

BOB GOODLATTE, Virginia
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
STEVE CHABOT, Ohio
SPENCER BACHUS, Alabama
DARRELL E. ISSA, California
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
RAUL R. LABRADOR, Idaho
BLAKE FARENTHOLD, Texas
GEORGE HOLDING, North Carolina
DOUG COLLINS, Georgia
RON DESANTIS, Florida
JASON SMITH, Missouri
VACANCY

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

August 19, 2014

JOHN CONYERS, JR., Michigan
RANKING MEMBER

JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
JUDY CHU, California
TED DEUTCH, Florida
LUIS V. GUTIERREZ, Illinois
KAREN BASS, California
CEDRIC L. RICHMOND, Louisiana
SUZAN K. DELBENE, Washington
JOE GARCIA, Florida
HAKEEM S. JEFFRIES, New York
DAVID CICILLINE, Rhode Island

The Honorable Richard B. Nugent, Chairman
Subcommittee on Rules and Organization of the House
Committee on the Rules
H-312, The Capitol
Washington, D.C. 20515

Dear Chairman Nugent,

I am writing to request participation in your Members' Day hearing on proposed rule changes to the standing rules of the House.

The Committee on the Judiciary has long held jurisdiction over criminal law. Rule X(1) states that Judiciary Committee has jurisdiction over "(1) The judiciary and judicial proceedings, civil and criminal;" and "(7) Criminal law enforcement."

The Judiciary Committee typically has primary jurisdiction over criminal laws in Title 18. However, there have been instances in which new conduct has been criminalized outside of Title 18 and the Judiciary Committee was not able to obtain a referral. The Office of the Parliamentarian prepared a detailed memorandum on this anomaly, which I have enclosed.

The Judiciary Committee takes its jurisdiction over the criminal laws of the United States very seriously. As the standing committee with criminal law expertise, we work hard to ensure that criminal laws are appropriately drafted and fit within the overall federal criminal construct. We also take the opportunity to ensure that if we are criminalizing new conduct, that it is reasonable and warranted. For these reasons, I want to ensure that the Judiciary Committee is always able to obtain a referral - either upon introduction or sequentially - when a bill will have the effect of criminalizing new conduct when it goes on the books.

I would appreciate the opportunity to appear before your subcommittee to discuss possible changes to Rule X that would clarify the Judiciary Committee's criminal law jurisdiction.

Sincerely,



Bob Goodlatte
Chairman

Office of the Parliamentarian
U.S. House of Representatives
Washington, DC 20515-6731

Memorandum

To: Over-Criminalization Task Force of the Committee on the Judiciary

From: Office of the Parliamentarian

Date: July 21, 2014

The Over-Criminalization Task Force of the Committee on the Judiciary is tasked with assessing the current federal criminal statutes and making recommendations for improvements. One of its areas of study is legislative jurisdiction in the House over proposals addressing federal criminal law. This memo provides guidance on the rules of the House and precedents in this area.

Rule X – the jurisdictional statement of the Committee on the Judiciary

The Parliamentarian, acting as the Speaker's agent, refers bills and other matters upon their introduction to committees pursuant to the jurisdiction of each committee as defined by rule X, taking into account any relevant precedents. Rule XII guides the Speaker in the type and timing of a referral.

The jurisdiction of each of the 20 standing committees of the House is set out in rule X of the rules of the House. The jurisdictional statement of the Committee on the Judiciary is found in clause 1(l) of rule X. The referral of measures on the subject of criminalization is based on clause 1(l)(1) addressing, "The judiciary and judicial proceedings, civil and criminal," and clause 1(l)(7), addressing "Criminal law enforcement."

The jurisdictional statement regarding "The judiciary and judicial proceedings, civil and criminal" has been in place since the creation of the Committee on the Judiciary in 1813. That statement has been interpreted to apply to matters "touching judicial proceedings." Hinds, vol. 4, sec. 4054.

The jurisdictional statement regarding "Criminal law enforcement" was added in the 109th Congress (sec. 2(a)(2), H. Res. 5, Jan. 4, 2005). This statement has been interpreted by the Office of the Parliamentarian as a codification of the committee's existing *de facto* jurisdiction over legislation addressing law *enforcement* powers, consistent with the absence of legislative history supplying any other meaning (Cong. Rec. Jan 4, 2005). This area of the committee's jurisdiction is often manifested in

measures addressing police powers, such as executing warrants and making arrests. The Office of the Parliamentarian has not noted a change in the body of precedents surrounding criminalization as a result of the addition of "Criminal law enforcement" to clause (1)(l)(7) of rule X.

Title 18 – the Criminal Code

The organization of the United States Code permeates many aspects of the legislative process. The Office of the Law Revision Counsel organizes the general and permanent laws of the United States in its compilation, restatement, and revision of the United States Code. In turn, the Office of the Legislative Counsel employs its framework in the drafting of bills and the Office of the Parliamentarian considers it when advising on jurisdictional matters. The organizational structure of the Code promotes consistency and predictability throughout the legislative process.

The structure of the Code, specifically the placement of the criminal code in title 18, has resulted in a consistent pattern of referrals of measures addressing criminalization within that title to the Committee on the Judiciary. Past referrals of measures criminalizing action within title 18 span many subjects that would otherwise fall within the subject-matter jurisdiction of other committees. For example, in the 113th Congress the Committee on the Judiciary received a referral for a measure amending title 18 to criminalize the counterfeiting or selling of Presidential inauguration tickets (H.R. 336) and a measure amending title 18 criminalizing the importation or exportation of mussels of a certain genus (H.R. 1823). Those measures were referred solely to the Committee on the Judiciary despite the fact that other committees otherwise would have jurisdiction over the subjects of inaugurations and invasive species. Past efforts by other committees to obtain additional or sequential referrals of criminalization measures within the confines of title 18 have not been successful absent a showing that the measure also contained a non-criminal aspect.

As a general matter, the non-criminal regulation of behavior does not fall within the jurisdiction of the Committee on the Judiciary. If a measure creates a new criminal penalty or modifies an existing criminal penalty within a larger regulatory initiative outside the confines of title 18, the Committee on the Judiciary may still obtain a referral for that direct address of criminalization. A more complex situation occurs when a measure subjects new or different conduct to regulation and that conduct is criminalized through the separate operation of an existing criminal penalty – resulting in criminalization without a textual address of the criminal penalty by the measure.

Referral Patterns

The issue presented by indirect criminalization can be found in examples spanning many different subject matters. One illustration is in the referrals of the Lacey Act, a frequently amended statute that regulates the trafficking of fish, wildlife, and plants. The Lacey Act is compiled in both title 16 and title 18 of the United States Code. In the case of H.R. 3049 of the 109th Congress (regulating the trafficking in Asian carp), the bill amended 18 U.S.C. 42 and addressed criminalization. Accordingly, it was referred to the Committee on the Judiciary. In contrast, H.R. 1497 of the 110th Congress (regulating plants harvested outside the United States) amended various regulatory sections of the Lacey Act Amendments of 1981 that have been compiled in title 16 of the United States Code. The bill extended the Lacey Act's coverage to plants harvested outside the United States and any address of criminalization was indirect. Accordingly, it was referred to the Committee on Natural Resources.

A more recent example is found in the animal welfare area. H.R. 2492 of the 112th Congress addressed attendance at animal fighting events through amendments to the Animal Welfare Act – compiled in title 7 of the United States Code – and to title 18. The bill was referred to both the Committee on Agriculture and the Committee on the Judiciary. Parts of the contents of this bill were later included in a larger measure in the 113th Congress – H.R. 2642, the Federal Agriculture Reform and Risk Management Act of 2013 (section 11311). The provision addressed a type of animal fighting to be covered by the Animal Welfare Act, but did not amend the existing criminal penalty in the Animal Welfare Act and did not touch title 18. The Parliamentarian advised that a referral to the Committee on the Judiciary was not consistent with past precedent.