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Crazy crimes prey on citizens

By Marc A. Levin, Guest Columnist

Even the wealthiest man in Texas may be no match for the gargantuan growth in criminal law.

Retired Houston energy executive Dan Duncan finds himself in federal prosecutors' crosshairs because he hunted moose in Russia from a helicopter. Felony charges may be brought under the Lacey Act, a law enacted in 1900 to prevent the interstate and international trafficking of rare plants and animals. The Act criminalizes "fish or wildlife taken, possessed, transported, or sold in violation of ... any foreign law."

Duncan's case is reminiscent of the 2001 Lacey Act case brought against David McNab and other lobster importers. They were charged by federal prosecutors with violating Venezuelan law because the lobsters they caught were too small and transported in opaque plastic bags instead of paper bags. Even though the Venezuelan government asked American prosecutors to drop the case, McNab languishes in federal prison on an eight-year sentence. Similarly, Russian authorities have no quarrel with Duncan.

When someone like Duncan who can afford the best legal advice can nevertheless be ensnared, it is time to reexamine the more than 4,000 federal criminal laws and more than 2,000 state criminal laws.

The Texas Board of Pardons and Paroles recently released its annual list ranking the severity of all felonies. It weighs in at 2,324 felonies – that doesn't include misdemeanors. It also counts catch-all offenses like violation of a rule issued by the Comptroller as a single crime.

While moose and lobsters don't populate these parts, 11 of the 2,324 listed felonies relate to oysters. Fortunately, they are rated low severity; although oyster crimes can trigger prison sentences of up to 10 years, those who meddle with mollusks have a good shot at getting out early.

Another 11 felonies relate to grain, but these offenders are not so lucky. Inexplicably, stealing grain and operating a grain warehouse without a license are ranked as low severity, but unlicensed delivery of grain and depositing grain without a title are ranked as medium severity – higher than attempted indecency with a child, three or more convictions for driving while intoxicated, and smuggling illegal immigrants.

There are hundreds of other excessive Texas criminal laws that regulate ordinary business conduct. It is a Class A misdemeanor – carrying up to a year in jail – to use, handle, store, or dispose of a pesticide in a manner that injures vegetation, crops, wildlife, or pollinating insects. Under the Water Code, it is a second degree felony – carrying up to 20 years in prison – if a person "fails to remit any fees collected by any person required to hold a permit under this section," even though the fees range from \$25 to \$50.

Excessive use of criminal law, often referred to as overcriminalization, trivializes "real" crimes that involve injury to another person. It also deters productive economic activity. Who wants to risk importing lobsters or harvesting oysters if a minor mistake leads to many years behind bars? If business conduct does not defraud, steal, or poison someone, but simply runs afoul of a government regulation, it should trigger at most a civil fine.

Another pitfall of overcriminalization is that those ensnared by these laws, even if they receive probation rather than a prison sentence, have a conviction on their record. This will likely make them ineligible for hundreds of state occupational licenses and cause them to encounter barriers to non-licensed

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Between now and the next legislative session, Texas lawmakers should identify some of the thousands of criminal laws to repeal or convert to civil infractions. When hunters and fishermen must tether themselves to a lawyer or risk becoming unwitting criminals, our individual liberties could soon be declared the next endangered species.

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