Department of Public Safety and Correctional Services

Office of the Secretary

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Department of Public Safety and Correctional Services
Division of Correction - Q00B
Fiscal Year 2022 Budget
Response to Department of Legislative Services Analysis

Senate Budget and Taxation Committee
Public Safety, Transportation and Environment Subcommittee
Senator Cory McCray, Chair
March 1, 2021

House Appropriations Committee
Public Safety and Administration Subcommittee
Delegate Keith Haynes, Chair
March 1, 2021

Assaults

Issue: DPSCS should discuss the reasons why assaults increased above the Managing for Results goal and also discuss the impact of COVID-19 on inmate and staff assaults.

Response: COVID-19 has impacted every facet of the agency, including trends in inmate on inmate assaults and inmate on staff assaults.

Impact of COVID-19 - Inmate on Inmate Assaults

A deeper analysis of assault trends over the course of fiscal year 2020 reveals that inmate-on-inmate assaults were on the decline during the first two quarters of fiscal year (FY) 2020. However, COVID-19 impacted inmate-on-inmate assault rate trends in a few significant manners: (1) fear of the potential impact of the virus led to an uptick in assaults; and, (2) a decline in the incarcerated population in the Division of Correction during the fourth quarter of FY 2020 skewed the assault rates. In comparison to the drop in population, the number of inmate-on-inmate assaults fell by 23.4% in FY 2020 overall, despite the temporary uptick in the third quarter.

Before the first case of COVID-19 was identified in the United States, inmate-on-inmate assaults had decreased in comparison to the prior six months. Specifically, the Division of Correction (DOC) experienced a 12% decline in serious inmate on inmate assaults during the first and second quarters of FY 2020 in comparison to FY 2019. By the time the first case of

COVID-19 was reported in Maryland, it was the third quarter of FY 2020. During the third quarter of 2020, the DOC experienced a slight uptick in the number of inmate-on-inmate assaults, which was likely the result of heightened tensions related to the stress and fear of the potential impact of the virus. The assault rate then decreased in the fourth quarter as the agency limited movement in order to mitigate and stop potential spread of COVID-19.

As previously stated, the dramatic reduction in the Division of Correction (DOC) population skewed the inmate on inmate assault rates since they are based on ADP. From March 2020 to the end of FY 2020, the Department's sentenced population decreased by 10%. The population trends seen in the fourth quarter of 2020 coincide with Maryland's response to the COVID-19 pandemic. The MFR shows an increase in inmate-on-inmate assaults in FY 2020 by 0.03/100 inmates - the equivalent of an increase of 5 assaults across the sentenced population in DOC facilities - when in actuality the Department experienced a net decrease in inmate-on-inmate assaults. Again, in comparison to the 10% drop in population, the number of inmate-on-inmate assaults fell by 23.4% in FY 2020 overall, despite the temporary increase attributed to COVID.

The Department's ability to decrease inmate assaults even before COVID-related decreases in movement and population is a positive indicator of progress towards MFR goals, and the impact of improved staffing resources.

Impact of COVID-19 - Inmate on Staff Assaults

As the DLS analysis points out, in FY 2020 the offender-on-staff assaults did slightly exceed the MFR goal by 0.17/100 ADP. The agency suspended visitation in the third quarter of FY 2020 and modified movement within the correctional facilities. This dramatic change in inmate movement placed staff as the more consistent contact with inmates. As a result, inmate-on-staff assaults peaked in the third quarter of FY 2020, largely driven by non-contact forms of assault, such as inmates throwing liquids and bodily fluids at staff. Prior to the third quarter of FY 2020, inmate-on-staff assaults had begun to stabilize at or below FY 2019 levels, which were previously within the MFR goal. While any level of inmate on staff assault is of great concern to the Department, it is important to note that this trend seems very closely tied with the current extraordinary circumstances the Department is facing, and the Department has no reason to expect that they will continue at this level once operations normalize. Despite these challenges, inmate assaults on staff that were associated with serious injury have decreased by 11% over the past fiscal year, a positive change for the Department.

Inmate Medical Contract

Issue: DPSCS should comment on the new auditable reimbursement model for the inmate medical contract emergency modification and provide a funding plan for the approximately $12 million in unsupported cost increases.

Response: In response to the statewide emergency declaration back in March 2020, the Department declared an emergency recognizing the State's constitutional duty to provide healthcare for individuals incarcerated in State correctional facilities, acknowledging the fact that the COVID-19 pandemic required additional medical services and safety measures were required to ensure inmates' medical needs were addressed. During the June 17, 2020 Board of Public Works (BPW) meeting, the Department's emergency report was remanded to the Department, with clear direction that the Department renegotiate the contract from a fixed cost increase to a reimbursement model for actual costs incurred stemming from increased COVID-19 costs. Similar, to many agenda items brought before and approved by the BPW across all State agencies, significant additional costs have materialized on behalf of the vendor for an increase in staff to support quarantine and isolation housing areas, serial testing, and now vaccine implementation, not to mention increased costs associated with offsite medical care, transportation, etc. to cover these necessary and unforeseen costs directly attributable to the pandemic.

On February 24, 2021 the BPW unanimously accepted the emergency report, meeting the Board's prior direction in which the vendor submits auditable invoices based on actual COVID costs incurred and as such are reimbursed for those costs.

It is important to note the modification addresses supplemental medical care specific to COVID-19 - terms of care and medical treatment stipulated in the base contract is unaffected by this action. In other words, all terms and conditions pertaining to the base contract remain the same. The reimbursement of invoices is specific to those COVID-19 expenses as directly incurred and through the period July 1, 2020 through June 30, 2021.

The Department has been reassured that adequate federal funding is available to cover these additional costs. The Department continues to work collaboratively with partner agencies, including the Maryland Department of Health (MDH) and Department of Budget and Management (DBM), and will keep these agencies apprised of any additional or anticipated COVID-19 expenses that may qualify for reimbursement through federal funds to the extent they are available.

COVID-19 Expenditures

Issue: DPSCS should brief the budget committees on the amount of unfunded COVID-19 expenses that are expected in fiscal 2021 if costs continue at the current rate.

Response: The Department anticipates that all future COVID-19 expenses incurred in fiscal 2021 will be covered by federal funds. The Department anticipates three major categories of continued COVID-19 expenses as follows: 1.) Employee Quarantine Pay; 2.) COVID-19 Reimbursement for Inmate Medical Care; and, 3.) Professional Deep Cleaning Services.

<u>1.) Employee Quarantine Pay:</u> The state continues to provide an additional $5.13/hour for employees that work in a medical quarantine/isolation area. Through the February 9, 2021, the Department spent $35.1 million on additional quarantine pay and estimates an additional $22.6 million in spending through the remainder of the fiscal year.

<u>2.) COVID-19 Reimbursement for Inmate Medical Care:</u> As previously stated, the BPW unanimously approved a modification that reimburses the medical provider for COVID-19 costs incurred. Through December 31, 2020 invoices totaled $6.7 million. The contract period is a 'Not To Exceeds' amount of $24 million and the remaining period from January 1, 2021 through June 30, 2021 will be dependent on offsite hospitalization costs that have not yet come to fruition. The potential spread of COVID variances and the evolving nature of this pandemic will further impact costs. The COVID-19 modification is based on an average estimate of $2 million per month, so it is not unreasonable to assume there could be as much as $12 million more in costs through the remainder of the year.

<u>3.) Professional Deep Cleaning Services:</u> The Department has spent $2.6 million in professional deep cleaning services to cover the Department's 23 facilities and over 40 Division of Parole and Probation (DPP) offices to ensure maximum mitigation efforts are taken to provide for staff, inmate and offender safety as well as, aid in reducing viral spread. The Department estimates an additional $5.8 million in costs for bills not yet received, as well as additional services to be rendered through June 30, 2021. The budget includes $1.26 million to cover professional deep cleaning services at DPP locations.

At this time the Department is not projecting additional COVID-19 related costs associated with Personal Protective Equipment (PPE) based on inventory ordered prior to June 30, 2020 and working collaboratively with the Maryland Emergency Management Agency (MEMA), Department of General Services (DGS), and Maryland Department of Health (MDH), the agency is able to obtain necessary PPE directly through established inventories and available stock as coordinated through these entities without needing to order these items on our own.

The Department continues to brief both MDH and DBM on these COVID-19 related costs and it is the Department's understanding that additional federal funds will be made available to address these items.

<u>Maryland Correctional Enterprises</u>

Issue: Because this issue could result in a budgetary crisis for the self-financing MCE, DPSCS and MCE should comment on the reduction in MCE sales as well as any steps currently being taken to avoid costs and enhance revenues while COVID-19 safety precautions and market conditions remain in effect.

Response: Throughout the course of the pandemic, MCE has been faced with several temporary closures and shutdowns in an effort to reduce the spread of COVID-19 throughout the institutions. Based on positive case data, 10 MCE business units were closed in April and some did not reopen until September. As COVID-19 cases began to spike again in Maryland in mid-November, 21 out of 26 business units were idled, the majority of which remained closed well into January. As a result of these closures, MCE was not able to produce goods for several customers. This led to delivery delays, lost sales and cancellations of memorandums of understanding, including the end of a thirteen-year contract. In addition to lost revenues due to business unit closures, other state agency purchasing abilities have been cut dramatically leading to a decrease in purchases from MCE. So far in FY21, MCE has waived over 70 requests from state agencies to bypass MCE's purchasing preference, enabling the agencies to purchase the products from other vendors, as MCE was unable to provide the requested product within the given timeframe. Estimated individual waiver amounts range from $150 to $223,000. An increase in utilization of telework has decreased the need for office furniture in state agencies. Given that furniture sales typically account for approximately 40% of MCE revenues, the impact has been significant. Due to the reduction in the state prison population, MCE has also experienced decreased sales in inmate items such as clothing, bedding, etc.

In response to the pandemic, MCE has been proactive in reducing costs and trying to realign sales strategies with current trends; however, some accelerated costs have been unavoidable. MCE was forced to increase expenditures early on in the pandemic to ensure that all personnel at headquarters had the necessary equipment to telework. Since the Department limited the movement of the incarcerated population, MCE lost the ability to assign installation services to inmate participants. As a result, MCE has been forced to procure outside installation services for all offsite projects. Even though MCE was producing PPE, the costs to MCE were exorbitant. This was especially true in the middle of the pandemic. For instance, alcohol prices were 75% higher than normal, but MCE continued to sell hand sanitizer at the average market price. MCE incurred these unanticipated expenses in an effort to save our State. MCE may face a further strain on expenditures and sustainability should legislative efforts force the implementation of a minimum wage for MCE inmate program participants.

Despite these forced expenses, MCE immediately reduced spending and implemented additional purchasing approval requirements. For example, MCE has $2.2 million budgeted for vehicle operations & equipment in fiscal year 2021. Using cost avoidance measures, MCE anticipates reducing the actual expenditures to $1.3 million, resulting in a savings of $900,000, or 43%. MCE has also made efforts to reduce personnel costs by eliminating all outside temporary employees and reducing hours worked for contractual employees. MCE continues to monitor overtime and only approves if necessary to satisfy critical customer needs.

To increase sales in this new climate, MCE continues to shift efforts to producing COVID-19 related supplies where possible. The sales and marketing team actively engages with customers via calls, e-marketing campaigns, and other daily interactions. MCE continues to conduct outreach to encourage new customers in non-traditional allowable markets such as non-profit groups and state run hospitals. Prior to the end of FY21, MCE anticipates that it will begin the delivery of approximately $5 million in capital projects and anticipates orders for an additional $3 million in capital projects which will be scheduled to be delivered during the first half of FY22. MCE consistently reviews its product lines and requests feedback from stakeholders to ensure proper alignment with current needs and trends.

Although the current climate continues to be challenging, MCE looks forward to the opportunity to reopen at a full capacity when it is safe to do so. With the implementation of the new Enterprise Resource Planning system this calendar year, MCE hopes to revitalize the organization and make it more adaptable in a post-pandemic environment. MCE continues to evaluate operations to ensure it continues to meet all aspects of its multifaceted mission.

Recommended Actions

Operating Budget:

1. **Adopt committee narrative requesting a report on Maryland Correctional Enterprises staffing, programs, and sales.**

Response: The Department concurs.

2. **Add budget bill language restricting funds for quarterly hiring and attrition reports.**

Response: The Department concurs.

3. **Adopt committee narrative requesting a report on prerelease opportunities.**

Response: The Department concurs.