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Smarter Sentencing

By THE EDITORIAL BOARD

You know a transformational moment has arrived when the attorney general of the United States makes a highly anticipated speech on a politically combustible topic and there is virtually no opposition to be heard.

That describes the general reaction to Eric Holder Jr.'s announcement on Monday that he was ordering “a fundamentally new approach” in the federal prosecution of many lower-level drug offenders. What once would have elicited cries of “soft on crime” now drew mostly nods of agreement. As Mr. Holder said, it’s “well past time” to take concrete steps to end the nation’s four-decade incarceration binge — the result of harsh sentencing laws enacted in response to increased violent crime in the late 1960s and 1970s.

The statistics have been repeated so often as to be numbing: 1.57 million Americans in state and federal prisons, an increase of more than 500 percent since the late 1970s, at a cost of \$80 billion annually. In 2010, more than 7 in 100 black men ages 30 to 34 years old were behind bars. The federal system alone holds 219,000 inmates, 40 percent above its capacity, thanks to strict sentencing guidelines and mandatory minimum sentences. Of these inmates, nearly half are in prison for drug-related crimes.

In Mr. Holder’s words, “too many Americans go to too many prisons for far too long, and for no truly good law enforcement reason.” Many criminal-justice experts have long felt the same way. What made Mr. Holder’s speech timely and important was that it reflected a fundamental shift in thinking about crime and punishment at the highest levels of government.

The harsher-is-better mind-set is giving way to a recognition that widespread incarceration is, as Mr. Holder put it, “both ineffective and unsustainable.” Even if the historic decrease in violent crime is partly attributable to putting more people in prison, the nation is long past the point of diminishing returns.

As for specific policies, Mr. Holder ordered prosecutors to pull back when pressing charges in low-level, nonviolent drug cases. Where a defendant does not have a significant criminal history or gang ties, he said, prosecutors should avoid triggering mandatory minimum

sentences, which are pegged to drug quantities, by leaving those quantities out of the charges.

Mr. Holder also loosened the restrictions on releasing elderly, ill prisoners who pose no safety threat; called for the enhancement of alternatives to prison, such as drug treatment programs; and directed prosecutors to redouble efforts to reduce recidivism, which remains a vexing problem nationwide.

Mr. Holder oversees a Justice Department that is playing catch-up to the states, which house a vast majority of America's prisoners. Many states have reduced their prison populations and saved money without increasing the risk to public safety. Texas has cut sentences for drug and property offenses, while its prisons have expanded their treatment of drug addiction and mental health. The state's prison population, which had grown exponentially, has been stable or declining since 2007; and violent crime has decreased at the same time.

It will be years before the full impact of Mr. Holder's changes becomes clear. Much will depend on details, including how broadly prosecutors define a defendant's criminal history, and what it means to have "ties" to a gang. In the interest of fairness, Mr. Holder should also apply the policy to the tens of thousands of federal inmates already serving out mandatory minimum sentences for drug-related crimes.

It would help if Congress ratified the new policy. Presidents come and go, and it is entirely possible that without long-term legislative reform some future administration could regress. Thankfully, there's evidence that Congress, too, is finally getting the message. In 2010, it passed the Fair Sentencing Act, reducing huge and unwarranted disparities in sentencing for cocaine possession, which, in turn, shortened thousands of unjustly long sentences and has already saved about a half-billion dollars.

And two bipartisan bills would reduce mandatory minimums and give judges more discretion in sentencing offenders. Both represent a growing consensus that includes the political right. From the antitax crusader Grover Norquist to the American Legislative Exchange Council, which has previously supported tough sentencing laws, conservatives are among the clearest voices in favor of broad-based prison reform.

Public opinion is also firmly on the side of reform. A 2012 Pew Charitable Trusts poll found that nearly half of voters believed that too many people were in prison, and more than 80 percent supported reducing prison time for low-risk, nonviolent offenders. One of the last missing pieces in the reform effort has been the support of federal law enforcement. In unmistakably strong terms, Mr. Holder has now supplied it.

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