



Remarks as Prepared for Delivery by Attorney General Eric Holder at the 2009 ABA Convention

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Good afternoon. Thank you, William, for your kind introduction. I want to thank the American Bar Association's House of Delegates for providing me with this opportunity to join all of you here today. It's a special honor to address the House of Delegates and it's a particular pleasure to do so in the presence of so many friends and colleagues.

Throughout my professional career, whether as a prosecutor, a judge, a lawyer in private practice, or now, as Attorney General, it has been clear to me that the ABA and its members are committed to the notion that the pursuit of justice requires more than a single-minded pursuit of victory before the courts. Rather, as officers of the courts, you have been mindful of your obligations to seek justice, while also seeking to advance your clients' interests.

As citizens, we share a common conviction that liberty depends on the equitable and impartial enforcement of the law, an ideal embodied in our founding documents. As lawyers, we share a duty to make that conviction a reality, a responsibility that is the foundation of our profession and a truth recognized by the ABA for more than a century. In no aspect of our legal system is this obligation more serious than in our system of criminal justice. But too often our public debates about law enforcement policy become mired in rhetoric or recrimination, when they instead should focus on reform and on identifying innovative solutions to our common problems.

In doing so, we must move beyond the narrow parameters that have constrained our nation's debate about criminal justice policy over the last several decades. There is no doubt that we must be "tough on crime." But we must also commit ourselves to being "smart on crime." And we must realize that these approaches complement, rather than contradict, each other. In the six months that I have served as Attorney General, I have worked to advance this fundamental truth: it is time to move past politics and ideology, and to move forward to a criminal justice system that is predicated on the fact that we need it to be fair and effective. In sum, we need to adopt what works.

Getting smart on crime requires talking openly about which policies have worked and which have not. And we have to do so without worrying about being labeled as too soft or too hard on

crime. Getting smart on crime means moving beyond useless labels and catch-phrases, and instead relying on science and data to shape policy. And getting smart on crime means thinking about crime in context – not just reacting to the criminal act, but developing the government’s ability to enhance public safety before the crime is committed and after the former offender is returned to society.

It is imperative that we get smart on crime now, for much has changed since some of our basic, governing assumptions about criminal law enforcement were developed. In the middle decades of the Twentieth Century, our nation experienced an historic increase in crime and illegal drug use. In the 1960s and 70s, the overall crime rate increased more than five-fold. Violent crime nearly quadrupled. The murder rate doubled. And illegal drug use surged.

Many lawmakers in the 1980s responded by declaring, in rhetoric and through legislation, that we needed to get "tough on crime." States passed truth-in-sentencing and three-strikes-and-you’re-out laws. Some state parole boards became more cautious, while other states eliminated discretionary parole altogether. And the federal government adopted severe mandatory minimum sentencing laws, eliminated parole, and developed the federal sentencing guidelines.

That’s not all. The federal government and the states spent billions of dollars for new prison construction to house the rapidly increasing number of persons convicted or sentenced under these policies. The results were dramatic. The number of inmates in American prisons increased seven-fold from 1970 to the present. Today, one out of every 100 adults in America is incarcerated – the highest incarceration rate in the world.

By 2007, the nation’s violent crime rate had dropped by almost 40% from its peak in 1991. Few would dispute that the imprisonment of offenders has been at least partially responsible for this dramatic drop in crime rates. But just as everyone should agree that incarceration is – and will continue to be – part of the answer, everyone should also agree that it is not the whole answer. And so, we at the Department of Justice will continue to put the people who threaten our communities where they belong – behind bars. But we will also recognize that imprisonment alone is not a complete strategy for enforcing our nation’s criminal laws, and we will act on that fact.

We will not focus exclusively on incarceration as the most effective means of protecting public safety. For although spending on prison construction continues to increase, public safety is not continuing to improve. Crime rates appear to have reached a plateau beyond which they no longer decline in response to increases in incarceration. Indeed, since 2003, spending on incarceration has continued to rise, but crime rates have flattened.

But there is another reason to consider new law enforcement strategies: simple dollars and cents, and the principle of diminishing marginal returns. Every state in the Union is trying to trim budgets. States and localities are laying off teachers, cutting back on public health, and canceling after-school programs for our children. But in almost all cases, spending on prisons continues to rise. This is unsustainable economically. Many jurisdictions simply cannot afford the monetary costs of focusing exclusively on incarceration, to say nothing of the social costs associated with high rates of imprisonment.

So what can we do to lower the crime rate further, to make American communities safer, and to get smarter on crime? We need to add new tools and new strategies to our existing efforts to fight crime. One of these strategies is to look several steps past the point where we put people in prison, and to consider what happens to those people after they leave prison and reenter society.

We know that offenders who have participated in the federal Bureau of Prisons' residential drug abuse treatment program are 16% less likely to be re-arrested, have their supervision revoked, and be returned to prison, than similar inmates who did not receive such treatment before their reentry into society. They are also less likely to use drugs once released. We also know that inmates who work in prison industries – which operate at no cost to the taxpayer – are 24% less likely to commit crimes again, than inmates who do not work in the program. The Bureau of Prisons' programs designed to address educational deficiencies – ranging from Adult Basic Education to high school level classes – are also effective in reducing recidivism. Inmates who participate in these programs are 16% less likely to commit crime again compared to those who do not. And inmates who are released through halfway houses are more likely to be gainfully employed, and therefore less likely to commit crimes again, than inmates who are released from prison directly into the community.

These statistics are particularly compelling because we know that most crimes in America are committed by people who have committed crimes before. About 67% of former state prisoners and 40% of former federal prisoners are rearrested within three years of release. If we can reduce the rate of recidivism, we will directly reduce the crime rate. Even a modest reduction in recidivism rates would prevent thousands of crimes, protect thousands of victims, and save hundreds of millions of taxpayer dollars. In other words, being smart on crime means understanding that our work to prevent crime does not end when prison time begins. It means working to develop policies – rooted in data – to address what happens after incarceration in order to prevent the next crime before it occurs.

We already rely on evidence-based methods to innovate in such areas as occupational safety and public health. Under my watch, the Department of Justice will likewise embrace modern, evidence-based methods to drive our policy-making process as well as our enforcement efforts to protect our fellow citizens. Smart risk assessments can identify which offenders are likely to safely remain in their communities, and which require continued detention and more intensive supervision. And data analysis can determine which offenders pose a higher recidivism risk based on the type of crime the offender was charged with or the offender's prior record.

One specific area where I know we can do a much better job is the way in which we deal with non-violent drug offenders. We know that people convicted for drug possession or for the sale of small quantities of drugs compose a significant portion of the prison population. Indeed, in my thirty years in law enforcement, I have seen far too many young people lose their claim to a future by committing non-violent drug crimes.

One promising solution to the devastating effect of drugs on American communities is the implementation of more drug treatment courts. Drug court programs provide an alternative to incarceration for non-violent offenders by focusing on treatment of their underlying addiction. Program participants are placed in treatment and routinely tested for drug use – with the

imposition of immediate sanctions for positive tests balanced against suitable incentives to encourage abstinence from drug use. These programs give no one a free pass. They are strict and can be difficult to get through. But for those who succeed, there is the real prospect of a productive future.

New York has been a leader in this area, diverting some non-violent offenders into drug court programs and away from prison, and extending early release to other non-violent offenders who participate in treatment programs. And while national prison populations have consistently increased, in New York the state prison population has dropped steadily in the past decade and has 12,000 fewer inmates now than it did in 1999. And since 1999, the overall crime rate in New York has dropped 27%. Other states have followed New York's example and found similar success. And most importantly, studies show significant reductions in re-arrests, in the range of 15 to 30 percent, for drug-court participants compared to those who are simply incarcerated.

As we work to implement smarter criminal justice policies, our efforts cannot be exclusively reactive. We must also use data and evidence-based methods to prevent crime before it occurs. We have models, for example, in New York City's CompStat program: it uses data to map where crime is most likely to occur, to deploy police to those areas to disrupt criminal activity, and to evaluate the effectiveness of the enforcement strategies. We can also extrapolate from available data to identify the children who are most at-risk of committing crimes in the future. For example, research suggests that children who are exposed to domestic violence at home are at greater risk than children who are not. Once we have identified at-risk youth, we can intervene with targeted programs, and one of the Department's priorities under my leadership will be focusing on the issue of children exposed to violence. There is much work to be done in this area, but the underlying premise is already clear: we need to understand crime in context in order to prevent it – and with better understanding and more information, we can develop new approaches to persistent and seemingly intractable problems.

Although this Administration is still in its first months, we have already started to implement a data-driven, non-ideological approach to crime. For example, I have asked the Deputy Attorney General to conduct a comprehensive, evidence-based review of federal sentencing and corrections policy. Specifically, the group is examining the federal sentencing guidelines, the Department's charging and sentencing advocacy practices, mandatory minimums, crack/powder cocaine sentencing disparities, and racial and ethnic disparities in sentencing. The group is also studying alternatives to incarceration, and strategies that help reduce recidivism when former offenders reenter society. We intend to use the group's findings as a springboard for recommending new legislation that will reform the structure of federal sentencing.

I have also called upon the Department to focus on another part of the criminal justice system: the very difficult issue of indigent defense. Putting politics aside, we must address the fact that there is a crisis within our nation's system of indigent defense. Resources for public defender programs lag far behind other justice system programs, constituting only about 3% of all criminal justice expenditures in our nation's largest counties. In many cases, contract attorneys and assigned lawyers receive compensation that does not even cover their overhead. Defenders in many jurisdictions carry huge caseloads that make it difficult for them to fulfill their legal and ethical responsibilities to their clients. And we often hear of lawyers who cannot interview their

clients properly, file appropriate motions, conduct fact investigations, or do many of the other things an attorney should be able to do as a matter of course.

This growing crisis is troubling not just because of the government's constitutional duty to ensure the right to counsel. When defendants fail to receive competent legal representation, their cases are vulnerable to costly, and time-consuming, mistakes. Lawyers on both sides can spend years dealing with appeals arising from technical infractions and procedural errors. When that happens, no one wins. Addressing the American Council of Chief Defenders in June, I committed to several steps to help improve the indigent defense system, including hosting a national conference with the goal of developing a set of best practices and practical solutions.

I have also made it clear that this Department of Justice will use the available data to improve our handling of the forensics sciences – such as fingerprints, trace evidence, and firearms matching. We are studying a recent report from the National Academies of Science that diagnosed problems in the use of forensics sciences and suggested ways forward, and we are working with our partners in the Executive Branch and Congress to act on the report's insights and recommendations. Our goal is to ensure that forensic science is practiced at the highest level possible, and always in the pursuit of truth. Because we put a premium on truth-seeking and because this Administration is committed to using the best science possible whenever possible, including in criminal justice, I also believe that defendants should have access to DNA evidence in a range of circumstances. DNA testing has an unparalleled ability to exonerate the wrongfully convicted as well as to identify the guilty. Federal law already guarantees access to DNA evidence held by the federal government under specific conditions, and I hope that all states will follow the federal government's lead on this issue regardless of what the Supreme Court has said.

A smarter, research-driven approach can also aid our ability to detect and prevent economic crimes and online crimes, as well as related civil enforcement efforts. The Department's work to combat health care fraud provides just one example. Last Wednesday, the Houston Medicare Fraud Strike Force, part of a joint taskforce combining resources from the Department of Justice and the Department of Health and Human Services, indicted thirty-two people for a scheme to submit more than \$16 million in false Medicare claims. The Strike Force is using a smart on crime approach – real-time data analysis of Medicare billing records – to focus its investigative efforts. This strategy is helping our civil enforcement efforts as well. During fiscal year 2008, the Department's health care fraud litigation efforts led to more than \$1 billion in judgments and settlements. In fewer than 9 months this year, we have almost matched this amount. For every dollar spent by DOJ and HHS on federal health care fraud enforcement, we recover approximately four dollars. This is just one example, but it shows the promise of this data-driven approach to law enforcement. We can protect some of our most vulnerable citizens – the sick, the poor, and the elderly – while we protect scarce public resources.

Adapting our law enforcement strategies to get smart on crime is both necessary and possible – if we are willing to demand it. The challenges we face have evolved with time. But the opportunities available to us have changed too. We are able to compare the cost and suitability of different criminal justice strategies. We no longer must choose between more prisoners or more crime: we can reduce our dependence on incarceration and we can reduce crime rates. At the

same time we can increase the integrity of our criminal justice system. We can harness science and data to tackle emerging problems and to preserve our foundational principles. The more we know, the better we can do, the more sophisticated we can be.

If all of us – judges, attorneys, law enforcement personnel, corrections officials, Justice Department lawyers, policymakers, and all Americans concerned with the cause of safe streets and equal justice – approach these challenges with open minds and determined action, there is no question that a smarter- and better- criminal justice system is within our grasp.

Thank you very much.