



**Department of Public Safety and Correctional Services
Office of the Secretary**

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Department of Public Safety and Correctional Services
Division of Pretrial Detention and Services
Fiscal Year 2025 Operating Budget
Response to Department of Legislative Services Analysis

STATE OF MARYLAND

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Senate Budget and Taxation Committee
Public Safety, Transportation and Environment Subcommittee
Senator Sarah K. Elfreth, Chair
Friday, February 9, 2024

Appropriations Committee
Public Safety and Administration Subcommittee
Delegate Jazz Lewis, Chair
February 8, 2024

Budget Decreases Most for Personnel Costs

Issue: DPDS should comment on this anticipated decline in overtime spending for the division.

Response:

The Department, in conjunction with DBM, monitors all salary related spending and has the ability to realign funding as needed.

Senate Bill 134 - Correctional Ombudsman

Issue: DPSCS should comment on efforts to improve the administrative remedy process, diligently investigate claims of wrongdoing of employees or others, and maintain the safety of claimants while investigations are conducted. Additionally, as training was a component of the jury's findings in the Wallace case, DPSCS should comment on changes to DPDS and Division of Correction employee training since the closure of BCDC that are relevant to use of force, negligence, retaliation, and preservation of rights. Finally, DPSCS should comment on the pros and cons of a correctional ombudsman.

Response:

The grievance process is available to the Division of Pretrial Detention and Services (DPDS) juveniles and adults. It provides a standard method by which incarcerated individuals may seek formal administrative decisions or answers to issues and complaints. Incarcerated individuals may only submit grievances or complaints. No petitions or group (i.e. more than one signatory) grievances shall be accepted.

A grievance may be used to address issues regarding conditions of confinement, actions of staff, program and services, other incarcerated individuals and/or incidents occurring within or under the authority and control of DPDS that have personally affected the incarcerated individual making the complaint and for which a remedy may be allowed by the Division. The grievance process may be used no matter what the incarcerated individual's current custody assessment or disciplinary status is at the time of filing.

The current DPDS resident grievance procedure is a four step process to allow an incarcerated individual to seek resolution to issues and complaints. Outlined below is a synopsis of the current resident grievance procedures.

DPDS Current Incarcerated Individual Grievance Procedures

The Incarcerated Individual Grievance process is available to the Division of Pretrial Detention and Services (DPDS) juveniles and adults. It provides a standard method by which incarcerated individuals may seek formal administrative decisions or answers to issues and complaints. Incarcerated individuals may only submit grievances or complaints.

A grievance may be used to address issues regarding conditions of confinement, actions of staff, program and services, other incarcerated individuals and/or incidents occurring within or under the authority and control of DPDS that have personally affected the incarcerated individual making the complaint and for which a remedy may be allowed by the Division. The grievance process may be used no matter what the incarcerated individual's current custody assessment or disciplinary status is at the time of filing.

The current DPDS resident grievance procedure is a four step process to allow an incarcerated individual to seek resolution to issues and complaints. Outlined below is a synopsis of the current resident grievance procedures.

STEP 1 - Grievance filed with the DPDS Resident Grievance Office – A resident grievance must be filed within 15 calendar days from the date on

which the incident occurred or on which the detainee first learned of the incident, whichever is later.

RESPONSE to STEP 1 -Grievance to the Detainee/incarcerated individual – DPDS Resident Grievance Office (RGO) shall investigate and respond in writing within 20 working days.

STEP 2 - Motion for Grievance Committee Hearing –

A resident wishing to appeal a STEP 1 decision to the Resident Grievance Procedure Committee (RGPC) must file an appeal with the Resident Grievance Office (RGO). RGPC meetings are scheduled as needed. The resident shall be afforded an opportunity to present their grievance and any related documentation regarding the claim.

RESPONSE to STEP 2-Motion for Resident Grievance Procedure Committee Hearing – The STEP 2 Resident Grievance Procedure Committee (RGPC) shall send a written response within 5 working days of the hearing date, stating whether or not the grievance is without merit or meritorious. If the RGPC finds the grievance to be meritorious; the Warden shall review the Committee's recommendation and respond within 5 days of its receipt to affirm, reverse, or modify the committee's decision.

STEP 3 - Motion to Appeal to the Warden – A resident wishing to appeal a STEP 2 decision to the Warden must file an appeal with the Resident Grievance Office (RGO) within 3 working days of the decision rendered in the STEP 2.

RESPONSE to STEP 3 - Motion to Appeal to the Warden – The warden shall review the grievance, records and the previous decisions, and conduct further inquiries if deemed appropriate. The Warden shall submit a written decision on the appeal within 3 working days of receipt of the appeal. If the Warden's decision determines that the grievance is at least meritorious in part, he/she shall direct specific relief to be afforded to the resident. The Warden shall direct the appropriate relief and order compliance to his/her order to be carried out and documented within 10 working days.

STEP 4 - Motion to Appeal to the Assistant Commissioner – A resident wishing to appeal a STEP 3 decision to the Assistant Commissioner must file an appeal with the Resident Grievance Office (RGO) within 3 working days of the decision rendered in the STEP 3.

RESPONSE to STEP 4 - Motion to Appeal to the Assistant Commissioner – The Assistant Commissioner shall direct the Resident Grievance Office (RGO) to inform the resident and other parties of the time, date, and place for the Step 4 Hearing. At the conclusion of the hearing the Asst. Commissioner shall submit a written decision to the detainee/incarcerated individual within 20 working days. If the Assistant

Commissioner's decision determines that the grievance is at least meritorious in part, he/she shall direct specific relief to be afforded to the resident. The Assistant Commissioner shall order compliance to his/her order to be carried out and documented within 10 working days.

APPEAL TO THE CIRCUIT COURT FOR BALTIMORE CITY and/or FEDERAL COURT – A resident wishing to appeal a STEP 4 decision from the Assistant Commissioner must file an appeal with the Circuit Court of Baltimore City and/or Federal Court. The resident has exhausted his/her relief with DPDS.

DOC Current Administrative Remedy Procedure (ARP) – COMAR 12.02.28

The Department of Corrections (DOC) has an Administrative Remedy Procedure (ARP)

COMAR 12.02.28 outlines the ARP and is the formal process established by the Commissioner of Correction to address incarcerated individual complaints concerning conditions of confinement, for sentenced incarcerated individuals. The ARP process is a Three (3) step process.

The formal resolution of a sentenced incarcerated individual complaint consist of utilizing the ARP to file:

1. A request is submitted by the incarcerated individual for administrative remedy with the facility managing official; and
2. An appeal to the Commissioner, if the incarcerated individual is not satisfied with the managing official's response to the request for an administrative remedy.
3. If the incarcerated individual's complaint is not resolved after an appeal under the ARP, the incarcerated individual may file a grievance with the incarcerated individual Grievance Office within the Office of the Inspector General, according to procedures under COMAR 12.07.01.

DPDS NEW Proposed Administrative Grievance Procedure

DPDS is currently revising and updating its Administrative Grievance Procedure to be in line with DOC's Administrative Remedy Procedure (ARP) COMAR 12.02.28. DPDS anticipates having the new administrative grievance procedure reviewed and approved by the DPSCS Office of the Attorney General by June 30, 2024. Outlined below is a synopsis of the new proposed administrative grievance procedures.

STEP 1 - Administrative Grievance filed with the Warden and the New DPDS Administrative Grievance Office – An Incarcerated Individual's Grievance must be filed within 30 calendar days from the date on which the incident occurred or on which the detainee first learned of the incident, whichever is later.

RESPONSE to STEP 1 - Administrative Grievance to the Incarcerated Individual – The Warden and/or his/her designee (New Administrative Grievance Office) shall investigate and respond in writing within 30 calendar days. The Warden is permitted one extension of 15 calendar days to respond to the request for Administrative Grievance. The incarcerated individual's consent to the extension is not required.

Incarcerated Individual's Right to Withdraw an Administrative Grievance – An incarcerated individual may withdraw a request for administrative grievance at any time. An incarcerated individual who withdraws a request for administrative grievance shall submit the withdrawal using a Withdrawal Form. The Withdrawal of the request may prevent consideration of the claim at a higher level.

STEP 2 - Administrative Grievance Appeal to the Commissioner of the Division of Pretrial Detention and Services (DPDS) – An incarcerated individual wishing to appeal a STEP 1 decision to the Commissioner of the Division of Pretrial Detention and Services must file an appeal within 30 calendar days of the decision rendered in the STEP 1. The Administrative Grievance Appeal must be mailed to the Commissioner's Office.

RESPONSE to STEP 2 - Administrative Appeal to the Division of Pretrial Detention and Services (DPDS) – The Commissioner of the Division of Pretrial Detention and Services shall investigate and respond in writing within 30 calendar days. The Commissioner of the Division of Pretrial Detention and Services is permitted one extension of 15 calendar days to respond to the Administrative Grievance Appeal. The detainee's consent to the extension is not required.

Incarcerated Individual's Right to Withdraw an Administrative Grievance – An incarcerated individual may withdraw a request for administrative grievance at any time. An incarcerated individual who withdraws a request for administrative grievance shall submit the withdrawal using a Withdrawal Form. The Withdrawal of the request may prevent consideration of the claim at a higher level.

STEP 3 - Administrative Grievance Appeal to The Department of Public Safety and Correctional Services - incarcerated individual Grievance Office – An incarcerated individual wishing to appeal a STEP 2 decision to the DPCSC incarcerated individual Grievance Office (IGO) must file an appeal within 30 calendar days of the decision rendered in the STEP 2. The

Administrative Grievance Appeal must be mailed to the DPSCS incarcerated individual Grievance Office.

RESPONSE to STEP 3 - Administrative Remedy Appeal to The Department of Public Safety and Correctional Services - incarcerated individual Grievance Office (IGO) – The Executive Director of the IGO shall conduct a preliminary review of a grievance to determine whether it should be dismissed or proceed to a hearing.

APPEAL TO THE CIRCUIT COURT FOR BALTIMORE CITY and/or FEDERAL COURT – A resident wishing to appeal a STEP 3 decision from the Department of Public Safety and Correctional Services - incarcerated individual Grievance Office (IGO) must file an appeal with the Circuit Court of Baltimore City and/or Federal Court. The resident has exhausted his/her relief with DPDS.

TRAINING

The Police and Correctional Training Commission provides training for correctional and police officers. The Department is conducting a comprehensive review of entrance level/academy training and are in the process of updating lesson plans, presentations and the student study guide.

Because of cases like Wallace and others, as well as the Correctional Training Commission's mandatory objectives, the Department is focusing on the constitutional rights of incarcerated individuals (in particular 1st, 4th, 5th, 6th, 8th and 14th), including the right to be protected, use of force, retaliation, and negligence.

In addition to entrance level training, the department is also reviewing annual in-service training which is a requirement for all mandated staff (those with care, custody, control and/or supervision of incarcerated individuals). To be sure, although Wallace was a pretrial detainee, the training review and updates apply to DPDS and DOC staff.

POTENTIAL PROS AND CONS OF OMBUDSMAN

Pros

An ombudsman should be an independent and impartial party.

An ombudsman can assist with remedies to difficult situations without resorting to legal action.

An ombudsman can find an equitable solution.

An ombudsman may find quicker resolutions in non complex situations.

An ombudsman can make recommendations for positive change.

Cons

An ombudsman may be influenced by biases or conflicts of interest.

An ombudsman may find decisions can take a long time depending on caseload.

An ombudsman may not have the subject matter expertise in department policies to make decisions.

An ombudsman may add an additional layer to adhering to departmental policy.

Ensuring the ombudsman or oversight unit has enough staff/budget

A Correctional Ombudsman, by the independent nature of their duties, may unintentionally interfere with the mechanisms already established in statute, regulation, and policy.

The Department is subject to thorough and routine internal and external audits by several entities, including the Maryland Commission on Correctional Standards, Office of Legislative Audits, and the Office of Performance Evaluation and Government Accountability as well as internal units that investigate and respond to areas of noncompliance, including, the Office of the Inspector General, the Intelligence and Investigative Division, and Office of Health Contracts Administration and Audits.

Duvall v. Hogan Consent Decree

Issue: DPSCS should comment on the steps taken in the past year to achieve greater compliance with Duvall, including a discussion of the effectiveness of third-party consultants and the new SUD contract. DPSCS should also comment on the impending deadline of June 30, 2024, and address the possibility of future litigation.

Response:

The Maryland Department of Public Safety & Correctional Services Secretary has made achieving *Duvall* compliance a priority for her administration. As such, she has designated the Deputy Secretary of Operations to oversee compliance. This appointment is in addition to the on-site compliance coordinator who manages day to day compliance efforts, and who serves as a point of contact for compliance activities.

The Deputy Secretary of Operations brought all the *Duvall* stakeholders to the table and has scheduled meetings and supervised collaborative efforts with the medical and mental health contractors. The Deputy Secretary of Operations reports directly to the Secretary on ongoing *Duvall* compliance.

Under her direction, the *Duvall* defendants have made enormous strides toward achieving compliance in mental health. The Secretary hopes to be fully compliant in the mental health portion of the agreement within the next 6-9 months.

Additionally, the Butler Snow law firm has been hired by the Attorney General's Office to assist with the representation of the State in the *Duvall* case. This firm has evaluated how close the defendants were to achieving compliance with all paragraphs of the Settlement Agreement. The new attorneys reviewed the case and concluded that the former *Duvall* medical monitor could not justify many of the decisions and recommendations that he made as monitor.

Although innumerable jails and prisons have been found to be substantially compliant in the medical care using hard copies of medical records, the *Duvall medical* monitor insisted that the defendants would not reach compliance without procuring a new medical record system. At the same time, the mental health monitor reviewed the current medical records system and found that it did not impede compliance in mental health. This dichotomy was hard to reconcile.

Consequently, in the past six months, the Secretary demanded fair treatment from the medical monitor, who subsequently resigned. The defendants are in the search process for a new monitor who will treat the defendants fairly. Once a monitor is in place, the Department's *Duvall* counsel believes that the defendants will be in substantial compliance with all paragraphs of the medical portion of the agreement within the next year.

Predicting future litigation is difficult. Whether or not they provide adequate care to incarcerated persons, public safety organizations get sued.

CDF Agreement

Issue: DPSCS should comment on their plans to utilize CDF upon completion of the agreement with USMS. DPSCS should also discuss strategies to reduce the need for general funds in fiscal 2024 and 2025.

Response:

The Department anticipates continuing its relationship with USMS upon the completion of the term of the existing agreement. In an effort to reduce the need for general funds in FY24/25 - a renegotiation of the existing per diem is currently underway. The Department's intent is to agree to an increased per diem, paid by USMS, for the remainder of the current agreement term. The Department is hopeful it will be able to agree to a per diem that brings CDF

closer to self sufficiency and reduce the general funds needed to continue operation. The Department is happy to update the committee upon completion of these negotiations.

Recommended Action:

1. Concur with the Governor's Allowance

Response:

The Department agrees with the analyst to concur.