

Denver City Council
Safety, Housing, Education & Homelessness Committee
Written Testimony of Christopher N. Lasch concerning Council Bill No. 17-XXX
“For an ordinance amending the sentencing structure for violations of the Denver Revised
Municipal Code, modifying the general penalty, and creating a tiered penalty system for different
levels of class 1 and class 2 violations.”

May 3, 2017

While the views expressed herein are my own and not those of my employer, my views are informed by my work as an Associate Professor at the University of Denver Sturm College of Law. My scholarship focuses on the intersection of criminal justice and immigration justice systems. And, in my teaching capacity, I regularly supervise students in the Criminal Defense Clinic handling cases in the General Sessions division of the Denver County Court.

This bill takes important steps toward disentangling the criminal justice system of the City and County from the federal immigration enforcement system, and toward reforming the one-size-fits-all municipal criminal code. I write to urge the Committee and the City Council to take the additional steps needed to make this bill deliver on what it promises—meaningful disentanglement of Denver’s criminal justice system from federal immigration enforcement.

Disentangling criminal justice from federal immigration enforcement

Of the many reasons why cities and counties all across the country are taking steps to disentangle their criminal justice systems from the federal immigration enforcement system, foremost among them is the goal of building community trust. At this point it is common knowledge that entanglement drives non-citizens and members of mixed families into the shadows, making them less likely to interact with police as crime victims or witnesses.¹ President Obama’s task force on policing concluded that “whenever possible, state and local law enforcement should not be involved in immigration enforcement.”²

It has been represented that the bill before the Committee is an attempt to accomplish just this sort of disentanglement.³ But the bill falls short in several important ways.

The bill retains the possibility of a one-year sentence, creating entanglement with immigration.

The City did reach out to immigration stakeholders during the drafting of the bill, but ignored their principal request—to reduce the maximum sentence under the municipal code to 364 days. This would

¹ An influential early paper by the Major Cities Chiefs Association warned that entanglement of local police in immigration enforcement would “undermine the level of trust and cooperation between local police and immigrant communities,” creating a divide that would undermine public safety. M.C.C. IMMIGRATION COMMITTEE RECOMMENDATIONS FOR ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES (adopted by Major Cities Chiefs, June 2006), https://www.majorcitieschiefs.com/pdf/MCC_Position_Statement.pdf.

² PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 18 (2015).

³ Jon Murray & Noelle Phillips, *Denver is set to change its sentencing ordinance to help some immigrants avoid deportation*, DENVER POST (April 27, 2017).

create a clean break between the Denver criminal justice system and immigration enforcement by eliminating the possibility that municipal crimes could lead to deportation on the ground that they carry a potential penalty of one year.

There is no criminal justice purpose for insisting on a one-year sentence maximum. There is no meaningful difference between a 364-day and a 365-day sentence—City officials readily admit that these sentences are rarely imposed,⁴ and sentence credits for “good time” all but ensure that no one will actually serve the 365th day. Given the insignificant difference—except for its bearing on immigration consequences—between a 364-day and 365-day sentence, the suggestion that retaining the possibility of a one-year sentence is necessary to “protect the community from violent offenders”⁵ undercuts the claim that the City is disentangling itself from immigration enforcement. Instead the intransigence on this point suggests the intent behind retaining the one-year sentence is precisely for the purpose of adding deportation to whatever sentence is received through the municipal court process.

The bill fails to take other meaningful steps recommended by stakeholders to disentangle Denver’s criminal system from immigration enforcement.

The bill also represents no action on other meaningful reforms suggested by immigration advocates. Under the Trump administration, noncitizens may be targeted for enforcement based on any contact with the criminal justice system, regardless of how minor and regardless of whether a conviction results.⁶ The point of entanglement with immigration is arrest—because the fingerprints of every person booked following arrest are transmitted to the Department of Homeland Security.

The proposed Denver Sanctuary Ordinance of 2017, unveiled at a community meeting on April 27, 2017,⁷ includes specific proposals to limit arrests,⁸ which would signal a meaningful break with immigration enforcement. The bill represents inadequate consideration of those proposals, which include:

- Decriminalizing code violations;
- Establishing tiers of fine-only violations, for which jail is not a possible sentence;

⁴ “Municipal Sentencing Reform” (Powerpoint submitted in support of the bill).

⁵ Murray & Phillips, *supra* (quoting Mayor Hancock).

⁶ President Donald J. Trump, Exec. Order 13,768, *Enhancing Public Safety in the Interior of the United States* § 5 (Jan. 25, 2017) [hereinafter “Exec. Order on Interior Enforcement”], <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united> (declaring priorities for enforcement to include those with a criminal conviction, those charged with a crime, those thought to have committed acts that would constitute a crime, and any other person deemed a public safety threat by immigration officials).

⁷ Chris Walker, *Immigrant Rights Groups Unveil Sanctuary City Policy*, WESTWORD (April 28, 2017).

⁸ Proposed Denver Sanctuary Ordinance of 2017, § VI(2)(b).

- Limiting arrest authority,⁹ so that more ordinance violations are handled via summons without arrest;
- Creating procedures for community members to clear warrants without arrest or incarceration;
- Creating procedures for community members to resolve ordinance violations without appearing in court.¹⁰

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Reducing the maximum sentence for a good number of municipal violations is a significant and badly needed reform. But without more, the claim that the City is meaningfully disentangling its criminal system from federal immigration enforcement with this bill rings hollow. Discretion will continue to be exercised at every stage of the system—from policing on the street to sentencing in the courts—that leaves entanglement with immigration in the hands of City officials, to be decided on a case-by-case basis. More can and should be done by the City Council to insulate the City’s criminal system from the corrosive effects of this entanglement with the federal immigration system.

⁹ *See, e.g.*, Boulder Municipal Code §§ 2-6-18(b) (limiting circumstances where police may incarcerate).

¹⁰ The City has taken steps to increase the use of its plea-by-mail program, but as of this date that only applies to traffic violations and not to municipal ordinance violations more generally.