

MEMORANDUM

TO: Criminal Code Reorganization Committee

FROM: Jim Tomkovicz, Chair, Foundational Provision Subcommittee

RE: Proposals of Foundational Provision Subcommittee re: Actus Reus, Mens Rea, Mistake, Liability for Acts of Others

DATE: September 8, 2008

The following are the four provisions that the Foundational Provision Subcommittee proposes for inclusion in the Iowa Criminal Code:

ACT REQUIREMENT

(1) A person is not guilty of an offense unless his or her liability is based on conduct that includes a voluntary act or an omission to perform an act of which he or she is physically capable.

(2) The following are not voluntary acts within the meaning of this Section:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(2) A voluntary act is a conscious or habitual bodily movement that is the product of the effort or the determination of the person [or actor].”

Note: The two highlighted provisions are alternative formulations of how to define what constitutes a voluntary act. The subcommittee is evenly split, with two members favoring the first alternative and two favoring the second alternative. The tie will be broken once the fifth member votes.

(3) Liability for the commission of an offense may not be based on an omission unaccompanied by an act unless (a) the omission is expressly made sufficient by the law defining the offense; or (b) the person has a legal duty to perform the omitted act.

(4) Possession is an act, within the meaning of this section, if the possessor knowingly procured or received the thing possessed or was aware of his or her control thereof for a sufficient period to have been able to terminate his or her possession.

□ **CULPABILITY REQUIREMENT**

(1) Minimum Requirements of Culpability: Except when the legislature has enacted an offense that does not require proof of culpability for a material element, a person is not guilty of an offense unless he or she acted purposely, knowingly, recklessly, or negligently, as the law may require, with respect to each material element of the offense.”

(2) Kinds of Culpability Defined:

(a) Purposely: A person acts purposely with respect to the nature of his or her conduct or a result of his or her conduct when it is his or her conscious object to engage in conduct of that nature or to cause such a result and a person acts purposely with respect to an attendant circumstance when he or she is aware of the existence of that circumstance, unless he or she believes or hopes that it does not exist. A conditional purpose does satisfy the requirement of acting purposely unless the condition negates the culpability ordinarily demonstrated by acting purposely.

(b) Knowingly: A person acts knowingly with respect to the nature of his or her conduct if he or she is aware or an attendant circumstance if he or she is aware or aware of a high probability that his or her conduct is of that nature or that the circumstance exists and a person acts knowingly with regard to a result of his or her conduct when he or she is aware that it is practically certain that his or her conduct will cause such result.

(c) Recklessly: A person acts recklessly with respect to a material element of an offense when he or she consciously disregards a substantial and justifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him or her, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.”

(4) Negligently: A person acts negligently with respect to a material element of an offense when he or she should be aware of a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him or her, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(3) Culpability Required Unless Otherwise Required: When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

(4) Higher Levels of Culpability Than Required: A person who acts with a higher level of culpability than required for any material element of an offense satisfies the culpability requirement for that element.

(5) Culpability as to Illegality of Conduct: Unless otherwise provided, it is not necessary to prove that a person acted with any culpability as to whether his or her conduct constitutes an offense or as to the existence of an offense, meaning of an offense, or application of an offense to his or her conduct.

☐ IGNORANCE OR MISTAKE OF FACT OR LAW

(1) Ignorance or mistake as to a matter of fact or law is a defense if:

(a) because of the ignorance or mistake the defendant did not have the purpose, knowledge, belief, recklessness or negligence that is a required element of the offense; or

(b) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.

(2) Although ignorance or mistake would otherwise afford a defense to the offense charged under subsection (1), the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall alter the grade and degree of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

(3) A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:

(a) the statute or other enactment defining the offense is not known to the actor and has not been published or otherwise reasonably made available prior to the conduct alleged; or

(b) he or she acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in: (i) a statute or other enactment; (ii) a judicial decision, opinion or judgment; (iii) an administrative order or grant of permission; or (iv) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.

(4) The defendant must prove a defense arising under Subsection (3) of this Section by a preponderance of evidence.

□ CRIMINAL LIABILITY FOR THE ACTS OF OTHERS

(1) A person is guilty of an offense if it is committed by his or her own conduct or by the conduct of another person for which he or she is legally accountable, or both. Any person who is guilty of an offense committed by his or her own conduct or by the conduct of another person for which he or she is legally accountable shall be charged, tried, and punished as a principal.

(2) A person is legally accountable for the conduct of another person when:

(a) acting with the kind of culpability that is sufficient for the commission of the offense, he or she causes an innocent or irresponsible person to engage in such conduct; or

(b) he or she is made accountable for the conduct of such other person by the Iowa Code; or

(c) he or she is an accomplice of such other person in the commission of the offense.

(3) A person is an accomplice of another person in the commission of an offense if:

(a) with the knowledge that he or she is promoting or facilitating or will promote or facilitate the commission of the offense, he or she

(i) commands, encourages, or requests such other person to commit it, or

(ii) aids or agrees or attempts to aid such other person in planning or committing it, or

(iii) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or

(b) the law otherwise expressly declares that his or her conduct establishes his or her conduct complicity.

(4) When an offense requires proof of causation of a particular result, a person who knowingly promotes or facilitates the conduct that causes that result is an accomplice in the commission of the offense if he or she acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(5) When an offense requires proof of a particular circumstance, a person who knowingly promotes or facilitates the conduct of the person who commits the offense is an accomplice in the commission of the offense if he or she acts with the kind of culpability, if any, with respect

to that circumstance that is sufficient for the commission of the offense.

(6) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his or her incapacity.

(7) Unless otherwise provided by the Iowa Code, a person is not an accomplice in an offense committed by another person if:

(a) he or she is a victim of that offense; or

(b) he or she terminates his or her complicity prior to the commission of the offense and

(I) wholly deprives it of effectiveness in the commission of the offense; or

(ii) gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense;

(iii) the defendant shall have the burden of proving the defense provided in subsection (b) by a preponderance of the evidence.

(8) An accomplice may be convicted on proof of the commission of the offense and of his or her complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

(9) The guilt of an accomplice in the commission of an offense must be determined upon the facts which show the part that he or she had in the commission of the offense, and does not depend upon the degree of another person's guilt.

**(10) When two or more persons, acting in concert, knowingly participate in an offense, each is responsible for the acts of the other done in furtherance of the commission of the offense or escape therefrom, and each person's guilt will be the same as that of the person so acting, unless the act was one which the person could not reasonably expect to be done in the furtherance of the commission of the offense.*

**Currently, the subcommittee is evenly divided over whether to adopt the substance reflected in subsection (10)—which is currently Section 703.2 of the Iowa Criminal Code. Two members favor including the provision and two members oppose it. If adopted, it could appear as subsection 10 of the proposed provision or as an entirely separate provision.*

The subcommittee also recommends retention of the following provision, which is currently Section 703.3 of the Iowa Code, as a separate section of the Iowa Code:

☐ **ACCESSORY AFTER THE FACT**

Any person having knowledge that a public offense has been committed and that a certain person committed it, and who does not stand in the relation of husband or wife to the person who committed the offense, who harbors, aids or conceals the person who committed the offense, with the purpose of preventing the apprehension of the person who committed the offense, commits an aggravated misdemeanor if the public offense committed was a felony, or commits a simple misdemeanor if the public offense was a misdemeanor.