

SENATE No. 897

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone 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 Stone Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/23/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/23/2019</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/29/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/29/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/29/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/29/2019</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>1/30/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/30/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/30/2019</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>1/30/2019</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>1/31/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/31/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/31/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/1/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>2/1/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2019</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>2/1/2019</i>

<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/1/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/1/2019</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/1/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/1/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/4/2019</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>5/8/2019</i>

SENATE No. 897

By Ms. Creem, a petition (accompanied by bill, Senate, No. 897) of Cynthia Stone Creem, Jack Patrick Lewis, Jason M. Lewis, Ruth B. Balser and other members of the General Court for legislation to eliminate mandatory minimum sentences related to drug offenses. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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 2016 Official Edition
2 as most recently amended by Chapter 69 of the Acts of 2018, is hereby amended by striking out
3 section 32 and inserting in place thereof the following 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. Section 32A of Chapter 94C of the General Laws, as so appearing, is
17 hereby further amended by striking out in the paragraph (a) the words “less than \$1,000 nor” an
18 said section is further amended by striking in paragraph (b) the words “not less than \$2,500 and”
19 and in paragraph (c) by striking each time they appear, the words “not less than \$1,000 and” in
20 paragraph (d) by string the words “less than \$2,500 nor”.

21 SECTION 3. Chapter 94C of the General Laws, as so appearing, is hereby further
22 amended by striking out in section 32B paragraph (a) the words “less than \$500 nor” and in
23 paragraph (b) by striking out, each time they appear, the words “less than \$1,000 nor”.

24 SECTION 4. Section 32C of Chapter 94C of the General Laws, as so appearing, is
25 hereby further amended by striking out in paragraph (a) the words “less than \$500 nor” and in
26 paragrapgh (b) by striking the words “less than one thousand nor”.

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

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

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

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

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

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

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

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

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

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

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

66 (c) Any person who trafficks in , a controlled substance defined in paragraph (d) of Class
67 A of section 31, morphine or any salt thereof, opium or any derivative thereof by knowingly or
68 intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture,
69 distribute or dispense or by bringing into the commonwealth a net weight of 18 grams or more of
70 , a controlled substance defined in paragraph (d) of Class A of section 31, morphine or any salt
71 thereof, opium or any derivative thereof or a net weight of 18 grams or more of any mixture
72 containing , a controlled substance defined in paragraph (d) of Class A of section 31, morphine
73 or any salt thereof, opium or any derivative thereof shall, if the net weight of , a controlled
74 substance defined in paragraph (d) of Class A of section 31, morphine or any salt thereof, opium
75 or any derivative thereof or any mixture thereof is:

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

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

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

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

88 (c $\frac{1}{2}$) Any person who trafficks in fentanyl or any derivative of fentanyl by knowingly or
89 intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture,
90 distribute or dispense or by bringing into the commonwealth a net weight of 10 grams or more of
91 fentanyl or any derivative of fentanyl, or a net weight of 10 grams or more of any mixture
92 containing fentanyl or any derivative of fentanyl, shall be punished by a term of imprisonment in
93 state prison for not more than 20 years.

94 (c $\frac{3}{4}$) Any person who trafficks in carfentanil, including without limitation, any
95 derivative of carfentanil by knowingly or intentionally manufacturing, distributing, dispensing or
96 possessing with intent to manufacture, distribute or dispense or by bringing into the
97 commonwealth carfentanil or any derivative of carfentanil, any mixture containing carfentanil or

98 a derivative of carfentanil, provided, that such person had specific knowledge that such mixture
99 contained carfentanil or any derivative of carfentanil, shall be punished by a term of
100 imprisonment in state prison for not more than 20 years.

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

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

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

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

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

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

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

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

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

135 Section 32J. Any person who violates the provisions of section 32, 32A, 32B, 32C, 32D,
136 32E, 32F or 32I while in, on or within 300 feet of the real property comprising a public or private
137 accredited preschool, accredited headstart facility, elementary, vocational or secondary school if
138 the violation occurs between 5:00a.m. and midnight, whether or not in session, or within 100 feet
139 of a public park or playground and who during the commission of the offense: (i) used violence
140 or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described

141 in paragraph (b) of section 10 of chapter 269, or induced another participant to do so during the
142 commission of the offense; or (ii) engaged in a course of conduct whereby the person directed
143 the activities of another person who committed any felony in violation of this chapter; or (iii)
144 committed or attempted to commit a violation of section 32F or section 32K shall be punished by
145 a term of imprisonment in the state prison for not more than 15 years or by imprisonment in a jail
146 or house of correction for not more than 21/2 years. A fine of not more than \$10,000 may be
147 imposed. In accordance with section 8A of chapter 279 such sentence shall begin from and after
148 the expiration of the sentence for violation of section 32, 32A, 32B, 32C, 32D, 32E, 32F or 32I.

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

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

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

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

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

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

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