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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.