Beckman FAV SB 653

Uploaded by: Beckman, Emily

Position: FAV

Good afternoon, Chair, Vice Chair and members of the Committee. My name is Emily Beckman. I am testifying in support of SB 653. I am a resident of Montgomery County Maryland and have been a practicing criminal defense lawyer for almost 15 years. During that time I have worked as a public defender in Alexandria, Virginia, as a public defender in Montgomery County, Maryland, and as a defense lawyer in private practice.

In my time as a public defender and private criminal defense lawyer I have represented hundreds, if not thousands, of non-U.S. Citizen clients. Non-citizen clients are often denied the benefits of alternative dispositions like the PBJ not because of any opposition on the part of the prosecution or any victim in the case, but because federal immigration law considers a successfully completed Maryland PBJ to be a conviction even though Maryland law does not.

In Virginia, however, the PBJ equivalent is available to non-citizen clients so that when they successfully complete the program, they do not have a conviction under either state or federal immigration law. This is because non-citizens can participate in these diversion programs after a Judge makes a finding of facts sufficient to support a conviction, rather than a finding of guilt.

The "facts sufficient" finding functions just like a current Maryland PBJ does but without being considered a "conviction" under federal immigration law. If you pass SB 653, just as defendants do all over Northern Virginia right now, a non-citizen client would plead not guilty, waive all objections to a statement of facts being read to the Judge instead of having a trial, agree not to present any alternative facts or evidence, and in this way acquiesce to a finding of "facts sufficient" and to participation in the diversion program. If the defendant successfully completed all of the requirements imposed by the Judge, the charge would eventually be dismissed. If the defendant failed to complete the requirements imposed by the Judge, a conviction would be imposed with no further trial or evidence required.

Though the change sought through SB 653 may seem like a meaningless technicality, for legal immigrants charged with minor offenses like theft under $1000 or simple possession of a controlled substance, it can mean the difference between remaining in this country and being deported.

The "facts sufficient" alternative provides a necessary avenue for a non-adversarial resolution of cases against non-citizen defendants so that they may receive the same benefits of a PBJ that currently exist for US Citizens.

- SB 653 promotes finality of judgements by reducing post-conviction litigation on behalf of criminal defendants who were not properly advised that their PBJ dispositions would be considered convictions under immigration law and could lead to their deportation.
- SB 653 saves resources by avoiding unnecessary trials when prosecutors, victims, and defendants are inclined to resolve the case with a PBJ, but the non-citizen defendant cannot agree to a result that would have catastrophic immigration consequences.
- SB 653 provides the same opportunities for non-citizens to make amends by participating in programs of self-improvement and by paying restitution as Maryland law currently offers to US Citizens through the PBJ option.

It is a minimal change to Maryland law that will promote equitable outcomes in the criminal justice system and provide flexibility to prosecutors, victims, and defendants in determining the appropriate resolution of individual cases.

Thank you for your interest in and consideration of this bill; I hope you will support SB 653.

Gossart FAV SB 653

Uploaded by: Gossart, Judge John

Position: FAV

IN SUPPORT OF SB 653

To: Senate Judicial Proceedings Committee
From: The Honorable John F. Gossart, Jr., Retired United States Immigration Judge
Date: February 19, 2020
Re: Written Testimony in support of Senate Bill 653

I am submitting this written testimony to offer my unequivocal support for House Bill 213. I served as a United States Immigration Judge at the Baltimore Immigration Court for thirty-one years. I retired in 2013. At my retirement, I was the third most senior immigration judge in the United States. I was also an adjunct professor of immigration law at the University of Baltimore School of Law (20 years), and the University of Maryland School of Law. (3 years). I am a proud Army Vietnam veteran.

Under current Maryland law, an adjudication through the Probation Before Judgement process, Crim. Pro. Section 6-220, is not considered a conviction. Unfortunately, however, the Maryland PBJ process *is* a "conviction" under federal immigration law. A person who avails herself/himself of the PBJ process has been convicted, with all attendant immigration consequences including deportation, ICE custody, and disqualification from defenses to deportation. This is because, to obtain a PBJ in Maryland, the defendant either pleads guilty or is found guilty, and then the court imposes probation. Even though the formal entering of judgment is stayed, the guilty plea and imposition of probation is sufficient to constitute a conviction under Title 8 United States Code 1101(a) (48) (A).

The immigration law defines "conviction" at 8 USC 1101(a) (48) (A) as follows:

> (48) (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt 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 guilt, and
>
> (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(emphasis added)

The proposed short addition to the Maryland PBJ statute would change the process such that a PBJ obtained through it would not be considered a conviction under federal immigration law. By allowing a judge to "find facts justifying a finding of guilt" before imposing probation and entering a PBJ, such a procedure would not be a conviction for Maryland criminal purposes *or* immigration purposes. That is, the result would be as intended by the Maryland legislature and the parties in negotiating for and imposing a PBJ: not a conviction in Maryland and NOT a conviction under federal immigration law.

The definition of a conviction under federal immigration law is not likely to change in response to this addition to the Maryland PBJ statute. It would take an act of Congress to alter the definition in the statute. As we know, immigration reform is unlikely to be feasible now or in the foreseeable future. The last major change to the federal immigration laws occurred in 1996, over 20 years ago. Since then, the statutes and regulations have remained virtually the same. Further, Virginia and New York have their own PBJ statutes; dispositions from these states do not constitute a conviction under federal immigration. To allow this inequity to exist from one jurisdiction to another, when the intent of PBJ statutes is the same or similar, is in my opinion unjust.

To the contrary, my experience as an immigration judge has been that when an immigrant received the benefit of a Maryland PBJ, the facts of the case and/or the personal qualities of the immigrant, were consistent with the lenient nature of the disposition imposed. These were individuals who had made a mistake, often a minor one, and this mistake was aberrant, an accident of youth, inexperience, or a reaction to some kind of trauma or temporary problem that was often resolved by the time the individual found themselves in deportation proceedings. During my time as an immigration judge, I was often statutorily obligated to order the deportation of an immigrant

because of a Maryland PBJ, even though the immigrant was otherwise eligible to stay in the United States.

As an adjunct professor of law, I began each class by writing on the board,

"Do Justice"…."Read the Law".

I can share with you many gut wrenching and deeply sad stories where families have been torn apart permanently as a result of deportation based on federal immigration law notwithstanding a Maryland PBJ resolution. These decisions were correct as required by the law; however, they were not just.

Therefore, I unequivocally support HB 213 and this amendment to the Maryland PBJ statute.

CASA FAV SB 653

Uploaded by: Katz, Nick

Position: FAV

Senate Judicial Proceedings Committee

CASA Testimony in SUPPORT of SB 653

February 19, 2020

Good Afternoon Chairman and Committee Members,

My name is Nicholas Katz, and I am the Senior Manager of Legal Services at CASA. CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 90,000 members in Maryland alone.

On behalf of our members, CASA urges a favorable report for Senate Bill 653.

We stand in support of this bill because our members are routinely negatively impacted by receiving a Probation Before Judgement ("PBJ") disposition as it is currently structured.

Under Maryland State law, a court may stay the entering of a judgment, defer further proceeding, and place a defendant on probation when a defendant has plead guilty, *nolo contendere*, or is found guilty by a judge or jury. MD. Code. Ann., Crim. Proc § 6-220(b)(1). Once the defendant's probationary requirements have been completed, the court "shall discharge the defendant from probation." *Id*. at (g)(1). This is a final disposition and a defendant is then discharged without "judgement of a conviction." *Id*. at (g)(2) and (3).

Probation Before Judgment is used to successfully avoid saddling a criminal defendant with a guilty disposition, which can incur a host of negative downstream consequences including limited employment opportunities, lack of access to education and other significant burdens. The criminal defense community looks favorably upon PBJ because of the simple fact that it helps clients avoid a guilty conviction if probation and other requirements are completed. MD. Code. Ann., Crim. Proc § 6-220.

When a defendant chooses to plead guilty, *nolo contendere*, or is found guilty, a court may impose probation onto the defendant subject to reasonable conditions. *Id*. at (b)(1). Upon completing that probation, that defendant would not have a guilty conviction on their record. *Id*.

However, the Federal immigration system does not view the results of PBJ in the same manner that is mentioned above. Because PBJ is associated with guilt by manner of a plea, or a judge or

jury conviction, it is therefore seen as a conviction under criminal law. MD. Code. Ann., Crim. Proc § 6-220(b)(1). Thus, PBJ is deemed a guilty disposition for the purposes of federal immigration law. 1 INA § 101(a)(48)(A), 8 USC § 1101(a)(48)(A). Regarding an alien in the United States a conviction is "a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt 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 contender or has admitted sufficient facts to warrant a finding of guilt…" *Id.*

There are various ways a Probation Before Judgment directly affects our work providing immigration services at a non-profit that works with low income immigrants. The issues of PBJ being a guilty disposition for immigration purposes affect CASA's Deferred Action for Childhood Arrivals ("DACA") clients, clients applying for citizenship, and those clients that are undocumented. CASA is the regional leader in providing DACA and citizenship assistance to low-income immigrant communities, helping more than 1,000 people apply for these benefits each year.

I want to describe briefly what the requirements for the DACA application are, in order to demonstrate how important this amendment is, especially to DACA recipients. To qualify for DACA, a person much demonstrate that they: (a) Were under age 31 in June 15, 2012; (b) Entered the US before turning 16; (c) Have been in the US continuously since June 15, 2012 and while applying for DACA; (d) Had no lawful status on June 15, 2012; (e) They are currently in school, completed high school, have obtained a GED, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the US; and (f) "Have not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety." (See DACA Frequently Asked Questions available at https://www.uscis.gov/archive/frequently-asked-questions).

Clearly, the final section outlining disqualifying convictions is where DACA recipients are directly impacted by a PBJ. I have some examples I would like to share.

In 2018, Ryan was charged with First Degree Assault, which was subsequently amended to Second Degree Assault. The Second Degree Assault charge was *Nolle Prosequi* and Ryan pled to Disorderly Conduct, for which he was sentenced to Probation Before Judgement. Besides this Disorderly Conduct conviction, Ryan has never been convicted of any criminal offense. By giving Ryan Probation Before Judgement, the judge was likely sparing the 21 year old from receiving a criminal conviction upon the completion of his probation. However, in the eyes of the immigration system, Ryan has been convicted of Disorderly Conduct, a record of which expungement bears no weight in immigration law. Ryan will have to live with this guilty disposition, which could cause him harm concerning his immigration status, for the rest of his life.

Another DACA recipient negatively affected by the current structure of PBJ is Maricruz. She is a divorced mother of three young children and is the sole provider for them. She owns her own business, while attending Baltimore University, studying philosophy, law and ethics. Once she finishes her degree, she hopes to attend law school. Maricruz is a pillar of her community, volunteering with CASA, the Latino Racial Justice Circle and the Latino Providers Network in Baltimore City. Maricruz's only interaction with law enforcement was in 2014, when she was

charged with Driving Without a License. She received Probation Before Judgement for this charge and has never had a negative encounter with the police since that time. In the eyes of immigration, however, she has been found guilty of a crime because of the way the law is currently structured.

Ryan, who is only 22 years old, and Maricruz who is supporting her family and trying to make a difference in her community, could be at grave risk if they lose their DACA status – which is a real risk, given that the Supreme Court of the United States is expected to rule on the future of the program in coming months. The current federal administration has shown its intention to target vulnerable populations, and anyone who they can paint as a "criminal" is at special risk. Even though Ryan and Maricruz received PBJ, and were not convicted of an offense under state law, due to the current structure of the PBJ statute, federal immigration officials view them as having a conviction.

Probation Before Judgment is a vital tool of the criminal justice system, which offers individuals the opportunity to have "clean" records and avoid the collateral consequences often associated with criminal convictions. The minor, but significant, changes to the system embodied in Senate Bill 653 will enable members of the immigrant community to benefit in the same way that others do from this law. DACA recipients like Ryan and Maricruz, along with many other immigrants, are already facing a myriad of hurdles in the US. There should no additional reasons for them to hide in the shadows.

CASA stands in favor of Senate Bill 653 and urges a favorable report.

UM IMM Clinic_FAV_SB 653
Uploaded by: Light, Miles
Position: FAV

UNIVERSITY of MARYLAND
FRANCIS KING CAREY
SCHOOL OF LAW

CLINICAL LAW PROGRAM

Immigration Clinic
500 W. Baltimore St.
Baltimore, MD 21201
410-706-3295

IN SUPPORT OF SB 653

To: Senate Judicial Proceedings Committee
From: Maryland Carey Law Immigration Clinic
Date: February 19, 2020
Re: Written Testimony in Support of SB 653

INTRODUCTION

SB 653 is necessary because there is no existing Maryland law or disposition that can both hold the defendant accountable and provide a resolution of a criminal case without triggering federal immigration consequences. SB 653 is not a technical loophole designed to evade the federal government's jurisdiction. SB 653 would not make it easier for immigrants to become U.S. citizens.

A. The Immigration and Nationality Act ("INA") Expressly States that a Plea of *Nolo Contendere* Constitutes a Conviction.

A plea of "nolo contendere" is, by the explicit language of the statute, a conviction under federal immigration law**.** The INA states in pertinent part that the term "conviction" is:

> (…) where 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 guilt."
> *See* 8 U.S.C. 1101(a)(48(A)(i) (emphasis added).

Because a plea to nolo contendere is a conviction under federal immigration law, Maryland immigrant residents cannot enter a plea to nolo contendere, as the MSAA suggested in its opposition testimony, and avoid collateral immigration consequences such as deportation. A nolo contendere plea, like a guilty plea, is a conviction under federal immigration law and can therefore trigger deportation.

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B. A "Not Guilty Agreed Statement of Facts" Constitutes a Conviction Under Immigration Law.

Even though there is no plea of guilt during a NGASF, it is still a conviction under federal immigration law for at least two reasons: 1) there is an admission by the defendant as to facts sufficient to warrant a finding of guilt and/or 2) there is a formal finding of guilt at the conclusion of the NGASF. The immigration law defines "conviction" as follows:

> (48) (A) The term "conviction" means, with respect to an alien, **a formal judgment of guilt of the alien entered by a court** or, **if adjudication of guilt 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 guilt**, and
>
> (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

See 8 USC 1101(a)(48)(A) (emphasis added).

Because there is an admission as to the facts and, usually, a formal finding of guilt by the judge, a NGASF is a conviction for federal immigration purposes. Similarly, Maryland courts also treat NGASF as a conviction, holding that a NGASF is the functional equivalent of guilty plea. *Sutton v. State*, 289 Md. 359, 366, 424 A.2d 755, 759 (1981).

C. An *Alford* Plea is Also a Conviction under Federal Immigration Law.

Similarly, an *Alford* plea qualifies as a conviction under federal immigration law. An *Alford* plea is a guilty plea, and meets the federal definition of a conviction because there is a formal finding of guilt. *U.S. v. King,* 673 F.3d 274, 281-2 (4th Cir. 2012). *See also Abimdola v. Ashcroft,* 378 F.3d 173, 181 (2d Cir. 2002) (holding directly that an Alford plea is a guilty plea and therefore a conviction under the Immigration and Nationality Act, 8 U.S.C, Sec. 1101 (a)(48)(A)).

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D. The Bill Preserves Maryland State Rights and Protects Maryland Residents From Unintended Consequences

Maryland State Law should not be subservient to or distorted by the federal law. When the Maryland General Assembly codified probation before judgment in 1975, it was because Maryland legislators recognized the importance and value of a criminal disposition that is not a conviction. The federal law thwarts the Maryland General Assembly's intent by treating a PBJ as a conviction, despite the fact that this is not how Maryland treats it. SB 653 preserves the legislative intent of the Maryland General Assembly by creating an alternative process for imposing a PBJ. This Bill does not thwart federal law; rather it keeps federal law from thwarting the express intent of Maryland's PBJ statute.

E. The Bill Will Not Make It Easier For an Immigrant to Become a U.S. Citizen.

SB 653 will not make it easier for an immigrant to become a citizen. That is factually incorrect. To become a United States citizen, an applicant must demonstrate good moral character. A PBJ *even if not a conviction* would still affect eligibility for citizenship The PBJ, like all other criminal contacts, would still have to be disclosed on the naturalization application. Any contact with the criminal justice system, even dismissed charges and expunged cases, must be included in the application and will be considered by the naturalization officer when assessing eligibility for citizenship. Per the instructions on the naturalization application:

> If you have ever been convicted or placed in an alternative sentencing program (such as diversion) or rehabilitative program (such as drug treatment or community service program, bring:
> (1) An original or court-certified sentencing record for each incident; and
> (2) Evidence that you completed your sentence, such as probation record, or evidence that you completed an alternative sentencing program or rehabilitative program. Copies must be certified by the issuing agency.

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> If you have ever had an arrest or conviction vacated, set aside, sealed, expunged, or otherwise removed from your record, bring:
> (1) An original or court-certified court order vacating, setting aside, sealing, expunging or otherwise removing the arrest or conviction from your record or
> (2) An original statement from the court that no record exists of your arrest or conviction.
>
> **NOTE:** You must provide the documentation even if someone including a judge, law enforcement officer, or attorney told you that you no longer have a record or told you that you do not have to disclose that information.
> ***(****See page 13 of 18, Form N-400 Instructions, Naturalization Application)*

Under these instructions, a disposition of PBJ, whether deemed a conviction or not, must be disclosed in any application for naturalization. It will be weighed by the naturalization officer when making a decision about whether to grant the application, because it is relevant to a determination concerning good moral character and to whether the individual warrants a positive exercise of discretion, both of which are requirements for naturalization. Therefore, SB 653 does not make it any easier for an immigrant to become a citizen.

CONCLUSION

Probation before judgment, *as the code is currently written*, does support a finding of deportability under the technical language of the federal immigration law. There is no existing Maryland law or disposition that can both hold the defendant accountable and provide a resolution of a criminal case without triggering federal immigration consequences. The proposed amendment to the Maryland PBJ statute will create the only option under Maryland law by which a prosecutor can offer an efficient resolution to a criminal case that carries a penalty, obviating the need for a trial, but does not trigger deportation.

Lee_FAV_SB653
Uploaded by: Senator Lee, Senator Lee
Position: FAV

Susan C. Lee
Legislative District 16
Montgomery County

Majority Whip

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

Chair Emeritus
Maryland Legislative Asian American
and Pacific Islander Caucus

President Emeritus
Women Legislators of the
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February 19, 2020

Senate Judicial Proceedings Committee

Senate Bill 653 - Probation Before Judgment - Facts Justifying a Finding of Guilt and Suspension of Sentence

Senate Bill 653 aims to fix a technicality in our state law that creates an unintended consequence at the federal level. Under current law, a plea acceptance of a probation before judgment (PBJ) in Maryland may trigger the deportation of legal permanent residents or undocumented immigrants, even though a PBJ is not a finding of guilt. We must correct this undesirable consequence and protect people from harmful effects that a technicality in law has created.

In no way does this bill subvert justice or punishment. Judges may impose any punishment, just as before the effective date of the bill. Only in cases where State's Attorneys, defense counsel, and judges agreed that a PBJ is an available option could the immigrant defendant plea. A PBJ is supposed to be used to create efficiency in our judicial process, but the use of this tool in cases involving immigrants is currently unethical and unusable because no documented nor undocumented immigrant would take a PBJ knowing that it would put them at risk of deportation. And I remind anyone that might want to sensationalize the impact of this bill, that the relevant crimes would be limited and apply to almost exclusively to first-time violators.

For these reasons, I respectfully request a favorable report on SB 653.

Spielberger_ACLU_FAV_SB 653
Uploaded by: Spielberger, Joe
Position: FAV

JOSEPH SPIELBERGER
PUBLIC POLICY COUNSEL

Testimony for the Senate Judicial Proceedings Committee
February 19, 2020

SB 653 – Criminal Procedure – Probation Before Judgment – Facts Justifying a Finding of Guilt and Suspension of Sentence

FAVORABLE

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The ACLU of Maryland supports SB 653, which would allow a judge to "find facts justifying a finding of guilt" before granting a Probation Before Judgment ("PBJ"). This bill addresses a critical intersection between immigration and criminal justice reform by eliminating unintended immigration consequences for non-citizens who receive a PBJ sentence.

The current PBJ process in Maryland requires a defendant to plead guilty or be found guilty, and the court to sentence the defendant to probation. PBJ was originally designed to provide individuals with an alternative sentence: the opportunity to take responsibility for certain minor offenses, without suffering some of the lifelong consequences of a criminal conviction. However, this is not the case for non-citizens. A PBJ can still trigger severe consequences, including ICE custody, deportation, and disqualification of defenses to deportation.

This is because although a PBJ is not considered a conviction under Maryland law, it is a conviction, or an *admission of guilt*, under federal immigration law.

Under the INA, a conviction is found where:
(1) A judge or jury finds the person guilty, or the person enters a plea of guilty or no contest, or admits sufficient facts to warrant a finding of guilt; and
(2) The judge orders some sort of punishment.[1]

So even without a formal judgment, a guilty plea and imposition of probation is enough to constitute a conviction under federal immigration law.

Under Maryland's current PBJ statute, the Fourth Circuit Court of Appeals has held that an adjudication constitutes a conviction, for both the purposes of a criminal record[2] as well as federal sentencing.[3] On the other hand, as proposed under SB 653, if a defendant does not plead guilty but the judge "finds facts justifying a finding of guilt," the disposition does not constitute a

[1] 8 USC 1101(a)(48)(A).
[2] *Yanez-Popp v. INS*, 998 F. 2d 231 (4th Cir. 1993).
[3] *U.S. v. Medina*, 718 F.3d 364 (4th Cir. 2013).

conviction for federal immigration purposes.[4] The Court in *Jacquez* also held that a finding of guilt requires the *person* admitting facts sufficient to find guilt, not the *judge* finding sufficient facts.[5]

This bill's simple change, to allow a court to "find facts justifying a finding of guilt," would align Maryland with other states who have amended their PBJ statutes for this purpose, and whose statutes have been found to allow for non-convictions in the PBJ process.[6] The PBJ would operate as was always intended, to not lead to a conviction.

Most importantly, without disrupting the process for the vast majority of PBJ cases, this bill would protect non-citizens from the types of lifelong consequences that a PBJ was never intended to trigger.

For the foregoing reasons, we urge a favorable report on SB 653.

[4] *Jacquez v. Sessions*, 859 F.2d 258 (4th Cir. 2017).
[5] *Id.*, at n 4.
[6] *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011).

JOSEPH SPIELBERGER
PUBLIC POLICY COUNSEL

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UM GEN VIOL Clinic_FAV_SB 653

Uploaded by: Yost, Emily

Position: FAV

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CLINICAL LAW PROGRAM

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IN SUPPORT OF SB 653

To: Senate Judicial Proceedings Committee
From: Gender Violence Clinic, University of Maryland Carey School of Law
Date: February 19, 2010
Re: Written Testimony in support of Senate Bill 653

The University of Maryland Carey School of Law Gender Violence Clinic unequivocally supports House Bill 213.

The Gender Violence Clinic represents clients with histories of and/or in matters involving intimate partner violence, rape, sexual assault, and trafficking. The Clinic has represented a number of immigrant clients whose partners have been or could have been subjected to criminal prosecution leading to deportation.

Domestic violence related charges, like assault, are among the kinds of crimes for which probation before judgment ("PBJ") is often appropriate. For example, courts will agree to impose PBJs in domestic violence cases where no serious injury occurred, no weapon was used, the incident involved a first time defendant, the incident was limited to threats, or there was a violation of the no contact provision of a protective order, but no new abuse occurred.

Currently, if an immigrant gets a PBJ for a crime involving domestic violence , the PBJ is treated as a conviction for immigration purposes and the person can be deported. Victims are all too aware of the deportation risk to their immigrant partners if they call the police, so some victims are less likely to report domestic violence. There are many reasons why victims do not want their partners to be deported. If the partner is deported, the victim could be deprived of critical assistance, including child support payments, co-parenting support, economic support, health care benefits, housing, and transportation. A sole parent may also experience added stress because the children are grieving the loss of their deported parent.

If deportation after a PBJ was no longer a possibility, victims of domestic violence might be more likely to call the police. Moreover, if perpetrators are not concerned that a PBJ will trigger deportation proceedings, they might be more likely to take pleas and less likely to demand trials, sparing victims the experience of testifying, which is often retraumatizing. For all of these reasons, the Gender Violence Clinic strongly supports H.B. 213.

Ella_Ennis_UNF_SB0653
Uploaded by: Ennis, Ella
Position: UNF

MARYLAND FEDERATION of Republican Women

The Honorable William C. Smith, Jr.
Chairman and Members of the Senate
Judicial Proceedings Committee

Re: SB 653 – Criminal Procedure "Facts Justifying a finding of Guilt and Suspension of Sentence" – MFRW – Opposed

The Maryland Federation of Republican Women oppose SB 653 – Criminal Procedure – "Facts Justifying a finding of Guilt and Suspension of Sentence". The justification for this bill is unclear from reading the text of the bill. After reading the fiscal/policy note it appears that the reason for this bill is to allow illegal immigrants who commit a criminal offense to not be declared as "guilty" and receive a "Suspension of Sentence" without any conditions or requirements as provided currently under suspending a sentence under a Probation before Judgement (PBJ). Under a PBJ a defendant who violates any conditions of probation can be fined or incarcerated in line with the penalty for the crime committed.

How can you suspend a sentence if the person is not found guilty even though a "court finds facts justifying a finding of guilt"? If they are not guilty can you impose any sentence?

It appears that the purpose of this bill is to allow an illegal immigrant who has committed a crime to be protected from deportation by allowing the individual to avoid being judged guilty of a crime and receive no conditions for suspension of sentence. Therefore, the action of the court is unreportable to Federal Immigration or the Justice Department. So, if you are a citizen you could be required to perform some form of reparation, pay a monetary penalty or enter a rehabilitation program and be subject to penalties if you violate these conditions of PBJ, but if you are illegal you just go free and there is no penalty. The court (the arbitrator of the law) participates in a deception to avoid Federal penalties for illegally entering our country and then committing a crime while here.

The current law of Probation before Judgement provides the opportunity for someone who has committed an offense to redeem themselves. This legislation is unnecessary and afront to respect for our nation as a "country of laws". Please give SB 653 an Unfavorable Report.

Sincerely,

Ella Ennis
Legislative Chairman
Maryland Federation of Republican Women

MDJudiciary_UNF_SB653
Uploaded by: Jones, Tyler
Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO:	Senate Judicial Proceedings Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	Senate Bill 653 Criminal Procedure – Probation before Judgment – Facts Justifying a Finding of Guilt and Suspension of Sentence
DATE:	February 7, 2020 (2/19)
POSITION:	Oppose

The Maryland Judiciary opposes Senate Bill 653. This legislation authorizes the court to stay the entering of judgment, defer further proceedings, and place a defendant on probation subject to reasonable conditions if the court finds facts justifying a finding of guilt. This legislation authorizes the court as a condition of probation to order a person to a term of custodial confinement or imprisonment and may suspend a portion or all of the sentence.

The amendments to Criminal Procedure §6-220(b)(1) of the bill are confusing and seem inconsistent with the requirements of Maryland Rule 4-242 which requires a defendant to plead not guilty, guilty or nolo contendere. The court is not authorized to proceed to disposition without taking a plea authorized by the rules.

cc. Hon. Susan Lee
Judicial Council
Legislative Committee
Kelley O'Connor

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Joseph A. Riley
State's Attorney

February 7, 2020

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 19th, 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 4th 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.

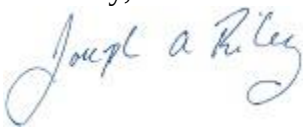
The reality is Maryland could change its current law to the proposed bill and there is no guarantee that the Courts will interpret it as Virginia's law (the language is quite different as will be discussed later).

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