

WDA/WACDL SUPPORTS REDEFINING GROSS MISDEMEANOR TO MEAN “LESS THAN ONE YEAR”

WDA/WACDL supports changing the definition of gross misdemeanor to “less than one year”. This one day change will have a positive impact on our judicial system by ensuring that those who are charged with similar offenses receive similar results and that those who face misdemeanor charges receive the same process as those facing felony charges in deportation proceedings.

This bill has a positive effect on Washington State Lawful Residents and their families.

- Ensures Equal Protection to All Persons Charged with Crimes
- No Impact on Immigration Enforcement
- Pro Family and Cost Saving to the State

Ensures Equal Protection to All Persons Charged with Crimes

Noncitizens, including lawful permanent residents, convicted of certain gross misdemeanor offenses face automatic deportation where the maximum sentence is 365 days. Imposition of a 365 day sentence, regardless of time suspended, results in classification of certain misdemeanor convictions as “aggravated felonies” under immigration law. This consequence renders a disproportionate impact on misdemeanor defendants since felony defendants convicted of more serious offenses are only classified as “aggravated felons” where an actual (not suspended sentence is imposed. For example, a defendant convicted of a misdemeanor theft with a 365 day sentence imposed is classified as an aggravated felon while a defendant convicted of a felony second degree theft will receive a sentence 3-6 months and, thus, is not classified as an aggravated felon.

Aggravated felony classification triggers automatic deportation for noncitizen defendants, regardless of their lawful status, how long they have lived in the U.S. or the impact of deportation on them and their families. This consequence occurs despite the fact that, in the majority of cases, the defendant serves a fraction of the sentence (often only several days).

This definitional change seeks to remedy this unfair result by making the maximum that a person can receive for a gross misdemeanor less than one year.

Two Case Stories

- **Angela** came to the U.S. lawfully with her parents as a small child. In 2000, when she was 19 she was convicted of misdemeanor theft. She received a suspended sentence of 365 days and served no time in jail. By 2008 she was happily married to a U.S. citizen and the mother of two small U.S. citizen children. She applied for U.S. citizenship. Her application was denied and she was placed in deportation proceedings as an “aggravated felon” due to her 2000 conviction. A 364 day maximum sentence would have avoided this outcome.

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- **Laura** fled an abusive father in Mexico at 17. That same year, 1994, she came to Yakima to live with her sister. In 2001 she was charged with shoplifting. Unrepresented, she pled guilty and was given a 365 day sentence. Despite the fact that she had legal avenues to remain lawfully in the U.S., she was deported as an aggravated felon following her conviction. Desperate to see her U.S. citizen children, she returned. Apprehended again by ICE, she was federally prosecuted for the crime of illegal reentry after deportation. Because her theft conviction was an “aggravated felony” she faced a federal prison sentence of 18-24 months. She spent over a year in jail while her federal defender fought (and won) the illegal reentry charge and arranged for pro bono immigration counsel to reopen her immigration proceedings and obtain the lawful status she was originally entitled to. A 364 day sentence maximum would have prevented this unnecessary and wasteful saga.

No Impact on Immigration Enforcement

Persons unlawfully present in the U.S. or who have convictions that otherwise violate immigration law will still be subject to deportation proceedings. This bill does not change that. This bill will only ensure that noncitizens, including lawful residents, will not be unfairly classified as “aggravated felons”. In short, it ensures that deportation is not automatic due to imposition of a 365 day sentence and preserves the ability of immigration judges in removal proceedings to actually hear cases and consider applications for discretionary relief for deserving noncitizens.

Pro Family and Cost Saving to the State

This bill will keep families together. Many noncitizens, including longtime lawful permanent residents who are deported leave behind families and minor children who depended upon them for economic and emotional support and stability. Children of deported parents regularly become state dependents as a result of the deportation of their parent. This bill would enable those residents who are convicted of minor offenses to remain in this country supporting their children and would help to ensure that their children do not become state dependents.

WDA/WACDL supports this change to the definition of gross misdemeanor because it makes misdemeanor sentencing fair to both United States citizens and lawful residents. Courts maintain the ability to impose maximum suspended sentences and lawful residents do not face automatic deportation as a result of their convictions to gross misdemeanor crimes.

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