

Interim Report: Transition Project

December 1, 2015

Submitted by Dr. Richard L. Wiener

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### Introduction

This is the first in a series of reports that serves two separate but related purposes: 1) to report the findings of the process evaluation that is at the heart of transitioning the Nebraska Parole Administration (NPA), currently serving under the Nebraska Department of Corrections Services (NDCS), to the Nebraska Board of Parole (BOP) and 2) offering a strategic plan for that transition. On September 1, 2015 the BOP signed a consulting agreement with me (Dr. Richard L. Wiener) to provide a process evaluation to assist in the above described transition. The contract called for three reports. The first was a “detailed transition plan outline” which I submitted to the BOP and NDCS on September 15, 2015. The contents of that outline constitutes the scope of work for this project. After the BOP and the NDCS agreed to that outline (September 16, 2015) I assembled the work team (three UNL PhD students – two with law degrees) that would assist me in completing the scope of work outlined in the agreement. We began work on process evaluation in the last week of September (September 27). We interviewed administrators, reviewed information flow documents, and observed hearings through October and the first two weeks in November. We met to discuss our findings and to prepare the first report due on December 1 – “an interim report presenting all the findings and recommendations” to date. At that time the team had made significant progress towards answering the first questions outlined in the scope of work. The three main questions in that plan are:

*Question 1: Describe in detail the structure and function of the Parole Board and Parole Administration as each completes their assigned responsibilities. (The answers to that question include of a description of the flow of information between Parole Administration and the Board of Parole with regard to offender reviews, parole hearings, rescission hearing, and revocation hearings -- hereafter parole review hearings. The answer also includes a description of the hiring, training and supervision of parole officers. The information collected to data forms the basis of the Strategic Plan for Transition – Part A of this report)*

*Question 2: Describe in detail all services that the Parole Administration offers to parolees and assess the evidence based status of these programs. (The answer to this question is essential to the transition process because the post-transition Board of Parole will be responsible for supervising Parole Administration as it offers these services and the BOP will be responsible for certifying service effectiveness.)*

*Question 3: What is the role of parole officers in the field? How do they complete their tasks? What are the aids and barriers to their work? (After the transition, the Board of Parole will supervise Parole Administration, which in turn will train, supervise and evaluate parole officers in the field. The final responsibility for planning and directing parole officers will fall with the Board of Parole.)*

The final report with all my findings, answers to the above questions and all my recommendations is due on May 31, 2015. In the meantime, my contract with the BOP states,

“This agreement may include up to two additional reports through the course of the contract as determined by the BOP with at least two (2) weeks’ notice to Dr. Wiener.” The Chair of the Board of Parole invoked this clause on November 2, 2015 explaining that the December 1 report needed to include a “Strategic Plan for the Transition”, which should include a budget for that transition. As a result, this report includes two parts: Part A is a Strategic Plan for the Transition and Part B is a summary of our findings regarding offender reviews, parole hearings, and rescission hearings as they relate to the flow of information between Parole Administration and the Board of Parole. In the process of gathering information to answer the first process evaluation question, through meetings with key position holders in the NPA, the NDCS Director, members of the Parole Board, Administrative Staff of the Board, and Staff reporting directly to the NDCS Director, I accumulated enough information to write an initial Strategic Plan for the transition. This plan is preliminary because it is not informed by the full answer to Question 1 and it leaves open several issues that I will address after gathering enough information to answer Questions 2 and 3.

## **PART A: Preliminary Strategic Plan for Transition**

### **Description of the Transition**

LB598 – Section 28, 83-1, 100 states, “...Beginning July 1, 2016 the office [Parole Administration] shall be within the Board of Parole. The Director [NDCS] and the Board shall jointly develop a transition implementation plan. The plan shall be presented to the governor and to the legislature no later than Dec. 1, 2015. The report to the legislature shall be delivered electronically. The employees of the office shall consist of the Parole Administrator, the Field Parole Service Officers, and all other office staff. The Office shall be responsible for the

following: a) administration of parole services in the community, b) the maintenance of all records and files associated with the board of parole, c) the daily supervision and training of staff members of the office and d) the assessment, evaluation, and supervision of individuals who are subject to lifetime community supervision pursuant Sec 83-174.03.”

The transition consists of moving the existing NPA from the supervision authority of the NDCS to the Parole Board Supervision. The functions of the NPA are 1) administration of parole services offered to parolees; maintenance of records for its own purposes and some for the BOP; hiring, training and supervision of staff members (including administrative staff and the officers in the field); and supervision of individuals subject to lifetime supervision. Under current statute the transition should begin on July 1, 2016.

### **Transition Mission Statement**

The mission of the transition process is to make the BOP as independent from the NDCS as possible while at the same time maintaining an effective working relationship between the NDCS and the BOP. The outcome of that separation should improve the functioning of the NPA and its relationship to the BOP but should not harm the working relationship between the NPA and the NDCS. The elements of the NPA functioning that will be improved are:

*1) Provide more efficient and timelier information to the BOP for decisions that it makes regarding inmates and parolees that require input from the NPA.* Part B of the current report summarizes our findings to date regarding the flow of information. That section includes recommendations for improving the efficiency and timeliness of information flow. More generally, making the NPA accountable to the BOP will, in and of itself, make the flow of information more direct and thereby more efficient and

timelier. That is, the BOP will be able to directly monitor and adjust recording and storage of information to meet the demands of its decision making.

**2) *Improve training of all NPA employees including the officers in the field – this includes instituting better practices in the field and communicating to the officers a fuller understanding of the BOP’s expectations, the responsibilities of the BOP, and the responsibilities of the officers vis-a-vis the BOP.*** After collecting and analyzing information pertaining to Questions 2 and 3 of the work plan, we will be able to make specific recommendations about training and communicating expectations and responsibilities.

**3) *Improve the quality of services that NPA offers to parolees.*** In answering Question 2, the evaluation work team will catalogue the services that NPA and other agents of NDCS currently offer to parolees, determine the program models, examine the active ingredients that bring about rehabilitation, and ascertain the evidence based status of these programs. The transition will suggest effective and efficient mechanisms for documenting fidelity, measuring outcomes, and improving the effectiveness of programs.

**4) *Increase the effectiveness of communication between the BOP and the NPA.*** Many of the functions of the BOP requires the reciprocal flow of information between NPA staff and field officers, especially the conduct of parole review hearings, which are predicated upon a cause finding following the NPA probable cause hearing. The transition will open direct lines of communication between the NPA staff and officers and the BOP because the former will report directly to the latter. Part B of the current report summarizes our findings to date regarding the flow of information.

**5) Improve the organizational structure, staffing patterns, and work distribution of NPA as it relates to BOP decision making and service provision.** Following the transition the BOP will supervise the activities of the NPA staff and field officers, allowing for direct oversight of work patterns and work distribution leading to a faster and easier approach to correcting any misfit between the work patterns and responsibilities of the NPA. The evaluation team will be able to make recommendations to improve staffing and work distribution after collecting the information needed to answer Question 3 in the scope of work.

### **Problem Statement**

There a number of key issues facing the NPA, NDCS, and the BOP that stand in the way of a smooth transition of the NPA.

**First**, the BOP is currently a decision making body that lacks the infrastructure to supervise the activities of the NPA in hiring officers, supervising officers, planning, offering, and evaluating mental health treatment, substance abuse treatment, and case management services. The BOP directs administrative staff, manages and schedule offender reviews, parole hearings, rescission hearings, and parole review hearings. It has no staff with the training required to manage field officers, direct services, or monitor case management activities in the community. Furthermore, even if BOP administrative staff had the skills necessary to perform those functions, these individuals' work time is taken up by their current management responsibilities.

**Second**, currently NDCS mental health and substance abuse counselors provide behavioral health and substance abuse services to parolees. After the transition, the NPA will need to offer similar services either using the same counselors, who will then be working for the

BOP or the NPA will need to hire other counselors to offer these services. There are no funds currently allocated in either the BOP budget or the NPA budget to pay for these services. The evaluation team, in answering Question 2, will assess the quality of behavioral health counseling that NDCS currently offers to parolees, the number of counselors, the credentials of the counselors, and the adequacy of current services. At that stage of the project, we will be able to offer an estimate of the number and type of behavioral health counselors that the BOP through the NPA will need, to meet the needs of the paroles. Equally important, the quality of the services remains an unknown factor. The evaluation team in answering Questions 2 and 3 will be able to catalogue the current behavioral health and substance abuse treatment services that the NDCS provides to parolees and begin to assess the evidence based practice status of those services. Post-transition, the BOP should certify that services offered are evidence based.

**Third,** officers in the field need to recognize when parolees that they serve require mental health and/or substance abuse treatment. The key is to distinguish between parolees criminogenic needs and their health care needs. Currently, the NPA understands the importance of this distinction but may not have sufficient training in place to assure that the field officers are able to make this determination. The evaluation team in answering Question 3 will ascertain the status of the field officers' understanding of mental health and substance abuse treatment and make recommendations concerning the training needed to assist the officers in making appropriate referrals to behavioral health specialists.

**Fourth,** after the transition, parole officers in the field will need to start operating under the best current professional standards in the criminal justice field. This will require the BOP and the NPA under its supervision to adopt the RNR Model of Rehabilitation which consists of a risk principle, a need principle and a responsibility principle. According to the risk principle, the level



of treatment should match the level of risk so that high risk parolees should receive higher doses of intervention, while low risk offenders should receive minimal or no treatment. In order to meet the demand of the risk principle the NDCS will soon begin administering a validated risk assessment tool to all inmates early on in their incarceration. The need principle states that treatments should focus on criminogenic needs, which are the factors most predictive of decisions to engage in criminal activity and that these treatments should be evidence based. Finally, in accordance with the responsivity principle treatments should match the characteristics of the offenders (e.g., learning style, motivation, intensity, etc.). The NPA and the parole officers it supervises will need to learn to use the NDCS risk assessment tools to understand the level of risk of their clients, their criminogenic needs, and the services that they require to move forward in rehabilitation. To accomplish this, the BOP will need to assure that the case management skills of the NPA, especially the parole officers, meet professional standards so that they are able to apply the RNR principles to their clients. The case management capabilities of the parole officers in the field are unknown to the evaluation team, but we will assess those skills as we answer Question 3 in the scope of work.

**Fifth**, the educational level of many of the parole officers may not be adequate to allow them operate at the professional level required to assure adherence to RNR principles. While some of the current field officers have an undergraduate degree, many more do not. Instead, these officers have work experience in corrections. Prior work experience is helpful for officers to complete their functions but it may fall short of the training that they need to successfully follow RNR principles. To attain an educated and well-trained workforce of parole officers, the NPA working under the direction of the BOP will likely have to increase the pay of officers to be commensurate with others occupying similar positions in the criminal justice system such as

probation officers who all have at least a bachelor's degree, with many having advanced training beyond this level. As the evaluation team answers Question 3 in the scope of work, we will be able to make more specific recommendations regarding education, training, and pay of parole officers accountable (after the transition) to the BOP.

**Sixth**, the relationship between the budget for transition (following this plan) and the operating budget for the BOP is not clear. The two budgets have some overlap that needs to be reviewed and resolved. In the end the business manager for the BOP needs to integrate the two budgets and work with the transition director and the financial offers of NDCS to develop a final working budget.

**Seventh**, the timeframe for the transition is rushed. LB 598 requires the transition to begin on July 1, 2016. As we have tried to show in the paragraphs above there is a great deal of work to complete before a smooth and thoughtful transition can take place. Problems involving, staffing, infrastructure, training, and funding need resolution. A realistic timeline for successfully resolving these issues is likely to be longer than the six months that are left before the transition is to take place. An additional six months would place the transition onset at January 1, 2017. However, optimal solutions for many of these problems will require negotiations between the BOP and union representative of the parole officers and perhaps additional legislation. A more comfortable deadline for transition might be July 1, 2017.

### **Transition Goals and Objectives**

The following represent a set of immediate and long term goals for the transition of NPA from NDCS to the BOP.

**Three Year Goal:** Nebraska Probation Administration will continue all its current functions at the highest standards of criminal justice practice under the direct supervision of the BOP.

**Year One Goal** – The Board of Parole will develop infrastructure to allow it to function as a separate organizational unit of government operating independently from the Nebraska Department of Corrections Services.

*Objective 1:* BOP will develop a legal section that will be able to represent its interests and offer legal counsel for all its activities.

*Objective 2:* BOP will develop a financial section to manage both its overall budget and its day-to-day fiscal obligations.

*Objective 3:* BOP will develop a service provision section that oversees NPA’s activities to hire new officers, train officers, provide services to parolees, and develop new programming as needed.

*Objective 4:* BOP will develop or contract out to create a data management section, which will maintain a data base to conduct ongoing research on its decisions, validate its guidelines, and make final adjustments to those guidelines.

The data management section will also collect data on risk and the evidence based status of the NPA treatments and interventions.

**Year One goal:** Parole Administration will review all its parole related records, resolve any problems with the current records, standardize all records, and maintain them in a user friendly electronic system available to all staff who require access. Part B of this report summarizes our research to date on the flow of information for between NPA and the BOP.

*Objective 1:* NPA will carefully review the findings of the evaluation team, examine each instrument as well as the manner in which it files electronic data and determine if there are modifications that will improve efficiency.

*Objective 2:* NPA will work closely with the data management section and service administration sections of the BOP to accomplish this goal.

*Objective 3:* NPA will reports its changes back to the BOP for a final review.

**Year Two Goal** – Parole Administration will attain qualified behavioral health counselors and clinicians to administer behavioral health services to clients in need of those services throughout the state of Nebraska. During year one the Parole Administration (and the BOP) will use the existing mental health counselors and substance abuse counselors who currently work under the Nebraska Department of Correctional Services. (Note: The BOP legal section, service provision section and financial sections will need to negotiate terms for service provision with NDSC for the first year in the transition.)

*Objective 1:* The BOP service provision section will review the evaluation team’s answers to Questions 2 and 3 of the scope of work of the current project to determine the behavioral health needs of parolees.

*Objective 2:* The BOP service provision section will survey the field as it exists in year 2 of the transition and add its findings to Objective 1 (immediately above).

*Objective 3:* The BOP financial and legal sections will assist the service section in creating a budget and obtaining funds to hire the necessary behavioral health and substance abuse counselors

*Objective 4:* The BOP service provision section will hire qualified behavioral health and substance abuse counselors to meet the documented needs of parolees.

**Year Three Goal** – Working with the Board of Parole service provision and legal sections, Parole Administration will review and evaluate all current practices related to the

assessment, evaluation, and supervision of individuals who are subject to lifetime community supervision (i.e., sex offenders)

*Objective 1:* Review the final report of the evaluation team's answers to Questions 2 and 3 to learn about the current practices of the NPA in this area.

*Objective 2:* Collaborate with the BOP legal section to conduct a thorough review of existing law related to lifetime community supervision.

*Objective 3:* Collaborate with the BOP service provision section to thoroughly review the criminal justice and treatment literature on successful supervision practices with this population.

*Objective 4:* Update all existing practices in conjunction with the results of the first 3 objectives.

*Objective 5:* NPA will reports its changes back to the BOP for a final review.

**Year Three Goal** – An outside agency (or the data management section, if it is contracted) will develop measures and conduct a process and outcome evaluation of the Transition.

*Objective 1:* Complete an analysis and a report on the functioning of the Board of Parole and the Nebraska Parole Administration in areas related to judgments about offenders (e.g., reviews, parole hearings, rescissions, and parole review hearings).

*Objective 2:* Complete an analysis and a report on the functioning of the Board of Parole and the Nebraska Parole Administration in areas related to service provision (e.g., training and establishing evidence based practices).

*Objective 3:* Complete an analysis and report on the functioning of the Board of Parole and the Nebraska Parole Administration in areas related to legal services (i.e., amount of use and type of use of legal services).

*Objective 4:* Complete an analysis and report on the functioning of the Board of Parole in areas related to guideline use (e.g., validation of guidelines, use of guidelines, and misuse of guidelines).

*Objective 5:* Complete an analysis and report on the functioning of the Board of Parole and the Nebraska Parole Administration in areas related to financial functioning (e.g., budget adequacy, overspending, and underspending).

*Objective 6:* Complete an analysis and report on the functioning of the Board of Parole and the Nebraska Parole Administration in areas related to individuals who are subject to lifetime community supervision.

**SWAT Analysis: (Strengths, Weaknesses, Opportunities, and Threats for the Transition)**

*Inside the Organizations (i.e., the Board of Parole and Nebraska Parole Administration).*

There are a number of strengths inside the organization that will facilitate the transition and a number of weakness that will be obstacles. With regard to the strengths, the BOP and the NPA are currently self-contained organizations, each with fully developed operating procedures. Therefore, while the transition will require a number of changes and modifications, there is no need to redevelop all existing procedures and practices. It is much easier to modify procedures and practices than to develop them in the first place. Second, both organizations currently have well developed organizational structures. Again, while the transition will require some integration of structures and the development of new infrastructure (i.e., BOP legal, administrative, financial, data management, and service provision sections), the BOP will find it

easier to integrate the old structures into the new ones instead of starting over without any organizational structures in place. Third, and finally, as described in Part B, the BOP and NPA record keeping systems are in place and running with relative efficiency.

With regard to internal weakness, there are several that will need to be overcome. First, the BOP does not currently have full access to the NPA operating procedures. In order for the BOP legal, administrative, service and data management sections to work with and oversee the functions of the NPA, the BOP will need access to all current operating procedures. Second, or perhaps a corollary of point 1, the BOP currently does not have access to the supervision policies, procedures and practices of the NPA making it impossible for the BOP to oversee the hiring, training and supervision of parole officers in the field. After the transition the BOP will need to review all related policies and practices. Finally, and perhaps most importantly, the BOP does not currently have the infrastructure or the skills to act as an independent agency. It will need to develop sections that perform legal, enhanced administrative, service provision, and data management functions. This will be the greatest challenge for the BOP during the first year of transition.

*Outside the Organizations (i.e., the Nebraska Unicameral and the Nebraska Department of Correctional Services).*

This is a time of great opportunity for criminal justice reform in Nebraska because of the recent legislation that the Unicameral passed and the Governor signed into law. First, under LB 598 and LB 605 the different agencies in the criminal justice system (i.e., probation, corrections, and parole) are now, more than ever, collaborating with each other to resolve many of the longstanding problems in the system. Most specifically in the parole context, LB598 requires NPA, NDCS, and the BOP to share and develop common expectations.

This is not to suggest that there are not serious threats to the transition that outside agencies impose. First, currently NPA functioning under the NDCS conducts probable cause hearings for possible parole revocation independent of the BOP. This is a gatekeeping function so that unless the NPA hearing officer finds probable cause, a parole review hearing does not proceed. This is an important legal protection for parolees that could be lost post-transition. It will be extremely important for the legal section of the BOP to work closely with NPA to develop guidelines for these hearings that maintain independence between the hearing officer function and the decision making function of the BOP in cases that involve potential revocation of parole as an outcome. Thus, while the transition will increase independence between the BOP and NDCS, it has the potential to weaken the protective status of the current probable cause hearing by decreasing the independence of the NPA hearing officer.

Second, as discussed above the Nebraska Unicameral wrote into statute in LB 598 that the transition will take place on July 1, 2016. The evaluation team believes that it will take more time to bring about a thoughtful and well-designed transition. Under the current deadline, the transition will be hurried and as a result there will likely be a number of issues (as outlined above) that would remain unresolved and which might threaten the optimal functioning of parole in the state.

Third, there are some difficult funding issues that could limit the BOP's ability to develop the needed infrastructure (as described above) for the July 1, 2016 transition.



## **Action Plan and Budget:**

The action plans for the transition begins with the caveat that the evaluation team has not answered a majority of the questions that make up the scope of work for the process evaluation that I outlined (September 15, 2015) and that the Board of Parole and Nebraska Department of Correctional Services accepted. As we answer Questions 2 and 3 in the scope of work, we may change some of these activities, add some activities and drop others. I have worked out a budget for the transition plan assuming that the BOP has already accounted for hiring legal counsel, a business administrator, and a data management team. The budget appears as Appendix I of this report.

- 1) Before the transition takes place the BOP and the NDCS will resolve any conflicts between their existing budgets with the one provided at the end of this action plan.
- 2) Before or during the first year of transition the BOP will hire:
  - a. Legal counsel
  - b. A business manager administrator
  - c. A director of services and supervision
  - d. A data management team
- 3) During the second year of the transition, the BOP, the director of services and supervision, and the NPA will recruit and hire mental health clinicians and substance abuse clinicians to work as BOP employees.
  - a. Some of the services that need to be addressed include
    - i. Employment development services
    - ii. Cognitive Behavioral Therapy services

- iii. Life skills development (including time management, money management and parenting skills)
- 4) During the second year of the transition, the director of services and supervision will develop a training guide for new parole officers and booster training for existing officers. The NPA under the supervision of the director of services and supervision will enact the training plan during the second year of the transition.
- a. Training for parole officers will include:
    - i. supervision of parolees
    - ii. case management (motivational interviewing)
    - iii. Enactment of RNR principles
    - iv. Specialized training for substance abuse and mental health case management and treatment
    - v. Special training for sex offenders case management and treatment
    - vi. Special training for domestic violence offenders case management and treatment
    - vii. Special training for criminal threat groups (gangs) case management and treatment

**Appendix 1** contains the transition budget that I developed based upon the process evaluation work completed to date and on the Transition Strategic Plan outlined above. I calculated the budget based upon the NPA expenditures in 2014 with an added position for the BOP, Director of Services and Training. I included a 2% increase in all personnel expenditures and anticipated a 5% increase in spending in all other areas. I arrived at the 5% increase estimate by examining the projected and actual expenditures

for 2014. The overall increase in the projected budget results mostly from the increase in personnel expenditures and not the 5% increase in areas other than personnel because personnel expenses account for the greatest dollar expenditures. While I vetted the budget with NDCS financial experts, this budget has not yet been integrated with the BOP annual budget nor has it been cross checked against the NDCS budget. These are obvious next steps in the transition process.

**PART B: Preliminary Findings for Components of Scope of Work Question 1:**

*Describe in detail the structure and function of the Parole Board and Parole*

*Administration as each completes their assigned responsibilities*

Below, I present descriptions of Offender Board Reviews (OBR), Parole Hearings (PH), and Rescission Hearings (RH) based upon the evaluation team's observations at reviews and hearings as well as our interviews of key participants (i.e., Parole Administrators, NPA support staff, BOP members, BOP support staff, and a small sample of inmates). I present a view from the perspectives of both the NPA and the BOP because the differences in perspective are instructive and point the way to recommendations for change before, during and after the transition. After each analysis (Offender Board Reviews, Parole Hearings, and Rescission Hearings), I present some preliminary recommendations. *(Note: The process evaluation is incomplete so that these are preliminary findings and recommendations which may change by the end of the evaluation in May, when the team will present the final report as per our contract. The strategic plan for the transition that I presented above emerged, in part, from the following analyses. Therefore the strategic plan may change as more information emerges and as the team answers each of the three questions posed in the scope of work.)*

**\*\*\*It is important to qualify that these are preliminary findings and recommendations that I developed for the purposes of the December 1 report. Some of the findings and recommendations may change depending upon what the evaluation team finds out from additional observations and interviews. Furthermore, we make many of our recommendations to date about BOP operations, in part, because we have analyzed in depth Offender Board Reviews, Parole Hearings, and Rescission Hearings, all of which fall primarily on the BOP to execute. We expect further recommendations as we examine Parole Review Hearings and answer questions about services and parole officer activity in Questions 2 and 3. Statements of strengths, weaknesses and recommendations are conclusions of the evaluation team and NOT conclusions of the parole administrators or members of the Board of Parole. \*\*\***

## **Offender Board Reviews**

*Parole Administration View:* The NPA has little responsibility for Offender Board Reviews (OBR), during which time, the BOP meets with the offender, discusses the offense and decides whether or not the offender is ready for a Parole Hearing. The BOP also determines whether the offender was involved in programming while in the institution and the outcome of that programming. The BOP decides to conduct an OBR as state law prescribes within several months after incarceration and holds subsequent reviews for offenders who have parole eligibility dates (PED) within five years of the initial OBR. The BOP uses information from the penal institution and information from the offender's electronic file to decide when to hold an OBR. The BOP completes at least a "paper" review (one in which the BOP reviews the information but without the offender present) before conducting any parole hearings for that inmate. One staff member thought that the BOP must complete a review (in person or paper) every year by law once the inmate is within 10 years of release – this interviewee did not favor this rule because the BOP acts not as a decision making body but rather as a case management body overseeing activity inside the institution for purpose of reviews. One administrator thought that the information from the review comes from the Pre-sentence investigation and the DSC classification study, both of which they felt are not always forthcoming in a timely manner.

Another NPA staff thought that every offender receives a paper review or an in-person review within the first year of incarceration and that a case manager at the institution completes the paper work that the BOP needs to conduct the review. The NPA has very little to do with completing these reviews. The case manager completes an Institutional Progress Report (IPR), which includes a misconduct report, a job assignment, an evaluation of the job performance, programs completed or not completed, a parole recommendation, information about past

criminal record, violence incidents, drug use, skill acquisition, criminogenic needs, and a parole plan. The IPR travels to the BOP directly from the institution without any involvement from NPA.

**(Side note:** Currently, a case manager at the Diagnostic and Evaluation Center of DSC – completes a classification study on every offender but PSI’s are available for only about 87% of offenders (anecdotal report). The staff at the DEC include psychologists and other mental health specialists. When a judge waives the PSI’s, DSC does not receive one for that inmate. This process will change with LB 605. While the classification process will remain the same, the BOP will receive a PSI directly from probation for offenders who will be directing the released inmates during post-release supervision. An “LS/CMI” – or some risk assessment-- will be part of the offender’s reentry plan.)

The BOP notifies the offender of the upcoming review via a direct letter. However, NPA believes that the staff at the institution knows about the review ahead of the letter through access to the electronic data base and likely informs the offender ahead of the BOP letter. The NPA believes that the offender has statutory rights at the review process but is not aware of what these rights are. The NPA “knows” that the offender does not have a right to legal representative at the OBR.

The NPA believes that the BOP holds monthly OBRs at all the penal institutions but conducts some via telecommunications (at Tecumseh State Correctional Institution). Attending the hearings are the BOP, BOP support staff, offenders, and penal institution staff -- depending upon the institution, case managers, floor officers or substance abuse treatment providers). However, the reviews are closed to the public. The offender does not need to provide any

information at the review but must answer the BOP's questions. Offenders may provide additional information to the BOP and any relevant certificates of program completion.

The BOP makes decisions at the review hearing with a majority of the attending board members in agreement. Therefore, if five members of the board are present at an OBR then a majority of 3 votes carries the decisions. However NPA believes that a new policy necessitates that only 3 members of the BOP must be present, so that a majority of only 2 votes carries the day. *At least one member of the NPA finds this new policy helpful because it leaves other members of the BOP available to complete work that the NPA needs completed to perform its duties. If all members of the BOP were in attendance at all reviews, it would be difficult for NPA to complete all its work on time.*

The BOP makes a decision at the OBR to schedule a Parole Hearing, defer to another OBR at a later date, or rule in favor of a mandatory discharge because the sentence is almost completed (i.e., "jamming out"). If the BOP is undecided, it may go into executive session without the inmate present to discuss the case and reach a decision. If the BOP goes into an executive session to make the decision, that could delay the decision. Although the BOP notifies the defendant with a letter after the end of the review session, normally the BOP members present at the review inform the defendant of the outcome at the end of the OBR.

The BOP formally conveys the outcome of the OBR to the offender, the penal institution, the NPA, and any other relevant actors in the process in a letter. However, the parole support staff at the hearing enter the decision into NCANS (the DSC IT system) and PIMS (the Parole IT system). The electronic recording keeping system keeps everyone involved aware of the outcomes shortly after they occur.

*Strengths and Weaknesses.* One **strength** in the review process is that it involves human beings in the judgment and decision making process. “A piece of paper can’t weigh why someone didn’t finish programing.” The BOP members can identify justifiable and unjustifiable reasons for the failure to complete programing. Another **strength** of the process is the attendance of the case manager at the review who knows the offender. Another **strength** is that the process forces the BOP to check in on the offenders regularly, which incentivizes the offenders and keeps them on the right track.

One **weakness** of the review system is its subjective quality. The BOP makes important community safety decisions based upon the members’ own insights. The BOP needs a validated risk assessment tool to assist it in making these decisions and the BOP needs training to use that risk assessment tool. Another **weakness** of the system is that case managers do not have the appropriate training at the institutions to perform this task. Too often the institution pulls the case managers to the “floor” to perform other tasks because of staff shortage. A final **weakness** is that the BOP fulfills a case management role at the institution spending too much time following and tracking offenders. This allows the BOP too much discretion in determining which programs the offenders need to complete and the BOP is not prepared to make those judgments. Furthermore, the BOP does not always take the programming into account in its decisions even after it has ordered the programming. The decision is too emotional and the process should be less personal so that a validated risk assessment tool will help a great deal.



***Parole Board View:*** The “system” lets the BOP know when an offender is ready for a new OBR. The BOP conducts an initial Offender Board Review (OBR) in the first two months of incarceration to discuss the offender’s offense, but after the initial OBR, the BOP conducts OBRs once a year for most offenders. Statute requires BOP to conduct yearly reviews of all inmates with the “possible” exception of inmates with life sentences or “very long” sentences. Inmates may waive a review and many with long sentences do, waiting for reviews until they are 10 years away from their TRD (Tentative Release Date). If an offender’s Parole Eligibility Date (PED) is more than five years from the time of the OBR, then the BOP may defer the next OBR to three years rather than one year.

All the information about inmates is available to all board members in CTS (DSC’s IT system). Tanya (BOP support staff) provides the Chair a docket with the inmate number, name, date admitted, PED, and TRD. The institution generates this docket for Tanya the first two weeks of each month. There are review hearings and review of parole hearings (i.e., “revocation hearings”) every other Tuesday. BOP utilizes two types of OBRs both of which involve at least two board members.

***Paper review*** – The chair and the former chair designed these reviews in 2011 to assist DSC with overcrowding in the institutions. Some members of BOP feel that paper reviews may be over-utilized because they are less effective than are in-person reviews. One problem with paper reviews is that they do not always provide the BOP the opportunity to evaluate inmates with regard to the programs that they need to resolve their criminogenic needs. Paper reviews are available only for non-violent offenders when they first come into the system. The NDSC may transfer inmates with short TRD’s to community placement so they can participate in programing. This is especially important if they have only have a month or so until release. (LB

605 will resolve this problem with mandatory post-release supervision.) Some board members do not feel comfortable conducting paper reviews.

**In-person review** – The BOP restricts the use of in-person reviews to violent inmates but the definition of a violent inmate is fluid. Violent inmates could include those who are currently violent but sometimes the BOP extends this definition to include those that have a history of violence. The final decision of whether to use a paper or in-person review is at the discretion of the BOP Chair. During an in-person review, two board members visit with the offender, review his/her status, and ask questions about the crime, programming status, and misconduct reports. Review hearings are open to institutional staff (-- some attend depending upon the institution) but they are closed to the public. In-person reviews may be teleconferenced. They may last anywhere from 5 to 25 minutes.

During the review, right before the offender comes in, Tanya (support staff) introduces the offender's case to the panel and provides the necessary files to conduct the review. This is all available in the electronic data management system. Tanya also records all notes and outcomes in CTS including: who is present at the hearing, the Parole Board's decision, and the requirements the Board gives the offender as a result of the review. When the Board is ready, the offender comes before it and explains his or her criminal history and activities while incarcerated. If the BOP tasked the offender with requirements (programming or other conditions) during a previous hearing, the BOP will invite the inmate to speak about progress on those goals. On rare occasions, the BOP will ask an offender's case worker or supervisor in a prison-led treatment program to speak privately with the Board to update it on the offender's progress.

At the time of the in-person review the two board members may decide through a motion to schedule a parole hearing (if the inmate is within a year of the PED) or they may move to schedule another review hearing. The longest time the BOP can defer an OBR is one year, unless the offender's PED is more than five years from the current OBR.

The decision must be unanimous or the two board members may hold an executive session (closed to the inmate and institution) to make a final decision. In the executive session the panel will review the inmate again, make a final decision and send the inmate results in writing 3 to 4 weeks after the executive session. The board knows that inmates seem to find out in advance the outcome of executive reviews. The BOP may recommend at the end of either type of review that the inmate should engage in specific types of programming.

The decision of what type of review to set and the exact date of the review is at the discretion of the BOP Chair. While the DSC Diagnostic and Evaluation Center does generate a docket as inmates enter prison or jail (i.e., paper for non-violent inmates and in-person for violent inmates), the Chair has final discretion in determining the type of review. The Chair seeks consultation with the rest of the Board for decisions about the type of review in cases that are complicated or controversial. Tanya (support staff) sends out the final docket to the institution prior to the reviews. Inmates are often aware of the upcoming reviews but the institutional case manager makes sure that the offender knows the date. The BOP holds in-person reviews at all facilities except Tecumseh and Work Ethic Camp – at these latter two facilities the in-person reviews occur via closed circuit television. As of September, 2015 the BOP decided that the review panel should inform the offender of its decision at the time of the review because the BOP staff upload the results into CTS so it is available for the institution and family members to see online. The inmate learns the outcome before the formal designation comes to

him or her. However, the inmate still receives a formal letter and a contract for the required programming 14 days after the in-person review. The institution, case manager, residential treatment, and any relevant program directors receive copies of the letter with the required programming.

*Strengths and Weaknesses.* One **strength** of the process is that the BOP conducts the process with the aid of electronic record keeping in CTS. Although some Board members still carry physical files for offenders to each review session, most of the information about offenders and their reviews is available online in an electronic database. This technology allows for easier tracking and exchange of information. A second **strength** to the current review process is that the inmates learn the outcome at the time of the review and they find out immediately what the BOP requires of them in terms of programming in the institution.

However, there are several problems (**weaknesses**) associated with the process. First, some inmates may come to believe that they will receive a parole hearing because the BOP holds a review. The inmate may be disappointed when he or she learns that the BOP has deferred the hearing. Second, the inmates can come away from the review sometimes thinking that the BOP will provide them with programming, which it cannot do. Another **weakness** is that the process is sometimes inefficient because the NDSC does not always have psychological evaluations and inmate progress reports ready at the time of the OBRs.

### **Evaluation Team Recommendations:**

- 1) The BOP should have a rule for determining when reviews should be in-person and when they can be paper. The board should discuss the issues, settle on a rule and promulgate it in a written policy. This discussion should begin with statutory requirements and proceed with a discussion of the purpose of reviews, whether “paper” reviews accomplish the same as in-person reviews , and why or why not. It should include a review of the history of paper reviews and why BOP started using them. This discussion and rule promulgation should involve the Board’s legal counsel.
- 2) Before the transition is complete, the BOP in conjunction with NPA should discuss whether the BOP should have a case management role with regard to inmates while they are in the institution. Alternatively, in light of the transition, should the BOP case management role pertain only to parolees? This is an especially important issue because some of the required programming does not seem to be available at all the institutions. This discussion should involve the BOP Director of Services and Training.
- 3) The BOP should develop a set of written policies to account for its own procedures similar to the “paper” vs. in person review rule. The BOP should promulgate these policies during the transition in collaboration with the legal counsel it will hire.
- 4) The BOP policies should include a written rule for determining exactly when review hearings should occur for different types of incarcerations. This should also become part of the BOP’s written policies and procedures. A rule to guide this decision should come after a careful review of statute and the history of the way in which the

BOP has scheduled review hearings in the past. The BOP should reach this decision during the transition period in conjunction with the legal counselor that it will hire.

- 5) The BOP should determine when and how inmates should learn the outcome of the review (at the time of the review, in a follow-up letter, through institutional staff, or through family and friends). The BOP has determined that for in-person reviews this should occur at the conclusion of the hearing. Should the inmate learn about the required programming at this time? When and how do inmates learn about the results of paper reviews? This should become a written policy rule and the BOP should take steps to enforce it so that the expectations are clear and all inmates learn about all the outcomes in the same way. Again, the BOP should write this policy in conjunction with its legal counsel during the transition process.
- 6) The BOP should make these policies available to the NDSC including the NPA so that there is not confusion about the process.

## **Parole Hearings**

*Parole Administration View:* Parole Administration plays a larger role in Parole Hearing (PH) process by 1) providing information about the offender and the case in PIM's, 2) obtaining signatures on forms used in the PH process, 3) answering questions from the BOP about programs in which the offender participates and 4) supervising and answering questions about the Investigative Officers' findings. The PH process starts with a review hearing at which time BOP sets a parole hearing date. Trudy Clark or Barb Wilken (BOP support staff) sends a letter of notification from the Parole Board to the offender and the institution indicating that it has scheduled a parole hearing for an offender. The re-entry unit receives a copy of the letter. Prior to LB 907, the re-entry staff were part of Parole Administration but following LB 907, beginning in November, 2015 the re-entry unit works in the institutions under NDSC.

The re-entry unit starts working on the parole plan 90-120 days prior to the parole hearing so that it is completed at the time of the hearing. As the hearing gets closer (30-60 days) offenders attend a class that the reentry officer teaches. (Note: NPA believes that there may be a problem with offenders missing too many of these class sessions.) The class discusses all aspects of parole including medication so that offenders can determine who will supply their needs after the two week supply they receive upon leaving the institution. (Note: LB 605 will help here because it suspends Medicaid rather than stopping it upon incarceration.) The reentry officer also meets with individual inmates to explain parole, discuss the standard conditions, and then discusses individualized special conditions. The offender completes a document that will eventually become the Adult Placement Work Plan (APW). It includes the parole's intended address, the names of the residents living at the address, contact information for the residents, and the inmates' thoughts about what they see as necessary for their parole plans.

The NPA assigns a Release Officer at the institution (currently part of NPA) who collects all the information and assigns the case to one of the field supervisors (also part of NPA) who in turn will assign the case to the inmate's parole officer (also the Investigative Officer – IO) passing along the APW. The release officer will recommend factors for the IO to attend to while determining the soundness of the release plan. Currently, there are six field supervisors (3 in Lincoln, 2 in Omaha, 1 in Hastings, and 1 specialized sex offender supervisor).

The IO reviews the case and determines whether the residence named in the APW is suitable. The IO visits the residence to determine that it is satisfactory, that there are no offender or victims living at the residence, that there are no alcoholic beverages or guns in the residence, and that the residents will allow a search of their home. The Parole Officer explains to the residence provider the expectations of parole, the conditions of parole and finds out some additional basic information: (i.e., how well the residence provider knows the inmate, whether the residence provider will be willing to help the inmate, if transportation will be a problem for work and programming, whether programming is available. After the transition, the BOP will be responsible for supervising the IO officer's work through the NPA.

The IO has a great deal of discretion in determining whether the residence is satisfactory. If the offender doesn't have a job (and is thus on house parole – only leaves the house to look for work), the IO will help assist the offender to find work. The IO contacts other helping agents (e.g., social workers) to assist with whatever else must be in place to assure that the parole plan is acceptable. If it is acceptable, the IO records the results of on the APW and completes a Placement Investigative Worksheet, (PIW) both of which go first to the Parole Administrator who then sends the results back to the Release Officer in the institution. While this can take some time (note: it should be completed in 30 days or less – if the case is pending release), only about



20% of plans fail and have to be renegotiated (anecdotal estimate). The NPA or a field supervisor may disagree with the IO and “overrule” the decision but this is rare. Based upon “the totality of the circumstances” Parole Administration decides whether the residence and the parole release plan is satisfactory. After the transition, the NPA will provide these case management services under the direct supervision of the BOP.

Next, the Release Officer enters a Parole Certificate into the data base. Barb Wilkens (parole board staff) retrieves it and presents it to the BOP. All five parole board members must agree to the plan and sign the certificate as does the inmate. This occurs at the parole hearing. Currently, the Release Officer goes to the Parole Hearing to represent Parole Administration but following LB 605, the new re-entry officers who will be supervised in the institution and not be part of NPA, will take over this responsibility. The NDSC maintains its own Discharge Review Team that evaluates parole candidates when there is concern of danger to the community. This mostly occurs for mentally ill defendants who are not civilly committed. This team meets every month to review approximately 20 to 30 cases. It includes a social works, psychologists, and reentry specialists.

The PH is public and takes place at the inmate’s institution. Attending are the BOP, the BOP staff support, the offender, and the offender’s support system. Others may attend and give testimony, which sometimes includes relevant NPA staff, or DSC staff, the Re-Entry Officer, and staff of the penal institution. Because this is a public hearing the inmate’s attorney may attend but few do. Those in opposition to the inmate being paroled (e.g., an opposing attorney, family, and victims) may be present to testify. If the parole conditions require the inmate to wear an electronic monitor, the offender’s parole officer may go to the facility at the time of the parole hearing to attach the equipment. Similarly, if the offender must wear an alcohol monitor the

officer attaches it as soon as possible but often not at the hearing. IO's do not typically attend parole hearings. The institutional staff are more likely to attend.

The five member BOP makes the final decision to grant or deny parole to an offender. The parole conditions are set at the time of the hearing but the board can make changes. The BOP determines at the hearing what services the offender needs but the IO can add services later, if he or she thinks the parolee should have additional programming. Services that are typically part of the parole conditions often include: Narcotics Anonymous, Alcoholics Anonymous, IOP (intensive outpatient or outpatient therapy), sex offender continuing care (SOCC), medication management, Moral Reconciliation Therapy (MRT), and GED classes. At the end of the hearing, one of the BOP members makes a motion to parole or to deny parole and then the other members vote on the motion, which must pass by a majority. The offender is in attendance and finds out the results immediately unless there is a tie (2 to 2, if only 4 board members are present – there must be a quorum of at least 3 board members at every hearing ) on a motion, in which case, the BOP goes into executive session to reach a decision. (IMPORTANT CAVEATS: 1) NDSC provides services in Lincoln and Omaha in the form of substance abuse and mental health counselors. This may discontinue after the transition. 2) Following transition, the ultimate supervision of the case management function in the community will pass from NDSC to the BOP.)

*Strengths and Weaknesses.* One **strength** of the process is that there is a great deal of personal contact between the inmate and his or her family while trying to arrange a parole plan. Another **strength** is that the re-entry staff meet with the inmate multiple times: at entry, when 50% of sentence is complete, when 80% of sentence is complete and 4 months before parole. This allows inmates to talk about what they want to accomplish once they leave prison. Having

human beings involved in the judgment and decision-making process is a current **strength**. Some interviewees thought that one advantage of having a Parole Officer attend parole hearings would be that the IO could answer the BOP's questions about the parole plan directly.

However, a **weakness** of this intense contact is that there are only 7 re-entry officers for thousands of inmates in the institutions. So that it is difficult to manage all the cases. Another **weakness** is that NDSC behavioral treatment providers offer little in the way of feedback to the BOP before or after parole, claiming client-therapist privilege. Often times this means that BOP only receives informal feedback. Without feedback the BOP is making decisions about sanctions (i.e., during Parole Review Hearings) with inadequate treatment information. Another **weakness** is that there is no contact between the supervision officers (i.e., the IO) prior to parole. A final **weakness** was that the BOP is not currently using a validated risk assessment instrument to help guide its decisions.

***Board of Parole View:*** The outcome of the review hearing triggers the Parole Hearing process. If the BOP panel votes in favor of a hearing, Barb Wilken (BOP support staff) sends general PH notices to the offender, victims, and public officials (e.g., the Judge, County Attorney, Chief of Police, and Sheriff of the county in which the offender was convicted), and then creates PH news releases, a PH roster, and PH briefs for the BOP. Barb Wilken sends notices to victims registered on the Nebraska Information and Notification Everyday (VINE) hotline and to anyone else who has registered a letter of opposition to the BOP. Letters of opposition are “red tagged” in the file. Anyone can write a letter of opposition but few do. The number of red tagged letters depends upon the type of crime. These PH briefs contain details about the offender’s possible parole. Later, the offender will learn of the specific date, time, and location of the PH by means of a specific PH notice from the BOP support staff. The period of time between the general notice PH notice and the specific PH notice can be as long as one year or as short as just over thirty-days, but usually is about sixty days.

Barb Wilkins generates the docket for hearings and makes it available for BOP members in the CTS system, The BOP members read the cases, taking notes both in the CTS system and on paper to prepare for the hearing. Most of the relevant information appears on the CTS dashboard including:

- a. Progress reports (from case managers at institutions),
- b. Criminal history (from the DNE assessment),
- c. Misconduct reports (from institutional coordinators),
- d. Education progress (from DEC),
- e. Substance abuse report (from supervisor clinicians -- behavior health workers at the institutions)

- f. Mental health report (from supervisor clinicians -- behavior health worker at institutions and at DEC),
- g. Deportation report (detainers – if there are detainers in another county),
- h. Residence and employment report (from the reentry officers who formerly were part of Parole Administration but after LB 907 are at the institutions under DSC).

At the hearing the offender comes before the board, takes an oath, and then states his or her name and number. The offender may provide the BOP with “certificates” or other relevant information if he or she wants to provide such information. The BOP members ask questions of the offender, mostly about his or her parole plans (e.g., Why is this plan a good plan? Does the offender have any misconduct reports pending? Does the offender have a place of secure employment?) Most of the time the BOP panel that conducted the OBR has already decided the issues critical to whether or not to grant parole. The anecdotal estimate is that 90% of the cases result in a vote to parole the offender once the OBR panel sets the review hearing. If the BOP decides not to parole the offender, it is usually the result of a misconduct report (or reports) that occurred after the OBR or the result of someone coming forth at the hearing to speak out in opposition to parole. The latter occurs infrequently.

The chair and vice chair conduct the parole hearings. They also take turns making motions in the form of -- “name, number will be paroled to the general special conditions to his /her approved residence.” The attending supporting staff member takes a roll call vote and the motion (with its outcome vote) appears in the final parole plan. There are few disagreements among the board members at this point in the process. When there are disagreements, they usually concern a residence or the appropriate amount of time to pass after a misconduct report before voting in favor of parole.

The motions are one of the following: 1) motion to parole, 2) motion to defer for a short period of time, or 3) motion to deny parole and set up a new review hearing at some designated time in the future. A motion to deny is usually the result of a drug offense and occurs very infrequently. Anecdotally, a motion to deny occurs in 1 or 2 of 25 hearings (less frequent than the earlier estimated 10%. After the data management section is in place, this number will be known and no longer be an anecdotal estimate.) The BOP most often reaches a decision during the open hearing but there are times during which the Board members disagree and go into a private executive session to deliberate. The BOP clears the hearing room and discusses the issues by themselves. The BOP usually makes the decision at the hearing. In far majority of situations the Parole Hearing has little decision making value; instead, the BOP tries to impress upon the inmate the importance and value of following the parole conditions. Once the BOP schedules a hearing the outcome is likely to be parole unless the offender commits a crime between the OBR and the PH.

The hearing is public and the offender has the right to have an attorney present (almost none do), a right to speak, a right to bring witnesses to speak on his or her behalf, and a right to have supporters present (many do). The offender can waive his or her right to be present and some do, when they wish to remain in prison until the mandatory release time. (Note: LB 605 with mandatory post-release supervision to probation will change the practicalities of this choice.) The inmate is normally present, the board is always present along with support staff, and sometimes institutional staff attend. The reentry officer attends the parole hearing and records the results into the PIMS dashboard. Until very recently this was a position in Parole Administration but now is a position in the institution under NDSC. The offender's parole officer learns of the outcome through the PIM's dashboard.

Rarely do parole administrators, NPA staff, or parole officers other than the re-entry officer attend the PH. The absence of NPA staff understates the accountability of the staff and field officers to the BOP. Yet, after release, the offender is accountable to the BOP and the BOP is responsible for its decision to release an offender. It is important for NPA and the field officers to understand that accountability and for them to have an open line of communication to the BOP. It is important for the BOP or one of its agents to exert supervisory influence over the parole officers and agents of NPA, especially after the transition when NPA will serve under the BOP making the BOP accountable for any failures after release.

The inmate can sit quietly at the hearing and not offer any new information but the BOP members are likely to ask the offender questions. Most importantly, BOP members will likely ask the inmate if he or she understands the parole conditions and the answer must be yes. If not, the BOP will stop the hearing so that the offender and the reentry officer can leave and discuss the conditions. While the BOP staff do send the inmates an official notice of the outcome of the PH, offenders are present during the hearing to listen to the motion and final vote when the BOP staff make a final decision.

*Strengths and Weaknesses.* One **strength** in the system is that the BOP runs the hearings efficiently while a **weakness** is the fact that an officer or some other representative of the NPA is not always in attendance. Often the BOP has some conversation with the inmate that a representative of the NPA should witness. Further, conveying information back to the NPA should not be the responsibility of the reentry officer; this is a missed opportunity for the BOP to convey its expectations to officers, and a missed opportunity for the officers to come to know the responsibilities that they owe to the BOP. Another **weakness** in the process is that the BOP does not always have access to all of the offender “placements” before a PH. This is a problem that

should resolve itself after the transition, which will improve communication between the NPA and the BOP and make more visible the NPA's responsibilities to the BOP.

**Recommendations:**

1. At the time of the transition, the BOP should direct NPA to start developing a parole plan at a fixed time between 90 and 120 days before the parole hearing. The exact time should result after discussion between the NPA, the BOP, and the BOP Director of Services and Supervision regarding the amount of time necessary to complete the plan.
2. The NPA under the supervision of the BOP should promulgate its own policy procedures and make these policies available to the NDSC as well as the BOP so that there is no confusion about its processes.
3. The process of developing the Parole Release Plan and the transfer of information back and forth between NDSC, NPA and the BOP is cumbersome. After the transition, the representatives of each entity should meet to determine if the flow of information might be simplified and made more efficient given that the final responsibility will lie not with NPA and NDSC but rather with the BOP.
4. After the transition and the enactment of LB 605, the Release Officer representing NPA will no longer attend hearings. Instead, re-entry officers from the institutions will attend. There will be no representative of NPA at parole hearings, which may create a break in communications. Representatives of NPA, NDSC, and BOP should determine if it is necessary to have a representative of NPA at the hearing. Some possibilities would include the IO or one of the supervisors in the field



depending upon schedules and/or location of the hearing and residence of the future parolee. The representative could attach electronic and alcohol monitors if these are part of the release conditions. This will be an opportunity for the BOP to convey its expectations with regard to enacting the parole plan and all its conditions. After the transition, the BOP will have the ultimate burden of overseeing community case management so that having a representative of NPA at the PH will enable the BOP to make its expectations known and the parole officers to understand their responsibilities to the BOP and the parolees.

- a. **Note:** The Council of State Governments (CSG) is not in favor of this recommendation for two reasons. First and foremost, CSG does not favor a case management role for the BOP and instead advocates that the BOP serve only as a decision making body. With the passage of LB 598 and the transition of NPA to serve under the supervision of BOP, this is not an option. After the transition, the BOP will be responsible for supervising the NPA as it, and its field officers, service parolees throughout the state. Thus, a case management function for the BOP with regard to parolees is inevitable following LB 598. Second, CSG is of the view that taking officers away from their duties in the field to attend hearings is not an efficient use of officer time. There is some merit to this second concern. However, one way around this issue will be to have the supervisors and/or officers attend parole hearings interchangeably. If neither is able to attend, another representative of NPA could also help communicate expectations and responsibilities.

5. The BOP Director of Services and Training should be in contact with the NDSC discharge review team on a regular basis to help plan services for inmates with need of mental health services who will soon become parolees. This is a function that will need to switch to the BOP Director upon transition.
6. Currently the NDSC provides behavioral health services for paroles paid for out of its budget. Before the transition occurs, representatives of BOP, NPA, and NDSC should meet to decide how to fund these services in the early stages of the transition and whether to move the services into the BOP budget later in the transition period.
7. While the problem of behavioral health progress feedback will decrease once the transition occurs and the NPA comes under the supervision of the BOP, there is still the issue of the behavioral health counselors providing feedback to the BOP for Parole Review Hearings, which could end with revocation. Before the transition the BOP Director of Services and Training, BOP legal counsel, the NPA, and the BOP should meet with the behavioral health and substance counselors to devise a system for providing feedback that satisfies the privilege need and the Board's need for timely feedback about the progress of parolees.
8. Parole Hearings may be less important than the Offender Board Reviews in the parole decision process. The BOP is currently in the process of adopting decision making guidelines. I recommend that the BOP panel at the OBR make use of those guidelines or a separate set of guidelines to decide whether to schedule a Parole Hearing for the offender.

9. After the transition, the parole officers in the field should maintain contact with the BOP Director of Services and Training to inform the BOP of problems and concerns that could lead to a Parole Review Hearing and ultimately result in sanctions, changes in the parole conditions, or revocation. Furthermore, one of the jobs of the Director of Services and Training will be to supervise assist officers in using the RNR approach to rehabilitation through training, program development, and supervision sessions.
10. It is critically important that the inmates understand the general and special conditions of parole. After the transition, it will be the responsibility of the NPA working under the BOP to verify that the offender does understand the conditions of parole. While some of this communication should occur in the institution through the reentry class and other reentry meetings, I nonetheless recommend that an NPA staff member verifies that the inmate is aware of the conditions and can demonstrate comprehension of each condition before the PH. This will serve three purposes, one, to assure the BOP that parolees do not fail because they were unaware of parole conditions or that they failed to understand them fully, two, that the NPA is also aware of the programming requirements, and three, to shorten Parole Hearings and make them more efficient.

## **Rescission Hearings**

*Parole Administration View:* The Case Manager at the institution has a great deal of discretion regarding Rescission Hearings (RH) as he or she determines whether an offender's misconduct while awaiting parole is a serious enough wrongdoing to file a report. If the institution unit staff (most likely the Case Manager) finds a serious wrongdoing, he or she will communicate to the NPA that there is a serious misconduct by sending a "buckslip" to the NPA release officer, who communicates the new information to Barb Wilken (BOP staff), who then reports to the BOP. The BOP decides if a rescission hearing is in order. (Note: The BOP could also hold a rescission hearing if an inmate who is pending parole is unable to secure a suitable residence.) The BOP conducts the rescission hearing exactly as a parole hearing with outcome to rescind, continue with parole, or schedule a review hearing dependent upon the board vote. The offender attends the hearing and learns of the outcome at the time of the Board vote.

The major **strength** of the process is that it allows the system to identify dangerous offenders and prevent them from being released but a major **weakness** is the subjectivity of the decision to hold a rescission hearing and the subjectivity of the outcome of such a hearing.

***Board of Parole View:*** The process is almost identical to parole hearings for individuals who are parole pending (i.e., they have gone through a hearing, were granted parole and are awaiting release.) Most of the inmates who undergo rescission hearings received a misconduct report while waiting for a suitable residence. Others may have decided that they do not want to go on parole and would rather wait for the mandatory release date. Another possibility is that a detainer that was not known at the time of the PH surfaces in an inmate's record. These are rescission hearings because the offenders have not have not yet left the institution.

With regard to misconduct while parole pending, an officer in the institution will write a misconduct report and inform the NPA, who reports the misconduct to Barb Wilkins (parole staff). Barb reports the notification to the BOP Chair who makes the decision whether to hold a rescission hearing but does so only after seeking the Board's input for more serious or complicated infractions.

The inmate receives a formal letter if there is to be a rescission hearing. The BOP uses the exact same process for RH's as for Parole Hearings and decides through a vote on a motion to continue on parole, to rescind parole and defer to a mandatory release date, or to defer to a subsequent OBR. The reentry staff enter the outcomes into the database and inmates find out the decision immediately after the hearing. Offender rights are the same as in a regular parole hearing. Although they can invite attorneys, supporters, and witnesses none usually do. The BOP hears rescission cases when they can fit them into the PH docket. They are infrequent with one or two each month at the most and for most months, none at all.

The primary **strength** of the RH is deterrence. The fact that they can occur puts the parolee on record that he or she must behave while awaiting parole and not receive misconduct

reports. A secondary **strength** is that this hearing does allow the BOP an opportunity to not parole an inmate if it feels the offender will not be a good candidate. The BOP can “nip it” before the inmate leaves the institution. However, the **weakness** is that these hearings are very inefficient because of the redundancy with the Parole Hearings. The BOP starts the process anew and reviews the same information.

**Recommendation:**

1. Whether or not to schedule a Rescission Hearing is subjectively determined and holding one is inefficient. At the time of the transition, the NPA and the BOP should adopt formal guidelines to determine when Rescission Hearings should occur (i.e., for what reasons) to cut down on both subjectivity and inefficiency. Furthermore, the BOP should write into policies and procedures the types of evidence that is reviewable at Rescission Hearings. The promulgation of this rule or policy should occur in consultation with the new BOP legal section. I recommend that only new information should come up at the hearings to increase efficiency and a fair process.

**Qualification:**

**\*\*\* Again, it is important to point out that these are preliminary findings and recommendations and that there are likely to be changes in the findings and recommendations depending upon what the evaluation team finds out from additional observations and interviews. Statements of strengths, weaknesses and recommendations are conclusions of the evaluation team and NOT conclusions of the parole administrators or members of the Board of Parole. \*\*\***

## Appendix 1: Proposed Budget (December 1, 2015)

## BUDGET DRAFT FOR 2016-2017 BASED UPON 2014 EXPENDITURES

Budget Fund Types - Expenditures	Expenditures 2014	Fiscal Year 2016 Budgeted <sup>1</sup>
<b>Personal Services</b>		
Permanent Salaries - Wages (based upon budgeted amount)	\$ 3,060,726.46	\$ 3,121,940.99
Director of Services and Supervision	\$ -	\$ 72,000.00
Overtime Payments	\$ 26,615.69	\$ 27,414.16
On Call Pay	\$ 10,636.29	\$ 10,955.38
Employee Bonuses	\$ 500.00	\$ 515.00
Comp. Time Payment	\$ 11,862.00	\$ 12,217.86
<b>Personal Services Subtotal</b>	<b>subtotal</b> \$ 3,110,340.44	\$ 3,245,043.39
Retirement Plans Expense	\$ 188,412.02	\$ 197,580.26
Fica License	\$ 177,229.33	\$ 186,281.92
Life & Accident Ins Expenditures (\$22.50 per person)	\$ 690.75	\$ 713.25
Health Insurance Expense	\$ 494,139.37	\$ 508,963.55
Employee Assistance Program (based upon budgeted amount)	\$ 694.00	\$ 714.82
Unemployment Comp Ins Exp. (based upon budgeted amount)	\$ 5,000.00	\$ 5,150.00
Workers Comp Premiums	\$ 38,961.13	\$ 40,129.96
	<b>subtotal</b> \$ 905,126.60	\$ 939,533.76
<b>Major Account 10000 total</b>	<b>\$ 4,015,467.04</b>	<b>\$ 4,184,577.15</b>
		4.21% increase



## OPERATING EXPENSES

Postage Expense	\$	4,809.32	\$	4,953.60
Comm. Expense - Voice Data	\$	66,362.29	\$	68,353.16
Comm. Expense - Data Only	\$	36,855.56	\$	37,961.23
Publication & Print Expense	\$	29,464.36	\$	30,348.29
Dues & Subscription Expense	\$	11,257.87	\$	11,595.61
Conf. Reg. -- Non-Ceu's (Conferenc Registration)	\$	1,680.00	\$	1,730.40
Electricity (based upon square footage per building)	\$	2,205.76	\$	2,271.93
Rent Expense - Buildings (Trabert and outside Lincoln/Omaha)	\$	159,770.53	\$	164,563.65
Rent Expense - Dupr. Surcharge (Fee from Downtown Lincoln)	\$	3,130.99	\$	3,224.92
Repair and Maintence Moter Vehicle (Owned by Administration)	\$	7,445.57	\$	7,668.94
Repairs & Maintenance -- Community Equip.	\$	160.50	\$	165.32
Repairs & Maintenance -- Housing Institution E	\$	221.40	\$	228.04
Office Supplies Expense	\$	17,396.97	\$	17,918.88
Non Capitalized Equipment PU (Equipment under \$1500)	\$	746.29	\$	768.68
Household & Institution Expenses (Cleaning supplies and paper goods)	\$	1,689.01	\$	1,739.68
Educational Expense (Teaching Curriculum)	\$	1,393.80	\$	1,435.61
Engineering Technology and Community Supplemental Expense	\$	6,735.97	\$	6,938.05
Security Supplies	\$	450.40	\$	463.91
General Medical Supplies	\$	356.58	\$	367.28
Vehicles and Equipment Supplemental (Special -- e.g. cage)-budgeted	\$	1,000.00	\$	1,030.00
Gas/Oil FSP & CSI (state owned vehicles)	\$	3,103.31	\$	3,196.41
Accounting and Auditing Services	\$	5,000.00	\$	5,150.00
SOS Temporary Service Personnel	\$	5,619.50	\$	5,788.09
IT Consulting - Applications	\$	262,687.36	\$	270,567.98
Refuse/Recycling	\$	202.85	\$	208.94
Other Contractual Services (Miscellaneous Personnel Service)	\$	312.00	\$	321.36
Software - New Purchases	\$	312,222.05	\$	321,588.71
Insurance Expense	\$	296.06	\$	304.94
New Equipment and Replacment Equipment	\$		\$	-
Other Operating Expenses (based upon budgeted amount)	\$	65,689.00	\$	67,659.67
<b>subtotal</b>	\$	1,008,265.30	\$	1,038,513.26
<b>Major Account 520000 total</b>	\$	1,008,265.30	\$	1,038,513.26

3.00% increase

**TRAVEL EXPENSES**

Boarding & Lodging	\$	6,471.20	\$	6,665.34
Commercial Transportation (based upon budgeted amount)	\$	1,000.00	\$	1,030.00
State Owned Transportation (transportation service bureau)	\$	116,022.62	\$	119,503.30
Personal Vehicle	\$	251.33	\$	258.87
Miscellaneous Travel Expenses (based upon budgeted amount)	\$	500.00	\$	515.00
<b>subtotal</b>	\$	124,245.15	\$	127,972.50

<b>Major Account 570000 total</b>	\$	124,245.15	\$	127,972.50
				3.00% increase

<b>Total in 2014 AND Total Budgeted 2016-2017</b>	\$	5,147,977.49	\$	5,351,062.91
				3.94% increase

**1) Permanent Saleries and FICA increased by 2% & all other categories by 3% from 2014**