

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 940
Judiciary

(Delegate Kaufman, *et al.*)

**Criminal Procedure - Probation Before Judgment - Defendants Diagnosed With
Autism or Intellectual Disabilities**

This bill requires a court to stay the entering of judgment, defer further proceedings, and place a defendant diagnosed with autism spectrum disorder or an intellectual disability on probation before judgment under specified circumstances.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$3,900 in FY 2026 only for computer programming. Otherwise, the bill is not expected to materially affect State finances or operations.

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

Small Business Effect: None.

Analysis

Bill Summary: A court must stay the entering of judgment, defer further proceedings, and place a defendant on probation before judgment, subject to reasonable conditions, if (1) the defendant pleads guilty or *nolo contendere* or is found guilty of a crime; (2) the defendant is diagnosed with autism spectrum disorder or an intellectual disability; and (3) the court finds by clear and convincing evidence that the defendant's criminal conduct was a manifestation of the defendant's disorder or disability and granting the probation before judgment would be in the best interests of the defendant and in the interest of public safety and justice.

In making this determination, a court must consider the position of the State and any statement made by a victim or a victim's representative in accordance with § 11-403 of the Criminal Procedure Article (right of a victim or victim's representative to address the court during sentencing or a disposition hearing).

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.

Guilty or Nolo Contendere Pleas: 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) 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.

Not Guilty Pleas: When a defendant pleads not guilty, the defendant may, with the consent of the State, enter into an agreement with the State and the court may find facts justifying a finding of guilt beyond a reasonable doubt, defer entry of a conviction, and place the defendant on probation before judgment subject to reasonable conditions only if (1) the court finds that the best interests of the defendant and the public welfare would be served and (2) the defendant consents in writing to the probation before judgment. If the defendant violates the terms of the probation agreement, the court may enter a finding of guilt and impose a sentence.

The agreement must specify that:

- the defendant does not admit to the facts offered by the State and pleads not guilty;
- 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 these specified provisions and 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 defers judgment and 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.

Conditions of Probation Before Judgment, Procedural Issues, Etc.: 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 before judgment, 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 before judgment, 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.

Intellectual Disability

Section 7-101 of the Health-General Article defines an "intellectual disability" as a developmental disability that is evidenced by significantly subaverage intellectual functioning and impairment in the adaptive behavior of an individual.

"Developmental disability" means a severe chronic disability of an individual that (1) is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments; (2) is manifested before the individual attains the age of 22; (3) is likely to continue indefinitely; (4) results in an inability to live independently without external support or continuing and regular assistance; and (5) reflects the need for a combination and sequence of special,

interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): 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

Fiscal Note History: First Reader - February 16, 2025
rh/jkb

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510