



The Fortune Society  
BUILDING PEOPLE, NOT PRISONS



IMMIGRANT  
DEFENSE  
PROJECT

## Support the One Day to Protect New Yorkers Campaign, One Day Matters!

### Campaign Leaders

#### Immigrant Defense Project

The Immigrant Defense Project (IDP) works to secure fairness and justice for immigrants in the United States. IDP aims to abolish a racially biased criminal legal system that violates basic human rights and an immigration system that every year tears hundreds of thousands of immigrants with convictions from their homes, their families, and their communities.

#### The David Rothenberg Center for Public Policy at The Fortune Society

The David Rothenberg Center for Public Policy (DRCPP) works to build equitable legal systems and alternative approaches to justice, change counterproductive laws, and shift public perception. Advancing policies to minimize the adverse ramifications of the criminal and immigration legal systems on individuals, families, and communities at the intersections is a priority for DRCPP.

### Campaign Goals

The One Day to Protect New Yorkers campaign supports a bill ([A.5964 /S.1825a](#)) that would amend NY law to reduce the maximum sentence on class A misdemeanor offenses by *one day* to 364 days. 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 small change of reducing the maximum class A misdemeanor sentence by only one day would protect thousands of New Yorkers from these unnecessary, harsh immigration consequences. A version of this bill was included in the Governor's FY 2020 budget.

### Campaign Context

Hundreds of thousands of immigrants in the United States are at risk of detention and deportation due to the combination of current immigration enforcement policies that target people with past or ongoing encounters with the justice system, and the harsh federal immigration laws enacted in 1996.<sup>1</sup> Due to some idiosyncrasies in the drafting of federal immigration laws, New York's one year maximum sentence for class A misdemeanors has extraordinary, harsh, and disproportionate consequences for immigrant New Yorkers.

The disastrous immigration consequences resulting from a conviction often far outweigh those stemming from the initial legal system involvement, exacerbating the astronomical human cost that results from an immigrant's conviction of even a misdemeanor offense.

### Successful Examples

California, Washington and Nevada have taken action to protect their immigrant communities by enacting one day reductions in misdemeanor sentences, thereby joining other immigrant-rich states like New Jersey, Illinois, and New Mexico, which already had a maximum penalty for misdemeanors, or equivalent offenses, of 364 days or less. New York is home to one of the most diverse populations in the country. Twenty-two percent of New Yorkers are born outside the United States and 16.6 million people currently living in the United States are part of families with members that have varying immigration statuses.

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<sup>1</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996

## Why One Day Matters

**Preventing Deportation Based on a Misdemeanor Offense:** Because class A misdemeanors in New York have a potential sentence of one year, even green card holders can often be deported for a single misdemeanor conviction. This is true even if people are not sentenced to a single day in jail. Reducing the maximum potential sentence by one day could spare thousands of immigrants from deportation.

**Restoring Discretion to Immigration Judges:** Due to the way New York's one year maximum sentence for class A misdemeanors interacts with a draconian provision of federal immigration law, a conviction for certain misdemeanors offenses can trigger mandatory deportation. As a result, immigration judges are often deprived of discretion to even determine whether deportation is warranted or not. Reducing the maximum potential sentence by one day would allow immigration judges to exercise discretion and make informed decisions in these cases.

**Protecting Vulnerable New Yorkers:** Immigration law is supposed to protect people who would face persecution if deported (asylees), and immigrant victims of domestic violence (VAWA recipients). However, because class A misdemeanors in New York have a potential sentence of one year, these vulnerable New Yorkers can be deprived of protection from removal based upon a single misdemeanor conviction, sometimes even if they are not sentenced to one day in jail. Reducing the maximum potential sentence by one day would help protect these vulnerable New Yorkers.

### Benefits to the NY Criminal Justice System:

- ✓ **Efficient Plea Negotiations:** due to negative immigration consequences people are often unable to take pleas that might otherwise appear to benefit all parties, so cases experience prolonged negotiations. The sentence reduction in the bill leads to fewer harsh immigration consequences, opening creative plea offers.
- ✓ **Fewer Unnecessary Trials:** people may be compelled to go to trial rather than accept unfavorable pleas that trigger negative immigration consequences. Because this bill would produce fewer harsh immigration consequences, people will be more willing to accept plea offers and avoid unnecessary trial.
- ✓ **Reduced Pre-Trial Detention:** if people facing charges are able to accept pleas that benefit all parties more quickly, they will not spend unnecessary weeks or months in jail unable to resolve their cases. During this period of incarceration, they may lose employment, housing, or be unable to care for family members.
- ✓ **Fewer Post-Conviction Relief Motions:** by correcting this sentencing issue, motions relating to a defense counsel's failure to advise people will decline, and people will no longer need to file motions seeking to vacate prior pleas because the harsh immigration consequences from minor convictions is alleviated.

### Immigration Consequences Not Impacted by this Bill

This bill does not mean that all class A misdemeanors would no longer trigger immigration consequences. Many would still trigger other 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 impacts 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.

### Role of District Attorneys

Prosecutors will still have wide discretion to charge people with offenses they deem appropriate 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. Every year, over 90,000 people are convicted of a class A misdemeanor offense. The One Day to Protect New Yorkers Act will serve to make the New York criminal justice system more efficient and fair. Of these convictions, 40% did not result in any sentence of incarceration, and only 4% resulted in the maximum sentence of one year, with virtually no one actually serving the full year.<sup>2</sup>

<sup>2</sup> See Division of Criminal Justice Services (DCJS) data (available on file with Immigrant Defense Project).