

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to Repeal Mandatory Minimum Drug Sentences.

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO REPEAL MANDATORY MINIMUM DRUG SENTENCES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 94C of the General Laws is hereby amended by striking out section 32, as
2 appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

3 Section 32. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or
4 possesses with intent to manufacture, distribute or dispense a controlled substance in Class A of section
5 31 shall be punished by imprisonment in the state prison for not more than 10 years or in a jail or house of
6 correction for not more than 2 ½ years or by a fine of not less than \$1,000 nor more than \$10,000, or by
7 both such fine and imprisonment.

8 (b) Any person convicted of violating this section after one or more prior convictions of manufacturing,
9 distributing, dispensing or possessing with the intent to manufacture, distribute, or dispense a controlled
10 substance as defined by section 31 of this chapter under this or any prior law of this jurisdiction or of any
11 offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes
12 the elements of said offense shall be punished by a term of imprisonment in the state prison for not less
13 than 5 nor more than 15 years or a fine of not less than \$2,500 nor more than \$25,000, or by both such
14 fine and imprisonment.

15 SECTION 2. Said chapter 94C is hereby amended by striking out section 32A, as appearing in the 2004
16 Official Edition, and inserting in place thereof the following section:-

17 Section 32A. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or
18 possesses with intent to manufacture, distribute or dispense a controlled substance in Class B of section
19 31 shall be punished by imprisonment in the state prison for not more than 10 years, or in a jail or house

20 of correction for not more than 2 ½ years, or by a fine of not less than \$1,000 nor more than \$10,000 , or
21 both such fine and imprisonment.

22 (b) Any person convicted of violating this section after one or more prior convictions of manufacturing,
23 distributing, dispensing, or possessing with the intent to manufacture, distribute or dispense a controlled
24 substance as defined by section 31 of this chapter under this or any other prior law of this jurisdiction or
25 of any offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily
26 includes the elements of said offense shall be punished by a term of imprisonment in the state prison for
27 not less than 3 nor more than 10 years or a fine of not less than \$2,500 nor more than \$25,000, or by both
28 such fine and imprisonment.

29 (c) Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with
30 intent to manufacture, distribute or dispense phencyclidine or a controlled substance defined in clause (4)
31 of paragraph (a) or in clause (2) of paragraph (c) of class B of section 31 shall be punished by a term of
32 imprisonment in the state prison for not less than 2 ½ nor more than 10 years or by imprisonment in a jail
33 or house of correction for not less than one nor more than 2 ½ years or a fine of not less than \$1,000 nor
34 more than \$10,000 may be imposed but not in lieu of the mandatory minimum one year term of
35 imprisonment, or by both such fine and imprisonment..

36 (d) Any person convicted of violating the provisions of subsection (c) after one or more prior convictions
37 of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute, or
38 dispense a controlled substance, as defined in section 31 or of any offense of any other jurisdiction, either
39 federal, state or territorial, which is the same as or necessarily includes, the elements of said offense, shall
40 be punished by a term of imprisonment in the state prison for not less than 5 nor more than 15 years or a
41 fine of not less than \$2,500 nor more than \$25,000, or by both such fine and imprisonment..

42 SECTION 3. Said chapter 94C is hereby amended by striking out section 32B, as appearing in the 2004
43 Official Edition, and inserting in place thereof the following section:-

44 Section 32B. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or
45 possesses with intent to manufacture, distribute, or dispense a controlled substance in Class C of section
46 31 shall be imprisoned in state prison for not more than 5 years or in a jail or house of correction for not
47 more than 2 ½ years, or by a fine of not less than \$500 nor more than \$5,000, or both such fine and
48 imprisonment.

49 (b) Any person convicted of violating this section after one or more prior convictions of manufacturing,
50 distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled
51 substance as defined by section 31 under this or any prior law of this jurisdiction or of any offense of any
52 other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes the elements of

53 said offense shall be punished by a term of imprisonment in the state prison for not less than 2 ½ nor more
54 than 10 years, or by imprisonment in a jail or house of correction for not less than 2 nor more than 2 ½
55 years or a fine of not less than \$1,000 nor more than \$10,000, or by both such fine and imprisonment.

56 SECTION 4. Said chapter 94C of the General Laws is hereby amended by striking out section 32E, as
57 appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

58 Section 32E. (a) Any person who traffics in marihuana by knowingly or intentionally manufacturing,
59 distributing, dispensing, or cultivating or possessing with intent to manufacture, distribute, dispense, or
60 cultivate, or by bringing into the commonwealth a net weight of 50 pounds or more of marihuana or a net
61 weight of 50 pounds or more of any mixture containing marihuana shall, if the net weight of marihuana or
62 any mixture thereof is:

63 (1) 50 pounds or more, but less than 100 pounds, be punished by a term of imprisonment in the state
64 prison for not less than 2 ½ nor more than 15 years or by imprisonment in a jail or house of correction for
65 not less than 1 nor more than 2 ½ years or a fine of not less than \$500 nor more than \$10,000, or by both
66 such fine and imprisonment.

67 (2) 100 pounds or more, but less than 2,000 pounds, be punished by a term of imprisonment in the state
68 prison for not less than 3 nor more than 15 years or a fine of not less than \$2,500 nor more than \$25,000,
69 or by both such fine and imprisonment.

70 (3) 2,000 pounds or more, but less than 10,000 pounds, be punished by a term of imprisonment in the
71 state prison for not less than 5 nor more than 15 years or a fine of not less than \$5,000 nor more than
72 \$50,000, or by both such fine and imprisonment.

73 (4) 10,000 pounds or more, be punished by a term of imprisonment in the state prison for not less than 10
74 nor more than 15 years or a fine of not less than \$20,000 nor more than \$200,000, or by both such fine
75 and imprisonment.

76 (b) Any person who traffics in a controlled substance defined in clause (4) of paragraph (a) or in clause
77 (3) of paragraph (c) of Class B of section 31 by knowingly or intentionally manufacturing, distributing or
78 dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the
79 commonwealth a net weight of 14 grams or more of a controlled substance as so defined, or a net weight
80 of 14 grams or more of any mixture containing a controlled substance as so defined shall, if the net weight
81 of a controlled substance as so defined, or any mixture thereof is:

82 (1) 14 grams or more but less than 28 grams, be punished by a term of imprisonment in the state prison
83 for not less than 3 nor more than 15 years or a fine of not less than \$2,500 nor more than \$25,000, or by
84 both such fine and imprisonment.

85 (2) 28 grams or more, but less than 100 grams, be punished by a term of imprisonment in the state prison
86 for not less than 5 nor more than 20 years, or a fine of not less than \$5,000 nor more than \$50,000, or by
87 both such fine and imprisonment.

88 (3) 100 grams or more, but less than 200 grams, be punished by a term of imprisonment in the state prison
89 for not less than 10 nor more than 20 years, or a fine of not less than \$10,000 nor more than \$100,000, or
90 by both such fine and imprisonment.

91 (4) 200 grams or more, be punished by a term of imprisonment in the state prison for not less than 15 nor
92 more than 20 years or a fine of not less than \$50,000 nor more than \$500,000, or by both such fine and
93 imprisonment.

94 (c) Any person who traffics in heroin or any salt thereof, morphine or any salt thereof, opium or any
95 derivative thereof by knowingly or intentionally manufacturing, distributing or dispensing or possessing
96 with intent to manufacture, distribute, or dispense or by bringing into the commonwealth a net weight of
97 14 grams or more of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative
98 thereof or a net weight of 14 grams or more of any mixture containing heroin or any salt thereof,
99 morphine or any salt thereof, opium or any derivative thereof shall, if the net weight of heroin or any salt
100 thereof, morphine or any salt thereof, opium or any derivative thereof or any mixture thereof is:—

101 (1) 14 grams or more but less than 28 grams, be punished by a term of imprisonment in the state prison
102 for not less than 5 nor more than 20 years or a fine of not less than \$5,000 nor more than \$50,000, or by
103 both such fine and imprisonment.

104 (2) 28 grams or more but less than 100 grams, be punished by a term of imprisonment in the state prison
105 for not less than 7 nor more than 20 years or a fine of not less than \$5,000 nor more than \$50,000, or by
106 both such fine and imprisonment.

107 (3) 100 grams or more but less than 200 grams, be punished by a term of imprisonment in the state prison
108 for not less than 10 nor more than 20 years or a fine of not less than \$10,000 nor more than \$100,000, or
109 by both such fine and imprisonment.

110 (4) 200 grams or more, be punished by a term of imprisonment in the state prison for not less than 15 nor
111 more than 20 years or a fine of not less than \$50,000 nor more than \$500,000, or by both such fine and
112 imprisonment

113 SECTION 5. Said chapter 94C is hereby further amended by striking out section 32F, as appearing in the
114 2004 Official Edition, and inserting in place thereof the following section:-

115 Section 32F. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or
116 possesses with intent to manufacture, distribute, or dispense a controlled substance in Class A of section
117 31 to a person under the age of 18 years shall be punished by a term of imprisonment in the state prison
118 for not less than 5 nor more than 15 years or a fine of not less than \$1,000 nor more than \$25,000, or by
119 both such fine and imprisonment.

120 (b) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with
121 intent to manufacture, distribute, or dispense a controlled substance in Class B of section 31 to a person
122 under the age of 18 years shall be punished by a term of imprisonment in the state prison for not less than
123 3 nor more than 15 years or a fine of not less than \$1,000 nor more than \$25,000, or by both such fine and
124 imprisonment.

125 (c) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with
126 intent to manufacture, distribute, or dispense a controlled substance in Class C of section 31 to a person
127 under the age of 18 years shall be punished by a term of imprisonment in the state prison for not less than
128 2 ½ nor more than 15 years or in a jail or house of correction for not less than 2 ½ years, or a fine of not
129 less than \$1,000 nor more than \$25,000, or by both such fine and imprisonment.

130 (d) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with
131 intent to manufacture, distribute or dispense a controlled substance as defined in clause (4) of paragraph
132 (a) of class B of section 31, to a person under the age of 18 years shall be punished by a term of
133 imprisonment in the state prison for not less than 5 nor more than 15 years, or a fine of not less than
134 \$1,000 nor more than \$25,000, or by both such fine and imprisonment.

135 SECTION 6. Said chapter 94C is hereby further amended by striking out section 32H, as appearing in the
136 2004 Official Edition, and inserting in place thereof the following section:-

137 Section 32H. A prosecution commenced under paragraph (b) of section 32, paragraphs (b), (c) and (d) of
138 section 32 A, paragraph (b) of section 32 B, sections 32 E 32 F and 32 J shall not be placed on file or
139 continued without a finding.

140 The provisions of section 87 of chapter 276 shall not apply to any person, 17 years of age or over, charged
141 with a violation of said sections, or to any child between age 14 and 17, so charged, if the court is of the
142 opinion that the interests of the public require that he shall be tried for such offense instead of being dealt
143 with as a child.

144 SECTION 7. Said chapter 94C is hereby further amended by striking out section 32J, as appearing in the
145 2004 Official Edition, and inserting in place thereof the following section:-

146 Section 32J. Any person who violates the provisions of section 32, 32 A, 32 B, 32 C, 32 D, 32 E, 32 F or
147 32 I while in or on, or within 1,000 feet of the real property comprising a public or private accredited
148 preschool, accredited headstart facility, elementary, vocational, or secondary school whether or not in
149 session, or within 100 feet of a public park or playground shall be punished by a term of imprisonment in
150 the state prison for not less than 2 ½ nor more than 15 years or by imprisonment in a jail or house of
151 correction for not less than 2 nor more than 2 ½ years, or a fine of not less than \$1,000 nor more than
152 \$10,000 or by both such fine and imprisonment. In accordance with the provisions of section 8 A of
153 chapter 279 such sentence shall begin from and after the expiration of the sentence for violation of section
154 32, 32A, 32B, 32C, 32D, 32E, 32 F or 32I.

155 Lack of knowledge of school boundaries shall not be a defense to any person who violates the provisions
156 of this section.

157 SECTION 8. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, 32F, and 32J of chapter 94C
158 of the General Laws, or any other general or special law to the contrary, persons serving mandatory
159 minimum sentences for violations of the above referenced sections as of July 1, 2009, shall be eligible for
160 parole after serving two-thirds of their maximum sentence.