

JUSTICE NEWS

Attorney General Eric Holder Delivers Remarks at the Annual Meeting of the American Bar Association's House of DelegatesSan Francisco ~ Monday, August 12, 2013

Thank you, Bob Carlson, for those kind words – and for your exemplary service as Chair of the American Bar Association's House of Delegates. It's a pleasure to be with you this morning. And it's a privilege to join so many friends, colleagues, and leaders – including U.S. Attorney for the Northern District of California Melinda Haag – here in San Francisco for the ABA's 2013 Annual Meeting.

I'd like to thank your Delegates for all that they've done to bring us together this week – and for their dedication to serving as faithful stewards of the greatest legal system the world has ever known. From its earliest days, our Republic has been bound together by this system, and by the values that define it. These values – equality, opportunity, and justice under law – were first codified in the United States Constitution. And they were renewed and reclaimed – nearly a century later – by this organization's earliest members.

With the founding of the ABA in 1878, America's leading legal minds came together – for the first time – to revolutionize their profession. In the decades that followed, they created new standards for training and professional conduct. And they established the law as a clear and focused vocation at the heart of our country's identity.

Throughout history, Americans of all backgrounds and walks of life have turned to our legal system to settle disputes, but also to hold accountable those who have done wrong – and even to answer fundamental questions about who we are and who we aspire to be. On issues of slavery and segregation; voting and violence; equal rights and equal justice – generations of principled lawyers have engaged directly in the work of building a more perfect Union. Today, under the leadership of my good friend, President Laurel Bellows, this organization is fighting against budget cuts that undermine the ability of our courts to administer justice. You're standing with me – and with my colleagues across the Obama Administration – in calling for Congressional action on common-sense measures to prevent and reduce gun violence. And you're advancing our global fight against the heinous crime of human trafficking.

In so many ways, today's ABA is reminding us that, although our laws must be continually updated, our shared dedication to the cause of justice – and the ideals set forth by our Constitution – must remain constant. It is this sense of dedication that brings me to San Francisco today – to enlist your partnership in forging a more just society. To ask for your leadership in reclaiming, once more, the values we hold dear. And to draw upon the ABA's legacy of achievement in calling on every member of our profession to question that which is accepted truth; to challenge that which is unjust; to break free of a tired status quo; and to take bold steps to reform and strengthen America's criminal justice system – in concrete and fundamental ways.

It's time – in fact, it's well past time – to address persistent needs and unwarranted disparities by considering a fundamentally new approach. As a prosecutor; a judge; an attorney in private practice; and now, as our nation's Attorney General, I've seen the criminal justice system firsthand, from nearly every angle. While I have the utmost faith in – and dedication to – America's legal system, we must face the reality that, as it stands, our system is in too many respects broken. The course we are on is far from sustainable. And it is our time – and our duty – to identify those areas we can improve in order to better advance the cause of justice for all Americans.

Even as most crime rates decline, we need to examine new law enforcement strategies – and better allocate resources – to keep pace with today's continuing threats as violence spikes in some of our greatest cities. As studies show that six in ten American children are exposed to violence at some point in their lives – and

nearly one in four college women experience some form of sexual assault by their senior year – we need fresh solutions for assisting victims and empowering survivors. As the so-called “war on drugs” enters its fifth decade, we need to ask whether it, and the approaches that comprise it, have been truly effective – and build on the Administration’s efforts, led by the Office of National Drug Control Policy, to usher in a new approach. And with an outsized, unnecessarily large prison population, we need to ensure that incarceration is used to punish, deter, and rehabilitate – not merely to warehouse and forget.

Today, a vicious cycle of poverty, criminality, and incarceration traps too many Americans and weakens too many communities. And many aspects of our criminal justice system may actually exacerbate these problems, rather than alleviate them.

It’s clear – as we come together today – that too many Americans go to too many prisons for far too long, and for no truly good law enforcement reason. It’s clear, at a basic level, that 20th-century criminal justice solutions are not adequate to overcome our 21st-century challenges. And it is well past time to implement common sense changes that will foster safer communities from coast to coast.

These are issues the President and I have been talking about for as long as I’ve known him – issues he’s felt strongly about ever since his days as a community organizer on the South Side of Chicago. He’s worked hard over the years to protect our communities, to keep violent criminals off our streets, and to make sure those who break the law are held accountable. And he’s also made it part of his mission to reduce the disparities in our criminal justice system. In Illinois, he passed legislation that addressed racial profiling and trained police departments on how they could avoid racial bias. And in 2010, this Administration successfully advocated for the reduction of the unjust 100-to-1 sentencing disparity between crack and powder cocaine.

That’s the balance the President and I have tried to strike – because it’s important to safeguard our communities and stay true to our values. And we’ve made progress. But as you heard the President say a few weeks ago when he spoke about the Trayvon Martin case, he also believes – as I do – that our work is far from finished.

That’s why, over the next several months, the President will continue to reach out to Members of Congress from both parties – as well as governors, mayors, and other leaders – to build on the great work being done across the country to reduce violent crime and reform our criminal justice system. We need to keep taking steps to make sure people feel safe and secure in their homes and communities. And part of that means doing something about the lives being harmed, not helped, by a criminal justice system that doesn’t serve the American people as well as it should.

At the beginning of this year, I launched a targeted Justice Department review of the federal system – to identify obstacles, inefficiencies, and inequities, and to address ineffective policies. Today, I am pleased to announce the results of this review – which include a series of significant actions that the Department has undertaken to better protect the American people from crime; to increase support for those who become victims; and to ensure public safety by improving our criminal justice system as a whole. We have studied state systems and been impressed by the policy shifts some have made. I hope other state systems will follow our lead and implement changes as well. The changes I announce today underscore this Administration’s strong commitment to common sense criminal justice reform. And our efforts must begin with law enforcement.

Particularly in these challenging times – when budgets are tight, federal sequestration has imposed untenable and irresponsible cuts, and leaders across government are being asked to do more with less – coordination between America’s federal, state, local, and tribal law enforcement agencies has never been more important. It’s imperative that we maximize our resources by focusing on protecting national security; combating violent crime; fighting against financial fraud; and safeguarding the most vulnerable members of our society.

This means that federal prosecutors cannot – and should not – bring every case or charge every defendant who stands accused of violating federal law. Some issues are best handled at the state or local level. And

that's why I have today directed the United States Attorney community to develop specific, locally-tailored guidelines – consistent with our national priorities – for determining when federal charges should be filed, and when they should not.

I've also issued guidance to ensure that every case we bring serves a substantial federal interest and complements the work of our law enforcement partners. I have directed all U.S. Attorneys to create – and to update – comprehensive anti-violence strategies for badly-afflicted areas within their districts. And I've encouraged them to convene regular law enforcement forums with state and local partners to refine these plans, foster greater efficiency, and facilitate more open communication and cooperation.

By targeting the most serious offenses, prosecuting the most dangerous criminals, directing assistance to crime “hot spots,” and pursuing new ways to promote public safety, deterrence, efficiency, and fairness – we in the federal government can become both smarter and tougher on crime. By providing leadership to all levels of law enforcement – and bringing intelligence-driven strategies to bear – we can bolster the efforts of local leaders, U.S. Attorneys, and others in the fight against violent crime.

Beyond this work, through the Community Oriented Policing Services – or “COPS” – Office, the Justice Department is helping police departments keep officers on the beat while enhancing training and technical support. Over the last four years, we have allocated more than \$1.5 billion through the COPS Hiring Program to save or create over 8,000 jobs in local law enforcement. In the coming weeks, we will announce a new round of COPS grants – totaling more than \$110 million – to support the hiring of military veterans and school resource officers throughout the country.

In addition, through our landmark Defending Childhood Initiative and the National Forum on Youth Violence Prevention, we're rallying federal leaders, state officials, private organizations, and community groups to better understand, address, and prevent young people's exposure to violence. We have assembled a new Task Force to respond to the extreme levels of violence faced by far too many American Indian and Alaska Native children. Next month, we will launch a national public awareness campaign – and convene a Youth Violence Prevention Summit – to call for comprehensive solutions. And, through the Department's Civil Rights Division and other components, we'll continue to work with allies – like the Department of Education and others throughout the federal government and beyond – to confront the “school-to-prison pipeline” and those zero-tolerance school discipline policies that do not promote safety, and that transform too many educational institutions from doorways of opportunity into gateways to the criminal justice system. A minor school disciplinary offense should put a student in the principal's office and not a police precinct.

We'll also continue offering resources and support to survivors of sexual assault, domestic violence, and dating violence. Earlier this summer, I announced a new Justice Department initiative – known as Vision 21 – which offers an unprecedented snapshot of the current state of victim services. It calls for sweeping, evidence-based changes to bring these services into the 21st century, and to empower all survivors by closing research gaps and developing new ways to reach those who need our assistance the most.

This work shows tremendous promise. I'm hopeful that it will help to bring assistance and healing to more and more crime victims across the country. But it is only the beginning.

More broadly, through the Department's Access to Justice Initiative, the Civil Rights Division, and a range of grant programs, this Administration is bringing stakeholders together – and providing direct support – to address the inequalities that unfold every day in America's courtrooms, and to fulfill the Supreme Court's historic decision in *Gideon v. Wainwright*. Fifty years ago last March, this landmark ruling affirmed that every defendant charged with a serious crime has the right to an attorney, even if he or she cannot afford one. Yet America's indigent defense systems continue to exist in a state of crisis, and the promise of *Gideon* is not being met. To address this crisis, Congress must not only end the forced budget cuts that have decimated public defenders nationwide – they must expand existing indigent defense programs, provide access to counsel for more juvenile defendants, and increase funding for federal public defender offices. And every legal professional, every member of this audience, must answer the ABA's call to contribute to this cause through pro bono service – and help realize the promise of equal justice for all.

As we come together this morning, this same promise must lead us all to acknowledge that – although incarceration has a significant role to play in our justice system – widespread incarceration at the federal, state, and local levels is both ineffective and unsustainable. It imposes a significant economic burden – totaling \$80 billion in 2010 alone – and it comes with human and moral costs that are impossible to calculate.

As a nation, we are coldly efficient in our incarceration efforts. While the entire U.S. population has increased by about a third since 1980, the federal prison population has grown at an astonishing rate – by almost 800 percent. It's still growing – despite the fact that federal prisons are operating at nearly 40 percent above capacity. Even though this country comprises just 5 percent of the world's population, we incarcerate almost a quarter of the world's prisoners. More than 219,000 federal inmates are currently behind bars. Almost half of them are serving time for drug-related crimes, and many have substance use disorders. Nine to 10 million more people cycle through America's local jails each year. And roughly 40 percent of former federal prisoners – and more than 60 percent of former state prisoners – are rearrested or have their supervision revoked within three years after their release, at great cost to American taxpayers and often for technical or minor violations of the terms of their release.

As a society, we pay much too high a price whenever our system fails to deliver outcomes that deter and punish crime, keep us safe, and ensure that those who have paid their debts have the chance to become productive citizens. Right now, unwarranted disparities are far too common. As President Obama said last month, it's time to ask tough questions about how we can strengthen our communities, support young people, and address the fact that young black and Latino men are disproportionately likely to become involved in our criminal justice system – as victims as well as perpetrators.

We also must confront the reality that – once they're in that system – people of color often face harsher punishments than their peers. One deeply troubling report, released in February, indicates that – in recent years – black male offenders have received sentences nearly 20 percent longer than those imposed on white males convicted of similar crimes. This isn't just unacceptable – it is shameful. It's unworthy of our great country, and our great legal tradition. And in response, I have today directed a group of U.S. Attorneys to examine sentencing disparities, and to develop recommendations on how we can address them.

In this area and many others – in ways both large and small – we, as a country, must resolve to do better. The President and I agree that it's time to take a pragmatic approach. And that's why I am proud to announce today that the Justice Department will take a series of significant actions to recalibrate America's federal criminal justice system.

We will start by fundamentally rethinking the notion of mandatory minimum sentences for drug-related crimes. Some statutes that mandate inflexible sentences – regardless of the individual conduct at issue in a particular case – reduce the discretion available to prosecutors, judges, and juries. Because they oftentimes generate unfairly long sentences, they breed disrespect for the system. When applied indiscriminately, they do not serve public safety. They – and some of the enforcement priorities we have set – have had a destabilizing effect on particular communities, largely poor and of color. And, applied inappropriately, they are ultimately counterproductive.

This is why I have today mandated a modification of the Justice Department's charging policies so that certain low-level, nonviolent drug offenders who have no ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose draconian mandatory minimum sentences. They now will be charged with offenses for which the accompanying sentences are better suited to their individual conduct, rather than excessive prison terms more appropriate for violent criminals or drug kingpins. By reserving the most severe penalties for serious, high-level, or violent drug traffickers, we can better promote public safety, deterrence, and rehabilitation – while making our expenditures smarter and more productive. We've seen that this approach has bipartisan support in Congress – where a number of leaders, including Senators Dick Durbin, Patrick Leahy, Mike Lee, and Rand Paul have introduced what I think is promising legislation aimed at giving federal judges more discretion in applying mandatory minimums to certain drug offenders. Such legislation will ultimately save our country billions of dollars while keeping us safe. And the President and I look forward to working with members of both parties to refine and advance

these proposals.

Secondly, the Department has now updated its framework for considering compassionate release for inmates facing extraordinary or compelling circumstances – and who pose no threat to the public. In late April, the Bureau of Prisons expanded the criteria which will be considered for inmates seeking compassionate release for medical reasons. Today, I can announce additional expansions to our policy – including revised criteria for elderly inmates who did not commit violent crimes and who have served significant portions of their sentences. Of course, as our primary responsibility, we must ensure that the American public is protected from anyone who may pose a danger to the community. But considering the applications of nonviolent offenders – through a careful review process that ultimately allows judges to consider whether release is warranted – is the fair thing to do. And it is the smart thing to do as well, because it will enable us to use our limited resources to house those who pose the greatest threat.

Finally, my colleagues and I are taking steps to identify and share best practices for enhancing the use of diversion programs – such as drug treatment and community service initiatives – that can serve as effective alternatives to incarceration.

Our U.S. Attorneys are leading the way in this regard – working alongside the judiciary to meet safety imperatives while avoiding incarceration in certain cases. In South Dakota, a joint federal-tribal program has helped to prevent at-risk young people from getting involved in the federal prison system – thereby improving lives, saving taxpayer resources, and keeping communities safer. This is exactly the kind of proven innovation that federal policymakers, and state and tribal leaders, should emulate. And it's why the Justice Department is working – through a program called the Justice Reinvestment Initiative – to bring state leaders, local stakeholders, private partners, and federal officials together to comprehensively reform corrections and criminal justice practices.

In recent years, no fewer than 17 states – supported by the Department, and led by governors and legislators of both parties – have directed funding away from prison construction and toward evidence-based programs and services, like treatment and supervision, that are designed to reduce recidivism. In Kentucky, for example, new legislation has reserved prison beds for the most serious offenders and re-focused resources on community supervision and evidence-based alternative programs. As a result, the state is projected to reduce its prison population by more than 3,000 over the next 10 years – saving more than \$400 million.

In Texas, investments in drug treatment for nonviolent offenders and changes to parole policies brought about a reduction in the prison population of more than 5,000 inmates last year alone. The same year, similar efforts helped Arkansas reduce its prison population by more than 1,400. From Georgia, North Carolina, and Ohio, to Pennsylvania, Hawaii, and far beyond – reinvestment and serious reform are improving public safety and saving precious resources. Let me be clear: these measures have not compromised public safety. In fact, many states have seen drops in recidivism rates at the same time their prison populations were declining. The policy changes that have led to these welcome results must be studied and emulated. While our federal prison system has continued to slowly expand, significant state-level reductions have led to three consecutive years of decline in America's overall prison population – including, in 2012, the largest drop ever experienced in a single year.

Clearly, these strategies can work. They've attracted overwhelming, bipartisan support in "red states" as well as "blue states." And it's past time for others to take notice.

I am also announcing today that I have directed every U.S. Attorney to designate a Prevention and Reentry Coordinator in his or her district – to ensure that this work is, and will remain, a top priority throughout the country. And my colleagues and I will keep working closely with state leaders, agency partners, including members of the Federal Interagency Reentry Council – and groups like the American Bar Association – to extend these efforts.

In recent years, with the Department's support, the ABA has catalogued tens of thousands of statutes and regulations that impose unwise and counterproductive collateral consequences – with regard to housing or employment, for example – on people who have been convicted of crimes. I have asked state attorneys

general and a variety of federal leaders to review their own agencies' regulations. And today I can announce that I've directed all Department of Justice components, going forward, to consider whether any proposed regulation or guidance may impose unnecessary collateral consequences on those seeking to rejoin their communities.

The bottom line is that, while the aggressive enforcement of federal criminal statutes remains necessary, we cannot simply prosecute or incarcerate our way to becoming a safer nation. To be effective, federal efforts must also focus on prevention and reentry. We must never stop being tough on crime. But we must also be smart and efficient when battling crime and the conditions and the individual choices that breed it.

Ultimately, this is about much more than fairness for those who are released from prison. It's a matter of public safety and public good. It makes plain economic sense. It's about who we are as a people. And it has the potential to positively impact the lives of every man, woman, and child – in every neighborhood and city – in the United States. After all, whenever a recidivist crime is committed, innocent people are victimized. Communities are less safe. Burdens on law enforcement are increased. And already-strained resources are depleted even further.

Today – together – we must declare that we will no longer settle for such an unjust and unsustainable status quo. To do so would be to betray our history, our shared commitment to justice, and the founding principles of our nation. Instead, we must recommit ourselves – as a country – to tackling the most difficult questions, and the most costly problems, no matter how complex or intractable they may appear. We must pledge – as legal professionals – to lend our talents, our training, and our diverse perspectives to advancing this critical work. And we must resolve – as a people – to take a firm stand against violence; against victimization; against inequality – and for justice.

This is our chance – to bring America's criminal justice system in line with our most sacred values.

This is our opportunity – to define this time, our time, as one of progress and innovation.

This is our promise – to forge a more just society.

And this is our solemn obligation, as stewards of the law, and servants of those whom it protects and empowers: to open a frank and constructive dialogue about the need to reform a broken system. To fight for the sweeping, systemic changes we need. And to uphold our dearest values, as the ABA always has, by calling on our peers and colleagues not merely to serve their clients, or win their cases – but to ensure that – in every case, in every circumstance, and in every community – justice is done.

This, after all, is the cause that has been our common pursuit for more than two centuries, the ideal that has guided the ABA since its inception, and the goal that will drive additional actions by President Obama – and leaders throughout his Administration – in the months ahead. Of course, we recognize – as you do – that the reforms I've announced today, and others that we must consider, explore, and implement in the coming years, will not take hold overnight. There will be setbacks and false starts. We will encounter resistance and opposition.

But if we keep faith in one another, and in the principles we've always held dear; if we stay true to the ABA's history as a driver of positive change; and if we keep moving forward together – knowing that the need for this work will outlast us, but determined to make the difference that we seek – then I know we can all be confident in where these efforts will lead us. I look forward to everything that we will undoubtedly achieve. And I will always be proud to stand alongside you in building the brighter, more just, and more prosperous future that all of our citizens deserve.

Thank you.