SENATE BILL 494 EMERGENCY BILL

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By: **Senators Ferguson, Jacobs, Hooper, Harris, and Mooney** Introduced and read first time: February 4, 2000 Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 3	Sentencing - Confinement as a Condition of Probation - Ineligibility for Probation
4 5 6 7 8	FOR the purpose of expanding the authority of the courts throughout the State to impose a sentence of confinement as a condition of probation; making certain offenders who are convicted of certain crimes ineligible for probation; making this Act an emergency measure; and generally relating to the authority of the courts to impose a sentence of confinement as a condition of probation.
9 10 11 12 13	Section 639(a), 641(a), and 641A(a)
14 15	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
16	Article 27 - Crimes and Punishments
17	639.
20 21 22	(a) (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.
24 25	(2) [In Charles County, St. Mary's County, and Calvert County, the] THE court may impose a sentence of confinement as a condition of probation.
26	641.
27 28	(a) (1) (i) 1. Whenever a person accused of a crime pleads guilty or nolo contendere or is found guilty of an offense, a court exercising criminal jurisdiction, if

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1 satisfied that the best interests of the person and the welfare of the people of the 2 State would be served thereby, and with the written consent of the person after 3 determination of guilt or acceptance of a nolo contendere plea, may stay the entering 4 of judgment, defer further proceedings, and place the person on probation subject to 5 reasonable terms and conditions as appropriate. The terms and conditions may 6 include ordering the person to pay a fine or pecuniary penalty to the State, or to make 7 restitution, but before the court orders a fine, pecuniary penalty, or restitution the 8 person is entitled to notice and a hearing to determine the amount of the fine, 9 pecuniary penalty, or restitution, what payment will be required, and how payment 10 will be made. The terms and conditions also may include any type of rehabilitation 11 program or clinic, or similar program, or the parks program or voluntary hospital 12 program. 13 2. [In Allegany County, Calvert County, Charles County, 14 Garrett County, and St. Mary's County, the] THE court may impose a sentence of 15 confinement as a condition of probation. 16 [However,] SUBJECT TO SUBPARAGRAPH (III) OF THIS (ii) 17 PARAGRAPH, when the offense for which the judgment is being stayed is for violation 18 of any provision of § 21-902 of the Transportation Article, the court: 19 1. Shall impose a period of probation and, as a condition of 20 the probation, require the person to participate in an alcohol treatment or education 21 program approved by the Department of Health and Mental Hygiene, unless the court 22 finds and affirmatively states on the record that the interests of the person and the 23 people of the State do not require the imposition of this condition; and 24 2. May, as a condition of probation, prohibit the person from 25 operating a motor vehicle unless the motor vehicle is equipped with an ignition 26 interlock system under § 27-107 of the Transportation Article. 27 SUBPARAGRAPH (II) OF THIS PARAGRAPH APPLIES ONLY (III) 1. 28 TO FIRST-TIME OFFENDERS OF ANY PROVISION OF § 21-902 OF THE 29 TRANSPORTATION ARTICLE. 30 2. A PERSON WHO IS CONVICTED FOR A SECOND OR 31 SUBSEQUENT VIOLATION OF ANY PROVISION OF § 21-902 OF THE TRANSPORTATION 32 ARTICLE IS NOT ELIGIBLE TO RECEIVE PROBATION AND SHALL SERVE THE FULL 33 SENTENCE IN A CORRECTIONAL FACILITY. 34 When the offense for which the judgment is being stayed is [(iii)] (IV) 35 for a violation of any provision of §§ 276 through 303 of this article, the court shall 36 require the person to participate in a drug treatment or education program approved 37 by the Department of Health and Mental Hygiene, unless the court finds and 38 affirmatively states on the record that the interests of the person and the people of 39 the State do not require the imposition of this condition.

40 [(iv)] (V) Any fine or pecuniary penalty imposed as a term or 41 condition of probation shall be within the amount prescribed by law for a violation

42 resulting in conviction.

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1 (2) 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

3 provision of § 21-902 of the Transportation Article if the person has been convicted 4 under, or has been placed on probation under this section after being charged with a

5 violation of, § 21-902 of the Transportation Article within the preceding 5 years.

6 (3) Notwithstanding paragraph (1) of this subsection, a court may not 7 stay the entering of judgment and place a person on probation for a second or 8 subsequent controlled dangerous substance offense under §§ 276 through 303 of this 9 article.

10 (4) Notwithstanding paragraph (1) of this subsection, a court may not 11 stay the entering of judgment and place a person on probation for a violation of any of 12 the provisions of §§ 462 through 464B of this article for an offense involving a person 13 under the age of 16 years.

14 (5) By consenting to and receiving a stay of entering of the judgment as 15 provided by this subsection, the person waives the right to appeal from the judgment 16 of guilt by the court at any time. Prior to the person consenting to the stay of entering 17 of the judgment, the court shall notify the person that by consenting to and receiving 18 a stay of entry of judgment, the person waives the right to appeal from the judgment 19 of guilt by the court at any time.

20 641A.

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

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

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

30 (4) However, if the defendant consents in writing, the court may grant 31 probation in excess of 5 years, but only for purposes of making restitution.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency

33 measure, is necessary for the immediate preservation of the public health and safety,34 has been passed by a yea and nay vote supported by three-fifths of all the members

35 has been passed by a yea and hay vote supported by infee-finits of an use members 35 elected to each of the two Houses of the General Assembly, and shall take effect from

36 the date it is enacted.

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