

SENATE BILL REPORT

SB 5168

As of January 28, 2011

Title: An act relating to reducing maximum sentences for gross misdemeanors by one day.

Brief Description: Reducing maximum sentences for gross misdemeanors by one day.

Sponsors: Senators Prentice, Kline, Regala, Chase and Kohl-Welles.

Brief History:

Committee Activity: Judiciary: 1/28/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7438)

Background: Under current law, a gross misdemeanor is punishable by not more than one year in the county jail, or by a fine of not more than \$5,000 or by both imprisonment and fine.

Under federal law, state and local criminal convictions and sentences can affect a noncitizen defendant's immigration status in various ways. Federal immigration law counts the total sentence, including both days suspended and days actually served in determining whether a person may be deported. This means that a noncitizen defendant who is convicted of certain crimes and, for example, is sentenced to serve five days in jail, with 360 days suspended, would have a one-year sentence as interpreted by immigration law. Some deportation grounds are triggered not just by the type of crime, but also based on whether the sentence imposed for the crime is one year or more, including suspended time. This means that a noncitizen defendant, who could be a refugee and a lawful permanent resident, could face automatic deportation for a gross misdemeanor offense based solely on the receipt of a 365-day suspended sentence. This remains true despite whether the person served very little or, in some cases, no jail time for the sentence.

Summary of Bill: A gross misdemeanor is punishable by less than one year in the county jail or by a fine of not more than \$5,000 or by both imprisonment and fine.

Appropriation: None.

Fiscal Note: Available.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There is not a nationwide definition of gross misdemeanor. Therefore there are varying penalties across the nation. Washington State is in the minority of states imposing 365 days for a gross misdemeanor. Changing the penalty from 365 days to 364 days is nothing radical.

A sentence of 365 days for a gross misdemeanor is disproportionate with felonies. Felons face a determinate sentence of zero to 90 days whereas a gross misdemeanor faces up to 365 days. In most cases, the judge sentences the defendant to one to two days and suspends the rest of the time. However, the noncitizen defendant will face possible deportation for the gross misdemeanor and not the felony simply because of the possibility that the defendant be sentenced to a year in jail.

There is also geographic disproportionality across the state. Many courts choose, or adopt, policies to impose 364 days sentences for gross misdemeanors rather than 365 day sentences in order to avoid possible deportation for noncitizens. Other courts do not. It is important to remember that this bill affects legally documented persons and not illegal immigrants.

What noncitizens face in the criminal court is quite different than what they face in the immigration court. The immigration courts are faced with the aftermath of the criminal court. Convictions in criminal court are not always required for deportation. Often the maximum potential sentence is sufficient to trigger federal deportation. Deportation often impacts the families of those deported. Many times these people stay behind and are left to depend on the system because their only source of income has been deported. This in turn causes a hardship on the government which must then provide services to these people.

Persons Testifying: PRO: Travis Stearns, Washington Defender Association; John Schochet, Seattle City Attorney's Office; Bonnie Wasser, American Immigration Lawyers Assn.; Toby Guerin, One America; Grace Huang, WA State Coalition Against Domestic Violence.