



Department of Public Safety and Correctional Services

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DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES DIVISION OF PAROLE AND PROBATION & MARYLAND PAROLE COMMISSION

FY 2021 OPERATING BUDGET Response to Department of Legislative Services Budget Analysis

House Appropriations Public Safety and Administration Subcommittee Chairman Keith E. Haynes January 22, 2019

Division of Parole and Probation

Drug Testing

Issue: The department should comment on the decision to reduce drug testing rates by 95% and the positive and negative effects that has had on operations including caseload management, determining compliance with conditions of supervision, and the provision of laboratory technicians for testimony at hearings.

DPSCS should also comment on the rate of positive results and the factors to which they attribute the recent increase.

Response: The Department acknowledges that the current contract for drug testing could be better utilized to increase frequency of drug testing for those offenders under supervision by the Division of Parole and Probation (DPP). The decline in drug testing rates is attributable to the shift in methodology of drug testing, an issue related to a manufacturer's recall, and the reliance on self-admissions. DPP has instituted measures to increase the frequency of drug testing in addition to continuing to utilize self-admissions.

On January 1, 2018, the Department transitioned to a new drug testing vendor, Redwood Toxicology Laboratory. Under the new contract, the Division of Parole and Probation (DPP) selected a "rapid drug screen" (RDS) testing method using an oral swab in order to avoid many of the issues

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related to urine specimen collection, and to enhance the efficiency and efficacy of drug testing of supervised individuals. The Division went through a transition period when the drug testing vendor changed from urine screens to oral swabs. This was a significant shift in operational policy, procedure, and practice and it has taken time and continuous training in order to encourage proper use of the oral swab.

Additionally, the overall number of tests administered by DPP was impacted by a manufacturer recall of the oral swab device utilized by the agency. The recall was announced by the manufacturer on June 21, 2018. As a result of the recall, the DPP conducted a physical accounting of all of the devices impacted. It was determined that the recall affected the agency's entire inventory of over 16,000 devices. The devices were returned to the manufacturer and DPP had to wait for the manufacturer to replace the faulty devices. As such, DPP was unable to return to normal testing until October of 2018.

The utilization and reliance on self-admission of reporting drug use also factored into drug testing usage. Frequently, individuals under supervision will self-admit to using illegal substances to their supervising Agent, which may result in a technical violation depending on the graduated sanction matrix. While research shows that self-admission is an important component of the recovery process, the Department acknowledges that steps can be taken to increase utilization of drug testing.

Accordingly, DPP has instituted measures to further increase testing for individuals under supervision with substance abuse related special conditions as well as methods to properly account for the use of self-admission. DPP has instituted a monthly review process to ensure all individuals under supervision with substance abuse and drug testing special conditions are being tested on a frequent basis. DPP will continue reviewing the current testing protocols and policies to ensure clear direction in terms of drug testing utilization. To verify increased testing is appropriately applied, drug testing audits will be instituted.

DPSCS should also comment on the rate of positive results and the factors to which they attribute the recent increase.

The increase in the rate of positive results is due to the increased number of substances, or panels, the oral swab is able to test for. The oral swab offers a more comprehensive testing panel than under the urinalysis protocol, resulting in the increased likelihood of an individual testing positive. DPP currently tests for the following substances: Opiates, Cocaine, Cannabinoids, Benzodiazepines, Methamphetamines, Buprenorphine, Amphetamines, Oxycodone, Phencyclidine (PCP), and Fentanyl. Buprenorphine, Oxycodone, and Fentanyl were not previously tested. A secondary oral swab for alcohol is also utilized.

Case Closures

Issue: Because employment is a primary factor in the successful reentry of an offender into society, DPSCS should comment on current offender employment data and enrollment rates in programs offered to assist offenders in securing and maintaining employment.

Response: DPP Agents supervise offenders in the community in addition to referring offenders to employment, treatment, and housing services. Employment is a primary indicator for successful reentry into society following correctional or community supervision. The employment rate of supervisees upon case closure in fiscal year 2019 was 37%, above the performance goal of 30%.

When an individual is released to supervision, the primary focus of the Agent is to ensure compliance with the supervision order. Agents are required to attend Court/Commission hearings, collect drug tests, engage clients and their significant others in the office and the community on a regular basis, respond to supervision non-compliance, conduct risk/needs assessments and reassessments, impose sanctions and interventions for non-compliance, and respond to the needs of victims among a host of additional duties not listed.

DPP primarily relies on referrals to service providers within the local jurisdictions in which the supervisees reside to address criminogenic risks and needs. Community based programming varies by jurisdiction. DPP relies on these individual providers to address the individuals' needs in the areas of mental health, medical treatment, housing assistance, and reentry services. These agencies and providers are dedicated to providing these services within their individual specialty areas. While successful reentry is a key component of the Department's overall mission, the agency should not be recreating systems already in place for individuals in need of certain human services. As such, DPP leverages the current systems in place, connecting supervisees with all available services within the local jurisdictions. Leveraging of locally available resources is recognized as a good reentry practice.

Agent Vacancies

Issue: Considering DPSCS must abolish 531 vacant positions contingent on passage of the fiscal 2021 proposed budget, the department should comment on the number of agent and monitor positions that may be identified for abolishment as well as identifying hiring goals for these positions in fiscal year 2020 and 2021.

Response: The Department will not comment on specific position abolitions at this time.

The Department is committed to continuing to fill its vacant positions, to include those vacant DPP Agent positions as well as those vacant Drinking Driver Monitor (DDM) positions. The Department is pleased to share the following updated hiring statistics that were not factored into DLS's analysis.

In calendar year 2019, the Maryland Police and Correctional Training Commissions (PCTC) hosted three separate DPP Agent academies, resulting in the graduation of approximately 50 DPP Agents. PCTC held two academies for DDM positions, resulting in the graduation of eight DDMs.

Year-to-date, PCTC has held one DPP Agent academy, which resulted in the graduation of an additional 18 DPP Agents.

As of January 17, 2020 DPP has a total of 64 vacant DPP Agent positions 11 vacant Drinking Driver Monitor positions.

The Department plans on holding another DPP Agent academy in February 2020 and will continue to recruit for these positions.

Maryland Parole Commission

Issue: The department should comment on why the parole grantee rate for local inmates has declined by nearly half since fiscal year 2015.

Response: The Department has identified several reasons for the decline in the parole grant rate for local inmates, including the establishment of the Administrative Release process under the Justice Reinvestment Act (JRA); the expansion of application of diminution credits; and, the growing trend in release preference of local inmates. One of the substantive provisions of JRA was the establishment of an Administrative Release process. Pursuant to the Administrative Release process, low level offenders may be automatically released from incarceration at 25 percent of sentence served if a case plan is followed, there are no major conduct infractions, the victim does not request a hearing, and the Maryland Parole Commission deems a hearing unnecessary. These releases come disproportionately more from local detention centers and are not categorized or statistically counted as parole releases. Also, as a result of JRA, local jurisdictions have expanded the application of diminution credits after further review of the statutory provisions. Local inmates are now earning diminution credits at a higher rate than previously, which impacts their release dates. In turn, the Maryland Parole

Commission has a narrower timeframe to hold hearings. Finally, local detention centers are providing more work release opportunities and treatment programming than in the past. This makes parole a less attractive option to an offender due to the supervision component that follows. Unlike in the Division of Correction, when an offender is released by expiration of sentence (not paroled) in a local detention center, there is no term of supervision by the Division of Parole and Probation after release. These factors have resulted in a decline in the parole grantee rate for local inmates.

Issue: The department should comment on this trend and why an increasing proportion of parole releases are occurring over a year after the eligibility month.

Response: The Maryland Parole Commission has seen both an increase in the number of parole releases occurring on or BEFORE an inmate reaches parole eligibility and an increase in the number of parole releases occurring over 12 months AFTER an inmate reaches parole eligibility. These trends are attributable to better case planning and a shift in the inmate population incarcerated in the Division of Correction (DOC). It is important to note that, while parole eligibility is established in statute, parole is discretionary. Commissioners utilize a dynamic guideline system in determining whether an inmate who is eligible for parole is suitable for parole.

The increase in the number of parole releases occurring on or BEFORE an inmate reaches parole eligibility is due to better case planning, facilitated by the implementation of the Justice Reinvestment Act. The Department's Case Management team is better able to collaborate with the Maryland Parole Commission in developing case plans and coordinating in terms of parole hearing dates. As such, lower risk inmates incarcerated for non-violent offenses have been increasingly paroled on or before an inmate reaches parole eligibility.

While case planning has improved across the entire agency, there has also been an increase in the number of parole releases occurring over 12 months AFTER parole eligibility. This is primarily due to a shift in the inmate population in the DOC, as the Department has seen an increase in the percentage of higher risk inmates serving terms of incarceration for violent offenses. The percentage of inmates received into the DOC serving a term of confinement that included a sentence for a violent offense was 76% in fiscal year (FY) 2015, which climbed to 85% in FY 2019. This trend was cited by the Department of Legislative Services' (DLS) in their analysis of the Department's fiscal year (FY) 2020 Budget Overview, which stated: "[t]he department has fewer inmates, but those who remain tend to be more dangerous – as nonviolent offenders have more options in terms of shorter

sentences and non-jail sanctions such as parole and probation.”¹ Higher risk, violent inmates if paroled, tend to be released after serving greater percentages of their sentences than non-violent, low risk offenders.

The Department and the Maryland Parole Commission will continue monitoring these trends and reporting data as required by the Managing for Results process.

Recommended Actions

1. Adopt the following narrative:

Division of Parole and Probation (DPP) Caseload Report: In recent fiscal years, the Division of Parole and Probation (DPP) has been working to reduce caseloads to a manageable level for its parole and probation agents. While vacancies and caseload ratios marginally improved in fiscal 2019, vacancy rates remain above 10%, and some offices have over 100 cases per agent. The budget committees request a report due by September 15, 2020, from DPP on the following:

- Efforts to maintain uniform caseloads below the national average in each region;
- The exact breakdown of support staff and general supervision caseloads by office into DPP supervision levels (low, moderate, high risk, administrative, and Violence Prevention Initiative) for fiscal 2019 and 2020; and
- An evaluation of staff realignment between regions.

Response: The Department concurs.

2. Adopt the following narrative:

Community Supervision Treatment and Services Report: Division of Parole and Probation (DPP) agents supervise offenders in the community in addition to referring offenders to employment, treatment, and housing services. Employment is a primary indicator for successful reentry into society following correctional or community supervision, yet the employment rate of supervisees upon case closure in fiscal 2019 was 28%, below the

¹ See Maryland Gen. Assembly. Dept. of Legis. *Services Department of Public Safety and Correctional Services Fiscal 2020 Budget Overview*. Annapolis: Department of Legislative Services, 2019. Maryland General Assembly. January 2019. Available at: <http://mgaleg.maryland.gov/Pubs/BudgetFiscal/2020fy-budget-docs-operating-Q00-DPSCS-Overview.pdf>

performance goal of 30%. The budget committees request a report from DPP on the services that it provides to offenders during and following supervision, including but not limited to employment assistance, mental health and medical treatment, housing assistance, and other reentry services. This report should include current enrollment and expenditures and should be submitted to the committees by November 1, 2020.

Response: The Department requests the subcommittee rejects this recommendation. DPP does not have the ability to track employment rates on an ongoing monthly basis. This data element is only captured at case closure. Mental health, medical treatment, housing assistance, and referrals are not measurable data points within the Department's Offender Case Management System. As outlined in the aforementioned responses, DPP Agents make referrals to community resources based upon assessed need. Although the service providers that DPP makes referrals to are evidence-based, there exists no universal standardized tracking of these referrals by the providers.

3. Adopt the following narrative:

Community Supervision Drug Testing Report: The Division of Parole and Probation is responsible for administering drug testing for prohibited substances of offenders supervised in the community, as ordered by a sentencing authority. Testing rates have declined dramatically since the switch to a new vendor in fiscal 2018. Additionally, while the rate of positive results increased to 25% in fiscal 2019, the sharp decline in sample size makes comparisons difficult between years. The budget committees request a report due by October 1, 2020, including the following:

- An overview of drug testing policies, including what offenders are subject to testing, how often testing occurs, the way results are processed by staff, and the provision of laboratory technicians for testimony at hearings;
- A breakdown of drug testing and results for fiscal 2017 to 2020 by type of substance;
- An analysis of these results, including possible reasons for any increase in drug use rates among supervisees, and steps taken to address high drug-use rates; and
- A review of the operational impacts of testing less frequently.

Response: The Department concurs.