

SENATE BILL 91
EMERGENCY BILL

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2001 Regular Session
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By: **Senator Baker**

Introduced and read first time: January 15, 2001

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 20, 2001

CHAPTER_____

1 AN ACT concerning

2 **Criminal Sentencing - Custodial Confinement as a Condition of a Suspended**
3 **Sentence or Probation**

4 FOR the purpose of allowing a court as a condition of a suspended sentence or
5 probation to order a person to a term of custodial confinement for a certain term
6 under certain circumstances; clarifying and limiting the authority of certain
7 courts in certain counties to order a term of imprisonment as a condition of a
8 suspended sentence or probation under certain circumstances; defining a
9 certain term; making a portion of this Act an emergency measure; and generally
10 relating to custodial confinement as a condition of a suspended sentence or
11 probation.

12 BY repealing and reenacting, with amendments,
13 Article 27 - Crimes and Punishments
14 Section 639, 641, and 641A
15 Annotated Code of Maryland
16 (1996 Replacement Volume and 2000 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - Criminal Procedure
19 Section 6-219, 6-220, and 6-225
20 Annotated Code of Maryland
21 (As enacted by Chapter___ (S.B. 1) of the Acts of the General Assembly of 2001)

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

1

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 THAT REQUIRES THE INDIVIDUAL TO PARTICIPATE
7 IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR PROGRAM
8 INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE EQUIVALENT OF
9 CONFINEMENT; OR

10 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ORDERED IN
11 COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE.

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

13 (B) (1) The courts may suspend sentence generally or for a definite time, and
14 may make such orders and impose such terms as to costs, recognizance for
15 appearance, or matters relating to the residence or conduct of the convicts as may be
16 deemed proper; and if the convict is a person under 18 years of age, the courts may
17 also make such orders as to his detention in any care or custody as may be deemed
18 proper.

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

21 (3) AS A CONDITION OF A SUSPENDED SENTENCE, THE COURT MAY
22 ORDER A PERSON TO A TERM OF CUSTODIAL CONFINEMENT.

23 [(b)] (C) However, when the conviction is for violation of § 21-902(a) or (b) of
24 the Transportation Article, if the court places the person on probation, it shall require,
25 as a condition of the suspension of sentence, that the person participate in an alcohol
26 treatment or education program approved by the Department of Health and Mental
27 Hygiene, unless the court finds and affirmatively states on the record that the
28 interests of the person and the people of the State do not require the imposition of this
29 condition.

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

1 [(d)] (E) When the conviction is for violation of any provision of §§ 276 through
2 303 of this article, if the court places the person on probation, it shall require, as a
3 condition of the suspension of sentence, that the person participate in a drug
4 treatment or education program approved by the Department of Health and Mental
5 Hygiene, unless the court finds and affirmatively states on the record that the
6 interests of the person and the people of the State do not require the imposition of this
7 condition.

8 641.

9 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

10 (I) HOME DETENTION;

11 (II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER THE
12 CODE OR BY COUNTY ORDINANCE THAT REQUIRES THE INDIVIDUAL TO PARTICIPATE
13 IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR PROGRAM
14 INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE EQUIVALENT OF
15 CONFINEMENT; OR

16 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ORDERED IN
17 COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE.

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

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

33 2. In Allegany County, Calvert County, Charles County,
34 Garrett County, Howard County, and St. Mary's County, the court may impose a
35 sentence of [confinement] IMPRISONMENT as a condition of probation.

36 3. AS A CONDITION OF PROBATION, THE COURT MAY ORDER
37 A PERSON TO A TERM OF CUSTODIAL CONFINEMENT.

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

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

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

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

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

18 (2) Notwithstanding paragraph (1) of this subsection, a court may not
19 stay the entering of judgment and place a person on probation for a violation of any
20 provision of § 21-902 of the Transportation Article if the person has been convicted
21 under, or has been placed on probation under this section after being charged with a
22 violation of, § 21-902 of the Transportation Article within the preceding 5 years.

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

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

31 (5) By consenting to and receiving a stay of entering of the judgment as
32 provided by this subsection, the person waives the right to appeal from the judgment
33 of guilt by the court at any time. Prior to the person consenting to the stay of entering
34 of the judgment, the court shall notify the person that by consenting to and receiving
35 a stay of entry of judgment, the person waives the right to appeal from the judgment
36 of guilt by the court at any time.

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

40 [(c)] (D) Upon fulfillment of the terms and conditions of probation, the court
41 shall discharge the person from probation. The discharge is final disposition of the

1 matter. Discharge of a person under this section shall be without judgment of
2 conviction and is not a conviction for purposes of any disqualification or disability
3 imposed by law because of conviction of crime.

4 641A.

5 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

6 (I) HOME DETENTION;

7 (II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER THE
8 CODE OR BY COUNTY ORDINANCE THAT REQUIRES THE INDIVIDUAL TO PARTICIPATE
9 IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR PROGRAM
10 INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE EQUIVALENT OF
11 CONFINEMENT; OR

12 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ORDERED IN
13 COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE.

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

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

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

21 (3) AS A CONDITION OF PROBATION, THE COURT MAY ORDER A
22 DEFENDANT TO A TERM OF CUSTODIAL CONFINEMENT.

23 [(3)] (4) The court may impose a sentence for a specified period and
24 provide that a lesser period be served in confinement, suspend the remainder of the
25 sentence and grant probation for a period longer than the sentence but not in excess
26 of 5 years.

27 [(4)] (5) However, if the defendant consents in writing, the court may
28 grant probation in excess of 5 years, but only for purposes of making restitution.

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

35 (c) If a sentence of imprisonment is imposed, a portion of it is suspended, and
36 the defendant is placed on probation, the court may impose as a condition of probation

1 that the probation commence on the date the defendant is actually released from
2 imprisonment.

3 (d) When the probation granted is for violation of any provision of §§ 276
4 through 303 of this article, if the court places the person on probation, it shall require,
5 as a condition of the suspension of sentence, that the person participate in a drug
6 treatment or education program approved by the Department of Health and Mental
7 Hygiene, unless the court finds and affirmatively states on the record that the
8 interests of the person and the people of the State do not require the imposition of this
9 condition.

10 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
11 read as follows:

12 **Article - Criminal Procedure**

13 6-219.

14 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

15 (I) HOME DETENTION;

16 (II) A CORRECTIONS OPTIONS PROGRAM ESTABLISHED UNDER THE
17 CODE OR BY COUNTY ORDINANCE THAT REQUIRES THE INDIVIDUAL TO PARTICIPATE
18 IN HOME DETENTION, INPATIENT TREATMENT, OR OTHER SIMILAR PROGRAM
19 INVOLVING TERMS AND CONDITIONS THAT CONSTITUTE THE EQUIVALENT OF
20 CONFINEMENT; OR

21 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ORDERED IN
22 COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE.

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

24 (B) Subject to subsection (b) of this section, a court:

25 (1) may suspend a sentence generally or for a definite time;

26 (2) may pass orders and impose terms as to costs, recognizance for
27 appearance, or matters relating to the residence or conduct of the defendant who is
28 convicted as may be deemed proper; [or]

29 (3) if the defendant who is convicted is under 18 years of age, may order
30 confinement in any care or custody as may be deemed proper; OR

31 (4) MAY ORDER A PERSON TO A TERM OF CUSTODIAL CONFINEMENT AS
32 A CONDITION OF A SUSPENDED SENTENCE.

33 [(b)] (C) (1) If the court places on probation a defendant who has been
34 convicted of a violation of § 21-902(a) or (b) of the Transportation Article, the court
35 shall require as a condition that the defendant participate in an alcohol treatment or

1 education program approved by the Department of Health and Mental Hygiene,
2 unless the court finds and states on the record that the interests of the defendant and
3 the public do not require the imposition of this condition.

4 (2) If the court places on probation a defendant who has been convicted
5 of a violation of any provision of Article 27, §§ 276 through 303 of the Code, the court
6 shall require as a condition that the defendant participate in a drug treatment or
7 education program approved by the Department of Health and Mental Hygiene,
8 unless the court finds and states on the record that the interests of the defendant and
9 the public do not require the imposition of this condition.

10 [(c)] (D) (1) In Calvert County, Charles County, and St. Mary's County, the
11 court may impose a sentence of [confinement] IMPRISONMENT as a condition of
12 probation.

13 (2) In Prince George's County, the court on conviction may sentence a
14 defendant to the local correctional facility or place of confinement under the
15 jurisdiction of the sheriff, if:

16 (i) the sentence is to be performed during any 48-hour period in a
17 7-day period, with each period of confinement to be not less than 2 days of the
18 sentence imposed;

19 (ii) the crime leading to the conviction allows confinement in the
20 local correctional facility; and

21 (iii) the total sentence does not exceed 30 two-day periods of
22 confinement.

23 6-220.

24 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

25 (I) HOME DETENTION;

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

31 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ORDERED IN
32 COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE.

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

34 (B) (1) When a defendant pleads guilty or nolo contendere or is found guilty
35 of a crime, a court may stay the entering of judgment, defer further proceedings, and
36 place the defendant on probation subject to reasonable conditions if:

1 (i) the court is satisfied that the best interests of the defendant
2 and the public welfare would be served; and

3 (ii) the defendant gives written consent after determination of guilt
4 or acceptance of a nolo contendere plea.

5 (2) Subject to paragraphs (3) and (4) of this subsection, the conditions
6 may include an order that the defendant:

7 (i) pay a fine or monetary penalty to the State or make restitution;
8 or

9 (ii) participate in a rehabilitation program, the parks program, or a
10 voluntary hospital program.

11 (3) Before the court orders a fine, monetary penalty, or restitution, the
12 defendant is entitled to notice and a hearing to determine the amount of the fine,
13 monetary penalty, or restitution, what payment will be required, and how payment
14 will be made.

15 (4) Any fine or monetary penalty imposed as a condition of probation
16 shall be within the amount set by law for a violation resulting in conviction.

17 (5) AS A CONDITION OF PROBATION, THE COURT MAY ORDER A PERSON
18 TO A TERM OF CUSTODIAL CONFINEMENT.

19 [(b)] (C) (1) When the crime for which the judgment is being stayed is for a
20 violation of § 21-902 of the Transportation Article, the court shall impose a period of
21 probation and, as a condition of the probation:

22 (i) shall require the defendant to participate in an alcohol
23 treatment or education program approved by the Department of Health and Mental
24 Hygiene, unless the court finds and states on the record that the interests of the
25 defendant and the public do not require the imposition of this condition; and

26 (ii) may prohibit the defendant from operating a motor vehicle
27 unless the motor vehicle is equipped with an ignition interlock system under § 27-107
28 of the Transportation Article.

29 (2) When the crime for which the judgment is being stayed is for a
30 violation of any provision of Article 27, §§ 276 through 303 of the Code, the court shall
31 impose a period of probation and, as a condition of probation, require the defendant to
32 participate in a drug treatment or education program approved by the Department of
33 Health and Mental Hygiene, unless the court finds and states on the record that the
34 interests of the defendant and the public do not require the imposition of this
35 condition.

36 [(c)] (D) Notwithstanding subsections [(a)] (B) and [(b)] (C) of this section, a
37 court may not stay the entering of judgment and place a defendant on probation for:

1 (1) a violation of § 21-902 of the Transportation Article, if within the
2 preceding 5 years the defendant has been convicted under or has been placed on
3 probation under that section after being charged with a violation of § 21-902 of the
4 Transportation Article;

5 (2) a second or subsequent controlled dangerous substance crime under
6 Article 27, §§ 276 through 303 of the Code; or

7 (3) a violation of any of the provisions of Article 27, §§ 462 through 464B
8 of the Code for a crime involving a person under the age of 16 years.

9 [(d)] (E) (1) By consenting to and receiving a stay of entering of the
10 judgment as provided by subsections [(a)] (B) and [(b)] (C) of this section, the
11 defendant waives the right to appeal at any time from the judgment of guilt.

12 (2) Before granting a stay, the court shall notify the defendant of the
13 consequences of consenting to and receiving a stay of entry of judgment under
14 paragraph (1) of this subsection.

15 [(e)] (F) On violation of a condition of probation, the court may enter
16 judgment and proceed as if the defendant had not been placed on probation.

17 [(f)] (G) (1) On fulfillment of the conditions of probation, the court shall
18 discharge the defendant from probation.

19 (2) The discharge is a final disposition of the matter.

20 (3) Discharge of a defendant under this section shall be without
21 judgment of conviction and is not a conviction for the purpose of any disqualification
22 or disability imposed by law because of conviction of a crime.

23 [(g)] (H) In Allegany County, Calvert County, Charles County, Garrett County,
24 Howard County, and St. Mary's County, the court may impose a sentence of
25 ~~confinement~~ IMPRISONMENT as a condition of probation.

26 6-225.

27 (a) (1) IN THIS SECTION, "CUSTODIAL CONFINEMENT" MEANS:

28 (I) HOME DETENTION;

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

34 (III) INPATIENT DRUG OR ALCOHOL TREATMENT ORDERED IN
35 COMPLIANCE WITH TITLE 8, SUBTITLE 5 OF THE HEALTH - GENERAL ARTICLE.

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

1 (B) (1) (i) Probation may be granted whether the crime is punishable by
2 fine or imprisonment or both.

3 (ii) If the crime is punishable by both fine and imprisonment, the
4 court may impose a fine and place the defendant on probation as to the imprisonment.

5 (iii) Probation may be limited to one or more counts or indictments
6 but, in the absence of express limitation, extends to the entire sentence and judgment.

7 (iv) The court may revoke or modify a condition of probation or may
8 reduce the period of probation.

9 (V) AS A CONDITION OF PROBATION, THE COURT MAY ORDER A
10 DEFENDANT TO A TERM OF CUSTODIAL CONFINEMENT.

11 (2) If a sentence of imprisonment is imposed and a part of it is suspended
12 with the defendant placed on probation, the court may impose as a condition of
13 probation that the probation begin on the day the defendant is released from
14 imprisonment.

15 [(b)] (C) If the court places on probation a defendant who has been convicted
16 of a violation of any provision of Article 27, §§ 276 through 303 of the Code, the court
17 shall require as a condition that the defendant participate in a drug treatment or
18 education program approved by the Department of Health and Mental Hygiene,
19 unless the court finds and states on the record that the interests of the defendant and
20 the public do not require the imposition of this condition.

21 [(c)] (D) In Calvert County, Cecil County, Charles County, Harford County,
22 and St. Mary's County, the court may impose a sentence of ~~confinement~~
23 IMPRISONMENT as a condition of probation.

24 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act is an
25 emergency measure, is necessary for the immediate preservation of the public health
26 and safety, has been passed by a ye and nay vote supported by three-fifths of all the
27 members elected to each of the two Houses of the General Assembly, and Section 1 of
28 this Act shall take effect from the date it is enacted. It shall remain effective until the
29 taking effect of Section 2 of this Act. If Section 2 of this Act takes effect, Section 1 of
30 this Act shall be abrogated and of no further force and effect.

31 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to the provisions
32 of Section 3 of this Act, this Act shall take effect October 1, 2001.

