
By: ~~Senator Giannetti~~ **Senators Giannetti and Green**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

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CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure - Imprisonment as a Condition of Probation Before**
3 **Judgment - ~~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; ~~requiring a court that imposes a sentence of~~
7 ~~imprisonment as a condition of probation to impose the sentence and other~~
8 ~~conditions of probation in the same proceeding; repealing a provision~~
9 ~~authorizing a court in certain counties to impose a sentence of imprisonment as~~
10 ~~a condition of probation; and generally relating to conditions of probation before~~
11 judgment.

12 BY repealing and reenacting, with amendments,
13 Article - Criminal Procedure
14 Section ~~6-220~~ 6-220(h)
15 Annotated Code of Maryland
16 (2001 Volume and 2002 Supplement)

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

19 **Article - Criminal Procedure**

20 6-220.

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

22 (i) ~~home detention;~~

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

5 (iii) inpatient drug or alcohol treatment.

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

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

10 (i) the court finds that the best interests of the defendant and the
11 public welfare would be served; and

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

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

15 (1) ~~MAY INCLUDE AN ORDER OF A SENTENCE OF IMPRISONMENT;~~
16 OR

17 (II) may include an order that the defendant:

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

20 [(ii)] 2. participate in a rehabilitation program, the parks
21 program, or a voluntary hospital program.

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

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

29 (5) ~~As a condition of probation, the court may order a person to a term of~~
30 ~~eustodial confinement.~~

31 (6) ~~IF A COURT IMPOSES A SENTENCE OF IMPRISONMENT AS A~~
32 ~~CONDITION OF PROBATION UNDER THIS SECTION, THE COURT SHALL IMPOSE THE~~
33 ~~SENTENCE OF IMPRISONMENT AND ANY OTHER CONDITIONS OF PROBATION IN THE~~
34 ~~SAME PROCEEDING.~~

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

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

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

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

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

20 (1) a violation of § 21-902 of the Transportation Article or § 2-503, §
21 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if within the
22 preceding 5 years the defendant has been convicted under § 21-902 of the
23 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the
24 Criminal Law Article, or has been placed on probation in accordance with this section,
25 after being charged with a violation of § 21-902 of the Transportation Article or §
26 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article;

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

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

31 (e) (1) By consenting to and receiving a stay of entering of the judgment as
32 provided by subsections (b) and (c) of this section, the defendant waives the right to
33 appeal at any time from the judgment of guilt.

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

37 (f) On violation of a condition of probation, the court may enter judgment and
38 proceed as if the defendant had not been placed on probation.

1 ~~(g)~~ ~~(1)~~ On fulfillment of the conditions of probation, the court shall
2 discharge the defendant from probation.

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

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

7 ~~{(h)~~ ~~In Allegany County, Calvert County, Charles County, Garrett County,~~
8 ~~Howard County, and St. Mary's County, the~~ THE court may impose a sentence of
9 imprisonment as a condition of probation.}

10 ~~{(i)}~~ ~~(H)~~ If an individual violates the terms of probation, any time served by
11 the individual in custodial confinement shall be credited against any sentence of
12 incarceration imposed by the court.

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