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MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: April 3, 2017

RE: OPPOSITION TO HOUSE BILL 741 (STEPHENS)

In 2013, the United States Supreme Court ruled that the process by which courts reached a sentencing decision was unconstitutional under the Sixth Amendment.¹ Citing the [Alleyne decision](#), the [Pennsylvania Supreme Court invalidated existing mandatory minimum sentences](#) in 2015 after ruling that the state's Drug Free School Zones Act was unconstitutional.² House Bill 741 proposes to reinstate much of that sentencing scheme with the constitutionally appropriate process.

On behalf of the 44,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote 'no' on HB 741 for the following reasons:

Mandatory minimums impede judicial discretion: Legislating mandatory minimum sentences prevents judges from performing their most fundamental role – making decisions based on the case before them. Judges do not need minimum sentence requirements; they look to Pennsylvania's existing [sentencing guidelines](#)³ for direction and apply those guidelines 90% of the time.⁴

No evidence that mandatory minimums deter crime or prevent recidivism: There is widespread recognition that mandatory minimums fail to deter crime or prevent recidivism. In fact, the [2009 Pennsylvania Commission on Sentencing report](#) on the use and impact of mandatory minimum sentences concluded that "(1) fewer than half of all convictions for mandatory-eligible offenses resulted in the mandatory sentence; (2) only 34% of Pennsylvanians surveyed could correctly name a mandatory eligible offense; and (3) neither the length of sentence, nor the imposition of the mandatory sentence per se, was a predictor of recidivism."⁵ As has been often repeated in the General Assembly, we cannot arrest our way out of this problem.

¹ *Alleyne v. United States*, 133 S.Ct. 2151 (2013)

² *Commonwealth v. Hopkins*, 98 MAP 2013 (Pa. 2015)

³ 204 PA Code § 303

⁴ Melamed, Samantha. "Mandatory minimums don't reduce recidivism. So why is Pa. weighing bringing them back?" Philly.com. N.p., 17 Mar. 2017. Web. 20 Mar. 2017.

⁵ Pennsylvania (State). Legislature. House. Pennsylvania Commission on Sentencing, Report to the Pennsylvania House of Representatives: A Study on the Use and Impact of Mandatory Minimum Sentences. House Resolution 12, Session of 2007. Oct 2009.

Mandatory minimums balloon the prison population and increase costs: Last session, the [House Appropriations committee assessed the fiscal impact](#) of reinstating mandatory minimum sentences. Using data from the Pennsylvania Commission on Sentencing and the Department of Corrections (DOC), the committee found that: “increased DOC costs will be the result of two primary factors: increased average minimum sentences for offenders who would be sentenced to a DOC facility without the reinstatement of the mandatory minimums; and additional costs for new inmates who would not have been sentenced to DOC without the reinstatement of the mandatory minimums. Enactment of this legislation could result in approximately 2,200 inmates having their sentences increased by four to six months as a result of the reinstatement of the mandatory minimums. This could increase costs in the DOC by about \$21.1 million. Increases will also arise from new inmates being sentenced to DOC, not county jails, due to the reinstatement of the mandatory minimums. DOC estimates a total impact of up to \$19 million in the first year after enactment, up to a **potential maximum impact of \$21.1 million to \$85.5 million in subsequent fiscal years**” (emphasis added).⁶

School zone provision disproportionately punishes people in cities: The school zone provision imposes a two-year minimum for drug offenses committed within 1000 feet of school, college or university or within 250 feet of a playground or recreation center. This provision is especially problematic, as it risks being inequitably and disproportionately applied to people who live in cities. Cities are more densely populated; the chance that someone who lives in a city would be within 1000 feet of a school – the length of three football fields – is far greater than someone in a rural or suburban area. As a result, two people convicted of an identical offense would receive different sentences. Reinstating this provision would run counter to one of the primary recommendations cited in the Pennsylvania Commission on Sentencing report, namely that Pennsylvania “repeal the Drug-Free School Zone mandatory legislation, which is irregularly applied and overbroad geographically.”⁷

For these reasons, we urge you to vote ‘NO’ on House Bill 741.

⁶ Pennsylvania (State). Legislature. House. Committee on Appropriations. Fiscal Note: Senate Bill No. 1062, PN 2109. 2015-2016 Reg. Sess. (October 17, 2016).

⁷ Pennsylvania (State). Legislature. House. Pennsylvania Commission on Sentencing, Report to the Pennsylvania House of Representatives: A Study on the Use and Impact of Mandatory Minimum Sentences. House Resolution 12, Session of 2007. Oct 2009.