



THE PENNSYLVANIA INTERBRANCH COMMISSION FOR GENDER, RACIAL, AND ETHNIC FAIRNESS

U.S. STEEL TOWER, SUITE 4830
600 GRANT STREET
Pittsburgh, Pennsylvania 15219
412-261-0679
FAX 412-553-7033

Co-Chairs
Rhonda Hill Wilson, Esquire
Nora Winkelman, Esquire

Executive Director
Lisette M. McCormick, Esquire
lisette.mccormick@pacourts.us

TESTIMONY IN OPPOSITION TO HB 741

Submitted by:
Lisette M. McCormick, Esq., Executive Director,
Pennsylvania Interbranch Commission for Gender,
Racial and Ethnic Fairness

THE SENATE JUDICIARY COMMITTEE

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness (“Commission”) and its Criminal Justice Committee¹, I want to thank you for the opportunity to submit written testimony to the Senate Judiciary Committee today and to register our strong opposition to House Bill 741. In short, reinstatement of even a portion of Pennsylvania’s mandatory minimum sentencing scheme, declared unconstitutional by the Pennsylvania Supreme Court in 2015, would be nothing but

¹ The members of our Criminal Justice Committee include Khadija Diggs, Esq., Chair; Honorable Kim Berkeley Clark; Homer C. Floyd; Jeffrey Shook; Honorable John Wetzels, Secretary of the Department of Corrections; Honorable Doris Smith-Ribner; Lisa Campbell, Esq.; Honorable Timothy Lewis; and Tyra Oliver, Esq.

disastrous for our state's justice system and the state budget. Indeed, by the House of Representative's fiscal calculations, it will be prohibitively costly to the taxpayers of Pennsylvania, while at the same time failing to accomplish its goals of improving public safety and deterring future criminal behavior.

By way of background, the 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 2003.² 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 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 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 Commission has identified the following other serious concerns with the legislation:

² The Final Report is available at http://www.pa-interbranchcommission.com/_pdfs/FinalReport.pdf

1. 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 struggling to close 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 this bill's fiscal note (attached), the House Committee on Appropriations noted that the reinstatement of mandatory minimums contained in the bill would significantly increase DOC costs due to increased average minimum sentences for offenders who already would have been sentenced to a DOC facility, as well as new inmates who would not have been sentenced to a DOC facility without the reinstatement of mandatory minimums. This would result in a projected 1,285 additional filled beds in the DOC annually, costing the state approximately \$19 million in the first year after enactment. Over five years, the likely impact would be \$47.3 million, and a "worst-case scenario" estimate of an \$85 million ceiling. This massive increase in spending is particularly problematic given the evidence that mandatory minimums fail to increase public safety or deter criminals.

2. 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.

3. 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 Sentencing 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 Sentencing Commission found that only one in three could identify an offense that had a mandatory sentence. Thus, the Sentencing Commission concluded that mandatory minimum sentences have little bearing on whether someone chooses to commit a crime or not.

4. 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.

5. Mandatory Minimum Sentences Do Not Reduce Recidivism

The Sentencing Commission also 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.

6. Critical Judicial Discretion Is Removed

Reinstating mandatory minimum sentences 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 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 the defendant 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.

7. 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, which have eliminated them entirely for nonviolent drug offenders.

For the reasons above, we urge you to vote against H.B. 741. This bill is a dangerous and expensive attempt to return to the failed policies of the past at enormous cost to the citizens of Pennsylvania. 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.

Thank you for your time and consideration.