



Maryland State's Attorneys' Association

3300 North Ridge Road, Suite 185

Ellicott City, Maryland 21043

410-203-9881

FAX 410-203-9891

Rich Gibson
President

Steven I. Kroll
Coordinator

DATE: February 14, 2025

BILL NUMBER: HB 940

POSITION: Favorable with Amendment

The Maryland State's Attorneys' Association (MSAA) supports House Bill 940 with the inclusion of an amendment that returns the discretion to award probation before judgment to the sentencing court.

During sentencing, a court will consider numerous factors, including the nature of the defendant's conduct and what led to it, the harm caused to any victim, the deterrent effect of a potential sentence, and the safety of the public. In appropriate cases, a court can stay the imposition of a conviction entirely – Maryland's criminal legal system affords a mechanism by which a court can keep a guilty verdict off of a defendant's criminal record, despite finding facts sufficient to support such a result beyond a reasonable doubt. Probation before judgement, outlined in MD. CODE ANN., CRIM. PRO. § 6-220, is a tool rooted in the idea that sometimes a defendant deserves an opportunity to keep their record clean, a tool that trusts the judgment of courts and relies on their exercise of discretion.

The considerations outlined by HB 940 – a defendant's autism spectrum disorder or intellectual disability, and that their criminal conduct was a manifestation of same – are factors that courts can, and routinely do, consider in fashioning appropriate sentences, including deciding whether to award probation before judgment. Indeed, these factors are considered by prosecutors in determining whether to institute criminal charges in the first place. Our criminal legal system presents many opportunities for these considerations to shape case trajectory and outcome, as any just system of adjudication should.

MSAA's concern, however, is the mandate imposed by HB 940. While the considerations in the bill ought to be – and currently are – considered by courts, requiring a court to impose probation before judgment restricts flexibility, impinges on judicial discretion, and violates separation of powers principles. There are any number of factors that will mitigate a defendant's culpability – an amendment requiring judicial consideration of a defendant's autism spectrum disorder or intellectual disability, but eliminating the compelled grant of probation before judgment, will underscore the importance of these factors without constraining judicial decision-making.