

**SENATE . . . . . No. 786**

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 adoption of the accompanying bill:

An Act to eliminate mandatory minimum sentences related to drug offenses.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>

<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>

**SENATE . . . . . No. 786**

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 786) of Cynthia S. Creem, Sonia Chang-Diaz, Jason M. Lewis, Michael J. Barrett and other members of the General Court for legislation to repeal mandatory minimum sentences for non-violent drug offenses. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 667 OF 2013-2014.]

**The Commonwealth of Massachusetts**

—————  
**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
—————

An Act to eliminate mandatory minimum sentences related to 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:*

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

4           Section 32. (a) Any person who knowingly or intentionally manufactures, distributes,  
5 dispenses, or possesses with intent to manufacture, distribute or dispense a controlled substance  
6 in Class A of section 31 shall be punished by imprisonment in the state prison for not more than  
7 10 years or in a jail or house of correction for not more than 2½ years or by a fine of not more  
8 than \$10,000, or by both such fine and imprisonment.

9 (b) Any person convicted of violating this section after 1 or more prior convictions of  
10 manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or  
11 dispense a controlled substance as defined by section 31 of this chapter under this or any prior  
12 law of this jurisdiction or of any offense of any other jurisdiction, federal, state or territorial,  
13 which is the same as or necessarily includes the elements of said offense shall be punished by a  
14 term of imprisonment in the state prison for not more than 15 years. No sentence imposed under  
15 the provisions of this section shall be punished by a fine of more than \$25,000.

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

18 Section 32A. (a) Any person who knowingly or intentionally manufactures, distributes,  
19 dispenses or possesses with intent to manufacture, distribute or dispense a controlled substance  
20 in Class B of section 31 shall be punished by imprisonment in the state prison for not more than  
21 10 years, or in a jail or house of correction for not more than 2½ years, or by a fine of not more  
22 than \$10,000, or both such fine and imprisonment.

23 (b) Any person convicted of violating sub-section (a) after 1 or more prior convictions of  
24 manufacturing, distributing, dispensing, or possessing with the intent to manufacture, distribute  
25 or dispense a controlled substance as defined by section 31 of this chapter under this or any other  
26 prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state, or  
27 territorial, which is the same as or necessarily includes the elements of said offense shall be  
28 punished by a term of imprisonment in the state prison for not more than 10 years. No sentence  
29 imposed under the provisions of this section shall be punished by a fine of more than \$25,000.

30 (c) Any person who knowingly or intentionally manufactures, distributes, dispenses or  
31 possesses with intent to manufacture, distribute or dispense phencyclidine or a controlled  
32 substance defined in clause (4) of paragraph (a) or in clause (2) of paragraph (c) of class B of  
33 section 31 shall be punished by a term of imprisonment in the state prison for not more than 10  
34 years or by imprisonment in a jail or house of correction for not more than 2½ years. No  
35 sentence imposed under the provisions of this section shall be punished by a fine of more than  
36 \$10,000.

37 (d) Any person convicted of violating the provisions of subsection (c) after 1 or more  
38 prior convictions of manufacturing, distributing, dispensing or possessing with the intent to  
39 manufacture, distribute or dispense a controlled substance, as defined in section 31 or of any  
40 offense of any other jurisdiction, either federal, state or territorial, which is the same as or  
41 necessarily includes, the elements of said offense, shall be punished by a term of imprisonment  
42 in the state prison for not more than 15 years and a fine of not more than \$25,000 may be  
43 imposed.

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

46 Section 32B. (a) Any person who knowingly or intentionally manufactures, distributes,  
47 dispenses or possesses with intent to manufacture, distribute, or dispense a controlled substance  
48 in Class C of section 31 shall be imprisoned in state prison for not more than 5 years or in a jail  
49 or house of correction for not more than 2½ years, or by a fine of not more than \$5,000, or both  
50 such fine and imprisonment.

51 (b) Any person convicted of violating this section after 1 or more prior convictions of  
52 manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or  
53 dispense a controlled substance as defined by section 31 under this or any prior law of this  
54 jurisdiction or of any offense of any other jurisdiction, federal, state or territorial, which is the  
55 same as or necessarily includes the elements of said offense shall be punished by a term of  
56 imprisonment in the state prison for not more than 10 years, or by imprisonment in a jail or  
57 house of correction for not more than 2½ years. No sentence imposed under the provisions of  
58 this section shall be punished by a fine of more than \$10,000.

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

61 Section 32C. (a) Any person who knowingly or intentionally manufactures, distributes,  
62 dispenses or cultivates, or possesses with intent to manufacture, distribute, dispense or cultivate a  
63 controlled substance in Class D of section thirty-one shall be imprisoned in a jail or house of  
64 correction for not more than two years or by a fine of not more than five thousand dollars, or  
65 both such fine and imprisonment.

66 (b) Any person convicted of violating this section after one or more prior convictions of  
67 manufacturing, distributing, dispensing, cultivating or possessing with intent to manufacture,  
68 distribute, dispense or cultivate a controlled substance as defined by section thirty-one under this  
69 or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state, or  
70 territorial, which is the same as or necessarily includes the elements of said offense shall be  
71 punished by a term of imprisonment in a jail or house of correction for not more than two and

72 one-half years, or by a fine of not more than ten thousand dollars, or both such fine and  
73 imprisonment.

74 SECTION 5. Chapter 94C of the General Laws, as so appearing, is hereby further  
75 amended by striking out section 32E and inserting in place thereof the following section:-

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

81 (1) Fifty pounds or more, but less than 100 pounds, be punished by a term of  
82 imprisonment in the state prison for more than 15 years or by imprisonment in a jail or house of  
83 correction for not more than 2½ years. No sentence imposed under the provisions of this section  
84 shall be punished by a fine of more than \$10,000.

85 (2) One hundred pounds or more, but less than 2,000 pounds, be punished by a term of  
86 imprisonment in the state prison for not more than 15 years. No sentence imposed under the  
87 provisions of this section shall be punished by a fine of more than \$25,000.

88 (3) Two thousand pounds or more, but less than 10,000 pounds, be punished by a term of  
89 imprisonment in the state prison for not more than 15 years. No sentence imposed under the  
90 provisions of this section shall be punished by a fine of more than \$50,000.

91 (4) Ten thousand pounds or more, be punished by a term of imprisonment in the state  
92 prison for not more than 15 years. No sentence imposed under the provisions of this section shall  
93 be punished by a fine of more than \$200,000.

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

101 (1) Eighteen grams or more but less than 36 grams, be punished by a term of  
102 imprisonment in the state prison for not more than 15 years. No sentence imposed under the  
103 provisions of this section shall be punished by a fine of more than \$25,000.

104 (2) Thirty-six grams or more, but less than 100 grams, be punished by a term of  
105 imprisonment in the state prison for not more than 20 years. No sentence imposed under the  
106 provisions of this section shall be punished by a fine of more than \$50,000.

107 (3) One hundred grams or more, but less than 200 grams, be punished by a term of  
108 imprisonment in the state prison for not more than 20 years. No sentence imposed under the  
109 provisions of this section shall be punished by a fine of more than \$100,000.

110 (4) Two hundred grams or more, be punished by a term of imprisonment in the state  
111 prison for not more than 20 years. No sentence imposed under the provisions of this section  
112 shall be punished by a fine of more than \$500,000.



113 (c) Any person who trafficks in heroin or any salt thereof, morphine or any salt thereof,  
114 opium or any derivative thereof by knowingly or intentionally manufacturing, distributing or  
115 dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into  
116 the commonwealth a net weight of 18 grams or more of heroin or any salt thereof, morphine or  
117 any salt thereof, opium or any derivative thereof or a net weight of 18 grams or more of any  
118 mixture containing heroin or any salt thereof, morphine or any salt thereof, opium or any  
119 derivative thereof shall, if the net weight of heroin or any salt thereof, morphine or any salt  
120 thereof, opium or any derivative thereof or any mixture thereof is:

121 (1) Eighteen grams or more but less than 36 grams, be punished by a term of  
122 imprisonment in the state prison for not more than 20 years. No sentence imposed under the  
123 provisions of this section shall be punished by a fine of more than \$50,000.

124 (2) Thirty-six grams or more but less than 100 grams, be punished by a term of  
125 imprisonment in the state prison for not more than 20 years. No sentence imposed under the  
126 provisions of this section shall be punished by a fine of more than \$50,000.

127 (3) One hundred grams or more but less than 200 grams, be punished by a term of  
128 imprisonment in the state prison for not more than 20 year. No sentence imposed under the  
129 provisions of this section shall be punished by a fine of more than \$100,000.

130 (4) Two hundred grams or more, be punished by a term of imprisonment in the state  
131 prison for not more than 20 years. No sentence imposed under the provisions of this section  
132 shall be punished by a fine of more than \$500,000.

133 SECTION 6. Chapter 94C of the General Laws, as so appearing, is hereby further  
134 amended by striking out section 32F and inserting in place thereof the following section:-

135 Section 32F. (a) Any person who knowingly or intentionally manufactures, distributes,  
136 dispenses, or possesses with intent to manufacture, distribute, or dispense a controlled substance  
137 in Class A of section thirty-one to a person under the age of eighteen years shall be punished by  
138 a term of imprisonment in the state prison for not more than fifteen years. No sentence imposed  
139 under the provisions of this section shall be punished by a fine of more than \$25,000.

140 (b) Any person who knowingly or intentionally manufactures, distributes, dispenses, or  
141 possesses with intent to manufacture, distribute, or dispense a controlled substance in Class B of  
142 section thirty-one to a person under the age of eighteen years shall be punished by a term of  
143 imprisonment in the state prison for not more than fifteen years. No sentence imposed under the  
144 provisions of this section shall be punished by a fine of more than \$25,000.

145 (c) Any person who knowingly or intentionally manufactures, distributes, dispenses, or  
146 possesses with intent to manufacture, distribute, or dispense a controlled substance in Class C of  
147 section thirty-one to a person under the age of eighteen years shall be punished by a term of  
148 imprisonment in the state prison for not more than fifteen years or in a jail or house of correction  
149 for not more than two and one-half years. No sentence imposed under the provisions of this  
150 section shall be punished by a fine of more than \$25,000.

151 (d) Any person who knowingly or intentionally manufactures, distributes, dispenses, or  
152 possesses with intent to manufacture, distribute or dispense a controlled substance as defined in  
153 clause (4) of paragraph (a) of class B of section thirty-one, to a person under the age of eighteen  
154 years shall be punished by a term of imprisonment in the state prison for not more than fifteen  
155 years. No sentence imposed under the provisions of this section shall be punished by a fine of  
156 more than \$25,000.

157 SECTION 7. Chapter 94C of the General Laws, as so appearing, is hereby further  
158 amended by striking out section 32G and inserting in place thereof the following section:-

159 Section 32G. Any person who knowingly or intentionally creates, distributes, dispenses  
160 or possesses with intent to distribute or dispense a counterfeit substance shall be punished by  
161 imprisonment in a jail or house of correction for not more than one year or by a fine of not more  
162 than two thousand and five hundred dollars, or both such fine and imprisonment.

163 SECTION 8. Chapter 94C of the General Laws, as so appearing, is hereby further  
164 amended by striking out section 32H in its entirety.

165 SECTION 9. Chapter 94C of the General Laws, as so appearing, is hereby further  
166 amended by striking out section 32J and inserting in place thereof the following section:-

167 Section 32J. Any person who violates the provisions of section thirty-two, thirty-two A,  
168 thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F or thirty-two I while in or on,  
169 or within 300 feet of the real property comprising a public or private accredited preschool,  
170 accredited headstart facility, elementary, vocational, or secondary school if the violation occurs  
171 between 5:00 a.m. and midnight, whether or not in session, or within one hundred feet of a  
172 public park or playground shall be punished by a term of imprisonment in the state prison for not  
173 more than fifteen years or by imprisonment in a jail or house of correction for not more than two  
174 and one-half years. A fine of not more than \$10,000 may be imposed.

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

177 SECTION 10. Chapter 94C of the General Laws, as so appearing, is hereby further  
178 amended by striking out section 32K and inserting in place thereof the following section:-Section  
179 32K. Any person who knowingly causes, induces or abets a person under the age of eighteen to  
180 distribute, dispense or possess with the intent to distribute or dispense any controlled substance  
181 as defined herein, or to accept, deliver or possess money used or intended for use in the  
182 procurement, manufacture, compounding, processing, delivery, distribution or sale of any such  
183 controlled substance shall be punished by imprisonment in the state prison for not more than  
184 fifteen years. No sentence imposed under the provisions of this section shall be punished by a  
185 fine of more than \$100,000.

186 SECTION 11. Section 34 of said chapter 94C, as so appearing, is hereby amended by  
187 striking out the words “less than two and one-half years nor” in the third sentence of the first  
188 paragraph.

189 SECTION 12. Notwithstanding any general or special law to the contrary, a person  
190 serving a sentence for violating any provisions of chapter 94C or charged with such a violation  
191 but a guilty plea has not been accepted nor a conviction entered as of the effective date of this  
192 act:

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

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

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