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Joint Committee on the Judiciary
Senator William Brownsberger & Representative Claire Cronin, Chairs

SUPPORT FOR S.819 and H.741
AN ACT TO ELIMINATE MANDATORY MINIMUM SENTENCES RELATED TO DRUG OFFENSES

Dear Senator Brownsberger, Representative Cronin, and members of the committee:

The ACLU of Massachusetts, on behalf of our nearly 100,000 members and activists, urges the committee to take swift action to repeal mandatory minimum sentences for drug offenses. One-size-fits-all sentences, handed down by prosecutors instead of judges, are a plague on our system of justice, separation of powers, and due process rights. Ending mandatory minimum sentencing is likely the single most impactful criminal justice reform the general court can pursue this session.

Mandatory Minimums Impact Thousands of Lives.

There have been efforts by the district attorneys to downplay the significant role of mandatory minimums in fueling over-incarceration in Massachusetts, but much of the information they have provided is misleading. Recent Department of Correction data indicates that nearly 900 people are currently serving mandatory minimum drug sentences in the Commonwealth. That is a significant number of people by any measure – both as a raw number of human beings behind bars without any hope of improving their lot, and as a percentage of the incarcerated population in Massachusetts.

However, the number of people serving mandatory minimum sentences is just the tip of the iceberg. During the ACLU's involvement in the drug laboratory scandal litigation, *Commonwealth v. Bridgeman*, we received revelatory charge and disposition data from the trial courts. That data shows that for every one person serving a mandatory minimum sentence for a drug offense, two others were charged with drug offenses that carry a mandatory minimum sentence but had a plea leveraged against them with the threat of the mandatory minimum sentence hanging over their head. In other words, the true number of people serving extended sentences based on existing mandatory minimums for drug offenses is three times as high – or between 2,500 and 3,000 people.

This bill would end both mandatory minimum sentencing for drug offenses and the unjust prosecutorial practice of forcing defendants to plea to significant sentences to avoid serving a mandatory minimum.

Mandatory Minimum Sentencing is the Wrong Prescription for Drug Addiction

Everyone agrees that the opioid epidemic is a public health crisis. The solution to the problem lies in

treatment and prevention – not rigid one-size-fits-all sentencing meted out by prosecutors. One problem with mandatory minimum sentences is they are used against drug dealers and drug users alike, although that distinction frequently is meaningless.

Mandatory minimum sentences rob people of opportunities and incentives to participate in programing and treatment. When people serve mandatory minimum sentences they are not eligible for good time or early release, so they lose any incentive to participate in programing and treatment. In addition, though treatment may sometimes be available – indeed, required – as a condition of parole, most people sentenced under mandatory minimums are ineligible for parole. (Because of the lengthy nature of mandatory minimum sentences for drug offenses, prosecutors usually recommend “and a day” sentences instead of meaningful sentencing ranges, thus eliminating the possibility of parole). As a result, people wrap up their lengthy sentences without any form of substance abuse treatment and return the streets – sometimes at their own peril.

Repealing mandatory minimum sentences for drug offenses will create more opportunities for those suffering from drug addiction to take advantage of treatment programing.

Mandatory Minimums Are Used Across the Board, Not to Punish the “Worst of the Worst.”

District Attorneys routinely pursue mandatory sentences, or threaten people with mandatory sentences, regardless of the seriousness of the offense. They do not use them sparingly or reserve them for the worst of the worst. A 2014 report from the Massachusetts Sentencing Commission¹ showed that in reality roughly a third of the people serving mandatory minimum sentences have a Massachusetts Sentencing Commission criminal history classification “A” – minor or no record at all. If people with criminal history classification “B” – a moderate criminal history background – are included, that number jumps up to 54% of the people serving mandatory minimum sentences for drug offenses. In addition, a full 53% of mandatory minimum sentences were for possession with intent to distribute 2nd offense, distribution 2nd offense, possession with intent to distribute in a school zone or distribution in a school zone. These are low level street transactions.

Mandatory minimum sentencing is a tool for prosecutors, not for justice, as evidenced by two recent SJC decisions. In *Commonwealth v. Denton*,² Mr. Denton assisted an undercover state trooper, whom he believed to be dope sick, by purchasing drugs on his behalf—and was then charged with distribution. Because of a 19 year old prior conviction, Mr. Denton was charged with a subsequent offense that carried a mandatory minimum sentence. In *Commonwealth v. Peterson*,³ the Suffolk County District Attorney’s office prosecuted Mr. Peterson for merely driving through a school zone with an amount of drugs law enforcement believed he possessed with an intent to distribute; not for actually selling drugs in a school zone, whether to children or otherwise. Repeal of mandatory minimum sentences for drug offenses would eliminate the harsh sentencing regime that indiscriminately punishes people for low level drug offenses.

Repealing mandatory minimum sentences would also allow judges to differentiate between the

¹ Massachusetts Sentencing Commission: Survey of Sentencing Practices 2013, retrieved from: <http://www.mass.gov/courts/docs/admin/sentcomm/fy2013-survey-sentencing-practices.pdf#page=44>

² [Commonwealth v. Scypio Denton 477 Mass. 248 \(2017\)](#)

³ [Commonwealth v. Marcus G. Peterson 476 Mass. 163 \(2017\)](#)

worst actors and those who are involved in drug transactions for reasons related to addiction. Current trafficking laws fail to do this. It is shocking that possession of a mere 18 grams of class A or B substances -- the equivalent of 4 and a half packets of sugar – is enough to prosecute a person for drug trafficking. With or without mandatory minimum sentencing, no judge would hesitate to put away a “kingpin” for a long time. But the existence of mandatory minimum sentencing prevents appropriate sentencing in many, many cases.

Mandatory Minimums Exacerbate Significant Racial Disparities.

Mandatory minimum sentences for drug offenses have resulted in gross racial disparities in the Massachusetts criminal justice system—worse than almost anywhere in the nation. Massachusetts sentencing data⁴ shows that Black and Latino residents make up only 22% of Massachusetts population, yet the percentage of Black and Latino residents serving sentences for drug offenses is more than twice as high. Most disturbingly, however, the percentage *triples* when looking at people serving sentences for mandatory minimum drug offenses. This shocking disparity exists in the face of information that White people use and sell drugs at relatively similar rates as Black and Latino people.

Eliminating mandatory minimum sentences can be expected to bring the percentage of individuals serving mandatory minimum sentences on drug offenses more in line with the overall percentages of people of color serving non-mandatory sentences for drug offenses. There is much more work to be done to completely eliminate racial disparities in sentencing, but this would be a significant step in the right direction.

Repeal Of Mandatory Minimums Is Good For Public Safety.

The state of Rhode Island eliminated mandatory sentencing for so-called nonviolent drug offenses eight years ago. As a result Rhode Island’s prison population decreased by 9.2 percent, and the state saw a decline in violent crime between 2009 and 2011.

Because mandatory minimum sentences mean no probation, no parole and no incentives for treatment and program participation, people are less likely to get the help they need. When people are able to receive treatment, education and employment opportunities they are less likely to be involved in conduct that contributes to the overall crime rate. Also, repealing mandatory minimum sentences for drug offenses will result in fewer people serving sentences for low level drug offenses, thus reducing the total number of incarcerated individuals.

Repealing Mandatory Minimums Would Restore Balance and Accountability to the Justice System.

Sentencing is supposed to be the judge’s job; mandatory minimums take judges out of the picture. The power of prosecutors to prosecute and impose sentences upends the balance of power in the judicial system by taking discretion away from jurists who have been charged to “faithfully and impartially discharge and perform all [their] duties... according to the best of their abilities and

⁴ Massachusetts Sentencing Commission: Selected Race Statistics, September 27, 2016
<http://www.mass.gov/courts/docs/sentencing-commission/selected-race-statistics.pdf#page=8>

understanding, agreeably, to the rules and regulations of the constitution, and the laws of this Commonwealth.” The result? An increased prison population, little to no impact on recidivism for drug offenders, gross racial disparities in drug sentences, and zero accountability.

Sentencing should appropriately reflect the nature of the offense and the circumstances of the individual accused of the crime. In many instances prosecutors’ use of mandatory minimums is inconsistent with these considerations. That is why the vast majority of Massachusetts voters believe that judges should retain the responsibility and discretion to set appropriate sentences. A May 2017 MassINC poll revealed that only 8% of Massachusetts voters believe that mandatory minimum sentences for drug offenses are a good sentencing structure.⁵ Massachusetts is ripe for reform.

There has been considerable talk about passing meaningful criminal justice reforms this legislative session. The ACLU of Massachusetts believes those reforms must begin with repeal of mandatory minimum sentencing for drug offenses. We urge the committee to advance this legislation with a favorable report, and we look forward to discussing and working with you to pursue the Justice system that our Commonwealth needs.

Sincerely,

Carol Rose
Executive Director

Rahsaan Hall
Racial Justice Program Director

Gavi Wolfe
Legislative Director

⁵ MassINC (2017) Public Opinion on Criminal Justice Reform in Massachusetts “Which is the best way for judges to sentence convicted offenders? Mandatory Minimums (8%), Judicial Discretion (46%). Retrieved from <https://massinc.org/wp-content/uploads/2017/06/Public-Opinion-on-Criminal-Justice-Reform-in-Massachusetts.pdf#page=2>