

April 4, 2017

Re: Comments on House Bill 741 (Reinstating Mandatory Minimum Sentences for Certain Criminal Offenses)

Dear Representative:

We are writing to register our strong opposition to House Bill 741. In our view, the bill's reinstatement of Pennsylvania's mandatory minimum sentencing scheme, declared unconstitutional by the Pennsylvania Supreme Court in 2015, is an exercise in futility. Indeed, by your own fiscal calculations, it will be prohibitively costly to the taxpayers of Pennsylvania, while at the same time it fails to accomplish its goals of improving public safety and deterring future criminal behavior.

By way of background, the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness ("Interbranch Commission") was established in 2005 as a means of implementing the recommendations from the Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System ("Committee"). After three years of study, the Committee produced its Final Report in 2003.¹ It consists of 550-pages, covering fourteen individual topics, and concludes with 173 recommendations for addressing the deficiencies discovered in the system.

Among other issues reviewed during the course of its study, the Committee conducted an extensive examination of Pennsylvania's criminal justice system. It surveyed county public defender and district attorneys' offices, court administrators, and judges; convened roundtable and focus group discussions on criminal justice issues in Pennsylvania; reviewed testimony from prosecutors, public defenders, judges, former inmates, victims and the general public at its six public hearings held around the state; engaged the services of statistical experts to conduct original research on

¹ The Final Report is available at http://www.pa-interbranchcommission.com/_pdfs/FinalReport.pdf

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criminal justice issues; and consulted the findings from existing statistical studies on criminal justice systems in Pennsylvania and other states.

On the basis of this research, the Committee found serious, widespread deficiencies in the operation of Pennsylvania's criminal justice system. Of particular importance to the Interbranch Commission, the Committee found glaring disparities in the treatment of African American and Hispanic individuals in our justice system. This disparate treatment occurred during the period in which mandatory minimum sentencing laws were in effect, and federal and state prison populations were exploding as a consequence. Thus, in effect, the mandatory minimum sentencing laws operated not only to increase the number of individuals being sentenced to incarceration, but did so without addressing the sentencing disparity problem. The result decimated minority communities that have failed to recover to this day. A return to this type of sentencing policy will only magnify the damage suffered by these communities.

In addition to the racial and ethnic disparity issues, the Interbranch Commission has identified the following other serious concerns with the legislation:

- Mandatory Minimums Significantly Increase State Prison Populations at Prohibitive Cost to the State

It is only in the last few years that Pennsylvania's state prison population has begun to decline. According to the Pennsylvania Department of Corrections ("DOC"), this was partly due to the elimination of mandatory minimum sentences. By all accounts, Pennsylvania is now facing its worst budget deficit in decades, resulting in the decision by the Governor to recommend the closure of several state prisons. Consequently, this is hardly the time to take action that would significantly increase the need for more prison beds. In a Fiscal Note issued for a substantially similar bill proposed last session,² the House Committee on Appropriations calculated that the reinstatement of the mandatory minimums for trafficking drugs in a drug-free

² The House Appropriations Committee has not yet issued a Fiscal Note for H.B. 741.

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school zone alone could result in approximately 2,200 inmates having their sentences increased by four to six months. This would cost the state approximately \$21.1 million. Similarly, the estimated number of new inmates being sentenced to the DOC prisons due to the reinstatement of the mandatory minimums is approximately 795 each year for two years, for a potential maximum of 1,590 additional inmates. This could result in \$64.4 million in additional costs for the state. In total, the Fiscal Note estimates that reinstating mandatory minimum sentencing will cost the state approximately \$19 million in the first year after enactment and up to \$85.5 million in subsequent fiscal years.

- Public Safety is Not Enhanced by Mandatory Minimums

The crime rate in Pennsylvania is lower now than it was in 1970, before mandatory minimums were initially enacted. According to the most recent DOC statistics, the property and drug crime rates dropped in 2015, after mandatory minimums were abolished. Crime data from 2016 are available for Philadelphia and Harrisburg, and they reveal that rates for major crimes there declined during 2016. Thus, if mandatory minimums are deemed necessary to reduce crime and thereby, increase public safety, the statistics do not bear out that theory.

- Mandatory Minimums are Ineffective in Deterring Crime

Pursuant to House Resolution 12 of 2007, the Pennsylvania Commission on Sentencing (“Sentencing Commission”) conducted a study and released a 480-page report entitled “A Study on the Use and Impact of Mandatory Minimum Sentences”. The study found that most offenders the Commission surveyed, who were currently incarcerated for a drug offense, did not consider the type of sentence they would likely receive if caught. Moreover, most of them knew which offenses carried a mandatory sentence, but they committed the offense anyway. Among the general public, the Commission found that only one in three could identify an offense that had a mandatory sentence. Thus, the Commission concluded that mandatory minimum sentences have little bearing on whether someone chooses to commit a crime or not.

- Mandatory Minimum Sentences are Applied Unevenly

Another finding of the Sentencing Commission's study was that mandatory minimum sentences are applied unevenly across the Commonwealth. The study found that less than half of the mandatory-eligible offenses resulted in a mandatory sentence. Firearm offenses were by far the most likely to have mandatory sentences imposed (77%), compared to only 43% for drug delivery offenses. Furthermore, most (70%) of the mandatory-eligible cases involved some type of plea agreement, the majority of which resulted in the dropping of charges, rather than a reduction in the severity of charges or a minimum sentence less than that required by the mandatory statute. If the theory of the proponents of H.B 741 is that mandatory minimum sentences will eliminate light sentences, the Sentencing Commission's study does not support it. The study found a wide range in the imposition of such sentences and the manipulation of criminal charges to serve the interests of the prosecutor or police. This is particularly problematic for members of racial and ethnic minorities who suffer from implicit and explicit bias in their treatment and sentencing in Pennsylvania's criminal justice system.

- Mandatory Minimum Sentences Do Not Reduce Recidivism

The Pennsylvania Sentencing Commission conducted four recidivism studies to determine the impact that length of sentence has on offender recidivism for drug delivery offenders, school zone offenders, repeat violent offenders, and firearm offenders. The studies concluded that the two consistent and strong predictors of recidivism were age and prior arrests. Neither length of sentence nor the imposition of the mandatory sentence, per se, was a predictor of recidivism in the studies.

- Critical Judicial Discretion Is Removed

Reinstating mandatory minimums would remove the discretion that judges have fought for since mandatory minimums were initiated. Each case is unique. Careful consideration of the defendant's upbringing, intellectual capacity, remorsefulness, prior record and individual culpability is critical in

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fashioning the most effective sentence and protecting the public. Recognition of this principle can be found in numerous recent opinions by the U.S. Supreme Court, particularly those addressing the sentencing of juveniles. It is also reflected in the many diversionary courts and alternative programs that have been established in Pennsylvania based upon an individual analysis of defendants in each case. Moreover, judicial discretion is already subject to restrictions in Pennsylvania through the sentencing guidelines, which are closely adhered to by the Pennsylvania judiciary. According to the Sentencing Commission study, Pennsylvania judges sentence defendants within the recommended guidelines 90% of the time. They sentence below the guidelines only 7% of the time, and in most of those instances, they do so at the recommendation of the prosecutor.

- Opposite Direction from National Trend

Over the past decade, a national trend has emerged toward the development of community corrections policies that emphasize diversionary courts, alternative sentences and other innovative ways in which to address nonviolent crime. Reinstating mandatory minimum sentencing is certainly not among those recommended approaches. The turnaround in attitudes has resulted in reduced crime rates and less recidivism by addressing the root causes of the criminal behavior. Mandatory minimum sentences do not serve that purpose and do not make the public safer. The Supreme Court of Pennsylvania recognized this in finding the mandatory sentencing scheme unconstitutional in 2015. Similarly, nearly thirty states have reformed their mandatory minimum sentencing policies, including Maryland and Rhode Island, that have eliminated them entirely for nonviolent drug offenders.³

Thank you for your attention. For the reasons above, we urge you to vote against H.B. 741⁴ This is a dangerous and expensive attempt to return to the failed policies of the past at enormous cost to the citizens of Pennsylvania.

³ See Issue Brief by The Pew Charitable Trusts, *State Reforms Reverse Decades of Incarceration Growth: Policies have reduced prison populations, expanded prison alternatives, protected public safety*, March 21, 2017. Available at <http://pew.org/2mSpr9T>.

⁴ For employment-related conflicts, four members of the Interbranch Commission abstained from the Commission's decision to submit this letter to the House of Representatives.

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Undoubtedly, our criminal justice system is in need of further reform, but proposals designed for that purpose must be based on solid evidence of successful policies that truly serve the best interests of all of our citizens.

Respectfully,

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