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October 6, 2020

Sen. Peter Lucido
Chair, Judiciary and Public Safety Committee
Michigan Senate

*Via email, Jackie Mosher, Committee Clerk, ofcsc@senate.michigan.gov,
jmosher@senate.michigan.gov*

Re: Oppose HB 5856, Senate Judiciary and Public Safety Committee Meeting, October 7, 2020

Dear Senator Lucido and Committee Members:

Thank you for the opportunity to provide testimony. Attorneys for Animals, Inc. (AFA) is a Michigan non-profit and 501(c)(3) organization of legal professionals and animal advocates. The organization's Board of Directors voted to oppose specific provisions of HB 5856 that remove mandatory minimum sentences for crimes related to taking, killing or possessing a wide variety of wildlife, including fish, game, fur-bearing animals, game birds and sturgeon.ⁱ

This bill is part of a package revising various misdemeanor statutes to remove mandatory minimum sentences. The package was introduced after a January 2020 report and recommendations by the Michigan Joint Task Force on Jail and Pretrial Incarceration.ⁱⁱ

In testimony supporting this bill to the House Judiciary Committee in September 2020, the Task Force explained the recommendation as "a way to give discretion back to judges" and said:

... around 50 of Michigan's nearly 2,000 misdemeanors require a minimum jail sentence, anywhere from two days to six months. Most of these mandatory minimums do not correspond to the seriousness of the offense, but are relics from another time, tying judges' hands and wasting jail resources on offenses unrelated to public safety.ⁱⁱⁱ

The Task Force and other proponents of the bill note that judges would have more discretion to consider the particular circumstances of each case and determine whether any term of incarceration is appropriate.

Yet, by the wholesale repeal of these mandatory minimums, the legislature is engaging in a similar exercise, i.e., not considering each law on its own merits and determining whether retaining a mandatory minimum has value.

We cite one example to illustrate this point. Michigan's Wolf Management Plan^{iv} developed by the Department of Natural Resources lists one of its Wolf Management Strategies:

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6.3.3 Investigate and penalize violations of wolf regulations. To help deter wolf-related crimes, the DNR will make its best efforts to investigate violations and to pursue the appropriate penalties based on available evidence. ... Actions: ... **5. Recommend modification of law, at the State level, to make penalties for illegally killing a wolf commensurate with other highly valued species with similar legal status (endangered, threatened, game, or protected animals).**^v

Current Michigan law has a 5 day mandatory minimum and a 90 day maximum, as well as fines from between \$200 and \$1000.^{vi} The federal Endangered Species Act has criminal penalties of not more than \$50,000 or imprisoned for not more than one year, or both.^{vii}

In addition, the bill ignores this important Task Force directive to the legislature which tempers its recommendation:

The legislature should specify the findings a court must make on the record in order to depart from the presumption of a non-jail and non-probation sentence, noting that probation is appropriate as a sentence for non-serious misdemeanors only in cases with a specific rehabilitation goal and/or an articulable risk of harm to a victim (in which case jail could also be appropriate).^{viii}

We urge the Committee to not report these bills unless it has considered both the DNR recommendations and provides guidance to judges called for in the Task Force report.

Very Truly Yours,



Beatrice M. Friedlander, JD
President

ⁱ We oppose the provisions of the bill regarding the possession or taking of game, Section 40118; the taking or killing any fish, game, fur-bearing animal, or game bird contrary to order, Section 41105; and taking or possessing sturgeon, Section 48738, HB 5658, page 2, line 1 through page 9, line 27

ⁱⁱ <https://courts.michigan.gov/News-Events/Documents/final/Jails%20Task%20Force%20Final%20Report%20and%20Recommendations.pdf>

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[https://www.house.mi.gov/MHRPublic/CommitteeDoc.aspx?uri=api/integration/committee_documents/content/?revno=-1&apn=2019_2020_session/committee/house/standing/judiciary/meetings/2020-09-09-1/documents/testimony/HB%205844%205855%205856%205857%20Recommendations%20by%20MI%20Joint%20Task%20Force%20on%20Jail%20and%20Pretrial%20Incarceration%20090920.pdf](https://www.house.mi.gov/MHRPublic/CommitteeDoc.aspx?uri=api/integration/committee_documents/content/?r evno=-1&apn=2019_2020_session/committee/house/standing/judiciary/meetings/2020-09-09-1/documents/testimony/HB%205844%205855%205856%205857%20Recommendations%20by%20MI%20Joint%20Task%20Force%20on%20Jail%20and%20Pretrial%20Incarceration%20090920.pdf):

^{iv} https://www.michigan.gov/documents/dnr/wolf_management_plan_492568_7.pdf (emphasis added, page 37 of 101)

^v Ibid, emphasis added, page 37 of 101

^{vi} MCLA §324.40118 (2)

^{vii} 16USC §1540(b)

^{viii} Supra at Fn II, Recommendation 13 at page 29 of 47