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**TESTIMONY ON MANDATORY MINIMUM SENTENCING GUN BILLS
BEFORE HOUSE JUDICIARY COMMITTEE
H-5022, H-5703, H-5739, H-5741
March 19, 2019**

Four of the gun bills being heard today establish mandatory minimum sentencing provisions for second-time offenders violating new criminal offenses relating to weapons. Mandatory sentencing legislation is not only contrary to the justice reinvestment reforms the General Assembly recently enacted, it is an ineffective, costly and discredited approach to criminal justice. The ACLU of RI therefore strongly opposes their inclusion in these bills.

H-5022 imposes this sentence for offenses relating to the carrying and conveyance of rifles or shotguns, H-5739 for possessing or selling machine guns or “ghost” guns, H-5739 for possessing or selling “large capacity feeding devices,” and H-5741 for possessing or selling assault weapons.

Some years ago, a distinguished commission chaired by former U.S. Supreme Court Justice Anthony Kennedy urged all jurisdictions in the country to “[r]epeal mandatory minimum sentence statutes.” As the American Bar Association noted in supporting that recommendation:

Mandatory minimum sentences raise serious issues of public policy. Basic dictates of fairness, due process and the rule of law require that criminal sentencing should be both uniform between similarly situated offenders and proportional to the crime that is the basis of conviction. Mandatory minimum sentences are inconsistent with both commands of just sentencing.

Mandatory minimum sentences have resulted in excessively severe sentences. They operate as a mandatory floor for sentencing, and as a result, all sentences for a mandatory minimum offense must be at the floor or above regardless of the circumstances of the crime. This is a one-way ratchet upward ...

The ABA went on to note the misleading nature of “mandatory” sentencing, something that many people often fail to understand or appreciate:

Aside from the fact that mandatory minimums are inconsistent with the notion that sentences should consider all of the relevant circumstances of an offense by an offender, they tend to shift sentencing discretion away from courts to prosecutors. Prosecutors do not charge all defendants who are eligible for mandatory minimum sentences with crimes triggering those sentences. If the prosecutor charges a crime carrying a mandatory minimum sentence, the judge has no discretion in most jurisdictions to impose a lower sentence. If the prosecutor chooses not to charge a crime carrying a mandatory minimum sentence, the normal sentencing rules apply. http://www.americanbar.org/content/dam/aba/migrated/poladv/letters/crimlaw/2007jul03_minimumsenth_1.authcheckdam.pdf

In short, mandatory sentences are ineffective, costly, eliminate individualized consideration of the offender and the circumstances of the offense, and place too much power in the hands of prosecutors instead of neutral judges.

Supporters may point to the fact that these bills impose mandatory sentencing only upon second convictions. But that does not in any way overcome the concerns we have cited above. It resembles the call for “three strikes legislation” that permeated criminal sentencing laws across the country a few decades ago, requiring judges to impose sentences on repeat offenders, however unjust those sentences might be in an individualized context, because the law took away their discretion. This is no different. Whether it is for the first, second or third offense, mandatory sentencing undermines individualized justice and inappropriately ties the hands of judges. Just as importantly, these sentencing schemes tend to have their alternative intended effect – forcing individuals to plead to other offenses, even if they may be innocent, in order to avoid the potential imposition of a mandatory sentence.

Supporters of this sentencing mandate may also note that some of the state's *current* weapons statutes have similar sentencing schemes for second offenders. But that is not a reason to blindly follow what has been done before and further expand the use of mandatory sentencing, rather than reconsidering its use. A poor sentencing scheme is not made better the more often it is adopted.

For all these reasons, the ACLU of Rhode Island urges that these bills be amended to eliminate their mandatory sentencing provisions.

