



Chair Ron Latz and Lead Warren Limmer

Senate Judiciary and Public Safety Committee

Testimony submitted in support of SF 816

January 30, 2023

The Immigrant Law Center of Minnesota (ILCM) is a statewide non-profit organization providing free legal services to low-income immigrants. We have offices in Austin, Moorhead, St. Paul, and Worthington. We also contract with the Minnesota State Board of Public Defense to advise public defenders on the immigration consequences of criminal charges and convictions.

Currently, Minnesota law authorizes a sentence of up to 365 days for gross misdemeanor convictions. HF 43 would amend Minnesota law to reduce this maximum sentence by only one day to 364 days for all Minnesotans. This one day will make a profound difference by reasserting the state's authority over the effect of a state gross misdemeanor sentence; promoting clarity and consistency in gross misdemeanor sentencing; and freeing up criminal justice system resources. **ILCM therefore supports SF 816.**

First, SF 816 reasserts the state's authority over the effect of a gross misdemeanor sentence.

The Minnesota legislature has long distinguished misdemeanors, gross misdemeanors, and felonies and established progressively higher sentences for each category of crime. Federal immigration law does not honor Minnesota's classifications, and instead treats a number of gross misdemeanor convictions as "aggravated felonies" simply because a sentence of 365 days—as opposed to 364 days—is imposed. This renders long-term Minnesota residents—many of whom are green card holders, refugees, and spouses and parents of U.S. citizen Minnesotans—deportable for offenses that the state of Minnesota does not deem felonies. The Minnesota legislature cannot change federal immigration law, but by reducing the maximum sentence for gross misdemeanors by one day, the legislature can prevent the federal government from treating certain gross misdemeanor convictions as "aggravated felonies" and deporting long-time Minnesotans.

Next, SF 816 promotes clarity in sentencing for gross misdemeanor offenses. It can be confusing to defendants, prosecutors, defense attorneys, and judges alike when a gross

misdemeanor conviction under Minnesota law can be treated as an "aggravated felony" under federal immigration law. Individual prosecutor's offices, prosecutors, and judges have pursued sentences of 364 days, rather than the 365 days currently authorized by the statute, to ensure that gross misdemeanor convictions under Minnesota law are not considered "aggravated felonies" under federal law. But this is not done consistently, resulting in the possibility of two Minnesotans with the same immigration status who have committed the same crime facing vastly different outcomes because of a one-day difference in sentencing—one returning to their family after serving their sentence and the other being detained, deported, and separated from their family. Reducing the maximum sentence for a gross misdemeanor conviction will increase clarity, promote consistent treatment across the state, and ensure that Minnesotans with gross misdemeanor convictions do not face more dire consequences than residents of other states—such as Nevada, Oregon, and Washington—that impose a sentence of 364 days or less for gross misdemeanors or the equivalent.

Finally, SF 816 frees up criminal justice system resources. There are numerous situations in which long-time Minnesotans have successfully reopened their criminal cases or obtained post-conviction relief to address a gross misdemeanor conviction for which they were sentenced to 365 days. Defense attorneys, prosecutors, and judges conscientiously work through these cases to ensure that justice is served. For example, we worked with a refugee who had been convicted of a gross misdemeanor and sentenced to 365 days. He had rebuilt his life and sought to become a permanent resident and ultimately a citizen, but because his sentence was one day too long, he faced the possibility of deportation to a country where he could be persecuted. The Minnesota State Appellate Public Defender worked with prosecutors and the court to have the sentence modified. Had the maximum sentence for a gross misdemeanor been 364 days, these efforts would not have been necessary because the conviction would not have been treated as an "aggravated felony" in the first place, obviating the need to implement a fix after a case has concluded and thereby freeing up resources in an already taxed system.

ILCM urges this Committee to support SF 816 and bring consistency, clarity, and fairness to gross misdemeanor sentencing.

Respectfully submitted,
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