See: Minutes of Commission
6/17/69, p. 36, Vol. IX
Tape #68

CRIMINAL LAW REVISION COMMISSION
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ARTICLE 2, GENERAL PRINCIPLES OF CRIMINAL LIABILITY

Culpability

Preliminary Draft No. 4; April 1969

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Subcommittee No. 1

ARTICLE 2, GENERAL PRINCIPLES OF CRIMINAL LIABILITY

Culpability

Preliminary Draft No. 4; April 1969

Section 1. Culpability; definitions. As used in this ____, unless the context may require otherwise:

Existing Law
ORS 161.010
Intention: 161.010 (1) 163.010 et.seq. 166.220
Knowingly: 161.010(7)
Reckless: 483.992(1) 163.020(2)
Negligent: 161.010(2) 30.115(2)

(1) "Act" means a bodily movement.

(2) "Voluntary act" means a bodily movement performed consciously and includes the conscious possession or control of property.

(3) "Omission" means a failure to perform an act the performance of which is required by law.

(4) "Conduct" means an act or omission and its accompanying mental state.

(5) "To act" means either to perform an act or to omit to perform an act.

(6) "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as these terms are defined in sections (7), (8), (9) and (10) of this section.

(7) "Intentionally" or "with intent", when used with respect to a result or to conduct described by a statute defining a crime, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.

(8) "knowingly" or "with knowledge", when used with respect to conduct or to a circumstance described by a statute defining a crime, means that a

person acts with an awareness that his conduct is of a nature so described or that a circumstance so described exists.

(9) "Recklessly", when used with respect to a result or to a circumstance described by a statute defining a crime, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(10) "Criminal negligence" or "criminally negligent", when used with respect to a result or to a circumstance described by a statute defining a crime, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Section 2. General Requirements of Culpability.

(1) The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is capable of performing.

(2) Except as provided in subsection (3) of this section, a person is not guilty of a crime unless he acts with a culpable mental state with respect to each material element of the crime that necessarily requires a culpable mental state.

(3) Notwithstanding the provisions of subsection (2) of this section, a culpable mental state is not required if:

(a) the offense constitutes a violation, unless a culpable mental state is expressly included in the definition of the offense; or

(b) the statute defining a crime clearly indicates a legislative intent to dispense with any culpable mental state requirement.

Section 3. Construction of Statutes with Respect to Culpability Requirements. (1) If a statute defining a crime prescribes a culpable mental state but does not specify the element to which it applies, the prescribed culpable mental state applies to each material element of the crime that necessarily requires a culpable mental state.

(2) Except as provided in subsection (3) of Section 2 of this Article, if a statute defining a crime does not prescribe a culpable mental state, culpability is nonetheless required and is established only if a person acts intentionally, knowingly or recklessly.

(3) If the definition of a crime prescribes criminal negligence as the culpable mental state, it is also established if a person acts

intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.

(4) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of an offense unless the statute clearly so provides.

Section 4. Intoxication. (1) Voluntary intoxication is not, as such, a defense to a criminal charge, but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

(Existing Law (ORS 136.400

(2) When recklessness establishes an element of the crime, if the defendant, due to voluntary intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

COMMENTARY - CULPABILITY

A. Summary

These sections set out the blameworthy mental states or mens rea required for the establishment of criminal liability and are intended to present a simpler, more understandable and more accurate statement of the requirements than is found in existing law.

Section 1. Definitions:

Subsection (1) requires bodily movement.

Subsection (2) defines a voluntary act to be a bodily movement performed consciously; and includes the "conscious" possession

or control of property. Possession (or control) of property is included in the concept, providing the actor is aware of it.

Subsections (3), (4) and (5) stress the fact that omissions are included when performance is required by law.

Subsection (6) defines the term "culpable mental state". This must consist of one of the following: "intentionally", "knowingly", "recklessly" or with "criminal negligence" as defined in subsections (7), (8), (9) and (10). These are the only culpable mental states proposed to be recognized or used in the revised code.

Section 2. General Requirements of Culpability:

Subsection (1) enunciates the basic principle that, no matter how an offense is defined, the minimal requirement for criminal liability is conduct which includes a "voluntary" act or omission. This excludes all "involuntary" acts such as reflex actions, acts committed during hypnosis, epileptic fugue, etc. Also excluded are omissions to perform an act which one is incapable of performing.

Subsection (2) states the requirement of a culpable mental state for each material element "that necessarily requires a culpable mental state". The quoted phrase is designed to make it clear that the draft does not require scienter with respect to an element relating solely to the statute of limitations, jurisdiction, venue and the like.

Subsection (3) sets forth the only two exceptions to the need for a culpable mental state.

Section 3. Construction of Statutes with Respect to Culpability Requirements: This section provides a statutory framework for construing penal statutes as regards their culpability content, and the application of the culpable mental state requirement to specific crimes.

Section 4. Intoxication: Subsection (1) substantially restates existing law, ORS 136.400.

Subsection (2) provides, in effect, that a defendant may be guilty of reckless conduct, although he is unaware of a risk, if his unawareness is the result of voluntary intoxication. The reckless offender is aware of and "consciously disregards" it (Sec. 1 (9)). The criminally negligent offender is not aware of the risk created, therefore, cannot be guilty of disregarding it (Sec 1 (10)). The New York commentary suggests this illustration of how an offender can act with both forms of culpability: "[T]he driver of a car who stops at a bar, drinks heavily, continues on his way and then runs over a pedestrian whom he fails to see in his in-

> toxicated condition and whom he undoubtedly would have seen had he been sober. Here, his culpability goes well beyond his failure of perception at the time of the accident. By getting drunk in the course of his automobile trip, he consciously disregarded a substantial and unjustifiable risk of accident and, hence, in the overall setting he acted 'recklessly'." (Sec. 15.05, New York Revised Penal Law, p.23)

Note re ignorance or mistake as defense: The MPC, New York Revised Penal Law, Michigan Revised Criminal Code and the California draft contain sections relating to ignorance or mistake of fact or law as a defense. Preliminary Draft No. 3 included a similar section (Sec. 5). The Subcommittee, while not disagreeing with the legal proposition behind such a section, was of the opinion that a specific statute was probably unnecessary in view of the broad culpability provisions already formulated by the draft. A factual mistake that supports a defense of justification will be covered by a separate article.

B. Derivation

Section 1. This section is based on the definitions formulated in New York Revised Penal Law sections 15.00 - 15.05. Similar definitions appear in Michigan Revised Criminal Code sections 301, 305. The key definitions, i.e., the culpable mental states set out in subsections (7), (8), (9) and (10), follow the same rationale as section 2.02 of the MPC with one exception. The definition of "Knowingly" or "with Knowledge" in subsection (8) was changed by the New York reporters to eliminate any reference to result of conduct and to restrict the term to awareness of the nature of one's conduct or of the existence of specified circumstances (e.g., that property is stolen, that one has no right to enter a building, etc.). The New York commentary has this to say:

> "Under the formulations of the Model Penal Code (S. 2.02[2bii]) and the Illinois Criminal Code (S. 4-5 [b]) 'Knowingly' is, in one phase, almost synonymous with 'intentionally' in that a person achieves a given result 'knowingly' when he is 'practically certain' that his conduct will cause that result. This distinction between 'Knowingly' and 'intentionally' in that context appears highly technical or semantic, and the Revised Penal Law does not employ the word 'Knowingly' in defining result offenses. Murder of the common law variety, for example, is committed intentionally or not at all." (Commentary, S. 15.05, New York Revised Penal Law, p.22)

Section 2. Sources of the language used in this section are New York code sections 15.10, 15.15 and Model Penal Code S. 2.02.

Section 3. This section is based on language of Model Penal Code S. 2.02.

Section 4. Subsection (1) is derived from New York Revised Penal Law S. 15.25 with the modifying adjective "voluntary" retained from ORS 136.400. Subsection (2) is taken from MPC S. 2.08 (2).

C. Relationship to Existing Law (This section of the Commentary was prepared by Prof. Courtney Arthur, reporter for P.D. No. 1.)

The articulation of culpability requirements is of major importance in the development of a penal code. The draft here presented is in no sense original, but it is presented with the hope and the expectation that consideration of the problem will require a basic look at the law we now have and will point toward the law we ought to have.

ORS 161.010 expressly defines the following mental states: "Wilfully", "Neglect", "Corruptly", "Malice", "Wrongfully", "Wantonly", and "Knowingly". The definitions are not clear, and have been difficult to interpret and apply. See Hans A. Linde's article "Criminal Law - 1959 Oregon Survey," 39 Or. Law Rev. 161. "Malice" and "Maliciously" are defined as importing a wish to vex, annoy or injure another person, established either by proof or presumption of law. The definition is either very much too narrow, or it requires reference to the entire historical development of murder and other crimes which require malice for any sort of understanding. Criminal Law, Perkins (1957) 31, 173, 676. The definitions set out in ORS 161.010 are not useful tools for meaningful instruction of juries. Intent, intention and recklessness are not defined.

Jerome Hall in Chapter IV of his General Principles of Criminal Law, 2d ed., condenses the mental element required for criminal liability into three mental states: intention, recklessness and negligence. The Model Penal Code (and the New York and Illinois law and the California and Michigan drafts) adds knowledge.

The draft here submitted would change Oregon law in one significant area, that of the treatment of negligence and recklessness. The blameworthy mental state now required for guilt of negligent homicide under ORS 163.091 is gross negligence. In State v. Hodgdon, 244 Or 219 (1966) the Oregon Supreme Court held: (1) that gross negligence is the same when applied to civil law (guest passenger statute, ORS 30.115 (2)) as when used to define an ingredient of crime; (2) that the guest passenger statute definition of gross negligence may properly be used in instructing the jury in a negligent homicide case; and (3) that "in gross negligence, we find not simply an inadvertent breach of duty or imprudent conduct(as in ordinary negligence), but the violation of the duty to others is so flagrant as to evidence an indifference to or reckless disregard of the rights of others." (Emphasis supplied). State v. Hodgdon, 244 Or 219 at 223.

The court in Hodgdon thus adopted Mr. Justice O'Connell's conclusion in Williamson v. McKenna, 223 Or 366, at 387-88 (1960) that: "Gross negligence thus becomes identical with recklessness."

And finally, the court in State v. Hodgdon, supra, at page 228 said: "... 'recklessness' may be found in circumstances where defendant did not appreciate the extreme risk, but where any reasonable man would appreciate it."

To summarize, Oregon now equates gross negligence with recklessness, and in Oregon one may be found to have been reckless on the basis of an objective test, without an actual subjective appreciation of risk.

The Model Penal Code, and Illinois and New York law, and the California and Michigan drafts and the draft proposed here, on the other hand, distinguish between recklessness and gross negligence, characterize an act as negligent when the actor should be aware of the risk, and characterize an act as reckless when the actor consciously disregards the risk.

The comments to the new penal codes and to the various drafts indicate that negligence will rarely be used as the mental state required for guilt. To that extent the draft proposed here makes somewhat less change in the law than appears at first blush. Since gross negligence in Oregon is now equated with recklessness, the only substantial change is in using a subjective test for awareness of risk, rather than an objective one. Ordinary negligence will not be an adequate basis for criminal liability under the proposal. This is of course true in present Oregon law as far as negligent homicide is concerned. State v. Wilcox, 216 Or 110, 124 (1959); ORS 163.091 (1).

The draft will do away with the problem that now often arises when a statute defining a crime fails to prescribe a required culpable state of mind. In that case the draft will require that intention, knowledge or recklessness shall have existed in order to find the defendant guilty, except in cases of violations (which are not punished by imprisonment) or if the law defining the offense clearly indicates a purpose to dispense with any culpable mental state requirement.

It would seem that uniformity of basic criminal law throughout the various states is a highly desirable goal. Perhaps the single most basic part of the code is the culpability part of it. It would seem, therefore, that the culpability provisions should be matched to those of New York, California, Illinois and Michigan if that is possible. It would hardly seem possible that Oregon could have local conditions that would dictate major differences.

TEXT OF OREGON REVISED STATUTES

161.010. Definitions. As used in the statutes relating to crimes and criminal procedure, unless the context requires otherwise:

(1) "Wilfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or omission referred to, and does not require any intent to violate law, to injure another or to acquire any advantage.

(2) "Neglect," "negligence," "negligent" and "negligently" import a want of such attention to the nature or probable consequences of the act or omission referred to as a prudent man ordinarily bestows in acting in his own concerns.

(3) "Corruptly" imports a wrongful design to acquire some pecuniary or other advantage to the person guilty of the act or omission referred to.

(4) "Malice" and "maliciously" import a wish to vex, annoy or injure another person, established either by proof or presumption of law.

(5) "Wrongfully" when applied to the commission of an act, implies simply that the act was done in violation of right or without authority of law.

(6) "Wantonly," when applied to the commission of an act, implies that the act was done with a purpose to injure or destroy without cause and without reference to any particular person.

(7) "Knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of the criminal statutes, and does not require any knowledge of the unlawfulness of the act or omission.

(8) "Signature" includes any name, mark or sign written with intent to authenticate any instrument or writing.

(9) "Writing" includes printing.

(10) "Property" includes both real and personal property.

(11) "Person" includes corporations as well as natural persons. Where "person" is used to designate the party whose property may be the subject of a crime, it includes this state, any other state, government or country which may lawfully own any property in this state, and all municipal, public or private corporations, as well as individuals.

Text of Oregon Revised Statutes (Cont'd)

30.115. Motor vehicle, aircraft and watercraft guest passenger; definitions.

(2) "Gross negligence" refers to negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by conscious indifference to or reckless disregard of the rights of others.

TEXT OF REVISIONS OF OTHER STATES

Text of New York Penal Law

§ 15.05. Culpability; definitions of culpable mental states

The following definitions are applicable to this chapter:

1. "Intentionally." A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct.

2. "Knowingly." A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.

3. "Recklessly." A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree tha disregard thereof nstitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

4. "Criminal negligence." A person acts with criminal negligence with respect to a result or to a circumstance described b a statute defining an offense when he fails to perceive a substantia and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree tha the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Text of New York Penal Law (Cont'd)

§ 15.10 Requirements for criminal liability in general and for offenses of strict liability and mental culpability

The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is physically capable of performing. If such conduct is all that is required for commission of a particular offense, or if an offense or some material element thereof does not require a culpable mental state on the part of the actor, such offense is one of "strict liability." If a culpable mental state on the part of the actor is required with respect to every material element of an offense, such offense is one of "mental culpability."

§ 15.15 Construction of statutes with respect to culpability requirements

1. When the commission of an offense defined in this chapter, or some element of an offense, requires a particular culpable mental state, such mental state is ordinarily designated in the statute defining the offense by use of the terms "intentionally," "knowingly," "recklessly" or "criminal negligence," or by use of terms, such as "with intent to defraud" and "knowing it to be false," describing a specific kind of intent or knowledge. When one and only one of such terms appears in a statute defining an offense, it is presumed to apply to every element of the offense unless an intent to limit its application clearly appears.

2. Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of such offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such culpable mental state. A statute defining a crime, unless clearly indicating a legislative intent to impose st ict liability, should be construed as defining a crime of mental culpability. This subdivision applies to offenses defined both in and outside this chapter.

Text of New York Penal Law (Cont'd)

Section 15.20 Effect of ignorance or mistake upon liability

1. A person is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief of fact, unless:

(a) Such factual mistake negatives the culpable mental state required for the commission of an offense; or

(b) The statute defining the offense or a statute related thereto expressly provides that such factual mistake constitutes a defense or exemption; or

(c) Such factual mistake is of a kind that supports a defense of justification as defined in article thirty-five of this chapter.

2. A person is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless such mistaken belief is founded upon an official statement of the law contained in (a) a statute or other enactment, or (b) an administrative order or grant of permission, or (c) a judicial decision of a state or federal court, or (d) an interpretation of the statute or law relating to the offense, officially made or issued by a public servant, agency or body legally charged or empowered with the responsibility or privilege of administering, enforcing or interpreting such statute or law.

3. Notwithstanding the use of the term "knowingly" in any provision of this chapter defining an offense in which the age of a child is an element thereof, knowledge by the defendant of the age of such child is not an element of any such offense and it is not, unless expressly so provided, a defense to a prosecution therefor that the defendant did not know the age of the child or believed such age to be the same as or greater than that specified in the statute.

Section 15.25 Effect of intoxication upon liability

Intoxication is not, as such, a defense to a criminal charge; but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

Text of Model Penal Code

Section 2.01. Requirement of Voluntary Act; Omission as Basis of Liability; Possession as an Act.

(1) A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he 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) conduct during hypnosis or resulting from hypnotic suggestion;

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

(3) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

(a) the omission is expressly made sufficient by the law defining the offense; or

(b) a duty to perform the omitted act is otherwise imposed by law.

(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 control thereof for a sufficient period to have been able to terminate his possession.

Text of Model Penal Code,(Cont'd)

Section 2.02. General Requirements of Culpability.

(1) Minimum Requirements of Culpability. Except as provided i Section 2.05, a person is not guilty of an offense unless he 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 a material element of a offense when:

(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(b) Knowingly.

A person acts knowingly with respect to a material element of a offense when:

(i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(c) Recklessly.

A person acts recklessly with respect to a material elemen of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his 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, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) Negligently.

A person acts negligently with respect to a material eleme of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will

Text of Model Penal Code (cont'd)

result from his 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, 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 Provided. 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) Prescribed Culpability Requirement Applies to All Material Elements. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) Substitutes for Negligence, Recklessness and Knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

(6) Requirement of Purpose Satisfied if Purpose Is Conditional. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

(7) Requirement of Knowledge Satisfied by Knowledge of High Probability. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.

(8) Requirement of Wilfulness Satisfied by Acting Knowingly. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(9) Culpability as to Illegality of Conduct. Neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense unless the definition of the offense or the Code so provides.

Text of Model Penal Code (Cont'd)

(10) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

Section 2.03. Causal Relationship Between Conduct and Result; Divergence Between Result Designed or Contemplated and Actual Result or Between Probable and Actual Result.

(1) Conduct is the cause of a result when:

(a) it is an antecedent but for which the result in question would not have occurred; and

(b) the relationship between the conduct and result satisfies any additional causal requirements imposed by the Code or by the law defining the offense.

(2) When purposely or knowingly causing a particular result is an element of an offense, the element is not established if the actual result is not within the purpose or the contemplation of the actor unless:

(a) the actual result differs from that designed or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm designed or contemplated would have been more serious or more extensive than that caused; or

(b) the actual result involves the same kind of injury or harm as that designed or contemplated and is not too remote or accidental in its occurrence to have a [just] bearing on the actor's liability or on the gravity of his offense.

(3) When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which he should be aware unless:

(a) the actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(b) the actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a [just] bearing on the actor's liability or on the gravity of his offense.

Text of Model Penal Code, Cont'd.

(4) When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

Section 2.04. Ignorance or Mistake.

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

(a) the ignorance or mistake negatives the purpose, knowledge, belief, recklessness or negligence required to establish a material 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, 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 reduce 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 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.

Text of Model Penal Code, Cont'd.

Section 2.05. When Culpability Requirements Are Inapplicable to Violations and to Offenses Defined by Other Statutes; Effect of Absolute Liability in Reducing Grade of Offense to Violation.

(1) The requirements of culpability prescribed by Sections 2.01 and 2.02 do not apply to:

(a) offenses which constitute violations, unless the requirement involved is included in the definition of the offense or the Court determines that its application is consistent with effective enforcement of the law defining the offense; or

(b) offenses defined by statutes other than the Code, insofar as a legislative purpose to impose absolute liability for such offenses or with respect to any material element thereof plainly appears.

(2) Notwithstanding any other provision of existing law and unless a subsequent statute otherwise provides:

(a) when absolute liability is imposed with respect to any material element of an offense defined by a statute other than the Code and a conviction is based upon such liability, the offense constitutes a violation; and

(b) although absolute liability is imposed by law with respect to one or more of the material elements of an offense defined by a statute other than the Code, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes sufficient culpability and the classification of the offense and the sentence that may be imposed therefor upon conviction are determined by Section 1.04 and Article 6 of the Code.