

**COMMISSION ON OFFENDER REVIEW**

Clemency and Conditional Medical Release



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Auditor General

## Commission on Offender Review

The Commission on Offender Review is established by Article IV, Section 8(c) of the State Constitution and operates under the authority of Sections 20.32 and 947.13, Florida Statutes. Pursuant to Section 947.04, Florida Statutes, the head of the Commission is the Chair, and the three members of the Commission are appointed by the Governor and Cabinet subject to confirmation by the Senate. The Commission also serves as the administrative and investigative body that supports the Board of Executive Clemency, composed of the Governor and Cabinet. During the period of our audit, the following individuals served as Commission members:

Melinda N. Coonrod	Chair
Richard D. Davison	Vice Chair
David A. Wyant	Secretary

The team leader was Ryan Marlar, CPA, and the audit was supervised by Barry Bell, CPA.

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# COMMISSION ON OFFENDER REVIEW

## Clemency and Conditional Medical Release

### SUMMARY

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On November 14, 2019, the Legislative Auditing Committee directed the Auditor General to perform this operational audit of the Commission on Offender Review (Commission) and address specific concerns related to clemency and conditional medical release. Accordingly, this operational audit of the Commission focused on clemency and conditional medical release. As discussed in Finding 1, our audit found that the Commission did not always timely docket or investigate conditional medical release referrals.

Additional information obtained during our audit related to the Legislative Auditing Committee's specific concerns is presented in this report under the subheading *RELATED INFORMATION*.

### BACKGROUND

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The Commission on Offender Review (Commission) functions as a quasi-judicial, decision-making body that administers post-prison supervisory release programs such as parole, conditional release, and conditional medical release, as well as administers the clemency process. The Commission operates through a central office in Tallahassee and 12 regional field offices. For the 2019-20 fiscal year, the Legislature appropriated approximately \$11.4 million to the Commission and authorized 132 positions.<sup>1</sup> According to Commission records, during the 2019-20 fiscal year, clemency activities accounted for approximately 60 percent of Commission workload hours and conditional medical release accounted for less than 1 percent of the workload hours.

#### CLEMENCY

Pursuant to State law,<sup>2</sup> the Commission serves as the administrative and investigative arm of the Board of Executive Clemency (Board), composed of the Governor and Cabinet. Clemency is a constitutionally authorized process through which convicted individuals may be considered for relief from punishment and seek restoration of their civil rights. The types of clemency include: full pardon; conditional pardon; pardon without firearm authority; pardon for misdemeanor; commutation of sentence; remission of fines and forfeitures; specific authority to own, possess, or use firearms; restoration of civil rights; restoration of alien status under State law; and commutation of death sentence. The *Rules of Executive Clemency*<sup>3</sup> specify that clemency is an act of mercy, the Governor has the unfettered discretion to deny clemency at any time, for any reason, and the Governor, with the approval of at least two members of the Board, has the unfettered discretion to grant clemency, at any time, for any reason.

The Commission, Office of Executive Clemency, is responsible for processing applications for clemency and the Office of Clemency Investigations is responsible for investigating, reviewing, evaluating, and

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<sup>1</sup> Chapter 2019-115, Laws of Florida.

<sup>2</sup> Sections 20.32 and 947.13, Florida Statutes.

<sup>3</sup> Rules 1 and 4, *Rules of Executive Clemency*.

reporting to the Board on all clemency cases. Individuals seeking any type of clemency must submit an application to the Office of Executive Clemency. Every application that meets the requirements of the *Rules of Executive Clemency* may be referred to the Commission for an investigation, report, and recommendation, and such applications may be considered by the Board.<sup>4</sup> The Office of Executive Clemency determines eligibility, forwards eligible applications to the Office of Clemency Investigations for investigation, and notifies ineligible applicants of their options. The Board appoints a Clemency Coordinator who is responsible for coordinating all clemency meetings, referring applications for investigation, and serving as the official custodian of all clemency records.

As shown in Table 1, the number of pending clemency cases fell from a high of 95,425 at June 30, 2011, to 28,024 the next fiscal year largely due to a Commission initiative to complete eligibility determinations for approximately 40,000 pending applications.

**Table 1**  
**Clemency Cases Pending, Cases Completed,**  
**and Applications Received**  
**For the 2009-10 Through 2019-20 Fiscal Years**

Fiscal Year	Applications Received	Cases Completed	Pending Clemency Cases at June 30
2009-10	66,035	38,355	88,096
2010-11	38,886	30,565	95,425
2011-12	5,781	73,569	28,024
2012-13	6,626	15,099	21,641
2013-14	4,820	7,636	20,125
2014-15	5,327	6,121	20,258
2015-16	6,462	6,622	20,907
2016-17	6,921	6,768	22,126
2017-18	5,381	5,639	22,746
2018-19	5,204	4,748	23,842
2019-20	4,525	4,244	24,400
<b>Totals</b>	<b><u>155,968</u></b>	<b><u>199,366</u></b>	<b><u>387,590</u></b>

Sources: Commission *Annual Reports* and Commission management.

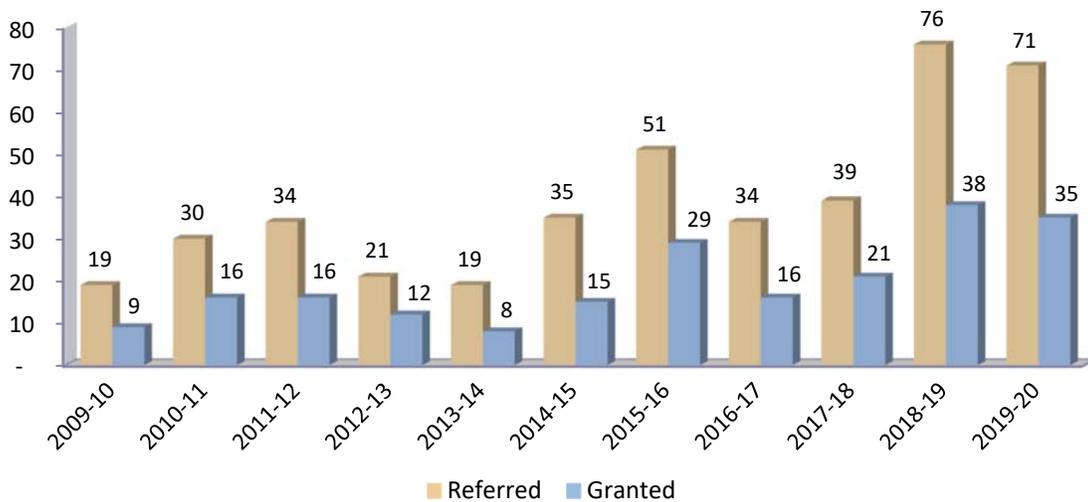
After the number of pending clemency cases decreased to 20,125 at June 30, 2014, the number of cases slowly increased to 24,400 at June 30, 2020. The number of clemency applications received declined from 66,035 during the 2009-10 fiscal year to 4,525 during the 2019-20 fiscal year due to changes in the *Rules of Executive Clemency* that added eligibility criteria and ended the requirement that the Department of Corrections (Department) electronically transmit to the Commission a list of persons released from incarceration and supervision to begin the restoration of civil rights process. These changes also contributed to fewer cases being completed by the Commission, with the number of cases completed declining from 38,355 during the 2009-10 fiscal year to 4,244 during the 2019-20 fiscal year.

<sup>4</sup> Rules 7 and 11, *Rules of Executive Clemency*.

## CONDITIONAL MEDICAL RELEASE

In accordance with State law,<sup>5</sup> the Commission established the conditional medical release program. As part of the program, the Department is responsible for evaluating inmates to determine whether an inmate meets the statutory requirements to be designated as either terminally ill or permanently incapacitated and for referring identified inmates to the Commission for release consideration. State law provides that no inmate has a right to conditional medical release and that the authority to grant or deny, and to establish additional conditions for, conditional medical release rests solely with the Commission. The Commission also has the authority to order inmates who have been released under this program to be returned to the Department for a conditional medical release revocation hearing if their medical or physical conditions improve to the extent that they no longer meet the program's criteria or if the inmate violates any condition of the release established by the Commission. As shown in Chart 1, the Commission granted conditional medical release to approximately half of the inmates referred by the Department during the 2009-10 through 2019-20 fiscal years.

**Chart 1**  
**Offenders Referred for and Offenders Granted Conditional Medical Release**  
**During the 2009-10 Through 2019-20 Fiscal Years**



Sources: Commission Annual Reports and Monthly Accomplishments Reports.

## FINDING AND RECOMMENDATION

### Finding 1: Conditional Medical Release

The Department submits for each conditional medical release referral a proposed release plan and residence to the Commission, Office of Commission Clerk (Commission Clerk). The Commission Clerk was to immediately e-mail that information to the appropriate Commission regional administrator and field office staff to request a conditional medical release investigation and, pursuant to Commission

<sup>5</sup> Section 947.149, Florida Statutes.

procedures,<sup>6</sup> allow at least 2 business days for the completion of the investigation prior to placing the referral on the next docket for Commission consideration. According to Commission procedures<sup>7</sup> and management, upon receipt of the proposed release plan by the field office, an investigator was to be immediately assigned to conduct the conditional medical release investigation, which was to be completed as soon as possible and in time to be considered on the scheduled docket date.

As part of our audit, we examined records for 19 of the 132 conditional medical release referrals with docket dates during the period July 2018 through February 2020 to determine whether the referrals were placed on the next docket for Commission consideration and whether conditional medical release investigations were timely completed. Our examination found that the conditional medical release referrals for three terminally ill inmates were not considered on the next docket after referral from the Department. Specifically:

- For one referral, there were 10 business days between the referral date and the next Commission docket date. However, the referral was not sent to the Commission regional administrator until 4 business days after referral from the Department. Upon receipt, the regional administrator immediately routed the referral for investigation and, within 2 business days, the investigator determined that the proposed residence was unsatisfactory. On the same day the investigator determined that the proposed residence was unsatisfactory, the inmate's spouse suggested an alternative proposed residence and the investigator's supervisor e-mailed the Commission Clerk inquiring how to proceed. The Commission Clerk replied 2 business days later requesting that the alternative proposed residence be investigated. The next day, the investigator determined the alternative proposed residence was also unsatisfactory. The Commission then continued the case to the next docket 2 weeks later to consider an alternate release plan; however, the inmate died 2 days prior to the new docket date.

According to Commission management, the Commission Clerk employee responsible for coordinating conditional medical release cases had been recently promoted and was continuing to work part-time in her previous position while training for her new position. Notwithstanding, promptly routing the referral to the regional administrator and promptly responding to the supervisor's inquiries would have provided up to 6 additional business days to identify an acceptable proposed residence prior to the original docket date and the opportunity for the inmate to be considered for release from prison prior to his death.

- For another referral, there were 12 business days between the referral date and the next Commission docket date. However, due to employee error, the Commission Clerk did not submit the referral for the next available docket date but instead placed it on a docket 22 business days after referral, at which time the request was granted.
- For the third referral, there were 3 business days between the referral date and the next Commission docket date. However, the Commission Clerk placed it on a docket 8 business days after referral, at which time the request was denied. According to Commission management, if a referral was received late on a Friday, the case would be placed on the docket 2 weeks following the referral to allow sufficient time to review and investigate the referral. However, subsequent to our initial inquiry, Commission management indicated in May 2020 that the Commission had amended its process to require docketing conditional medical release cases on the next docket without regard to the referral day.

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<sup>6</sup> *Procedures for Docketing Conditional Medical Release.*

<sup>7</sup> *Commission Procedure Directive 3.03.09, Pre-Parole and Conditional Medical Release Investigations.*

Absent the timely docketing and investigation of conditional medical release referrals, eligible inmates may not be promptly considered for conditional medical release in accordance with Commission procedures and management's expectations.

**Recommendation:** We recommend that Commission management take appropriate steps to ensure that conditional medical release referrals are timely docketed and investigated.

## ***RELATED INFORMATION***

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For the 2019-20 fiscal year, the Legislature appropriated \$1,311,525 for Other Personal Services (OPS),<sup>8</sup> an increase of \$755,217 (136 percent) over the prior fiscal year, to address clemency workload issues. Citing, among other things, the increased OPS appropriations, on November 14, 2019, the Legislative Auditing Committee directed the Auditor General to perform this operational audit of the Commission and address specific concerns related to clemency and conditional medical release. Our audit procedures identified the following information related to those specific concerns.

<b>CLEMENCY INVESTIGATIONS COMPLETED</b>
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As of March 2020, the Commission had hired 26 OPS Commission investigators and 25 dual-compensated<sup>9</sup> Commission investigators (19 salaried Commission investigators, 1 salaried Commission investigator supervisor, and 5 salaried regional administrators) using the additional OPS appropriations. As shown in Table 2, during the period July 2019 through February 2020, 18 of the 26 OPS Commission investigators completed 360 clemency investigations, 19 of the 25 dual-compensated Commission investigators completed 291 clemency investigations, and 32 salaried Commission investigators completed 526 clemency investigations.

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<sup>8</sup> Pursuant to Department of Management Services (DMS) Rule 60L-33.005, Florida Administrative Code, OPS employment is a temporary employer-employee relationship used solely for the completion of short-term or intermittent tasks. OPS employees do not fill established positions.

<sup>9</sup> The dual-compensated Commission investigators' salaries were funded by both OPS and non-OPS appropriations.

**Table 2**  
**Clemency Investigations Completed by Investigator**  
**July 2019 Through February 2020**

Clemency Type	OPS Commission Investigators	Dual-Compensated Commission Investigators	Salaried Commission Investigators	Totals
Full pardon	101	97	146	344
Pardon without firearm authority	4	1	7	12
Pardon for misdemeanor	6	5	6	17
Commutation of sentence	-	-	2	2
Remission of fines and forfeitures	1	1	5	7
Specific authority to own, possess, or use firearms	96	62	125	283
Restoration of civil rights in Florida	130	58	148	336
Restoration of civil rights in Florida without a hearing <sup>a</sup>	20	59	71	150
Restoration of alien status under State law	2	1	12	15
Restoration of alien status under State law without a hearing <sup>a</sup>	-	2	1	3
Commutation of death sentence	-	5	3	8
<b>Totals</b>	<b><u>360</u></b>	<b><u>291</u></b>	<b><u>526</u></b>	<b><u>1,177</u></b>

<sup>a</sup> Pursuant to the *Rules of Executive Clemency*, certain eligible persons may have their civil rights or alien status under State law (excluding the specific authority to own, possess, or use firearms), restored by approval of the Board without a hearing.

Sources: Commission clemency and employment records.

### COMMISSION INVESTIGATOR PERFORMANCE STANDARDS

Pursuant to State law<sup>10</sup> and DMS rules,<sup>11</sup> the Commission established performance expectations for salaried Commission investigators. The Commission did not establish formal performance expectations for OPS Commission investigators, as OPS employees are not subject to statutory requirements for, or DMS rules regarding, performance evaluations. According to Commission management, due to variability in investigator experience, clemency case complexity, and investigator responsibilities, the Commission did not identify a minimum number of clemency cases to be completed as part of Commission investigator performance expectations. However, as shown in Chart 2, the Commission did identify *Quantity of Work* as an agency-level performance expectation category.

<sup>10</sup> Sections 110.224 and 110.605(1)(b), Florida Statutes.

<sup>11</sup> DMS Rules, Chapter 60L-35, Florida Administrative Code.

## Chart 2 Commission Investigator Agency-Level Performance Expectations

### **Interpersonal Skills**

Includes encouraging participation and teamwork; fostering and contributing to unit morale, working respectfully with the public, peers, and subordinates. Accepts and acts on advice and counseling from superiors. Shares ideas and concerns with superiors. Helps others.

### **Quality of Work**

Includes job knowledge, accuracy, achievement of objectives, effectiveness, initiative, resourcefulness, thoroughness, neatness and organization of work product.

### **Quantity of Work**

Includes amount and efficiency of work being performed. Includes the individual's contribution to the productivity of the unit and accomplishing unit goals. Readily accepts additional work assignments and duties.

### **Work Habits**

Sets a good example for others which includes attendance, observance of work hours, completion of work by established deadlines, compliance with rules, policies and directives, safety practice and use of tools and equipment. Helps others. Displays the integrity and values consistent with the Commission's Code of Conduct, a positive attitude and a passion for excellence in his/her work. Willingness to adapt to changes in work environment and work schedules.

Source: Commission investigator performance plans for the 2019-20 evaluation period.

As shown in Chart 3, the Commission also established job-specific performance expectations for salaried Commission investigators, which varied depending on each Commission investigator's specific job duties.

## Chart 3 Commission Investigator Job-Specific Performance Expectations

**Completes Clemency Gold Seal Requests:** *Timely and accurately completes all Gold Seal requests regarding the status of all forms of clemency.*

- 5 = 100 to 98 percent of the time provides timely and accurate completion of Gold Seal requests.
- 4 = 97 to 95 percent of the time provides timely and accurate completion of Gold Seal requests.
- 3 = 94 to 92 percent of the time provides timely and accurate completion of Gold Seal requests.
- 2 = 91 to 89 percent of the time provides timely and accurate completion of Gold Seal requests.
- 1 = Less than 88 percent of the time provides timely and accurate completion of Gold Seal requests.

**Clemency – With a Hearing and Without a Hearing Clemency Comprehensive Case Analysis (CCA):** *With a Hearing and Without a Hearing CCA's are submitted by the Investigator to the Regional Administrator or Commission Investigator Supervisor with no clemency rule eligibility errors or omissions.*

- Clemency Rule Eligibility Error: When a CCA is submitted for approval, but returned to the Investigator based on the rules of eligibility: 1) Ineligible per clemency rules, 2) Request to convert to alternate clemency type; each CCA returned is counted as one error.
- CCA Errors and Omissions: When a CCA is submitted for approval, but returned to the Investigator based on the error and/or omission of information which is required by the Clemency Investigations Instruction Manual in the following categories: 1) Felony Convictions, 2) Prior/Subsequent/Criminal Record, 3) Traffic Record, 4) Domestic Violence Information/Injunction Records: four or more errors and/or omissions in one CCA would be counted as one omission.
- Measurement and Evaluation: The total number of Clemency Rule Eligibility Errors plus the total number of CCA Errors and Omissions divided by the total number of CCAs completed. This excludes capital punishment cases.  $1 - (\text{CCA Clemency Errors} + \text{CCA Omissions}) / \text{Completed CCAs} \times 100 = \%$
- 5 = 90 to 100 percent of With a Hearing and Without a Hearing CCAs are submitted with no errors or omissions.
- 4 = 80 to 89 percent of With a Hearing and Without a Hearing CCAs are submitted with no errors or omissions.
- 3 = 70 to 79 percent of With a Hearing and Without a Hearing CCAs are submitted with no errors or omissions.
- 2 = 60 to 69 percent of With a Hearing and Without a Hearing CCAs are submitted with no errors or omissions.
- 1 = Less than 60 percent of With a Hearing and Without a Hearing CCAs are submitted with no errors or omissions.

**Violation Hearing Process:** *To ensure public safety and provide victim assistance the examiner will timely and accurately serve notice of violations to the offender, conduct violation hearings, and provide the Commission with the hearing packet.*

- The measure is evaluated by the total number of violation hearings and hearing packets divided by the number of violation hearings and hearing packets that were not completed timely and/or accurately.
- 5 = The examiner will accurately and timely serve notice of violations to the offender, prepare for and conduct violation hearings within 45 calendar days, and provide the Commission with the hearing packet within 14 calendar days 96-100 percent of the time.
- 4 = The examiner will accurately and timely serve notice of violations to the offender, prepare for and conduct violation hearings within 45 calendar days, and provide the Commission with the hearing packet within 14 calendar days 91-95 percent of the time.
- 3 = The examiner will accurately and timely serve notice of violations to the offender, prepare for and conduct violation hearings within 45 calendar days, and provide the Commission with the hearing packet within 14 calendar days 85-90 percent of the time.
- 2 = 84 percent or less on either accuracy or timeliness of the violation hearing process.
- 1 = 84 percent or less on both accuracy and timeliness of the violation hearing process.

**Prepare Clemency Materials for Clemency Board Meetings:** *Accurately provide Director with all scanned and bookmarked materials for Clemency Board Meetings.*

- 5 = 100 to 98 percent of the time accurately provides materials for Clemency Board Meetings.
- 4 = 97 to 95 percent of the time accurately provides materials for Clemency Board Meetings.
- 3 = 94 to 92 percent of the time accurately provides materials for Clemency Board Meetings.
- 2 = 91 to 89 percent of the time accurately provides materials for Clemency Board Meetings.
- 1 = Less than 89 percent of the time accurately provides materials for Clemency Board Meetings.

**Clemency Investigation Eligibility Determinations:** *Clemency investigation eligible determinations are submitted by the examiner with no errors.*

- The measure is evaluated by the total number of eligible With a Hearing and Without a Hearing cases completed (excluding capital punishment cases) divided by the number of eligible With a Hearing and Without a Hearing cases completed that had no errors.
- 5 = 98 to 100 percent of eligible determinations are submitted with no errors.
- 4 = 95 to 97 percent of eligible determinations are submitted with no errors.
- 3 = 92 to 94 percent of eligible determinations are submitted with no errors.
- 2 = 89 to 91 percent of eligible determinations are submitted with no errors.
- 1 = Less than 89 percent of eligible determinations are submitted with no errors.

**Capital Punishment Investigation Assignments:** *Accurately provides response to assignments in a timely manner.*

- 5 = 100 to 98 percent of the time accurately responds to assignments.
- 4 = 97 to 95 percent of the time accurately responds to assignments.
- 3 = 94 to 92 percent of the time accurately responds to assignments.
- 2 = 91 to 89 percent of the time accurately responds to assignments.
- 1 = Less than 89 percent of the time accurately responds to assignments.

**CRS/ARS Audits:** *Timely and accurately review Conditional Release and Addiction Recovery interviews to determine eligibility and determine the eligible components.*

- 5 = 95 to 100 percent timely and accurately review CRS/ARS interviews to determine eligibility.
- 4 = 90 to 94 percent timely and accurately review CRS/ARS interviews to determine eligibility.
- 3 = 85 to 89 percent timely and accurately review CRS/ARS interviews to determine eligibility.
- 2 = 80 to 84 percent timely and accurately review CRS/ARS interviews to determine eligibility.
- 1 = Less than 80 percent timely and accurately review CRS/ARS interviews to determine eligibility.

Source: Commission investigator performance plans for the 2019-20 evaluation period.

## POLICIES AND PROCEDURES

As part of our audit, we reviewed Commission policies and procedures, performed inquiries of Commission management, and examined Commission records relating to clemency and conditional medical release cases and determined that, except as noted in Finding 1, the Commission had established and substantially complied with policies and procedures that promoted the effective, efficient, and timely review of clemency and conditional medical release cases in accordance with applicable guidelines. Although Commission policies and procedures did not establish time frames for completing clemency investigations, the policies and procedures did require cases to be completed in the order received. Our analysis of clemency cases at various phases of the clemency process found that the Commission generally processed clemency cases in the order received during the period July 2018 through February 2020.

According to Commission management, the Commission had not established time frames for completing clemency investigations because clemency operates at the discretion of the Board and, as a result, the Commission processes applications and conducts subsequent investigations as it receives direction from the Board. Commission management further stated that the Board has adopted the *Rules of Executive Clemency* which provide no specific time frame requirements for each step in the clemency application process and that clemency functions do not have statutorily mandated time frames.

## CLEMENCY WORKLOAD

As of February 29, 2020, there were 23,134 pending clemency cases and 2,451 pending requests for review.<sup>12</sup> Approximately 90 percent (20,898) of pending clemency cases and 71 percent (1,750) of requests for review were pending the completion of an investigation. Tables 3 and 4 present, by case status, the ages of the pending clemency cases and requests for review and Table 5 presents, by case type, the ages of pending clemency cases in the *Sent to region for investigation* status.

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<sup>12</sup> Pursuant to the *Rules of Executive Clemency*, applicants for commutation of sentence must submit request for review applications. The Commission is responsible for reviewing requests for review along with other relevant materials and making advisory recommendations to the Board. If the Governor and at least one other member of the Board grant a request for review, the Clemency Coordinator may refer the request to the Commission for a full investigation and place the case on an agenda to be heard by the Board. Alternatively, in cases of exceptional merit, any member of the Board may place a case on an upcoming agenda for consideration.

**Table 3**  
**Pending Clemency Case Ages (in Years)**  
**As of February 29, 2020**

<b>Clemency Status</b>	<b>Totals</b>	<b>Less than 1</b>	<b>&gt; 1 to 5</b>	<b>&gt; 5 to 10</b>	<b>&gt; 10 to 15</b>
Not yet reviewed	727	727	-	-	-
Sent to Commission investigator for with hearing investigation	165	156	8	1	-
Sent to Commission investigator for without hearing investigation	11	10	1	-	-
Sent to region for investigation	20,898	1,178	8,464	7,263	3,993
Being reviewed by Commission investigator (Eligible) <sup>a</sup>	877	56	184	95	542
Being reviewed by Commission investigator (Ineligible) <sup>a</sup>	13	5	2	3	3
Eligible	146	-	133	3	10
On agenda for Commission review	126	1	7	6	112
On agenda for Board	100	3	18	9	70
Under Board advisement	16	1	1	1	13
Order circulating with hearing only	47	1	1	5	40
Ineligible cases sent to the Office of Executive Clemency to return to applicant	8	3	-	3	2
<b>Totals</b>	<b><u>23,134</u></b>	<b><u>2,141</u></b>	<b><u>8,819</u></b>	<b><u>7,389</u></b>	<b><u>4,785</u></b>

<sup>a</sup> The results of the field investigation have been received from the field for review by a Central Office investigator. *Eligible* indicates that the applicant is eligible for clemency, while *ineligible* indicates the investigator has determined that the applicant is not eligible for clemency.

Source: Commission clemency records.

**Table 4**  
**Pending Requests for Review Ages (in Years)**  
**As of February 29, 2020**

<b>Request for Review Status</b>	<b>Totals</b>	<b>Less than 1</b>	<b>&gt; 1 to 5</b>	<b>&gt; 5 to 10</b>	<b>&gt; 10 to 14</b>
Not yet reviewed	288	280	8	-	-
Sent to the Office of Clemency Investigations for waiver report	100	76	16	5	3
Pending investigation in the Office of Clemency Investigations	1,750	47	1,637	66	-
Sent to the Office of Executive Clemency	17	-	11	6	-
On agenda for Commission review	49	-	32	17	-
Sent to Board for decision	247	-	2	241	4
<b>Totals</b>	<b><u>2,451</u></b>	<b><u>403</u></b>	<b><u>1,706</u></b>	<b><u>335</u></b>	<b><u>7</u></b>

Source: Commission clemency records.

**Table 5**  
**Pending Sent to Region for Investigation Clemency Case Ages (in Years)**  
**As of February 29, 2020**

<b>Clemency Case Type</b>	<b>Totals</b>	<b>Less than 1</b>	<b>&gt; 1 to 5</b>	<b>&gt; 5 to 10</b>	<b>&gt; 10 to 14</b>
Full pardon	5,446	355	2,672	2,120	299
Conditional pardon	1	-	1	-	-
Pardon without firearm authority	139	7	77	52	3
Pardon for misdemeanor	345	23	168	147	7
Remission of fines and forfeitures	98	9	47	33	9
Specific authority to own, possess, or use firearms	5,294	366	2,729	1,969	230
Restoration of civil rights with a hearing	9,245	290	2,652	2,889	3,414
Restoration of civil rights without a hearing <sup>a</sup>	209	120	79	3	7
Restoration of alien status under State law without a hearing <sup>a</sup>	114	3	38	50	23
Restoration of alien status under State law with a hearing	3	1	1	-	1
Commutation of death sentence	4	4	-	-	-
<b>Totals</b>	<b><u>20,898</u></b>	<b><u>1,178</u></b>	<b><u>8,464</u></b>	<b><u>7,263</u></b>	<b><u>3,993</u></b>

<sup>a</sup> Pursuant to the Rules of Executive Clemency, certain eligible persons may have their civil rights or alien status under State law, excluding the specific authority to own, possess, or use firearms, restored by approval of the Board without a hearing.

Source: Commission clemency records.

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from March 2020 through August 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit of the Commission on Offender Review (Commission) focused on clemency and conditional medical release. For those areas, the objectives of the audit were to:

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed into operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- Identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

In planning and conducting our audit, we assessed whether internal controls were significant to our audit objectives by considering the internal control integrated framework established by the Committee of Sponsoring Organizations (COSO)<sup>13</sup> and adapted for a government environment within the *Standards for Internal Control in the Federal Government* issued by the United States Government Accountability Office. That framework is illustrated in the following table.

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<sup>13</sup> The Committee of Sponsoring Organizations (COSO) of the Treadway Commission was established in 1985 to develop guidance in the areas of risk and control which enable good organizational governance and reduction of fraud. Pursuant to their mission, COSO developed a framework for internal control that consists of five components and 17 underlying principles.

## COSO Internal Control Integrated Framework

Internal Control Component	Description	Underlying Principles (To be Applied by Commission Management)
<b>Control Environment</b>	Standards, processes, and structures that provide the basis for carrying out internal control across the organization. Represents the foundation on which an effective internal control system is built.	<ul style="list-style-type: none"> <li>• Demonstrate commitment to integrity and ethical values.</li> <li>• Exercise oversight responsibility.</li> <li>• Establish structures and reporting lines and assign authorities and responsibilities.</li> <li>• Demonstrate commitment to a competent workforce.</li> <li>• Hold individuals accountable for their responsibilities.</li> </ul>
<b>Risk Assessment</b>	Management's process to consider the impact of possible changes in the internal and external environment and to consider actions to mitigate the impact. The basis for how risks will be managed.	<ul style="list-style-type: none"> <li>• Establish clear objectives to define risk and risk tolerances.</li> <li>• Identify, analyze, and respond to risks.</li> <li>• Consider the potential for fraud.</li> <li>• Identify, analyze, and respond to significant changes that impact the internal control system.</li> </ul>
<b>Control Activities</b>	Activities in the form of policies, procedures, and standards that help management mitigate risks. Control activities may be preventive in nature or detective in nature and may be performed at all levels of the organization.	<ul style="list-style-type: none"> <li>• Design control activities to achieve objectives and respond to risks.</li> <li>• Design control activities over technology.</li> <li>• Implement control activities through policies and procedures.</li> </ul>
<b>Information and Communication</b>	Information obtained or generated by management to support the internal control system. Communication is the dissemination of important information to help the organization meet requirements and expectations.	<ul style="list-style-type: none"> <li>• Use relevant and quality information.</li> <li>• Communicate necessary information internally to achieve entity objectives.</li> <li>• Communicate necessary information externally to achieve entity objectives.</li> </ul>
<b>Monitoring</b>	Periodic or ongoing evaluations to verify that the internal control system is present and functioning properly.	<ul style="list-style-type: none"> <li>• Conduct periodic or ongoing evaluations of the internal control system.</li> <li>• Remediate identified internal control deficiencies on a timely basis.</li> </ul>

We determined that the internal control components significant to our audit objectives included control environment, control activities, information and communication, and monitoring. The associated underlying principles significant to our objectives included:

- Management commitment to recruit, develop, and retain competent individuals.
- Management evaluation of employee performance and holding individuals accountable for their internal control responsibilities.
- Management design of control activities to achieve the Commission's objectives and respond to risks.
- Management design of controls over information technology.
- Management establishment of policies and procedures to implement internal control activities.
- Management use of relevant and quality information to achieve the Commission's objectives.
- Management communication of information internally necessary to achieve the Commission's objectives.
- Management activities to monitor the Commission's internal control system and evaluate the results.
- Management remediation of identified internal control deficiencies on a timely basis.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in internal controls significant to our audit objectives; instances of noncompliance with applicable governing laws, rules, or contracts; and instances of inefficient or ineffective operational

policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; identifying and evaluating internal controls significant to our audit objectives; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature, does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws, rules, Commission policies and procedures, and other guidelines, and interviewed Commission personnel to obtain an understanding of clemency and conditional medical release processes.
- Obtained an understanding of selected information technology (IT) controls over Commission IT resources, assessed the risks related to those controls, and evaluated whether selected general and application IT controls for the Management of Application for Clemency system, Performance Based Budgeting System, and Victim Notification List were in place.
- From the population of 55 career service Commission investigators and 5 select exempt service Commission investigator supervisors as of March 2020, examined Commission records for 22 selected Commission investigators and 3 selected Commission investigator supervisors to determine whether the Commission established performance expectations for, and evaluated the performance of, Commission investigators in accordance with State law and Department of Management Services rules. In addition, we performed inquiries of Commission management and examined Commission records to determine whether the Commission established performance expectations and evaluated the performance of Other Personal Service (OPS) Commission investigators.
- Analyzed Commission personnel and clemency records to determine whether Commission investigators completed significantly fewer clemency investigations during the period July 2018 through February 2020 compared, on average, to prior monthly periods and whether the investigations were completed in accordance with Commission performance expectations.
- Analyzed Commission clemency records related to the 6,334 clemency cases and 1,733 requests for review closed during the period July 2018 through February 2020 and the 23,134 clemency

cases and 2,451 requests for review pending as of February 29, 2020, to determine whether the Commission had established a process to track and monitor clemency cases, processed applications in the order received, and whether the time for each phase of the clemency process increased significantly compared to prior periods.

- From the population of 7,599 clemency applications submitted during the period July 2018 through February 2020, examined Commission records for 25 selected applications to determine whether the Commission efficiently processed and screened clemency applications in accordance with State law, the *Rules of Executive Clemency*, and Commission procedures.
- From the population of 5,387 clemency applications deemed ineligible during the period July 2018 through February 2020, examined Commission records for 25 selected applications to determine whether the Commission appropriately determined applicants to be ineligible and notified applicants in accordance with the *Rules of Executive Clemency* and Commission procedures.
- From the population of 2,234 clemency applications deemed eligible during the period July 2018 through February 2020, examined Commission records for 25 selected applications to determine whether the Commission appropriately determined the applicants to be eligible and routed the applications for investigation in accordance with the *Rules of Executive Clemency* and Commission procedures.
- From the population of 2,704 clemency investigations completed during the period July 2018 through February 2020, examined Commission records for 50 selected investigations to determine whether the Commission efficiently investigated clemency cases in accordance with Commission procedures.
- From the population of 1,733 closed and 2,451 pending requests for review during the period July 2018 through February 2020, examined Commission records for 50 selected requests for review (25 closed and 25 pending) to determine whether the Commission efficiently processed and investigated requests for review applications in accordance with State law, the *Rules of Executive Clemency*, and Commission procedures.
- Analyzed Commission conditional medical release records and, from the population of 132 conditional medical release referrals with docket dates during the period July 2018 through February 2020, examined Commission records for 19 selected referrals to determine whether the Commission had established a process to track and monitor referrals, the referrals were placed on the next docket, conditional medical release investigations were timely completed, and the referrals were processed and investigated in accordance with State law, Commission rules, and Commission procedures.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the finding and recommendation that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

## ***AUTHORITY***

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Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is written in a cursive style with a large initial 'S'.

Sherrill F. Norman, CPA  
Auditor General

# MANAGEMENT'S RESPONSE

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## FLORIDA COMMISSION ON OFFENDER REVIEW

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MELINDA N. COONROD  
*Commissioner/Chair*

RICHARD D. DAVISON  
*Commissioner/Vice-Chair*

DAVID A. WYANT  
*Commissioner/Secretary*

January 27, 2021

Ms. Sherrill F. Norman, CPA  
Auditor General  
G74 Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

Dear Ms. Norman:

The Florida Commission on Offender Review (Commission) is in receipt of your December 28, 2020, report of preliminary and tentative findings and recommendations resulting from your audit of Clemency and Conditional Medical Release.

The Commission acknowledges no audit findings for Clemency and no audit findings in the prior audit Report No. 2019-025 for Conditional Medical Release.

The Commission acknowledges the following finding and recommendation for Conditional Medical Release:

Finding: On page 4 and 5 of the report.

Recommendation: "We recommend that Commission management take appropriate steps to ensure that Conditional Medical Release referrals are timely docketed and investigated."

Commission Response: In response to three Conditional Medical Release referrals not being timely docketed and investigated, the Commission will implement a quality assurance process to track Conditional Medical Release cases throughout the process, from receiving the referral to assigning, investigating, and docketing the case, to ensure that Conditional Medical Release referrals are timely docketed and investigated.

In closing, my staff and I would like to thank your auditors for their assistance during this process.

Sincerely,

Melinda N. Coonrod  
Chairman

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