

Maryland Criminal Defense Attorneys' Association



Md House of Delegates – Judiciary Committee

March 30, 2023 1pm

Hearing on SB 211

Senator West – Probation Agreements

MCDAA POSITION: SUPPORT

Brief bill explanation (Revised): This bill authorizes a court, with the defendant's and prosecutor's consent, to make findings on the record and impose probation; in the event of a violation of probation, it can enter a finding of guilt and impose a sentence up to the maximum punishment for the underlying offense.

MCDAA's position: This legislation's current wording is the result of several years of work by the sponsor and the stakeholders, and currently enjoys support from the defense bar, the prosecutors, and the judiciary. It is a straightforward approach to repair an unintended consequence of Maryland's unique Probation Before Judgment law. Currently, federal law treats a Maryland defendant's Probation Before Judgment as a conviction under certain federal statutes (such as immigration laws), even though a PBJ is NOT currently considered a conviction under Maryland law. Other states, such as Virginia, have recently corrected their PBJ laws. Recent rulings by the US Fourth Circuit Court of Appeals have ruled that Maryland's Probation before Judgment qualifies as a conviction under federal law. This has major implications in the United States Immigration Court, and has led to deportation, which oftentimes was not an intended outcome. This legislation cures the problem in a nuanced way so that a court can enter into a Probation Agreement, avoiding the conviction result (as the PBJ does currently under state law), but the resulting probation treatment will not be viewed as a conviction by federal courts, so that a probation agreement under SB211 will NOT be treated as a conviction under federal law, and will not have "unintended consequences" for immigration or licenses.