

HOUSE BILL 1418

E2, E4, E1

7lr2563

By: **Delegate Dumais**

Introduced and read first time: February 10, 2017

Assigned to: Judiciary and Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Justice Reinvestment Act – Modifications**

3 FOR the purpose of requiring a certain designee who may conduct a certain assessment to
4 be certified or licensed, rather than certified and licensed; providing that a certain
5 court may grant a certain application without a hearing, but may not deny an
6 application without a hearing; authorizing a certain person serving a certain term of
7 confinement for an offense relating to drug distribution or volume dealing in cocaine
8 base imposed on or before a certain date to file a certain motion to modify or reduce
9 the sentence under certain circumstances; repealing a provision of law excluding
10 certain sex offender registrants from eligibility for a certain geriatric parole;
11 repealing a certain incorrect statutory reference; altering a certain incorrect
12 statutory reference; repealing a requirement that a certain person file a certain
13 petition in a certain court under certain circumstances; altering a provision relating
14 to the expiration of the terms of certain members of the Justice Reinvestment
15 Oversight Board; making conforming changes; providing for the effective date of this
16 Act; and generally relating to justice reinvestment.

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Law
19 Section 5–601(e)(1), 5–609.1, and 14–101(f)
20 Annotated Code of Maryland
21 (2012 Replacement Volume and 2016 Supplement)
22 (As enacted by Chapter 515 of the Acts of the General Assembly of 2016)

23 BY adding to
24 Article – Criminal Law
25 Section 5–612.1
26 Annotated Code of Maryland
27 (2012 Replacement Volume and 2016 Supplement)

28 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Criminal Procedure
Section 10–110(a) and (b)
Annotated Code of Maryland
(2008 Replacement Volume and 2016 Supplement)
(As enacted by Chapter 515 of the Acts of the General Assembly of 2016)

BY repealing and reenacting, with amendments,
Chapter 515 of the Acts of the General Assembly of 2016
Section 10

SECTION 1. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
as follows:

Article – Criminal Law

5–601.

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

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

5–609.1.

(a) Notwithstanding any other provision of law and subject to subsection (c) of
this section, a person who is serving a term of confinement that includes a mandatory
minimum sentence imposed on or before September 30, 2017, for a violation of §§ 5–602
through 5–606 of this subtitle may apply to the court to modify or reduce the mandatory
minimum sentence as provided in Maryland Rule 4–345, regardless of whether the
defendant filed a timely motion for reconsideration or a motion for reconsideration was
denied by the court.

(b) The court may modify the sentence and depart from the mandatory minimum
sentence unless the State shows that, giving due regard to the nature of the crime, the
history and character of the defendant, and the defendant's chances of successful
rehabilitation:

(1) retention of the mandatory minimum sentence would not result in
substantial injustice to the defendant; and

(2) the mandatory minimum sentence is necessary for the protection of the
public.

(c) (1) Except as provided in paragraph (2) of this subsection, an application [for a hearing] under subsection (a) of this section shall be submitted to the court or review panel on or before September 30, 2018.

(2) The court may consider an application after September 30, 2018, only for good cause shown.

(3) The court shall notify the State's Attorney of [a request for a hearing]
THE FILING OF AN APPLICATION.

**(4) THE COURT MAY GRANT AN APPLICATION WITHOUT A HEARING,
BUT MAY NOT DENY AN APPLICATION WITHOUT A HEARING.**

~~[(4)]~~ **(5)** A person may not file more than one application [for a hearing] under subsection (a) of this section for a mandatory minimum sentence for a violation of §§ 5-602 through 5-606 of this subtitle.

5-612.1.

(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT TO SUBSECTION (C) OF THIS SECTION, A PERSON WHO IS SERVING A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE IMPOSED ON OR BEFORE, FOR A VIOLATION OF § 5-612 OF THIS SUBTITLE INVOLVING LESS THAN 448 GRAMS OF COCAINE BASE MAY APPLY TO THE COURT TO MODIFY OR REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND RULE 4-345, REGARDLESS OF WHETHER THE DEFENDANT FILED A TIMELY MOTION FOR RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE COURT.

(B) THE COURT MAY MODIFY THE SENTENCE AND DEPART FROM THE MANDATORY MINIMUM SENTENCE UNLESS THE STATE SHOWS THAT, GIVING DUE REGARD TO THE NATURE OF THE CRIME, THE HISTORY AND CHARACTER OF THE DEFENDANT, AND THE DEFENDANT'S CHANCES OF SUCCESSFUL REHABILITATION:

(1) RETENTION OF THE MANDATORY MINIMUM SENTENCE WOULD NOT RESULT IN SUBSTANTIAL INJUSTICE TO THE DEFENDANT; AND

(2) THE MANDATORY MINIMUM SENTENCE IS NECESSARY FOR THE PROTECTION OF THE PUBLIC.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN APPLICATION SUBSECTION (A) OF THIS SECTION SHALL BE SUBMITTED TO THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30, 2018.

(2) THE COURT MAY CONSIDER AN APPLICATION AFTER SEPTEMBER 30, 2018, ONLY FOR GOOD CAUSE SHOWN.

(3) THE COURT SHALL NOTIFY THE STATE'S ATTORNEY OF THE FILING OF AN APPLICATION.

(4) THE COURT MAY GRANT AN APPLICATION WITHOUT A HEARING, BUT MAY NOT DENY AN APPLICATION WITHOUT A HEARING.

(5) A PERSON MAY NOT FILE MORE THAN ONE APPLICATION UNDER SUBSECTION (A) OF THIS SECTION FOR A MANDATORY MINIMUM SENTENCE FOR A VIOLATION OF § 5-612 OF THIS SUBTITLE INVOLVING LESS THAN 448 GRAMS OF COCAINE BASE.

14-101.

(f) (1) [This subsection does not apply to a person registered or eligible for registration under Title 11, Subtitle 7 of the Criminal Procedure Article.

(2)] A person sentenced under this section may petition for and be granted parole if the person:

(i) is at least 60 years old; and

(ii) has served at least 15 years of the sentence imposed under this section.

[(3)] (2) The Maryland Parole Commission shall adopt regulations to implement this subsection.

Article – Criminal Procedure

10-110.

(a) A person may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State if the person is convicted of a misdemeanor that is a violation of:

(1) § 6-320 of the Alcoholic Beverages Article;

(2) an offense listed in § 17-613(a) of the Business Occupations and Professions Article;

(3) § 5-712, § 19-304, § 19-308, or Title 5, Subtitle 6 or Subtitle 9 of the Business Regulation Article;

- 1 (4) § 3–1508 or § 10–402 of the Courts Article;
- 2 (5) § 14–1915, § 14–2902, or § 14–2903 of the Commercial Law Article;
- 3 (6) § 5–211 of the Criminal Procedure Article;
- 4 (7) § 3–203 or § 3–808 of the Criminal Law Article;
- 5 (8) § 5–601, § 5–618, § 5–619, § 5–620, § 5–703, § 5–708, or § 5–902 of the
6 Criminal Law Article;
- 7 (9) § 6–105, § 6–108, § 6–206, § 6–303, § 6–306, § 6–307, § 6–402, or §
8 6–503 of the Criminal Law Article;
- 9 (10) § 7–104, § 7–203, § 7–205, § 7–304, § 7–308, or § 7–309 of the Criminal
10 Law Article;
- 11 (11) § 8–103, § 8–206, § 8–401, § 8–402, § 8–404, § 8–406, § 8–408, § 8–503,
12 § 8–521, § 8–523, or § 8–904 of the Criminal Law Article;
- 13 (12) § 9–204, § 9–205, § 9–503, or § 9–506 of the Criminal Law Article;
- 14 (13) § 10–110, § 10–201, § 10–402, **OR** § 10–404[, or § 10–502] of the
15 Criminal Law Article;
- 16 (14) § 11–306(a) of the Criminal Law Article;
- 17 (15) § 12–102, § 12–103, § 12–104, § 12–105, § 12–109, § 12–203, § 12–204,
18 § 12–205, or § 12–302 of the Criminal Law Article;
- 19 (16) § 13–401, § 13–602, or § 16–201 of the Election Law Article;
- 20 (17) § 4–509 of the Family Law Article;
- 21 (18) § 18–215 of the Health – General Article;
- 22 (19) § 4–411 or § 4–2005 of the [Human Services] **HOUSING AND**
23 **COMMUNITY DEVELOPMENT** Article;
- 24 (20) § 27–403, § 27–404, § 27–405, § 27–406, § 27–406.1, § 27–407, §
25 27–407.1, or § 27–407.2 of the Insurance Article;
- 26 (21) § 5–307, § 5–308, § 6–602, § 7–402, or § 14–114 of the Public Safety
27 Article;
- 28 (22) § 7–318.1, § 7–509, or § 10–507 of the Real Property Article;

(23) § 9–124 of the State Government Article;

(24) § 13–1001, § 13–1004, § 13–1007, or § 13–1024 of the Tax – General Article;

(25) the common law offenses of affray, rioting, criminal contempt, or hindering; or

(26) an attempt, a conspiracy, or a solicitation of any offense listed in items (1) through (25) of this subsection.

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person shall file a petition for expungement in the court in which the proceeding began.

(2) [(i) Except as provided in subparagraph (ii) of this paragraph, if] **IF** the proceeding began in one court and was transferred to another court, the person shall file the petition in the court to which the proceeding was transferred.

[(ii) If the proceeding began in one court and was transferred to the juvenile court under § 4–202 or § 4–202.2 of this article, the person shall file the petition in the court of original jurisdiction from which the order of transfer was entered.]

(3) (i) If the proceeding in a court of original jurisdiction was appealed to a court exercising appellate jurisdiction, the person shall file the petition in the appellate court.

(ii) The appellate court may remand the matter to the court of original jurisdiction.

Chapter 515 of the Acts of 2016

SECTION 10. AND BE IT FURTHER ENACTED, That the terms of the initial appointed members of the Justice Reinvestment Oversight Board shall expire as follows:

(1) two members in 2017;

(2) two members in 2018;

(3) **[two] THREE** members in 2019; and

(4) **[two] THREE** members in 2020.

SECTION 2. AND BE IT FURTHER ENACTED, That of this Act shall take effect October 1, 2017, the effective date of Section 2 of Chapter 515 of the Acts of the General Assembly of 2016. If the effective date of Section 2 of Chapter 515 is amended, of this Act shall take effect on the taking effect of Section 2 of Chapter 515.