

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL NO. 81

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after "Sentencing -" insert "Custodial"; strike beginning with "expanding" in line 3 down through "probation" in line 4 and substitute "allowing a court as a condition of a suspended sentence or probation to order a person to a term of custodial confinement for a certain term under certain circumstances; clarifying that a term of imprisonment or custodial confinement does not limit the court's authority to order other terms of a suspended sentence or probation under certain circumstances; providing that any time served in imprisonment or custodial confinement shall be credited against certain sentences under certain circumstances; clarifying and limiting the authority of certain courts in certain counties to order a term of imprisonment as a condition of a suspended sentence or probation under certain circumstances; defining a certain term"; strike beginning with the first "the" in line 5 down through the second "of" in line 6 and substitute "custodial confinement as a condition of a suspended sentence or"; and in line 9, strike "641(a) and 641A(a)" and substitute "639, 641, and 641A".

AMENDMENT NO. 2

On page 1, after line 14, insert:

"639.

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

(I) HOME DETENTION;

(II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER THE CODE OR BY COUNTY ORDINANCE WHICH REQUIRES THE INDIVIDUAL TO PARTICIPATE IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR PROGRAM INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE

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EQUIVALENT OF CONFINEMENT; OR

(III) INPATIENT DRUG OR ALCOHOL TREATMENT.

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

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

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

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

(4) (I) THE LENGTH OF THE TERM OF IMPRISONMENT OR CUSTODIAL CONFINEMENT IMPOSED UNDER THIS SUBSECTION MAY NOT EXCEED THE MAXIMUM LENGTH OF IMPRISONMENT FOR THE CRIME OF WHICH THE PERSON WAS CONVICTED.

(II) THIS PARAGRAPH MAY NOT BE CONSTRUED TO LIMIT A COURT'S AUTHORITY TO ORDER IN THE MANNER PROVIDED BY LAW CONDITIONS OF PROBATION OTHER THAN IMPRISONMENT OR CUSTODIAL CONFINEMENT THAT EXCEED THE MAXIMUM LENGTH OF IMPRISONMENT FOR THE CRIME OF WHICH THE PERSON WAS CONVICTED.

[(b)] (C) However, when the conviction is for violation of § 21-902(a) or (b) of the Transportation Article, if the court places the person on probation, it shall require, as a condition of the suspension of sentence, that the person participate in an alcohol treatment or education program approved by the Department of Health and Mental Hygiene, unless the court finds and affirmatively states on the record that the interests of the person and the people of the State do not require the imposition of this condition.

[(c)] (D) In Prince George's County, the courts may also impose such sentences as may be provided by law with respect to the offense upon which an accused has been convicted and cause

the convict to serve the sentence by attendance at the county detention center or place of confinement under the jurisdiction of the sheriff, where the sentence is to be performed during any 48-hour period, in any 7-day period, with each period of confinement to constitute not less than 2 days of the sentence imposed; provided, however, that the offense leading to such conviction shall permit confinement in the county detention center and the total sentence imposed by the judge may not exceed 30 2-day periods of confinement.

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

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

AMENDMENT NO. 3

On page 1, after line 15, insert:

“(A) (1) IN THIS SECTION, “CUSTODIAL CONFINEMENT” MEANS:

(I) HOME DETENTION;

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

(III) INPATIENT DRUG OR ALCOHOL TREATMENT.

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(2) “CUSTODIAL CONFINEMENT” DOES NOT INCLUDE IMPRISONMENT.”;

and in line 16, strike “(a)” and substitute “(B)”.

On page 2, in lines 1 and 2, in each instance, strike the bracket; in line 2, strike “THE”; in line 3, strike “confinement” and substitute “IMPRISONMENT”; and after line 23, insert:

“(V) AS A CONDITION OF PROBATION THE COURT MAY ORDER A PERSON TO A TERM OF CUSTODIAL CONFINEMENT.

(VI) 1. THE LENGTH OF THE TERM OF IMPRISONMENT OR CUSTODIAL CONFINEMENT IMPOSED UNDER THIS PARAGRAPH MAY NOT EXCEED THE MAXIMUM LENGTH OF IMPRISONMENT FOR THE CRIME OF WHICH THE PERSON WAS FOUND GUILTY.

2. THIS SUBPARAGRAPH MAY NOT BE CONSTRUED TO LIMIT A COURT’S AUTHORITY TO ORDER IN THE MANNER PROVIDED BY LAW CONDITIONS OF PROBATION OTHER THAN CUSTODIAL CONFINEMENT THAT EXCEED THE MAXIMUM LENGTH OF IMPRISONMENT FOR THE CRIME OF WHICH THE PERSON WAS FOUND GUILTY.”.

On page 3, after line 2, insert:

“(b) (C) (1) Upon violation of a term or condition of probation, the court may enter judgment and proceed with disposition of the person as if the person had not been placed on probation.

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

[(c)] (D) Upon fulfillment of the terms and conditions of probation, the court shall discharge the person from probation. The discharge is final disposition of the matter. Discharge of a

person under this section shall be without judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of crime."; after line 3, insert:

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

(I) HOME DETENTION;

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

(III) INPATIENT DRUG OR ALCOHOL TREATMENT.

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

in line 4, strike "(a)" and substitute "(B)"; in lines 7 and 8, in each instance, strike the bracket; in line 8, strike "THE"; in line 9, strike "confinement" and substitute "IMPRISONMENT"; in line 10, strike "The" and substitute "EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF THIS SUBSECTION, THE"; after line 12, insert:

"(4) AS A CONDITION OF PROBATION THE COURT MAY ORDER A DEFENDANT TO A TERM OF CUSTODIAL CONFINEMENT.";

in line 13, strike "(4)" and substitute "(5)"; and after line 14, insert:

"(6) (I) THE LENGTH OF THE TERM OF IMPRISONMENT OR CUSTODIAL CONFINEMENT IMPOSED UNDER THIS SUBSECTION MAY NOT EXCEED THE MAXIMUM LENGTH OF IMPRISONMENT FOR THE CRIME OF WHICH THE PERSON WAS CONVICTED.

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(II) THIS PARAGRAPH MAY NOT BE CONSTRUED TO LIMIT A COURT'S AUTHORITY TO ORDER IN THE MANNER PROVIDED BY LAW CONDITIONS OF PROBATION OTHER THAN IMPRISONMENT OR CUSTODIAL CONFINEMENT THAT EXCEED THE MAXIMUM LENGTH OF IMPRISONMENT FOR THE CRIME OF WHICH THE PERSON WAS CONVICTED.

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

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

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

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