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## JUSTICE NEWS

**Attorney General Holder's Remarks for the Charles Hamilton Houston Institute for Race and Justice and Congressional Black Caucus Symposium "Rethinking Federal Sentencing Policy 25th Anniversary of the Sentencing Reform Act"**

Washington, D.C. ~ Wednesday, June 24, 2009

*Remarks as prepared for delivery.*

Congressman Conyers, thank you for your kind introduction. It is my pleasure to join this esteemed group of federal judges, academics, sentencing practitioners, advocates, and Members of Congress. The Congressional Black Caucus and Harvard Law School's Charles Hamilton Houston Institute for Race and Justice deserve enormous credit for hosting this important and timely event. The CBC has long spearheaded the movement to reexamine our criminal justice system to ensure that it is more just and fair. We at the Justice Department look forward to joining with you as we reexamine sentencing and corrections policy. I'd also like to acknowledge the tremendous contributions of Justice Breyer who was one of the original members of the United States Sentencing Commission. He has played a key role in reforming federal criminal sentencing policy and procedure throughout his career. In fact, many of you here today have contributed tirelessly to the evolution of federal sentencing law and we all have the same goal: to create a sentencing system that is predictable and fair.

The federal sentencing system, which includes both sentencing guidelines and mandatory minimum sentencing statutes, has undergone significant change since the Supreme Court's decision in *United States v. Booker*. The guidelines continue to provide a sentencing baseline in all federal criminal cases. However, Sentencing Commission data show that the percentage of defendants sentenced within the guidelines has decreased since the decision. Although the full impact of recent trends in sentencing jurisprudence is still unclear, these developments should be monitored carefully. For example, we should assess whether current sentencing practices show an increase in unwarranted sentencing disparities based upon regional differences or even differences in judicial philosophy among judges working in the same courthouse. But we must also be prepared to accept the fact that not every disparity is an unwelcome one. The desire to have an almost mechanical system of sentencing has led us away from individualized, fact-based determinations that I believe, within reason, should be our goal.

We must also be aware of the fact that the federal inmate population continues to increase. This development puts an enormous strain on correctional resources. The number of inmates in federal prisons, state prisons, or local jails has quadrupled since 1980, reaching more than 2.2 million today. Of particular concern, the burgeoning prison population limits the ability of corrections officials to provide drug treatment and other services necessary to minimize recidivism. A 2002 study from the Bureau of Justice Statistics tracked a sample of more than a quarter-million prisoners released in 15 states in 1994. Within three years, two-thirds of these offenders were rearrested at least once for a new offense, nearly half were convicted for a new crime, and another quarter were re-sentenced to prison for a new conviction.

The current federal sentencing system continues to be a target for criticism from judges.

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academics, and attorneys across our nation. These criticisms range from concerns about mandatory minimums to the use of acquitted conduct in sentencing decisions. Accordingly, a thorough review of federal sentencing and corrections policies, with an eye toward possible reform, is welcome and necessary.

The twenty-fifth anniversary of the Sentencing Reform Act provides a good opportunity to reflect on the state of federal sentencing. The U.S. Sentencing Commission has begun a review of the impact of *Booker* and of the federal sentencing system as a whole by soliciting testimony at regional hearings. Those hearings will identify those practices that contribute to the goals of the Sentencing Reform Act, and those practices that do not.

At the same time, the Department of Justice has begun its own internal review of sentencing and corrections policy. I have asked members of the DOJ community – both in Washington, DC and in the U.S. Attorneys Offices around the country – to participate in the Sentencing and Corrections Working Group which is chaired by the Deputy Attorney General. Our review will consider:

- the structure of federal sentencing, including the role of mandatory minimums;
- the Department's own charging and sentencing policies;
- alternatives to incarceration and re-entry;
- eliminating the sentencing disparity between crack and powder cocaine; and
- an examination of other unwarranted disparities in federal sentencing.

As part of that review, we are soliciting the input of key stakeholders such as law enforcement, members of Congress, the defense and advocacy community, and judges.

We are approaching this effort with a specific set of core values. We will apply those principles to create a sentencing and corrections system that protects the public, is fair to both victims and defendants, eliminates unwarranted sentencing disparities, reduces recidivism, and controls the federal prison population. In doing so we must create a system that allows us to dismantle gangs and drug trafficking organizations that plague too many of our nation's streets, and that allows us to effectively combat offenses as varied as violent crime, child exploitation, sex trafficking, and financial fraud. But focusing on punishment is not enough. The federal sentencing system must also embrace the President's commitment to reducing recidivism and providing opportunities to offenders to become contributing members of society at the conclusion of their sentence.

Public trust and confidence are also essential elements of an effective criminal justice system. Our laws and their enforcement must not only be fair, they also must be perceived as fair. A perception of unfairness undermines governmental authority in the criminal justice process. It leads victims and witnesses of crime to think twice before cooperating with law enforcement, tempts jurors to ignore the law and facts when deciding a criminal case, and causes the public to question the motives of government officials. Accordingly, we must create a system where the factual basis for sentencing in a particular case is clear to all parties and to the public, and where the sentences themselves are truly commensurate with the crime committed.

One thing is very clear to me: we must review our federal cocaine sentencing policy. Fifteen years ago, the United States Sentencing Commission first reported on the differences in sentencing between crack and powder cocaine. Since then, the need to reassess the federal cocaine sentencing laws has only grown stronger. This Administration firmly believes that the disparity in crack and powder cocaine sentences is unwarranted, creates a perception of unfairness, and must be eliminated. This change should be addressed in Congress.

Many of you in Congress already have introduced or co-sponsored legislation to address the disparity between crack and powder cocaine. We look forward to working with you and other Members of Congress over the coming months to deal with this issue.

There is no tension between a sentencing scheme that is effective and fair and one that is tough and equitable. We must work toward these twin goals and we must do so now. Too much time has passed, too many people have been treated in a disparate manner, and too many of our citizens have come to have doubts about our criminal justice system. We must be honest with each other and have the courage to ask difficult questions of ourselves and our system. We must break out of the old and tired partisan stances that have stood in the way of needed progress and reform. We have a moment in time that must be seized in order to insure that all of our citizens are treated in a way that is consistent with the ideals embodied in our founding documents. This Department of Justice is prepared to act. We look forward to working with all of you.

Thank you.

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