

ANTHONY G. BROWN
Attorney General



CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
(410) 576-6475

WRITER'S DIRECT DIAL NO.
(410) 576-6435

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TO: The Honorable Luke Clippinger, Chair, Judiciary Committee

FROM: Jer Welter, Assistant Attorney General
Deputy Chief for Legal Affairs, Criminal Appeals Division
Office of the Attorney General

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

The Office of the Attorney General (OAG) urges the Judiciary Committee to report favorably on SB 211. This bill will help avoid devastating federal collateral consequences for people who commit minor crimes—particularly immigration consequences, including deportation, for legal immigrants and permanent residents. It will do so by establishing a probation-before-judgment (PBJ) disposition that will operate under federal law the same way that a PBJ is intended to operate and does operate for most purposes under Maryland law: as a disposition that does not result in the consequences of a conviction.

This bill—which this Committee and the House have already passed in identical form as HB 193 this session—is the product of negotiation by many stakeholders. It does not displace a traditional PBJ, but instead creates an alternative, equivalent form of PBJ that comes with important procedural safeguards. These include requirements that:

- the defendant knowingly and voluntarily waives the right to trial;
- the court makes an express finding that the facts justify a finding of guilt beyond a reasonable doubt;
- the defendant agrees to entry of a guilty verdict if the defendant violates probation; and
- the alternative form of PBJ authorized by the bill cannot be granted without State consent.

The bill also ensures that the alternative PBJ disposition it creates is “considered a probation before judgment for all other purposes under state law.”

OAG urges a favorable report without amendments.

cc: Senator West, Members of the Committee

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