

Mens Rea Reform Act of 2018

The Mens Rea Reform Act of 2018 would provide a process to identify and clarify mens rea (i.e., criminal intent) requirements for certain federal crimes. Specifically, the bill would provide both agencies and Congress an extended opportunity to clarify mens rea requirements in existing laws before establishing a baseline state of mind requirement that would apply when no state of mind requirement is specified in the text of the offense or Supreme Court precedent.

I. Applicability to Future Enacted Laws

For any covered offense (i.e., a criminal statutory or regulatory offense) enacted, promulgated, or finalized after the date of enactment, the Government would be required to prove beyond a reasonable doubt that the defendant acted: (1) with the state of mind specified in the text of the covered offense for each element for which the text specifies a state of mind; and (2) willfully, with respect to any element for which the text of the covered offense does not specify a state of mind.

II. Process to Evaluate and Reform Current Laws

a. Inventory of Federal Criminal Offenses and Mens Rea Requirements

The bill incorporates a provision from the Sentencing Reform and Corrections Act (S. 1917) that would require executive branch agencies to report to Congress various information about covered offenses, including state of mind requirements.

b. Opportunity for Congress to Clarify Mens Rea Requirements in Existing Statutes

The bill also incorporates from S. 1917 the National Criminal Justice Commission Act and directs the bipartisan Commission to identify covered offenses that (1) have no state of mind requirement specified in the text of the offense or Supreme Court precedent, and (2) the Commission determines should not have a state of mind requirement, based on specified criteria related to the Federal interest in protecting public health and safety and the potential penalty attached to a violation of the covered offense.

After 3 years, the Commission would make a recommendation to Congress identifying each of these offenses and provide proposed legislative language to make clear the Government is not required to prove any state of mind when prosecuting such offenses. The bill sets forth a procedure for Congress to consider the Commission's recommendations on an expedited basis.

Congress would have 2 years to act after the Commission submits its recommendations and proposed legislative language to Congress. After that period of time, which would be 5 years from the date of enactment, criminal statutory offenses that Congress does not act to make strict liability and do not have a state of mind requirement specified in the text of the offense or Supreme Court precedent would be construed to require the Government to prove beyond a reasonable doubt that the defendant acted: (1) with the state of mind specified in the text of the covered offense for each element for which the text specifies a state of mind; and (2) willfully, with respect to any element for which the text of the covered offense does not specify a state of mind.

c. Opportunity for Agencies to Clarify Mens Rea Requirements in Existing Regulations

Each federal agency would have 3 years from the date the Commission submits its report to Congress to use notice and comment rulemaking to specify the state of mind requirement for each criminal regulatory offense enforceable by the agency for which neither the text of the offense nor Supreme Court precedent specifies a state of mind requirement. Agencies would not be permitted to specify that a criminal regulatory offense is strict liability, as that determination should and could, through the above process, be made by Congress. And any change would of course have to be consistent with the statute authorizing the criminal regulatory offense.

After giving the agencies this opportunity to revise criminal regulatory offenses to specify state of mind requirements in the text of the offense, which would be 6 years after the date of enactment, the criminal penalty provisions of any criminal regulatory offense that does not have a state of mind requirement specified in the text of the offense or Supreme Court precedent would cease to have force or effect.