

Attorney General Eric Holder Delivers Remarks on  
Criminal Justice Reform at  
Georgetown University Law Center

Tuesday, February 11, 2014

Thank you, Wade [Henderson], for those kind words – and thank you all for being here. It's a privilege to join so many criminal justice leaders, policy experts, public servants, and aspiring legal professionals at today's Forum. And it's a pleasure to be back at Georgetown University Law Center.

I'd like to thank Dean [William] Treanor and Nick Turner – along with their colleagues from the University, the Vera Institute of Justice, and the Leadership Conference Education Fund – for hosting this important discussion, and bringing this remarkable group together to confront some of the most complex, and urgent, criminal justice challenges of our time.

Today, we gather in recognition of the fact that, although our laws and procedures must be continually updated, our commitment to the cause of justice must remain constant. From its earliest days, our Republic has been bound together by its extraordinary legal system, and by the enduring values that define it. These values – of equality, opportunity, and justice under law – were first codified in our founding documents. And they are put into action every day by leaders like you – and the talented men and women who learn, at great institutions like Georgetown, what it means to be a steward of the law – and an advocate for those whom it protects and empowers.

Although the issues on our agenda this morning are difficult and at times divisive, the diversity of this crowd – and the panelists and Members of Congress you'll be hearing from – is a testament to the fact that criminal justice reform is essentially not a partisan issue. It's about providing legal professionals and law enforcement leaders with the 21st-century solutions they need to address 21st-century challenges. It's about shaping a system that deters and punishes crime, keeps us safe, and ensures that those who pay their debts have the chance to become productive citizens. Most importantly, it's about answering fundamental questions – about fairness and equality – that determine who we are, and who we aspire to be, not only as a nation, but as a people – a people resolved to move forward together, and committed to implementing criminal justice policies that work for everyone in this country.

This is the challenge – and the extraordinary opportunity – that brings us together this morning. And it's the same challenge that drove me, roughly one year ago, to launch a targeted Justice Department review of our criminal justice system: to identify areas for improvement and make this system as efficient, as effective, and as just as possible.

Last August, I announced a new “Smart on Crime” initiative – based on the results of this review – that's already allowing the Justice Department to strengthen the federal system; to increase our emphasis on proven diversion, rehabilitation, and reentry programs; and to reduce unnecessary collateral consequences for those seeking to rejoin their communities. Among the key changes we're implementing is a modification of the Department's charging policies – to ensure that

people who commit certain low-level, nonviolent federal drug crimes will face sentences appropriate to their individual conduct – rather than stringent mandatory minimums, which will now be reserved for the most serious criminals.

As you'll be discussing later today, this change will not only make our system fairer – it will also make our expenditures more productive. It will enhance our ability to combat crime, reduce drug-fueled violence, and protect our communities. And it will complement proposals like the bipartisan Smarter Sentencing Act – cosponsored by Senators Dick Durbin, Mike Lee, and Chairman Patrick Leahy, along with Representatives Bobby Scott and Raul Labrador – to give judges more discretion in determining appropriate sentences for those convicted of certain crimes.

As we work with Members of Congress to refine and pass this legislation, my colleagues and I 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 appropriate cases. We're working to target law enforcement resources to the areas where they're needed most. And we're partnering with state officials, agency leaders, and others – including members of the Federal Interagency Reentry Council, comprised of Cabinet Secretaries and leadership from throughout the Obama Administration – to advance proven strategies to help formerly incarcerated people successfully rejoin their communities.

After all, at some point, 95 percent of all prisoners will be released. And just as we expect everyone who commits a crime to pay their societal debts, we also expect them to remain sober and crime-free upon their release. We expect them to get jobs and find housing. And we expect them to become productive, law-abiding members of society.

Unfortunately, as you know all too well, these expectations are not always met. Rates of recidivism remain unacceptably high. And that's why the Smart on Crime initiative is driving us to tear down unnecessary barriers to economic opportunities and independence. I've directed every United States Attorney to designate a Prevention and Reentry Coordinator in his or her district to ensure that this work will be a top priority throughout the country. And I've ordered our law enforcement components, and asked state Attorneys General, to reconsider policies that impose overly burdensome collateral consequences on formerly incarcerated individuals without meaningfully improving public safety.

This is important because we've seen that maintaining family connections, developing job skills, and fostering community engagement can reduce the likelihood of re-arrest. And we know that restoring basic rights – and encouraging inclusion in all aspects of society – increases the likelihood of successful reintegration. We've taken significant steps forward in improving reentry policies and addressing the unintended collateral consequences of certain convictions.

Yet formerly incarcerated people continue to face significant obstacles. They are frequently deprived of opportunities they need to rebuild their lives. And in far too many places, their rights – including the single most basic right of American citizenship – the right to vote – are either abridged or denied.

As the Leadership Conference Education Fund articulated very clearly in your recent report, “there is no rational reason to take away someone’s voting rights for life just because they’ve committed a crime, especially after they’ve completed their sentence and made amends.” On the contrary: there is evidence to suggest that former prisoners whose voting rights are restored are significantly less likely to return to the criminal justice system. As your report further notes, a study recently conducted by a parole commission in Florida found that, while the overall three-year recidivism rate stood at roughly 33 percent, the rate among those who were re-enfranchised after they’d served their time was just a third of that.

Unfortunately, the re-enfranchisement policy that contributed to this stunning result has been inexplicably and unwisely rolled back since that study was completed. And, in other states, officials have raised hurdles to be faced by those with past convictions seeking to regain their access to the ballot box. And that’s why I believe that, today – starting here and now – it is time for criminal justice leaders to come together to address this issue. It is time to fundamentally reconsider laws that permanently disenfranchise people who are no longer under federal or state supervision.

These restrictions are not only unnecessary and unjust, they are also counterproductive. By perpetuating the stigma and isolation imposed on formerly incarcerated individuals, these laws increase the likelihood they will commit future crimes. They undermine the reentry process and defy the principles – of accountability and rehabilitation – that guide our criminal justice policies. And however well-intentioned current advocates of felony disenfranchisement may be – the reality is that these measures are, at best, profoundly outdated. At worst, these laws, with their disparate impact on minority communities, echo policies enacted during a deeply troubled period in America’s past – a time of post-Civil War repression. And they have their roots in centuries-old conceptions of justice that were too often based on exclusion, animus, and fear.

The history of felony disenfranchisement dates to a time when these policies were employed not to improve public safety, but purely as punitive measures – intended to stigmatize, shame, and shut out a person who had been found guilty of a crime. Over the course of many decades – court by court, state by state – Americans broadly rejected the colonial-era notion that the commission of a crime should result in lifelong exclusion from society.

After Reconstruction, many Southern states enacted disenfranchisement schemes to specifically target African Americans and diminish the electoral strength of newly-freed populations. The resulting system of unequal enforcement – and discriminatory application of the law – led to a situation, in 1890, where ninety percent of the Southern prison population was black. And those swept up in this system too often had their rights rescinded, their dignity diminished, and the full measure of their citizenship revoked for the rest of their lives. They could not vote.

In the years since, thanks to the hard work, and the many sacrifices, of millions throughout our history, we’ve outlawed legal discrimination, ended “separate but equal,” and confronted the evils of slavery and segregation. Particularly during the last half-century, we’ve brought about historic advances in the cause of civil rights. And we’ve secured critical protections like the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

Yet – despite this remarkable, once-unimaginable progress – the vestiges, and the direct effects, of outdated practices remain all too real. In many states, felony disenfranchisement laws are still on the books. And the current scope of these policies is not only too significant to ignore – it is also too unjust to tolerate.

Across this country today, an estimated 5.8 million Americans – 5.8 million of our fellow citizens – are prohibited from voting because of current or previous felony convictions. That's more than the individual populations of 31 U.S. states. And although well over a century has passed since post-Reconstruction states used these measures to strip African Americans of their most fundamental rights, the impact of felony disenfranchisement on modern communities of color remains both disproportionate and unacceptable.

Throughout America, 2.2 million black citizens – or nearly one in 13 African-American adults – are banned from voting because of these laws. In three states – Florida, Kentucky, and Virginia – that ratio climbs to one in five. These individuals and many others – of all races, backgrounds, and walks of life – are routinely denied the chance to participate in the most fundamental and important act of self-governance. They are prevented from exercising an essential right. And they are locked out from achieving complete rehabilitation and reentry – even after they've served the time, and paid the fines, that they owe.

Fortunately – despite unfortunate steps backward in a few jurisdictions, and thanks to the leadership of policymakers from both parties and criminal justice professionals like you – in recent years we have begun to see a trend in the right direction. Since 1997, a total of 23 states – including Nebraska, Nevada, Texas, and Washington State – have enacted meaningful reforms. In Virginia, just last year, former Governor McDonnell adopted a policy that began to automatically restore the voting rights of former prisoners with non-violent felony convictions.

These are positive developments. But many of these changes are incremental in nature. They stop well short of confronting this problem head-on. And although we can be encouraged by the promising indications we've seen, a great deal of work remains to be done. Given what is at stake, the time for incrementalism is clearly over.

Eleven states continue to restrict voting rights, to varying degrees, even after a person has served his or her prison sentence and is no longer on probation or parole – including the State of Florida, where approximately 10 percent of the entire population is disenfranchised as a result. In Mississippi, roughly 8 percent of the population cannot vote because of past involvement with the criminal justice system. In Iowa, action by the governor in 2011 caused the state to move from automatic restoration of rights – following the completion of a criminal sentence – to an arduous process that requires direct intervention by the governor himself in every individual case. It's no surprise that, two years after this change – of the 8,000 people who had completed their sentences during that governor's tenure – voting rights had been restored to fewer than 12.

That's moving backwards – not forward. It is unwise, it is unjust, and it is not in keeping with our democratic values. These laws deserve to be not only reconsidered, but repealed. And so today, I call upon state leaders and other elected officials across the country to pass clear and

consistent reforms to restore the voting rights of all who have served their terms in prison or jail, completed their parole or probation, and paid their fines.

I call upon experts and legislators to stand together in overturning an unfortunate and outdated status quo.

And I call upon the American people – who overwhelmingly oppose felony disenfranchisement – to join us in bringing about the end of misguided policies that unjustly restrict what’s been called the “most basic right” of American citizenship.

I applaud those who have already shown leadership in raising awareness and helping to address this issue. Later today, this conference will hear from Senator Rand Paul, who has been a leader on this matter. His vocal support for restoring voting rights for former inmates shows that this issue need not break down along partisan lines.

Bipartisan support will be critical going forward because, even in states where reforms are currently taking hold, we need to do even more. And we need to make sure these positive changes are expanded upon – and made permanent.

Virginia’s progress has come through the executive power of its former governor, rather than the legislature – meaning that, without action by state lawmakers, these reforms can be reversed by any future executive with the stroke of a pen. More broadly, the inconsistent patchwork of laws affecting felony disenfranchisement varies so widely between states – and, in some places, between cities and counties – that even those who administer the laws are sometimes unfamiliar with how to apply them. The New York Times noted in 2012 that this kind of confusion means that many who are legally allowed to vote erroneously believe that their rights are restricted. And too often, those who do understand their rights are wrongfully turned away.

Today – together – we need to correct this injustice. As the evidence has shown, and as I pointed out in an amicus brief – filed more than a decade ago, in a case challenging Florida’s disenfranchisement law – permanent exclusion from the civic community does not advance any objective of our criminal justice system. It has never been shown to prevent new crimes or deter future misconduct. And there’s no indication that those who have completed their sentences are more likely to commit electoral crimes of any type – or even to vote against pro-law enforcement candidates.

What is clear – and abundantly so – is that these laws sever a formerly incarcerated person’s most direct link to civic participation. They cause further alienation and disillusionment between these individuals and the communities that our Smart on Crime policies encourage them to rejoin. And particularly at a time when our prisons are overflowing – and many who are serving sentences for nonviolent drug crimes find themselves trapped in a vicious cycle of poverty and incarceration – it is counterproductive to exclude these individuals from the voting franchise once their involvement with the corrections system is at an end. It is contrary to the goals that bring us together today. And it is not consistent with the cherished ideals that once led Supreme Court Justice William Brennan to call disenfranchisement “the very antithesis of rehabilitation.”

Whenever we tell citizens who have paid their debts and rejoined their communities that they are not entitled to take part in the democratic process, we fall short of the bedrock promise – of equal opportunity and equal justice – that has always served as the foundation of our legal system. So it's time to renew our commitment – here and now – to the notion that the free exercise of our fundamental rights should never be subject to politics, or geography, or the lingering effects of flawed and unjust policies.

After all, at its most basic level, this isn't just about fairness for those who are released from prison. It's about who we are as a nation. It's about confronting – with clear eyes, and in frank terms – disparities and divisions that are unworthy of the greatest justice system the world has ever known. It's about ensuring that we hold accountable those who do wrong – while preserving the values our nation has always held sacred. And it's about protecting the American people and strengthening our communities – while enabling all of our citizens, no matter who they are or where they're from, to make their voices heard.

Throughout America's long history of progress, struggle, and sacrifice – as generation after generation has come together to move our nation closer to the ideals our founders envisioned, and to advance our pursuit of a more perfect Union – this country has always looked to its legal system to answer questions of right and wrong; of truth and justice.

This morning, these questions remain before us – and the pursuit of a more perfect Union goes on. Although I recognize, as you do, that the progress we seek will not be easy – and the reforms we need will not take hold overnight – I am proud to join and, where necessary, lead, this bipartisan group in seeking solutions to these urgent issues. I am honored to count you as colleagues in the work of forging a more just society that reflects our conviction that all are created equal. And despite the difficulties, the opposition, and the resistance we will undoubtedly face – as I look around this room – I cannot help but feel confident in where today's experts, and tomorrow's leaders, will take us in the months and years to come.

Thank you.