



D.C. Criminal Code Reform Commission

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To: Code Revision Advisory Group
From: Criminal Code Reform Commission (CCRC)
Date: March 13, 2017
Re: Copy of D.C. Sentencing Commission Draft Language on Preliminary Provisions, Mistake & Intoxication

This Memorandum provides copies of: (1) statutory language recommended by the D.C. Criminal Code Reform Commission (CCRC) in the First Draft of Report No. 3, *Recommendations for Chapter 2 of the Revised Criminal Code—Mistake, Deliberate Ignorance, and Intoxication* (distributed to the Advisory Group on March 13, 2017); (2) statutory language recommended by the D.C. Criminal Code Reform Commission (CCRC) in the First Draft of Report No. 4, *Recommendations for Chapter 1 of the Revised Criminal Code—Preliminary Provisions*; and (3) the draft statutory language addressing similar topics developed by the D.C. Sentencing Commission, as last referenced at the Sentencing Commission’s September 20, 2016 meeting. This Memorandum responds to the request of two Advisory Group members on January 11, 2017. The Memorandum presents each section of the statutory language recommended by the CCRC with the relevant draft statutory language, if any, developed by the Sentencing Commission.

Please note that the draft statutory language from the Sentencing Commission was not given final approval by that agency, or that agency’s Subcommittee on Criminal Code Revision. The draft statutory language from the Sentencing Commission is a compilation of statutory changes that were discussed by that agency’s Subcommittee on Criminal Code Revision, some of which were specifically bracketed for further consideration, and all of which were subject to further changes. The statutory mandate and customary practices that were applicable to the Sentencing Commission’s work on code revision between January 2013 and September 2016 also differ significantly from those applicable to the CCRC’s work on code reform, which commenced on October 2016.

The First Drafts of Report No. 3 and No. 4, provide a comprehensive explanation of the basis, rationale, and intended operation of the recommended statutory language and should be evaluated independent of any prior work by the Sentencing Commission.

Criminal Code Reform Commission Language

§ 22A-101 SHORT TITLE AND EFFECTIVE DATE

- (a) SHORT TITLE. This title may be cited as the “Revised Criminal Code.”
- (b) EFFECTIVE DATE. This title takes effect at 12:01 am on [A DATE AT LEAST ONE YEAR FROM ENACTMENT].
- (c) PRIOR OFFENSES. Offenses committed prior to the effective date of the Revised Criminal Code are subject to laws in effect at that time. For purposes of this subsection, an offense is “committed prior to the effective date” if any one of the elements of the offense was satisfied prior to the effective date.

Corresponding Sentencing Commission Language

§ 22A-101 SHORT TITLE

This Title shall be known and may be cited as “Revised Criminal Code of XXXX” or as “Title 22A.”

Criminal Code Reform Commission Language

§ 22A-102 RULES OF INTERPRETATION

- (a) **GENERALLY.** To interpret a statutory provision of this title, the plain meaning of that provision shall be examined first. If necessary, the structure, purpose, and history of the provision also may be examined.
- (b) **RULE OF LENITY.** If two or more reasonable interpretations of a statutory provision remain after examination of that provision's plain meaning, structure, purpose, and history, then the interpretation that is most favorable to the defendant applies.
- (c) **EFFECT OF HEADINGS AND CAPTIONS.** Headings and captions that appear at the beginning of chapters, subchapters, sections, and subsections of this title, may aid the interpretation of statutory language.

Corresponding Sentencing Commission Language

§ 22A-102 EFFECT OF HEADINGS AND CAPTIONS

Captions or headings appear at the beginning of chapters, subchapters, sections, and subsections in Title 22A only as an aid to understanding their respective contents. The presence, absence, or meaning of such captions or headings has no legal significance.

Criminal Code Reform Commission Language

§ 22A-103 INTERACTION OF TITLE 22A WITH OTHER DISTRICT LAWS

- (a) GENERAL INTERACTION OF TITLE 22A WITH PROVISIONS IN OTHER LAWS. Unless otherwise provided by law, a provision in this title applies to this title alone.
- (b) INTERACTION OF TITLE 22A WITH CIVIL PROVISIONS IN OTHER LAWS. The provisions of this title do not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil action.

Corresponding Sentencing Commission Language

§ 22A-103 INTERACTION WITH OTHER CODE PROVISIONS

- (a) INTERACTION OF TITLE 22A WITH OTHER CODE OFFENSES. The provisions of Title 22A are not applicable to offenses in other titles in the Code, unless the Code specifically provides otherwise.
- (b) INTERACTION OF TITLE 22A WITH OTHER CODE PROVISIONS. The provisions of Title 22A shall not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil action.

Criminal Code Reform Commission Language

§ 22A-104 APPLICABILITY OF THE GENERAL PART

Unless otherwise provided by law, provisions in subtitle I of Title 22A apply to all other provisions of Title 22A.

Corresponding Sentencing Commission Language

None.

Criminal Code Reform Commission Language

**§ 22A-208 PRINCIPLES OF LIABILITY GOVERNING ACCIDENT, MISTAKE, AND
IGNORANCE**

(a) EFFECT OF ACCIDENT, MISTAKE, AND IGNORANCE ON LIABILITY. A person is not liable for an offense when that person's accident, mistake, or ignorance as to a matter of fact or law negates the existence of a culpable mental state applicable to a result or circumstance in that offense.

(b) CORRESPONDENCE BETWEEN MISTAKE AND CULPABLE MENTAL STATE REQUIREMENTS. For purposes of determining when a particular mistake as to a matter of fact or law negates the existence of a culpable mental state applicable to a circumstance:

(1) *Purpose.* Any reasonable or unreasonable mistake as to a circumstance negates the existence of the purpose applicable to that element.

(2) *Knowledge.* Any reasonable or unreasonable mistake as to a circumstance negates the existence of the knowledge applicable to that element.

(3) *Recklessness.* Any reasonable mistake as to a circumstance negates the recklessness applicable to that element. An unreasonable mistake as to a circumstance only negates the existence of the recklessness applicable to that element if the person did not recklessly make that mistake.

(4) *Negligence.* Any reasonable mistake as to a circumstance negates the existence of the negligence applicable to that element. An unreasonable mistake as to a circumstance only negates the existence of the negligence applicable to that element if the person did not recklessly or negligently make that mistake.

(c) IMPUTATION OF KNOWLEDGE FOR DELIBERATE IGNORANCE. When a culpable mental state of knowledge applies to a circumstance in an offense, the required culpable mental state is established if:

(1) The person was reckless as to whether the circumstance existed; and

(2) The person avoided confirming or failed to investigate whether the circumstance existed with the purpose of avoiding criminal liability.

Corresponding Sentencing Commission Language

§ 22A-207 EFFECT OF IGNORANCE OR MISTAKE

EFFECT OF IGNORANCE OR MISTAKE. A person is not liable for an offense when the person's ignorance or mistake as to a matter of fact or law:

- (1) Negates a culpable mental state applicable to an objective element in an offense definition; or
- (2) The statute defining the offense specifically provides that mistake or ignorance constitutes a defense.

Criminal Code Reform Commission Language

§ 22A-209 PRINCIPLES OF LIABILITY GOVERNING INTOXICATION

(a) **RELEVANCE OF INTOXICATION TO LIABILITY.** A person is not liable for an offense when that person's intoxication negates the existence of a culpable mental state applicable to a result or circumstance in that offense.

(1) *Definition of Intoxication.* "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

(b) **CORRESPONDENCE BETWEEN INTOXICATION AND CULPABLE MENTAL STATE REQUIREMENTS.**

(1) *Purpose.* A person's intoxication negates the existence of the culpable mental state of purpose applicable to a result or circumstance when, due to the person's intoxicated state, that person does not consciously desire to cause that result or that the circumstance exists.

(2) *Knowledge.* A person's intoxication negates the existence of the culpable mental state of knowledge applicable to a result or circumstance when, due to the person's intoxicated state, that person is not practically certain that the person's conduct will cause that result or that the circumstance exists.

(3) *Recklessness.* A person's intoxication negates the existence of the culpable mental state of recklessness applicable to a result or circumstance when, due to the person's intoxicated state, that person is not aware of a substantial risk that the person's conduct will cause that result or that the circumstance exists, unless that person's conduct satisfies subsection (c), in which case the culpable mental state of recklessness is established.

(c) **IMPUTATION OF RECKLESSNESS FOR SELF-INDUCED INTOXICATION.** When a culpable mental state of recklessness applies to a result or circumstance in an offense, recklessness is established if:

(1) The person, due to self-induced intoxication, fails to perceive a substantial risk that the person's conduct will cause that result or that the circumstance exists; and

(2) The person is negligent as to whether the person's conduct will cause that result or as to whether that circumstance exists.

Corresponding Sentencing Commission Language

{§ 22A-208 EFFECT OF VOLUNTARY INTOXICATION}

{A person is not liable for an offense when the person’s voluntary intoxication negates a culpable mental state applicable to an objective element in an offense definition unless otherwise stated in the statute defining the offense. However, the voluntary intoxication of a person accused of a crime shall establish the culpable mental state of “recklessly,” as defined in § 22A-205(3), if: (1) the person, due to voluntary intoxication, fails to perceive a risk that a result will occur or that a circumstance exists; and (2) the risk the person failed to perceive is otherwise sufficient to establish that the person acted “recklessly.”}¹

¹ 9/30/15 Minutes: The Committee had no further comments but wished to revisit this provision after completion of an agency review. The provision was submitted for agency review on 10/5/15. No responses have been received to date.