

(PRE-FILED)

By: **Delegate Boutin**
Requested: October 30, 2000
Introduced and read first time: January 10, 2001
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving - Alcohol and Drug Abuse Evaluations -**
3 **Conditions of Probation**

4 FOR the purpose of requiring a court that suspends a sentence or stays a judgment of
5 conviction and places a defendant on probation for certain alcohol- or
6 drug-related driving offenses to require as a condition of probation that the
7 defendant participate in an alcohol or drug treatment or education program
8 approved by the Department of Health and Mental Hygiene under certain
9 circumstances; authorizing a court that stays judgment of conviction and places
10 a defendant on probation for certain alcohol- or drug-related driving offenses to
11 prohibit the defendant from operating a motor vehicle unless the motor vehicle
12 is equipped with an ignition interlock system; requiring a court to order the
13 Department to conduct a certain evaluation of a defendant who is charged with
14 certain alcohol- or drug-related driving offenses; providing for the application of
15 this Act; and generally relating to providing for alcohol or drug abuse evaluation
16 and conditions of probation for certain alcohol- and drug-related driving
17 offenses.

18 BY repealing and reenacting, with amendments,
19 Article 27 - Crimes and Punishments
20 Section 639(b) and 641(a)(1)(ii)
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 2000 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Health - General
25 Section 8-505
26 Annotated Code of Maryland
27 (2000 Replacement Volume)

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

1

Article 27 - Crimes and Punishments

2 639.

3 (b) However, when the conviction is for violation of [§ 21-902(a) or (b)] §
 4 21-902 of the Transportation Article OR § 388A OR § 388B OF THIS ARTICLE, if the court
 5 places the person on probation, it shall require, as a condition of the suspension of
 6 sentence, that the person participate in an alcohol OR DRUG treatment or education
 7 program approved by the Department of Health and Mental Hygiene, unless the court
 8 finds and affirmatively states on the record that the interests of the person and the
 9 people of the State do not require the imposition of this condition.

10 641.

11 (a) (1) (ii) However, when the offense for which the judgment is being
 12 stayed is for violation of any provision of § 21-902 of the Transportation Article OR §
 13 388A OR § 388B OF THIS ARTICLE, the court:

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

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

22

Article - Health - General

23 8-505.

24 (a) (1) Before or during a criminal trial or prior to sentencing, the court may
 25 order the Department to evaluate a defendant to determine whether, by reason of
 26 drug or alcohol abuse, the defendant is in need of and may benefit from treatment if:

27 (i) It appears to the court that the defendant has an alcohol or drug
 28 abuse problem; or

29 (ii) The defendant alleges an alcohol or drug dependency.

30 (2) BEFORE THE DATE OF A CRIMINAL TRIAL OF A DEFENDANT WHO IS
 31 CHARGED WITH A VIOLATION OF A PROVISION OF § 21-902 OF THE TRANSPORTATION
 32 ARTICLE OR ARTICLE 27, § 388A OR § 388B OF THE CODE, THE COURT SHALL ORDER
 33 THE DEPARTMENT TO EVALUATE THE DEFENDANT TO DETERMINE WHETHER, BY
 34 REASON OF DRUG OR ALCOHOL ABUSE, THE DEFENDANT IS IN NEED OF AND MAY
 35 BENEFIT FROM TREATMENT.

36 [(2)] (3) The court shall set and may change the conditions under which
 37 the examination is to be conducted.

1 (b) Except in a capital case, on consideration of the nature of the charge, the
2 court:

3 (1) May require or permit an examination to be conducted on an
4 outpatient basis; and

5 (2) If an outpatient examination is authorized, shall set bail for the
6 defendant or authorize the release of the defendant on personal recognizance.

7 (c) (1) If a defendant is to be held in custody for examination under this
8 section:

9 (i) The defendant may be confined in a detention facility until the
10 Department is able to conduct the examination; or

11 (ii) The court may order confinement of the defendant in a medical
12 wing or other isolated and secure unit of a detention facility, if the court finds it
13 appropriate for the health or safety of the defendant.

14 (2) (i) If the court finds that, because of the apparent severity of the
15 alcohol or drug dependency or other medical or psychiatric complications, a defendant
16 in custody would be endangered by confinement in a jail, the court may order the
17 Department to either:

18 1. Place the defendant, pending examination, in a health
19 care facility that the Department designates as appropriate; or

20 2. Have local health department staff, or other qualified
21 personnel who the Department finds appropriate, immediately conduct an evaluation
22 of the defendant.

23 (ii) Unless the Department retains a defendant, the defendant shall
24 be promptly returned to the court after an examination.

25 (iii) A defendant who is detained for an examination under this
26 section may question at any time the legality of the detention by a petition for a writ
27 of habeas corpus.

28 (d) (1) If a court orders an evaluation under this section, the evaluator shall:

29 (i) Conduct an evaluation of the defendant; and

30 (ii) Submit a complete report of the evaluation within 7 days to the:

31 1. Court;

32 2. Administration; and

33 3. Defendant or the defendant's attorney.

1 (2) On good cause shown, the court may extend the time for an
2 evaluation.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
4 construed only prospectively and may not be applied or interpreted to have any effect
5 on or application to any person arrested before the effective date of this Act.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2001.