

OVERCRIMINALIZATION

An Explosion of Federal Criminal Law

Too Many Laws, Too Little Oversight

- **Too Many New Laws:** Federal criminal law has exploded in size and scope and deteriorated in quality. It used to focus on inherently wrongful conduct: treason, murder, counterfeiting, and the like. Today, an unimaginably broad range of socially and economically beneficial conduct is criminalized.
- **Unjust Punishment:** More and more Americans who have worked diligently to abide by the law are being trapped and unjustly punished due to vague, overly broad criminal offenses. Congress must halt its overcriminalization rampage.



How We Got Here

- **Explosion of Federal Criminal Law:** The number of criminal offenses in the U.S. Code increased from 3,000 in the early 1980s to 4,000 by 2000 to over 4,450 by 2008.
- **Criminalization by Bureaucrat:** Scores of federal departments and agencies have created so many criminal offenses that the Congressional Research Service itself admitted that it was unable to even count all of the offenses. The service's best estimate? "Tens of thousands." In short, Congress's own experts do not have a clear understanding of the size and scope of federal criminalization.
- **Deeply Flawed Criminal Offenses:** A recent Heritage-NACDL joint study reported that three out of every five new non-violent offenses have inadequate criminal-intent requirements. This means that they fail to protect from unjust criminal punishment Americans who engaged in conduct that they did not know was illegal or otherwise wrongful.
- **Breakneck Pace Continues:** Despite existing overcriminalization, Congress continues to criminalize at an average rate of one new crime for every week of every year (including when its Members are not in session). All inherently wrongful conduct has been criminalized several times over, yet from 2000 through 2007, Congress enacted 452 new criminal offenses.

Fix the Problem

- **New Criminal Laws Must Be Necessary and Precise:** Before enacting any new criminal law, Congress should review the questions raised by the Criminal Law Checklist for Federal Legislators, which is produced by a wide coalition of organizations. Its questions help ensure that any new criminal laws stay within the bounds of fairness, the rule of law, and the U.S. Constitution.
- **Congress Must Justify All New Criminalization:** Congress should require written analysis for every new or modified criminal offense or penalty. Such a report should include a description of the problem that the new law is intended to redress, specific cases and concerns motivating the legislation, and an analysis of overlaps that the new law will have with existing federal and state law.
- **Congress's Carelessness Should Not Endanger You:** Federal law should codify the venerable rule of lenity. Rather than favoring the prosecution, the rule ensures that the benefit of the doubt under vague, overbroad laws is given to the person accused.
- **Honest Mistakes Should Not Result in Prison Time:** Every criminal conviction must require proof beyond a reasonable doubt that the person acted with criminal intent. Federal criminal laws should require such proof.
- **Bureaucrats Should Not Be Making New Crimes:** Congress should not "delegate" its power to criminalize to unelected officials in the scores of federal departments and agencies. Such decisions should be made by the American people's elected representatives.
- **Repeal Unjust Laws:** Congress seems to have forgotten that it can repeal bad laws. It can and should. The worst, most unjust criminal offenses should be thrown into the legislative dumpster.

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