

SENATE BILL 428

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2003 Regular Session
(3r1758)

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by ~~Senator Giannetti~~ **Senators Giannetti and Green**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure - ~~Imprisonment~~ Custodial Confinement as a Condition**
3 **of Probation ~~Before Judgment or Suspension of Sentence~~ - ~~Required~~**

4 FOR the purpose of ~~authorizing~~ expanding to all jurisdictions in the State the
5 authority of a court to impose a certain sentence of imprisonment as a condition
6 ~~of probation before judgment~~ the authority of the courts throughout the State to
7 impose a sentence of custodial confinement or imprisonment as a condition of
8 probation or suspension of sentence; requiring a court that imposes a sentence of
9 imprisonment as a condition of probation to impose the sentence and other
10 conditions of probation in the same proceeding; repealing a provision
11 authorizing a court in certain counties to impose a sentence of imprisonment as
12 a condition of probation; and generally relating to conditions of probation before
13 judgment the authority of the courts to impose a sentence of custodial
14 confinement or imprisonment as a condition of probation or suspension of
15 sentence.

16 BY repealing and reenacting, with amendments,

1 Article - Criminal Procedure
 2 Section 6-219(a), (b), (d), and (e), 6-220(a) and (b), and 6-225(d)
 3 Annotated Code of Maryland
 4 (2001 Volume and 2002 Supplement)

5 BY repealing ~~and reenacting, with amendments,~~
 6 Article - Criminal Procedure
 7 Section ~~6-220~~ 6-220(h)
 8 Annotated Code of Maryland
 9 (2001 Volume and 2002 Supplement)

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

12 **Article - Criminal Procedure**

13 ~~6-220, 6-219.~~

14 (a) [(1)] In this section, "custodial confinement" means:

15 [(i)] (1) home detention;

16 [(ii)] (2) a corrections options program established under law which
 17 requires the individual to participate in home detention, inpatient treatment, or other
 18 similar program involving terms and conditions that constitute the equivalent of
 19 confinement; or

20 [(iii)] (3) inpatient drug or alcohol treatment.

21 [(2) "Custodial confinement" does not include imprisonment.]

22 (b) Subject to subsection (c) of this section, a court:

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

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

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

29 (4) may order a person to a term of custodial confinement as a condition
 30 of a suspended sentence.

31 (d) [(1) In Calvert County, Charles County, and St. Mary's County, the] THE
 32 court may impose a sentence of imprisonment as a condition of probation.

1 ~~[(2)]~~ ~~(E)~~ In Prince George's County, the court on conviction may sentence
2 a defendant to the local correctional facility, if:

3 ~~[(i)]~~ ~~(1)~~ the sentence is to be performed during any 48-hour period
4 in a 7-day period, with each period of confinement to be not less than 2 days of the
5 sentence imposed;

6 ~~[(ii)]~~ ~~(2)~~ the crime leading to the conviction allows confinement in
7 the local correctional facility; and

8 ~~[(iii)]~~ ~~(3)~~ the total sentence does not exceed 30 2-day periods of
9 confinement.

10 ~~[(e)]~~ ~~(F)~~ If an individual violates the terms of probation, any time served by the
11 individual in custodial confinement shall be credited against any sentence of
12 incarceration imposed by the court.

13 6-220.

14 ~~(a)~~ ~~[(1)]~~ In this section, "custodial confinement" means:

15 ~~[(i)]~~ ~~(1)~~ home detention;

16 ~~[(ii)]~~ ~~(2)~~ a corrections options program established under law which
17 requires the individual to participate in home detention, inpatient treatment, or other
18 similar program involving terms and conditions that constitute the equivalent of
19 confinement; or

20 ~~[(iii)]~~ ~~(3)~~ inpatient drug or alcohol treatment.

21 ~~[(2)]~~ "Custodial confinement" does not include imprisonment.]

22 ~~(b)~~ ~~(1)~~ When a defendant pleads guilty or nolo contendere or is found guilty
23 of a crime, a court may stay the entering of judgment, defer further proceedings, and
24 place the defendant on probation subject to reasonable conditions if:

25 ~~(i)~~ the court finds that the best interests of the defendant and the
26 public welfare would be served; and

27 ~~(ii)~~ the defendant gives written consent after determination of guilt
28 or acceptance of a nolo contendere plea.

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

31 ~~(i)~~ pay a fine or monetary penalty to the State or make restitution;
32 or

33 ~~(ii)~~ participate in a rehabilitation program, the parks program, or a
34 voluntary hospital program.

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

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

7 (5) As a condition of probation, the court may order a person to a term of
 8 custodial confinement OR IMPRISONMENT.

9 [(h) In Allegany County, Calvert County, Charles County, Garrett County,
 10 Howard County, and St. Mary's County, the court may impose a sentence of
 11 imprisonment as a condition of probation.]

12 6-225.

13 (d) [In Calvert County, Cecil County, Charles County, Harford County, and St.
 14 Mary's County, the] THE court may impose a sentence of CUSTODIAL CONFINEMENT
 15 OR imprisonment as a condition of probation.

16 ~~(a) (1) In this section, "custodial confinement" means:~~

17 ~~(i) home detention;~~

18 ~~(ii) a corrections options program established under law which~~
 19 ~~requires the individual to participate in home detention, inpatient treatment, or other~~
 20 ~~similar program involving terms and conditions that constitute the equivalent of~~
 21 ~~confinement; or~~

22 ~~(iii) inpatient drug or alcohol treatment.~~

23 ~~(2) "Custodial confinement" does not include imprisonment.~~

24 ~~(b) (1) When a defendant pleads guilty or nolo contendere or is found guilty~~
 25 ~~of a crime, a court may stay the entering of judgment, defer further proceedings, and~~
 26 ~~place the defendant on probation subject to reasonable conditions if:~~

27 ~~(i) the court finds that the best interests of the defendant and the~~
 28 ~~public welfare would be served; and~~

29 ~~(ii) the defendant gives written consent after determination of guilt~~
 30 ~~or acceptance of a nolo contendere plea.~~

31 ~~(2) Subject to paragraphs (3) and (4) of this subsection, the conditions:~~

32 ~~(I) MAY INCLUDE AN ORDER OF A SENTENCE OF IMPRISONMENT;~~

33 ~~OR~~

34 ~~(II) may include an order that the defendant:~~

1 ~~[(i)]~~ 1. pay a fine or monetary penalty to the State or make
2 restitution; or

3 ~~[(ii)]~~ 2. participate in a rehabilitation program, the parks
4 program, or a voluntary hospital program.

5 ~~(3)~~ Before the court orders a fine, monetary penalty, or restitution, the
6 defendant is entitled to notice and a hearing to determine the amount of the fine,
7 monetary penalty, or restitution, what payment will be required, and how payment
8 will be made.

9 ~~(4)~~ Any LENGTH OF SENTENCE, fine, or monetary penalty imposed as a
10 condition of probation shall be within the MAXIMUM SENTENCE OR amount set by law
11 for a violation resulting in conviction.

12 ~~(5)~~ As a condition of probation, the court may order a person to a term of
13 custodial confinement.

14 ~~(6)~~ ~~IF A COURT IMPOSES A SENTENCE OF IMPRISONMENT AS A~~
15 ~~CONDITION OF PROBATION UNDER THIS SECTION, THE COURT SHALL IMPOSE THE~~
16 ~~SENTENCE OF IMPRISONMENT AND ANY OTHER CONDITIONS OF PROBATION IN THE~~
17 ~~SAME PROCEEDING.~~

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

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

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

28 ~~(2)~~ When the crime for which the judgment is being stayed is for a
29 violation of any provision of Title 5 of the Criminal Law Article, the court shall impose
30 a period of probation and, as a condition of probation, require the defendant to
31 participate in a drug treatment or education program approved by the Department of
32 Health and Mental Hygiene, unless the court finds and states on the record that the
33 interests of the defendant and the public do not require the imposition of this
34 condition.

35 ~~(d)~~ Notwithstanding subsections (b) and (c) of this section, a court may not
36 stay the entering of judgment and place a defendant on probation for:

37 ~~(1)~~ a violation of § 21-902 of the Transportation Article or § 2-503, §
38 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if within the
39 preceding 5 years the defendant has been convicted under § 21-902 of the

1 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the
2 Criminal Law Article, or has been placed on probation in accordance with this section,
3 after being charged with a violation of § 21-902 of the Transportation Article or §
4 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article;

5 (2) a second or subsequent controlled dangerous substance crime under
6 Title 5 of the Criminal Law Article; or

7 (3) a violation of any of the provisions of §§ 3-303 through 3-307 of the
8 Criminal Law Article for a crime involving a person under the age of 16 years.

9 (e) (1) By consenting to and receiving a stay of entering of the judgment as
10 provided by subsections (b) and (c) of this section, the defendant waives the right to
11 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 (f) On violation of a condition of probation, the court may enter judgment and
16 proceed as if the defendant had not been placed on probation.

17 (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 [(h) In Allegany County, Calvert County, Charles County, Garrett County,
24 Howard County, and St. Mary's County, the THE court may impose a sentence of
25 imprisonment as a condition of probation.]

26 [(i)] (H) If an individual violates the terms of probation, any time served by
27 the individual in custodial confinement shall be credited against any sentence of
28 incarceration imposed by the court.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
30 effect October 1, 2003.

