

September 20, 2011

**Massachusetts Association of Criminal Defense Lawyers  
Statement Supporting Legislation Repealing or Modifying  
Mandatory Minimum Sentence Statutes**

The Massachusetts Association of Criminal Defense Lawyers (MACDL) is an association of 1,000 lawyers who primarily engage in defending and advocating for the rights of citizens accused of crimes in every county, state, and federal court in the Commonwealth of Massachusetts. MACDL is in support of the various bills calling for the repeal or mitigation of our draconian mandatory minimum sentencing laws (H. 40, S. 758, S. 909) including those provisions which would reduce the extent of the school zone in drug cases. (H.40, S 557, S. 908).

As defense attorneys, we have had a first-hand view of the harm, waste and just plain dysfunction caused by these draconian laws. Mandatory minimum laws create the antithesis of a rational sentencing system. They render irrelevant the circumstances of the offense and the offender, often producing arbitrary, grossly disproportionate and unfair results by any sensible measure. They make entirely beside the point any consideration of the defendant's background, criminal history, need for deterrence, or prospects for rehabilitation, not to mention justice. They deny any role to the officials charged with making a close examination of what an individual actually deserves – the judges and the parole board. They breed bitterness and cynicism in prisoners, who have little incentive to improve themselves while in prison. They have had no discernible positive effect on deterrence.

And they contribute mightily to a crisis of overpopulation in our prison system, a “luxury” we can literally no longer afford -- whether measured in dollars or in human

cost. Prison populations are now being pushed to dangerous levels, with both state and county facilities way over capacity. The state prison population has increased by 14% over the last six years, even as the crime rate has gone down. This ever growing population bubble is now costing us \$45,000 per state prisoner, per year. Total state and county spending on prisons, probation and parole is over \$1.2 billion per year, and will inevitably rise unless something changes the rate at which prisoners are added and released. Someone has to pay for this bloated system, and in a time of recession the state has had to make extraordinary cuts in Local Aid, Higher Education and Public Health, among other needs, in order to do so.

Massachusetts is not alone in this respect. Many states are facing similar crises and have come to similar crossroads on how deal with them. Importantly, a movement has developed among states and among political leaders to find new effective and cost-effective ways of dealing with crime. These cut across ideological lines: the ACLU calls it “Smart on Crime;” Newt Gingrich calls it “Right on Crime.” These methods entail more flexible sentencing and an emphasis on reentry programs, including community treatment for mentally ill and drug addicted persons. Texas has turned to this approach and has substantially reduced its prison population, which is projected to go down by 11% and save as much as \$2 billion by 2012. Kansas, Mississippi, South Carolina, Kentucky and Ohio have adopted similar methods, with comparable results. None of these states are slouches when it comes to crime policy. A key component of many of these efforts has been the elimination or restriction of mandatory minimum sentences. Massachusetts should do the same. Passage of the proposed legislation would constitute a vital first step toward a new fiscally sound and effective criminal justice policy.

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