

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 265
Probation Before Judgment – Probation Agreements – Probation
Not Deportation
DATE: January 19, 2022
(2/2)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 265. This bill authorizes a court to stay the entering of judgment, defer further proceedings, and place a defendant on probation subject to reasonable conditions if the court finds facts justifying a finding of guilt.

The amendments to Criminal Procedure §6-220 of the bill are confusing and are inconsistent with the requirements of Maryland Rule 4-242 which requires a defendant to plead not guilty, guilty or nolo contendere. The court is not authorized to proceed to disposition without taking a plea authorized by the rules.

It is also unclear how a court would “find facts justifying a finding of guilt” and how such a finding would fit into jurisprudential norms and safeguards.

The bill is contradictory and also raises constitutional concerns. If the bill would allow the court to find facts justifying a finding of guilt without requiring a trial—which is unclear in the bill—it raises significant due process problems. This was echoed in the Attorney General’s letter dated March 9, 2021 which states “although the bill and amendments are not clearly unconstitutional, they appear to raise due process and enforcement concerns.” The standard of proof at a violation of probation proceeding is a civil standard – preponderance of the evidence. It is difficult to understand how an individual could be found guilty of the underlying offense at a violation of probation proceeding, which only requires proof by a preponderance of evidence, when there has never been a judicial finding that the individual is guilty beyond a reasonable doubt as is required by constitutional standards. Given that an individual’s liberty is at stake at a violation of probation proceeding, the “due process” concerns are significant. Finding the defendant guilty of the underlying crime following a probation violation is mixing things up. Moreover, the attempt to address an issue at the federal level by means of a statutory change at the state level is problematic at best.

cc. Hon. Susan Lee
Judicial Council
Legislative Committee
Kelley O'Connor