

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 213
 Judiciary

(Delegate W. Fisher, *et al.*)

Criminal Procedure - Probation Before Judgment - Facts Justifying a Finding of Guilt and Suspension of Sentence

This bill alters provisions governing probation before judgment by (1) authorizing a court to place a defendant on probation before judgment if the court finds facts justifying a finding of guilt; (2) repealing the requirement that the required written consent of the defendant to the probation before judgment occur after a determination of guilt or acceptance of a *nolo contendere* plea; and (3) clarifying that a court may suspend a portion or all of a sentence imposed for a probation before judgment.

Fiscal Summary

State Effect: General fund expenditures increase by \$97,500 in FY 2021 only for programming changes. Potential minimal decrease in general fund expenditures for incarcerations. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	97,500	0	0	0	0
Net Effect	(\$97,500)	\$0	\$0	\$0	\$0

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

Local Effect: Potential minimal decrease in local expenditures for incarcerations. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: 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.

Background: Probation before judgment allows the judge to impose a reasonable punishment upon the defendant without including the taint of a conviction that could have adverse consequences on the defendant’s future. While probation before judgment is not considered a conviction under Maryland law, it is considered a conviction under federal immigration law. Thus, a probation before judgment under Maryland law can have immigration consequences, including deportation.

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.

State Expenditures: The Judiciary advises that compliance with the bill requires computer programming costs of \$97,510 in fiscal 2021 only. To the extent that the bill increases the frequency with which judges opt for probations before judgment and suspended sentences for probations before judgment, the bill may result in a minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services. While the bill appears to authorize judges to suspend a portion or all of a sentence imposed as a condition of probation before judgment, it is unclear to what extent judges do not have this authority under existing statute.

With respect to prior identical legislation, the Division of Parole and Probation has advised that it cannot determine whether the bill's provisions will result in more individuals being sentenced to probation supervision or not, since (1) probation before judgment necessarily involves a finding of guilt based upon willingness of the defendant to so plead and (2) the division is unsure of what facts will suffice for "facts justifying a finding of guilt" by a court absent the defendant's consent. There is no functional difference in the supervision of individuals sentenced to probation before judgment and probation after judgment.

Local Expenditures: To the extent that the bill expands the use of probations before judgment and increases the amount of suspended time on a sentence imposed pursuant to a probation before judgment, the bill may reduce expenditures for local detention facilities.

Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: HB 845 of 2019 received a hearing in the House Judiciary Committee, but no further action was taken on the bill.

Designated Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, Harford, Montgomery, and Queen Anne's counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; U.S. Department of Homeland Security; Department of Public Safety and Correctional Services; Department of Legislative Services

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