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Senator William Smith  
Chair of JPR  
Maryland State Senate

Re: Senate Bill 653

Chairman Smith:

I am submitting this written testimony in opposition to Senate Bill 653 scheduled for open hearings on Wednesday, February 19<sup>th</sup>, 2020.

Senate Bill 653 if it becomes law will create a new disposition in Maryland criminal courts. This new disposition will change the current probation before judgment disposition that has largely been unchanged since adopted in the mid 1970's. The reason for this alteration is that the proponents of this change do not approve of how the current probation before judgment disposition is treated by Federal Immigration Courts.

The Maryland State's Attorney's Association opposes this change for the following reasons:

I. The Federal Government has Exclusive Jurisdiction on Immigration Matters  
The question of immigration is a civil matter in the exclusive jurisdiction of the Federal Government. Immigration is controlled federally by the Immigration and Nationality Act (see 8 U.S.C. §§ 1101-1537). The State of Maryland does not have a role in who stays in this Country, who is ordered to leave, or any of the multiple remedies in between. By passing this law, Maryland as a State would be actively setting policy for the federal government.

II. What is treated as a conviction for Immigration purposes is subject to judicial interpretation.

The proponents of this bill object to how probation before judgment is viewed by the Immigration courts. Currently, a disposition of Probation Before Judgment is treated the same as a guilty finding in an Immigration context. A conviction is defined in the Immigration Nationality Act in § 1101 (48) (A).

- (A) The term “conviction” means, with respect to an alien, a formal judgment of guilty of the alien entered by a court or, if adjudication of guilty has been withheld, where –
- i. A judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilty, and
  - ii. The judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

As you can see, nowhere is “conviction” in this sense equated with Maryland’s probation before judgment in the statute. Maryland’s Probation Before Judgment has been regarded as a conviction because of judicial interpretation of this statute. *See United States v. Medina*, 718 F.3d 364 (2013).

This change is designed to mirror language from the Commonwealth of Virginia in *Va. Code Ann.* § 18.2-251 which is a plea of sorts that allows the Defendant to enter a plea of not guilty, the Court hears facts that would justify a finding of guilt, and upon consent to deferral from the Defendant may place terms and conditions of probation on the Defendant. Findings of this sort have been deemed to not be convictions under Immigration Nationality Act in § 1101 (48) (A). *Crespo v. Holder*, 631 F.3d 130 (2011). This is still a judicial interpretation. If a higher court than the 4<sup>th</sup> Circuit reviewed the case it is possible that Court would agree with the Government that Crespo’s disposition should be viewed as a conviction under the Immigration Nationality Act.

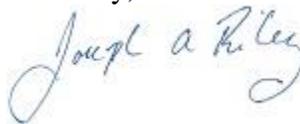
The reality is Maryland could change its current law to the proposed bill and there is no guarantee that the Courts will interpret it as Virginia’s law (the language is quite different as will be discussed later).

III. The proposed bill change goes much farther than Virginia’s law.

The bill which the advocates claim to wish to emulate from Virginia deals with a first time offense of possession of controlled dangerous substances. *See Va. Code Ann.* § 18.2 Article 1 (Drugs). In contrast, Maryland’s PBJ could apply to almost any charge.

The Maryland State’s Attorney’s Association is opposed to this bill.

Sincerely,



Joseph A. Riley  
State Attorney