



Department of Public Safety and Correctional Services

Office of the Secretary

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Department of Public Safety and Correctional Services
Community Supervision
Fiscal Year 2022 Operating Budget
Response to Department of Legislative Services Analysis

House Appropriations Committee
Public Safety and Administration Subcommittee
Delegate Keith Haynes, Chair
January 28, 2021

Senate Budget and Taxation Committee
Public Safety, Transportation and Environment Subcommittee
Senator Cory McCray, Chair
January 28, 2021

Proposed Budget Change

Issue: Rent decreases by a significant amount from fiscal 2021 levels, as do expenses for security guards, travel expenses, and service grants. Communication expenses and overtime, however, increase. DPP should comment on the extent to which the COVID-19 pandemic has driven these changes.

Response:

The Division of Parole and Probation (DPP) took swift action in response to COVID-19 and drastically modified its operations while continuing to carry out its mission of supervising individuals who were paroled, on probation, or released under mandatory supervision from a correctional facility. Leveraging technology, DPP transitioned to a more mobile, telework structure. The Division of Parole and Probation maintained certain critical in-person functions, such as conducting home visits for higher-risk clients, processing intakes and new clients, and attending revocation hearings. As a result of the operational modifications and actions taken to mitigate the spread of COVID-19, DPP experienced a decrease in expenditures on security guards and travel expenses.

On March 30, 2020, the Governor issued Executive Order 20-03-01 ("Stay at Home Executive Order") which directed all Maryland residents to stay at home except under limited circumstances. In response, DPP closed field offices to the public at the close of business on March 31, 2020, and transitioned to telework and remote supervision. The Department rapidly deployed additional smartphones, tablets, laptops, and mobile

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hotspots to ensure connectivity and enable staff to efficiently work remotely. In mid June 2020, DPP reopened its offices with a modified schedule. All individuals reporting to an office were scheduled in a fashion consistent with social distancing and guidelines issued by the Maryland Department of Health and Centers for Disease Control. Given the increased utilization of telework and modified utilization of office space, DPP experienced a decreased reliance on security guards. Travel expenses also decreased as DPP personnel were able to meet virtually with supervisees. Training, conferences and meetings were held virtually.

The Division of Parole and Probation did experience an increase in overtime expenses in fiscal year (FY) 2021. This was primarily attributable to the Premium Pay established by the Department of Budget and Management (DBM) during the onset of the pandemic. Specifically, on March 13, 2020, DBM added Premium Pay for all emergency personnel who had to report to a facility to work and DPP employees were also eligible for this increased compensation. However, the Premium Pay was discontinued on Sunday, March 22, 2020, and subsequent COVID-19 response pay incentives were specific to certain eligible employees working in correctional facilities.

Hiring Issues

Issue: DPSCS should comment on hiring issues during the most recent calendar year.

Response:

The COVID-19 pandemic affected the hiring process. The implementation of a hiring freeze and the need to expeditiously implement a virtual process delayed recruitments. However, Parole and Probation agents I, II, and subsequently, Supervisors I were exempted from the hiring freeze process. This exemption, in tandem with increased efficiencies due to utilization of a virtual hiring process, has had a positive effect on the number of agents and supervisors the Department has been able to hire. Four new recruitments for DPP began in calendar year (CY) 2020, and two continued from the Fall of CY 2019. Those six active recruitments represent over 1,400 applicants. Given the nature of promotions, recruitments are done in a sequential pattern from most senior to entry-level positions. Senior-level position recruitments yielded 56 promotions. Since December 2020, there were 27 additional candidates hired or had committed to starting work as a Parole and Probation Agent I. There are 58 candidates undergoing background checks and three with outstanding offers.

Despite the delay caused by the pandemic, the hiring process has been strengthened and the results of the current recruitment will fill a large number of vacancies.

Caseload Ratio:

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Issue: DPP should describe the impact of the COVID-19 pandemic on agent caseload ratios and community supervision work in general.

Response:

As referenced in the Department of Legislative Services' analysis, the Department submitted a Joint Chairmen's report to the budget committees in September 2020, specifically regarding agent caseload ratios. At the time of the report, DPP was approximately seven months into the pandemic.

Over the past two fiscal years, the Department has continued to see a decrease in the average agent to caseload ratio. DPP statewide caseload averages were 74 cases per agent at the end of fiscal year (FY) 2020. Currently, the caseload average is 61 cases per agent. The Department strives to maintain an average caseload ratio per agent based on evidence-based supervision techniques, best practices, and national ratio guidelines. The Department surmises that another contributing factor in terms of decline in caseload ratios has been the court closures resulting from COVID-19. The Department has and will continue to address average caseload ratios by continuing to reduce the number of vacant agent positions and realigning agents where practical. It is important to note that there are limitations to comparing national average caseload ratios to Maryland's average caseload ratio – and even in comparing certain regions within Maryland to one another.

As previously stated, DPP took swift action in response to COVID-19 and drastically modified its operations while continuing to carry out its mission of supervising individuals who were paroled, on probation, or released under mandatory supervision from a correctional facility. As part of the COVID-19 response, DPP agents began utilizing PPE and adapting office protocols in March, including the increased use of remote contact methods. Under the elevated state of emergency, DPP leveraged existing and expanded telework capacity to institute statewide tele-supervision.

DPP agents and supervisors have continued conducting home visits using PPE and following social distance guidelines. In mid June DPP reopened its offices with a modified schedule. All individuals reporting to an office were scheduled in a fashion consistent with social distancing and guidelines issued by the Maryland Department of Health and Centers for Disease Control. As of December 31, 2020, DPP agents made 24,955 home contacts, 11,176 community contacts and 12,486 employment contacts.

Maryland Parole Commission

Issue: MPC should discuss parole hearings during the pandemic and explain why fewer inmates were granted parole in fiscal 2020 than fiscal 2019 despite the Governor's executive order to expedite release where possible.

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Response:

The Maryland Parole Commission has continued its mission to provide timely parole grant hearings and parole revocation hearings despite the challenges posed by the global COVID-19 pandemic. Governor Hogan issued the first Executive Order placing State agencies in an elevated level II response to the pandemic on March 12, 2020. The Division of Correction and each of Maryland's local, county-operated, detention centers responded quickly by limiting access to outside visitors and non-essential personnel, as well as limiting inmate movement. The Parole Commission was able to adapt quickly, conducting hearings over video platforms and via telephone. The Parole Commission's ability to provide hearings to inmates serving less than 5 years within weeks of intake; and, hearings for those inmates serving sentences of over 5 years within 6 months of parole eligibility was unaffected. While the number of paroles awarded in FY 2020 was smaller than the prior year, the Department would note that this was a decrease of 20 paroles, representing a negligible 1.7% reduction in individuals paroled.

Impacts of the Justice Reinvestment Act, COVID-related court closures, and an increase in inmates declining parole all contribute to the trend of a lower parole grant rate. The Justice Reinvestment Act has been remarkably successful in diverting low-risk non-violent offenders from incarceration and into community-based treatment and programs. This is certainly evident in the steep decline seen in Maryland's prison population from 2015 until now. The prison population that remains in the Division of Correction skews to a more violent and high-risk population than before the implementation of the Justice Reinvestment Act. There is a clear inverse relationship between a greater percentage of high-risk violent offenders in the prison population, and a decreasing parole rate as inmates serve longer periods before being paroled.

While the rate of paroles granted declined by 1.7% in FY 2020, outright parole refusals plummeted by 63% over the same period. In FY 2020, DOC inmates refusals fell from 2,111 to 761. Similarly, local detention refusals fell by 57%. Commissioners are granting more re-hearings allowing the possibility of a parole release. More re-hearing decisions and longer periods on administrative refusal status help explain the decline in the parole rate.

The Parole Commission has taken steps in light of the pandemic to balance the concerns of public safety and community health. The Parole Commission started in July 2020 to advance approved parole releases under recommended guideline ranges. These efforts should be apparent when assessing FY 2021. Although these steps did not affect those inmates who had parole hearings in FY 2020, the Commission faithfully discharged its duties under Executive Order 20-04-18-01, which identified 76 inmates in the Department's custody who were ultimately eligible for COVID-related accelerated release. Of those, 48 (or 63%) were approved for an accelerated parole release. This is in contrast to the parole rate in FY 2020, noted by DLS as 22% statewide; demonstrating how effectively MPC utilized this additional parole avenue in light of the remarkable circumstances faced by the State in 2020.

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The activities of the court system had a profound impact on the ability to release inmates on parole. An administrative order issued March 16, 2020 by the Chief Judge of the Maryland Court of Appeals restricted court activities to those actions not requiring testimony or argument. This administrative order covered most of the period at the end of FY 2020. The Parole Commission is restricted in its decision-making ability when conducting a parole hearing for an inmate who still has charges pending in a Maryland court. The Parole Commission cannot make parole decisions without an actual determination of an inmate's ultimate aggregate sentence structure, and instead places inmates in a status of administrative refusal awaiting charge adjudication. The courts were obviously limited in their ability to resolve pending cases at the end of FY 2020 leading to more parole cases that remained on administrative refusal status than in years past.

Recent changes to the criminal justice landscape have impacted the types of hearings and decisions made by the Parole Commission. Under the Justice Reinvestment Act's administrative release program, release is now available at minimum parole eligibility for non-violent offenders without need for a parole hearing. The Parole Commission administers this program and issues administrative release orders. Administrative releases do not count as paroles and as such, do not add to our parole rate. Since the implementation of JRA in 2017, the Parole Commission has granted 284 releases through this program, outstripping its decline in paroles by 14x. In FY 2020, there was also a dramatic increase in cases heard by Parole Commissioners pursuant to CS §7-307, which encompassed many inmates serving life sentences. These hearings do not result in direct parole grant decisions at the same rate as other cases due to the need for executive review.

Parole grant rates declined at local detention centers because an increasingly higher number of local detention center inmates declined parole themselves. Inmates who remain at a local detention center until released on accumulated diminution of confinement credits do not have a community supervision obligation. Those released on parole do have an obligation to community supervision. Inmates at local detention centers have many opportunities to earn diminution of confinement credits. Local detention center inmates, who do not otherwise have a probation order attached to their sentence, often decline to be considered for parole.

Recommended Actions

1. **Adopt the following narrative:**

Supervision Caseloads and Staffing: 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. Caseload ratios improved,

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but vacancies worsened in fiscal 2020. The budget committees request a report due by September 15, 2021, 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 for fiscal 2020 and 2021;
- an evaluation of staff realignment between regions; and
- a review and analysis of monthly fiscal 2021 DPP agent and Drinking Driver Monitor Program monitor new hires, separations, and vacancies.

Information Request: DPP caseload report

Author: DPP

Due Date: September 15, 2021

Response:

The Department concurs.

2. Adopt the following narrative:

Increase budgeted turnover to match vacancy trends. \$ 2,000,000 GF - Total General Fund Reductions \$ 2,000,000 (i.e. cut \$2 million from DPP and MPC's budget) (Finance, MPC, DPP)

Response:

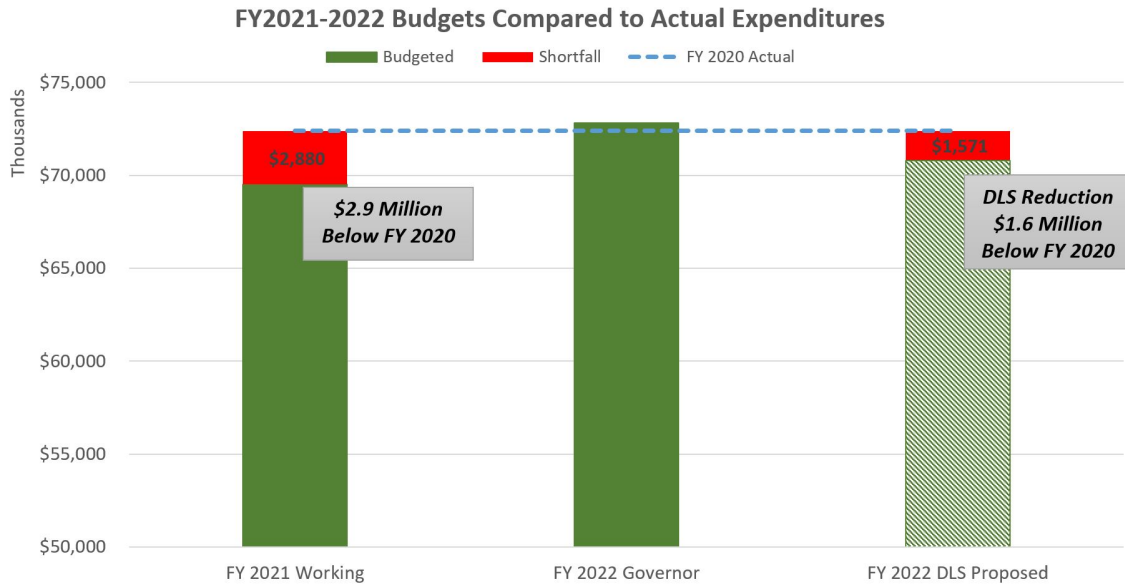
The Department disagrees with the recommended action as the action:

- Ignores actual salary spending patterns;
- Ignores reported trends in hiring and current vacancy trends;
- Directly contradicts General Assembly direction to fill vacancies; and
- Would actually put community supervision in a worse position financially and prevent the units from hiring.

Ignores actual salary spending patterns

Comparing the proposed FY22 budget against the working FY21 budget is misleading. Any comparison should be made against actual spending patterns. The FY22 budget is currently only \$400K over actual spending for the most recent year just ended. This is a more accurate depiction of the Community Supervision salary trends. In fact, the current FY21 budget is almost \$2.9 million below actual spending levels and the Department is working with DBM on potential solutions.

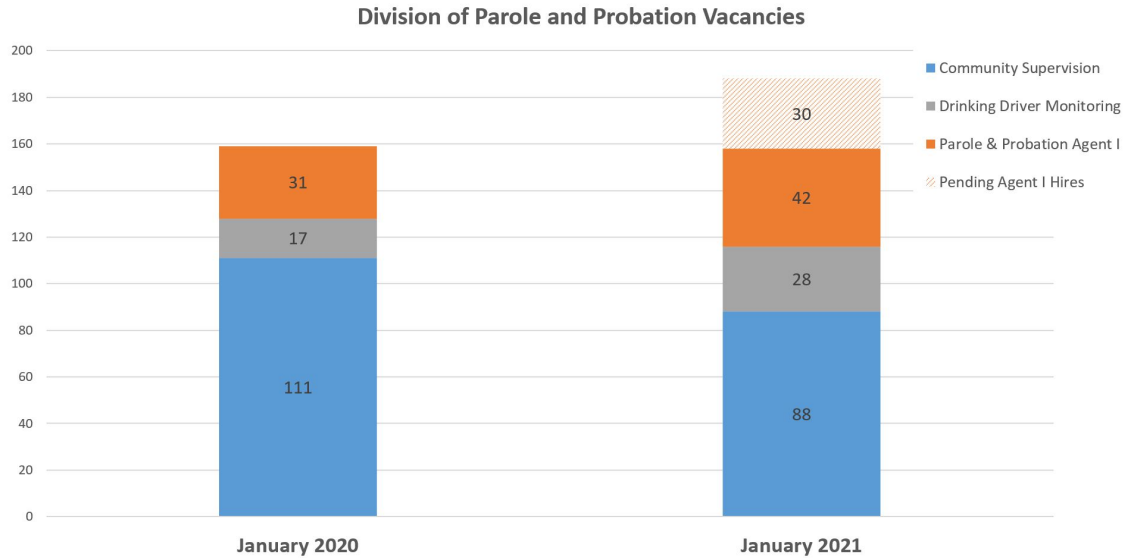
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Ignores reported trends in hiring and current vacancy trends

The Department has been required by the budget committees to submit monthly reports regarding hiring. As evidenced by these reports, the Department is experiencing record levels of hiring and a decline in attrition as the hiring rate significantly passed separations. Additionally, a current review of vacancy data reveals that community supervision has only experienced a net increase of 29 vacancies. Most of these vacancies have occurred as a result of the Department's efforts and focus on filling supervisor and management positions throughout the late summer and into the fall months. As a result, many front line agent positions were successfully hired and promoted into these positions which greatly increased front-line staff vacancies. This is proven by the fact that Parole and Probation Agent I positions went from 31 vacancies to 72 between January of 2020 to January of 2021 as those promotional opportunities occurred. The Department was well prepared for this occurrence and immediately shifted focus on the need to fill front-line agent positions. Already the Department has 27 positions filled for the upcoming Academy with 3 more pending commitments. In addition, there are 58 candidates making their way through the background process. As a result of the Department's recent hiring successes that are not included in DLS's analysis, the overall vacancies for community supervision will shortly decrease from 188 to 158, which is below January 2020 levels. These vacancy rates will drop even further as additional applicants successfully complete the background process. The chart below illustrates the decrease in vacancies once the 30 pending hires are onboarded.

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Directly contradicts General Assembly direction to fill vacancies

During the past several fiscal years, the General Assembly has taken unprecedented action against the Department's budget, including severe budget cuts and restrictions. During the 2020 legislative session, the budget committees restricted over 60% of the agency's entire budget so that it could only be applied to salaries. Based on language contained in the budget, this action was taken in an attempt to encourage the Department to focus on hiring - despite the fact the Department had already shown significant progress on this front. This recommended action directly contradicts with the General Assembly's continued direction for the agency to prioritize recruitment and hiring. If the budget committees adopt this proposed reduction it will prevent the Department from filling vacancies as discussed below.

The recommended action would actually put community supervision in a worse position financially and prevent the Department from continuing to fill vacancies

As indicated previously, salaries are only \$400K higher than actual spending levels in FY20. A reduction of this magnitude would require an additional 37 front-line Parole and Probation agents remain vacant throughout the FY22 budget year. Hiring reports have proven the Department has not experienced the same challenges when it comes to filling DPP positions as it has with other front-line agent positions. Furthermore, data reported by the General Assembly and nationally have noted that during challenging periods of economic times, public safety positions tend to appeal to a larger audience of applicants and lead to higher success rates in filling these positions. As such, the State should seek to mitigate any impact the pandemic has had on joblessness by continuing its efforts to fill as many of these critical positions as possible.

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Due to the aforementioned reasons, the Department recommends the budget committees reject this proposed reduction as the reduction fails to fully analyze the facts and would compromise community supervision.