



**Testimony for the House Judiciary Committee
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**HB 213 – 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 HB 213, 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 record² as well as federal sentencing.³ On the other hand, as proposed under HB 213, 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 HB 213.

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).

