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Judiciary Committee



The Maryland House of Delegates
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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

February 15, 2022

Honorable Chairman, Luke Clippinger
Vice-Chair, David Moon
Members of the Judiciary Committee

Re: HB 559 - Probation Before Judgment - Probation Agreements - Probation Not Deportation

I am pleased to reintroduce H.B. 559, formerly H.B. 354. The Maryland Probation before Judgment (PBJ) statute allows an individual to be placed on probation, temporarily suspended from judgment and proceedings, if he or she has pleaded guilty/ nolo contendere, or been found guilty. A defendant who consents to and receives probation before judgment accepts a basic statement of facts and waives the right to appeal at any time from the judgment of guilt. Upon violation of a condition of probation, the court may enter judgment and proceed as if the defendant had not been placed on probation. While probation before judgment is not considered a conviction under Maryland law, it is considered a conviction under federal immigration law, U.S. Code INA 1101(a) 48 ([hyperlink](#)). Under this federal statute, USCIS may use any statement of facts established in a state adjudicated case for immigration cases for a finding. Essentially, ICE can take the proffer of facts to use in federal court, subjecting people with pending immigration status to ultimately harsher punishments due to taking a PBJ.

This may result in detention, disqualification from defense to deportation, or deportation. Although Pursuant to Maryland Rule 4-242, the court must notify a defendant of the consequences of consenting to and receiving probation before judgment, the omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid, Code, Criminal Procedure Article, § 11701 ([hyperlink](#)).

The proposed provision will: (1) allow judges to provide a PBJ decision if the court finds facts justifying a finding of guilt, and (2) provide consistent language between Maryland Criminal Law and federal immigration law. H.B. 559 is not an impediment to the PBJ process or judges' responsibilities but an opportunity for people to avoid harsh federal convictions for immigration purposes.

Please join me in protecting vulnerable populations and keeping families together.

I ask the committee to please give a **favorable** report on House Bill 559.

Sincerely,

Wanika B. Fisher

Wanika B. Fisher Esq.

Maryland State Delegate – District 47B