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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

February 2, 2022

Sponsor Testimony - FAVORABLE - SB 265 – Probation Not Deportation

Senate Bill 265 is a more nuanced version of a bill that passed the Senate in 2020, but failed to pass the House because of technical concerns that we have since resolved. This legislation is essential for us to respect and honor the sacred words on lawyer's mall, "equal justice under law." A determination of a "finding of guilt" in state law needlessly creates an extreme collateral consequence to non-citizens under federal immigration law, even when lawfully present, with children, or military distinction.

These circumstances arise when a Maryland defendant enters into an agreement of probation before judgment or PBJ, but ends up a prisoner to their own plea. This may be due to a variety of possibilities such as lack of adequate counsel, or the prosecutors not understanding the future consequences under federal law. More likely, the defendant doesn't have a choice because a plea has become common cause in our judicial system for first time offenses, and if you don't accept it, you face much worse penalties when you go to trial. This is a harsh and unintended result of Maryland law that can be changed without more than a law update in Maryland that reflects decisions neighboring states have made to ensure this injustice does not continue to occur. I believe this to be an extreme and harsh consequence and not one which we should allow to remain a possibility for non-violent first time offenses. The pain to families can last a lifetime. That is not probation.

Probation before judgment was thought a means to balance the best interest of both the public and defendant yet alleviate the implication of a finding of guilt for first time offenders. It enables the defendant to learn, take responsibility for a first time mistake, have the opportunity to lead a productive life, and give back to the community without facing the lifelong consequences of a criminal conviction. In Maryland, a PBJ is not considered a conviction for state purposes, however, under federal immigration law, it is

considered a conviction, resulting in a legal conditional resident, legal permanent resident, or a noncitizen being subject to deportation once a PBJ is issued. This has happened when the individual has served with distinction in the US Armed Forces, has been a model employee, small business owner, or community leader, or is the sole breadwinner for their family, and never again committed an offense. Probation before judgment is not supposed to be a finding of guilt by the plain reading of the term of art.

The General Assembly created probation before judgment for the same reason I offer this bill. There are reasons to treat first time offenders in a manner that does not brand them for life nor begin a domino effect that ends in their- and potentially their family's- deportation. Even if whole families are not dislocated, usually the breadwinner is banished from the country and unable to earn enough abroad to support their family.

This bill is largely a technical fix to achieve justice with a policy that aligns Maryland with other states such as Virginia, New York, and Pennsylvania. This is the humane and just policy when you consider the harms we seek to avoid, and the equal treatment this policy intends to create, so all parties can achieve justice under from our state laws. I have requested an amendment in alignment with the Maryland State's Attorney's Association recommendations to win their support. I truly appreciate everyone's good faith efforts to find a solution, and a special thanks to members of the MSAA and the OAG, that guided the sponsor and advocates around many potential pitfalls. This is a thoughtful bill to correct a thoughtless cruelty under existing state law. We still seek to align all technical violations with the achievements of the JRA. We look forward to continue to fine-tune this bill and will circulate potential amendments widely to ensure we have sound technical fixes.

To highlight some individuals who have suffered harm with the status quo, please consider Dorothy Stewart, who came to the United States as a legal permanent resident with her mother at 10 years old. She enlisted in the U.S. Army at 19 years old and faithfully served for 7 years, after completing active duty tours in Korea and Germany. She was honored with the Good Conduct Medal, Army Service Ribbon, Overseas Ribbon, Army Achievement Medal, and NCO Professional Development Ribbon. Towards the end of her service, she was sexually assaulted. To cope with the trauma, she started to use drugs and ended up with a PBJ for a conviction that made her deportable and prevented her from becoming a U.S. citizen.

People like Dorothy deserve justice in Maryland. In Dorothy Stewart's own words: *Today, I am 61 years old, and still eager to become a citizen of the United States. It has been frustrating and extremely disheartening to live with this PBJ that has prevented me from moving forward in life. It has stripped my life away from me, as my life has been defined entirely by this one charge that occurred 31 years ago. A PBJ as it is currently written does not account for first-time offenders, non-violent crimes, or a fair consequence that is disproportionate to the situation that gave rise to it.*

For these reasons, I request a favorable vote on SB265.