



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

A nonprofit, nonpartisan legal organization formed at the request of President Kennedy in 1963



MENS REA REFORM LEGISLATION

The Lawyers Committee for Civil Rights Under Law conducted a thorough examination of two reform bills intended to reduce over-criminalization in the federal code: The Criminal Code Improvement Act of 2015, S. 2298, and the Mens Rea Reform Act of 2015, H.R. 4002.

The bills do not accomplish this goal and may have devastating consequences for the federal enforcement of important public health and safety, environmental, corporate wrongdoing, child exploitation and terrorism crimes.

Ambiguous Language - The bills contain language that make their interpretation and likely scope impossible to ascertain. They purport to fundamentally alter the required mens rea across all federal statutes and regulations, upsetting the carefully negotiated balances that have been struck by Congress in passing these and other laws throughout the past several decades. To do so without a full understanding of the force and consequences of the law, and to do so without precise language which makes the intent of Congress clear, would be reckless and irresponsible in the context of federal public safety protections.

Negative Impact on Public Health and Safety - The bills' greatest likely impact will be to make it more difficult to enforce laws that promote public health and safety, especially against corporate wrongdoers who violate federal laws, as well as to prosecute more traditional criminal offenses such as child sexual exploitation and terrorism.

No Effect on Mass Incarceration - The bills are not likely to have an appreciable effect on over-criminalization or mass incarceration. They do not address the drivers of mass incarceration, including lengthy sentences, especially for federal drug offenses, nor do they address immigration offenses, which are the most-prosecuted federal crime.

Importance of Criminal Offenses without Mens Rea - Criminal offenses without mens rea are an important public safety tool sometimes necessary to safeguard the public in the modern world. In the leading cases, the Supreme Court explained that the rise of industry and manufacturing and the increasingly dangerous workplace conditions called for higher precautions by employers; the wide distribution of goods, food, drink, drugs and securities meant that those controlling the means of production and the ability to ensure quality and safety needed to be held to higher legal standards. In order to ensure manufacturers and corporations make their products safe for the market and to deter possible negligence, Congress passed some of these laws without a required showing of intent, the violation of which may not directly cause injury to person or property, "but merely create the danger or probability of it."

Dangerous Overreach - The bills overreach by altering the required mens rea across all federal statutes and regulations, fundamentally altering the balances that have been struck by Congress in passing important laws throughout the past several decades such as the Food, Drug, and Cosmetic Act of 1938; the Internal Revenue Code; the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; and the Dodd Frank Act.