

114TH CONGRESS
1ST SESSION

H. R. 3401

To reduce Federal overcriminalization, protect Americans from unjust punishment, and uphold the role of Congress by clarifying mens rea requirements for all Federal criminal offenses, creating an inventory of Federal offenses that carry a criminal penalty, and providing that no rule of the executive branch which may be enforced by criminal penalties can take effect unless a joint resolution of approval is enacted into law.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2015

Mr. ROONEY of Florida (for himself and Mr. RICHMOND) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reduce Federal overcriminalization, protect Americans from unjust punishment, and uphold the role of Congress by clarifying mens rea requirements for all Federal criminal offenses, creating an inventory of Federal offenses that carry a criminal penalty, and providing that no rule of the executive branch which may be enforced by criminal penalties can take effect unless a joint resolution of approval is enacted into law.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Stopping Over-Crim-
3 inalization Act of 2015”.

4 **SEC. 2. PURPOSE.**

5 The purpose of this Act is to reduce the size, scope
6 and complexity of the Federal criminal code. In order to
7 ensure that honest mistakes by individuals who are not
8 morally blameworthy do not result in criminal charges, the
9 Act establishes a default criminal state of mind require-
10 ment for all Federal criminal offenses, and allows a mis-
11 take of law defense for situations in which the defendant
12 did not know, and a reasonable person would not have
13 known, that the action was a crime. Currently, Federal
14 crimes, including executive rules that carry criminal pen-
15 alties are scattered throughout the Federal code and reg-
16 ister. To enable all Americans to access and view Federal
17 crimes, the Act requires the creation of a Federal inven-
18 tory that lists all Federal criminal offenses, including
19 agency rules that define criminal offenses. To uphold the
20 role of Congress in defining what constitutes a Federal
21 crime, the Act holds that no rule of the executive branch
22 defining or establishing a criminal offense shall have force
23 or effect unless approved by both branches of Congress.

1 **SEC. 3. CLARIFICATION OF DEFAULT MENS REA FOR FED-**
2 **ERAL OFFENSES.**

3 (a) IN GENERAL.—Chapter 1 of title 18, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 28. Default mens rea requirement**

7 “(a) KNOWING STATE OF MIND GENERALLY RE-
8 QUIRED.—For the purposes of a Federal offense, unless
9 otherwise specifically provided in the provision of law de-
10 fining the offense, the state of mind required for a convic-
11 tion is knowing as to each element of the offense.

12 “(b) SPECIAL RULE FOR REGULATORY AND SIMILAR
13 OFFENSES.—In addition, in the case of an offense, such
14 as a regulatory offense, where a defendant might reason-
15 ably be unaware the conduct could be criminally punished,
16 the Government must prove the defendant had reason to
17 know the defendant’s conduct was unlawful.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 at the beginning of chapter 1 of title 18, United States
20 Code, is amended by adding at the end the following new
21 item:

“28. Establishing a default mens rea for Federal offenses.”.

1 **SEC. 4. REQUIRING AN INVENTORY OF ALL FEDERAL**
2 **CRIMINAL OFFENSES.**

3 (a) IN GENERAL.—Chapter 31 of title 28, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 530E. Inventory of Federal criminal offenses**

7 “(a) DEVELOPMENT AND AVAILABILITY.—

8 “(1) INITIALLY.—Not later than one year after
9 the enactment of this section, the Attorney General
10 shall develop and make available to the public, online
11 and through other appropriate means, an inventory
12 of all Federal criminal offenses, including violations
13 of agency rules that carry criminal penalties.

14 “(2) UPDATING.—The Attorney General shall
15 update the inventory following the subsequent enact-
16 ment or amendment (or the creation by agency rule-
17 making) of any Federal criminal offenses in order to
18 keep the inventory as up to date as practicable.

19 “(b) PROHIBITION OF PROSECUTION OF NON-INVEN-
20 TORIED OFFENSES.—

21 “(1) GENERALLY.—Except as provided in para-
22 graph (2), it is a defense against a prosecution for
23 any Federal offense that the offense is not listed in
24 the inventory as required by this section.

25 “(2) EXCEPTIONS.—Paragraph (1) does not
26 apply if—

1 “(A) the Government demonstrates beyond
2 a reasonable doubt that a reasonable person
3 would have known the conduct that person en-
4 gaged in was criminal in nature; or

5 “(B) the conduct of the defendant resulted
6 in an imminent and foreseeable risk of death or
7 bodily injury to another.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 at the beginning of chapter 31 of title 28, United States
10 Code, is amended by adding at the end the following new
11 item:

 “530E. Inventory of Federal criminal offenses.”.

12 **SEC. 5. PRESERVING THE ROLE OF CONGRESS IN DEFIN-**
13 **ING FEDERAL CRIMES.**

14 (a) IN GENERAL.—Chapter 8 of title 5, United
15 States Code, is amended—

16 (1) by inserting before section 801 the fol-
17 lowing:

18 “SUBCHAPTER I—CONGRESSIONAL REVIEW
19 GENERALLY”;

20 and

21 (2) by inserting after section 808 the following:

1 “SUBCHAPTER II—RULES WITH CRIMINAL
2 PENALTIES

3 **“§ 811. New rules with criminal penalties**

4 “(a) LIMITATION ON TAKING EFFECT.—A new rule
5 with criminal penalties shall not take effect except upon
6 the enactment of a joint resolution under this subchapter,
7 the matter after the resolving clause of which is as follows:
8 ‘That Congress approves the rules submitted by the
9 _____ relating to _____.’ (The blank
10 spaces being appropriately filled in).

11 “(b) PROPOSED RULES TO BE SUBMITTED TO CON-
12 GRESS.—Upon proposing a rule to which subsection (a)
13 applies, the agency proposing the rule shall submit to Con-
14 gress—

15 “(1) a copy of the rule, a concise general state-
16 ment relating to the rule, and the proposed effective
17 date of the rule;

18 “(2) a justification for providing criminal pen-
19 alties, including—

20 “(A) an estimate of the number of ex-
21 pected prosecutions annually over a 10-year pe-
22 riod;

23 “(B) the anticipated cost of prosecuting
24 and punishing, including by incarceration, of-
25 fenders;

1 “(C) a cost-benefit analysis of punishing
2 offenses as crimes, rather than lesser violations,
3 including the effect on rule compliance, impact
4 on total Federal spending, and the impact of in-
5 carceration and other punishments under the
6 rule on communities.

7 “(3) a criminal rule report for such rule. Such
8 a rule may not take effect prior to the final dispo-
9 sition date for such criminal rule report.

10 “(c) REFERRAL OF SUBMISSION.—Upon receipt of a
11 submission under this section, each House of Congress
12 shall provide copies of the submission to the chairman and
13 ranking member of each standing committee with the ju-
14 risdiction to report a bill to amend the provision of law
15 under which the rule is issued.

16 “(d) DEADLINE FOR REPORTING BY COMMITTEES.—
17 If, not later than 15 legislative days after the referral in
18 one of the Houses of Congress, no committee to which a
19 submission is referred under subsection (c) reports out,
20 either favorably or unfavorably, a joint resolution approv-
21 ing the rule, the committee to which the submission is re-
22 ferred is automatically discharged of the resolution of ap-
23 proval.

24 “(e) HOUSE OF REPRESENTATIVES.—(1) In the
25 House of Representatives, after the 15-day period de-

1 scribed in subsection (d), it is at any time in order for
2 a motion to proceed to the consideration of a joint resolu-
3 tion described in subsection (a).

4 “(2) In the House of Representatives, all points of
5 order against a joint resolution described in subsection (a)
6 shall be considered waived. The joint resolution shall be
7 debatable for one hour equally divided and controlled by
8 the chairman and ranking minority member of the com-
9 mittee of referral. The previous question shall be consid-
10 ered as ordered on the resolution to final passage without
11 intervening motion, except one motion to recommit with-
12 out instructions.

13 “(f) AUTOMATIC DISCHARGE.—In the Senate, if the
14 committee to which is referred a joint resolution described
15 in subsection (a) has not reported such joint resolution
16 (or an identical joint resolution) after the 15-day period
17 described in subsection (d), such committee shall be dis-
18 charged from further consideration of such joint resolution
19 and such joint resolution shall be placed on the calendar.

20 “(g) MOTION TO PROCEED AND DEBATE.—(1) In
21 the Senate, when the committee to which a joint resolution
22 is referred has reported, or when a committee is dis-
23 charged (under subsection (f)) from further consideration
24 of a joint resolution described in subsection (a), it is at
25 any time thereafter in order (even though a previous mo-

1 tion to the same effect has been disagreed to) for a motion
2 to proceed to the consideration of the joint resolution, and
3 all points of order against the joint resolution (and against
4 consideration of the joint resolution) are waived. The mo-
5 tion is not subject to amendment, or to a motion to post-
6 pone, or to a motion to proceed to the consideration of
7 other business. A motion to reconsider the vote by which
8 the motion is agreed to or disagreed to shall not be in
9 order. If a motion to proceed to the consideration of the
10 joint resolution is agreed to, the joint resolution shall re-
11 main the unfinished business of the Senate until disposed
12 of.

13 “(2) In the Senate, debate on the joint resolution,
14 and on all debatable motions and appeals in connection
15 therewith, shall be limited to not more than 5 hours, which
16 shall be divided equally between those favoring and those
17 opposing the joint resolution. A motion further to limit
18 debate is in order and not debatable. An amendment to,
19 or a motion to postpone, or a motion to proceed to the
20 consideration of other business, or a motion to recommit
21 the joint resolution is not in order.

22 “(3) In the Senate, immediately following the conclu-
23 sion of the debate on a joint resolution described in sub-
24 section (a), and a single quorum call at the conclusion of
25 the debate if requested in accordance with the rules of the

1 Senate, the vote on final passage of the joint resolution
2 shall occur.

3 “(4) Appeals from the decisions of the Chair relating
4 to the application of the rules of the Senate to the proce-
5 dure relating to a joint resolution described in subsection
6 (a) shall be decided without debate.

7 “(h) CONSIDERATION BY THE OTHER HOUSE.—If,
8 before the passage by one House of a joint resolution of
9 that House described in subsection (a), that House re-
10 ceives from the other House a joint resolution described
11 in subsection (a), then the following procedures shall
12 apply:

13 “(1) The joint resolution of the other House
14 shall not be referred to a committee.

15 “(2) With respect to a joint resolution described
16 in subsection (a) of the House receiving the joint
17 resolution—

18 “(A) the procedure in that House shall be
19 the same as if no joint resolution had been re-
20 ceived from the other House; but

21 “(B) the vote on final passage shall be on
22 the joint resolution of the other House.

23 “(i) EXERCISE OF RULEMAKING POWER.—This sec-
24 tion is enacted by Congress—

1 “(1) as an exercise of the rulemaking power of
2 the Senate and House of Representatives, respec-
3 tively, and as such it is deemed a part of the rules
4 of each House, respectively, but applicable only with
5 respect to the procedure to be followed in that
6 House in the case of a joint resolution described in
7 subsection (a), and it supersedes other rules only to
8 the extent that it is inconsistent with such rules; and

9 “(2) with full recognition of the constitutional
10 right of either House to change the rules (so far as
11 relating to the procedure of that House) at any time,
12 in the same manner, and to the same extent as in
13 the case of any other rule of that House.

14 **“§ 812. Definition**

15 “‘In this subchapter, the term ‘new rule with criminal
16 penalties’ means a rule or provision of a rule, or an
17 amendment to such a rule or provision, that—

18 “(1) if violated, may be punished by criminal
19 penalties; and

20 “(2) is proposed after the date of enactment of
21 this section.”.

22 (b) CLERICAL AMENDMENT.—

23 (1) REFERENCES TO CHAPTER CONFORMED.—

24 Sections 801 through 808 of such title are amended

1 by striking “chapter” each place such term appears,
 2 and inserting “subchapter”.

3 (2) TABLE OF SECTIONS.—The table of sections
 4 for chapter 8 of such title is amended as follows:

5 (A) before the item pertaining to section
 6 801, insert the following:

“SUBCHAPTER I. CONGRESSIONAL REVIEW GENERALLY”;

7 and

8 (B) after the item pertaining to section
 9 808, insert the following:

“SUBCHAPTER II. RULES WITH CRIMINAL PENALTIES

“811. Agency reviews of rules with criminal penalties.

“812. Definitions.”.

10 **SEC. 6. NONAPPLICATION OF ACT TO UNIFORM CODE OF**
 11 **MILITARY JUSTICE.**

12 Nothing in this Act or any amendment made by this
 13 Act applies to any existing or future statute or regulation
 14 enacted in, or prescribed under, the Uniform Code of Mili-
 15 tary Justice.

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