



If You Can't Expect People to Know About a Crime, Don't Prosecute Them for It

By Kahryn Riley

Summary

In Michigan, it's possible to be prosecuted for breaking a law you didn't know exists. The Legislature is considering a reform to protect innocent criminal defendants.

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The number of laws on our books continues to grow every year as we pass many regulations that carry criminal penalties. Adding to an already overly complex criminal code means that people are liable for far more crimes than they could hope to know or understand. As crimes proliferate, so do instances of people facing criminal sentencing for unintentionally violating laws they did not realize applied to them or even existed. The risk of unanticipated prosecution challenges centuries-old understandings of due process, a key protection of our legal system. It also puts a damper on economic activity, leaving us poorer. Legislators should alleviate that risk by passing a reform — known as default criminal intent standards — that will protect well-meaning individuals.

Traditionally, a crime requires two parts: a bad act (known in the legal profession by its Latin term, “actus reus”) and the criminal intent to perform that act (also known as “mens rea”). But in a newer class of crime, known as a public welfare or strict liability offense, the government does not need to prove that a person acted with a culpable mental state in order to prosecute. In it, a person can be prosecuted for doing something he or she would not have been expected to know was objectionable.

In 2003, a Michigander named Kenneth Schumacher delivered scrap tires to what he believed to be a business that had the legal right to accept his tires. But in fact, the facility needed a specific license, which it lacked, to accept those tires. As a result, Schumacher was prosecuted for the unlawful disposal of scrap tires. Despite acting in what he thought was a responsible way, he had to endure a criminal conviction, a lengthy appeal, and, finally, a sentence of 270 days in jail and fines of \$10,000. What of the fact that he didn't know that the facility lacked the required license, or even that it needed to have one? It did not matter. Although Schumacher meant to act responsibly, the strict liability standard made his intent irrelevant. Unfortunately, other people will be trapped by the law as Schumacher was. This will continue to happen as long our Legislature passes laws that criminalize actions without taking into account what a person knew or meant to do.

Of Michigan's 3,100 laws, 27 percent of felonies and 49 percent of misdemeanors lack a requirement that a prosecutor prove criminal intent (mens rea). When the Legislature has not specified a standard about intent, Michigan courts have to evaluate whether the crime was meant to impose

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It's hard for citizens to know when they're breaking the law.

strict liability, or whether the court should infer some degree of mens rea. A court can look to legislative history for help in making this determination, but a quick look at the criminal code reveals that even though criminal intent requirements do exist, they are an ad hoc patchwork of mental states that range from “willfully” and “intentionally” to “knowingly” or “recklessly.” As a result, the people of Michigan must resort to expensive, lengthy litigation to determine what standard of intent should be applied to individuals who often meant no harm at all.

Rather than leave Michiganders exposed to criminal prosecution through no fault of their own, the Legislature should pass a default intent requirement that would fill in the gaps in our existing body of crimes. In fact, two bills proposing such a feature, SB 20 and HB 4713, are currently before the Senate Judiciary Committee. These bills represent an important step toward a coherent criminal framework by creating a default mens rea requirement.

The familiar legal principle that “ignorance of the law is no excuse” has been made absurd. In an age where state laws number 3,100 and counting, ignorance is the reality for nearly everyone. We can no longer rely on prosecutorial discretion to protect ordinary, well-meaning people from massive legal fees and undeserved sentences for regulatory offenses they unknowingly commit. We must defend individual liberty and by ensuring that our crimes punish true criminals.

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Kahryn Riley is an advancement officer at the Mackinac Center for Public Policy, a research and educational institute headquartered in Midland, Michigan. Permission to reprint in whole or in part is hereby granted, provided that the author and the Mackinac Center are properly cited.

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Please contact:

DAN ARMSTRONG

Director of Marketing
and Communications
140 West Main Street
P.O. Box 568
Midland, Mich. 48640

Phone: 989-631-0900

Fax: 989-631-0964

Armstrong@mackinac.org

Mackinac.org

Facebook.com/MackinacCenter

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