

Payne Yes Bill 211.pdf

Uploaded by: Alex Payne

Position: FAV

8 February 2023

Judicial Proceedings Committee

Senate Office Building

Annapolis, Maryland 21401

Re: Vote YES on Senate Bill 211

Senators of the Judicial Proceedings Committee,

I support Bill 211 because it will enable Judges to give Probation Before Judgements (PBJs) without the fear of inadvertently deporting non-citizens. I am a law clerk in the Baltimore City Circuit Court, and I have routinely seen Judges give PBJs as a means to facilitate second chances for defendants who made a mistake and need an opportunity to get their life back on track. However, as interpreted by the federal government, a PBJ for a non-citizen does not mean a second chance—it could mean deportation, which, in the worst cases, can mean death.

This bill is a common-sense remedy to put more power in the hands of Maryland's Judges to do what they think is right to carry out justice. This bill reduces unnecessary federal interference within our state. By ensuring that non-citizens do not face the threat of deportation through a PBJ, it protects the fabric of our communities by ensuring that family members, neighbors, and taxpayers are not cruelly removed despite a local Judge's assessment that they pose no ongoing threat to our safety. Please support Bill 211 and end the threat of deportation over a PBJ for non-citizens.

Sincerely,

Alexander Payne

Resident of Senate District 46

916 N. Calvert St.

Baltimore, MD 21202

HB 193 - Business Immigration Perspective.pdf

Uploaded by: Alexis Turner-Lafving

Position: FAV

CLINICAL LAW PROGRAM

IN SUPPORT OF HOUSE BILL 193

To: House Judiciary Committee
From: Alexis Turner-Lafving & Matthew Gorman, Esquire,
University of Maryland Carey Law School
Date: 2/3/2023

I am a student attorney at the University of Maryland Francis King Carey School of Law's Clinical Law Program. I am also business immigration professional with 4 years of experience. I submit written testimony in support of House Bill 193, on behalf of myself and Matthew Gorman, because amending the Probation Before Judgment ("PBJ") bill would ensure that the visas used by foreign students and professional immigrants -- here to support the US economy, build scientific knowledge, and advance US interests at home and abroad--, are not inadvertently stripped away because of a one-time, minor mistake.

As currently written, the Maryland Probation Before Judgement Statute, Crim. Pro. Section 6-220, constitutes a conviction under federal immigration law.¹ As a result, if a non-citizen resident of Maryland obtains a PBJ, a non-citizen may be deemed "inadmissible," or ineligible to obtain or maintain a visa or gain admission to the United States.² This is because there are certain criminal convictions that trigger one of the grounds of inadmissibility under 8 U.S.C. §1182(a)(2)(A)(i).

8 U.S.C. §1182(a)(2)(A)(i) states that:

- (i) In general . . . any alien **convicted of, or who admits having committed, or who admits committing acts** which constitute the essential elements of-
- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
 - (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21),

is inadmissible. (Emphasis added)

As a result, a non-citizen resident of Maryland who is present in the United States through a non-immigrant visa status, such as a student visa, intracompany transferee visa,³ specialty occupation visa,⁴ extraordinary ability visa,⁵ could commit a minor non-

¹ See U.S. v. Medina, 718 F.3d 364 (4th Cir. 2013).

² 8 U.S.C. §1182(a).

³ The intracompany transferee visa, or L-1 visa, allows a company to transfer an executive, manager, or other employee with specialized knowledge to its U.S. subsidiary, affiliate, or parent company. See 8 U.S.C. §1101(a)(15)(L).

violent crime, avail themselves of the Probation Before Judgment process, but when they next depart the United States, they would not be allowed to re-enter the United States with their current visa, and they would need to obtain a discretionary waiver, not guaranteed in order to obtain a new visa. This discretionary waiver is just that, purely discretionary.⁶ Consideration of the waiver involves the reviewing officer weighing social and humanitarian factors against adverse factors, such as the criminal conviction someone has obtained because their criminal record shows a Maryland PBJ under the current statute.⁷

For example, consider a non-citizen Maryland resident is in the United States on a J-1 visa to complete their medical residency at a Maryland-based medical school.⁸ The doctor has a lapse in judgement that results in being charged with possession of a controlled substance. They accept a PBJ, appropriate and routinely offered for a first-time, minor offense. The doctor goes on and complete their residency and then a fellowship. As a result of their medical training, the doctor receives an offer of employment from a US hospital. In order to begin working as a physician at this hospital and comply with U.S. immigration law, procedurally, the doctor would first need to depart the United States, obtain a different non-immigrant visa, and then return to the United States and seek admission with their new non-immigrant visa status. Because the Maryland PBJ from several years earlier renders the non-citizen physician inadmissible, once they leave the United States, they cannot simply obtain a new visa and return to the United States to begin working as a physician. This results in an incalculable loss to the US employer, and the community they would be serving, because the foreign national physician has particular skills and talent that cannot be replicated.

Additionally, as currently written, the PBJ statute has deportation consequences for foreign nationals working and living in the United States. For example, a foreign national employee who entered the United States on a nonimmigrant visa and became a lawful permanent resident after being sponsored for permanent resident status by their US employer, would be placed in deportation proceedings if they commit a minor, non-violent drug possession offense and accept a Maryland PBJ. This takes the decision

⁴ The specialty occupation visa, or H-1B visa, allows U.S. companies to hire highly educated foreign nationals to work for them. U.S. Citizenship and Immigration Services, “H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers and Fashion Models,” updated May 18, 2022, <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models>.

⁵ The extraordinary ability visa, or O-1 visa, is available to foreign nationals with extraordinary ability in the sciences, arts, education, business, or athletics “which has been demonstrated by sustained national or international acclaim . . . whose achievements have been recognized in the field through extensive documentation.” 8 U.S.C. §1101(a)(15)(O)(i).

⁶ 8 U.S.C. §1182(d)(3)(A).

⁷ USCIS Policy Manual, Volume 9, Part A. Waiver Policies and Procedures, Ch. 5 Discretion. <https://www.uscis.gov/policy-manual/volume-9-part-a-chapter-5>.

⁸ The J-1 visa, also called the exchange visitor visa, is available for foreign national “student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill” who is coming to the United States to participate in a Department of State supervised program. 8 U.S.C. §1101(a)(15)(J).

regarding what a US employer should do about an employee issue, out of the employer's hands.

Amending the PBJ statute will make it easier for the United States and US companies to retain foreign talent.

I therefore support HB 193, which amends the Maryland PBJ statute and makes available a disposition that would preserve intellectual resources critical to Maryland and U.S. economy, and respectfully urge a favorable report.

Support of SB 211 Probation Before Deportation UUL

Uploaded by: Ashley Egan

Position: FAV



Unitarian Universalist Legislative Ministry of Maryland

Testimony in Support of SB 211 Probation Before Judgment - Probation Agreements

To: Senator Will Smith, Jr and the Members of the Judicial Proceedings Committee

From: Jim Caldiero, Lead Advocate, Immigration Reform
Unitarian Universalist Legislative Ministry of Maryland

Date : February 8, 2023

"Thank you for the opportunity to offer this testimony in support of SB 211, Probation Before Judgment - Probation Agreements – Probation Not Deportation

The federal Immigration and Nationality Act lists multiple categories of deportable aliens which include lawfully admitted permanent residents (I-151, green card holders). Among the categories is conviction of a crime -- felony or certain misdemeanors – and subsequent sentence to confinement. 8 U.S.C.A. section 1251; US Citizenship and Immigration Services (USCIS) Policy Manual, Volume 12, Part F, Chapter 2.

Sometimes, as our wise Maryland legislature has recognized, it is in the best interests of the community to provide an outcome in a criminal matter that will not result in a conviction and has established “probation before judgment” (PBJ) where a judge will strike a conviction and impose probation instead. The statute works well for U.S. citizens. However, under federal immigration law, the current MD PBJ statute is still considered a conviction for non-U.S. citizens because during the PBJ plea agreement process, they have admitted guilt and a finding of guilt is sufficient to trigger severe consequences of the Immigration and Nationality Act.

The results can be not only severe but inhumane. A Maryland resident for whom PBJ is imposed, but who happens to be a lawfully admitted permanent resident or an undocumented immigrant, can face detention and deportation. Families can be separated – fathers, mothers, breadwinners, taken from their children – for minor offenses. We have the opportunity with SB 211 to correct this injustice by removing the admission of guilt.

As retired U.S. Immigration Judge John F. Gossart Jr. commented in the *Baltimore Sun*, “Virginia and New York have similar statutes, which function so that their non-citizen residents do not suffer additional consequences from probation. To allow this inequity to exist from one jurisdiction to another, when the intent of PBJ statutes is the same or similar, is in my opinion unjust. Which side of the Potomac River the case is heard on should not determine whether a PBJ triggers federal consequences.”

My Unitarian Universalist faith calls me to promote and affirm justice, equity and compassion in human relations and surely, supporting the passage and enactment of SB 211, Probation Before Deportation will redress the inequity that exists in Maryland's Probation Before Judgment statute.

I encourage you to vote in favor of SB 211, Probation Not Deportation.

Thank you.

Jim Caldiero,

UULM-MD Lead Advocate, Immigration Reform

Sources:

John A. Gossart, Jr. Baltimore Sun, 02/05/2021, "Commentary: A finding of 'probation before judgment' should never lead to deportation."

University of Maryland, Francis King Carey School of Law, Clinical Law Program, "Support Probation Not Deportation"

MOPD Position on SB 211.pdf

Uploaded by: Brian Zavin

Position: FAV



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 211 – Probation Before Judgment – Probation Agreements

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: February 7, 2023

The Maryland Office of the Public Defender (“MOPD”) respectfully requests that the Committee issue a favorable report on Senate Bill 211.

MOPD endorses without reservation this important legislation, which meets the concerns voiced by prosecutors and the Judiciary to prior versions of the Bill and is needed to correct an unintended but consequential inequality created by current law.

Current PBJ law does not protect Maryland residents

Through the authorization of probation before judgment (“PBJ”), the General Assembly sought to provide deserving individuals the opportunity to avoid the collateral consequences and stigma of having a conviction on their record in exchange for their completion of probation. Under Criminal Procedure Art. § 6-220(g)(3), a defendant who receives PBJ and is discharged successfully from probation shall not be deemed to have a conviction “for the purpose of any disqualification or disability imposed by law because of conviction of a crime.”

Notwithstanding the unambiguous language in § 6-220(g)(3), the benefits of PBJ are not conferred equally on its recipients. For purposes of federal law, and in particular federal immigration law, PBJ is tantamount to a conviction where, as is presently required by § 6-220, it is preceded by a finding of guilt or a plea of guilty or nolo contendere. *See* 8 U.S.C.A. § 1101 (48)(A)(i) (defining conviction as “a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where ... 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”). As a result, non-citizens who receive PBJ face loss of liberty, deportation, and banishment just as if they had been convicted of a crime.

Senate Bill 211 fixes the law by ensuring that the General Assembly’s intent in authorizing the imposition of PBJ – to enable deserving individuals to avoid the stigma and collateral consequences of a conviction – is carried out. The Bill does this by permitting a court to impose probation in the absence of a guilty plea, nolo contendere plea, or finding of guilt. Under the procedure authorized by Senate Bill 211, a defendant enters a not guilty plea and enters into an agreement with the court pursuant to which the court, after determining that the facts support a finding of guilt, defers making that finding of guilt. If the defendant successfully completes probation, the court discharges the defendant, who then has neither a conviction on their record nor the equivalent of a conviction for federal immigration purposes. On the other hand, if the defendant violates probation, the court, pursuant to the agreement, enters a finding of guilt and imposes sentence.

Other laws provide precedent for Senate Bill 211

Maryland law already recognizes the authority of a court to order probation or probation-like conditions in cases where the defendant is not found guilty. Court rules provide that, upon accepting a plea of nolo contendere, a court “shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty.” Md. Rule 4-242(e). Similarly, Criminal Procedure Article § 6-229 allows for the entry of a nolle prosequi or stet with the requirement of drug and alcohol treatment.

The key difference between the procedure authorized by Senate Bill 211 and a plea of nolo contendere is that only the former does not lead to a conviction for federal immigration purposes. And while the State currently may enter a nolle prosequi or stet to dispose of charges against an individual whom everyone agrees should not be subject to removal, this is not a one-size-fits-all disposition. In order to ensure that individuals can remain in the community with their families, courts also must have the ability to place them on probation in appropriate cases.

Senate Bill 211 protects Maryland residents in a manner recognized by federal courts

For years, neighboring jurisdictions like Virginia and New York have had laws similar to Senate Bill 211 on their books. Over a dozen years ago, the Fourth Circuit Court of Appeals held,

in *Crespo v. Holder*, 631 F.3d 130 (2011), that a defendant who entered a probation agreement under Virginia’s deferred-finding-of-guilt law did not have a conviction for purposes of federal immigration law. Maryland should adopt a similar commonsense procedure which holds individuals responsible for their actions without subjecting them to draconian and unintended consequences.

Senate Bill 211 does not supplant or significantly alter current PBJ law

Under Senate Bill 211, Maryland law will permit two forms of PBJ: the current form, which requires a guilty plea or finding or a plea of nolo contendere, and a new form, which involves a not guilty plea and a deferred finding of guilt. Aside from this difference, the two forms of PBJ will operate similarly. An individual who is not eligible to receive a traditional PBJ would be ineligible to receive the new form of PBJ. By the same token, Senate Bill 211 is explicit that an individual who receives the new disposition will be considered to have received PBJ for all purposes under state law. Apart from the way in which federal law views the individual who receives the new form of PBJ, that individual would thus be no better nor no worse off than an individual who receives traditional PBJ.

Importantly, Senate Bill 211 also continues to entrust our courts with determining when PBJ is appropriate. Before imposing PBJ – of either variety – a court must find that “the best interests of the defendant and the public welfare would be served.” This is consistent with the broad sentencing discretion Maryland affords judges in almost all other contexts, and it permits judges to act in accordance with what they deem best for defendants and public safety.

For these reasons, MOPD urges this Committee to issue a favorable report on Senate Bill 211.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

Authored by: Brian L. Zavin, Chief Attorney, Appellate Division
brian.zavin@maryland.gov, (410) 767-8523

SB0211 Probation Before Judgement FAV.pdf

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0211 Probation Before Judgement – Probation Agreements

Bill Sponsor: Senator West

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0211 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

The goal of this legislation is to protect our immigrant community from deportation for small offenses that would otherwise be the catalyst for deportation proceedings. Minor, first time infractions, such as speeding or failure to have their taillights working, can place a sentence on an immigrant's record, which can trigger deportation proceedings.

Under current law, a person must plead guilty to obtain a probation before judgement verdict and the judge makes a finding of 'guilt'. Because of the admission of guilt, a probation before judgement is treated as a conviction under federal law, although that is not what Maryland law intended.

This bill would bring the Maryland probation before judgement law in line with the original legislative intent and allow the person to plead nolo contendere to the facts of the case, which would not leave a sentence on their record, as long as they do not violate their probation.

We support this bill and recommend a **FAVORABLE** report in committee.

SB211 West FAV.pdf

Uploaded by: Christopher West

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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February 8th, 2023
Senate Judicial Proceedings Committee
The Honorable William C. Smith Jr.
2 East Miller Senate Building
Annapolis, MD, 21401

Re: Senate Bill 211 – Probation Before Judgement – Probation Agreements

Dear Chairman Smith and members of the Committee,

Probation Before Judgment or PBJ's are widely used by Maryland judges to give first-time and nonviolent offenders the benefit of probation without the burden of a criminal conviction on their record. Typical PBJ recipients are young people who go on to live successful lives because they were given this second chance.

For the benefactors of a PBJ, there still may be severe consequences not intended by the General Assembly. They may encounter difficulty obtaining federal employment, security clearances, and certain professional and commercial licenses. This is because a PBJ, though not considered a conviction under Maryland law, is considered a conviction under federal law because it is imposed after a guilty verdict. The solution is a simple amendment to Section 6-220 of the Criminal Procedure Article so that a PBJ can be entered when a court finds facts justifying a finding of guilt rather than entering the disposition only after a verdict of guilt.

Senate Bill 211 would add another route to a PBJ: a not-guilty plea followed by a proffer of facts sufficient for a guilty verdict but without entry of the guilty verdict. There is nothing novel about this approach, which simply provides a new method of obtaining a PBJ, fully consistent with the existing law relating to pleas and dispositions in criminal cases.

Senate Bill 211 presents an opportunity to ensure that federal law does not subvert the true intention of our state statute to treat a PBJ as a non-conviction.

I appreciate the Committee's consideration of Senate Bill 211 and will be happy to answer any questions the Committee may have.

SB_211_CAIRCoalition.pdf

Uploaded by: Eric Lopez

Position: FAV



Fighting for equal justice for all immigrants
at risk of detention and deportation

www.caircoalition.org

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IN SUPPORT OF SB 211

To: Judicial Proceedings Committee

From: Capital Area Immigrants' Rights (CAIR) Coalition

Date: February 7, 2023

Re: Written Testimony in support of Senate Bill 211

The Capital Area Immigrants' Rights (CAIR) Coalition—the only non-profit organization in Maryland with a legal services program focused exclusively on assisting detained immigrants—urges the Maryland legislature to vote in favor of SB 211 and amend the Maryland Probation Before Judgment (PBJ) statute so that this disposition in state criminal court will no longer be considered a conviction under federal immigration law. The passage of this bill would significantly benefit the state of Maryland by reducing the state's detained immigrant population and reforming a judicial mechanism that disproportionately harms Black and brown immigrants in the state.

Each year, the U.S. government detains nearly 500,000 immigrants.¹ It operates more than 200 immigration detention centers, which hold a daily average of over 50,000 people.²

At any given time, approximately 1,600 adults are detained by Immigration and Customs Enforcement (ICE) in DC, Maryland, and Virginia.³ Immigration detention is a form of

¹ Immigration Detention 101, Detention Watch Network, <https://www.detentionwatchnetwork.org/issues/detention-101>.

² Rachel Trafford & Peter Markham, *Immigration Detention: The Mental Health Impacts*, MAD IN AMERICA (Nov. 19, 2020), <https://www.madinamerica.com/2020/11/immigration-detention-mental-health/>.

³ Detained Adult Program, Cap. Area Immigrants' Rts. Coal., <https://www.caircoalition.org/what-we-do/detained-adult-program>.



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systematized, often lethal⁴ cruelty that physically and mentally traumatizes immigrants.⁵ This cruelty has only worsened and expanded its reach during the COVID-19 pandemic, as ICE has deported COVID-infected immigrants to other countries,⁶ contributed to COVID-19 outbreaks in U.S. communities,⁷ and facilitated the COVID-related deaths of detained immigrants.⁸ Detention centers in Maryland and Virginia have seen multiple major COVID-19 outbreaks.⁹

SB 211 will ease the horrific impact of immigration detention during the COVID-19 pandemic and beyond by reducing the number of Maryland immigrants detained by ICE after receiving a Maryland PBJ. Of CAIR Coalition clients or potential clients who received Maryland PBJs, at least 53% were detained by ICE after time spent in criminal custody, at a probation office, or after leaving court.¹⁰ Amending the PBJ statute would reduce the number of Maryland immigrants who are detained because their PBJ is a conviction under federal immigration law. By granting power to prosecutors and judges to impose a more equitable PBJ disposition for

⁴ Deaths at Adult Detention Centers, American Immigration Lawyers Association, <https://www.aila.org/infonet/deaths-at-adult-detention-centers>.

⁵ César Cuauhtémoc García Hernández, *Abolish Immigration Prisons*, NY TIMES (Dec. 2, 2019), <https://www.nytimes.com/2019/12/02/opinion/immigration-detention-prison.html>.

⁶ Human Rights Watch, *US: Suspend Deportations During Pandemic*, HUMAN RIGHTS WATCH, (June 4, 2020, 9:00 AM), <https://www.hrw.org/news/2020/06/04/us-suspend-deportations-during-pandemic>.

⁷ Stephen Stock, *COVID-19 Outbreaks May Arise From Immigrant Detention Centers, Doctors Say*, NBC BAY AREA, <https://www.nbcbayarea.com/investigations/covid-19-outbreaks-may-arise-from-immigrant-detention-centers-doctors-say/2289775/>.

⁸ Caroline Lee, *COVID-19 deaths in ICE detention demand medical action now*, THE HILL (June 4, 2020, 7:30 PM), <https://thehill.com/opinion/immigration/501261-covid-19-deaths-in-ice-detention-demand-medical-action-now>.

⁹ Dean Mirshahi, *Amid Major COVID-19 Outbreak, Judge Blocks Transfers Into ICE Detention Center In Farmville*, ABC 8 News, (Aug. 11, 2020, 12:12 PM), <https://www.wric.com/news/virginia-news/cdc-team-begins-work-to-address-covid-19-outbreak-at-ice-detention-center-in-farmville/>; Brad Petrishen, *Worcester County jail on modified lockdown: Uptick in COVID-19 cases prompts facilities to limit inmate movements*, TELEGRAM & GAZETTE (Jan. 4, 2021, 8:20 PM), <https://www.telegram.com/story/news/courts/2021/01/04/worcester-county-jail-modified-lockdown-after-uptick-covid-19-cases/4134940001/>.

¹⁰ Internal CAIR Coalition data.



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noncitizen Marylanders, this bill will ensure that more Maryland residents can remain healthy, safe, and free from the harmful confines of immigration detention.

Furthermore, amending the MD PBJ statute would help protect Black and brown immigrants disproportionately harmed by the U.S. criminal legal system. The U.S. criminal legal system has long served as a direct funnel to the immigration legal system. Black and brown immigrants are more likely to have encounters with law enforcement and to be charged and prosecuted for crimes which lead to deportation.¹¹ While in custody, black immigrants are six times more likely to be sent to solitary confinement and are more likely to lose their legal cases for immigration relief.¹² Black and brown immigrants are more likely to be deported because of the prevalence of racial profiling and discriminatory policing in the United States.¹³ Of CAIR Coalition clients or potential clients who received Maryland PBJs, 99% were Black or brown.¹⁴ The passage of this bill will help protect Black and brown noncitizen Marylanders from disproportionate detention and deportation because a Maryland PBJ would no longer be a conviction under federal immigration law.

Finally, though the Biden administration is now working to undo many of President Trump's harmful immigration policies, this is an enormous undertaking that will last several

¹¹ UndocuBlack Network and Cap. Area Immigrants' Rts. Coal., Fact Toolkit, <https://www.caircoalition.org/sites/default/files/5KforJustice%20-%20Toolkit%20FULL%20LINKS.pdf>.

¹² *Id.*

¹³ The discriminatory and broken criminal justice system has cascading immigration consequences, IMMIGRANT JUSTICE NETWORK & NATIONAL IMMIGRANT JUSTICE CENTER, https://www.ilrc.org/sites/default/files/resources/criminal_racial_justice_backgrounder_final1.pdf.

¹⁴ Internal CAIR Coalition data.



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years.¹⁵ In addition, the immigration consequences of a PBJ disposition cannot be addressed by the federal executive branch alone. The definition of a conviction under federal immigration law is codified in the Immigration and Nationality Act.¹⁶ It would therefore require an Act of Congress to change this definition at the federal level so that Maryland's existing PBJ disposition would no longer be considered a conviction under federal immigration law. Considering the elusive nature of congressional consensus, state legislatures are uniquely equipped to take action in defense of immigrant communities. This bill is a nimble and effective adjustment that the Maryland Legislature can make its criminal procedure to protect noncitizens.

For the foregoing reasons, the CAIR Coalition strongly urges a favorable report on SB 211.

¹⁵ Editorial Board, *Trump's Overhaul of Immigration is Worse Than You Think*, NY TIMES (Oct. 10, 2020), <https://www.nytimes.com/2020/10/10/opinion/sunday/trump-immigration-child-separations.html>.

¹⁶ 8 USC 1101(a)(48)(A).

SB211 - Testimony - ACLU-MD - 2.8.23.pdf

Uploaded by: Frank Patinella

Position: FAV



**Testimony for the Senate Judiciary Proceedings Committee
SB 211 – Probation Before Judgment – Probation Agreements**

February 8, 2023

FAVORABLE

NICK TAICHI STEINER
STAFF ATTORNEY

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GENERAL COUNSEL

The ACLU of Maryland supports SB 211 — Probation Before Judgment — Probation Agreements, which would allow a criminal defendant to accept probation before judgment (“PBJ”) in exchange for the court expressly withholding a finding of guilt, preventing dire immigration consequences of what constitutes a conviction for federal purposes while leaving the spirit and purpose of the PBJ statute intact. This bill addresses a critical intersection between immigration and criminal justice reform by eliminating unintended immigration consequences for non-citizens who agree to a PBJ.

The current PBJ process in Maryland requires a defendant to plead guilty or be found guilty, and the court to sentence the defendant to probation. PBJ was originally designed to provide individuals with an alternative sentence: the opportunity to take responsibility for certain minor offenses, without suffering some of the lifelong consequences of a criminal conviction.

However, this is not the case for non-U.S. citizens. A PBJ can still trigger severe consequences, including U.S. Immigration and Customs Enforcement (“ICE”) custody, deportation, and disqualification of defenses to deportation. This happens because a PBJ is a conviction, or an *admission of guilt*, under federal immigration law, even if it is not considered a conviction under Maryland law.

A conviction under the Immigration and Nationality Act (“INA”) is found where:

1. (1) A judge or jury finds the person guilty, or the person enters a plea of guilty or no contest, or admits sufficient facts to warrant a finding of guilt; and
2. (2) The judge orders some sort of punishment.¹

¹ 8 U.S.C. § 1101(a)(48)(A).

So even without a formal judgment, a guilty plea and imposition of probation is enough to constitute a conviction under federal immigration law. Indeed, under Maryland's current PBJ statute, the U.S. Court of Appeals for the Fourth Circuit has held that an adjudication constitutes a conviction, for purposes of a criminal record² as well as federal sentencing.³ On the other hand, as proposed under SB 211, if a defendant does not plead guilty but the judge "finds facts justifying a finding of guilt," the disposition does not constitute a conviction for federal immigration purposes.⁴ 4th Circuit case law is clear that a finding of guilt requires the *person* admitting facts sufficient to find guilty, not the *judge* finding sufficient facts.⁵

This bill's simple change, to allow a court to "find facts justifying a finding of guilt," would align Maryland with other states who have amended their PBJ statutes for this purpose, and whose statutes have been found to allow for non-convictions in the PBJ process.⁶ The PBJ would operate as was always intended: to prevent the collateral consequences of a criminal conviction.

Most importantly, this bill would protect non-U.S. citizens from the types of lifelong consequences that a PBJ was never intended to trigger without disrupting the outcome for other PBJ cases.

For the foregoing reasons, we urge a favorable report on SB 211.

² *Yanez-Popp v. INS*, 998 F. 2d 231 (4th Cir. 1993)

³ *U.S. v. Medina*, 718 F.3d 364 (4th Cir. 2013).

⁴ *Jacquez v. Sessions*, 859 F.2d 258 (4th Cir. 2017).

⁵ *Id.*, at n 4.

⁶ *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011).

SB 211_FAV_ Immigration Clinic_UMD.pdf

Uploaded by: Gabriela Kahrl

Position: FAV

CLINICAL LAW PROGRAM

IN SUPPORT OF
SENATE BILL 211

To: House Judiciary Committee
From: Gabriela Q. Kahrl, Kathryn Robinson, Kaska Watson
on behalf of the UMD Carey Law Immigration Clinic¹
Date: February 7, 2023
Re: Written Testimony in Support of SB 211

We urge a favorable report on SB 211, a bill which amends Maryland's Probation Before Judgment statute so that it no longer triggers unintended, disproportionate consequences like detention, deportation, loss of lawful immigration status, and/or loss of professional opportunities, like security clearances, military or other federal employment.

Currently, if a non-citizen Maryland resident obtains a probation before judgment ("PBJ"), that person can face loss of liberty, deportation, and permanent banishment from the United States. This is because both the Fourth Circuit and the Board of Immigration Appeals have held that a Maryland PBJ is a conviction under federal immigration law,² notwithstanding the Maryland General Assembly's intent to the contrary. *U.S. v. Medina*, 718 F.3d 364 (4th Cir. 2013)³ *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988).

The General Assembly did not intend for a PBJ to carry with it the same consequences

¹ This written testimony is submitted on behalf of the Immigration Clinic at the University of Maryland Carey School of Law and not on behalf of the School of Law or University of Maryland, Baltimore.

² 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—

- (i) 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
- (ii) 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)

³ In *U.S. v. Medina*, 718 F.3d 364 (4th Cir. 2013), the court held that a diversionary disposition under the Maryland PBJ statute, in which the defendant pleads guilty and the court sentences the person but does not formally enter judgment against him, is a predicate conviction for purposes of sentence enhancement under the federal sentencing guidelines. The court held that the definition of conviction in the immigration statute, 8 USC 1101(a)(48)(A), "must control our reading" of the sentencing guideline language. 718 F.3d at 368. Medina's diversionary disposition was a conviction because he "pled guilty to the charged offenses and was sentenced to some form of restraint on his liberty; namely, probation for a period of 18 months. *Id.*

CLINICAL LAW PROGRAM

as a conviction. When it enacted the probation before judgment statute, the General Assembly acknowledged in the very language of the statute that a PBJ should afford lenience in situations where “the best interest of the person and welfare of the state” dictate an outcome in a criminal matter that is not a conviction. Md. Crim. Proc. § 6-220 (b)(1)(i).⁴ The federal law thwarted this intent in 1996 when it enacted the “Illegal Immigration Reform and Immigrant Responsibility Act” (IIRIRA) which substantially broadened the definition of a conviction. The effect was that the Maryland PBJ, and other non-convictions like it, were then treated as convictions.

SB 211 protects the intent of the General Assembly “that a grant of probation before judgment, unless subsequently altered by a violation of that probation, should have the effect of wiping the criminal slate clean.” *Jones v. Baltimore City Police*, 326 Md. 606 (2008). SB 211 adds an **additional, alternative** process for imposing a PBJ. The defendant pleads not guilty and enters into a probation agreement with the court. The defendant waives trial and appellate rights and does not admit facts that would support a finding of guilt that are read into the record by the State. The court then makes a “finding of facts sufficient to support a finding of guilt,” which gives the court jurisdiction to later find guilt and impose a sentence, if there is a violation of probation.

SB 211 does not disturb, erode, replace or remove the current method for obtaining a PBJ. Practically, the two processes will appear and function similarly to one another, and the consequences of failing to abide by probation will remain the same. This bill does not provide additional benefits, but instead merely ensures that noncitizens have the ability to take responsibility for mistakes, without suffering lifelong consequences, like

⁴ “By this 1975 amendment [to the PBJ statute], the General Assembly expressed its unmistakable intent that the disposition of probation before judgment not be a conviction.” *Myers v. State*, 303 Md. At 645, 496 A.2d at 312.

CLINICAL LAW PROGRAM

deportation. This bill merely ensures that a noncitizen is not deported for a one-time relatively minor mistake that would have a minimal effect on the life of a similarly-situated citizen.⁵

This bill fills an important gap in Maryland criminal law by ensuring that all people have equal access to probation. Currently, there is no existing Maryland law or disposition that can both hold the defendant accountable and provide a resolution of a criminal case without triggering federal immigration consequences. Under the Immigration and Nationality Act (“INA”), a PBJ, a plea of *nolo contendere*, an *Alford* plea, and a “Not Guilty Agreed Statement of Facts” (“NGASF”) plea all constitute a conviction under federal immigration law.

A *nolo contendere* plea, an *Alford* plea, and an NGASF plea are all convictions for federal immigration purposes under the INA. The INA states in pertinent part that the term “conviction” is:

(...) where 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.” See 8 U.S.C. 1101(a)(48)(A)(i).

A plea of *nolo contendere* is, by the explicit language of the statute, a conviction under federal immigration law. Similarly, even though there is no plea of guilt during a NGASF, it is still a conviction under federal immigration law because (1) there is an admission by the defendant as to facts sufficient to warrant a finding of guilt and (2) there is a formal finding of guilt at the conclusion of the NGASF. Even Maryland courts treat NGASF as a

⁵ A PBJ—even if not a conviction—would still affect eligibility for citizenship. To become a United States citizen, an applicant must demonstrate good moral character. The PBJ, like all other contact with the criminal legal system, would still have to be disclosed on a noncitizens’ naturalization application. The PBJ would thus be taken into consideration when determining whether the noncitizen meets the good moral character requirement for citizenship.

CLINICAL LAW PROGRAM

conviction, holding that a NGASF is the functional equivalent of guilty plea. *Sutton v. State*, 289 Md. 359, 366, 424 A.2d 755, 759 (1981). Similarly, an *Alford* plea qualifies as a conviction under federal immigration law because there is a formal finding of guilt, thus meeting the requirements for the definition of a “conviction” under the INA. *Abimbola v. Ashcroft*, 378 F.3d 173, 181 (2d Cir. 2004); *United States v. King*, 673 F.3d 274, 276 (4th Cir. 2012).

The Maryland General Assembly cannot wait for or rely on federal immigration reform. This issue is squarely in the jurisdiction of the Maryland General Assembly. It has been nearly 30 years since Congress was able to pass comprehensive immigration reform⁶. The last two attempts, made in 2007 by President George W. Bush and in 2013 by President Barack Obama, failed.⁷ The Maryland General Assembly not only has the authority to resolve this issue, it is the only legislative body that realistically can address it.

This bill promotes racial justice. This bill is necessary to ensure racial equity in the consequences for such low-level first-time offenders. Detention and deportation disproportionately impact Black immigrants.⁸ Black immigrants continue to be detained in large numbers, exposing them to harm **including use of force and lack of access to medical care.**⁹ Because communities of color are over-policed, charged, and prosecuted, Black and brown noncitizens are more likely to face adverse—and often severe—immigration consequences as a result of low-level crimes where a PBJ is warranted.

⁶ Center for Immigration Studies, [Historical Overview of Immigration Policy \(cis.org\)](https://www.cis.org/immigration-policy-overview)

⁷ Brookings Institution, *Can Biden pass immigration reform? History says it will be tough*, [Can Biden pass immigration reform? History says it will be tough \(brookings.edu\)](https://www.brookings.edu/research/can-biden-pass-immigration-reform-history-says-it-will-be-tough/)

⁸ Juliana Morgan-Trostle, Kexin Zheng & Carl Lipscombe, *The State of Black America*, (2018), <http://stateofblackimmigrants.com/wp-content/uploads/2018/09/sobi-fullreport-jan22.pdf>.

⁹ Southern Poverty L. Ctr., (Aug. 26, 2020) https://www.splcenter.org/sites/default/files/8.26.20_crcl_letter.pdf.

Conclusion

The proposed amendment to the Maryland PBJ statute provides an additional avenue of granting a PBJ so that all people have meaningful access to it. This amendment would allow for the efficient and final resolution of the criminal cases and preserve the Maryland General Assembly's intent to render a PBJ a second chance for first-time low-level criminal offenders in Maryland. For the foregoing reasons, The Maryland Carey Law Immigration Clinic urges a favorable report on SB 211.

SB 211_BAIR_FAV.pdf

Uploaded by: Gary Bair

Position: FAV



Isabelle Raquin, Partner

Licensed in MD & NY

Steve Mercer, Partner

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Judge Gary E. Bair (Ret.), Of Counsel

Licensed in MD

POSITION IN FAVOR OF SENATE BILL 211

I am a recently retired judge, having served on the Circuit Court for Montgomery County from 2012 to 2020. Prior to that time, I was involved in criminal cases over many decades as Chief of the Criminal Appeals Division of the Maryland Attorney General's Office, as a public defender and private defense attorney, and as a long-time law school adjunct professor teaching Criminal Procedure. I am now Of Counsel to the Rockville law firm of RaquinMercer LLC. Senate Bill 211-- to amend the probation before judgment statute so that it would no longer trigger unintended, serious consequences, including loss of professional licenses and immigration consequences--would be a positive step forward for the courts, prosecutors, and defendants alike. For the reasons stated below, I urge the Committee to issue a favorable report on this bill.

Probation Before Judgment (PBJ) is widely used by judges in Maryland where nonviolent first-time offenders can receive the benefit of probation without the burden of a criminal conviction on their record. Often these are young people who go on to live highly successful lives because they have been given this break. Lawful immigrants who are not yet citizens, however, are subject to deportation even when they receive a PBJ because federal immigration courts currently treat this disposition as a "conviction" even though Maryland state courts do not. U.S. citizens also face serious collateral consequences including loss of professional licenses, security clearances, and therefore livelihoods. These harmful consequences are inconsistent with the statutory intent of the statute which was to give first-time offenders a second chance.

There is a straightforward way to remedy this problem and that is to amend the current statute so that a PBJ can be entered when a court finds facts justifying a guilty verdict rather than entering the disposition only after a guilty verdict. This is already done in a similar fashion when defendants enter a nolo contendere plea that is accepted by the court. Another analogous proceeding that occurs with some regularity is a not guilty plea followed by an agreed statement of facts. Neither of these currently used procedures that could lead to a PBJ require a guilty plea.

Senate Bill 211 would add yet another route to a PBJ, namely a not guilty plea followed by a proffer of facts sufficient for a guilty verdict and a waiver of rights by the defendant. This is the mechanism already used in Virginia courts that the United States Court of Appeals for the Fourth Circuit (which also covers Maryland) has ruled is not a "conviction" for federal immigration purposes. *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011).

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As this Committee knows, there is a broad consensus of support for this much needed legislation. In addition to immigrant advocacy groups, the Maryland Criminal Defense Attorneys' Association, the Maryland Attorney General's Office, and a coalition of former federal judges support this Bill. As a former Maryland state trial judge, I, too, support it. This broadened statute would ensure that all Marylanders have equal access to probation and prevent unintended, draconian consequences from turning what should be a second chance into the harshest of punishments. There would be certainty for the prosecutor and crime victim, for the defendant and defense counsel, and for the courts. With this amended PBJ statute, time consuming appeals and post-conviction/coram nobis proceedings would be all but eliminated. It is a win for the judiciary, interested parties, and all Marylanders. I urge this committee to issue a favorable report on Senate Bill 211.

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SB 211_jpr_Janice Alonzo_fav.pdf

Uploaded by: Janice Alonzo

Position: FAV

In Support of Senate Bill 211

Written Testimony submitted by Janice Alonzo

February 7, 2023

My name is Janice Alonzo, and I am a senior academic advisor/adjunct faculty at the Community College of Baltimore County. I am also a doctoral student at Morgan State University working on my dissertation for a degree in Community College Leadership. My bachelor's degree is in Anthropology with a Spanish minor from Ithaca College (NY), and my master's degree is in International Affairs from Florida State University. My experience in higher education has spanned more than twenty years at three different institutions. I am fluent in Spanish and have working knowledge of a few other languages; I have also traveled to over twenty countries and spent a semester in Madrid, Spain in college. I am a U.S. citizen who was born in Syracuse, NY, and I have lived in three different states.

I am submitting this testimony in support of Senate Bill (SB) 211 because it needs to get passed so that everyone who has a PBJ is not deported. A close family member who has DACA received a DUI in 2020. After he went to court, his charge was a PBJ. He completed alcohol counseling classes even before his court hearing and is working on paying the fine incurred by the court. He made a mistake that night in 2020 but has taken full responsibility for what happened. This family member is married and has a small child; he also owns his own business, owns his own house, and pays taxes loyally every year. His child is the most important thing in his life, and every day we worry that this PBJ could lead to deportation and not seeing his child grow up every day. He takes his child to sports activities, indoor playgrounds, and more, and his child loves his daddy.

This family member and the rest of our family treat every day as special in case his days in the U.S. are limited. We have cried and are very worried about the fact that this family member could be sent back home because of this one-night mistake. What happened almost two and a half years ago was a wake-up call for him, and things truly got better for all of us after he realized what he had done. The fact that a PBJ could break apart this family and cause a little boy to lose his father has been very stressful and heart wrenching for all of us. The family could also lose their home, as he is the main income source for the family. His employees could also lose their jobs since they work for his company. This family member has been in the U.S. for seventeen years, and this is the only incident on his record. It would be unjust for our family to suffer unnecessarily because of a PBJ on this person's record. I am pleading to our elected officials that SB 211 is passed so that no family is affected by a PBJ and so that no one is subject to deportation because of having a PBJ on their record.

TESTIMONY SB0211.pdf

Uploaded by: Jared Schablein

Position: FAV

TESTIMONY FOR SB0211

Probation Before Judgement – Probation Agreements

Bill Sponsor: Senator West

Committee: Judicial Proceedings

Organization Submitting: Lower Shore Progressive Caucus

Person Submitting: Jared Schablein, Chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0211 on behalf of the Lower Shore Progressive Caucus. The Caucus is a political and activist organization on the Eastern Shore, unaffiliated with any political party, committed to empowering working people by building a Progressive movement on the Lower Eastern Shore.

This legislation is crafted to offer legal protection for our immigrant community from deportation over small offenses that would otherwise be the catalyst for deportation proceedings. Minor, first time infractions, such as speeding or failure to have their tail lights working, can place a sentence on an immigrant's record, which due to our broken immigration system can trigger deportation proceedings.

Under current law, a person must plead guilty to obtain a probation before judgement verdict and the judge makes a finding of 'guilt'. Because of the admission of guilt, a probation before judgment is treated as a conviction under federal law, although that is not what Maryland law intended.

This bill would bring the Maryland probation before judgment law in line with the original legislative intent and allow the person to plead nolo contendere to the facts of the case, which would not leave a sentence on their record, as long as they do not violate their probation. We support this bill and recommend a **FAVORABLE** report in committee.

TESTIMONY SB0211.pdf

Uploaded by: Jared Schablein

Position: FAV

TESTIMONY FOR SB0211

Probation Before Judgement – Probation Agreements

Bill Sponsor: Senator West

Committee: Judicial Proceedings

Organization Submitting: Lower Shore Progressive Caucus

Person Submitting: Jared Schablein, Chair

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2023-02-08 SB 211 (Support).pdf

Uploaded by: Jer Welter

Position: FAV

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February 8, 2023

TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Jer Welter
Assistant Attorney General, Office of the Attorney General

RE: SB 211 - Probation Before Judgment - Probation Agreements
(SUPPORT)

The Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 211. This bill will help avoid devastating federal collateral consequences, particularly immigration consequences, for people who commit minor crimes.

For most purposes under State law, the entry of probation before judgment is not considered a conviction, and does not result in the consequences of a conviction. However, due to the way that a “conviction” is defined under federal immigration law, *see* 18 U.S.C. § 1101(a)(48)(A), a Maryland probation before judgment qualifies as a “conviction,” with all attendant consequences, for federal purposes.

Senate Bill 211 creates a probation before judgment disposition that allows a judge to find facts sufficient to support a guilty finding but defer entry of that guilty finding in lieu of probation. Because it avoids an admission of guilt by the defendant or a finding of guilt by the court (unless and until the defendant violates probation), it would not be considered a “conviction” for purposes of federal immigration law. However, the bill specifies that such a disposition “shall be considered as a probation before judgment for all purposes under State law.” (*See* page 3, lines 23–26 of the bill).¹

¹ The Office of the Attorney General understands that it is the sponsor’s intent to ensure that the form of probation before judgment established by this bill would have all of the same consequences under

This bill letter is a statement of the Office of Attorney General’s policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

When this bill was proposed in prior years, concerns were raised that the “deferred finding” procedure created by the bills could violate due process. Specifically, concerns were raised regarding the court’s ability to find “facts justifying a finding of guilt without ... a trial,” and the ability to find a defendant guilty at a violation of probation hearing when there had not been a previous finding of guilt beyond a reasonable doubt.

In the event that similar concerns are raised before this committee, they appear to be unfounded. Although this would be a new procedure for Maryland, as discussed below, similar procedures have existed in Maryland for decades. Moreover, Virginia has had a remarkably similar statute in place since 1991. Virginia Code Ann., § 18.2-251 states that “if the facts found by the court would justify a finding of guilt,” a court may “without entering a judgment of guilt and with the consent of the accused defer further proceedings and place [the defendant] on probation[.]” “Upon violation of a term or condition, the court may enter an adjudication of guilty and proceed as otherwise provided.” *Id.* See also *Nunez v. Commonwealth*, 783 S.E.2d 62, 66-67 (Va. Ct. App. 2016). In *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011), the Fourth Circuit confirmed that this disposition under Virginia law does not constitute a “conviction” under the federal statute.

Regarding the court’s ability to find “facts justifying a finding of guilt” without a trial, judges currently do this all the time. When a defendant agrees to proceed by way of a not guilty statement of facts, the defendant pleads not guilty and waives his right to a trial. *Bishop v. State*, 417 Md. 1, 20 (2010). In lieu of a trial, the court hears a proffer of stipulated evidence or an agreed statement of facts. *Id.* The court then renders a verdict based upon the facts received.

Under this bill, similarly, the defendant would plead not guilty and would not admit the facts offered by the State. (*See* page 3, lines 1–2 of the bill). If the defendant and the court agree to proceed by way of a deferred finding, the State would proffer the evidence that the defendant stipulates would be presented by the State at trial—*i.e.*, a proceeding equivalent to the “stipulated evidence” proceeding described in *Bishop* and regularly used in Maryland courts under existing law. Instead of entering a guilty verdict if the court finds the facts sufficient, the court would simply defer the entry of a verdict and instead find that the proffered facts justify a finding of guilt beyond a reasonable doubt.

As for the ability of the court to find a defendant guilty at a violation of probation hearing when there had never been a previous finding of guilt beyond a reasonable doubt, there already exists a procedure in Maryland law that allows a judge to defer a finding of guilt and place a defendant on probation: a plea of *nolo contendere*. What is more, Senate Bill 211 contains language that addresses the finding of guilt beyond a reasonable doubt

Maryland law as a probation before judgment entered under current law. To the extent that any amendments to the bill may be necessary to ensure the same State-law treatment of the probation before judgment disposition authorized by this bill, the Office would support such amendments.

should the defendant violate probation. (See page 3, lines 5–14 of the bill).

“Nolo contendere,” Latin for “I do not wish to contend,” is sometimes referred to as a plea of “no contest.” The defendant pleading nolo contendere is not admitting guilt, but is not contesting the charges. Maryland Rule 4-242(e) describes the process for pleading nolo contendere. If the court accepts a plea of nolo contendere, the rule explains, “the court shall proceed to disposition as on a plea of guilty, *but without finding a verdict of guilty.*” Md. Rule 4-242(e) (emphasis added). There is no verdict entered in a plea of nolo contendere, and, thus, it is not considered a conviction under State law. *Hubbard v. State*, 76 Md. App. 228, 240-41 (1988).²

Even though a plea of nolo contendere does not result in a verdict of guilty, “[t]he plea of nolo, just as the plea of guilty, has the effect of submitting the accused to punishment by the court; following the entry of either plea the court shall proceed to determine and impose sentence.” *McCall v. State*, 9 Md. App. 191, 193-94 (1970). The defendant can be placed on probation and can be ordered to pay fines or restitution. Md. Code Ann., Crim. Pro. § 6-220(b).

The procedure proposed by Senate Bill 211 is similar to a plea of nolo contendere. One distinction, however, allows a court to find the defendant guilty of the underlying crime (based upon the previous finding of facts justifying a finding of guilty beyond a reasonable doubt) in the event that the defendant violates the terms of probation. This distinction addresses the procedural hurdles created by the Court of Special Appeals’ decision in *Bartlett v. State*, 15 Md. App. 234 (1972). In *Bartlett*, the Court explained that where probation is granted without the imposition of a guilty verdict, “[s]hould the probation thus granted be revoked at a subsequent hearing for that purpose, the case reverts to its status at the time the probation was granted, and determination of guilt [of the original charge], by plea or trial, must follow before any sentence may be imposed.” *Id.* at 241. Senate Bill 211 addresses this by requiring a defendant to agree that, if he or she is found in violation of probation, the court may find the defendant guilty of the underlying crime. (See page 3, lines 9–14 of the bill). That guilty verdict would be based on the previous finding that there existed facts justifying a finding of guilt beyond a reasonable doubt.

In short, although Senate Bill 211 creates a new procedure, similar procedures have been in place in Maryland for decades. A nearly identical procedure has been in place in Virginia for 30 years without raising due process concerns. The Attorney General urges a favorable report on Senate Bill 211.

cc: Members of the Committee

² A plea of nolo contendere cannot, however, be used to avoid the consequence of deportation because federal immigration law specifically defines pleas of nolo contendere as convictions that may result in deportation.

CAN Testimony in support of SB211 (Probation befor

Uploaded by: Jerry Kickenson

Position: FAV



faith. love. liberation.
fe. amor. Liberación.

Testimony in support of Senate Bill 211

Probation Before Judgment – Probation Agreements

To: Hon. Will Smith, Jr, chair, and Members of the Senate Judicial Proceedings Committee

From: Jerry Kickenson, Treasurer and Montgomery County Coordinator, Congregation Action Network

Date: February 7, 2023

We are writing in **support of Senate Bill 211, Probation Before Judgment – Probation Agreements**, on behalf of the Congregation Action Network (CAN). The Congregation Action Network is a network of faith communities in Washington, DC, and the Maryland and Virginia suburbs acting in solidarity to end detention, deportation, profiling, and criminalization of immigrants and demanding and upholding justice, dignity, safety, and family unity. With over 75 congregations and a thousand members throughout the capital area, including over 25 congregations with thousands of members in Montgomery and Prince George's counties, we live our faith in advocacy for and solidarity with our immigrant neighbors.

As people of faith committed to ending the detention and deportation of immigrants, we adhere to the sacred texts of most major faiths that call for welcoming the stranger and treating each other with love, dignity, respect, and compassion. We believe in liberation and that immigrant families should be united and free - never incarcerated.

SB211 will amend Maryland's Probation Before Judgment (PBJ) statute so that all Maryland residents, regardless of their immigration status, have access to the benefit of probation.

Right now, a Maryland PBJ is considered a conviction under federal immigration law. The proposed legislation adds an additional method that would make probation accessible to all Marylanders without risk of deportation and detention for noncitizens. This proposed amendment promotes justice, fairness, and will keep Maryland families together.

We respectfully urge you to reach a **favorable** report for SB211. It will provide the benefits of probation to all residents of Maryland facing loss of their liberty and home. It is the right and moral thing to do.

Respectfully yours,

Jerry Kickenson

Treasurer and Montgomery County Coordinator

Congregation Action Network

% 1701 Ladd Street

Silver Spring, MD 20902

HPPP SB 211 Testimony (PBJ)- FAV.pdf

Uploaded by: Jessica Emerson

Position: FAV

Testimony of the Human Trafficking Prevention Project

BILL NO: Senate Bill 211
TITLE: Probation Before Judgment – Probation Agreements
COMMITTEE: Judicial Proceedings
HEARING DATE: February 8, 2023
POSITION: SUPPORT

Senate Bill 211 would amend the Probation Before Judgment (PBJ) statute to include a process for entering a PBJ which clarifies that the successful completion of whatever period of probation is ordered by the court is *not* a conviction. The Human Trafficking Prevention Project at the University of Baltimore School of Law supports this bill because it would reduce the likelihood of deportation and other immigration consequences for foreign national victims of trafficking charged with a criminal offense.

Currently, if a non-citizen Maryland resident obtains a PBJ, they can face loss of liberty, deportation, and permanent banishment from the United States. Because the noncitizen admits guilt under the existing PBJ procedure and the judge makes a finding of guilt, even though that disposition may later be stricken if the defendant complies with the terms of probation, the disposition is considered a conviction under federal immigration law. This is contrary to the intent of the Maryland General Assembly, which codified the PBJ statute for use in situations where “the best interest of the person and welfare of the state” dictate an outcome in a criminal matter that is not a conviction.¹ For U.S. citizens, the PBJ has the desired outcome of allowing people to take responsibility for their mistakes and move on with their lives, without enduring lifelong, adverse consequences. The same is not true for non-citizen Maryland residents.

An often-overlooked subset of criminal defendants are victims of human trafficking, who frequently have criminal records stemming from acts they were forced to commit by their traffickers, as well as the instability that so often precedes or follows a trafficking experience. Data recently obtained from a national survey of sex and labor trafficking survivors, both foreign-born and domestic, highlights the regularity with which victims of trafficking are criminalized, with 91% of the survivors surveyed reporting having been arrested at some point in their lives.² Of those 91%, over 40% reported being arrested over nine times or more.³ While U.S.-born victims are saddled with the collateral consequences of criminal convictions such as difficulties obtaining safe housing and gainful employment, foreign national victims face the additional far more severe consequence of deportation. Allowing for some leniency in situations where a foreign national defendant is a first-time offender and/or where the crime is non-violent would reduce these life-altering collateral consequences as well allow for the possibility of connecting the victim with service providers who can provide assistance with pursuing the immigration relief they so rightly deserve.

Senate Bill 211 will reduce the risk of this harm by allowing a judge to grant a PBJ whereby the defendant would neither admit nor deny guilt while at the same time not disputing the alleged facts of the case. A PBJ by these means would not be considered a conviction under Maryland law or federal immigration law. While this bill may improve outcomes for criminal defendants as a whole, for trafficking survivors it contains the added benefit of avoiding the likelihood that they will be deported as a direct result of a crime being committed against them, which is an inexcusable miscarriage of justice. For these reasons, the Human Trafficking Prevention Project at the University of Baltimore School of Law supports Senate Bill 211. We respectfully urge a favorable report.

¹ MD CODE ANN., Crim. Proc. § 6-220(b)(1)(i).

² National Survivor Network, *National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking* (2016), <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>.

³ *Id.*

SB211 FAVORABLE Testimony - Probation Before Judgm

Uploaded by: Jim Caldiero

Position: FAV



Unitarian Universalist Legislative Ministry of Maryland

Shared voices for liberal religious values in Maryland

Testimony IN FAVOR of SB211 – Probation Before Judgment

To: Senator Will Smith, Chair, and Members of the Judicial Proceedings Committee

From: Jim Caldiero, Lead Advocate, Immigration Team, Unitarian Universalist Legislative Ministry of Maryland

Date: February 7, 2023

Thank you for the opportunity to offer this testimony in support of HB193/SB211, Probation Before Judgment - Probation Agreements

The federal Immigration and Nationality Act lists multiple categories of deportable aliens which include lawfully admitted permanent residents (I-151, green card holders). Among the categories is conviction of a crime -- felony or certain misdemeanors – and subsequent sentence to confinement. 8 U.S.C.A. section 1251; US Citizenship and Immigration Services (USCIS) Policy Manual, Volume 12, Part F, Chapter 2.

Sometimes, as our wise Maryland legislature has recognized, it is in the best interests of the community to provide an outcome in a criminal matter that will not result in a conviction and has established “probation before judgment” (PBJ) where a judge will strike a conviction and impose probation instead. The statute works well for U.S. citizens. However, under federal immigration law, the current MD PBJ statute is still considered a conviction for non-U.S. citizens because during the PBJ plea agreement process, they have admitted guilt and a finding of guilt is sufficient to trigger severe consequences of the Immigration and Nationality Act.

The results can be not only severe but inhumane. A Maryland resident for whom PBJ is imposed, but who happens to be a lawfully admitted permanent resident or an undocumented immigrant, can face detention and deportation. Families can be separated – fathers, mothers, breadwinners, taken from their children – for minor offenses. We have the opportunity with SB211 to correct this injustice by removing the admission of guilt.

Consider, for example, the story of Manuel, a legal DACA recipient, a 17-year resident of Maryland with a U.S. citizen spouse and a young son, who is a business owner, pays taxes and had no criminal record except for one lapse of judgment resulting in a DUI arrest. Manuel received probation before judgment by a Maryland court, not a conviction. Federal law, however, views his PBJ as a conviction, threatening his DACA status and more. See the link below for Manuel’s full story.

As the University of Maryland’s Chacon Center for Immigrant Justice noted, Manuel is not alone. "They accept probation because everyone around the table recognizes this is not

somebody who should have a criminal conviction. All of a sudden, they're in jail. They're separated from their families. They lose their jobs or lose their apartments. They've lost their children. It's a horrible thing and it's not what anyone wanted, but by the time the Maryland system gets around to fixing it, the damage has already been done."

As retired U.S. Immigration Judge John F. Gossart Jr. commented in the *Baltimore Sun*, "Virginia and New York have similar statutes, which function so that their non-citizen residents do not suffer additional consequences from probation. To allow this inequity to exist from one jurisdiction to another, when the intent of PBJ statutes is the same or similar, is in my opinion unjust. Which side of the Potomac River the case is heard on should not determine whether a PBJ triggers federal consequences."

My Unitarian Universalist faith calls me to promote and affirm justice, equity and compassion in human relations and surely, supporting the passage and enactment of HB193/SB211 Probation Before Judgment will redress the inequity that exists in Maryland's Probation Before Judgment statute.

I encourage you to vote in favor of HB193/SB211, Probation Before Judgment.

Thank you.

James Caldiero

Lead Advocate, Immigration Team, Unitarian Universalist Legislative Ministry of MD
Home: 4128 Lotus Circle, Ellicott City, MD 21043, tel: 410-465-7452, email:
jimcal87@gmail.com

Sources:

John A. Gossart, Jr. Baltimore Sun, 02/05/2021, "Commentary: A finding of 'probation before judgment' should never lead to deportation."

University of Maryland, Francis King Carey School of Law, Clinical Law Program, "Support Probation Not Deportation"

Manuel's Story NPR - [Maryland bill aims to give immigrants a second chance after a misdemeanor](https://www.npr.org/local/305/2022/02/03/1077894957/maryland-bill-aims-to-give-immigrants-a-second-chance-after-a-misdemeanor) : NPR <https://www.npr.org/local/305/2022/02/03/1077894957/maryland-bill-aims-to-give-immigrants-a-second-chance-after-a-misdemeanor>

Judge Gossart Written Testimony SB 211 (1) (1).pdf

Uploaded by: John Gossart

Position: FAV

IN SUPPORT OF SENATE BILL 211

To: House Judiciary Committee
From: The Honorable John F. Gossart, Jr., Retired United States Immigration Judge
Date: February 3, 2023
Re: Written Testimony in Support of Senate Bill 211

I am submitting this written testimony to offer my unequivocal support for Senate Bill 211.

I served as a United States Immigration Judge at the Baltimore Immigration Court for thirty-one years. I retired in 2013. At my retirement, I was the third most senior immigration judge in the United States. I was also an adjunct professor of immigration law at the University of Baltimore School of Law (20 years), and the University of Maryland School of Law (3 years). I am a proud Army Vietnam veteran.

Under current Maryland law, an adjudication through the Probation Before Judgment process, Crim. Pro. Section 6-220, is not considered a conviction. Unfortunately, however, the Maryland PBJ process *is* a “conviction” under federal immigration law. A person who avails herself/himself of the PBJ process has been convicted, with all attendant immigration consequences including deportation, ICE custody, and disqualification from defenses to deportation. This is because, to obtain a PBJ in Maryland, the defendant either pleads guilty or is found guilty, and then the court imposes probation. Even though the formal entering of judgment is stayed, the guilty plea and imposition of probation is sufficient to constitute a conviction under Title 8 United States Code 1101(a)(48)(A).

The immigration law defines “conviction” at 8 USC 1101(a)(48)(A) as follows:

(48)(A) 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--

(i) 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

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(emphasis added)

The proposed short addition to the Maryland PBJ statute would change the process such that a PBJ obtained through it would not be considered a conviction under federal immigration law. By allowing a judge to “find facts justifying a finding of guilt” before imposing probation and entering a PBJ, such a procedure would not be a conviction for Maryland criminal purposes *or* immigration purposes. That is, the result would be as intended by the Maryland legislature and the parties in negotiating for and imposing a PBJ: not a conviction in Maryland and NOT a conviction under federal immigration law.

The definition of a conviction under federal immigration law is not likely to change in response to this addition to the Maryland PBJ statute. It would take an act of Congress to alter the definition in the statute. As we know, immigration reform is unlikely to be feasible now or in the foreseeable future. The last major change to the federal immigration laws occurred in 1996, over 20 years ago. Since then, the statutes and regulations have remained virtually the same. Further, Virginia and New York have their own PBJ statutes; dispositions from these states do not constitute a conviction under federal immigration. To allow this inequity to exist from one jurisdiction to another, when the intent of PBJ statutes is the same or similar, is in my opinion unjust.

To the contrary, my experience as an immigration judge has been that when an immigrant received the benefit of a Maryland PBJ, the facts of the case and/or the personal qualities of the immigrant, were consistent with the lenient nature of the disposition imposed. These were individuals who had made a mistake, often a minor one, and this mistake was aberrant, an accident of youth, inexperience, or a reaction to some kind of trauma or temporary problem that was often resolved by the time the individual found themselves in deportation proceedings. During my time as an immigration judge, I was often statutorily obligated to order the deportation of an immigrant

because of a Maryland PBJ, even though the immigrant was otherwise eligible to stay in the United States.

As an adjunct professor of law, I began each class by writing on the board,

“Do Justice.... Read the Law.”

I can share with you many gut wrenching and deeply sad stories where families have been torn apart permanently as a result of deportation based on federal immigration law notwithstanding a Maryland PBJ resolution. These decisions were correct as required by the law; however, they were not just.

Therefore, I unequivocally support and request a favorable report on Senate Bill 211, this amendment to the Maryland PBJ statute.

Judge Gossart Written Testimony SB 211 (1).pdf

Uploaded by: John Gossart

Position: FAV

IN SUPPORT OF SENATE BILL 211

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(emphasis added)

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The definition of a conviction under federal immigration law is not likely to change in response to this addition to the Maryland PBJ statute. It would take an act of Congress to alter the definition in the statute. As we know, immigration reform is unlikely to be feasible now or in the foreseeable future. The last major change to the federal immigration laws occurred in 1996, over 20 years ago. Since then, the statutes and regulations have remained virtually the same. Further, Virginia and New York have their own PBJ statutes; dispositions from these states do not constitute a conviction under federal immigration. To allow this inequity to exist from one jurisdiction to another, when the intent of PBJ statutes is the same or similar, is in my opinion unjust.

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because of a Maryland PBJ, even though the immigrant was otherwise eligible to stay in the United States.

As an adjunct professor of law, I began each class by writing on the board,

“Do Justice.... Read the Law.”

I can share with you many gut wrenching and deeply sad stories where families have been torn apart permanently as a result of deportation based on federal immigration law notwithstanding a Maryland PBJ resolution. These decisions were correct as required by the law; however, they were not just.

Therefore, I unequivocally support and request a favorable report on Senate Bill 211, this amendment to the Maryland PBJ statute.

SB211 D4CC fav.pdf

Uploaded by: Kate Sugarman

Position: FAV



SB 211 – SUPPORT

Dr. Kate Sugarman, MD
Doctors for Camp Closure, Maryland
katesugarman@hotmail.com
301-343-5724

SB 211 — SUPPORT

Probation Before Judgment – Probation Agreements

Senate Judicial Proceedings Committee

February 8, 2023

Dear Chair Smith and Members of the Judicial Proceedings Committee:

I was born and raised in Baltimore City and am now a practicing public health family physician living in Potomac MD. I am the co-chair of the Maryland Chapter of Doctors for Camp Closure.

The Maryland Chapter of Doctors for Camp Closure strongly supports SB 211 and urges this committee to report favorably on this legislation. We are part of the national Doctors for Camp Closure organization which is a non-partisan organization of over 2,200 physicians and health care professionals from all specialties who oppose inhumane detention of migrants and refugees who are attempting to enter the United States of America.

Currently, if a judge believes a charge warrants it, and the prosecution and defense agree, the judge can impose Probation Before Judgment (PBJ) and if the defendant completes the term imposed without problems, there is no conviction on their record. Unfortunately, under federal law this is still considered a conviction and thus for non-citizens (including green card holders), it can result in issues ranging from citizenship denial, to detention by ICE and even deportation, all related to what the justice system saw as a minor offense.

Meanwhile, non-citizens are often led to believe (sometimes by attorneys ignorant of how federal law views a PBJ) that a PBJ will not have any major consequences if they successfully complete the probation period. However, actually under federal law a non-citizen would face dire consequences, including deportation. (Passage of the Driver Privacy Act in 2021, helps regarding another minor offense that can be appropriate for a PBJ, driving without a license. However, that law did not take effect until June 1, 2022, thus immigrants may still be discouraged from getting licenses fearing ICE's continued use of MVA data to target undocumented immigrants for detention and deportation until after that bill has been in effect for some time.)

Because of this inequity, attorneys who do understand the potential consequences advise clients to take the risk of a full trial, rather than rely on a PBJ. In addition to the added risks and costs for these non-citizens, this burdens the Maryland courts and prosecutors with unnecessary trials for offenses that could otherwise be assigned a PBJ.

This clearly is not the intent of the Maryland legislature and is unjust. SB 211 will make minor changes to the law which would ensure the PBJ will no longer be considered a conviction under federal law and thus reduce the harm that ICE and the immigration system is able to inflict upon our non-citizen neighbors, while also reducing the costs and burdens on the criminal justice system.



SB 211 – SUPPORT

Dr. Kate Sugarman, MD
Doctors for Camp Closure, Maryland
katesugarman@hotmail.com
301-343-5724

As physicians we know as eye witnesses, that there is no healthy amount of time for an immigrant to be detained. We have been inside of immigration detention centers and we know how hazardous these places are both to the immigrants and their families.

This issue has taken on a heightened sense of urgency because of the continued pandemic. Serious illnesses and deaths due to COVID continue to rise inside the prisons and detention centers even under the Omicron variant, not only for the detained immigrant but also for the staff at these facilities.

In addition, family members suffer when their mothers and fathers, husbands and wives are deported. Families lose their wage earners and children lose their mothers and fathers. These children can no longer concentrate in school and suffer a host of psychological consequences. The emotional scarring is permanent and severe.

The Maryland Chapter of Doctors for Camp Closure urges a favorable report on SB 211.

JVCC & GVC Written Testimony PBJ.pdf

Uploaded by: Lila Meadows

Position: FAV

CLINICAL LAW PROGRAM

IN SUPPORT OF SB 211

To: Senate Judicial Proceedings Committee
From: Gender Violence Clinic & Justice for Victims of Crime Clinic, University of Maryland Carey School of Law
Date: February 7, 2023
Re: Written Testimony in Support of Senate Bill 211

The University of Maryland Carey School of Law Gender Violence Clinic & Justice for Victims of Crime Clinic unequivocally support Senate Bill 211.*

The Gender Violence Clinic & Justice for Victims of Crime Clinic represent clients with histories of and/or in matters involving intimate partner violence, rape, sexual assault, and trafficking. Both Clinics have represented a number of immigrant clients whose partners have been or could have been subjected to criminal prosecution leading to deportation.

Domestic violence related charges, like assault, are among the kinds of crimes for which probation before judgment (“PBJ”) is often appropriate. For example, courts will agree to impose PBJs in domestic violence cases where no serious injury occurred, no weapon was used, the incident involved a first-time defendant, the incident was limited to threats, or there was a violation of the no contact provision of a protective order, but no new abuse occurred.

Currently, if an immigrant gets a PBJ for a crime involving domestic violence, the PBJ is treated as a conviction for immigration purposes and the person can be deported. Victims are all too aware of the deportation risk to their immigrant partners if they call the police, so some victims are less likely to report domestic violence. There are many reasons why victims do not want their partners to be deported. If the partner is deported, the victim could be deprived of critical assistance, including child support payments, co-parenting support, economic support, health care benefits, housing, and transportation. A sole parent may also experience added stress because the children are grieving the loss of their deported parent.

If deportation after a PBJ was no longer a possibility, victims of domestic violence might be more likely to call the police. Moreover, if perpetrators are not concerned that a PBJ will trigger deportation proceedings, they might be more likely to take pleas and less likely to demand trials, sparing victims the experience of testifying, which is often retraumatizing. For all of these reasons, the Gender Violence Clinic & Justice for Victims of Crime Clinic strongly supports SB 211.

*This written testimony is submitted on behalf of the Gender Violence Clinic at the University of Maryland Carey School of Law and not on behalf of the School of Law or University of Maryland, Baltimore.

Judge Dornell Written Testimony SB 211.pdf

Uploaded by: Lisa Dornell

Position: FAV

IN SUPPORT OF SB 211

To: House Judiciary Committee
From: The Honorable Lisa Dornell, Retired Immigration Judge
Date: February 7, 2023
Re: Written Testimony in Support of Senate Bill 211

I am submitting this written testimony to offer my unequivocal support for Senate Bill 211. I served as a United States Immigration Judge at the Baltimore Immigration Court for 24 years. I retired in 2019. Prior to my time on the bench, I was a Senior Litigation Counsel with the Justice Department's Office of Immigration Litigation, where I argued many cases before federal circuit courts including the Fourth Circuit Court of Appeals.

Right now, immigrants who receive the benefit of probation for the same crime will face radically different outcomes, depending on if the probation is imposed by the State of Maryland or Commonwealth of Virginia. If the probation is imposed in Virginia pursuant to VA Code Ann. § 18.2-251, the immigrant's probation will not be treated as a conviction under federal immigration law. In *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011), the Fourth Circuit considered a Virginia adjudication under *Virginia Code § 18.2-251*, and the court said:

After such a plea, "if the facts found by the court would justify a finding of guilt," the court may, "without entering a judgment of guilt," instead "defer further proceedings and place" the offender on probation. *Id.* In his case, Crespo pled *not* guilty to the offense and the judge **found facts justifying a finding of guilt** and deferred adjudication over the Commonwealth's objection. Crespo was sentenced to one year of probation, which he served without incident.

Because Mr. Crespo had not pled guilty or admitted facts related to the simple possession of marijuana charge, but instead the court had *found facts justifying a finding of guilt*, the imposition of probation was not considered a conviction under federal immigration law and he was not deported.

But had Mr. Crespo's case occurred in Maryland, and had he received the benefit of probation before judgment, this Maryland equivalent to Virginia's probation statute would have rendered him deportable. This is because to receive the benefit of probation before judgment in Maryland, the judge would have had to follow the procedure as it is currently laid out in Md. Crim. Proc. § 6-220 which requires an admission of guilt and a formal finding of guilt by the judge before the benefit of probation may be extended. Although the Maryland legislature did not intend for a PBJ to be a conviction, it is just that for federal immigration purposes. Consequently, an immigrant with probation for the same crime will face radically different outcomes if the probation was imposed in Virginia versus Maryland. We refer to this unforeseen and arbitrary intersection between state and federal law as being a "jurisdictional happenstance." It is highly unfair and as a sitting Immigration Judge, it was very painful to render findings of deportability against individuals with a Maryland PBJ, knowing full well that, but for the fact that they agreed to a PBJ on the wrong side of the Potomac, they were sealing their fate under the federal immigration law, something that was not the desired or anticipated result of, and in fact, contrary to the purpose of the granting of the PBJ.

Not only is the current regime *prima facie* unjust, it also creates unequal and inconsistent law within the Fourth Circuit, which presides over both Maryland and Virginia. My experience in litigating before the Federal Circuit Courts of Appeals and my experience as an Immigration Judge cement my view that conflicting rulings from the Circuit Court, in addition to being unfair, cast an unnecessary shadow of confusion and uncertainty, something that in this instance can easily be remedied by Senate Bill 211.

This Bill presents an opportunity for the State of Maryland to ensure that the Federal Immigration Statute does not subvert the true intention of the Maryland State statute, which

is to truly give all who rely on the Maryland law the benefit of a probation *before* judgment, a benefit that tempers justice with mercy. The State of Maryland need not and ought not wait for a federal bureaucracy, with its mind-boggling array of priorities, to address this important matter over which the State has control. I therefore urge a favorable report on Senate Bill 211.

SB0211_Probation Agreement _testimony on 2_08_2023

Uploaded by: Michael David

Position: FAV

TESTIMONY IN SUPPORT OF SENATE BILL 0211

PROBATION BEFORE JUDGEMENT – PROBATION AGREEMENTS

Dear Senators West and Smith and Members of the Committee,

Thank you for the opportunity to comment on Senate Bill 0211, Probation Before Judgement- Probation Agreements. I am a Facilitator for the Immigration Action Team of Indivisible of HoCo and I am a member of the Executive Committee of the Howard County Coalition for Immigrant Justice; I am an immigrant, a veteran and a retired attorney. I support passage of SB0211.

SB0211 strikes a careful balance between the interests of a defendant and of society at large vs the need for sufficient punishment to deter crime. In particular, our penal system is overcrowded and needs relief; moreover, a guilty verdict, if entered as such in the record, would often have secondary traumatic consequences, to include hardship in subsequent employment or deportation of migrants, breaking apart families.

The Bill does not provide unearned panacea for a defendant. It allows a judge discretion to reach and enforce an agreement with the defendant, whereby the defendant may be required to pay a monetary fine, penalty and/or make restitution; participate in a rehabilitation program; potentially fulfill a term of imprisonment; and waive rights to a trial and to appeal the agreement. If the defendant violates the probation agreement, the court may sentence the defendant.

Accordingly, SB0211 appears balanced in supporting relief for defendant and society, but allows consequences for a defendant that fails to keep his/her duties under the agreement. Please pass this bill.

Michael David, PhD, JD

Columbia MD 21044

SB0211_CC_Vaughan_FAV.pdf

Uploaded by: Regan Vaughan

Position: FAV



Senate Bill 211
Probation Before Judgment – Probation Agreements
Judiciary Committee
February 8, 2023

Favorable

Catholic Charities of Baltimore support SB 211 which would amend the Probation Before Judgment procedure so that all Maryland residents, regardless of immigration status, have the same access to the benefit of probation before judgment (“PBJ”).

Inspired by the Gospel to love, serve and teach, Catholic Charities provides care and services to improve the lives of Marylanders in need. For 100 years, Catholic Charities has accompanied Marylanders as they age with dignity, obtain empowering careers, heal from trauma and addiction, achieve economic independence, prepare for educational success and feel welcome as immigrant neighbors.

SB 211 will help prevent unnecessary detention and deportation of people over minor criminal contacts.

As intended, PBJ offers individuals the ability to accept responsibility for their actions for minor offenses, while avoiding the life-altering, adverse consequences of a guilty finding. In order to receive PBJ, a person must first admit guilt, and the judge must make a finding of guilt. Under the current procedure, after a judge strikes the guilty finding, a U.S. citizen who has a PBJ can, in most all aspects of their life, indicate that they have never been “convicted” of any crime. For a noncitizen, however, despite that it might have been technically stricken from the criminal court case, a finding of guilt will continue to be considered a “conviction” for immigration purposes. This results in a stark consequential contrast where non-citizens can face deportation from the U.S. for receiving the same PBJ for which a U.S. citizen would have minimal impact.

Adopting the proposed amendments to the PBJ procedure, which include removing the necessity for an admission of guilt and a guilty finding will ensure that individuals can still receive PBJs that will not trigger adverse immigration consequences. A PBJ would then no longer be considered a conviction under Maryland law or federal immigration law. There is no risk to the public safety, as this change does not impact the state’s ability to punish a person who might violate probation. The state would retain the ability to issue a judgement against, and sentence, an individual who has violated probation.

We urge the legislature to pass SB 211. Adding this language to the Maryland Probation Before Judgment statute would help ensure equality and fair administration of the law for all Maryland residents.

For the reasons listed above, Catholic Charities of Baltimore appreciates your consideration, and urges the committee to issue a favorable report for SB 211.

Submitted By: Regan Vaughan, Director of Advocacy

SB0211 - MSBA Support Letter (2023.02.07).docx.pdf

Uploaded by: Shaoli Katana

Position: FAV



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

MEMORANDUM

To: Members of the Senate Judicial Proceedings Committee

From: Maryland State Bar Association (MSBA)
Shaoli Katana, Esq., Advocacy Director

Subject: Senate Bill 211 - Probation Before Judgment - Probation Agreements

Date: February 7, 2023

Position: Support

The Maryland State Bar Association (MSBA) supports **Senate Bill 211 - Probation Before Judgment - Probation Agreements**. SB 211 authorizes a court to stay the entering of judgment, defer further proceedings, and place a certain defendant on probation subject to reasonable conditions if the court finds facts justifying a finding of guilt; authorizes the court and a certain defendant to enter into a probation agreement under certain circumstances; provides that the entry of a probation agreement under the Act shall be considered as a probation before judgment for all other purposes under State law; etc.

The MSBA represents more attorneys than any other organization across the State in all practice areas. MSBA serves as the voice of Maryland's legal profession. Through its Laws Committee and various practice-specific sections, MSBA monitors and takes positions on legislation of importance to the legal profession.

The proposed legislation benefits and protects Maryland residents by removing the negative immigration consequences, including deportation, that can follow a criminal defendant who pleads guilty and receives probation in certain criminal cases, as a probation before judgment is considered a conviction under federal immigration law.

SB 211 would align Maryland law with that of several other jurisdictions, including Virginia, the District of Columbia, and California, and remove the trigger to deportation by pausing the finding of guilt in specific instances, providing clarity to defendants, attorneys, and courts.

The proposed legislation would prevent severe immigration consequences for Marylanders who are often first-time, non-violent offenders. With broad support from a variety of advocacy groups and retired judges, the MSBA hopes that stakeholders can work together through technical challenges to implement this important piece of legislation.

For the reasons stated above, MSBA supports SB 211 and respectfully requests a favorable report. For additional information, please feel free to contact Shaoli Katana at MSBA at shaoli@msba.org.

SB211 MDAID fav.pdf

Uploaded by: Susaanti Follingstad

Position: FAV



SB 211 - SUPPORT
Susaanti Follingstad
Maryland Against ICE Detention
sfolling@verizon.net 301-251-0139

SB 211 - SUPPORT
Probation Before Judgment – Probation Agreements
Senate Judicial Proceedings Committee
February 8, 2023

Dear Chair Smith and Members of the Judicial Proceedings Committee:

As a Maryland resident for 48 years and on behalf of Maryland Against ICE Detention (MDAID), I adamantly support SB 211 and urge this committee to report favorably on this legislation. MDAID is a statewide coalition of organizations and individuals striving to stop immigration detention as well as systems that contribute to detention and deportation. We are made up of over 60 organizations and over 200,000 individual members and members of those organizations.

The passage and implementation SB 211 is important to our mission of stopping detention and deportation of immigrants, even more so during this pandemic, which detention worsens, increasing the hazard to those detained and to surrounding communities.

Currently, if a judge believes a charge warrants it, and the prosecution and defense agree, the judge can impose Probation Before Judgment (PBJ) and if the defendant completes the term imposed without problems, there is no conviction on their record. Unfortunately, under federal law this is still considered a conviction and thus for non-citizens (including green card holders), it can result in issues ranging from citizenship denial, to detention by ICE and even deportation, all related to what the justice system saw as a minor offense.

I've used PBJ in traffic court, and avoided points and increased insurance rates as a result, while only paying a fine and completing the probation period successfully.

Meanwhile, non-citizens are often led to believe (sometimes by attorneys ignorant of how federal law views a PBJ) that a PBJ will not have any major consequences if they successfully complete the probation period. However, actually under federal law a non-citizen would face dire consequences, including deportation, even for a similar offense to mine. (Passage of the Driver Privacy Act in 2021, helps regarding another minor offense that can be appropriate for a PBJ, driving without a license. However, that law did not take effect until June 1, 2022, thus immigrants may still be discouraged from getting licenses fearing ICE's continued use of MVA data to target undocumented immigrants for detention and deportation until after that bill has been in effect for some time.)

Because of this inequity, attorneys who do understand the potential consequences advise clients to take the risk of a full trial, rather than rely on a PBJ. In addition to the added risks and costs for these non-citizens, this burdens the Maryland courts and prosecutors with unnecessary trials for offenses that could otherwise be assigned a PBJ.

This clearly is not the intent of the Maryland legislature and is unjust. SB 211 will make minor changes to the law which would ensure the PBJ will no longer be considered a conviction under federal law and thus reduce the harm that ICE and the immigration system is able to inflict upon our non-citizen neighbors, while also reducing the costs and burdens on the criminal justice system.

MDAID urges a favorable report on SB 211.

SB-211-2023 - Probation not Deportation - MFRW OPP

Uploaded by: Ella Ennis

Position: UNF



Ella Ennis, Legislative Chairman
Maryland Federation of Republican Women
PO Box 6040, Annapolis MD 21401
Email: eee437@comcast.net

Senator William C. Smith, Jr., Chairman
and Members of the Judicial Proceedings Committee
Senate of Maryland
Annapolis, Maryland

RE: **SB-211** Probation Before Judgement -Probation Agreements – **OPPOSED**

Dear Chairman Smith and Members,

The Maryland Federation of Republican Women opposes SB-211. Under federal law, probation before judgement is grounds for the deportation of illegal immigrants. This bill is specifically designed to circumvent that law. SB-211 authorizes the Court to withhold making a formal judgement for the express purpose of avoiding the possibility of deportation of the guilty party.

It would allow the Court to make findings of fact sufficient to support a guilty verdict but, instead of making a formal determination, allow the defendant to sign a probation agreement that the guilty finding and maximum sentence would be imposed if the defendant violates the agreement.

An illegal immigrant in such a case has already violated the laws of the United States by entering the country illegally. Then, the illegal immigrant committed a crime while present in Maryland.

How many crimes do we allow an illegal immigrant to commit before deportation is deemed appropriate? Do we continue to prevent the deportation of an illegal immigrant when they commit a 3rd crime? Perhaps a more serious crime than the earlier one?

When do we enforce the laws of our country? Where is the commitment to the safety of American citizens and legal immigrants?

Please give SB-211 an **UNFAVORABLE** report.

Sincerely,

Ella Ennis
Legislative Chairman
Maryland Federation of Republican Women

sb211.pdf

Uploaded by: Matthew Pipkin

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 211
Probation Before Judgment – Probation Agreements
DATE: January 30, 2023
(2/8)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 211. The Judiciary appreciates the concerns the bill is attempting to address and takes no position on the policy aims of the legislation. However, the bill as drafted raises several concerns.

First, it is important to note that the proposed bill differs from legislation addressing the issue in other states. In particular, the Virginia statute has been touted as effectively addressing the purported concerns. Unfortunately, this bill does not mirror the Virginia statute but, rather, differs in a number of significant ways. The Virginia statute is what is commonly referred to as a deferred disposition statute. In essence, it allows a court to withhold its verdict and sentence to see whether the Defendant complies with certain pre-disposition probationary terms. If the Defendant complies, the case is then dismissed. If not, the Court is free to impose a conviction. Additionally, this deferred disposition is only available in Virginia with the consent of both the State and the Defendant. HB 193 does not require such an agreement nor does it defer disposition. It is something else entirely – mixing various legal concepts in a way that is both hard to comprehend and hard to rectify with current law and procedure.

It appears to create a new type of plea, without expressly defining this new plea. It also appears to bind the Court to a certain disposition -- a PBJ – immediately upon the entry of the plea, rather than deferring disposition to ensure compliance. Moreover, there are no provisions within the bill itself outlining the exact plea to be entered nor are there any provisions regarding the manner in which the court would make the necessary factual findings. As drafted, it is unclear how the probationary agreement would dovetail with the entry of the plea itself. Rather than creating a section to outline the framework for this new plea type, the bill inserts the phrase “or a court finds facts justifying a finding of guilt” into existing language in Section 6-220(b)(1) on page 1, lines 22-23 of the bill. That placement does not work and will lead to confusion in its application.

Of course, a defendant must enter a plea before the Court can proceed so the lack of clarity on the plea itself is an important area of confusion that must be addressed. The Court is required to conduct a full examination of the defendant, on the record, to ensure that the defendant is freely and voluntarily entering the plea with a full understanding of the nature of the charge and the consequences of the plea. These are fundamental constitutional principles. Based on the language in the bill, and the purpose behind the legislation, this “new plea” cannot be a guilty plea or a plea of *nolo contendere*, which currently have federal immigration consequences. As such, the bill beginning on page 2, line 27 through and including p. 3, line 2, allows the Court to enter into a probationary disposition *at sentencing* in which the Defendant pleads not guilty. Of course, that plea and the plea litany is required at the outset of the matter. That is likely one reason the Virginia statute requires an agreement between the State and the Defendant at the outset. This bill contains no such clarifying provisions, nor any such requirement.

Pursuant to lines 18-22 on page 3 of the bill, it also appears that the Court **shall** impose a probation before judgment after finding facts justifying a finding of guilt. However, on page 2, in line 21 and on page 2, lines 27-29 the bill provides that a court **may** make findings of fact and enter into a probationary agreement under this new procedure. It is unclear how to read these provisions together – with both mandatory and discretionary language as to the probation agreement and the sentence -- in light of the lack of clarity on the other procedural issues. If this legislation intends to bind the Court to enter a PBJ after the plea, the Judiciary would note its opposition. The Judiciary traditionally opposes legislation that includes mandatory provisions. It is critical for judges to weigh the unique facts and circumstances in each case when making sentencing determinations and when making decisions as to whether to accept any plea agreement. It is entirely possible that a defendant could enter this “new plea” and, at the conclusion of the reading of the facts, the sentencing judge could have serious concerns for the safety of the victim or the community. There is no indication in the legislation that the sentencing judge would have the discretion to allow the withdrawal of the plea. Rather, the bill mandates that the judge enter a PBJ and place the person on probation, regardless of any safety concerns that may come to light.

Further, the bill as drafted raises constitutional concerns. There cannot be findings of fact in a criminal case that fall short of the constitutionally-mandated beyond a reasonable doubt standard. The bill provides, variously, that a court may “find facts justifying a finding of guilty” and “make findings of fact sufficient to support a finding of guilt.” The language within the bill itself is not consistent. Moreover, anything short of a finding of fact *beyond a reasonable doubt* would be constitutionally infirm. This constitutional concern was previously echoed in the Office of the Attorney General’s letter dated March 9, 2021, reviewing a similar bill, which noted that “although the bill and amendments are not clearly unconstitutional, they appear to raise due process and enforcement concerns.” Those concerns remain in this current iteration.

Additionally, the probation agreement provided in the bill notes that the defendant does not admit to the facts, and pleads not guilty, but that the court may find the defendant guilty of the underlying crime at a subsequent violation of probation proceeding. This

raises other concerns. The standard of proof at a violation of probation proceeding is a civil standard – preponderance of the evidence. It is difficult to understand how an individual could be found guilty – beyond a reasonable doubt - at a violation of probation proceeding which requires only proof by a preponderance of evidence. Moreover, it is unclear how the Court would handle cases in which probationers attempt to contest the original underlying facts – to which they never admitted nor for which they were ever adjudicated guilty.

As such, while the Maryland Judiciary appreciates the objectives of the bill’s proponents, the bill’s drafting makes it difficult for the Judiciary to fully comprehend and to apply. The bill is neither in conformity with similar legislation in other states nor in conformity with substantive and procedural Maryland law.

cc. Hon. Chris West
Judicial Council
Legislative Committee
Kelley O’Connor