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POSITION IN FAVOR OF HOUSE BILL 193

I am a recently retired judge, having served on the Circuit Court for Montgomery County from 2012 to 2020. Prior to that time, I was involved in criminal cases over many decades as Chief of the Criminal Appeals Division of the Maryland Attorney General's Office, as a public defender and private defense attorney, and as a long-time law school adjunct professor teaching Criminal Procedure. I am now Of Counsel to the Rockville law firm of RaquinMercer LLC. House Bill 193-- to amend the probation before judgment statute so that it would no longer trigger unintended, serious consequences, including loss of professional licenses and immigration consequences--would be a positive step forward for the courts, prosecutors, and defendants alike. For the reasons stated below, I urge the Committee to issue a favorable report on this bill.

Probation Before Judgment (PBJ) is widely used by judges in Maryland where nonviolent first-time offenders can receive the benefit of probation without the burden of a criminal conviction on their record. Often these are young people who go on to live highly successful lives because they have been given this break. Lawful immigrants who are not yet citizens, however, are subject to deportation even when they receive a PBJ because federal immigration courts currently treat this disposition as a "conviction" even though Maryland state courts do not. U.S. citizens also face serious collateral consequences including loss of professional licenses, security clearances, and therefore livelihoods. These harmful consequences are inconsistent with the statutory intent of the statute which was to give first-time offenders a second chance.

There is a straightforward way to remedy this problem and that is to amend the current statute so that a PBJ can be entered when a court finds facts justifying a guilty verdict rather than entering the disposition only after a guilty verdict. This is already done in a similar fashion when defendants enter a nolo contendere plea that is accepted by the court. Another analogous proceeding that occurs with some regularity is a not guilty plea followed by an agreed statement of facts. Neither of these currently used procedures that could lead to a PBJ require a guilty plea.

House Bill 193 would add yet another route to a PBJ, namely a not guilty plea followed by a proffer of facts sufficient for a guilty verdict and a waiver of rights by the defendant. This is the mechanism already used in Virginia courts that the United States Court of Appeals for the Fourth Circuit (which also covers Maryland) has ruled is not a "conviction" for federal immigration purposes. *Crespo v. Holder*, 631 F.3d 130 (4th Cir. 2011).

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As this Committee knows, there is a broad consensus of support for this much needed legislation. In addition to immigrant advocacy groups, the Maryland State's Attorneys' Association (with amendment)¹, the Maryland Criminal Defense Attorneys' Association, the Maryland Attorney General's Office, and a coalition of former federal judges support this Bill. As a former Maryland state trial judge, I, too, support it. This broadened statute would ensure that all Marylanders have equal access to probation and prevent unintended, draconian consequences from turning what should be a second chance into the harshest of punishments. There would be certainty for the prosecutor and crime victim, for the defendant and defense counsel, and for the courts. With this amended PBJ statute, time consuming appeals and post-conviction/coram nobis proceedings would be all but eliminated. It is a win for the judiciary, interested parties, and all Marylanders. I urge this committee to issue a favorable report on House Bill 193.

¹ MSAA recognizes the need for this additional route to a PBJ. However, MSAA wishes to include an amendment that would require the State's consent before a court could impose the proposed PBJ. This amendment is problematic because it limits the court's long-held authority to impose PBJ over a State's objection. There is no need for this to change here merely because the process of entering the PBJ has been amended. Consequences of and eligibility for the PBJ are unchanged, only the mechanism by which it is entered. The court, as the objective arbiter, remains in the best position to determine the appropriate sentence and is free to follow or reject either the defense or prosecution's recommendation either for or against the PBJ.

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