

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

Written Testimony Supporting H.B. 5544, An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Misdemeanor Sentences

March 21, 2018

Representative Tong, Senator Doyle, Senator Kissell, and members of the Judiciary Committee. Our names are Samantha Smith and Regina Wang, and we are law student interns with the Worker and Immigrant Rights Advocacy Clinic at Yale Law School.¹ We represent the Connecticut Immigrant Rights Alliance (CIRA), a statewide coalition of immigrant, faith, labor, youth, community, and business organizations dedicated to improving the lives of Connecticut's diverse immigrant community. We are here today to emphasize the importance of this legislation to keep Connecticut's misdemeanors as misdemeanors, and to minimize the disproportionate immigration consequences of misdemeanor convictions.

This legislation is important given the severe immigration consequences Connecticut misdemeanors can currently trigger under federal immigration law. This single-day change would allow Connecticut to decide what it means when it decides an offense is a misdemeanor, rather than the federal government.

Under federal immigration law, there are two categories of immigration consequences that are specifically triggered by a one-year sentence. First, conviction of a single "crime involving moral turpitude" can result in deportation if the maximum possible sentence is at least one year, regardless of the actual sentence the judge determines is appropriate.² This single conviction can further render noncitizens ineligible for cancellation of removal, an important form of discretionary relief available to individuals with longstanding family and community ties.³ Connecticut misdemeanors that can trigger these penalties include illegal use of a credit card⁴ and illegally obtaining drugs with a forged or altered prescription or written order.⁵

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

² 8 U.S.C. § 1227(a)(2)(A)(i).

³ *Id.* § 1229b(b)(1)(C).

⁴ Conn. Gen. Stat. § 53a-128d.

⁵ *Id.* § 21a-108. *See generally* Jorge L. Baron, et al., A Brief Guide to Representing Non-citizen Criminal Defendants in Connecticut 27-69 (revised May 2017), https://law.yale.edu/system/files/documents/pdf/Clinics/vlsc_CrimImmGuide.pdf.

Second, where an actual sentence of one year is imposed, a Connecticut misdemeanor can become an “aggravated felony” for federal immigration purposes. Individuals convicted of aggravated felonies are subject to some of the harshest immigration consequences, including mandatory detention and deportation, and ineligibility for nearly all forms of discretionary immigration relief, including (1) asylum, for individuals fleeing persecution;⁶ (2) cancellation of removal, for green card holders with strong ties to the community;⁷ and (3) special protections for certain victims of domestic violence.⁸ Many Connecticut misdemeanors may count as aggravated felonies, including larceny in the fourth degree,⁹ fraudulent use of an ATM,¹⁰ and receipt of money, goods or services obtained by illegal use of credit card.¹¹

While immigration policy is a matter of federal law, it is the role of the state to define its own criminal law and provide for its enforcement. By preventing its misdemeanors from becoming “aggravated felonies” under federal law, Connecticut makes clear that it has designated these particular offenses as misdemeanors.

This amendment will also facilitate appropriate plea-bargaining and reduce the distortive impact of immigration consequences in Connecticut’s criminal proceedings. Under *Padilla v. Kentucky*,¹² defense attorneys must advise noncitizen clients about the deportation risks of a guilty plea. A responsible defense attorney sometimes cannot advise his client to accept an otherwise acceptable misdemeanor plea deal because of the risk of removal such an outcome might create. This reform will make it easier for both prosecutors and defense attorneys to arrive at a proper and just disposition under state criminal law in cases where a misdemeanor is charged.

⁶ 8 U.S.C. § 1158(b)(2)(B)(i).

⁷ *Id.* § 1229b(a)(3).

⁸ *Id.* § 1229b(b)(2)(iv).

⁹ Conn. Gen. Stat. § 53a-125.

¹⁰ *Id.* § 53a-127b.

¹¹ *Id.* § 53a-128g; see generally Jorge L. Baron, et al., A Brief Guide to Representing Non-citizen Criminal Defendants in Connecticut 27-69 (revised May 2017), https://law.yale.edu/system/files/documents/pdf/Clinics/vlsc_CrimImmGuide.pdf.

¹² 559 U.S. 356 (2010).

This reform only mitigates two particularly severe immigration consequences that turn the state's classification scheme on its head (by converting misdemeanors into immigration "felonies"). Noncitizens can still be removed for other reasons, including presence in the U.S. without authorization,¹³ visa violations,¹⁴ or certain specific criminal offenses.¹⁵ For example, this change will not affect the immigration consequences for offenses involving domestic violence,¹⁶ violating an order of protection,¹⁷ drug¹⁸ and firearm convictions,¹⁹ or for multiple misdemeanor convictions²⁰ for crimes involving moral turpitude because the relevant immigration provisions do not depend on sentence length.

In passing this measure, Connecticut would join other states that have protected their state misdemeanors from becoming aggravated felonies for federal purposes. In 2011, Washington passed SB 5168, making it the first state to reduce the maximum penalty for a gross misdemeanor from one year to 364 days.²¹ This amendment applied to all offenses, regardless of date of conviction. In 2013, Nevada passed SB 169, a similar reform that reduced the maximum sentence.²² The bill permitted individuals sentenced a full year prior to its enactment to petition the court to reduce the sentence to 364 days.²³ It enjoyed wide bipartisan support, including the support of Republican Governor Sandoval. In 2014, California enacted SB 1310, which reduced the maximum penalty for all offenses with a one-year maximum penalty to 364 days.²⁴ It became effective January 1, 2015. In 2016, California passed SB 1242 to make this change retroactive.²⁵ Under the law, persons previously sentenced to a term of one year can apply to have the term of the sentence modified to 364 days. It became effective January 1, 2017. This past August, Oregon passed HB 2355, which reduced the maximum sentence for a Class A misdemeanor from 365 days to 364 days.²⁶

Right now, New York is considering a SB 4294, which would reduce the maximum sentence for a misdemeanor from 365 days to 364 days.²⁷ It also would apply this change retroactively to persons previously sentenced to a misdemeanor, and allows persons previously sentenced to 365 days to apply for a new certificate of conviction reflecting the change. This bill is currently being reviewed in the Senate Codes Committee. Colorado is considering a similar measure.²⁸

¹³ 8 U.S.C. § 1227(a)(1)(B).

¹⁴ *Id.* § 1227(a)(1)(C)(i).

¹⁵ *Id.* § 1227(a)(2).

¹⁶ *Id.* § 1227(a)(2)(E).

¹⁷ *Id.* § 1227(a)(2)(E)(ii).

¹⁸ *Id.* § 1227(a)(2)(B).

¹⁹ *Id.* § 1227(a)(2)(C).

²⁰ *Id.* § 1227(a)(2)(A)(ii).

²¹ An Act Relating to Reducing Maximum Sentences for Gross Misdemeanors by One Day, 2011 Wash. Sess. Laws 831.

²² Act of May 28, 2013, 2013 Nev. Stat. 976, 977.

²³ 2013 Nev. Stat. at 992.

²⁴ An Act to Add Section 18.5 to the Penal Code, Relating to Misdemeanors, 2014 Cal. Stat. 2235.

²⁵ An Act to Amend Section 18.5 of the Penal Code, relating to sentencing, 2016 Cal. Stat. 5368.

²⁶ Act of Aug. 15, 2017, 2017 Or. Laws, ch. 706.

²⁷ S.B. 4294, 2017-2018 Leg. Sess. (N.Y. 2018).

²⁸ S.B. 18-166, 71st Gen. Assemb., Reg. Sess. (Colo. 2018).

These changes have also happened at the local level. In May 2017, Denver, Colorado reduced the maximum sentence for many municipal offenses from 365 days to 300 days.²⁹

Based on the experience of these other states, we know reforms like this work. These reforms not only improve the lives of immigrants and their families, but also benefit the states as a whole. By making it less likely that state misdemeanors will trigger immigration consequences, this reform reduces the circumstances in which a defense attorney must advise her client to reject an otherwise reasonable plea deal based solely on immigration consequences. This in turn makes the plea bargaining process easier for both prosecutors and defense attorneys, and helps ensure that the parties arrive at the proper resolution under state law rather than based on considerations of federal immigration law.

We urge you to join other states in making this modest but meaningful change.

²⁹ Albus Brooks, *City Council Votes on Sentence Reform*, CITY AND COUNTY OF DENVER (May 23, 2017), <https://www.denvergov.org/content/denvergov/en/denver-council-district-9/news-events/2017/city-council-votes-on-sentence-reform.html>.