

# HOUSE BILL 1625

K4, P1

8lr2252

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By: **Delegate Miele**

Introduced and read first time: February 9, 2018

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Elected and Public Officials – Crimes – Pension Forfeiture**  
3 **(Clean Up Annapolis Act)**

4 FOR the purpose of requiring certain officials indicted and convicted for certain crimes to  
5 reimburse the State for any expenses or per diem spent or reimbursement paid to  
6 the official after the official is indicted; establishing that an individual employed in  
7 a certain position who is convicted of a certain crime is subject to forfeiture of benefits  
8 from the State Retirement and Pension System; altering certain provisions of law  
9 relating to the forfeiture of benefits from the State Retirement and Pension System  
10 for certain public employees; repealing the requirement for a forfeiture order to  
11 indicate the amount of benefits forfeit; repealing the requirement for a court to  
12 consider certain factors when determining the amount of benefits subject to  
13 forfeiture; repealing the authorization for a court to enter a domestic relations order  
14 that provides some or all of the forfeited benefits to be paid to certain individuals;  
15 repealing the prohibition against a forfeiture order impairing or altering certain  
16 domestic relations orders; repealing the prohibition against a public employee's  
17 interest in benefits of a former spouse being subject to forfeiture; providing for the  
18 application of this Act; providing for the effective date of certain provisions of this  
19 Act; and generally relating to the forfeiture of certain benefits by certain officials  
20 convicted of certain crimes.

21 BY adding to  
22 Article – General Provisions  
23 Section 5–905  
24 Annotated Code of Maryland  
25 (2014 Volume and 2017 Supplement)

26 BY repealing and reenacting, without amendments,  
27 Article – State Personnel and Pensions  
28 Section 21–701  
29 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2015 Replacement Volume and 2017 Supplement)  
2 (As enacted by Chapter 220 of the Acts of the General Assembly of 2016)

3 BY repealing and reenacting, with amendments,  
4 Article – State Personnel and Pensions  
5 Section 21–702 through 21–704  
6 Annotated Code of Maryland  
7 (2015 Replacement Volume and 2017 Supplement)  
8 (As enacted by Chapter 220 of the Acts of the General Assembly of 2016)

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

11 **Article – General Provisions**

12 **5–905.**

13 (A) THIS SECTION APPLIES TO AN OFFICIAL WHO, DURING THE OFFICIAL’S  
14 STATE EMPLOYMENT OR TERM OF OFFICE, IS INDICTED AND CONVICTED OF A  
15 FELONY:

16 (1) THAT IS COMMITTED IN THE COURSE OF THE OFFICIAL’S DUTIES  
17 AND RESPONSIBILITIES;

18 (2) THAT IS COMMITTED THROUGH THE USE OF THE OFFICIAL’S  
19 AUTHORITY DERIVED FROM THE OFFICIAL’S OFFICE; AND

20 (3) THE COMMISSION OF WHICH RESULTS IN, OR IS ATTEMPTED TO  
21 RESULT IN, GAIN, PROFIT, OR ADVANTAGE FOR THE OFFICIAL.

22 (B) AN OFFICIAL SHALL REIMBURSE THE STATE FOR ANY REIMBURSEMENT  
23 FOR EXPENSES OR PER DIEM RECEIVED BY THE OFFICIAL AFTER INDICTMENT.

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

26 **Article – State Personnel and Pensions**

27 21–701.

28 (a) In this subtitle the following words have the meanings indicated.

29 (b) “Domestic relations order” means an order issued in accordance with §  
30 21–502(a)(2) of this title, § 414(p) of the Internal Revenue Code, and regulations adopted  
31 by the Board of Trustees that assigns a benefit to a spouse, former spouse, child, or other  
32 dependent of a public employee in connection with a decree or order of alimony, child

1 support, or divorce.

2 (c) "Final adjudication" means adjudication by a trial court resulting in final  
3 disposition of all charges that constitute a qualifying crime.

4 (d) "Public employee" means an individual who:

5 (1) is employed in a position listed in § 21-702 of this subtitle; and

6 (2) has been charged with a qualifying crime.

7 (e) "Qualifying crime" means a felony:

8 (1) that is committed in the course of a public employee's duties and  
9 responsibilities;

10 (2) that is committed through the use of the public employee's authority  
11 derived from the position of employment; and

12 (3) the commission of which results in, or is attempted to result in, gain,  
13 profit, or advantage for the public employee.

14 21-702.

15 (a) This subtitle applies to an individual who:

16 (1) is a member, former member, or retiree of the Employees' Retirement  
17 System [or], the Employees' Pension System, **OR THE LEGISLATIVE PENSION PLAN**; and

18 (2) has earned creditable service while employed as:

19 (i) the Attorney General of the State;

20 (ii) the Comptroller of the State;

21 (iii) the Governor of the State;

22 (iv) the Lieutenant Governor of the State;

23 (v) the Secretary of State; [or]

24 (vi) the Treasurer of the State;

25 **(VII) A MEMBER OF THE GENERAL ASSEMBLY; OR**

26 **(VIII) AN EMPLOYEE WHO RECEIVED COMPENSATION AT A RATE**

1 **EQUIVALENT TO AT LEAST STATE GRADE LEVEL 16 AND WAS DESIGNATED A PUBLIC**  
2 **OFFICIAL UNDER THE PUBLIC ETHICS LAW.**

3 (b) This subtitle does not apply to any service earned before January 9, 2019.

4 21-703.

5 (a) Benefits under this Division II of this article payable to a public employee are  
6 subject to forfeiture [in whole or in part] in accordance with this subtitle if the public  
7 employee is found guilty of, pleads guilty to, or enters a plea of nolo contendere to a  
8 qualifying crime.

9 (b) (1) Benefits under this Division II may not be forfeited [or reduced] if the  
10 Internal Revenue Service determines that the forfeiture [or reduction] will negatively  
11 affect or invalidate the tax qualified status of any of the several systems.

12 (2) If the Internal Revenue Service determines that the application of this  
13 subtitle would negatively affect or invalidate the tax qualified status of any of the several  
14 systems, any forfeiture of benefits that took place before the Internal Revenue Service's  
15 determination shall be reversed in accordance with § 21-707 of this subtitle to the extent  
16 necessary to comply with the determination.

17 21-704.

18 (a) If the final adjudication of charges results in conviction of a public employee,  
19 the public employee's retirement allowance shall be forfeited [in whole or in part] in  
20 accordance with this section.

21 (b) (1) On conviction of a public employee, the Attorney General or State's  
22 Attorney shall file a complaint in circuit court to forfeit the public employee's benefits [in  
23 whole or in part].

24 (2) Notice of the complaint filed under paragraph (1) of this subsection  
25 shall be served on:

26 (i) the public employee;

27 (ii) any known spouse of the public employee;

28 (iii) any known dependents of the public employee;

29 (iv) the public employee's designated beneficiaries;

30 (v) any former spouse who has been assigned benefits under an  
31 existing domestic relations order; and

1 (vi) the State Retirement Agency.

2 (3) Notwithstanding § 4–312 of the General Provisions Article, on written  
3 request, the State Retirement Agency shall provide the Attorney General or State’s  
4 Attorney with available information from the retirement records of the public employee to  
5 assist the Attorney General or State’s Attorney in providing the notice required under this  
6 subsection.

7 (c) The court shall enter an order requiring the forfeiture[, in whole or in part,]  
8 of the public employee’s benefits if the court finds by clear and convincing evidence that:

9 (1) the public employee was convicted of a qualifying crime;

10 (2) the public employee was a member of the Employees’ Pension System  
11 [or], the Employees’ Retirement System, **OR THE LEGISLATIVE PENSION PLAN**; and

12 (3) the qualifying crime for which the public employee was convicted was  
13 committed while the public employee was an active member of the Employees’ Pension  
14 System [or], the Employees’ Retirement System, **OR THE LEGISLATIVE PENSION PLAN**.

15 (d) Only service credit in the State system in which the public employee is a  
16 member when the qualifying crime is committed is eligible for forfeiture under this section.

17 (e) [(1) An order requiring forfeiture of benefits shall indicate the amount of  
18 benefits to be forfeited.

19 (2) When determining the amount of benefits to be forfeited, the court shall  
20 consider:

21 (i) the severity of the crime;

22 (ii) the amount of monetary loss suffered by the State, a county, a  
23 political subdivision, or a person as a result of the crime;

24 (iii) the degree of public trust placed in the public employee;

25 (iv) the financial needs and resources of the public employee;

26 (v) the financial needs and resources of the public employee’s  
27 spouse, children, or other dependents;

28 (vi) any interest in benefits of a former spouse established under an  
29 existing domestic relations order; and

30 (vii) any other factors the court determines relevant.

31 (f) (1) If the court enters an order requiring the forfeiture of benefits, the court

1 may enter a domestic relations order that provides that some or all of the forfeited benefits  
2 be paid to a spouse, former spouse, child, or other dependent for purposes of child support,  
3 alimony, or marital property rights.

4 (2) When determining whether to enter a domestic relations order under  
5 paragraph (1) of this subsection, the court shall consider whether the public employee's  
6 spouse, former spouse, children, or dependents were culpable or complicit in the  
7 commission of the qualifying crime.

8 (3) The court may not order benefits to be paid to a public employee's  
9 spouse, former spouse, child, or other dependent in a manner that is inconsistent with the  
10 payment of benefits in the State system in which the public employee was a member.

11 (g) (1) An order requiring a forfeiture of benefits issued under this section may  
12 not impair or alter an existing domestic relations order providing benefits to a former  
13 spouse of a public employee.

14 (2) A public employee's interest in a benefit of a former spouse established  
15 by a domestic relations order may not be subject to a forfeiture or reduction under this  
16 subtitle.

17 (h)] Benefits available to a public employee as a beneficiary may not be subject to  
18 a forfeiture under this subtitle.

19 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take  
20 effect January 9, 2019, the effective date of Chapter 220 of the Acts of the General Assembly  
21 of 2017. If the effective date of Chapter 220 is amended, Section 2 of this Act shall take  
22 effect on the taking effect of Chapter 220.

23 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
24 apply only prospectively and may not be applied or interpreted to have any effect on or  
25 application to any convictions before the effective date of this Act.

26 SECTION 5. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this  
27 Act, this Act shall take effect June 1, 2018.