

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE

House Bill 66  
Judiciary

(Delegate Kelly, *et al.*)

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Criminal Procedure - Terms of Probation - Requirements

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This bill requires a court that orders any terms of probation to determine whether each standard or special condition is necessary or appropriate in the case. In addition, the court must: (1) state each condition to the defendant in open court; (2) allow the defendant the opportunity to be heard on the issue of whether a particular condition is necessary or appropriate; and (3) strike or amend any condition that the court finds to be not necessary or appropriate in the case.

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Fiscal Summary

**State Effect:** Potential significant increase in general fund expenditures due to longer District Court sentencing hearings in cases in which probation is ordered.

**Local Effect:** Potential significant increase in expenditures due to longer circuit court sentencing hearings in cases in which probation is ordered.

**Small Business Effect:** None.

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Analysis

**Current Law:** A person convicted of a crime may be sentenced to a period of probation, in place of or in addition to a period of imprisonment. Courts generally may impose whatever conditions of probation they consider proper. However, courts must require probationers convicted of certain alcohol or drug offenses to participate in treatment and education programs, unless the court finds and states on the record that the interests of the

defendant and the public do not require the imposition of this condition. This requirement does not apply to any other condition of probation.

Probation is supervised by the Division of Parole and Probation (P&P) of the Department of Public Safety and Correctional Services. A probationer typically must comply with the following standard conditions:

- report as directed and follow the P&P supervisor's lawful instructions;
- pay a monthly supervision fee to P&P;
- work or attend school regularly;
- get permission from the P&P supervisor before moving, changing jobs, or leaving the State;
- get permission from the P&P supervisor before owning, possessing, using, or having under his or her control any dangerous weapon or firearm of any description;
- obey all laws and incur no serious motor violation;
- notify the P&P supervisor at once if charged with a criminal offense and/or a jailable traffic offense;
- permit the P&P supervisor to visit the probationer's home unannounced; and
- appear in court when notified to do so.

In addition, the court may impose special conditions on a case-by-case basis. Examples of such special conditions include participation in drug education and treatment programs as noted above, as well as submission to random drug tests or paying restitution for wrongfully-obtained money or goods.

If a person is convicted of a felony in federal court or convicted in any State court of a crime carrying a maximum sentence of more than two years, that person is prohibited by law from possessing a firearm. The Division of Parole and Probation lacks authority to grant a probationer permission to possess a firearm under these circumstances.

**State Expenditures:** In fiscal 2002, the District Court processed over 295,000 cases in which probation could have been ordered. There are typically between 15 and 20

standard and special conditions of probation imposed in each case. Adopting the bill's new requirements in each case (requiring a judge to determine whether each condition was necessary or appropriate, state each condition to the defendant in open court, allow the defendant to be heard on the issue of whether a particular condition is necessary or appropriate, and strike or amend any condition that the court finds is not necessary or appropriate) would extend each case by an indeterminate time. While the time would vary from case to case, the total would likely be significant. In addition, the District Court advises that the bill's implementation would require changes in the court's courtroom and case management automated systems.

**Local Expenditures:** There were 28,400 circuit court cases in fiscal 2002 in which probation could have been ordered. Adopting the bill's new requirements in each circuit court case in which probation is ordered would extend each of these cases by an indeterminate time. While the time would vary from case to case, the total would likely be significant.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Judiciary (District Court of Maryland, Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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