## SENATE BILL 25

Emergency Bill

Unofficial Copy E2 2000 Regular Session 0lr0376 CF 0lr0394

#### (PRE-FILED)

# By: Senators Baker, Miller, Jimeno, Astle, DeGrange, and Neall

Requested: August 5, 1999 Introduced and read first time: January 12, 2000 Assigned to: Judicial Proceedings

## A BILL ENTITLED

## 1 AN ACT concerning

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### Criminal Sentencing - 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; making this Act an
- 5 emergency measure; and generally relating to the authority of the courts to
- 6 impose a sentence of confinement as a condition of probation.

7 BY repealing and reenacting, with amendments,

- 8 Article 27 Crimes and Punishments
- 9 Section 641(a) and 641A(a)
- 10 Annotated Code of Maryland
- 11 (1996 Replacement Volume and 1999 Supplement)

## 12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

13 MARYLAND, That the Laws of Maryland read as follows:

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### Article 27 - Crimes and Punishments

15 641.

16 Whenever a person accused of a crime pleads guilty or nolo (a) (1)(i) 1. 17 contendere or is found guilty of an offense, a court exercising criminal jurisdiction, if 18 satisfied that the best interests of the person and the welfare of the people of the 19 State would be served thereby, and with the written consent of the person after 20 determination of guilt or acceptance of a nolo contendere plea, may stay the entering 21 of judgment, defer further proceedings, and place the person on probation subject to 22 reasonable terms and conditions as appropriate. The terms and conditions may 23 include ordering the person to pay a fine or pecuniary penalty to the State, or to make 24 restitution, but before the court orders a fine, pecuniary penalty, or restitution the 25 person is entitled to notice and a hearing to determine the amount of the fine, 26 pecuniary penalty, or restitution, what payment will be required, and how payment 27 will be made. The terms and conditions also may include any type of rehabilitation

28 program or clinic, or similar program, or the parks program or voluntary hospital

29 program.

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1 2. [In Allegany County, Calvert County, Charles County, 2 Garrett County, and St. Mary's County, the] THE court may impose a sentence of 3 confinement as a condition of probation. 4 (ii) However, when the offense for which the judgment is being 5 stayed is for violation of any provision of § 21-902 of the Transportation Article, the 6 court: 7 1. Shall impose a period of probation and, as a condition of 8 the probation, require the person to participate in an alcohol treatment or education 9 program approved by the Department of Health and Mental Hygiene, unless the court 10 finds and affirmatively states on the record that the interests of the person and the 11 people of the State do not require the imposition of this condition; and 12 2. May, as a condition of probation, prohibit the person from 13 operating a motor vehicle unless the motor vehicle is equipped with an ignition 14 interlock system under § 27-107 of the Transportation Article. 15 When the offense for which the judgment is being stayed is for a (iii) 16 violation of any provision of §§ 276 through 303 of this article, the court shall require 17 the person to participate in a drug treatment or education program approved by the 18 Department of Health and Mental Hygiene, unless the court finds and affirmatively 19 states on the record that the interests of the person and the people of the State do not 20 require the imposition of this condition. 21 (iv) Any fine or pecuniary penalty imposed as a term or condition of 22 probation shall be within the amount prescribed by law for a violation resulting in 23 conviction. 24 (2)Notwithstanding paragraph (1) of this subsection, a court may not 25 stay the entering of judgment and place a person on probation for a violation of any 26 provision of § 21-902 of the Transportation Article if the person has been convicted 27 under, or has been placed on probation under this section after being charged with a 28 violation of, § 21-902 of the Transportation Article within the preceding 5 years. 29 Notwithstanding paragraph (1) of this subsection, a court may not (3)30 stay the entering of judgment and place a person on probation for a second or 31 subsequent controlled dangerous substance offense under §§ 276 through 303 of this 32 article. 33 Notwithstanding paragraph (1) of this subsection, a court may not (4)34 stay the entering of judgment and place a person on probation for a violation of any of 35 the provisions of §§ 462 through 464B of this article for an offense involving a person 36 under the age of 16 years. 37 By consenting to and receiving a stay of entering of the judgment as (5)38 provided by this subsection, the person waives the right to appeal from the judgment 39 of guilt by the court at any time. Prior to the person consenting to the stay of entering

40 of the judgment, the court shall notify the person that by consenting to and receiving

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1 a stay of entry of judgment, the person waives the right to appeal from the judgment2 of guilt by the court at any time.

3 641A.

4 (a) (1) Upon entering a judgment of conviction, the court having jurisdiction 5 may suspend the imposition or execution of sentence and place the defendant on 6 probation upon such terms and conditions as the court deems proper.

7 (2) [In Charles County, St. Mary's County, Cecil County, Harford County,
8 and Calvert County, the] THE court may impose as a condition of probation a
9 sentence of confinement.

10 (3) The court may impose a sentence for a specified period and provide 11 that a lesser period be served in confinement, suspend the remainder of the sentence 12 and grant probation for a period longer than the sentence but not in excess of 5 years.

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency 16 measure, is necessary for the immediate preservation of the public health and safety, 17 has been passed by a yea and nay vote supported by three-fifths of all the members

18 elected to each of the two Houses of the General Assembly, and shall take effect from

19 the date it is enacted.