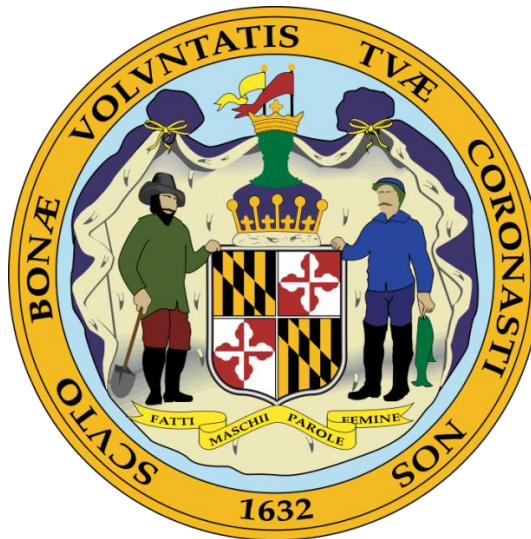


Practitioner Guide to SB1005

Maryland Justice Reinvestment Coordinating Council



Version as of January 2017

An Introduction to Senate Bill 1005 of 2016

In 2015, Governor Larry Hogan and Maryland lawmakers established the Justice Reinvestment Coordinating Council. The Council was charged with developing policies that would reduce both the State's incarcerated population as well as its spending on corrections, increase public safety, and reduce recidivism.

The Council, a diverse, bipartisan group of criminal justice stakeholders, included representatives from the judiciary, legislature, law enforcement, prosecutorial and defense bars, corrections agencies, and community. To fulfill the charge and develop recommendations, the Council completed a comprehensive analysis of the state's sentencing and community supervision data, assessed current policies, evaluated best practices in other states, and deliberated over policy recommendations.

The Council found that while Maryland had achieved declines in its incarceration and crime rates over the preceding decade, the state still incarcerated over 20,000 offenders. In 2014, the correctional system cost Maryland taxpayers \$1.3 billion annually, a 10 percent increase since 2006, adjusted for inflation. Additionally the Council found:

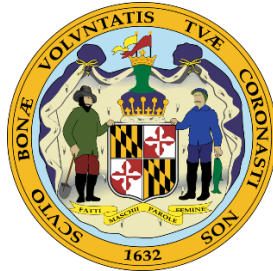
- 1) Nonviolent offenders made up almost 60 percent of those entering prison each year;
- 2) Fifty-eight percent of prison admissions were due to failures of probation or post-prison supervision; many for technical violations like missing an appointment or failing a drug test;
- 3) Offenders in Maryland were spending 23 percent longer behind bars than they were a decade ago, driven by a 25 percent increase in average sentence length; and,
- 4) Only 37 percent of those released from prison were paroled, and those offenders who were released on parole served an average of nine months past their initial eligibility date.

For six months, the Council reviewed data and research, assessed policies, evaluated best practices from other states, held four public hearings to field concerns about Maryland's justice system from community members and other criminal justice stakeholders, and conducted two victim roundtables. The Council ultimately developed 19 policy recommendations to focus prison space on serious and violent offenders, strengthen supervision practices, improve release and reentry procedures, and ensure oversight and accountability.

Many of those recommendations were enacted in Senate Bill 1005, which passed unanimously in the Senate and with strong bipartisan support in the House of Delegates. The bill was signed into law by Governor Hogan on May 19, 2016.

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Sentencing

Drug Sentencing

Drug Possession Offenses

Substance and Code	Previous Law		Current Law*	
	Conviction	Penalty	Conviction	Penalty
Controlled substance excluding marijuana CR § 5-601(c)(1)	Any conviction	0-4 years; \$25,000	1 st	0-1 year; \$5,000
			2 nd or 3 rd	0-18 months; \$5,000
			4 th or subsequent	0-2 years; \$5,000
Marijuana (>10 g) CR § 5-601(2))	Any conviction	0-1 year; \$1,000	Any conviction	0-6 months; \$1,000
Marijuana (<10 g) CR § 5-601(c)(2)(ii) and § 5-601.1	First conviction	civil offense; \$100	No change to existing law	
	Second conviction	civil offense; \$250		
	3 rd or subsequent	civil offense; \$500		

*Removes the ability of the court to double the sentence range under CR § 5-905 unless defendant was previously convicted of a violent crime under CR § 14-101

Substance Abuse Treatment Needs Assessment

Under existing law, when imposing a sentence under the drug possession statutes (CR § 5-601), the court may order the Department of Health and Mental Hygiene (DHMH) (or its licensed designee) to conduct an assessment to determine a defendant's substance abuse treatment needs. After the passage of SB 1005, the law now requires the court to state on the record the basis for a denial if an assessment is requested by the defendant and the court denies the request. Now, when DHMH (or designee) receives the order, a substance abuse disorder assessment must be conducted and the results will be provided to the court, the defendant, defendant's attorney, and the state's attorney identifying a treatment need.

The court now must consider the result of the assessment and either:

- Order probation thereby suspending the remainder of the sentence. If the assessment indicates a treatment need, the court will require DHMH (or a designee) to provide the medically appropriate level of treatment; or
- Sentence the individual to prison and order the Division of Corrections or local corrections to facilitate a medically appropriate level of treatment.

Commercial Drug Offenses

The conduct for the following commercial drug offenses includes: distribution, possession with intent to distribute (PWID), dispensing, equipment to produce CDS, counterfeit substance, keeping common nuisance, and false prescription.

Drug Offense (Statutory Reference)	Previous Law		Current Law	
	Conviction	Penalty*	Conviction	Penalty Φ
Controlled substances other than Sch. I or II narcotics and hallucinogens CR §5-607 violations of CR §5-602 – §5-606	1 st	0-5 years; \$15,000	1 st	0-5 years; \$15,000
	2 nd or subsequent	2-5 years; \$15,000	2 nd	0-5 years; \$15,000
			3 rd or subsequent	0-5 years; \$15,00
Selected Sch. I or II narcotics and hallucinogens CR §5-608 and §5-609 violations of CR §5-602 – §5-606	1 st	0-20 years; \$25,000	1 st	0-20 years; \$15,000
	2 nd	10-20; \$100,000 10 years MM with safety valve	2 nd	0-20 years; \$15,000
	3 rd	25 years, \$100,000 25 years MM with safety valve	3 rd	0-25 years; \$25,000
	4 th or subsequent	40 years; \$100,000 40 years MM with safety valve	4 th or subsequent	0-40 years; \$25,000
*Previous law: all offenders were eligible for parole at 25% of their sentence, after completing any mandatory time Φ Current law: for a first and second conviction, an offender is eligible for parole at 25% of their sentence; for third and subsequent convictions, an offender is eligible for parole at 50% of their sentence				

Retroactive Safety Valve (CR § 5-609.1)

In October 2015, a law went into effect that allowed judges the option of departing from a mandatory minimum sentence by applying a ‘safety valve’ if certain criteria was met. SB 1005 expanded this to apply retroactively. Judges have the ability to review cases that had been adjudicated with a mandatory minimum penalty on or before September 2017. Additionally, the new law shifts the burden to the prosecution to prove that the mandatory minimum sentence should be maintained. If they are unable, the judge can modify the offender’s current sentence. In order to participate:

- A person must be serving a mandatory minimum sentence imposed on or before September 30, 2017, for a violation of distribution, possession with intent to distribute, dispensing, manufacturing a drug, or creating false prescriptions (CR§ 5–602 through 5–606).

- The individual can only file one application for a hearing and once filed, the court shall notify the state’s attorney of a request for a hearing. The application must be submitted to the court or review panel on or before September 30, 2018, unless the defendant can show good cause.
- The court can modify the sentence and depart from the mandatory minimum sentence unless the state can prove that:
 - Maintaining the mandatory minimum sentence would not result in substantial injustice to the defendant; and
 - The mandatory minimum sentence is necessary for the protection of the public.

Volume Dealer Thresholds

The weight thresholds for crack cocaine and powder cocaine are equalized: CR § 5-612 established the threshold quantities of crack cocaine and powder cocaine at 448 g., up from 50 g. of crack cocaine for the purposes of prosecution under CR § 5-612 (“Volume dealer”) and CR § 5-613 (“Drug kingpin”).

Property Sentencing

Property Crime (Statutory Reference)	Previous Law		Current Law	
	Conviction / Amount	Penalty	Conviction / Amount	Penalty
Misdemeanor Theft (CR § 7-104(g)(2)-(4))	\$0-\$99	0-90 days; \$500	\$0-\$99	0-90 days; \$500
	1 st or 2 nd : \$100-\$999	0-18 months; \$500	1 st : \$100-\$1,499	0-6 months; \$500
	3 rd or subsequent: \$100 - \$999	0-5 years; \$5,000	2 nd or 3 rd : \$100-\$1,499	0-1 year; \$500
			5th or subsequent: \$0-\$1,499	0-5 years; \$5,000
Felony Theft (CR § 7-104(g)(1))	\$1,000-\$9,999	0-10 years; \$10,000	\$1,500-\$24,999	0-5 years; \$10,000
	\$10,000-\$99,999	0-15 years; \$15,000	\$25,000-\$99,999	0-10 years; \$15,000
	\$100,000 or more	0-25 years; \$25,000	\$100,000 or more	0-20 years; \$35,000

The current penalties for theft (CR § 7-104) described in the above chart extend to the offenses listed below:

Charging documents (CR § 7-108); Penalty [bad checks] (CR § 8-106); Obtaining property by counterfeiting, theft, or misrepresentation (CR § 8-206); Fraud—Honoring stolen or counterfeit credit card; false representation to issuer (CR § 8-207); Receiving property by stolen, counterfeit, or misrepresented credit card (CR § 8-209); Identity Fraud (CR § 8-301); Criminal penalty [medicaid fraud] (CR § 8-516); Trademark counterfeiting (CR § 8-611); Exploitation of vulnerable adults prohibited (CR § 8-801)

Transportation Sentencing

TR § 27-101: Removes the possibility of jail for driving with a suspended license (TR § 16-303 (h) or (i)) and establishes a fine of up to \$500.00, a requirement to appear in court, and a prohibition against prepaying the fine.

Statutory Reference	Previous Law	Current Law
License suspended under certain provision of article (TR § 16-303 (h))	0—2 months; up to \$500	(1) A fine of up to \$500; (2) Must appear in court; and (3) May not prepay the fine.
License suspended by another state for failure to appear or pay fine (TR § 16-303 (i))	0—2 months; up to \$500	(1) A fine of up to \$500; (2) Must appear in court; and (3) May not prepay the fine.

Sentencing Enhancements

- Second degree murder (CR § 2-204): maximum sentence is increased from 30 years to 40 years.
- First degree child abuse (CR § 3-601): if the violation results in the death of a victim under the age of 13 years, or if it is the second conviction under this section, the maximum sentence is imprisonment not exceeding life, up from a maximum of 40 years.
- Gang laws (RICO) (CR § 9-801):
 1. The definition of “enterprise”, for the purpose of gang activity, is expanded to include “a sole proprietorship, partnership, corporation, business trust, or other legal entity; or any group of individuals associated in fact although not a legal entity.”
 2. The underlying crimes used to establish gang status are expanded to include § 5-604, Counterfeit substance and § 5-606, False prescriptions
 3. The following sentence ranges and fines are enhanced:

Statutory Reference	Previous Law	Current Law
Coercing others to join gangs (CR § 9-802)	0-2 years; up to \$1,000	0-2 years; up to \$10,000
Coercing others to join gangs, in school zones (CR § 9-803)	0-4 years; up to \$4,000	0-4 years; up to \$20,000
Participate in gang activity (CR § 9-804(f)(1)(i))	0-10 years; up to \$100,000	0-15 years; up to \$1,000,000
Participate in gang activity, leading to a death (CR § 9-804(f)(1)(ii))	0-20 years; up to \$100,000	0-25 years; up to \$5,000,000
Gang leadership (CR § 9-805)	0-20 years; up to \$100,000	0-20 years; up to \$1,000,000

Under CR § 9-804:

1. Participation in businesses and business transactions, legal or otherwise, that relate to or profit from the underlying crimes that constitute the basis of gang prosecution are prohibited; also prohibits conspiracy to commit any of these activities.
2. The court can divest property, remove business licenses, and disband businesses of a group or an individual if it is found that the group or individual is a gang or the individual is a gang member.
3. The divested assets under this section are required to go into “The Addiction Treatment Divestiture Fund,” created under HG 8-6D-01.

Under CR § 9-805:

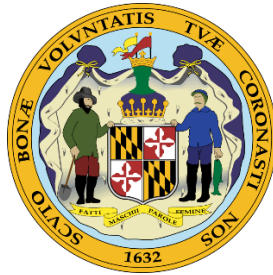
1. The definition of gang leadership is expanded to include “promot[ing]” and “sponsor[ing]” a criminal gang.

Under CR § 9-807:

1. Language is added to determine venues for prosecution based on where gang activities occurred, making prosecution possible in jurisdictions where gang-related acts were performed, business transacted, assets held, or an offender resides.

Under HG § 8-6D-01 (new section):

1. A fund for assets seized under the gang laws called the “Addiction Treatment Divestiture Fund” is established for the purpose of supporting addiction treatment services to persons with substance-related disorders.



Release and Rehabilitation

Risk and Needs Assessment and Case Planning

Division of Corrections

CS § 3-601 requires the Division of Corrections (DOC) under the Department of Public Safety and Correctional Services (DPSCS) to conduct a risk and needs assessment (as defined in CS § 6-101) on all state inmates and requires the results of the assessment be used to develop a case plan to guide an inmate's rehabilitation while under the custody of the DOC, including programming and treatment recommendations and a plan for the payment of restitution.

Parole Commission

CS § 7-305 language expands factors to be considered in determining parole eligibility to include compliance with an offender's individualized case plan, as developed under § 7-301.1 of this subtitle or § 3-601 of this article.

Diminution Credits

Diminution credits are expanded to provide more eligible programming and to allow more offenses to earn credits at a higher rate.

Statutory Reference	Credit Type	Previous Law		Current Law	
		General	Limitations	General	Limitations
State Facility					
Good Conduct CS § 3-704*	10 days/month	5 days/month:	10 days/month:	5 days/month:	
		• CR §14-101 (Crime of violence) • CR § 5-602—§ 5-609 (Distributing, possessing with intent to distribute, or dispensing controlled dangerous substance (CDS); Equipment to produce CDS; Counterfeit substance; Keeping common nuisance; False prescription) • CR § 5-612 (Volume dealer) • CR § 5-613 (Drug kingpin) 0 days/month: • Certain sex offenses**		• CR §14-101 (Crime of violence) • CR § 5-612 (Volume dealer) • CR § 5-613 (Drug kingpin) 0 days/month: • Registerable sex offense***	

Education CS § 3-706	5 days/month	0 days/month: • Certain sex offenses**	5 days/month: Adds the following programs: • Workforce development training • Cognitive-behavioral therapy • Substance abuse therapy	0 days/month: • Registerable sex offense***
Special Programs/Recidivism Reduction CS § 3-707*	Up to 10 days/month	0 days/month: • Certain sex offenses**	Up to 20 days/month: Adds “Recidivism reduction programming” to criteria for earning credits under this section	10 days/month: • CR §14-101 (Crime of violence) • CR § 5-612 (Volume dealer) • CR § 5-613 (Drug kingpin) • Registerable sex offense***
Cap CS § 3-708*	20 days/month cap on possible dim. credits	0 days/month: • Certain sex offenses**	30 days/month cap on possible dim. credits	20 days/month: • CR §14-101 (Crime of violence) • CR § 5-612 (Volume dealer) • CR § 5-613 (Drug kingpin) • Registerable sex offense***
Local Detention Center				
Good Conduct CS § 11-504	5 days/month	0 days/month: • Certain sex offenses**	10 days/month	5 days/month: • CR §14-101 (Crime of violence) • CR § 5-612 (Volume dealer) • CR § 5-613 (Drug kingpin) 0 days/month: • Certain sex offenses**

* Applies only prospectively to inmates that are sentenced on or after October 1, 2017.

** First or second degree rape or sex offense against victim under 16 (CR § 3-303, § 3-304, § 3-305, or § 3-306); repeat offender – 3rd degree sex offense against victim under 16 (CR § 3-307); violation of lifetime sexual offender supervision (CP §11-724(c))

***Sexual offense for which registration is required under Title 11, Subtitle 7 of the Criminal Procedure article, which includes all of the “certain sexual offenses” listed above

Diminution credits for mandatory supervision revocations:

CS § 7-504 Allows inmates who are released on mandatory supervision and then revoked back to prison for committing a violation can earn any diminution credits for which they are otherwise eligible.

Administrative Release

CS § 7-301.1 Establishes an “administrative release” mechanism allowing certain inmates to be released at their parole eligibility date (typically after serving one-fourth of their sentence), without a hearing, if:

- The inmate complies with their individualized case plan (CS § 3-601), which could include conditions that apply after release;
- The inmate has not committed a Category 1 rule violation as defined in 12.02.27.04 of COMAR;
- A victim (defined below) has not requested a hearing; and
- The Parole Commission finds a hearing unnecessary considering the inmate’s history, progress, and compliance.

Eligibility

In order to be eligible for administrative release, an inmate must:

- Be sentenced to a term of 6 months or longer;
- Be serving a sentence for which the most serious offense is:
 - a lower level drug crime (possession, distribution, PWID, dispensing, equipment to produce CDS, counterfeit substance, keeping common nuisance, false prescription (CR §5-601 through § 5-606)); or,
 - a misdemeanor property crime (violation involving a value of \$1,500 or less of CR § 7-104, § 8-103, § 8-206, § 8-207, § 8-209, § 8-301, § 8-509, § 8-510, § 8-511, § 8-512, § 8-513, § 8-514, § 8-515, § 8-611, or § 8-801);
- Not have a previous conviction for a violent crime as defined in CS § 7-101, or a registerable sex offense under CP Title 11, Subtitle 7;
- Not have two or more convictions for commercial drug crimes: distribution, PWID, dispensing, equipment to produce CDS, counterfeit substance, keeping common nuisance, false prescription (CR § 5-602 -606); and
- If serving a mandatory minimum, has served the mandatory portion of the sentence.

Victim Notification

Victims have a right to receive notification of an inmate’s eligibility for administrative release, and may request a hearing. If the victim requests a hearing, the inmate is no longer eligible for administrative release, but still eligible for parole under the conditional parole release process.

For the purposes of administrative release, a “victim” is:

1. Defined as the person who is a victim of a crime committed by an eligible inmate, or if deceased, their designee;
2. Notwithstanding the limitations on who is considered a victim in CS § 7–801 of this title, for purposes of this section, a victim has all the rights under this section that are granted to a victim under this title for a parole hearing, and as provided in CS § 7–801 of this title, the Parole Commission shall notify a victim of:
 - a. The inmate’s administrative release eligibility date;
 - b. The victim’s right to request an open hearing under CS § 7–304; and
 - c. The victim’s right to submit written testimony concerning the crime and the impact of the crime on the victim.

*For more clarification on the definition of victim for the purposes of different code sections, see Appendix C.

Process for State Inmates

1. The DOC shall conduct a risk and needs assessment for a state inmate and develop a case plan in accordance with CS § 3-601.
2. The Parole Commission shall:
 - a. Conduct an investigation to determine an inmate’s eligibility for administrative release;
 - b. Determine the conditions under which an eligible inmate may be released;
 - c. Calculate a tentative release date;
 - d. Provide written input on an inmate’s progress; and,
 - e. Decide based on their investigation and the progress reports submitted by the DOC whether to hold a hearing, considering the inmate’s history, progress, and compliance.
3. For eligible inmates, the DOC shall:
 - a. Review progress of an eligible inmate’s case plan every 8 weeks from the date of case plan development;
 - b. Send a progress report to the Parole Commission every 4 months; and,
 - c. Send a progress report to the Parole Commission on an inmates’ compliance or noncompliance with the case plan at least 30 days before an inmate’s tentative administrative release eligibility date.

An eligible inmate who is not released on administrative release under this section is still eligible for release on parole as provided under Title 7, Subtitle 3.

Process for Local Inmates

1. Local correctional facilities shall:
 - a. Review progress of an eligible inmate’s case plan every 8 weeks from date of case plan development;
 - b. Send a progress report on each eligible inmate to the Parole Commission every four months; and,
 - c. Send a progress report to the Parole Commission of an eligible inmates’ compliance or noncompliance with the case plan at least 30 days before inmate’s tentative admin release eligibility date.

2. The Parole Commission shall:
 - a. Conduct an investigation to determine a local inmate's eligibility for administrative release;
 - b. Develop an individual case plan with which an eligible inmate must comply in order to be released on administrative release.
 - c. Determine the conditions under which an eligible inmate may be released;
 - d. Calculate a tentative release date;
 - e. Provide written input on inmate's progress; and,
 - f. Decide based on their investigation and the progress reports submitted by local corrections whether to hold a hearing, considering the inmate's history, progress, and compliance.

An eligible inmate who is not released on administrative release under this section is otherwise eligible for release as provided under Title 7, Subtitle 3.

Parole Changes

Parole eligibility for commercial drug crimes

CS § 7-301 changes parole eligibility from 25% of sentence served to 50% of sentence served for a third or subsequent conviction of a felony violation of Title 5, Subtitle 6 of the Criminal Law article ("Crimes Involving CDS") committed on or after October 1, 2017. Offenses affected under the new law include:

Offenses no longer subject to mandatory minimum terms for subsequent offenses:

- Distribution; possession with intent to distribute; dispensing; manufacture of drugs; and false prescriptions of controlled substances other than selected Sch. I or II narcotics and hallucinogens: (CR §5-607 violations of CR §5-602 – §5-606)
- Distribution; possession with intent to distribute; dispensing; manufacture of drugs; and false prescriptions of selected Sch. I or II narcotics and hallucinogens (CR §5-608 and §5-609 violations of CR §5-602 – §5-606)

Offenses previously carrying no mandatory minimum term:

- Importer of controlled substances (CR §5-614)
- Distributing fake controlled substance (CR §5-617)
- Possessing firearm with previous drug felonies (CR §5-622)
- Use of proceeds of a drug crime (CR §5-623)
- Use of a minor in a drug crime (CR §5-628)

Offenses still carrying mandatory minimum terms for first and/or subsequent offenses:

- Volume dealer (CR §5-612)
- Drug kingpin (CR §5-613)
- Use of a weapon as a separate crime (CR §5-621)
- Distribution of controlled substance near school (CR §5-627)

Medical Parole

CS § 7-309 requires inmates to be chronically disabled in order to be released on medical parole; expands the information to be considered by the Parole Commission before granting medical parole to include a recommendation by the medical professional treating the inmate under contract with DPSCS, and if requested by an inmate or their designee, a medical evaluation conducted by a medical professional independent from the Division of Corrections, at no cost to the inmate.

If the Parole Commission grants medical parole to an inmate sentenced to life, the decision shall be transmitted to the Governor; the Governor may disapprove, but if the Governor takes no action within 180 days of the transmittal of the Parole Commission's decision, the offender will be released on medical parole.

Geriatric Parole

CR §14-101 modifies the eligibility criteria for geriatric parole by lowering the age to 60 years old (after serving 15 years of the sentence imposed) from 65. It also excludes offenders convicted of a registerable sex offense under Title 11, Subtitle 7 of Criminal Procedure article from geriatric parole. All eligible offenses remained the same.

Certificate of Rehabilitation

CS § 7-104 Allows first-time, nonviolent offenders (excluding registerable sex offenders) who have successfully completed their supervision term to apply for a certificate of rehabilitation. Once granted, professional licensing boards may not deny an occupational license to the recipient unless the licensing board determines that the conviction relates directly to the license sought, or the issuance of the license would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. An individual may receive only one certificate of rehabilitation per lifetime.

DPSCS responsibilities: The Department shall adopt regulations establishing an application and review process for a certificate of rehabilitation that allows the state's attorney and the victim to object to the issuance of the certificate of rehabilitation.

Expungement

CP § 10-110 allows individuals to file petitions for expungement of a police record, court record, or other government record for the convictions listed in Appendix D.

A petition may not be filed sooner than 10 years after completing the sentences and supervision periods for all the convictions for which expungement is sought. For a charge of Assault in the second degree (CR § 3-203) and certain domestically related crimes (defined in CP § 6-233), the petitioner must wait 15 years before he/she would be eligible for expungement.

Eligibility

- The individual applying for expungement cannot have a new conviction during the intervening period (10 years for most offenses, 15 years for Assault in the second degree and certain domestic offenses);
- The offender may not have any pending criminal proceedings; and,
- If an individual is convicted of more than one offense in a single criminal event and one of those convictions is not eligible for expungement, no offense in the criminal event will be eligible for expungement.

Process

1. The court shall serve a copy of the petition on the state's attorney and eligible victims, advising them of the right to offer information relevant to the petition.
2. If no objection is filed by the SA or victim within 30 days, the court shall pass an order requiring the expungement.
3. If an objection is filed, the court shall hold a hearing, and shall order the expungement if the court finds and states on the record:
 - a. That the conviction and the individual are eligible;
 - b. That considering the nature of the crime, the history and character of the person, and the person's success at rehabilitation, the person is not a risk to public safety; and
 - c. That an expungement would be in the interest of justice.
4. The SA is party to the proceedings.
5. A party aggrieved by the decision of the court is entitled to the appellate review as provided in the courts article.
6. Unless an order is stayed pending appeal, within 60 days after entry of the order, the expungement shall be executed and the court and the petitioner shall be notified.

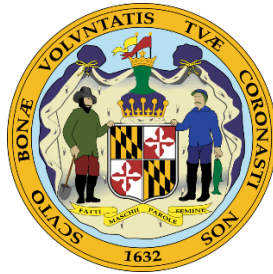
Restitution

Current law requires that an inmate's earnings will be withheld and applied to:

- The reimbursement of a county or state for providing food, lodging, and clothing (if required by law);
- Support of dependents; and
- Restitution;

Furthermore, CS § 9-614 (d) withholds 20% of an inmate's earnings and directs those funds toward crime victims compensation, if that inmate is part of a particular federal prison program.

SB 1005 additionally requires that any inmate that has an unsatisfied judgment of restitution will have 25% of their earnings withheld for the compensation of victims of crime, if the inmate falls into the category described in CS § 9-614 (d).



Community Supervision

Evidence-Based Practices

SB 1005 made a number of changes in how community supervision is conducted. Specifically, the Division of Parole and Probation (DPP) is required to use methods that are consistent with evidence-based programs and practices to aid and encourage a probationer or parolee to improve conduct, reduce the risk of recidivism, and pay restitution.

To inform these practices, DPP probation and parole agents and supervisors, Parole Commission members, and hearing officers will receive annual training on evidence-based practices that include: identifying, understanding, and targeting an individual's criminal risk factors; principles of effective risk interventions; and supporting and encouraging compliance and behavior change, including the payment of restitution.¹ DPP agents will learn to use the results of a risk and needs assessment tool to inform decision, as well as to help them develop a case plan for each individual.²

Earned Compliance Credits

One evidence-based practice is the use of incentives to foster compliance. Maryland already allowed individuals on probation and parole to earn credits off of their supervision term if they were compliant with the terms and conditions of their supervision. However, SB 1005 now requires DPP to automatically transfer nonviolent probationers, parolees, and mandatory releasees who have earned enough credits to satisfy their active term of supervision to unsupervised probation or parole, where they will not be required to report regularly or pay supervision fees.³ In addition, under SB 1005, low-level commercial drug offenses are no longer excluded from earning compliance credits (§§ 5-602 through 5-611, and §§ 5-615 through 5-617). All offenders not eligible include: those convicted for a crime of violence under § 14-101; sex crimes under Title 3, Subtitle 3 of the Criminal Law Article and a person eligible for registration under Title 11, Subtitle 7 of the Criminal Procedure Article; and, high level drug offenses under §§5-612 through 5-614, 5-627, and 5-628.

Technical Violations and Graduated Sanctions

In Maryland, there were no uniform practices in revoking probation or parole for a technical violation. SB 1005 directed the DPP to develop a system of graduated sanctions so that probation and parole agents can be responsive to technical violations. These sanctions would only include noncustodial sanctions, any custodial request would need to be determined by the governing authority – the court or Parole Commission.⁴

¹ CS § 6-120

² CS §6-104 and 6-111

³ CS §6-117

⁴ CS §§ 6-111, 6-121, and 6-104

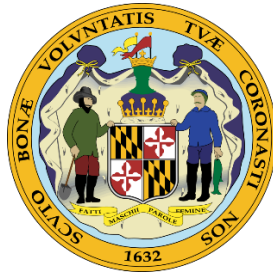
Revocation limitations⁵

SB 1005 established limitations on how the Parole Commission or the court can sentence when adjudicating a technical violation of parole, probation, or mandatory supervision. To follow is the sentencing structure upon revoking an order of parole or probation:

- First technical violation: period of imprisonment of not more than 15 days;
- Second technical violation: period of imprisonment of not more than 30 days;
- Third technical violation: period of imprisonment of not more than 45 days; and
- Fourth and subsequent technical violation: period of imprisonment up to the remainder of the sentence authorized by law.

If a Commissioner or Judge finds that adhering to the limits on the period of imprisonment would create a risk to public safety, a victim, or a witness, the adjudicator can impose a longer period of imprisonment than provided under the caps or commit the supervisee to DHMH for treatment.

⁵ CS §§ 7-401, 7-504, 6-223, 6-224



Oversight and Reinvestment

Justice Reinvestment Oversight Board

In order to monitor progress and compliance of SB 1005, the legislation established an Oversight Board. It will be housed in the Governor's Office of Crime Control and Prevention (GOCCP) and staffed by GOCCP. The Governor will appoint the Chair of the Board and the Board is required to meet at least quarterly each year. Membership will consist of:

- One member of the Senate of Maryland, appointed by the President of the Senate (serving in an advisory capacity only);
- One member of the House of Delegates, appointed by the Speaker of the House (serving in an advisory capacity only);
- The Executive Director of GOCCP, or the ED's designee;
- The Secretary of Public Safety and Correctional Services, or the Secretary's designee;
- The Chair of the Maryland Parole Commission, or the Chair's designee;
- The Secretary of State Police, or the Secretary's designee;
- The Attorney General, or the Attorney General's designee;
- The Public Defender, or the Public Defender's designee;
- The Secretary of Budget and Management, or the Secretary's designee;
- The Secretary of Health and Mental Hygiene, or the Secretary's designee;
- The Chair of the Local Government Justice Reinvestment Commission, or the Chair's designee;
- Two members appointed by the Chief Judge of the Court of Appeals(serving in an advisory capacity only);
- The Secretary of Labor, Licensing, and Regulation, or the Secretary's designee;
- One member appointed by the Maryland Chiefs and Sheriffs Association;
- The President of the Maryland State's Attorneys' Association or the President's designee;
- Two members of the Maryland Correctional Administrators Association, appointed by the President of the Maryland Correctional Administrators Association, including one representative from a large correctional facility and one representative from a small correctional facility;
- The President of the Maryland Association of Counties or the President's designee; and
- The following individuals, appointed by the Governor:
 - One member representing victims of crime;
 - One member representing law enforcement;
 - Two local health officers; and
 - One member with direct experience teaching inmates in academic programs intended to achieve the goal of a high school diploma or general educational development certification.

Additionally, the Board will establish an Advisory Board, to support and assist in sustaining reform efforts. The make-up of the advisory board follows:

- A representative of the exclusive representative of the employees of the Division of Parole and Probation;
- A representative of the NAACP;
- A representative of Casa de Maryland;
- A representative of the ACLU;
- The Chair of the Criminal Law and Practice section of the Maryland State Bar Association or the Chair's designee;

- A representative of victims of domestic violence;
- A representative of victims of sexual assault;
- A representative with clinical experience and expertise in behavioral health and criminal justice;
- A representative of the Maryland Retailers Association;
- A representative of an organization whose mission is to develop and advocate for policies and programs to increase the skills, job opportunities, and incomes of low-skill, low-income workers and job seekers;
- A representative of an organization whose mission is to advocate for ex-offenders; and
- A representative of the Maryland Chamber of Commerce.

Finally, the Board will make an annual report to the Governor and General Assembly on its activities including the progress toward implementation of the Justice Reinvestment Act and the projected financial impact of the implementation of this Act on local jurisdictions and correctional facilities. Codified in the bill, the Board will determine annual savings from the Act based on the difference in the prison population from October 1, 2017 (the baseline day) to October 1 of the current year being calculated; and then multiplied by the variable cost. The Board will recommend that half of the savings be directed toward the performance incentive grant fund and the remainder will go to additional services identified by the Justice Reinvestment Coordinating Council.

Studies

SB 1005 included the commission of a number of studies to help inform policy makers in other areas of the criminal justice system; the studies and the purpose of each follow:

Study	Purpose	Report Date
GOCCP Gap Analysis	To authorize the Governor's Office of Crime Control and Prevention, in coordination with DPSCS, DHMH, the Judiciary, public health and treatment professionals, and local corrections authorities, to conduct an analysis to determine the gap between offender treatment needs and available treatment services in the State, including a feasibility study of local substance abuse and mental health treatment capacity and a plan for how a sequential intercept model could be used to address the gap to report to the General Assembly with analysis and recommendations.	December 31, 2016
GOCCP Restitution Study	To authorize the Governor's Office of Crime Control and Prevention to: • Study the restitution collection process in the state • Identify the appropriate agency to oversee restitution collection • Recommending methods for enforcement and data collection on restitution payment • Determine whether the Criminal Injuries Compensation Board and any other victim services programs should be transferred to another entity • Review the classifications for larceny-theft under the Uniform Crime Reporting Program to determine how to distinguish shoplifting offenses from theft by organized retail crime rings and report its findings and recommendations to the Governor and General Assembly. Requires that unless the Governor determines that transferring the collection of restitution from the Division of Parole and Probation to another State unit will not improve the collection of restitution, the Governor shall order a new State unit to assume the responsibility of collecting restitution by issuing an executive order to that effect for the 2017 regular session of the General Assembly.	December 1, 2016
MACRO Study	To authorize the Maryland Mediation and Conflict Resolution Office to identify and report on the best practices for criminal referrals to mediation, based on experience across the state and research, and submit a report of its findings and recommendations to the Justice Reinvestment Oversight Board, the Governor, and the General Assembly.	January 1, 2017
Employment Study	To authorize that DHMH, the Department of Labor, and DPSCS cooperate with business organizations and nonprofits to review and make recommendations to the Governor and the General Assembly regarding potential barriers to employment, licensing, and entrepreneurship for individuals with a criminal record, with the objective of promoting the State's policy of encouraging employment of workers with a criminal record by removing barriers for applicants seeking to demonstrate fitness for occupational licenses.	December 31, 2016
Local Budgetary Needs Analysis	To authorize that local correctional facilities shall, in coordination with DHMH and local health departments, conduct an analysis to determine the budgetary requirements of this Act and shall report a plan for meeting the budgetary requirements to the General Assembly.	December 31, 2016

Appendix

A. New Definitions

Term	Definition	Code Section	Policy Area
Abatement	An end to active supervision of a supervised individual, without effect on the legal expiration date of the case or the supervised individual's obligation to: (i) obey all laws; and (iii) obtain written permission from the Division of Parole and Probation before relocating the supervised individual's residence outside the State. Individuals on abatement may not be required to regularly report to a parole or probation agent or pay a supervision fee.	CS § 6-117	Earned Compliance Credits
Absconding	Willfully evading supervision, not including missing a single appointment with a supervision authority	CS § 6-101	Revocation Caps
Administrative release	A mechanism which allows certain eligible inmates to be released on parole, without a hearing, after serving one-fourth of their sentence if certain conditions are met.	CS § 7-301.1	Administrative Release
Criminal risk factors	An individual's characteristics and behaviors that (1) affect the individual's risk of engaging in criminal behavior; and (2) are diminished when addressed by effective treatment, supervision, and other support services, resulting in a reduced risk of criminal behavior.	CS § 6-101	Risk and Needs Assessment and Case-Planning
Evidence-based programs and practices	Programs proven by scientific research to reliably produce reductions in recidivism.	CS § 6-119	Evidence-Based Practices
Innovative programs and practices	Programs that do not meet the standard of evidence-based practices but which preliminary research or data indicates will reduce the likelihood of offender recidivism.	CS § 6-119	Evidence-Based Practices
Risk and needs assessment	An actuarial tool validated on the state's correctional population that determines (1) an individual's risk of reoffending; and (2) the criminal risk factors that, when addressed, reduce the individual's risk of reoffending.	CS § 6-101	Risk and Needs Assessment and Case-Planning
Technical violation	A violation of a condition of probation, parole, or mandatory supervision that does not involve: • An arrest or a summons issued by a Commissioner or 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; • Absconding.	CS § 6-101	Revocation Caps
Victim	A person who is the victim of a crime committed by an inmate eligible for administrative release, or if deceased, the victim's designee.	CS § 7-301.1	Administrative Release

B. Violent Crime Defined

A crime of violence is defined in different ways throughout the code. Below are the definitions of violence relevant to the changes in SB1005.

Statutory Reference	Definition	Relevant Usage
Criminal law Title 14. General sentencing provisions Subtitle 1. Sentencing § 14-101	• abduction; • arson in the first degree; • kidnapping; • manslaughter, except involuntary manslaughter; • mayhem; • maiming, as proscribed under former Article 27, §§ 385 and 386 of the Code; • murder; • rape; • robbery under § 3-402 or § 3-403 of this article; • carjacking; • armed carjacking; • sexual offense in the first degree; • sexual offense in the second degree; • use of a handgun in the commission of a felony or other crime of violence; • child abuse in the first degree under § 3-601 of this article; • sexual abuse of a minor under § 3-602 of this article if: ○ the victim is under the age of 13 years and the offender is an adult at the time of the offense; and ○ the offense involved: ▪ vaginal intercourse, as defined in § 3-301 of this article; ▪ a sexual act, as defined in § 3-301 of this article; ▪ an act in which a part of the offender's body penetrates, however slightly, into the victim's genital opening or anus; or ▪ the intentional touching, not through the clothing, of the victim's or the offender's genital, anal, or other intimate area for sexual arousal, gratification, or abuse; • an attempt to commit any of the crimes described above • continuing course of conduct with a child under § 3-315 of this article; • assault in the first degree; • assault with intent to murder; • assault with intent to rape; • assault with intent to rob; • assault with intent to commit a sexual offense in the first degree; and	• Diminution credit exclusions • Certificate of rehabilitation exclusions • Doubler section inclusion for CDS crimes

	assault with intent to commit a sexual offense in the second degree.	
Correctional services Title 7. Parole, release on mandatory supervision, and executive clemency CS § 7-101	- Any crime listed in CR § 14-101 - Burglary in the 1st, 2nd, and 3rd degree	- Parole eligibility (50% for violent, 25% nonviolent) - Administrative release exclusion
Correctional services Title 6. Parole and probation CS § 6-101	Any crime listed in CR § 14-101	Earned compliance credits exclusion
Department of Public Safety and Correctional Services “Person Crimes” COMAR	- Includes many offenses that are not listed in CR § 14-101, including conspiracy, solicitation, accessory, to crimes that are included in CR § 14-101 2nd degree assault is the most common of these offenses that is not considered violent for the purposes of parole and supervision	Statistical purposes

C. Victim Defined

Purpose	Definition	Statutory Reference	Summary
MEDEC Registry (existing)	For the purposes of registering as a victim for notification in the MEDEC system, "victim" means a person who suffers actual or threatened physical, emotional, or financial harm as a direct result of a crime or delinquent act under CP § 11-104 (4).	CP § 11-104 (4)	Applies to a victim of any crime which causes harm.
Conditional parole hearings (existing)	For the purposes of conditional parole hearings (receiving notice of hearing, submitting statements, and appearing at hearings) under CS § 7-304 and CS § 7-801, “victim” means: - an individual who suffers personal physical injury or death as a direct result of a crime; - a victim of child abuse under § 3-601 or § 3-602 of the Criminal Law Article; - a victim of a violent crime (defined in this title as any crime listed in CR § 14-101 or Burglary 1, 2, or 3); or - if the victim is deceased, disabled, or a minor, a designated family member or other representative of the victim.	CS § 7-304 and CS § 7-801	Applies to a victim of a violent crime, a crime which causes physical/death, or child abuse.
Administrative release (new)	Under SB1005, in the new administrative release section, a “victim” is defined as the person who is a victim of a crime, or if deceased, their	CS § 7-301.1	Applies to a victim of any crime.

	designee; notwithstanding the definitions of “victim” given in the existing parole section under CS § 7-801, for purposes of this section, a victim has all the rights under this section that are granted to a victim under CS § 7-304, including the right to request an open hearing and submit written testimony concerning the crime and the impact of the crime on the victim.		
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D. Offenses eligible for expungement

Article	Statutory Reference	Statutory Description*
Alcoholic Beverages	§ 6-320	Disorderly intoxication
Business Occupations and Professions	§ 17-613(a)	Real estate brokers penalties
Business Regulation	§ 5-712	Preneed burial contracts prohibited acts/penalties
	§ 19-304	Returnable containers and returnable textiles prohibited acts/penalties
	§ 19-308	Returnable containers and returnable textiles purchase of secondary packaging
	Title 5, Subtitle 6 or Subtitle 9	Cemeteries prohibited acts
Courts	§ 3-1508	Peace orders penalties
	§ 10-402	Interception of communications generally
Commercial Law	§ 14-1915	Credit services business act fines and punishments
	§ 14-2902	False and fraudulent advertising
	§ 14-2903	Bait and switch
Criminal Procedure	§ 5-211	Failure to surrender after forfeiture of bail or recognizance
Criminal Law	§ 3-203	Assault in the second degree
	§ 3-808	Filing fraudulent liens prohibited
	§ 5-601	Possessing or administering controlled dangerous substance
	§ 5-618	Possession or purchase of non-controlled substance
	§ 5-619	Drug paraphernalia
	§ 5-620	Controlled paraphernalia
	§ 5-703	Unsolicited mailing
	§ 5-708	Prohibited inhalants
	§ 5-902	Criminal and civil liability prohibited acts
	§ 6-105	Malicious burning of personal property in the second degree
	§ 6-108	Burning trash container

	§ 6-206	Breaking and entering motor vehicle -- Rogue and vagabond
	§ 6-303	Public utility interference -- Electrical equipment
	§ 6-306	Serial number -- Alteration and sale of good
	§ 6-307	Serial number -- Possession and use
	§ 6-402	Trespass on posted property
	§ 6-503	Unauthorized access to railroad vehicle
	§ 7-104	General theft provisions
	§ 7-203	Unauthorized removal of property
	§ 7-205	Failure to return rental vehicle
	§ 7-304	Obtaining telephone records without authorization prohibited
	§ 7-308	Prohibited transfer of recorded sounds or images
	§ 7-309	Recorded articles penalty
	§ 8-103	Obtaining property or services by bad check
	§ 8-206	Obtaining property by counterfeiting, theft, or misrepresentation
	§ 8-401	Fraudulent conversion of partnership assets
	§ 8-402	Fraudulent misrepresentation by corporate officer or agent
	§ 8-404	Pyramid promotional schemes
	§ 8-406	Misuse of documents of title
	§ 8-408	Unlawful subleasing of motor vehicles
	§ 8-503	Public assistance fraud
	§ 8-521	Fraudulently obtaining legal representation from Public Defender's office
	§ 8-523	Housing assistance -- Knowingly making false statement
	§ 8-904	Racing horse under false name
	§ 9-204	Bribery of person participating in or connected with athletic contest
	§ 9-205	Acceptance of bribe by person participating in or connected with athletic contest
	§ 9-503	False statement -- To public official concerning crime or hazard
	§ 9-506	Maryland Higher Education Commission fund application -- False or concealed material fact
	§ 10-110	Litter Control Law
	§ 10-201	Disturbing the public peace and disorderly conduct
	§ 10-402	Removing human remains without authority
	§ 10-404	Cemetery -- Destroying funerary objects; indecent conduct
	§ 10-502	Bigamy
	§ 11-306(a)	House of prostitution
	§ 12-102	Betting, wagering, gambling, etc.

	§ 12-103	Playing certain games
	§ 12-104	Gaming device, or building, vessel, or place for gambling
	§ 12-105	Gambling on vessel or building or other structure on or over water within the State
	§ 12-109	Prearrangement or predetermination of horse race results
	§ 12-203	Sales and draw of lottery devices
	§ 12-204	Location of sales or barter of lottery devices
	§ 12-205	Possession of lottery device and records
	§ 12-302	Possession or operation of slot machine
Election Law	§ 13-401	Campaign materials -- authority line
	§ 13-602	Campaign finance prohibited acts
	§ 16-201	Offenses related to voting
Family Law	§ 4-509	Household violence penalties
Health - General	§ 18-215	Disease prevention -- Penalties for failure to file reports or making unauthorized use of reports of confidential information
Human Services	§ 4-411	(Title 4 of the Human Services Article does not include these statutes. Rather include codes §§ 4-101, 4-201 through 4-207, and 4-301 through 4-304)
	§ 4-2005	
Insurance Article	§ 27-403	Failure to return premiums; false or misleading claims
	§ 27-404	Doing business with unlicensed persons
	§ 27-405	Representations to public by unlicensed persons
	§ 27-406	False applications and statements; unregulated insurers
	§ 27-406.1	Fraudulent insurance acts of individual sureties
	§ 27-407	Solicitation
	§ 27-407.1	Intentional motor vehicle accident
	§ 27-407.2	Compensation for deductible
Public Safety	§ 5-307	Handgun permits -- scope of permit
	§ 5-308	Handgun permits -- Possession of permit required
	§ 6-602	State fire prevention commission and state fire marshal -- interference, obstruction or false representation
	§ 7-402	Fire, rescue, or emergency medical services entities -- interference, obstruction, or false representation prohibited; penalty
	§ 14-114	Maryland Emergency Management Agency Act -- prohibited acts; penalties
Real Property	§ 7-318.1	Protection of homeowners in foreclosure act -- violations
	§ 7-509	Maryland Mortgage Assistance Relief Services Act -- Penalties
	§ 10-507	Custom Home Protection Act -- Violations
State Government	§ 9-124	State lottery and gaming control agency -- Prohibited acts; penalties
Tax - General	§ 13-1001	Willful failure to file return

	§ 13-1004	False return or false claim for refund by income tax return preparer
	§ 13-1007	Violations of income tax withholding requirements
	§ 13-1024	Willful failure to provide information
Common Law	Affray, Rioting, Criminal Contempt, Hindering	

*Includes an attempt, a conspiracy, or a solicitation of any offense listed above