

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

House Bill 1274 (Delegate Cluster, *et al.*)
 Appropriations and Judiciary

Correctional Services - Baltimore City Detention Center - Transfer of Ownership

This bill transfers ownership and operation of the Baltimore City Detention Center (BCDC) and the central booking facility in Baltimore City from the State to Baltimore City, effective January 1, 2015, and establishes a five-year transition period to shift associated costs to Baltimore City. The bill also abolishes the Division of Pretrial Detention and Services (DPDS) and the Pretrial Release Services Program.

The bill generally takes effect July 1, 2014. The elimination of DPDS as a State agency and the Pretrial Release Services Program takes effect January 1, 2015.

Fiscal Summary

State Effect: General fund operating expenditures decrease by \$85.02 million in FY 2018 and by at least \$183.21 million annually beginning in FY 2019 as a result of the transfer; this reflects the bill’s phase in regarding responsibility for costs. Savings in capital program costs may begin in FY 2018. Revenues are not affected.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	0	0	(85,017,000)	(183,213,100)
Bond Exp.	0	0	0	(-)	(-)
Net Effect	\$0	\$0	\$0	\$85,017,000	\$183,213,100

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Baltimore City expenditures increase by \$85.02 million in FY 2018 and by at least \$183.21 million annually beginning in FY 2019 to assume operating costs at BCDC and the central booking facility. Additional capital costs could accrue beginning in FY 2018. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: Specifically, the bill:

- repeals the authority of DPDS to operate and control BCDC and the central booking facility for Baltimore City;
- repeals certain findings, policies, and provisions relating to inmates housed at BCDC;
- establishes certain policies and findings relating to the transfer of ownership, records, property, assets, licenses, credits, and rights of BCDC from the State to Baltimore City, including the transfer of the records of inmates currently housed at BCDC;
- requires a judge who commits an individual to the custody of BCDC after January 1, 2015, to commit the individual to the custody of the Mayor of Baltimore City or the Mayor's designee;
- requires any person already committed to custody at BCDC as of January 1, 2015, to be, on that date, committed to the custody of the Mayor of Baltimore City or the Mayor's designee;
- requires the termination of all BCDC employees from State employment as of December 31, 2014;
- authorizes the Mayor of Baltimore City to employ any employee of BCDC as the Mayor deems necessary at the same salary received on December 31, 2014, or the salary received at the time of employment, whichever is greater, without further examination or qualification;
- establishes that each former BCDC employee remains a member of the Maryland State Retirement and Pension System, but that on retirement, each employee may elect to participate in either the State employee health insurance program for retirees or the Baltimore City health insurance program for retirees;
- requires Baltimore City to contribute the annual cost of the pension coverage to the Maryland State Retirement and Pension System;
- requires the State to pay the operating and capital costs of BCDC in fiscal 2015 through 2017;
- requires that, for fiscal 2018, Baltimore City pay one-half of the operating and capital costs of BCDC; and
- requires Baltimore City to pay all of the operating and capital costs of BCDC beginning in fiscal 2019.

By January 1, 2015, certain memorandums of understanding (MOUs) and agreements relating to the transfer of all the rights, title, and interests of the property, assets, licenses, and credits of BCDC are required.

Current Law/Background: The State assumed responsibility for the Baltimore City Jail and renamed it BCDC pursuant to Chapter 59 of 1991. DPDS was established within the Department of Public Safety and Correctional Services (DPSCS) by that same enactment. Since 1991, the State has assumed the fiscal responsibility of funding the operating and capital costs of BCDC. The central booking facility opened in 1995 as the single location where all arrestees in Baltimore City are processed.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. BCDC is used primarily for pretrial detentions.

Like all local detention centers in Maryland, BCDC houses both pretrial detainees and short-term sentenced offenders. BCDC, however, is a unique facility in Maryland since it is the only local detention center operated by the State. This provides DPSCS the option of relocating offenders to other State correctional facilities, if necessary, to meet population demands. As such, the short-term sentenced offender population is a relatively small portion of the total offender population located at the Baltimore detention facilities. BCDC actually has a higher percentage of pretrial detainees than any other jurisdiction in the State, with approximately 86% of its population in pretrial status. Pretrial detainees accounted for 57% of the local detention population for the other 23 jurisdictions in the State.

Since fiscal 2008, BCDC has seen a decline in its total population, particularly among pre-trial detainees. During the same time period, the overall length of stay for offenders housed in Baltimore City detention facilities has increased from 37.3 days in fiscal 2008 to 42.0 days in fiscal 2012. In addition, the percent of pretrial detainees held over 90 days increased significantly in recent years. Prior to fiscal 2011, approximately 26%

of the pretrial population was held beyond 90 days, on par with the population of the other 23 local jurisdictions. In fiscal 2011 and 2012, nearly 45% of the pretrial population was detained for more than 90 days. A point-in-time analysis of the population from May 30, 2013, revealed that 37% of the population had been held at the detention center for longer than six months. To date, DPSCS has been unable to identify the cause of the increase.

BCDC Facilities

Today, BCDC primarily consists of four buildings: the Women's Detention Center (WDC), the Men's Detention Center (MDC), the Jail Industries Building, and the Wyatt Building. BCDC has a standing population of between 2,400 and 3,000 detainees and employs over 700 people, the majority of which are correctional officers.

The operation of a facility that manages offenders in pre-trial status is inherently different from a correctional facility designed to house incarcerated individuals. Pretrial individuals have different needs regarding programming, health services, addictions treatment, *etc.* In addition, there is a more recent and established connection to the world outside of the correctional facility. Meeting the needs of a pretrial population requires different resources as it pertains to the type of facility and staff. Offenders who are held for lengthy periods of time in a facility that is not intended for that purpose, and with a staff that may not be adequately trained to supervise long-term populations, can create management problems.

The Correctional Complex in Baltimore City includes approximately 27 acres and houses more than 3,000 inmates and detainees within the complex. The land-locked site is bounded by the Jones Falls Expressway to the west and residential communities to the north, south, and east, limiting construction of new facilities to the existing footprint. BCDC includes the oldest buildings still in use within the complex. The original Baltimore City jail was constructed in 1801 on the site of the current BCDC. A replacement facility was completed in 1859; between 1859 and 1999, the facility underwent 11 renovations. The current WDC to house female detainees was opened in 1967. Since 1991, \$65.0 million has been authorized for BCDC capital improvements.

Despite the improvements and expansion completed over the years, the existing structures within the Correctional Complex, specifically at BCDC, have a variety of significant shortfalls. In addition to inadequate housing and the problems that result from persistent overcrowding, the facilities lack program space, are inefficiently designed, and pose life safety and accessibility risks. Specifically, the American Federation of State County and Municipal Employees notes failures in the plumbing, broken elevators, bug and rodent infestations, problems with air conditioning, and mold as areas of concern. The design of the facilities creates poor lines of sight, which increases the potential for

assaults. The existing barred cells and keyed doors are particular impediments to maintaining officer safety and reducing the flow of contraband throughout the facility.

The best resolution to these issues is considered to be the demolition and replacement of the old, inadequate structures within the Correctional Complex. To that end, DPSCS included a multiyear redevelopment of the entire Correctional Complex in its *2013 Facilities Master Plan (FMP)*, submitted to the General Assembly in June 2013.

The decade-long redevelopment plan proposes new facilities for all pretrial populations, the creation of a reentry campus to serve inmates from the Central Region, and improved program space for short-sentenced offenders. The estimated cost of the entire redevelopment is approximately \$533.0 million over the next 10 years. Specifically, the plan includes:

- a 60-bed, \$30.0 million new Youth Detention Center (YDC) to accommodate pretrial youth who are detained pending charges in the adult court. The General Assembly added \$2.6 million in general obligation (GO) bond funds to the fiscal 2014 capital budget to begin designing the renovation of an existing facility within the complex to accommodate this population, with construction anticipated to begin in fiscal 2015;
- a 512-bed, \$96.0 million replacement for WDC, with construction estimated to begin in fiscal 2018. The proposed site for the new WDC is currently occupied by the former West Wing of the Metropolitan Transition Center (MTC);
- a 2,304-bed, \$296.0 million replacement of MDC. The new MDC will consist of three 768-bed towers to be constructed in three phases.

The existing men's detention facilities in Baltimore City are the some of the oldest structures in the complex, yet construction of the first phase of a new MDC is not scheduled to begin for at least four years, assuming funding is available and provided according to the DPSCS proposed capital plan. The male population represents the majority of the population at the Baltimore City Correctional Complex.

Special Joint Commission

In light of the April 2013 federal grand jury indictment which alleged that correctional officers helped leaders of the Black Guerilla Family smuggle contraband into State correctional facilities, the Special Joint Commission on Public Safety and Security in State and Local Correctional Facilities, in its December 2013 final report to the General Assembly, made several specific recommendations.

The commission urged the Administration to make replacement of BCDC a priority in its five-year *Capital Improvement Program (CIP)*. The commission recommended that capital funding be provided in accordance with DPSCS's response to a 2012 legislative request for an updated FMP that would include improving correctional facilities in Baltimore City.

Understanding that capital construction projects require significant time to complete, the commission also recommended that funding be provided to enhance safety and security at the existing Baltimore correctional facilities pending the construction of new detention centers for the male, female, and youth populations.

Retirement Systems

The Baltimore City Employees' Retirement System is noncontributory for any member hired on or after July 1, 1979. Members are eligible for a normal service retirement at age 65 with 5 years of service or after 30 years regardless of age. The benefit multiplier is 1.60% for each year of service up to 30, plus 0.25% for each year of service up to 30 for compensation that exceeds covered compensation. The multiplier is 1.85% for each year of service that exceeds 30.

The correctional officers in the first six classifications who are employed by BCDC are members of the Correctional Officers' Retirement System (CORS) as a condition of their employment. CORS provides a normal service retirement at age 55 or after 20 years of service. Members contribute 5% of earnable compensation and receive a normal service retirement equal to 1.82% of average final compensation for each year of service.

State Fiscal Effect:

Operating Budget

Since the corruption issues at BCDC were made public in April 2013, nearly \$23.3 million has been provided to improve security and staffing within DPSCS. Approximately \$16.1 million has been provided to upgrade security cameras, implement cell phone-managed access systems, install x-ray machines and metal detectors, and purchase intelligence software. Slightly more than \$7.1 million in general funds and 109 new positions are provided in the Governor's proposed fiscal 2015 budget to enhance correctional officer staffing, establish a pre-employment polygraph unit, expand the Canine Unit to detect contraband, and enhance the Internal Investigative Unit.

Although the bill transfers ownership of BCDC and the central booking facility for Baltimore City from the State to Baltimore City on January 1, 2015, the State is required to continue to pay all operating and capital costs through fiscal 2017. In fiscal 2018, the

State and Baltimore City are required to equally share all operating and capital costs. Beginning in fiscal 2019, all such costs are borne by Baltimore City.

Assuming that Baltimore City hires all former BCDC employees as of January 1, 2015, continuing State operating costs for fiscal 2015 through 2017 are as follows:

- fiscal 2015: \$150.25 million;
- fiscal 2016: \$156.46 million; and
- fiscal 2017: \$163.05 million.

In fiscal 2018, the shared operating costs for Baltimore City and the State totals \$85.02 million each, which represents an \$85.02 million general fund expenditure decrease for DPSCS. In fiscal 2019, total operating costs are borne by Baltimore City; thus, general fund expenditures decrease by an estimated \$183.21 million. **Appendix 1** details the operating costs the State continues to pay from fiscal 2015 through 2017 and the savings realized by the State in fiscal 2018 and 2019 as a result of the transfer to Baltimore City. Even though the bill provides that all of the employees at BCDC and central booking (including those with DPDS who currently run the central booking facility) may transfer from State employment to Baltimore City employment in fiscal 2015, all operating costs for those employees continue as State costs through fiscal 2017.

The Department of Budget and Management (DBM) advises that the Office of Personnel Services and Benefits (OPSB) needs to be involved in implementing the termination from State employment of all BCDC employees. In addition, OPSB must determine the status of any money due to any employee. Because employees are allowed to present grievances, OPSB is also responsible for managing that process. It is assumed that these responsibilities for DBM can be handled with existing budgeted resources and that any payments made to current BCDC employees do not materially affect State finances.

This analysis does not reflect any shift in special or federal funds currently available to BCDC and the central booking facility, as it is unclear what effect the bill has on those funds. The Governor's proposed fiscal 2015 budget includes a total of \$991,462 in special funds and \$382,015 in federal funds for BCDC and the central booking facility. It is assumed these funds are retained by DPSCS.

Capital Budget

The 2013 FMP was requested by the General Assembly as an update from the previous master plan completed in 2004 in order to reflect the department's recent reorganization, which has refocused DPSCS's mission on reentry, rehabilitation, and regionalization. Overall, the 2013 FMP includes 50 projects with construction start dates between

fiscal 2014 and 2028. The projects have a total estimated construction cost of nearly \$911.0 million, which does not include costs associated with land acquisition, design, or equipment purchases. The majority of the funding (58%) is focused within the Central Region (Baltimore City and Baltimore County) and includes a \$533.0 million redevelopment of the Correctional Complex in Baltimore City. The FMP provides a comprehensive plan to address the future capital needs of the \$1.3 billion department.

Youth Detention Center

Funding to create a new YDC in Baltimore City has been included in the CIP after the General Assembly added \$2.6 million during the 2013 session to design a new 60-bed facility for youth charged as adults in the Maryland Criminal Justice System. According to a calendar 2000 investigation by the U.S. Department of Justice, the conditions in the current detention center facility do not provide adequate program or education space for youth charged as adults and do not comply with sight and sound separation requirements.

Construction of a detention facility in Baltimore City for this particular youth population has a long history. DPSCS had originally designed a facility to house 180 youth between the ages of 14 and 18 who were facing serious felony charges in the adult court system. In response to downward population trends and urging from the advocacy and legislative communities, DPSCS revised the facility capacity to 120 beds. An additional analysis of the youth-charged-as-adult population data and interest from the General Assembly in evaluating current statute regarding the treatment of this population resulted in the current proposed 60-bed facility.

The youth-charged-as-adult population at BCDC has declined dramatically, as judges are utilizing discretion to place youth in Department of Juvenile Services facilities. Approximately \$9.5 million is provided in the Governor's proposed fiscal 2015 capital budget to complete design of the facility and to begin construction. The Maryland Consolidated Capital Bond Loan of 2014 also pre-authorizes \$12.9 million in fiscal 2016 and \$4.3 million in fiscal 2017 to complete the construction. In total, the project is estimated to cost \$29.7 million. The design for the new facility was approved in September 2013 by change order to the original design contract. It is currently estimated that the project will require 10 months to design, allowing construction to begin in December 2014 and be complete by December 2016.

Women's Detention Center

Nearly \$96.0 million is required to construct a 512-bed replacement for WDC, with construction estimated to begin in fiscal 2018. This is a reduction in capacity from the previous proposal of 800 beds due to a revised population projection resulting from recent declines in the female population at the existing detention center. The CIP

includes \$5.2 million to begin the design of the MTC West Wing demolition and the new WDC building in fiscal 2017 and includes additional funding in fiscal 2018 and 2019.

Men's Detention Center

An estimated \$296.0 million is needed to construct a 2,304-bed replacement of MDC. As noted above, the new MDC will consist of three 768-bed towers to be constructed in three phases. Construction for each phase is projected to begin between fiscal 2019 and 2023. The new MDC will be sited parallel to the Baltimore Central Booking and Intake Center. The site is currently occupied by the existing BCDC, including the existing WDC. As such, the construction of the new MDC must be completed in phases, and in coordination with the construction of the new YDC and WDC, in order to accommodate the pretrial detention offender population within Baltimore City while the project is being completed. The CIP includes \$10.0 million in fiscal 2019 to begin the first phase of construction.

The bill's impact on the State's capital program is unclear and discussed in more detail under the Local Fiscal Effect section of this fiscal and policy note. However, presumably there could be some savings as early as fiscal 2018 if any of the planned capital improvements are financed by Baltimore City instead of the State.

Additional Operating and Capital Impacts

Additional projects within the complex include a new power plant and food service facility, a medical and mental health facility, a 500-bed reentry unit with program services, and administration, parking, and video visitation space. The parking garage and central visiting facility will be sited where the current Jail Industries Building exists, although the 2013 FMP proposes construction of this project, estimated to cost \$8.0 million in fiscal 2013 dollars, to begin beyond fiscal 2028.

DPSCS is also responsible for the administration of the Local Jails and Detention Centers Capital Grant Program. In order to meet the needs of growing inmate populations at the local level, the State pays a minimum of 50% of eligible costs for construction or expansion of local detention centers. If a county can demonstrate that a portion of the expansion is necessary to house additional offenders serving between 6- and 12-month sentences due to changes in sentencing made by Chapter 128 of 1986, then the State provides 100% of funding for that portion of the project. State funds may only be used for costs directly related to incarceration. Ineligible costs include, but are not limited to, air conditioning, single cells, maintenance work on current facilities, utility connections, and space not directly attributable to detention functions, such as office space. It is assumed that, after fiscal 2017, Baltimore City may apply for grants under this program.

DBM also advises that it is necessary for Baltimore City to be involved in the development of the State operating and capital budgets through 2018. Under the bill, DBM must work with Baltimore City on the annual budget submission, as specified in the MOU that is required by the bill.

The Administrative Office of the Courts (AOC) advises that because the bill eliminates the Pretrial Release Services Program in Baltimore City, the Judiciary is affected. Currently, District Court commissioners operate in the centralized booking facilities in Baltimore City. AOC believes the bill is unclear as to how the transfer of ownership of the detention center impacts commissioners working in Baltimore City, the performance of their duties, and video bail reviews. In addition, AOC advises that the bill requires the Judiciary to replace any instances of “Baltimore City Detention Center” to “Baltimore City Jail” in any forms, procedures, systems, and website. AOC concludes that the total fiscal and operational impacts of the bill on the Judiciary cannot be reliably estimated at this time due to the number of unknown variables involved. AOC advises that such costs could be significant, however.

Under the bill, former employees of BCDC remain members of the State’s pension system at least through fiscal 2018 (and may elect to remain members of the State’s pension system beyond fiscal 2018) and Baltimore City pays their contributions; thus, assuming there is no change in membership or employer payments, the bill has no fiscal impact on the State’s pension system.

Local Fiscal Effect: Expenditures for Baltimore City increase by \$85.02 million in fiscal 2018 and by at least \$183.21 million in fiscal 2019, which reflects only the costs to operate BCDC and the central booking facility. Future year operating costs increase due to inflation. (See Appendix 1.)

The bill’s impact on Baltimore City’s capital budget is less clear. The bill requires capital costs to be shared equally in fiscal 2018, and for Baltimore City to pay all capital costs beginning in fiscal 2019. Most of the projects slated for the Baltimore City correctional complex have design, construction, and completion dates for DPSCS that fall at or beyond fiscal 2018. Funding for State capital projects is generally provided through GO bonds and must be included in each year’s capital budget bill for continuation.

Because Baltimore City has the ability to issue its own GO bonds, Baltimore City has the option under the bill to seek to be included in the annual State capital budget bill or to issue its own GO bonds. It is unclear which avenue Baltimore City might choose under the bill, and what may be approved by the General Assembly each year in the State’s capital budget.

Additional Comments: When the State assumed control over BCDC, Baltimore City was also eliminated from the formula for grants through the State Aid for Police Protection Fund. Returning Baltimore City to that formula for State aid requires separate legislation; it is not addressed in this bill.

The Governor's proposed fiscal 2015 budget includes the following targeted grants specifically for Baltimore City through the Governor's Office of Crime Control and Prevention:

- Baltimore City Community Policing \$1,974,000
- Baltimore State's Attorney's Office –
Gun Crimes Prosecutions \$2,459,195
- Baltimore City Police Patrol \$2,763,600
- Baltimore City Violent Crime Control \$2,454,422
- War Room – Baltimore City \$716,397

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Department of Budget and Management, Department of General Services, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Maryland Supplemental Retirement Plans, Governor's Budget Books, Department of Legislative Services

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mc/lgc

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Appendix 1
Operating Costs for BCDC and Central Booking
Under the Bill
Fiscal 2015-2019

	<u>FY 2015¹</u>	<u>FY 2016¹</u>	<u>FY 2017¹</u>	<u>FY 2018²</u>	<u>FY 2019³</u>
Permanent Employee Salaries, Wages, and Fringes (1,305 persons)	\$103,591,357	\$109,806,838	\$116,395,248	(\$61,689,481)	(\$138,184,439)
Contractual Salaries and Fringes (32.29)	858,902	858,902	858,902	(429,451)	(429,451)
Communications	269,095	269,095	269,095	(134,548)	(134,548)
Travel	3,000	3,000	3,000	(1,500)	-1,500
Fuel & Utilities	3,866,000	3,866,000	3,866,000	(1,933,000)	(1,933,000)
Automobile Operations	94,642	94,642	94,642	(47,321)	(944,642)
Contractual Services	35,987,317	35,987,317	35,987,317	(17,993,659)	(35,987,317)
Supplies and Materials	1,953,800	1,953,800	1,953,800	(976,900)	(1,953,800)
Equipment – Replacement	22,065	22,065	22,065	(11,033)	(22,065)
Equipment – Additional	2,442,266	2,442,266	2,442,266	(1,221,133)	(2,464,331)
Grants, Subsidies, <i>etc.</i>	945,500	945,500	945,500	(472,750)	(945,500)
Fixed Charges	212,469	212,469	212,469	(106,235)	(212,469)
Total Expenditures or (Savings)	\$150,246,413	\$156,461,894	\$163,050,304	(\$85,017,009)	(\$183,213,062)

¹The State continues to pay these costs in fiscal 2015 through 2017; this is unchanged from current law.

²In fiscal 2018, the State and Baltimore City share all costs equally; thus, State operating costs decrease by \$85.02 million.

³Beginning in fiscal 2019, Baltimore City has the responsibility to pay all costs; thus, State operating costs decrease by \$183.21 million.

Source: Department of Public Safety and Correctional Services