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Testimony to Assembly Judiciary Committee Re: SB 169

Mr. Chair Frierson, Vicechair Ohrenschall, and members of the Committee, I am pleased to be here this morning and I would like to thank the committee for allowing me to testify on SB 169. I have submitted a written version of my testimony and a summary of selected state legislation regarding the maximum penalty for gross misdemeanors. My testimony will be brief and I am happy to answer any questions the committee may have.

This bill provides for an important change to the penalty for crimes defined as gross misdemeanors. This legislation is important given the heavy immigration consequences the current definition carries in federal immigration law. It also means that Nevada gets to decide what it means by calling something a “gross misdemeanor”, not the federal government.

Currently, because the maximum penalty is one year, noncitizens convicted of a gross misdemeanor in Nevada can be considered an “aggravated felon” under federal immigration law. As a result, the collateral consequences for noncitizens convicted of certain gross misdemeanors in Nevada are far more serious than those for citizens. I first will address why this change matters—both in terms of for whom it will make a difference and what a sentence of 365 days (or one year) can mean for an immigrant. Then I will briefly address my review of other state’s definitions of gross misdemeanors or the equivalent.

First, according to the Nevada Migration Policy Institute’s review of the 2011 American Census Survey, approximately 308,788 people in Nevada are noncitizens (immigrant, nonimmigrants or undocumented -- undocumented estimates are 190,000). (MPI Data Hub, *Nevada: Social & Demographic Characteristics*, <http://www.migrationinformation.org/datahub/state.cfm?ID=NV>). Even more people, and especially children, have family members who are immigrants. 39.3% of children in Nevada live with at least one parent who is an immigrant, and of those children residing with immigrant parents, 89.2% or 221,238, were United States citizens. (*Ibid.*).

Why does this matter? Under current Nevada law, some individuals who are convicted of certain gross misdemeanors and receive a sentence of 365 days or 1 year or less are categorized as “aggravated felons” under the Immigration and Nationality Act. (INA § 101(a)(43)). Individuals who have committed an aggravated felon under immigration law can face the following consequences:

- Deportation without a Removal Hearing with no appeal (INA § 238)
- Deportation even for long-term legal residents with no eligibility for cancellation of removal (INA § 240A(a)(3), (b)(1)(C), (b)(1)(D))
- Mandatory unreviewable detention following release from criminal custody or upon referral to Immigration Court (INA § 236(c))
- Ineligibility for Asylum (INA § 208(b)(2)(B)(i); INA § 101(a)(42))
- Ineligibility for waivers of inadmissibility based on extreme hardship to a qualifying USC or LPR spouse or parent (INA § 212(h))
- Permanent Inadmissibility following departure/deportation from United States (INA § 212(a)(9)(ii))
- Increased criminal penalties for illegally re-entering the United States after deportation for an aggravated felony (INA § 276(b)(2))
- Ineligibility for Naturalization (Citizenship) (INA § 101(f)(8))

Aggravated felonies include certain types of offenses for which a court has imposed a sentence of one year or more. (INA § 101(a)(43)). These types of crimes include the following types of crimes that are classified as gross misdemeanors in Nevada, crimes of violence, theft offenses, fraud, counterfeiting, or forgery offenses, and related attempt offenses:

- NRS 200.368(2)—Statutory Sexual Seduction when perpetrator is under the age of 21
- NRS 200.450 –challenge to fight where no deadly weapon used
- NRS 200.481—certain battery offenses where no bodily harm and no deadly weapon; (*see* United States v. Gonzalez-Tamariz, 310 F.3d 1168 (9th Cir. 2003) (finding conviction under NRS 200.481 with suspended one year sentence was an aggravated felony)).
- NRS 205.085—possession of instrument with burglarious intents
- NRS 205.130-- Issuance of check or draft without sufficient money or credit
- NRS 205.350-- Removal or sale of property to defraud creditors
- NRS 205.680-- False statement to procure issuance of credit card or debit card

For immigration purposes, the amount of time imposed by the court, regardless of the time suspended is considered part of the sentence. The result is that people who the state may consider as more dangerous offenders experience no immigration consequences, while individuals who the state may consider less dangerous are subject to deportation. For example, if someone were to plead guilty to a gross misdemeanor for writing a bad check with a suspended sentence of one year, she would still be classified as an aggravated felon under Immigration law. In contrast, someone who receives an actual imposed sentence of two years after being convicted for felony burglary, would not necessarily be considered an aggravated felon for purposes of the Immigration laws.

The impact on long-term members of our community and their United States citizen family members is significant. I have done consultations at citizenship fairs, where I have had to advise people not only to not apply for citizenship because of a bad check offense but to let them know they need to seek immigration counsel because the offense has made them deportable. These are often longtime legal residents with significant ties to Las Vegas. This breaks apart families and can be devastating to someone who thought she had put her crime behind her and paid her debt to our community. Revising the maximum penalty to 364 days ensures that those residents who are convicted of minor offenses remain in the country and are able to continue to support their minor children, which helps ensure those children do not become state dependents. (Applied Research Center, SHATTERED FAMILIES: THE PERILOUS INTERSECTION OF IMMIGRATION ENFORCEMENT AND THE CHILD WELFARE SYSTEM (2011)).

This bill will not end immigration enforcement. People who are unlawfully present in the United States or who have convictions that otherwise make them deportable will still be subject to deportation proceedings. The bill only ensures that people are not unfairly classified as aggravated felons, and makes sure that deportation is not automatic. It preserves the ability of immigration judges and officials to make decisions about who might be worthy of an exercise of discretion.

Lastly, I would like to turn to my overview of selected state statutes setting penalties for gross misdemeanors or their equivalent. I am no expert on criminal law and so my survey was brief and may not have captured all of the nuances in the laws. Here are my general observations about what other states are doing/have done.

- With the exception of Washington State, there appears to be no other state to have consciously considered a bill like SB 169.
- Many states do not even have a category of crimes that the state defines as gross misdemeanor. Rather many states have felonies or misdemeanors, with the majority defining a felony as a crime punishable by a year or more in the state penitentiary, and a misdemeanor as any crime punishable by a year or less in jail.
- The states I have left off, either had indeterminate sentencing or set the penalty within the individual section for the crime.
- It does seem consistent that the types of crimes I described earlier in Nevada are also defined as gross misdemeanors or misdemeanors in states with the definition of 1 year or less.

In conclusion, I support the changes in the definition of gross misdemeanor because it makes sentencing fair to both citizens and noncitizens, it ensures that the law matches what people think they are pleading to, it lets Nevada decide that something is a “gross misdemeanor” without the federal government imposing its own definition, and it will help keep families together.