

SENATE BILL 91
EMERGENCY BILL

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2001 Regular Session
(11r0994)

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by **Senator Baker**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER 356

1 AN ACT concerning

2 **Criminal Sentencing - Custodial Confinement as a Condition of a Suspended**
3 **Sentence or Probation**

4 FOR the purpose of allowing a court as a condition of a suspended sentence or
5 probation to order a person to a term of custodial confinement for a certain term
6 under certain circumstances; providing that any time served in custodial
7 confinement shall be credited against certain sentences under certain
8 circumstances; clarifying and limiting the authority of certain courts in certain
9 counties to order a term of imprisonment as a condition of a suspended sentence
10 or probation under certain circumstances; defining a certain term; making a
11 ~~portion~~ of this Act an emergency measure; providing for a delayed effective date
12 for certain provisions of this Act; and generally relating to custodial confinement
13 as a condition of a suspended sentence or probation.

14 BY repealing and reenacting, with amendments,
15 Article 27 - Crimes and Punishments
16 Section 639, 641, and 641A

1 Annotated Code of Maryland
2 (1996 Replacement Volume and 2000 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Criminal Procedure
5 Section 6-219, 6-220, and 6-225
6 Annotated Code of Maryland
7 (As enacted by Chapter___ (S.B. 1) of the Acts of the General Assembly of 2001)

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

10 **Article 27 - Crimes and Punishments**

11 639.

12 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

13 (I) HOME DETENTION;

14 (II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER ~~THE~~
15 ~~CODE OR BY COUNTY ORDINANCE THAT~~ LAW WHICH REQUIRES THE INDIVIDUAL TO
16 PARTICIPATE IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR
17 PROGRAM INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE
18 EQUIVALENT OF CONFINEMENT; OR

19 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ORDERED IN
20 COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH GENERAL ARTICLE.

21 (2) "CUSTODIAL CONFINEMENT" DOES NOT INCLUDE IMPRISONMENT.

22 (B) (1) The courts may suspend sentence generally or for a definite time, and
23 may make such orders and impose such terms as to costs, recognizance for
24 appearance, or matters relating to the residence or conduct of the convicts as may be
25 deemed proper; and if the convict is a person under 18 years of age, the courts may
26 also make such orders as to his detention in any care or custody as may be deemed
27 proper.

28 (2) In Charles County, St. Mary's County, and Calvert County, the court
29 may impose a sentence of [confinement] IMPRISONMENT as a condition of probation.

30 (3) AS A CONDITION OF A SUSPENDED SENTENCE, THE COURT MAY
31 ORDER A PERSON TO A TERM OF CUSTODIAL CONFINEMENT.

32 [(b)] (C) However, when the conviction is for violation of § 21-902(a) or (b) of
33 the Transportation Article, if the court places the person on probation, it shall require,
34 as a condition of the suspension of sentence, that the person participate in an alcohol
35 treatment or education program approved by the Department of Health and Mental
36 Hygiene, unless the court finds and affirmatively states on the record that the

1 interests of the person and the people of the State do not require the imposition of this
2 condition.

3 [(c)] (D) In Prince George's County, the courts may also impose such sentences
4 as may be provided by law with respect to the offense upon which an accused has been
5 convicted and cause the convict to serve the sentence by attendance at the county
6 detention center or place of confinement under the jurisdiction of the sheriff, where
7 the sentence is to be performed during any 48-hour period, in any 7-day period, with
8 each period of confinement to constitute not less than 2 days of the sentence imposed;
9 provided, however, that the offense leading to such conviction shall permit
10 confinement in the county detention center and the total sentence imposed by the
11 judge may not exceed 30 2-day periods of confinement.

12 [(d)] (E) When the conviction is for violation of any provision of §§ 276 through
13 303 of this article, if the court places the person on probation, it shall require, as a
14 condition of the suspension of sentence, that the person participate in a drug
15 treatment or education program approved by the Department of Health and Mental
16 Hygiene, unless the court finds and affirmatively states on the record that the
17 interests of the person and the people of the State do not require the imposition of this
18 condition.

19 (F) IF AN INDIVIDUAL VIOLATES THE TERMS OF PROBATION, ANY TIME
20 SERVED BY THE INDIVIDUAL IN CUSTODIAL CONFINEMENT SHALL BE CREDITED
21 AGAINST ANY SENTENCE OF INCARCERATION IMPOSED BY THE COURT.

22 641.

23 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

24 (I) HOME DETENTION;

25 (II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER ~~THE~~
26 ~~CODE OR BY COUNTY ORDINANCE THAT~~ LAW WHICH REQUIRES THE INDIVIDUAL TO
27 PARTICIPATE IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR
28 PROGRAM INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE
29 EQUIVALENT OF CONFINEMENT; OR

30 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ~~ORDERED IN~~
31 ~~COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH GENERAL ARTICLE.~~

32 (2) "CUSTODIAL CONFINEMENT" DOES NOT INCLUDE IMPRISONMENT.

33 (B) (1) (i) 1. Whenever a person accused of a crime pleads guilty or nolo
34 contendere or is found guilty of an offense, a court exercising criminal jurisdiction, if
35 satisfied that the best interests of the person and the welfare of the people of the
36 State would be served thereby, and with the written consent of the person after
37 determination of guilt or acceptance of a nolo contendere plea, may stay the entering
38 of judgment, defer further proceedings, and place the person on probation subject to
39 reasonable terms and conditions as appropriate. The terms and conditions may
40 include ordering the person to pay a fine or pecuniary penalty to the State, or to make

1 (4) Notwithstanding paragraph (1) of this subsection, a court may not
 2 stay the entering of judgment and place a person on probation for a violation of any of
 3 the provisions of §§ 462 through 464B of this article for an offense involving a person
 4 under the age of 16 years.

5 (5) By consenting to and receiving a stay of entering of the judgment as
 6 provided by this subsection, the person waives the right to appeal from the judgment
 7 of guilt by the court at any time. Prior to the person consenting to the stay of entering
 8 of the judgment, the court shall notify the person that by consenting to and receiving
 9 a stay of entry of judgment, the person waives the right to appeal from the judgment
 10 of guilt by the court at any time.

11 [(b)] (C) (L) Upon violation of a term or condition of probation, the court
 12 may enter judgment and proceed with disposition of the person as if the person had
 13 not been placed on probation.

14 (2) IF AN INDIVIDUAL VIOLATES A TERM OR CONDITION OF PROBATION,
 15 ANY TIME SERVED BY THE INDIVIDUAL IN CUSTODIAL CONFINEMENT SHALL BE
 16 CREDITED AGAINST ANY SENTENCE OF INCARCERATION IMPOSED BY THE COURT.

17 [(c)] (D) Upon fulfillment of the terms and conditions of probation, the court
 18 shall discharge the person from probation. The discharge is final disposition of the
 19 matter. Discharge of a person under this section shall be without judgment of
 20 conviction and is not a conviction for purposes of any disqualification or disability
 21 imposed by law because of conviction of crime.

22 641A.

23 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

24 (I) HOME DETENTION;

25 (II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER ~~THE~~
 26 ~~CODE OR BY COUNTY ORDINANCE THAT~~ LAW WHICH REQUIRES THE INDIVIDUAL TO
 27 PARTICIPATE IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR
 28 PROGRAM INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE
 29 EQUIVALENT OF CONFINEMENT; OR

30 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ~~ORDERED IN~~
 31 ~~COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH GENERAL ARTICLE.~~

32 (2) "CUSTODIAL CONFINEMENT" DOES NOT INCLUDE IMPRISONMENT.

33 (B) (1) Upon entering a judgment of conviction, the court having jurisdiction
 34 may suspend the imposition or execution of sentence and place the defendant on
 35 probation upon such terms and conditions as the court deems proper.

36 (2) In Charles County, St. Mary's County, Cecil County, Harford County,
 37 and Calvert County, the court may impose as a condition of probation a sentence of
 38 [confinement] IMPRISONMENT.

1 (3) AS A CONDITION OF PROBATION, THE COURT MAY ORDER A
2 DEFENDANT TO A TERM OF CUSTODIAL CONFINEMENT.

3 [(3)] (4) The court may impose a sentence for a specified period and
4 provide that a lesser period be served in confinement, suspend the remainder of the
5 sentence and grant probation for a period longer than the sentence but not in excess
6 of 5 years.

7 [(4)] (5) However, if the defendant consents in writing, the court may
8 grant probation in excess of 5 years, but only for purposes of making restitution.

9 (b) Probation may be granted whether the offense is punishable by fine or
10 imprisonment or both. If the offense is punishable by both fine and imprisonment, the
11 court may impose a fine and place the defendant on probation as to the imprisonment.
12 Probation may be limited to one or more counts or indictments, but, in the absence of
13 express limitation, shall extend to the entire sentence and judgment. The court may
14 revoke or modify any condition of probation or may reduce the period of probation.

15 (c) If a sentence of imprisonment is imposed, a portion of it is suspended, and
16 the defendant is placed on probation, the court may impose as a condition of probation
17 that the probation commence on the date the defendant is actually released from
18 imprisonment.

19 (d) When the probation granted is for violation of any provision of §§ 276
20 through 303 of this article, if the court places the person on probation, it shall require,
21 as a condition of the suspension of sentence, that the person participate in a drug
22 treatment or education program approved by the Department of Health and Mental
23 Hygiene, unless the court finds and affirmatively states on the record that the
24 interests of the person and the people of the State do not require the imposition of this
25 condition.

26 (E) IF AN INDIVIDUAL VIOLATES THE TERMS OF PROBATION, ANY TIME
27 SERVED BY THE INDIVIDUAL IN CUSTODIAL CONFINEMENT SHALL BE CREDITED
28 AGAINST ANY SENTENCE OF INCARCERATION IMPOSED BY THE COURT.

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

31 **Article - Criminal Procedure**

32 6-219.

33 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

34 (I) HOME DETENTION;

35 (II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER ~~THE~~
36 ~~CODE OR BY COUNTY ORDINANCE THAT~~ LAW WHICH REQUIRES THE INDIVIDUAL TO
37 PARTICIPATE IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR

1 PROGRAM INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE
2 EQUIVALENT OF CONFINEMENT; OR

3 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ~~ORDERED IN~~
4 ~~COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH GENERAL ARTICLE.~~

5 (2) "CUSTODIAL CONFINEMENT" DOES NOT INCLUDE IMPRISONMENT.

6 (B) Subject to subsection ~~(b)~~ (C) of this section, a court:

7 (1) may suspend a sentence generally or for a definite time;

8 (2) may pass orders and impose terms as to costs, recognizance for
9 appearance, or matters relating to the residence or conduct of the defendant who is
10 convicted as may be deemed proper; [or]

11 (3) if the defendant who is convicted is under 18 years of age, may order
12 confinement in any care or custody as may be deemed proper; OR

13 (4) MAY ORDER A PERSON TO A TERM OF CUSTODIAL CONFINEMENT AS
14 A CONDITION OF A SUSPENDED SENTENCE.

15 [(b)] (C) (1) If the court places on probation a defendant who has been
16 convicted of a violation of § 21-902(a) or (b) of the Transportation Article, the court
17 shall require as a condition that the defendant participate in an alcohol treatment or
18 education program approved by the Department of Health and Mental Hygiene,
19 unless the court finds and states on the record that the interests of the defendant and
20 the public do not require the imposition of this condition.

21 (2) If the court places on probation a defendant who has been convicted
22 of a violation of any provision of Article 27, §§ 276 through 303 of the Code, the court
23 shall require as a condition that the defendant participate in a drug treatment or
24 education program approved by the Department of Health and Mental Hygiene,
25 unless the court finds and states on the record that the interests of the defendant and
26 the public do not require the imposition of this condition.

27 [(c)] (D) (1) In Calvert County, Charles County, and St. Mary's County, the
28 court may impose a sentence of [confinement] IMPRISONMENT as a condition of
29 probation.

30 (2) In Prince George's County, the court on conviction may sentence a
31 defendant to the local correctional facility or place of confinement under the
32 jurisdiction of the sheriff, if:

33 (i) the sentence is to be performed during any 48-hour period in a
34 7-day period, with each period of confinement to be not less than 2 days of the
35 sentence imposed;

36 (ii) the crime leading to the conviction allows confinement in the
37 local correctional facility; and

1 (iii) the total sentence does not exceed 30 two-day periods of
2 confinement.

3 (E) IF AN INDIVIDUAL VIOLATES THE TERMS OF PROBATION, ANY TIME
4 SERVED BY THE INDIVIDUAL IN CUSTODIAL CONFINEMENT SHALL BE CREDITED
5 AGAINST ANY SENTENCE OF INCARCERATION IMPOSED BY THE COURT.

6 6-220.

7 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

8 (I) HOME DETENTION;

9 (II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER ~~THE~~
10 ~~CODE OR BY COUNTY ORDINANCE THAT~~ LAW WHICH REQUIRES THE INDIVIDUAL TO
11 PARTICIPATE IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR
12 PROGRAM INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE
13 EQUIVALENT OF CONFINEMENT; OR

14 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ~~ORDERED IN~~
15 ~~COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE.~~

16 (2) "CUSTODIAL CONFINEMENT" DOES NOT INCLUDE IMPRISONMENT.

17 (B) (1) When a defendant pleads guilty or nolo contendere or is found guilty
18 of a crime, a court may stay the entering of judgment, defer further proceedings, and
19 place the defendant on probation subject to reasonable conditions if:

20 (i) the court is satisfied that the best interests of the defendant
21 and the public welfare would be served; and

22 (ii) the defendant gives written consent after determination of guilt
23 or acceptance of a nolo contendere plea.

24 (2) Subject to paragraphs (3) and (4) of this subsection, the conditions
25 may include an order that the defendant:

26 (i) pay a fine or monetary penalty to the State or make restitution;
27 or

28 (ii) participate in a rehabilitation program, the parks program, or a
29 voluntary hospital program.

30 (3) Before the court orders a fine, monetary penalty, or restitution, the
31 defendant is entitled to notice and a hearing to determine the amount of the fine,
32 monetary penalty, or restitution, what payment will be required, and how payment
33 will be made.

34 (4) Any fine or monetary penalty imposed as a condition of probation
35 shall be within the amount set by law for a violation resulting in conviction.

1 (5) AS A CONDITION OF PROBATION, THE COURT MAY ORDER A PERSON
2 TO A TERM OF CUSTODIAL CONFINEMENT.

3 [(b)] (C) (1) When the crime for which the judgment is being stayed is for a
4 violation of § 21-902 of the Transportation Article, the court shall impose a period of
5 probation and, as a condition of the probation:

6 (i) shall require the defendant to participate in an alcohol
7 treatment or education program approved by the Department of Health and Mental
8 Hygiene, unless the court finds and states on the record that the interests of the
9 defendant and the public do not require the imposition of this condition; and

10 (ii) may prohibit the defendant from operating a motor vehicle
11 unless the motor vehicle is equipped with an ignition interlock system under § 27-107
12 of the Transportation Article.

13 (2) When the crime for which the judgment is being stayed is for a
14 violation of any provision of Article 27, §§ 276 through 303 of the Code, the court shall
15 impose a period of probation and, as a condition of probation, require the defendant to
16 participate in a drug treatment or education program approved by the Department of
17 Health and Mental Hygiene, unless the court finds and states on the record that the
18 interests of the defendant and the public do not require the imposition of this
19 condition.

20 [(c)] (D) Notwithstanding subsections [(a)] (B) and [(b)] (C) of this section, a
21 court may not stay the entering of judgment and place a defendant on probation for:

22 (1) a violation of § 21-902 of the Transportation Article, if within the
23 preceding 5 years the defendant has been convicted under or has been placed on
24 probation under that section after being charged with a violation of § 21-902 of the
25 Transportation Article;

26 (2) a second or subsequent controlled dangerous substance crime under
27 Article 27, §§ 276 through 303 of the Code; or

28 (3) a violation of any of the provisions of Article 27, §§ 462 through 464B
29 of the Code for a crime involving a person under the age of 16 years.

30 [(d)] (E) (1) By consenting to and receiving a stay of entering of the
31 judgment as provided by subsections [(a)] (B) and [(b)] (C) of this section, the
32 defendant waives the right to appeal at any time from the judgment of guilt.

33 (2) Before granting a stay, the court shall notify the defendant of the
34 consequences of consenting to and receiving a stay of entry of judgment under
35 paragraph (1) of this subsection.

36 [(e)] (F) On violation of a condition of probation, the court may enter
37 judgment and proceed as if the defendant had not been placed on probation.

1 [(f)] (G) (1) On fulfillment of the conditions of probation, the court shall
2 discharge the defendant from probation.

3 (2) The discharge is a final disposition of the matter.

4 (3) Discharge of a defendant under this section shall be without
5 judgment of conviction and is not a conviction for the purpose of any disqualification
6 or disability imposed by law because of conviction of a crime.

7 [(g)] (H) In Allegany County, Calvert County, Charles County, Garrett County,
8 Howard County, and St. Mary's County, the court may impose a sentence of
9 ~~confinement~~ IMPRISONMENT as a condition of probation.

10 (I) IF AN INDIVIDUAL VIOLATES THE TERMS OF PROBATION, ANY TIME
11 SERVED BY THE INDIVIDUAL IN CUSTODIAL CONFINEMENT SHALL BE CREDITED
12 AGAINST ANY SENTENCE OF INCARCERATION IMPOSED BY THE COURT.

13 6-225.

14 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

15 (I) HOME DETENTION;

16 (II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER ~~THE~~
17 ~~CODE OR BY COUNTY ORDINANCE THAT~~ LAW WHICH REQUIRES THE INDIVIDUAL TO
18 PARTICIPATE IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR
19 PROGRAM INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE
20 EQUIVALENT OF CONFINEMENT; OR

21 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ~~ORDERED IN~~
22 ~~COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE.~~

23 (2) "CUSTODIAL CONFINEMENT" DOES NOT INCLUDE IMPRISONMENT.

24 (B) (1) (i) Probation may be granted whether the crime is punishable by
25 fine or imprisonment or both.

26 (ii) If the crime is punishable by both fine and imprisonment, the
27 court may impose a fine and place the defendant on probation as to the imprisonment.

28 (iii) Probation may be limited to one or more counts or indictments
29 but, in the absence of express limitation, extends to the entire sentence and judgment.

30 (iv) The court may revoke or modify a condition of probation or may
31 reduce the period of probation.

32 (V) AS A CONDITION OF PROBATION, THE COURT MAY ORDER A
33 DEFENDANT TO A TERM OF CUSTODIAL CONFINEMENT.

34 (2) If a sentence of imprisonment is imposed and a part of it is suspended
35 with the defendant placed on probation, the court may impose as a condition of

1 probation that the probation begin on the day the defendant is released from
2 imprisonment.

3 [(b)] (C) If the court places on probation a defendant who has been convicted
4 of a violation of any provision of Article 27, §§ 276 through 303 of the Code, the court
5 shall require as a condition that the defendant participate in a drug treatment or
6 education program approved by the Department of Health and Mental Hygiene,
7 unless the court finds and states on the record that the interests of the defendant and
8 the public do not require the imposition of this condition.

9 [(c)] (D) In Calvert County, Cecil County, Charles County, Harford County,
10 and St. Mary's County, the court may impose a sentence of ~~confinement~~
11 IMPRISONMENT as a condition of probation.

12 (E) IF AN INDIVIDUAL VIOLATES THE TERMS OF PROBATION, ANY TIME
13 SERVED BY THE INDIVIDUAL IN CUSTODIAL CONFINEMENT SHALL BE CREDITED
14 AGAINST ANY SENTENCE OF INCARCERATION IMPOSED BY THE COURT.

15 ~~SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act is an~~
16 ~~emergency measure, is necessary for the immediate preservation of the public health~~
17 ~~and safety, has been passed by a yea and nay vote supported by three-fifths of all the~~
18 ~~members elected to each of the two Houses of the General Assembly, and Section 1 of~~
19 ~~this Act shall take effect from the date it is enacted. It shall remain effective until the~~
20 ~~taking effect of Section 2 of this Act. If Section 2 of this Act takes effect, Section 1 of~~
21 ~~this Act shall be abrogated and of no further force and effect.~~

22 ~~SECTION 4. AND BE IT FURTHER ENACTED, That, subject to the provisions~~
23 ~~of Section 3 of this Act, this Act shall take effect October 1, 2001.~~

24 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act
25 shall take effect October 1, 2001.

26 SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency
27 measure, is necessary for the immediate preservation of the public health and safety,
28 has been passed by a yea and nay vote supported by three-fifths of all of the members
29 elected to each of the two Houses of the General Assembly, and except as provided in
30 Section 3 of this Act, shall take effect from the date it is enacted. Section 1 of this Act
31 shall remain effective until the taking effect of Section 2 of this Act. On the taking effect
32 of Section 2 of this Act, Section 1 of this Act shall be abrogated and of no further force
33 and effect.

