

SENATE No. 819

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>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>2/3/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/23/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/25/2017</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/25/2017</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>1/25/2017</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>	<i>1/25/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/25/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/26/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/26/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/26/2017</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/26/2017</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>1/26/2017</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>1/27/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/27/2017</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>1/27/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/30/2017</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	<i>1/30/2017</i>

<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/30/2017</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/31/2017</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>	<i>1/31/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/31/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/1/2017</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>2/1/2017</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/2/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/2/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/2/2017</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>2/2/2017</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/3/2017</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>2/3/2017</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>2/3/2017</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/15/2017</i>

SENATE No. 819

By Ms. Creem, a petition (accompanied by bill, Senate, No. 819) of Cynthia S. Creem, Joseph A. Boncore, Denise Provost, Marjorie C. Decker and other members of the General Court for legislation to repeal mandatory minimum sentences for non-violent drug offenses. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 786 OF 2015-2016.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninetieth General Court
(2017-2018)**
—————

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 2014 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.