



**Testimony of Maureen A. Sweeney, Esq.**  
**University of Maryland Carey School of Law, Immigration Law Clinic**  
**Support for H.B. 0213, Relating to Probation Before Judgment**

My name is Maureen Sweeney. I am a Law School Professor at the University of Maryland Francis King Carey School of Law. My primary areas of scholarship are in the law of immigration consequences of criminal convictions and asylum law. I have directed the Immigration Clinic at the School of Law since 2004. **I am writing today in support of H.B. 0213.**

Our Immigration Clinic represents people who are facing deportation proceedings. Over the years, we have represented many individuals who were facing the threat of deportation or were subject to mandatory immigration detention because of a criminal disposition that federal immigration law considered a conviction.

Maryland's Probation Before Judgment ("PBJ") disposition is a lifeline to many Maryland residents accused of a crime. The PBJ statute allows first-time and low-level offenders the opportunity to take responsibility for their actions while avoiding the disproportionate harm and collateral consequences of a criminal conviction.

**This is not the case for non-citizen residents of Maryland, even for lawful permanent residents and people who have been granted asylum.** For them, a PBJ can trigger severe immigration consequences, including deportation, mandatory detention (in a jail) during often lengthy deportation proceedings, and disqualification from citizenship. Even though a PBJ disposition is not considered a conviction in Maryland, it can trigger deportation proceedings and ICE detention because the current procedure for PBJ meets the technical definition of a conviction under federal immigration statutes.

A few years ago, the Immigration Clinic represented a client who had a PBJ disposition for simple possession under 30 grams of marijuana (an offense that would no longer be a crime in Maryland). While driving a friend's car, our client was involved in a traffic stop. Police discovered a marijuana

cigarette in the ashtray and arrested our client. Because he had no prior criminal record (and perhaps because of the difficulty of proving the marijuana was his), the State agreed that a PBJ would be appropriate and beneficial to all parties. No one advised our client that a PBJ would affect his immigration situation, and he accepted the disposition on his attorney's advice that it would not count against him as a conviction.

However, ICE brought deportation proceedings against him, and **the PBJ was considered a conviction under the federal definition.** As a result, our client was subject to mandatory ICE detention while he pursued his immigration case. Even though the State of Maryland had agreed that his case did not warrant a criminal conviction, **he spent three years of his life locked up in immigration detention because of the PBJ.**

Under the current PBJ procedure, an accused person is required to plead guilty, which triggers federal immigration consequences. H.B. 0213 rectifies this by creating an alternative procedure that allows the parties to decide whether the defendant should plead guilty or the judge should make findings of fact that would support a guilty plea. If the judge makes the finding, the PBJ will not trigger immigration consequences. If passed, this bill would not take any power away from the state, nor will it expand the scope of PBJ. H.B. 0213 only adds another tool in a prosecutor's toolbox, allowing the State to protect non-citizens when the underlying crime does not warrant a conviction or immigration consequences.

This bill also brings us in line with states like New York and Virginia, both of which have similar dispositions to PBJ that do not require the accused to plead guilty. This avoids a conviction for immigration purposes, meaning non-residents in those states can agree to the sanctions of probation (including substance abuse treatment or anger management counseling, where appropriate) without triggering collateral immigration consequences. If H.B. 0213 is signed into law, non-citizens in Maryland can likewise be assured that a PBJ disposition will not lead to a deportation proceeding.