

Attorney General Revamps Sentencing Policies.

By David Zapp

This is the first act in a long time where the economy forced a change in the criminal justice system. And there will be more. The new policy announced by attorney general Holder is not going impact a majority of defendants because it is only going to help people who cannot otherwise qualify to come from under the mandatory minimums either because of ineligibility for “safety valve” consideration or because they cannot offer quality cooperation. These folks will be either indicted or re-indicted (if their cases are now pending) with charges that carry no mandatory minimum sentences at all where prosecutors think that is appropriate. Drug charges will simply carry a 0-20 year sentence. It is a small change but represents a significant shift in attitude.

It brings to mind former Attorney General Ramsey Clark’s statement that very few people need to be sentenced to more than five years a sentiment echoed by Shon Hopwood, a bank robber who after serving 12 years is now a law clerk for a federal judge.: “From my

experience, sentences over five years do little to help society or the prisoner. Longer sentences rob prisoners of hope, he wrote, discouraging them from preparing for a new and productive life.” Even Hopwood’s judge agreed. “I have thought for a long time that 60 months was about the maximum sentence one should impose if you were solely hoping to make a positive impact on the prisoner.” And attorney General Holder said. “Too many Americans go to too many prisons for far too long, and for no truly good law enforcement reason.”

A few days after the attorney general’s announcement, the Federal Sentencing Commission sent out a press release that they too were going to reconsider mandatory minimums as well as the drug quantity table, already a subject of much discussion in the prisons. It is being suggested that each drug quantity table be reduced two points, but not before 2014. That said every defense lawyer should mention this to the judge upon sentencing. A lawyer can simply call the Bureau of Prisons to find out the specifics. The telephone number is on their website and they will get back to you on the following business day.

The proposal will be made in January 2014. Public hearings will be held in April 2014, and hopefully it will appear in the November 2014 amendments. But as I say, that does not

stop attorneys from mentioning it to judges even the hard line ones who still incredibly enough continue following the guidelines. Hopefully many of these changes including the Holder policy will be retroactive. They should be, but do not hold your breath. Justice has a way of finding its way only to a lucky few, but if the holder policy is wise, it is no less wise for those who were sentenced during the mandatory minimum days. **BUT THESE NEW CHANGES ARE NOT IN PLACE YET FOR DEFENDANTS ALREADY SENTENCED.**

The only down side to this new pronouncement is thinking about all those unfortunate defendants that were sentenced under the old regime when the Guidelines were mandatory and drug trafficking was still sexy and causing irrational mass hysteria. (“They should all die!” said one senator) The Guidelines destroyed the lives of thousands innocent (families) and guilty (defendants.) And you will see, you will now find judges and prosecutors alleging that they always thought the mandatory minimum sentences and Guidelines were too harsh. And defense lawyers will also say they always did their part. Not so fast. Each one of us should have said, loudly and clearly, every time one of our clients went to slaughter, that he was getting too much time and that it was cruel.

In the end it all came down to money. It is a shame that the change did not come because the guidelines and the mandatory minimums were failures, but that would be too much to admit. It

would be tantamount to saying that all we did was impose gratuitous cruelty on our fellow men.

But things are sure looking up.

How to Really End Mass Incarceration

By *Vanita Gupta* (edited and abridged)

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Starting in the 1970s, a domestic “war on crime” dominated by antidrug policies and racial profiling fueled a prison-building binge that is morally — and now financially — bankrupt. Both political parties embraced draconian policies like mandatory minimum sentences, three-strikes laws and wide disparities in sentences for possession of crack versus powder cocaine. The result: by 2003, the United States had 4.6 percent of the world’s population but 22.4 percent of its prison population. So I was elated when Attorney General Eric H. Holder Jr. announced on Monday that the government would commit to reducing the bloated prison population. This is without precedent: the nation’s top law enforcement official directed all federal prosecutors to exercise their discretion toward ending the relentless warehousing of inmates — the vast majority of whom are minorities — in federal prison for low-level drug crimes.

Mr. Holder [however] has limited authority to enact permanent reforms without Congressional action. It’s unclear how federal prosecutors will enforce his plan. To maximize its impact, the Justice Department needs to track implementation by the 93 United States attorneys around the country and hold them accountable for enforcing the policy.

For lasting national impact we need to look at the states, where most criminal defendants are sentenced. Over the past few years, a quiet revolution has been brewing in state capitals. Historically low crime rates and shrinking state coffers have led to a nascent consensus among lawmakers and advocates across the ideological spectrum that our addiction to incarceration is not sustainable, effective or humane.

What Mr. Holder has done is turn up the dial, lending his imprimatur to a growing sense of national urgency and moral necessity. The muted reaction to his announcement from ardent conservatives is a reflection of the shift in debate.

But this is no time to rest. Those who seek a fairer criminal justice system, must at a minimum demand that the government eliminate mandatory minimum sentences, which tie judges’ hands; rescind three-strikes laws, which often make no distinction between, say, armed assault and auto theft; amend “truth in sentencing” statutes, which prohibit early release for good behavior; and recalibrate drug policies.

The work ahead is daunting, but Mr. Holder’s announcement holds out hope

that we have crossed a threshold, that there is no longer any serious argument about whether there is a problem with criminal justice in America. It’s sad it took so long for this moment to arrive — and that the impetus has come as much from budget pressures as from concerns about justice — but we need to seize it.

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