

IN SUPPORT OF HB-213

To: House of Delegates, Judiciary Committee
From: Antonio Gioia, retired Chief Counsel, Baltimore City State's Attorney's Office
Date: January 28, 2020
Re: Written Testimony in support of House Bill 213

I am submitting this written testimony to offer my unqualified support for House Bill 213. I was a prosecutor in the Baltimore City State's Attorney's Office for nineteen years. During that time, I served in various capacities; namely, as Chief of the Felony Narcotics Division, Chief of the Conviction Integrity Unit and Training Director. I have represented the State in numerous postconviction and coram nobis proceedings in the Circuit Court for Baltimore City.

The most important task of a State's Attorney is to do justice. One of the tools that a State's Attorney has at their disposal to do so in Maryland is the probation before judgment ("PBJ") disposition. The PBJ was originally designed by the legislature as an alternative to a traditional conviction for certain minor offenses, to be implemented when it was both in the interest of the defendant and in the interest of the public welfare. A PBJ is appropriate in broad range of cases, including for first time offenders, minor crimes, defendants who have otherwise exhibited good moral character. The statute makes some serious crimes ineligible for a PBJ, but, for the most part, the statute gives latitude to the State, judge, and defense to negotiate a fair and just outcome. This is because the legislature recognized that the decision of who deserves a PBJ is case specific. PBJs also decrease the number of trials. Many accused individuals are inclined to accept a PBJ, rather than go to trial, because that way they can avoid the stigma of a criminal conviction without having to endure the stresses of trial. Fewer trials means a more efficient criminal justice system and less trauma/stress in the event of victims.

Unfortunately, for immigrants, a PBJ is treated as conviction in their federal immigration case. I've handled countless collateral attacks brought by immigrants who at first accepted PBJs because

they believed that it was not a conviction and therefore would not trigger deportation proceedings. Later, when they found themselves in ICE custody because of the PBJ, often facing mandatory deportation because of it, they desperately filed petitions and motions to vacate the PBJ. The State has often agreed to vacatur of PBJs and re-pled the defendant to crimes that did not match the facts of the case because the State agreed that deportation was a disproportionate punishment, unintended and inappropriate to the situation.

This bill would give immigrants access to a PBJ disposition without the risk of deportation, mandatory detention that often lasts years, and would contribute to greater finality of judgments, and reduce the number of trials sought on the front end to avoid deportation. The way the amendment to the PBJ statute is currently written, it would not change the process at all for citizens. Rather, it adds a procedural mechanism so that both immigrants and citizens have access to the PBJ and therefore equal justice under the law.