

SENATE BILL 593

E2
HB 1418/17 – JUD & HGO

8lr3533
CF 8lr3532

By: **Senator Kelley**

Introduced and read first time: January 31, 2018

Assigned to: Judicial Proceedings

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; authorizing a certain
5 person serving a certain term of confinement for an offense relating to volume
6 dealing in cocaine base imposed on or before a certain date to file a certain motion to
7 modify or reduce the sentence under certain circumstances; repealing a certain
8 incorrect statutory reference; altering a certain incorrect statutory reference;
9 repealing a requirement that a certain person file a certain petition in a certain court
10 under certain circumstances; altering the membership of the Justice Reinvestment
11 Oversight Board; altering a provision relating to the expiration of the terms of
12 certain members of the Justice Reinvestment Oversight Board; making conforming
13 changes; making clarifying changes; making a certain technical correction; and
14 generally relating to justice reinvestment.

15 BY repealing and reenacting, with amendments,
16 Article – Criminal Law
17 Section 5–601(e)(1) and 5–609.1
18 Annotated Code of Maryland
19 (2012 Replacement Volume and 2017 Supplement)

20 BY adding to
21 Article – Criminal Law
22 Section 5–612.1
23 Annotated Code of Maryland
24 (2012 Replacement Volume and 2017 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Criminal Procedure
27 Section 10–110(a) and (b)
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2008 Replacement Volume and 2017 Supplement)

2 BY repealing and reenacting, without amendments,
3 Article – State Government
4 Section 9–3202
5 Annotated Code of Maryland
6 (2014 Replacement Volume and 2017 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article – State Government
9 Section 9–3203(a)
10 Annotated Code of Maryland
11 (2014 Replacement Volume and 2017 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Transportation
14 Section 16–303(k)
15 Annotated Code of Maryland
16 (2012 Replacement Volume and 2017 Supplement)

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

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

22 **Article – Criminal Law**

23 5–601.

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

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

31 5–609.1.

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

1 defendant filed a timely motion for reconsideration or a motion for reconsideration was
2 denied by the court.

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

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

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

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

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

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

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

21 **5-612.1.**

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

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

- 1 5-619, § 5-620, § 5-703, § 5-708, or § 5-902 of the Criminal Law Article;
- 2 (9) § 6-105, § 6-108, § 6-206, § 6-303, § 6-306, § 6-307, § 6-402, or §
3 6-503 of the Criminal Law Article;
- 4 (10) § 7-104, § 7-203, § 7-205, § 7-304, § 7-308, or § 7-309 of the Criminal
5 Law Article;
- 6 (11) § 8-103, § 8-206, § 8-401, § 8-402, § 8-404, § 8-406, § 8-408, § 8-503,
7 § 8-521, § 8-523, or § 8-904 of the Criminal Law Article;
- 8 (12) § 9-204, § 9-205, § 9-503, or § 9-506 of the Criminal Law Article;
- 9 (13) § 10-110, § 10-201, § 10-402, **OR** § 10-404 [, or § 10-502] of the
10 Criminal Law Article;
- 11 (14) § 11-306(a) of the Criminal Law Article;
- 12 (15) § 12-102, § 12-103, § 12-104, § 12-105, § 12-109, § 12-203, § 12-204,
13 § 12-205, or § 12-302 of the Criminal Law Article;
- 14 (16) § 13-401, § 13-602, or § 16-201 of the Election Law Article;
- 15 (17) § 4-509 of the Family Law Article;
- 16 (18) § 18-215 of the Health – General Article;
- 17 (19) § 4-411 or § 4-2005 of the [Human Services] **HOUSING AND**
18 **COMMUNITY DEVELOPMENT** Article;
- 19 (20) § 27-403, § 27-404, § 27-405, § 27-406, § 27-406.1, § 27-407, §
20 27-407.1, or § 27-407.2 of the Insurance Article;
- 21 (21) § 5-307, § 5-308, § 6-602, § 7-402, or § 14-114 of the Public Safety
22 Article;
- 23 (22) § 7-318.1, § 7-509, or § 10-507 of the Real Property Article;
- 24 (23) § 9-124 of the State Government Article;
- 25 (24) § 13-1001, § 13-1004, § 13-1007, or § 13-1024 of the Tax – General
26 Article;
- 27 (25) the common law offenses of affray, rioting, criminal contempt, battery,
28 or hindering; or
- 29 (26) an attempt, a conspiracy, or a solicitation of any offense listed in items

1 (1) through (25) of this subsection.

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

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

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

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

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

15 Article – State Government

16 9–3202.

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

19 9–3203.

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

21 (1) one member of the Senate of Maryland, appointed by the President of
22 the Senate;

23 (2) one member of the House of Delegates, appointed by the Speaker of the
24 House;

25 (3) the Executive Director, or the Executive Director’s designee;

26 (4) the Secretary of Public Safety and Correctional Services, or the
27 Secretary’s designee;

28 (5) the chair of the Maryland Parole Commission, or the chair’s designee;

29 (6) the Secretary of State Police, or the Secretary’s designee;

30 (7) the Attorney General, or the Attorney General’s designee;

1 (8) the Public Defender, or the Public Defender's designee;

2 (9) the Secretary of Budget and Management, or the Secretary's designee;

3 (10) the Secretary of Health, or the Secretary's designee;

4 (11) the chair of the Local Government Justice Reinvestment Commission,
5 or the chair's designee;

6 (12) two members appointed by the Chief Judge of the Court of Appeals;

7 (13) the Secretary of Labor, Licensing, and Regulation, or the Secretary's
8 designee;

9 (14) one member appointed by the Maryland Chiefs and Sheriffs
10 Association;

11 (15) the president of the Maryland State's Attorneys' Association or the
12 president's designee;

13 (16) two members of the Maryland Correctional Administrators Association,
14 appointed by the president of the Maryland Correctional Administrators Association,
15 including one representative from a large correctional facility and one representative from
16 a small correctional facility;

17 (17) the president of the Maryland Association of Counties or the president's
18 designee; [and]

19 **(18) ONE MEMBER REPRESENTING A COMMUNITY ADVOCACY**
20 **ORGANIZATION, APPOINTED BY THE PRESIDENT OF THE SENATE;**

21 **(19) ONE MEMBER REPRESENTING A COMMUNITY ADVOCACY**
22 **ORGANIZATION, APPOINTED BY THE SPEAKER OF THE HOUSE; AND**

23 **[(18)] (20)** the following individuals, appointed by the Governor:

24 (i) one member representing victims of crime;

25 (ii) one member representing law enforcement;

26 (iii) two local health officers; and

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

Article – Transportation

16–303.

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

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

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

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

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

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

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

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

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] **THREE** members in 2017;

(2) [two] **THREE** members in 2018;

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.