

HOUSE BILL 559

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2lr1823
CF SB 265

By: **Delegates W. Fisher, Cardin, Charkoudian, Feldmark, Foley, Healey, J. Lewis, Palakovich Carr, Stewart, Washington, and Williams**

Introduced and read first time: January 31, 2022

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 10, 2022

CHAPTER _____

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; providing that the entry of a probation agreement under this Act shall be
12 considered as a probation before judgment for all other purposes under State law;
13 and generally relating to probation before judgment.

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Procedure
16 Section 6–220(b) and (e)(1)
17 Annotated Code of Maryland
18 (2018 Replacement Volume and 2021 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Criminal Procedure
21 Section 6–220(e)(2)
22 Annotated Code of Maryland

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.



(2018 Replacement Volume and 2021 Supplement)

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

Article – Criminal Procedure

6–220.

(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 COURT FINDS FACTS JUSTIFYING A FINDING OF GUILT**, 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 1. MAKE FINDINGS OF FACT SUFFICIENT TO SUPPORT A
2 FINDING OF GUILT; AND

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

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

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

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

13 2. THE DEFENDANT KNOWINGLY AND VOLUNTARILY
14 WAIVES:

15 A. THE RIGHT TO A TRIAL; AND

16 B. THE RIGHT TO APPEAL THE PROBATION AGREEMENT;

17 3. IF THE COURT FINDS THAT THE DEFENDANT HAS
18 VIOLATED THE TERMS OF THE PROBATION AGREEMENT:

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

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

23 4. THE DEFENDANT AGREES TO THE TERMS AND
24 CONDITIONS OF PROBATION ORDERED BY THE COURT.

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

30 (V) THE CONSENT OF A DEFENDANT TO AND THE RECEIPT BY
31 THE DEFENDANT OF A DISPOSITION UNDER THIS PARAGRAPH SHALL BE

1 CONSIDERED AS A PROBATION BEFORE JUDGMENT FOR ALL OTHER PURPOSES
2 UNDER STATE LAW.

3 (e) (1) By consenting to and receiving a stay ~~of entering~~ of the COURT
4 ENTERING A FINDING OR judgment as provided by subsections ~~[(b)] (b)(1) AND (2)~~ and
5 (c) of this section, the defendant waives the right to appeal at any time from the FINDING
6 OR judgment of guilt.

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.