

HOUSE BILL 1217

E1, E2, E4

01r0133

By: **Chair, Judiciary Committee (By Request – Departmental – Office of Crime Prevention, Youth, and Victim Services)**

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Justice Reinvestment Act – Conditions of Release – Technical Revocation Caps**

3 FOR the purpose of providing that a certain presumption may be rebutted if a certain
4 commissioner or court finds and states on the record at a certain time that adhering
5 to certain limits would create a risk to a certain parolee, inmate, probationer, or
6 defendant; authorizing a certain commissioner or court to take certain actions on
7 finding that adhering to certain limits would create a risk to a certain parolee,
8 inmate, probationer, or defendant; requiring a certain commissioner to consider
9 certain factors when determining whether adhering to certain limits would create a
10 risk to a certain parolee, inmate, probationer, or defendant; requiring a certain
11 commissioner to find and state on the record certain matters before imposing a
12 certain period of imprisonment under certain circumstances; requiring a certain
13 designee who may conduct a certain assessment to be certified or licensed, rather
14 than certified and licensed; clarifying the maximum sentence that can be imposed
15 for a certain violation; and generally relating to justice reinvestment and conditions
16 of release.

17 BY repealing and reenacting, with amendments,
18 Article – Correctional Services
19 Section 7–401 and 7–504
20 Annotated Code of Maryland
21 (2017 Replacement Volume and 2019 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Criminal Law
24 Section 5–601(e)(1)
25 Annotated Code of Maryland
26 (2012 Replacement Volume and 2019 Supplement)

27 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Procedure
2 Section 6–223 and 6–224
3 Annotated Code of Maryland
4 (2018 Replacement Volume and 2019 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
6 That the Laws of Maryland read as follows:

7 **Article – Correctional Services**

8 7–401.

9 (a) If a parolee is alleged to have violated a condition of parole, one commissioner
10 shall hear the case on revocation of the parole at the time and place that the Commission
11 designates.

12 (b) (1) Each individual charged with a parole violation is entitled to be
13 represented by counsel of the individual's choice or, if eligible, counsel provided by the
14 Public Defender's office.

15 (2) The Commission shall keep a record of the hearing.

16 (c) If the commissioner finds from the evidence that the parolee has violated a
17 condition of parole, the commissioner may take any action that the commissioner considers
18 appropriate, including:

19 (1) (i) subject to subsection (d)(1) of this section, revoking the order of
20 parole;

21 (ii) setting a future hearing date for consideration for reparole; and

22 (iii) remanding the individual to the Division of Correction or local
23 correctional facility from which the individual was paroled; or

24 (2) continuing parole:

25 (i) without modification of its conditions; or

26 (ii) with modification of its conditions, including a requirement that
27 the parolee spend all or part of the remaining parole period in a home detention program.

28 (d) (1) Subject to paragraph (4) of this subsection, if an order of parole is
29 revoked due to a technical violation, as defined in § 6–101 of this article, the commissioner
30 hearing the parole revocation may require the individual to serve a period of imprisonment
31 of:

32 (i) for a first violation, not more than 15 days;

1 (ii) for a second violation, not more than 30 days; and

2 (iii) for a third violation, not more than 45 days.

3 (2) Subject to paragraph (3) of this subsection and further action by the
4 Commission, if the order of parole is revoked for a fourth or subsequent technical violation
5 or a violation that is not a technical violation, the commissioner hearing the parole
6 revocation, in the commissioner's discretion, may require the inmate to serve any unserved
7 portion of the sentence originally imposed.

8 (3) An inmate may not receive credit for time between release on parole
9 and revocation of parole if:

10 (i) the inmate was serving a sentence for a violent crime when
11 parole was revoked; and

12 (ii) the parole was revoked due to a finding that the inmate
13 committed a violent crime while on parole.

14 (4) (i) There is a rebuttable presumption that the limits on the period
15 of imprisonment that may be imposed for a technical violation established in paragraph (1)
16 of this subsection are applicable.

17 (ii) The presumption may be rebutted if a commissioner finds and
18 states on the record, after consideration of the following factors, that adhering to the limits
19 on the period of imprisonment established under paragraph (1) of this subsection would
20 create a risk to public safety, **THE PAROLEE**, a victim, or a witness:

21 1. the nature of the parole violation;

22 2. the facts and circumstances of the crime for which the
23 parolee was convicted; and

24 3. the parolee's history.

25 (iii) On finding that adhering to the limits would create a risk to
26 public safety, **THE PAROLEE**, a victim, or a witness under subparagraph (ii) of this
27 paragraph, the commissioner may:

28 1. direct imposition of a longer period of imprisonment than
29 provided in paragraph (1) of this subsection, but no more than the time remaining on the
30 original sentence; or

31 2. commit the parolee to the Maryland Department of Health
32 for treatment under § 8-507 of the Health – General Article.

1 **(iv) 1. WHEN DETERMINING WHETHER ADHERING TO THE**
 2 **LIMITS UNDER PARAGRAPH (1) OF THIS SUBSECTION WOULD CREATE A RISK TO THE**
 3 **PAROLEE, THE COMMISSIONER SHALL CONSIDER THE FOLLOWING FACTORS:**

4 **A. WHETHER THERE IS A LESS RESTRICTIVE**
 5 **ALTERNATIVE TO IMPRISONMENT THAT WILL PROTECT THE PAROLEE, INCLUDING**
 6 **APPROPRIATE TREATMENT IN THE COMMUNITY;**

7 **B. IF TREATMENT IS AVAILABLE, WHETHER THE**
 8 **PAROLEE IS AMENABLE TO TREATMENT; AND**

9 **C. WHETHER A LONGER PERIOD OF IMPRISONMENT**
 10 **WILL INCREASE THE RISK TO THE PAROLEE.**

11 **2. BEFORE IMPOSING A LONGER PERIOD OF**
 12 **IMPRISONMENT UNDER SUBPARAGRAPH (III)1 OF THIS PARAGRAPH BECAUSE**
 13 **ADHERING TO THE LIMITS ON THE PERIOD OF IMPRISONMENT ESTABLISHED UNDER**
 14 **PARAGRAPH (1) OF THIS SUBSECTION WOULD CREATE A RISK TO THE PAROLEE, THE**
 15 **COMMISSIONER SHALL FIND AND STATE ON THE RECORD THAT:**

16 **A. THE COMMISSIONER HAS CONSIDERED THE FACTORS**
 17 **LISTED IN SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH; AND**

18 **B. A LONGER PERIOD OF IMPRISONMENT IS THE BEST**
 19 **ALTERNATIVE FOR REDUCING THE RISK TO THE PAROLEE.**

20 **[(iv)] (v) A finding under subparagraph (ii) of this paragraph or an**
 21 **action under subparagraph (iii) of this paragraph is subject to appeal under Title 12,**
 22 **Subtitle 3 or Subtitle 4 of the Courts Article.**

23 (e) Subject to subsection (d) of this section, if a sentence has commenced as
 24 provided under § 9–202(c)(2) of this article and the inmate is serving that sentence when
 25 the order of parole is revoked, any reimposed portion of the sentence originally imposed
 26 shall begin at the expiration of any sentences which were begun under § 9–202(c)(2) of this
 27 article.

28 (f) (1) The inmate may seek judicial review in the circuit court within 30 days
 29 after receiving the written decision of the Commission.

30 (2) The court shall hear the action on the record.

31 7–504.

32 (a) (1) In this section the following words have the meanings indicated.

1 (2) “Technical violation” has the meaning stated in § 6–101 of this article.

2 (3) “Term of confinement” has the meaning stated in § 3–701 of this article.

3 (b) (1) Subject to paragraph (3) of this subsection, the commissioner presiding
4 at an individual’s mandatory supervision revocation hearing may revoke diminution credits
5 previously earned by the individual on the individual’s term of confinement in accordance
6 with the following schedule:

7 (i) not more than 15 days for a first technical violation;

8 (ii) not more than 30 days for a second technical violation;

9 (iii) not more than 45 days for a third technical violation; and

10 (iv) up to all remaining days for a fourth or subsequent technical
11 violation or a violation that is not a technical violation.

12 (2) Nothing in this section affects the prohibition against the application of
13 diminution credits under § 7–502 of this subtitle to the term of confinement of an inmate
14 convicted and sentenced to imprisonment for a crime committed while on mandatory
15 supervision.

16 (3) (i) There is a rebuttable presumption that the limits on the
17 revocation of diminution credits for a technical violation established in paragraph (1) of this
18 subsection are applicable.

19 (ii) The presumption may be rebutted if a commissioner finds and
20 states on the record, after consideration of the following factors, that adhering to the limits
21 on the revocation of diminution credits established under paragraph (1) of this subsection
22 would create a risk to public safety, **THE INMATE**, a victim, or a witness:

23 1. the nature of the mandatory supervision violation;

24 2. the facts and circumstances of the crime for which the
25 inmate was convicted; and

26 3. the inmate’s history.

27 (iii) On finding that adhering to the limits would create a risk to
28 public safety, **THE INMATE**, a victim, or a witness under subparagraph (ii) of this
29 paragraph, the commissioner may:

30 1. direct that a greater number of diminution credits be
31 revoked than provided in paragraph (1) of this subsection; or

32 2. commit the inmate to the Maryland Department of Health

1 for treatment under § 8–507 of the Health – General Article.

2 **(IV) 1. WHEN DETERMINING WHETHER ADHERING TO THE**
 3 **LIMITS UNDER PARAGRAPH (1) OF THIS SUBSECTION WOULD CREATE A RISK TO THE**
 4 **INMATE, THE COMMISSIONER SHALL CONSIDER THE FOLLOWING FACTORS:**

5 **A. WHETHER THERE IS A LESS RESTRICTIVE**
 6 **ALTERNATIVE TO IMPRISONMENT THAT WILL PROTECT THE INMATE, INCLUDING**
 7 **APPROPRIATE TREATMENT IN THE COMMUNITY;**

8 **B. IF TREATMENT IS AVAILABLE, WHETHER THE INMATE**
 9 **IS AMENABLE TO TREATMENT; AND**

10 **C. WHETHER A LONGER PERIOD OF IMPRISONMENT**
 11 **WILL INCREASE THE RISK TO THE INMATE.**

12 **2. BEFORE REVOKING A GREATER NUMBER OF**
 13 **DIMINUTION CREDITS UNDER SUBPARAGRAPH (III)1 OF THIS PARAGRAPH BECAUSE**
 14 **ADHERING TO THE LIMITS ON THE REVOCATION OF DIMINUTION CREDITS**
 15 **ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION WOULD CREATE A RISK**
 16 **TO THE INMATE, THE COMMISSIONER SHALL FIND AND STATE ON THE RECORD THAT:**

17 **A. THE COMMISSIONER HAS CONSIDERED THE FACTORS**
 18 **LISTED IN SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH; AND**

19 **B. REVOKING A GREATER NUMBER OF DIMINUTION**
 20 **CREDITS IS THE BEST ALTERNATIVE FOR REDUCING THE RISK TO THE INMATE.**

21 **[(iv)] (v) A finding under subparagraph (ii) of this paragraph or an**
 22 **action under subparagraph (iii) of this paragraph is subject to appeal under Title 12,**
 23 **Subtitle 3 or Title 12, Subtitle 4 of the Courts Article.**

24 **Article – Criminal Law**

25 5–601.

26 (e) (1) (i) Before imposing a sentence under subsection (c) of this section,
 27 the court may order the Maryland Department of Health or a certified [and] OR licensed
 28 designee to conduct an assessment of the defendant for substance use disorder and
 29 determine whether the defendant is in need of and may benefit from drug treatment.

30 (ii) If an assessment for substance use disorder is requested by the
 31 defendant and the court denies the request, the court shall state on the record the basis for
 32 the denial.

1 of incarceration established under subsection (d)(2) of this section would create a risk to
2 public safety, **THE PROBATIONER OR DEFENDANT**, a victim, or a witness:

3 (i) the nature of the probation violation;

4 (ii) the facts and circumstances of the crime for which the
5 probationer or defendant was convicted; and

6 (iii) the probationer's or defendant's history.

7 (3) On finding that adhering to the limits would create a risk to public
8 safety, **THE PROBATIONER OR DEFENDANT**, a victim, or a witness under paragraph (2)
9 of this subsection, the court may:

10 (i) direct imposition of a longer period of incarceration than
11 provided under subsection (d)(2) of this section, but no more than the time remaining on
12 the original sentence; or

13 (ii) commit the probationer or defendant to the Maryland
14 Department of Health for treatment under § 8-507 of the Health – General Article.

15 **(4) (I) WHEN DETERMINING WHETHER ADHERING TO THE LIMITS**
16 **UNDER SUBSECTION (D)(2) OF THIS SECTION WOULD CREATE A RISK TO THE**
17 **PROBATIONER OR DEFENDANT, THE COMMISSIONER SHALL CONSIDER THE**
18 **FOLLOWING FACTORS:**

19 **1. WHETHER THERE IS A LESS RESTRICTIVE**
20 **ALTERNATIVE TO IMPRISONMENT THAT WILL PROTECT THE PROBATIONER OR**
21 **DEFENDANT, INCLUDING APPROPRIATE TREATMENT IN THE COMMUNITY;**

22 **2. IF TREATMENT IS AVAILABLE, WHETHER THE**
23 **PROBATIONER OR DEFENDANT IS AMENABLE TO TREATMENT; AND**

24 **3. WHETHER A LONGER PERIOD OF IMPRISONMENT**
25 **WILL INCREASE THE RISK TO THE PROBATIONER OR DEFENDANT.**

26 **(II) BEFORE IMPOSING A LONGER PERIOD OF IMPRISONMENT**
27 **UNDER PARAGRAPH (3)(I) OF THIS SUBSECTION BECAUSE ADHERING TO THE LIMITS**
28 **ON THE PERIOD OF IMPRISONMENT ESTABLISHED UNDER SUBSECTION (D)(2) OF**
29 **THIS SECTION WOULD CREATE A RISK TO THE PROBATIONER OR DEFENDANT, THE**
30 **COMMISSIONER SHALL FIND AND STATE ON THE RECORD THAT:**

31 **1. THE COMMISSIONER HAS CONSIDERED THE FACTORS**
32 **LISTED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND**

1 (iv) [all or any part of the period of imprisonment imposed in the
2 original sentence] **ANY OR ALL OF THE UNSERVED PORTION OF THE SENTENCE**
3 **ORIGINALLY IMPOSED** for a fourth or subsequent technical violation.

4 (2) (i) There is a rebuttable presumption that the limits on the period
5 of incarceration that may be imposed for a technical violation established in paragraph (1)
6 of this subsection are applicable.

7 (ii) The presumption may be rebutted if the court finds and states on
8 the record, after consideration of the following factors, that adhering to the limits on the
9 period of incarceration established under paragraph (1) of this subsection would create a
10 risk to public safety, **THE DEFENDANT**, a victim, or a witness:

11 1. the nature of the probation violation;

12 2. the facts and circumstances of the crime for which the
13 defendant was convicted; and

14 3. the defendant's history.

15 (iii) On finding that adhering to the limits would create a risk to
16 public safety, **THE DEFENDANT**, a victim, or a witness under subparagraph (ii) of this
17 paragraph, the court may:

18 1. direct imposition of a longer period of incarceration than
19 provided in paragraph (1) of this subsection, but no more than the time remaining on the
20 original sentence; or

21 2. commit the defendant to the Maryland Department of
22 Health for treatment under § 8-507 of the Health – General Article.

23 **(IV) 1. WHEN DETERMINING WHETHER ADHERING TO THE**
24 **LIMITS UNDER PARAGRAPH (1) OF THIS SUBSECTION WOULD CREATE A RISK TO THE**
25 **DEFENDANT, THE COMMISSIONER SHALL CONSIDER THE FOLLOWING FACTORS:**

26 **A. WHETHER THERE IS A LESS RESTRICTIVE**
27 **ALTERNATIVE TO IMPRISONMENT THAT WILL PROTECT THE DEFENDANT,**
28 **INCLUDING APPROPRIATE TREATMENT IN THE COMMUNITY;**

29 **B. IF TREATMENT IS AVAILABLE, WHETHER THE**
30 **DEFENDANT IS AMENABLE TO TREATMENT; AND**

31 **C. WHETHER A LONGER PERIOD OF IMPRISONMENT**
32 **WILL INCREASE THE RISK TO THE DEFENDANT.**

1 **2. BEFORE IMPOSING A LONGER PERIOD OF**
2 **IMPRISONMENT UNDER SUBPARAGRAPH (III)1 OF THIS PARAGRAPH BECAUSE**
3 **ADHERING TO THE LIMITS ON THE PERIOD OF IMPRISONMENT ESTABLISHED UNDER**
4 **PARAGRAPH (1) OF THIS SUBSECTION WOULD CREATE A RISK TO THE DEFENDANT,**
5 **THE COMMISSIONER SHALL FIND AND STATE ON THE RECORD THAT:**

6 **A. THE COMMISSIONER HAS CONSIDERED THE FACTORS**
7 **LISTED IN SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH; AND**

8 **B. A LONGER PERIOD OF IMPRISONMENT IS THE BEST**
9 **ALTERNATIVE FOR REDUCING THE RISK TO THE DEFENDANT.**

10 **[(iv)] (v)** A finding under subparagraph (ii) of this paragraph or an
11 action under subparagraph (iii) of this paragraph is subject to appeal under Title 12,
12 Subtitle 3 or Subtitle 4 of the Courts Article.

13 (d) (1) The District Court judge who originally imposed conditions of probation
14 or suspension of sentence shall hear any charge of violation of the conditions of probation
15 or suspension of sentence.

16 (2) Except as provided in paragraph (3) of this subsection, the judge shall
17 sentence the defendant if probation is revoked or suspension stricken.

18 (3) If the judge has been removed from office, has died or resigned, or is
19 otherwise incapacitated, any other judge of the District Court may act in the matter.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2020.