

## Bipartisan task force seeks to tackle criminal code

By: Bill Bartel – May 28, 2013

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While liberals and conservatives in Congress may be at one another's throats over budget and social issues, some are finding common ground: a belief that federal criminal laws have run amok, with too many people ending up in prison or with a criminal record.

Looking to spark the first major rewrite of U.S. crime statutes in half a century, U.S. Reps. Bobby Scott, a Newport News Democrat, and Jim Sensenbrenner, a Wisconsin Republican, are leading a 10-member task force to address what they call the "overcriminalization" of America.

Their focus: to revise and shrink the criminal code by leaving some offenses to state and local authorities, considering an end to mandatory-minimum sentences for some crimes and making it harder to convict people who did not know they were breaking federal laws.

The two congressmen, both lawyers, aren't in complete agreement on all issues - ending mandatory-minimum prison sentences may be difficult - but each has long argued that the national crime laws overreach and need to be condensed.

"When you talk about making a federal case out of it, you're usually talking about a big deal," Scott said recently. "But for run-of-the mill cases, there's just no rationale."

Scott argues that politicians have padded the law books, noting that Congress has established more than 50 new crimes annually for the past 13 years.

The task force's goal is to reach consensus among its members - five Democrats and five Republicans - on changes to criminal laws. It hopes to recommend revisions to Congress within six months.

The project, created by the House Judiciary Committee, already has support from such diverse groups as the Heritage Foundation, the National Criminal Defense Attorneys Association, the Cato Institute and the American Civil Liberties Union, which has said that current crime statutes reflect "an addiction to incarceration."

A concern shared by many liberals and conservatives, Scott said, is that the criminal justice system is weighed down with needless enforcement or punishment and is too expensive.

"One of the reasons that conservative groups have gotten involved is, it's clear that the sentences violated common sense," Scott said. "Hundreds of thousands of dollars to lock up somebody? How long to do you have to lock somebody up to protect the public?"

Scott and Sensenbrenner are pushing for stronger adherence to the legal concept of mens rea - meaning that a person must know he or she is breaking the law when committing a crime. They argue prosecutors increasingly ignore that element.

"This is an alarming trend because mens rea plays an important role in protecting the innocent and those who did not intend to commit wrongful or even criminal acts," Scott said during a Judiciary Committee hearing earlier this month.

Sensenbrenner said during a committee hearing, "A simple misreading or ignorance of a regulation can land a person in prison."

One case sometimes cited as an example involves retired Indianapolis 500 champion Bobby Unser. Unser has testified before Congress that he was wrongly convicted of a federal misdemeanor in 1997 for snowmobiling on federal land in Colorado when he became lost in a blizzard. He ended up on government property while trying to find shelter.

Judiciary Committee Chairman Bob Goodlatte, a Republican who serves in Virginia's 6th District, cited the case of a Fredericksburg girl who rescued a baby woodpecker from her family's cat in 2011. Skylar Capo briefly kept the bird in a cage. When the U.S. Fish and Wildlife Service learned about the caged bird, Skylar's mother was fined \$535. The service later rescinded the fine.

The task force needs "to make sure Americans who make innocent mistakes are not charged with criminal offenses," Goodlatte said during a hearing.

Federal law enforcement agencies should handle major crimes, Scott said, but not cases best left to local authorities.

"There's no need for a federal carjacking statute," he said. "Are you going to call the FBI" if your car gets stolen?

A consistent critic of mandatory sentencing laws, Scott said heavier federal enforcement, particularly of drug laws, has helped swell the federal prison population from 25,000 inmates in 1980 to more than 200,000 today.

Longer, mandated prison terms for many offenses do not deter crime or make communities safer, Scott said, and they have negative side effects.

"Families are disrupted.... Children being brought up by families with an absent member," he said. "If you lock up a 30-year-old for 50 years, how much protection are we getting for the money?"

Sensenbrenner has indicated he would have to be convinced that judges should have more leeway in sentencing.

"I have favored mandatory-minimum sentences as a way of getting around judge shopping," he said in a recent television interview, "because there are some federal judges that have reputations of being hanging judges and others that have reputations of being lenient judges."

As it works to develop a compromise acceptable to conservatives and liberals, the task force will likely have some self-imposed limits.

For example, the Drug Policy Alliance hopes the panel will consider decriminalizing federal marijuana laws in the wake of efforts by some states to do the same.

Scott doubts that will happen.

"I'm not sure that would be the highest priority," he said.