D.C. Criminal Code Reform Commission
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To: Code Revision Advisory Group
From: CCRC Staff
Date: December 21, 2016
Re: Adoption of a Comprehensive General Part in the Revised Criminal Code

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In this Memorandum No. 2, *Adoption of a Comprehensive General Part in the Revised Criminal Code*, the D.C. Criminal Code Reform Commission (CCRC) explains why a comprehensive general part should serve as the basis of criminal code reform efforts in the District of Columbia. The memorandum is intended to complement the First Draft of Report No. 2, *Recommendations for Chapter 2 of the Revised Criminal Code—Basic Requirements of Offense Liability*, which provides draft language and accompanying commentary on a group of general provisions that, if adopted, would constitute the foundation of the comprehensive general part of the Revised D.C. Criminal Code (Revised Criminal Code).

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INTRODUCTION

Part I of this memorandum provides an overview of a comprehensive general part, explaining the various functions that a statutory compendium of key definitions, essential interpretive rules, and fundamental culpability principles of general application serves in a modern criminal code. Part II considers the importance of codifying definitions, interpretive rules, and culpability principles of this nature by highlighting the pitfalls of the alternative to legislative action: judicial lawmaking. Part III then discusses the historical precedent for legislative adoption of a comprehensive general part, which has been a central feature of most comprehensive criminal code reform projects that have occurred since the turn of the twentieth century. Finally, the memorandum concludes by explaining why adoption of a comprehensive general part advances the various purposes enumerated in the CCRC's enabling statute.

I. OVERVIEW OF A COMPREHENSIVE GENERAL PART

Today, it is widely understood that the legislature should statutorily articulate the basis for criminal liability and punishment.[1] Generally speaking, criminal liability is a function of "two factors, an evil-meaning mind [and] an evil-doing hand,"[2] or what is more commonly referred to as *mens rea* and *actus reus*, respectively.[3] The *actus reus* of an offense is comprised of those "objective elements" [4] —conduct, results, and circumstances—in an offense definition which establish the scope of a particular criminal prohibition.[5] The *mens rea* of an offense, in contrast, typically refers to the culpable mental states, if any, with which the objective elements of an offense must be committed to support criminal liability.[6]

The concepts of *actus reus* and *mens rea* have been the focus of a variety of constitutional holdings. For example, the U.S. Constitution has been interpreted to require that every offense incorporate some *actus reus* (at minimum, an act or omission)[7]; to create a presumption that some *mens rea* applies to every serious criminal offense[8]; to

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[1] *See, e.g., Liparota v. United States*, 471 U.S. 419, 424 (1985) ("The definition of the elements of a criminal offense is entrusted to the legislature."); *United States v. Bass*, 404 U.S. 336, 348 (1971) ("Because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define crimes.").

[2] *United States v. Bailey*, 444 U.S. 394, 402 (1980) (quoting *Morissette v. United States*, 342 U.S. 246, 251 (1952)).

[3] *See, e.g., Conley v. United States*, 79 A.3d 270, 278 n.29 (D.C. 2013) (quoting *United States v. Apfelbaum*, 445 U.S. 115, 131 (1980)) ("In the criminal law, both a culpable *mens rea* and a criminal *actus reus* are generally required for an offense to occur.")

[4] *Cook v. State*, 884 S.W.2d 485, 492 (Tex. Crim. App. 1994) (*en banc*) (quoting Paul H. Robinson & Jane Grall, *Element Analysis in Defining Criminal Liability: The Model Penal Code and Beyond*, 35 STAN. L. REV. 681, 683 (1983)).

[5] *See, e.g., United States v. Burwell*, 690 F.3d 500, 505-07 (D.C. Cir. 2012) ("The [objective] elements of the offense are often distilled into three categories: the defendant's conduct, the attendant circumstances, and the results or consequences") (citing Model Penal Code § 1.13(9) and WAYNE R. LAFAVE, 1 SUBST. CRIM. L. § 5.4 (2d ed. 2014)).

[6] *Mens rea* has both broad and narrow meanings. In its broad sense, *mens rea* "suggests a general notion of moral blameworthiness, i.e., that the defendant committed the *actus reus* of an offense with a morally blameworthy state of mind." JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW § 10.02(B) (2d. 2012). The more common contemporary understanding, however, is that *mens rea* means the "the particular mental state(s) provided for in the definition of an offense." *Id.* On this elemental view of *mens rea*, "clear analysis requires that the question of the kind of culpability required to establish the commission of an offense be faced separately with respect to each material element of the crime[.]" *Ortberg v. United States*, 81 A.3d 303, 307 (D.C. 2013) (quoting *Bailey*, 444 U.S. at 402); *see, e.g., United States v. Woods*, 576 F.3d 400, 408 (7th Cir. 2009) (noting that "[i]t is possible [] that the mental state required might differ with regard to each element of the crime") (citing LAFAVE, *supra* note 5, at § 5.4).

[7] LAFAVE, *supra* note 5, at § 6.1 ("A statute purporting to make it criminal simply to think bad thoughts would, in the United States, be held unconstitutional."); *see generally Robinson v. California*, 370 U.S. 660 (1968); *Powell v. Texas*, 392 U.S. 514 (1968).

[8] *See, e.g., Staples v. United States*, 511 U.S. 600, 621 n.1 (1994) (noting that the presumption of *mens rea* "applies to statutes codifying traditional common-law offenses" and to "offenses that are "'entirely a creature of statute'") (quoting *Posters 'N' Things, Ltd. v. United States*, 511 U.S. 513, 522–23 (1994)); *Burwell*, 690 F.3d at 540 n.13 (noting the "presumption's historical foundation and quasi-constitutional if not constitutional basis"); *see generally* Eric A. Johnson, *Rethinking the Presumption of Mens Rea*, 47 WAKE FOREST L. REV. 769 (2012).

require the government to prove all the facts that satisfy the *mens rea* and *actus reus* of an offense beyond a reasonable doubt[9]; and to require the legislature to draft the *mens rea* and *actus reus* of every criminal offense with sufficient clarity to "provide a person of ordinary intelligence fair notice of what is prohibited."[10] The foregoing holdings reflect the significant liberty interests at stake in the criminal law, which authorizes the administration of state-sanctioned punishment. "Implementation of these constitutional demands," it is therefore argued, "requires a full and accurate description of all elements."[11]

To provide a full and accurate statutory description of the elements of a criminal offense, modern criminal codes rely on two distinct components. Through a special part, modern criminal codes articulate the general contours of the *actus reus* and *mens rea* necessary to establish liability for individual offenses. The description of specific offenses is then supplemented by a general part, which provides a legislative statement of the key definitions, essential interpretive rules, and fundamental culpability principles that complete the picture.

It is only by relying on this two-part structure that a legislature can ever hope to comprehensively codify the *mens rea* and *actus reus* governing a collection of criminal offenses. To understand why this is the case, and to better appreciate the importance of a general part, it's useful to consider the wide range of issues concerning the scope of liability that even the most comprehensive statutory offense definitions leave unresolved in a jurisdiction—such as the District—with a criminal code that lacks a general part.

Illustrative is the District's aggravated assault offense, D.C. Code § 22-404.01. Enacted by the D.C. Council in 1994, the text of this statute reads:

> (a) A person commits the offense of aggravated assault if:
>
> > (1) By any means, that person knowingly or purposely causes serious bodily injury to another person; or
> >
> > (2) Under circumstances manifesting extreme indifference to human life, that person intentionally or knowingly engages in conduct which creates a grave risk of serious bodily injury to another person, and thereby causes serious bodily injury.
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> (b) Any person convicted of aggravated assault shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned for not more than 10 years, or both.

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[9] *In re Winship*, 397 U.S. 358, 364 (1970) ("[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.")

[10] *United States v. Williams*, 553 U.S. 285, 304 (2008); *see, e.g., Rose v. Locke*, 423 U.S. 48, 50 (1975) (offenses must be drafted so that "men may conduct themselves so as to avoid that which is forbidden.").

[11] Robinson & Grall, *supra* note 4, at 684-85.

> (c) Any person convicted of attempted aggravated assault shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned for not more than 5 years, or both.[12]

As far as statutory offense definitions go, the above language is relatively comprehensive and among the clearest in the District's criminal code. It not only provides a general statement of the harm prohibited by the offense, but it also lists the alternative culpable mental states with which that harm must be committed and notes the penalties applicable to both commission of, as well as an attempt to commit, the crime. Notwithstanding this breadth of coverage, however, a closer analysis of the statute reveals that a wide range of fundamental issues concerning the scope of liability are left unresolved by the statutory text.

For example, in order to secure a conviction for aggravated assault under § (a)(2), the government must prove, at minimum, that the defendant caused "serious bodily injury" and that the defendant caused this harm by "knowingly" engaging in conduct "[u]nder circumstances manifesting extreme indifference to human life." The meaning of these quoted terms is not only essential to understanding the government's burden of proof for aggravated assault, but also for felony assault, which constitutes the second tier in the District's three tier assault hierarchy.[13] Aggravated assault and felony assault differentiate the most injurious assaults that inflict "*serious* bodily injury" premised upon "*knowing*[]" conduct manifesting "*extreme indifference to human life*" (aggravated assaults, subject to a ten year statutory maximum) from more intermediate assaults that merely implicate "*significant* bodily injury" caused "*recklessly*" (felony assaults, subject to a three year statutory maximum).[14]

Unfortunately, D.C. Code § 22-404.01 does not define the key terms "serious bodily injury," "extreme indifference to human life," or "knowing," which are central to understanding the scope of the District's aggravated assault offense—and to distinguishing it from the District's felony assault offense. Nor is the plain meaning of these key terms of much help: for example, states employing similar terminology have defined them in differing ways.[15] Issues such as these are the kind that general

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[12] D.C. Code § 22-404.01; *see* OMNIBUS CRIMINAL JUSTICE REFORM AMENDMENT ACT OF 1994, D.C. Law 10–151 (Aug. 20, 1994)).

[13] D.C. Code § 22-404(2); *see Flores v. United States*, 37 A.3d 866, 869 (D.C. 2011) (noting that felony assault is the "intermediary statute" in the District's three-tier scheme); COUNCIL OF THE DISTRICT OF COLUMBIA, COMMITTEE ON THE JUDICIARY, REPORT ON BILL 16-247, THE "OMNIBUS PUBLIC SAFETY ACT OF 2006," at 6 (Apr. 28, 2006) (noting that the District's felony assault statute was enacted to "fill the gap between aggravated assault and simple assault.")

[14] *See* D.C. Code § 22-404(2) ("Whoever unlawfully assaults, or threatens another in a menacing manner, and intentionally, knowingly, or recklessly causes significant bodily injury to another shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 3 years, or both.").

[15] *See, e.g., Nixon v. United States*, 730 A.2d 145, 149 (D.C. 1999) (reviewing statutory authorities that do, and do not, authorize "extreme physical pain" alone to suffice for "serious bodily injury"); John C. Duffy, *Reality Check: How Practical Circumstances Affect the Interpretation of Depraved Indifference Murder*, 57 DUKE L.J. 425, 444 (2007) (describing the various ways jurisdictions have interpreted the phrase "extreme indifference to human life"); LAFAVE, *supra* note 5, at § 5.2 (describing the various ways jurisdictions have interpreted the term "knowingly").

definitional provisions—a central feature of a comprehensive general part—are well situated to address. Lacking such general provisions, however, the text of the District's aggravated assault statute is silent on the meaning of all of these terms.

The District's aggravated assault statute is also unclear about how the culpable mental states it enumerates are to be understood in light of the *actus reus* of the offense. For example, in order to secure a conviction under § (a)(2), the government must prove, *inter alia*, that the accused "knowingly engag[ed] in conduct which create[d] a grave risk of serious bodily injury to another person." Importantly, however, this *actus reus* is comprised of three different objective elements: a *conduct element* (i.e., an act or omission) which causes a *result element* (i.e., the creation of a grave risk serious bodily injury) under a *prohibited circumstance* (i.e., that the victim to whom the risk of harm is imposed be a person).

The above breakdown of the offense's elements reveals that there are at least three different ways in which the culpable mental state of "knowingly" might be understood to apply to the *actus reus* of the offense:

> (1) Under the broadest interpretation of § (a)(2), the government need only prove that the accused knowingly engaged in the act or omission which did, in fact, create a grave risk of serious bodily injury to another person. On this reading, knowledge that a risk was created, or that the risk was to a person, is irrelevant for purposes of liability.
>
> (2) Under an intermediate interpretation of § (a)(2), the government must prove that the accused knowingly acted and knew that his or her conduct created a grave risk of serious bodily injury. On this reading, knowledge that the risk was to a person is irrelevant for purposes of liability.
>
> (3) Under the narrowest interpretation of § (a)(2), the government must prove that the accused knowingly acted; knew that his or her conduct created a grave risk of serious bodily injury; and knew the relevant risk was to a person.[16]

[16] A similar ambiguity exists under sub-section (a)(1), which requires the government to prove, *inter alia*, that the accused "knowingly or purposely cause[d] serious bodily injury to another person." As the DCCA in *Perry v. United States* summarized both sets of ambiguities:

> Even though the language of the statute, viewed in the context of legislative history, clearly intended a heightened level of culpability—a *mens rea* requirement—we recognize that the language of subsection (a)(1) is susceptible to two readings. The phrase "knowingly or purposefully" may modify only the element of the crime that immediately follows (as in knowingly or purposely doing that act that "causes" serious bodily injury), or it may modify this element *as well as* the other elements in the rest of the subsection (as in knowing or intending that the conduct at issue cause serious bodily injury). Similarly in subsection (a)(2), the phrase "intentionally or knowingly" could be read as applying only to the conduct engaged in (the *actus reus*) or also to its capacity to create a "grave risk of serious bodily injury to another person."

The choice between these three interpretations has significant consequences for the overall scope of liability under the District's aggravated assault statute. Therefore, identifying the correct interpretation is a matter of considerable importance. Nevertheless, the statutory text of the District's aggravated assault statute does not provide any direction on which interpretation the legislature intended. Issues of this nature can be addressed by general provisions governing the distribution of culpable mental states—a standard feature of a comprehensive general part. Absent any accompanying statutory rules of interpretation, however, the text of the District's aggravated assault statute does not clarify which reading is the right one.

Separate and apart from the meaning and distribution of the culpable mental states employed in the District's aggravated assault statute is the manner in which these terms were intended to interact with various fundamental culpability issues not otherwise addressed in D.C. Code § 22-404.01. Two examples are reflected in the following reoccurring questions of liability: first, how does the intoxication of an actor interact with the culpable mental states governing an offense; and second, how does the factual mistake of an actor interact with these culpable mental states? Each question implicates the nature of the background culpability principles governing aggravated assault, which are critical to understanding the scope of the offense. Consider the following:

> (1) With respect to the issue of voluntary intoxication, imagine the case of Person A, typically a reserved and law-abiding citizen, who, after finding out about her child's death, goes to a bar and drinks herself into a full-blown stupor. If, during that stupor, she throws an empty beer bottle into the crowd at a packed bar, thereby causing serious bodily injury to another patron in the process, what is the relevance of her intoxicated state to establishing the requisite culpable mental states under § (a)(2) of the statute?
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> (2) With respect to the issue of mistake, consider the case of Person B who, upon feeling the slightest of tugs on his pant leg, violently kicks the intruder, which he believes to be someone's small dog, with the intent to cause serious bodily injury. If the intruder turns out to be an infant to whom he has caused serious bodily injury, what relevance, if any, does this mistake of fact have on his liability under § (a)(2) of the statute?

The appropriate resolution of issues such as these is often quite controversial, a product of the fact that they both raise difficult conceptual issues and consequential policy issues with significant implications for the overall scope of liability. They are also the kinds of questions that general culpability provisions—another basic component of a comprehensive general part—typically address. Lacking accompanying general culpability provisions of this nature, however, the text of the District's aggravated assault statute is silent on both questions.[17]

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36 A.3d 799, 816 (D.C. 2011). Note, however, that there is also a circumstance element implicated by the statute, such that there are three, not two, potential interpretations of each subsection.

[17] To be sure, the DCCA, like the courts in many other jurisdictions without a comprehensive criminal code, has developed a set of judge-made rules for when voluntary intoxication and factual mistakes may be

Finally, it's worth noting that D.C. Code § 22-404.01, by criminalizing without further defining "attempt[s]" to commit aggravated assault, multiplies the preceding ambiguities many times over. Generally speaking, the application of attempt liability to any offense raises some of the greatest complexities concerning *mens rea* and *actus reus* in American criminal law—and the District's decision to apply attempt liability to the crime of aggravated assault is no exception.[18] Here, for example, are just a few of the difficult questions raised by the offense of attempted aggravated assault:

> (1) At what point in the criminal timeline has someone who is planning to cause serious bodily injury to another engaged in sufficient conduct to cross the line of "mere preparation" and pass into the zone of "perpetration" necessary to constitute attempted aggravated assault?
>
> (2) Given that attempts indicate an intent to commit the target offense, is it possible for someone who engages in "knowing[]" conduct evidencing "extreme indifference to human life" under § (a)(2) to be convicted of attempted aggravated assault if he or she merely created a risk of, but did not ultimately cause, serious bodily injury?
>
> (3) What effect on liability, if any, would there be if some circumstance, unbeknownst to the actor, rendered completion of his or her plan to commit aggravated assault factually or legally impossible?

Questions of this nature cut to the core of attempt liability applicable to aggravated assault—or to any other criminal offense. They are, therefore, the kinds of questions that fully developed general attempt provisions—yet another crucial piece of a comprehensive general part—typically devote substantial space to addressing. Absent such general attempt provisions, however, the text of the District's attempt to commit aggravated assault offense leaves these questions unanswered.

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raised as a defense; however, the application of these rules hinge upon whether a given offense is initially classified as a "general intent" or "specific intent" crime. *See, e.g., Wheeler v. United States*, 832 A.2d 1271, 1274 (D.C. 2003) (applying dichotomy to law of voluntary intoxication); *Hawkins v. United States*, 103 A.3d 199, 202 (D.C. 2014) (applying dichotomy to law of mistake of fact). Among other problems with this common law framework, it is not at all obvious—given that these terms are little more than "rote incantations" of "dubious value," *Buchanan v. United States*, 32 A.3d 990, 1001 (D.C. 2011) (Ruiz, J. concurring)—how any offense should be classified.

[18] Note that the D.C. Code contains a general attempt provision, D.C. Code § 22-1803, which states:

> Whoever shall attempt to commit any crime, which attempt is not otherwise made punishable by chapter 19 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321), shall be punished by a fine not more than the amount set forth in § 22-3571.01 [$1000] or by imprisonment for not more than 180 days, or both. Except, whoever shall attempt to commit a crime of violence as defined in § 23-1331 shall be punished by a fine not more than the amount set forth in § 22-3571.01 [$12,500] or by imprisonment for not more than 5 years, or both.[18]

As is evident, this provision does little more than establish a default penalty structure for attempt offenses. It is silent on the *actus reus* and *mens rea* of attempt liability in the District.

The above analysis has highlighted a few of the important questions concerning the scope of liability that the District's aggravated assault statute leaves unanswered. However, the statute's silence on this wide range of issues is not exceptional: few statutory offense definitions in the D.C. Code are more comprehensive than § 22-404.01, while many are less comprehensive. It's also important to point out that the D.C. Code's silence on such issues is no different than the silence in a minority of jurisdictions that have yet to modernize their criminal codes by relying on a comprehensive general part.[19]

In the absence of a comprehensive general part, it would take a legislature a prohibitive amount of time and resources to statutorily proscribe the key definitions, essential interpretive rules, and fundamental culpability principles governing each and every criminal offense in a criminal code on a statute-by-statute basis. Such an investment of time and resources would be brutally inefficient given that the legislature would almost surely end up writing many of the same definitions, rules, and governing principles into multiple statutes. And the sum total of these lengthy and duplicative provisions would produce a criminal code of overwhelming complexity.

Fortunately, incorporating a comprehensive general part in the context of a holistic revision of a jurisdiction's criminal laws is a simpler, easier, and more efficient means of fully codifying the elements of criminal statutes. This pathway to reform is, as will be explained in Part III, the approach that the majority of states have pursued. Prior to addressing these models, however, it is necessary to first address why—separate and apart from the constitutional considerations noted earlier—it is critical for a legislature to codify all major aspects of criminal liability in the first place. This issue is the focus of the next Part.

II. THE BENEFITS OF CODIFICATION AND THE PITFALLS OF JUDICIAL LAWMAKING

When a legislature enacts a criminal statute that fails to provide a full and accurate statutory description of the governing *mens rea* and *actus reus*, it effectively delegates a portion of its lawmaking authority to the judiciary.[20] Courts must apply criminal statutes to individual cases: when a particular prosecution calls into question an issue left unresolved by a criminal statute, the presiding judge has no choice but to exercise the traditionally legislative function of crime definition and fill in the resulting gap through the process of common law decision-making.[21]

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[19] *See generally* Paul H. Robinson, Michael T. Cahill, and Usman Mohammad, *The Five Worst (and Five Best) American Criminal Codes*, 95 NW. U. L. REV. 1 (2000).

[20] *See generally* Dan M. Kahan, *Is Chevron Relevant to Federal Criminal Law?*, 110 HARV. L. REV. 469 (1996).

[21] *See* RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 31 (1977) (noting that legal discretion "is like the hole of a doughnut": it "does not exist except as an area left open by a surrounding belt of restriction.") In some cases, legislative history may guide the courts in their exercise of this authority; however, oftentimes the ambiguities will be so large and/or legislative intent so inscrutable, that judicial lawmaking is inevitable. Kahan, *supra* note 20, at 469.

Judicial lawmaking on matters of criminal liability is notoriously problematic.[22] Apart from the challenge to democratic representation that arises when unelected officials determine what the law should be,[23] institutional features of the judiciary preclude courts from making criminal justice policy in a manner that is clear, consistent, and accessible.[24]

For example, "common law crimes"—that is, crimes recognized through case law—are likely to be *inaccessible* to the vast majority of citizens in any given jurisdiction who lack the time or ability to cull rules of liability from published court opinions. And in a jurisdiction such as the District, where judicial opinions are so infrequently published, these crimes may be *inaccessible* even to legal professionals. Moreover, even assuming the public did have easy access to judge-made criminal law, what they are likely to find is a surprising amount of ambiguity—a product of the fact that appellate litigation is intended to resolve arguments about the application of certain parts of a statute to the facts of a particular case, rather than generally clarify criminal statutes in their entirety. And in the absence of a global, prospective review and clarification of the law, appellate rulings can lead to inconsistent outcomes as different lower courts apply the law in conflicting ways.

An illustrative example of these problems can be seen in the decades of appellate case law surrounding the District's simple assault statute, D.C. Code § 22-404(a). Enacted by U.S. Congress in 1901, the statute summarily criminalizes, *inter alia*, the "unlawful[] assault[]" of another without further defining any of the elements of the offense.[25] Intended to "codif[y] the common law of the District of Columbia," this statute formalized that the responsibility of determining the *actus reus* and *mens rea* governing simple assault resides with the District's appellate courts—originally, the U.S. Court of Appeals for the D.C. Circuit (CADC), but as of 1971 the D.C. Court of Appeals (DCCA).[26] And this is still the case today: the cursory reference to an "assault[]" contained in D.C. Code § 22-404(a) "has remained unchanged since the statute was enacted in 1901."[27]

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[22] *See, e.g., Int'l News Serv. v. Associated Press*, 248 U.S. 215, 267 (1918) (Brandeis, J., dissenting) ("Courts are ill-equipped to make the investigations which should precede [legislation]."); Pierre N. Leval, *Judging Under the Constitution: Dicta About Dicta*, 81 N.Y.U. L. REV. 1249, 1260-61 (2006) (noting that given the judiciary's "structure and manner of operation, courts lack the ability to perform [legislative] tasks").

[23] *See, e.g., Bass*, 404 U.Sat 348 ("Because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define crimes.").

[24] *See* Kahan, *supra* note 20, at 470 ("[J]udges frequently lack sufficient consensus to make the law uniform . . . ."); *id.* at 495 ("Frequent disagreements are inevitable when [many] judges . . . are all independently empowered to identify the best readings of ambiguous criminal statutes."); *United States v. Harriss*, 347 U.S. 612, 635 (1954) (noting that appellate courts can always change an interpretation of a criminal statute).

[25] More specifically, the statute references both an "unlawful assault" *or* "threaten[ing] another in a menacing manner." The former phrase comprises the offense of attempted battery assault, while the latter phrase comprises the offense of intent-to-frighten assault. *See, e.g.,* Alfaro v. United States, 859 A.2d 149 (D.C. 2004). The discussion here focuses solely on attempted battery assault.

[26] *Newby v. United States*, 797 A.2d 1233, 1239 (D.C. 2002).

[27] *Robinson v. United States*, 506 A.2d 572, 575 (D.C. 1986).

Over the course of the last century, the District's appellate courts have produced dozens of decisions expounding upon the elements of simple assault in the course of settling particular cases. Even at its clearest, this body of case law is problematic for reasons of accessibility: it is only by consulting reported judicial opinions that a District resident can discover the contours of an offense that constitutes a significant line of demarcation between conduct that is merely offensive and conduct that is criminal. However, even the most seasoned criminal justice practitioner would likely confront difficulty in performing this task given that the District's appellate courts have described the elements of the offense in materially different—and often confusing—ways.[28] Indeed, after decades of piecemeal case law, some of the same, very basic questions regarding the contours of simple assault are still currently being litigated.[29] Further, the ample amount of conflicting case law that has resulted risks a lack of uniformity in the treatment of individual defendants in the lower courts.

Protracted litigation of this nature—as well as the lack of clarity, consistency, and accessibility it inevitably produces—is a typical byproduct of criminal statutes that rely on piecemeal judicial opinions to describe the prohibited conduct. However, as illustrated by the discussion of the District's aggravated assault offense in Part I—a statute which has produced case law comprised of similar problems of clarity, consistency, and accessibility[30]—even when a legislature affirmatively seeks to clearly state the elements of an offense, it is surprisingly difficult to achieve in the context of any individual criminal statute. Rather, it is only by adopting a comprehensive general part through a modern code reform project that the key definitions, essential interpretive rules, and fundamental culpability principles governing all offenses can be legislatively specified.

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[28] For example, some cases suggest that the culpability requirement for the offense is an "intent to perform the acts which constitute the assault." *See, e.g.*, *Anthony v. United States*, 361 A.2d 202, 206 n.5 (D.C. 1976); *Dunn v. United States*, 976 A.2d 217, 219–20 (D.C. 2009) (quoting *Ray v. United States*, 575 A.2d 1196, 1198 (D.C. 1990)). But to say that the act which constitutes the crime must be intentional does nothing more than restate the requirement of a voluntary act, *see* Paul H. Robinson, *A Functional Analysis of Criminal Law*, 88 NW. U. L. REV. 857, 863 (1994), which is not a mental state in the traditional sense and is entirely consistent with strict liability, *see Buchanan*, 32 A.3d at 1002 (Ruiz, J. concurring). Other cases suggest, however, that the defendant must both intend to do the acts constituting the assault as well as intent to cause the resulting harm. *See, e.g.*, *Williams v. United States*, 887 A.2d 1000, 1003 (D.C. 2005); *Buchanan*, 32 A.3d at 992.

[29] For a good overview of this litigation as it pertains to the culpability requirement of the offense, see Judge Ruiz's concurrence in *Buchanan*, 32 A.3d at 1000-02. For more recent cases evidencing the unsettled nature of the dispute after *Buchanan*, see, for example, *Vines v. United States*, 70 A.3d 1170, 1180 (D.C. 2013), *as amended* (Sept. 19, 2013).

[30] For litigation surrounding the culpability requirement of the offense, see, for example, *Johnson v. United States*, 118 A.3d 199, 205 (D.C. 2015) (deeming lower court's instruction based on the model jury instruction to be erroneous); *Perry*, 36 A.3d at 809, 817 (providing multiple, confusing formulations of the minimum culpability requirement for aggravated assault); CRIMINAL JURY INSTRUCTIONS FOR THE DISTRICT OF COLUMBIA, NO. 4.103 (5th ed. 2013) (adopting one of these formulations, which excludes the requirement that the assault take place "under circumstances manifesting extreme indifference to human life"). For litigation surrounding the objective elements of the offense, see, for example, *Nixon*, 730 A.2d at 150 (applying the definition of "serious bodily injury" governing sex offenses in D.C. Code § 22-3001 to aggravated assault); *Scott v. United States*, 954 A.2d 1037, 1046 (D.C. 2008) (materially revising definition of "serious bodily injury" adopted in *Nixon*, thereby calling into question jury instructions provided in prior aggravated assault cases).

III. HISTORICAL PRECEDENT FOR ADOPTING A COMPREHENSIVE GENERAL PART

The idea of a general part was originally developed by the American Law Institute's Model Penal Code Project. Led by Professor Herbert Wechsler, the Model Penal Code was the culmination of a decades-long examination of criminal law conducted by a diverse group of prominent judges, lawyers, and scholars.[31] Initially, the Model Penal Code drafters set out to merely "summarize" the current state of the law in accordance with the American Law Institute's influential Restatement series; however, after considering the significant flaws inherent in the criminal codes and case law of the mid-twentieth century, they opted instead to produce a revisionary document geared towards, among other things, enhancing the clarity, consistency, and comprehensiveness of culpability evaluations in the criminal law.[32]

At the time the Model Penal Code was developed, the prevailing legislative practice was to leave the determination of the precise requirements governing individual criminal offenses to the courts.[33] For example, criminal codes of this era routinely employed common law statutes, which merely affixed a penalty to the commission of a crime whose elements were described only in court opinions (such as the District's simple assault statute discussed in Part II).[34] For these statutes, the prohibited conduct was not described at all, let alone in detail. Moreover, even when statutes of this era did enumerate one or more culpable mental state states, legislatures rarely defined any of the more than seventy from which they were apt to choose,[35] let alone described their relationship to recurring culpability-related issues, such as voluntary intoxication or factual mistakes.[36] In all such instances, therefore, it was the judiciary that was tasked with providing the relevant answers.

The resulting regime of judicial policymaking was, in the Model Penal Code drafters' view, problematic for two reasons. First, it violated the basic principle that the

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[31] *See generally* Herbert Wechsler, *Codification of Criminal Law in the United States: The Model Penal Code*, 68 COLUM. L. REV. 1425 (1968).

[32] *See generally* Paul H. Robinson & Markus D. Dubber, *The American Model Penal Code: A Brief Overview*, 10 NEW CRIM. L. REV. 319 (2007).

[33] *See* Martin R. Gardner, *The Mens Rea Enigma: Observations on the Role of Motive in the Criminal Law Past and Present*, 1993 UTAH L. REV. 635, 682 (1993) ("[L]egislatures adopted the opposite tack of listing myriad, often undefined, *mens rea* terms as part of the offense, again relying on the courts to sort matters out.").

[34] *See, e.g.*, D.C. Code § 22-2105 ("Whoever is guilty of manslaughter shall be sentenced to a period of imprisonment not exceeding 30 years."); D.C. Code § 22-406 ("Every person convicted of mayhem or of maliciously disfiguring another shall be imprisoned for not more than 10 years.").

[35] *See* NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS (hereinafter "NCR"), 1 WORKING PAPERS OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS 119 (1970) (collecting more than seventy culpability terms).

[36] This is also reflected in many of the District's older statutes, which employ vague, outdated culpability terminology, such as "maliciously" and "wantonly," prior to stating the offense's various objective elements. *See, e.g.*, D.C. Code § 22-303 ("Whoever *maliciously* injures or breaks or destroys, or attempts to injure or break or destroy, by fire or otherwise, any public or private property, whether real or personal, not his or her own, of the value of $1,000 or more . . . ."); D.C. Code § 22-3312.01 ("It shall be unlawful for any person or persons *willfully* and *wantonly* to disfigure, cut, chip, or cover, rub with, or otherwise place filth or excrement of any kind . . . .").

legislature, and not the judiciary, should be making what are, at their core, fundamentally moral decisions about the nature of criminal responsibility.[37] Second, and perhaps more importantly, judges often struggled mightily to resolve the relevant culpability issues, creating policies that were "inconsistent and confusing."[38] Indeed, the practice of judicial culpability evaluations during the mid-twentieth century was characterized by, as Justice Jackson famously described it, "variety, disparity and confusion" in "definitions of the requisite but elusive mental element."[39]

This "variety, disparity, and confusion" was in large part due to judicial reliance on the ambiguous distinction between "general intent" crimes and "specific intent" crimes to address various issues of culpability, including the government's affirmative burden of proof, the availability of a voluntary intoxication defense, and the relevance of factual mistakes. Reliance on these doctrines was problematic because the very notion of a "general intent" crime or "specific intent" crime is rooted in the common law framework of "offense analysis," which views criminal offenses as being comprised of a singular *actus reus* subject to an "umbrella culpability requirement that applie[s] in a general way to the offense as a whole."[40] However, as the Model Penal Code drafters realized, criminal offenses are comprised of different objective elements, each of which may—or may not—be subject to a culpable mental state. This so-called "element analysis" requires "that the question of the kind of culpability required to establish the commission of an offense be faced separately with respect to each [objective] element of the crime."[41]

The Model Penal Code drafters attempted to remedy the problems caused by judicial reliance on offense analysis by devising a statutory framework that would enable legislatures to implement "element analysis," that is, draft offenses in a way that clarifies the culpable mental state requirement governing each and every objective element of a criminal offense. The foundation for this framework resides in the Model Penal Code's general part, which contains the three following components critical to element analysis:

1. A culpability hierarchy comprised of four comprehensively defined culpable mental states—purpose, knowledge, recklessness, and negligence—which the

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[37] *See* Robinson & Dubber, *supra* note 32, at 331-32 ("The Model Penal Code drafters understood that an undefined term invites judicial lawmaking in the same way as an absent or partial provision, and can as effectively undercut the goals of the legality principle. Every code will inevitably contain ambiguous language that must be interpreted by judges. A drafter's obligation, they believed, is to reserve that delegation of judicial authority to the instances in which it is not reasonably avoidable. Code terms that might reasonably be given different definitions by different readers ought to be defined.").

[38] PETER W. LOW ET AL., CRIMINAL LAW: CASES AND MATERIALS 198-99 (2d ed. 1986).

[39] *Morissette*, 342 U.S. at 252; *see* Ronald L. Gainer, *The Culpability Provisions of the Model Penal Code*, 19 RUTGERS L.J. 575, 577 (1988) (noting that Anglo-American *mens rea* law was an "amorphous quagmire," reflected by "a thin surface of general terminology denoting wrongfulness.").

[40] *See* PAUL H. ROBINSON & MICHAEL CAHILL, CRIMINAL LAW 155 (2d. 2012). This umbrella culpability requirement, moreover, was quite simplistic, indicating "little more than immorality of motive," a "vicious will," or an "evil mind." Sayre, *The Present Signification of Mens Rea in the Criminal Law*, *in* HARVARD LEGAL ESSAYS 399, 411-12 (1934); 4 WILLIAM BLACKSTONE, COMMENTARIES at 21; 1 JOEL P. BISHOP, CRIMINAL LAW § 287 (9th ed. 1923). *See also* Gardner, *supra* note 33, at 663.

[41] Model Penal Code § 2.02 cmt. at 123.

Model Penal Code drafters believed to be the most fundamental (and ultimately the only necessary) distinctions for a criminal code to articulate.[42]

2. Rules of interpretation for distributing—and, where necessary, implying—culpable mental states, which provide a basis for drafting simple offense definitions that nevertheless clarify the culpable mental state applicable to each objective element.[43]

3. General culpability principles, which clarify how recurring issues, such as voluntary intoxication and factual mistakes, interact with the culpable mental states governing a criminal offense.[44]

All of the foregoing components were intended to work in conjunction with the Model Penal Code's special part, which is comprised of offense definitions that were drafted in light of the relevant definitions, interpretive rules, and culpability principles contained in the general part. The overarching idea was that by adopting something like the Model Penal Code's general part and special part, legislatures would be able to clearly and comprehensively communicate the elements governing every offense.

When the Model Penal Code and its accompanying commentary was published in 1962, it was widely celebrated as a "tremendous advance."[45] This was due in large part to its general part, which "accomplished what no legal system had ever expressly tried to do: orchestrate the noise of culpability into a reasonably uniform and workable system."[46] Completion of the Model Penal Code set off a cascade of comprehensive criminal code revision efforts across the country, such that by 1989—a mere twenty-seven years after its promulgation—thirty-five states had adopted a new criminal code "influenced in some part by the Model Penal Code."[47]

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[42] *See e.g.*, Model Penal Code § 2.02(2) (definitions of purpose, knowledge, recklessness, and negligence); *see also* Wechsler, *supra* note 31, at 1436-37 ("The submission was that for purposes of liability (as distinguished from sentence) only four concepts are needed to prescribe the minimal requirements and lay the basis for distinctions that may usefully be drawn.").

[43] *See e.g.*, Model Penal Code § 2.02(3) ("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."); Model Penal Code § 2.02(4) ("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.").

[44] *See, e.g.*, Model Penal Code § 2.04(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."); Model Penal Code §§ 2.08(1), (2) ("[I]ntoxication of the actor is not a defense unless it negatives an element of the offense . . . When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.").

[45] Kenneth W. Simons, *Rethinking Mental States*, 72 B.U. L. REV. 463, 480 (1992).

[46] Francis X. Shen et. al., *Sorting Guilty Minds*, 86 N.Y.U. L. REV. 1306, 1315-16 (2011).

[47] Robinson & Dubber, *supra* note 32, at 319. As Robinson and Dubber note:

The criminal codes adopted through such efforts reflected the prescriptions of the Model Penal Code to varying degrees, with some of the Model Penal Code's more controversial policy prescriptions being rejected by many states.[48] Yet a basic commitment to element analysis implemented through a general part was consistent throughout these reform codes. For example, twenty-nine of the thirty-five states that successfully completed comprehensive code modernization projects opted to incorporate a general part,[49] while the vast majority of these twenty-nine states adopted the Model Penal Code's culpable mental state hierarchy, rules of interpretation, and general culpability principles.[50] These same general provisions also played a prominent role in most failed code revision efforts—including the proposed Federal Criminal Code[51] and the proposed D.C. Code of 1978[52]—as well as in the successful promulgation of the U.S. Sentencing Guidelines.[53] In relatively short order, then, the Model Penal Code's core general provisions were transformed into the "representative modern American culpability scheme" reflected in American criminal codes.[54]

Legislative adoption of a general part consistent with element analysis has brought with it significant practical benefits. By limiting the number of culpable mental state terms applied in their criminal codes, providing comprehensive definitions to those that do apply, and creating an analytical framework for expressing culpability judgments on an element-by-element basis, those jurisdictions that successfully completed a Model Penal Code-based code reform project significantly improved the clarity, consistency,

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New codes were enacted in Illinois, effective in 1962; Minnesota and New Mexico in 1963; New York in 1967; Georgia in 1969; Kansas in 1970; Connecticut in 1971; Colorado and Oregon in 1972; Delaware, Hawaii, New Hampshire, Pennsylvania, and Utah in 1973; Montana, Ohio, and Texas in 1974; Florida, Kentucky, North Dakota, and Virginia in 1975; Arkansas, Maine, and Washington in 1976; South Dakota and Indiana in 1977; Arizona and Iowa in 1978; Missouri, Nebraska, and New Jersey in 1979; Alabama and Alaska in 1980; and Wyoming in 1983.

Id. Six years later, "Tennessee, in 1989, [] enacted a significantly revised penal code." Dannye Holley, *The Influence of the Model Penal Code's Culpability Provisions on State Legislatures: A Study of Lost Opportunities, Including Abolishing the Mistake of Fact Doctrine*, 27 SW. U. L. REV. 229, 229 n.2 (1997).

[48] Robinson & Dubber, *supra* note 32, at 319.

[49] The 29 states are: Alabama; Alaska; Arizona; Arkansas; Colorado; Connecticut; Delaware; Hawaii; Illinois; Indiana; Kansas; Kentucky; Maine; Minnesota; Missouri; Montana; New Hampshire; New Jersey; New York; North Dakota; Ohio; Oregon; Pennsylvania; South Dakota; Tennessee; Texas; Utah; Washington; Wisconsin. The six jurisdictions that have undertaken comprehensive code reform but did not adopt a comprehensive general part based on the Model Penal Code are: Florida, Georgia, Iowa, Nebraska, New Mexico, and Wyoming.

[50] *See, e.g.*, Holley, *supra* note 47, at 236 n.1, 57 (identifying more than twenty states that adopted the Model Penal Code culpability hierarchy and rules governing factual mistakes); Darryl K. Brown, *Criminal Law Reform and the Persistence of Strict Liability*, 62 DUKE L.J. 285, 289 n.8 (2012) (identifying more than twenty states that adopted the Model Penal Code's rules of interpretation).

[51] *See generally* NCR, *supra* note 35.

[52] *See generally* COMMENTARY ON THE 1978 D.C. CODE.

[53] *See, e.g.*, U.S.S.G. §2A1.4 (incorporating the Model Penal Code definitions of recklessness and negligence).

[54] Robinson & Grall, *supra* note 4, at 692. More generally, "the Model Penal Code is the closest thing to being an American criminal code." Robinson & Dubber, *supra* note 32, at 319.

and comprehensiveness of their criminal laws.[55] And these improvements, in turn, have had the effect of "reducing litigation by reducing ambiguities in offense definitions,"[56] "increas[ing] [the] simplicity [of the criminal law],"[57] affording defendants a greater level of "fair notice,"[58] and providing "substantially improved analytical tools for practicing lawyers and courts to use in understanding what must be proven by the prosecution [] beyond a reasonable doubt."[59]

Importantly, however, the influence of the Model Penal Code's general culpability provisions reaches beyond a majority of American criminal codes, and into the American legal system writ large. For example, although the U.S. Congress has never successfully enacted a comprehensive revision of the U.S. Code, federal courts across the country (including the U.S. Supreme Court) regularly rely upon the Model Penal Code's general culpability provisions to interpret ambiguous federal statutes and sentencing guidelines.[60] And the situation is no different in the District, where the DCCA and D.C. Criminal Jury Instructions frequently cite the Model Penal Code's general culpability provisions and their accompanying commentary as both a general source of guidance[61] and as a mechanism for interpreting ambiguous statutes contained in the D.C. Code.[62] (This is not particularly surprising, however, given that the more recent statutes passed by the Council clearly reflect the influence of the Model Penal Code.[63])

Perhaps most importantly, the DCCA, like the courts in many other non-reform jurisdictions, has repeatedly endorsed the central tenants of element analysis in recent years. For example, in an important pair of 2011 decisions, *Perry v. United States* and *Buchanan v. United States*, the DCCA recognized that the terms "general intent" or "specific intent" commonly used to describe mental state requirements of District criminal offenses are little more than "rote incantations" of "dubious value,"[64] which

[55] *See generally* Holley, *supra* note 47, at 230.
[56] Robinson & Grall, *supra* note 4, at 704.
[57] *Id.*
[58] *Id.*
[59] Holley, *supra* note 47, at 230.
[60] *See, e.g., Leary v. United States*, 395 U.S. 6, 46 n.93 (1969) (relying upon Model Penal Code definition of knowledge); *Lockett v. Ohio*, 438 U.S. 621, 628 (1978) (relying upon Model Penal Code definition of recklessness); *United States v. Honeycutt*, 8 F.3d 785, 787 (11th Cir. 1993) (applying Model Penal Code definition of knowledge to U.S.S.G.); *United States v. Villanueva-Sotelo*, 515 F.3d 1234, 1239 (D.C. Cir. 2008) (relying on Model Penal Code § 2.02(4)).
[61] *See, e.g., Wilson-Bey v. United States*, 903 A.2d 818, 837 (D.C. 2006) (citing Model Penal Code § 2.02 and accompanying commentary); *Ingram v. United States*, 592 A.2d 992, 1002 (D.C. 1991) (same); *McKinnon v. United States*, 644 A.2d 438, 442 (D.C. 1994) (same); *Brawner v. United States*, 979 A.2d 1191, 1194 (D.C. 2009) (same).
[62] *See, e.g., Tarpeh v. United States*, 62 A.3d 1266, 1270 (D.C. 2013) (relying upon Model Penal Code definition of recklessness to resolve statutory ambiguity); *Jones v. United States*, 813 A.2d 220, 225 (D.C. 2002) (same); D.C. Crim. Jur. Instr. cmt. § 4.120 (quoting Model Penal Code definition of recklessness).
[63] For example, in *United States v. Esparza-Herrera*, the U.S. Court of Appeals for the Ninth Circuit observed that "the District of Columbia follow[s] the Model Penal Code definition" of aggravated assault. 557 F.3d 1019, 1025 (9th Cir. 2009); *compare* D.C. Code § 22-404.01 *with* Model Penal Code § 211.1(2)(a).
[64] *Buchanan*, 32 A.3d at 1001 (D.C. 2011) (Ruiz, J., concurring).

"can be too vague or misleading to be dispositive or even helpful."[65] The reason? As the court explained two years later in the 2013 decision in *Ortberg v. United States*, "these terms fail to distinguish between elements of the crime, to which different mental states may apply."[66] Rather, as the *Orberg* court goes on to explain—quoting directly from the Model Penal Code commentary—"clear analysis requires that the question of the kind of culpability required to establish the commission of an offense be faced separately with respect to each material element of the crime."[67] This recognition in turn explains why the DCCA observed in 2015 in *Jones v. U.S.* that "courts and legislatures" should, wherever possible, "simply make clear what mental state (for example, strict liability, negligence, recklessness, knowledge, or purpose) is required for whatever material element is at issue (for example, conduct, resulting harm, or an attendant circumstance)."[68] There is little question, therefore, that the key tenants of element analysis find strong support in DCCA case law.

CONCLUSION: CRIMINAL CODE REFORM COMMISSION RECOMMENDATION

The CCRC's enabling statute requires the Commission to propose revisions to the D.C. Code that "[u]se clear and plain language," "[a]pply consistent, clearly articulated definitions," and "[d]escribe all elements, including mental states, that must be proven."[69] In order to adequately address these statutory mandates, any revisions made by the CCRC should—for the reasons discussed in Parts I and II—rely on a general part, which provides a legislative statement of the key definitions, essential interpretive rules, and fundamental culpability principles governing all revised offenses. Moreover, these definitions, interpretive rules, and culpability principles should—for the reasons discussed in Part III—incorporate the central insights of element analysis, which has played such a significant role in the development of American criminal law over the past five decades. With the foregoing in mind, the CCRC recommends adoption of a comprehensive general part to serve as the basis of criminal code reform efforts in the District of Columbia.

Consistent with this recommendation, the First Draft of Report No. 2, *Recommendations for Chapter 2 of the Revised Criminal Code—Basic Requirements of Offense Liability*, contains a set of general provisions that are intended to comprise the heart of the chapter on the basic requirements of offense liability incorporated into the Revised Criminal Code. These include general provisions establishing: a voluntariness requirement, § 22A-203; a causation requirement, § 22A-204; a culpable mental state requirement, § 22A-205; a hierarchy of culpable mental states, § 22A-206; and rules of interpretation applicable to the culpable mental state requirement, § 22A-207. If adopted, these general provisions would provide the basis for implementing element analysis throughout the Revised Criminal Code while making it easier to revise offenses in a manner that clearly communicates the governing culpability requirements.

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[65] *Perry*, 36 A.3d at 809 n.18.
[66] *Ortberg*,81 A.3dat 307.
[67] *Id.* (citations, quotations, and alterations omitted).
[68] 124 A.3d 127, 130 n.3 (D.C. 2015)
[69] D.C. Code §§ 3-101.01 (a)(1) & (5).

The general provisions proposed for Chapter 2 broadly reflect the "representative modern American culpability scheme,"[70] as initially developed by the drafters of the Model Penal Code and thereafter adopted by the vast majority of states that undertook a comprehensive code revision project. For example, the proposed general provisions, like the vast majority of reform codes, contain a hierarchy of culpable mental states comprised of element-sensitive definitions of purpose, knowledge, recklessness, and negligence, in addition to rules of interpretation applicable to the culpable mental state requirement comprised of a rule of distribution and a default rule of recklessness to govern in cases of interpretive uncertainty.

Notwithstanding the influence of reform codes on the general provisions proposed for Chapter 2, however, the proposed general provisions also frequently depart from the standard modern approach. These variances are often intended to simplify or otherwise improve upon the standard modern approach to the relevant issues, based upon insights drawn from case law, commentary, and independent staff research. Other variances are intended to preserve District law where doing so is consistent with the CCRC's mandates. The accompanying commentary to the proposed general provisions provides details on these variances, while more generally explaining the statutory text and analyzing its relationship to current District law.

In closing, the CCRC notes that the general provisions contained in First Draft of Report No. 2, *Recommendations for Revised Criminal Code Chapter 2—Basic Requirements of Offense Liability*, are not intended to comprise the entirety of the proposed general part—or even the entirety of Chapter 2. The CCRC will release additional proposed general provisions at a later date. Some of these general provisions will address preliminary matters, such as the interaction between the Revised Criminal Code and other titles of the D.C. Code, that are mostly distinct from the issues addressed by First Draft of Report No. 2. However, other future general provisions will address additional issues related to culpability, such as mistake, voluntary intoxication, willful blindness, and attempts, which rely on the basic framework created by the general provisions released in this First Draft of Report No. 2. Therefore, understanding and reaching agreement on this first set of proposed general provisions is a prerequisite not only for future work on specific offenses, but for the remainder of the general part. For this reason, staff has prioritized presenting them to the CCRC's Advisory Group for review.

[70] Robinson & Grall, *supra* note 4, at 692.