Misdemeanor Sentencing
Senate Bill 1242

**Summary:**
SB 1242 provides that all misdemeanor crimes retroactively shall have a maximum possible sentence not exceeding 364 days.

**Background:**
Two years ago SB 1310 (Lara, 2014) aligned the definition of a misdemeanor between state and federal law. Federal law defines a misdemeanor as a crime punishable for up to 364 days and anything longer is considered a felony. Previously, California defined a misdemeanor as a crime punishable for up to 365 days. The federal government did not recognize California’s definition and due to this minor and technical difference, thousands legal residents, who have committed low level and non-violent crimes were subject to deportation unnecessarily, needlessly ripping apart families.

Legal residents have always been subject to deportation, if they commit specified crimes determined by federal statute. In 1996 Congress enacted the Illegal Immigration Reform and Immigration Responsibility Act, which expanded the list of crimes that a legal immigrant can be deported for to include an aggravated felony. Under immigration law, an aggravated felony is a term of art that can apply to crimes that are neither aggravated or a felony.

Under the U.S. Immigration and Nationality Act, aggravated felonies fall into two categories: specific crimes that federal law has determined trigger deportation and crimes that are deportable if the defendant receives a 365-day sentence, regardless of the actual time served in jail. In the first category, misdemeanors where the time imposed by the court, irrespective of whether the time is suspended or not, is considered part of the sentence. As a result, a legal immigrant convicted of a crime and sentenced to 365 days with 362 days suspended, who served only 3 days in jail, would have a one year sentence as defined under federal law and face deportation. Additionally, in the second category, convictions of certain misdemeanors are grounds for immediate removal regardless of the sentence, including domestic violence, firearms, and drug-related crimes, among others.

**Problem:**
While SB 1310 aligned state and federal law on a prospective basis, it did not help those who were convicted of a misdemeanor prior to 2015. Thousands of legal residents are currently living in California with the threat of deportation looming for minor crimes, due to a technical difference between state and federal law. Many of those people have families and businesses in the state and few ties to their country of origin.

**Solution:**
SB 1242 will provide on a retroactive basis that all misdemeanors are punishable for no more than 364 days. This will ensure that legal residents are not deported due to discrepancies between state and federal law.

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