

CARRIE LEONETTI
1327 SE Tacoma St. #239
Portland, OR 97202

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Representative Jeff Barker, Chair, and Members,
House Committee on Judiciary
Oregon State Legislature
900 Court St. NE
Salem, Oregon 97301

RE: Testimony Regarding H.B. 2988

Dear Chair Barker and Members,

I am an Associate Professor of Criminal and Constitutional Law at the University of Oregon School of Law. Prior to joining the Academy in 2008, I was an Assistant Federal Defender in the Eastern District of California, where I represented more than a hundred clients charged with federal immigration offenses, and I continue to serve in an emeritus capacity on the Criminal Justice Act Panel for the District of Oregon. I teach multiple classes involving criminal and constitutional law, including a seminar in Crimmigration (the intersection of criminal and immigration law). I am writing to draw the Legislature's attention to the potential immigration impacts of H.B. 2988 for noncitizens convicted of violating O.R.S. 166.065 (1) (a) (A).

Under the federal Immigration and Nationality Act ("INA"), the definition of a "felony" is not determined by state law, but rather by the penalties to which an offender is subject on conviction. The result of this statutory definition of felonies in the INA is that many crimes that are designated as misdemeanors under state law function as "aggravated felonies" for the purpose of federal immigration consequences. Conviction of an aggravated felony, as defined in the INA, renders noncitizens immediately removable and bars them from returning to the United States permanently. Since the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, federal immigration judges no longer have discretion to grant relief from removal for noncitizens convicted of aggravated felonies, no matter how compelling the circumstances are in favor of waiving removal.

The INA categorically defines "crimes of violence" with a term of imprisonment of one year or more as "aggravated felonies." The new, aggravated crime defined in O.R.S. 166.065 (1) (a) (A) is categorically a crime of violence under the INA and, therefore, categorically an "aggravated felony" for removal purposes for anyone sentenced to its statutory maximum term of imprisonment.

The most significant aspect of the proposed amendment to O.R.S. 166.065 (1) (a) (A) for immigration purposes, therefore, is its change in the statutory maximum sentence for a subset of its violations from six months to one year (by changing violations of (1) (a) (A) from class B to class A misdemeanors when certain children are present). The result of this change is that a noncitizen convicted of the new, aggravated version of O.R.S. 166.065 (1) (a) (A), if sentenced to the statutory maximum term of imprisonment of one year, would automatically be rendered permanently inadmissible and removed from the United States, with no avenue of relief from removal. This is true for any noncitizen, from an undocumented immigrant or temporary worker to a long-time, permanent resident (*i.e.*, “Green card” holder) with permanent domicile in the United States and an American citizen spouse and children.

Thank you for permitting me to submit the foregoing comments regarding H.B. 2988.

Sincerely,
/s/ Carrie Leonetti
CARRIE LEONETTI