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GOVERNOR



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BOARD OF EXECUTIVE CLEMENCY

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September 18, 2024

Lindsey Perry, CPA, CFE, Auditor General
Arizona Auditor General
2910 North 44th Street, Suite, 410
Phoenix, Arizona 85018-7271

Re: Arizona Board of Executive Clemency Sunset Review

Dear Ms. Perry,

On behalf of the Arizona Board of Executive Clemency, attached is the response to the Performance Audit and Sunset Review report finding and recommendations.

The audit recommendations are agreed to and the Board is already in the process of implementing a number of them. The Board extends its appreciation to the auditors for their professionalism and the time they spent in gaining an understanding of the Board's processes.

Respectfully,

A handwritten signature in blue ink, appearing to read "Gretchen McClellan-Singh".

Gretchen McClellan-Singh
Executive Director

Finding 1: Board did not comply with some State conflict-of-interest requirements, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

Recommendation 1: The Board should continue to revise and implement its conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices, including:

Recommendation 1a: Requiring Board members and employees to complete an ADOA disclosure form upon appointment/hire, including attesting that no conflicts exist, if applicable, and reminding them at least annually to update their disclosure form when their circumstances change, consistent with recommended practices.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has taken necessary steps to revise conflict of interest and hearing recusal policies to comply with requirements and reduce risk that interests may influence official conduct. On August 21, 2024, the Board voted to accept revisions to Board policies #103, Conflict of Interest and #104, Hearing Recusal, effective September 1, 2024. The Board will continue to review all policies and procedures to ensure the agency is in compliance. 1a: The Board has implemented a process to have all Board members and Board staff complete the ADOA approved disclosure form upon hire and on an annual basis in addition to any time there is a change.

Recommendation 1b: Implementing a process to track Board member/employee completion of conflict-of-interest disclosure forms, including the date the form was completed.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has implemented a process for all Board members and Board staff complete the ADOA approved disclosure form upon hire and on an annual basis. The Board will also implement the use of an employee file checklist to ensure all required records are included in the Board's personnel files.

Recommendation 1c: Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: All substantial interest disclosures (forms and any meeting minutes) will now be kept in a special file and made available for public inspection.

Recommendation 1d: Establishing a process to review and remediate disclosed conflicts.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has taken necessary steps to revise conflict of interest and hearing recusal policies to comply with requirements and reduce risk that interests may influence official conduct. On August 21, 2024 the Board voted to accept revisions to Board policies #103, Conflict of Interest and #104, Hearing Recusal, effective September 1, 2024.

Hearing recusals remain very rare. The Board will continue to review all policies and procedures to ensure the agency is in compliance.

Recommendation 1e: Providing periodic training on its conflict-of-interest requirements, process, and disclosure form, including providing training to all Board members and employees on how the State's conflict-of-interest requirements relate to their unique programs, functions, or responsibilities.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will implement annual training on conflict of interest requirements, hearing recusal policies and procedures and how State requirements relate to agency business.

Sunset Factor 2: The Board's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.

Recommendation 2: The Board should consistently track victim notification requirements for hearings, including whether notices have been sent, and adopt oversight procedures to ensure notices are tracked correctly and sent timely.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will adopt and implement oversight procedures to ensure that notices are tracked and continue to be sent timely as found during the audit.

Recommendation 3: The Board should hold revocation hearings within 60 days of an inmate's arrest and return to custody.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: Upon receipt of the warrant, the Board will continue to schedule probable cause hearings and revocation hearings as timely as possible. The Board will continue to review options to expand the availability of revocation calendar slots, particularly in months where a holiday occurs on a revocation calendar day.

Recommendation 4: The Board should develop and implement a process for tracking its compliance with the 60-day time frame for holding revocation hearings after an inmate's arrest and return to custody.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: Upon receipt of the warrant, the Board is tracking the date the individual was returned to custody to identify those cases that are at risk of going beyond 60 days.

Recommendation 5: The Board should develop and implement a process for identifying those cases where the revocation hearing is at risk of being held after the 60-day time frame and prioritize holding these revocation hearings.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is tracking the date an individual was returned to custody to prioritize those cases that are at risk of going beyond 60 days. The Board will continue to review options to expand the availability of revocation calendar slots, particularly in months where a holiday occurs on a revocation calendar day.

Recommendation 6: The Board should obtain inmates' warrants electronically from ADCRR.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board was notified by representatives from ADCRR that they planned to implement electronic delivery of warrants to the Board in September 2024.

Recommendation 7: The Board should establish consistent communication with ADCRR to notify ADCRR of any delays in receiving inmates' warrants and to discuss and establish expectations and/or goals for ADCRR's timely delivery of warrants to the Board. The Board should document any agreed upon expectations and/or goals that result from these communications, including considering the need for entering into a written agreement, such as a memorandum of understanding or an intergovernmental agreement, with ADCRR that establishes formal time frame expectations and/or goals for receiving inmates' warrants.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is now tracking the date individuals are returned to custody and will be able to analyze the average length of time from re-incarceration to the Board's receipt of the warrant. By tracking this data, the Board will be able to engage in more productive communications with ADCRR regarding the timely receipt of warrants and to document agreed upon expectations. If needed, the Board will engage in discussions with ADCRR regarding a memorandum of understanding or an intergovernmental agreement to establish more certain expectations.

Recommendation 8: The Board should develop and implement a structured decision-making model appropriate for use in Arizona to assist Board members in reaching consistent and accurate decisions.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: With current limited staff resources the Board is unable to develop and implement a full structured decision-making (SDM) model at this time. However, the Board will seek out training on SDM models and will focus efforts on identifying more flexible models and tools that can be implemented without a significant increase in staffing.

Recommendation 9: The Board should, in coordination with ADCRR, develop and implement a process for tracking whether any inmate whose sentence was commuted by the Governor ever reoffends and is incarcerated with ADCRR to help assess the impact and usefulness of and improve its commutation recommendations.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has implemented a process for tracking individuals who have obtained a commutation of sentence to determine if they have been re-incarcerated in ADCRR

custody. In reviewing cases of commutation and pardons granted in Arizona since 2015 the Board has found no instance where an individual was incarcerated in ADCRR after their commutation or pardon was granted.