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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 5891

ENTITLED, AN ACT RELATING TO CRIMINAL OFFENSES – WEAPONS

Chairman Craven and Members of the House Judiciary Committee:

The Office of the Public Defender has concerns with HB5891, which proposes to prohibit all persons with any felony conviction from owning or possessing a firearm and makes changes to the penalty for violations of the statute. We believe that this proposed legislation raises important constitutional and policy considerations that warrant careful examination.

First, we are concerned that the broad, categorical prohibition on firearm possession for all individuals with a felony conviction may violate the Second Amendment. The U.S. Supreme Court has repeatedly emphasized that the Second Amendment is not a “second-class right” but a fundamental constitutional protection. In *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), the Court held that firearm regulations must be consistent with the Nation’s historical tradition of firearm regulation, reinforcing that the right to keep and bear arms is not subject to a different or lower standard than other constitutional rights.

Similarly, in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court explicitly rejected the notion that the Second Amendment should be treated as a lesser right than those in the Bill of Rights, stating that “the right to keep and bear arms is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” Blanket prohibitions, such as HB5891’s lifetime firearm ban for all felons, regardless of the nature of their offense, fail to recognize that the Second Amendment protects an individual right no less than the First or Fourth Amendments.

A broad lifetime ban that applies indiscriminately to all individuals with a felony record—without any individualized assessment of risk, rehabilitation, or the nature of the offense—goes beyond the type of firearm regulations historically recognized as valid. Such an approach risks violating the constitutional framework outlined in *Bruen* and may be subject to legal challenge.

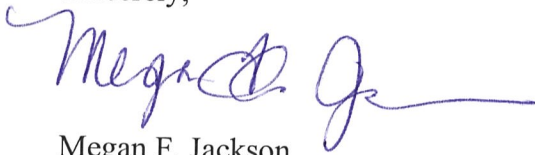
Additionally, we reiterate our steadfast objection to the use of mandatory minimum sentences, as the bill maintains a 10-year maximum sentence with a mandatory minimum of 2 years for violations. We have consistently advocated for judicial discretion to determine appropriate penalties based on the specific circumstances of each case. Mandatory minimum

Administration	Appeals	Felony Division	Misdemeanor/PAC	Licht VOP Unit	Family Court	Investigations
222-1511	222-1510	222-1540	222-1520	222-1312	222-1530	222-3492

sentences deprive judges of this discretion and can lead to disproportionate and unjust outcomes, increased costs, and a perpetuation of mass incarceration.

The Office of the Public Defender strongly urges the Committee to reconsider the breadth of the firearm prohibition in light of *Bruen* and *McDonald*, and to ensure that any restrictions are consistent with constitutional principles. Additionally, we urge the Committee to remove the mandatory minimum sentence to allow for sentencing that allows judges to consider the unique facts and circumstances of each case.

Sincerely,

A handwritten signature in blue ink, appearing to read "Megan F. Jackson", with a long horizontal flourish extending to the right.

Megan F. Jackson
Legislative Liaison
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