Report of the Justice Reinvestment Oversight Board

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Larry Hogan
Governor

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CONTENTS

INTRODUCTION

The Justice Reinvestment Act (JRA or SB 1005) was passed by the General Assembly and signed into law by Governor Larry Hogan in May 2016 (Senate Bill 2005/Chapter 515 of 2016). This Act represents the most comprehensive criminal justice reform to pass in a generation. The Act establishes a Justice Reinvestment Oversight Board to oversee the reforms. Section 16 of the JRA requires the Oversight Board to report to the Governor and the General Assembly on or before January 1, 2017 on:

> "(1) the status of the progress toward the implementation of this Act; and
>
> (2) the projected financial impact of the implementation of this Act on local jurisdictions and correctional facilities."

We are pleased to submit this report on these matters.

JUSTICE REINVESTMENT OVERVIEW

The United States prison population grew exponentially over the last four decades, and state officials spent an increasing share of taxpayer dollars to keep pace with soaring prison costs. Over the last decade, Maryland had achieved large declines in both its violent and property crime rates, but only modest reductions in the state prison population. Maryland still incarcerates more than 20,000 offenders, costing Maryland taxpayers $1.3 billion in corrections spending in FY 2014.

The Justice Reinvestment Coordinating Council ('Council'), formed by Governor Hogan and the General Assembly, began meeting in June 2015. This group was charged with further reducing the State's incarcerated population, reducing spending on corrections, and reinvesting in strategies to increase public safety and reduce recidivism. Over the course of six meetings, the Council studied the state's criminal justice data, reviewed research on sentencing and corrections practices, and proposed a set of policy recommendations for consideration by state leadership.

From this study, the members found:

- More than half of prison admissions (58%) were for nonviolent offenses;
- Nearly 60% of all prison admissions were because of failures on probation, parole, or mandatory release supervision, and many of these failures were due to technical violations of supervision conditions;
- Those incarcerated were spending more time in prison than in the past; and,

- Community supervision resources were not sufficiently focused on those offenders most likely to commit new crime in the future.

Many of the Council's recommendations were translated into the Justice Reinvestment Act, including the following policy changes.

Sentencing Modifications

A number of modifications were made to sentencing for property offenses, driving with a suspended license, drug offenses, and penalties for gang activity.

- The felony theft threshold was raised, penalties for theft were reduced, and enhancements were added for fifth and subsequent misdemeanor convictions.
- Driving with a suspended license for failing to pay a fine or failing to appear for trial was made non-jailable with a fine of $500.
- Drug possession changes include lowering non-marijuana drug possession penalties and commensurate changes to marijuana possession penalties, the provision of guidance to the court to divert offenders with substance abuse disorders into treatment, and elimination of the disparity between crack and powder cocaine penalties.
- The Act allows felony drug offenders (except volume dealers and kingpins) currently serving a sentence with a mandatory minimum term to apply for retroactive reconsideration of their mandatory sentence, eliminates mandatory minimum sentences for all felony drug offenses (except volume dealers and drug kingpins), repeals the statute that allows prosecutors to double the sentence for subsequent drug offenders, unless the defendant has previously been convicted of a crime of violence, and makes third and subsequent commercial drug offenders eligible for parole after serving 50% of sentence.
- The maximum sentence for second degree murder was increased from 30 to 40 years and the sentencing range for first degree child abuse endangerment was expanded from a maximum of 40 years to imprisonment not exceeding life, when particular circumstances apply.
- The definition of gang activity was expanded and sentencing ranges and money penalties for gang activity were enhanced.

Revised Release Policies

SB 1005 requires the establishment of administrative release, when an offender is parole eligible, for certain offenders convicted of drug offenses and misdemeanor property crimes who have

satisfied specific criteria and complied with an individualized case plan. It also expands the use of diminution credits, and the use of medical and geriatric parole.

Policies to Enhance the Effectiveness of Community Supervision

The Justice Reinvestment Act contains a number of provisions to increase the effectiveness of probation and parole supervision. These provisions include:

- Case planning for state inmates using risk and needs assessment to guide programming and treatment decisions;
- Development and use of graduated sanctions to respond to technical violations using swift, certain, and proportional sanctions;
- A schedule to limit the amount of time that parolees and probationers can be returned to prison for a technical violation (which may be rebutted if a commissioner or judge finds that adhering to the limits would create a risk to public safety, a victim, or a witness);
- Use of evidence based practices;
- Expanded eligibility for earned compliance credits; and
- An allowance for individuals with certain convictions to seek expungement after 10 years.

Provisions to elevate the voices of victims of crime

- All inmates ordered to pay restitution to the victim will have 25 percent withheld of any inmate earnings for restitution; and
- 5 percent of the grants provided through the Performance Incentive Grant Fund go to victims' programs.

Oversight

In addition, the Justice Reinvestment Act required the creation of the Justice Reinvestment Oversight Board ('Board') to ensure the implementation of the provisions within the Act. The Board will meet at least quarterly to:

- Monitor progress and compliance with the implementation of SB 1005;
- Consider the recommendations of the Local Government Justice Reinvestment Commission and any legislation, regulations, rules, budgetary changes, or other actions taken to implement SB 1005;
- Make additional legislative and budgetary recommendations for future data-driven, fiscally sound criminal justice policy changes;
- Collect and analyze the data submitted as dictated by SB 1005;

- In collaboration with the Department of Public Safety and Correctional Services, the Maryland Parole Commission, the Administrative Office of the Courts, and the Maryland State Commission on Criminal Sentencing Policy, create performance measures to track and assess the outcomes of the laws related to SB 1005;
- Collaborate with Maryland Parole Commission to monitor administrative release and determine whether to adjust eligibility considering the effectiveness of administrative release and evidence-based practices;
- Create performance measures to assess the effectiveness of the grants administered through SB 1005; and,
- Consult and coordinate with the Local Government Justice Reinvestment Commission and other units of the state and local jurisdictions concerning justice reinvestment issues.

PROGRESS TOWARD IMPLEMENTATION OF THE JUSTICE REINVESTMENT ACT

The Governor's Office of Crime Control and Prevention ('Office') has spearheaded the justice reinvestment efforts in Maryland. Multiple agencies are collaborating to implement SB 1005 including the Department of Public Safety and Correctional Services, the Department of Health and Mental Hygiene, the Administration Office of Courts, the Maryland State Commission on Criminal Sentencing Policy, the Attorney General's Office, the Maryland Parole Commission, and local corrections. To assist Maryland in implementing the Justice Reinvestment Act, the Bureau of Justice Assistance, under the Office of Justice Programs at the U.S. Department of Justice, is funding implementation technical assistance provided by the Crime and Justice Institute (CJI). CJI has an extensive history with justice reinvestment, having worked with ten states on the policy development and legislative phase and currently providing implementation technical assistance in four states.

Work is underway to implement the policies within SB 1005, the Oversight Board has been appointed, the studies required by the Act are nearing completion, and work has begun on ensuring there are performance measures in place to monitor the impact of the Act.

Department of Public Safety and Correctional Services - Policy Implementation

Under the leadership of the Division of Correction (DOC), progress is being made on the revised release policies. DOC has a Diminution Credit Innovation Team (an implementation team) that is setting up a process to identify offenders who are eligible for diminution credits and how many credits the eligible offenders are allowed to obtain. To accomplish this, the Innovation Team is developing a screening tool to determine the offender's eligibility for diminution credits. The team has recommended that there be an indicator, or flag, in the case file to keep track of the

diminution eligibility for each inmate. Additionally, the Diminution Credit Innovation Team has begun to identify jobs and programs that can be awarded diminution credits and how many credits each program is worth. There is another group of staff assigned to a Medical Geriatric Parole Innovation Team that is investigating who is responsible for funding the examinations that determine medical parole eligibility as the inmate is not responsible for this cost. DOC's Administrative Release Innovation Team has worked with the Director of Policy and Regulations to ensure the policies will be accurately portrayed in Maryland's Code of Regulations. This team is currently developing a process to identify eligibility for administrative release, and has been in communication with the Chair of the Maryland Parole Commission on the administrative release policies and procedures.

Much progress is being made on the implementation of the policies intended to improve the effectiveness of community supervision. The Division of Parole and Probation (DPP) has detailed plans to ensure each policy is implemented in accordance with evidence based practices and the Division is working on information technology changes to support the staff to implement the new policies. Examples of progress to date include the drafting of a graduated responses matrix and policy which has been shared with the Judiciary for feedback; completed drafts of the application for a Certificate of Rehabilitation and certificate itself; and, the selection of a risk and needs assessment, rollout of training on the assessment, and the start of the development of the case plan to drive the interactions of probation agents and offenders

Department of Health and Mental Hygiene - Policy Implementation

The Department of Health and Mental Hygiene has begun considering how the Behavioral Health Administration can meet the requirements and timeframes of SB 1005 regarding court referrals for substance abuse evaluation and treatment under §§ 8-505 and 8-507 of the Health-General Article. As part of these discussions, DHMH has pulled data and is looking at the process to facilitate substance abuse treatment for court involved individuals. DHMH did receive a 50% increase ($3 million) in fiscal year 2017 to increase capacity for §§ 8-505 and 8-507 evaluations and treatment. Further, it expects that the change from block grants to fee-for-service billing for substance use disorder treatment will result in greater efficiencies and savings. The Department has also been working on parts of the following reports required by the Justice Reinvestment Act: the Report of the Collateral Consequences Workgroup; the Local Jail Budgetary Report; and the Substance Use and Mental Health Disorders Gaps and Needs Analysis Report.

Oversight Board Appointments

To help guide implementation, Governor Hogan announced the appointments to the Oversight Board on December 20, 2016, and the group is scheduled to meet on January 4, 2017. The appointed members are:

- Judge Daniel M. Long, Chair—Appointed by the Governor
- Senator Michael Hough, District 4, Frederick and Carroll Counties—Appointed by the President of the Senate
- Delegate Kathleen Dumais, District 15, Montgomery County—Appointed by the Speaker of the House
- V. Glenn Fueston Jr., Executive Director, Governor's Office of Crime Control & Prevention—designated by the JRA
- Patricia Goins-Johnson, Department of Public Safety and Correctional Services—designee of the Secretary of Public Safety and Correctional Services
- John R. Greene Jr., Maryland Parole Commission—designee of the Chair of the Maryland Parole Commission
- Major Roland Butler, Maryland State Police—designee of the Secretary of the Maryland State Police
- David Eppler, Office of the Attorney General—designee of the Attorney General
- Paul DeWolfe, Office of the Public Defender—designated by the JRA
- Secretary David Brinkley, Department of Budget and Management—designated by the JRA
- Barbara Bazron, Department of Health and Mental Hygiene—designee of the Secretary of Health and Mental Hygiene
- Robert L. Green, Montgomery County Department of Correction and Rehabilitation—Chair of the Local Government Justice Reinvestment Commission, designated by the JRA
- Chief Judge John Morrissey, District Court of Maryland—Appointed by the Chief Judge of the Court of Appeals
- Judge Kathleen Gallogly Cox, Baltimore County Circuit Court—Appointed by the Chief Judge of the Court of Appeals
- Constance Parker, Department of Labor, Licensing and Regulation—designee of the Secretary of Labor, Licensing and Regulation
- Sheriff Jim Dewees, Carroll County—Appointed by the Maryland Chiefs of Police Association and the Maryland Sheriffs' Association

- Scott Shellenberger, State's Attorney, Baltimore County—President of the Maryland State's Attorneys' Association, designated by the JRA
- Terry Kokolis, Anne Arundel County Department of Detention Facilities—Appointed by the President of the Maryland Correctional Administrators Association as a representative of a large county correctional facility
- Douglas C. Devenyns, Talbot County Detention Center—Appointed by the President of the Maryland Correctional Administrators Association as a representative of a small county correctional facility
- Councilman Jamel R. (Mel) Franklin, Prince George's County—designee of the President of the Maryland Association of Counties
- Russell Butler, Maryland Crime Victims' Resource Center—Victim's Representative, Appointed by the Governor
- Kevin Davis, Police Commissioner of the Baltimore Police Department—Law Enforcement Representative, Appointed by the Governor
- Jinlene Chan, Anne Arundel County Department of Health—Local Health Officer, Appointed by the Governor
- Lori Brewster, Wicomico County Health Department—Local Health Officer, Appointed by the Governor
- Perthean Toins-Banks, Department of Labor, Licensing and Regulation—Direct Experience Teaching Inmates, Appointed by the Governor

Required Studies

The Justice Reinvestment Act required several studies be completed and submitted on or before the end of 2016, including:

- A study of the state's restitution and victim services processes;
- A study of organized retail theft;
- An analysis by local correctional facilities, in coordination with the Department of Health and Mental Hygiene and local health departments to determine the budgetary requirements of the Act;
- An employment study to identify potential barriers to employment, licensing, and entrepreneurship for individuals with a criminal record;
- A study to identify best practices for criminal referrals to mediation; and,
- An analysis to determine the gap between offender treatment needs and available services in the state.

Each of the reports is on track for completion.

Performance Measurement

SB 1005 established semiannual data collection and reporting requirements for each county, the Department of Public Safety and Correctional Services, the Maryland Parole Commission, the Administration Office of Courts, and the Maryland State Commission on Criminal Sentencing Policy. The data are to be reported to the Board.

In conjunction with CJI, the Office compiled a list of performance measures, including those specifically outlined in SB 1005, to measure each of the Justice Reinvestment Act policies. The Office shared the list with the Director of the Governor's Office of Performance Improvement and together they will create data definitions to ensure all jurisdictions will be collecting the same type of data where possible. With all of the local jurisdictions needing to collect data without a uniform data system, the Office is in the process of collaborating with the local jurisdictions to create a uniform way to collect and report justice reinvestment data with consistency and reliability.

JUSTICE REINVESTMENT AND LOCAL JURISDICTIONS AND CORRECTIONAL FACILITIES

To examine the projected impact the Justice Reinvestment Act may have on local jurisdictions and correctional facilities, the Office conducted analyses to determine the budgetary requirements of implementation of the legislation on the local correctional facilities. In collaboration with the Maryland Correctional Administrators Association, the Department of Health and Mental Hygiene, and Maryland Association of Counties, along with a local health officer, the Office identified the nine policies in the Justice Reinvestment Act that would most likely impact local jurisdictions and correctional facilities. The Office (through the Maryland Correctional Administrators Association) sent a survey to each local correctional facility requesting responses to a series of questions related to each of the policies identified. Eight out of 23 facilities responded.

The preliminary estimate on how various provisions of the Justice Reinvestment Act would impact local correctional facilities is outlined in the Justice Reinvestment Jail Budgetary Report. Anticipated impacts include the following:

- Many offenders will have shorter lengths of stay in jail while some new offenders who were previously sentenced to the State Division of Correction may now be sentenced locally.

- The technical revocation caps, the increase in good conduct credits, elimination of jail time for some driving while suspended crimes, and administrative release may reduce the population of local correctional facilities.

It is unknown the extent the sentencing changes to possession of controlled dangerous substance and theft-related offenses will impact local correctional facilities. The actual cost or savings to each county will depend on how the inmate population changes and the *per diem* cost for an inmate, which varies for each county.

NEXT STEPS

Moving forward, the implementation of the Justice Reinvestment Act is expected to intensify as the majority of policies go into effect on October 1, 2017. Not only will internal policies have to be created and updated, but training, communication, and quality assurance processes around these policies will be needed. Concurrently, the technological infrastructure and procedures to collect and report on implementation progress and overall outcomes associated with the Act will need to be put in place. With support from the Governor and leaders within the General Assembly and Judiciary, the coordination of the Office, guidance of the Oversight Board, and the ongoing commitment at the agency level, Maryland will be well on its way to achieving the goals of the Justice Reinvestment Act.