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Attorney General Holder Urges Changes in Federal Sentencing Guidelines to Reserve Harshest Penalties for Most Serious Drug Traffickers

In Testimony to Sentencing Commission, Holder Endorses Proposal That Would Reduce the Average Sentence for Low-level Drug Offenders by Nearly a Year

In testimony delivered before the U.S. Sentencing Commission Thursday, Attorney General Eric Holder endorsed a proposed change to the Federal Sentencing Guidelines that would reserve the harshest penalties for the most serious drug offenders.

The Sentencing Commission proposal, first unveiled in January, would lower by two levels the base offense associated with various drug quantities involved in drug trafficking crimes. If adopted, the change would impact nearly 70% of all drug trafficking offenders and reduce the average sentence by 11 months, or nearly 18%, according to the Commission.

As an added result of the new proposal, the Commission projects that the Bureau of Prisons population would drop by 6,550 inmates at the end of five years.

“This straightforward adjustment to sentencing ranges – while measured in scope – would nonetheless send a strong message about the fairness of our criminal justice system,” Holder testified. “And it would help to rein in federal prison spending while focusing limited resources on the most serious threats to public safety.”

The move is Holder’s latest step to alter the federal government’s approach to dealing with nonviolent drug offenders. Last August, Holder announced his “Smart on Crime” initiative, which included a major change to the department’s charging policy intended to reserve strict, mandatory minimum sentences for high-level or violent drug traffickers.

The “Smart on Crime” initiative would help ease the nation’s overcrowded prison system. Today, the United States comprises just five percent of the world’s population but it incarcerates almost a quarter of the world’s prisoners. In 2010 alone, state and federal governments spent \$80 billion on incarceration. And of the 216,000 current federal inmates, nearly half are serving time for drug-related crimes.

The Commission is expected to vote on the proposal endorsed by Holder in April. Until then, the Justice Department will direct prosecutors not to object if defendants in court seek to have the newly proposed guidelines applied to them during sentencing.

The complete text of the Attorney General’s statement to the Sentencing Commission, as prepared for delivery, is below.

Testimony by Attorney General Eric H. Holder, Jr.
U.S. Sentencing Commission
March 13, 2014

Chief Judge [Patti] Saris and Members of the Commission: good morning, and thank you for the invitation to appear before you to discuss our shared goals – and to provide the Justice Department’s

views on proposed changes to the Federal Sentencing Guidelines related to certain drug trafficking crimes.

In particular, I appreciate the opportunity to speak in support of the amendments under consideration today. The Justice Department strongly supports the Commission's proposed change to the Drug Quantity Table. If adopted, this amendment would lower by two levels the base offense levels associated with various drug quantities involved in drug trafficking crimes. This would have the effect of modestly reducing guideline penalties for drug trafficking offenses while keeping the guidelines consistent with current statutory minimums – and continuing to ensure tough penalties for violent criminals, career criminals, or those who used weapons when committing drug crimes.

This straightforward adjustment to sentencing ranges – while measured in scope – would nonetheless send a strong message about the fairness of our criminal justice system. And it would help to rein in federal prison spending while focusing limited resources on the most serious threats to public safety. Let me be clear, my primary obligation as Attorney General is to ensure the safety of the American people. The changes that I have implemented over the past year are designed to do exactly that – while making our system more fair and more efficient.

This proposed amendment is consistent with the “Smart on Crime” initiative I announced last August. Its implementation would further our ongoing effort to advance commonsense criminal justice reforms. And it would deepen the Department's work to make the federal criminal justice system both more effective and more efficient when battling crime and the conditions and behaviors that breed it.

As it stands – and as this Commission has recognized – certain types of cases result in too many Americans going to prison for too long, and at times for no truly good public safety reason. Although the United States comprises just five percent of the world's population, we incarcerate almost a quarter of the world's prisoners. One in 28 American children currently has a parent behind bars. State and federal governments spent a combined \$80 billion on incarceration during 2010 alone. And as you know – of the more than 216,000 current federal inmates – nearly half are serving time for drug-related crimes.

This focused reliance on incarceration is not just financially unsustainable – it comes with human and moral costs that are impossible to calculate. That's why, in recent years – under the leadership of President Obama and alongside members of this Commission; with the support of policymakers as well as prosecutors; and with the expertise of advocates and researchers, law enforcement officials, and government leaders on both sides of the aisle – we have taken significant steps to improve criminal justice policies and implement targeted reforms. I am particularly proud of the work we did together to reduce the inappropriate and unjust 100-to-1 sentencing disparity between crack and powder cocaine – a disparity that this Commission had correctly found to be unjustifiable, and which President Obama alleviated with the signing of the Fair Sentencing Act in 2010.

Just over a year ago, in an effort to take our collective work to a new level, I launched a targeted Justice Department review of the federal criminal justice system – to identify areas for improvement, and to seek ways to make the system more efficient, more effective, and more closely aligned with our highest ideals, while not sacrificing our duty to promote public safety. Last August, I announced a new “Smart on Crime” initiative – based on the results of that review – and it is already allowing the Justice Department to make critical improvements; to conserve precious resources; to improve outcomes; and to disrupt the destructive cycle of poverty, incarceration, and crime that traps too many Americans and weakens entire communities.

Among the key changes I mandated as part of this initiative is a modification of the Justice Department's charging policies – to ensure that people convicted of certain low-level, nonviolent federal drug crimes will face sentences appropriate to their individual conduct – rather than stringent mandatory minimums, which will now be applied only to the most serious criminals. The Commission's proposed amendment to the Federal Sentencing Guidelines would help to further advance and institutionalize this work, controlling the federal prison population and ensuring just and proportional sentences.

I'm pleased to note that this approach enjoys significant bipartisan support on Capitol Hill, where a number of leaders, including Senators Patrick Leahy, Dick Durbin, and Mike Lee – along with Representatives Bobby Scott and Raul Labrador – have introduced legislation that would give judges more discretion in determining appropriate sentences for those convicted of certain crimes. By reserving the most severe penalties for dangerous and violent drug traffickers, we can better promote public safety, deterrence, and rehabilitation while saving billions of dollars and strengthening communities. And as my colleagues and I work with Congress to refine and pass this legislation, we are simultaneously moving forward with a range of other reforms.

We're investing in evidence-based diversion programs – like drug treatment initiatives and veterans courts – that can serve as alternatives to incarceration in some cases. We are working to reduce unnecessary collateral consequences for formerly incarcerated individuals seeking to rejoin their communities. And we are building on innovative, data-driven reinvestment strategies that have in many cases been pioneered at the state level.

In recent years, no fewer than 17 states – supported by the Department's Justice Reinvestment Initiative, and led by officials from both parties – have directed significant funding away from prison construction and toward evidence-based programs and services, like supervision and drug treatment, that are proven to reduce recidivism while improving public safety. Rather than increasing costs, a new report – funded by the Bureau of Justice Assistance – projects that these 17 states will actually save \$4.6 billion over a 10-year period. Many have already seen drops in recidivism rates – as well as overall crime rates – even as their prison populations have declined. And although the full impact of our justice reinvestment policies and other reforms remains to be seen, it's clear that these efforts are bearing fruit – and showing significant promise across the country.

We can be encouraged by this ongoing work – which is enabling us to better promote public safety, deterrence, and rehabilitation while making our expenditures smarter and more productive. Yet each of us is here this morning because we recognize that we cannot yet be satisfied. And a great deal remains to be done.

By adopting these proposed amendments to the Federal Sentencing Guidelines, this Commission can take an important step to allow judges to make commonsense determinations; to provide legal professionals and law enforcement leaders with the 21st-century solutions they need to address 21st-century challenges; and to build on the progress we've already seen in constructing a criminal justice system that deters and punishes crime, keeps us safe, and ensures that those who have paid their debts have the chance to become productive citizens.

As the Commission considers these and other actions – and as you hear testimony from a diverse group of expert panelists over the course of today's hearing – I urge you to seize this opportunity to make our criminal justice system more fair and to keep the American people more safe.

I look forward to continuing to work closely with each of you – and with leaders in Congress and throughout the Administration – to strengthen America's criminal justice system and forge the more just society that everyone in this country deserves.

I thank you, once again, for the opportunity to appear before you today. And I would be happy to take a few questions at this time.