

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 883

(Delegate Dumais)

Judiciary and Health and Government  
Operations

Judicial Proceedings

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Justice Reinvestment Act - Modifications

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This bill makes various modifications and technical corrections to Chapter 515 of 2016, the Justice Reinvestment Act, relating to court procedures, sentencing, and membership on the advisory board to the Justice Reinvestment Oversight Board. In addition, the bill alters penalties for obtaining, attempting to obtain, possessing, or distributing controlled paraphernalia.

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Fiscal Summary

**State Effect:** Minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services as a result of a decrease in the number of persons incarcerated in State correctional facilities. Minimal increase in general fund revenues from penalties due to cases shifting from the circuit courts to the District Court.

**Local Effect:** Minimal increase in local incarceration expenditures due to the bill's altered penalty provision. Minimal increase in expenditures for State's Attorneys' offices due to the bill's notice provision. Potential minimal operational impact on the circuit courts due to the changes to court procedures. Minimal decrease in local revenues from penalties due to cases shifting to the District Court from the circuit courts. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** None.

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## Analysis

**Bill Summary/Current law:** The bill makes the following changes:

- extends the existing rebuttable presumption to the limits on a term of incarceration for the creation of a risk to include the parolee and authorizes the Maryland Parole Commission (MPC) to consider the parolee when departing from a specified maximum sentence for a revocation due to a “technical violation,” if adhering to the limits would create a risk to the parolee, in addition to public safety or to a victim or witness. “Technical violation” means a violation of a condition of probation, parole, or mandatory supervision that does not involve an arrest or a summons issued by a District Court commissioner on a statement of charges filed by a law enforcement officer, a violation of a criminal prohibition other than a minor traffic offense, a violation of a no-contact or stay-away order, or “absconding.” “Absconding” means willfully evading supervision. “Absconding” does not include missing a single appointment with a supervising authority;
- extends the existing rebuttable presumption to the limits on revocation of diminution credits for the creation of a risk to include the inmate and authorizes MPC to consider the inmate when departing from a specified maximum revocation of diminution credits due to a “technical violation,” if adhering to the limits would create a risk to the inmate, in addition to public safety or to a victim or witness;
- extends the existing rebuttable presumption to the limits on the period of incarceration for the creation of a risk to include the probationer or defendant, authorizes a court to consider the probationer or defendant when departing from a specified maximum term of incarceration due to a “technical violation,” if adhering to the limits would create a risk to the probationer or defendant, in addition to public safety or to a victim or witness, and authorizes a court to impose any unserved portion of the sentence originally imposed (instead of all or any part of the period of imprisonment imposed in the original sentence) for a fourth or subsequent technical violation;
- requires the court to hold a hearing on an application filed requesting a modification or reduction of a mandatory minimum sentence imposed, on or before September 30, 2017, for specified crimes generally involving the manufacture, sale, and distribution of a controlled dangerous substance (CDS);
- requires a designee of the Maryland Department of Health who conducts an assessment to determine the need for and benefit of drug treatment, as ordered by the court for a defendant with a substance use disorder, to be certified *or* licensed instead of certified *and* licensed;
- authorizes a person serving a term of confinement that includes a mandatory minimum sentence for an offense relating to drug distribution or volume dealing in less than 448 grams of cocaine base imposed on or before September 30, 2017, to

file a motion to modify or reduce the sentence under specified circumstances. Under Chapter 515, only a person serving a term of confinement that includes a mandatory minimum sentence imposed on or before September 30, 2017, for specified felony drug offenses may apply to the court to modify or reduce the mandatory minimum sentence;

- repeals the requirement that a petition for expungement of a misdemeanor conviction that has been transferred to another court be filed in the court of original jurisdiction from which the order of transfer was entered and retains the requirement for the petition to be filed in the court to which the proceeding was transferred. Chapter 515 duplicated the requirement that a petition for expungement of a *criminal charge* that has been transferred to the juvenile court be filed in the court of original jurisdiction from which the order of transfer was entered (the adult court); however, the provisions under which the language was added apply to specified misdemeanor *convictions*;
- requires the State's Attorney, instead of the court, to send written notice of the filing of an expungement request to each listed victim in the case at the victim's last known address, rather than the address listed in the court file;
- expands the membership of the advisory board to the Justice Reinvestment Oversight Board; and
- clarifies that a person *charged with* driving with a suspended license, as specified, must appear in court and may not prepay the fine, and that a person *convicted of* driving with a suspended license, as specified, is subject to a fine of up to \$500.

In addition, the bill alters the maximum sentence for obtaining, attempting to obtain, possessing, or distributing controlled paraphernalia related to CDS to be the same as the current sentence for controlled paraphernalia related to marijuana. The maximum sentence is reduced from imprisonment not exceeding four years and/or a \$25,000 fine to a maximum of one year imprisonment and/or a \$5,000 fine.

**Background:** Chapter 42 of 2015 established the Justice Reinvestment Coordinating Council (JRCC) within the Governor's Office of Crime Control and Prevention. JRCC was required to use a data-driven approach to develop a statewide policy framework for sentencing and corrections policies to further reduce the State's incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism. The council and its subcommittees met numerous times in 2015 to analyze criminal justice data and review relevant research. Based on its findings, JRCC developed a comprehensive set of recommendations intended to focus prison resources on serious and violent offenders, strengthen community supervision efforts, improve and enhance release and reentry practices, support local corrections systems, and ensure oversight and accountability.

Chapter 515 of 2016, the Justice Reinvestment Act, generally implemented many of the recommendations of JRCC by altering provisions relating to sentencing, corrections, parole, and offender supervision. In addition, the Justice Reinvestment Act (1) altered provisions relating to criminal gangs; (2) increased maximum penalties for second-degree murder and first-degree child abuse resulting in death; (3) modified provisions regarding drug treatment; (4) expanded expungement provisions; and (5) specified the manner for reinvestment of savings from the changes in incarceration policies. By October 1, 2017, all provisions of Chapter 515 had taken effect.

**State Revenues:** General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court instead of the circuit courts.

**State Expenditures:** Reducing penalties means that (1) such cases are likely to be filed in the District Court rather than the circuit courts and (2) persons move from serving sentences in State correctional facilities to local correctional facilities. Accordingly, it is assumed that this bill shifts an unknown number of cases from the circuit courts to the District Court. It is not known whether such a prospective shift may affect actual sentencing practices for this offense.

General fund expenditures decrease minimally as a result of the bill's reduction in the incarceration penalty for obtaining, attempting to obtain, possessing, or distributing controlled paraphernalia related to CDS due to fewer people being committed to State correctional facilities. Generally, only offenders sentenced in Baltimore City would be incarcerated in a State correctional facility for the offense. There were 21 Division of Correction intakes in 2018 for possession of controlled paraphernalia related to CDS; therefore, the number of people sentenced to a State correctional facility for this crime is expected to be minimal.

Any impact on other affected State agencies is not anticipated to materially affect State finances.

**Local Revenues:** Revenues decrease minimally as a result of the bill's monetary penalty provision and the shift in cases heard in the circuit courts to the District Court.

**Local Expenditures:** Expenditures increase minimally as a result of (1) the bill's requirement for State's Attorney offices to send notices regarding expungement requests to each listed victim in the case in which the petitioner is seeking expungement at the victim's last known address and (2) the bill's altered incarceration penalty, as violators are generally incarcerated in local correctional facilities instead of State correctional facilities. Counties pay the full cost of incarceration for people in their facilities for the first

12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** HB 1082 of 2018, a similar bill, passed with amendments in the House, passed with amendments in the Senate, and had a conference committee appointed, but no further action was taken. Its cross file, SB 593, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 1418 of 2017, a similar bill, passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Harford and Montgomery counties; Maryland Association of Counties; City of Havre de Grace; Maryland Municipal League; Governor's Office of Crime Control and Prevention; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510