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Testimony of the Human Trafficking Prevention Project

BILL NO: Senate Bill 211
TITLE: Probation Before Judgment – Probation Agreements
COMMITTEE: Judicial Proceedings
HEARING DATE: February 8, 2023
POSITION: **SUPPORT**

Senate Bill 211 would amend the Probation Before Judgment (PBJ) statute to include a process for entering a PBJ which clarifies that the successful completion of whatever period of probation is ordered by the court is *not* a conviction. The Human Trafficking Prevention Project at the University of Baltimore School of Law supports this bill because it would reduce the likelihood of deportation and other immigration consequences for foreign national victims of trafficking charged with a criminal offense.

Currently, if a non-citizen Maryland resident obtains a PBJ, they can face loss of liberty, deportation, and permanent banishment from the United States. Because the noncitizen admits guilt under the existing PBJ procedure and the judge makes a finding of guilt, even though that disposition may later be stricken if the defendant complies with the terms of probation, the disposition is considered a conviction under federal immigration law. This is contrary to the intent of the Maryland General Assembly, which codified the PBJ statute for use in situations where "the best interest of the person and welfare of the state" dictate an outcome in a criminal matter that is not a conviction.[1] For U.S. citizens, the PBJ has the desired outcome of allowing people to take responsibility for their mistakes and move on with their lives, without enduring lifelong, adverse consequences. The same is not true for non-citizen Maryland residents.

An often-overlooked subset of criminal defendants are victims of human trafficking, who frequently have criminal records stemming from acts they were forced to commit by their traffickers, as well as the instability that so often precedes or follows a trafficking experience. Data recently obtained from a national survey of sex and labor trafficking survivors, both foreign-born and domestic, highlights the regularity with which victims of trafficking are criminalized, with 91% of the survivors surveyed reporting having been arrested at some point in their lives.[2] Of those 91%, over 40% reported being arrested over nine times or more.[3] While U.S.-born victims are saddled with the collateral consequences of criminal convictions such as difficulties obtaining safe housing and gainful employment, foreign national victims face the additional far more severe consequence of deportation. Allowing for some leniency in situations where a foreign national defendant is a first-time offender and/or where the crime is non-violent would reduce these life-altering collateral consequences as well allow for the possibility of connecting the victim with service providers who can provide assistance with pursuing the immigration relief they so rightly deserve.

Senate Bill 211 will reduce the risk of this harm by allowing a judge to grant a PBJ whereby the defendant would neither admit nor deny guilt while at the same time not disputing the alleged facts of the case. A PBJ by these means would not be considered a conviction under Maryland law or federal immigration law. While this bill may improve outcomes for criminal defendants as a whole, for trafficking survivors it contains the added benefit of avoiding the likelihood that they will be deported as a direct result of a crime being committed against them, which is an inexcusable miscarriage of justice. For these reasons, the Human Trafficking Prevention Project at the University of Baltimore School of Law supports Senate Bill 211. We respectfully urge a favorable report.

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[1] MD CODE ANN., Crim. Proc. § 6-220(b)(1)(i).
[2] National Survivor Network, *National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking* (2016), https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf.
[3] *Id*.