
By: **Senators Ruben, Forehand, Garagiola, and Hollinger**

Introduced and read first time: February 3, 2006

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws - Finding of High Alcohol Concentration - Prohibition on**
3 **Probation Before Judgment - Mandatory Penalties**

4 FOR the purpose of prohibiting a court from staying the entering of judgment and
5 placing a defendant on a certain probation for certain violations if the trier of
6 fact finds that the defendant had a certain alcohol concentration; requiring a
7 court to impose certain mandatory penalties of imprisonment for certain
8 violations if the trier of fact finds that the defendant had a certain alcohol
9 concentration; providing that certain penalties are not subject to suspension or
10 probation; defining certain terms; and generally relating to certain mandatory
11 penalties for certain violations involving a certain alcohol concentration.

12 BY repealing and reenacting, without amendments,
13 Article - Criminal Procedure
14 Section 6-220(b)(1)
15 Annotated Code of Maryland
16 (2001 Volume and 2005 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - Criminal Procedure
19 Section 6-220(d)
20 Annotated Code of Maryland
21 (2001 Volume and 2005 Supplement)

22 BY adding to
23 Article - Transportation
24 Section 27-101(y)
25 Annotated Code of Maryland
26 (2002 Replacement Volume and 2005 Supplement)

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

1

Article - Criminal Procedure

2 6-220.

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

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

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

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

12 (1) a violation of § 21-902 of the Transportation Article or § 2-503, §
13 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if within the
14 preceding 5 years the defendant has been convicted under § 21-902 of the
15 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the
16 Criminal Law Article, or has been placed on probation in accordance with this section,
17 after being charged with a violation of § 21-902 of the Transportation Article or §
18 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article;

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

21 (3) a violation of any of the provisions of §§ 3-303 through 3-307, §§
22 3-309 through 3-312, § 3-315, or § 3-602 of the Criminal Law Article for a crime
23 involving a person under the age of 16 years; [or]

24 (4) a moving violation, as defined in § 11-136.1 of the Transportation
25 Article, if:

26 (i) the defendant holds a provisional license under § 16-111 of the
27 Transportation Article; and

28 (ii) the defendant has previously been placed on probation under
29 this section for the commission of a moving violation while the defendant held a
30 provisional license; OR

31 (5) A VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE IF THE
32 TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD A
33 TEST RESULT INDICATING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AS
34 DESCRIBED IN § 27-101(Y) OF THE TRANSPORTATION ARTICLE.

Article - Transportation

1
2 27-101.

3 (Y) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
4 MEANINGS INDICATED.

5 (II) "IMPRISONMENT" INCLUDES CONFINEMENT IN:

6 1. AN INPATIENT REHABILITATION OR TREATMENT CENTER;
7 OR

8 2. HOME DETENTION THAT INCLUDES ELECTRONIC
9 MONITORING FOR THE PURPOSE OF PARTICIPATING IN AN ALCOHOL TREATMENT
10 PROGRAM THAT IS:

11 A. CERTIFIED BY THE DEPARTMENT OF HEALTH AND
12 MENTAL HYGIENE;

13 B. CERTIFIED BY AN AGENCY IN AN ADJACENT STATE THAT
14 HAS POWERS AND DUTIES SIMILAR TO THE DEPARTMENT OF HEALTH AND MENTAL
15 HYGIENE; OR

16 C. APPROVED BY THE COURT.

17 (III) "TEST" HAS THE MEANING STATED IN § 16-205.1 OF THIS
18 ARTICLE.

19 (2) THE MANDATORY MINIMUM PENALTIES IN THIS SUBSECTION ARE IN
20 ADDITION TO ANY OTHER APPLICABLE MANDATORY MINIMUM PENALTY UNDER
21 THIS SECTION.

22 (3) IF A PERSON IS CONVICTED OF A VIOLATION OF § 21-902 OF THIS
23 ARTICLE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE
24 PERSON HAD A TEST RESULT INDICATING AN ALCOHOL CONCENTRATION OF 0.15 OR
25 MORE AT THE TIME OF THE VIOLATION, THE PERSON IS SUBJECT TO A MANDATORY
26 PENALTY OF IMPRISONMENT AS FOLLOWS:

27 (I) FOR A FIRST VIOLATION, IMPRISONMENT FOR NOT LESS THAN 7
28 DAYS;

29 (II) FOR A SECOND VIOLATION WITHIN 10 YEARS, IMPRISONMENT
30 FOR NOT LESS THAN 14 DAYS;

31 (III) FOR A THIRD OFFENSE WITHIN 10 YEARS, IMPRISONMENT FOR
32 NOT LESS THAN 21 DAYS; AND

33 (IV) FOR A FOURTH OR SUBSEQUENT OFFENSE WITHIN 10 YEARS,
34 IMPRISONMENT FOR NOT LESS THAN 28 DAYS.

1 (4) FOR THE PURPOSE OF DETERMINING SUBSEQUENT OFFENDER
2 PENALTIES PROVIDED UNDER THIS SUBSECTION, A PRIOR CONVICTION OF ANY
3 PROVISION OF § 21-902 OF THIS ARTICLE SHALL BE CONSIDERED A PRIOR
4 CONVICTION.

5 (5) THE PENALTIES PROVIDED BY THIS SUBSECTION ARE MANDATORY
6 AND ARE NOT SUBJECT TO SUSPENSION OR PROBATION.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2006.