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MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: December 9, 2019

RE: OPPOSITION TO SENATE BILL 501 (KILLION)

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose SB 501 PN 1423 because this legislation:

Creates a new mandatory sentence of parole. Anyone sentenced to 4 to 8 years of state incarceration (or longer) will have to serve an additional year of parole consecutive to incarceration if that person is not granted parole during their incarceration.

Reinstates mandatory minimum sentences for certain offenses against minors, including for aggravated assault and sexual offenses. These mandatories would have a devastating impact on young people and young people charged as adults. This means if an 18-year-old gets into a fight at school with a 15-year-old and is convicted of aggravated assault, they would be facing a mandatory minimum of 2 to 4 years incarceration even if they had no prior record. Likewise, a 17-year-old, charged as a direct file juvenile for involuntary deviate sexual intercourse against a fifteen-year-old, would be facing a mandatory 10 years of incarceration if convicted.

Grants the Commonwealth the right to appeal any sentence below the mandatory.

Requires that county jails deduct fines/costs/restitution from commissary accounts, in the same way that the Department of Corrections already does. In theory, this is not too troubling, but it requires that AT LEAST 25% is deducted from the inmate account - with no limit. Some counties may just take it all.

Gives courts the discretion to garnish up to 25% of GROSS salary at the time of sentencing for fines/costs/restitution. Garnishment is already authorized by law for fines/costs/restitution.

Allows courts to revoke probation for vague threats to public safety and would negate the PA Supreme Court's recent ruling in [Commonwealth v. Foster](#), 214 A.3d 1240. In Foster, the PA Supreme Court found you couldn't revoke a person's probation unless they violated a specific condition of their probation. This amendment would negate the recent court's rule and allow a court to revoke a person's probation "if the person presents an identifiable threat to public safety."

Incarceration for technical probation violations could get worse. The bill appears to transform the current swift & certain sanctions program (9771.1) into universally applied sentences for probation violations. It appears as if the bill removes the eligibility requirements that currently exist in 9771.1 and applies this section to everyone on probation. This means that if anyone on probation "commits a probation violation, the participant shall be promptly arrested, and a hearing held no later than two business days after the arrest date." Is this calling for the mandatory arrest and 2-day detention for **all** technical violations? Moreover, it

goes on to mandate 3 days for the first violation, 7 days for the second, and so on. While this was fine when it was part of a program, we are concerned that the bill would essentially mandate incarceration for all technical violations of probation.

Makes it harder to get into SIP - the State Intermediate Punishment program (now called State Drug Treatment). The bill revamps SIP into state drug treatment. It's important to note that SIP is currently wildly underutilized, despite the benefits it provides - only a fraction of eligible people are actually evaluated or sentenced to the program. According to the PA Sentencing Commission's [2018 Annual Report](#), of all the SIP eligible people, only 23% were actually evaluated for the SIP and only 5% of eligible people were actually sentenced to SIP despite the fact that people on SIP are far less likely to recidivate and save the state lots of money. The amendment states "the judge shall exclude the person from eligibility if the prosecuting attorney opposes eligibility." This is essentially taking sentencing power away from the trial judge and handing it directly to prosecutors - any prosecutor who opposes SIP can prevent a person from being receiving state drug treatment. One of the **only benefits** SB 501 included was to get more people in SIP - and this amendment makes it highly unlikely that anyone will ever get placed into that program.

The bill includes problematic risk assessment provisions. While the PA Commission on Sentencing has already passed a risk assessment instrument, the bill would give the Commission the authority to embed a new risk assessment tool into the guidelines. The bill calls for modifications to the guidelines to "reflect risk to reoffend and substantial risk to public safety" and declares "the guidelines shall include interactive information to support decisions with risk..." This would have a particularly damaging impact on young people, as age is one of the factors most directly correlated to "risk." Moreover, again we would see the double-counting problem as criminal history typically defines risk and is also defines one's prior record score.

For these reasons, we urge you to oppose Senate Bill 501.