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ACLU OF RI POSITION: SUPPORT

TESTIMONY ON 20-H 5312, RELATING TO CRIMINAL OFFENSES February 23, 2021

The ACLU of Rhode Island strongly supports this legislation, which would codify two important recommendations that emanated from the Governor's Justice Reinvestment Commission in 2017 but that were not included in the package of bills ultimately approved by the legislature.

The bill's first provision would tweak the definitions of felony and misdemeanor to address what we believe is an unfortunate and unintentional, but harmful, anomaly in the law. There are some crimes that are felonies even though they carry no risk of a prison sentence whatsoever. That is because, by statutory definition, any crime that carries a fine greater than \$1,000 is automatically deemed a felony. As a result, to give just two examples, any person who "allows to be injured any fire hydrant," R.I.G.L. §11-66-1, or who is convicted of a second offense of transporting horses while stacked on two or more levels, R.I.G.L. §4-1-39, is a felon even though the General Assembly decided these offenses did not warrant any time in prison. Once designated a felon, the person convicted of these offenses faces many of the same collateral consequences – such as ineligibility for various government benefits, public housing, etc. – that a person who has served a lengthy prison sentence for a violent crime would encounter. This amendment would correct such an injustice.

The second provision in this bill would have Rhode Island join more than a dozen other states in requiring the issuance of prison impact statements when considering bills

that would create new prison sentences or increase prison sentences for existing crimes. It is extremely poor policy to pass criminal laws with potentially severe fiscal (not to mention social) consequences while turning a blind eye to that financial impact.

The General Assembly routinely subjects to strict scrutiny all forms of social services-related legislation that will impact the state's finances, whether it involves efforts to better feed or house the poor, provide better education, or promote economic justice. Yet legislation increasing prison sentences is often given a fiscal "free ride" that all this other legislation is not. But from a fiscal perspective, a bill increasing prison sentences is no different. If it costs approximately \$40,000 a year to incarcerate a person at the ACI, a new sentencing enhancement law used against just five offenders to add five years to their prison sentences potentially means an extra \$1 million spent on corrections – money that cannot be spent on more useful preventive methods or other pressing social needs.

In short, there is no reason for criminal sentencing legislation – which can add millions of dollars to the state budget – to be considered without a fiscal note. For many years, Rhode Island has had a law in place establishing the use of prison impact statements for bills proposing mandatory minimum sentences, so this concept is not new. However, legislators should not pass *any* criminal sentencing laws without a transparent nod to the fiscal costs involved in doing so.

We urge the Committee to continue its efforts at justice reinvestment and criminal justice reform by enacting these modest but important measures.

Submitted by: Steven Brown, Executive Director