

---

By: **Senator Brochin**

Introduced and read first time: January 16, 2004

Assigned to: Judicial Proceedings

---

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Defendants on Probation for Committing Sex-Related**  
3 **Crimes against Minors - Child Safety Zone**

4 FOR the purpose of requiring a court to establish a certain child safety zone  
5 applicable to a defendant who has been placed on probation before or after  
6 judgment for committing certain crimes; setting forth the required elements of a  
7 child safety zone; authorizing the court to deviate from the required elements of  
8 a child safety zone under certain circumstances; authorizing a certain defendant  
9 to request the court to modify the child safety zone applicable to the defendant  
10 under certain circumstances; and generally relating to child safety zones  
11 applicable to defendants on probation for committing sex-related crimes against  
12 minors.

13 BY repealing and reenacting, without amendments,  
14 Article - Criminal Procedure  
15 Section 6-220 and 6-221  
16 Annotated Code of Maryland  
17 (2001 Volume and 2003 Supplement)

18 BY adding to  
19 Article - Criminal Procedure  
20 Section 6-229  
21 Annotated Code of Maryland  
22 (2001 Volume and 2003 Supplement)

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

25 **Article - Criminal Procedure**

26 6-220.

27 (a) In this section, "custodial confinement" means:

28 (1) home detention;

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

5 (3) inpatient drug or alcohol treatment.

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

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

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

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

15 (i) pay a fine or monetary penalty to the State or make restitution;  
16 or

17 (ii) participate in a rehabilitation program, the parks program, or a  
18 voluntary hospital program.

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

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

25 (5) As a condition of probation, the court may order a person to a term of  
26 custodial confinement or imprisonment.

27 (c) (1) When the crime for which the judgment is being stayed is for a  
28 violation of § 21-902 of the Transportation Article or § 2-503, § 2-504, § 2-505, §  
29 2-506, or § 3-211 of the Criminal Law Article, the court shall impose a period of  
30 probation and, as a condition of the probation:

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

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

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

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

10           (1)       a violation of § 21-902 of the Transportation Article or § 2-503, §  
11 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if within the  
12 preceding 5 years the defendant has been convicted under § 21-902 of the  
13 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the  
14 Criminal Law Article, or has been placed on probation in accordance with this section,  
15 after being charged with a violation of § 21-902 of the Transportation Article or §  
16 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article;

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

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

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

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

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

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

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

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

35           (i)       If an individual violates the terms of probation, any time served by the  
36 individual in custodial confinement shall be credited against any sentence of  
37 incarceration imposed by the court.

1 6-221.

2 On entering a judgment of conviction, the court may suspend the imposition or  
3 execution of sentence and place the defendant on probation on the conditions that the  
4 court considers proper.

5 6-229.

6 (A) THIS SECTION APPLIES TO A DEFENDANT WHO, BASED ON A CRIMINAL  
7 CHARGE OR CONVICTION INVOLVING A VICTIM WHO IS A MINOR, IS PLACED ON  
8 PROBATION BEFORE OR AFTER JUDGMENT FOR A VIOLATION OF:

9 (1) § 3-303, § 3-304, § 3-305, § 3-306, § 3-307, § 3-602, OR § 11-207 OF THE  
10 CRIMINAL LAW ARTICLE;

11 (2) IF THE DEFENDANT COMMITTED THE OFFENSE WITH THE INTENT  
12 TO VIOLATE OR ABUSE THE VICTIM SEXUALLY, § 3-502 OR § 3-503 OF THE CRIMINAL  
13 LAW ARTICLE;

14 (3) ANY OF THE PROHIBITIONS AGAINST PROSTITUTION AND RELATED  
15 ACTIVITIES UNDER TITLE 11, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE IF THE  
16 INTENDED PROSTITUTE OR VICTIM WAS A MINOR; OR

17 (4) IF THE DEFENDANT COMMITTED THE OFFENSE WITH THE INTENT  
18 TO VIOLATE OR ABUSE THE VICTIM SEXUALLY, COMMON LAW FALSE  
19 IMPRISONMENT.

20 (B) SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, IN  
21 ESTABLISHING THE CONDITIONS OF PROBATION FOR A DEFENDANT DESCRIBED IN  
22 SUBSECTION (A) OF THIS SECTION, THE COURT SHALL ESTABLISH A CHILD SAFETY  
23 ZONE APPLICABLE TO THE DEFENDANT THAT AS A CONDITION OF PROBATION:

24 (1) PROHIBITS THE DEFENDANT FROM:

25 (I) SUPERVISING OR PARTICIPATING IN ANY PROGRAM THAT  
26 REGULARLY PROVIDES ANY ATHLETIC, CIVIC, OR CULTURAL ACTIVITY THAT  
27 INCLUDES A MINOR AS A PARTICIPANT; OR

28 (II) ENTERING OR BEING WITHIN 1,000 FEET OF THE PERIMETER OF  
29 ANY PREMISES WHERE MINORS COMMONLY GATHER, INCLUDING A SCHOOL,  
30 DAY-CARE FACILITY, PLAYGROUND, PUBLIC OR PRIVATE YOUTH CENTER, PUBLIC  
31 SWIMMING POOL, OR VIDEO ARCADE FACILITY; AND

32 (2) REQUIRES THE DEFENDANT TO ATTEND PSYCHOLOGICAL  
33 COUNSELING SESSIONS FOR SEX OFFENDERS WITH AN INDIVIDUAL OR  
34 ORGANIZATION THAT PROVIDES SEX OFFENDER TREATMENT OR COUNSELING AS  
35 SPECIFIED OR AS APPROVED BY THE JUDGE OR THE DIVISION OF PAROLE AND  
36 PROBATION.

1 (C) IN ESTABLISHING A CHILD SAFETY ZONE APPLICABLE TO A PARTICULAR  
2 DEFENDANT, THE COURT MAY DEVIATE FROM THE REQUIRED ELEMENTS LISTED IN  
3 SUBSECTION (B) OF THIS SECTION IF THE COURT DETERMINES THAT TO DO SO  
4 WOULD BE APPROPRIATE UNDER THE CIRCUMSTANCES AND WOULD NOT  
5 ENDANGER CHILDREN IN THE COMMUNITY.

6 (D) AT ANY TIME AFTER THE ESTABLISHMENT OF A CHILD SAFETY ZONE  
7 UNDER SUBSECTION (B) OF THIS SECTION, THE COURT MAY MODIFY THE CONDITION  
8 OF PROBATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION IF THE COURT  
9 DETERMINES THAT THE CONDITION:

10 (1) INTERFERES WITH THE ABILITY OF THE DEFENDANT TO ATTEND  
11 SCHOOL OR MAINTAIN EMPLOYMENT; OR

12 (2) IS BROADER THAN IS NECESSARY TO PROTECT THE PUBLIC, GIVEN  
13 THE NATURE AND CIRCUMSTANCES OF THE OFFENSE.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2004.