

A person is shown in silhouette, sitting in a prison cell. They are looking out through the vertical bars of the cell window. The lighting is dramatic, with the person's face and hands partially visible against the light coming through the bars. The overall mood is somber and oppressive.

USA **vs** YOU

THE FLOOD OF CRIMINAL LAWS THREATENING YOUR LIBERTY

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Read on for shocking stories—and how you can make a difference

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WE LIVE IN A SOCIETY THAT IS OVERCRIMINALIZED ...

in fact, you may be a criminal without even knowing it.

Overcriminalization is a term used to describe the misuse and overuse of criminal laws and penalties.

Historically, criminal penalties were only used to punish morally blameworthy behavior such as murder, theft, fraud, rape, etc.—conduct we all know is wrong.

Today, criminal penalties are used to punish activity that reasonable people would not know is illegal.

Criminal laws and regulations touch nearly every aspect of our lives, including:

- the food we eat
- the property we own
- many of our routine activities
- and our businesses ... just to name a few.

A MAZE OF CRIMINAL LAWS

Issues once dealt with by civil penalties can now land you in prison. As a result, well-meaning people are subject to harsh criminal penalties and labeled as criminals—often with life-altering consequences, affecting a person's ability to find work, attend school, choose where to live, and much more.

4,500 federal criminal statutes in the U.S. Code.

300,000 regulations with criminal consequences, written by unelected bureaucrats.

The result? We are all at risk of imprisonment for behavior no one would imagine is criminal—everything from shipping products in the wrong container to honest paperwork mistakes and accidents.

“BUT I DIDN’T MEAN TO BREAK THE LAW!”

In many criminal laws, the “guilty mind” requirement has been removed or weakened. This means people can go to prison regardless of whether they intended to break the law or knew their actions were in violation of the law.

Traditionally, crimes had two components: (1) *mens rea* (guilty mind), and (2) *actus reus* (bad act).

Today, many criminal laws and regulations have insufficient or no *mens rea* (guilty mind) requirement—meaning, a person need not know that his or her conduct is illegal in order to be guilty of the crime.

TO CONVICT A PERSON OF MURDER, a prosecutor must prove that the accused (1) caused the death of the victim, and (2) intended to kill or cause serious bodily injury to the victim.

TO BE CONVICTED OF VIOLATING THE CLEAN WATER ACT, the prosecutor need only show that the accused committed the acts constituting a violation of the Act—not that he intended to pollute or violate the law.


This means in many cases, if a person does not know that his conduct was illegal, or even if his conduct was an accident, it will not protect him from a criminal conviction.

LIBERTY ITSELF HANGS IN THE BALANCE


Much is at stake for our freedoms and the freedoms of future generations. Many constructive changes are possible that would make our justice system fairer and more just when needed—doing a better job of deterring wrongdoing and punishing those who *intend* to violate the law and engage in *actual* criminal conduct.

Read on to explore documented stories that illustrate the troubling trend of overcriminalization. Caught in the crosshairs of bureaucrats and rogue prosecutors, these accounts show why real reforms are needed for American criminal law to truly reflect justice.





VICTIM: ALISON & SKYLAR CAPO
LOCATION: FREDERICKSBURG, VIRGINIA



A BIRD'S-EYE VIEW OF BIG GOVERNMENT

THE CRIME: Nursing a bird back to health

Skylar Capo was an 11-year-old who loved animals. Skylar spotted a woodpecker who was about to be eaten by a cat. She asked her mother, Alison, if she could nurse the bird back to health. Her mom agreed, and to avoid leaving the bird at home, carried the bird to a local home improvement store. While in the store, an undercover U.S. Fish & Wildlife Services (USFWS) agent stopped young Skylar. The agent explained that the Migratory Bird Treaty Act protects woodpeckers and that transporting the bird is a violation of federal law.

Two weeks later, that same agent came to Alison and Skylar's home, delivered a \$535 ticket, and informed them that Alison faced up to one year in prison. Only after the story made headlines did USFWS drop the criminal charges.



VICTIM: LAWRENCE LEWIS
LOCATION: WASHINGTON, D.C.

CRIMINAL INTENT: DOWN THE DRAIN

THE CRIME: Rerouting sewage away from the hospice area of a military retirement home

Lawrence Lewis was the head engineer at a military retirement home in Washington, D.C. For 20 years, the facility had problems with sewage backup due to residents of the facility flushing adult diapers down toilets. For years prior to Lawrence's arrival, the facility rerouted the sewage on such occasions to a drain to avoid waste backing up into the first floor hospice units, where the most fragile patients reside.

Such an event occurred on Lawrence's watch, and his crew went to work rerouting the sewage to save the hospice residents from infection. Unbeknownst to Mr. Lewis and his crew, the storm drain led to the Potomac River, not to a water treatment facility. Mr. Lewis, who cares for his two daughters and elderly mother, was convicted of violating the Clean Water Act.



VICTIM: OCIE & CAREY MILLS
LOCATION: ESCOMBIA BAY, FLORIDA



A CONVICTION THAT DOESN'T HOLD WATER

THE CRIME: Dumping sand for a foundation

Ocie and Carey Mills, a father and son, had always wanted to live on the water. They bought waterfront property where they planned to build their home. The Mills obtained all of the state and local permits that were required to build.

Once the Mills began using clean sand for what was to be the foundation of their home, the Environmental Protection Agency (EPA) got involved. The EPA declared the Mills' dry property a "wetland" and charged them with violating the Clean Water Act. The Mills were convicted, and each served 21 months in prison.



VICTIM: CODY CHITWOOD
LOCATION: MARIETTA, GEORGIA

FISHING AS A FELONY

THE CRIME: Carrying fishing knives—which were locked in a truck, parked in a school lot

17-year-old Cody Chitwood, a student at Lassiter High School in Cobb County, Georgia, was charged with a felony for bringing weapons into a school zone. The weapons? Fishing knives... that were in his truck... in a tackle box.

Georgia law states that any knife “having a blade of two or more inches” is a weapon, and that anyone who carries a weapon onto school property by that very act is guilty of a crime. This is an example of a “strict liability” crime—one that does not require that an offender have a culpable mental state in order to be found guilty. Laws of this kind, which are distressingly common nowadays, break with the traditional understanding of criminal law as reserved for those who have done something that is morally wrong and deserve punishment.

Cody faced minimum of two years in prison and up to 10 years in prison and a \$10,000 fine. Fortunately, he was not prosecuted.



VICTIM: LISA SNYDER
LOCATION: MIDDLEVILLE, MICHIGAN

NANNY STATE CRIMINALIZES BABYSITTING

THE CRIME: Babysitting without a license

The local school bus stop is right in front of Lisa Snyder's Michigan home. Lisa was a stay-at-home mom, and as a favor to her working friends, she volunteered to watch their children for 15–40 minutes every morning until the children could catch the school bus.

When the police got wind of Lisa's free "babysitting services," they threatened her with fines and up to 90 days in jail for operating a daycare without a license. Luckily for Lisa, the Governor of Michigan intervened and had the law changed.



VICTIM: ANTHONY BRASFIELD
LOCATION: ORLANDO, FLORIDA

LOVE IS IN THE AIR—AND IT'S A FELONY

THE CRIME: Releasing heart-shaped helium balloons in a romantic gesture

Anthony Brasfield, a 40-year-old Florida man, was arrested for releasing a dozen heart-shaped helium balloons into the air in what was to be a romantic gesture for his girlfriend.

Anthony was charged with polluting to harm humans, animals, and plants under the Florida Air and Water Pollution Control Act. The state claimed that he released the balloons a mile and a half from an animal refuge, possibly endangering animals. Anthony's offense is a third-degree felony punishable by up to five years in prison.



VICTIM: JEFF & JENNIFER COUNCELLER
LOCATION: CONNERSVILLE, INDIANA

INVASIVE GOVERNMENT COSTS US DEARLY

THE CRIME: Rescuing a baby deer

Jeff Counciller, a police officer, and his wife Jennifer spotted an injured baby deer on their neighbor's porch. Instead of turning a blind eye to the dying fawn, the Councillers took the deer in and nursed it back to health.

An Indiana Conservation Officer spotted the fawn (named Dani) in the Councillers' yard—and promptly charged the couple with unlawful possession of a deer, a misdemeanor offense. Fortunately for her, the day that “Little Orphan Dani” was to be euthanized by the state, the deer escaped into the wild. Due to public outrage, the government dropped the charges.



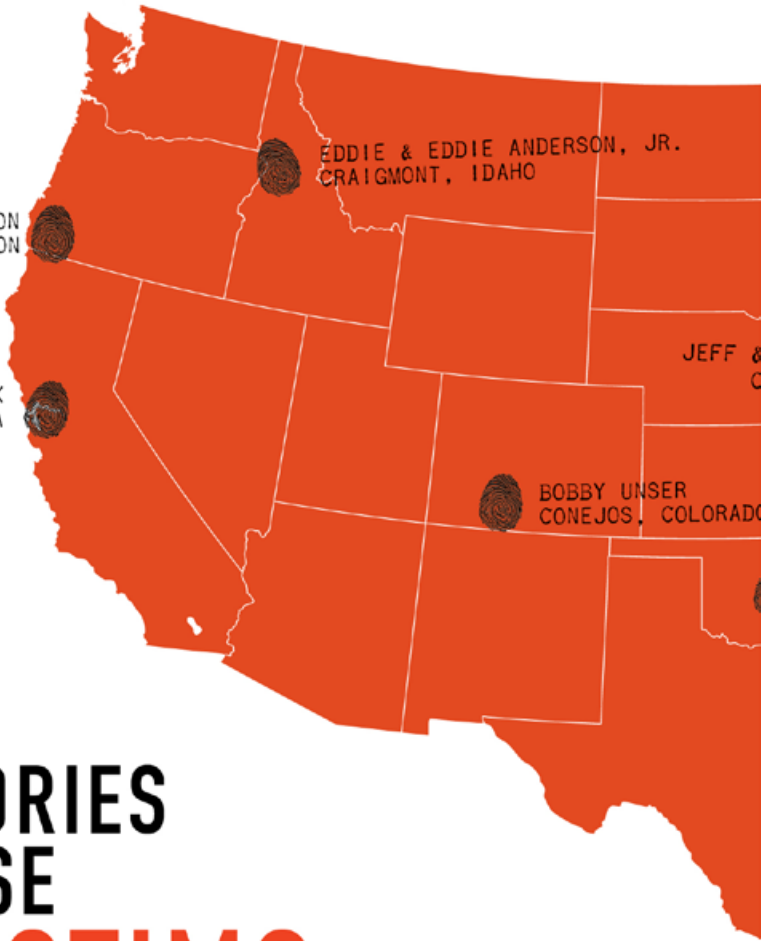
VICTIM: EDDIE & EDDIE ANDERSON, JR.
LOCATION: CRAIGMONT, IDAHO

GOVERNMENT TAKES A DIG AT LIBERTY

THE CRIME: Searching for arrowheads on federal land

Eddie Leroy Anderson, a former science teacher in Idaho, took his son camping in the Idaho wilderness. As a hobby, Mr. Anderson and his son collected arrowheads. Although they did not find any arrowheads that day, they did find themselves in trouble with the law. They were searching on federal land, which is prohibited by the Archaeological Resources Protection Act of 1979.

The Andersons found themselves facing a felony, punishable by up to two years' imprisonment, before pleading guilty to a misdemeanor. The Andersons were fined \$1,500 each and placed on one year's probation.



GARY HARRINGTON
EAGLE POINT, OREGON

NANCY BLACK
MONTEREY, CALIFORNIA

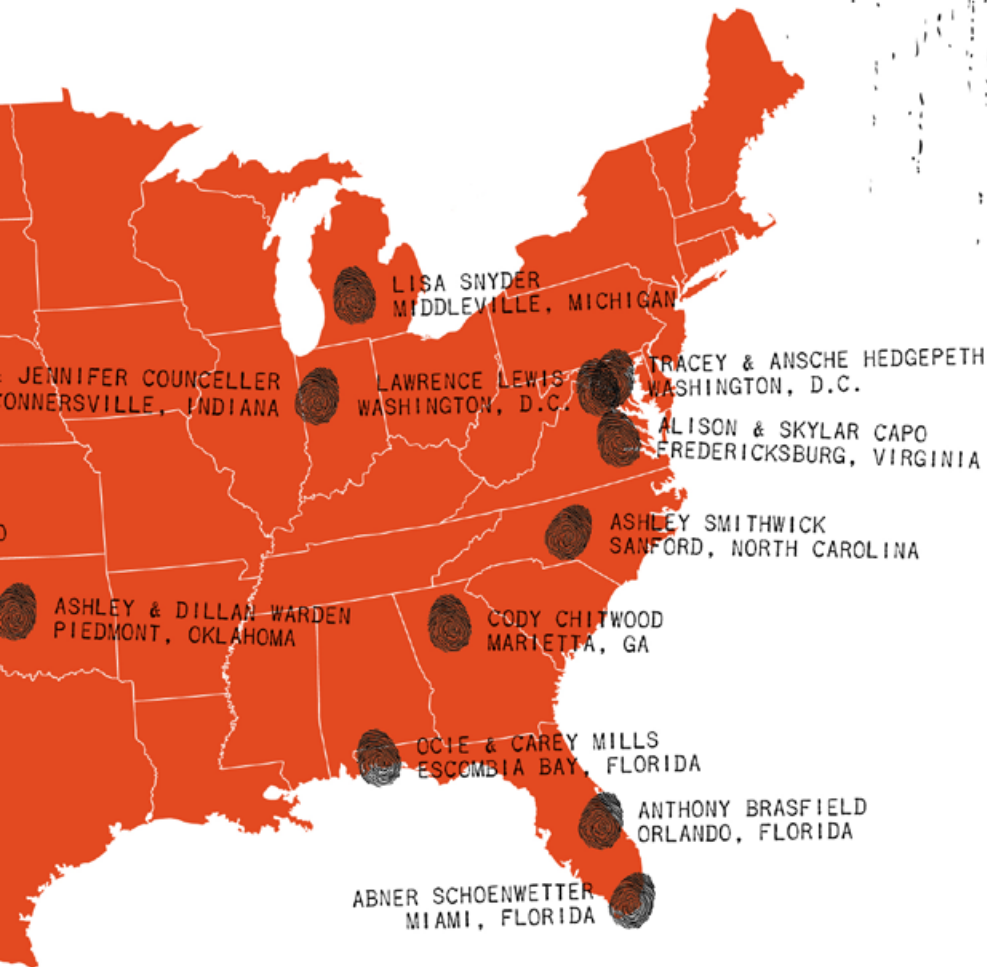
EDDIE & EDDIE ANDERSON, JR.
CRAIGMONT, IDAHO

JEFF &
C


BOBBY UNSER
CONEJOS, COLORADO

THE STORIES OF THESE 21 VICTIMS


ILLUSTRATE HOW OVERCRIMINALIZATION AFFECTS AMERICANS NATIONWIDE—
PEOPLE FROM ALL BACKGROUNDS, RACES, AND INCOME LEVELS.



READ ON FOR MORE STORIES OR
SEE PAGE 23 ▶
WHAT YOU CAN DO TO REVERSE THIS TREND



VICTIM: TRACEY & ANSCHE HEDGEPEETH
LOCATION: WASHINGTON, D.C.



WANT A CRIMINAL RECORD WITH THOSE FRIES?

THE CRIME: Eating french fries on the subway

On her way home from school, twelve-year-old Ansche Hedgepeth bought french fries to eat on her trip. While today in Washington, D.C., Metro stations there are numerous signs regarding the no-eating policy, in 2000 there was unfortunately no easy way for Ansche to know she was about to commit a crime.

A Metro police officer spotted Ansche eating a fry and immediately searched and arrested her. The officer confiscated Ansche's backpack, jacket, and even the girl's shoelaces. Ansche was handcuffed and taken to the Juvenile Processing Center where she waited three hours for her mother Tracey to pick her up. The case went all the way up to the U.S. Circuit Court of Appeals, where the court upheld the arrest and citation of Ansche.



VICTIM: BOBBY UNSER
LOCATION: CONEJOS, COLORADO

BIG GOVERNMENT RUNS LAPS AROUND INDY 500 LEGEND

THE CRIME: Trespassing on federal land while lost in a blizzard

Indianapolis 500 Champion Bobby Unser nearly died when he was caught in a blizzard while snowmobiling in the mountains. In order to seek help, the Indy car driver was forced to abandon his snowmobile. Fortunately, Bobby was rescued, but his problems did not end there.

He worked with U.S. Forest Services to retrace his steps in hopes of recovering his snowmobile.

Little did Bobby know, the agents he worked with were not interested in recovering his snowmobile, but instead wanted to prosecute him for trespassing onto a protected wilderness area. Although the snowmobile was never recovered and the government was unable to prove that Mr. Unser trespassed onto the restricted area, the racecar champion was convicted of a misdemeanor.



VICTIM: NANCY BLACK
LOCATION: MONTEREY, CALIFORNIA

A WHALE OF A CRIME

THE CRIME: Providing edited video of whaling research and “feeding” killer whales

How does a wildlife researcher become a “criminal”? It’s quite a story that led Nancy Black to be sentenced to three years’ probation, a \$12,500 fine, and 300 hours of community service.

Nancy’s film crew twice encountered a pod of orcas feasting on the blubber of a dead whale. In order to film this underwater activity, Nancy instructed her crew to remove a piece of the blubber and attach it to the boat. In an unrelated incident, her vessel’s captain whistled at a humpback whale hoping to keep it in the vicinity, and a crew member encouraged passengers to do likewise. Black reprimanded both employees.

Afterwards, the National Oceanic and Atmospheric Administration began an investigation into potential whale harassment, a federal offense. Nancy gave the investigator a videotape, but did not tell him that she had removed what she thought was extraneous footage.

Nancy was charged with two felonies for failing to tell the officer the video was edited and two misdemeanors for “feeding” killer whales. The government also sought forfeiture of her boats. In order to avoid a felony conviction, possible prison time, and losing her boats, Nancy pleaded guilty to one of the misdemeanor charges.



VICTIM: ASHLEY & DILLAN WARDEN
LOCATION: PIEDMONT, OKLAHOMA

JUSTICE “FLOWING LIKE A RIVER”?

THE CRIME: Three-year-old’s “public urination” on the family’s property

Ashley Warden was fined \$2,500 after her three-year-old son Dillan pulled down his pants to urinate on his grandmother’s front yard. A police officer was in his car at the end of the block when he spotted the young urinator.

The officer wasn’t fazed by the fact that the young toddler was on private property when the wetting occurred. Under the common law, young Dillan (still in potty training) is not even capable of committing a crime.

After reports of the incident sparked outrage across the country, the Piedmont city manager confirmed that the police officer who wrote the excessively hefty fine was fired.



VICTIM: GARY HARRINGTON
LOCATION: EAGLE POINT, OREGON

WHEN IT RAINS IN OREGON, THE STATE POURS ON THE FINES

THE CRIME: Collecting rainwater on his property

Who owns the rain? That sounds like a silly question, but the answer may surprise you. If you live in Oregon, the government does.

An Oregon landowner, Gary Harrington dug three ponds on his property to collect rain water and snow runoff. Unfortunately for Gary, the state of Oregon deems itself to own all precipitation in the state once it touches the ground. So you cannot collect rainwater without a permit, unless it feeds directly into a rain barrel.

Gary has attempted to get permits in the past for his ponds in order to reimburse the state for the rain they have so graciously allowed to fall on his property. The state initially granted the permits, then immediately revoked them and has ordered Harrington to drain his ponds. Gary was given a \$1,500 fine and sentenced to 30 days in jail for his ponds.

Photo: Garret Harrington




VICTIM: ASHLEY SMITHWICK
LOCATION: SANFORD, NORTH CAROLINA

CUT FROM CLASS, WITHOUT INTENT

THE CRIME: A paring knife in her lunch bag at school

Ashley Smithwick was a 17-year-old standout student athlete at her high school. Ashley maintained a 3.5 GPA while taking college level courses. She had never been in trouble at school, let alone with the law. On her way to school one morning, Ashley accidentally picked up her father's lunch, which contained a small paring knife used to slice apples.

Having a knife on campus violates a North Carolina law prohibiting carrying "any sharp-pointed or edged instrument ... on educational property." Ashley was suspended from school for the remainder of the year and was forced to take online college courses to finish her senior year. Ashley was charged with a Class 1 Misdemeanor. Five months later, a jury found Ashley not guilty of the charge.



VICTIM: ABNER SCHOENWETTER
LOCATION: MIAMI, FLORIDA

“PAPER OR PLASTIC?” TIME BEHIND BARS FOR SHIPPING LOBSTERS

THE CRIME: Importing small lobsters in plastic rather than paper bags

The next time a cashier asks “paper or plastic?” think of Abner Schoenwetter. He spent more than six years in federal confinement for shipping lobster in plastic instead of cardboard.

A small business owner, Abner imported lobsters from Honduras. The Food and Drug Administration regularly inspected his lobsters, and they were always compliant with U.S. law. An obscure Honduran regulation required lobsters to be shipped in paper rather than plastic and to be a certain size. Not knowing the regulation, Abner shipped some marginally-small lobsters in plastic bags.

The Lacey Act makes it a felony to violate any foreign nation’s law while importing flora or fauna into the United States. Abner was tried, convicted, and sentenced to eight years in prison. The Honduran Attorney General informed the Court of Appeals that the regulation in question was invalid, but the Court of Appeals upheld his conviction anyway.

UNDER COMMON LAW, THERE WERE ONLY 9 FELONIES:

MURDER, ROBBERY, ARSON,
AND OTHER CRIMES CONSIDERED
MORALLY BLAMEWORTHY



Everyone knew it was
against the law to
commit those crimes

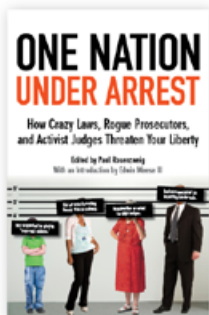
TODAY, 4,500
THERE ARE: FEDERAL CRIMINAL OFFENSES
300,000
CRIMINAL REGULATIONS



(RULES DEFINING CRIMINAL CONDUCT THAT
HAVE THE FORCE OF LAW, WRITTEN BY UNELECTED
BUREAUCRATS)

OF 446 PROPOSED CRIMINAL OFFENSES IN A RECENT CONGRESS, NEARLY
60 PERCENT LACKED AN ADEQUATE CRIMINAL INTENT REQUIREMENT.

IN-DEPTH RESOURCES TO LEARN MORE



ONE NATION UNDER ARREST

A landmark work of more than a dozen scholars, *One Nation Under Arrest* sheds light on an insidious problem that assaults the fundamental values of America: overcriminalization. With a foreword by former Attorney General Edwin Meese III, this in-depth book highlights a major effort to reverse this trend, returning criminal law to its proper role in society: to ensure public safety and protect the innocent. Paperback, 268 pages.



CRIMINAL LAW CHECKLIST FOR FEDERAL LEGISLATORS

A collaborative product of diverse policy organizations, the *Criminal Law Checklist* gives lawmakers the right questions to ask when crafting new laws. This checklist provides important issues of law and policy to

review throughout the legislative process—ensuring any criminal laws being drafted stay within the bounds of fairness, the rule of law, and the United States Constitution. Full-color wall poster.

FIND THESE RESOURCES AND MORE AT USAvsYOU.COM

- 📄 Download this booklet free and order more copies
- 📺 Watch and share video interviews with many of the victims
- 🔗 Links to activist tools from criminal law reform coalition



WHAT YOU CAN DO TO REVERSE OVERCRIMINALIZATION

Questionable laws cause irreversible harm to our justice system—and to the lives of untold numbers of Americans. Now is the time to act.

1. SHARE THE STORIES—AND THE FACTS

- Talk to your family and friends to educate them on what's at stake
- Sign up for e-mail updates from Heritage, NACDL, Right on Crime, and other partners to stay informed on criminal law reforms active in Congress and around the nation
- Distribute copies of this booklet to people in your circle of influence

2. RAISE YOUR VOICE IN THE PUBLIC SQUARE

- Bring up overcriminalization when calling in to talk radio shows
- Write a letter to your newspaper editor, especially when a relevant story comes up locally
- Share your concerns directly and publicly by commenting on your elected representatives' Facebook and Twitter profiles

3. TEAM UP WITH OTHERS TO AMPLIFY YOUR VOICE

- Raise questions about overcriminalization when participating in local town hall meetings
- Share this booklet with groups where you participate, whether a book club or other small group
- Ensure your vote matters for justice—using legislative scorecards, know your elected officials' voting records and stance on this issue. And tell friends what you learn!

ABOUT THE CRIMINAL LAW REFORM COALITION

A diverse coalition of public interest legal groups are committed to reversing the troubling trend of overcriminalization, including the partners who worked together on this booklet.

- **The American Center for Law and Justice (ACLJ)** and its globally affiliated organizations are committed to ensuring that freedom and liberty are viable in the United States and around the world.
- **The American Civil Liberties Union (ACLU)** is America's oldest and largest organization dedicated to preserving the civil liberties enshrined in the United States Constitution and Bill of Rights.
- **The American Legislative Exchange Council (ALEC)**, the nation's largest individual membership organization of state legislators, is dedicated to promoting free markets, limited government, and federalism throughout the states.
- **Families Against Mandatory Minimums (FAMM)** is a nonprofit, nonpartisan organization fighting for fair and proportionate sentencing laws that allow judicial discretion while maintaining public safety.
- **Justice Fellowship**, the advocacy division of Prison Fellowship Ministries, promotes reform of the criminal justice system based on biblical principles so communities are safer, victims are respected, and offenders are transformed.
- **The National Association of Criminal Defense Lawyers (NACDL)** is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing.
- **Right on Crime**, an initiative led by the Texas Public Policy Foundation, aims to raise awareness and grow support for effective criminal justice reforms within the conservative movement.
- **The Heritage Foundation** develops and promotes public policy solutions that advance free enterprise, limited government, individual freedom, traditional values, and a strong national defense.



aclj.org



JusticeFellowship.org



aclu.org



nacdl.org/overcrim



alec.org



RightOnCrime.com



famm.org



heritage.org

WHAT YOU DON'T KNOW CAN HURT YOU

A child rescuing a bird **charged as a criminal...**

Releasing heart-shaped balloons **becomes a felony...**

Collecting rainwater **leads to weeks behind bars...**

...and it could happen to you right here in the United States.

Every day, an escalating trend in American law results in more shocking incidents that violate our basic liberties. Criminal laws are created to "solve" every problem, punish every mistake, and compel the "right" behaviors. It's called overcriminalization, and it leads to injustice at every level of society.

Now, advocates for justice across the political spectrum are uniting to end the practice of trapping our citizens with carelessly written laws. In *USA vs. YOU*, experience the stories of Americans like you treated unjustly—and discover how your voice can make a difference in defending our liberties.



Join the movement at USAvsYOU.com

The 
Heritage Foundation

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