

## **Senator Orrin Hatch's Full Remarks on Criminal Justice Reform Efforts, as prepared for delivery**

I'm glad to be with you today and I thank our witnesses for coming.

I'm both puzzled and disappointed that the bill we're discussing today does not include any provisions to shore up mens rea requirements. The need for robust mens rea protections—and the inadequacy of such protections in much of our modern criminal code—has been a central part of the overcriminalization discussion from the beginning. Over in the House, members from both sides of the aisle have said that the lack of meaningful criminal intent requirements in federal law is a major problem that Congress must address.

Advocacy groups across the ideological spectrum have agreed. The Heritage Foundation and the National Association of Criminal Defense Lawyers, for example, published a study finding that over half of all nonviolent crimes proposed during the 109th Congress contained inadequate mens rea requirements, and over a quarter contained no mens rea requirement at all. Along similar lines, a coalition of left-leaning groups including the National Association of Criminal Defense Lawyers, the ACLU, the ABA, and Families Against Mandatory Minimums authored a chapter decrying the absence of meaningful intent requirements in many criminal laws and calling on Congress to pass a statute to “direct federal courts to read a protective, default mens rea requirement into any criminal offense that lacks one.”

From where I sit, I do not see how we can adequately address the problem of overcriminalization without getting at the root causes of the problem. And one of those root causes is that we have let wither the fundamental principle that in order for an action to be criminal, a person must have acted with criminal intent. When criminal laws lack meaningful mens rea requirements, honest, hard-working Americans can face criminal penalties for accidental conduct or for conduct that a reasonable person would not know was wrong.

For this reason, I believe that any package of criminal justice reforms that passes this body must include provisions to strengthen mens rea protections. In particular, I believe that such a package should include language setting a default mens rea requirement for all criminal statutes that lack such a requirement. This is an idea that General Mukasey and many others have strongly endorsed.

Now, there are three points to emphasize about default mens rea.

First, such a provision would not override existing standards set forth in statutes. All it would do is set a default for when Congress has failed to specify the criminal intent required for conviction.

Second, a default mens rea provision would in no way limit the authority of Congress or agencies to create new criminal offenses. All it would do is require them to be more thoughtful about selecting criminal intent standards.

Third, a default mens rea provision would have no impact on statutes or regulations that prescribe civil penalties. It would apply only to criminal prosecutions, where the question is whether to take away someone's freedom or impose other criminal penalties.

I hope that we can find a way to make default mens rea part of a meaningful package of criminal justice reforms. Indeed, I don't think it will surprise anyone to hear me say that I believe default mens rea is at least as important as many of the provisions that were included in this bill at the request of Senators who are not even members of this committee.