

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1217

(Chair, Judiciary Committee)(By Request - Departmental  
- Office of Crime Prevention, Youth, and Victim  
Services)

Judiciary

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**Justice Reinvestment Act - Conditions of Release - Technical Revocation Caps**

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This departmental bill makes modifications to Chapter 515 of 2016, the Justice Reinvestment Act, relating to court procedures and sentencing for “technical violations.” In addition, the bill 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.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund expenditures for the Department of Public Safety and Correctional Services due to the ability for the court to depart from a specified maximum term of incarceration due to a technical violation under specified circumstances. Any impact on other affected State agencies is not anticipated to materially affect State finances. Revenues are not materially affected.

**Local Effect:** Minimal increase in local incarceration expenditures due to the ability for the court to depart from a specified maximum term of incarceration due to a technical violation under specified circumstances. Potential minimal operational impact on the circuit courts due to the changes to court procedures. Revenues are not affected.

**Small Business Effect:** The Governor’s Office of Crime Prevention, Youth, and Victim Services has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

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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. When determining whether adhering to the limits would create a risk to the parolee, MPC must consider specified factors, and before imposing a longer sentence, MPC must find and state on the record that MPC considered the required factors and that a longer period of imprisonment is the best alternative for reducing the risk to the parolee. “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. When determining whether adhering to the limits would create a risk to the inmate, MPC must consider specified factors, and before revocation of a greater number of diminution credits, MPC must find and state on the record that MPC considered the required factors and that revoking a greater number of diminution credits is the best alternative for reducing the risk to the inmate;
- 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, and authorizes a court to (1) 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 (2) impose any or all of the 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. When determining whether adhering to the limits would create a risk to the probationer or defendant, MPC (instead of the court) must consider specified factors and before imposing a longer period of imprisonment, MPC must

find and state on the record that MPC considered the required factors and that a longer period of imprisonment is the best alternative for reducing the risk to the inmate;

- authorizes a court to impose any or all of the unserved portion of a sentence originally imposed for a probationer or defendant, instead of any part that might have originally been imposed for a fourth or subsequent technical violation or a violation that was not technical; and
- authorizes a court, after finding that a defendant violated a condition of probation or for a fourth or subsequent technical violation, to sentence a defendant to any or all of the unserved portion of a sentence originally imposed, instead of all or any part of the period of imprisonment imposed in the original sentence.

**Background:** Chapter 42 of 2015 established the Justice Reinvestment Coordinating Council (JRCC) within the Governor’s Office of Crime Control and Prevention (now called the Governor’s Office of Crime Prevention, Youth, and Victim Services). 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.

**Local Expenditures:** Expenditures increase minimally as a result of the ability for the court to depart from specified maximum terms of incarceration due to a technical violation under specified circumstances. 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.

**Additional Comments:** It is unclear how, under the bill, the court makes a determination to depart from imposing specified maximum terms of incarceration due to a technical

violation under specified circumstances while MPC must consider the required factors for making the determination regarding adhering to the maximum limits on the period of incarceration for the creation of a risk.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** 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; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2020  
mr/lgc

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## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Justice Reinvestment Act – Conditions of Release**

BILL NUMBER: HB 1217

PREPARED BY: GOCCP

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

**OR**

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

### PART B. ECONOMIC IMPACT ANALYSIS

Minimal increase in local incarceration expenditures due to the bill's altered penalty provision.  
Potential minimal operational impact on circuit courts due to the changes in court proceedings.