

SENATE BILL 83

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2004 Regular Session
4lr0865
CF 4lr1038

By: **Senator Brochin**

Introduced and read first time: January 16, 2004
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted with floor amendments
Read second time: March 25, 2004

CHAPTER _____

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

15 BY repealing and reenacting, without amendments,
16 Article - Criminal Procedure
17 Section 6-220 and 6-221
18 Annotated Code of Maryland
19 (2001 Volume and 2003 Supplement)

20 BY adding to
21 Article - Criminal Procedure
22 Section 6-229
23 Annotated Code of Maryland
24 (2001 Volume and 2003 Supplement)

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

3 **Article - Criminal Procedure**

4 6-220.

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

6 (1) home detention;

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

11 (3) inpatient drug or alcohol treatment.

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

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

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

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

21 (i) pay a fine or monetary penalty to the State or make restitution;
22 or

23 (ii) participate in a rehabilitation program, the parks program, or a
24 voluntary hospital program.

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

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

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

33 (c) (1) When the crime for which the judgment is being stayed is for a
34 violation of § 21-902 of the Transportation Article or § 2-503, § 2-504, § 2-505, §

1 2-506, or § 3-211 of the Criminal Law Article, the court shall impose a period of
2 probation and, as a condition of the probation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 6-221.

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

12 6-229.

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

16 (1) § 3-303, § 3-304, § 3-305, § 3-306, § 3-307, § 3-602, OR § 11-207 OF THE
17 CRIMINAL LAW ARTICLE;

18 (2) ~~IF THE DEFENDANT COMMITTED THE OFFENSE WITH THE INTENT~~
19 ~~TO VIOLATE OR ABUSE THE VICTIM SEXUALLY, § 3-502 OR § 3-503 OF THE CRIMINAL~~
20 ~~LAW ARTICLE, WITH THE INTENT TO VIOLATE § 3-303, § 3-304, § 3-305, § 3-306, OR §~~
21 ~~3-307 OF THE CRIMINAL LAW ARTICLE;~~

22 (3) ANY OF THE PROHIBITIONS AGAINST PROSTITUTION AND RELATED
23 ACTIVITIES UNDER TITLE 11, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE ~~IF THE~~
24 ~~INTENDED PROSTITUTE OR VICTIM WAS~~ INVOLVING A MINOR; OR

25 (4) ~~IF THE DEFENDANT COMMITTED THE OFFENSE WITH THE INTENT~~
26 ~~TO VIOLATE OR ABUSE THE VICTIM SEXUALLY, COMMON LAW FALSE~~
27 ~~IMPRISONMENT, WITH THE INTENT TO VIOLATE § 3-303, § 3-304, § 3-305, § 3-306, OR §~~
28 ~~3-307 OF THE CRIMINAL LAW ARTICLE.~~

29 (B) SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, IN
30 ESTABLISHING THE CONDITIONS OF PROBATION FOR A DEFENDANT DESCRIBED IN
31 SUBSECTION (A) OF THIS SECTION, THE COURT ~~SHALL ESTABLISH A CHILD SAFETY~~
32 ~~ZONE APPLICABLE TO THE DEFENDANT THAT MAY, AS A CONDITION OF PROBATION:~~

33 (1) ~~PROHIBITS~~ PROHIBIT THE DEFENDANT FROM:

34 (I) SUPERVISING OR PARTICIPATING IN ANY PROGRAM THAT
35 REGULARLY PROVIDES ANY ATHLETIC, CIVIC, OR CULTURAL ACTIVITY THAT
36 INCLUDES A MINOR AS A PARTICIPANT; OR

1 (II) ~~ENTERING OR BEING LOITERING~~ WITHIN 1,000 FEET OF THE
2 PERIMETER OF ANY PREMISES ~~WHERE MINORS COMMONLY GATHER~~ USED BY A
3 VICTIM OF THE DEFENDANT OR PRIMARILY USED BY MINORS, INCLUDING A SCHOOL,
4 DAY-CARE FACILITY, PLAYGROUND, PUBLIC OR PRIVATE YOUTH CENTER, PUBLIC
5 SWIMMING POOL, OR VIDEO ARCADE FACILITY; AND

6 (2) ~~REQUIRES~~ REQUIRE THE DEFENDANT TO ATTEND PSYCHOLOGICAL
7 COUNSELING SESSIONS FOR SEX OFFENDERS WITH AN INDIVIDUAL OR
8 ORGANIZATION THAT PROVIDES SEX OFFENDER TREATMENT OR COUNSELING AS
9 SPECIFIED OR AS APPROVED BY THE JUDGE OR THE DIVISION OF PAROLE AND
10 PROBATION.

11 (C) ~~IN ESTABLISHING A CHILD SAFETY ZONE APPLICABLE TO A PARTICULAR~~
12 ~~DEFENDANT~~, THE COURT MAY DEVIATE FROM THE REQUIRED ELEMENTS LISTED IN
13 SUBSECTION (B) OF THIS SECTION IF THE COURT DETERMINES THAT TO DO SO
14 WOULD BE APPROPRIATE UNDER THE CIRCUMSTANCES AND WOULD NOT
15 ENDANGER CHILDREN IN THE COMMUNITY.

16 (D) AT ANY TIME ~~AFTER THE ESTABLISHMENT OF A CHILD SAFETY ZONE~~
17 ~~UNDER SUBSECTION (B) OF THIS SECTION~~, ON MOTION OF THE DEFENDANT, THE
18 COURT MAY MODIFY THE CONDITION OF PROBATION REQUIRED UNDER SUBSECTION
19 (B) OF THIS SECTION IF THE COURT DETERMINES THAT THE CONDITION:

20 (1) INTERFERES WITH THE ABILITY OF THE DEFENDANT TO ATTEND
21 SCHOOL ~~OR~~, MAINTAIN EMPLOYMENT, OR MAINTAIN FAMILY RELATIONSHIPS WHEN
22 THERE IS NO LIKELIHOOD OF THE DEFENDANT COMMITTING A SEXUAL OFFENSE
23 WITH A FAMILY MEMBER WHO IS A MINOR; OR

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

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