



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN OPPOSITION TO:

S.B. No. 1117 (RAISED) AN ACT CONCERNING CERTAIN MISDEMEANORS

JOINT COMMITTEE ON JUDICIARY

March 30, 2015

The Division of Criminal Justice opposes S.B. No. 1117, An Act Concerning Certain Misdemeanors, and respectfully recommends the Committee take NO ACTION on this bill. S. B. No. 1117 would change the maximum allowable sentence for certain crimes, including violent crimes such as Assault in the Third Degree (Sec. 53a-61) and Strangulation in the Third Degree (Sec. 53a-64cc), from 365 days to 364 days. The clear purpose of the proposed change is to prohibit Connecticut Superior Court judges from imposing a 365-day sentence, which allows – but does not require – the United States government to initiate deportation proceedings against a non-citizen convicted of such crimes.

Currently, all class A misdemeanor violations carry a maximum jail sentence of 365 days. Pursuant to the Title 8, United States Code, §1227 (a)(2)(A)(i)(II) a non-citizen who is convicted of a violent crime or a larceny offense and who receives “a sentence of one year or longer” is subject to possible deportation. A sentence of less than 365 days does not qualify for deportation.

Both United States Supreme Court precedent and our General Statutes require that before accepting a guilty plea, a Superior Court judge must inquire of a defendant and his attorney whether the defendant understands the possible immigration consequences of a conviction. Consistent with this requirement, in negotiating a resolution to a criminal charge with the prosecutor and judge before entering the plea, criminal defense lawyers address whether the anticipated sentence will subject a non-citizen defendant to deportation proceedings. Fully cognizant of all consequences of the plea – including any immigration consequences – the parties then reach an agreed resolution.

S.B. No. 1117 would prohibit the judge from imposing a sentence in class A misdemeanors that might have immigration consequences. Thus, a defendant who injures another in an assault, or who strangles his or her domestic partner, cannot receive a sentence that might subject that person to deportation, even if the judge believes that such a resolution is appropriate.

As the members of this committee know, it is the rare defendant who ends up with a conviction for a first arrest. Given Connecticut's extensive pre-trial diversionary programs, many persons charged with the crimes at issue here have been through the criminal justice system several times before incurring a conviction. To prohibit the sentencing judge – who best knows the risk presented by any particular defendant – from imposing a sentence that simply makes the convictee eligible for deportation, creates an unwise and unacceptable risk to public safety.

It also is important to understand the process by which deportation occurs. First, not every person who sustains a criminal conviction for a crime of violence punishable by a year or more is brought before Immigration authorities. The judge must actually impose a sentence of 365 days or more before Immigration authorities may consider initiating deportation proceedings. Nothing currently prevents a judge from imposing a 364-day sentence (or less) for the crimes in question – in fact, the vast majority of sentences imposed for misdemeanor convictions involve a sentence of less than 365 days incarceration – and, if the judge does so, the convictee will not be deported for that crime. Prosecutors often agree to sentences of 364 days on Class A misdemeanors in cases involving potential deportation. That decision is based on the seriousness of the case and whether the State is reducing the charge from a felony to a misdemeanor.

Second, if the Immigration authorities seek to deport a convicted non-citizen, the process is one that affords extraordinary due process protections. First, the non-citizen may challenge deportation before an Immigration judge and is represented by counsel of his choice. If the Immigration judge orders deportation, the non-citizen may then appeal that decision to the Board of Immigration Appeals which reviews the matter de novo. If the Board affirms the deportation order, the non-citizen may then appeal that order to the relevant United States Circuit Court of Appeals.

The unintended consequences of the proposed changes might well expose more persons to deportation than currently exists. Many of those who plead to the misdemeanors in question originally are charged with class C or D felonies, with the charge being reduced during the plea discussion process. If the prosecutor and/or judge believes that the defendant's criminal history and behavior merit consideration for removal, they will be much more likely to insist on a plea to a felony, which might well make Immigration authorities more likely to seek deportation than if the defendant is convicted of a misdemeanor.

Finally, the bill would seriously undermine the work of the Sentencing Commission on the classification of offenses, which was endorsed by the General Assembly with the overwhelming approval of Public Act 12-80, An Act Concerning the Recommendations of the Sentencing Commission Regarding the Classification of Unclassified Misdemeanors, and P.A. 13-258, An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding Unclassified Felonies. The Commission, through its classification working group, spent considerable time and effort over a three-year period scouring the General Statutes to catalog and subsequently clarify and revise, where appropriate, the classification of offenses. A major goal of the effort was to reduce or eliminate the number of unclassified offenses.

This process resulted in the two substantial public acts reclassified hundreds of offenses and created a the new class D level of misdemeanor and class E level of felony. This process better

aligned sanctions with the public policy directives of the General Assembly and created greater consistency in our sentencing structure. S.B. No. 1117 undoes that effort, creating the potential for confusion on a variety of serious misdemeanors and could create unforeseen collateral consequences regarding diversionary program and probation issues. It is yet another reason the Judiciary Committee should reject this bill.

In conclusion, the Division of Criminal Justice opposes S.B. No. 1117 and respectfully recommends the Committee take **NO ACTION** on this bill. The Division thanks the Committee for affording this opportunity to offer input on this matter and would be happy to provide any additional information you require or answer any questions you might have.