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**To:** Members of The House Judiciary Committee

**From:** Doyle Niemann, Chair, Legislative Committee, Criminal Law and Practice Section

**Date:** 3/11/2020

**Subject:** **HB213 – Criminal Procedure – Probation Before Judgment – Facts Justifying a Finding of Guilt**

**Position:** **Oppose**

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The Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association (MSBA) **Opposes HB213 – Criminal Procedure – Probation Before Judgment – Facts Justifying a Finding of Guilt.**

This bill would change the law allowing a court to set aside a conviction and impose a Probation Before Judgment after making a factual finding that the facts involved would justify a finding of guilt.

The Criminal Law Legislative Committee opposes SB653 both practical and legal reasons.

On the practical side, we think that the bill would not achieve the object that has been stated as a rationale for the bill – reducing the immigration consequences of a conviction.

We believe that the circumstances in which the proposed changes would come into would still fit into the federal government's framework as to what is a finding of guilt. Under the bill, a court would still have to find that the defendant was, in effect, guilty of the crime charged. The fact that the defendant might not say those words would not change that finding.

The framework set out in the bill is very similar to a plea of nolo contendere or a not guilty plea with an agreed upon statement of facts. In both cases, the defendant does not directly admit guilt, but, if justified by the facts presented, the court still finds him guilty. And in both cases, the court can still set aside the conviction and grant a PBJ.

On the legal side, we had questions about the constitutionality of the bill. First, a defendant who accepts a PBJ explicitly gives up appellate rights. This must be a knowing and intelligent waiver. That would not happen in this case, at least not in a way that would likely be seen as legally binding. Second, it would allow a court to (essentially) find the defendant guilty of a crime and impose a criminal sanction, which is unquestionably what a PBJ is, without the defendant agreeing or explicitly consenting to the outcome.



For the reasons stated, we **Oppose HB213 – Criminal Procedure – Probation Before Judgment – Facts Justifying a Finding of Guilt..**

If you have questions about the position of the Criminal Law and Practice Section's Legislative Committee, please feel free to address them to me at 240-606-1298 or at [doyleniemann@verizon.net](mailto:doyleniemann@verizon.net).

Should you have other questions, please contact The MSBA's Legislative Office at (410)-269-6464 / (410)-685-7878 ext: 3066 or at [Richard@MSBA.org](mailto:Richard@MSBA.org) and [Parker@MSBA.org](mailto:Parker@MSBA.org).