HB 559

Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 559 (Delegate W. Fisher, *et al.*)
Judiciary Judicial Proceedings

Probation Before Judgment - Probation Agreements - Probation Not Deportation

This bill authorizes a court to place a defendant on probation before judgment if the court finds facts justifying a finding of guilt. The bill makes corresponding statutory changes to account for this authorization and establishes procedures and requirements for a probation before judgment granted under this circumstance.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by $30,900 in FY 2023 only for programming changes. Otherwise, the bill is not anticipated to materially affect State finances or operations.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	$0	$0	$0	$0	$0
GF Expenditure	30,900	0	0	0	0
Net Effect	($30,900)	$0	$0	$0	$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes a court to make findings sufficient to support a finding of guilt and, in the event of a violation of probation, enter a finding of guilt and impose a sentence. When the court finds facts justifying a finding of guilt, the court may enter into a probation agreement with the defendant. The agreement must specify that:

- the defendant accepts probation in exchange for the court expressly withholding a finding of guilt;
- the defendant knowingly and voluntarily waives the right to a trial and the right to appeal the probation agreement;
- if the court finds the defendant has violated the terms of the probation agreement (1) the court may find the defendant guilty of the underlying crime as a result of the violation and (2) on a finding of guilt, the court may sentence the defendant for up to the maximum penalty for the underlying crime; and
- the defendant agrees to the terms and conditions of probation ordered by the court.

After an agreement is placed on the record, the court must make a finding that there are sufficient facts to support a finding of the defendant's guilt but that the court does not do so and instead imposes probation before judgment. The consent of a defendant to and the receipt of such a disposition by the defendant must be considered as a probation before judgment for all other purposes under State law.

Current Law:

Probation Before Judgment

Probation before judgment requires a finding of guilt by a judge or jury – either after trial or after a guilty plea by the defendant. When a defendant pleads guilty or *nolo contendere* or is found guilty of a crime, a court may stay the entering of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions if (1) the court finds that the best interests of the defendant and the public welfare would be served and (2) the defendant gives written consent after determination of guilt or acceptance of a *nolo contendere* plea. Statutory provisions prohibit probation before judgment in specified types of cases.

The conditions a court may place on a defendant include ordering the defendant to (1) pay a fine or monetary penalty to the State or make restitution or (2) participate in various programs. Also, as a condition of probation, the court may order a person to a term of custodial confinement or imprisonment. For purposes of probation before judgment, "custodial confinement" means home detention, a corrections options program meeting specified criteria, or inpatient drug or alcohol treatment.

A defendant who consents to and receives probation before judgement waives the right to appeal at any time from the judgment of guilt. Before granting a stay of the judgment, the court must notify the defendant of the consequences of consenting to and receiving probation before judgment. On violation of a condition of probation, the court may enter judgment and proceed as if the defendant had not been placed on probation.

Upon fulfilling the conditions of probation before judgment, the defendant is discharged from probation by the court. The discharge is a final disposition of the matter and is "without judgment of conviction and is not a conviction for the purpose of any disqualification or disability imposed by law because of conviction of a crime." Under certain circumstances, a defendant who fulfills the conditions of probation before judgment may file a petition for expungement of the police record, court record, or other record maintained by the State or political subdivision relating to the defendant.

Immigration and Nationality Act and Maryland Rules

While probation before judgment is not considered a conviction under Maryland law, it is considered a conviction under federal immigration law. Under the Immigration and Nationality Act, the term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where (1) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt and (2) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. 8 U.S.C. § 1101(a)(48)(A).

Pursuant to Maryland Rule 4-242, before a court accepts specified pleas, the court, the State's Attorney, and/or defense counsel must advise the defendant of the potential immigration consequences of the plea and advise the defendant to consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences. The omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid.

Additional Information

Prior Introductions: Similar bills have been introduced during previous legislative sessions. SB 527 of 2021 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 354, received a hearing in the House Judiciary Committee, but no further action was taken. HB 213 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 653, passed the Senate and was referred to the House Judiciary Committee, but no further action was taken. HB 845 of 2019 received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: SB 265 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore City; Caroline, Montgomery, and Prince George's counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary

(Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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