

Letter in Opposition to H-7050

April 29, 2024

To the RI Legislature:

We are writing in opposition to H-7050, which would legislate mandatory minimum prison sentences as part of first sexual assault convictions. We are very much in favor of new policies and laws that will protect victims from sexual assault, that require appropriate investigations and support for victims, and that ultimately believe and respect survivors. However, this extreme bill, the most severe in the nation, will result in the excessive punishments, a ballooning State-wide reliance on prisons, and will ultimately fall disproportionately on low income communities and communities of color.

First, the Rhode Island legislature often asks for best practices and examples from other states when considering reforms. This legislation would be considered extreme. For example, neither Massachusetts nor Florida requires any mandatory minimum prison sentence for sexual assault in which the victim is an adult. This bill would require a ten-year mandatory minimum sentence. We have attached a table with comparison sentencing laws for other states.

Second, we think that this bill is not the best way to address the issue of sexual assault or, more specifically, sexual assault against minors. We need to provide more support and funding to agencies that support the investigation of these crimes, such as the Lawrence A. Aubin Center. That will ensure that prosecutors have the best chance of securing convictions against perpetrators. There is already statutory language that guarantees a victim's right to be heard by the court. Additional language that would allow victims to oppose plea deals in these cases would further strengthen the position of victims to take part actively in prosecutions and could address concerns about potential plea deals that are not fair to victims.

Third, we have grave concerns about the overuse of mandatory minimum sentencing and the potential for unintended consequences of this legislation. This bill requires a massive increase in prison sentences for sexual assault. For any first degree sexual assault conviction, this bill would increase that number from zero to a minimum of a ten year prison sentence. First degree sexual assault is a serious crime that requires serious punishment. However, we grant judges and prosecutors discretion to determine what sentence is warranted based on the evidence available and the particulars of the crime. This bill would require a broad brush application of very long prison times without regard to the particulars and realities of each individual case. We trust judges to administer the law fairly now and should continue to trust them.

A case from South Kingstown in 2021 is an example of the potential risk of this legislation. In that case, three young men, all African American, were charged with first degree sexual assault for an incident involving sex with an allegedly incapacitated woman, some of which was captured on video. Ultimately the charges were dismissed due to lack of evidence, lack of participation of the witness, and questions about whether the sex was consensual. The case was controversial and complicated for several reasons and illustrates the uncertainties involved

in some sexual assault cases. While we will never know for certain in this case, and in many sexual assault cases, the exact nature of what happened, the difficulties and uncertainties are part of the reason it is necessary to allow judges discretion in sentencing even in, and particularly in, cases involving such serious allegations.

In addition, we are worried that this dramatic increase in mandated prison time could actually discourage plea bargains for sexual assault convictions. Defendants will not be willing to accept plea agreements that entail so much prison time, forcing trials in cases where victims sometimes do not want to testify. As a result, defendants might end up accepting plea bargains for offenses that carry less time and are not sexual offenses. By ratcheting up the sentences for sexual assault, many defendants might end up with convictions for crimes that do not carry mandatory minimum sentences and do not require registration as a sex offender.

We would also like to point out that sexual assault convictions carry a number of very serious collateral punishments in Rhode Island. Individuals convicted of first degree sexual assault have to register for life as sex offenders and have very significant restrictions placed on where they can live and work for the rest of their lives. These punishments already exist in Rhode Island and should be weighed against concerns that Rhode Island is currently too lenient on people that commit sex offenses.

Lastly, please remember that consideration of this legislation without a Prison Impact statement is in violation of Rhode Island General Laws § 42-56-39, which requires a prison impact statement for all legislation entailing mandatory minimum prison sentences. The statute states that "All acts...by establishing or extending a mandatory minimum term of imprisonment which is not subject to suspension, probation or parole...shall be accompanied" by a prison impact statement "prior to consideration." A prison impact statement must be provided to legislators prior to hearing this bill in committee in order to comply with this law.

We take the rights of victims and the need to create a system that more justly prevents and addresses sexual assault very seriously. We live in a world that too often ignores survivors of sexual assault, particularly women, the LGBTQ+ community, and communities of color. We do not believe the solution is a return to the failed, extreme policies of 'tough on crime' mandatory minimum prison sentences of the past.

Sincerely,

OpenDoors

Rhode Island Association of Criminal Defense Lawyers

Direct Action for Rights and Equality

Black Lives Matter PAC

Andrew Horwitz, Associate Dean for Experiential Education at Roger Williams Law School

Sarah Martino, Advisor for Docs for Health, Director of Health Services for Amos House

Michael DiLauro, The Just Criminal Justice Group

State by State Comparison of Sexual Assault Sentencing Laws

Research by OpenDoors--references to specific state by state statutes available in appendix

1st Degree Sexual Assault or Rape, Victim is an Adult

State	Rhode Island Currently	Rhode Island Under HB 7050	Massachusetts	Connecticut	Alabama	Texas	Florida
Mandatory Minimum Prison Sentence (Years)*	0	10	0	2	0	0	0

Note--All these states have minimum required sentences, however except when indicated above, those sentences can be suspended at the discretion of a judge. Some states, such as Florida and Texas have more serious mandatory minimum sentences for repeat offenders.

1st Degree Sexual Assault or Rape, Victim is a Child

State	Rhode Island Currently	Rhode Island Under HB 7050	Massachusetts (victim is under 14 yrs of age)	Connecticut (victim is under 10 years of age)	Connecticut (victim is under 16 years of age)	Alabama	Texas	Florida
Mandatory Minimum Prison Sentence (Years)*	0	10	0	10	5	0	0	0

Note--All these states have minimum required sentences, however except when indicated above, those sentences can be suspended at the discretion of a judge. Some states, such as Florida and Texas have more serious mandatory minimum sentences for repeat offenders.

Appendix:

Alabama: Alabama Code Title 13A, Criminal Code § 13A-5-6 for information about sentence lengths, Section 13A-6-61 for Rape in the first degree criminal code. See <http://www.bradfordlacher.net/criminal-punishment-alabama-sentences-and-fines/alabama-split-sentence/> for description of split sentencing laws.

Connecticut: CT Gen Stat § 53a-70. (2022). [https://law.iustia.com/codes/connecticut/2022/title-53a/chapter-952/section-53a-70/#:~:text=\(a\)%20A%20person%20is%20guilty,person%20which%20reasonably%20causes%20such](https://law.iustia.com/codes/connecticut/2022/title-53a/chapter-952/section-53a-70/#:~:text=(a)%20A%20person%20is%20guilty,person%20which%20reasonably%20causes%20such)

Florida: http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0794/Sections/0794.011.html

Massachusetts: MGL c. 265, s. 22: Rape. <https://malegislature.gov/Laws/GeneralLaws/PartIV/Chapter265/Section22>; MGL c. 265, s. 23-23B: Rape of a child under 16. <https://malegislature.gov/Laws/GeneralLaws/PartIV/Chapter265/Section23#:~:text=Whoever%20unlawfully%20has%20sexual%20intercourse,at%20or%20house%20or%20other>

Texas: Texas Penal Code - PENAL § 22.011. Sexual Assault, <https://codes.findlaw.com/tx/penal-code/penal-sect-22-011/>; Sentencing Ranges--<https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/criminal-justice/PenalCode-Offenses-byRange.pdf>