

IN SUPPORT OF
HOUSE BILL 193

To: House Judiciary Committee
From: Andy Gross, Managing Partner, Law Firm of Andy P. Gross, LLC
Date: February 3, 2023
Re: Written Testimony in Support of HB 193

My name is Andrew Gross, and I am writing in support of HB 193. I am the founder of the Law Office of Andrew P. Gross, LLC, where my team focuses Veterans Disability Benefits Appeals. Earlier in my career, I served on active duty in the U.S. Army as a Judge Advocate, an Assistant State's Attorney in the City of Baltimore, and as a civil litigator in private practice. I currently serve as the Chair of the Maryland State Bar Association's Veterans Affairs and Military Law Section. I also serve as a Citizen-Soldier in the Maryland Army National Guard. To be clear, I am writing in my capacity as a citizen of Maryland, who represents Veterans in my civilian capacity, and spends a significant portion of my time advocating for Veteran's issues.

I support HB 193 for a few reasons, and it may be helpful to view my support through the lens of second chances. People deserve second chances and should not be judged by the worst thing they have ever done. Probation Before Judgment (PBJ) allows just that. The PBJ is a mechanism enshrined in statute that takes into account that individuals may make mistakes, but can be redeemed and return to society without being branded a convict.

Unfortunately, the law on PBJs, as written, does not quite line up with the federal law, and can result in unintended consequences.

A lot of time has been spent talking about the risks of deportation that come with a PBJ for non-citizen lawful permanent residents, or green card holders. What is often overlooked, however, is there are over 500,000 Veterans who were not born U.S. Citizens. While most of these Veterans ultimately gain U.S. Citizenship, there are by some estimates over 90,000 Veterans who have served in the U.S. military but remain lawful permanent residents. Sadly, many of them return from military service with invisible wounds and have a hard time adapting to civilian life, and as a result, may come into contact with the criminal justice system.

While a non-citizen Veteran in Maryland might ultimately be able to avail themselves of a PBJ as they work to make amends and get their life back on track, the same PBJ might ultimately result in them being deported from the country they served. While it's not clear exactly how many Veterans have been deported, it's a real problem.

<https://www.npr.org/local/309/2019/06/21/733371297/deported-u-s-veterans-feel-abandoned-by-the-country-they-defended>. It's a cruel irony that a country would ask a non-Citizen to serve, then deport the non-Citizen when they manifest the invisible wounds of war.

To put a finer point on it, if Maryland's PBJ law results in the deportation of a single Veteran who was on the road to rehabilitation, it's one too many.

Aside from the issue of Veterans being deported from the country they signed up to serve, the conflict between the current PBJ mechanism and federal law also puts citizen-Veterans and active-duty service members at risk. While the Department of Defense has its own system of managing good order and discipline, the admission of guilt that the current PBJ mechanism requires can potentially result in adverse consequences for active-duty service members, such as administrative sanction, removal from certain assignments, reduction in rank, and even administrative discharge under their services respective branches under the respective regulations for each of the branches. See Army Regulation 635-200, Chapter 14-12.

Civilian employees of the Department of Defense, many of which are Veterans themselves, may jeopardize their security clearances with the acceptance of a PBJ. For instance, the admission of criminal conduct is specifically enumerated as a factor that “raises concern” when it comes to security clearances. 32 CFR § 147.13. To be clear, there are separate procedures at these agencies for discipline and security clearance adjudication, however, the purpose of the PBJ should carry through to those agencies to the greatest degree possible. As such, HB 193 allows for Maryland law to truly reflect the nature of the PBJ, which is the legislative desire to avoid branding people “convicts” so that they may be able to redeem themselves and return to their prior lives.

Finally, we should consider a word the military uses a lot: Readiness. Readiness relies on a constant stream of new recruits to fill the ranks. Young recruits join the military, and through training, leaves young men and women with a skill and the tools necessary to serve their country, at home and abroad. We also know, however, that sometimes youth lack judgment and run afoul of the law. These youth are not bad people or even destined for a life of crime; indeed, they have just made mistakes. When I joined the military at age 25, I was long clear of my PBJ for speeding, ironically handed down by a now-retired Judge who also served in the military and also serves on a committee with me. Thankfully, the conviction for speeding was not a disqualifying offense. Others, however, may want to serve after PBJs for singular offenses like possession of alcohol as a minor or disorderly conduct. Under the current PBJ framework, their PBJ is considered a conviction under federal law, which would likely disqualify them for service. At a time where 75% of youth in this country are ineligible to serve for one reason or another, saddling a young person who wants to serve, but may have done something stupid, does not preserve readiness, but rather closes a door to them that results in a net loss to the individual and to the country.

Therefore, I strongly urge this Committee to return a favorable report on HB 193.