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June 8, 2015

The Honorable William Brownsberger
Senate Chair, Joint Committee on the Judiciary
State House, Rm 504
Boston, MA 02133

The Honorable John Fernandes
House Chair, Joint Committee on the Judiciary
State House, Rm 136
Boston, MA 02133

RE: S.64/H.1429, *An Act to increase neighborhood safety and opportunity*

Dear Chairman Brownsberger and Chairman Fernandes:

As the Legislature considers important proposals to reform our criminal justice system, I appreciate the opportunity to share my office's perspective. Massachusetts is at a crossroads when it comes to our criminal justice system. We are in the midst of a public health crisis; the vast majority of people appearing in our criminal courts and incarcerated in our correctional facilities present with addiction and mental health challenges. Our dedicated police and prosecutors are confronting constantly evolving public safety threats, from cyber security to gun violence and terrorism. And, like so many states across the country, we are engaged in a much-needed dialogue about building trust between law enforcement and the communities we serve.

I believe now is the time to make smart reforms to our criminal justice system that will improve public safety and make the system fairer for all. We must shift the lens by increasing our focus on prevention, intervention, and treatment programs, reducing barriers and improving training for those coming out of correctional facilities, updating our statutes to avoid disproportionate punishment for certain crimes, and maximizing the effectiveness of taxpayer dollars by investing in supervision and reentry services.

In that spirit, I am writing to share my support for several key concepts embodied in S.64/H.1429, *An Act to increase neighborhood safety and opportunity*, filed by Senator Sonia Chang-Díaz and Representative Mary Keefe. These bills, which incorporate several standalone

proposals,¹ are an important step toward smart, fair, and cost-effective criminal justice reform. As the Committee reviews S.64/H.1429 and the related standalone bills, I respectfully request that you consider the following comments.

Driver's License Revocations and Fees

Sections 3 through 6 of S.64/H.1429 would repeal the automatic suspension of an individual's driver's license after a drug offense conviction, and the subsequent required payment of a reinstatement fee. I strongly support this provision, which would apply only to those convicted of general drug-related crimes; it would not change the license suspension rules for those convicted of operating a vehicle under the influence of drugs or alcohol.

Since 1989, Massachusetts has been automatically suspending, for up to five years, the driver's license of any person convicted of a drug offense, and assessing a fee of at least \$500 for the person to regain their driving privileges. Each year, approximately 7,000 people in this state lose their driving privileges as a result of that law, even though a majority of them have not committed a crime involving a vehicle.² Only about 2,500 of those individuals pay the reinstatement fee to get their license back in good standing, demonstrating the real barrier the revocation and fee present for low-income people.³

The automatic suspension rule originated out of a federal law that withholds a portion of a state's highway funds unless the state agrees to suspend the driver's licenses of anyone convicted of a drug offense. However, that same federal law also authorizes a state to formally reject the suspension policy with a legislative resolution, thus shielding itself from a reduction of federal funds. These bills, in Section 6, incorporate that safety-valve and are intended to comply with the federal exemption.

Automatic license suspensions for non-vehicle-related drug offenses unnecessarily prevent people from rebuilding their lives, getting to work, and caring for their families. They also increase the number of unlicensed and uninsured drivers on our roads. That is why 33 other states have already ended this prohibitive policy. I urge Massachusetts to do the same.

Crimes Against Property Threshold Amounts

Sections 30-42 of S.64/H.1429 seek to increase the threshold amounts of several property-related crimes enumerated in Chapter 266 – including larceny, shoplifting, credit card theft, receiving stolen property, and destruction of property – thereby downgrading existing felonies to misdemeanors.

¹ S.B. 786, 2015 Leg., 189th Sess. (Mass. 2015); H.B. 162, 2015 Leg., 189th Sess. (Mass. 2015); S.B. 1812, 2015 Leg., 189th Sess. (Mass. 2015); H.B. 3039, 2015 Leg., 189th Sess. (Mass. 2015); S.B. 843, 2015 Leg., 189th Sess. (Mass. 2015); H.B. 1628, 2015 Leg., 189th Sess. (Mass. 2015).

² http://www.masslive.com/politics/index.ssf/2015/04/massachusetts_lawmakers_say_dr.html.

³ Id.

Massachusetts has not revisited many of these threshold amounts since 1987, which has put us out of line with other states. For example, the threshold amount for larceny in Massachusetts is the third lowest in the country, currently set at \$250.⁴ S.64/H.1429 would increase that and several other threshold amounts to \$1,300. I support the idea of raising these thresholds but defer to the Legislature to select appropriate amounts for each enumerated crime.

Mandatory Minimums for Drug Crimes

As you know, we are currently in the midst of a public health crisis in Massachusetts, fueled by opioids, heroin, and other commonly abused drugs. Opiates now take more lives in our state than car accidents and guns combined.⁵ These numbers remind us that addiction is a disease, affecting our colleagues, family members, and friends.

Nationwide, 80% of inmates in correctional facilities have substance abuse issues.⁶ Here in Massachusetts, the numbers appear to be just as high. The Suffolk County Sheriff reports that 85% of the inmates in his custody are committed for issues stemming from substance use.⁷ Incarceration alone is not solving this epidemic, and it is very costly. For example, we spend approximately \$47,000.00 per year to house an inmate in the Massachusetts Department of Corrections.⁸ We need to take a hard and honest look at how our criminal justice system responds to substance abuse and mental health issues.

In short, I believe history shows we cannot incarcerate our way out of this public health crisis, and we need smart reforms that will allow us to focus on treatment for those we are most able to help. That is why I support eliminating statutory mandatory minimums for certain drug offenses, specifically those that fall short of trafficking and do not involve minors. This includes, for example, the elimination of mandatory minimums for the subsequent possession of heroin [M.G.L. ch. 94C § 34], first and subsequent distribution and possession with intent offenses for Classes A through D [M.G.L. ch. 94C §§ 32, 32A, 32B, 32C, and 34], and possession or distribution of drug paraphernalia [M.G.L. ch. 94C § 32I(a)].

But there are many other sentences that deserve careful examination, which is why my office will continue to engage in conversations with stakeholders and the Legislature and will play an active role in the Massachusetts Sentencing Commission. The Commission was re-established on February 20, 2014, pursuant to M.G.L. ch. 211E, to continue its expert evaluation of mandatory minimums and all sentencing structures in this state and to provide recommendations to the Legislature and the Governor.

⁴ See M.G.L. ch. 266 § 30 and attached chart.

⁵ See, e.g., <http://www.bostonglobe.com/metro/2015/03/11/opioid-crisis-really-about-heroin/bPkbdkNpxPQDF7htWSxhqN/story.html>; <http://www.mass.gov/eohhs/docs/dph/quality/drugcontrol/county-level-pmp/comparison-overdose-deaths-vs-motor-vehicle.pdf>.

⁶ <http://www.cdc.gov/idu/facts/cj-satreat.pdf>.

⁷ <http://www.scsdma.org/news/press/2014/140808a.shtml>.

⁸ <http://www.mass.gov/eopss/docs/doc/research-reports/annualreport2013nov202014.pdf>.

Extraordinary Medical Placement of Certain Inmates

Section 29 of S.64/H.1429 authorizes the Commissioner of the Department of Corrections or a Sheriff to petition the court to transfer a terminally ill or permanently incapacitated inmate to an alternative location or facility to receive medically appropriate services. I support that concept, though I urge you to develop more explicit definitions of “terminally ill” and “permanently incapacitated.” Furthermore, as part of the Court’s review of a petition under this proposed new section, the victim and the victim’s family should receive notice of a petition for transfer and be afforded an opportunity to submit a statement.

Reinvestment of Correctional Funds

I strongly support the goal, outlined in Section 44 of S. 64/H.1429, of reviewing how we currently invest correctional dollars, with an eye toward keeping at-risk young people in school and creating opportunities for job training, creation, and placement for those who face high barriers to employment.

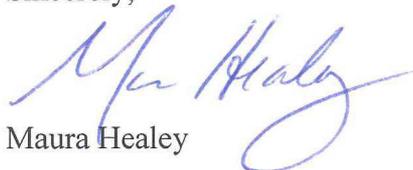
As currently drafted, the mechanism behind how these funds will be calculated and then distributed is unclear, so I encourage the Committee to revisit this section with the bill sponsors, and engage the expertise of the House Committee on Ways, Senate Committee on Ways and Means, and the Executive Office of Administration and Finance, as appropriate.

In conclusion, as the Committee reviews S. 64/H.1429 and the many other criminal justice-related bills before you this session, I urge you to consider a comprehensive approach to reform. If we want to make our state healthier and more productive, we must examine the criminal justice system in its entirety, using data-driven approaches that focus not just on sentencing but also on prevention, diversion, treatment, and reentry.

The Attorney General’s Office will be a partner in that effort, and we are committed to working with others in law enforcement, the Legislature, the judiciary, and the community to advance initiatives that promote public safety, provide opportunities for rehabilitation and treatment, and ensure the well-being of families and communities across the state.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.64/H.1429. If you have any questions, please do not hesitate to contact me or Alicia Pradas-Monne, Senior Policy Advisor, at (617) 963-2057.

Sincerely,



Maura Healey

General Larceny Felony Thresholds - 50 States and D.C.

