

Final Written Testimony_Dorothy Stewart_SB0517.pdf

Uploaded by: Abreu Jimenez, Kiria

Position: FAV

IN SUPPORT OF SENATE BILL 527

To: Senate Judicial Proceedings Committee
From: Dorothy Stewart
Date: February 23, 2021
Re: Written Testimony in Support of Senate Bill 527

I, Dorothy Stewart, am submitting this written testimony in support of Senate Bill 527. I am a proud resident of the State of Maryland and constituent of Maryland's 2nd district. I am a noncitizen, who came to the United States from Jamaica at the age of 10 years old as a lawful permanent resident. I was eager to be of service to the United States, and, at 19, I enlisted in the U.S. Army. I served faithfully for approximately 7 years, where I spent my time completing tours in Korea and Germany. As an active soldier I worked hard to serve the United States and its citizens with the due diligence this country deserved. Throughout my service I was honored with Good Conduct Medal, Army Service Ribbon, Overseas Ribbon, Army Achievement Medal, NCO Professional Development Ribbon and selected to serve on the prestige Honor Guard team. Although my time in the military was filled with many positive moments, I also had to endure difficult times as I became depressive and suffered PTSD during my time in service. My untreated PTSD and major depressive disorder led me on a path, that I would not have taken otherwise, culminating in a related charge for possession with intent to distribute.

On March 15, 1990, on the advice of my attorney I pled guilty to the charge against me. I received a sentence of 5 years of incarceration, which was suspended in its entirety, and instead received 3 years of probation. I without fault reported weekly to my probation officer, completed a drug rehabilitation program, and complied with all other aspects of my probation. I was determined to turn my life around; being on drugs was not, and never has been me. Subsequently, my final sentence was reduced to Probation Before Judgment (PBJ). My allegiance

lies with the United States, my entire family is here, which includes my only daughter and I have always hoped to be called a citizen of this country. So, it was to my dismay when I applied for naturalization and was denied because of my probation before judgment. Unbeknownst to me, this PBJ designation although not a conviction under Maryland state law, is considered a conviction under federal law and prevented the approval of my naturalization application.

Today, I am 60 years old, and still eager to become a citizen of the United States. It has been frustrating and extremely disheartening to live with this probation before judgment which has prevented me from moving forward in my life. This probation before judgment has stripped my life away from me, as my life has been defined entirely by this one charge that occurred 31 years ago. I am remorseful for my past action, but it has been my only offense in nearly the 50 years I have been in this country.

If not for the Maryland PBJ making my disposition a conviction under federal law, I would have naturalized years ago. Instead, I've had to endure a multi-year battle of working with the state courts and federal agencies to reach a resolution in my case. I've spent the last 31 years of my life, living (if it can even be called living) in the shadow of my shame and guilt. As a result of my PBJ, I became deportable and have lived in fear of being ordered deported at any given moment. My entire life and the life of my U.S. citizen daughter has been limited by this conviction as I was precluded from many job opportunities that could have helped me provide her a better life. Furthermore, in February 2015, my mother (the only parent I knew and loved) passed away in my arms and her dying wish was for me to bring her body back to Jamaica. Unfortunately, because of my PBJ I could not travel to fulfil her wish but pray that one day I am able to.

Since my PBJ, I have been treated as a stranger in the country that I call home, the country that I was willing to die for, and sacrificed so much for. I support Senate Bill 527,

because I hope it will prevent others from having their life stripped away and allow them to move forward.

Final Written Testimony_Elizabeth Keyes_SB 527.pdf

Uploaded by: Abreu Jimenez, Kiria

Position: FAV

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,



Elizabeth Keyes

Associate Professor, Director of the Immigrant Rights Clinic
University of Baltimore School of Law
ekeyes@ubalt.edu / 410-837-5666

Final Written Testimony_Judge Dornell_SB 527.pdf

Uploaded by: Abreu Jimenez, Kiria

Position: FAV

IN SUPPORT OF SB 527

To: Senate Judicial Proceedings Committee
From: The Honorable Lisa Dornell, Retired Immigration Judge
Date: February 23, 2021
Re: Written Testimony in Support of Senate Bill 527

I am submitting this written testimony to offer my unequivocal support for Senate Bill 527. I served as a United States Immigration Judge at the Baltimore Immigration Court for 24 years. I retired in 2019. Prior to my time on the bench, I was a Senior Litigation Counsel with the Justice Department's Office of Immigration Litigation, where I argued many cases before federal circuit courts including the Fourth Circuit Court of Appeals.

Right now, immigrants who receive the benefit of probation for the same crime will face radically different outcomes, depending on if the probation is imposed by the State of Maryland or Commonwealth of Virginia. If the probation is imposed in Virginia pursuant to VA Code Ann. § 18.2-251, the immigrant's probation will not be treated as a conviction under federal immigration law. In *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011), the Fourth Circuit considered a Virginia adjudication under *Virginia Code § 18.2-251*, and the court said:

After such a plea, "if the facts found by the court would justify a finding of guilt," the court may, "without entering a judgment of guilt," instead "defer further proceedings and place" the offender on probation. *Id.* In his case, Crespo pled *not* guilty to the offense and the judge **found facts justifying a finding of guilt** and deferred adjudication over the Commonwealth's objection. Crespo was sentenced to one year of probation, which he served without incident.

Because Mr. Crespo had not pled guilty or admitted facts related to the simple possession of marijuana charge, but instead the court had *found facts justifying a finding of guilt*, the imposition of probation was not considered a conviction under federal immigration law and he was not deported.

But had Mr. Crespo's case occurred in Maryland, and had he received the benefit of probation before judgment, this Maryland equivalent to Virginia's probation statute would have rendered him deportable. This is because to receive the benefit of probation before judgment in Maryland, the judge would have had to follow the procedure as it is currently laid out in Md. Crim. Proc. § 6-220 which requires an admission of guilt and a formal finding of guilt by the judge before the benefit of probation may be extended. Although the Maryland legislature did not intend for a PBJ to be a conviction, it is just that for federal immigration purposes. Consequently, an immigrant with probation for the same crime will face radically different outcomes if the probation was imposed in Virginia versus Maryland. We refer to this unforeseen and arbitrary intersection between state and federal law as being a "jurisdictional happenstance." It is highly unfair and as a sitting Immigration Judge, it was very painful to render findings of deportability against individuals with a Maryland PBJ, knowing full well, that but for the fact that they agreed to a PBJ on the wrong side of the Potomac, they were sealing their fate under the federal immigration law, something that was not the desired or anticipated result of, and in fact, contrary to the purpose of the granting of the PBJ.

Not only is the current regime *prima facie* unjust, it also creates unequal and inconsistent law within the Fourth Circuit, which presides over both Maryland and Virginia. My experience in litigating before the Federal Circuit Courts of Appeals and my experience as an Immigration Judge cement my view that conflicting rulings from the Circuit Court, in addition to being unfair, cast an unnecessary shadow of confusion and uncertainty, something that in this instance can easily be remedied by Senate Bill 527.

This Bill presents an opportunity for the State of Maryland to ensure that the Federal Immigration Statute does not subvert the true intention of the Maryland State statute, which

is to truly give all who rely on the Maryland law the benefit of a probation *before* judgment, a benefit that tempers justice with mercy. The State of Maryland need not and ought not wait for a federal bureaucracy, with its mind-boggling array of priorities, to address this important matter over which the State has control.

Final Written Testimony_Judge Gossart_SB 527.pdf

Uploaded by: Abreu Jimenez, Kiria

Position: FAV

IN SUPPORT OF SB 527

To: Senate Judicial Proceedings Committee
From: The Honorable John F. Gossart, Jr., Retired United States Immigration Judge
Date: February 23, 2021
Re: Written Testimony in Support of Senate Bill 527

I am submitting this written testimony to offer my unequivocal support for Senate Bill 527.

I served as a United States Immigration Judge at the Baltimore Immigration Court for thirty-one years. I retired in 2013. At my retirement, I was the third most senior immigration judge in the United States. I was also an adjunct professor of immigration law at the University of Baltimore School of Law (20 years), and the University of Maryland School of Law (3 years). I am a proud Army Vietnam veteran.

Under current Maryland law, an adjudication through the Probation Before Judgement process, Crim. Pro. Section 6-220, is not considered a conviction. Unfortunately, however, the Maryland PBJ process *is* a “conviction” under federal immigration law. A person who avails herself/himself of the PBJ process has been convicted, with all attendant immigration consequences including deportation, ICE custody, and disqualification from defenses to deportation. This is because, to obtain a PBJ in Maryland, the defendant either pleads guilty or is found guilty, and then the court imposes probation. Even though the formal entering of judgment is stayed, the guilty plea and imposition of probation is sufficient to constitute a conviction under Title 8 United States Code 1101(a)(48)(A).

The immigration law defines “conviction” at 8 USC 1101(a)(48)(A) as follows:

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where--

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(emphasis added)

The proposed short addition to the Maryland PBJ statute would change the process such that a PBJ obtained through it would not be considered a conviction under federal immigration law. By allowing a judge to “find facts justifying a finding of guilt” before imposing probation and entering a PBJ, such a procedure would not be a conviction for Maryland criminal purposes *or* immigration purposes. That is, the result would be as intended by the Maryland legislature and the parties in negotiating for and imposing a PBJ: not a conviction in Maryland and NOT a conviction under federal immigration law.

The definition of a conviction under federal immigration law is not likely to change in response to this addition to the Maryland PBJ statute. It would take an act of Congress to alter the definition in the statute. As we know, immigration reform is unlikely to be feasible now or in the foreseeable future. The last major change to the federal immigration laws occurred in 1996, over 20 years ago. Since then, the statutes and regulations have remained virtually the same. Further, Virginia and New York have their own PBJ statutes; dispositions from these states do not constitute a conviction under federal immigration. To allow this inequity to exist from one jurisdiction to another, when the intent of PBJ statutes is the same or similar, is in my opinion unjust.

To the contrary, my experience as an immigration judge has been that when an immigrant received the benefit of a Maryland PBJ, the facts of the case and/or the personal qualities of the immigrant, were consistent with the lenient nature of the disposition imposed. These were individuals who had made a mistake, often a minor one, and this mistake was aberrant, an accident of youth, inexperience, or a reaction to some kind of trauma or temporary problem that was often resolved by the time the individual found themselves in deportation proceedings. During my time as an immigration judge, I was often statutorily obligated to order the deportation of an immigrant

because of a Maryland PBJ, even though the immigrant was otherwise eligible to stay in the United States.

As an adjunct professor of law, I began each class by writing on the board,

“Do Justice.... Read the Law.”

I can share with you many gut wrenching and deeply sad stories where families have been torn apart permanently as a result of deportation based on federal immigration law notwithstanding a Maryland PBJ resolution. These decisions were correct as required by the law; however, they were not just.

Therefore, I unequivocally support SB 527 and this amendment to the Maryland PBJ statute.

A finding of ‘probation before judgment’ should never lead to deportation | COMMENTARY

[S baltimoresun.com/opinion/op-ed/bs-ed-op-0207-pbj-deportation-20210205-4td5rmdayraobpp4fejvdxfo4-story.html](https://baltimoresun.com/opinion/op-ed/bs-ed-op-0207-pbj-deportation-20210205-4td5rmdayraobpp4fejvdxfo4-story.html)

By John F. Gossart Jr.



“May God forgive you, because I cannot.”

These words were written to me in a letter while I was a United States immigration judge at the Baltimore Immigration Court, where I presided for 31 years. The letter was written by the wife of a man I had ordered deported. In so doing, I had permanently separated a father and husband from his wife and children. These words will stay with me for the rest of my life.

Michelle Jones’ husband, Daryl, was charged with a minor offense in Maryland. Like many first-time offenders and individuals charged with minor violations, he was given probation before judgment (PBJ). This meant that Daryl, a lawful permanent resident of the United States was not convicted under Maryland state law. For United States citizens, a Maryland PBJ poses no further consequences unless they violate the terms of their probation. But for non-citizens like Daryl, the legal consequences can be far more dire.

Although a PBJ is not considered a conviction under state law, it is considered a conviction under federal law and therefore triggers immigration consequences, such as detention and deportation. I have witnessed countless non-citizens be ordered deported as a result of a PBJ and the devastation to their families that follows. I myself have ordered the deportation of hundreds of Maryland residents like Daryl because of a PBJ. It didn’t matter that these

individuals had been deemed worthy of a second chance and not convicted under Maryland law. Their PBJs condemned them to the gravest punishment — deportation under federal immigration law — leaving me with no judicial discretion. My hands were tied by the law.

The Maryland General Assembly has the opportunity, and the responsibility, to correct this unjust system by amending the PBJ statute. That is why I am asking the Maryland General Assembly to pass legislation (House Bill 354/Senate Bill 527) that would make probation before judgment accessible to all Maryland residents, regardless of citizenship status. The amendment would merely change the process by which a PBJ is entered; the impact of a PBJ would remain unchanged.

This bill ensures that the consequences of PBJs are the same for citizens and non-citizens alike, narrowing the disparities in our criminal justice and immigration systems, which disproportionately affect people of color. And for someone like Daryl, it would have been the difference between deportation and staying in the country to be with his family and watch his kids grow up.

Virginia and New York have similar statutes, which function so that their non-citizen residents do not suffer additional consequences from probation. To allow this inequity to exist from one jurisdiction to another, when the intent of PBJ statutes is the same or similar, is in my opinion unjust. Which side of the Potomac River the case is heard on should not determine whether a PBJ triggers federal consequences.

While the arrival of a new administration in Washington brings hope of immigration reform, the federal immigration statute at issue here is very unlikely to be changed. Such an alteration would require an act of Congress, which is extremely improbable given that the last major change to the federal immigration laws occurred 25 years ago. It is up to the Maryland General Assembly to take action.

People like Daryl, who was deemed worthy of PBJ, should not be condemned to deportation under federal law. Daryl's wife, Michelle, told me in her letter that I had ruined her life and the lives of her children. She wrote that I was in a position of great power and authority and that I could have given him a second chance. I regret that I was not able to do so.

In addition to serving as a United States Immigration Judge, I was an adjunct professor of law for twenty years. I always told my students, "Do Justice." Amending the Maryland PBJ statute is the just thing to do.

John F. Gossart Jr. (judge800@yahoo.com) retired as a United States Immigration Judge.

Recommended on Baltimore Sun

Final Written Testimony_NIPNLG_SB527.pdf

Uploaded by: Abreu Jimenez, Kiria

Position: FAV



IN SUPPORT OF SB 527

To: Senate Judicial Proceedings Committee
From: Sirine Shebaya, Executive Director of the National Immigration Project of the National Lawyers Guild
Date: February 23, 2021
Re: Written Testimony in Support of SB 527

Dear Chairman and Committee Members:

My name is Sirine Shebaya, and I am the Executive Director of the National Immigration Project of the National Lawyers Guild (NIPNLG). NIPNLG is a national non-profit organization that provides technical assistance and support to community-based immigrant organizations, legal practitioners, and all advocates seeking and working to advance the rights of noncitizens. For 50 years, NIPNLG has provided legal training and resources across the United States on the immigration consequences of criminal conduct. NIPNLG works to protect the rights of all immigrants, including noncitizens entangled within the criminal legal system, victims of government abuse and misconduct, and those facing summary removal.

The past four years have been marked by an extreme targeting of immigrants across the United States. This makes it even more important for 2021 to be a year filled with daring and impactful changes on a federal and state level, to begin to reverse all the harms that were done. For decades, immigrants in the United States, especially Black and brown immigrants, are overpoliced, prosecuted, and then deported for minor crimes.¹ As a nation, we have an obligation to root out racism wherever we can. Ensuring that state dispositions do not carry devastating immigration consequences is part of that effort.

SB 527 provides an important step towards combating the injustice and systematic racism found within the Maryland criminal system, by allowing a probation before judgment (PBJ) finding—which is not a conviction under Maryland law—to also not count as a conviction for purposes of immigration law.

NIPNLG supports this bill because it addresses a national issue that cannot be unilaterally addressed by the federal government and should be taken on by state legislators. The Biden Administration has signaled a different vision of immigration and enforcement, but change at the federal level will take a very long time to fully be implemented and must be supplemented by state-level changes that remove the worst consequences of contact with the criminal legal

¹ David A. Harris, *Racial Profiling: Past, Present, and Future?*, American Bar Association, (January 21, 2021), available at: https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/winter/racial-profiling-past-present-and-future/.

system. Any federal legislation on immigration is going to take a very long time. In the meantime, state legislators have an obligation to address injustice wherever they can. Amending the Maryland PBJ statute presents just such an opportunity. The purpose of a PBJ is to provide an opportunity for rehabilitation for Maryland residents. That purpose is undermined when a PBJ triggers draconian immigration consequences.

Passing SB 527 will also Maryland to join other states, like Virginia and New York, that already have similar statutes which avoid harsh immigration consequences, joining a growing trend towards addressing immigration consequences for members of our communities. SB 527 will provide the residents of Maryland the opportunity to receive probation that does not trigger adverse immigration consequences.

NIPNLG urges this honorable committee to pass SB 527, to protect members of the Maryland community from harsh consequences and double punishment.

Sincerely,



Sirine Shebaya

SB527_SUPPORT_TPM_Belanger.docx.pdf

Uploaded by: Belanger, Maurice

Position: FAV



SB 527 - SUPPORT

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

Senate Judicial Proceedings Committee

Dear Chair Smith and Members of the Judicial Proceedings Committee:

On behalf of Takoma Park Mobilization, I'm writing to SUPPORT SB 527, *Criminal Procedure - Probation Before Judgment - Facts Justifying a Finding of Guilt and Suspension of Sentence*, sponsored by Senator Susan Lee.

Takoma Park Mobilization is a grassroots organization with 2,300 members in and around Takoma Park that advocates and works for laws and policies that ensure equal treatment and justice for all at the city, county, state and national levels.

This bill seeks to correct a problem with Maryland's law governing probation before judgement as it pertains to noncitizens. Under Maryland law, an individual who may be a first-time offender or who has committed a non-violent crime, or where a conviction might generate disproportionate consequences might have the benefit of "probation before judgement" in the context of a plea agreement. These individuals admit their guilt and waive their right to a trial. The judge strikes the conviction and imposes probation. Once the judge's conditions are met, the individual does not have the conviction on his or her record.

A noncitizen, however, still suffers disproportionate consequences. A judge's action to strike a conviction is not recognized under immigration law; the individual's admission of guilt is considered a conviction whether or not the judge strikes the conviction. Thus, the noncitizen may still be subject to severe consequences under immigration law. A conviction for even a minor crime may result in removal from the U.S.

SB 527 proposes to extend the benefit of probation before judgement to noncitizens, by adding some language to the statute without replacing or superseding the existing law. The additional language would allow a judge to make a finding of facts sufficient to warrant guilt and impose probation and any other conditions on the individual, as happens now with citizens. The new language would protect the noncitizens from immigration consequences that still occur under the current law. While the noncitizen would still be subject to whatever penalty the judge imposed, the judge's finding of facts would not be considered a conviction under Maryland law or under federal immigration law. Virginia and New York have similar statutes.

In Maryland, 70% of noncitizens have resided in the U.S. for 10 or more years, and

TAKOMA PARK MOBILIZATION

Maryland is their home. Essentially, removal from the U.S. is equivalent to sending them into permanent exile — a harsh penalty to pay for a first-time offender or for a minor crime. Until this language is corrected, long-resident Marylanders who are noncitizens will continue to suffer disproportionate consequences because immigration law does not recognize this effort by the state to offer individuals a way to avoid a permanent record of conviction.

We urge a favorable report on SB 527.

Submitted for Takoma Park Mobilization by
Maurice Belanger
mauricembelanger@gmail.com
301-728-5317
February 18, 2021

SB 527 Probation Before Judgement Position Stateme

Uploaded by: Carrington, Darrell

Position: FAV



THE PRINCE GEORGE'S COUNTY GOVERNMENT

(301) 952-3700 County Council

POSITION STATEMENT

SB 527 Probation Before Judgement – Facts Justifying
Senator Susan Lee, et. al a Finding of Guilt and Suspension of Sentence
(Judicial Proceedings
Committee)

POSITION:

SUPPORT

SB 527 – Probation Before Judgement – Facts Justifying a Finding of Guilt and Suspension of Sentence – This bill Authorizes a court to stay the entering of judgment, defer further proceedings, and place a certain defendant on probation subject to reasonable conditions if the court finds facts justifying a finding of guilt; repealing a requirement that certain written consent of the defendant to the probation before judgment occur after a determination of guilt or acceptance of a nolo contendere plea; and authorizing a court to suspend a portion or all of a certain sentence as a condition of probation before judgment.

This bill seeks to remedy problems associated with the Maryland Probation Before Judgement (PBJ) Statute for residents that are not U.S. Citizens. For U.S. Citizens, you admit guilt and waive your rights to a trial during the plea agreement process. The Judge then strikes the conviction and imposes probation instead. Upon successful completion of probation, the PBJ is permanent and no conviction is recorded. However, for those who are not U.S. Citizens, the PBJ is still considered a conviction under federal immigration law and subjects the non-citizen to deportation for first-time, non-violent offenses.

The Prince George's County Council has long been a champion of comprehensive immigration reform that removes disproportional consequences for non-citizens. In 2019, the County Council unanimously enacted **CB-62-2019** which bars all County agencies from engaging in immigration enforcement to ensure the constitutional rights of County residents are not violated and that County benefits and services are provided to all residents regardless of country of birth or immigration status. The County Council agrees that **SB 527** will assist in reducing fear among our growing immigrant population, encouraging interaction with law enforcement, including reporting crimes and serving as witnesses.

For the foregoing reasons, the Prince George's County Council **SUPPORTS SB 527** and respectfully requests your favorable consideration of its position.

Prepared by: Carrington & Associates, LLC
On behalf of Prince George's County Council

County Administration Building – Upper Marlboro, Maryland 20772

MDAID - Support Probation before Judgment bill SB

Uploaded by: Follingstad, Susaanti

Position: FAV



SB 527/HB 354 - SUPPORT
Susaanti Follingstad
Maryland Against ICE Detention
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SB 527/HB 354 - SUPPORT

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

Senate Judicial Proceedings Committee/House Judiciary Committee
February 25, 2021

Dear Chair Smith and Members of the Judicial Proceedings Committee:

As a Maryland resident for 46 years and on behalf of Maryland Against ICE Detention (MDAID), I adamantly support SB 527/HB 354 and urge this committee to report favorably on this legislation. MDAID is a statewide coalition of organizations and individuals striving to stop immigration detention as well as systems that contribute to detention and deportation. We are made up of over 60 organizations and over 200,000 individual members and members of those organizations.

The passage and implementation SB 527/HB 354 is important to our mission of stopping detention and deportation of immigrants, even more so during this pandemic, which detention worsens, increasing the hazard to those detained and to surrounding communities.

Currently, if a judge believes a charge warrants it, and the prosecution and defense agree, the judge can impose Probation Before Judgment (PBJ) and if the defendant completes the term imposed without problems, there is no conviction on their record. Unfortunately, under federal law this is still considered a conviction and thus for non-citizens (including green card holders), it can result in issues ranging from citizenship denial, to detention by ICE and even deportation, all related to what the justice system saw as a minor offense.

I've used PBJ in traffic court, and avoided points and increased insurance rates as a result, while only paying a fine and completing the probation period successfully.

Meanwhile, non-citizens are often led to believe (sometimes by attorneys ignorant of how federal law views a PBJ) that a PBJ will not have any major consequences if they successfully complete the probation period. However, actually under federal law a non-citizen would face dire consequences, including deportation, even for a similar offense to mine. (Another minor offense that can be appropriate for a PBJ is driving without a license. Until SB 234/HB 23 gets enacted, ICE will continue use of MVA data to target undocumented immigrants for detention and deportation which currently discourages those immigrants from getting licenses.)

Because of this inequity, attorneys who do understand the potential consequences advise clients to take the risk of a full trial, rather than rely on a PBJ. In addition to the added risks and costs for these non-citizens, this burdens the Maryland courts and prosecutors with unnecessary trials for offenses that could otherwise be assigned a PBJ.

This clearly is not the intent of the Maryland legislature and is unjust. SB 527/HB 354 will make minor changes to the law which would ensure the PBJ will no longer be considered a conviction under federal law and thus reduce the harm that ICE and the immigration system is able to inflict upon our non-citizen neighbors, while also reducing the costs and burdens on the criminal justice system.

MDAID urges a favorable report on SB 527/HB 354.

VSAB Support Ltr Prob Before Judg SB527.pdf

Uploaded by: Frey, Leslie

Position: FAV



VICTIM SERVICES ADVISORY BOARD

February 25, 2021

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

Re: Support - SB527 - Criminal Procedure - Probation Before Judgment - Facts Justifying a Finding of Guilt and Suspension of Sentence

Dear Chairman Smith:

Senate Bill 527 changes the process by which a Probation Before Judgment (PBJ) is entered. PBJs are typically used in first-time and minor violations. Under current law, a PBJ is not considered a conviction under state law, but is considered a conviction under federal law. This discrepancy puts non-citizens at risk for deportation. Senate Bill 527 eliminates the need to first determine guilt or a defendant's acceptance of a nolo contendere plea before a PBJ is entered. Lack of a conviction applies the law equally to both citizens and non-citizens, and eliminates the fear of deportation for non-citizens.

The Montgomery County Victim Services Advisory Board (VSAB) advises the County Council and County Executive on assisting with the needs of victims of crimes including domestic violence, sexual assault, rape and human trafficking. The number and severity of sexual assault and domestic violence cases referred to the Montgomery County HHS Victim Assistance and Sexual Assault Program and the Abused Persons Program increased substantially in one year when comparing 2019 and 2020 intake data. The Montgomery County Police also reported concerns with an increase in violence in 2020 when investigating domestic violence calls. (<https://wtop.com/montgomery-county>, Oct. 16, 2020)

Fear of deportation of a spouse or intimate partner is a powerful motive to remain silent about domestic violence. Victims often depend on a partner for financial support, co-parenting, housing, health care benefits and transportation. Eliminating deportation as an obstacle will likely result in more victims coming forward to seek help for themselves and their partner. Domestic violence cases where a PBJ may be appropriate can include first-time offenses, those where no injury occurred or no weapon was used, or offenses where a protective order was violated with no injury.

VSAB asks the committee to issue a favorable report on Senate Bill 527.

Sincerely,

Kathryn Pontzer & Juanita Rogers
VSAB Co-chairs

Department of Health and Human Services

FINAL Written Testimony_Maryland Immigration Clini

Uploaded by: Kahrl, Gabriela

Position: FAV

IN SUPPORT OF SB 527

To: Senate Judicial Proceedings Committee
From: Gabriela Kahrl on behalf of the Maryland Carey Law Immigration Clinic
Date: February 23, 2021
Re: Written Testimony in Support of SB 527

We urge a favorable report on SB 527, because, without it, countless noncitizen Maryland residents will continue to face detention and deportation because they accepted probation in a Maryland court. Currently, if a non-citizen Maryland resident obtains a probation before judgment (“PBJ”), they can face loss of liberty, deportation, and permanent banishment from the United States. This is because both the Fourth Circuit and the Board of Immigration Appeals have held that a Maryland PBJ is a conviction under federal immigration law¹, notwithstanding the Maryland General Assembly's intent to the contrary. *U.S. v. Medina*, 718 F.3d 364 (4th Cir. 2013)²; *Matter of Ozkok*, 19 IN Dec. 546 (BIA 1988).

The General Assembly did not intend for a PBJ to carry with it the same consequences as a conviction. When it enacted the probation before judgment statute, the General Assembly acknowledged in the very language of the statute that a PBJ should afford lenience in situations where “the best interest of the person and welfare of the state” dictate an

¹ The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. 8 U.S.C. 1101(a)(48)

² In *U.S. v. Medina*, 718 F.3d 364 (4th Cir. 2013), the court held that a diversionary disposition under the Maryland PBJ statute, in which the defendant pleads guilty and the court sentences the person but does not formally enter judgment against him, is a predicate conviction for purposes of sentence enhancement under the federal sentencing guidelines. The court held that the definition of conviction in the immigration statute, 8 USC 1101(a)(48)(A), “must control our reading” of the sentencing guideline language. 718 F.3d at 368. *Medina*’s diversionary disposition was a conviction because he “pled guilty to the charged offenses and was sentenced to some form or restraint on his liberty, namely probation for a period of eighteen months.” *Id.*

CLINICAL LAW PROGRAM

outcome in a criminal matter that is not a conviction. Md. Crim. Proc. § 6-220 (b)(1)(i)³. The federal law thwarted this intent in 1996 when it enacted the “Illegal Immigration Reform and Immigrant Responsibility Act” (IIRAIRA) which substantially broadened the definition of a conviction. The effect was that the Maryland PBJ, and other non-convictions like it, were then treated as convictions.

SB 527 protects the intent of the General Assembly “that a grant of probation before judgment, unless subsequently altered by a violation of that probation, should have the effect of wiping the criminal slate clean.” *Jones v. Baltimore City Police*, 326 Md. 606 (2008). SB 527 adds an **additional, alternative** process for imposing a PBJ. The defendant enters into a probation agreement with the court, which does not require the entry of a guilty plea. The defendant waives trial rights and defenses, and does not deny facts that would support a finding of guilt that are read into the record. The court then makes a “finding of facts sufficient to support a finding of guilt”, which gives the court jurisdiction to later find guilt and impose a sentence, if there is a violation of probation.

SB 527 does not disturb, erode, replace or remove the current method for obtaining a PBJ. Practically, the two processes will appear and function virtually indistinguishably from one another, and the consequences of failing to abide by probation, the same. This bill does not provide additional benefits, merely ensures that noncitizens can have what citizens have already: The ability to take responsibility for one's mistakes, without suffering lifelong consequences, like deportation. This bill merely ensures that a noncitizen is

³ “By this 1975 amendment [to the PBJ statute], the General Assembly expressed its unmistakable intent that the disposition of probation before judgment not be a conviction.” *Myers v. State*, 303 Md. At 645, 496 A.2d at 312.

CLINICAL LAW PROGRAM

not deported for a one-time relatively minor mistake that would have a minimal effect on the life of a similarly-situated citizen⁴.

This bill fills an important gap in Maryland criminal law by ensuring that all people have equal access to probation. Currently, there is no existing Maryland law or disposition that can both hold the defendant accountable and provide a resolution of a criminal case without triggering federal immigration consequences. Under the Immigration and Nationality Act (“INA”), a PBJ, a plea of *nolo contendere*, an *Alford* plea, and a “Not Guilty Agreed Statement of Facts” (“NGASF”) plea all constitute a conviction.

A *nolo contendere* plea, an *Alford* plea, and an NGASF plea are all convictions for both Maryland state purposes and federal immigration purposes under the INA. The INA states in pertinent part that the term “conviction” is:

(...) where a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt.” See 8 U.S.C. 1101(a)(48)(A)(i).

A plea of *nolo contendere* is, by the explicit language of the statute, a conviction under federal immigration law. Similarly, even though there is no plea of guilt during a NGASF, it is still a conviction under federal immigration law because (1) there is an admission by the defendant as to facts sufficient to warrant a finding of guilt and (2) there is a formal finding

⁴This bill will not make it easier for an immigrant to become a U.S. citizen, nor does it treat noncitizens more favorably than citizens. SB 527 categorically will not make it easier for an immigrant to become a citizen. A PBJ—even if not a conviction—would still affect eligibility for citizenship. To become a United States citizen, an applicant must demonstrate good moral character. The PBJ, like all other contact with the criminal legal system, would still have to be disclosed on a noncitizens’ naturalization application. The PBJ would thus be taken into consideration when determining whether the noncitizen meets the good moral character requirement for citizenship.

CLINICAL LAW PROGRAM

of guilt at the conclusion of the NGASF. Even Maryland courts treat NGASF as a conviction, holding that a NGASF is the functional equivalent of guilty plea. *Sutton v. State*, 289 Md. 359, 366, 424 A.2d 755, 759 (1981). Similarly, an *Alford* plea qualifies as a conviction under federal immigration law because there is a formal finding of guilt, thus meeting the requirements for the definition of a “conviction.”

The Maryland General Assembly cannot wait for or rely on federal immigration reform. This issue is squarely in the jurisdiction of the Maryland General Assembly.

We are living in unprecedented times. Immigrants have suffered four long years under the harsh, xenophobic, and racist policies of the prior administration and that suffering is not going to stop any time soon. President Trump issued over 400 executive actions which directly targeted immigration and immigrants of all backgrounds⁵. Even though Joe Biden is now president, immigrants are still, right now, under attack. Trump's changes to both the immigration policies and the agencies that enforce those policies will take years to fix⁶. The Guardian published a report on February 8, 2021, showing how Trump policies continue to result in cruel deportations of babies and children: “ICE deported at least 72 people to Haiti on Monday, including a two-month-old baby and 21 other children, as the Biden administration made clear it would press on with expulsions of newly-arrived migrants, pending a review of immigration policy. The children were deported to Haiti on Monday on

⁵ Dany Bahar, *The road to fix America's broken immigration system begins abroad*, BROOKINGS, (Dec. 8, 2020), <https://www.brookings.edu/blog/up-front/2020/12/08/the-road-to-fix-americas-broken-immigration-system-begins-abroad/>.

⁶ Sarah Stillman, *The Race to Dismantle Trump's Immigration Policies*, THE NEW YORKER, (Feb. 1, 2021), <https://www.newyorker.com/magazine/2021/02/08/the-race-to-dismantle-trumps-immigration-policies>

CLINICAL LAW PROGRAM

two flights chartered by Ice from Laredo, Texas, to the Haitian capital Port-au-Prince. The removals sent vulnerable infants back to Haiti as it is being roiled by major political unrest.”⁷ The Biden Administration is struggling to undo the horrible policies of the Trump Administration and, issued the following statement: “As this administration has stated from the very outset, our capacity at the border will not transform overnight, due in large part to the damage done over the last four years to our asylum system and infrastructure.”⁸ The federal and immigration courts, filled with Trump appointees, are also preventing Biden's attempts to roll back Trump policies. On January 29, a three-judge panel comprising conservative judges appointed by Trump overturned a lower court decision to block the rule from applying to unaccompanied minors.⁹

This bill promotes racial justice. This bill is necessary to ensure racial equity in the consequences for such low-level first-time offenders. Detention and deportation disproportionately impact Black immigrants¹⁰. Black immigrants continue to be detained in large numbers, exposing them to harm **including use of force and lack of access to medical care**¹¹. Because communities of color are over-policed, charged, and prosecuted, Black and brown noncitizens are more likely to face adverse—and often severe—immigration consequences as a result of low-level crimes where a PBJ is warranted.

⁷ Ed Pilkington, *Outcry as more than 20 babies and children deported by US to Haiti*, THE GUARDIAN, (Feb. 8, 2021, 6:21 PM), <https://www.theguardian.com/us-news/2021/feb/08/us-ice-immigration-customs-enforcement-haiti-deportations>.

⁸ *Id.*

⁹ Tanvi Misra, *Revealed: US Citizen newborns sent to Mexico under Trump-era border ban*, THE GUARDIAN, (Feb. 5, 2021, 6:00 AM), <https://www.theguardian.com/us-news/2021/feb/05/us-citizen-newborns-mexico-migrant-women-border-ban>.

¹⁰ Juliana Morgan-Trostle, Kexin Zheng & Carl Lipscombe, *The State of Black America*, (2018), <http://stateofblackimmigrants.com/wp-content/uploads/2018/09/sobi-fullreport-jan22.pdf>.

¹¹ Southern Poverty L. Ctr., (Aug. 26, 2020) https://www.splcenter.org/sites/default/files/8.26.20_crcl_letter.pdf.

Conclusion

The proposed amendment to the Maryland PBJ statute provides an additional avenue of granting a PBJ so that all people, regardless of citizenship status, have meaningful access to it. This amendment would allow for the efficient and final resolution of the criminal cases and preserve the Maryland General Assembly's intent to render a PBJ a second chance for first-time low-level criminal offenders in Maryland. For the foregoing reasons, The Maryland Carey Law Immigration Clinic urges a favorable report on SB 527.

MD PBJ Sign-on Letter_HB 354_SB 527.pdf

Uploaded by: Kahrl, Gabriela

Position: FAV

February 19, 2021

Maryland General Assembly

Senate

Miller Senate Office Building
11 Bladen St.
Annapolis, Maryland

House of Delegates

House Office Building
6 Bladen St.
Annapolis, Maryland

Re: In Support of House Bill 354 and Senate Bill 527

Dear Honorable Members of the General Assembly,

We, the undersigned, urge you to support HB 354/SB 527, a bill that will amend the Probation Before Judgment procedure so that all Maryland residents, regardless of immigration status, have the same access to the benefit of probation before judgment (“PBJ”).

While we expect that the Biden administration will treat immigrants with greater humanity than Trump did, we also know that prior administrations have not been fair to immigrants. There is a long history—especially for Black and brown people—being over-policed, –prosecuted, and then deported for even minor criminal contacts¹. The criminal justice system has acted, for years, as a direct funnel to the immigration system². Black and brown immigrants are more likely to have encounters with law enforcement, and then end up charged and prosecuted for crimes which lead to deportation.³ In short, Black and brown immigrants are more likely to be deported because of the prevalence of racial profiling and discriminatory policing in the United States. While in custody, black immigrants often face worse treatment by immigration authorities and can be more likely to lose their legal cases for immigration relief.⁴ Just last year, Black immigrants reported that ICE officers had tortured them into signing their own deportation orders and then deported them to countries where they were likely to

¹ Drew DeSilver, Michael Lipka, and Dalia Fahmy, *10 Things We Know About Race and Policing in the U.S.*, PEW RESEARCH CENTER, (June 3, 2020), <https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/>.

² Tanvi Misra, *The Rise of ‘Crimmigration’: Law Professor César García Hernández Talks About How America Built a Legal System that Targets Immigrants For Profit – and How to Take it Down*, BLOOMBERG CITYLAB, (Sep. 16, 2016, 2:01 PM), <https://www.bloomberg.com/news/articles/2016-09-16/c-sar-garc-a-hern-ndez-on-the-rise-of-crimmigration>.

³ See Gabriela Q. Kahrl, *Commentary: Racism in Immigration Asylum Decisions*, BALTIMORE SUN, (Oct. 14, 2020, 11:53 AM), <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1015-racist-immigration-policies-20201014-bi3dufphnzfjzlsdimchnzz2jy-story.html>.

⁴ *Id.*

be persecuted.⁵ This and other examples of institutional racism pervade our immigration system and will not disappear with a new administration.⁶

HB 354/SB 527 will prevent just these sorts of injustices – the needless, cruel detention and deportation of Black and brown people over minor criminal contacts. The prevalence of COVID-19 cases in immigrant detention centers increases the urgency of reducing the number of detained people, which this bill would also accomplish.⁷

The Maryland General Assembly long recognized that there are situations where “the best interest of the person and welfare of the state” dictate an outcome in a criminal matter that is not a conviction,⁸ for example when the individual is a **first-time offender, the crime is non-violent, and/or the conviction would generate consequences that are disproportionate to the situation that gave rise to the charges**. The General Assembly codified a disposition that is not a conviction under Maryland law— “probation before judgment” –whereby a court has the authority to strike the conviction and impose probation before judgment instead.⁹ For U.S. citizens, the PBJ has the desired outcome of allowing people to take responsibility for their mistakes and move on with their lives, without enduring lifelong, adverse consequences. The same is not true for non-citizen Maryland residents.

If a non-citizen Maryland resident obtains a PBJ, they can face loss of liberty, deportation, and permanent banishment from the United States. Because the noncitizen admits guilt under the existing PBJ procedure and the judge makes a finding of guilt, even though it is later stricken, the disposition is considered a conviction under federal immigration law, notwithstanding the intent of the Maryland General Assembly.¹⁰

This bill proposes an equitable and simple solution: amend the PBJ statute so that it includes a process for entering a PBJ that would not trigger adverse immigration consequences. It provides another method for a judge to grant the same disposition, a PBJ¹¹; the defendant would neither admit nor deny guilt and would not dispute the proposed facts of the case,

⁵ Julian Borger, *US ICE Officers ‘Used Torture to Make Africans Sign Own Deportation Orders’*, GUARDIAN, (Oct. 22, 2020, 6:00 AM), <https://www.theguardian.com/us-news/2020/oct/22/us-ice-officers-allegedly-used-torture-to-make-africans-sign-own-deportation-orders>. One man recounted that ICE officers “pepper-sprayed me in the eyes and [one officer] strangled me almost to the point of death. I kept telling him, ‘I can’t breathe.’ I almost died. As a result of the physical violence, they were able to forcibly obtain my fingerprint on the document.” Letter from Freedom for Immigrants et. al. to CRCL Officer Nation et. al. (Oct. 7, 2020), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5f7f17f39e044f47175204fb/1602164723244/Re+CRCL+Complaint+ICE%27s+Use+of+Torture+to+Coerce+Immigrants+to+Sign+Immigration+Documents+at+Adams+County+Correctional+Facility.pdf>.

⁶ *Id.* (“The abuse we are witnessing, especially right now against black immigrants, isn’t new, but it is escalating.”).

⁷ See CENTER FOR MIGRATION STUDIES, IMMIGRANT DETENTION AND COVID-19: HOW A PANDEMIC EXPLOITED AND SPREAD THROUGH THE U.S. IMMIGRANT DETENTION SYSTEM, (Aug. 2020), <https://cmsny.org/wp-content/uploads/2020/08/CMS-Detention-COVID-Report-08-12-2020.pdf>. “A simulation by the Vera Institute for Justice – which accounted for new ‘book ins’ and transfers between facilities – estimated that 19 percent of all detainees over a 60-day period between mid-March and mid-May 2020 would have contracted COVID-19, a figure 15 times higher than the number of confirmed cases by ICE in mid-May (Kuo et al.). If ICE had tested earlier and more extensively, it would have ‘confirmed’ that many times more detainees had contracted COVID-19.” *Id.* at 4.

⁸ Md. Code Ann., Crim. Proc. § 6-220(b)(1)(i).

⁹ Md. Code Ann., Crim. Proc. § 6-220(b).

¹⁰ U.S. v. Medina, 718 F.3d 364 (4th Cir. 2013).

¹¹ Virginia (Virginia Code § 18.2-251) and New York (NY. Crim Pro. § 170.55) have similar statutes.

and the judge would make a finding of facts sufficient to warrant guilt, and then impose probation. A PBJ by these means would not be considered a conviction under Maryland law *or* federal immigration law. Because the defendant waives his right to future trial prior to the entry of the PBJ, the judge can immediately proceed to judgment and sentencing if the defendant is later found to be in violation of probation.

We urge the legislature to pass HB 354/SB 527. Adding this language to the Maryland Probation Before Judgment statute would protect, without cost to anyone else, some of our most vulnerable Maryland residents from persistent institutional racism in both the criminal justice and immigration systems.

In gratitude,

**The Honorable John F. Gossart, Jr., Retired
Immigration Judge**



ACLU of Maryland

**The Honorable Lisa Dornell, Retired
Immigration Judge**



**The Honorable Deni L. Taveras,
Prince George's County Council, District 2**

**American Immigration Lawyers
Association- DC Chapter (DC/MD/VA)**

**Prof. E. Keyes, University of Baltimore
Immigration Rights Clinic**



**ROUND TABLE
of Former Immigration Judges**

**The Round Table of Former Immigration
Judges¹²**



UndocuBlack Network



MSBA Immigration Law Section Council



Annapolis Immigration Justice Network

¹² The Round Table of Former Immigration Judges is a group composed of former Immigration Judges and Appellate Immigration Judges of the Board of Immigration Appeals who united to file amicus briefs and engage in other advocacy work.



Jews United for Justice



Capital Area Immigrants' Rights Coalitions (CAIR)



Justice for Victims of Crime Clinic
University of Maryland School of Law



FIRM, Inc.



Maryland Criminal Defense Attorneys' Association (MCDAA)



University of Maryland School of Law,
Immigration Clinic



University of Maryland School of Law,
Gender Violence Clinic



National Immigration Project of the
National Lawyers Guild (NIPNLG)



Public Justice Center



CASA



Sanctuary DMV



SURJ Baltimore



Takoma Park Mobilization



Baltimore City Mayor's Office of
Immigrant Affairs

SB527 01-Feb-2021 11-10-26 Page 1.pdf

Uploaded by: Martin, Suzanne

Position: FAV



Annapolis Immigration Justice Network

Walking Alongside Our Immigrant Neighbors

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January 31, 2021

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TESTIMONY IN SUPPORT OF SB527

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

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TO: Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

From Suzanne Martin

My name is Suzanne Martin and I have lived in Annapolis, Maryland for 17 years in District #30A. I am the founder and President of the Annapolis Immigration Justice Network (AIJN)- a grass roots, all volunteer organization serving residents of Anne Arundel County. I share this testimony on behalf of the Annapolis Immigration Justice Network.

Our non-profit formed in 2017 and since then, AIJN has served over 300 residents in Anne Arundel County. Since mid-2018, we have provided financial assistance totaling over \$180,000 in legal fees. AIJN has served non-detained as well as detained immigrants. In addition to financial assistance, we also have a case management team that has helped people in pro se situations to fill out asylum applications, work permit applications, and any other paperwork needed as part of their immigration process. Through my work over the last few years, I strongly support SB527. I believe it will help keep families together in Anne Arundel county while still providing an additional tool for accountability.

SB527 will ensure that Probation Before Judgment (PBJ) in Maryland will not lead to unintended consequences for our immigrant neighbors. The Maryland Legislature recognized the value of holding an individual accountable for their actions without attaching the lifelong consequences of a criminal conviction. Those consequences are often even more dire for our immigrant neighbors. Unlike Maryland state law, federal law currently treats a PBJ in Maryland as a criminal conviction, which could ultimately lead to deportation for some people. The resulting pain of permanent separation from family, community, and home goes far beyond what the Maryland Legislature intended for PBJ. SB527 will simply bring PBJ in line with the Maryland Legislature's original intention. For these reasons, I fully support SB527 on behalf of AIJN.

Legal Fund Director

(Interim)
Tonya Foley

Legal Advisory Board

Gabriela Kahrl,
Maryland Carey
Immigration Clinic

Elizabeth Keyes,
University of Baltimore
Immigrant Rights Clinic

Maureen Sweeney,
Maryland Carey
Immigration Clinic

Final Written Testimony_Gender Violence Clinic_SB

Uploaded by: Meadows, Lila

Position: FAV

IN SUPPORT OF SB 527

To: Senate Judicial Proceedings Committee
From: Gender Violence Clinic & Justice for Victims of Crime Clinic, University of Maryland Carey School of Law
Date: February 23, 2021
Re: Written Testimony in Support of Senate Bill 527

The University of Maryland Carey School of Law Gender Violence Clinic & Justice for Victims of Crime Clinic unequivocally support Senate Bill 527.

The Gender Violence Clinic & Justice for Victims of Crime Clinic represent clients with histories of and/or in matters involving intimate partner violence, rape, sexual assault, and trafficking. Both Clinics have represented a number of immigrant clients whose partners have been or could have been subjected to criminal prosecution leading to deportation.

Domestic violence related charges, like assault, are among the kinds of crimes for which probation before judgment (“PBJ”) is often appropriate. For example, courts will agree to impose PBJs in domestic violence cases where no serious injury occurred, no weapon was used, the incident involved a first-time defendant, the incident was limited to threats, or there was a violation of the no contact provision of a protective order, but no new abuse occurred.

Currently, if an immigrant gets a PBJ for a crime involving domestic violence, the PBJ is treated as a conviction for immigration purposes and the person can be deported. Victims are all too aware of the deportation risk to their immigrant partners if they call the police, so some victims are less likely to report domestic violence. There are many reasons why victims do not want their partners to be deported. If the partner is deported, the victim could be deprived of critical assistance, including child support payments, co-parenting support, economic support, health care benefits, housing, and transportation. A sole parent may also experience added stress because the children are grieving the loss of their deported parent.

If deportation after a PBJ was no longer a possibility, victims of domestic violence might be more likely to call the police. Moreover, if perpetrators are not concerned that a PBJ will trigger deportation proceedings, they might be more likely to take pleas and less likely to demand trials, sparing victims the experience of testifying, which is often retraumatizing. For all of these reasons, the Gender Violence Clinic & Justice for Victims of Crime Clinic strongly supports SB 527.

PBJ Testimony- SDMV (Austin Rose).pdf

Uploaded by: Rose, Austin

Position: FAV



SB 0527- SUPPORT
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SB 0527- SUPPORT
Probation Before Judgement for Non-Citizens
Senate Judicial Proceedings Committee
February 2021

Members of the Committee,

As a Maryland resident, long-time organizer with Sanctuary DMV, and third-year law student working in the immigration legal space, I wholeheartedly express my support on behalf of Sanctuary DMV for this legislation. We at Sanctuary DMV believe firmly that immigrants should be treated as equals in our criminal justice system, and that no person deserves to be banished from their community. This Act would eliminate disparities in the treatment of citizens and non-citizens and keep families together.

Sanctuary DMV is an all-volunteer collective dedicated to working in solidarity with immigrant communities in DC, Maryland, and Virginia. Amongst other activities, we accompany individuals to immigration appointments carrying a risk of detention or deportation, support families affected by ICE enforcement in the region, and advocate for state and local policies that enhance rights and resources for immigrant communities. Through this work, we have supported several individuals who were arrested by ICE and entered immigration proceedings through the criminal justice system in Maryland and elsewhere, often for offenses for which they otherwise would have served no jail time and that would have had only minimal consequences for similarly situated U.S. citizens.

The nexus between criminal legal proceedings and immigration enforcement is responsible for the majority of ICE arrests each year. The apprehension and detention by ICE of non-citizens charged or convicted of criminal offenses is unjust. We at Sanctuary DMV believe that no person should be detained or deported for civil immigration violations, regardless of their involvement in the criminal justice system. Rather, non-citizens who commit criminal offenses should be treated the same as U.S. citizens.

Take Probation Before Judgement as an example. If the Maryland criminal justice system determines that an offense committed by a non-citizen is not serious enough to warrant a formal criminal conviction carrying potential jail time, then the non-citizen should be released into the community on probation just like a U.S. citizen would be. What happens instead is that non-citizens who receive PBJ in Maryland — both undocumented people and green-card holders — are still considered to have a conviction for federal immigration purposes, and are often taken into immigration detention and deported despite a judge having determined that their offense warranted only probation. This is an arbitrary form of double punishment, and it has no place in our legal system.

A small change to Maryland criminal law could eliminate this disparity as applied to PBJ. This Act would provide an alternative avenue for granting PBJ to non-citizens such that it would not be considered a conviction under Maryland law or federal immigration law. It is a common sense change that helps us ensure equal justice for all Maryland residents. And it sends a clear signal that, even if a person living in Maryland may not be a U.S. citizen, they are still a *Maryland citizen*.

Sanctuary DMV urges a favorable report on SB 0527.

SB 527_FAV_ACLU_Spielberger.pdf

Uploaded by: Spielberg, Joe

Position: FAV



**Testimony for the Senate Judicial Proceedings Committee
February 25, 2021**

**SB 527 – Criminal Procedure – Probation Before Judgment – Facts
Justifying a Finding of Guilt and Suspension of Sentence**

JOSEPH SPIELBERGER
PUBLIC POLICY COUNSEL

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The ACLU of Maryland supports SB 527, which would allow a judge to “find facts justifying a finding of guilt” before granting a Probation Before Judgment (“PBJ”). This bill addresses a critical intersection between immigration and criminal justice reform by eliminating unintended immigration consequences for non-citizens who receive a PBJ sentence.

The current PBJ process in Maryland requires a defendant to plead guilty or be found guilty, and the court to sentence the defendant to probation. PBJ was originally designed to provide individuals with an alternative sentence: the opportunity to take responsibility for certain minor offenses, without suffering some of the lifelong consequences of a criminal conviction. However, this is not the case for non-citizens. A PBJ can still trigger severe consequences, including ICE custody, deportation, and disqualification of defenses to deportation.

This is because although a PBJ is not considered a conviction under Maryland law, it is a conviction, or an *admission of guilt*, under federal immigration law.

Under the INA, a conviction is found where:

- (1) A judge or jury finds the person guilty, or the person enters a plea of guilty or no contest, or admits sufficient facts to warrant a finding of guilt; and
- (2) The judge orders some sort of punishment.¹

So even without a formal judgment, a guilty plea and imposition of probation is enough to constitute a conviction under federal immigration law.

Under Maryland’s current PBJ statute, the Fourth Circuit Court of Appeals has held that an adjudication constitutes a conviction, for both the purposes of a criminal record² as well as federal sentencing.³ On the other hand, as proposed under SB 527, if a defendant does not plead guilty but the judge “finds

¹ 8 USC 1101(a)(48)(A).

² *Yanez-Popp v. INS*, 998 F. 2d 231 (4th Cir. 1993).

³ *U.S. v. Medina*, 718 F.3d 364 (4th Cir. 2013).



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Maryland

facts justifying a finding of guilt,” the disposition does not constitute a conviction for federal immigration purposes.⁴ The Court in *Jacquez* also held that a finding of guilt requires the *person* admitting facts sufficient to find guilt, not the *judge* finding sufficient facts.⁵

This bill’s simple change, to allow a court to “find facts justifying a finding of guilt,” would align Maryland with other states who have amended their PBJ statutes for this purpose, and whose statutes have been found to allow for non-convictions in the PBJ process.⁶ The PBJ would operate as was always intended, to not lead to a conviction.

Most importantly, without disrupting the process for the vast majority of PBJ cases, this bill would protect non-citizens from the types of lifelong consequences that a PBJ was never intended to trigger.

For the foregoing reasons, we urge a favorable report on SB 527.

⁴ *Jacquez v. Sessions*, 859 F.2d 258 (4th Cir. 2017).

⁵ *Id.*, at n 4.

⁶ *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011).

D4CC - Support Probation before Judgment bill SB 5

Uploaded by: Sugarman, Kate

Position: FAV



SB 527/HB 354 – SUPPORT

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SB 527/HB 354 — SUPPORT

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

Senate Judicial Proceedings Committee/House Judiciary Committee
February 25, 2021

Dear Chair Smith and Members of the Judicial Proceedings Committee:

I was born and raised in Baltimore City and am now a practicing public health family physician living in Potomac MD. I am the co-chair of the Maryland Chapter of Doctors for Camp Closure.

The Maryland Chapter of Doctors for Camp Closure strongly supports SB 527/HB 354 and urges this committee to report favorably on this legislation. We are part of the national Doctors for Camp Closure organization which is a non-partisan organization of over 2,200 physicians and health care professionals from all specialties who oppose inhumane detention of migrants and refugees who are attempting to enter the United States of America.

Currently, if a judge believes a charge warrants it, and the prosecution and defense agree, the judge can impose Probation Before Judgment (PBJ) and if the defendant completes the term imposed without problems, there is no conviction on their record. Unfortunately, under federal law this is still considered a conviction and thus for non-citizens (including green card holders), it can result in issues ranging from citizenship denial, to detention by ICE and even deportation, all related to what the justice system saw as a minor offense.

Meanwhile, non-citizens are often led to believe (sometimes by attorneys ignorant of how federal law views a PBJ) that a PBJ will not have any major consequences if they successfully complete the probation period. However, actually under federal law a non-citizen would face dire consequences, including deportation. (Another minor offense that can be appropriate for a PBJ is driving without a license. Until SB 234/HB 23 gets enacted, ICE will continue use of MVA data to target undocumented immigrants for detention and deportation which currently discourages those immigrants from getting licenses.)

Because of this inequity, attorneys who do understand the potential consequences advise clients to take the risk of a full trial, rather than rely on a PBJ. In addition to the added risks and costs for these non-citizens, this burdens the Maryland courts and prosecutors with unnecessary trials for offenses that could otherwise be assigned a PBJ.

This clearly is not the intent of the Maryland legislature and is unjust. SB 527/HB 354 will make minor changes to the law which would ensure the PBJ will no longer be considered a conviction under federal law and thus reduce the harm that ICE and the immigration system is able to inflict upon our non-citizen neighbors, while also reducing the costs and burdens on the criminal justice system.

As physicians we know as eye witnesses, that there is no healthy amount of time for an immigrant to be detained. We have been inside of immigration detention centers and we know how hazardous these places are both to the immigrants and their families.



SB 527/HB 354 – SUPPORT

Dr. Kate Sugarman, MD
Doctors for Camp Closure, Maryland
katesugarman@hotmail.com
301-343-5724

This issue has taken on a heightened sense of urgency as we face a worsening pandemic. Serious illnesses and deaths due to COVID continue to rise inside the prisons, not only for the detained immigrant but also for the staff at these facilities.

In addition, family members suffer when their mothers and fathers, husbands and wives are deported. Families lose their wage earners and children lose their mothers and fathers. These children can no longer concentrate in school and suffer a host of psychological consequences. The emotional scarring is permanent and severe.

The Maryland Chapter of Doctors for Camp Closure urges a favorable report on SB 527/HB 354.

MOPD Position on HB 354 and SB 527.pdf

Uploaded by: Zavin, Brian

Position: FAV



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.

Emily Beckman Testimony in Support of SB 527.pdf

Uploaded by: Beckman, Emily

Position: FWA

IN SUPPORT OF SB 527

To: House Judiciary Committee
From: Emily Beckman, Criminal Defense Attorney
Date: February 23, 2021
Re: Written Testimony in Support of Senate Bill 527

Good afternoon, Chair, Vice Chair and members of the Committee. My name is Emily Beckman. I am testifying in support of SB 527. I am a resident of Montgomery County Maryland and have been a practicing criminal defense lawyer for almost 15 years. During that time I have worked as a public defender in Alexandria, Virginia, as a public defender in Montgomery County, Maryland, and as a defense lawyer in private practice.

In my time as a public defender and private criminal defense lawyer I have represented hundreds, if not thousands, of non-U.S. Citizen clients. Non-citizen clients are often denied the benefits of alternative dispositions like the PBJ not because of any opposition on the part of the prosecution or any victim in the case, but because federal immigration law considers a successfully completed Maryland PBJ to be a conviction even though Maryland law does not.

In Virginia, however, the PBJ equivalent is available to non-citizen clients so that when they successfully complete the program, they do not have a conviction under either state or federal immigration law. This is because non-citizens can participate in these diversion programs after a Judge makes a finding of “facts sufficient to support a conviction,” rather than a finding of guilt.

The “facts sufficient” finding functions just like a current Maryland PBJ does but without being considered a “conviction” under federal immigration law. If you pass SB 527, just as defendants do all over Northern Virginia right now, a non-citizen client would plead not guilty, waive all objections to a statement of facts being read to the Judge instead of having a trial, agree not to present any alternative facts or evidence, and in this way acquiesce to a finding of “facts sufficient” and to participation in the diversion program. If the defendant successfully completed all of the requirements imposed by the Judge, the charge would eventually be dismissed. If the defendant failed to complete the requirements imposed by the Judge, a conviction would be imposed with no further trial or evidence required.

Though the change sought through SB 527 may seem like a meaningless technicality, for legal immigrants charged with minor offenses like theft under \$1000 or simple possession of a controlled substance, it can mean the difference between remaining in this country and being deported.

The “facts sufficient” alternative provides a necessary avenue for a non-adversarial resolution of cases against non-citizen defendants so that they may receive the same benefits of a PBJ that currently exist for US Citizens.

- SB 527 promotes finality of judgements by reducing post-conviction litigation on behalf of criminal defendants who were not properly advised that their PBJ dispositions would be considered convictions under immigration law and could lead to their deportation.

- SB 527 saves resources by avoiding unnecessary trials when prosecutors, victims, and defendants are inclined to resolve the case with a PBJ, but the non-citizen defendant cannot agree to a result that would have catastrophic immigration consequences.
- SB 527 provides the same opportunities for non-citizens to make amends by participating in programs of self-improvement and by paying restitution as Maryland law currently offers to US Citizens through the PBJ option.

SB 527 will make a change to Maryland law that will promote equitable outcomes in the criminal justice system and provide flexibility to prosecutors, victims, and defendants in determining the appropriate resolution of individual cases.

Thank you for your interest in and consideration of this bill; I hope you will support SB 527.

SB527_FAV_Lee.pdf

Uploaded by: Lee, Susan

Position: FWA

SUSAN C. LEE
Legislative District 16
Montgomery County

MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

Chair Emeritus
Maryland Legislative Asian American
and Pacific Islander Caucus

President Emeritus
Women Legislators of the
Maryland General Assembly, Inc.



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 23, 2021

Senate Judicial Proceedings Committee

Senate Bill 527 - Probation Before Judgment - Facts Justifying a Finding of Guilt and Suspension of Sentence

Senate Bill 653 aims to fix a technicality in our state law that creates an unintended consequence at the federal level. Under current law, a plea acceptance of a probation before judgment (PBJ) in Maryland may trigger the deportation legal permanent residents or undocumented immigrants, even though it is not a finding of guilt. We must correct this undesirable consequence and protect people from harmful effects that a technicality in law has created. This language passed this chamber in 2020, but we have updates.

Judges may impose any punishment, just as before the effective date of the bill. Only in cases where State's Attorneys, defense counsel, and judges agreed that a PBJ is an available option could the immigrant defendant plea. There are many arguments in favor of the purpose for PBJs that opponents of this bill might like to use in other context, but I urge them to see that in this context the tool is unusable and even unethical. And I remind anyone that might want to sensationalize the impact of this bill, that the relevant crimes would be limited and apply to almost exclusively to first-time violators.

For these reasons, I respectfully request a favorable report on SB 527, as amended. (see draft below)

- (3) (I) FOR THE PURPOSES OF THIS PARAGRAPH, THE COURT MAY:
1. MAKE FINDINGS OF FACT SUFFICIENT TO SUPPORT A FINDING OF GUILT; AND
 2. IN THE EVENT OF A VIOLATION OF PROBATION GRANTED IN ACCORDANCE WITH THIS PARAGRAPH, ENTER A FINDING OF GUILT AND IMPOSE A SENTENCE.
- (II) WHEN THE COURT FINDS FACTS JUSTIFYING A FINDING OF GUILT, THE COURT MAY ENTER INTO A PROBATION AGREEMENT WITH THE DEFENDANT.
1. THE DEFENDANT ACCEPTS PROBATION IN EXCHANGE FOR THE COURT EXPRESSLY WITHHOLDING A FINDING OF GUILT;
 2. THE DEFENDANT KNOWINGLY AND VOLUNTARILY WAIVES:
 - A. THE RIGHT TO A TRIAL; AND
 - B. UNLESS THE COURT MAKES A FINDING OF GUILT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE RIGHT TO APPEAL THE PROBATION AGREEMENT, BUT NOT THE UNDERLYING PROBATION;

2021.2.23_Moravec_FIRN PBJ Testimony on SB527_FINA

Uploaded by: Moravec, Joseph

Position: FWA



RESOURCES FOR THE FOREIGN BORN

5999 Harpers Farm Rd, Suite E-200 Columbia, MD 21044
410-992-1923

February 23, 2021

RE: In Support of Senate Bill 527

Dear Chair Smith, Vice-Chair Waldstreicher, and members of the Judicial Proceedings Committee:

As a Maryland resident and attorney, I write on behalf of FIRN to express our wholehearted support for SB527. Since 1981, FIRN has been dedicated to providing services to immigrants including refugees, asylees, asylum seekers, and many who are noncitizens in Howard County and throughout Maryland. Our legal staff represent hundreds of Marylanders each year in every phase of their immigration story, and for those who might face contact with the criminal justice system, even minor offenses can lead to grave consequences.

Noncitizen Marylanders, regardless of their immigration status or the path they took to the United States, face an extraordinarily complex federal immigration system. When immigrants are charged with even minor criminal offenses, it can result in detention, deportation, ineligibility for citizenship, and possible banishment from the U.S. and permanent separation from their families. These consequences are often unexpected and not the intention of Maryland prosecutors or judges, but are the result of the way federal immigration law operates—an area of the law not well understood even by the best attorneys and which is subject to constant change.

Before he served as Associate Justice of the U.S. Supreme Court and Chief Prosecutor at the Nuremberg war crimes trials, Robert H. Jackson served as U.S. Attorney General. In 1940, then Attorney General Jackson delivered a speech to the Department of Justice on his vision for the ethic and conduct of prosecutors. To his attorneys, he said that a prosecutor's position is "of such independence and importance that while you are being diligent, strict, and vigorous in law enforcement you can also afford to be just."¹ He continued that even when "the government technically loses its case, it has really won if justice has been done."² Justice Jackson's successors—good and bad—continue to oversee the federal immigration courts³ and his words remain an example for Maryland prosecutors who, with the passage of SB527, would have additional latitude to do justice for Marylanders.

But justice is a rare thing in American immigration. It carries a long legacy of racism, border walls, kids in cages, and raids within our communities. It is a legacy of fear and violence

¹ Robert H. Jackson, *The Federal Prosecutor*, April 1, 1940, available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/04-01-1940.pdf>.

² *Id.*

³ Federal immigration courts are part of the Executive Officer for Immigration Review ("EOIR"), a federal agency within the U.S. Department of Justice overseen by the U.S. Attorney General.

against outsiders, and cuts harshly against the vision we teach our children about America; that we are a nation of immigrants and dreamers, a melting pot of cultures, open to anyone willing to work hard for their piece of the Dream. One need only tour an immigration detention facility or sit for a few minutes in an immigration court to see that reality is far different: a deportation machine without independent judges, without rules of evidence or procedure, and without basic notions of fairness or due process of law.

I concede many of these challenges require an overhaul of the immigration system at the federal level, but that does not mean that state and local officials are without power to change the system for the better. Currently, Maryland criminal procedure law allows a defendant to agree to Probation Before Judgment (“PBJ”). Where circumstances of the offense warrant it—such as first time, non-violent offenses—a PBJ allows Maryland courts to impose probation without a formal conviction under Maryland law. This statute has allowed U.S. citizens charged in Maryland to take responsibility for an offense without enduring the collateral consequences ordinarily imposed with a conviction. But for noncitizens, federal law does not interpret a Maryland PBJ as it was intended by the General Assembly; federal law still finds a PBJ in Maryland to be a conviction. This leads many noncitizens who agree to PBJ—many who reasonably believe they will not face these consequences and who would not if they were citizens—to be detained by immigration officials and placed into removal proceedings. And Maryland judges who only intended for the defendant in front of them to receive probation are actually sentencing many of them to be deported and exiled from the U.S. It is clearly a mechanism in need of reform.

As is often said, even a small change can make a big difference. And with that in mind, FIRN encourages the General Assembly to take the opportunity through SB527 to provide Maryland judges and state’s attorneys with one more tool to do justice; to mitigate the disastrous consequences of America’s unforgiving immigration system to better serve their community, regardless of a defendant’s immigration status.

SB527 would make a simple amendment to the PBJ procedure by allowing Maryland judges to impose probation after staying its finding of guilt, thereby avoiding immigration consequences. Similar to procedures which already exist in other states such as Virginia⁴ and New York⁵, SB527 would create greater equity and bring the PBJ mechanism in line with the General Assembly’s original intent that a PBJ should not be a conviction. The amendment would not change the outcome of the criminal case, nor would it provide noncitizens any advantage—it simply tries to keep noncitizens on equal footing in the criminal justice system.⁶

From my own prior experience working as an immigration attorney in New York, I have seen the effect of a similar process to the amendment offered in SB527. By adjudicating cases in contemplation of dismissal, New York’s prosecutors and judges are able to do justice in their communities when—in cases they believe it warranted—they may agree to postpone and ultimately dismiss charges without a conviction so long as a defendant avoids future criminal activity and satisfies agreed-upon conditions. This process is not a way for anyone to avoid

⁴ See Va. Code § 18.2-251.

⁵ See N.Y. Crim. Proc. L. § 170.55.

⁶ See *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n. 5 (1953) (The Constitution “extends [its] inalienable privileges to all ‘persons’” in the United States.).

responsibility for criminal activity, but is a means to keep the “particularly severe penalty”⁷ of deportation or other collateral consequences from attaching to relatively minor or first-time offenses.

Therefore, given FIRN’s experience providing legal services to the immigrant community in Maryland, my own comparative experience with a similar procedure in New York, and the significant equity which would be afforded by this small procedural change in the criminal procedure law, we can see no justification for refusing to pass this important legislation. We encourage the committee to forward SB527 for approval by the Senate. I welcome any additional questions you may have.

Respectfully submitted,

/S/ Joseph Moravec
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⁷ See *Padilla v. Kentucky*, 130 S. Ct. 1473, 1481 (2010).

MD Judiciary - Testimony SB 527.pdf

Uploaded by: Elalamy, Sara

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 527
Criminal Procedure – Probation before Judgment – Facts Justifying
a Finding of Guilt and Suspension of Sentence
DATE: January 21, 2021
(2/25)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 527. This legislation authorizes the court to stay the entering of judgment, defer further proceedings, and place a defendant on probation subject to reasonable conditions if the court finds facts justifying a finding of guilt. This legislation authorizes the court as a condition of probation to order a person to a term of custodial confinement or imprisonment and may suspend a portion or all of the sentence.

The amendments to Criminal Procedure §6-220(b)(1) of the bill are confusing and seem inconsistent with the requirements of Maryland Rule 4-242 which requires a defendant to plead not guilty, guilty or nolo contendere. The court is not authorized to proceed to disposition without taking a plea authorized by the rules.

It is also unclear how a court would “find facts justifying a finding of guilt” and how such a finding would fit into jurisprudential norms and safeguards.

cc. Hon. Susan Lee
Judicial Council
Legislative Committee
Kelley O’Connor