

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 59
OFFERED BY M__ . _____

Strike all that follows after the enacting clause and
insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Mens Rea Reform
3 Act”.

4 SEC. 2. STATE OF MIND ELEMENT FOR CRIMINAL OF-
5 FENSES.

6 (a) IN GENERAL.—Chapter 1 of title 18, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 “§ 28. State of mind when not otherwise specifically
10 provided

11 “(a) DEFINITIONS.—In this section—

12 “(1) the term ‘covered offense’—

13 “(A) means an offense—

14 “(i) specified in—

15 “(I) this title or any other Act of
16 Congress;

17 “(II) any regulation; or

1 “(III) any law (including regula-
2 tions) of any State or foreign govern-
3 ment incorporated by reference into
4 this title or any other Act of Con-
5 gress; and

6 “(ii) that is punishable by imprison-
7 ment, a maximum criminal fine of at least
8 \$2,500, or both; and

9 “(B) does not include—

10 “(i) any offense set forth in chapter
11 47 or chapter 47A of title 10; or

12 “(ii) any offense incorporated by sec-
13 tion 13(a) of this title;

14 “(2) the term ‘knowingly’, as related to an ele-
15 ment of an offense, means—

16 “(A) if the element involves the nature of
17 the conduct of a person or the attendant cir-
18 cumstances, that the person is aware that the
19 conduct of the person is of that nature or that
20 such circumstances exist; and

21 “(B) if the element involves a result of the
22 conduct of a person, that the person is aware
23 that it is practically certain that the conduct of
24 the person will cause such a result;

1 “(3) the term ‘state of mind’ means willfully,
2 intentionally, maliciously, knowingly, recklessly, wan-
3 tonly, negligently, with reason to believe, or any
4 other word or phrase that is synonymous with or
5 substantially similar to any such term; and

6 “(4) the term ‘willfully’, as related to an ele-
7 ment of an offense, means—

8 “(A) that the person acted with knowledge
9 that the person’s conduct was unlawful; and

10 “(B) if the element involves the nature, at-
11 tendant circumstances, object, or result of the
12 conduct of a person, that—

13 “(i) the person had knowledge of the
14 nature, attendant circumstances, object, or
15 result of the conduct of the person; and

16 “(ii) it was the conscious object of the
17 person to engage in conduct—

18 “(I) of that nature;

19 “(II) with that attendant cir-
20 cumstance;

21 “(III) with that object; or

22 “(IV) to cause such a result.

23 “(b) DEFAULT REQUIREMENT.—Except as provided
24 in subsections (c) and (d), a covered offense shall be con-

1 strued to require the Government to prove beyond a rea-
2 sonable doubt that the defendant acted—

3 “(1) with the state of mind specified in the text
4 of the covered offense for each element of the of-
5 fense for which the text specifies a state of mind;
6 and

7 “(2) knowingly, with respect to any element of
8 the offense for which the text of the covered offense
9 does not specify a state of mind.

10 “(c) FAILURE TO DISTINGUISH AMONG ELE-
11 MENTS.—Except as provided in subsection (d), if the text
12 of a covered offense specifies the state of mind required
13 for commission of the covered offense without specifying
14 the elements of the covered offense to which the state of
15 mind applies, the state of mind specified shall apply to
16 all elements of the covered offense, unless a contrary pur-
17 pose plainly appears.

18 “(d) EXCEPTIONS.—

19 “(1) IN GENERAL.—Subsections (b)(2) and (c)
20 shall not apply with respect to—

21 “(A) any element for which the text of the
22 covered offense makes clear that Congress af-
23 firmatively intended not to require the Govern-
24 ment to prove any state of mind with respect to
25 such element;

1 “(B) any element of a covered offense, to
2 the extent that the element establishes—

3 “(i) subject matter jurisdiction over
4 the covered offense; or

5 “(ii) venue with respect to trial of the
6 covered offense; or

7 “(C) any element of a covered offense, to
8 the extent that applying subsections (b)(2) and
9 (c) to such element would lessen the degree of
10 mental culpability that the Government is re-
11 quired to prove with respect to that element
12 under—

13 “(i) precedent of the Supreme Court
14 of the United States; or

15 “(ii) any other provision of this title,
16 any other Act of Congress, or any regula-
17 tion.

18 “(2) MERE ABSENCE INSUFFICIENT.—For pur-
19 poses of paragraph (1)(A), the mere absence of a
20 specified state of mind for an element of a covered
21 offense in the text of the covered offense shall not
22 be construed to mean that Congress affirmatively in-
23 tended not to require the Government to prove any
24 state of mind with respect to that element.

1 “(e) APPLICABILITY.—This section shall apply with
2 respect to a covered offense—

3 “(1) without regard to whether the provision or
4 provisions specifying the covered offense are enacted,
5 promulgated, or finalized before, on, or after the
6 date of enactment of this section; and

7 “(2) that was committed—

8 “(A) on or after the date of enactment of
9 this section; or

10 “(B) before the date of enactment of this
11 section, unless—

12 “(i) applying this section to such cov-
13 ered offense would—

14 “(I) punish as a crime conduct
15 that was innocent when done;

16 “(II) increase the punishment for
17 the covered offense; or

18 “(III) deprive a person charged
19 with the covered offense of any de-
20 fense available according to law at the
21 time the covered offense occurred;

22 “(ii) a jury has been empaneled and
23 sworn in a prosecution for the covered of-
24 fense before the date of enactment of this
25 section;

1 “(iii) the first witness has been sworn
2 in a prosecution for the covered offense
3 tried without a jury before the date of en-
4 actment of this section; or

5 “(iv) a sentence has been imposed fol-
6 lowing a plea of guilty or nolo contendere
7 in a prosecution for the covered offense be-
8 fore the date of enactment of this section.

9 “(f) SUBSEQUENTLY ENACTED LAWS.—No provision
10 of law enacted after the date of enactment of this section
11 shall be construed to repeal, modify the text or effect of,
12 or supersede in whole or in part this section, unless such
13 law specifically refers to this section and explicitly repeals,
14 modifies the text or effect of, or supersedes in whole or
15 in part this section.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENT.—
17 The table of sections for chapter 1 of title 18, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

“28. State of mind when not otherwise specifically provided.”.

