

# HOUSE BILL 1217

E1, E2, E4

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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

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## 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,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

**Article – Correctional Services**

7–401.

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

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

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

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

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

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

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

(2) continuing parole:

(i) without modification of its conditions; or

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

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

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

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

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

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

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

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

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

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

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

1. the nature of the parole violation;

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

3. the parolee's history.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7–504.

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

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

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

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

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

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

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

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

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

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

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

1. the nature of the mandatory supervision violation;

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

3. the inmate’s history.

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

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

2. commit the inmate to the Maryland Department of Health

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

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

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

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

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

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

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

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

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

## **Article – Criminal Law**

5–601.

(e) (1) (i) Before imposing a sentence under subsection (c) of this section, the court may order the Maryland Department of Health 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.

1                                   **Article – Criminal Procedure**

2   6–223.

3           (a)     A circuit court or the District Court may end the period of probation at any  
4   time.

5           (b)     On receipt of written charges, filed under oath, that a probationer or  
6   defendant violated a condition of probation during the period of probation, the District  
7   Court may, during the period of probation or within 30 days after the violation, whichever  
8   is later, issue a warrant or notice requiring the probationer or defendant to be brought or  
9   appear before the judge issuing the warrant or notice:

10                   (1)     to answer the charge of violation of a condition of probation or of  
11   suspension of sentence; and

12                   (2)     to be present for the setting of a timely hearing date for that charge.

13           (c)     Pending the hearing or determination of the charge, a circuit court or the  
14   District Court may remand the probationer or defendant to a correctional facility or release  
15   the probationer or defendant with or without bail.

16           (d)     If, at the hearing, a circuit court or the District Court finds that the  
17   probationer or defendant has violated a condition of probation, the court may:

18                   (1)     revoke the probation granted or the suspension of sentence; and

19                   (2)     (i)     subject to paragraph (e) of this subsection, for a technical  
20   violation, impose a period of incarceration of:

21                               1.     not more than 15 days for a first technical violation;

22                               2.     not more than 30 days for a second technical violation; and

23                               3.     not more than 45 days for a third technical violation; and

24                   (ii)     for a fourth or subsequent technical violation or a violation that  
25   is not a technical violation, impose any [sentence that might have originally been] **OR ALL**  
26   **OF THE UNSERVED PORTION OF THE SENTENCE ORIGINALLY** imposed for the crime of  
27   which the probationer or defendant was convicted or pleaded nolo contendere.

28           (e)     (1)     There is a rebuttable presumption that the limits on the period of  
29   incarceration that may be imposed for a technical violation established under subsection  
30   (d)(2) of this section are applicable.

31                   (2)     The presumption may be rebutted if the court finds and states on the  
32   record, after consideration of the following factors, that adhering to the limits on the period

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

(i) the nature of the probation violation;

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

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

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

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

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

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

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

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

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

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

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



1                                   **2.     A LONGER PERIOD OF IMPRISONMENT IS THE BEST**  
2 **ALTERNATIVE FOR REDUCING THE RISK TO THE PROBATIONER OR DEFENDANT.**

3                   **[(4)] (5)**     A finding under paragraph (2) of this subsection or an action  
4 under paragraph (3) of this subsection is subject to appeal under Title 12, Subtitle 3 or  
5 Subtitle 4 of the Courts Article.

6 6–224.

7           (a)     This section applies to a defendant who is convicted of a crime for which the  
8 court:

9                   (1)     does not impose a sentence;

10                  (2)     suspends the sentence generally;

11                  (3)     places the defendant on probation for a definite time; or

12                  (4)     passes another order and imposes other conditions of probation.

13           (b)     If a defendant is brought before a circuit court to be sentenced on the original  
14 charge or for violating a condition of probation, and the judge then presiding finds that the  
15 defendant violated a condition of probation, the judge:

16                  (1)     subject to subsection (c) of this section, may sentence the defendant to:

17                          (i)     [all or any part of the period of imprisonment imposed in the  
18 original sentence] **ANY OR ALL OF THE UNSERVED PORTION OF THE SENTENCE**  
19 **ORIGINALLY IMPOSED**; or

20                          (ii)     any sentence allowed by law, if a sentence was not imposed  
21 before; and

22                  (2)     may suspend all or part of a sentence and place the defendant on  
23 further probation on any conditions that the judge considers proper, and that do not exceed  
24 the maximum set under § 6–222 of this subtitle.

25           (c)     (1)     Subject to paragraph (2) of this subsection, if the court finds that the  
26 defendant violated a condition of probation that is a technical violation, the court may  
27 impose a period of incarceration of:

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

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

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

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

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

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

1. the nature of the probation violation;

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

3. the defendant's history.

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

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

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

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

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

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

**C. WHETHER A LONGER PERIOD OF IMPRISONMENT 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.