

SENATE BILL 211

E2
SB 265/22 – JPR

3lr0455
CF HB 193

By: ~~Senators West and Smith~~ **West, James, Muse, Smith, and Waldstreicher**

Introduced and read first time: January 23, 2023

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2023

CHAPTER _____

1 AN ACT concerning

2 **Probation Before Judgment – Probation Agreements**

3 FOR the purpose of authorizing a court to stay the entering of ~~judgment~~ a conviction, defer
4 further proceedings, and place a certain defendant on probation subject to reasonable
5 conditions if the court finds facts justifying a finding of guilt; authorizing the ~~court~~
6 State and a certain defendant to enter into a probation agreement ~~before the~~
7 ~~defendant enters a plea of guilty or nolo contendere or the court finds facts justifying~~
8 ~~a finding of guilt~~ under certain circumstances; establishing requirements for a
9 certain probation agreement; requiring a court to make a certain finding after a
10 probation agreement is made; providing that the entry of a probation agreement
11 under this Act shall be considered ~~as~~ a probation before judgment for all other
12 purposes under State law; and generally relating to probation before judgment.

13 BY repealing and reenacting, with amendments,
14 Article – Courts and Judicial Proceedings
15 Section 13–101(e)
16 Annotated Code of Maryland
17 (2020 Replacement Volume and 2022 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Criminal Procedure
20 Section ~~6–220(b) and (c)~~ 6–220
21 Annotated Code of Maryland
22 (2018 Replacement Volume and 2022 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
 2 Article – Health – General
 3 Section 8–401(a)(3)
 4 Annotated Code of Maryland
 5 (2019 Replacement Volume and 2022 Supplement)

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

8 Article – Courts and Judicial Proceedings

9 13–101.

10 (e) The Administrative Office of the Courts shall:

11 (1) Keep a current list of alcoholism education or treatment programs that
 12 the Maryland Department of Health approves for use under § 6–219(c) or [§ 6–220(c)] §
 13 6–220(E) of the Criminal Procedure Article; and

14 (2) Notify promptly the appropriate judges whenever the Maryland
 15 Department of Health approves a new alcoholism education or treatment program or
 16 withdraws approval for a program.

17 Article – Criminal Procedure

18 6–220.

19 ~~(b) (1) When a defendant pleads guilty or nolo contendere or is found guilty of~~
 20 ~~a crime, OR A COURT FINDS FACTS JUSTIFYING A FINDING OF GUILT, a court may stay~~
 21 ~~the entering of judgment, defer further proceedings, and place the defendant on probation~~
 22 ~~subject to reasonable conditions if:~~

23 ~~(i) the court finds that the best interests of the defendant and the~~
 24 ~~public welfare would be served; and~~

25 ~~(ii) the defendant gives written consent [after determination of guilt~~
 26 ~~or acceptance of a nolo contendere plea] TO THE PROBATION BEFORE JUDGMENT.~~

27 ~~(2) (I) Subject to [paragraphs (3) and (4) of this subsection]~~
 28 ~~SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH, WHEN A DEFENDANT PLEADS~~
 29 ~~GUILTY OR NOLO CONTENDERE OR THE COURT FINDS FACTS JUSTIFYING A FINDING~~
 30 ~~OF GUILT, the conditions OF PROBATION may include an order that the defendant:~~

31 ~~[(i)] 1. pay a fine or monetary penalty to the State or make~~
 32 ~~restitution; or~~

1 ~~[(ii)] 2. participate in a rehabilitation program, the parks~~
2 ~~program, or a voluntary hospital program.~~

3 ~~[(3)] (H) Before the court orders a fine, monetary penalty, or restitution,~~
4 ~~the defendant is entitled to notice and a hearing to determine the amount of the fine,~~
5 ~~monetary penalty, or restitution, what payment will be required, and how payment will be~~
6 ~~made.~~

7 ~~[(4)] (H) Any fine or monetary penalty imposed as a condition of probation~~
8 ~~shall be within the amount set by law for a violation resulting in conviction.~~

9 ~~[(5)] (IV) As a condition of probation, the court may order a person to a~~
10 ~~term of custodial confinement or imprisonment.~~

11 ~~(3) (i) FOR THE PURPOSES OF THIS PARAGRAPH, THE COURT MAY:~~

12 ~~1. MAKE FINDINGS OF FACT SUFFICIENT TO SUPPORT A~~
13 ~~FINDING OF GUILT; AND~~

14 ~~2. IN THE EVENT OF A VIOLATION OF PROBATION~~
15 ~~GRANTED IN ACCORDANCE WITH THIS PARAGRAPH, ENTER A FINDING OF GUILT AND~~
16 ~~IMPOSE A SENTENCE.~~

17 ~~(ii) WHEN THE COURT FINDS FACTS JUSTIFYING A FINDING OF~~
18 ~~GUILT, THE COURT MAY ENTER INTO A PROBATION AGREEMENT WITH THE~~
19 ~~DEFENDANT.~~

20 ~~(iii) AN AGREEMENT UNDER SUBPARAGRAPH (ii) OF THIS~~
21 ~~PARAGRAPH SHALL PROVIDE THAT:~~

22 ~~1. THE DEFENDANT DOES NOT ADMIT TO THE FACTS~~
23 ~~OFFERED BY THE STATE AND PLEADS NOT GUILTY;~~

24 ~~2. THE DEFENDANT ACCEPTS PROBATION IN EXCHANGE~~
25 ~~FOR THE COURT EXPRESSLY WITHHOLDING A FINDING OF GUILT;~~

26 ~~3. THE DEFENDANT KNOWINGLY AND VOLUNTARILY~~
27 ~~WAIVES:~~

28 ~~A. THE RIGHT TO A TRIAL; AND~~

29 ~~B. THE RIGHT TO APPEAL THE PROBATION AGREEMENT;~~

30 ~~4. IF THE COURT FINDS THAT THE DEFENDANT HAS~~
31 ~~VIOLATED THE TERMS OF THE PROBATION AGREEMENT;~~

~~A. THE COURT MAY FIND THE DEFENDANT GUILTY OF THE UNDERLYING CRIME AS A RESULT OF THE VIOLATION; AND~~

~~B. ON A FINDING OF GUILT, THE COURT MAY SENTENCE THE DEFENDANT UP TO THE MAXIMUM PENALTY FOR THE UNDERLYING CRIME; AND~~

~~5. THE DEFENDANT AGREES TO THE PROVISIONS OF ITEMS 1 THROUGH 4 OF THIS SUBPARAGRAPH AND THE SAME TERMS AND CONDITIONS OF PROBATION ORDERED BY THE COURT.~~

~~(IV) AFTER AN AGREEMENT MADE IN ACCORDANCE WITH THIS PARAGRAPH IS PLACED ON THE RECORD, THE COURT SHALL 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.~~

~~(V) THE CONSENT OF A DEFENDANT TO AND THE RECEIPT BY THE DEFENDANT OF A DISPOSITION UNDER THIS PARAGRAPH SHALL BE CONSIDERED AS A PROBATION BEFORE JUDGMENT FOR ALL OTHER PURPOSES UNDER STATE LAW.~~

~~(c) (1) By consenting to and receiving a stay [of entering] of the COURT ENTERING A FINDING OR judgment as provided by subsections (b) and (c) of this section, the defendant waives the right to appeal at any time from the FINDING OR judgment of guilt.~~

~~(2) Before granting a stay, the court shall notify the defendant of the consequences of consenting to and receiving a stay of A FINDING OF GUILT OR AN entry of judgment under paragraph (1) of this subsection.~~

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

(1) home detention;

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

(3) inpatient drug or alcohol treatment.

(b) [(1)] 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 BEFORE JUDGMENT subject to reasonable conditions if:

1 [(i)] (1) the court finds that the best interests of the defendant and
2 the public welfare would be served; and

3 [(ii)] (2) the defendant gives written consent after determination of
4 guilt or acceptance of a nolo contendere plea.

5 **(C) (1) WHEN A DEFENDANT PLEADS NOT GUILTY, THE DEFENDANT MAY,**
6 **WITH THE CONSENT OF THE STATE, ENTER INTO AN AGREEMENT WITH THE STATE**
7 **UNDER THIS SUBSECTION AND THE COURT MAY FIND FACTS JUSTIFYING A FINDING**
8 **OF GUILT BEYOND A REASONABLE DOUBT, DEFER ENTRY OF A CONVICTION, AND**
9 **PLACE THE DEFENDANT ON PROBATION BEFORE JUDGMENT SUBJECT TO**
10 **REASONABLE CONDITIONS ONLY IF:**

11 **(I) THE COURT FINDS THAT THE BEST INTERESTS OF THE**
12 **DEFENDANT AND THE PUBLIC WELFARE WOULD BE SERVED; AND**

13 **(II) THE DEFENDANT CONSENTS IN WRITING TO THE**
14 **PROBATION BEFORE JUDGMENT.**

15 **(2) IF THE DEFENDANT VIOLATES THE TERMS OF AN AGREEMENT**
16 **UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT MAY ENTER A FINDING OF**
17 **GUILT AND IMPOSE A SENTENCE.**

18 **(3) AN AGREEMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION**
19 **SHALL PROVIDE THAT:**

20 **(I) THE DEFENDANT DOES NOT ADMIT TO THE FACTS OFFERED**
21 **BY THE STATE AND PLEADS NOT GUILTY;**

22 **(II) THE DEFENDANT ACCEPTS PROBATION IN EXCHANGE FOR**
23 **THE COURT EXPRESSLY WITHHOLDING A FINDING OF GUILT;**

24 **(III) THE DEFENDANT KNOWINGLY AND VOLUNTARILY WAIVES:**

25 **1. THE RIGHT TO A TRIAL; AND**

26 **2. THE RIGHT TO APPEAL THE PROBATION AGREEMENT;**

27 **(IV) IF THE COURT FINDS THAT THE DEFENDANT HAS VIOLATED**
28 **THE TERMS OF THE PROBATION AGREEMENT:**

29 **1. THE COURT MAY FIND THE DEFENDANT GUILTY OF**
30 **THE UNDERLYING CRIME AS A RESULT OF THE VIOLATION; AND**

1 2. ON A FINDING OF GUILT, THE COURT MAY SENTENCE
2 THE DEFENDANT UP TO THE MAXIMUM PENALTY FOR THE UNDERLYING CRIME; AND

3 (V) THE DEFENDANT AGREES TO THE PROVISIONS OF ITEMS (I)
4 THROUGH (IV) OF THIS PARAGRAPH AND THE TERMS AND CONDITIONS OF
5 PROBATION ORDERED BY THE COURT.

6 (4) AFTER AN AGREEMENT MADE IN ACCORDANCE WITH THIS
7 SUBSECTION IS PLACED ON THE RECORD, THE COURT SHALL MAKE A FINDING THAT
8 THERE ARE SUFFICIENT FACTS TO SUPPORT A FINDING OF THE DEFENDANT'S GUILT
9 BUT THAT THE COURT DOES NOT DO SO AND INSTEAD DEFERS JUDGMENT AND
10 IMPOSES PROBATION BEFORE JUDGMENT.

11 (5) THE CONSENT OF A DEFENDANT TO AND THE RECEIPT BY THE
12 DEFENDANT OF A DISPOSITION UNDER THIS PARAGRAPH SHALL BE CONSIDERED A
13 PROBATION BEFORE JUDGMENT FOR ALL OTHER PURPOSES UNDER STATE LAW.

14 [(2)] (D) (1) Subject to paragraphs [(3)] (2) and [(4)] (3) of this
15 subsection, the conditions OF PROBATION BEFORE JUDGMENT may include an order that
16 the defendant:

17 (i) pay a fine or monetary penalty to the State or make restitution;
18 or

19 (ii) participate in a rehabilitation program, the parks program, or a
20 voluntary hospital program.

21 [(3)] (2) Before the court orders a fine, monetary penalty, or restitution,
22 the defendant is entitled to notice and a hearing to determine the amount of the fine,
23 monetary penalty, or restitution, what payment will be required, and how payment will be
24 made.

25 [(4)] (3) Any fine or monetary penalty imposed as a condition of probation
26 BEFORE JUDGMENT shall be within the amount set by law for a violation resulting in
27 conviction.

28 [(5)] (4) As a condition of probation BEFORE JUDGMENT, the court may
29 order a person to a term of custodial confinement or imprisonment.

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

1 (i) before imposing a period of probation, may order the Maryland
2 Department of Health to evaluate the defendant in accordance with § 8–505 of the Health
3 – 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 Maryland Department of Health,
10 unless the court finds and states on the record that the interests of the defendant and the
11 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 of
14 the Transportation Article.

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

21 [(d)] (F) Notwithstanding subsections (b) and (c) of this section, a court may not
22 stay the entering of judgment and place a defendant on probation **BEFORE JUDGMENT** for:

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

30 (2) a second or subsequent controlled dangerous substance crime under
31 Title 5 of the Criminal Law Article, except that the court may stay the entering of judgment
32 and place a defendant on probation **BEFORE JUDGMENT** for possession of a controlled
33 dangerous substance under § 5–601 of the Criminal Law Article if:

34 (i) the defendant has been convicted once previously of or received
35 probation before judgment once previously for possession of a controlled dangerous
36 substance under § 5–601 of the Criminal Law Article;

1 (ii) the court requires the defendant to graduate from drug court or
2 successfully complete a substance abuse treatment program as a condition of probation;
3 and

4 (iii) the defendant graduates from drug court or successfully
5 completes a substance abuse treatment program as required;

6 (3) a violation of any of the provisions of §§ 3–303 through 3–307, § 3–309,
7 § 3–310, § 3–315, or § 3–602 of the Criminal Law Article for a crime involving a person
8 under the age of 16 years; or

9 (4) a moving violation, as defined in § 11–136.1 of the Transportation
10 Article, if:

11 (i) the defendant holds a provisional license under § 16–111 of the
12 Transportation Article; and

13 (ii) the defendant has previously been placed on probation under this
14 section for the commission of a moving violation while the defendant held a provisional
15 license.

16 **[(e)] (G)** (1) By consenting to and receiving a stay of entering of the judgment
17 as provided by subsections (b) and (c) of this section, the defendant waives the right to
18 appeal at any time from the judgment of guilt.

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

22 **[(f)] (H)** On violation of a condition of probation BEFORE JUDGMENT, the court
23 may enter judgment and proceed as if the defendant had not been placed on probation.

24 **[(g)] (I)** (1) On fulfillment of the conditions of probation BEFORE
25 JUDGMENT, the court shall discharge the defendant from probation.

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

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

30 **[(h)]** Repealed.

31 **[(i)] (J)** If an individual violates the terms of probation, any time served by the
32 individual in custodial confinement shall be credited against any sentence of incarceration
33 imposed by the court.

Article – Health – General

8-401.

(a) (3) The Administration shall:

(i) Review and, in accordance with regulations that the Administration shall adopt, approve or disapprove each program that a public or private agency wants to offer under § 6-219(c) or [§ 6-220(c)] § 6-220(E) of the Criminal Procedure Article;

(ii) Promptly give the Administrative Office of the Courts notice of each program approved under this paragraph;

(iii) Monitor and biennially review each program approved under this paragraph;

(iv) Investigate each complaint made in connection with a program;
and

(v) Promptly give the Administrative Office of the Courts notice if the Department withdraws its approval of any program.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.