

SB 265 AAPI Support Letter.docx.pdf

Uploaded by: AAPI Caucus

Position: FAV



MARYLAND LEGISLATIVE ASIAN AMERICAN
AND PACIFIC ISLANDER CAUCUS
MARYLAND GENERAL ASSEMBLY

SENATOR CLARENCE K. LAM, M.D., M.P.H.
CHAIR

DELEGATE HARRY BHANDARI
FIRST VICE CHAIR

DELEGATE MARK S. CHANG
SECOND VICE CHAIR,
OUTREACH COMMITTEE CHAIR

DELEGATE DAVID MOON
SECRETARY

DELEGATE LILY QI
TREASURER

DELEGATE KUMAR P. BARVE
DELEGATE WANIKA FISHER, ESQ.
DELEGATE KRISelda VALDERRAMA

SENATOR SUSAN C. LEE,
CHAIR EMERITUS

TO: Senator William C. Smith, Jr., Chairman
Senator Jeff Waldstreicher, Vice Chairman
Judicial Proceedings Committee Members

FROM: Maryland Legislative Asian American & Pacific Islander (AAPI) Caucus

DATE: February 2, 2022

RE: SB265 Probation Before Judgment – Probation Agreements – Probation
Not Deportation

**The AAPI Caucus strongly supports SB265 – Probation Before Judgment –
Probation Agreements – Probation Not Deportation.**

This legislation is paramount to ensuring Marylanders truly have equal justice under law because current probation before judgment (PBJ) pleas have a pernicious collateral consequence that can lead to deportation under Maryland law. Fortunately, to combat this injustice, we only have to change a technical aspect of Maryland's law that declares someone guilty under federal law if they accept the plea. The law does not provide equal justice because anyone who is not a citizen, even if they are lawfully present in the county, could be banished for a non-violent offense that would lead a citizen to minor inconveniences. SB 265 finds a solution to this problem.

This bill requires judicial consent, and we understand the sponsor is willing to accept amendments from MSAA. This can be a true consensus. There are examples in other states where they have solved this problem without federal complaints. There is no need to wait for a federal fix as we can solve it here in this legislative session in Annapolis.

A PBJ for a first-time non-violent offense should not create adverse childhood experiences for children who lose a mother or father. Families are being separated for minor crimes, where someone might have a moment where they have a serious judgment lapse, like anyone of us can have. We do not punish extended families for these offenses. That is why we offer pleas, for judicial efficiency, justice and common sense. Taking someone out of a cage to only put them outside of the fence where their family is does not serve justice. Supporting SB 265 supports justice.

This is a simple fix that aligns Maryland with other states such as Virginia, New York, and Pennsylvania. This is the humane and just policy for Maryland. For these reasons, we request a favorable vote on SB265, as amended to gain the support of the prosecutors who know how

urgent this clarification is needed for their offices to better serve justice. Equal justice, under law.

AMDavis Written Testimony SB 265.pdf

Uploaded by: Andre Davis

Position: FAV

IN SUPPORT OF SB 265

To: Senate Judicial Proceedings Committee
From: Andre M. Davis, United States Circuit Judge(ret.)
Date: January 31, 2022
Re: Written Testimony in Support of Senate Bill 265

I am submitting this written testimony to offer my unequivocal support for Senate Bill 265. I served as the City Solicitor of Baltimore City from 2017 until 2020 after retiring from the United States Court of Appeals for the Fourth Circuit, where I served as Circuit Judge from 2009 until 2017. Prior to that I served as a Judge on the United States District Court for the District of Maryland, and before that as an Associate Judge on the Baltimore City Circuit Court, and the District Court of Maryland for Baltimore City. Early in my career I served as an Assistant United States Attorney in Maryland, and even earlier as an Appellate Attorney in the Civil Rights Division of the United States Department of Justice. I have also served as a professor of law at the University of Maryland Francis King Carey School of Law. Throughout my career I have encountered, litigated, and employed the Maryland Probation Before Judgment (PBJ) statute countless times both as an attorney and as a judge.

I am very familiar with the serious negative consequences that this statute, despite its intended purpose as a lesser punishment for those undeserving of a conviction, has had and continues to have on Marylanders who are not U.S. citizens. As it is interpreted under federal law, the Maryland PBJ statute has become an instrument of injustice. Accordingly, I strongly support Senate Bill 265, which would if enacted repair the profound injustice visited on some members of our statewide communities.

Equality before the law is a foundational element of the United States justice system. Maryland's current PBJ statute functions to create injustices in the form of additional, extraordinarily harsh consequences for non-citizens as compared with their citizen counterparts. PBJs occur most

frequently in a plea agreement context, in which the prosecution and the defense agree, and the judge independently finds and agrees, that the defendant should have the benefit of probationary disposition that, under Maryland law, does not constitute, and is not treated as, a conviction. While the current process works as intended for United States citizens, non-citizens, including but not limited to those going through the process of obtaining U.S. citizenship, i.e., resident aliens, often face severe additional consequences, such as detention and deportation, despite all parties agreeing that a lesser sanction will achieve the purposes of the criminal law and restorative justice, which includes rehabilitative outcomes. Such a policy offends our most deeply held American values of fairness and equality under the law. SB 265 will appropriately amend the PBJ statute in a way that is wholly consistent with Maryland law.

Indeed, in its unamended application to non-citizens, the PBJ statute is distorted by operation of federal law into a ghost of itself, entirely divorced from the remedial purposes the General Assembly clearly had in mind. In short, the modest but important amendment embodied in SB 265 is plainly necessary in order to bring our state's law into compliance with the Due Process protections that states are required to afford their residents under the United States Constitution. The current policy of allowing some individuals to suffer more dire consequences from a PBJ solely because of their immigration status flies in the face of the equality before the law that our federal and state constitutions promise.

I therefore enthusiastically support SB 265, which justly amends the Maryland PBJ statute, and respectfully urge its favorable report.

MOPD Position on SB 265.pdf

Uploaded by: Brian Zavin

Position: FAV



POSITION ON PROPOSED LEGISLATION

BILL:	SB265, Criminal Procedure – Probation Before Judgment – Probation Agreements – Probation Not Deportation
POSITION:	SUPPORT
DATE:	January 31, 2022

The Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 265. We endorse without reservation this important legislation and write to outline why the revised law is needed to correct an unintended but nevertheless consequential inequality in the law.

Through the authorization of probation before judgment (“PBJ”), the General Assembly sought to provide deserving individuals the opportunity to avoid the collateral consequences and stigma of having a conviction on their record in exchange for their completion of probation. Under § 6-220(g)(3), a defendant who receives PBJ and is discharged successfully 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.”

Notwithstanding the unambiguous language in § 6-220(g)(3), the benefits of PBJ are not conferred equally on its recipients. For purposes of federal immigration law, PBJ is tantamount to a conviction where, as is presently required by § 6-220, it is preceded by a finding of guilt or a plea of guilty or *nolo contendere*. As a result, non-citizens who receive PBJ face loss of liberty, deportation, and banishment just as if they had been convicted of a crime.

Senate Bill 265 fixes the law by ensuring that the General Assembly’s intent in authorizing the imposition of PBJ – to enable deserving 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, *nolo contendere* plea, or finding of guilt. Under the procedure authorized by Senate Bill 265, 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. If the defendant adheres to the conditions of probation, the

For further information, please contact Krystal Williams, Director, Government Relations Division, by email at krystal.williams@maryland.gov or by phone at 410-209-8682; or Brian Zavin, Chief Attorney, Appellate Division, by email at brian.zavin@maryland.gov or by phone at 410-767-8523.

court discharges the defendant, who then has neither a conviction on their record nor the equivalent of a conviction for federal immigration purposes.

Importantly, persons not eligible to receive PBJ under current law remain ineligible under Senate Bill 265.¹ By the same token, a defendant who receives PBJ where the court agrees to defer a finding of guilt is no better or worse off than a defendant who receives PBJ after a finding of guilt, guilty plea, or plea of *nolo contendere*. If the court finds that the defendant violated a condition of probation and that the violation warrants revocation, the court may enter the deferred finding of guilt and impose up to the maximum sentence for the crime. And, if the defendant successfully completes probation and is discharged, restrictions otherwise imposed by law on persons who receive PBJ will attach.²

A final point bears mentioning. Former Article 27, § 641, the predecessor to § 6-220, authorized the imposition of “probation without finding a verdict” but did not specify what a court could do in the event of a violation of probation. The omission was critical. In *Bartlett v. State*, 15 Md. App. 234 (1972), *aff’d*, 267 Md. 530 (1973), the Court of Special Appeals held that the circuit court erred when it revoked probation and imposed sentence without making a finding of guilt.

Senate Bill 265 accounts for the defect in § 641. In order for a court to impose probation before judgment, the court finds facts sufficient to support a guilty verdict but defers entering a guilty finding. In exchange, the defendant agrees that, in the event of a violation of probation, the court may enter a finding of guilt and impose sentence based on that finding. The court thus derives the authority to sentence from the deferred finding of guilt entered with the previously-obtained consent of the defendant.

The current statute authorizing PBJ has failed to carry out the Legislature’s intent of removing conviction-related barriers to defendants who have shown the capacity for rehabilitation. Senate Bill 265 is a carefully-tailored corrective measure. It confers no special benefit on recipients of PBJ with a deferred finding of guilt; instead, it remedies the fact that non-citizens who receive PBJ under current law are not treated the same as citizens who receive PBJ.

For the above reasons, the Office of the Public Defender urges a favorable report on the Bill.

¹ See § 6-220(d) (listing crimes for which PBJ may not be ordered).

² See, e.g., Crim. Proc. Art. § 11-702; Educ. Art. § 9.5-414; Public Safety Art., § 5-101.

OAG_Support

Uploaded by: Carrie Williams

Position: FAV



State of Maryland
Office of the Attorney General

Monday, January 31, 2022

TO: The Honorable William C. Smith, Jr., Chair, Judicial Proceedings
Committee

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Support with Amendments for SB 265

The Attorney General urges the Judicial Proceedings Committee to report favorably with amendments on Senate Bill 265. Senate Bill 265 will help avoid devastating immigration consequences for people who commit minor crimes.

Senate Bill 265 creates a probation before judgment disposition that allows a judge to find facts sufficient to support a guilty finding but defer entry of that guilty finding in lieu of probation. Because it avoids any admission of guilt by the defendant, and any finding of guilt by the court, it is not considered a "conviction" for purposes of federal immigration law.

Immigration advocates and prosecutors worked together on the proposed amendments to Senate Bill 265 to ensure that the newly created "deferred facts" form of probation before judgment would be procedurally sound and subject to the same collateral consequences and limitations as the form of probation before judgment that already exists in the law.

Thanks to the hard work of these stakeholders, Senate Bill 265 as amended will allow defendants to avoid the devastating consequence of deportation while still protecting public safety and holding defendants accountable. The Attorney General urges a favorable report for Senate Bill 265.

cc: Members of the Committee

SB 265_CAIR Coalition 1.31.2022.pdf

Uploaded by: Emily Johanson

Position: FAV



Fighting for equal justice for all immigrants
at risk of detention and deportation

www.caircoalition.org

1 N. Charles Street, Suite 2305 T 202 / 331.3320
Baltimore, MD 21201 F 202 / 331.3341

IN SUPPORT OF SB 265

To: Senate Judicial Proceedings Committee

From: Capital Area Immigrants' Rights (CAIR) Coalition

Date: January 31, 2022

Re: Written Testimony in support of Senate Bill 265, Probation Not Deportation

The Capital Area Immigrants' Rights (CAIR) Coalition—the only non-profit organization in Maryland with a legal services program focused exclusively on assisting detained immigrants—urges the Maryland legislature to vote in favor of SB 265 and amend the Maryland Probation Before Judgment (PBJ) statute so that this disposition in state criminal court will no longer be considered a conviction under federal immigration law. The passage of this bill would significantly benefit the state of Maryland by reducing the state's detained immigrant population and reforming a judicial mechanism that disproportionately harms Black and brown immigrants in the state.

Each year, the U.S. government detains nearly 500,000 immigrants.¹ It operates more than 200 immigration detention centers, which hold a daily average of over 50,000 people.²

At any given time, approximately 1,600 adults are detained by Immigration and Customs Enforcement (ICE) in DC, Maryland, and Virginia.³ Immigration detention is a form of

¹ Immigration Detention 101, Detention Watch Network, <https://www.detentionwatchnetwork.org/issues/detention-101>.

² Rachel Trafford & Peter Markham, *Immigration Detention: The Mental Health Impacts*, MAD IN AMERICA (Nov. 19, 2020), <https://www.madinamerica.com/2020/11/immigration-detention-mental-health/>.

³ Detained Adult Program, Cap. Area Immigrants' Rts. Coal., <https://www.caircoalition.org/what-we-do/detained-adult-program>.



Fighting for equal justice for all immigrants
at risk of detention and deportation

www.caircoalition.org

1 N. Charles Street, Suite 2305 T 202 / 331.3320
Baltimore, MD 21201 F 202 / 331.3341

systematized, often lethal⁴ cruelty that physically and mentally traumatizes immigrants.⁵ This cruelty has only worsened and expanded its reach during the COVID-19 pandemic, as ICE has deported COVID-infected immigrants to other countries,⁶ contributed to COVID-19 outbreaks in U.S. communities,⁷ and facilitated the COVID-related deaths of detained immigrants.⁸ Detention centers in Maryland and Virginia have seen multiple major COVID-19 outbreaks.⁹

SB 265 will ease the horrific impact of immigration detention during the COVID-19 pandemic and beyond by reducing the number of Maryland immigrants detained by ICE after receiving a Maryland PBJ. Of CAIR Coalition clients or potential clients who received Maryland PBJs, at least 53% were detained by ICE after time spent in criminal custody, at a probation office, or after leaving court.¹⁰ Amending the PBJ statute would reduce the number of Maryland immigrants who are detained because their PBJ is a conviction under federal immigration law. By granting power to prosecutors and judges to impose a more equitable PBJ disposition for

⁴ Deaths at Adult Detention Centers, American Immigration Lawyers Association, <https://www.aila.org/infonet/deaths-at-adult-detention-centers>.

⁵ César Cuauhtémoc García Hernández, *Abolish Immigration Prisons*, NY TIMES (Dec. 2, 2019), <https://www.nytimes.com/2019/12/02/opinion/immigration-detention-prison.html>.

⁶ Human Rights Watch, *US: Suspend Deportations During Pandemic*, HUMAN RIGHTS WATCH, (June 4, 2020, 9:00 AM), <https://www.hrw.org/news/2020/06/04/us-suspend-deportations-during-pandemic>.

⁷ Stephen Stock, *COVID-19 Outbreaks May Arise From Immigrant Detention Centers, Doctors Say*, NBC BAY AREA, <https://www.nbcbayarea.com/investigations/covid-19-outbreaks-may-arise-from-immigrant-detention-centers-doctors-say/2289775/>.

⁸ Caroline Lee, *COVID-19 deaths in ICE detention demand medical action now*, THE HILL (June 4, 2020, 7:30 PM), <https://thehill.com/opinion/immigration/501261-covid-19-deaths-in-ice-detention-demand-medical-action-now>.

⁹ Dean Mirshahi, *Amid Major COVID-19 Outbreak, Judge Blocks Transfers Into ICE Detention Center In Farmville*, ABC 8 News, (Aug. 11, 2020, 12:12 PM), <https://www.wric.com/news/virginia-news/cdc-team-begins-work-to-address-covid-19-outbreak-at-ice-detention-center-in-farmville/>; Brad Petrishen, *Worcester County jail on modified lockdown: Uptick in COVID-19 cases prompts facilities to limit inmate movements*, TELEGRAM & GAZETTE (Jan. 4, 2021, 8:20 PM), <https://www.telegram.com/story/news/courts/2021/01/04/worcester-county-jail-modified-lockdown-after-uptick-covid-19-cases/4134940001/>.

¹⁰ Internal CAIR Coalition data.



*Fighting for equal justice for all immigrants
at risk of detention and deportation*

www.caircoalition.org

1 N. Charles Street, Suite 2305 T 202 / 331.3320
Baltimore, MD 21201 F 202 / 331.3341

noncitizen Marylanders, Probation Not Deportation will ensure that more Maryland residents can remain healthy, safe, and free from the harmful confines of immigration detention.

Furthermore, Probation Not Deportation will help protect Black and brown immigrants disproportionately harmed by the U.S. criminal legal system. The U.S. criminal legal system has long served as a direct funnel to the immigration legal system. Black and brown immigrants are more likely to have encounters with law enforcement and to be charged and prosecuted for crimes which lead to deportation.¹¹ While in custody, black immigrants are six times more likely to be sent to solitary confinement and are more likely to lose their legal cases for immigration relief.¹² Black and brown immigrants are more likely to be deported because of the prevalence of racial profiling and discriminatory policing in the United States.¹³ Of CAIR Coalition clients or potential clients who received Maryland PBJs, 99% were Black or brown.¹⁴ The passage of Probation Not Deportation will help protect Black and brown noncitizen Marylanders from disproportionate detention and deportation because a Maryland PBJ would no longer be a conviction under federal immigration law.

Finally, though the Biden administration is now working to undo many of President Trump's harmful immigration policies, this is an enormous undertaking that will last several

¹¹ UndocuBlack Network and Cap. Area Immigrants' Rts. Coal., Fact Toolkit, <https://www.caircoalition.org/sites/default/files/5KforJustice%20-%20Toolkit%20FULL%20LINKS.pdf>.

¹² *Id.*

¹³ The discriminatory and broken criminal justice system has cascading immigration consequences, IMMIGRANT JUSTICE NETWORK & NATIONAL IMMIGRANT JUSTICE CENTER, https://www.ilrc.org/sites/default/files/resources/criminal_racial_justice_background_final1.pdf.

¹⁴ Internal CAIR Coalition data.



*Fighting for equal justice for all immigrants
at risk of detention and deportation*

www.caircoalition.org

1 N. Charles Street, Suite 2305 T 202 / 331.3320
Baltimore, MD 21201 F 202 / 331.3341

years.¹⁵ In addition, the immigration consequences of a PBJ disposition cannot be addressed by the federal executive branch alone. The definition of a conviction under federal immigration law is codified in the Immigration and Nationality Act.¹⁶ It would therefore require an Act of Congress to change this definition at the federal level so that Maryland's existing PBJ disposition would no longer be considered a conviction under federal immigration law. Considering the elusive nature of congressional consensus, state legislatures are uniquely equipped to take action in defense of immigrant communities. This bill is a nimble and effective adjustment that the Maryland Legislature can make to its criminal procedure to protect noncitizens.

For the foregoing reasons, the CAIR Coalition strongly urges the passage of this bill. Please do not hesitate to contact me with any questions about this bill or for further discussion.

Emily J. Johanson, Esq.
Immigrant Justice Corps Fellow
CAIR Coalition
1 N. Charles Street, Suite 2305
Baltimore, MD 21201
(202) 998-3110
emily.johanson@caircoalition.org

¹⁵ Editorial Board, *Trump's Overhaul of Immigration is Worse Than You Think*, NY TIMES (Oct. 10, 2020), <https://www.nytimes.com/2020/10/10/opinion/sunday/trump-immigration-child-separations.html>.

¹⁶ 8 USC 1101(a)(48)(A).

Testimony_G Quercia Kahrl_Maryland Immigration Cli

Uploaded by: Gabriela Kahrl

Position: FAV

CLINICAL LAW PROGRAM

IN SUPPORT OF SB 265

To: House Judiciary Committee
From: Gabriela Kahrl on behalf of the Maryland Carey Law Immigration Clinic
Date: January 31, 2022
Re: Written Testimony in Support of SB 265

We urge a favorable report on SB 265, 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 265 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 265 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 265 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

⁴ This 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 265 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

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, 2021, 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 265.

SB 265_jacoblichtenbaum_fav.pdf

Uploaded by: Jacob Lichtenbaum

Position: FAV



SUPPORT SB 265

January 28, 2022

Jacob Lichtenbaum, Staff Attorney
CASA de Maryland
8151 15th Avenue
Hyattsville, MD 20783

Good Afternoon Chairman and Committee Members,

My name is Jacob Lichtenbaum, and I am a Staff Attorney at CASA de Maryland. CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 90,000 members in Maryland alone.

On behalf of our members, CASA urges a favorable report for Senate Bill 265.

We stand in support of this bill because our members are routinely harmed by Probation Before Judgement (“PBJ”) dispositions as the Maryland PBJ statute is currently structured.

Under Maryland state law, a court may stay the entering of a judgment, defer further proceedings, and place a defendant on probation when a defendant pleads guilty, *nolo contendere*, or is found guilty. Md. Code. Ann., Crim. Proc § 6-220(b)(1). Once the defendant’s probationary requirements have been completed, the court “shall discharge the defendant from probation.” *Id.* at (g)(1). This is a final disposition and a defendant is then discharged without “judgement of a conviction.” *Id.* at (g)(2) and (3).

PBJ avoids saddling a criminal defendant with a guilty disposition, which can incur a host of negative downstream consequences including limited employment opportunities, lack of access to education, and other significant burdens. The criminal defense community appreciates PBJ because it helps clients avoid guilty convictions if probation and other requirements are completed. Md. Code. Ann., Crim. Proc § 6-220.

When a defendant chooses to plead guilty, *nolo contendere*, or is found guilty, a court may impose probation on the defendant subject to reasonable conditions. *Id.* at (b)(1). Upon completing that probation, that defendant would not have a guilty conviction on their record. *Id.* at (g)(3). However, the federal immigration system views PBJ differently, deeming it a guilty disposition for purposes of federal immigration law. According to the Immigration

and Nationality Act, a conviction is “a formal judgment of guilt of the [noncitizen] entered by a court or, if adjudication of guilt has been withheld, where – (i) a judge or jury has found the [noncitizen] guilty or the [noncitizen] has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt.” INA § 101(a)(48)(A), 8 U.S.C. § 1101(a)(48)(A). A Maryland PBJ thus constitutes a conviction under federal immigration law and can lead to devastating immigration consequences like detention, deportation, and loss of status.

There are various ways Maryland PBJ directly affects our work providing immigration services at a non-profit that works with low-income immigrants. The fact that Maryland PBJ is a conviction for federal immigration purposes affects CASA’s Deferred Action for Childhood Arrivals (“DACA”) clients, clients applying for citizenship, and CASA’s undocumented clients.

I want to describe briefly DACA’s requirements in order to show how important this amendment is to DACA recipients. To qualify for DACA, a person must demonstrate that they: (a) were under age 31 on June 15, 2012; (b) entered the US before turning 16; (c) have been in the US continuously since June 15, 2012 and while applying for DACA; (d) had no lawful status on June 15, 2012; (e) are currently in school, completed high school, have obtained a GED, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the US; and (f) “[h]ave not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.” See DACA Frequently Asked Questions available at <https://www.uscis.gov/archive/frequently-asked-questions>.

Clearly, the final section outlining disqualifying convictions is where DACA recipients are directly impacted by a PBJ. I have some examples I would like to share.

In 2018, Ryan was charged with First Degree Assault, which was subsequently amended to Second Degree Assault. The Second Degree Assault charge was *nolle prosequi* and Ryan pled to Disorderly Conduct, for which he received Probation Before Judgement. By giving Ryan Probation Before Judgement, the judge was likely sparing Ryan—only nineteen at the time—from receiving a criminal conviction upon the completion of his probation. However, in the eyes of the immigration system, Ryan has been convicted of Disorderly Conduct. Ryan will have to live with this guilty disposition—which could strip him of his DACA status—for the rest of his life.

Maricruz is another DACA recipient negatively affected by the current structure of Maryland PBJ. She is a divorced mother and the sole provider for three young US citizen children. She owns her own business and attends Baltimore University, where she is studying philosophy, law and ethics. Once she finishes her degree, she hopes to attend law school. Maricruz is a pillar of her community who volunteers with CASA, the Latino Racial Justice Circle, and the Latino Providers Network in Baltimore City. Maricruz’s only interaction with the criminal legal system was in 2014, when she was charged with Driving Without a License. She received Probation Before Judgement for that charge and hasn’t a criminal contact since. According to federal immigration law, however, she has been found guilty of a crime because of the way MD PBJ is currently structured.

Ryan, who is now only twenty-two, and Maricruz, who is supporting her family and trying to make a difference in her community, could be at grave risk if they lose their DACA status. The Biden administration has taken steps to protect DACA-mented individuals, but it has shown no immediate intention to change the INA's definition of "conviction." Therefore, the risk of adverse immigration consequences for immigrants with a Maryland PBJ disposition is ever-present. For immigrants like Ryan and Maricruz, these dispositions can lead to loss of status, detention, and deportation, contrary to the state's and judge's likely intent. Even though Ryan and Maricruz received PBJ, and were not convicted of an offense under state law, due to the current structure of the PBJ statute, federal immigration officials view them as having a conviction.

Probation Before Judgment is a vital tool of the criminal legal system that offers people the chance to have "clean" records and avoid the collateral consequences often associated with criminal convictions. The minor, but significant, changes to the statute presented in Senate Bill 265 will allow noncitizens to benefit in the same way that citizens do from this law. DACA recipients like Ryan and Maricruz, along with many other immigrants, are already facing a myriad of hurdles in the US. There should be no additional reason for them to live in the shadows.

CASA stands in favor of Senate Bill 265 and urges a favorable report.



SB 265_jpr_Janice Alonzo_fav.pdf

Uploaded by: Janice Alonzo

Position: FAV

In Support of Senate Bill 265

Written Testimony submitted by Janice Alonzo

January 31, 2022

My name is Janice Alonzo, and I am a senior academic advisor/adjunct faculty at the Community College of Baltimore County. I am also a doctoral student at Morgan State University working on my dissertation for a degree in Community College Leadership. My bachelor's degree is in Anthropology with a Spanish minor from Ithaca College (NY), and my master's degree is in International Affairs from Florida State University. My experience in higher education has spanned more than twenty years at three different institutions. I am fluent in Spanish and have working knowledge of a few other languages; I have also traveled to over twenty countries and spent a semester in Madrid, Spain in college. I am a U.S. citizen who was born in Syracuse, NY, and I have lived in three different states.

I am submitting this testimony in support of Senate Bill (SB) 265 because it needs to get passed so that everyone who has a PBJ is not deported. A close family member who has DACA received a DUI in 2020. After he went to court, his charge was a PBJ. He completed alcohol counseling classes even before his court hearing and is working on paying the fine incurred by the court. He made a mistake that night in 2020 but has taken full responsibility for what happened. This family member is married and has a small child; he also owns his own business, owns his own house, and pays taxes loyally every year. His child is the most important thing in his life, and every day we worry that this PBJ could lead to deportation and not seeing his child grow up every day. He takes his child to sports activities, indoor playgrounds, and more, and his child loves his daddy.

This family member and the rest of our family treat every day as special in case his days in the U.S. are limited. We have cried and are very worried about the fact that this family member could be sent back home because of this one-night mistake. What happened almost a year and a half ago was a wake-up call for him, and things truly got better for all of us after he realized what he had done. The fact that a PBJ could break apart this family and cause a little boy to lose his father has been very stressful and heart wrenching for all of us. The family could also lose their home, as he is the main income source for the family. His employees could also lose their jobs since they work for his company. This family member has been in the U.S. for seventeen years, and this is the only incident on his record. It would be unjust for our family to suffer unnecessarily because of a PBJ on this person's record. I am pleading to our elected officials that SB 265 is passed so that no family is affected by a PBJ and so that no one is subject to deportation because of having a PBJ on their record.

SB265_CAN_fav.pdf

Uploaded by: Jerry Kickenson

Position: FAV



faith. love. liberation.
fe. amor. Liberación.

Testimony in support of SB0265

Probation Before Judgment – Probation Agreements – Probation Not Deportation

To: Hon. William Smith, Jr., Chair, Hon. Jeff Waldstreicher, Vice-chair and members of the Senate Judicial Proceedings Committee

From: Jerry Kickenson and Martha Wells, Congregation Action Network

Date: February 2, 2022

We are writing in **support of Senate Bill 0265**, Probation Before Judgment – Probation Agreements – Probation Not Deportation, on behalf of the Congregation Action Network (CAN). The Congregation Action Network is a network of faith communities in Washington, DC, and the Maryland and Virginia suburbs acting in solidarity to end detention, deportation, profiling, and criminalization of immigrants and demanding and upholding justice, dignity, safety, and family unity. With over 75 congregations and a thousand members throughout the capital area, including over 25 congregations with thousands of members in Montgomery and Prince George's counties, we live our faith in advocacy for and solidarity with our immigrant neighbors.

As people of faith committed to ending the detention and deportation of immigrants, we adhere to the sacred texts of most major faiths that call for welcoming the stranger and treating each other with love, dignity, respect, and compassion. We believe in liberation and that immigrant families should be united and free - never incarcerated.

SB265 "Probation, Not Deportation," will amend Maryland's Probation Before Judgment (PBJ) statute so that all Maryland residents, regardless of their immigration status, have access to the benefit of probation.

Right now, a Maryland PBJ is considered a conviction under federal immigration law. The proposed legislation adds an additional method that would make probation accessible to all Marylanders without risk of deportation and detention for noncitizens. This proposed amendment promotes justice, fairness, and will keep Maryland families together.

We respectfully urge you to reach a **favorable** report for SB265. It will provide the benefits of probation to all residents of Maryland facing loss of their liberty and home. It is the right and moral thing to do.

Respectfully yours,

Jerry Kickenson, Cluster Leader, Congregation Action Network (Montgomery County)

Martha Wells, Cluster Leader, Congregation Action Network (Prince Georges County)

HPP SB 265 Testimony- FINAL.pdf

Uploaded by: Jessica Emerson

Position: FAV

Testimony of the Human Trafficking Prevention Project

BILL NO: Senate Bill 265
TITLE: Probation Before Judgment – Probation Agreements – Probation Not Deportation
COMMITTEE: Judicial Proceedings
HEARING DATE: February 2, 2022
POSITION: SUPPORT

Senate Bill 265 would amend the Probation Before Judgment (PBJ) statute to include a process for entering a PBJ that would not trigger adverse immigration consequences. The Human Trafficking Prevention Project at the University of Baltimore School of Law supports this bill because it would reduce the likelihood of deportation and other immigration consequences for foreign national victims of trafficking charged with a criminal offense.

Currently, 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 that disposition may later be stricken if the defendant complies with the terms of probation, the disposition is considered a conviction under federal immigration law. This is contrary to the intent of the Maryland General Assembly, which codified the PBJ statute for use in 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.¹ 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.

An often-overlooked subset of criminal defendants are victims of human trafficking, who frequently have criminal records stemming from acts they were forced to commit by their traffickers, as well as the instability that so often precedes or follows a trafficking experience. Data recently obtained from a national survey of sex and labor trafficking survivors, both foreign-born and domestic, highlights the regularity with which victims of trafficking are criminalized, with 91% of the survivors surveyed reporting having been arrested at some point in their lives.² Of those 91%, over 40% reported being arrested over nine times or more, while 60% stated that they were arrested for a variety of crimes *other* than prostitution.³ While domestic survivors are saddled with the collateral consequences of criminal convictions such as difficulties obtaining safe housing and gainful employment, foreign national victims face the additional far more severe consequence of deportation. Allowing for some leniency in situations where a foreign national defendant is a first-time offender and/or where the crime is non-violent would allow for the possibility of connecting the victim with service providers as well as the option for them to pursue the immigration assistance they so rightly deserve.

Senate Bill 265 will reduce the risk of this harm by allowing a judge to grant a PBJ whereby the defendant would neither admit nor deny guilt while at the same time not disputing the proposed facts of the case. A PBJ by these means would not be considered a conviction under Maryland law or federal immigration law. While this bill may improve outcomes for foreign national defendants as a whole, for trafficking survivors it contains the added benefit of avoiding the likelihood that they will be deported as a direct result of a crime being committed against them, which is an inexcusable miscarriage of justice. For these reasons, the Human Trafficking Prevention Project at the University of Baltimore School of Law supports Senate Bill 265. We respectfully urge a favorable report.

¹ MD CODE ANN., Crim. Proc. § 6-220(b)(1)(i).

² National Survivor Network, *National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking* (2016), <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>.

³ *Id.*

sb 625 PBJ bill .pdf

Uploaded by: John Giannetti

Position: FAV

Maryland Criminal Defense Attorneys' Association



Md Senate – Judicial Proceedings Committee

February 2, 2022

Hearing on SB 625

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 unique 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

Judge Gossart Written Testimony SB 265 (1).pdf

Uploaded by: John Gossart

Position: FAV

IN SUPPORT OF SB 265

To: Senate Judicial Proceedings Committee
From: The Honorable John F. Gossart, Jr., Retired United States Immigration Judge
Date: January 31, 2022
Re: Written Testimony in Support of Senate Bill 265

I am submitting this written testimony to offer my unequivocal support for Senate Bill 265. 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 Judgment 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 265 and this amendment to the Maryland PBJ statute.

SB265 SDMV fav.pdf

Uploaded by: John Payne

Position: FAV



SB 265 - SUPPORT

John Payne - Liaison

Sanctuary DMV

john.howard.payne@gmail.com 202-907-5794

SB 265- SUPPORT

Probation Before Judgment – Probation Agreements – Probation Not Deportation

Senate Judicial Proceedings Committee

February 2, 2022

Dear Chair Smith and members of the Judicial Proceedings Committee,

My name is John Payne and I am a core organizer with Sanctuary DMV, which works with immigrants and immigrant communities throughout Maryland, Virginia, and DC, and I am here today to express our support on behalf for SB 265. Sanctuary DMV is an entirely volunteer organization dedicated to helping immigrants and immigrant communities build power, standing with individuals and their families during immigration proceedings, and advocating for legislation that will ensure immigrants are treated justly and with the respect they deserve.

Sanctuary DMV believes that all people residing in this country should receive equal and just treatment and that our immigrant neighbors deserve to be part of a fair justice system that does not discriminate against them or put them in danger from being separated from their friends and family. Unfortunately, we have seen over and over again that our current legal system puts unnecessary burdens on our immigrant neighbors. No one should ever face either detention or deportation due to a civil immigration defense. True equality under the law means all people, including non-citizens, should have access to the same legal system. But the current system is especially harmful to non-citizens as a conviction of simple civil offense can lead to being torn away from their family and community.

Probation Before Judgment, or PBJ, is a perfect example of this problem. 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 back into the community on probation just like a U.S. citizen would be. But this is not what happens. Instead, both undocumented individuals and green-card holders who receive PBJ in Maryland are still considered to have a conviction for federal immigration purposes. This sentence often results in the individual being taken into detention and then deported, despite the fact that a judge has determined that their offense warranted only probation. This is a shameful process within our judicial system that is neither just or fair but is most certainly cruel.

Thankfully, it will only take a small change to Maryland law to eliminate this specific disparity. SB 265 will make it possible for our non-citizen neighbors to use PBJ without the fear of detention or deportation by making sure that any conviction from PBJ would not be a conviction under both Maryland or federal immigration law. Not only will this simple change relieve a burden on our non-citizen neighbors, but it will create a more fair and just Maryland that is one step closer to true equality under a law that ensures everyone their rights and dignity.

Sanctuary DMV urges a favorable report on SB 265.

SB265 D4CC fav.pdf

Uploaded by: Kate Sugarman

Position: FAV



SB 265 – SUPPORT

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

SB 265 — SUPPORT

Probation Before Judgment – Probation Agreements – Probation Not Deportation

Senate Judicial Proceedings Committee/House Judiciary Committee

February 2, 2022

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 265 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. (Last year's passage of the Driver Privacy Act, helps regarding another minor offense that can be appropriate for a PBJ, driving without a license. However, that law does not take effect until June 1, 2022, thus immigrants may still be discouraged from getting licenses fearing ICE's continued use of MVA data to target undocumented immigrants for detention and deportation until after that bill has been in effect for some time.)

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 265 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.



SB 265 – SUPPORT

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

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.

This issue has taken on a heightened sense of urgency because of the continued pandemic. Serious illnesses and deaths due to COVID continue to rise inside the prisons and detention centers even under the Omicron variant, 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 265.

SB265-JPR-TPM-support.pdf

Uploaded by: Laura Atwood

Position: FAV



SB265 – SUPPORT

Laura Atwood

Takoma Park Mobilization

laura_a79@hotmail.com; 301-587-3876

SB265 – SUPPORT

Probation Before Judgment – Probation Agreements – Probation Not Deportation

Senate Judicial Proceedings Committee

February 2, 2022

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

My name is Laura Atwood. I have lived in Maryland since 1999, and I represent Takoma Park Mobilization, an advocacy organization with a following of over 2500 people, active in environmental, justice, economic, and electoral matters. We are in SUPPORT of SB265.

One of our organization's core values is to recognize and act on the fundamental humanity of our neighbors and community members.

And if we all look inward honestly, how many of us can say we and our loved ones have lived 100% perfect lives? Versus: How many have made (hopefully minor) mistakes, genuinely learned from them and made appropriate amends, and gotten to move forward?

The PBJ system in Maryland is fundamentally constructive for individuals and pragmatic for the judicial system. SB265 would correct a technicality that too often lets it be used against its intended spirit. As it stands, a Maryland judge has the discretion to decide whether a person should be allowed to take accountability for the offense (generally first-time, nonviolent) and fulfill any range of probation and other requirements, then move forward without a conviction that could lead to disproportionate consequences, e.g., for education, housing, or employment.

Yet severe consequences can still fall on Maryland residents who are not citizens (this includes green card holders and other longtime residents with strong community and family ties): Because of how the PBJ statute is written, PBJ counts as a conviction in federal law, and this person can be deported. As we know well, deportation is too often family separation or even a death sentence.

Please continue working toward constructive justice for Maryland residents, honor the spirit of the PBJ statute as originally passed by the Maryland state legislature, and amend this statute.

Takoma Park Mobilization urges a favorable report on SB265.

sb265_gvc_fav.pdf

Uploaded by: Leigh Goodmark

Position: FAV

IN SUPPORT OF SB 265

To: Senate Judicial Proceedings Committee
From: Gender Violence Clinic, University of Maryland Carey School of Law
Date: January 31, 2022
Re: Written Testimony in support of Senate Bill 265

The University of Maryland Carey School of Law Gender Violence Clinic unequivocally supports Senate Bill 265.

The Gender Violence Clinic represents clients with histories of and/or in matters involving intimate partner violence, rape, sexual assault, and trafficking. The Clinic has 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 strongly supports SB 265.

VSAB Support Ltr Prob Before Judg Senate 2022 SB26

Uploaded by: Leslie Frey

Position: FAV



VICTIM SERVICES ADVISORY BOARD

February 2, 2022

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

Re: Support - SB265 - Probation Before Judgment - Probation Agreements - Probation Not Deportation

Dear Chairman Smith:

Senate Bill 265 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. This bill changes the process by which a Probation Before Judgment (PBJ) is entered. Under current law, a PBJ is not considered a conviction under state law, but is considered a conviction under federal law. Senate Bill 265 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 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, and has continued to increase during the pandemic. The severity of cases has also become more critical, with increases in homicides, domestic violence, sexual violence, and more reports of strangulations. At the start of the pandemic, the Montgomery County Police also reported concerns with an increase in violence when investigating domestic violence calls as victims were forced to shelter in place with their perpetrator. (<https://wtop.com/montgomery-county>, Oct. 16, 2020)

Fear that a spouse or intimate partner will be deported 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 partners. 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 265.

Sincerely,

Kathryn Pontzer
VSAB Co-chair

Department of Health and Human Services

JVCC GVC Written Testimony SB 265.pdf

Uploaded by: Lila Meadows

Position: FAV

IN SUPPORT OF SB 265

To: Senate Judicial Proceedings Committee
From: Gender Violence Clinic & Justice for Victims of Crime Clinic, University of Maryland Carey School of Law
Date: January 31, 2022
Re: Written Testimony in Support of Senate Bill 265

The University of Maryland Carey School of Law Gender Violence Clinic & Justice for Victims of Crime Clinic unequivocally support Senate Bill 265.

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 265.

Judge Dornell Written Testimony SB 265.pdf

Uploaded by: Lisa Dornell

Position: FAV

IN SUPPORT OF SB 265

To: Senate Judicial Proceedings Committee
From: The Honorable Lisa Dornell, Retired Immigration Judge
Date: January 31, 2022
Re: Written Testimony in Support of Senate Bill 265

I am submitting this written testimony to offer my unequivocal support for Senate Bill 265. 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 265.

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.

Testimony in support of SB0265 - CAN.pdf

Uploaded by: Martha Wells

Position: FAV

Testimony in support of SB0265

Probation Before Judgment – Probation Agreements – Probation Not Deportation

To: Hon. William Smith, Jr., Chair, Hon. Jeff Waldstreicher, Vice-chair and members of the Senate Judicial Proceedings Committee

From: Martha Wells, University Park

Date: February 2, 2022

I am writing in **support of Senate Bill 0265**, Probation Before Judgment – Probation Agreements – Probation Not Deportation, on behalf of the Congregation Action Network (CAN). I am a member of the Congregation Action Network is a network of faith communities in Washington, DC, and the Maryland and Virginia suburbs acting in solidarity to end detention, deportation, profiling, and criminalization of immigrants and demanding and upholding justice, dignity, safety, and family unity. With over 75 congregations and a thousand members throughout the capital area, including over 25 congregations with thousands of members in Montgomery and Prince George's counties, we live our faith in advocacy for and solidarity with our immigrant neighbors.

As a person of faith committed to ending the detention and deportation of immigrants, I adhere to the sacred texts of most major faiths that call for welcoming the stranger and treating each other with love, dignity, respect, and compassion. I believe in liberation and that immigrant families should be united and free - never incarcerated.

SB265 "Probation, Not Deportation," will amend Maryland's Probation Before Judgment (PBJ) statute so that all Maryland residents, regardless of their immigration status, have access to the benefit of probation.

Right now, a Maryland PBJ is considered a conviction under federal immigration law. The proposed legislation adds an additional method that would make probation accessible to all Marylanders without risk of deportation and detention for noncitizens. This proposed amendment promotes justice, fairness, and will keep Maryland families together.

I respectfully urge you to reach a **favorable** report for SB265. It will provide the benefits of probation to all residents of Maryland facing loss of their liberty and home. It is the right and moral thing to do.

Respectfully yours,
Martha Wells
6813 40th Ave.
University Park, MD 20782

Maryland Carey Law Immigration Clinic_SB265_jpr_Fa

Uploaded by: Molly Albano

Position: FAV

January 31, 2022

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 “Probation, Not Deportation,” House Bill 559 and Senate Bill 265

Dear Honorable Members of the General Assembly,

We, the undersigned, urge you to support HB 559/SB 265, 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”).

There is a long history—especially for Black and brown people—of being over-policed, prosecuted, and then deported for even minor criminal contacts.¹ The criminal justice system has acted, for years, as a direct funnel to the immigration system.² 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 In 2020, 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 be persecuted.⁵ Hopes that conditions for Black immigrants

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.*

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>.

would improve under the Biden administration quickly faded as horrifying images of border agents harassing Haitian migrants at the United States-Mexico border flooded the media last fall.⁶ These and other examples of institutional racism pervade our immigration system under the administrations of Democrats and Republicans alike.⁷

HB 559/SB 265 will prevent these sorts of injustices, including 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.⁸

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,⁹ 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.¹⁰ 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.¹¹

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 PBJ¹²; the defendant would neither admit nor deny guilt and would not dispute the proposed facts of the case, and the judge would make a finding of facts sufficient to warrant guilt, and then impose probation.

⁶ Eileen Sullivan and Zolan Kanno-Youngs, *Images of Border Patrol's Treatment of Haitian Migrants Prompt Outrage*, N.Y. TIMES (Sept. 21, 2021), <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrol-photos.html>.

⁷ Borger, *supra* note 5. See also *UndocuBlack Reflects On U.S. Anti-Immigrant Brutality, Past And Present*, UNDOCUBLACK NETWORK (Oct. 5, 2021), <https://undocublack.org/press-releases/2021/10/5/undocublack-reflects-on-us-anti-immigrant-brutality-past-and-present>.

⁸ See *Highly-contagious omicron could spread quickly through crowded ICE facilities*, NPR (Jan. 2, 2021), <https://www.npr.org/2022/01/02/1069739357/highly-contagious-omicron-could-spread-quickly-through-crowded-ice-facilities>. Detainees have reported “begging for soap, for face masks, for the most basic of protections, only to be met with really brutal force and sometimes tear gas, solitary confinement and retaliation for speaking out about these conditions.” *Id.* Furthermore, “many detainees are reporting that they're having difficulty getting basic protections against COVID-19, including . . . the COVID-19 booster shot.” *Id.* See also Hector Alejandro Arzate, *People Detained at ICE Facility Allege COVID-19 Outbreak is Being Mishandled*, DCist (Jan. 13, 2022, 2:38 PM), <https://dcist.com/story/22/01/13/caroline-detention-facility-accused-mishandling-covid/>.

⁹ Md. Code Ann., Crim. Proc. § 6-220(b)(1)(i).

¹⁰ Md. Code Ann., Crim. Proc. § 6-220(b).

¹¹ *U.S. v. Medina*, 718 F.3d 364 (4th Cir. 2013).

¹² Virginia (Virginia Code § 18.2-251) and New York (NY. Crim Pro. § 170.55) have similar statutes.

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 559/SB 265. 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



Annapolis Immigration Justice Network

Marilyn J. Mosby
Baltimore City State's Attorney

Eleanor Tierney
Alderdwoman, Ward 1
Annapolis City Council



Catholic Charities of the Archdiocese of Washington

The Human Trafficking Prevention Project

Maryland Against ICE Detention

Amanda L. Indorf
Virginia Indigent Defense Commission



Capital Area Immigrants' Rights Coalitions (CAIR)

Albert Mohkiber, Attorney

Anne Arundel Immigration Affairs Commission



Luminus Network for New Americans

Smitson Law LLC

IHE Church



Hamed PLLC

**University of Maryland School of Law,
Chacón Center for Immigrant Justice**

Loan Nguyen, Attorney



Shuo Huang

**National Immigration Project of the
National Lawyers Guild (NIPNLG)**



**ROUND TABLE
of Former Immigration Judges**

**The Round Table of Former Immigration
Judges¹³**



Just Peace Circles, Inc.



MSBA Immigration Section Council



CASA



Jews United for Justice



Hutchison Immigration, LLC



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



¹³ 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.



Howard County Coalition for Immigrant Justice



REYNOLDS IMMIGRATION PLLC



Maryland Criminal Defense Attorneys' Association (MCDA)



Takoma Park Mobilization



University of Maryland School of Law, Gender Violence Clinic



Muslim Voices Coalition



Sanctuary DMV



Maryland Office of the Public Defender



Law Office of J. Lance Conklin



Tohidi Law Office



Murray Osorio PLLC



Garfinkel Immigration Law, LLC



Heritage Community Church



Progressive Maryland



Just Neighbors



Maryland Legislative Coalition



Jezic & Moyse, LLC



Beverly Clarke Legal



Congregation Action Network



PG ChangeMakers



Law Office of Eldridge, Nachtman, &
Crandell, LLC



Sanctuary Streets Baltimore

Stewart_SB265_jpr_Fav.pdf

Uploaded by: Molly Albano

Position: FAV

IN SUPPORT OF SENATE BILL 265

To: Senate Judicial Proceedings Committee
From: Dorothy Stewart
Date: January 31, 2022
Re: Written Testimony in Support of Senate Bill 265

I, Dorothy Stewart, am submitting this written testimony in support of Senate Bill 265. 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. At 19, I was eager to be of service to the United States, and 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 the Good Conduct Medal, Army Service Ribbon, Overseas Ribbon, Army Achievement Medal, and NCO Professional Development Ribbon. Alas, amongst the positive moments I also had to endure difficult times within the Army as I was sexually abused while in service. Regrettably, this led me to act uncharacteristically and resulted in a conviction for possession of a controlled substance.

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. Subsequently, my final sentence was designated as Probation Before Judgment (PBJ). My allegiance lies with the United States, my entire family is here—which includes my only daughter, Maisha Peterson—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 past conviction.

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 one conviction that has prevented me from moving forward in life. This conviction has stripped my life away from me, as my life has been defined entirely by this one charge that occurred 31 years ago. A PBJ as it is currently written does not account for first-time offenders, non-violent crimes, or a fair consequence that is disproportionate to the situation that gave rise to it. 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 requiring an admission of guilt, making my disposition a conviction under federal law, I believe 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 support Senate Bill 265, because I hope it will prevent others from having their life stripped away and allow them to move forward.

Sincerely,

Dorothy Stewart

SB0265_CC_Vaughan_FAV.pdf

Uploaded by: Regan Vaughan

Position: FAV

Senate Bill 265
Probation Before Judgment – Probation Agreements – Probation Not Deportation

Judicial Proceedings Committee
February 2, 2022

Favorable

Catholic Charities of Baltimore strongly supports SB 265 which would 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”).

Inspired by the Gospel mandates to love, serve and teach, Catholic Charities provides care and services to improve the lives of Marylanders in need. As the largest human service provider in Maryland working with tens of thousands of youth, individuals, and families each year, we recognize the inherent dignity within all including our immigrant neighbors.

SB 265 will help prevent unnecessary detention and deportation of people over minor criminal contacts.

As intended, PBJ offers individuals the ability to accept responsibility for their actions for minor offenses, while avoiding the life-altering, adverse consequences of a guilty finding. In order to receive PBJ, a person must first admit guilt, and the judge must make a finding of guilt. Under the current procedure, after a judge strikes the guilty finding, a U.S. citizen who has a PBJ can, in most all aspects of their life, indicate that they have never been “convicted” of any crime. For a noncitizen, however, despite that it might have been technically stricken from the criminal court case, a finding of guilt will continue to be considered a “conviction” for immigration purposes. This results in a stark consequential contrast where non-citizens can face deportation from the U.S. for receiving the same PBJ for which a U.S. citizen would have minimal impact.

Adopting the proposed amendments to the PBJ procedure, which include removing the necessity for an admission of guilt and a guilty finding will ensure that individuals can still receive PBJs that will not trigger adverse immigration consequences. A PBJ would then no longer be considered a conviction under Maryland law or federal immigration law. There is no risk to the public safety, as this change does not impact the state’s ability to punish a person who might violate probation. The state would retain the ability to issue a judgement against, and sentence, an individual who has violated probation.

We urge the legislature to pass SB 265. Adding this language to the Maryland Probation Before Judgment statute would help ensure equality and fair administration of the law for all Maryland residents. **On behalf of the individuals and families we work with, Catholic Charities of Baltimore appreciates your consideration of our views, and urges the committee to issue a favorable report for SB 265.**

Submitted By: Regan K. Vaughan, Director of Advocacy

SB265-FAV-Joanna Silver, JUFJ.pdf

Uploaded by: Rianna Lloyd

Position: FAV

February 2, 2022

Joanna Silver
Silver Spring, MD 20902



THINK JEWISHLY. ACT LOCALLY.

TESTIMONY ON SB265 - POSITION: FAVORABLE

Probation Before Judgment – Probation Agreements – Probation Not Deportation

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

FROM: Joanna Silver, on behalf of Jews United for Justice (JUFJ)

My name is Joanna Silver. I am a resident of Silver Spring, in District 18. I am submitting this testimony on behalf of Jews United for Justice in support of SB265, Probation Before Judgment – Probation Agreements – Probation Not Deportation. JUFJ organizes 6,000 Jews and allies from across Maryland in support of local social, racial, and economic justice campaigns.

One of the core concepts of Judaism, which we return to each year during the High Holidays, is that all people can and must engage in Teshuvah, or repentance. Through Teshuvah, Judaism recognizes that all people are capable of recognizing mistakes they've made, returning to make those mistakes right, and through that repentance, earning a second chance.

The Maryland General Assembly recognized the importance of second chances when it created a way for people to avoid the harsh consequences of a criminal conviction through a probation before judgment; an opportunity to meet certain conditions imposed by the court in exchange for the chance to start again, without a conviction on your record.

Unfortunately, noncitizens in Maryland do not get the full benefit of this second chance. Because of the way Maryland structures its probation before judgment (PBJ) disposition, a PBJ in Maryland is still considered a conviction under immigration law. Thus, one of the most significant collateral consequences of a criminal conviction - deportation - still threatens Maryland's non-citizens, even if they've complied with all of the conditions set by the court, even if they've otherwise earned their second chance.

SB265 extends the benefit of probation before judgment to noncitizens, by amending Maryland's PBJ statute. The amendment would add a new option to the current PBJ procedure so that, if the parties and the court agree, the judge can make a finding of facts sufficient to warrant guilt and impose probation and any other conditions on the noncitizen, as happens now with citizens. This minor change would bring Maryland in line with states like Virginia and New York,

which have similar statutes. More importantly, it is consistent with steps the General Assembly has previously taken to recognize that citizenship status should not prevent people in Maryland from contributing to their fullest potential; it recognizes that our state has a stake in keeping immigrant families intact and thriving.

As a former practitioner in Maryland's criminal courts, I also know that having this option available can benefit not only defendants, but also the state and any victims, as well as further the interest of judicial efficiency. Having an additional way to resolve a criminal charge and allow a defendant to make amends and engage in rehabilitation benefits everyone.

Second chances for everyone, regardless of citizenship status, benefit all of us. On behalf of Jews United for Justice, I urge a favorable report on SB265.

SB265 MDAID fav.pdf

Uploaded by: Susaanti Follingstad

Position: FAV



SB 265 - SUPPORT
Susaanti Follingstad
Maryland Against ICE Detention
sfolling@verizon.net 301-251-0139

SB 265 - SUPPORT

Probation Before Judgment – Probation Agreements – Probation Not Deportation

Senate Judicial Proceedings Committee/House Judiciary Committee

February 2, 2022

Dear Chair Smith and Members of the Judicial Proceedings Committee:

As a Maryland resident for 47 years and on behalf of Maryland Against ICE Detention (MDAID), I adamantly support SB 265 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 265 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. (Last year's passage of the Driver Privacy Act, helps regarding another minor offense that can be appropriate for a PBJ, driving without a license. However, that law does not take effect until June 1, 2022, thus immigrants may still be discouraged from getting licenses fearing ICE's continued use of MVA data to target undocumented immigrants for detention and deportation until after that bill has been in effect for some time.)

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 265 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 265.

SB265_jpr_fav.pdf

Uploaded by: Susan Lee

Position: FAV

SUSAN C. LEE
Legislative District 16
Montgomery County

MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

Chair

Maryland Legislative Asian American
and Pacific Islander Caucus

President Emeritus

Women Legislators of the
Maryland General Assembly, Inc.



James Senate Office Building
11 Bladen Street, Room 223
Annapolis, Maryland 21401
410-841-3124 · 301-858-3124
800-492-7122 Ext. 3124
Susan.Lee@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 2, 2022

Sponsor Testimony - FAVORABLE - SB 265 – Probation Not Deportation

Senate Bill 265 is a more nuanced version of a bill that passed the Senate in 2020, but failed to pass the House because of technical concerns that we have since resolved. This legislation is essential for us to respect and honor the sacred words on lawyer's mall, "equal justice under law." A determination of a "finding of guilt" in state law needlessly creates an extreme collateral consequence to non-citizens under federal immigration law, even when lawfully present, with children, or military distinction.

These circumstances arise when a Maryland defendant enters into an agreement of probation before judgment or PBJ, but ends up a prisoner to their own plea. This may be due to a variety of possibilities such as lack of adequate counsel, or the prosecutors not understanding the future consequences under federal law. More likely, the defendant doesn't have a choice because a plea has become common cause in our judicial system for first time offenses, and if you don't accept it, you face much worse penalties when you go to trial. This is a harsh and unintended result of Maryland law that can be changed without more than a law update in Maryland that reflects decisions neighboring states have made to ensure this injustice does not continue to occur. I believe this to be an extreme and harsh consequence and not one which we should allow to remain a possibility for non-violent first time offenses. The pain to families can last a lifetime. That is not probation.

Probation before judgment was thought a means to balance the best interest of both the public and defendant yet alleviate the implication of a finding of guilt for first time offenders. It enables the defendant to learn, take responsibility for a first time mistake, have the opportunity to lead a productive life, and give back to the community without facing the lifelong consequences of a criminal conviction. In Maryland, a PBJ is not considered a conviction for state purposes, however, under federal immigration law, it is

considered a conviction, resulting in a legal conditional resident, legal permanent resident, or a noncitizen being subject to deportation once a PBJ is issued. This has happened when the individual has served with distinction in the US Armed Forces, has been a model employee, small business owner, or community leader, or is the sole breadwinner for their family, and never again committed an offense. Probation before judgment is not supposed to be a finding of guilt by the plain reading of the term of art.

The General Assembly created probation before judgment for the same reason I offer this bill. There are reasons to treat first time offenders in a manner that does not brand them for life nor begin a domino effect that ends in their- and potentially their family's- deportation. Even if whole families are not dislocated, usually the breadwinner is banished from the country and unable to earn enough abroad to support their family.

This bill is largely a technical fix to achieve justice with a policy that aligns Maryland with other states such as Virginia, New York, and Pennsylvania. This is the humane and just policy when you consider the harms we seek to avoid, and the equal treatment this policy intends to create, so all parties can achieve justice under from our state laws. I have requested an amendment in alignment with the Maryland State's Attorney's Association recommendations to win their support. I truly appreciate everyone's good faith efforts to find a solution, and a special thanks to members of the MSAA and the OAG, that guided the sponsor and advocates around many potential pitfalls. This is a thoughtful bill to correct a thoughtless cruelty under existing state law. We still seek to align all technical violations with the achievements of the JRA. We look forward to continue to fine-tune this bill and will circulate potential amendments widely to ensure we have sound technical fixes.

To highlight some individuals who have suffered harm with the status quo, please consider Dorothy Stewart, who came to the United States as a legal permanent resident with her mother at 10 years old. She enlisted in the U.S. Army at 19 years old and faithfully served for 7 years, after completing active duty tours in Korea and Germany. She was honored with the Good Conduct Medal, Army Service Ribbon, Overseas Ribbon, Army Achievement Medal, and NCO Professional Development Ribbon. Towards the end of her service, she was sexually assaulted. To cope with the trauma, she started to use drugs and ended up with a PBJ for a conviction that made her deportable and prevented her from becoming a U.S. citizen.

People like Dorothy deserve justice in Maryland. In Dorothy Stewart's own words: *Today, I am 61 years old, and still eager to become a citizen of the United States. It has been frustrating and extremely disheartening to live with this PBJ that has prevented me from moving forward in life. It has stripped my life away from me, as my life has been defined entirely by this one charge that occurred 31 years ago. A PBJ as it is currently written does not account for first-time offenders, non-violent crimes, or a fair consequence that is disproportionate to the situation that gave rise to it.*

For these reasons, I request a favorable vote on SB265.

AIJN PBJ 2022.docx - Google Docs.pdf

Uploaded by: Suzanne Martin

Position: FAV

January 31, 2022

Suzanne Martin
118 Maple Drive, Annapolis, MD 21403
suzanne.martin@aijnetwork.org (443) 223-6810

TESTIMONY IN SUPPORT OF SB265
In Support of “Probation, Not Deportation”, Senate Bill 265/House Bill TBD

TO: Maryland General Assembly

Senate
Miller Senate Office Building
11 Bladen St.
Annapolis, Maryland

House of Delegates
House Office Building
6 Bladen St.
Annapolis, Maryland

From Suzanne Martin

My name is Suzanne Martin and I have lived in Annapolis, Maryland for 18 years in District #30A. I am the founder and Executive Director of the Annapolis Immigration Justice Network (AIJN)- a grass roots 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 400 residents in Anne Arundel County. Since mid-2018, we have provided financial assistance totaling over \$245,000 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 SB265. I believe it will help keep families together in Anne Arundel county while still providing an additional tool for accountability.

SB265 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. SB265 will simply bring PBJ in line with the Maryland Legislature’s original intention. For these reasons, I fully support SB265 on behalf of AIJN.

SB 265 Probation not Deportation - MFRW OPPOSED fi

Uploaded by: Ella Ennis

Position: UNF



Ella Ennis, Legislative Chairman
Maryland Federation of Republican Women
PO Box 6040, Annapolis MD 21401
Email: eee437@comcast.net

Senator William J. Smith, Jr. Chairman
and Members of the Judicial Proceedings Committee
Senate of Maryland
Annapolis, Maryland

RE: **SB 0265** Probation not Deportation – **OPPOSED**

Dear Chairman Smith and Members,

The Maryland Federation of Republican Women opposes SB 0265. Under federal law, probation before judgement is grounds for the deportation of illegal immigrants. This bill is specifically designed to circumvent that law. HB 0265 authorizes the Court to withhold making a formal judgement for the express purpose of avoiding the possibility of deportation of the guilty party.

It would allow the Court to make findings of fact sufficient to support a guilty verdict but, instead of making a formal determination, allow the defendant to sign a probation agreement that the guilty finding and maximum sentence would be imposed if the defendant violates the agreement.

An illegal immigrant in such a case has already violated the laws of the United States by entering the country illegally. Then, the illegal immigrant committed a crime while present in Maryland.

How many crimes do we allow an illegal immigrant to commit before deportation is deemed appropriate? Do we continue to prevent the deportation of an illegal immigrant when they commit a 3rd crime? Perhaps a more serious crime than the earlier one?

When do we enforce the laws of our country? Where is the commitment to the safety of American citizens and legal immigrants?

Please give SB 0265 an **UNFAVORABLE** report.

Sincerely,

Ella Ennis
Legislative Chairman
Maryland Federation of Republican Women

sb265.pdf

Uploaded by: Sara Elalamy

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
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 265
Probation Before Judgment – Probation Agreements – Probation
Not Deportation
DATE: January 19, 2022
(2/2)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 265. This bill authorizes a 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.

The amendments to Criminal Procedure §6-220 of the bill are confusing and are 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.

The bill is contradictory and also raises constitutional concerns. If the bill would allow the court to find facts justifying a finding of guilt without requiring a trial—which is unclear in the bill—it raises significant due process problems. This was echoed in the Attorney General’s letter dated March 9, 2021 which states “although the bill and amendments are not clearly unconstitutional, they appear to raise due process and enforcement concerns.” The standard of proof at a violation of probation proceeding is a civil standard – preponderance of the evidence. It is difficult to understand how an individual could be found guilty of the underlying offense at a violation of probation proceeding, which only requires proof by a preponderance of evidence, when there has never been a judicial finding that the individual is guilty beyond a reasonable doubt as is required by constitutional standards. Given that an individual’s liberty is at stake at a violation of probation proceeding, the “due process” concerns are significant. Finding the defendant guilty of the underlying crime following a probation violation is mixing things up. Moreover, the attempt to address an issue at the federal level by means of a statutory change at the state level is problematic at best.

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

SB 265_sp_unf.pdf

Uploaded by: Sarah Reichert-Price

Position: UNF

The Honorable William C. Smith, Chair
and Members of the Senate Judicial Committee
Maryland Senate
Annapolis, MD

RE: SB 265- Immigration- Probation NOT Deportation- UNFAVORABLE

Dear Chair Smith and Members of the Committee,

SB 265 Avoids a formal finding of guilt and prohibits an illegal immigrant from receiving a formal sentence or Probation Before Judgement which is grounds for deportation. The Supreme Court has ruled that deportation is not a punishment but rather a civil administrative procedure whereby an illegal alien is returned to their homeland.

Additionally, SB 265 holds the offender to (basically) no accountability. Probation is too easily breeched and locating said offender utilizes valuable time and more taxpayer money to, likely, no avail.

For these reasons, I ask that you vote for an Unfavorable Report for SB 265- Immigration- Probation NOT Deportation

Thank you for your time,

Sarah Price (ACRWC)
221 Miller Street
Westernport, MD 21562