
By: **Delegate Benson**

Introduced and read first time: January 24, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Defendants on Probation for Committing Sex-Related**
3 **Crimes Against Minors**

4 FOR the purpose of authorizing a court to establish certain conditions of probation
5 applicable to a defendant who has been placed on probation before or after
6 judgment for committing certain crimes involving a victim who is a minor;
7 authorizing the court to deviate from certain conditions of probation under
8 certain circumstances; authorizing a certain defendant to request the court to
9 modify certain conditions of probation applicable to the defendant under certain
10 circumstances; and generally relating to certain conditions of probation
11 applicable to defendants on probation for committing sex-related crimes against
12 minors.

13 BY repealing and reenacting, without amendments,
14 Article - Criminal Procedure
15 Section 6-220 and 6-221
16 Annotated Code of Maryland
17 (2001 Volume and 2004 Supplement)

18 BY adding to
19 Article - Criminal Procedure
20 Section 6-233
21 Annotated Code of Maryland
22 (2001 Volume and 2004 Supplement)

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

25 **Article - Criminal Procedure**

26 6-220.

27 (a) In this section, "custodial confinement" means:

28 (1) home detention;

1 (2) a corrections options program established under law which requires
2 the individual to participate in home detention, inpatient treatment, or other similar
3 program involving terms and conditions that constitute the equivalent of
4 confinement; or

5 (3) inpatient drug or alcohol treatment.

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

9 (i) the court finds that the best interests of the defendant and the
10 public welfare would be served; and

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

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

15 (i) pay a fine or monetary penalty to the State or make restitution;
16 or

17 (ii) participate in a rehabilitation program, the parks program, or a
18 voluntary hospital program.

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

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

25 (5) As a condition of probation, the court may order a person to a term of
26 custodial confinement or imprisonment.

27 (c) (1) When the crime for which the judgment is being stayed is for a
28 violation of § 21-902 of the Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506,
29 or § 3-211 of the Criminal Law Article, the court:

30 (i) before imposing a period of probation, may order the
31 Department of Health and Mental Hygiene to evaluate the defendant in accordance
32 with § 8-505 of the Health - General Article;

33 (ii) if an evaluation was ordered under item (i) of this paragraph,
34 shall review the evaluation before imposing a period of probation; and

35 (iii) shall impose a period of probation and, as a condition of the
36 probation:

1 1. shall require the defendant to participate in an alcohol or
2 drug treatment or education program approved by the Department of Health and
3 Mental Hygiene, unless the court finds and states on the record that the interests of
4 the defendant and the public do not require the imposition of this condition; and

5 2. may prohibit the defendant from operating a motor vehicle
6 unless the motor vehicle is equipped with an ignition interlock system under § 27-107
7 of the Transportation Article.

8 (2) When the crime for which the judgment is being stayed is for a
9 violation of any provision of Title 5 of the Criminal Law Article, the court shall impose
10 a period of probation and, as a condition of probation, require the defendant to
11 participate in a drug treatment or education program approved by the Department of
12 Health and Mental Hygiene, unless the court finds and states on the record that the
13 interests of the defendant and the public do not require the imposition of this
14 condition.

15 (d) Notwithstanding subsections (b) and (c) of this section, a court may not
16 stay the entering of judgment and place a defendant on probation for:

17 (1) a violation of § 21-902 of the Transportation Article or § 2-503, §
18 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if within the preceding
19 5 years the defendant has been convicted under § 21-902 of the Transportation Article
20 or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, or has
21 been placed on probation in accordance with this section, after being charged with a
22 violation of § 21-902 of the Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506,
23 or § 3-211 of the Criminal Law Article;

24 (2) a second or subsequent controlled dangerous substance crime under
25 Title 5 of the Criminal Law Article; or

26 (3) a violation of any of the provisions of §§ 3-303 through 3-307 of the
27 Criminal Law Article for a crime involving a person under the age of 16 years.

28 (e) (1) By consenting to and receiving a stay of entering of the judgment as
29 provided by subsections (b) and (c) of this section, the defendant waives the right to
30 appeal at any time from the judgment of guilt.

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

34 (f) On violation of a condition of probation, the court may enter judgment and
35 proceed as if the defendant had not been placed on probation.

36 (g) (1) On fulfillment of the conditions of probation, the court shall
37 discharge the defendant from probation.

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

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

4 (h) Repealed.

5 (i) If an individual violates the terms of probation, any time served by the
6 individual in custodial confinement shall be credited against any sentence of
7 incarceration imposed by the court.

8 6-221.

9 On entering a judgment of conviction, the court may suspend the imposition or
10 execution of sentence and place the defendant on probation on the conditions that the
11 court considers proper.

12 6-233.

13 (A) THIS SECTION APPLIES TO A DEFENDANT WHO, BASED ON A CONVICTION
14 INVOLVING A VICTIM WHO IS A MINOR, IS PLACED ON PROBATION BEFORE OR AFTER
15 JUDGMENT FOR A VIOLATION OF:

16 (1) § 3-303, § 3-304, § 3-305, § 3-306, § 3-307, § 3-602, OR § 11-207 OF THE
17 CRIMINAL LAW ARTICLE;

18 (2) § 3-502 OR § 3-503 OF THE CRIMINAL LAW ARTICLE, WITH THE INTENT
19 TO VIOLATE § 3-303, § 3-304, § 3-305, § 3-306, OR § 3-307 OF THE CRIMINAL LAW
20 ARTICLE;

21 (3) ANY OF THE PROHIBITIONS AGAINST PROSTITUTION AND RELATED
22 ACTIVITIES UNDER TITLE 11, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE INVOLVING
23 A MINOR; OR

24 (4) COMMON LAW FALSE IMPRISONMENT, WITH THE INTENT TO
25 VIOLATE § 3-303, § 3-304, § 3-305, § 3-306, OR § 3-307 OF THE CRIMINAL LAW ARTICLE.

26 (B) SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, IN
27 ESTABLISHING THE CONDITIONS OF PROBATION FOR A DEFENDANT DESCRIBED IN
28 SUBSECTION (A) OF THIS SECTION, THE COURT MAY, AS A CONDITION OF PROBATION:

29 (1) PROHIBIT THE DEFENDANT FROM:

30 (I) SUPERVISING OR PARTICIPATING IN ANY PROGRAM THAT
31 REGULARLY PROVIDES ANY ATHLETIC, CIVIC, OR CULTURAL ACTIVITY THAT
32 INCLUDES A MINOR AS A PARTICIPANT; OR

33 (II) LOITERING WITHIN 500 FEET OF THE PERIMETER OF ANY
34 PREMISES USED BY A VICTIM OF THE DEFENDANT OR PRIMARILY USED BY MINORS,
35 INCLUDING A SCHOOL, DAY-CARE FACILITY, PLAYGROUND, PUBLIC OR PRIVATE
36 YOUTH CENTER, PUBLIC SWIMMING POOL, OR VIDEO ARCADE FACILITY; AND

1 (2) REQUIRE THE DEFENDANT TO ATTEND PSYCHOLOGICAL
2 COUNSELING SESSIONS FOR SEX OFFENDERS WITH AN INDIVIDUAL OR
3 ORGANIZATION THAT PROVIDES SEX OFFENDER TREATMENT OR COUNSELING AS
4 SPECIFIED OR AS APPROVED BY THE JUDGE OR THE DIVISION OF PAROLE AND
5 PROBATION.

6 (C) THE COURT MAY DEVIATE FROM THE REQUIRED ELEMENTS LISTED IN
7 SUBSECTION (B) OF THIS SECTION IF THE COURT DETERMINES THAT TO DO SO
8 WOULD BE APPROPRIATE UNDER THE CIRCUMSTANCES AND WOULD NOT
9 ENDANGER CHILDREN IN THE COMMUNITY.

10 (D) AT ANY TIME, ON MOTION OF THE DEFENDANT, THE COURT MAY MODIFY
11 THE CONDITION OF PROBATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION
12 IF THE COURT DETERMINES THAT THE CONDITION:

13 (1) INTERFERES WITH THE ABILITY OF THE DEFENDANT TO ATTEND
14 SCHOOL, MAINTAIN EMPLOYMENT, OR MAINTAIN FAMILY RELATIONSHIPS WHEN
15 THERE IS NO LIKELIHOOD OF THE DEFENDANT COMMITTING A SEXUAL OFFENSE
16 WITH A FAMILY MEMBER WHO IS A MINOR; OR

17 (2) IS BROADER THAN IS NECESSARY TO PROTECT THE PUBLIC, GIVEN
18 THE NATURE AND CIRCUMSTANCES OF THE OFFENSE.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2005.