

SUMMARY OF RECOMMENDATIONS OF THE ABA JUSTICE KENNEDY COMMISSON

I. RECOMMENDATION ON PUNISHMENT, INCARCERATION, AND SENTENCING

The Resolution urges states, territories and the federal government to ensure that sentencing systems provide appropriate punishment without over-reliance on incarceration. Lengthy periods of incarceration should be reserved for offenders who pose the greatest danger to the community and who commit the most serious offenses, and alternatives to incarceration should be available for offenders who pose minimal risk to the community and appear likely to benefit from rehabilitation efforts.

The Resolution sets out a series of recommended actions, including:

- Repealing mandatory minimum sentences
- Providing for guided discretion in sentencing, consistent with *Blakely v. Washington*, while allowing courts to consider the unique characteristics of offenses and offenders that may warrant an increase or decrease in a sentence
- Requiring sentencing courts to state the reason for increasing or reducing a sentence, and allowing appellate review of such sentences
- Considering diversion programs for less serious offenses, and studying the cost effectiveness of treatment programs for substance abuse and mentally illness
- Giving greater authority and resources to an agency responsible for monitoring the sentencing system
- Developing graduated sanctions for violations of probation and parole

In addition, the resolution urges Congress to give greater latitude to the United States Sentencing Commission in developing and monitoring guidelines, and to reinstate a more deferential standard of appellate review of sentences.

II. RECOMMENDATION ON RACIAL DISPARITY IN THE CRIMINAL JUSTICE SYSTEM

The Recommendation urges that state, territorial and federal governments strive to eliminate actual and perceived racial and ethnic bias in the criminal justice system by

- Establishing a Criminal Justice Racial and Ethnic Task Force to study and make recommendations concerning racial and ethnic disparity in the various stages of the criminal justice process;
- Requiring law enforcement agencies to develop and implement policies to combat racial and ethnic profiling;
- Requiring the legislature to conduct racial and ethnic disparity impact analyses, evaluate the potential disparate effects on racial and ethnic groups of existing statutes and proposed legislation, and propose legislative alternatives intended to eliminate predicted racial and ethnic disparity at each stage of the criminal justice process.

III. RECOMMENDATION ON CLEMENCY, SENTENCE REDUCTION AND RESTORATION OF RIGHTS

The Recommendation urges state, territorial and federal governments to establish standards and a process to permit prisoners to request a reduction of their sentences in exceptional circumstances. It further urges expanded use of the federal statute permitting reduction of sentences for “extraordinary and compelling reasons,” and specifically urges the United States Sentencing Commission to develop guidance for courts relating to the use of this statute. It recommends expanded use of executive clemency to reduce sentences, and of processes by which persons who have served their sentences may request a pardon, restoration of legal rights and relief from collateral disabilities. Finally, it urges bar associations to encourage and train lawyers to assist convicted persons in applying for pardons, restoration of legal rights, relief for collateral sanctions, and reduction of sentences.

IV. RECOMMENDATION ON PRISON CONDITIONS AND PRISONER REENTRY

The Recommendation speaks to the need to ensure that correctional facilities are safe and secure; that correctional staff are properly trained and supervised; and that allegations of prisoner mistreatment are promptly investigated and dealt with appropriately. It further addresses the need for programs and policies geared toward preparing prisoners for release and reentry into the community, and encouraging community acceptance of returning prisoners. It urges jurisdictions to identify and remove unwarranted legal barriers to reentry. Finally, it urges that law schools establish clinics to assist convicted person with legal issues related to their reentry into the community.