

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

Written Testimony Supporting an Act Concerning Misdemeanor Offenses

December 6, 2018

Members of the Sentencing Commission, our names are Samantha Smith and Iva Velickovic, and we are law student interns with the Worker and Immigrant Rights Advocacy Clinic at Yale Law School, working under the supervision of attorneys Muneer Ahmad and Reena Parikh.¹ We write on behalf of the Connecticut Immigrant Rights Alliance in support of An Act Concerning Misdemeanor Offenses.

As the materials included with the legislative proposal explain, this one-day change would help address the disconnect between the state’s misdemeanor offenses and the stark and asymmetrical immigration consequences that can result. Currently, certain state offenses, even though labeled “misdemeanors” under Connecticut law, are treated as “aggravated felonies” by the federal immigration statutes,² triggering mandatory detention and deportation.³ A person convicted of an “aggravated felony” is also ineligible for nearly all forms of discretionary immigration relief, like asylum,⁴ cancellation of removal,⁵ and special protections for certain victims of domestic violence.⁶ Noncitizens – including legal permanent residents – convicted of a single Connecticut misdemeanor can also be subject to deportation regardless of the actual sentence imposed.⁷ By simply changing the maximum sentence from 365 to 364 days, Connecticut can ensure that immigrants and their families do not experience some of the most severe immigration consequences that can result from minor crimes.

We write separately here to describe the experiences of other states that have enacted such reforms, and to highlight some of the benefits of such a reform beyond its consequences for immigrants.

California

California enacted SB 1310 in 2014, which took effect in January 2015. This legislation reduced the maximum penalty for all offenses with a one-year maximum penalty to 364 days. In 2016, California enacted SB 1242, which made this change retroactive and allowed anyone previously sentenced to a term of one year to submit an application to have the term of the sentence modified to 364 days.

Nevada

In 2013, Nevada enacted SB 169, which both amended the maximum penalty for specific offenses and also amended the maximum penalty for gross misdemeanors generally from one year

¹ The views stated here do not purport to represent the opinions of Yale Law School, if any.

² See 8 U.S.C. § 1101(a)(43)(F)-(G) (defining “aggravated felony” to include “a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year” and “a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at least one year”).

³ 8 U.S.C. § 1226(c)(1)(B); 8 U.S.C. § 1227(a)(2)(A)(iii).

⁴ 8 U.S.C. § 1158(b)(2)(B)(i).

⁵ 8 U.S.C. § 1229b(b)(1)(C).

⁶ 8 U.S.C. § 1229(b)(2)(iv).

⁷ 8 U.S.C. § 1227(a)(2)(A)(i).

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to 364 days. It also allowed people who had already served 365-day sentences to petition for a one-day reduction in sentence.

Washington State

In 2011, Washington enacted SB 5168, which also reduced the maximum penalty for gross misdemeanors from one year to 364 days. This amendment applied to all offenses, regardless of date of conviction.

All of the above states have only reported positive consequences as a result of the change. In addition to protecting non-citizens from deportation as a result of a single misdemeanor conviction, the process of negotiating pleas can also be easier for both prosecutors and defense attorneys, since pleas to misdemeanor offenses are now more likely to be immigration-safe. Under *Padilla v. Kentucky*,⁸ criminal defense attorneys are required to advise noncitizen clients about the immigration consequences of a guilty plea. This could often result in a backlog of criminal cases as the parties considered the immigration consequences, and defense attorneys often felt that they could not advise clients to take reasonable pleas to misdemeanor offenses because of the immigration consequences. With the one-day reduction, misdemeanor offenses are less likely to trigger immigration consequences, making the process of negotiating such pleas easier.

Besides making the process of negotiating pleas easier for prosecutors and defense attorneys, this change would also return some discretion to immigration judges. Not only do convictions for certain misdemeanors “punishable by a year or more” render lawful permanent residents deportable, but it also renders certain nonpermanent residents ineligible for a very important deportation defense called cancellation of removal. This defense is available to nonpermanent residents who have been physically present in the United States for at least ten years, have been a person of good moral character during that entire period, have not been convicted of certain enumerated offenses, and whose deportation would cause “exceptional and extremely unusual hardship” to a lawful permanent resident or U.S. citizen spouse, child or parent.⁹ For individuals convicted of certain misdemeanors with a maximum possible penalty of one year, immigration judges are currently required to deny relief and are unable to consider the totality of the circumstances and any hardship that may result as a result of their deportation.

As Steve Yeager of the Clark County Public Defender’s Office explained in his legislative testimony for the Nevada bill, this legislation also presents a state sovereignty issue: “The federal government does what it wants in the area of immigration, but any protection we can give our citizens to say they are not automatically deported is important.”¹⁰

We would welcome any inquiries on this proposal or related matters, and can be reached at Samantha.N.Smith@ylsclinics.org and Iva.Velickovic@ylsclinics.org.

⁸ 559 U.S. 356 (2010).

⁹ 8 U.S.C. § 1229b(b)(1).

¹⁰ *Hearing on S.B. 169 Before the S. Comm. on Judiciary*, 2013 Leg. 77th Sess. 31 (Nev. 2013) (Statement of Steve Yeager).