



June 19, 2020

Support the Count Crimes to Cut Act, H.R. 7270

On behalf of our activist community, I urge you to contact your representative and ask him or her to support the Count Crimes to Cut Act, H.R. 7270. Introduced by Rep. Chip Roy (R-Texas), the Count Crimes to Cut Act would require the Department of Justice to produce a full inventory of federal criminal statutes and regulations carrying criminal penalties, require a list of the elements of each offense, the potential criminal penalty for each offense, the number of prosecutions brought each year for the 15 previous years for each offense, and the *mens rea* requirement for each offense.

Every law passed by government is enforced at the point of a gun. The more laws there are, the more potential interactions with law enforcement there could be. Over-criminalization in federal law and over-federalization of criminal law are concerns that still, even with the focus on criminal justice reform in recent years, have not been addressed. More concerning, no one has any real idea of the scope of the problem.

In [a June 2013 hearing](#), the House Over-Criminalization Task Force tried to look at the scope of the problem, which was described by Sensenbrenner in his opening remarks. “[O]ver the past three decades, Congress has created an average of 500 new crimes per decade, and the Administrative Office of the U.S. Courts estimate that over 80,000 defendants are sentenced in Federal courts annually,” said Sensenbrenner, who led the task force. “Many of the crimes on the books are antiquated or redundant, some are poorly drafted, and some have not been used in the last 30 years.”

“Moreover, many of the regulatory crimes in the code lack any *mens rea*, the attempt to commit a crime. That means that an American citizen may not only be unaware that he is committing a crime, but he may be held strictly liable for his conduct,” he added.

The House Over-Criminalization Task Force requested the Congressional Research Service to provide a complete accounting of all federal offenses. The agency, however, could not produce the report. “CRS’ initial response to our request was that they lack the manpower and resources

to accomplish this task,” noted Sensenbrenner. “And I think this confirms the point that all of us have been making on this issue and demonstrates the breadth of over-criminalization.”

The best estimates are that there are between 4,500 and 5,000 federal criminal statutes and as many as 300,000 regulations that carry criminal penalties. The size and scope of federal criminal statutes and regulatory offenses are a cause for concern. “There is no one in the United States over the age of 18 who cannot be indicted for some federal crime,” [retired law professor John Baker once said](#). “That is not an exaggeration.”

The Count Crimes to Cut Act -- which comes from Section 5 of the Smarter Sentencing Act, introduced by Sen. Mike Lee (R-Utah) -- would require the Department of Justice to produce a full inventory of federal criminal statutes and regulations carrying criminal penalties, but it would also require a list of the elements of each offense, the potential criminal penalty for each offense, the number of prosecutions brought each year for the 15 previous years for each offense, and the *mens rea* requirement for each offense.

A full inventory of federal criminal statutes and regulations carrying criminal penalties would allow Congress to have an understanding of the scope of over-criminalization and over-federalization. For these reasons, I urge you to contact your representative and ask him or her to support the Count Crimes to Cut Act, H.R. 7270.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Brandon', with a stylized flourish at the end.

Adam Brandon
President, FreedomWorks