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**TESTIMONY IN OPPOSITION TO 20-H 7102,
AN ACT RELATING TO CRIMINAL OFFENSES – WEAPONS
January 22, 2020**

This bill would ban the manufacturing, importation, sale, shipment, delivery, possession, or transfer of so-called “ghost guns.” While the ACLU has no position on the substance of this legislation, we are constrained to oppose it because of the criminal penalties that it contains, particularly the inclusion of a mandatory sentencing provision for second time offenders.

Approval of such a penalty would be an unfortunate step backward in this state’s efforts to promote criminal justice reform. We therefore strongly urge that this provision be eliminated. In making this request, we note that the Attorney General, who had sponsored a version of this legislation last year, has agreed to remove such a penalty in his bill’s reintroduction.

Mandatory sentencing is not only contrary to the justice reinvestment reforms the General Assembly has enacted, it is an ineffective, costly and discredited approach to criminal justice. It has been an unfortunate driver of the mass incarceration epidemic in this country, and in recent years has been opposed by organizations across the political spectrum, as well as a distinguished commission chaired many years ago by former U.S. Supreme Court Justice Anthony Kennedy.

The American Bar Association has noted the misleading nature of “mandatory” sentencing:

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 ... to impose a lower sentence. If the prosecutor chooses not to charge a crime carrying a mandatory minimum sentence, the normal sentencing rules apply.

We recognize that the mandatory sentencing in this bill applies only upon second convictions.

But that 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, regardless of how unjust those sentences might be in an individualized context. 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.

We also note that, unlike many mandatory sentencing laws, H-2002 does not specify a set period of minimum time that the defendant must serve in prison. But, again, this does not mitigate the harm that automatically flows from being sentenced to prison – whether for ten days or ten years – in terms of employment, housing and family support.

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. While this legislation does not specify how much minimum time a second-time defendant must spend in prison, the evidence is overwhelming that even short prison stays have an extremely disruptive influence on offenders and their families.

This regressive sentencing standard already appears in a few of the state’s gun laws. Before it becomes the norm for a range of offenses, we urge its removal from this bill. A poor sentencing scheme is not made better the more often it is adopted.

Thank you for considering our views.