Smarter Sentencing Act Would Bring Needed Reform to Criminal Justice System

By U.S. Senator Mike Lee

It is not often that you see a political coalition on Capitol Hill like the one that has come together to reform our federal sentencing laws. This is an issue that bridges the traditional divisions in our politics, bringing together individuals and organizations that don’t typically see eye to eye on public policy matters.

The diversity of opinion and breadth of experience represented in this movement reflects the importance of an issue whose time has come. And there’s no doubt that the time has come for criminal justice reform in America.

The first thing to understand about this issue is that our criminal justice system is in need of reform not because current policies have failed, but in many ways because those policies have succeeded.

This is an important point for reformers to remember because we can’t solve a problem unless we first understand the nature of that problem.

In the mid 1980s through the early 1990s, violent and drug-related crime was a serious problem in this country. And it galvanized policymakers from both parties, at the state and federal level, to pass a series of tough-on-crime policies that helped make our communities safer.

But as these reforms took hold, and as the landscape of our criminal justice system changed, our laws remained the same—which is to say they became outdated. And in some cases these policies created new challenges that our generation must now meet.

This is one of the reasons why, as a conservative, I’m involved in criminal justice reform. The unforeseen problems that have grown out of our tough-on-crime policies illustrate one of the inherent features of government: that the well-intentioned and even well-designed policies of yesterday often become the dysfunctional and even harmful policies of today.

As a conservative policymaker, I believe it is my job not to blindly defend the status quo or cling to the policies of the past, but to modernize our government’s outdated programs and to fix our broken policies.

And there’s no denying that our criminal justice system is broken. The financial costs of today’s criminal justice system are staggering. But its real failure is measured in terms of the tragic human costs of over-criminalization, over-incarceration, and over-sentencing.

Simply put, the current system leaves too many Americans behind—some of them are reformed offenders languishing in prison; some of them are innocent men, women, and children on the outside, trapped in fraying communities with too little security and too few fathers, uncles, and older brothers.

As a conservative, I believe the purpose of government is to protect and to promote our free-enterprise economy and voluntary civil society. I call these America’s twin networks of opportunity, because within them are institutions where individuals come together to meet each other’s needs, improve each other’s lives, and help themselves by helping everyone else.

These networks cannot function when threatened by violent predators, so we give government the power to incarcerate those who violate the law and endanger public safety. Likewise, our free market and civil society cannot properly function when people are unnecessarily excluded from fully participating in them.
So a government that has the power to punish crime also has the corresponding responsibility to sentence offenders on an individualized basis and for no longer than necessary. It also has a commitment to rehabilitate as many offenders as possible—to help them prepare to return to the families and communities that we know so desperately need them.

We have lost sight of these principles in a justice system that relies too much on prisons—prisons that keep nonviolent offenders locked up for too long with too few opportunities to change. The time has come to reform the mandatory sentencing laws that undermine our ability to do real justice.

That’s why I have introduced in the U.S. Senate the Smarter Sentencing Act of 2015, along with Senators Dick Durbin, Patrick Leahy, and Cory Booker—three of the most liberal members of Congress. The Smarter Sentencing Act would reduce—but not repeal—federal mandatory minimum penalties for drug offenses, while leaving intact all federal maximum sentences. This targeted approach maintains a floor below which no offenders can be sentenced, while giving judges the discretion to determine when the harshest penalties should apply.

It’s important to note that the changes to mandatory minimum sentences that are proposed in this bill do not apply to violent offenses. Nor do they apply to offenders who import drugs into the United States, unless the offender’s role is limited solely to transporting or storing drugs or money.

The second major component of the Smarter Sentencing Act is to modestly expand the federal “safety valve.” This is a provision in federal law that allows federal judges to sentence a limited number of nonviolent drug offenders below the mandatory minimum sentence. The only cases that would be eligible under this expanded safety valve are those of non-violent offenders with a minor criminal history.

The Smarter Sentencing Act does not prevent judges from rendering stiff sentences for the most serious and dangerous drug lords and cartel bosses. It simply gives them the flexibility and discretion they need to impose sentences that reflect the facts of each case, while enabling nonviolent offenders to return more quickly to their families and communities.

As I see it, criminal justice reform is not so much about letting people out as it is about bringing people in. It’s about crafting policies to help reformed offenders and their families fully participate in our society and economy, and to help build an America that gives them the opportunities we would want for ourselves.