



The One Day To Protect New Yorkers Act—Questions and Answers

1. What will the Bill do?

A. The Bill will amend New York Penal Law to reduce the maximum jail sentence for New York class A misdemeanor offenses by one day, from 365 days to 364 days.

2. How would this small change protect immigrant N.Y. State residents from deportation for minor offenses?

A. The bill addresses a mismatch in the way New York law overlaps with federal immigration law. Under immigration law, certain minor convictions that are punishable by a year or more may lead to detention, denial of necessary forms of immigration relief, and deportation for thousands of immigrants. This minor amendment of reducing the maximum class A misdemeanor sentence by only one day would protect thousands of New Yorkers from these unnecessary, harsh immigration consequences.

For example, a long-time lawful permanent resident (green card holder) who has a single conviction for a first-time shoplifting misdemeanor for which she was given no jail time (a very common occurrence) may still be facing deportation and permanent exile from her family and home for this offense.

This is because immigration law classifies this offense as “a crime involving moral turpitude for which a sentence of a year or longer may be imposed.” This law is clearly aimed at felony crimes that are serious enough to trigger deportation. However, because a New York class A misdemeanor are punishable by a maximum of 365 days, there is an unintended one-day overlap in these statutes that means that even first-time misdemeanors for which New Yorkers received no jail sentence at all can trigger deportation.

3. What types of offenses are class A misdemeanors in New York?

A. Common examples include shoplifting, bad checks, counterfeit goods, and false advertising.

4. Does this mean that all class A misdemeanors would no longer trigger immigration consequences?

A. Not at all. Many class A misdemeanors would still trigger grounds for removal. For instance, a controlled substance offense, a crime of child abuse, a crime of domestic violence, and a firearm offense would all still trigger deportability, regardless of the sentence imposed, as does having more than one “crime involving moral turpitude.” The Bill targets a subset of class A misdemeanors where the potential or imposed sentence triggers disproportionately

harsh immigration consequences, but does not affect federal deportation grounds that are based on the type of offense itself.

5. Will this Bill strip discretion from state prosecutors or judges?

- A. No. Prosecutors will still have wide discretion to charge defendants with appropriate offenses and to negotiate pleas and recommend sentences. Judges will still have the discretion to sentence individuals convicted of class A misdemeanors, and to impose jail sentences ranging from time served up to 364 days, as each case warrants. The Bill creates significant efficiencies for prosecutors and judges, as noncitizen defendants will be more likely to accept plea offers that otherwise benefit all parties when those pleas do not trigger particularly harsh immigration consequences.

6. How often are New York defendants actually sentenced to jail time for class A misdemeanors?

- A. New Yorkers with class A misdemeanor convictions are given non-jail sentences (such as probation or conditional discharge) 40% of the time. Only 4% of individuals with class A misdemeanor convictions are actually sentenced to 365 days of jail time, and many of those likely do not serve the full year.

6. Besides preventing deportation of N.Y. State immigrants based on a single class A misdemeanor conviction, what other positive effects ways would this Bill produce?

- A. The Bill would also help protect vulnerable members of our community which includes asylum seekers and victims of domestic violence, who otherwise may be barred from immigration relief due to a class A misdemeanor conviction.

7. Have other states addressed this immigration consequence relating to class A misdemeanors carrying a maximum sentence of 365 days?

Yes. Three states (California, Washington and Nevada) amended their criminal codes in recent years to protect their residents against unduly harsh immigration consequences. Other states, such as New Jersey, Illinois and New Mexico, avoided this mismatch in state and federal statutes because they had already defined a misdemeanor to carry a maximum sentence of less than one year.