



**Testimony for the House Judiciary Committee  
February 23, 2021**

**HB 354 – Criminal Procedure – Probation Before Judgment – Facts  
Justifying a Finding of Guilt and Suspension of Sentence**

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**FAVORABLE**

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The ACLU of Maryland supports HB 354, 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.<sup>1</sup>

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 record<sup>2</sup> as well as federal sentencing.<sup>3</sup> On the other hand, as proposed under HB 354, if a defendant does not plead guilty but the judge

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<sup>1</sup> 8 USC 1101(a)(48)(A).

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

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



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“finds facts justifying a finding of guilt,” the disposition does not constitute a conviction for federal immigration purposes.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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 HB 354.

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

<sup>5</sup> *Id.*, at n 4.

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