SENATE DOCKET, NO. 1770 FILED ON: 1/16/2015

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

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

SENATE DOCKET, NO. 1770 FILED ON: 1/16/2015

SENATE . . . . . No. 786

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.

[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:

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

Section 32. (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 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 2½ years or by a fine of not more than $10,000, or by both such fine and imprisonment.

(b) Any person convicted of violating this section after 1 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 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 more than 15 years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $25,000.

SECTION 2. Chapter 94C of the General Laws, as so appearing, is hereby further amended by striking out section 32A 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 2½ years, or by a fine of not more than $10,000, or both such fine and imprisonment.

(b) Any person convicted of violating sub-section (a) after 1 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 more than 10 years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $25,000.

(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 more than 10 years or by imprisonment in a jail or house of correction for not more than 2½ years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $10,000.

(d) Any person convicted of violating the provisions of subsection (c) after 1 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 more than 15 years and a fine of not more than $25,000 may be imposed.

SECTION 3. Chapter 94C of the General Laws, as so appearing, is hereby further amended by striking out section 32B 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 2½ years, or by a fine of not more than $5,000, or both such fine and imprisonment.

(b) Any person convicted of violating this section after 1 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 more than 10 years, or by imprisonment in a jail or house of correction for not more than 2½ years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $10,000.

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

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

(b) Any person convicted of violating this section after one or more prior convictions of manufacturing, distributing, dispensing, cultivating or possessing with intent to manufacture, distribute, dispense or cultivate a controlled substance as defined by section thirty-one 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 a jail or house of correction for not more than two and

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

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

Section 32E. (a) Any person who trafficks 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) Fifty pounds or more, but less than 100 pounds, be punished by a term of imprisonment in the state prison for more than 15 years or by imprisonment in a jail or house of correction for not more than 2½ years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $10,000.

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

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

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

(b) Any person who trafficks 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 18 grams or more of a controlled substance as so defined, or a net weight of 18 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) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not more than 15 years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $25,000.

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

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

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

(c) Any person who trafficks 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 18 grams or more of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or a net weight of 18 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) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not more than 20 years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $50,000.

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

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

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

SECTION 6. Chapter 94C of the General Laws, as so appearing, is hereby further amended by striking out section 32F 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 thirty-one to a person under the age of eighteen years shall be punished by a term of imprisonment in the state prison for not more than fifteen years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $25,000.

(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 thirty-one to a person under the age of eighteen years shall be punished by a term of imprisonment in the state prison for not more than fifteen years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $25,000.

(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 thirty-one to a person under the age of eighteen years shall be punished by a term of imprisonment in the state prison for not more than fifteen years or in a jail or house of correction for not more than two and one-half years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $25,000.

(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 thirty-one, to a person under the age of eighteen years shall be punished by a term of imprisonment in the state prison for not more than fifteen years. No sentence imposed under the provisions of this section shall be punished by a fine of more than $25,000.

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

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

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

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

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

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

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

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

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

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

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

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