

TESTIMONY IN SUPPORT OF SB 527

Criminal Procedure - Probation Before Judgment - Facts Justifying a Finding of Guilt and Suspension of Sentence

TO: Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee
FROM: Elizabeth Keyes
DATE: February 23, 2021

My name is Elizabeth Keyes, and I am an Associate Professor at the University of Baltimore School of Law, where I teach immigration law and direct the Immigrant Rights Clinic (among other courses). I am also a resident of Maryland's District 20. I write to strongly support SB 527.

My experience consists of directly representing immigrant clients in immigration court since 2002. During these almost two decades, I have represented many people who have been disqualified from defenses to deportation, or subject to ICE custody and not able to be released on bond, all as a result of Probation Before Judgment in Maryland.

Beyond my direct representation experience, I also base my opinion of SB 527 on my deep, nationally-recognized expertise in immigration law and policy. I have published numerous articles on immigration law and procedures, and my scholarship has been cited in numerous important articles, as well as a leading Immigration Law textbook. I know and understand the consequences a "conviction" can have at the federal level for immigrants as a result of PBJ in Maryland.

As you certainly know, under Maryland State law, a court may stay the entering of a judgment, defer further proceeding, and place a defendant on probation when a defendant has plead guilty, *nolo contendere*, or is found guilty by a judge or jury. Once the defendant's probationary requirements have been completed, the court then discharges the defendant from probation, without a conviction. Unfortunately, although a PBJ is not a conviction under Maryland law, a **PBJ is a conviction, under federal immigration law.** The federal immigration statute defines a conviction as either a "formal judgment of guilt of the [noncitizen] entered by a court" or, critically for this bill, where (1) the noncitizen "has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (2) the judge "has ordered some form of punishment, penalty, or restraint," however minimal the penalty might be.¹ Probation, for example, meets that second prong of the definition.

Because of this expansive definition of a "conviction" for immigration purposes, noncitizens granted PBJs in Maryland face entirely different consequences to U.S. citizens. The current

¹ 8 U.S.C. 1101(a)(48)(A); see also *Matter of Roldan-Santoyo* 22 I&N Dec. 512 (BIA 1999)

Maryland PBJ statute is not reflective of the legislature's said intent, as it places Maryland noncitizen residents in danger of detention, separation from U.S. citizen family members, and deportation. The Maryland Legislature's intent in establishing the PBJ statute was to provide a second chance to Maryland residents, especially first-time offenders, whose lives should not be defined by the criminal and collateral consequences of minor or first-time offenses. This demonstration of grace in the criminal legal system matters particularly for Black and brown people caught up in the widely-recognized structural racism of the criminal legal system. SB 527 will allow the PBJ statute to align with the Maryland Legislature's original intention and permit all Maryland residents (regardless of alienage) to be treated alike, as well as combat the embedded racial inequality found in the Maryland criminal system.

The residents of Maryland deserve to be treated equally within the law, and SB 527 addresses one important source of *inequality*. Meaningful immigration reform at the federal level could also remove the inequality, but with immigration reform proving exceptionally difficult to achieve, I urge this Assembly to be proactive and set a national example. Maryland can join states like Virginia and New York, which have similar statutes that prevent adverse immigration consequences for their non-citizen residents.

For all of these reasons, I support SB 527, and hope that your committee will reach a favorable decision on this bill.

Respectfully submitted,



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