STATE OF CONNECTICUT
SENTENCING COMMISSION

Testimony of Honorable Judge Robert Devlin and Alex Tsarkov before the Judiciary Committee on SB 1019, *An Act Concerning the Board of Pardons and Paroles, Erasure of Criminal Records for Certain Misdemeanor and Felony Offenses, Prohibiting Discrimination based on Erased Criminal History Record Information and Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Misdemeanor Sentences.*

Senator Winfield, Representative Stafstrom, Senator Kissel, Representative Fishbein, and members of the Judiciary Committee. For the record, Alex Tsarkov, Executive Director of the Connecticut Sentencing Commission. With me is Judge Robert Devlin Jr., Appellate Court Judge Trial Referee and chair of the Sentencing Commission. We are here to testify in support of Section 38 of SB 1019, *An Act Concerning the Board of Pardons and Paroles, Erasure of Criminal Records for Certain Misdemeanor and Felony Offenses, Prohibiting Discrimination based on Erased Criminal History Record Information and Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Misdemeanor Sentences.*

We would first like to give you some brief background about the Sentencing Commission. We are a permanent commission created ten years ago, consisting of all the stakeholders in Connecticut's criminal justice system. Our membership includes four judges; the Chief State's Attorney; the Chief Public Defender; the Victim Advocate; the commissioners of Correction and Emergency Services and Public Protection; community activists interested in the criminal justice system; the chair of the Board of Pardons and Paroles; a municipal police chief; the undersecretary of the Office of Policy and Management's Criminal Justice Policy and Planning Division; as well as others vitally engaged in the criminal justice system. Our work is informed by all the major system stakeholders of the criminal justice system and aims to adhere to the best legal and evidence based research and practices.

Section 38 of SB 1019 would reduce the maximum penalty for misdemeanors by one day to a 364-day sentence. This proposal supported by the Commission in the last three years, arose from work done in collaboration with the Connecticut Immigrant Rights Alliance and the Yale Law School Worker and Immigrant Rights Advocacy Clinic. Section 38 before you would make an important change to the penalty for offenses defined in our state as misdemeanors, and would better align Connecticut's classification of offenses with the classification scheme used in federal immigration laws and regulations. This alignment of definitions is important given the heavy immigration consequences associated with how federal immigration law classifies criminal offenses.

Connecticut non-citizen residents, including lawful permanent residents ("green card" holders), can face unexpected and unduly harsh immigration consequences because of an inconsistency between the state's penal code and federal immigration law. A significant impact arises because the maximum potential sentence for conviction of a class A misdemeanor in Connecticut is one year imprisonment, which, under federal immigration law can trigger deportation proceedings and removal from the United States. Furthermore, some federal immigration provisions apply based on the potential sentence available for the offense, rather than the *actual* sentence imposed or time in prison actually served.

In addition, a sentence of one year in jail for some misdemeanor convictions disqualifies Connecticut residents in some vulnerable populations from consideration for certain protections, such as asylum (based on a well-founded fear of persecution in the foreign country), and protection for domestic violence victims.

Such a sentence also denies immigration judges, in certain cases, discretion to consider mitigating circumstances against deportation, such as long-term residence in the United States or past military service.

This small but important change in the maximum sentence for misdemeanor cases targets two categories of offenses that carry deportation and other immigration consequences. First, under the Immigration and Nationality Act (INA), a single "crime involving moral turpitude" is a deportable offense if it is committed within five years of entry and punishable by a sentence of a year or more. This basis for deportation depends on whether the offense is "a crime for which a sentence of one year or longer may be imposed," not the actual length of the sentence imposed. Such a conviction makes a person deportable and makes persons without green cards ineligible for cancellation of removal, an important form of discretionary relief from removal for individuals with longstanding family and community ties to the United States. It thus prevents immigration judges from exercising discretion they would otherwise have to consider the totality of the circumstances in deciding a particular case. A "crime involving moral turpitude" covers a broad array of offenses, including most assault offenses; almost all offenses involving fraud; and almost all offenses involving theft, including petty theft offenses.

Second, the INA classifies as "aggravated felonies" certain offenses that carry a sentence of one year or more, regardless of whether they are misdemeanors under state law or if the sentence imposed is suspended. The "aggravated felony" designation triggers mandatory detention and deportation. The INA's definition of aggravated felony includes a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least one year. *See also Forbes v. Lynch,* 642 F. App'x 29, 30 (2d Cir. 2016) (unpublished) (upholding classification of third-degree larceny under Connecticut law as a theft offense constituting a deportable "aggravated felony"); *United States v. Pacheco,* 225 F. 3d 148 (2d Cir. 2000) (upholding classification of theft of $10 videogame with one year suspended sentence as "aggravated felony"). A person convicted of an "aggravated felony" is ineligible for nearly all forms of discretionary immigration relief, such as asylum, cancellation of removal, and special protections for certain victims of domestic violence.

SB 1019 would not, of course, end immigration enforcement. Those who are unlawfully present in the United States or who have convictions that otherwise make them deportable will still be subject to deportation proceedings. It is important to note that reducing the maximum sentence by one day would not protect from deportation certain people convicted of serious offenses, regardless of their sentence. These convictions include offenses related to domestic violence, violating an order of protection, drug offenses and firearm convictions. In addition, multiple convictions for "crimes involving moral turpitude," also carry deportation regardless of the maximum penalty for each offense.

Several other states, including Nevada, California, Washington, Colorado, Utah, New York, and Oregon, have already enacted this modest change in sentencing that ensures appropriate discretion for federal immigration authorities, helps protect certain non-citizens from arbitrary deportations and denial of consideration of individual circumstances.

We thank the Committee for raising this important legislation and urge the Committee's JOINT FAVORABLE Report.