

RESOLUTION 06-04-2014

DIGEST

Immigration: Punishment for Use of False Documents

Amends Penal Code section 114 to make using false documents to conceal one's country of origin or resident status a wobbler and provide a range of available sentences.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 114 to make using false documents to conceal one's country of origin or resident status a wobbler and provide a range of available sentences. This resolution should be approved in principle because it makes the punishment more suitable to the crime.

Section 114 was enacted in 1994 as part of Proposition 187, a largely unconstitutional attempt to fight the perceived ills of illegal immigration and punish the undocumented. It makes using false documents to conceal one's country of origin or resident status a felony punishable by five years in prison or a fine of \$25,000. In contrast, a felony conviction for assault with a handgun is punishable by two, three or four years in state prison. (Pen. Code, § 245, subd. (a)(2).) Making a false bomb report is a straight misdemeanor, punishable by a term of imprisonment in county jail not to exceed one year. (Pen. Code, § 148.1.)

The proposed range of punishment is more appropriate than that in the current statute. It is comparable to the possible prison time imposed for using a false driver's license or identification card to facilitate the commission of a forgery, for example. (Pen. Code, § 470b.) While the potential monetary fine remains exorbitantly high, this resolution goes a long way to making this statute more reasonable.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 114 to read as follows:

§ 114

- 1 Any person who uses false documents to conceal his or her true citizenship or resident
- 2 alien status is guilty of a felony, and shall be punished by imprisonment pursuant to subdivision
- 3 (h) of Section 1170 for ~~five years~~ a period of sixteen months, two or three years, or by
- 4 imprisonment in the county jail, or by a fine of up to twenty-five thousand dollars (\$25,000).

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Penal Code section 114 criminalizes the use of false documents to conceal the defendant's country of origin or resident status. In other words, undocumented individuals who buy twenty dollar fake social security cards in MacArthur Park so they can work (or simply not get deported away from their families) are prosecuted as felons and carry a sentence of five years in prison . . . period. In other words, there IS no range for this offense. If sentenced to custody time, a defendant can only receive a sentence of five years! Contrast this to the sentencing ranges available for far more serious offenses (i.e., rape, robbery, domestic violence, assault with a deadly weapon, etc.) and the disparity in punishment and the lack of accommodation of judicial discretion in sentencing couldn't be clearer.

The Solution: Substitute the "five year" sentencing range with a still severe but more flexible 16-2-3 range of punishment. This allows a judge (and prosecutor) to choose a just rather than robotic sentence for these defendants.

LEGISLATIVE HISTORY

This resolution is related to Penal Code section 114, which was enacted as part of Proposition 187. The Legislature can amend this statute by a 2/3 vote.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Robin Bernstein-Lev, Los Angeles County Public Defender's Office, 320 W. Temple Street, Suite 590, Los Angeles, CA 90012; (213) 893-2545; rbernstein-lev@pubdef.lacounty.gov

RESPONSIBLE FLOOR DELEGATE: Gerald Williams