



# Americans on Sentencing Reform



PROGRAM FOR PUBLIC CONSULTATION  
SCHOOL OF PUBLIC POLICY, UNIVERSITY OF MARYLAND

**August 2018**

# Methodology

**Fielded by:** Nielsen Scarborough

**Method:** Administered online to a probability-based sample selected from a larger panel recruited by telephone and mail

**Fielding Dates:** July 10-23, 2018

**Sample Size:** 2,417 Registered Voters

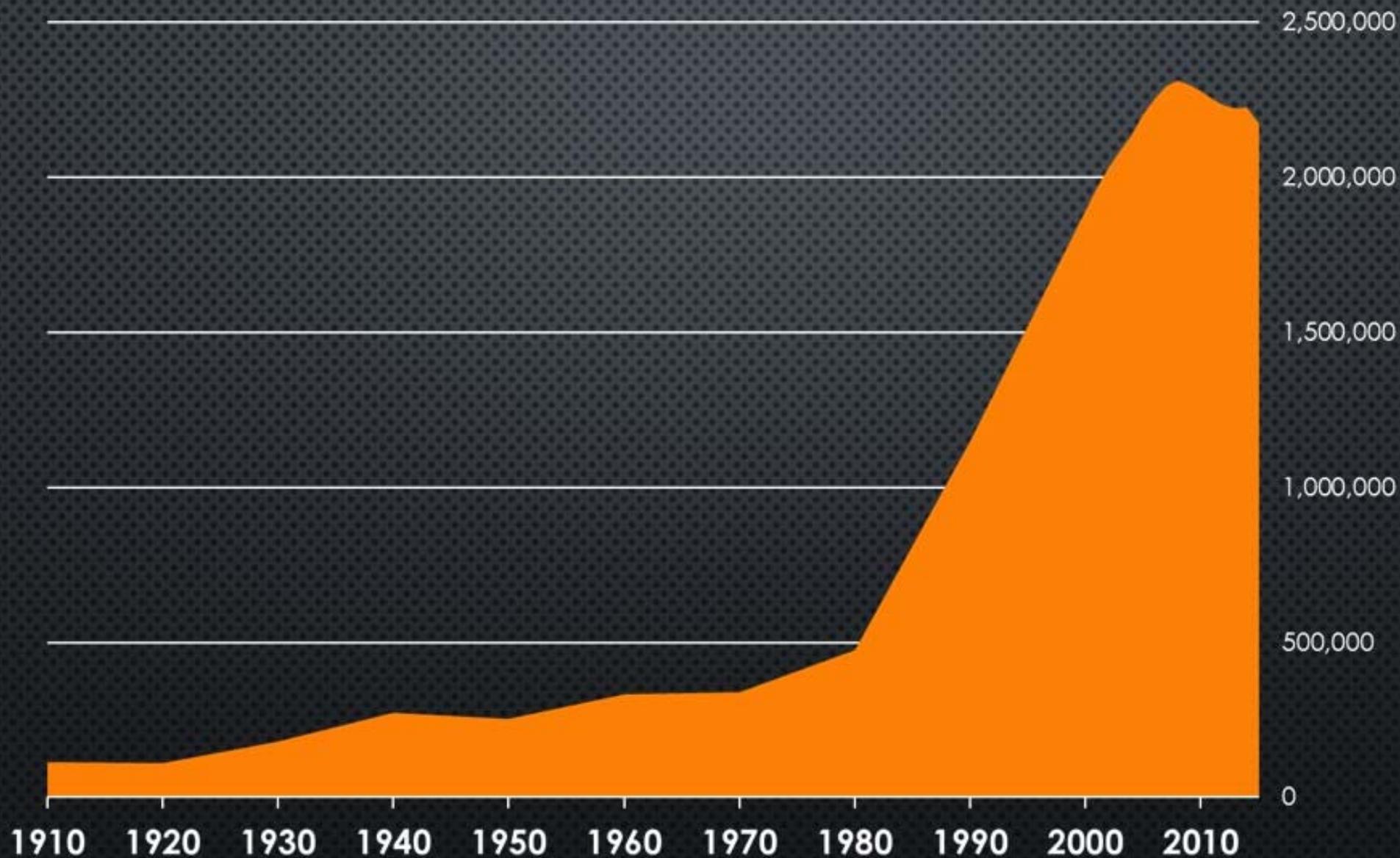
**Margin of Error:** +/- 2.0%

# Briefing

As you may know, there is a major debate these days about the number of Americans in prison. This debate has been prompted by the fact that the number of Americans in prison is historically high.

As we will see, some people say this has gone too far, while others say it has contributed to the reduction in crime.

# Number of Prison and Jail Inmates 1910-2015



Source: U.S. Department of Justice Data

# Crime Rate in the United States 1960-1995



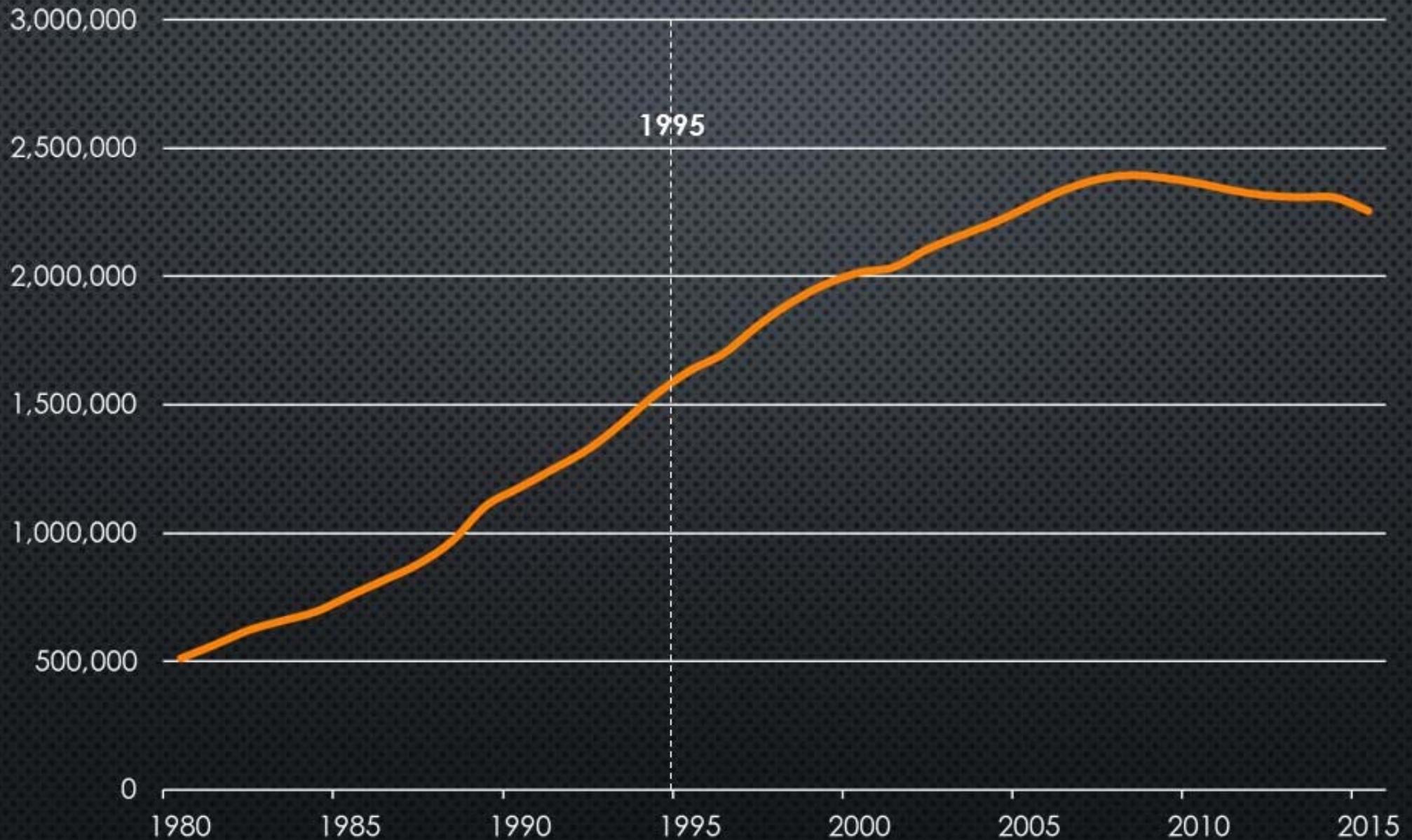
Source: FBI Uniform Crime Reports

# Crime Rate in the United States 1960-2014



Source: FBI Uniform Crime Reports

# U.S. Prison Population Growth 1980-2015



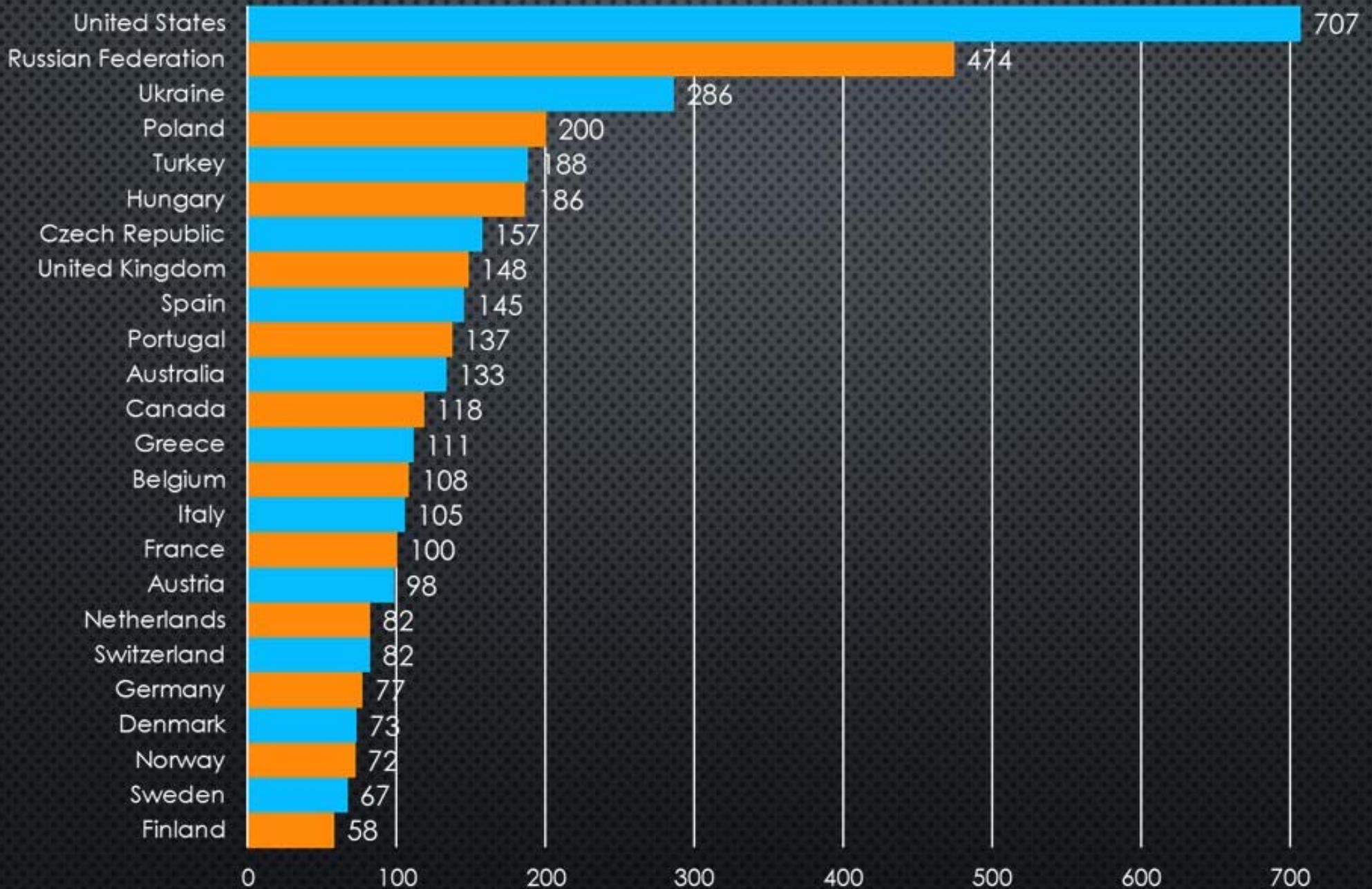
Source: Bureau of Justice Statistics

# Average Federal Prison Sentence Length: 1945-2010



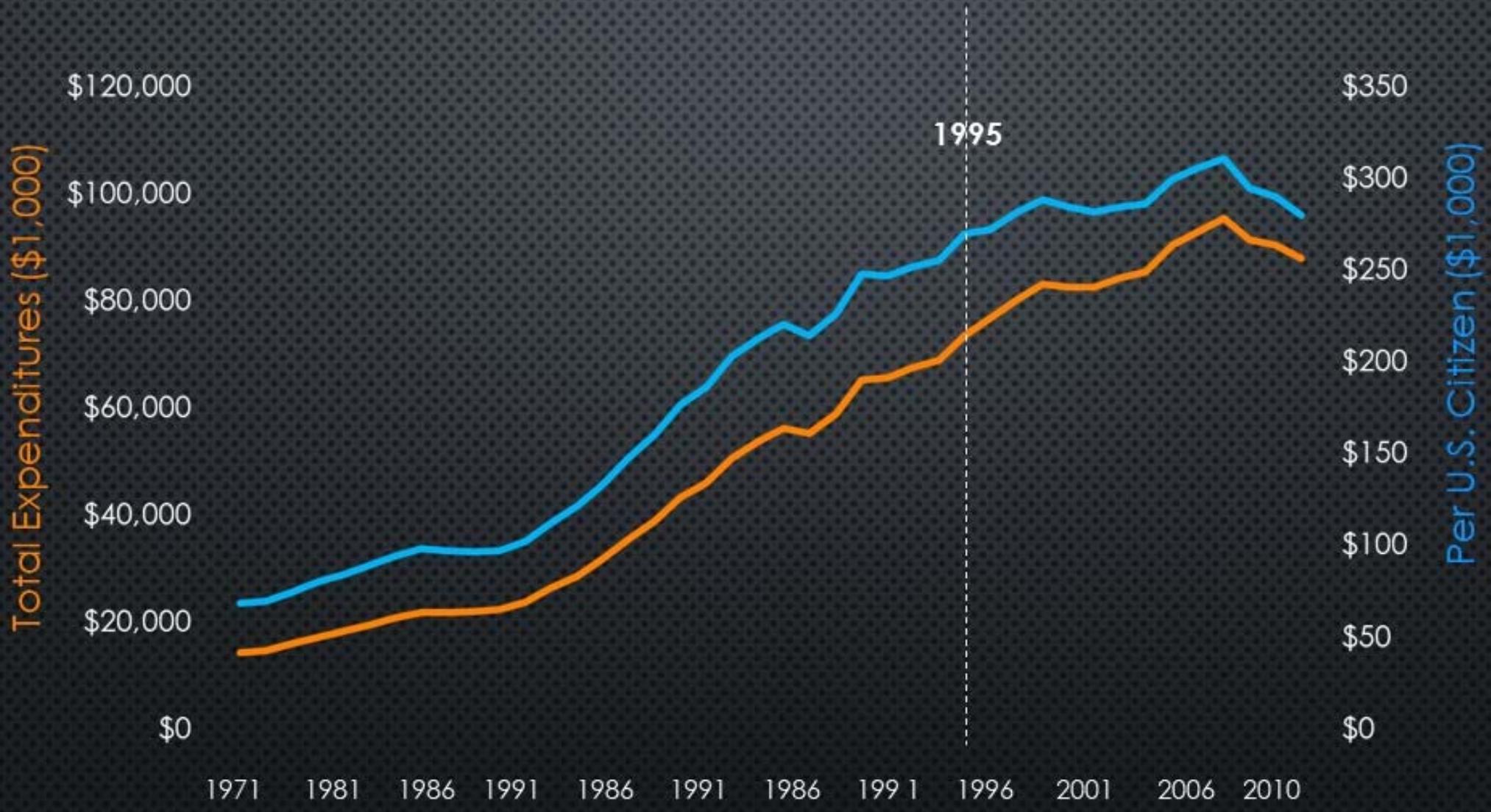
Source: Sourcebook of Criminal Justice Statistics, University of Albany

# Number of People in Prison per 100,000 Population



Source: "The Growth of Incarceration in the United States: Exploring Causes and Consequences," The National Research Council, 2014.

# Total Spending on Prison System 1971-2012



Source: Uniform Crime Report, Bureau of Justice Statistics 1971-2012.  
Note Costs adjusted to 2017 dollars using BLS-CPI

# Briefing

The new proposals currently being considered in Congress call for reducing federal mandatory sentencing requirements and giving judges more discretion, in setting sentences and granting early release.

With this discretion the judge can adjust sentences in light of the seriousness of the crime and their judgment of how much a defendant poses a risk to society. The kinds of things that a judge may consider is whether the person has a history of crimes, possessed a weapon at the time of the crime, were a leader in a joint criminal effort, and whether they fully cooperated with legal authorities. More broadly the judge may consider whether the person is likely to repeat their offenses.

# Current Federal Mandatory Minimums and Proposals for Modification

## “One Strike”

Currently, federal law requires a **minimum 10 year prison** sentence for a serious drug offense - the sale, trafficking or manufacturing of a significant amount of illegal drugs. **The proposal is to lower the mandatory minimum sentence** for ‘one strike’ so that a judge could decide to give a sentence of **5 years** in prison if certain requirements are met (e.g. no criminal history, no firearm involved), though the judge could still make it longer.

## “Two Strikes”

Current law requires a **minimum 20 year sentence** for a serious drug offense if the defendant has 1 prior federal drug conviction that resulted in at least a 1 year sentence. **The proposal is to lower the minimum sentence to 15 years**, and to expand the prior convictions to include violent felonies that resulted in at least a 1 year sentence.

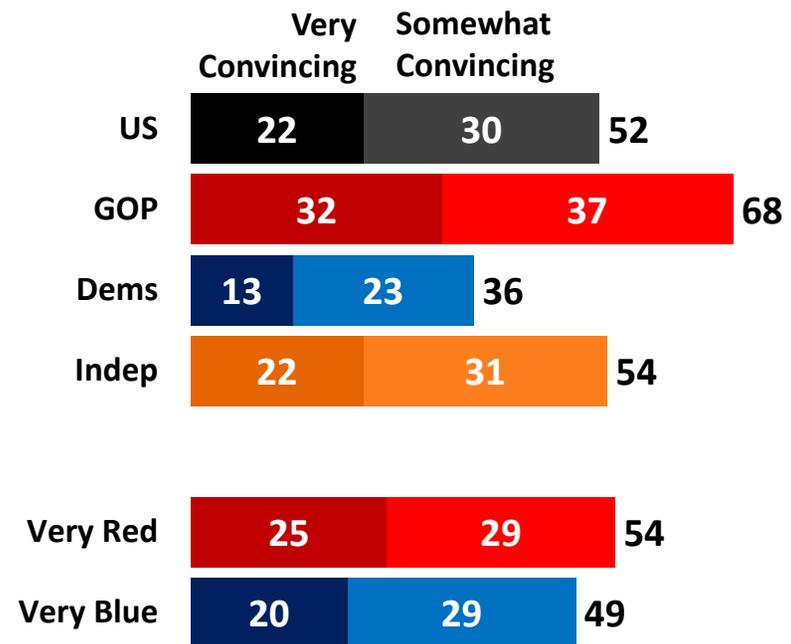
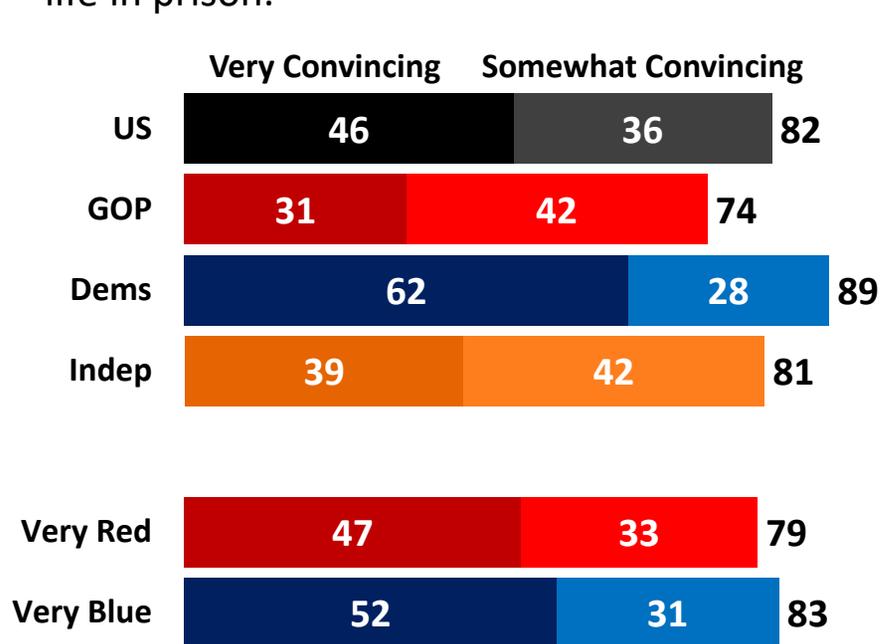
## “Three Strikes”

Currently, law requires **life imprisonment** for a serious drug offense if the defendant has 2 or more prior convictions for a federal drug offense. **The proposal is to lower the minimum sentence to 25 years**, and to expand the prior convictions to include violent felonies that resulted in at least a 1 year sentence.

# Arguments: Moderating Mandatory Minimums (1)

Our sentencing laws prevent judges from considering the specifics of cases, often times resulting in sentences that are much longer than the criminal deserves. Many judges complain that the straitjacket of mandatory sentencing laws forces them to give long sentences that they think are unnecessary and unjust. Justice requires considering the whole situation. For example, say a new father with no criminal record is desperate to get money to feed his children and falls prey to the temptation of some quick and easy money by participating in a drug deal. Putting him in prison for 10 years makes no sense for him, his family, or society. A repeat offender with a relapsing drug problem may need treatment and supervision, not life in prison.

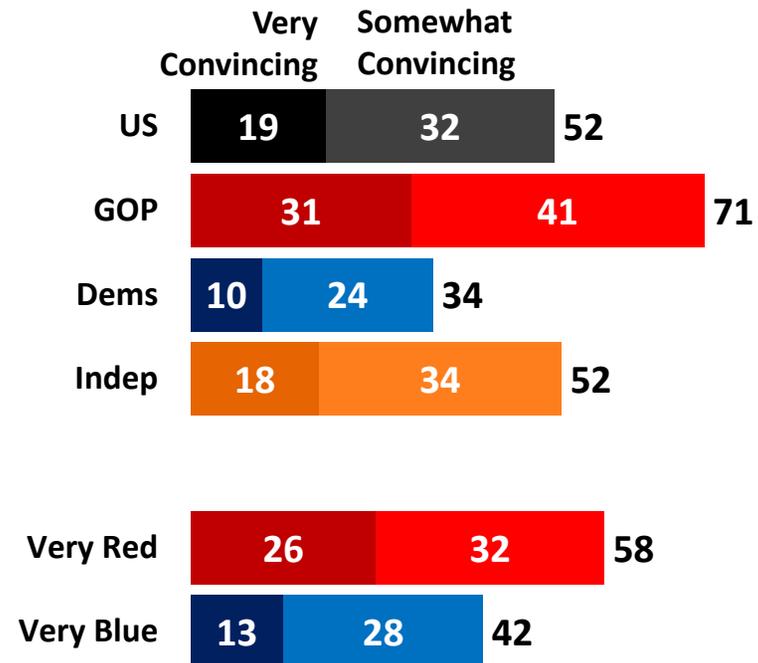
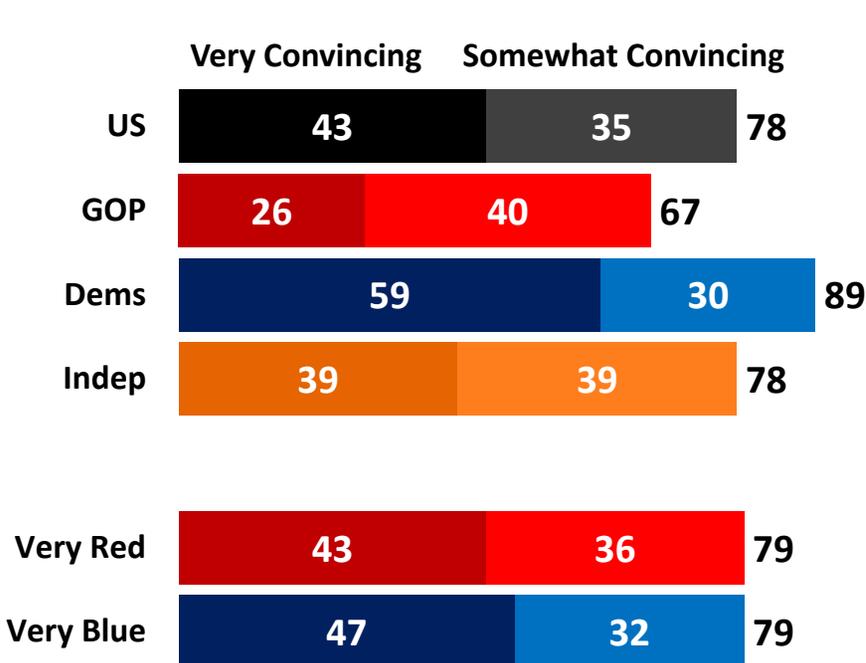
Criminals need to know that if they break the law, they will face the full consequences of their actions. That certainty is a pillar of our criminal justice system, and acts as a deterrent to crime. If they believe that their sentences could get reduced, or that they could be released, they might be more likely to commit a crime. Before they committed their crimes, criminals knew the consequences of their actions and took that risk anyway; they should serve their time. It is also more just for everyone to get treated the same. It is not fair that one criminal gets a long sentence, while another who commits the same crime but has a sob story, should have a shorter sentence. This weakens our justice system.



# Arguments: Moderating Mandatory Minimums (2)

It is understandable that, when crime rates went up, there was a move to crack down on crime and impose harsher sentences. But crime rates have come down a lot and it is time for us to recognize that we have gone too far. One out of 100 American adults is in prison – far more than in any developed country. Keeping people in prison for long periods has been shown to increase the likelihood that people will commit more crimes when they are released. It is time to look more closely at our sentencing laws and ask whether some of the sentences we have been giving are longer than they need to be.

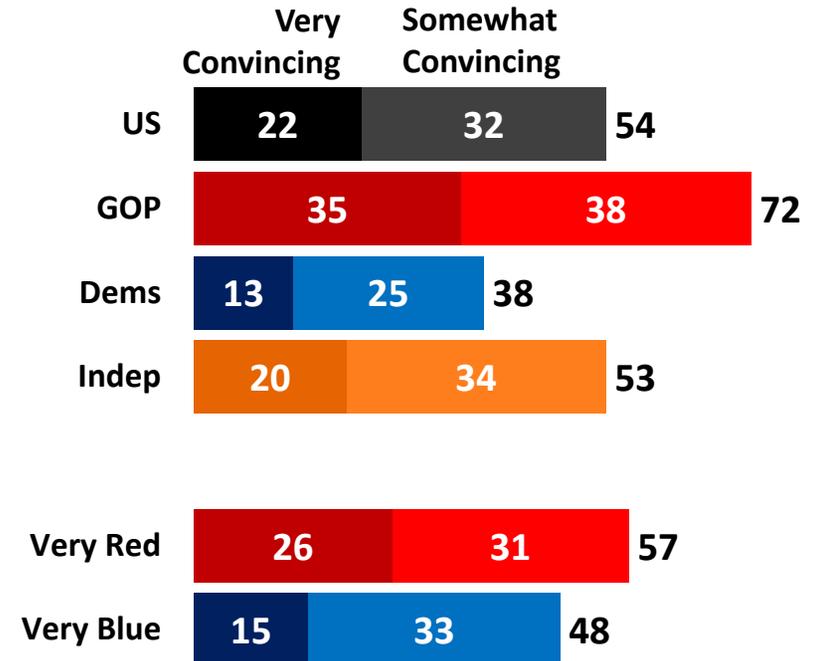
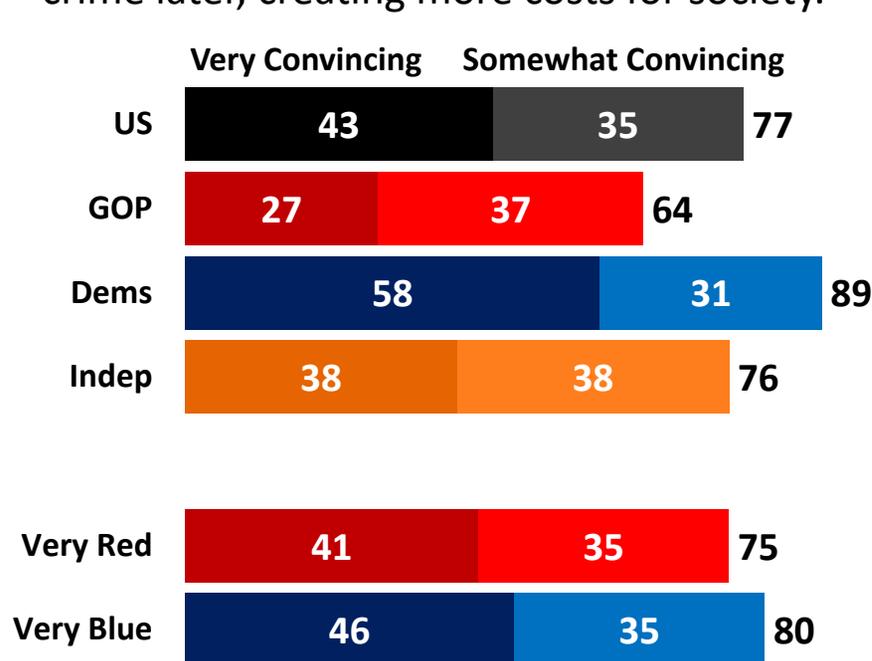
Because crime rates have come down, this does not mean that we should ease up on sentencing. On the contrary: a key reason that crime rates have come down is that more criminals are behind bars. Clearly, the sentencing system we have is working and there is no reason to change it. Millions of people have not become crime victims, and we can all feel more secure. If we let criminals out earlier, they will be back on the streets committing more crimes.



# Arguments: Moderating Mandatory Minimums (3)

Besides the severe personal costs of overly-long sentences, we should not forget the great costs to society. On average, it costs more than \$30,000 a year to keep an inmate in prison. Currently, we spend over \$8 billion a year on federal prisons. Research studies have found that the lost productivity, the lost tax revenue, and other factors, cost society hundreds of billions of dollars per year. When families lose a breadwinner it harms the whole family. Also, when people stay in prison a long time they lose their work habits and support networks, and spend more time with hardened criminals, all of which have been shown to increase the likelihood that they will go back to crime later, creating more costs for society.

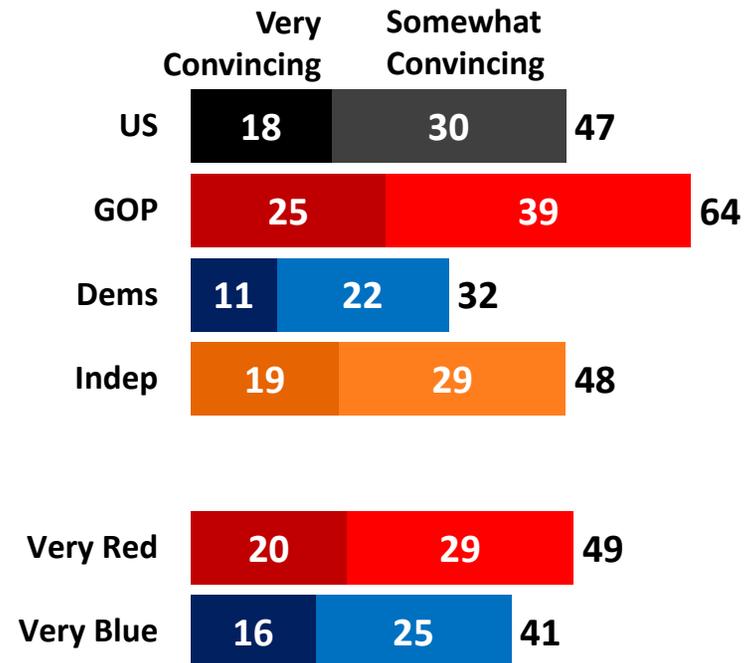
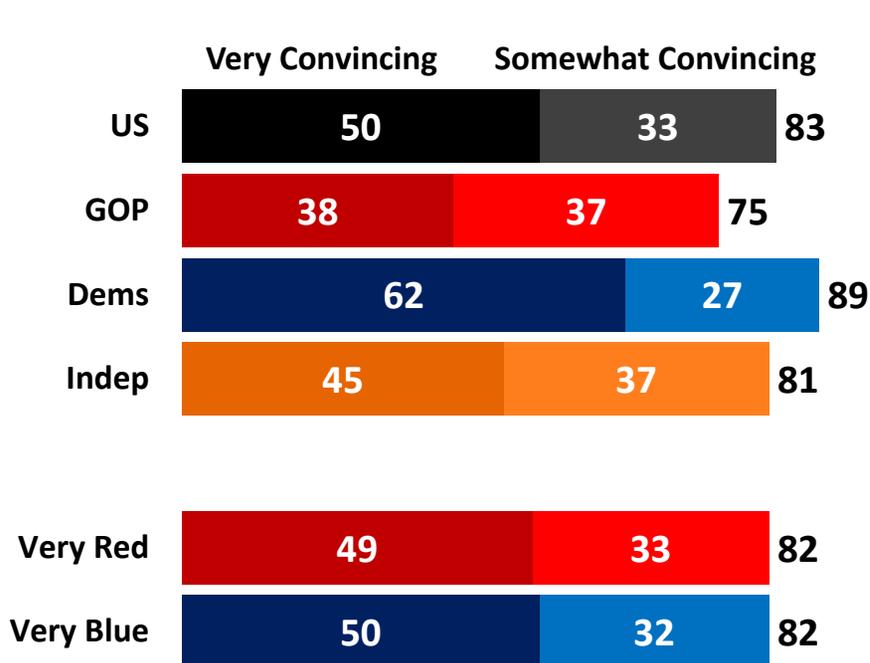
Sentencing criminals should not be simply assessed in economic terms. It is a question of upholding justice – and we cannot have justice on the cheap. Furthermore, the idea of trying to save money by cutting back on prison sentences is penny-wise and pound foolish – it can well lead to greater crime which will impose greater costs on society. While the Federal government might save money, the costs of more crime will be transferred to state and local police and communities. A firm and sustained response against crime is a good investment for society.



# Arguments: Moderating Mandatory Minimums (4)

Studies have shown that many of the people in prison do not pose a real threat to society. Many did not commit violent crimes and yet got very long sentences because of rigid sentencing rules. Many were young and exercised poor judgement, but have matured. Some have been in prison for decades and are simply too old or disabled to commit crimes. Judges should be able to assess whether such people should still be in prison.

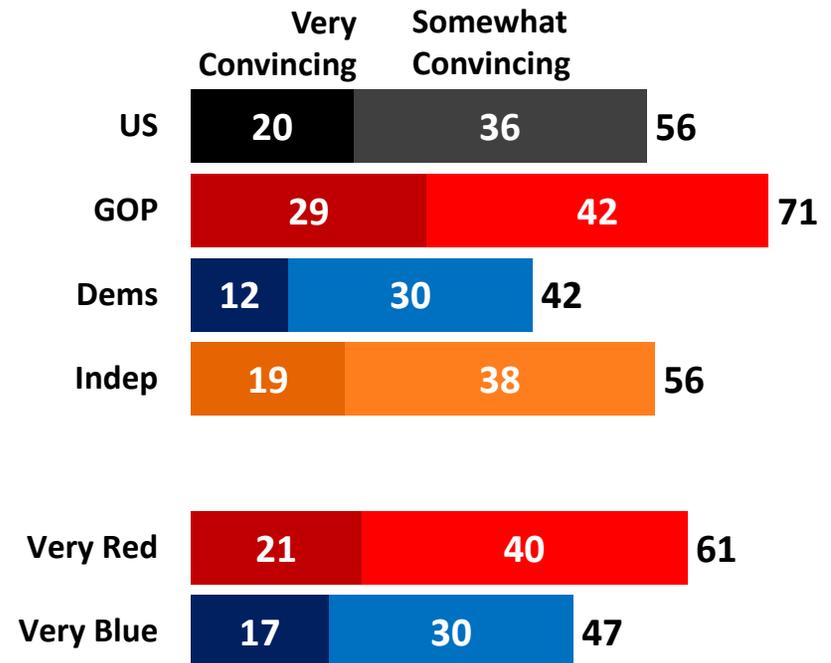
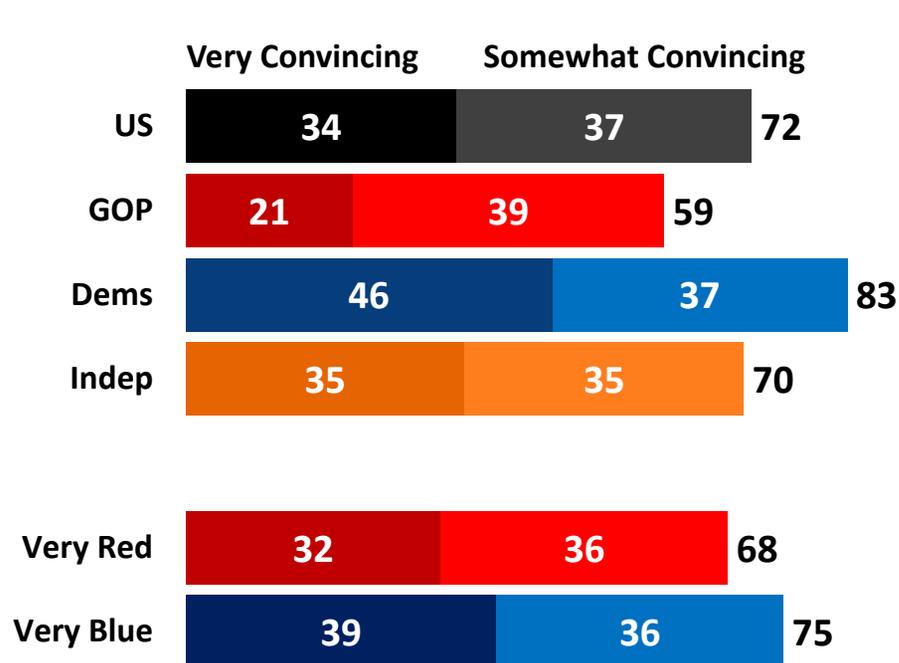
Our criminal justice system is not simply about whether people pose a threat to society. We have a legal system that, at its core, is about what is moral. When someone violates those rules, their punishment is about upholding and reasserting those principles. When we get lax and let people off too easily, this undermines the moral foundation of society itself.



# Arguments: Moderating Mandatory Minimums (5)

Long mandatory sentences can actually undermine the enforcement of laws – that’s why many law enforcement professionals oppose them. A twice convicted felon who faces certain life imprisonment will be more likely to resist arrest--putting officers at greater risk – and to kill witnesses or attempt escapes. And keeping people in prison for long periods has been shown to increase the likelihood of repeating crimes. More limited sentences coupled with rehabilitation, job training and supervision after release are most apt to reduce crime.

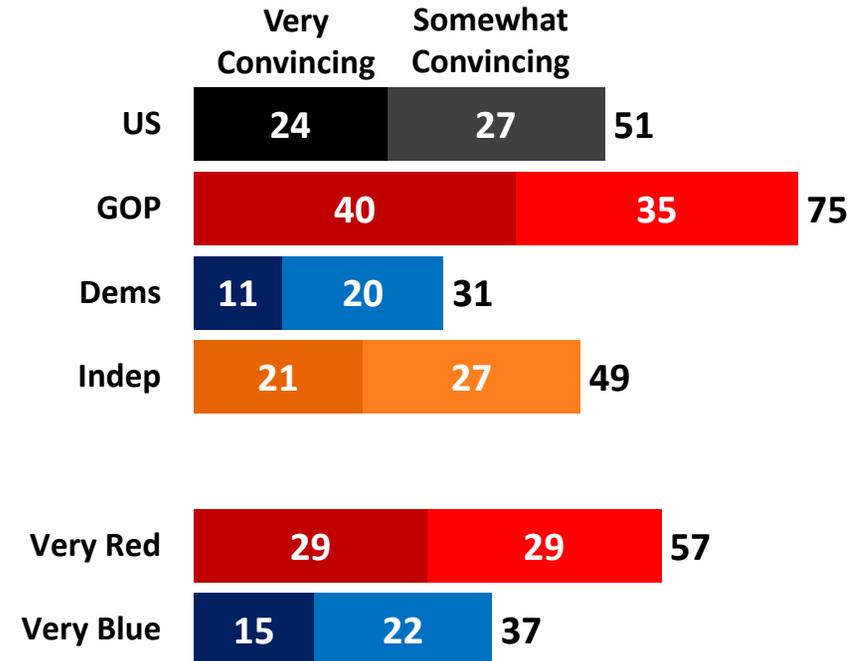
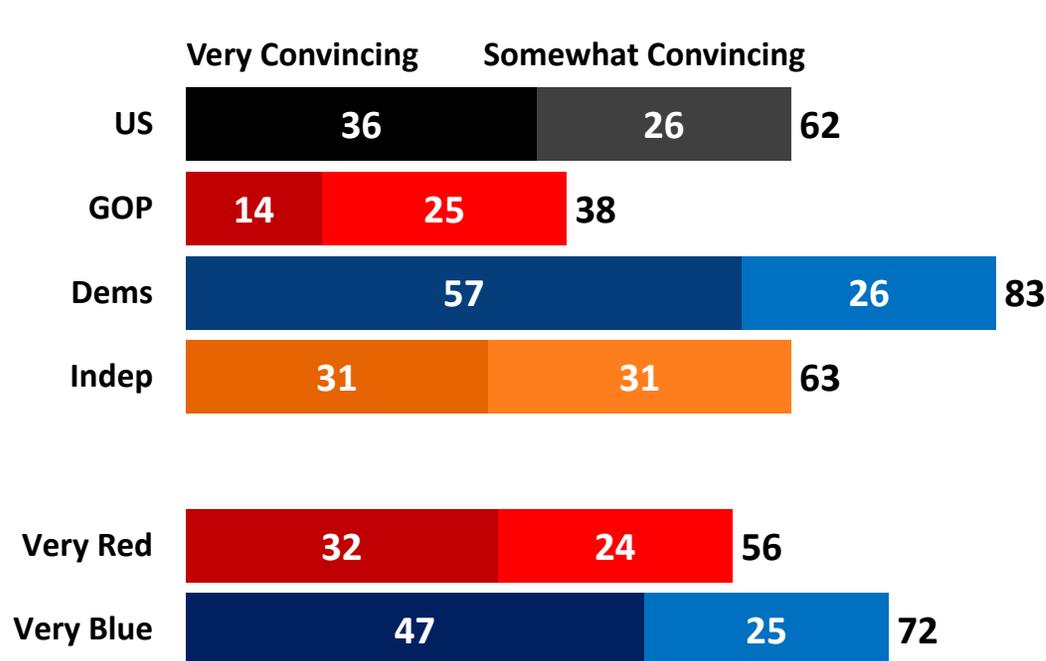
Mandatory minimum sentences are an important law enforcement tool. They give the police and prosecutors the leverage necessary to secure the cooperation and testimony of low-level offenders against their more senior confederates. Because prosecutors can more effectively threaten defendants with a charge that could lead to a certain long sentence, they will be more willing to cooperate in an investigation and/or plead guilty to a lesser charge. Such tools are key for breaking the resistance of gang members and weakening organized crime.



# Arguments: Moderating Mandatory Minimums (6)

Research shows that mandatory minimum sentences disproportionately and unfairly punish African Americans due to racial biases in the criminal justice system – from policing to prosecution. Blacks are more likely to be stopped by police and during stops, they are nearly three times as likely to be searched. Their communities have greater police presence, and although they use and sell drugs at the same rate as whites, they are almost three times as likely to be arrested on drug charges. Research also shows that prosecutors are twice as likely to pursue mandatory minimum sentences for blacks as they are for whites who violated the exact same law. Clearly, mandatory minimum laws have exacerbated racial disparities in sentencing, and understandably undermined confidence that the US justice system is fair and equitable.

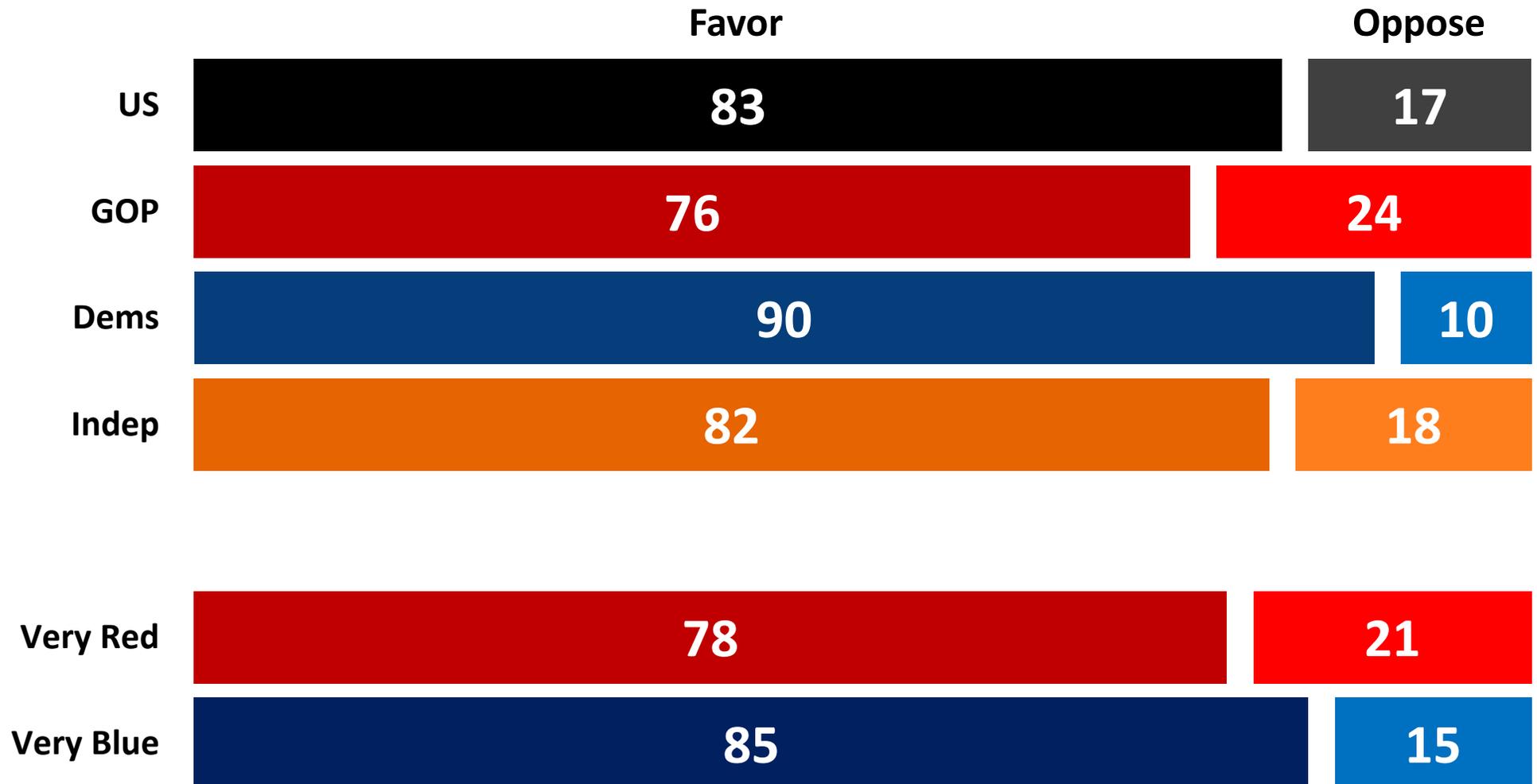
It may well be that there is some racial bias in the US justice system, but mandatory minimums actually helps the problem. By having more standardized sentences, the chance of racial bias is diminished. Mandatory sentencing laws are meant to reduce those biases and prejudices that come with any human decision making. It may be true that there are biases in policing and prosecution, but those problems should be addressed directly. Cutting back mandatory minimum sentences across the board is not the solution. There are numerous factors which lead to the racial disparities we see in the prison population – socioeconomic factors as well as racism. If we want to reduce these disparities, we must solve the problems that lead to criminal activity – not attack the tools that make sure every crime gets treated equally.



# Final Recommendations: Mandatory Minimums

## “One Strike”

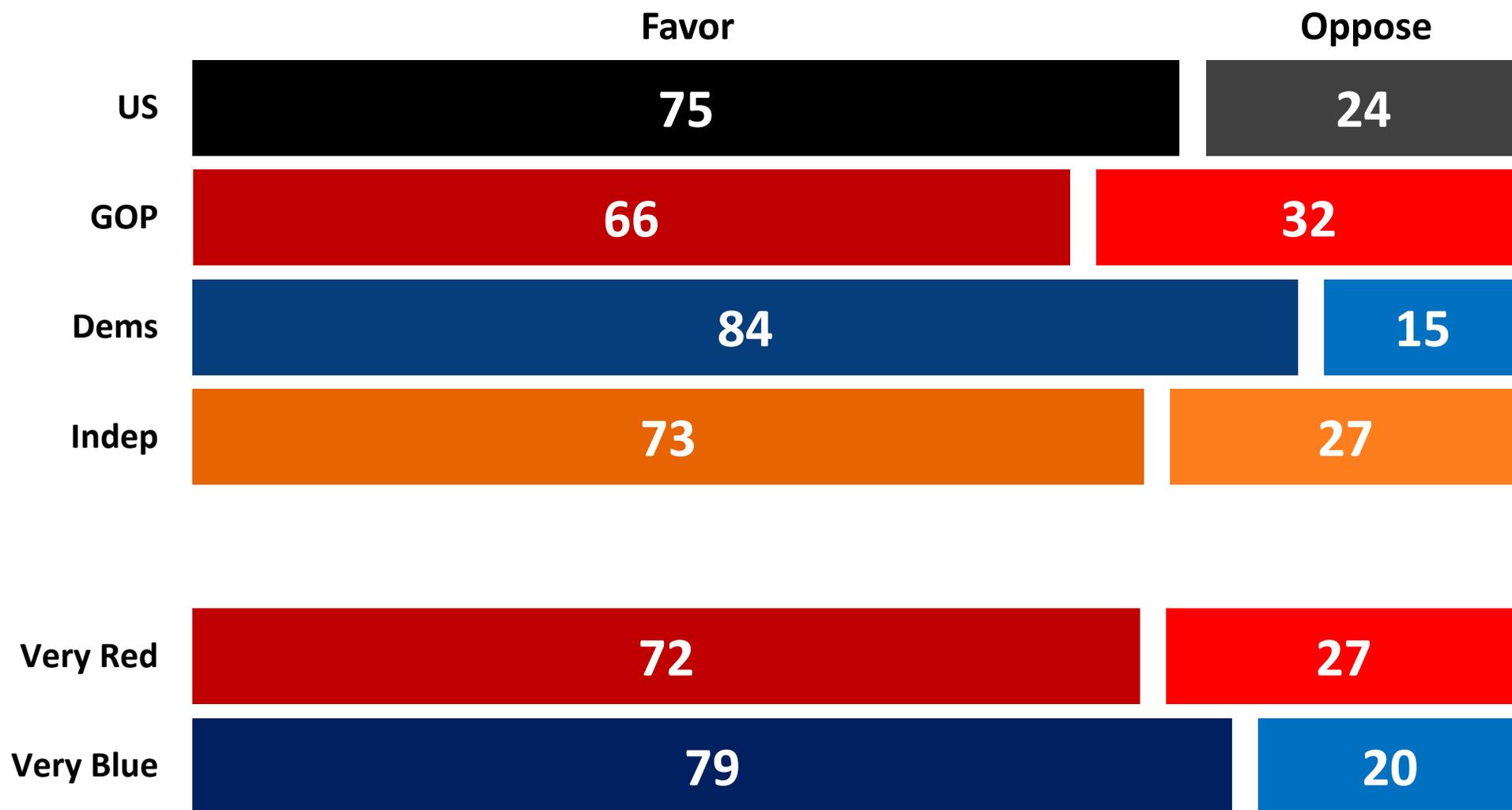
Current federal law states that a conviction for one serious drug offense must result in a minimum 10 year prison sentence. Do you favor or oppose a proposal that would allow a judge to give a sentence of 5 years in prison, though the judge could still make it longer?



# Final Recommendation: Mandatory Minimums

## “Two Strikes”

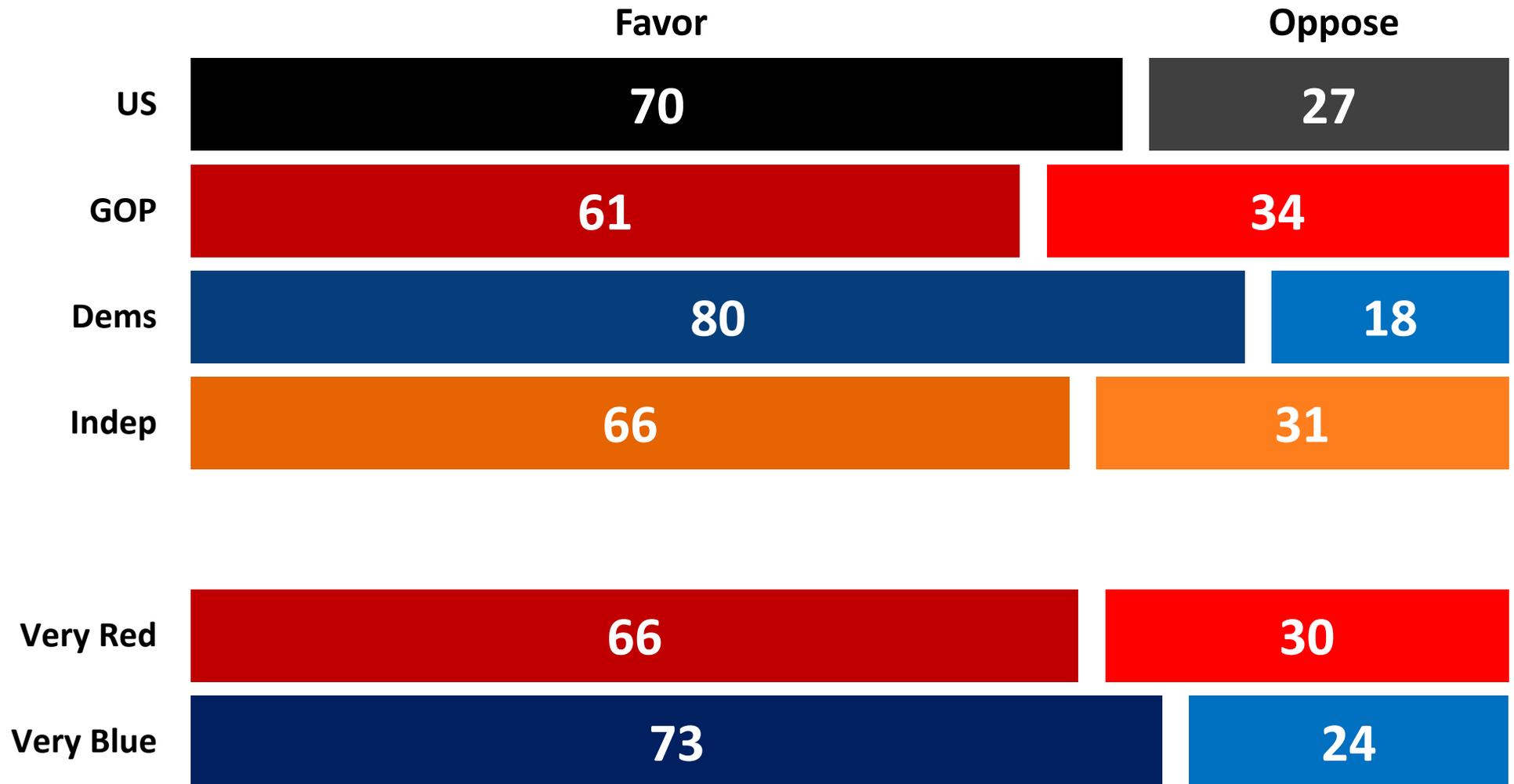
Current federal law states that someone who is convicted of a second serious drug offense be sentenced to 20 years in prison. Do you favor or oppose a proposal that would allow a judge to give a sentence of 15 years in prison, though the judge could still make it longer?



# Final Recommendation: Mandatory Minimums

## “Three Strikes”

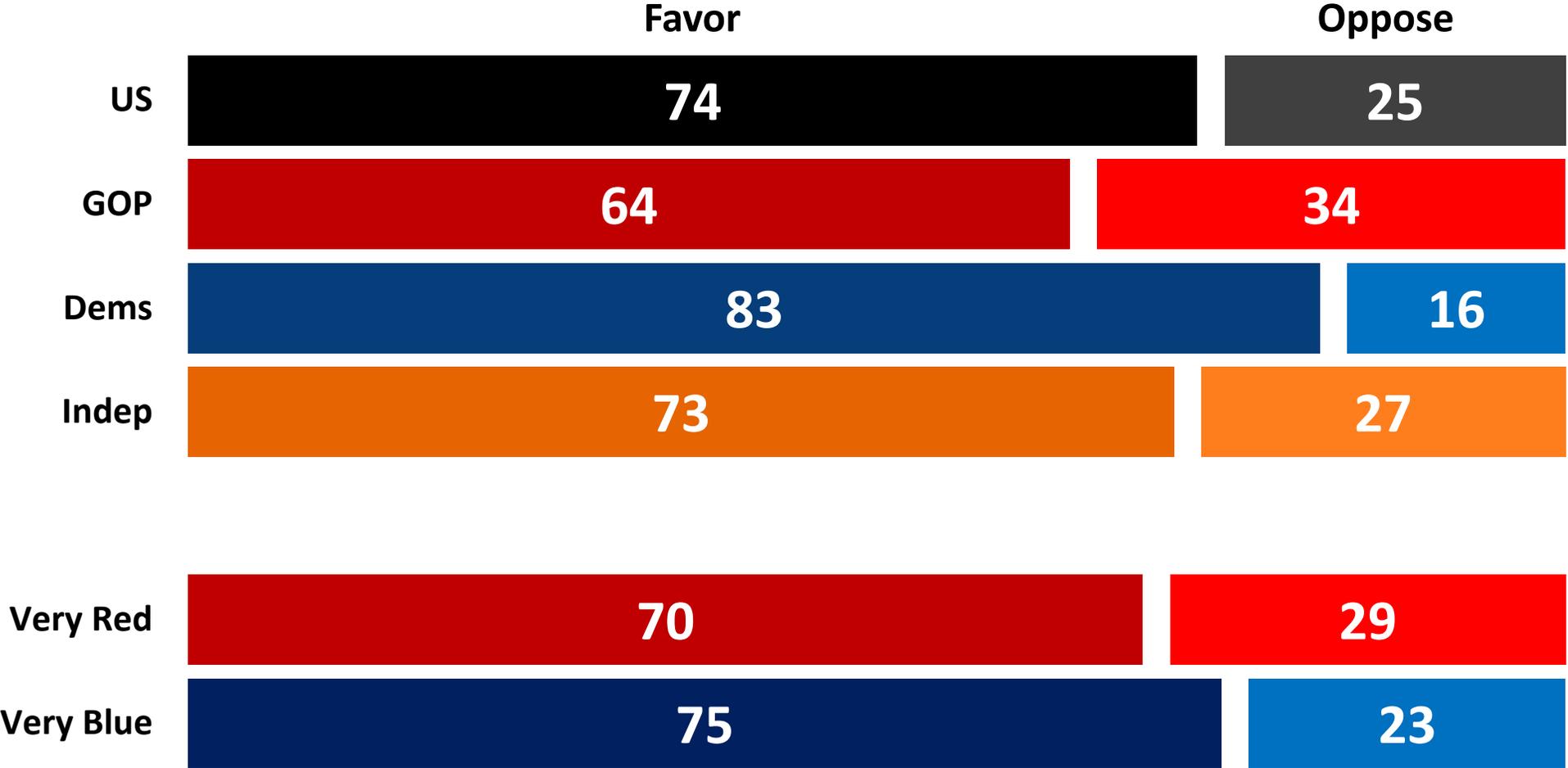
Current federal law states that if someone commits three serious drug offenses, they must be sentenced to life imprisonment. Do you favor or oppose a proposal that would allow a judge to give a sentence of 25 years in prison, though the judge could still make it longer?



# New Courier Category

Currently, someone whose role is limited to transporting or storing illegal drugs or the money related to drug deals, is still subject to the mandatory minimum requirements so that, for example, one offense will result in a minimum sentence of 10 years.

Do you favor or oppose a proposal is to create a new category for such cases, called 'couriers,' which would still be subject to punishment, but would not be subject to the mandatory minimums for serious drug offenses?



# Compassionate Release

Here is another proposal that could reduce the number of people in federal prisons. Currently, a significant number of prisoners are 60 years or older, terminally ill, or so ill that they need to be in an assisted living situation. It is also projected that, with current demographics, the number of prisoners in these categories will grow to 28% of the prison population by 2019. Here is the proposal:

## **Judges would have the discretion to release from prison:**

- prisoners who are 60 years or older and have served two thirds of their sentence; and
- prisoners who are terminally ill, or are so ill that they need to be in an assisted care facility

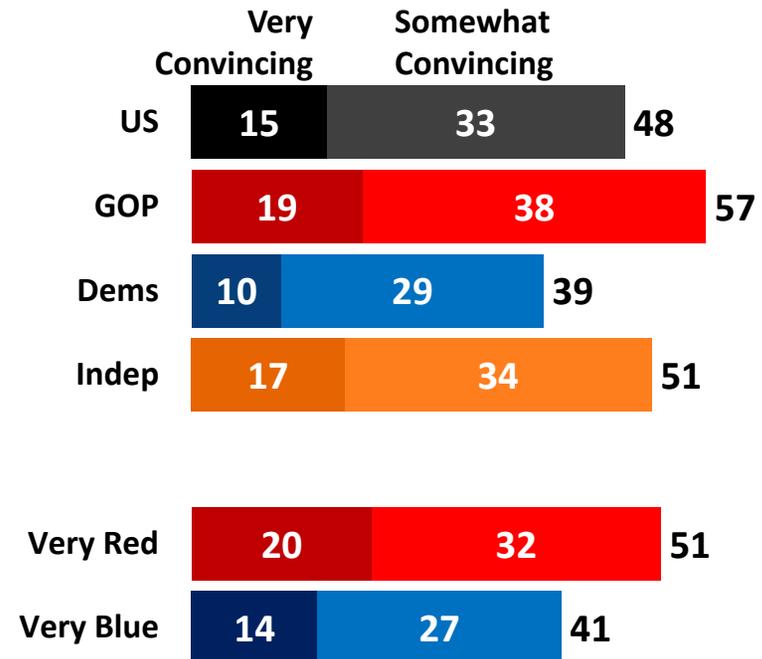
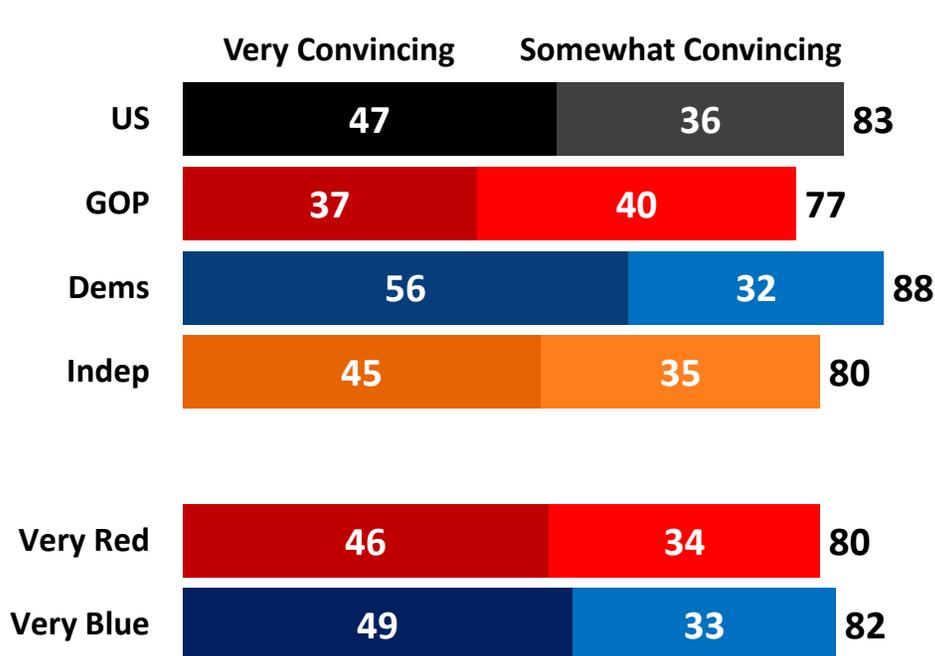
## **provided that:**

- they have no prior convictions for a crime of violence, sex offense, terrorism offense, or espionage;
- they do not have a history of violence;
- they have never attempted an escape;
- their release from prison would lower costs for the government; and
- their release has been determined to pose no risk for society

# Arguments: Compassionate Release

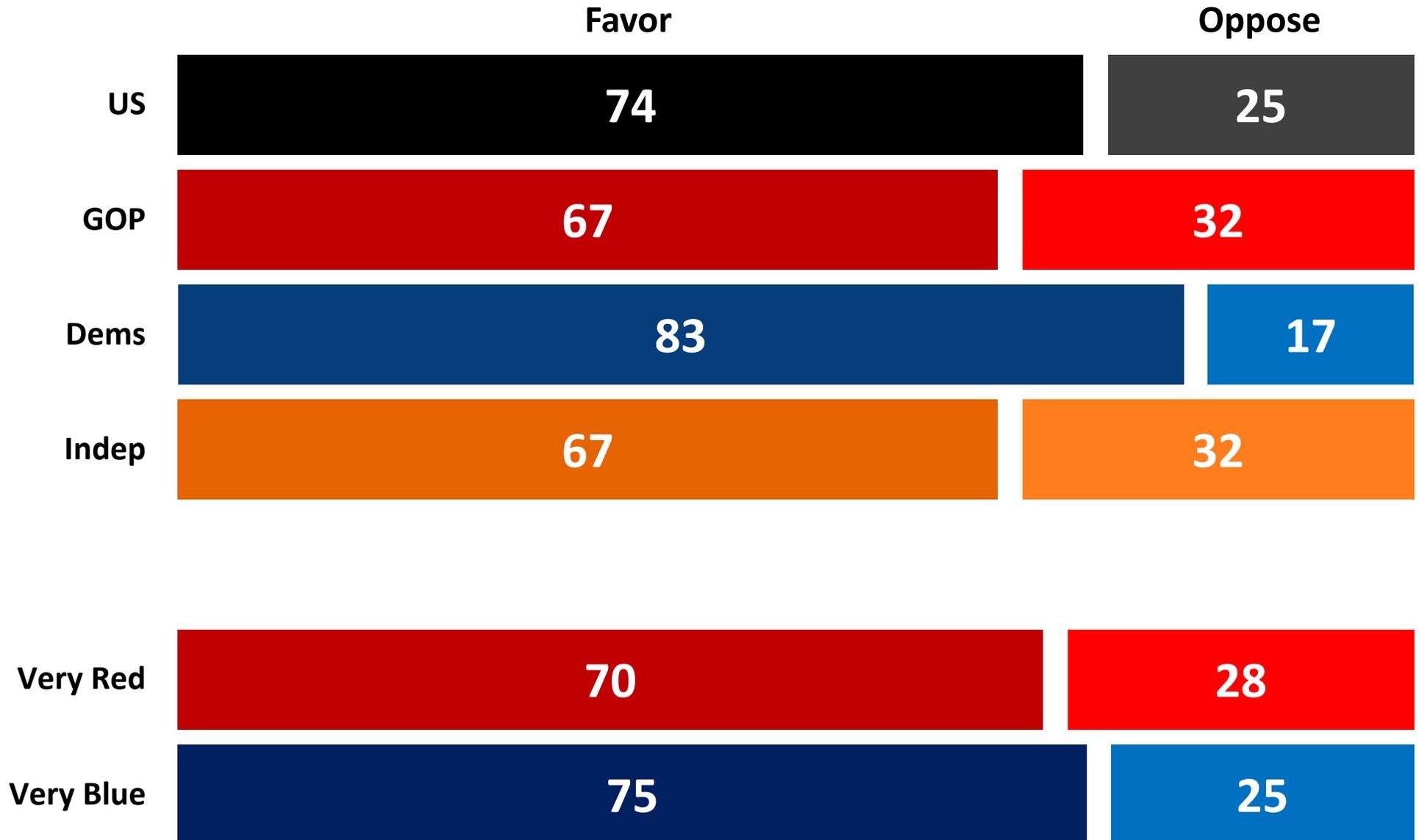
First, let's be clear, older people and sick people rarely commit crimes. Second, this law requires careful vetting to ensure that the prisoners to be released do not pose a risk to society. Third, it should be recognized that keeping older people and sick people in prison is substantially more costly than keeping regular prisoners. But, above all, allowing early release for elderly and sick people is the compassionate thing to do. It gives them the time to reconnect with their families and live out their life with some dignity. For those with illness, especially a terminal illness, they will be able to get better and more loving care than they will get in prison.

We should not be making decisions to cut short people's sentences because they are old or sick. The criminal justice system is not about what is convenient or what saves money. It is about justice. If a certain crime warrants a certain sentence this does not change just because somebody grows old or sick. If we start making exceptions, this sends a bad signal to all criminals or would-be criminals about the certainty of the punishment they will face. Furthermore, convicted criminals who have been in prison for many years do not necessarily have a real support system anymore. Pushing them out the door when they are old and sick, just so we can save some money, is not necessarily the compassionate thing to do.



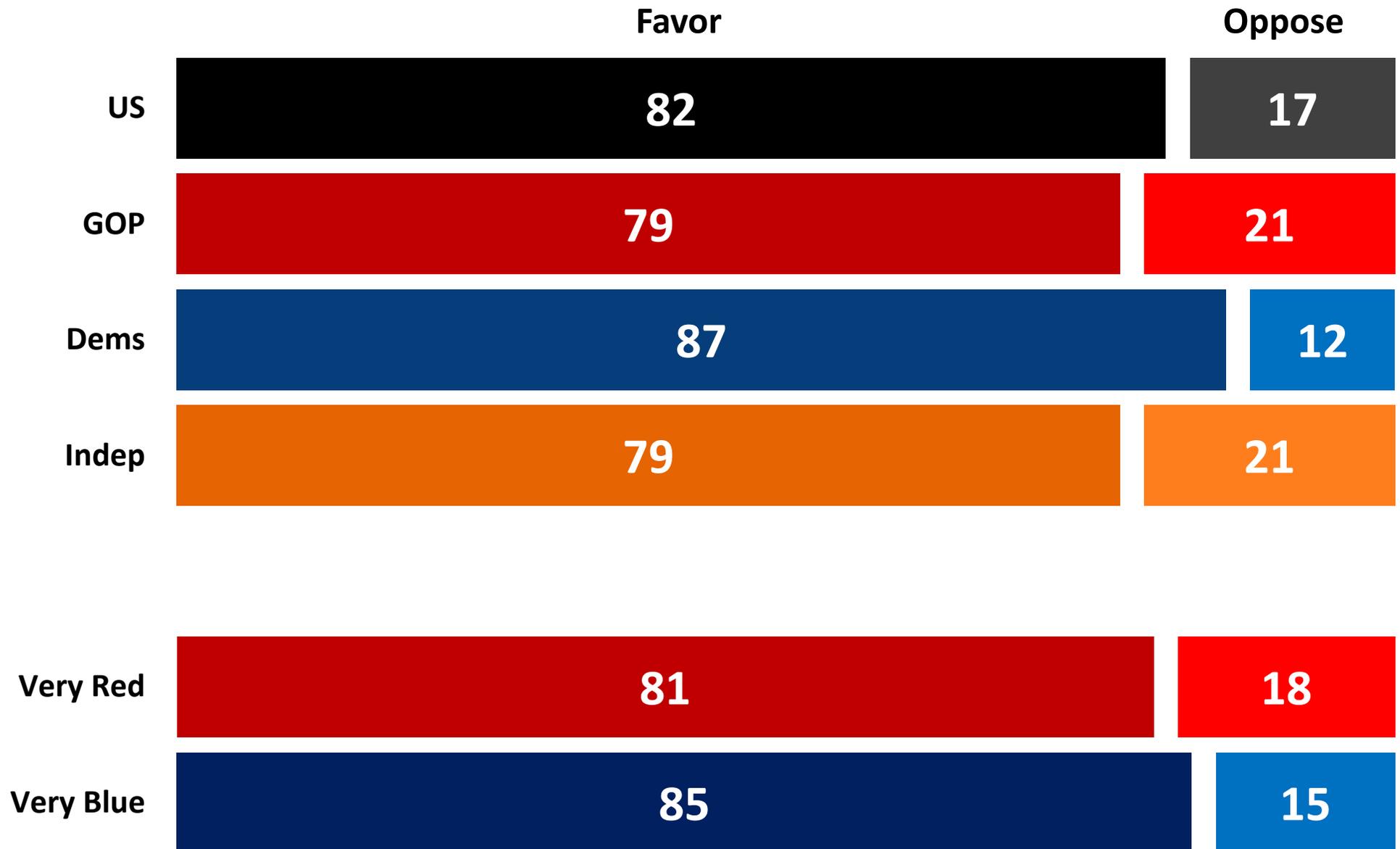
# Final Recommendation: Compassionate Release (1)

Allow judges to release prisoners 60 years and older who have completed at least two thirds of their sentence.



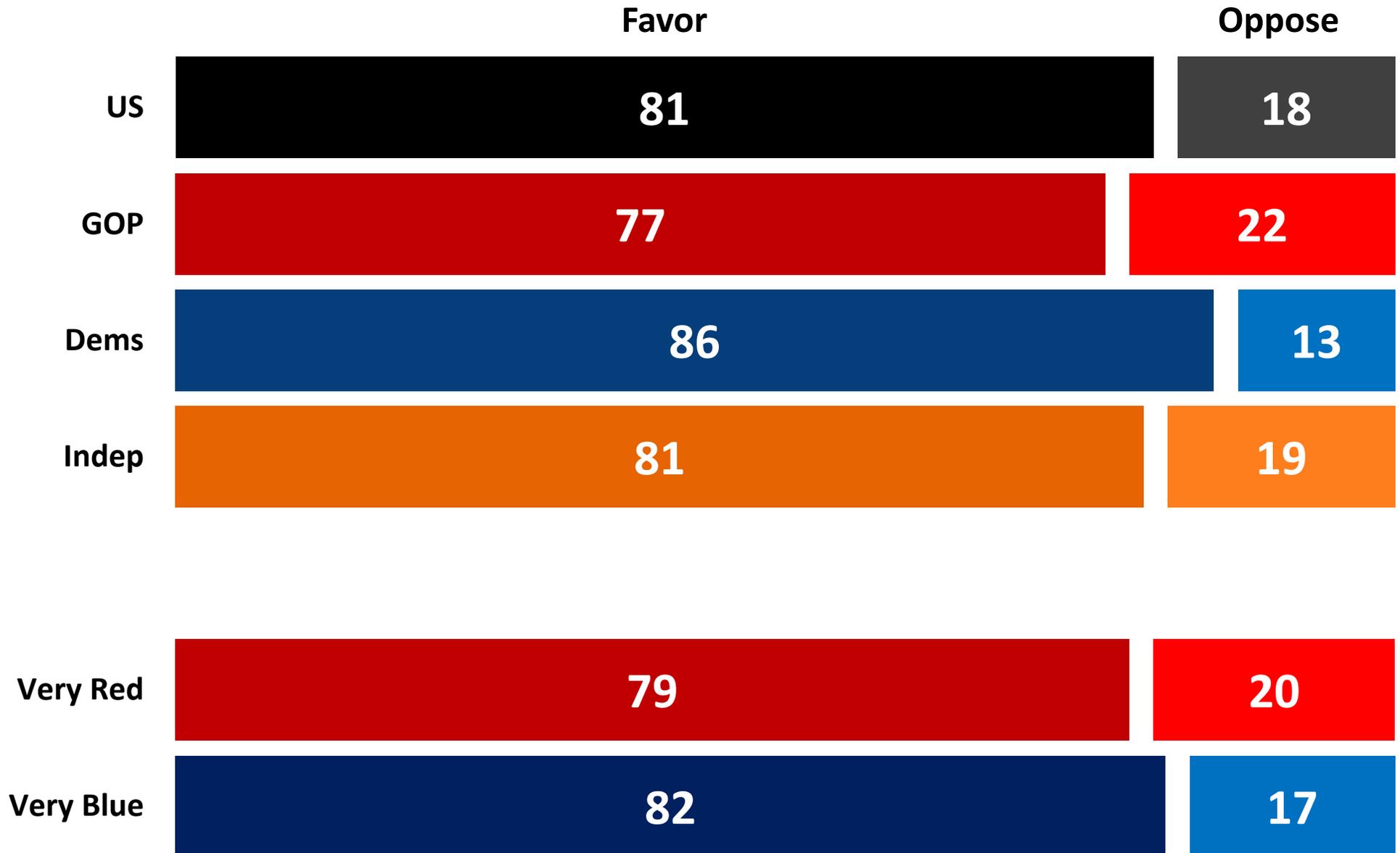
# Final Recommendation: Compassionate Release (2)

Allow judges to release prisoners who are terminally ill.



# Final Recommendation: Compassionate Release (3)

Allow judges to release prisoners who need to be in some type of assisted living facility.



# Pre-Release Custody

The Bureau of Prisons would have the option to allow selected prisoners to **serve the last 10% of their sentences** in their home or in a halfway house. While in their home or halfway house, they would be subject to monitoring, such as with an electronic ankle bracelet, and are required to remain in their home or halfway house, with exceptions for employment and other specified activities.

To be selected for this program the prisoner must:

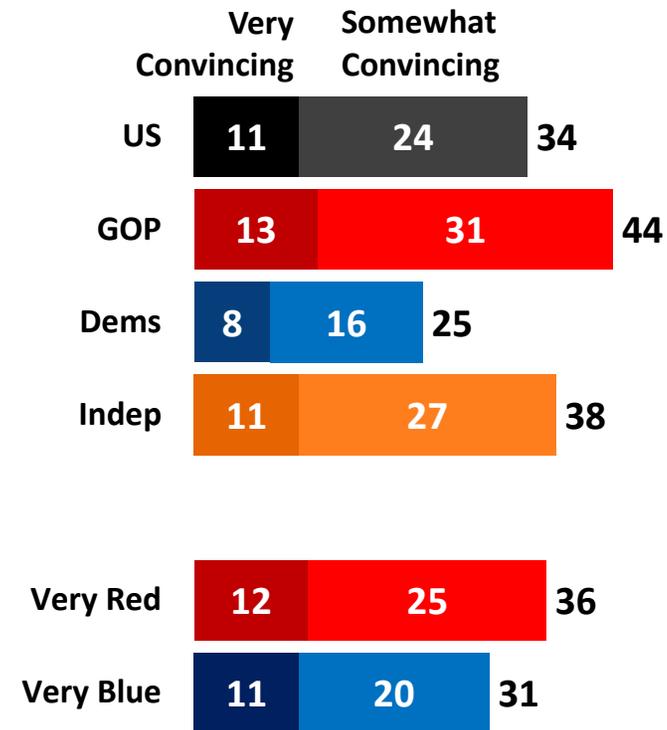
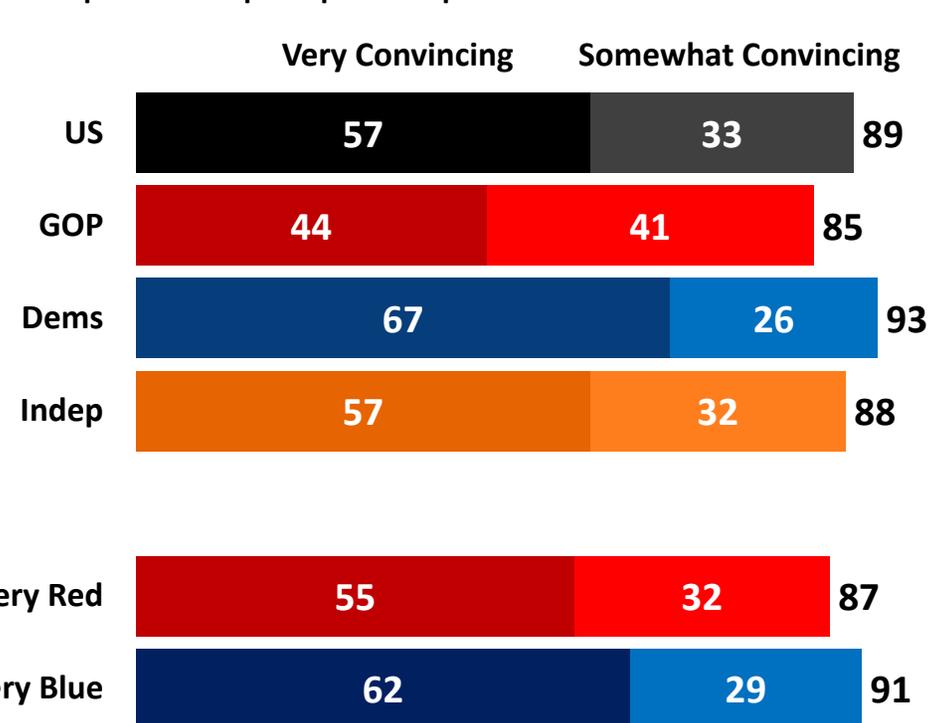
- be evaluated as having a low to moderate risk of renewed criminal activity
- and, if moderate, the risk of renewed criminal activity must be assessed to have diminished during the period of the sentence.

Also, prisoners who participate in programs that reduce the risk of renewed criminal activity – such as drug/alcohol treatment, or employment training – will have a higher chance of being selected for the program.

# Arguments: Pre-Release Custody

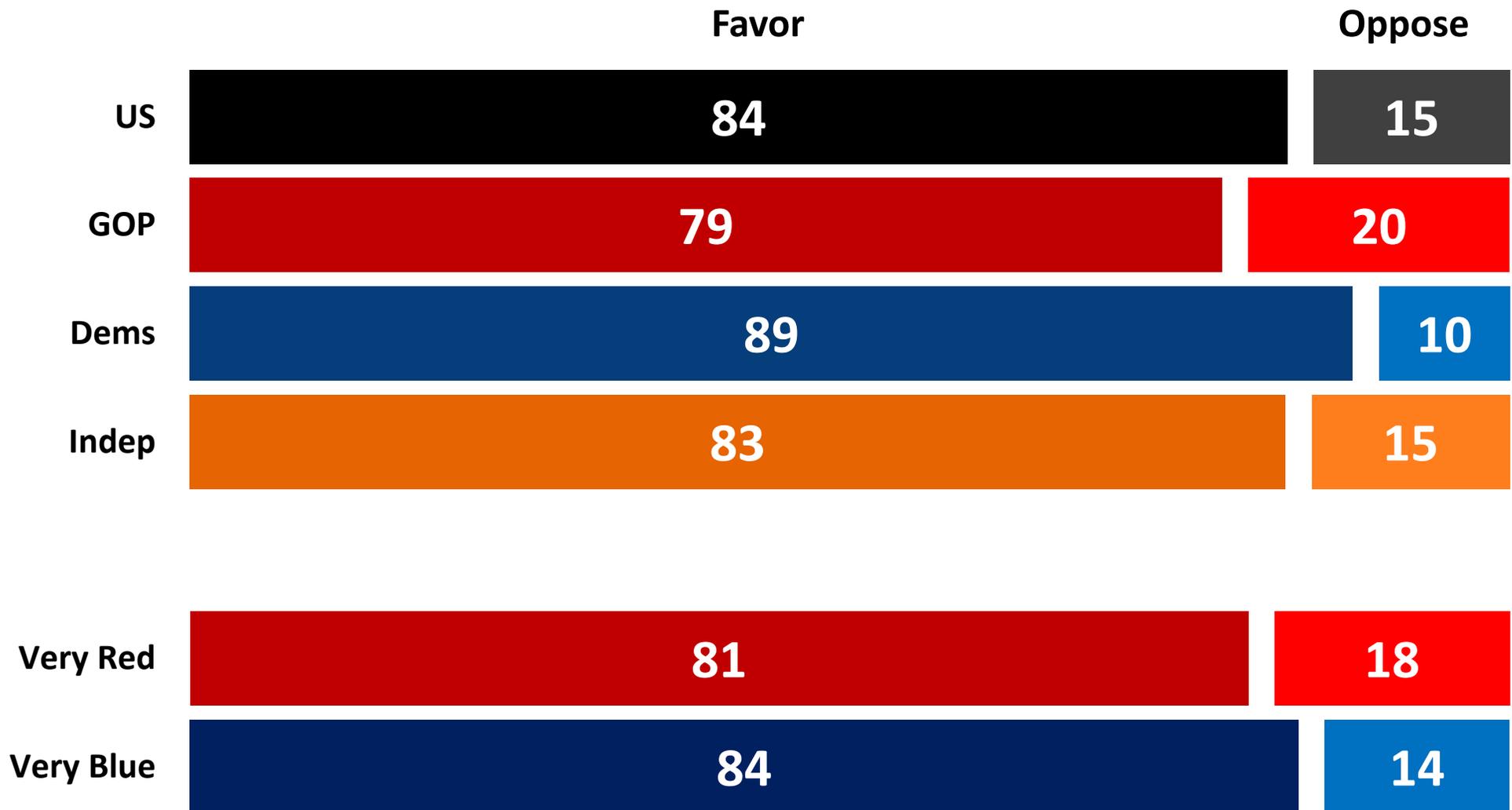
If a prisoner poses little risk to society, and especially if the prisoner has made efforts to prepare themselves for civilian life through drug and alcohol treatment and employment training, it makes sense to let them serve the last 10% of their sentence in a monitored home situation. This helps them with the transition to complete freedom, creates a positive incentive for prisoners to prepare themselves for civilian life, and saves the government the substantial money it costs to keep these people in prison.

Shaving time off sentences weakens our justice system. We must always remember that we are dealing with people who have committed crimes. If our justice system decides that a certain sentence is the right punishment for a crime, later trimming them back by 10%, primarily to save money, signals a lack of resolve that all criminals and potential criminals will hear, weakening the deterrence to committing crimes.



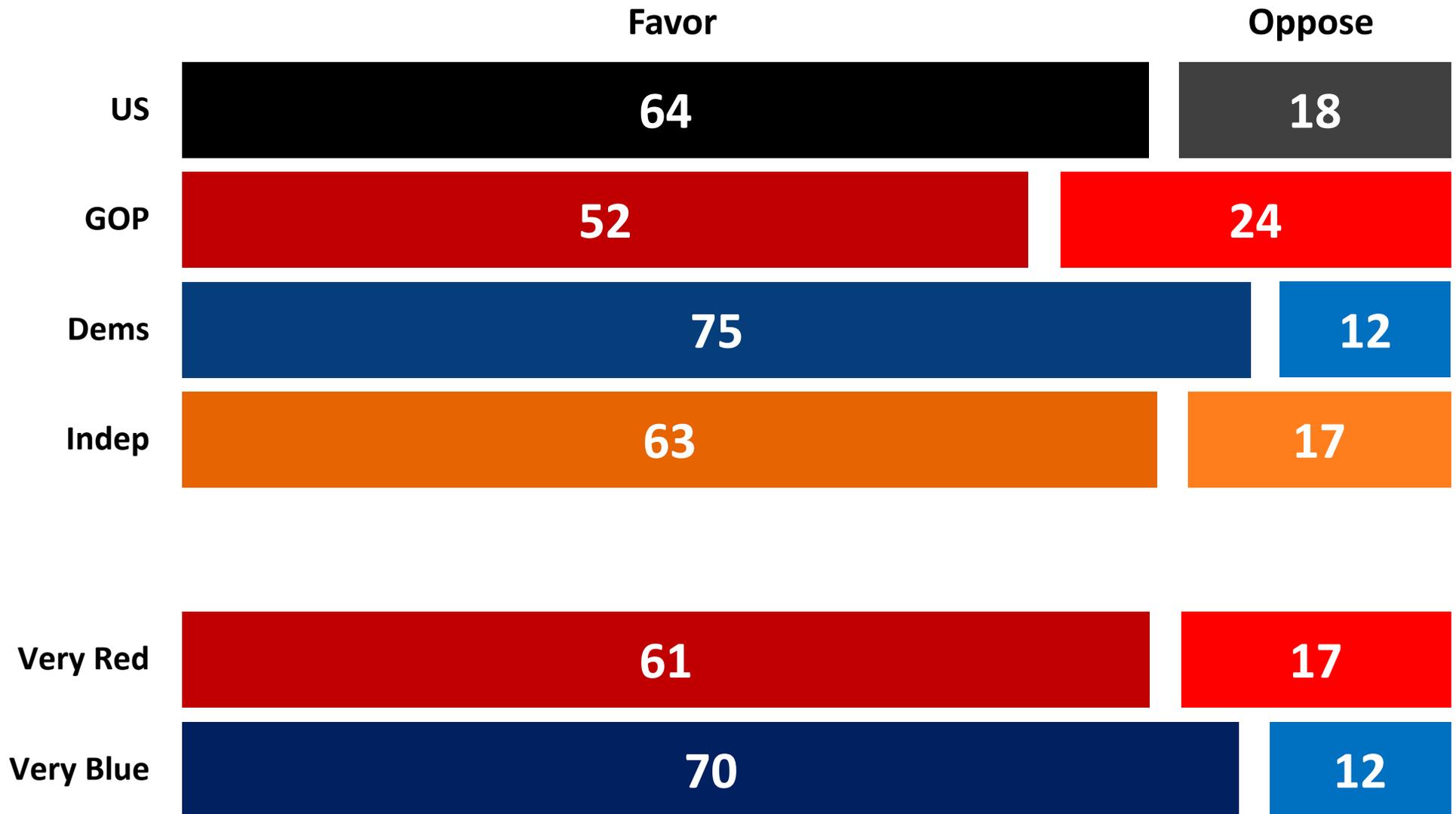
# Final Recommendation: Pre-Release Custody (1)

Do you favor or oppose a proposal to give the Bureau of Prisons the option to allow selected prisoners to serve the **last 10% of their sentence** in a monitored home setting, provided that they pose a low to moderate risk that they will repeat their criminal activity?



# Final Recommendation: Pre-Release Custody (2)

Would you favor or oppose allowing selected prisoners to serve the **last 20% of their sentence** in in a monitored home setting, provided that they pose a low to moderate risk that they will repeat their criminal activity?



# Older Prisoners Convicted When Juveniles

Some of the people in federal prison today were convicted for crimes they committed when they were juveniles i.e. less than 18 years old. Many of them were tried as adults and received long-term sentences, including life in prison.

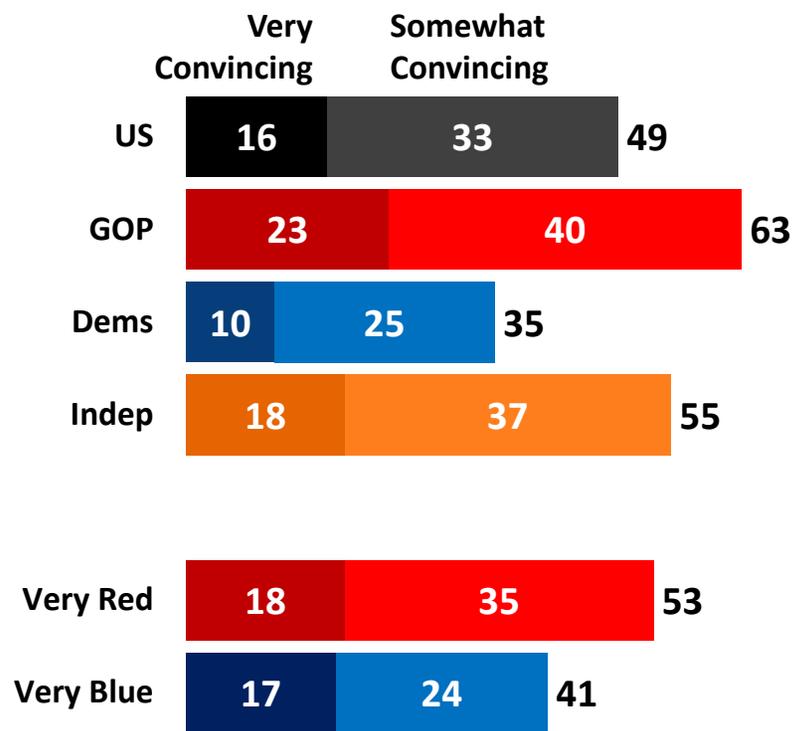
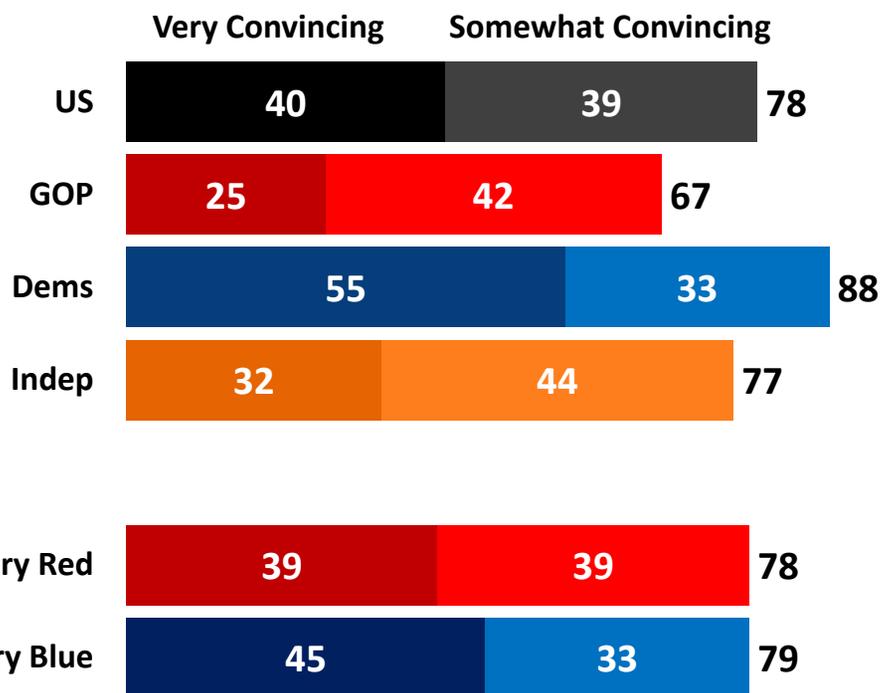
Here is the proposal:

- For prisoners who have been convicted as juveniles and have **served at least 20 years in prison**, federal judges will have the option to determine whether the prisoner still poses a threat to society, and to release them from prison and place them on **5 years of supervised release**.

# Arguments: Older Prisoners Convicted When Juveniles

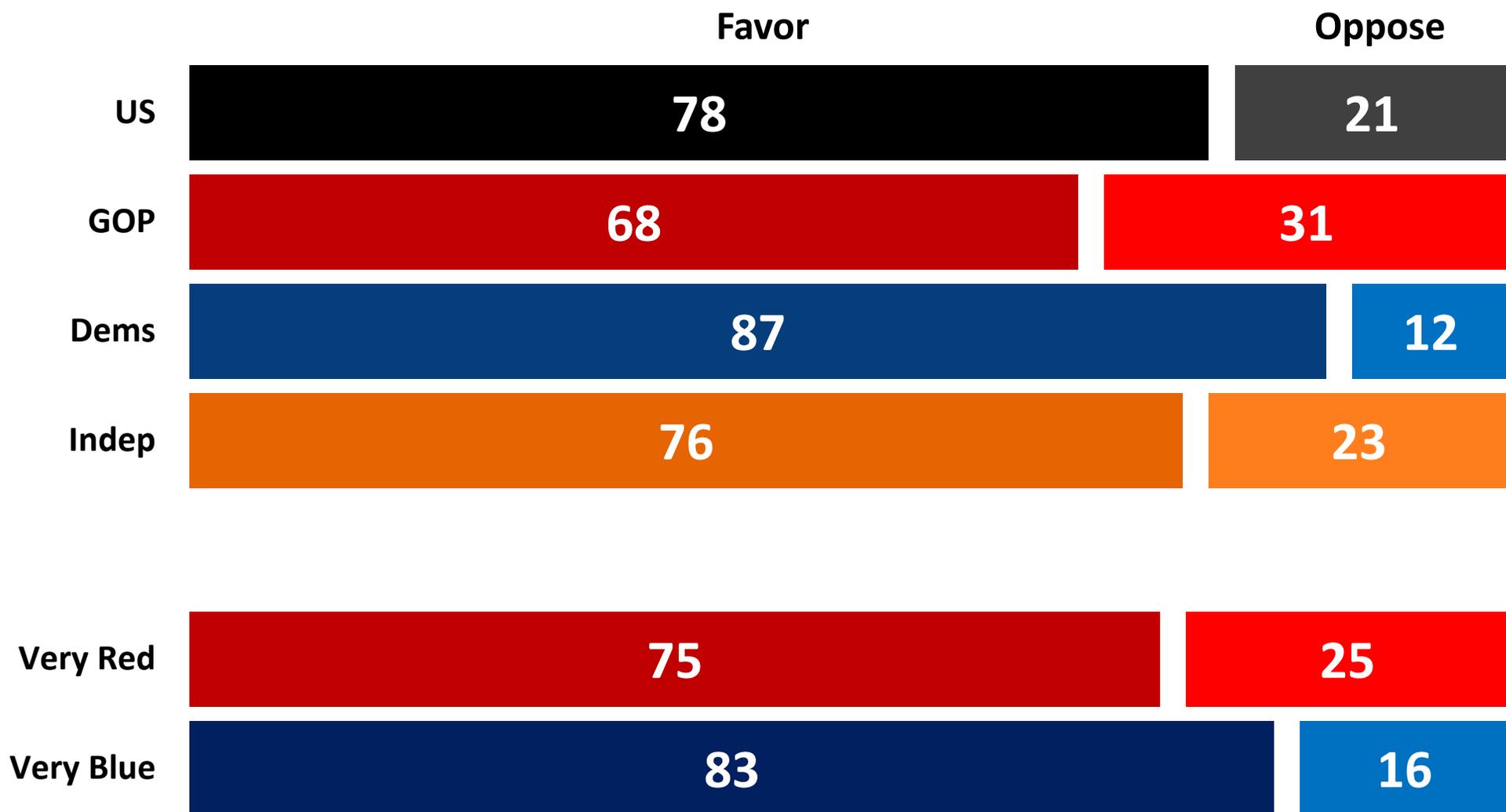
During the 1990s, in response to the increase in crime, there was a strong movement toward having juveniles tried as adults, which leads to longer prison terms. This was an overreaction. Many young people who commit crimes are not fully developed mentally and are susceptible to pressure from older criminals. They are not hardened criminals. If, after at least 20 years in prison, the courts determine that someone convicted as a juvenile does not pose a threat to the community, it is just and humane for the courts to be able to convert their prison sentence to five years of supervised release.

A crime is a crime, even if the person who committed it was very young at the time. The victim still suffers, even if the perpetrator is a juvenile. To uphold the principles of justice it is important for serious crimes to have serious consequences, irrespective of the age of the criminal. Furthermore, juveniles who commit crimes as juveniles often have a propensity for committing crime. Just because they have not gotten in trouble while they were in prison, this does not mean that they could not still have that propensity. We are taking a real risk for society to release these criminals into society.



# Final Recommendation: Older Prisoners Convicted When Juveniles

For prisoners who have were convicted as juveniles and have served **at least 20 years in prison**, federal judges will have the option to determine whether the prisoner still poses a threat to society, and to release them from prison and place them on **5 years of supervised release**.



# Equalizing Crack and Powder Sentencing

In 1986, when there was an epidemic of crack cocaine, a law was passed that gave much more severe sentences for crack cocaine than for powder cocaine. The 1986 law required that, for sentencing purposes, **one gram of crack cocaine** would be treated as **equivalent to 100 grams of powder cocaine**. This law contributed to significantly longer sentences for crack cocaine.

In 2010, a **new law** was passed that moderated this ratio. Crack cocaine was still counted as equivalent to a greater amount of powder cocaine, but it was counted as **18 times more than the equivalent of powder cocaine** instead of 100 times.

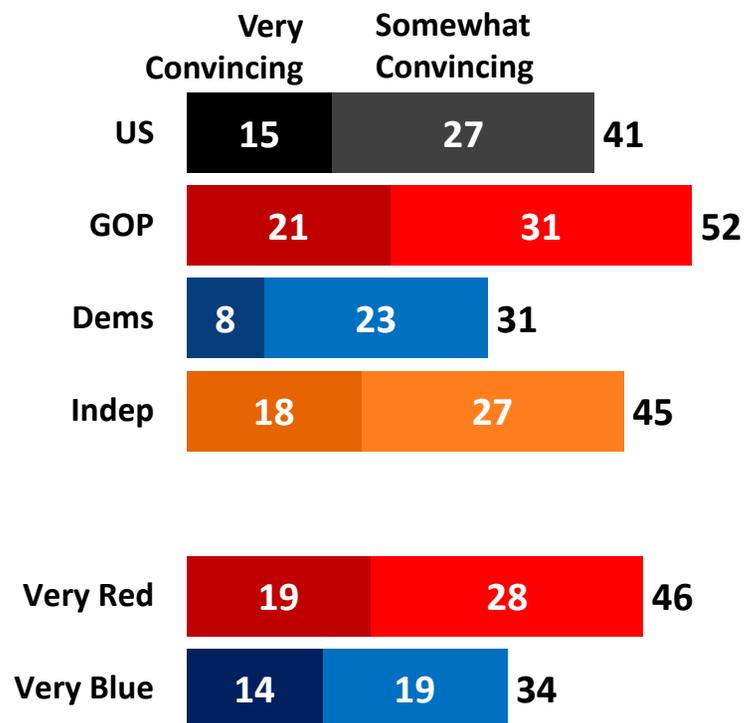
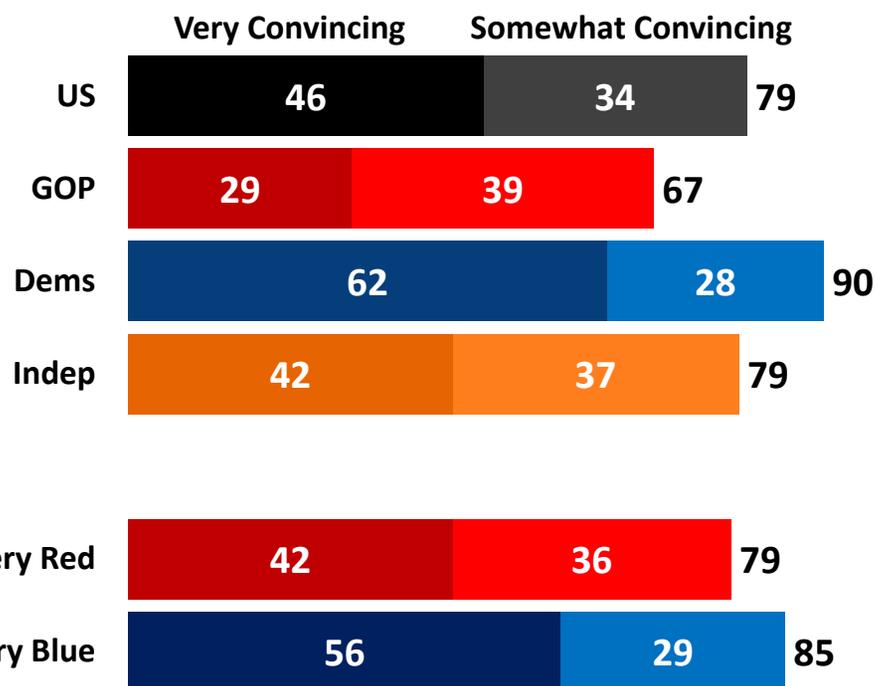
This law applied to all new cases, but it **did not apply retroactively** to cases before 2010. Thus there are now people in prison who would have completed their sentence under the counting-methods of the new law (18 to 1), but are still in prison under the counting-methods of the old law (100 to 1).

There is now a proposal to make the counting methods of the new law apply to the sentences from before the year 2010.

# Arguments: Equalizing Crack and Powder Sentencing

Treating crack cocaine as 100 times worse than powder cocaine is a holdover from a time when a 'crack epidemic' was feared. It was driven by false assumptions of crack's harmfulness: in fact crack cocaine is no more or less addictive than powder cocaine. The epidemic has passed, but thousands of people are still in prison with greatly extended sentences. Furthermore, these unfair sentences have been mostly applied to African-Americans. While more white people use crack cocaine than black people, blacks are more likely to be sent to federal prison for it. Treating crack as equivalent to 18 times the amount of powder cocaine is still quite extreme. We should at least apply the principle equally for people who were sentenced before and after the year 2010.

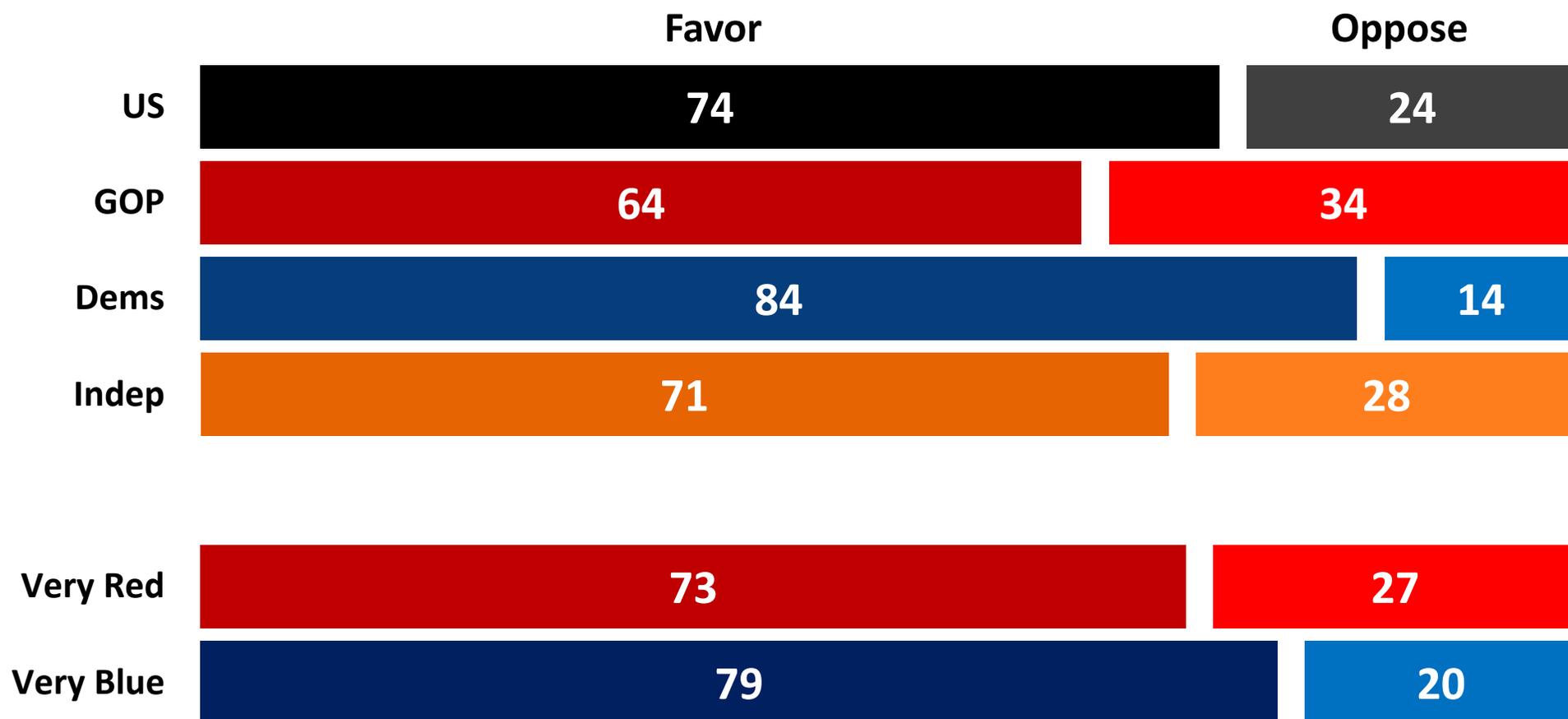
Applying these reforms retroactively is unjust, will weaken confidence in our justice system and is costly. The individuals now in prison who were selling crack cocaine knew the consequences of their actions and yet acted anyways. They should be given the judicial consequences which we as a nation decided upon. Reducing these sentences retroactively would undermine the finality of court decisions. If criminals start to believe that all reforms are going to be applied retroactively they may see less risk in committing a crime. Furthermore, this would require significant resources to individually review the thousands of cases.



# Final Recommendation: Equalizing Crack and Powder Sentencing

Starting in 1986, sentencing guidelines counted an amount of crack cocaine as equivalent to 100 times that amount of powder cocaine. In 2010 this was changed so that crack cocaine would be counted as equivalent to 18 times the amount of powder cocaine. However, this law was not applied retroactively to sentences from before 2010.

Do you favor or oppose applying the new sentence guidelines to sentences from before 2010?

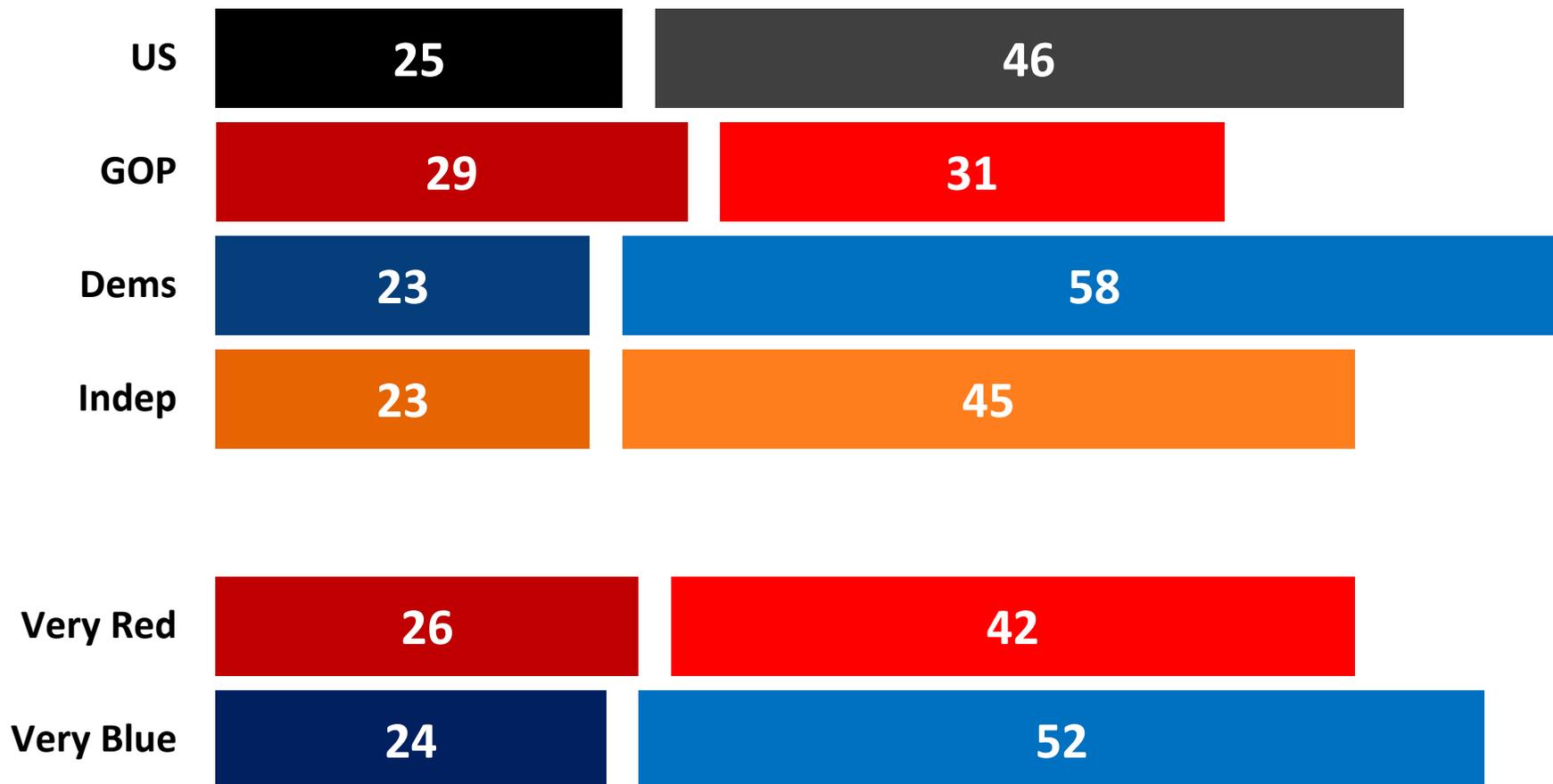


# Equalizing Crack and Powder Sentencing

Of those who favor applying the new sentence guidelines to sentences from before 2010:

Crack cocaine as equivalent to 18 times the amount of powder cocaine is about right

The ratio should be less than 18 times as much





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