



POSITION ON PROPOSED LEGISLATION

BILL:	HB354/SB527, Criminal Procedure - Probation Before Judgment - Facts Justifying a Finding of Guilt and Suspension of Sentence
POSITION:	SUPPORT
DATE:	February 19, 2021

The Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 354/Senate Bill 527. We endorse without reservation the reasons for this important legislation set forth in the letter submitted by the University of Maryland Francis King Carey School of Law and the Capital Area Immigrants' Rights Coalition. We write separately to outline how the revised law will work in practice and why we believe it addresses concerns voiced about a prior statute authorizing probation without a verdict.

As currently enacted, Criminal Procedure Article § 6-220 authorizes a court to impose probation before judgment (“PBJ”) under circumstances where the court finds that the best interests of the defendant and the public welfare would be served and the defendant consents. In order for a court to impose PBJ, the defendant first must plead guilty or *nolo contendere* or the court must find the defendant guilty. While PBJ enables a defendant who successfully completes probation to avoid having a conviction on their record, the non-citizen defendant may still face loss of liberty, deportation, and permanent banishment. This is so even though § 6-220(g)(3) states that a defendant who is discharged from probation shall not be deemed to have a conviction “for the purpose of any disqualification or disability imposed by law because of conviction of a crime.”

House Bill 354/Senate Bill 527 would ensure that the General Assembly’s intent in authorizing the imposition of PBJ – to enable worthy individuals to avoid the stigma and collateral consequences of a conviction – is carried out. The Bill does this by permitting a court to impose probation in the absence of a guilty plea or finding of guilt. Under the procedure authorized by the Bill, a court, after determining that the facts support a finding of guilt, may enter into a probation agreement with the defendant whereby the court agrees to not to make the finding of guilt if the defendant successfully completes probation. In exchange, the defendant waives the right to trial in the event of a violation of probation as well as the right to appeal from the probation agreement.

For further information please contact Krystal Williams, Director, Government Relations Division, by email at krystal.williams@maryland.gov or by phone at 443-908-0241; or Brian Zavin, Deputy Chief Attorney, Appellate Division, at brian.zavin@maryland.gov or 410-767-8523.

If the defendant adheres to the conditions of probation, the court discharges the defendant. On the other hand, if the court finds that the defendant has violated a condition of probation and that the violation warrants revocation, the court may enter the deferred finding of guilt and sentence the defendant accordingly.

Key to the above procedure is that the court, in the event of a violation of probation, would not be imposing sentence for the violation but, rather, as a result of the agreed-upon and deferred entry of a finding of guilt. In *Bartlett v. State*, 15 Md. App. 234 (1972), *aff'd*, 267 Md. 530 (1973), the Court of Special Appeals reversed a conviction and sentence imposed pursuant to former Article 27, § 641. The statute, the predecessor to § 6-220, authorized the imposition of “probation without finding a verdict” but did not specify what a court should do in the event of a violation of probation. Holding that the circuit court erred when it imposed sentence without making a finding of guilt¹, the Court of Special Appeals explained:

Procedurally, when a judge concludes to place an accused on probation without finding a verdict, and the accused consents in writing, there must be in the case an indictment (Maryland Rule 702 a) or a charging document (Maryland District Rule 702 a) and there may be a plea of not guilty, but there may not be a plea of guilty or of nolo contendere. Should there be either of the latter, the judge should grant leave to withdraw it, or should order it stricken. Only then is the case in proper posture for placing the accused on probation without finding a verdict.

Should the probation thus granted be revoked at a subsequent hearing for that purpose, the case reverts to its status at the time the probation was granted, and determination of guilt, by plea or trial, must follow before any sentence may be imposed.

Id. at 240-41 (footnote omitted). *See also Myers v. State*, 303 Md. 639, 646 (1985) (“[In *Bartlett*, the Court of Special Appeals held that if a person were placed on probation without finding a verdict and a court subsequently revoked that probation, the court would be required to conduct a *de novo* trial on the original offense before the court could sentence the person.”).

House Bill 354/Senate Bill 527 accounts for the issue confronted in *Bartlett*. In order for a court to impose probation before judgment in the absence of a guilty plea or

¹ The defendant in *Bartlett* entered a guilty plea before the court imposed probation without finding a verdict. When the circuit court later revoked his probation and sentenced him to a term of imprisonment, it did so on the basis of the earlier guilty plea. The Court of Special Appeals held that this was error, as the guilty plea was necessary annulled when the court imposed probation without finding a verdict.

finding of guilt, the defendant must agree in advance to waive the right to trial and the court must find facts sufficient to support a guilty verdict such that, if the court later finds that the defendant has violated probation, the court may enter a finding of guilt at that time and impose sentence. It is the deferred finding of guilt, entered with the previously-obtained consent of the defendant, which gives the court the authority to impose sentence.

In fact, the proposed legislation is carefully tailored to protect the interests of all parties involved. *First*, the court may defer entering a finding of guilt only if the defendant provides written consent and the court finds that the best interests of the defendant and the public welfare would be served. *Second*, the defendant must knowingly and voluntarily waive the right to a trial and the right to appeal from the probation agreement. *Third*, the defendant must agree to the terms and conditions of probation (likely examples of which include no-contact orders, drug or alcohol treatment, and restitution). And, *fourth*, the court must determine that the facts support a finding of guilt.

The current statute authorizing PBJ has proven ineffective at carrying out the Legislature's intent of removing conviction-related barriers to defendants who otherwise have shown the capacity for rehabilitation. In this light, House Bill 354/Senate Bill 527 is appropriately viewed as a necessary corrective measure. We believe that the proposed legislation passes muster.

For these reasons, the Office of the Public Defender urges a favorable report on House Bill 354/Senate Bill 527.