

Maryland Criminal Defense Attorney's Association



MD House of Delegates -Judiciary Committee

February 23, 2021

Hearing on HB 354

Criminal Procedure – Probation Before Judgment

MCDAA POSITION: SUPPORT

Brief bill explanation: This bill alters provisions governing probation before judgment by (1) authorizing a court to place a defendant on probation before judgment if the court finds facts justifying a finding of guilt; (2) repealing the requirement that the required written consent of the defendant to the probation before judgment occur after a determination of guilt or acceptance of a nolo contendere plea; and (3) clarifying that a court may suspend a portion or all of a sentence imposed for a probation before judgment.

MCDAA's position: This is one of the most elegant pieces of legislation this session, and it has been needed for years. Recent rulings by the US Fourth Circuit Court of Appeals have ruled that a Virginia court's finding of "Probation before Judgment" does not qualify as a "conviction" under Federal Law, whereas the same US Court has ruled that Maryland's Probation before Judgment qualifies as a conviction under federal law. This has major implications in the United States Immigration Court, which often leads to deportation. Under Maryland state law, and within Maryland, a Maryland PBJ is not treated as a conviction, however, under federal law, it is. **This legislation cures the problem in a nuanced way so that the ramifications of a PBJ in Maryland within Maryland will remain unchanged, but will have major effects under federal law, so that a Maryland PBJ will NOT be treated as a conviction in federal courts.**

For additional information or questions regarding this legislation, please contact MCDAA Government Relations Contact John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com or MCDAA legislative policy leader Erica Suter, 202.468.6640 erica@ericasuterlaw.com