

IN SUPPORT OF HB 354

To: House Judiciary Committee
From: Emily Beckman, Criminal Defense Attorney
Date: February 19, 2021
Re: Written Testimony in Support of House Bill 354

Good afternoon, Chair, Vice Chair and members of the Committee. My name is Emily Beckman. I am testifying in support of HB 354. 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 HB 354, 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 HB 354 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.

- HB 354 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.

- HB 354 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.
- HB 354 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.

HB 354 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 HB 354.