

IN SUPPORT OF SB 211

To: House Judiciary Committee
From: Andre M. Davis, United States Circuit Judge (ret.)
Date: March 28, 2023
Re: Written Testimony in Support of SB 211

I am submitting this written testimony to offer my unequivocal support for Senate Bill 211. I served as the City Solicitor of Baltimore City from 2017 until 2020 after retiring from the United States Court of Appeals for the Fourth Circuit, where I served as Circuit Judge from 2009 until 2017. Prior to that I served as a Judge on the United States District Court for the District of Maryland, and before that as an Associate Judge on the Baltimore City Circuit Court, and the District Court of Maryland for Baltimore City. Early in my career I served as an Assistant United States Attorney in Maryland, and even earlier as an Appellate Attorney in the Civil Rights Division of the United States Department of Justice. I have also served as a professor of law at the University of Maryland Francis King Carey School of Law. Throughout my career I have encountered, litigated, and employed the Maryland Probation Before Judgment (PBJ) statute countless times both as an attorney and as a judge.

I am very familiar with the serious negative consequences that this statute, despite its intended purpose as a lesser punishment for those undeserving of a conviction, has had and continues to have on Marylanders who are not U.S. citizens. As it is interpreted under federal law, the Maryland PBJ statute has become an instrument of injustice. Accordingly, I strongly support Senate Bill 211, which would if enacted repair the profound injustice visited on some members of our statewide communities.

Equality before the law is a foundational element of the United States justice system. Maryland's current PBJ statute functions to create injustices in the form of additional, extraordinarily harsh consequences for non-citizens as compared with their citizen counterparts. PBJs occur most

frequently in a plea agreement context, in which the prosecution and the defense agree, and the judge independently finds and agrees, that the defendant should have the benefit of probationary disposition that, under Maryland law, does not constitute, and is not treated as, a conviction. While the current process works as intended for United States citizens, non-citizens, including but not limited to those going through the process of obtaining U.S. citizenship, i.e., lawful immigrants, often face severe additional consequences, such as detention and deportation, despite all parties agreeing that a lesser sanction will achieve the purposes of the criminal law and restorative justice, which includes rehabilitative outcomes. Such a policy offends our most deeply held American values of fairness and equality under the law. SB 211 will appropriately amend the PBJ statute in a way that is wholly consistent with Maryland law.

Indeed, in its unamended application to non-citizens, the PBJ statute is distorted by operation of federal law into a ghost of itself, entirely divorced from the remedial purposes the General Assembly clearly had in mind. In short, the modest but important amendment embodied in SB 211 is plainly necessary in order to bring our state's law into compliance with the Due Process protections that states are required to afford their residents under the United States Constitution. The current policy of allowing some individuals to suffer more dire consequences from a PBJ solely because of their immigration status flies in the face of the equality before the law that our federal and state constitutions promise.

I therefore enthusiastically support SB 211, which justly amends the Maryland PBJ statute, and respectfully urge its favorable report.