



SPONSOR: Sen. Gay & Sen. Brown & Rep. Lynn &  
Rep. Dorsey Walker & Rep. Bush & Rep. Lambert  
Sens. Lockman, Mantzavinos, S. McBride, Pinkney,  
Townsend; Reps. Baumbach, Kowalko, Morrison

DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

SENATE BILL NO. 39

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:

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

3           § 4218 Probation before judgment.

4           (a) Subject to the limitations set forth in this section, for a violation or misdemeanor offense under Title 4, 7, or this  
5     title, or for any violation or misdemeanor offense under Title 21 which is designated as a motor vehicle offense subject  
6     to voluntary assessment by § 709 of Title 21, or a violation of § 2702 of Title 14, or for violations of § 4166(d) of Title  
7     21, or for violations of § 4172 of Title 21, or for a violation of a county or municipal code, or for a misdemeanor  
8     offense under § 4764, § 4771 or § 4774 of Title 16, or for a misdemeanor offense under § 4810(a) of Title 29, a court  
9     exercising criminal jurisdiction after accepting a guilty plea or nolo contendere plea may, with the consent of the  
10    defendant and the State, stay the entry of judgment, defer further proceedings, and place the defendant on "probation  
11    before judgment" subject to such reasonable terms and conditions as may be appropriate. The terms and conditions of  
12    any probation before judgment shall include the following requirements: (i) the defendant shall provide the court with  
13    that defendant's current address; (ii) the defendant shall promptly provide the court with written notice of any change of  
14    address; and (iii) the defendant shall appear if summoned at any hearing convened for the purpose of determining  
15    whether the defendant has violated or fulfilled the terms and conditions of probation before judgment. The terms and  
16    conditions may include any or all of the following:

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

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

26 (b) This section may not be substituted for:

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

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

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

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

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

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

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

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

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

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

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

46 h. The person is charged with a violation of a county or municipal code provision and has previously  
47 been convicted of a violation of another county or municipal code provision within 5 years of the date of the  
48 commission of the alleged offense.

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

51 (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; or

~~b. An adjudication of delinquency; or~~

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

(d) This section shall not be available to any person who has previously been admitted to probation before judgment for any offense involving the same title within 5 years of the current offense.

(e) Nothing in this section shall be construed to permit probation before judgment for a violation of a county or municipal code that would not be permitted for the corresponding state code offense.

(f) Upon a violation of a term or condition of the court's order of probation before judgment, the court may enter judgment and proceed with disposition of the person as if the person had not been placed on probation before judgment.

(g) Upon fulfillment of the terms and conditions of probation before judgment, the court shall enter an order discharging the person from probation. The burden shall be upon the defendant to demonstrate that the terms and conditions of probation have been fulfilled. The discharge is the final disposition of the matter. Discharge of a person under this section shall be without judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of a crime.

(h) Notwithstanding any provision of this section to the contrary, the court shall not admit a defendant to probation before judgment nor otherwise apply any provision of this section unless the defendant first gives written consent to the court permitting any hearing or proceeding pursuant to this section to occur in the defendant's absence if:

(1) Timely notice of the hearing or proceeding is sent or delivered to the address provided by the defendant pursuant to subsection (a) of this section; and

(2) The defendant fails to appear at said proceeding.

In the event that a defendant fails to appear at any hearing or proceeding pursuant to this section, the court may proceed in the defendant's absence if it first finds that timely notice of the hearing or proceeding was sent or delivered to the address provided by the defendant pursuant to subsection (a) of this section. Nothing in this subsection shall limit the power of the court to hold a hearing to determine whether a defendant is in violation of the terms of that defendant's probation.

(i) Notwithstanding the provisions of subsection (a) of this section to the contrary, in any case in which the Delaware Department of Justice does not intend to enter its appearance, the consent of the State shall not be required prior to placing a defendant on "probation before judgment." In such cases, the defendant may be placed on probation before judgment only for charges arising from a single arrest. Notwithstanding the foregoing, except

82 for the offenses under Title 21 to which this section applies, the Attorney General or other prosecuting authority  
83 may advise the court of aggravating circumstances in opposition to placing a defendant on "probation before  
84 judgment."

#### SYNOPSIS

This bill clarifies that Probation Before Judgment (PBJ) may be entered for multiple charges arising from a single arrest. Changes to the legislation also allow for a defendant to be permitted Probation Before Judgment more than once in a five year period so long as offenses are in different titles of the Code. For example, a defendant who was granted PBJ in 2017 for speeding (title 21) would be eligible for PBJ on a title 11 charge (e.g. bad check) or title 4 (e.g. underage consumption of alcohol) in 2019.

This bill also allows persons who have been adjudicated delinquent of a crime as a juvenile to be eligible for Probation Before Judgment.

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