

SENATE BILL 265

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By: **Senators Lee, Ferguson, and Smith**

Introduced and read first time: January 14, 2022

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Probation Before Judgment – Probation Agreements – Probation Not**
3 **Deportation**

4 FOR the purpose of authorizing a court to stay the entering of judgment, defer further
5 proceedings, and place a certain defendant on probation subject to reasonable
6 conditions if the court finds facts justifying a finding of guilt; authorizing the court
7 and a certain defendant to enter into a probation agreement before the defendant
8 enters a plea of guilty or nolo contendere or the court finds facts justifying a finding
9 of guilt under certain circumstances; establishing requirements for a probation
10 agreement; requiring a court to make a certain finding after a probation agreement
11 is made; and generally relating to probation before judgment.

12 BY repealing and reenacting, with amendments,
13 Article – Criminal Procedure
14 Section 6–220(b) and (e)(1)
15 Annotated Code of Maryland
16 (2018 Replacement Volume and 2021 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article – Criminal Procedure
19 Section 6–220(e)(2)
20 Annotated Code of Maryland
21 (2018 Replacement Volume and 2021 Supplement)

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

24 **Article – Criminal Procedure**

25 6–220.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

(2) **(I)** Subject to [paragraphs (3) and (4) of this subsection] **SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH, WHEN A DEFENDANT PLEADS GUILTY OR NOLO CONTENDERE OR IS FOUND GUILTY OF A CRIME**, the conditions **OF PROBATION** may include an order that the defendant:

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

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

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

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

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

(3) (I) FOR THE PURPOSES OF THIS PARAGRAPH, THE COURT MAY:

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

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

(II) WHEN THE COURT FINDS FACTS JUSTIFYING A FINDING OF GUILT, THE COURT MAY ENTER INTO A PROBATION AGREEMENT WITH THE DEFENDANT.

(III) AN AGREEMENT UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL PROVIDE THAT:

1. THE DEFENDANT ACCEPTS PROBATION IN EXCHANGE FOR THE COURT EXPRESSLY WITHHOLDING A FINDING OF GUILT;

2. THE DEFENDANT KNOWINGLY AND VOLUNTARILY WAIVES:

A. THE RIGHT TO A TRIAL; AND

B. THE RIGHT TO APPEAL THE PROBATION AGREEMENT;

3. IF THE COURT FINDS THAT THE DEFENDANT HAS 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

4. THE DEFENDANT AGREES TO THE 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.

(e) (1) By consenting to and receiving a stay of entering of the judgment as provided by subsections [(b)] **(B)(1) AND (2)** and (c) of this section, the defendant waives the right to appeal at any time from the 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 entry of judgment under paragraph (1) of this subsection.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.