
By: **Senators Ruben, Britt, Forehand, Garagiola, Giannetti, Grosfeld,
Hughes, Kelley, Kramer, Lawlah, and Teitelbaum**

Introduced and read first time: January 31, 2005

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 22, 2005

CHAPTER _____

1 AN ACT concerning

2 **Drunk and Drugged Driving - Prior Convictions - Penalties and Probation**
3 **Before Judgment**

4 FOR the purpose of ~~prohibiting a court~~ extending the time period during which a
5 court is prohibited from staying the entry of a judgment and placing a person on
6 probation for a subsequent violation of certain alcohol- or drug-related driving
7 offenses if the person previously was convicted of or placed on probation for
8 certain alcohol- or drug-related driving offenses; ~~providing that a prior~~
9 ~~conviction for certain alcohol- or drug-related driving offenses shall be~~
10 ~~considered a conviction of a certain offense for purposes of imposing certain~~
11 ~~subsequent offender penalties regardless of when the prior offense was~~
12 ~~committed~~; and generally relating to certain drunk and drugged driving offenses
13 and prior convictions and probation before judgement.

14 BY repealing and reenacting, without amendments,
15 Article - Criminal Procedure
16 Section 6-220(b) and (c)
17 Annotated Code of Maryland
18 (2001 Volume and 2004 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Criminal Procedure
21 Section 6-220(d)
22 Annotated Code of Maryland
23 (2001 Volume and 2004 Supplement)

1 ~~BY repealing and reenacting, with amendments,~~
2 ~~Article Transportation~~
3 ~~Section 27-101(j) and (k)~~
4 ~~Annotated Code of Maryland~~
5 ~~(2002 Replacement Volume and 2004 Supplement)~~

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

8 **Article - Criminal Procedure**

9 6-220.

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

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

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

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

19 (i) pay a fine or monetary penalty to the State or make restitution;
20 or

21 (ii) participate in a rehabilitation program, the parks program, or a
22 voluntary hospital program.

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

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

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

31 (c) (1) When the crime for which the judgment is being stayed is for a
32 violation of § 21-902 of the Transportation Article or § 2-503, § 2-504, § 2-505, §
33 2-506, or § 3-211 of the Criminal Law Article, the court:

1 (i) before imposing a period of probation, may order the
 2 Department of Health and Mental Hygiene to evaluate the defendant in accordance
 3 with § 8-505 of the Health - General Article;

4 (ii) if an evaluation was ordered under item (i) of this paragraph,
 5 shall review the evaluation before imposing a period of probation; and

6 (iii) shall impose a period of probation and, as a condition of the
 7 probation:

8 1. shall require the defendant to participate in an alcohol or
 9 drug treatment or education program approved by the Department of Health and
 10 Mental Hygiene, unless the court finds and states on the record that the interests of
 11 the defendant and the public do not require the imposition of this condition; and

12 2. may prohibit the defendant from operating a motor vehicle
 13 unless the motor vehicle is equipped with an ignition interlock system under § 27-107
 14 of the Transportation Article.

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

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

24 (1) a violation of § 21-902 of the Transportation Article or § 2-503, §
 25 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if ~~within the~~
 26 ~~preceding 5 10 years~~ the defendant ~~PREVIOUSLY~~ has been convicted under § 21-902
 27 of the Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the
 28 Criminal Law Article, or ~~PREVIOUSLY~~ has been placed on probation in accordance
 29 with this section, after being charged with a violation of § 21-902 of the
 30 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the
 31 Criminal Law Article;

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

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

36 ~~Article—Transportation~~

37 ~~27-101.~~

38 (j) (1) ~~In this subsection, "imprisonment" includes confinement in:~~

- 1 (i) An inpatient rehabilitation or treatment center; or
- 2 (ii) Home detention that includes electronic monitoring for the
3 purpose of participating in an alcohol treatment program that is:
- 4 1. Certified by the Department of Health and Mental
5 Hygiene;
- 6 2. Certified by an agency in an adjacent state that has
7 powers and duties similar to the Department of Health and Mental Hygiene; or
- 8 3. Approved by the court.
- 9 (2) (i) A person who is convicted of a [violation of] ~~SECOND OFFENSE~~
10 ~~UNDER § 21-902(a) of this article [within 5 years after a prior conviction under that~~
11 ~~subsection] is subject to a mandatory minimum penalty of imprisonment for not less~~
12 ~~than 5 days.~~
- 13 (ii) A person who is convicted of a third or subsequent offense under
14 § 21-902(a) of this article [within 5 years] is subject to a mandatory minimum
15 penalty of imprisonment for not less than 10 days.
- 16 (3) (i) A person who is convicted of a [violation of] ~~SECOND OFFENSE~~
17 ~~UNDER § 21-902(d) of this article [within 5 years after a prior conviction under that~~
18 ~~subsection] is subject to a mandatory minimum penalty of imprisonment for not less~~
19 ~~than 5 days.~~
- 20 (ii) A person who is convicted of a third or subsequent offense under
21 § 21-902(d) of this article [within 5 years] is subject to a mandatory minimum
22 penalty of imprisonment for not less than 10 days.
- 23 (4) A person who is convicted of [an] ~~A SECOND OR SUBSEQUENT~~ offense
24 ~~under § 21-902(a) of this article [within 5 years of a prior conviction of any offense~~
25 ~~under that subsection] shall be required by the court to:~~
- 26 (i) Undergo a comprehensive alcohol abuse assessment; and
- 27 (ii) If recommended at the conclusion of the assessment, participate
28 in an alcohol program as ordered by the court that is:
- 29 1. Certified by the Department of Health and Mental
30 Hygiene;
- 31 2. Certified by an agency in an adjacent state that has
32 powers and duties similar to the Department of Health and Mental Hygiene; or
- 33 3. Approved by the court.
- 34 (5) A person who is convicted of [an] ~~A SECOND OR SUBSEQUENT~~ offense
35 ~~under § 21-902(d) of this article [within 5 years of a prior conviction of any offense~~
36 ~~under that subsection] shall be required by the court to:~~

- 1 (i) Undergo a comprehensive drug abuse assessment; and
- 2 (ii) If recommended at the conclusion of the assessment, participate
- 3 in a drug program as ordered by the court that is:
- 4 1. Certified by the Department of Health and Mental
- 5 Hygiene;
- 6 2. Certified by an agency in an adjacent state that has
- 7 powers and duties similar to the Department of Health and Mental Hygiene; or
- 8 3. Approved by the court.
- 9 (6) The penalties provided by this subsection are mandatory and are not
- 10 subject to suspension or probation.

11 (k) (1) Except as provided in subsection (q) of this section, any person who is

12 convicted of a violation of any of the provisions of § 21-902(a) of this article ("Driving

13 while under the influence of alcohol or under the influence of alcohol per se") or §

14 21-902(d) of this article ("Driving while impaired by controlled dangerous

15 substance"):

- 16 (i) For a first offense, shall be subject to a fine of not more than
- 17 \$1,000, or imprisonment for not more than 1 year, or both;
- 18 (ii) For a second offense, shall be subject to a fine of not more than
- 19 \$2,000, or imprisonment for not more than 2 years, or both; and
- 20 (iii) For a third or subsequent offense, shall be subject to a fine of
- 21 not more than \$3,000, or imprisonment for not more than 3 years, or both.

22 (2) For the purpose of second or subsequent offender penalties for

23 violation of § 21-902(a) of this article provided under this subsection, a prior

24 conviction of § 21-902(b), (c), or (d) of this article[, within 5 years of the conviction for

25 a violation of § 21-902(a) of this article,] shall be considered a conviction of §

26 21-902(a) of this article.

27 (3) For the purpose of second or subsequent offender penalties for

28 violation of § 21-902(d) of this article provided under this subsection, a prior

29 conviction of § 21-902(a), (b), or (c) of this article[, within 5 years of the conviction for

30 a violation of § 21-902(d) of this article,] shall be considered a conviction of §

31 21-902(d) of this article.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

33 October 1, 2005.

