

Limited Incarceration for Parole "Technical Violations" with Public Safety / Victim Exception –CP Art., §6-223 and 6-224.

d States; or

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(Q) "TECHNICAL VIOLATION" HAS THE MEANING STATED IN § 6-101 OF THE CORRECTIONAL SERVICES ARTICLE.

6-223.

(a) A circuit court or the District Court may end the period of probation at any time.

(b) On receipt of written charges, filed under oath, that a probationer or defendant violated a condition of probation during the period of probation, the District Court may, during the period of probation or within 30 days after the violation, whichever is later, issue a warrant or notice requiring the probationer or defendant to be brought or appear before the judge issuing the warrant or notice:

(1) to answer the charge of violation of a condition of probation or of suspension of sentence; and

(2) to be present for the setting of a timely hearing date for that charge.

(c) Pending the hearing or determination of the charge, a circuit court or the District Court may remand the probationer or defendant to a correctional facility or release the probationer or defendant with or without bail.

(d) If, at the hearing, a circuit court or the District Court finds that the probationer or defendant has violated a condition of probation, the court may:

(1) revoke the probation granted or the suspension of sentence; and

(2) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, FOR A TECHNICAL VIOLATION, IMPOSE A PERIOD OF INCARCERATION OF:

1. NOT MORE THAN 15 DAYS FOR A FIRST TECHNICAL VIOLATION;

2. NOT MORE THAN 30 DAYS FOR A SECOND TECHNICAL VIOLATION; AND

3. NOT MORE THAN 45 DAYS FOR A THIRD TECHNICAL VIOLATION; AND

1 (II) FOR A FOURTH OR SUBSEQUENT TECHNICAL VIOLATION OR
 2 A VIOLATION THAT IS NOT A TECHNICAL VIOLATION, impose any sentence that might
 3 have originally been imposed for the crime of which the probationer or defendant was
 4 convicted or pleaded nolo contendere.

5 (3) (I) THERE IS A REBUTTABLE PRESUMPTION THAT THE LIMITS
 6 ON THE PERIOD OF INCARCERATION THAT MAY BE IMPOSED FOR A TECHNICAL
 7 VIOLATION ESTABLISHED IN PARAGRAPH (2) OF THIS SUBSECTION ARE APPLICABLE.

8 (II) THE PRESUMPTION MAY BE REBUTTED IF THE COURT FINDS
 9 AND STATES ON THE RECORD, AFTER CONSIDERATION OF THE FOLLOWING FACTORS,
 10 THAT ADHERING TO THE LIMITS ON THE PERIOD OF INCARCERATION ESTABLISHED
 11 UNDER PARAGRAPH (2) OF THIS SUBSECTION WOULD CREATE A RISK TO PUBLIC
 12 SAFETY, A VICTIM, OR A WITNESS:

13 1. THE NATURE OF THE PROBATION VIOLATION;

14 2. THE FACTS AND CIRCUMSTANCES OF THE CRIME FOR
 15 WHICH THE PROBATIONER OR DEFENDANT WAS CONVICTED; AND

16 3. THE PROBATIONER'S OR DEFENDANT'S HISTORY.

17 (III) ON FINDING THAT ADHERING TO THE LIMITS WOULD
 18 CREATE A RISK TO PUBLIC SAFETY, A VICTIM, OR A WITNESS UNDER SUBPARAGRAPH
 19 (II) OF THIS PARAGRAPH, THE COURT MAY:

20 1. DIRECT IMPOSITION OF A LONGER PERIOD OF
 21 INCARCERATION THAN PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, BUT NO
 22 MORE THAN THE TIME REMAINING ON THE ORIGINAL SENTENCE; OR

23 2. COMMIT THE PROBATIONER OR DEFENDANT TO THE
 24 DEPARTMENT OF HEALTH AND MENTAL HYGIENE FOR TREATMENT UNDER § 8-507
 25 OF THE HEALTH - GENERAL ARTICLE.

26 (IV) A FINDING UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH
 27 OR AN ACTION UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH IS SUBJECT TO
 28 APPEAL UNDER TITLE 12, SUBTITLE 3 OR TITLE 12, SUBTITLE 4 OF THE COURTS
 29 ARTICLE.

30 **6-224.**

31 (a) This section applies to a defendant who is convicted of a crime for which the
 32 court:

1 (1) does not impose a sentence;

2 (2) suspends the sentence generally;

3 (3) places the defendant on probation for a definite time; or

4 (4) passes another order and imposes other conditions of probation.

5 (b) If a defendant is brought before a circuit court to be sentenced on the original
6 charge or for violating a condition of probation, and the judge then presiding finds that the
7 defendant violated a condition of probation, the judge:

8 (1) SUBJECT TO SUBSECTION (C) OF THIS SECTION, may sentence the
9 defendant to:

10 (i) all or any part of the period of imprisonment imposed in the
11 original sentence; or

12 (ii) any sentence allowed by law, if a sentence was not imposed before;
13 and

14 (2) may suspend all or part of a sentence and place the defendant on further
15 probation on any conditions that the judge considers proper, and that do not exceed the
16 maximum set under § 6-222 of this subtitle.

17 (c) **(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE COURT**
18 **FINDS THAT THE DEFENDANT VIOLATED A CONDITION OF PROBATION THAT IS A**
19 **TECHNICAL VIOLATION, THE COURT MAY IMPOSE A PERIOD OF INCARCERATION OF:**

20 **(I) NOT MORE THAN 15 DAYS FOR A FIRST TECHNICAL**
21 **VIOLATION;**

22 **(II) NOT MORE THAN 30 DAYS FOR A SECOND TECHNICAL**
23 **VIOLATION;**

24 **(III) NOT MORE THAN 45 DAYS FOR A THIRD TECHNICAL**
25 **VIOLATION; AND**

26 **(IV) ALL OR ANY PART OF THE PERIOD OF IMPRISONMENT**
27 **IMPOSED IN THE ORIGINAL SENTENCE FOR A FOURTH OR SUBSEQUENT TECHNICAL**
28 **VIOLATION.**

1 **(2) (I) THERE IS A REBUTTABLE PRESUMPTION THAT THE LIMITS**
2 **ON THE PERIOD OF INCARCERATION THAT MAY BE IMPOSED FOR A TECHNICAL**
3 **VIOLATION ESTABLISHED IN PARAGRAPH (1) OF THIS SUBSECTION ARE APPLICABLE.**

4 **(II) THE PRESUMPTION MAY BE REBUTTED IF THE COURT FINDS**
5 **AND STATES ON THE RECORD, AFTER CONSIDERATION OF THE FOLLOWING FACTORS,**
6 **THAT ADHERING TO THE LIMITS ON THE PERIOD OF INCARCERATION ESTABLISHED**
7 **UNDER PARAGRAPH (1) OF THIS SUBSECTION WOULD CREATE A RISK TO PUBLIC**
8 **SAFETY, A VICTIM, OR A WITNESS:**

9 **1. THE NATURE OF THE PROBATION VIOLATION;**

10 **2. THE FACTS AND CIRCUMSTANCES OF THE CRIME FOR**
11 **WHICH THE DEFENDANT WAS CONVICTED; AND**

12 **3. THE DEFENDANT'S HISTORY.**

13 **(III) ON FINDING THAT ADHERING TO THE LIMITS WOULD**
14 **CREATE A RISK TO PUBLIC SAFETY, A VICTIM, OR A WITNESS UNDER SUBPARAGRAPH**
15 **(II) OF THIS PARAGRAPH, THE COURT MAY:**

16 **1. DIRECT IMPOSITION OF A LONGER PERIOD OF**
17 **INCARCERATION THAN PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION, BUT NO**
18 **MORE THAN THE TIME REMAINING ON THE ORIGINAL SENTENCE; OR**

19 **2. COMMIT THE DEFENDANT TO THE DEPARTMENT OF**
20 **HEALTH AND MENTAL HYGIENE FOR TREATMENT UNDER § 8-507 OF THE HEALTH-**
21 **GENERAL ARTICLE.**

22 **(IV) A FINDING UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH**
23 **OR AN ACTION UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH IS SUBJECT TO**
24 **APPEAL UNDER TITLE 12, SUBTITLE 3 OR TITLE 12, SUBTITLE 4 OF THE COURTS**
25 **ARTICLE.**

26 **(D) (1) The District Court judge who originally imposed conditions of probation**
27 **or suspension of sentence shall hear any charge of violation of the conditions of probation or**
28 **suspension of sentence.**

29 **(2) Except as provided in paragraph (3) of this subsection, the judge shall**
30 **sentence the defendant if probation is revoked or suspension stricken.**

31 **(3) If the judge has been removed from office, has died or resigned, or is**
32 **otherwise incapacitated, any other judge of the District Court may act in the matter.**