

# HOUSE BILL 1418

E2, E4, E1

7lr2563

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By: **Delegate Dumais**

Introduced and read first time: February 10, 2017

Assigned to: Judiciary and Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2017

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## CHAPTER \_\_\_\_\_

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 the membership of~~  
14 ~~the Justice Reinvestment Oversight Board;~~ altering a provision relating to the  
15 expiration of the terms of certain members of the Justice Reinvestment Oversight  
16 Board; making conforming changes; making clarifying changes; making a certain  
17 technical correction; providing for the effective date of certain provisions of this Act;  
18 and generally relating to justice reinvestment.

19 BY repealing and reenacting, with amendments,

20 Article – Criminal Law

21 Section ~~5-601(e)(1), 5-609.1, and 14-101(f)~~ 5-601(e)(1) and 5-609.1

22 Annotated Code of Maryland

23 (2012 Replacement Volume and 2016 Supplement)

24 (As enacted by Chapter 515 of the Acts of the General Assembly of 2016)

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



- 1 BY adding to  
2 Article – Criminal Law  
3 Section 5–612.1  
4 Annotated Code of Maryland  
5 (2012 Replacement Volume and 2016 Supplement)
- 6 BY repealing and reenacting, with amendments,  
7 Article – Criminal Procedure  
8 Section 10–110(a) and (b)  
9 Annotated Code of Maryland  
10 (2008 Replacement Volume and 2016 Supplement)  
11 (As enacted by Chapter 515 of the Acts of the General Assembly of 2016)
- 12 BY repealing and reenacting, with amendments,  
13 Chapter 515 of the Acts of the General Assembly of 2016  
14 Section 10
- 15 BY repealing and reenacting, without amendments,  
16 Article – State Government  
17 Section 9–3202  
18 Annotated Code of Maryland  
19 (2014 Replacement Volume and 2016 Supplement)
- 20 BY repealing and reenacting, with amendments,  
21 Article – State Government  
22 Section 9–3203(a)  
23 Annotated Code of Maryland  
24 (2014 Replacement Volume and 2016 Supplement)
- 25 BY repealing and reenacting, with amendments,  
26 Article – Transportation  
27 Section 27–101(gg)  
28 Annotated Code of Maryland  
29 (2012 Replacement Volume and 2016 Supplement)  
30 (As enacted by Chapter 515 of the Acts of the General Assembly of 2016)
- 31 BY repealing and reenacting, with amendments,  
32 Article – Transportation  
33 Section 16–303(k)  
34 Annotated Code of Maryland  
35 (2012 Replacement Volume and 2016 Supplement)  
36 (As enacted by Chapter (S.B. 165) of the Acts of the General Assembly of 2017)
- 37 SECTION 1. ~~AND BE IT FURTHER ENACTED~~ BE IT ENACTED BY THE  
38 GENERAL ASSEMBLY OF MARYLAND, 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~~ **FILED WITH** the court or review panel on or before September 30, 2018.

(2) The court may consider an application **FILED** 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.~~

1           ~~[(4)] (5)~~ A person may not file more than one application [for a hearing]  
2 under subsection (a) of this section for a mandatory minimum sentence for a violation of §§  
3 5-602 through 5-606 of this subtitle.

4 **5-612.1.**

5           **(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT TO**  
6 **SUBSECTION (C) OF THIS SECTION, A PERSON WHO IS SERVING A TERM OF**  
7 **CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE IMPOSED ON OR**  
8 **BEFORE SEPTEMBER 30, 2017, FOR A VIOLATION OF § 5-612 OF THIS SUBTITLE**  
9 **INVOLVING LESS THAN 448 GRAMS OF COCAINE BASE MAY APPLY TO THE COURT TO**  
10 **MODIFY OR REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN**  
11 **MARYLAND RULE 4-345, REGARDLESS OF WHETHER THE DEFENDANT FILED A**  
12 **TIMELY MOTION FOR RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS**  
13 **DENIED BY THE COURT.**

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

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

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

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

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

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

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

31                   ~~**(5)**~~ A PERSON MAY NOT FILE MORE THAN ONE APPLICATION UNDER  
32 **SUBSECTION (A) OF THIS SECTION FOR A MANDATORY MINIMUM SENTENCE FOR A**

1 VIOLATION OF § 5-612 OF THIS SUBTITLE INVOLVING LESS THAN 448 GRAMS OF  
2 COCAINE BASE.

3 ~~14-101.~~

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

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

8 ~~(i) is at least 60 years old, and~~

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

11 ~~(3) (2) The Maryland Parole Commission shall adopt regulations to  
12 implement this subsection.~~

### 13 Article – Criminal Procedure

14 10-110.

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

18 (1) § 6-320 of the Alcoholic Beverages Article;

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

21 (3) § 5-712, § 19-304, § 19-308, or Title 5, Subtitle 6 or Subtitle 9 of the  
22 Business Regulation Article;

23 (4) § 3-1508 or § 10-402 of the Courts Article;

24 (5) § 14-1915, § 14-2902, or § 14-2903 of the Commercial Law Article;

25 (6) § 5-211 of the Criminal Procedure Article;

26 (7) § 3-203 or § 3-808 of the Criminal Law Article;

27 (8) § 5-601, § 5-618, § 5-619, § 5-620, § 5-703, § 5-708, or § 5-902 of the  
28 Criminal Law Article;

- 1 (9) § 6–105, § 6–108, § 6–206, § 6–303, § 6–306, § 6–307, § 6–402, or §  
2 6–503 of the Criminal Law Article;
- 3 (10) § 7–104, § 7–203, § 7–205, § 7–304, § 7–308, or § 7–309 of the Criminal  
4 Law Article;
- 5 (11) § 8–103, § 8–206, § 8–401, § 8–402, § 8–404, § 8–406, § 8–408, § 8–503,  
6 § 8–521, § 8–523, or § 8–904 of the Criminal Law Article;
- 7 (12) § 9–204, § 9–205, § 9–503, or § 9–506 of the Criminal Law Article;
- 8 (13) § 10–110, § 10–201, § 10–402, **OR** § 10–404[, or § 10–502] of the  
9 Criminal Law Article;
- 10 (14) § 11–306(a) of the Criminal Law Article;
- 11 (15) § 12–102, § 12–103, § 12–104, § 12–105, § 12–109, § 12–203, § 12–204,  
12 § 12–205, or § 12–302 of the Criminal Law Article;
- 13 (16) § 13–401, § 13–602, or § 16–201 of the Election Law Article;
- 14 (17) § 4–509 of the Family Law Article;
- 15 (18) § 18–215 of the Health – General Article;
- 16 (19) § 4–411 or § 4–2005 of the [Human Services] **HOUSING AND**  
17 **COMMUNITY DEVELOPMENT** Article;
- 18 (20) § 27–403, § 27–404, § 27–405, § 27–406, § 27–406.1, § 27–407, §  
19 27–407.1, or § 27–407.2 of the Insurance Article;
- 20 (21) § 5–307, § 5–308, § 6–602, § 7–402, or § 14–114 of the Public Safety  
21 Article;
- 22 (22) § 7–318.1, § 7–509, or § 10–507 of the Real Property Article;
- 23 (23) § 9–124 of the State Government Article;
- 24 (24) § 13–1001, § 13–1004, § 13–1007, or § 13–1024 of the Tax – General  
25 Article;
- 26 (25) the common law offenses of affray, rioting, criminal contempt, or  
27 hindering; or
- 28 (26) an attempt, a conspiracy, or a solicitation of any offense listed in items  
29 (1) through (25) of this subsection.

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

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

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

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

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

#### 14 **Chapter 515 of the Acts of 2016**

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

17 (1) ~~two~~ **THREE** members in 2017;

18 (2) ~~two~~ **THREE** members in 2018;

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

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
22 as follows:

#### 23 Article – State Government

24 9–3202.

25 There is a Justice Reinvestment Oversight Board in the Governor’s Office of Crime  
26 Control and Prevention.

27 9–3203.

28 (a) The Board consists of the following members:

- 1           (1)    one member of the Senate of Maryland, appointed by the President of  
2 the Senate;
- 3           (2)    one member of the House of Delegates, appointed by the Speaker of the  
4 House;
- 5           (3)    the Executive Director, or the Executive Director's designee;
- 6           (4)    the Secretary of Public Safety and Correctional Services, or the  
7 Secretary's designee;
- 8           (5)    the chair of the Maryland Parole Commission, or the chair's designee;
- 9           (6)    the Secretary of State Police, or the Secretary's designee;
- 10          (7)    the Attorney General, or the Attorney General's designee;
- 11          (8)    the Public Defender, or the Public Defender's designee;
- 12          (9)    the Secretary of Budget and Management, or the Secretary's designee;
- 13          (10)   the Secretary of Health and Mental Hygiene, or the Secretary's  
14 designee;
- 15          (11)   the chair of the Local Government Justice Reinvestment Commission,  
16 or the chair's designee;
- 17          (12)   two members appointed by the Chief Judge of the Court of Appeals;
- 18          (13)   the Secretary of Labor, Licensing, and Regulation, or the Secretary's  
19 designee;
- 20          (14)   one member appointed by the Maryland Chiefs and Sheriffs  
21 Association;
- 22          (15)   the president of the Maryland State's Attorneys' Association or the  
23 president's designee;
- 24          (16)   two members of the Maryland Correctional Administrators Association,  
25 appointed by the president of the Maryland Correctional Administrators Association,  
26 including one representative from a large correctional facility and one representative from  
27 a small correctional facility;
- 28          (17)   the president of the Maryland Association of Counties or the president's  
29 designee; [and]

1 (18) ONE MEMBER REPRESENTING A COMMUNITY ADVOCACY  
 2 ORGANIZATION, APPOINTED BY THE PRESIDENT OF THE SENATE;

3 (19) ONE MEMBER REPRESENTING A COMMUNITY ADVOCACY  
 4 ORGANIZATION, APPOINTED BY THE SPEAKER OF THE HOUSE; AND

5 ~~[(18)]~~ **(20)** the following individuals, appointed by the Governor:

6 (i) one member representing victims of crime;

7 (ii) one member representing law enforcement;

8 (iii) two local health officers; and

9 (iv) one member with direct experience teaching inmates in academic  
 10 programs intended to achieve the goal of a high school diploma or general educational  
 11 development certification.

12 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
 13 as follows:

14 Article – Transportation

15 27–101.

16 (gg) **(1)** A person who is [convicted of] CHARGED WITH a violation of §  
 17 16–303(h) (“Licenses suspended under certain provisions of Code”) or § 16–303(i) (“Licenses  
 18 suspended under certain provisions of the traffic laws or regulations of another state”) of  
 19 this article:

20 ~~[(1)]~~ **(1)** Is subject to a fine of not more than \$500;

21 ~~[(2)]~~ **(I)** Must appear in court; and

22 ~~[(3)]~~ **(II)** May not prepay the fine.

23 **(2)** A PERSON CONVICTED OF A VIOLATION OF § 16–303(H)  
 24 “LICENSES SUSPENDED UNDER CERTAIN PROVISIONS OF CODE”) OR § 16–303(I)  
 25 “LICENSES SUSPENDED UNDER CERTAIN PROVISIONS OF THE TRAFFIC LAWS OR  
 26 REGULATIONS OF ANOTHER STATE”) OF THIS ARTICLE IS SUBJECT TO A FINE NOT  
 27 EXCEEDING \$500.

28 SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
 29 as follows:

30 Article – Transportation

1 16-303.

2 (k) (1) Except as provided in paragraph (2) of this subsection, a person  
3 convicted of a violation of this section is subject to:

4 (i) For a first offense, imprisonment not exceeding 1 year or a fine  
5 not exceeding \$1,000 or both; and

6 (ii) For a second or subsequent offense, imprisonment not exceeding  
7 2 years or a fine not exceeding \$1,000 or both.

8 (2) (I) A person [convicted of] CHARGED WITH a violation of subsection  
9 (h) or (i) of this section:

10 [(i) Is subject to a fine not exceeding \$500;

11 [(ii)] 1. Must appear in court; and

12 [(iii)] 2. May not prepay the fine.

13 (II) A PERSON CONVICTED OF A VIOLATION OF SUBSECTION (H)  
14 OR (I) OF THIS SECTION IS SUBJECT TO A FINE NOT EXCEEDING \$500.

15 SECTION ~~2~~ 5. AND BE IT FURTHER ENACTED, That Sections 1 and 3 of this Act  
16 shall take effect October 1, 2017, the effective date of Section 2 of Chapter 515 of the Acts  
17 of the General Assembly of 2016. If the effective date of Section 2 of Chapter 515 is  
18 amended, Sections 1 and 3 of this Act shall take effect on the taking effect of Section 2 of  
19 Chapter 515.

20 SECTION 6. AND BE IT FURTHER ENACTED, That Section 4 of this Act shall take  
21 effect October 1, 2017, contingent on the taking effect of Chapter (S.B. 165) of the Acts of  
22 the General Assembly of 2017, and if Chapter (S.B. 165) does not become effective, Section  
23 4 of this Act shall be null and void without the necessity of further action by the General  
24 Assembly.

25 SECTION 7. AND BE IT FURTHER ENACTED, That, if Section 4 of this Act takes  
26 effect, Section 3 of this Act shall be abrogated and of no further force and effect.

27 SECTION 8. AND BE IT FURTHER ENACTED, That, subject to the provisions of  
28 Sections 5 and 6 of this Act, this Act shall take effect October 1, 2017.