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ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 22-H 7355, RELATING TO CRIMINAL OFFENSES – GENERAL PROVISIONS March 3, 2022

The ACLU of Rhode Island strongly supports this legislation, which would slightly redefine in two ways the definitions of felony and misdemeanor in Rhode Island’s criminal laws.

The first tweak addresses an unfortunate and unintentional, but harmful, anomaly in the law. There are some crimes that are felonies even though they carry no risk of a prison sentence whatsoever. That is because, by statutory definition, any crime that carries a fine greater than \$1,000 is automatically deemed a felony. As a result, to give just two examples, any person who “allows to be injured any fire hydrant,” R.I.G.L. §11-66-1, or who is convicted of a second offense of transporting horses while stacked on two or more levels, R.I.G.L. §4-1-39, is a felon even though the General Assembly decided these offenses did not warrant any time in prison. The clarification in this bill to address that problem was part of the package from the Governor’s Justice Reinvestment Commission in 2017 that, unfortunately, failed to pass at that time.

As committee members know, once designated a felon for a fine-only offense, a person faces many of the same collateral consequences – such as ineligibility for various government benefits, public housing, etc. – that a person who has served a lengthy prison sentence for a violent crime would encounter. This amendment would correct this injustice.

The bill’s second tweak would change the maximum prison sentence for a misdemeanor offense from one year to 364 days. This one-day difference could provide an enormous benefit to some immigrants and their families in our state by addressing a mismatch in the way Rhode Island law overlaps with federal immigration law.

Under immigration law, certain minor convictions that are punishable by *a year* or more in prison may lead to detention, denial of necessary forms of immigration relief, and deportation for immigrants. By making a one-day change in the definition of “misdemeanor,” this bill would protect hundreds of Rhode Islanders from these unnecessary, harsh immigration consequences.

To give an 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) could still face deportation and permanent exile from

her family and home for this offense because the crime, like all misdemeanors, carries a potential prison sentence of one year and is considered under federal law to be a “crime of moral turpitude.” If the statutory penalty were no more than 364 days instead of 365, however, the threat of federal punishment would not apply.

It is important to note that, under this bill, prosecutors will still have wide discretion to charge defendants with applicable offenses, including felonies where appropriate. Judges will still otherwise have the discretion to impose prison sentences up to 364 days instead of 365.

A benefit of this bill to the judicial system is that noncitizen defendants will be more likely to accept plea offers when they do not unintentionally trigger particularly harsh immigration consequences. The bill would also help protect vulnerable members of our immigrant community, including asylum seekers and victims of domestic violence, who otherwise could be barred from immigration relief due to a misdemeanor conviction.

States as diverse as New York, Washington and Nevada have amended their criminal codes in recent years in this way to protect their residents against unduly harsh immigration consequences. Other states, such as New Jersey, Illinois and New Mexico, already define a misdemeanor to carry a maximum sentence of less than one year.

In supporting the bill, however, we believe there should be an amendment to the effective date to make clear that these changes are prospective only.

With that one revision, we urge the Committee to approve this legislation and protect the state’s immigrant community from the harsh consequences of federal law for instances of minor misconduct.