

Criminal Law Checklist for Federal Legislators

Americans are outraged at federal overreaching. One reason is that Washington has been creating far too many criminal laws that serve as traps for respectable, taxpaying Americans who are doing their best to stay on the right side of the law. This growing problem is known as *overcriminalization*.

As you and your colleagues craft new laws defining and punishing certain conduct as “criminal,” we urge you to review these important questions throughout the legislative process to ensure any criminal laws being drafted stay within the bounds of fairness, the rule of law, and the United States Constitution.

✓ Should It Be a Crime?

- Is the conduct inherently wrongful (e.g., murder, rape, robbery, or embezzlement) and therefore to be prohibited in all circumstances?
- Does the conduct pose a substantial threat to public safety and create individual victims?
- Would civil or administrative penalties, State and local law enforcement, or other remedies be equally effective in discouraging and penalizing the conduct?

✓ Is a New Federal Criminal Law Needed?

- Does the Constitution grant power to the Federal government to criminalize the conduct?
- Is the conduct already prohibited by existing State or Federal laws?
- Do the costs to taxpayers of investigating, prosecuting, and punishing the new crime outweigh its potential societal benefits?

✓ If It Should Be a Federal Crime, What Should the Criminal-Intent Requirement Be?

- Does the crime have a criminal-intent requirement that is adequate to protect the innocent, therefore ensuring that criminal punishment is imposed only for conduct the person accused of the crime knew was unlawful or otherwise wrongful—and thus could have avoided?
- Does the criminal-intent requirement rely on the use of a single, inadequately protective term such as “knowingly,” or does it include the more protective term “willfully”?

✓ If It Should Be a Federal Crime, What Is the Appropriate Punishment?

- Is incarceration necessary, or would probation, fines, restitution, and/or community service satisfy the needs of justice?
- Should the offense be classified as a misdemeanor rather than as a felony that deprives the offender of constitutional rights and could permanently hamper his ability to obtain employment, occupational licenses, and housing?

To read the Overcriminalization Factsheet and *Without Intent* report, visit Overcriminalized.com