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(PRE-FILED)

By: Chairman, Judicial Proceedings Committee (Departmental - Public Safety and Correctional Services)

Requested: November 15, 1999

Introduced and read first time: January 12, 2000

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

- 2 Fingerprinting of Criminal Defendants Probation Prior to Judgment
- 3 FOR the purpose of repealing an exemption from a requirement for fingerprinting
- 4 upon being sentenced to probation prior to judgment under specified
- 5 circumstances; and generally relating to fingerprinting requirements for
- 6 criminal defendants.
- 7 BY repealing and reenacting, without amendments,
- 8 Article 27 Crimes and Punishments
- 9 Section 641
- 10 Annotated Code of Maryland
- 11 (1996 Replacement Volume and 1999 Supplement)
- 12 BY repealing and reenacting, with amendments,
- 13 Article 27 Crimes and Punishments
- 14 Section 747A
- 15 Annotated Code of Maryland
- 16 (1996 Replacement Volume and 1999 Supplement)
- 17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- 18 MARYLAND, That the Laws of Maryland read as follows:
- 19 Article 27 Crimes and Punishments

20 641.

- 21 (a) (1) (i) 1. Whenever a person accused of a crime pleads guilty or nolo
- 22 contendere is or is found guilty of an offense, a court exercising criminal jurisdiction,
- 23 if satisfied that the best interests of the person and the welfare of the people of the
- 24 State would be served thereby, and with the written consent of the person after
- 25 determination of guilt or acceptance of a nolo contendere plea, may stay the entering
- 26 of judgment, defer further proceedings, and place the person on probation subject to

- 1 reasonable terms and conditions as appropriate. The terms and conditions may
- 2 include ordering the person to pay a fine or pecuniary penalty to the State, or to make
- 3 restitution, but before the court orders a fine, pecuniary penalty, or restitution the
- 4 person is entitled to notice and a hearing to determine the amount of the fine,
- 5 pecuniary penalty, or restitution, what payment will be required, and how payment
- 6 will be made. The terms and conditions also may include any type of rehabilitation
- 7 program or clinic, or similar program, or the parks program or voluntary hospital
- 8 program.
- 9 2. In Allegany County, Calvert County, Charles County,
- 10 Garrett County, and St. Mary's County, the court may impose a sentence of
- 11 confinement as a condition of probation.
- 12 (ii) However, when the offense for which the judgment is being
- 13 stayed is for violation of any provision of § 21-902 of the Transportation Article, the
- 14 court:
- 15 1. Shall impose a period of probation and, as a condition of
- 16 the probation, require the person to participate in an alcohol treatment or education
- 17 program approved by the Department of Health and Mental Hygiene, unless the court
- 18 finds and affirmatively states on the record that the interests of the person and the
- 19 people of the State do not require the imposition of this condition; and
- 20 2. May, as a condition of probation, prohibit the person from
- 21 operating a motor vehicle unless the motor vehicle is equipped with an ignition
- 22 interlock system under § 27-107 of the Transportation Article.
- 23 (iii) When the offense for which the judgment is being stayed is for a
- 24 violation of any provision of §§ 276 through 303 of this article, the court shall require
- 25 the person to participate in a drug treatment or education program approved by the
- 26 Department of Health and Mental Hygiene, unless the court finds and affirmatively
- 27 states on the record that the interests of the person and the people of the State do not
- 28 require the imposition of this condition.
- 29 (iv) Any fine or pecuniary penalty imposed as a term or condition of
- 30 probation shall be within the amount prescribed by law for a violation resulting in
- 31 conviction.
- 32 (2) Notwithstanding paragraph (1) of this subsection, a court may not
- 33 stay the entering of judgment and place a person on probation for a violation of any
- 34 provision of § 21-902 of the Transportation Article if the person has been convicted
- 35 under, or has been placed on probation under this section after being charged with a
- 36 violation of § 21-902 of the Transportation Article within the preceding 5 years.
- 37 (3) Notwithstanding paragraph (1) of this subsection, a court may not
- 38 stay the entering of judgment and place a person on probation for a second or
- 39 subsequent controlled dangerous substance offense under §§ 276 through 303 of this
- 40 article.

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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 By consenting to and receiving a stay of entering of the judgment as (5) 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 Upon violation of a term or condition of probation, the court may enter 12 judgment and proceed with disposition of the person as if the person had not been 13 placed on probation. 14 (c) Upon fulfillment of the terms and conditions of probation, the court shall 15 discharge the person from probation. The discharge is final disposition of the matter. 16 Discharge of a person under this section shall be without judgment of conviction and 17 is not a conviction for purposes of any disqualification or disability imposed by law 18 because of conviction of crime. 19 747A. 20 (a) In this section, "law enforcement agency" includes: 21 (1) A State, county, or municipal police department or agency; or 22 (2) A sheriff's office. When a defendant is found guilty, or pleads guilty or nolo contendere 23 (b) (1) 24 to an offense that is criminal history record information, as defined in § 743(e) of this 25 subtitle, and is sentenced to commitment in a local correctional facility, or receives a 26 suspended sentence, probation, [other than] probation prior to judgment under § 641 27 of this article, or a fine, and the defendant has not previously been fingerprinted as a 28 result of arrest for the sentenced offense, the judge imposing the sentence shall order 29 that the defendant be fingerprinted by the appropriate available law enforcement 30 agency. 31 If the fingerprinting cannot be done immediately, the judge shall 32 order that the defendant report to the designated law enforcement agency for 33 fingerprinting within 3 days after sentencing. If a defendant fails to report as ordered under paragraph (2) of this 34 35 subsection, the defendant shall be in contempt of court. This subsection applies only to an adjudication of delinquency for a 36 (c) (1) 37 child:

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- 1 (i) Who is at least 14 years old, for an act described in § 3-804(e)(1)
 2 of the Courts and Judicial Proceedings Article; or

 3 (ii) Who is at least 16 years old, for an act described in § 3-804(e)(4)
 4 or (5) of the Courts and Judicial Proceedings Article.

 5 (2) When a child described under paragraph (1) of this subsection is
 6 adjudicated delinquent by reason of an offense described in this subsection and the
 7 child has not previously been fingerprinted as a result of arrest for the delinquent act,
 8 the court that conducted the disposition hearing shall order that the child be
 9 fingerprinted by the appropriate available law enforcement agency.
- 10 (3) If the fingerprinting cannot be done immediately, the court shall 11 order that the child report to the designated law enforcement agency for
- 12 fingerprinting within 3 days after making a disposition on an adjudication of
- 13 delinquency described under paragraph (1) of this subsection.
- 14 (d) When the offense charged is one that is defined as a "petty offense" by law
- 15 or rule of court, the judge shall exercise discretion as to whether the defendant shall
- 16 be fingerprinted under subsection (b) of this section.
- 17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 18 October 1, 2000.