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POSITION ON PROPOSED LEGISLATION

BILL: HB 940 Criminal Procedure – Probation Before Judgment –

Defendants Diagnosed With Autism or Intellectual Disabilities

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 2/12/2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on HB940

Intellectual Disabilities and Autism Spectrum Disorder are both classified by the DSM-5-TR as Neurodevelopmental Disorders although they do have very different diagnostic criteria. Intellectual Disabilities are defined by significant impairments in adaptive functioning, in other words the abilities necessary to complete everyday tasks required to care for oneself and interact in society. The hallmark features of all intellectual disabilities include deficits in the areas of reasoning, problem solving, planning, abstract thinking, judgement, and in learning from past experiences.¹ Autism is a spectrum disorder which includes people who are “high functioning” and need little, if any support to function independently, and others who require substantial levels of support. It is mainly characterized by deficits in communication and ability to understand social interactions, adherence to routines, and difficulties adapting to quickly changing situations.² Many people with Intellectual Disabilities or Autism can achieve some level of independence with appropriate training, support, and services; likewise in the legal context they are also found competent to stand trial.³ Nevertheless a person with Autism or an Intellectual Disability will still experience very real and

¹ DSM-5-TR, Section II: Neurodevelopmental Disorders, Intellectual Disability.

² DSM-5-TR, Section II: Neurodevelopmental Disorders, Autism Spectrum Disorder.

³ It should be noted at the outset that people who are not able to understand court proceedings or assist in their defense are not competent to stand trial (and therefore can not be tried, convicted, or sentenced unless and until they become competent. Criminal Procedure Article §3-101(f).

serious impairments which make it difficult for them to assist in their defense and understand the trial proceedings as they are happening. These deficits often are misinterpreted as a lack of remorse, rather than a lack of ability to understand which can have profound impacts on sentencing.

In the words of the U.S. Supreme Court, people with Intellectual Disabilities “frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. There is no evidence that they are more likely to engage in criminal conduct than others, but there is abundant evidence that they often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders. Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability.”⁴

HB940 recognizes this diminished personal culpability by allowing that people with intellectual disabilities to receive a Probation Before Judgment sentence if they can prove that the conduct was both a manifestation of their disability, and that it is in the interest of public safety, justice, and the Defendant to grant the Probation Before Judgment. This will act as a way of diverting people with Autism and Intellectual Disabilities from a carceral system where they are uniquely vulnerable to physical and emotional harms while ensuring that they are complying with conditions that would keep the public safe.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue favorable report on HB940

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⁴ Atkins v. Virginia, 536 U.S. 304 (2002)