

HOUSE BILL 81

Emergency Bill

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2000 Regular Session  
0lr0394  
CF 0lr0376

(PRE-FILED)

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By: **Delegates Dembrow, Gordon, O'Donnell, Cadden, and Giannetti**

Requested: August 16, 1999

Introduced and read first time: January 12, 2000

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 16, 2000

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Sentencing - Custodial Confinement as a Condition of Probation**

3 FOR the purpose of ~~expanding the authority of the courts throughout the State to~~  
4 ~~impose a sentence of confinement as a condition of probation~~ allowing a court as  
5 a condition of a suspended sentence or probation to order a person to a term of  
6 custodial confinement for a certain term under certain circumstances; clarifying  
7 that a term of imprisonment or custodial confinement does not limit the court's  
8 authority to order other terms of a suspended sentence or probation under  
9 certain circumstances; providing that any time served in imprisonment or  
10 custodial confinement shall be credited against certain sentences under certain  
11 circumstances; clarifying and limiting the authority of certain courts in certain  
12 counties to order a term of imprisonment as a condition of a suspended sentence  
13 or probation under certain circumstances; defining a certain term; making this  
14 Act an emergency measure; and generally relating to ~~the authority of the courts~~  
15 ~~to impose a sentence of confinement as a condition of~~ custodial confinement as a  
16 condition of a suspended sentence or probation.

17 BY repealing and reenacting, with amendments,  
18 Article 27 - Crimes and Punishments  
19 Section ~~641(a) and 641A(a)~~ 639, 641, and 641A  
20 Annotated Code of Maryland  
21 (1996 Replacement Volume and 1999 Supplement)

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

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## Article 27 - Crimes and Punishments

2 639.3 (A) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:4 (I) HOME DETENTION;5 (II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER THE  
6 CODE OR BY COUNTY ORDINANCE WHICH REQUIRES THE INDIVIDUAL TO  
7 PARTICIPATE IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR  
8 PROGRAM INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE  
9 EQUIVALENT OF CONFINEMENT; OR10 (III) INPATIENT DRUG OR ALCOHOL TREATMENT.11 (2) "CUSTODIAL CONFINEMENT" DOES NOT INCLUDE IMPRISONMENT.12 [(a)] (B) (1) The courts may suspend sentence generally or for a definite  
13 time, and may make such orders and impose such terms as to costs, recognizance for  
14 appearance, or matters relating to the residence or conduct of the convicts as may be  
15 deemed proper; and if the convict is a person under 18 years of age, the courts may  
16 also make such orders as to his detention in any care or custody as may be deemed  
17 proper.18 (2) In Charles County, St. Mary's County, and Calvert County, the court  
19 may impose a sentence of [confinement] IMPRISONMENT as a condition of probation.20 (3) AS A CONDITION OF A SUSPENDED SENTENCE THE COURT MAY  
21 ORDER A PERSON TO A TERM OF CUSTODIAL CONFINEMENT.22 (4) (I) THE LENGTH OF THE TERM OF IMPRISONMENT OR CUSTODIAL  
23 CONFINEMENT IMPOSED UNDER THIS SUBSECTION MAY NOT EXCEED THE  
24 MAXIMUM LENGTH OF IMPRISONMENT FOR THE CRIME OF WHICH THE PERSON WAS  
25 CONVICTED.26 (II) THIS PARAGRAPH MAY NOT BE CONSTRUED TO LIMIT A  
27 COURT'S AUTHORITY TO ORDER IN THE MANNER PROVIDED BY LAW CONDITIONS OF  
28 PROBATION OTHER THAN IMPRISONMENT OR CUSTODIAL CONFINEMENT THAT  
29 EXCEED THE MAXIMUM LENGTH OF IMPRISONMENT FOR THE CRIME OF WHICH THE  
30 PERSON WAS CONVICTED.31 [(b)] (C) However, when the conviction is for violation of § 21-902(a) or (b) of  
32 the Transportation Article, if the court places the person on probation, it shall require,  
33 as a condition of the suspension of sentence, that the person participate in an alcohol  
34 treatment or education program approved by the Department of Health and Mental  
35 Hygiene, unless the court finds and affirmatively states on the record that the  
36 interests of the person and the people of the State do not require the imposition of this  
37 condition.

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

10 [(d)] (E) When the conviction is for violation of any provision of §§ 276 through  
 11 303 of this article, if the court places the person on probation, it shall require, as a  
 12 condition of the suspension of sentence, that the person participate in a drug  
 13 treatment or education program approved by the Department of Health and Mental  
 14 Hygiene, unless the court finds and affirmatively states on the record that the  
 15 interests of the person and the people of the State do not require the imposition of this  
 16 condition.

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

21 641.

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

23 (I) HOME DETENTION;

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

29 (III) INPATIENT DRUG OR ALCOHOL TREATMENT.

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

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

1 will be made. The terms and conditions also may include any type of rehabilitation  
 2 program or clinic, or similar program, or the parks program or voluntary hospital  
 3 program.

4 2. ~~{In Allegany County, Calvert County, Charles County,~~  
 5 ~~Garrett County, and St. Mary's County, the} THE court may impose a sentence of~~  
 6 ~~confinement~~ IMPRISONMENT as a condition of probation.

7 (ii) However, when the offense for which the judgment is being  
 8 stayed is for violation of any provision of § 21-902 of the Transportation Article, the  
 9 court:

10 1. Shall impose a period of probation and, as a condition of  
 11 the probation, require the person to participate in an alcohol treatment or education  
 12 program approved by the Department of Health and Mental Hygiene, unless the court  
 13 finds and affirmatively states on the record that the interests of the person and the  
 14 people of the State do not require the imposition of this condition; and

15 2. May, as a condition of probation, prohibit the person from  
 16 operating a motor vehicle unless the motor vehicle is equipped with an ignition  
 17 interlock system under § 27-107 of the Transportation Article.

18 (iii) When the offense for which the judgment is being stayed is for a  
 19 violation of any provision of §§ 276 through 303 of this article, the court shall require  
 20 the person to participate in a drug treatment or education program approved by the  
 21 Department of Health and Mental Hygiene, unless the court finds and affirmatively  
 22 states on the record that the interests of the person and the people of the State do not  
 23 require the imposition of this condition.

24 (iv) Any fine or pecuniary penalty imposed as a term or condition of  
 25 probation shall be within the amount prescribed by law for a violation resulting in  
 26 conviction.

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

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

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

38 (2) Notwithstanding paragraph (1) of this subsection, a court may not  
 39 stay the entering of judgment and place a person on probation for a violation of any  
 40 provision of § 21-902 of the Transportation Article if the person has been convicted

1 under, or has been placed on probation under this section after being charged with a  
2 violation of, § 21-902 of the Transportation Article within the preceding 5 years.

3 (3) Notwithstanding paragraph (1) of this subsection, a court may not  
4 stay the entering of judgment and place a person on probation for a second or  
5 subsequent controlled dangerous substance offense under §§ 276 through 303 of this  
6 article.

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

11 (5) By consenting to and receiving a stay of entering of the judgment as  
12 provided by this subsection, the person waives the right to appeal from the judgment  
13 of guilt by the court at any time. Prior to the person consenting to the stay of entering  
14 of the judgment, the court shall notify the person that by consenting to and receiving  
15 a stay of entry of judgment, the person waives the right to appeal from the judgment  
16 of guilt by the court at any time.

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

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

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

29 641A.

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

31 (I) HOME DETENTION;

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

37 (III) INPATIENT DRUG OR ALCOHOL TREATMENT.

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

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

4               (2)     ~~{~~In Charles County, St. Mary's County, Cecil County, Harford County,  
5 and Calvert County, the~~}~~ ~~THE~~ court may impose as a condition of probation a  
6 sentence of ~~confinement~~ IMPRISONMENT.

7               (3)     ~~The~~ EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF THIS  
8 SUBSECTION, THE court may impose a sentence for a specified period and provide  
9 that a lesser period be served in confinement, suspend the remainder of the sentence  
10 and grant probation for a period longer than the sentence but not in excess of 5 years.

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

13              (4)     (5)     However, if the defendant consents in writing, the court may  
14 grant probation in excess of 5 years, but only for purposes of making restitution.

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

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

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

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

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

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

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
6 measure, is necessary for the immediate preservation of the public health and safety,  
7 has been passed by a ye and nay vote supported by three-fifths of all the members  
8 elected to each of the two Houses of the General Assembly, and shall take effect from  
9 the date it is enacted.