



Unitarian Universalist Legislative Ministry of Maryland

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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

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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>