



SB 265 - SUPPORT
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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.