



Second Draft of Report #9
Recommendations for Theft and
Damage to Property Offenses

SUBMITTED FOR ADVISORY GROUP REVIEW
December 28, 2018

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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This Draft Report contains recommended reforms to District of Columbia criminal statutes for review by the D.C. Criminal Code Reform Commission's statutorily designated Advisory Group. A copy of this document and a list of the current Advisory Group members may be viewed on the website of the D.C. Criminal Code Reform Commission at www.ccrdc.dc.gov.

This Draft Report has two parts: (1) draft statutory text for an enacted Title 22 of the D.C. Code; and (2) commentary on the draft statutory text. The commentary explains the meaning of each provision, considers whether existing District law would be changed by the provision (and if so, why this change is being recommended), and addresses the provision's relationship to code reforms in other jurisdictions, as well as recommendations by the American Law Institute and other experts.

Any Advisory Group member may submit written comments on any aspect of this Draft Report to the D.C. Criminal Code Reform Commission. The Commission will consider all written comments that are timely received from Advisory Group members. Additional versions of this Draft Report may be issued for Advisory Group review, depending on the nature and extent of the Advisory Group's written comments. The D.C. Criminal Code Reform Commission's final recommendations to the Council and Mayor for comprehensive criminal code reform will be based on the Advisory Group's timely written comments and approved by a majority of the Advisory Group's voting members.

The deadline for the Advisory Group's written comments on this Second Draft of Report #9, Recommendations for Theft and Damage to Property Offenses is March 1, 2019 (nine weeks from the date of issue, which includes a two-week extension from the initial deadline due to the federal shutdown). Oral comments and written comments received after March 1, 2019 may not be reflected in the next draft or final recommendation. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

[This report recommends changes to the RCC draft statutory language of theft contained in the First Draft of Report #9 (August 11, 2017). Changes are in red ink.]

RCC § 22E-2101. Theft.

- (a) *Offense.* A person commits the offense of theft if that person:
- (1) Knowingly takes, obtains, transfers, or exercises control over;
 - (2) The property of another;
 - (3) Without the consent of the owner; and
 - (4) With intent to deprive that person of the property.
- (b) *Definitions.* The term “possess” has the meaning specified in § 22A-202, the terms “knowingly,” and “intent,” have the meanings specified in § 22A-206, the term “in fact” has the meaning specified in § 22A-207, and the terms “consent,” “property,” “property of another,” “owner,” and “value,” have the meanings specified in § 22A-2001.
- (c) *Gradations and Penalties.*
- (1) *Aggravated Theft.* A person is guilty of aggravated theft if the person commits theft and the property, in fact, has a value of \$250,000 or more. Aggravated theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (2) *First Degree Theft.*
 - (A) A person is guilty of first degree theft if the person commits theft and:
 - (i) The property, in fact, has a value of \$25,000 or more; or
 - (ii) The property, in fact: is a motor vehicle, and the value of the motor vehicle is \$25,000 or more.
 - (B) Second degree theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (3) *Second Degree Theft.*
 - (A) A person is guilty of second degree theft if the person commits theft and:
 - (i) The property, in fact, has a value of \$2,500 or more; or
 - (ii) The property, in fact, is a motor vehicle.
 - (B) Second degree theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (4) *Third Degree Theft.*
 - (A) A person is guilty of third degree theft if the person commits theft and:
 - (i) The property, in fact, has a value of \$250 or more; or
 - (ii) **The property, in fact, is taken from the immediate actual possession of another person.**
 - (B) Third degree theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (5) *Fourth Degree Theft.* A person is guilty of fourth degree theft if the person commits theft and the property, in fact, has any value. Fourth degree theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[This report recommends that the below draft commentary language in red ink be added to the most recent RCC draft commentary for theft.]

Commentary

***Explanatory Note.** This section establishes the revised theft offense and penalty gradations for the Revised Criminal Code (RCC). The offense proscribes a broad range of conduct in which there is an intent to deprive another of property without the owner’s consent. The penalty gradations are primarily based on the value of the property involved in the crime. The revised theft offense replaces the theft statute,¹ part of the robbery statute,² and part of the carjacking statute³ in the current D.C. Code.*

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Subsection (c) provides the penalties for the revised offense. [RESERVED.]

Subsection (c) grades theft primarily according to the value of the property involved.⁴ The **two deviations** from this valuation scheme **are two grades of theft that specifically address theft of motor vehicles, a defined term, and the grade of theft that specifically addresses theft from a person.** However, even in the grades **that address motor vehicles,** the value of the motor vehicle is still the primary factor for grading.⁵ “In fact,” a defined term, is used in all of the theft gradations to indicate that there is no culpable mental state requirement as to the value of the property, the fact that the property is a motor vehicle, **or the fact that the property is taken from the immediate actual possession of another person.** The defendant is strictly liable as to the value of the property, the fact that it is a motor vehicle, **or the fact that the property is taken from the immediate actual possession of another person.**⁶ **[RESERVED.]**

***Relation to Current District Law.** The revised theft statute changes current District law in three additional main ways to reduce overlap with other offenses and improve the proportionality of penalties.⁷*

First, the revised third degree theft statute criminalizes non-violent pickpocketing or taking property from the immediate actual possession of another person as a property crime. The District’s current robbery statute criminalizes pickpocketing and any other takings of property from the “immediate actual possession” of another person “by force or violence, whether against

¹ D.C. Code § 22-3211.

² D.C. Code § 22-2801.

³ D.C. Code § 22-2803.

⁴ For example, if the value of the property has any value, it is Fourth Degree Theft; if the value of the property is, in fact, \$250,000 or more, it is Aggravated Theft.

⁵ Second Degree Theft includes theft of a motor vehicle, which includes motor vehicles with a greater value than the \$2,500 threshold for other property in the same grade. Effectively, this deviation allows for low-value motor vehicles to be treated as higher value property, with correspondingly greater penalties than they would otherwise receive if graded within the value thresholds of Third or Fourth Degree Theft. However, per the language in First Degree Theft, the theft of a motor vehicle valued at \$25,000 or more is no different than the theft of any other property valued \$25,000 or more in that grade.

⁶ [The Commission will reassess specific merger issues for this offense at a later date, when more offenses have been reviewed. At this time, in addition to property provisions specified in § 22A-2003, robbery, as defined in § 22A-1201, has been identified as merging with theft when arising from the same course of conduct.]

⁷ [This draft report is limited to discussing non-violent pickpocketing and non-violent takings of property other than a motor vehicle. The revised theft statute (RCC § 22E-2101) criminalizes non-violent takings of motor vehicles and the revised robbery statute criminalizes violent takings of motor vehicles (RCC § 22E-1201). See Commentary to RCC § 22E-2101 and RCC § 22E-1201.]

resistance or by sudden or stealthy seizure or snatching, or by putting in fear.”⁸ The DCCA has interpreted this statute to mean that a robbery may be committed even when the complainant did not have the property on their person or know the property was taken (and so was not menaced, let alone injured),⁹ and the only “force or violence” involved was the force of moving the object taken.¹⁰ While the DCCA has suggested that there is a limit to sudden or stealthy seizures or snatchings under the current robbery statute due to the “by force or violence” requirement, the precise contours of this limit have not been articulated.¹¹ In contrast, the RCC criminalizes all non-violent pickpocketing, seizures, and snatchings of property from the immediate actual possession of another person as third degree theft, a property crime, instead of robbery, an offense against persons. Taking an object from the immediate actual possession of another person without his or her knowledge merits less severe punishment when there is no physical harm or menacing. This change improves the proportionality of the revised robbery and theft statutes.

Second, non-violent pickpocketing or taking property from the immediate actual possession of another person is no longer subject to a penalty enhancement for the presence or use of a dangerous weapon or for the status of the complainant. The current robbery statute is subject to enhanced penalties under current D.C. Code § 22-4502 for committing robbery “while armed” or “having readily available” a dangerous weapon,¹² as well as several enhanced penalties for robbery committed against certain complainants.¹³ In contrast, in the RCC, non-

⁸ D.C. Code § 22-2801.

⁹ The DCCA has stated that “immediate actual possession” under the robbery statute “refers to the area within which the victim can reasonably be expected to exercise some physical control over the property.” *Sutton v. United States*, 988 A.2d 478, 485 (D.C. 2010). See also *Spencer v. United States*, 73 App. D.C. 98 (D.C. Cir. 1940) (affirming robbery conviction when defendant took cash from person’s pants, which were resting on a chair at the foot of a bed that defendant was using at the time); *Ulmer v. United States*, 649 A.2d 295, 298 (D.C. 1994).

¹⁰ District case law states that any taking from the immediate actual possession of another person satisfies the “by force or violence” requirement in the current robbery statute. See, e.g., *Turner v. United States*, 16 F.2d 535, 536 (D.C. Cir. 1926) (“[T]he requirement for force is satisfied within the sense of the statute by an actual physical taking of the property from the person of another, even though without his knowledge and consent, and though the property be unattached to his person.”).

¹¹ In a 2017 case, in response to an argument in the dissent, the DCCA rejected the proposition that any taking from the immediate actual possession of another person is robbery instead of theft because “[s]uch a principle would completely nullify the ‘by force or violence’ element of robbery.” *Gray v. United States*, 155 A.3d 377, 386 (D.C. 2017); see also *id.* at 386 n.18 (recognizing that “there are passages in opinions . . . that, divorced from context, could be read as supporting the broad proposition advanced by the dissent” that any theft from a person or from his or her immediate possession constitutes a robbery, but stating that “[w]e are unaware of any opinion binding on us that actually *holds* that this is the case.”). However, this discussion about the limits of sudden or stealthy seizure or snatching under the current robbery statute is dicta. The jury was not instructed on sudden or stealthy seizure or snatching, *id.* at 382 & n. 13, and this provision of the current robbery statute was not addressed in the court’s holding. The issue in *Gray* was whether the trial court erred in refusing to instruct the jury on the lesser included offense of second degree theft. *Id.* at 382. The court stated that “[o]ur earlier opinions glossed ‘by force or violence’ as ‘using force or violence’ or ‘accomplished by force of by putting the victim in fear’ . . . suggesting that we understood the statute to require proof of some sort of purposeful employment or at least knowing exploitation of force or violence.” *Id.* at 384 (internal citations omitted). The DCCA held that the trial court did err because, under the “unusual” facts of the case, “the jury rationally could have doubted that [appellant] assaulted the women intending to effectuate the theft or that, in taking [complainant’s] money, [appellant] was conscious of any fear (and lowered resistance) [complainant] might have experienced from the assaults.” *Id.* at 383.

¹² D.C. Code § 22-4502.

¹³ The District’s protection of District public officials statute penalizes various actions, including taking the property of any District official or employee while in the course of his or her duties or on account of those duties. D.C. Code § 22-851(c). The District also has penalty enhancements for robbery when the complainant is: a minor (D.C. Code

violent pickpocketing or taking property from the immediate actual possession of another person constitutes third degree theft and is not subject to these enhanced penalties. As a non-violent offense, such penalty enhancements are unnecessary. However, an actor still may be subject to additional criminal liability in the RCC for possessing a dangerous weapon during non-violent pickpocketing or taking property from the immediate actual possession of another person,¹⁴ or when targeting the complainant because of a characteristic such as his or her race or sex.¹⁵ In addition, any actual use or display of a dangerous weapon during the taking would constitute robbery under the RCC. This change improves the proportionality of the revised robbery and theft statutes.

Third, the revised theft statute punishes attempted non-violent pickpocketing or taking property from the immediate actual possession of another person consistent with other criminal attempts. The D.C. Code currently codifies a penalty for attempted robbery that differs from the general penalty for attempted crimes and is located in its own statutory section.¹⁶ In contrast, under the revised theft statute, the General Part's attempt provisions¹⁷ specify what must be proven to establish attempt liability and establish penalties for attempted theft consistent with other offenses. There is no clear rationale for such special attempt penalties in robbery as compared to other offenses. This change improves the consistency of the revised robbery statute with other offenses.

Beyond these three changes to current District law, five other aspects of the revised theft statute may constitute substantive changes of law.

First, third degree of the revised theft statute does not require asportation of the property for non-violent pickpocketing or taking property from the immediate actual possession of another person. The current robbery statute does not include an asportation element. However, the DCCA has stated that robbery requires that the defendant “possess the item being stolen and move it.”¹⁸ Asportation is a minimal requirement under current robbery law that may be satisfied by “the slightest moving of an object from its original location.”¹⁹ Third degree of the revised theft statute eliminates the asportation requirement as redundant to liability for non-violent pickpocketing or taking of property from the immediate actual possession of another person. It is unclear how a defendant could “take” property without also slightly moving it and satisfying any asportation requirement. However, to the extent that eliminating an asportation requirement expands the scope of current District law, such expansion reflects the gravamen of the gradation—invading the space of the complainant.²⁰ Eliminating the asportation requirement

§§ 22-3611; 23-1331(4)); a senior citizen (D.C. Code § 22-3601); a taxicab driver (D.C. Code §§ 22-3751; 22-3752); a transit operator or Metrorail station manager (D.C. Code §§ 22-3751.01; 22-3752); or a member of a citizen patrol (D.C. Code § 22-3602).

¹⁴ See, e.g., [RCC § 22E-XXXX possession of an unregistered firearm].

¹⁵ See, RCC § 22E-807. Hate Crime Penalty Enhancement.

¹⁶ D.C. Code § 22-2802.

¹⁷ RCC § 22E-301.

¹⁸ *Moorer v. United States*, 868 A.2d 137, 142 (D.C. 2005) (discussing *Newman v. United States*, 705 A.2d 246 (D.C. 1997)). See also D.C. Crim. Jur. Instr. § 4.300 (“[a]lthough not explicitly required in the statute, the government must prove that the defendant took the property and carried it away[.]”).

¹⁹ See, e.g., *Simmons v. United States*, 554 A.2d 1167, 1171 n.9 (D.C. 1989) (citing, *Durphy v. United States*, 235 A.2d 326, 327 (D.C.1967)).

²⁰ See, e.g., § 19.3(b) Carrying away (asportation), 3 Subst. Crim. L. § 19.3(b) (3d ed.) (“The rationale is that, in any taking from the area [within the victim’s presence] ‘the rights of the person to inviolability would be encroached upon and his personal security endangered, quite as much as if his watch or purse had been taken from his pocket.’”) (quoting *State v. Eno*, 8 Minn. 220 (1963)).

is also consistent with the revised robbery statute (RCC § 22E-1201) and revised unauthorized use of property statute (RCC § 22E-2102), neither of which requires asportation. This change improves the clarity and consistency of the revised statute.

Second, the revised theft statute’s provision for non-violent pickpocketing or taking property from the immediate actual possession of another person requires a culpable mental state of knowledge for the element that the defendant “take” the property. The current robbery statute does not specify any culpable mental states, and there is no case law directly on point. However, the DCCA has stated that robbery consists of larceny and an assault,²¹ and requires a “felonious taking,”²² suggesting that a culpable mental state similar to that of theft should be applied. Instead of this ambiguity, the revised theft statute applies a “knowing” culpable mental state to the element of taking. Applying a knowledge culpable mental state requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.²³ Requiring a knowing culpable mental state is consistent with other revised offenses against property like fraud (RCC § 22E-2201) and unauthorized use of property (RCC § 22E-2102), which generally require that the defendant act knowingly with respect to the elements of the offense. This change improves the clarity and consistency of the revised statute.

Third, the revised theft statute’s provision for non-violent pickpocketing or taking property from the immediate actual possession of another person requires that the taking be “without the consent of the owner” and requires a culpable mental state of knowledge for this element. The current robbery statute does not state as an element that the actor lacks the consent of the owner. However, the DCCA has stated that robbery requires a “felonious taking” “against the other person’s will,”²⁴ and District practice includes such an element in the robbery offense.²⁵ Instead of this ambiguity, the revised theft statute requires that the actor lack the owner’s “consent,” as that term is defined in RCC § 22E-1001, and applies a “knowing” culpable mental state to this element. Applying a knowledge culpable mental state requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.²⁶ Requiring a knowing culpable mental state is consistent with other revised offenses against property like unauthorized use of property (RCC § 22E-2102), which generally require that the defendant act knowingly with respect to the elements of the offense. This change improves the clarity and consistency of the revised statute.

Fourth, the revised theft statute’s provision for non-violent pickpocketing or taking property from the immediate actual possession of another person requires that the property be “property of another,” as that term is defined in RCC § 22E-2001, and requires a culpable mental state of knowledge for this element. The current robbery statute does not state as an element that

²¹ *Lattimore v. United States*, 684 A.2d 357, 359 (D.C. 1996) (citing *United States v. McGill*, 487 F.2d 1208, 1209 (U.S.App. D.C. 1973)).

²² *Lattimore v. United States*, 684 A.2d 357, 359 (D.C. 1996) citing *United States v. McGill*, 487 F.2d 1208, 1209 (U.S.App. D.C. 1973)).

²³ See *Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015) (“[O]ur cases have explained that a defendant generally must ‘know the facts that make his conduct fit the definition of the offense,’ even if he does not know that those facts give rise to a crime. (Internal citation omitted)”).

²⁴ *Lattimore v. United States*, 684 A.2d 357, 359-60 (D.C. 1996) (citing *United States v. McGill*, 487 F.2d 1208, 1209 (U.S.App. D.C. 1973)).

²⁵ D.C. Crim. Jur. Instr. § 4.300 (listing as an element of robbery that the actor “did so against the will” of the complainant).

²⁶ See *Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015) (“[O]ur cases have explained that a defendant generally must ‘know the facts that make his conduct fit the definition of the offense,’ even if he does not know that those facts give rise to a crime. (Internal citation omitted)”).

the property taken belong to another person. However, the DCCA has held that the current robbery statute incorporates the elements of “larceny,”²⁷ which requires that property belong to another person.²⁸ Instead of this ambiguity, the revised theft statute requires that the property be “property of another,” as that term is defined in RCC § 22E-2001. The definition of “property of another” clarifies when property is subject to the theft offense, such as when the accused takes property in which he or she has a joint ownership.²⁹ This change improves the clarity and consistency of the revised statute.

Fifth, the revised theft statute’s provision for non-violent pickpocketing or taking property from the immediate actual possession of another person, by the use of “in fact,” requires strict liability for the fact that the property was taken from the “immediate actual possession of another person.” The current robbery statute does not specify any culpable mental states, and there is no DCCA case law directly on point. Instead of this ambiguity, the revised third degree theft gradation requires strict liability for the fact that the property was taken from the “immediate actual possession of another person.” Requiring, at a minimum, a knowing culpable mental state for the elements of an offense that make otherwise legal conduct illegal is a generally accepted legal principle.³⁰ However, an actor may be held strictly liable for elements of an offense that aggravate what is already illegal conduct.³¹ This change improves the clarity and consistency of the revised statute.

Other changes to the revised statute are clarificatory in nature and are not intended to change current District law.

First, the revised theft statute requires that the defendant take the property with intent to deprive the owner of the property. The DCCA has held that the current robbery statute incorporates the elements of “larceny,”³² which requires an intent to deprive.³³ Codifying this element in the revised theft statute clarifies the scope of non-violent pickpocketing or taking property from the immediate actual possession of another person.

Second, per subsection (c) of the revised theft statute, a person may not receive a conviction for both theft, in any degree, and robbery, in any degree, when they are based on the

²⁷ *Lattimore*, 684 A.2d at 359 (“In the District of Columbia, robbery retains its common law elements. Thus, the government must prove larceny and assault.”) (internal citations omitted).

²⁸ *See, e.g., Lattimore*, 684 A.2d at 360 (“An individual has committed larceny if that person “without right took and carried away property of another with the intent to permanently deprive the rightful owner thereof.”) (quoting *Durphy v. United States*, 235 A.2d 326, 327 (D.C.1967)).

²⁹ The relevant language in the RCC definition of “property of another” is “any property that a person has an interest in that the accused is not privileged to interfere with, regardless of whether the accused also has an interest in that property.” The second requirement of the RCC definition of “property of another” is that the definition does not include “any property in the possession of the accused that the other person has only a security interest in.” The definition of “property of another” is discussed in the commentary to RCC § 22E-2001.

³⁰ *Elonis v. United States*,” 135 S. Ct. 2001, 2010, 192 L.Ed.2d 1 (2015).

³¹ *Elonis v. United States*,” 135 S. Ct. 2001, 2010, 192 L.Ed.2d 1 (2015) (“When interpreting federal criminal statutes that are silent on the required mental state, we read into the statute ‘only that mens rea which is necessary to separate wrongful conduct from ‘otherwise innocent conduct.’” *Carter v. United States*, 530 U.S. 255, 269, 120 S.Ct. 2159, 147 L.Ed.2d 203 (2000) (quoting *X-Citement Video*, 513 U.S., at 72, 115 S.Ct. 464.”). In this instance, administering an intoxicant without consent and with the specified intent is already sufficient to impose assault or attempted assault liability.

³² *Lattimore*, 684 A.2d at 359 (“In the District of Columbia, robbery retains its common law elements. Thus, the government must prove larceny and assault.”) (internal citations omitted).

³³ *See, e.g., Lattimore*, 684 A.2d at 360 (“An individual has committed larceny if that person “without right took and carried away property of another with the intent to permanently deprive the rightful owner thereof.”) (quoting *Durphy v. United States*, 235 A.2d 326, 327 (D.C.1967)).

same course of conduct. DCCA case law establishes that the current second degree theft offense is a lesser included offense of robbery.³⁴

Relation to National Legal Trends. *The revised theft offense’s above-mentioned substantive changes to current District law are broadly supported by national legal trends.*

First, based on a review of the reformed jurisdictions’ theft and robbery statutes, there is strong support in the criminal codes of reformed jurisdictions for criminalizing non-violent pickpocketing or taking property from the immediate actual possession of another person as a property crime. The DCCA has interpreted the District’s current robbery statute to mean that a robbery may be committed even when the complainant did not have the property on their person or know the property was taken, and the only “force or violence” involved was the force of moving the object taken. None of the twenty-nine states that have comprehensively reformed criminal codes influenced by the Model Penal Code (MPC) and have a general part³⁵ (hereinafter “reformed code jurisdictions”) statutorily define robbery to include non-violent pickpocketing or taking property from the immediate actual possession of another person.³⁶ In addition, at least

³⁴ See, e.g., *Leak v. United States*, 757 A.2d 739, 741 (D.C. 2000) (“There is no dispute here that theft is a lesser included offense of robbery.”); *Gray v. United States*, 155 A.3d 377, 381 (D.C. 2017) (“Here, as it is well-established that second-degree theft is a lesser included offense of robbery . . .”) (citing *Leak v. United States*, 757 A.2d 739, 741 (D.C. 2000)). Although the current theft statute and the current robbery statute may not satisfy the elements test the DCCA uses to determine a lesser-included relationship, see *Moorer v. United States*, 868 A.2d 137, 140 (D.C. 2005), the case law is clear that the DCCA considers theft to be a lesser included offense of robbery.

In addition, several DCCA cases establish that “larceny” is a lesser included offense of robbery. See, e.g., *Ulmer v. United States*, 649 A.2d 295, 297 (D.C. 1994) (“Clearly, larceny is a lesser-included offense of robbery and armed robbery.”). However, the District no longer has a “larceny” offense. The 1982 Theft and White Collar Crimes Act of 1982 codified the “theft” statute (D.C. Code § 22-3211), which has different elements than larceny, and replaced several other theft-related offenses. See generally Chairperson Clarke of the Judiciary Committee, *Extension of Comments on Bill No. 4-193: The District of Columbia Theft and White Collar Crimes Act of 1982* (July 20, 1982) (hereinafter *Extension of Comments on Bill No. 4-193*).

³⁵ See Paul H. Robinson & Markus D. Dubber, *The American Model Penal Code: A Brief Overview*, 10 NEW CRIM. L. REV. 319, 326 (2007) (listing 34 jurisdictions, six of which—Florida, Georgia, Iowa, Nebraska, New Mexico, and Wyoming—do not have general parts analogous to the Model Penal Code General Part). In addition, Tennessee reformed its criminal code after the publication of this article.

³⁶ As is discussed in the national legal trends section of the commentary to the revised robbery statute (RCC § 22E-1201), robbery statutes in all reformed code jurisdictions, as well as the MPC, require either “bodily injury,” force, threat of force, violence, intimidation, or committing or threatening to commit any felony. However, it is unclear exactly how broadly courts in these jurisdictions have interpreted the robbery statutes. Although stealthily taking property from the immediate actual possession of another without any touching would not constitute robbery in the 29 reformed jurisdictions, it is possible that a pick-pocketing that involves even a slight amount of physical contact could still satisfy the force requirement in some jurisdictions. See, e.g., 18 Pa. Stat. Stat. Ann. § 3701 (defining robbery as taking or removing property, “by force however slight[.]”). See also, LaFave, Wayne, 3 Subst. Crim. L. § 20.3 (2d ed.) (“Taking the owner’s property by stealthily picking his pocket is not taking by force and so is not robbery; but if the pickpocket or his confederate jostles the owner, or if the owner, catching the pickpocket in the act, struggles unsuccessfully to keep possession, the pickpocket’s crime becomes robbery. To remove an article of value, attached to the owner’s person or clothing, by a sudden snatching or by stealth is not robbery unless the article in question (e.g., an earring, pin or watch) is so attached to the person or his clothes as to require some force to effect its removal.”).

³⁶ LaFave, 3 SUBST. CRIM. L. § 20.3. In most jurisdictions, purse snatching itself does not constitute robbery. Peter G. Guthrie, *Purse Snatching as Robbery or Theft*, 42 A.L.R.3d 1381 (2014). However, depending on the specific facts, it is conceivable that a purse snatching could involve sufficient use of physical strength to constitute “overpowering physical force.” However, this would be a highly fact specific inquiry, and the revised robbery statute is not intended to categorically include or bar purse snatchings.

15 of the 29 reformed jurisdictions include non-violent pickpocketing or taking property from the immediate actual possession of another person as a gradation of theft.³⁷

Second, based on a review of the reformed jurisdictions' theft statutes, there is strong support in the criminal codes of reformed jurisdictions for eliminating the penalty enhancements for the presence or use of a dangerous weapon or for the status of the complainant. The current robbery statute is subject to enhanced penalties for committing robbery "while armed" or "having readily available" a dangerous weapon, as well as several enhanced penalties for robbery committed against certain complainants. As a non-violent offense, penalty enhancements are unnecessary for non-violent pickpocketing or taking property from the immediate actual possession of another person such. None of the 15 reformed jurisdictions³⁸ with theft gradations for non-violent pickpocketing or taking property from the immediate actual possession of

³⁷ Ala. Code § 13A-8-3(a) (including in first degree theft "property of any value taken from the person of another."); Alaska Stat. Ann. § 11.46.130(a)(3) (including in second degree theft "property is taken from the person of another."); Ariz. Rev. Stat. Ann. § 13-1802(G) (making theft of any property or services with a value of less than \$1,000 a class 1 misdemeanor, "unless the property is taken from the person of another," in which case it is a Class 6 felony); Colo. Rev. Stat. Ann. § 18-4-401(5) (including in the theft statute "[t]heft from the person of another by means other than the use of force, threat, or intimidation is a class 5 felony without regard to the value of the thing taken."); Conn. Gen. Stat. Ann. § 53a-123(a)(3) (including in second degree theft "the property, regardless of its nature or value, is taken from the person of another."); Haw. Rev. Stat. Ann. § 708-831(1) (including in second degree theft "property from the person of another."); 720 Ill. Comp. Stat. Ann. 5/16-1(b)(4) (making "theft from a person not exceeding \$500 in value" a Class 3 felony); Mo. Ann. Stat. § 570.030(3)(2) (making theft a Class C felony if "the value of property or services is an element" of the offense and the "actor physically takes the property appropriated from the person of the victim."); N.J. Stat. Ann. § 2C:20-2(b)(2) (making theft a crime of the third degree if "[i]t is from the person of the victim."); N.Y. Penal Law § 155.30(5) (including in fourth degree theft "[t]he property, regardless of its nature and value, is taken from the person of another."); S.D. Codified Laws § 22-30A-17(3) (including in grand theft property that is "taken from the person of another with a value of less than or equal to two thousand five hundred dollars."); Tex. Penal Code Ann. § 31.03(e)(4)(B) (making theft a state jail felony if "regardless of value, the property is stolen from the person of another."); Utah Code Ann. § 76-6-412(1) (making theft a second degree felony if the "property is stolen from the person of another."); Wash. Rev. Code Ann. § 9A.56.030(1)(b) (including in first degree theft "[p]roperty of any value . . . taken from the person of another."); Wis. Stat. Ann. § 943.20(3)(e) (making theft a Class G felony if "the property is taken from the person of another.").

³⁸ Ala. Code § 13A-8-3(a) (including in first degree theft "property of any value taken from the person of another."); Alaska Stat. Ann. § 11.46.130(a)(3) (including in second degree theft "property is taken from the person of another."); Ariz. Rev. Stat. Ann. § 13-1802(G) (making theft of any property or services with a value of less than \$1,000 a class 1 misdemeanor, "unless the property is taken from the person of another," in which case it is a Class 6 felony); Colo. Rev. Stat. Ann. § 18-4-401(5) (including in the theft statute "[t]heft from the person of another by means other than the use of force, threat, or intimidation is a class 5 felony without regard to the value of the thing taken."); Conn. Gen. Stat. Ann. § 53a-123(a)(3) (including in second degree theft "the property, regardless of its nature or value, is taken from the person of another."); Haw. Rev. Stat. Ann. § 708-831(1) (including in second degree theft "property from the person of another."); 720 Ill. Comp. Stat. Ann. 5/16-1(b)(4) (making "theft from a person not exceeding \$500 in value" a Class 3 felony); Mo. Ann. Stat. § 570.030(3)(2) (making theft a Class C felony if "the value of property or services is an element" of the offense and the "actor physically takes the property appropriated from the person of the victim."); N.J. Stat. Ann. § 2C:20-2(b)(2) (making theft a crime of the third degree if "[i]t is from the person of the victim."); N.Y. Penal Law § 155.30(5) (including in fourth degree theft "[t]he property, regardless of its nature and value, is taken from the person of another."); S.D. Codified Laws § 22-30A-17(3) (including in grand theft property that is "taken from the person of another with a value of less than or equal to two thousand five hundred dollars."); Tex. Penal Code Ann. § 31.03(e)(4)(B) (making theft a state jail felony if "regardless of value, the property is stolen from the person of another."); Utah Code Ann. § 76-6-412(1) (making theft a second degree felony if the "property is stolen from the person of another."); Wash. Rev. Code Ann. § 9A.56.030(1)(b) (including in first degree theft "[p]roperty of any value . . . taken from the person of another."); Wis. Stat. Ann. § 943.20(3)(e) (making theft a Class G felony if "the property is taken from the person of another.").

another person have theft-specific penalty enhancements for the presence or use of a dangerous weapon or for the status of the complainant.

Third, based on a review of the reformed jurisdictions' theft statutes, there is strong support in the criminal codes of reformed jurisdictions for punishing attempted non-violent pickpocketing or taking property from the immediate actual possession of another person consistent with other criminal attempts. None of the 15 reformed jurisdictions' with theft gradations for non-violent pickpocketing or taking property from the immediate actual possession of another person have separate penalties for attempt.³⁹

³⁹ Ala. Code § 13A-8-3(a) (including in first degree theft “property of any value taken from the person of another.”); Alaska Stat. Ann. § 11.46.130(a)(3) (including in second degree theft “property is taken from the person of another.”); Ariz. Rev. Stat. Ann. § 13-1802(G) (making theft of any property or services with a value of less than \$1,000 a class 1 misdemeanor, “unless the property is taken from the person of another,” in which case it is a Class 6 felony); Colo. Rev. Stat. Ann. § 18-4-401(5) (including in the theft statute “[t]heft from the person of another by means other than the use of force, threat, or intimidation is a class 5 felony without regard to the value of the thing taken.”); Conn. Gen. Stat. Ann. § 53a-123(a)(3) (including in second degree theft “the property, regardless of its nature or value, is taken from the person of another.”); Haw. Rev. Stat. Ann. § 708-831(1) (including in second degree theft “property from the person of another.”); 720 Ill. Comp. Stat. Ann. 5/16-1(b)(4) (making “theft from a person not exceeding \$500 in value” a Class 3 felony); Mo. Ann. Stat. § 570.030(3)(2) (making theft a Class C felony if “the value of property or services is an element” of the offense and the “actor physically takes the property appropriated from the person of the victim.”); N.J. Stat. Ann. § 2C:20-2(b)(2) (making theft a crime of the third degree if “[i]t is from the person of the victim.”); N.Y. Penal Law § 155.30(5) (including in fourth degree theft “[t]he property, regardless of its nature and value, is taken from the person of another.”); S.D. Codified Laws § 22-30A-17(3) (including in grand theft property that is “taken from the person of another with a value of less than or equal to two thousand five hundred dollars.”); Tex. Penal Code Ann. § 31.03(e)(4)(B) (making theft a state jail felony if “regardless of value, the property is stolen from the person of another.”); Utah Code Ann. § 76-6-412(1) (making theft a second degree felony if the “property is stolen from the person of another.”); Wash. Rev. Code Ann. § 9A.56.030(1)(b) (including in first degree theft “[p]roperty of any value . . . taken from the person of another.”); Wis. Stat. Ann. § 943.20(3)(e) (making theft a Class G felony if “the property is taken from the person of another.”).