

Without Intent: How Congress Is Eroding the Criminal Intent Requirement in Federal Law

- A core principle of the American system of justice is that no one should be subjected to criminal punishment for conduct that he did not know was illegal or otherwise wrongful.
- This principle of fair notice, which has been a cornerstone of our criminal justice system since the nation's founding, is embodied in the requirement that, with rare exceptions, the government must prove the defendant acted with *mens rea*—a “guilty mind”—before subjecting him to criminal punishment.
- Members of the 109th Congress (2005–2006) proposed 446 criminal offenses that did not involve violence, firearms, drugs and drug trafficking, pornography, or immigration violations.
- Of these 446 proposed non-violent criminal offenses, 57 percent lacked an adequate *mens rea* requirement. Worse, during the 109th Congress, 23 new criminal offenses that lack an adequate *mens rea* requirement were enacted into law.
- Congress's expertise for crafting criminal offenses resides in the House and Senate Judiciary Committees. Only these committees have express jurisdiction over federal criminal law, yet of the 446 criminal offenses studied, over one-half were not sent to the House or Senate Judiciary Committees for review and deliberation.
- By consistently neglecting the special expertise of the two judiciary committees when drafting criminal offenses, Congress is endangering civil liberties.
- Without reforms like those recommended in this report, innocent individuals are at risk of unjust conviction under federal criminal offenses that have inadequate *mens rea* requirements.

Recommendations

Congress should:

- Enact default rules of interpretation ensuring that guilty-mind requirements are adequate to protect against unjust conviction.
- Codify the rule of lenity, which grants defendants the benefit of the doubt when Congress fails to legislate clearly.
- Require adequate judiciary committee oversight of every bill proposing criminal offenses or penalties.
- Provide detailed written justification for and analysis of all new federal criminalization.
- Redouble efforts to draft every federal criminal offense clearly and precisely.



Report and Online Appendix available at:

www.nacdl.org/withoutintent
<http://report.heritage.org/sr0077>