



HB 354 - SUPPORT
Criminal Procedure - Probation Before Judgment - Facts Justifying a Finding of
Guilt and Suspension of Sentence
House Judiciary Committee

Dear Chair Clippinger and Members of the Judiciary Committee:

On behalf of Takoma Park Mobilization, I'm writing to SUPPORT HB 354, *Criminal Procedure - Probation Before Judgment - Facts Justifying a Finding of Guilt and Suspension of Sentence*, sponsored by Delegate Wanika Fisher.

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.

HB 354 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 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 HB 354.

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