

Department of Corrections and Rehabilitation

It Does Not Always Follow Its Policies When Discharging Parolees

REPORT NUMBER 2008-104, AUGUST 2008

Department of Corrections and Rehabilitation's response as of October 2008

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) examine the Department of Corrections and Rehabilitation's (Corrections) adult parole discharge practices. Specifically, the audit committee requested that we review Corrections' discharge policies and protocols and determine whether they comply with applicable laws and regulations. The audit committee also asked us to review Corrections' internal controls over its parole discharge process and determine whether they are sufficient to ensure compliance with Corrections' policies and state law and to identify inappropriate employee conduct. In addition, the audit committee requested that we ascertain whether a sample of parolees were discharged in accordance with staff recommendations and to determine, to the extent possible, the frequency with which parolees received discharges contrary to staff recommendations. Further, the audit committee asked us to assess whether Corrections discharged a sample of parolees in accordance with its policies, protocols, and applicable laws and regulations. The audit committee also requested that we determine whether Corrections took any corrective action as a result of an internal investigation of one of its regions. Finally, the audit committee asked us to review any proposed changes to laws, regulations, policies, and protocols to determine any potential changes in efficiency and effectiveness related to the discharge process and the extent to which those changes might affect the parole administrators' authority.

Finding #1: Corrections failed to adhere consistently to its discharge policies.

Corrections' policies dictate who must complete a discharge review report and who has the final authority to discharge parolees; however, Corrections does not always follow its own policies. With the exception of deported parolees,¹ these policies require that parole agents initiate a discharge review before parolees complete their required period of continuous parole and that the parole agents recommend on a discharge report whether to discharge or retain the parolees. Unit supervisors must read discharge review reports and then decide to discharge parolees or to forward the reports to district administrators. Although in many cases the unit supervisor may discharge parolees, the district administrator or the Board of Parole Hearings (board) must review and discharge certain parolees.

¹ United States Immigration and Customs Enforcement may place a hold on all confirmed illegal immigrants in Corrections' custody. Upon release to parole, these parolees transfer to federal custody pending deportation to their country of origin. Corrections monitors the status of these parolees during the deportation process. We refer to these individuals as deported parolees. Corrections' current policies allow parole staff to use their discretion on whether to prepare discharge review reports for deported parolees.

Audit Highlights . . .

Our review of the Department of Corrections and Rehabilitation's (Corrections) adult parole discharge practices found that:

- » *Corrections' data indicate that the responsible parole units did not submit discharge review reports for 4,981, or 9 percent, of the 56,329 parolees discharged between January 1, 2007, and March 31, 2008, and that Corrections lost jurisdiction over these individuals.*
- » *District administrators, operating within their authority to exercise judgment, at times discharged parolees despite the parole agents' and unit supervisors' recommendations to retain the parolees without documenting the reasons for their decisions.*
- » *Because of errors made by Corrections' Case Records Office, the appropriate authority did not participate in making the decisions to retain or discharge six of the 83 parolees whose discharge reviews we evaluated for compliance with Corrections' policies.*
- » *Corrections reported that it has taken immediate corrective measures and has drafted new policies that, if implemented, will govern its parole discharge process.*
- » *Changes to state law that became effective January 1, 2008, and proposed revisions to Corrections' policies—if implemented—could increase each district administrator's role and authority in the discharge review process.*

Corrections' data shows that a total of 56,329 parolees were discharged between January 1, 2007, and March 31, 2008. During this 15-month period, Corrections' data indicate that the responsible parole units did not submit discharge review reports for 4,981, or 9 percent, of these parolees and that Corrections lost jurisdiction over these individuals. Nearly half of these cases involved deported parolees for whom Corrections' current policies require only that parole staff prepare formal discharge review reports if staff wish to retain the parolees. The remaining discharged parolees who did not receive discharge review reports were not deported parolees, but the responsible parole units had failed to follow policy and submit the required reports. Consequently, Corrections lost its opportunity to recommend that the board retain these parolees, whose number included 363 individuals originally convicted of violent or serious offenses.

Additionally, our review of a sample of 509 discharges indicated that in 31 instances, district administrators, operating within their authority to exercise judgment, discharged parolees despite the parole agents' and unit supervisors' recommendations to retain the parolees. In 15 of these 31 instances, district administrators did not provide explanations for overruling these recommendations and discharging the parolees. In response to these issues, Corrections reported that it has taken certain immediate corrective measures and has drafted new regulations and a new policy memorandum that, if implemented, will govern its parole discharge process.

To prevent the automatic discharge of parolees, we recommended that Corrections ensure that its staff promptly prepare discharge review reports for all eligible parolees. We further recommended that Corrections finalize and implement the draft regulations and policy memorandum that will detail the policy and procedures governing its parole discharge process. The new policy should require district administrators to document their justifications for discharging parolees against the recommendations of both parole agents and unit supervisors. Finally, the new policy should require that discharge review reports be prepared for deported parolees.

Corrections' Action: Pending.

Corrections reports that it has drafted new regulations and a new policy memo that, when implemented, will govern its parole discharge process. Specifically, Corrections stated that the proposed regulations have been vetted through departmental stakeholders and are now with its Regulations Policy and Management Branch, pending submission to the State's Office of Administrative Law. Corrections also stated that its draft discharge review policy and procedures memorandum is currently undergoing administrative and executive review, and it expects the new policy to be finalized and approved by the end of February 2009. The new policy is intended to clearly define all aspects of the discharge review process, and specifically addresses report preparation and levels of oversight and tracking. For example, the new draft policy memorandum requires district administrators to provide sufficient justification for their decisions to retain or discharge parolees. In addition, the draft policy prohibits deported parolees from discharging by operation of law without a substantive documented review.

Finding #2: Corrections did not always ensure that the appropriate authority participated in discharge decisions.

Under state law, only the board has the authority to retain a parolee. Corrections' discharge policy requires that the board must review each case in which it previously took action to retain a parolee or to revoke or suspend an individual's parole. However, the board is not always involved in the discharge process when it should be. For 83 of the 509 parole discharges that we reviewed, we performed additional testing to determine whether Corrections followed all of its discharge policies. We found that because of errors made by Corrections' Case Records Office, the appropriate authority did not participate in making the decisions to retain or discharge six of these parolees. In four cases the board should have made the final decision to retain or discharge the parolees, but was not given the opportunity. Corrections' staff should have sent the other two cases to district administrators for either a decision to discharge or a recommendation to the board to retain the parolees, but staff did not do so. In all six of these cases, the parolees were discharged. Although Corrections maintains data on actions

taken by the board against offenders' paroles and on the entity that discharged each parolee, which it could use to verify that the board was involved in discharge decisions when required, this data is not always accurate.

In addition, in August 2007 Corrections began requiring its regional administrators, or designees, to audit 10 percent of all discharge review reports submitted each month to district administrators under their supervision. It also began requiring its district administrators to audit 10 percent of the monthly discharge decisions reached by each parole unit under their jurisdiction, excluding those discharge reviews that the parole units initially submitted to the district administrators for disposition. Although Corrections provided information that indicated that between August 2007 and May 2008, it conducted 6,380 discharge audits and noted instances of noncompliance, it was unable to provide us with accurate data on the number of these instances of noncompliance identified through such audits. Finally, these audits occur after staff have already processed the parole discharges and retentions, and therefore the audits would not be effective in preventing inappropriate discharges from occurring.

To ensure that parolees are discharged in accordance with its policies and with state laws, we recommended that Corrections make certain that the appropriate authority makes decisions to discharge or retain parolees. To document more accurately whether its staff completed discharge reports, Corrections should ensure that staff members properly code in its database the reasons for parolees' discharges. Further, to better identify the entities that make final discharge decisions for given cases, we recommended that Corrections establish a more precise method for maintaining information about which entity made the final discharge decisions, such as a new discharge reason code or a new data field that will track this information.

Because we found some discharges that did not comply with Corrections' policies even after Corrections had implemented its protocol requiring that regional and district administrators review 10 percent of the discharge decisions made by subordinates, we also recommended that Corrections consider providing to parole staff and analysts from the Case Records Office additional training on its discharge policies. If, after providing this training, regional and district administrators find that staff are still not following discharge policies, Corrections should consider requiring that the respective administrators perform these reviews before discharge decisions are finalized.

Corrections' Action: Partial corrective action taken.

Corrections reports that in addition to enforcing and reemphasizing existing law and policy, its pending policy memorandum will more clearly define discharge and retain authority and bolster existing discharge review procedures. Corrections also stated that its proposed regulations will provide the clarity that existing law lacks, and will give its pending policy the force of law. Corrections' Case Records Office also redefined the manner in which discharged cases are entered into its database. According to Corrections, all Case Records Office staff have already been trained on the new recording procedures for entering the appropriate discharge reason and code into its database.

Finding #3: Corrections is taking actions to address discharge review reports that were altered inappropriately.

In December 2007 Corrections reported that an internal investigation determined that one of its district administrators discharged parolees after altering discharge review reports prepared by parole agents and unit supervisors who recommended retaining parolees. Corrections subsequently referred the investigation to the State's Office of the Inspector General, which launched an investigation and determined that the district administrator may have used poor judgment but it found no evidence of criminal or administrative misconduct. In addition, Corrections initiated an internal audit to determine whether a sample of parolee discharge decisions comply with state laws and its internal policies.

We recommended that Corrections' new policy prohibit unit supervisors and district administrators from altering discharge review reports prepared by others.

Corrections' Action: Pending.

Corrections' pending discharge policy and procedures memorandum, previously discussed, expressly prohibits unit supervisors and district administrators from altering discharge review reports prepared by others.