

# SENATE . . . . . No. 1681

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act to Repeal Mandatory Minimum Drug Sentences..

*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 is hereby amended by striking out section  
2   32, as appearing in the 2004 Official Edition, 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 2 ½ years or by a fine of not less  
8   than \$1,000 nor more than \$10,000, or by both such fine and imprisonment.

9           (b) Any person convicted of violating this section after one or more prior convictions of  
10   manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute,  
11   or 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

term of imprisonment in the state prison for not less than 5 nor more than 15 years or a fine of not less than \$2,500 nor more than \$25,000, or by both such fine and imprisonment.

SECTION 2. Said chapter 94C is hereby amended by striking out section 32A, as appearing in the 2004 Official Edition, 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 2 ½ years, or by a fine of not less than \$1,000 nor more than \$10,000 , or both such fine and imprisonment.

(b) Any person convicted of violating this section after one 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 other 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 less than 3 nor more than 10 years or a fine of not less than \$2,500 nor more than \$25,000, or by both such fine and imprisonment.

(c) Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with intent to manufacture, distribute or dispense phencyclidine or a controlled substance defined in clause (4) of paragraph (a) or in clause (2) of paragraph (c) of class B of section 31 shall be punished by a term of imprisonment in the state prison for not less than 2 ½ nor more than 10 years or by imprisonment in a jail or house of correction for not less than one nor more than 2 ½ years or a fine of not less than \$1,000 nor more than \$10,000 may be imposed

but not in lieu of the mandatory minimum one year term of imprisonment, or by both such fine and imprisonment..

(d) Any person convicted of violating the provisions of subsection (c) after one or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute, or dispense a controlled substance, as defined in section 31 or of any offense of any other jurisdiction, either 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 less than 5 nor more than 15 years or a fine of not less than \$2,500 nor more than \$25,000, or by both such fine and imprisonment..

SECTION 3. Said chapter 94C is hereby amended by striking out section 32B, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 32B. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute, or dispense a controlled substance in Class C of section 31 shall be imprisoned in state prison for not more than 5 years or in a jail or house of correction for not more than 2 ½ years, or by a fine of not less than \$500 nor more than \$5,000, or both such fine and imprisonment.

(b) Any person convicted of violating this section after one 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 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 less than 2 ½ nor more than 10 years, or by

imprisonment in a jail or house of correction for not less than 2 nor more than 2 ½ years or a fine of not less than \$1,000 nor more than \$10,000, or by both such fine and imprisonment.

SECTION 4. Said chapter 94C of the General Laws is hereby amended by striking out section 32E, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 32E. (a) Any person who traffics 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) 50 pounds or more, but less than 100 pounds, be punished by a term of imprisonment in the state prison for not less than 2 ½ nor more than 15 years or by imprisonment in a jail or house of correction for not less than 1 nor more than 2 ½ years or a fine of not less than \$500 nor more than \$10,000, or by both such fine and imprisonment.

(2) 100 pounds or more, but less than 2,000 pounds, be punished by a term of imprisonment in the state prison for not less than 3 nor more than 15 years or a fine of not less than \$2,500 nor more than \$25,000, or by both such fine and imprisonment.

(3) 2,000 pounds or more, but less than 10,000 pounds, be punished by a term of imprisonment in the state prison for not less than 5 nor more than 15 years or a fine of not less than \$5,000 nor more than \$50,000, or by both such fine and imprisonment.

(4) 10,000 pounds or more, be punished by a term of imprisonment in the state prison for not less than 10 nor more than 15 years or a fine of not less than \$20,000 nor more than \$200,000, or by both such fine and imprisonment.

(b) Any person who traffics 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 14 grams or more of a controlled substance as so defined, or a net weight of 14 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) 14 grams or more but less than 28 grams, be punished by a term of imprisonment in the state prison for not less than 3 nor more than 15 years or a fine of not less than \$2,500 nor more than \$25,000, or by both such fine and imprisonment.

(2) 28 grams or more, but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 5 nor more than 20 years, or a fine of not less than \$5,000 nor more than \$50,000, or by both such fine and imprisonment.

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

(4) 200 grams or more, be punished by a term of imprisonment in the state prison for not less than 15 nor more than 20 years or a fine of not less than \$50,000 nor more than \$500,000, or by both such fine and imprisonment.

(c) Any person who traffics in heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof 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 14 grams or more of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or a net weight of 14 grams or more of any mixture containing heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof shall, if the net weight of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or any mixture thereof is:—

(1) 14 grams or more but less than 28 grams, be punished by a term of imprisonment in the state prison for not less than 5 nor more than 20 years or a fine of not less than \$5,000 nor more than \$50,000, or by both such fine and imprisonment.

(2) 28 grams or more but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 7 nor more than 20 years or a fine of not less than \$5,000 nor more than \$50,000, or by both such fine and imprisonment.

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

(4) 200 grams or more, be punished by a term of imprisonment in the state prison for not less than 15 nor more than 20 years or a fine of not less than \$50,000 nor more than \$500,000, or by both such fine and imprisonment

SECTION 5. Said chapter 94C is hereby further amended by striking out section 32F, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 32F. (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 to a person under the age of 18 years shall be punished by a term of imprisonment in the state prison for not less than 5 nor more than 15 years or a fine of not less than \$1,000 nor more than \$25,000, or by both such fine and imprisonment.

(b) 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 to a person under the age of 18 years shall be punished by a term of imprisonment in the state prison for not less than 3 nor more than 15 years or a fine of not less than \$1,000 nor more than \$25,000, or by both such fine and imprisonment.

(c) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute, or dispense a controlled substance in Class C of section 31 to a person under the age of 18 years shall be punished by a term of imprisonment in the state prison for not less than 2 ½ nor more than 15 years or in a jail or house of correction for not less than 2 ½ years, or a fine of not less than \$1,000 nor more than \$25,000, or by both such fine and imprisonment.

(d) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a controlled substance as defined in clause (4) of paragraph (a) of class B of section 31, to a person under the age of 18 years shall be punished by a term of imprisonment in the state prison for not less than 5 nor more than 15 years, or a fine of not less than \$1,000 nor more than \$25,000, or by both such fine and imprisonment.

SECTION 6. Said chapter 94C is hereby further amended by striking out section 32H, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 32H. A prosecution commenced under paragraph (b) of section 32, paragraphs (b), (c) and (d) of section 32 A, paragraph (b) of section 32 B, sections 32 E 32 F and 32 J shall not be placed on file or continued without a finding.

The provisions of section 87 of chapter 276 shall not apply to any person, 17 years of age or over, charged with a violation of said sections, or to any child between age 14 and 17, so charged, if the court is of the opinion that the interests of the public require that he shall be tried for such offense instead of being dealt with as a child.

SECTION 7. Said chapter 94C is hereby further amended by striking out section 32J, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 32J. Any person who violates the provisions of section 32, 32 A, 32 B, 32 C, 32 D, 32 E, 32 F or 32 I while in or on, or within 1,000 feet of the real property comprising a public or private accredited preschool, accredited headstart facility, elementary, vocational, or secondary school whether or not in session, or within 100 feet of a public park or playground shall be punished by a term of imprisonment in the state prison for not less than 2 ½ nor more than 15 years or by imprisonment in a jail or house of correction for not less than 2 nor more than 2 ½ years, or a fine of not less than \$1,000 nor more than \$10,000 or by both such fine and imprisonment. In accordance with the provisions of section 8 A of chapter 279 such sentence shall begin from and after the expiration of the sentence for violation of section 32, 32A, 32B, 32C, 32D, 32E, 32 F or 32I.



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

166           SECTION 8. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, 32F, and  
167 32J of chapter 94C of the General Laws, or any other general or special law to the contrary,  
168 persons serving mandatory minimum sentences for violations of the above referenced sections as  
169 of July 1, 2009, shall be eligible for parole after serving two-thirds of their maximum sentence.