



Presumed guilty: Libertarians join liberals to fight 'unjust' mandatory minimums

By: [Ari Melber](#) - 9/18/2013

When Eric Holder announced new policies to reduce harsh prison sentences for non-violent offenders in August, an unusual pol had his back.

Calling mandatory minimums “one of the most unjust federal policies of our time,” Sen. Rand Paul heralded the Obama administration’s move, arguing that reform should be a “bipartisan issue.” Paul followed up on that talk with action on Wednesday, testifying before the Senate Judiciary committee on a joint proposal with Democrat Pat Leahy to curb mandatory minimums for non-violent offenders.

Critics of the war on drugs are thrilled to have Paul on board. He offers not only bipartisan validation, but credibility with a growing constituency, since Paul is arguably the most prominent libertarian in America. While progressives have spent years building the groundwork for criminal justice reform, increasingly it is libertarian Republicans who are putting some key measures over the top.

In the past year alone, Republican-run legislatures in Alabama, Tennessee and Georgia have [rolled back draconian sentencing laws](#), citing both the cost and increasing public concern about over-incarceration.

At the national level, Republicans like Paul emphasize the libertarian argument that the U.S.’s harsh sentencing rules ruin lives and cost billions. Interestingly, his appeal for reform also addresses race.

Paul is increasingly pressing a progressive critique—that mandatory minimum sentences are marketed as “tough” on criminals, but they’re actually tough on minorities and the poor. ([Government data and independent studies](#) show black and Hispanic defendants receive longer minimum sentences than white defendants.)

“Mandatory minimum sentencing has disproportionately affected blacks, Hispanics and others who often don’t have the financial means to fight back,” Paul said after Holder’s announcement in August.

He pointed to a story from Timothy Lewis, one of the first black appeals judges appointed by a Republican president, about a black 19 year old who was convicted of simply sitting in a car where drugs were found. There were no charges of drug use, let alone drug dealing or violence.

Under automatic mandatory minimum rules, however, Lewis was forced to issue a drastic, automatic sentence. The defendant was on track to be the first person in his family to attend college, Lewis recalled, but instead he was sent off to ten years in federal prison. That outraged Sen. Paul, who says “Judge Lewis’ hands were tied” by rules rooted in “madness.” Paul approvingly quoted Lewis’ criticism that, as applied, these laws amount to a “pervasively racist policy.”

Other libertarians agree.

“There’s no question that the impact of these laws is racially disproportionate,” says Jacob Sullum, a writer for the libertarian *Reason* magazine and author of “Saying Yes; In Defense of Drug Use.”

“The overwhelming majority of people being charged under federal law with crack offenses are black or Hispanic—not white,” Sullum told MSNBC. “And they’re getting disproportionately long penalties because of the way crack laws are written,” he said.

“Even if you think the drug laws shouldn’t be on the books at all, the sentences are far too harsh,” says Tim Lynch, director of the Criminal Justice project at the Cato Institute, one of the most conservative think tanks in Washington. “This is something where libertarians can agree with progressives,” he told MSNBC, “that the sentences need to be reduced quickly.” He points to Texas as a state that’s “very tough on crime” but has a growing “alliance between progressives and conservatives” for sentencing reform.

While not all conservatives subscribe to libertarian dogma, there are broader signs that a new thinking is spreading.

David Koch, the influential conservative billionaire, has poured money into Families Against Mandatory Minimums, a non-profit founded in 1991 [to beat back excessive jail time](#).

Conservative leaders on justice issues, such as Sen. Orrin Hatch, led the GOP caucus to support an Obama proposal to reduce the crack-to-cocaine sentencing disparity. The 2010 law had six Republican cosponsors in the Senate, and passed the House on a voice vote. Republicans on the Senate Judiciary Committee, which Hatch once chaired, are working with Right on Crime, [a conservative coalition](#) that opposes what it calls a costly, “incarceration-focused” approach to crime.

The group, which testified at this week’s hearing, acknowledges that the approach they now oppose grew out of political pressure from yesterday’s Republicans.

That trend dates at least to 1968, when President Nixon [ran on “law and order.”](#) That year, the [GOP platform pledged](#) “an all-out, federal-state-local crusade against crime” (and a 13-point plan promising a “vigorous nationwide drive against trafficking in narcotics”).

Ronald Reagan took a similarly hard line as governor and president; by his second term, both parties were on board. He signed the Anti-Drug Abuse Act in 1986, a law with sweeping mandatory minimums for drug use. It drew only two “no” votes in the Senate.

It's telling that today's Republican platform is edging in a different direction.

The 2012 platform laments an "unfortunate expansion" of the "over-criminalization of behavior," noting that the number of activities that Congress has decreed to be federal crimes jumped by 50% over about 30 years. It nods towards "family-friendly policies" for prisons to reduce recidivism, prison violence and "the enormous fiscal and social costs of incarceration." If Rand Paul has any influence on the next platform, it could go even farther.

So far, Paul's legislation to provide a "safety valve" reducing jail time for non-violent offenders hasn't gained many friends in the House. There are about 48 members of the Tea Party caucus, but only two Republicans are sponsoring the House's [companion bill](#).

Reform advocates say a bottom-up, cross-party movement will take time, especially after thirty years of partisan dogma in the war on drugs.

Reason magazine's Sullum believes the mix of moral and pragmatic arguments favor a sea change.

"To send people away to prison who don't belong there [is] a waste of criminal justice resources," he says, "if these people don't pose a threat to the general public." He adds, "it's unjust—and this is a point that progressives, of course, have made for a long time. And conservatives have come around to that view."

If libertarians and liberals stick together, the rest of the GOP may decide it's better to be in a winning coalition than left behind.