



SPONSOR: Rep. Keeley & Sen. Henry
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HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 332

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO PROBATION BEFORE JUDGMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4218, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) Subject to the limitations set forth in this section, for a violation or misdemeanor offense under Title 4, 7, or 11, or for any violation or misdemeanor offense under Title 21 which is designated as a motor vehicle offense subject to voluntary assessment by § 709 of Title 21, or a violation of § 2702 of Title 14, or for violations of § 4166(d) of Title 21, or for violations of § 4172 of Title 21, or for a misdemeanor offense under § 4764, 4771 or 4774 of Title 16, a court exercising criminal jurisdiction after accepting a guilty plea or nolo contendere plea may, with the consent of the defendant and the State, stay the entry of judgment, defer further proceedings, and place the defendant on "probation before judgment" subject to such reasonable terms and conditions as may be appropriate. The terms and conditions of any probation before judgment shall include the following requirements: (i) the defendant shall provide the court with that defendant's current address; (ii) the defendant shall promptly provide the court with written notice of any change of address; and (iii) the defendant shall appear if summoned at any hearing convened for the purpose of determining whether the defendant has violated or fulfilled the terms and conditions of probation before judgment. The terms and conditions may include any or all of the following:

- (1) Ordering the defendant to pay a pecuniary penalty;
- (2) Ordering the defendant to pay court costs to the State;
- (3) Ordering the defendant to pay restitution;
- (4) Ordering the defendant to perform community service;
- (5) Ordering the defendant to refrain from contact with certain persons; and
- (6) Ordering the defendant to conduct themselves in a specified manner.

The length of the period of probation before judgment shall be fixed by the court, but in no event shall the total period of probation before judgment exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater.

(b) This section may not be substituted for:

(1) Section 1024 of Title 10. First offenders domestic violence diversion program;

(2) Section 900A of this title. Conditional discharge for issuing a bad check as first offense; or

(3) ~~Section 4767 of Title 16. First Offenders Controlled Substances Diversion Program; or~~

~~(4) Section 4177B of Title 21. First offenders; election in lieu of trial.~~

(c)(1) Notwithstanding any provision of this section to the contrary, no person shall be admitted to probation before judgment if:

a. The person is currently serving a sentence of incarceration, probation, parole or early release of any type imposed for another offense;

b. The person is charged with any offense set forth in this title, and has previously been convicted of any violent felony;

c. The person is charged with any offense set forth in this title, and has previously been convicted of any nonviolent felony within 10 years of the date of the commission of the alleged offense;

d. The person is charged with any offense set forth in this title, and has previously been convicted of any misdemeanor offense within 5 years of the date of the commission of the alleged offense;

e. The person is charged with any offense set forth in Title 4 or 7, and has been previously convicted of any offense set forth in Titles 4 or 7 within 5 years of the date of the commission of the alleged offense; ~~or~~

f. The person is currently charged with any offense set forth in § 709 of Title 21, and has been previously convicted of any offense set forth in Title 21 within 5 years of the date of the commission of the alleged ~~offense.~~
offense;

g. The person is currently charged with a violation of § 2702 of Title 14 and has been previously convicted of a violation of § 2702 of Title 14 within 5 years of the date of the alleged ~~offense.~~ offense; or

h. The person is charged with an offense involving a motor vehicle and holds a commercial driver license (CDL).

(2) For the purposes of this subsection, the following shall also constitute a previous conviction:

a. A conviction under the laws of another state, the United States, or any territory of the United States of any offense which is the same as, or equivalent to, any offense specified in paragraph (c)(1) of this section;

b. An adjudication of delinquency; or

c. Any adjudication, resolution, disposition or program set forth in § 4177B(e)(1) of Title 21.

SYNOPSIS

This bill adds misdemeanor possession and paraphernalia marijuana offenses to the list of violations and offenses for which a person may be eligible for probation before judgment if the person otherwise qualifies for probation before judgment. This bill also removes the prohibition for using probation before judgment with the first offenders controlled substances diversion program.