

The Commonwealth of Massachusetts

House of Representatives

State House, Boston 02133-1054

October 6, 2017

Dear Chairwoman Cronin,

Thank you for the open and involved process regarding crafting the House omnibus criminal justice reform package. As you know, the House Progressive Caucus supports action in this legislation session on the full range of criminal justice reforms that reduce incarceration levels, improve incarceration conditions, and reduce recidivism. In addition, we have an interest in ensuring that criminal justice reforms take into account the needs of women and their families, and will work to ensure that attention is paid to the impact on incarcerated women each of these specific reforms will have. Based on your feedback from our July 26 meeting, we have narrowed our priorities to the following five items for inclusion in any action this session to reform the criminal justice system:

Pre-trial reform: bail reform, diversion, and restorative justice

The Supreme Judicial Court recently ruled that bail cannot be set beyond an individual's means.¹ Our current system of cash bail results in the incarceration of individuals who could otherwise safely remain in the community while awaiting trial and the release of those with resources who may otherwise be held. It is in the interest of the court and public safety to ensure that an individual will show up for trial, but the current system of cash bail fails to effectively diminish so called flight risk defendants and instead, has the effect of longer terms of incarceration for lower income individuals that have not been convicted of a crime. Indeed, researchers point to estimates that about 70% of those accused of felonies remain in jail solely because of their inability to pay money bail. This result has negative impact on budgeting, particular at the Sheriff's Office. Instituting a risk-based approach to pretrial release decisions would allow persons who cannot afford money bail to avoid incarceration, losing employment, and having to find emergency childcare, all while saving the state money. Massachusetts should focus the money spent on unnecessary incarceration for pre-trial individuals who pose little threat to public safety towards expanding programs that encourage an alternative route to incarceration like restorative justice or diversion programs. This change will lead to a better result and at a lower cost.

Repeal mandatory minimums for non-violent drug offenses

¹ *Jahmal Brangan vs. Commonwealth* 2017

We believe that judges should have full discretion in sentencing for drug crimes. There is a growing body of evidence to suggest that mandatory minimums do not significantly reduce crime rates and are extremely costly for both the people they directly affect as well as the state's budget. Mandatory minimum sentences, particularly in drug cases, have well-documented, disparate impacts on racial and ethnic minorities. Black and Latino residents comprise just under one-fifth of our total state population but account for more than half of those incarcerated in our houses of correction and prisons; and three-quarters of those are convicted of drug offenses that carry mandatory minimum sentences. Moreover, by tying the hands of our judges, we prevent them from tailoring sentences to the needs of each defendant before them. Ending mandatory minimum sentences for drug crimes is an important step toward cutting costs and ending over-incarceration. We support repealing the mandatory minimum sentences in Chapter 94C, Sections 32 through 32K.

Juvenile Expungement

Criminal records persist for years and can create significant barriers to finding employment, housing, accessing higher education or pursuing a career in the military. For juveniles, this means that a single mistake that results in a criminal record can haunt a young person for the rest of their life. We believe that every young person deserves a second chance and that justice-involved young people should not be strapped with collateral consequences for the rest of their life. We support creating a system to allow individuals to expunge their criminal records for actions taken as juveniles.

Raise the felony-larceny threshold

We believe that the felony-larceny threshold of \$250, set in 1987, should be raised. Massachusetts has one of the lowest felony thresholds in the country; 30 states, including our neighboring states of New Hampshire, Connecticut, and Maine, have felony thresholds of \$1,000 or more. A felony charge for a non-violent theft carries significant collateral consequences which can derail a person's life for a minor crime. Moreover, increasing the felony larceny threshold does not increase crime. Crime decreased at the same rate in the 35 states that have increased their felony larceny threshold since 2001 as it did in states that did not increase their threshold².

Implement comprehensive data collection, including data related to women

The Progressive Caucus supports requiring uniform data collection procedures that inform our understanding of the criminal justice system. These reforms must include data collection that is particularly relevant to the justice-involved women. The Council on State Governments' (CSG) report on recidivism stated, "The lack of standardized data collection and reporting requirements in Massachusetts leaves the state with an incomplete understanding of trends and outcomes

² -<http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/02/the-effects-of-changing-state-theft-penalties>


within the criminal justice system.” We have incomplete arrest data from across the state, no statewide system for county jail population data, inconsistent use of personal identification numbers for anyone involved in the criminal justice system, no systemic reporting on recidivism rates, limited data on race and ethnicity, inconsistent testing and validation of risk assessment tools, and no standard protocols or regular monitoring of probation data entry. Section 5 of the CSG report highlighted all of these problems and proposed possible solutions; however these recommendations were not included in the Governor’s legislation (H. 74). Furthermore, given that CSG researchers, after completing their analyses during Massachusetts’ justice reinvestment project, were unable to complete as much targeted analysis on justice-involved women as they had hoped due to lack of available data, it is imperative that the Commonwealth now work to collect more information about this growing demographic, who are more likely to be the primary caretaker of children who are left to family members, friends, or the system during their incarceration. We also support requirements for data collection that would reveal any relationship between plea bargaining and mandatory minimums. Important data relevant to justice-involved women must be routinely collected, including data relevant to ease of visitation by young children, reproductive healthcare, and diversion. Rep. Rushing’s office is currently drafting the recommendations of the CSG report and Representatives Khan and Barber have filed relevant legislation as a result of the Justice-involved Women’s Task Force.

Thank you for the opportunity to comment on upcoming legislation. For your reference, we’ve included a list of legislation relevant to the priorities listed in this letter.

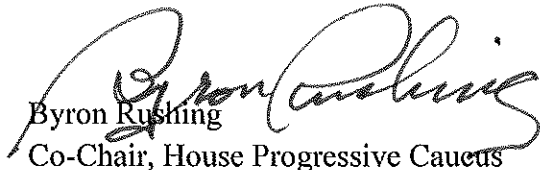
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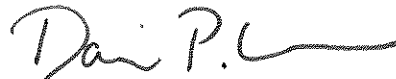
Mary Keefe
15th Worcester




Jay Livingstone
8th Suffolk



Byron Rushing
Co-Chair, House Progressive Caucus



David Linsky
5th Middlesex



Dave Rogers
24th Middlesex



Tricia Farley-Bouvier
Co-Chair, House Progressive Caucus

Relevant Legislation:

Pre-Trial Reform: H. 3120 *An Act promoting restorative justice practices* (Rep. Dave Rogers and Rep. Livingstone); H. 2181 *An Act relative to substance use disorder diversion and treatment* (Rep. Malia); H. 895 *An Act expanding eligibility for diversion to treatment for criminal offenders* (Rep. Livingstone); H. 793 *An Act promoting restorative justice practices* (Rep. Garballey)

Eliminate Mandatory Minimum Drug Offenses: H741: *An Act eliminating mandatory minimum sentences related to drug offenses* (Rep. Carvalho).

Omnibus legislation which includes eliminating mandatory minimums: H.2308 *An Act for Justice Reinvestment* (Rep. Keefe)

Juvenile Expungement: H.2309 *An Act relative to sealing of juvenile records and expungement of court records* (Rep. Khan and Rep. Dykema); H.3126 *An Act relative to the expungement of records of persons falsely accused and juveniles* (Rep. Tyler); H.756 *An Act relative to the expungement of records of persons falsely accused and of juveniles* (Rep. Cronin)

Raise the Felony Larceny Threshold: H.967 *An Act relative to larceny* (Rep. Tyler); H.886 *An Act relative to larceny* (Rep. Linsky); H.3650 *An Act relative to larceny thresholds* (Rep. Day); H.3126; H. 2337 *An Act relative to the classification and punishment for certain offenses in the Commonwealth* (Rep. Dave Rogers)

Omnibus legislation which includes raising the larceny threshold:

H.2359 *An Act to reduce the criminalization of poverty* (Rep. Tyler); H.2308 *An Act for Justice Reinvestment* (Rep. Keefe); H.2337 *An Act relative to the classification and punishment for certain offenses in the Commonwealth* (Rep. Dave Rogers)

Data Collection: H. 3586 *An Act relative to justice-involved women* (Rep. Barber and Rep. Khan); H. 953 *An Act relative to the collection, accuracy and public availability of arrest data* (Rep. Rushing)