

Maryland Criminal Defense Attorneys' Association



Md House of Delegates – Judiciary Committee

February 7, 2023

Hearing on HB 193

Delegate Moon – Probation Agreements

MCDAA POSITION: SUPPORT

Brief bill explanation: This bill authorizes a court to make findings sufficient to support a finding of guilt and impose probation; in the event of a violation of probation, it can enter a finding of guilt and impose a sentence. When the court finds facts justifying a finding of guilt, the court may enter into a probation agreement with the defendant.

MCDAA's position: This is a straightforward approach to repair an unintended consequence of Maryland's unique Probation Before Judgment law. Currently, federal law treats a Maryland defendant's Probation Before Judgment as a conviction under certain federal statutes (such as immigration laws), even though it is NOT considered a conviction under Maryland law. Other states with PBJ treatment, such as Virginia, have corrected their laws by legislation. 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, which oftentimes was not an intended outcome. 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 a court can enter into a Probation Agreement, avoiding the conviction result (as the PBJ does currently), but the resulting probation treatment will not be viewed the same way by federal courts, so that a probation agreement under HB193 will NOT be treated as a conviction under federal law.

For additional information or questions regarding this legislation, please contact MCDAA Government Relations Contact John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com