

SENATE BILL 211

E2
SB 265/22 – JPR

3lr0455
CF HB 193

By: **Senators West and Smith**

Introduced and read first time: January 23, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Probation Before Judgment – Probation Agreements**

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

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Procedure
15 Section 6–220(b) and (e)
16 Annotated Code of Maryland
17 (2018 Replacement Volume and 2022 Supplement)

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

20 **Article – Criminal Procedure**

21 6–220.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

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

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

1 **1. THE DEFENDANT DOES NOT ADMIT TO THE FACTS**
2 **OFFERED BY THE STATE AND PLEADS NOT GUILTY;**

3 **2. THE DEFENDANT ACCEPTS PROBATION IN EXCHANGE**
4 **FOR THE COURT EXPRESSLY WITHHOLDING A FINDING OF GUILT;**

5 **3. THE DEFENDANT KNOWINGLY AND VOLUNTARILY**
6 **WAIVES:**

7 **A. THE RIGHT TO A TRIAL; AND**

8 **B. THE RIGHT TO APPEAL THE PROBATION AGREEMENT;**

9 **4. IF THE COURT FINDS THAT THE DEFENDANT HAS**
10 **VIOLATED THE TERMS OF THE PROBATION AGREEMENT:**

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

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

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

18 **(IV) AFTER AN AGREEMENT MADE IN ACCORDANCE WITH THIS**
19 **PARAGRAPH IS PLACED ON THE RECORD, THE COURT SHALL MAKE A FINDING THAT**
20 **THERE ARE SUFFICIENT FACTS TO SUPPORT A FINDING OF THE DEFENDANT'S GUILT**
21 **BUT THAT THE COURT DOES NOT DO SO AND INSTEAD IMPOSES PROBATION BEFORE**
22 **JUDGMENT.**

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

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

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

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