SENATE DOCKET, NO. 1181 FILED ON: 1/18/2013

SENATE . . . . . No. 667

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. 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:

An Act to repeal mandatory minimum sentences for non-violent drug offenses.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia S. Creem	*First Middlesex and Norfolk*
Kay Khan	*11th Middlesex*
Daniel A. Wolf	*Cape and Islands*
Jonathan Hecht	*29th Middlesex*
Ruth B. Balser	*12th Middlesex*
Carolyn C. Dykema	*8th Middlesex*
Tom Sannicandro	*7th Middlesex*
Patricia D. Jehlen	*Second Middlesex*
Thomas M. McGee	*Third Essex*

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SENATE . . . . . No. 667

By Ms. Creem, a petition (accompanied by bill, Senate, No. 667) of Cynthia S. Creem, Kay Khan, Daniel A. Wolf, Jonathan Hecht and other members of the General Court for legislation to repeal mandatory minimum sentences for non-violent drug offenses. The Judiciary.

The Commonwealth of Massachusetts

An Act to repeal mandatory minimum sentences for non-violent drug offenses.

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

SECTION 1. Chapter 94C of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out section 32, as amended by chapter 192 of the acts of 2012, and inserting in place thereof the following section:-

Section 32. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a controlled substance in Class A of section 31 shall be punished by imprisonment in the state prison for not more than 10 years or in a jail or house of correction for not more than 2½ years or by a fine of not less than $1,000 nor more than $10,000, or by both such fine and imprisonment.

(b) Any person convicted of violating this section after 1 or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled substance as defined by section 31 of this chapter under this or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than $2,500 nor more than $25,000.

SECTION 2. Chapter 94C of the General Laws, as so appearing, is hereby further amended by striking out section 32A, as amended by chapter 192 of the acts of 2012, and inserting in place thereof the following section:-

Section 32A. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with intent to manufacture, distribute or dispense a controlled substance in Class B of section 31 shall be punished by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2½ years, or by a fine of not less than $1,000 nor more than $10,000, or both such fine and imprisonment.

24 (b) Any person convicted of violating sub-section (a) after 1 or more prior convictions of
25 manufacturing, distributing, dispensing, or possessing with the intent to manufacture, distribute
26 or dispense a controlled substance as defined by section 31 of this chapter under this or any other
27 prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state, or
28 territorial, which is the same as or necessarily includes the elements of said offense shall be
29 punished by a term of imprisonment in the state prison for not more than 10 years and by a fine
30 of not less than $2,500 nor more than $25,000.

31 (c) Any person who knowingly or intentionally manufactures, distributes, dispenses or
32 possesses with intent to manufacture, distribute or dispense phencyclidine or a controlled
33 substance defined in clause (4) of paragraph (a) or in clause (2) of paragraph (c) of class B of
34 section 31 shall be punished by a term of imprisonment in the state prison for not less than 2½
35 nor more than 10 years or by imprisonment in a jail or house of correction for not more than 2½
36 years and by a fine of not less than $1,000 nor more than $10,000, or both such fine and
37 imprisonment.

38 (d) Any person convicted of violating the provisions of subsection (c) after 1 or more
39 prior convictions of manufacturing, distributing, dispensing or possessing with the intent to
40 manufacture, distribute or dispense a controlled substance, as defined in section 31 or of any
41 offense of any other jurisdiction, either federal, state or territorial, which is the same as or
42 necessarily includes, the elements of said offense, shall be punished by a term of imprisonment
43 in the state prison for not more than 15 years and by a fine of not less $2,500 nor more than
44 $25,000.

45 SECTION 3. Chapter 94C of the General Laws, as so appearing, is hereby further
46 amended by striking out section 32B, as amended by chapter 192 of the acts of 2012, and
47 inserting in place thereof the following section:-

48 Section 32B. (a) Any person who knowingly or intentionally manufactures, distributes,
49 dispenses or possesses with intent to manufacture, distribute, or dispense a controlled substance
50 in Class C of section 31 shall be imprisoned in state prison for not more than 5 years or in a jail
51 or house of correction for not more than 2½ years, or by a fine of not less than $500 nor more
52 than $5,000, or both such fine and imprisonment.

53 (b) Any person convicted of violating this section after 1 or more prior convictions of
54 manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or
55 dispense a controlled substance as defined by section 31 under this or any prior law of this
56 jurisdiction or of any offense of any other jurisdiction, federal, state or territorial, which is the
57 same as or necessarily includes the elements of said offense shall be punished by a term of
58 imprisonment in the state prison for not less than 2½ nor more than 10 years, or by imprisonment
59 in a jail or house of correction for not more than 2½ years and by a fine of not less than $1,000
60 nor more than $10,000, or both such fine and imprisonment.

SECTION 4. Chapter 94C of the General Laws, as so appearing, is hereby further amended by striking out section 32E, as amended by chapter 192 of the acts of 2012, and inserting in place thereof the following section:-

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

(1) Fifty pounds or more, but less than 100 pounds, be punished by a term of imprisonment in the state prison for not less than 2½ nor more than 15 years or by imprisonment in a jail or house of correction for not more than 2½ years and by a fine of not less than $500 nor more than $10,000, or both such fine and imprisonment.

(2) One hundred pounds or more, but less than 2,000 pounds, be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than $2,500 nor more than $25,000.

(3) Two thousand pounds or more, but less than 10,000 pounds, be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than $5,000 nor more than $50,000.

(4) Ten thousand pounds or more, be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than $20,000 nor more than $200,000.

(b) Any person who trafficks in a controlled substance defined in clause (4) of paragraph (a) or in clause (3) of paragraph (c) of Class B of section 31 by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of 18 grams or more of a controlled substance as so defined, or a net weight of 18 grams or more of any mixture containing a controlled substance as so defined shall, if the net weight of a controlled substance as so defined, or any mixture thereof is:

(1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than $2,500 nor more than $25,000.

(2) Thirty-six grams or more, but less than 100 grams, be punished by a term of imprisonment in the state prison for not more than 20 years and by a fine of not less than $5,000 nor more than $50,000.

94 (3) One hundred grams or more, but less than 200 grams, be punished by a term of
95 imprisonment in the state prison for not more than 20 years and by a fine of not less than $10,000
96 nor more than $100,000.

97 (4) Two hundred grams or more, be punished by a term of imprisonment in the state
98 prison for not more than 20 years and by a fine of not less than $50,000 nor more than $500,000.

99 (c) Any person who trafficks in heroin or any salt thereof, morphine or any salt thereof,
100 opium or any derivative thereof by knowingly or intentionally manufacturing, distributing or
101 dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into
102 the commonwealth a net weight of 18 grams or more of heroin or any salt thereof, morphine or
103 any salt thereof, opium or any derivative thereof or a net weight of 18 grams or more of any
104 mixture containing heroin or any salt thereof, morphine or any salt thereof, opium or any
105 derivative thereof shall, if the net weight of heroin or any salt thereof, morphine or any salt
106 thereof, opium or any derivative thereof or any mixture thereof is:

107 (1) Eighteen grams or more but less than 36 grams, be punished by a term of
108 imprisonment in the state prison for not more than 20 years and by a fine of not less than $5,000
109 nor more than $50,000.

110 (2) Thirty-six grams or more but less than 100 grams, be punished by a term of
111 imprisonment in the state prison for not more than 20 years and by a fine of not less than $5,000
112 nor more than $50,000.

113 (3) One hundred grams or more but less than 200 grams, be punished by a term of
114 imprisonment in the state prison for not more than 20 years and by a fine of not less than $10,000
115 nor more than $100,000.

116 (4) Two hundred grams or more, be punished by a term of imprisonment in the state
117 prison for not more than 20 years and by a fine of not less than $50,000 nor more than $500,000.

118 SECTION 5. Chapter 94C of the General Laws, as so appearing, is hereby further
119 amended by striking out section 32H, as amended by chapter 192 of the acts of 2012, and
120 inserting in place thereof the following section:-

121 Section 32H. Prosecutions commenced under section 32F or section 32K shall not be
122 placed on file or continued without a finding, and the sentence imposed upon a person convicted
123 of violating any provision of said sections shall not be reduced to less than the mandatory
124 minimum term of imprisonment as established in said section, nor shall any sentence of
125 imprisonment imposed upon any person be suspended or reduced until such person shall have
126 served said mandatory minimum term of imprisonment.

127 A person convicted of violating said sections shall not, until the person shall have served
128 the mandatory minimum term of imprisonment established in said sections, be eligible for

129 probation, furlough, or receive any deduction from his sentence for good conduct under section
130 129C and 129D of chapter 127, nor shall he be eligible for parole; provided, however, that the
131 commissioner of correction, on the recommendation of the warden, superintendent or other
132 person in charge of the correctional institution, or a sheriff, on the recommendation of the
133 administrator of a county correctional institution, may grant to said offender a temporary release,
134 subject to the rules and regulations of the institution and under the direction, control and
135 supervision of the officers thereof, for the following purposes: (1) to attend the funeral of a
136 relative, to visit a critically ill relative, to obtain emergency medical or psychiatric services
137 unavailable at said institution; (2) to participate in education, training, or employment programs
138 established under section 48 of chapter 127; (3) to engage in employment pursuant to a work
139 release program under sections 49, 49A, 86F or 86G of chapter 127; or (4) to participate in a
140 program to provide services under section 49B or 49C of chapter 127. Section 87 of chapter 276
141 shall not apply to any person, 17 years of age or older, charged with a violation of said sections,
142 or to any child between age 14 and 17, so charged by indictment under section 54 of chapter 119.

143 SECTION 6. Chapter 94C of the General Laws, as so appearing, is hereby further
144 amended by striking out section 32J, as amended by chapter 192 of the acts of 2012, and
145 inserting in place thereof the following section:-

146 Section 32J. Any person who violates the provisions of section thirty-two, thirty-two A,
147 thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F or thirty-two I while in or on,
148 or within 300 feet of the real property comprising a public or private accredited preschool,
149 accredited headstart facility, elementary, vocational, or secondary school if the violation occurs
150 between 5:00 a.m. and midnight, whether or not in session, or within one hundred feet of a
151 public park or playground shall be punished by a term of imprisonment in the state prison for not
152 less than two and one-half nor more than fifteen years or by imprisonment in a jail or house of
153 correction for not more than two and one-half years.

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

156 SECTION 7. Notwithstanding any general or special law to the contrary, a person serving
157 a mandatory minimum sentence in state prison as of the effective date of this act, for violating
158 any provision of sections 32, 32A, 32B, or 32J of chapter 94C:

159 (a) shall be eligible for parole after serving one-half of the minimum term of the sentence,

160 (b) shall be eligible to participate in education, training, employment, or work release
161 programs established pursuant to Sections 49, 49B, 49C, 86F and 86G of Chapter 127; and

162 (c) shall be eligible to receive deductions from his sentence for good conduct under
163 Sections 129C and 129D of Chapter 127, provided that such deductions shall accrue as of the
164 effective date of this section.