Part B. Specific Offenses

Chapter 10. Offenses of General Applicability

§ 190. Criminal Attempt.

(1) Offense. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime. A substantial step is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime. Partial or legal impossibility of committing the crime is not a defense if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

(2) Complicity. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under section 577were the crimes committed by the person, even if the other is not guilty of committing or attempting the crime, for example, because he has a defense of justification or entrapment.

(3) Grading. Criminal attempt is an offense of the same class as the offense attempted, except that (a) an attempt to commit a Class A felony shall be a Class B felony, and (b) whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the crime, an attempt to commit a Class B felony shall be a Class C felony and an attempt to commit a Class C felony shall be a Class A misdemeanor.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section as prescribed in section 230.

Comment

This section establishes a general provision on attempt which is applicable to every federal crime. There has never been such a provision in federal criminal law. With such a provision there is no need for special statutes to prohibit conduct which merely amounts to an attempt to commit another crime. The section would establish standards as to the requisite intent and conduct and deal uniformly with such questions as impossibility, construebation, punishment and insolvency of the actor.

Federal law is, at present, unclear as to when preparation ends and attempt begins. In addition to the provision with respect to a substantial step in subsection (1), a provision could be added stating those of
§ 1002. CRIMINAL FACILITATION

(1) Offense. A person is guilty of criminal facilitation if he knowingly provides substantial assistance to a person intending to commit a felony, and that person, in fact, commits the crime contemplated, or a like or related felony, employing the assistance so provided. The ready lawful availability from others of the goods or services provided by a defendant is a factor to be considered in determining whether or not his assistance was substantial. This section does not apply to a person who is either expressly or by implication made not accountable by the statute defining the felony facilitated or related statute.

(2) Grading. Facilitation of a Class A felony is a Class C felony. Facilitation of a Class B or Class C felony is a Class A misdemeanor.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the felony facilitated is a federal felony.

Comment

This section, in effect, creates an included offense to accomplice liability, and would provide a legislative solution to the dilemma faced by a court which has to choose between holding a facilitating accomplice or absolving him completely of criminal liability. See note and comments thereto, supra. The culpability required of a facil...
agreed but no overt act has been committed sufficient to make the crime a conspiracy. This section would thus expand federal law to cover unenforceable solicitations of felons, so as to permit earlier inter- 
vention against a criminal enterprise which has served well beyond mere talk. An overt act is required so that criminality depends upon 
something besides speech. An alternative would be to penalize solicitation, whether or not the person solicited committed an overt act. It 
would thus be an offense for B to make a solicitation of any crime as an offense. In this Code solicitation of crimes which are not felonies are proscribed in a far less particular in- 
stance rather than by general provision here. See § 1346, dealing with 
solicitation of offenses obstructing justice. 
Instigation is required; mere encouragement is not enough. A 
“particular” felony must be solicited because to prohibit general 
solicitations would raise too few speech problems. The circumstances 
under which the solicitation is made must strongly demonstrate that 
the solicitor is serious about having the person solicited act upon the 
solicitation.


§ 1066. Criminal Conspiracy.

(1) Offense. A person is guilty of conspiracy if he agrees with 
one or more persons to engage in or cause the performance of 
conduct which, in fact, constitutes a crime or crimes, and any one 
or more of such persons does an act to effect an objective of the 
conspiracy. The agreement need not be explicit but may be 
implicit in the fact of cooperation or existence of other circumstances.

(2) Parties to Conspiracy. If a person knows or could expect 
that one with whom he agrees has agreed or will agree with 
another to effect the same objective, he shall be deemed to have 
agreed with the other, whether or not he knows the other’s identity.

(3) Duration of Conspiracy. A conspiracy shall be deemed to 
continue until its objectives are accomplished, frustrated or aban- 
donned. “Objective” includes escape from the scene of the crime, 
distribution of booty, and messeurs, other than silence, for con- 
cealing the crime or obstructing justice in relation to it. A con- 
spiracy shall be deemed to have been abandoned if no overt act to 
effect its objectives has been committed by any conspirator 
during the applicable period of limitations.

(4) Defense Proscribed. It is no defense to a prosecution un- 
der this section that the person with whom such person is alleged to 
have conspired has been acquitted, has not been prosecuted or 
corrupted, has been convicted of a different offense, is immune 
from prosecution, or is otherwise not subject to justice.

(5) Liability as Accomplice. Accomplice liability for offenses 
committed in furtherance of the conspiracy is to be determined 
as provided in section 602.

(6) Grading. Conspiracy shall be subject to the penalties pro- 
vided for attempt in section 893(e).

(7) Jurisdiction. There is federal jurisdiction over an offense 
defined in this section as prescribed in section 323.

Comment

The treatment of conspiracy in this Code differs from its treatment 
under existing federal conspiracy statutes and law in several respects.

2. The section is concerned with making conspiracy an offense when its 
objectives are to commit defined offenses, existing statutes define 
separate crimes-complaisances which have harmful objectives regardless of 
whether the objective is a crime if committed by a single person, 
e.g., to defraud the United States, or any agency thereof in any man- 
ner or for any purpose (18 U.S.C. § 371). This section is limited to 
agreements to engage in a crime or crimes §§ 923(c) are defined elsewhere. 
Defrauding the United States, for example, is covered in theft of 
property (§ 774), theft of services (§ 774), forgery (§ 774), false 
statements (§ 3502) tax evasion (§ 169), hindering law enforcement 
(§ 3503), etc. If there is any doubt about the coverage of these specific 
ofenses, an alternative might be to draft a substantive offense of “de- 
frauding the United States.” Consideration might also be given to 
articulating in subsection (2) the extent to which a conspirator ac- 
cesses the risk that those with whom he conspires will have additional 
but related objectives. E. g., Robinson v. United States, 242 fed. 116 (8th Cir., 1927).

3. The section is concerned with a conspiracy that does not 
satisfy any of the traditional definitions. This might be useful to consider replacing the 
term “conspiracy” by language that refers more immediately to the 
“commit” agreed upon.

4. Complicity. Because most crimes in the Code are defined without 
the federal jurisdictional factor and because culpability is not required 
so to the facts upon which federal jurisdiction is based, it would not be 
unusual under this Code to establish that the conspirators contem- 
plated the circumstances which give rise to federal jurisdiction. Under 
§ 320 all that is required is that the jurisdictional circumstance has 
occurred or would occur if the objectives were accomplished. See com-
ments to § 320, supra.

5. Act. Under subsection (1) an in existing law any act to effect an 
objective of the conspiracy suffices for criminal liability; the act need 
not constitute a "substantial step" as is required in the case of attempt.

6. For an alternative to the text would be to adapt the substantial 
step requirement of the theory that otherwise the act may be innocent 
in itself and not particularly conducive of the existence of a 
conspiracy.

imposition of a consecutive sentence for conspiracy and the combination of the contemplated offenses (see § 3244(2)(1) of Crime v. United States, 156 U.S. 330 (1895)); and that subsection (5) of this section encompasses the Supreme Court's decision in Blackbeard v. United States, 258 U.S. 406 (1922). Finally, these Commissioners wish to alert the Congress to the need to give special attention to procedural and evidentiary aspects of conspiracy law when it undertakes substantive revisions.
Subsection (1) makes it clear that the various forms of incitement dealt with in this Chapter are not to be connotated, i.e., one cannot be guilty of an attempt to commit, or a conspiracy to solicit. Subsection (2) makes the definitions of "attempt" and "conspiracy" applicable to the use of these words elsewhere in the Code. Note that the definitions of "aided" and "facilitate" are not given a similar generalized application; when these terms are used elsewhere their scope must be derived by the ordinary rules of statutory construction, once limitations appropriate to the definition of a separate offense under this Chapter are necessarily inappropriate elsewhere. For example, although the person solicited might perform an act directly related to the commission of the offense under §1008, as an overt act is not required under §1301 (inciting distribution of obscene material), subsection (2) has the further result that if attempt is explicitly prohibited in the definition of a specific substantive offense, the offenses in §§ 1004 to 1008 do not apply to that attempt. The general offense may apply, however, to an offense outside of Chapter 10 in which "aided" or "facilitate" is an element, e.g., conspiracy to solicit a bribe.

Subsection (3) defines a affirmative defense of renunciation to apply to include offenses where the defendant prevented commission of the substantive crime. The defense encompasses voluntary abandonment of a crime prior to the causation of harm and also serves to moderate the potentially broad scope of the incitement offenses. The defense is not available for facilitation, however, because the crime of facilitation itself requires that the crime facilitated be committed.


§106. Regulatory Offenses.

(1) Section Applicable When Invoked by Another Statute.

This section shall govern the use of sanctions to enforce a penal regulation whenever and to the extent that another statute so provides. The limits on a sentence to pay a fine provided in Part C of this Code shall not apply if the other statute fixes a different limit. "Penal regulation" means any requirement of a statute, regulation, rule, or order which is enforceable by criminal sanction, forfeiture or civil penalty.

(2) General Scheme of Regulatory Sanctions.

(a) Necessity of Violation. A person who violates a penal regulation is guilty of an infraction. Civil penalties may be imposed as a consequence of the existence of the penal regulation. The existence of the penal regulation need not be proved to the satisfaction of the jury, except to the extent required by the penal regulation.

(b) Willful Violation. A person who willfully violates a penal regulation is guilty of a Class B misdemeanor. Willful

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Final Report

There are many offenses in the United States Code, both in and outside Title 18, which, for a variety of reasons, do not belong in the Criminal Code, but which nevertheless should be subject to criminal or quasi-criminal sanctions. These provisions are regulatory in nature, priority, define prohibitions, offenses, they are usually detailed and complex, or primarily related to other provisions as part of a regulatory scheme. The question is whether they are consistent with fundamental principles of criminal law. Section 1060 represents a novel method for achieving consistency in penal policy with respect to regulatory offenses. It is proposed that the penalty for violation and grading, based upon culpability and other factors, should be governed by this section in the Criminal Code, even though the offense is defined elsewhere. This notion, which is considered appropriate, is incorporated by reference in any regulatory provision outside the Code. Those provisions in Congress with special competence in the regulatory areas would thus be free to define the misconduct, leaving questions of policy to be resolved by the Criminal Code. Since many regulatory laws deal with regulation of business, higher fines than those provided in the Code may be appropriate. Accordingly, it is made clear that such fine levels may be maintained even though this section is incorporated for other purposes.

In the final sanction of this provision it may be appropriate to include a deactivation of policy in the following order:

Deactivation of Policy. The great increase of statutory and administrative regulation containing affirmative act or forbidding behavior not conditioned by generally recognized ethical standards emphasizes the need for discrimination in the use of the criminal law to enforce such regulation. Use of penal sanctions to enforce regulation involves substantial risk that a person may be subjected to supervision, disgrace, and punishment although he did not know that his conduct was wrongful. When penal sanctions are employed for regulatory offenses, consideration with respect to fact treatment of human beings, as well as the substantive state of the regulatory statute, must enter into legislative, judicial, and administrative decisions with regard to sanctions. It is the policy of the United
Chapter 11. National Security

Introductory Notes

Sections 1101 through 1119 are based, for the most part, on the national security provisions currently located in Chapters 37, 38, and 113 of Title 18. Some existing Title 18 provisions, such as those involving treason, are dealt with by provisions in other Chapters of the proposed Code. Others are to be reclassified outside Title 18.

Some existing federal laws relating to national defense are defined outside Title 18. In accordance with the policy that all offenses be brought into the proposed Code, these offenses have been analyzed to determine the extent to which felony penalties are appropriate. Those not brought into the proposed Code would either be retained in their present titles, but graded no higher than misdemeanors, or repealed. Thus, revolution and obstruction of restricted data on atomic energy, now dealt with in Title 45, are covered by sections 1118, 1119, and 1121; some Trading With the Enemy Act provisions, now in Title 9, are covered by sections 1104, 1105, and 1106; and some sections of Chapter 38 and similar offenses that are statute law would remain outside Title 18. A felony dealing with employment of communists (20 U.S.C., § 204) presents some difficult constitutional issues, most often considered by the Supreme Court. Resolution of these issues, by creating the offense or otherwise, did not appear essential in a general criminal law reform effort. Therefore, it is contemplated that the offense, which is essentially regulatory, remain in Title 50 without felony sanctions.

The term "war" is used in various sections of Chapter 11. It is not defined and is subject to judicial construction depending upon the circumstances. An order based on a state of war may exist without, or before, a declaration of war. For example, an American who participated in Japan's attack on Pearl Harbor would be guilty of wartime treason under §1103. Use of other terms in lieu of "war," such as "armed conflict" and "armed hostilities," is set clearly preferable to continuing present usage of "war," since these terms would still require judicial determination as to whether they apply to brief engagements of United States armed forces abroad, such as in the Dominican Republic during 1965, as well as to long conflicts, such as in Southeast Asia.

§1101. Treason.

A national of the United States is guilty of treason, a Class A felony, if, when the United States is engaged in international war, he participates in or facilitates military activity of the enemy with intent to aid the enemy or prevent or obstruct a victory of the United States. It is a defense to prosecution under this section that the defendant believed that he was not a national of the United States and such belief was not reckless or derived...
at. "National of the United States" means a person who is a citizen of the United States or is domiciled in the United States, except that a person shall not be deemed a national solely because of domicile if by treaty or international law such domicile does not entail allegiance to the United States.

Comment

This section represents an attempt to cast the offense of treason in contemporary terms, and to reduce the difficulty of construction surrounding the current formulation in 18 U.S.C. § 2381 which is derived from the antiquated language in Articles II, § 3 of the Constitution. The proposal is based on the conclusion that Congress need not adhere to the constitutional language in defining treason and that retention of the current provision would be an anachronism in a modern code.

The explicit statutory requirement of culpability, defined as "intent to aid the enemy or prevent or obstruct a victory of the United States," is new. The existing statute contains no separately identifiable culpability element. Indeed, the now-use of "intent to betray" has been developed by judicial decision, resulting in difficulties and confusion. The limitation of treasonous conduct to participation in or facilitation of military activity of the enemy during international war is also new. The current catchall language in 18 U.S.C. § 2381, i.e., giving aid and comfort to the enemy, covers both service and initial conduct and affords no rational basis for grading. Since "facilitates" could also be construed to cover trivial conduct, an alternative would be to delete that word, stripping away judicial construction of "participate" to such conduct beyond actual membership in military forces. Note that wartime or peacetime hostilities, whether or not by a national, is outlined by espionage or sabotage.

Proposed law designates the person capable of committing treason as those who "aid the enemy" to the United States. Section 18 U.S.C. 18 U.S.C. 2381 undertakes to give specific offense to the state of the offense by making it applicable to "national" of the United States, and defining that concept primarily in terms of citizenship and domicile. However, as appears in the final clause of § 1301, a corollary reliance on the concept of allegiance is necessary in order to exclude several classes of noncitizens who are "national" of the United States. The term "naturalized" is defined in 22 U.S.C. § 2072 if it occurs in the United States. The constitutional requirement of two witnesses to an overt act of treason is not codified in § 1301, which in this respect is patterned on existing law.

To respect the possibility that treasoners may be subjected to the death penalty or life imprisonment, see Chapter 36. See Working Papers, pp. 419-20, 465.

$1103. Armed Insurrection.

(1) Engaging in Armed Insurrection. A person is guilty of a Class B felony if he engages in an armed insurrection with intent to overthrow, supplant or change the form of the government of the United States or of a state.

(2) Leading Armed Insurrection. A person is guilty of a Class A felony, with intent to overthrow, supplant or change the form of the government of the United States or of a state, he directs or leads an armed insurrection, or organizers or provides a substantial portion of the resources of an armed insurrection which is in progress or is impending or any part of such insurrection involving 100 persons or more.

(3) Advocating Armed Insurrection. A person is guilty of a Class C felony if, with intent to induce or otherwise cause others to engage in armed insurrection in violation of subsection (1), he

(a) advocates the desirability or necessity of armed insurrection under circumstances in which there is substantial likelihood his advocacy will imminently produce a violation of subsection (1) or (2); or

(b) organizes an association which engages in the advocacy prohibited in paragraph (a), or, as an active member of such association, facilitates such advocacy.

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§ 1104

Para-Military Activities.

(1) Offense. A person is guilty of an offense if he knowingly engages in, or intentionally facilitates, para-military activities not authorized by law. "Para-military activities" means acquisition, co-opting, use, or training in the use, of weapons for political purposes by or on behalf of an association of ten or more persons.
§ 1105

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weaponry, early warning systems, or other means of defense or retaliation against catastrophic enemy attack.

(3) Definitions. In this section:

(a) "defense establishment" means the defense establishment of the United States or of a nation at war with any nation with which the United States is at war;

(b) "offense of direct military significance" means armament or anything else peculiarly suited for military use, and includes such a thing in course of manufacture, transport, or other servicing or preparation for the defense establishment.

Comment

This section, together with §§ 1106 and 1107, would replace the existing sabotage statute (18 U.S.C. §§ 3591-3592) [sic] with a scheme which is less complex, which covers some conduct not presently covered, and which takes contemporary conditions into account.

Existing law attempts to list property which may be subject to sabotage, e.g., "... stores of clothing, ... water, food, foodstuff...", the presence of a nuclear weapon at the end of the list is testimony to the difficulty of the task, i.e.,..., and all articles, parts or ingredients intended for, adapted to, or normally used by the United States or any NATIONAL SECURITY, in connection with... Do conduct take a different approach. This section takes a different approach. It describes both the kinds of property and the damage that would likely occur in general terms, requiring that an intent to impair the military effectiveness of the United States accompany the conduct, even in respect to the property as described.

The reference to the thing of direct military significance in subsections (1)(a) and (1)(b) is intended to exclude property which, while belonging to the military establishment, is of a clearly non-military character, e.g., textbooks. Delays and obstructions caused by sabotage under subsections (1)(c) and (1)(d) because jurisdiction over arms and catastrophe is not plenary.

The requirement of "intent to impair the military effectiveness of the United States" is similar to existing law, but differs in that existing law also encompasses an intent to injure an ally. Under the definition of "defense establishment" in subsection (5)(A), this section covers injuries to allies if there is an intent thereby to injure the United States.

Grading under existing law distinguishes between war and national emergencies on the one hand, and peace on the other. But the most serious and irreparable harm to the national security is recognized, through injury to critical strike systems and critical infrastructure. Thus, this section classifies sabotage of that variety as well as sabotage in wartime as the most serious offenses.

Contrary to existing law, the existence of a "national emergency" is not an element of grading here. National emergency declarations by the President, primarily significant for civil and administrative purposes, have continued in force for decades, and therefore operate substantively, if at all, in grading. It should be explained that this has not been the case so far in grading, and the definition of an offense. Intentionally impairing the military effectiveness of the United States during decades, not amounting to sabotage under this section, could nevertheless be a Class C felony under § 1105.

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§ 1106

Recklessly Impairing Military Effectiveness.

A person is guilty of a Class C felony if, in reckless disregard of a substantial risk of seriously impairing the military effectiveness of the United States, he intentionally engages, in time of war, in the conduct prohibited in paragraphs (a) through (d) of section 1105(1), or, whether or not in time of war, in the conduct prohibited in section 1105(3).

Comment

This section replaces three provisions of existing sabotage statutes which impose criminal liability upon a person who acts "with such intent to believe that his act may injure, interferes with, or obstruct the United States," in preparing for or carrying on war or defense activities (18 U.S.C. §§ 2331, 2334). While it is similar to existing law in not requiring that an intent to harm the military effort accompany intentional misconduct, this section is more explicit as to the requirement of a culpability greater than mere negligence. See Working Paper, pp. 212-213.

§ 1107

Intentionally Impairing Defense Functions.

A person is guilty of a Class C felony if, with intent to impair the military effectiveness of the United States, he engages in the conduct prohibited in paragraphs (a) through (d) of section 1105 (1) and thereby causes a loss which in, in fact, in excess of $5,000.

Comment

This offense is similar to sabotage, but in a Class C, rather than Class A, felony, status circumstances of war or risk of catastrophic defense impairment. The requirement that the loss caused in excess of $5,000 be to military facilities grading provisions of criminal misconduct (§ 1105), leaving less severe harm to the military effectiveness grading provisions of that section. See Working Paper, pp. 50-51.

§ 1108

Avoiding Military Service Obligations.

(1) Offense. A person is guilty of a Class C felony if, in violation of the regulatory act and with intent to avoid service in the
armed forces of the United States or the performance of civilian work in lieu of induction into the armed forces, be:
(a) fails to register;
(b) fails to report for induction into the armed forces;
(c) refuses induction into the armed forces; or
(d) refuses or fails to perform, or avoids the performance of, civilian work required of him.

"Regulatory act" means Selective Service Act of 1940, or any other statute applicable to the recruiting of personnel for the armed forces, and any rules or regulations issued pursuant thereto.

(2) Duration of Offense. An offense under subsection (1)(a) is deemed to continue until the act is no longer under a duty to register as provided in the regulatory act.

Comment
Existing law makes any violation of the Selective Service Act, regardless of how trivial in the kind of intent, subject to felony penalties (50 U.S.C. § 464). In the 1950s Congress has added a misdemeanor penalty for failure to report for induction into the armed forces (50 U.S.C. § 462). Section 1110 restricts the felony to major violations where there is intent to avoid military or substitute service; other violations would be subject to misdemeanor sanctions under the Selective Service Act or equivalent legislation appearing in Title 18.

Subsection (2) is necessary to conform to the recent Supreme Court decision constraining the Selective Service Act in \\

Comment

This section refers to a number of U.S.C. § 2007 and § 2088 which have been described as dealing with improper recruitment of the armed forces. Under existing law, grading is based upon the existence or nonexistence of war. Here grading is more disapproving, because the force of warion should not abuse aggregate of causing an obstruction, e.g., causing one soldier to refuse to perform K.V.

§ 1111. Obstruction of Recruiting or Induction into Armed Forces

A person is guilty of a Class C felony if:
(a) in time of war, he intentionally and substantially obstructs the recruiting service by physical interference or obstacle or solicits another to violate section 1110; or
(b) with intent to avoid or delay his or another’s service in the armed forces of the United States, he employs force, threat or deception to influence a public servant in his official action.

"Recruiting service" means a voluntary enlistment system, the Selective Service System or any other system for obtaining personnel for the armed forces of the United States.

Comment

This section refers to U.S.C. § 2088, which deals with obstruction of recruiting service, in order to meet constitutional issues, correct grading disposition and integrate the offense into the Code as a whole. Thus, while reducing the 3-year penalty provided in existing law, paragraph (a) upgrades physical obstruction of recruiting service (from the Class A misdemeanor of obstructing any government function, § 1101) to a Class C felony when it occurs in time of war. Similarly, an unsuccessful solicitation to violate § 1109 (a Class A misdemeanor under § 1107) is raised here to a Class C felony when it is committed in time of war. In addition, paragraph (b) covers the use of force, threat, or deception against a public servant to prevent service in the armed forces, whether under the Selective Service Act or otherwise. See Working Papers, pp. 445-50, 446-60, 448-50.

§ 1111. Causaing Insubordination in the Armed Forces

(1) Offense. A person is guilty of an offense if he intentionally causes insubordination, mutiny or refusal of duty by a member of the armed forces of the United States.

(2) Grading. The offense is a Class B felony if committed in time of war and it consists of (a) causing mutiny, or (b) causing insubordination or refusal of duty of ten or more persons, or (c) causing insubordination or refusal of duty in or directly relating to a combat operation. Otherwise it is a Class C felony.

Comment

This section covers those aspects of 18 U.S.C. §§ 2387 and 2388 which have been described as dealing with improper recruitment of the armed forces. Under existing law, grading is based upon the existence or nonexistence of war. Here grading is more disapproving, because the force of warion should not abuse aggregate of causing an obstruction, e.g., causing one soldier to refuse to perform K.V.


§ 1111. Impairing Military Effectiveness by False Statement

(1) Offense. A person is guilty of an offense if, in time of war and with intent to aid the enemy or to prevent or obstruct the success of military operations of the United States, he knowingly makes or conveys a false statement of fact concerning losses, plans, operations or conduct of the armed forces of the United States or those of the enemy, civilian or military catastrophe, or other report likely to affect the strategy or tactics of the armed forces of the United States or likely to create general panic or serious disruption.

(2) Grading. The offense is a Class B felony if it causes serious impairment of the military effectiveness of the United States. Otherwise it is a Class C felony.
§ 1122 Espionage.

(1) Offense. A person is guilty of espionage if he:

(a) reveals national security information to a foreign power or agent thereof with intent that such information be used in a manner prejudicial to the safety or interest of the United States;

(b) in time of war, notifies, collects or records, or publishes or otherwise communicates national security information with intent that it be communicated to the enemy.

(2) Grading. Espionage is a Class A felony if committed in time of war or if the information directly concerns military missiles, space vessels, satellites, nuclear weapons, early warning systems or other means of defense or retaliation against catastrophic enemy attack, war plans, or any other major element of defense strategy, including security intelligence. Otherwise espionage is a Class II felony.

(3) Attempt and Conspiracy. Attempted espionage and conspiracy to commit espionage are punishable equally with the completed offense. Without limiting the applicability of section 102 (Criminal Attempt), any of the following acts is sufficient to constitute a substantial step under section 102 toward commission of espionage under subsection (1)(a) obtaining, collecting, or eliciting national security information or entering a restricted area to obtain such information.

(1) Definitions. In this section:

(a) "national security information" means information regarding:

(i) the military capability of the United States or of a nation at war with a nation with which the United States is at war;

(ii) military or defense planning or operations of the United States;

(iii) military communications, research or development of the United States;
§ 1114. Offense of Authorized Communications Information

(1) Offense. A person is guilty of a Class C felony if he knowingly:
(a) communicates classified communications information or otherwise makes it available to an unauthorized person;
(b) publishes classified communications information; or
(c) uses classified communications information in a manner prejudicial to the safety or interest of the United States.

(2) Attempt and Conspiracy. Attempt and conspiracy to violate this section are punishable equally with the completed offense.

(3) Definitions. In this section:
(a) "Communications information" means information:
(i) regarding the nature, preparation or use of any code, cipher or cryptographic system of the United States or of a foreign power;
(ii) regarding the design, construction, use, maintenance or repair of any device, apparatus or appliance used or

§ 1114. Intellectural Surveillance

(iii) regarding the intelligence surveillance activities of the United States or a foreign power; or
(iv) obtained by the process of intelligence surveillance from the communications of a foreign power;
(b) communications information is "classified" if, at the time the conduct is engaged in, the communications information in, for reasons of national security, specifically designated by a United States government agency for limited or restricted dissemination or distribution;
(c) "code," "cipher" and "cryptographic system" include, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance or means of communications;
(d) "Intelligence surveillance" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;
(e) "Unauthorized person" means a person who, or agency which, is not authorized to receive communications information by the President or by the head of a United States government agency which is expressly designated by the President to engage in intelligence surveillance activities for the United States;
(f) "Foreign power" has the meaning prescribed in section 1125(c).

§ 1115. Congressional Use. This section shall not apply to the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States or joint committee thereof. Irrelevancy under this subsection is a defense.

Comment

This section substantially carries forward the provisions of 18 U.S.C. § 793. Subsection (1)(a), in present law, reads: "... in a manner prejudicial to the safety or interest of the United States or for the advantage of any foreign power to the injury of the United States." The latter phrase has been dropped as surplusage. The present law also contains the culpability requirement of "willfully," as well as
§ 1115. Communication of Classified Information by Public Servant.

(1) Offense. A public servant or former public servant is guilty of a Class C felony if he communicates classified information to an agent or representative of a foreign government or to an officer or member of an organization defined in 50 U.S.C. § 501 (communist organizations). "Classified information" means information the dissemination of which has been restricted by classification by the President or by the head of a United States government agency with the approval of the President as affecting the security of the United States.

(2) Defense.

(a) It is a defense to a prosecution under this section that the public servant or former public servant was specifically authorized by the President or by the head of a United States government agency which he served to make the communication prohibited by this section.

(b) It is an affirmative defense to a prosecution under this section that the former public servant obtained the information in a manner unrelated to his having been a public servant or, if not so obtained, it was not classified while he was a public servant.

Comment
This section brings the provisions of 50 U.S.C. § 781(b) into Title 18, but extends the scope of the prohibitions to former public servants, subject to an appropriate affirmative defense. The section continues existing law in requiring proof only of intentional communication of classified information by a public servant to a foreign nation or the prohibited organization. No defense of faulty classification is provided. An alternative provision, prohibiting communication of classified information by persons, together with a defense of inappropriate classification, has been considered. No need for a change from current policy to broader prohibition, long rejected by the Congress, appears to have been established. See Working Papers, pp. 460, 460-61, 461-62.

§ 1116. Prohibited Recipients Obtaining Information.

An agent or representative of a foreign government or an officer or member of an organization defined in 50 U.S.C. § 501 (communist organizations) is guilty of a Class C felony if he:

(a) knowingly obtains classified information, as defined in section 1115;

(b) solicits another to commit a crime defined in sections 1112, 1113, 1114 or 1115.

Comment
This section is the counterpart of § 1115 for certain recipients of sensitive information and provides Class C felony treatment of such persons when they violate sections of §§ 1112 to 1115. See Working Papers, pp. 460, 460-61, 467, 468-61.

§ 1117. Wartime Censorship of Communications.

A person is guilty of a Class C felony if, in time of declared war and in violation of a statute of the United States, or regulation, rule or order issued pursuant thereto, he:

(a) knowingly communicates or attempts to communicate with the enemy or an ally of the enemy;

(b) knowingly endorses or attempts to evade submission to censorship of any communication passing or intended to pass between the United States and a foreign nation;

(c) uses any code or device with intent to conceal from censorship the meaning of a communication described in paragraphs (a) and (b); or

(d) uses any mode of communication knowing it is prohibited by such statute or regulation, rule or order issued pursuant thereto.

Comment
This section brings into the Code the wartime censorship provisions of the Trading With the Enemy Act (50 U.S.C. App. § 8(1) and (4)). The Trading With the Enemy Act refers to "declared war" and that limitation is continued here. See Working Papers, pp. 460-61, 467, 468-61.

§ 1118. Harboring or Concealing National Security Offenders.

A person is guilty of a Class C felony if he knowingly harbors or conceals another who has committed or is about to commit treason (section 1111), sabotage (section 106, espionage (section 1112), or murder of the President or Vice President (section 106,).
§ 1119. Aiding Deserters.

(1) Offense. A person is guilty of an offense if he intentionally assists a member of the armed forces of the United States to desert or attempt to desert or, knowing that a member of the armed forces has deserted, he engages in the conduct prohibited in paragraphs (a) through (d) of subsection (1) of section 1385 with intent to aid the other to avoid discovery or apprehension.

(2) Grade. The offense is a Class C felony if it is committed in time of war. Otherwise it is a Class A misdemeanor.

Comment

This section carries forward the provisions of 18 U.S.C. § 1801, in terms of the formulation developed for aiding law enforcement under § 1331 of the proposed Code. See Working Papers, pp. 465-466.

§ 1120. Aiding Escape of Prisoner of War or Enemy Alien.

A person is guilty of a Class C felony if he intentionally:

(a) facilitates the escape of a prisoner of war held by the United States or any of its allies or of a person apprehended or detained as an enemy alien by the United States or any of its allies; or

(b) interferes with, hinders, delays or prevents the discovery or apprehension of a prisoner of war or an enemy alien who has escaped from the custody or detention by the United States or any of its allies, by engaging in the conduct prohibited in paragraphs (a) through (d) of subsection (1) of section 1305.

Comment

This section brings into the Code the felony defined in 50 U.S.C. § 501. Abstem from the explicit coverage, the making of the material false statements contemplated here would only be a Class A misdemeanor under § 1303 of the proposed Code. See Working Papers, p. 466.
§ 1120. Time of War: Culpability.

Time of war or wartime, for the purposes of this Chapter, means the time when the United States is at war. Culpability as to the state of war need not be proved.

Comment

This section is intended to be explicit that time of war means only a war involving the United States. The last sentence will make it unnecessary for the government to prove that the defendant knew the United States was at war, a state of mind difficult to prove but almost certain to exist.

Chapter 12. Foreign Relations, Immigration and Nationality

FOREIGN RELATIONS AND TRADE

§ 1221. Military Exploits Against Friendly Powers.

(1) Offense. A person is guilty of a Class C felony if he:
   (a) launches an air attack from the United States against a friendly power:
   (b) organizes a military expedition assembled in the United States to engage in armed hostilities against a friendly power:
   or
   (c) within the United States, joins or knowingly provides substantial resources or transportation from the United States to a military expedition described in paragraph (b).

(2) Definitions. In this section:
   (a) "Friendly power" means a foreign government, whether or not recognized by the United States, or a faction engaged in armed hostilities, with which the United States is at peace;
   (b) "armed hostilities" means international war or civil war, rebellion or insurrection.

Comment

This section, carrying forward the substance of 18 U.S.C. § 935, implements a national obligation under international law and protects neutrality. Existing law deals with both expediency and enterprises. The proposed section continues use of the term "expedition" because of its fairly well-developed meaning under existing law, but covers the substance of 18 U.S.C. § 935 and the similar law applicable in the conduct of hostilities outside the United States. Whether it has any bearing on the exercise of the President's power under the War Powers Resolution. Note that it is an offense to engage in organizational activities regardless of where such activities take place, but it is an offense to join the expedition or knowingly provide it with transportation or substantial resources only if that conduct occurs within the United States. The distinction is made in order to avoid undue interference in activities which should not concern the United States, such as joining the expedition when it is on the high seas. As under existing law, the offense is committed if the expedition is assembled in the United States with the prohibited purpose, even though it is not launched from the United States. See Working Papers, pp. 646-67, 407, 500-09.

§ 1222. Conspiracy to Commit Offenses Against a Friendly Nation.

A person is guilty of a Class C felony if he agrees with another to engage in conduct hostile to a friendly nation within the terr-
ory of any foreign nation and if a party to the agreement engages in conduct within the United States constituting a substantial step toward effecting the objective of the agreement. "Conduct hostile to a friendly nation" means:
(a) gathering information relating to the national defense of a friendly nation while such nation is engaged in international war, with intent to reveal such information to the injury of such nation or to aid its enemy;
(b) intentionally killing a public servant of a friendly nation on account of his official duties; or
(c) engaging in theft or intentional destruction of or damage to or tampering with property belonging to or in the custody of the government of a friendly nation, or the intentional destruction of or damage to or tampering with a vital public facility located within the territory of a friendly nation, provided the conduct under this paragraph would constitute a felony if the property belonged to the United States or was a vital public facility as defined in section 1708(c).
"Friendly nation" means a nation with which the United States is at peace.

Comment
This section is largely derived from 18 U.S.C. § 951, although the current provision deals only with property depredations (paragraph (c) of the section). Also carried forward under this formulation is the aspect of 18 U.S.C. § 960 dealing with the launching of "military enterprises" (as well as "military expeditions" see § 1301) from the United States. Section 900 has been judicially construed to include intelligence activities (paragraph (b) of the section). The provision, dealing with murder, is a logical corollary of the list of activities prohibited under existing laws. The prohibition in paragraph (a) that the property crimes constitute felonies under the proposed Code, were United States property or vital facilities involved, avoids involvement of American law enforcement in civil foreign crimes. See Working Papers, pp. 441, 486-91, 506-508.

§ 1301. Unlawful Recruiting for or Establishment in Foreign Armed Forces.
(1) Offense. A person is guilty of a Class A misdemeanor if, within the United States, he:
(a) enters or agrees to enter the armed forces of a foreign nation; or
(b) recruits or attempts to recruit another for the armed forces of a foreign nation.

Comment
The purpose of this section is to identify the kinds of culpability which should make violators of the myriad statutory provisions of the broad subject subject to criminal prosecution. An important element here in common the fact that they deal with the normally legitimate conduct of exporting goods, services, money or credit, but use criminal
§ 1205. Orders Prohibiting Departure of Vessels and Aircraft.

A person who knowingly causes the departure from the United States of a vessel or aircraft in violation of an order prohibiting its departure. "Order" means an order issued pursuant to a federal statute designed to restrict the delivery of the vessel or aircraft, or the supply of goods or services, to a foreign nation engaged in armed hostilities.

Comment


§ 1204. Failure of Foreign Agents to Register.

A person who fails to register as a foreign agent as required by a federal statute is guilty of a Class C felony if he surreptitiously engages in the activity with respect to which the registrati

§ 1221. Foreign Agents Regulate

This requirement is imposed or attempted to conceal the fact he is a foreign agent.

Comment

Existing provisions—5 U.S.C. §§ 1101 and 16 U.S.C. § 951—require agents of foreign governments to register with the Attorney General and Secretary of State, respectively. Under this section, one who fails to register is guilty of a felony, although it may remain as a minor offense under a regulatory statute outside Title 18. The felony requires both failure to register and surreptitiously engaging in the activity with respect to which registration is required or attempting to conceal one's status as a foreign agent. These requirements carry out the principles concerning grading considered in connection with § 1204. It is also proposed (see 18 U.S.C. § 951) to integrate with the other registration provisions in Title 22. See Working Papers, pp. 449-99.

IMMIGRATION, NATURALIZATION, AND PASSPORTS

Introductory Note

Sections 1221 through 1239 represent an effort to integrate into the proposed Code many existing penal provisions designed to implement government regulation of immigration, citizenship, and foreign travel by aliens. Generally speaking, the approach has been: (1) to avoid interfering with existing substantive policy; (2) to eliminate duplication of general offenses such as bribery, perjury, and other crimes that are not specifically regulated; (3) to aggregate offenses which ought to remain in Title 18—usually the bribery—from lesser grade matters which might be regarded as regulatory offenses and placed in other Titles, amended, if necessary, to provide for minor penalties or incorporation of the regulatory offense provision (§ 1506). The grading and definitions of these offenses which are to be incorporated in Title 18 have been reconciled with the general penal policy of the remainder of the Code. The principal substantive changes which result from this process are in grading. These sections give to Congress the primary role of identifying more discriminately than existing law which misconduct should be a felony and which a misdemeanor.

In considering these provisions, one should bear in mind that much of the mischief which can occur in this area, e.g., making or using forged documents, is covered by other Code provisions.

§ 1233. Entry Into the United States

(1) Offense. An alien is guilty of an offense if he intentionally:
(a) enters the United States at a time or place other than as designated pursuant to a federal statute;
(b) eludes examination or inspection by immigration officers;
(c) obtains entry to the United States by deception; or
(d) enters the United States after having been arrested and
departed or excluded and deported from the United States.

(2) Grading. The offense is a Class C felony if:
(a) entry is obtained by the use of an entry document or
certificate of naturalization or citizenship which the actor
knows is forged or counterfeited or belongs or pertains to an-
other; or
(b) the offense constitutes a violation of subsection (3)(d)
and the alien previously has been arrested and departed be-
cause he was convicted of a felony involving moral turpitude.
Otherwise the offense is a Class A misdemeanor.

(3) Defense. It is an affirmative defense to a prosecution un-
der subsection (3)(d) that:
(a) the Attorney General had expressly consented to the
alien's reentry or re-admission to the United States prior to
his removal or deportation from the United States; or
(b) with respect to an alien previously excluded and de-
ported, he was not required by a federal statute to obtain such
admission consent.

(4) Presumption. In a prosecution under subsection (3)(d), an
alien who is found in the United States after having been de-
ported is presumed to have intentionally reentered the United
States.

Comment
This section arises from the provisions on smuggling of aliens
found in 8 U.S.C. § 1324(a)(1). The significant change is with respect
to grading. Under existing law all such conduct is felonious. This sec-
tion distinguishes between less serious cases in which no more than
ordinary complexity in unlawful entry is involved, such as with a
family member, and cases which warrant felony treatment: smuggling
for gain or aiding entry or of a person who intends to commit a felony.
Class C felony treatment for aiding aliens who intend to commit
felonies is intended to cover the most serious aspects of 8 U.S.C.
§§ 1327 and 1328 (aiding subversives and prostitutes). Note that
felony treatment is accorded to the procurement of procedures, what-
ever their origin, under § 1941. See Working Papers, p. 113.

§ 1223. Unlawfully Bringing Aliens Into the United States.

(1) Offense. A person is guilty of an offense if, with intent
to hinder, delay or prevent the discovery or apprehension of
another who is an alien, including an alien crewman, and who
has unlawfully entered or is unlawfully within the United States,
has:
(a) harbors or conceals such alien;
(b) provides such alien with a weapon, money, transportation,
disguise or other means of avoiding discovery or appre-
prehension;
(c) conceals, aids, or assists or destroys a document or
thing;
(d) warns such alien of impending discovery or apprehen-
sion.

(2) Grading. The offense is a Class C felony if the actor en-
gages in the conduct:
(a) for consideration for a thing of pecuniary value;
(b) with intent to receive consideration for placing such
alien in the employ of another;
(c) with intent such alien be employed or continued in the
employ of an enterprise operated for profit; or
(d) with knowledge such alien intends to commit a felony
in the United States.

Otherwise the offense is a Class A misdemeanor.
§ 1224. Obtaining Naturalization or Evidence of Citizenship by Deception.

A person is guilty of a Class C felony if he intentionally obtains by deception United States naturalization, registration in the alien registry of the United States, or the issuance of a certificate of United States naturalization or citizenship for or to any person not entitled thereto.

Comment

This section consolidates a number of existing provisions, 18 U.S.C. §§ 1015(a), 1424, 1425(a) and (b), and carries forward the policy of existing law, treating as a serious minor the obtaining of citizenship or evidence of citizenship by deception. This is an instance in which making false statements, otherwise a misdemeanor under § 1500, is upgraded to a felony. Note that obtaining the welfare by deception requires that the deception be material. See Working Papers, pp. 514-15.

§ 1225. Fraudulent Acquisition or Improper Use of Passports.

A person is guilty of a Class C felony if:

(a) he intentionally obtains the issuance of a United States passport by deception; or

(b) with intent to obstruct, impair or pervert a government function which is, in fact, federal, he uses a United States passport the issuance of which was obtained by deception or which was issued for the use of another.

Comment

This section carries forward the policy of 18 U.S.C. § 1505, treating fraudulent acquisition or improper use of passports as a serious offense. Like § 1224, it is one of the instances in which making false statements, otherwise a misdemeanor (§ 1500), is upgraded to a felony.

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Chapter 13. Integrity and Effectiveness of Government Operations

PHYSICAL OBSTRUCTION OF GOVERNMENT FUNCTION AND RELATED OFFENSES


(1) Offense. A person is guilty of a Class A misdemeanor if, by physical interference or obstacle, he intentionally obstructs, impedes or prevents the administration of law or other government function.

(2) Applicability to Arrest. This section does not apply to the conduct of a person obstructing arrest of himself, but such conduct is subject to section 1302. This section does apply to the conduct of a person obstructing arrest of another. Inapplicability under this subsection is a defense.

(3) Defense. It is a defense to a prosecution under this section that the administration of law or other government function was not lawful; but it is no defense that the defendant mistakenly believed that the administration of law or other government function was not lawful. For the purposes of this section the conduct of a public servant acting in good faith and under color of law in the execution of a warrant or other process for arrest or search and seizure shall be deemed lawful.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the government function is a federal government function.

Comment

This section, a general prohibition of physical interference with governmental functions, enacts several existing statutes covering specific problems in the general problem (18 USC §§ 1501, 1502, 2021). The definitional limitations imposed by present law are retained; proof of intent to interfere with a government function is specifically required. Since culpability need not be proved as to purely legislative acts under § 2021, proof that the government function intended to be obstructed was in fact federal, regardless of what the actor thought it was, would suffice to establish jurisdiction under subsection (4).

In addition to making physical obstruction of a government function an offense in itself, this section will serve as a jurisdictional basis for prosecuting more serious offenses, such as murder where homicide is the consequence of the violation. See § 1001(b) (bargain jurisdictional provision). Physical interference warranting more severe sanctions than the misdemeanor treatment authorized by this section are dealt with elsewhere in the Code. See, e.g., § 1301 under which assaulting a witness is a Class B felony.

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§ 1302. Preventing Arrest or Discharge of Other Duties.

(1) Offense. A person is guilty of a Class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty.

(2) Defense. It is a defense to a prosecution under this section that the public servant was not acting lawfully; but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the public servant is a federal public servant or the official duty is a federal official duty.

Comment

This section singles out and treats specially physical interference with an arrest. The conflicts in present federal law on the right to make arrest are resolved under §§ 1301 and 1306 and under § 2021(a), which deals with self-defense; these sections provide a consistent pattern of affording protection from risk of serious injury to an officer engaged in his duty in good faith and under color of law. Execution of official duty other than arrest is also covered, so that the public servant is protected against risk of bodily injury by reason of conduct which may not constitute "physical interference" under § 2021 or an assaultive offense under §§ 1301 et seq. Night interference which creates no substantial risk to the officer are not offenses under this section. The section provides conduct against a public servant executing a warrant or other process in "good faith, under color of law." Conduct in response to otherwise unlawful acts of a public servant is governed by the provisions generally applicable to use of force. The circumstances under which there is justification for use of force against a federal law enforcement officer in such cases are limited by § 2021(a).
Although the offense is graded as a Class A misdemeanor, violation of the section, as does violation of § 1118, serves as a jurisdictional basis for prosecution for murder, aggravated assault, and other serious offenses committed during the course of the violation. See § 901(l). See Working Papers, pp. 307-20, 444.

§ 1303. Hindering Law Enforcement.

(1) Offense. A person is guilty of hindering law enforcement if he intentionally interferes with, hinders, delays or prevents the discovery, apprehension, prosecution, conviction or punishment of another for an offense by:

(a) harboring or concealing the other;
(b) providing the other with a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension;
(c) concealing, altering, mutilating or destroying a document or thing, regardless of its admissibility in evidence; or
(d) warning the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law.

(2) Grading. Hindering law enforcement is a Class C felony if the actor:

(a) knows of the conduct of the other and such conduct constitutes a Class A or Class B felony; or
(b) knows that the other has been charged with or convicted of a crime and such crime is a Class A or Class B felony.

Otherwise hindering law enforcement is a Class A misdemeanor.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the principal offense is a federal offense.

Comment

This section replaces the provisions of 18 U.S.C. §§ 3071 and 1072, covering removal of fugitives from arrest and escaped prisoners, and 18 U.S.C. §§ 3 and 4, covering accessory after-the-fact and obstruction of justice, with the consolidated offense of hindering law enforcement by aiding a fugitive. The harboring and concealing provisions of hindering law enforcement is expanded to cover the other conduct specified in the section. Grading follows the principles of 18 U.S.C. § 2 in providing a lesser penalty for the accessory. Falsifying information and making false reports to law enforcement authorities are specifically dealt with in §§ 1322 and 1334, respectively.

While the provision is primarily concerned with hindering the other aspect of hindering—namely, the obstruction aspect of hindering, the other element of hindering-failure to give notice to appropriate authorities—is not stated. Proof of consciousness estab-


(1) Offense. A person is guilty of aiding conspiracy of crime if he intentionally aids another to commit, or to carry out the proceeds of a crime or otherwise profit from a crime.

(2) Grading. Aiding conspiracy of a crime:

(a) in a Class C felony if the actor knows of the conduct of the other and such conduct constitutes a Class A or Class B felony; and
(b) in a Class A misdemeanor if the actor knows of the conduct of the other and such conduct constitutes a Class C felony or a Class A misdemeanor.

Otherwise aiding conspiracy of a crime is a Class B misdemeanor.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the principal offense is a federal crime.

Comment

This section penalizes aiding another to benefit from his crime. It replaces and broadens the more specific offenses of 18 U.S.C. § 1964, which covers only the conduct of kidnapping crimes among others. Since the conduct prohibited in essentially the same manner, grading is attached to the principal offense. While § 1305, culpability is required as to the conduct which constitutes the principal offense. Federal jurisdiction is limited to cases in which the principal offense is a federal crime, as it is under § 1964; the actor need not know of the federal character of the principal crime. See Working Papers, p. 146.

§ 1306. Failure to Appear After Release; Bail Jumping.

(1) Offense. A person is guilty of an offense if, after having been released pursuant to the Bail Reform Act of 1966, upon condition of undertaking that he will subsequently appear before a court or judicial officer as required, he fails to appear as required.

(2) Grading. The offense is a Class C felony if the actor was released in connection with a charge of felony or while awaiting
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sentence or pending appeal or certiorari after conviction of any
crime. Otherwise it is a Class A misdemeanor.
(3) Defense. It is an affirmative defense to a prosecution under
this section that the defendant was prevented from appearing at
the specified time and place by circumstances beyond the control of
which he did not contribute in reckless disregard of the require-
ment to appear.

Comment
This section substantially reenacts 18 U.S.C. § 3160, the current bail
jumping provision. The grading scheme also substantially follows
existing law, although other grading schemes, perhaps equally mili-
taneous, such as grading on the basis of the intent of the actor to
commit himself or on the need to apprehend him to compel his appear-
ance, were considered.
The defense in subsection (3) was deemed necessary to take into
account excuses for failing to appear which would be registrable under
an elastic construction of "willfully", permitted by existing law but
not by the proposed Code. See § 307.

§ 1306. Escape

(1) Offense. A person is guilty of escape if, without lawful
authority, he removes or attempts to remove himself from official
detention or fails to return to official detention following tem-
porary leave granted for a specified purpose or limited period.

(2) Grading. Escape is a Class B felony if the actor uses a
firearm, destructive device or other dangerous weapon in effect-
ating or attempting to effect his removal from official detention. Escape
is a Class C felony if (a) he uses any other force or threat
of force against another in effecting or attempting to effect his
removal from official detention, or (b) the person escaping was in
official detention by virtue of his arrest for, or on charge of, a
felony or pursuant to his conviction of any offense. Otherwise es-
cape is a Class A misdemeanor.

(3) Definitions. In this section:
(a) "official detention" means arrest, custody following sur-
render in lieu of arrest, detention in any facility for custody of
persons under charge or conviction of an offense or alleged
or found to be delinquent, detention under a law authorizing
civil commitment in lieu of criminal proceedings or authorizing
such detention while criminal proceedings are held in abey-
ance, detention for extradition or deportation, or custody for
purposes incident to the foregoing, including transportation, med-
ical diagnosis or treatment, court appearances, work and
rehabilitation; but "official detention" does not include super-
vision on probation or parole or restraint incidental to release
under 18 U.S.C. Chapter 207 (Release) and § 5051 (Juvenile);
(b) "conviction of an offense" does not include an adjudica-
tion of juvenile delinquency.

(4) Defense. Irregularity in bringing about or maintaining
detention, or lack of jurisdiction of the committing or retaining
authority shall not be a defense to a prosecution under this sec-
tion if the escape is from prison or other facility used for official
detention or from detention pursuant to commitment by an official
proceeding. In the case of other detentions, irregularity or lack of
jurisdiction shall be an affirmative defense if (a) the escape
involved no substantial risk of harm to the person or property
of anyone other than the defendant, or (b) the detaining authority
did not act in good faith under color of law.

(5) Jurisdiction. There is federal jurisdiction over an escape
defined in this section when the official detention involves fed-
eral law enforcement or the escape is from a federal public
servant or federal facility used for official detention.

Comment
This section carries forward most of the principles now embodied in
18 U.S.C. § 733. Changes include definition of "escape" and "official
detention". This section broadens the offense, thereby removing
some difficulties of construction under existing law with respect to in-
voluntary and rehabilitation and juvenile proceedings. Subsection (b)
deals explicitly with the effect of illegal detention. It follows existing
law by generally denying a defense based on illegality, but changes
the provisions to provide that if the detention is illegal in the sense
that the arrest is unlawful to a requirement only that the arrest be
in good faith and under color of law. The escape, however, may not
in any event cause substantial risk of harm to others.

Grading keyed to the status of the defendant and the grade of of-
 offence with which he is charged is retained; but this section changes
existing law to make escape a Class B felony if dangerous means are
used and a Class C felony if any other force against the person is
used, regardless of how the offense would otherwise be graded. Escape
by juvenile is treated, as under existing law, as a misdemeanor, if
force or dangerous means are not used, through elimination of adjudi-
cation as a juvenile delinquent from "conviction of an offense".

The section does not contain special provisions on intentionally
sliding or knowingly facilitating escape (18 U.S.C. § 733), since the
effects of accomplice and facilitation provisions of the Code will
apply. Public servants who recklessly or negligently permit escape,
however, are dealt with explicitly in § 1305.
The federal jurisdiction provided for this offense covers prisoners who are in state custody in aid of federal law enforcement and in federal custody in aid of state law enforcement, as well as federal prisoners in federal custody.

See Working Papers, pp. 460, 467, 443-46.

§ 1307. Public Servants Permitting Escape

(1) Offense. A public servant concerned in official detention pursuant to process issued by a court, judge or magistrate is guilty of a Class A misdemeanor if he recklessly permits an escape and is guilty of a Class B misdemeanor if he negligently permits an escape. "Official detention" has the meaning prescribed in section 1306(2).

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the public servant is a federal public servant or the process is federal process.

Comment

This section continues the policy of 18 U.S.C. § 752, dealing with public servants having custody of a prisoner who "willfully or negligently" committed an escape or an attempt to escape, and. The elements of this offense are the same as those of the underlying requirements to the definitions in the proposed Code, and those in the fugitive provisions criminal liability for escape involve more serious than recklessness or negligence. A fundamental issue is whether the provision should be retained at all, since it now deals only with unaccompanied offenders, for whom similar or other penal sanctions would be sufficient. If the provision is retained, an issue to be considered is whether it should apply only to the having custody of persons for such purposes as commitment to mental institutions. Such additional coverage could be accomplished by the following:

For the purposes of this section, "official detention" means, in addition to the meaning prescribed in section 1306(2), any detention pursuant to process or commitment issued by a court, judge or magistrate.

See Working Papers, pp. 148-49.

§ 1308. Inciting or Leading Riot in Detention Facilities

(1) Offense. A person is guilty of a Class C felony if, with intent to cause, continue, or enlarge a riot, he solicits a group of five or more persons to engage in a riot in a facility used for official detention or engages in conduct intended to serve as the beginning of or signal for such riot, or participates in planning such riot, or, in the course of such riot, issues commands or instructions in furtherance thereof.

(2) Definitions. In this section:

(a) "riot" means a disturbance involving an assembly of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs the operation of the facility or other government function;

(b) "official detention" has the meaning prescribed in section 1306(2).

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the facility is a federal facility.

Comment

This section carries forward the policy of existing 18 U.S.C. § 1792, to the extent that section provides special criminal sanctions for leading or instigating prison riots. This section differs from existing law in that it includes a definition of the term "riot" and states more precisely the kinds of participation which call for such sanctions. It should be noted that other provisions of the Code, dealing with injury to persons and damage to property, as well as physical obstruction of government function (§ 1341), cover more generally, and that prison officials who cannot more severely specific offenses will be subject to greater penalties to those in the inciting the provisions of the Code (§ 1341). Note that this section carries forward the existing prescription of prison mutiny, which is not defined in 18 U.S.C. § 1792. Motives which do not lead to rioting do not appear to have presented problems requiring special criminal sanctions. See Working Papers, p. 350.

§ 1309. Introducing or Possessing Contraband Useful for Escape

(1) Introducing Contraband. A person is guilty of a Class C felony if he unlawfully provides an inmate of an official detention facility with any tool, weapon or other object which may be useful for escape. Such person is guilty of a Class B felony if the object is a firearm, destructive device or other dangerous weapon.

(2) Possession of Contraband. An inmate of an official detention facility in guilty of a Class B felony if he unlawfully procures, makes or otherwise provides himself with, or has in his possession, any tool, weapon or other object which may be useful for escape. Such person is guilty of a Class B felony if the object is a firearm, destructive device or other dangerous weapon.

(3) Definitions. In this section:

(a) "unlawfully" means surreptitiously or otherwise to a statute or regulation, rule or order issued pursuant thereto;
§ 1310. Flight to Avoid Prosecution or Giving Testimony.

(1) Offense. A person is guilty of a Class C felony if he moves or travels across a state or United States boundary with intent:

(a) to avoid prosecution, or detention after conviction, under the laws of the place from which he flees, for an attempt or conspiracy to commit, or commission of: (i) an offense involving willful infliction of bodily injury, property damage or property destruction by fire or explosion, or (ii) any felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of that state; or

(b) to avoid appearing as a witness, producing information, or giving testimony in any official proceeding in such place in which the commission of an offense described in paragraphs (a)(1) or (a)(2) of this section is charged or under investigation; or (c) to avoid contempt proceedings or other criminal prosecution, or custody or confinement after conviction, for such offenses.

(2) Discretionary Exercise of Jurisdiction. In addition to the authority for discretionary restraint in the exercise of federal jurisdiction by section 327, federal law enforcement agencies are authorized to decline or discontinue federal enforcement efforts whenever it appears that the conduct which is the subject of the official proceeding, prosecution or conviction would not, were it committed within federal jurisdiction, constitute a federal felony. No prosecution shall be instituted under this section unless expressly authorized by the Attorney General.
(a) with intent to influence another's testimony in an official proceeding; or
(b) with intent to induce or otherwise cause another:
(i) to withhold any testimony, information, document or thing from an official proceeding, whether or not the other person would be legally privileged to do so;
(ii) to violate section 1323 (Tampering With Physical Evidence);
(iii) to elude legal process summoning him to testify in an official proceeding; or
(iv) to absent himself from an official proceeding to which he has been summoned.

(2) Soliciting Bribe. A person is guilty of a Class C felony if he solicits, accepts or agrees to accept from another a thing of pecuniary value as consideration for:
(a) influencing the actor's testimony in an official proceeding;
(b) the actor's engaging in the conduct described in paragraphs (i) through (iv) of subsection (1)(b).

(3) Defense. (a) It is a defense to a prosecution under this section for use of threat with intent to influence another's testimony that the threat was not of unlawful harm and was used solely to influence the other to testify truthfully.
(b) In a prosecution under this section based on bribery, it shall be an affirmative defense that any consideration for a person's refraining from instigating or pressing the prosecution of an offense was to be limited to restitution or indemnification for harm caused by the offense.
(c) It is no defense to a prosecution under this section that an official proceeding was not pending or about to be instituted.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the official proceeding is a federal official proceeding.

(5) Witness Fees and Expenses. This section shall not be construed to prohibit the payment or receipt of witness fees provided for by law, or the payment, by the party upon whose behalf a witness is called, and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at an official proceeding, or in the case of expert witnesses, a reasonable fee for preparing and presenting an expert opinion.

Command

This section deals with corruption of actual or potential witnesses or informants. It replaces those aspects of 18 U.S.C. §§ 1505 and 1505(b) which contained "corrupt endeavors" directed towards "witnesses" which obstructed the "due administration of justice". See also 18 U.S.C. § 1505 (d), dealing with bribery of witnesses. Difficult issues of construction of the quoted statute have made the scope of current law uncertain. Despite the apparent broad sweep of the terms, courts have strictly construed the term "witness" and have required there to be a "pending proceeding" at the time the defendant acted.

The section avoids the difficulties raised by the terms "corrupt" and "corrupt endeavors" by describing the conduct or misconduct, e.g., use of force, which is corrupt when accompanied by the requisite culpability. Moreover, the manner in which the culpability elements are described, e.g., "intend to cause another to withhold testimony," avoids the requirements of existing law that a proceeding be pending or that the other person be a "witness."
§ 1322. Tampering With Informants in Criminal Investigations.

(1) Offense. A person is guilty of a Class C felony if, believing another may have information relating to an offense, he deceives such other person or employs force, threat or bribery with intent to hinder, delay or prevent communication of such information to a law enforcement officer. The affirmative defense in subsection (2) (b) of section 1311 applies to this section.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the principal offense is a federal offense or when the law enforcement officer is a federal public servant.

Comment

This section replaces 18 U.S.C. § 1511, which prohibits obstruction of criminal investigations by intimidation or bribery of informants. It contemplates no change in the substance of current law, but is more explicit in linking conduct to deprivation of the informant only, not actual deprivation of the official. The charge has respect to bribery rather than threats or force, but has fairly similar implications similar to those discussed in the comments to § 1301 supra. Note that, as with § 1311, a defendant may raise as a defense an affirmative defense for prosecution of even more serious crimes. Note also that bringing a violation of this section may be joined as a related offense of retaliation (§ 1517), which may be "piggybacked" as a related offense to affix the jurisdictional base for prosecution of more serious crimes. See Working Papers, p. 572.

§ 1323. Tampering With Physical Evidence.

(1) Offense. A person is guilty of an offense if, believing an official proceeding is pending or about to be instituted or believing process, demand or order has been issued or is about to be issued, he alters, destroys, mutilates, conceals or removes a record, document or thing with intent to impair its verity or availability in any official proceeding or for the purposes of such process, demand or order.

(2) Grading. The offense is a Class C felony if the act substantially obstructs, impairs or prejudices prosecution for a felony. Otherwise it is a Class A misdemeanor.

(3) Definition. In this section "process, demand or order" means process, demand or order authorized by law for the seizure, production, copying, discovery or examination of a record, document or thing.

Comment

This section covers the physical evidence aspects of the current obstruction of justice provisions (18 U.S.C. §§ 1503 and 1505) and renders predicates which have arisen under them in substantially the same way that the witness aspects are resolved in § 1311. Note related provisions: § 1301, dealing with failures to produce under a subpoena duces tecum; § 1310, perjury; and § 1311, false statements. An issue raised is whether any felony penalty is warranted for conduct short of actual perjury and, if it is, whether the limitation proposed in subsection (2) is sufficient. Another issue is whether unreasonable solicitation of the misconduct violation of this section should be specifically prohibited. Solicitation of a felony violation is covered by § 1303. See Working Papers, pp. 573-74.

§ 1324. Harassment of and Communication With Jurors.

(1) Offense. A person is guilty of a Class A misdemeanor if, with intent to influence the official action of another as a juror, he communicates with him other than as part of the proceedings in a case, or harasses or alarms him. Conduct directed against the juror's spouse or other relative residing in the same household with the juror shall be deemed conduct directed against the juror.

(2) Definition. In this section "juror" means a grand juror or a petit juror and includes a person who has been drawn or summoned to attend as a prospective juror.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the juror is a federal juror.

Comment

The major purpose of this section is to insulate the juror from any external influence on his official act. It carries forward existing federal law under 18 U.S.C. §§ 1503 and 1505, broadening the latter's coverage of written communications to include all communications. Bribery of and force or threats directed at jurors, who are defined in this Code as public servants under § 131, are covered by the general provisions on bribery of and threats against public servants (18 U.S.C. 1343, 1346). The second sentence of subsection (1) carries forward the scope of existing obstruction of juror provisions as construed by the courts; but broader coverage may be warranted. See Working Papers, pp. 585-86, 619.
§ 1335. Demonstrating to Influence Judicial Proceedings.

(1) Offense. A person is guilty of a Class B misdemeanor if, with intent to influence a judge, juror or witness in the discharge of his duties in a judicial proceeding, he pickets, parades, uses a sound-amplifying device, displays a placard or sign containing written or pictorial matter, or otherwise engages in a demonstration in or on the grounds of a building housing a court of the United States or of a residence or usual place of occupancy by such judge, juror or witness or on a public way near such building, residence or place. “Near” shall not be construed to mean a place more than 200 feet from such building, residence or place, unless otherwise modified by court rule.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the judicial proceeding is a federal judicial proceeding.

Comment

This section prohibits picketing and demonstration with intent to influence a judge, juror or witness in a judicial proceeding. It carries forward the rationale of Ex parte Yarbrough, 510 U.S. 219 (1994), and United States v. Cox, 417 U.S. 479 (1974). The Supreme Court upheld the constitutionality of a state statute making it a crime to obstruct the administration of justice. The question before the Court was whether the statute and the proceedings of an inflammatory demonstration engaged in on the ground of a courthouse were a demonstrative act occurring at a place remote from the courthouse. The Court held that the statute was constitutional. See also United States v. Knauff, 353 F.2d 915 (7th Cir. 1965) for discussion of similar problems. See Working Papers, pp. 428-29.

§ 1336. Eavesdropping on Jury Deliberations.

(1) Offense. A person is guilty of a Class A misdemeanor if he intentionally:

(a) records the proceedings of a jury while such jury is deliberating or voting; or

(b) listens to or observes the proceedings of any jury of which he is not a member while such jury is deliberating or voting.

(2) Defense. This section shall not apply to the taking of notes by a juror in connection with and solely for the purpose of assisting
§ 1341. Criminal Contempt

(1) Power of Court. A court of the United States shall have power to punish by fine or imprisonment for contempt of its authority, and none other, as:

(a) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(b) Misbehavior of any of its officers in their official transactions;

(c) Disobedience or resistance to its lawful writ, process, order, rule, decree or command.

(2) Status as Offense; Grading. Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed prosecution for an offense for the purposes of Part A (General Provisions) and Part C (Sentencing) of this Code. Criminal contempt shall be treated as a Class II misdemeanor, except that the defendant may be sentenced to be in a term of imprisonment of no more than six months, and, if the criminal contempt is disobedience or resistance to a court's lawful temporary restraining order or preliminary or final injunction or other final order, other than for the payment of money, the defendant may be sentenced to pay a fine in any amount deemed just by the court.

(3) Successive Proceedings. Notwithstanding the provisions of sections 704, 705, 706, 707 and 708 (relating to multiple prosecutions), a criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted. In a subsequent prosecution the defendant shall receive credit for all time spent in custody and any fine paid by him pursuant to the criminal contempt proceeding.

(4) Civil Contempt: Preserved. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree, or command, or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usages of law and equity, including the power of detention.
§ 1342. Failure to Appear as Witness, to Produce Information or to be Sworn.

(1) Failure to Appear or to Produce. A person who has been lawfully ordered to appear at a specified time and place to testify or to produce information in an official proceeding is guilty of a Class A misdemeanor if, without lawful privilege, he fails to appear or to produce the information at that time and place.

(2) Refusal to be Sworn. A person attending an official proceeding is guilty of a Class A misdemeanor if, without lawful privilege, he fails to comply with a lawful order:
   (a) to occupy or remain at the designated place from which he is to testify as a witness in such proceeding; or
   (b) to be sworn or to make equivalent affirmation as a witness in such proceeding.

(3) Defense. It is a defense to a prosecution under this section that the defendant:
   (a) was prevented from appearing at the specified time and place or unable to produce the information because of circumstances to the creation of which he did not contribute in reckless disregard of the requirement to appear or to produce; or
   (b) complied with the order before his failure to do so substantially affected the proceeding.

(4) Definitions. In this section:
   (a) "official proceeding" means
      (i) an official proceeding before a judge or court of the United States, a United States magistrate, a referee in bankruptcy or a federal grand jury;
      (ii) an official proceeding before Congress;
      (iii) a federal official proceeding in which pursuant to lawful authority a court orders attendance or the production of information;
      (iv) an official proceeding before an authorized agency;
      (v) an official proceeding which otherwise is made expressly subject to this section;
   (b) "authorized agency" means an agency authorized by federal statute to issue subpoenas or similar process supported by the sanctions of this section.

§ 1343. Official Proceeding before Congress means an inquiry authorized before either House or any joint committee established by a joint or concurrent resolution of the two Houses of Congress or any committee or subcommittee of either House of Congress.

§ 1344. Information means a book, paper, document, record, or other tangible object.
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(a) to answer a question pertinent to the subject under inquiry in an official proceeding before Congress and continues in such a refusal after the proceeding officer directs him to answer and advises him that his continuing refusal may make him subject to criminal prosecution; or

(b) to answer a question in any other official proceeding and continues in such refusal after a federal court or federal judge or, in a proceeding before a United States magistrate or referee in bankruptcy, the providing officer directs him to answer and advises him that his continuing refusal may make him subject to criminal prosecution.

(2) Defense. It is a defense to a prosecution under this section that the defendant complied with the direction or order before his refusal to do so substantially affected the proceeding.

(3) Definition. "Official proceeding before Congress" has the meaning prescribed in subsection (4)(c) of section 3552.

Comment

This section carries out the Code reform of treatment of contempt by making it a Class A misdemeanor to refuse to testify in an official proceeding after being directed to answer by the proceeding officer in a Congressional hearing or by a judicial officer in other proceedings. Corresponding specific offenses in existing law deal with Congressional hearings (7 U.S.C. §§ 196, 198) and certain administrative hearings (c.g., 5 U.S.C. § 552(c)(3)). Unlike § 1345 which deals with the refusal to answer a question in a judicial proceeding brought in response to a judicial order, the offenses in this section are effective to deal with refusals to answer a question in an official proceeding or to deal with refusals to answers a question in an official proceeding when the proceeding officer is not a judicial officer. This is consistent with current practice, although the powers of Congress and its committees may appear to give some agency broader powers. In view of the fact that a judge will be "preserving" the propriety of the proceeding, there is no requirement that the question under subsection (1)(B) be relevant, material or otherwise proper. The requirement of "pertinency" in Congressional proceedings has been maintained, however, in view of the judicial development of that concept and its jurisdictional significance. See Working Papers, pp. 514-52, 626.

§ 1344. Hindering Proceedings by Disorderly Conduct.

(1) Intentional Hindering. A person is guilty of a Class A misdemeanor if he intentionally hinders an official proceeding by noise or riotous or tumultuous behavior or disturbance.

(2) Reckless Hindering. A person is guilty of an offense if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance. The offense is a Class D misdemeanor if it continues after explicit official request to desist. Otherwise it is an infraction.

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(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the official proceeding is a federal official proceeding.

Comment

This section, for which there is no counterpart in existing law, permits prosecution as a specific offense, in the normal manner, for conduct heretofore treated as contempt, as long as the proceeding is brought in a federal official proceeding. The section extends the jurisdiction in all cases to judicial, Congressional and administrative as well as judicial. See Working Papers, pp. 621-22, 626.

§ 1354. Disobedience of Judicial Order.

(1) Offense. A person is guilty of a Class A misdemeanor if he disobeys or resists a lawful temporary restraining order or preliminary or final injunction or other final order, other than for the payment of money, of a court of the United States.

(2) Fines. Notwithstanding the limitations of section 3561 (Authorized Fines), the defendant may be sentenced to pay a fine in any amount deemed just by the court.

Comment

This section makes a specific offense of conduct hereafter treated only as contempt of court, since similar punishment is authorized under the contempt provisions in § 1344, a principal function of this section will be to permit the United States when it is a party to the underlying proceeding, to prosecute violations of the specified court order without the prior authorization by the court required under § 1344 for prosecution in other cases. The lawfulness of the order or injunction to be determined by principles developed under contempt law. See comment to § 1341, supra, with respect to the provisions regarding fines. See Working Papers, p. 623.

§ 1354. Soliciting Obstruction of Proceedings.

A person is guilty of a Class A misdemeanor if he solicits another to commit an offense defined in sections 1342, 1343, 1344(1) or 1344.

Comment

This section carries forward the wording of the provisions of 18 U.S.C. §§ 1503 and 1505 with respect to obstruction of judicial, Congressional and administrative proceedings by separate provisions to do so as necessary because the general solicitation offense (§ 1503) applies only to solicitation of offenses that are specifically so defined. Note that while bribery, threats, force or deception is employed, the conduct is a Class C felony under the proposed Code § 1352. No certification of a judge or Congress is required for prosecution under this section, as is for prosecution of the principal,
§ 1349. Certification for Prosecution of Offenses Under Sections 1342 to 1345.

(1) Judicial Proceeding. No person shall be prosecuted under sections 1342, 1343, 1344 or 1345 if the official proceeding involved in before a court of the United States unless the judge or a majority of the judges sitting certifies the case to the appropriate United States Attorney to be considered for possible prosecution, except that this provision does not apply to a prosecution under section 1345 if the United States or an agency thereof is a party to the matter in which the order issued. If the certification includes a recommendation that a prosecution be instituted, the United States Attorney shall have the duty to institute prosecution or to bring the matter before the grand jury for its action.

(2) Grand Jury Proceeding. If the official proceeding involved in a grand jury proceeding, no person shall be prosecuted:
(a) under section 1343 unless a judge certifies the case to the appropriate United States Attorney to be considered for possible prosecution;
(b) under section 1342 unless the judge whose direction has already been disobeyed, or any other judge of that court if the original judge is no longer serving, certifies the case to the appropriate United States Attorney to be considered for possible prosecution.

If the certification includes a recommendation that a prosecution be instituted, the United States Attorney shall have the duty to institute prosecution or to bring the matter before the grand jury for its action.

(3) Proceedings Before Magistrate or Referee in Bankruptcy. No person shall be prosecuted under sections 1332 or 1333 if the official proceeding involved in before a United States magistrate or referee in bankruptcy unless a district court judge certifies the case to the appropriate United States Attorney to be considered for possible prosecution. If the certification includes a recommendation that a prosecution be instituted, the United States Attorney shall have the duty to institute prosecution or to bring the matter before the grand jury for its action.

(4) Congressional Proceedings. No person shall be prosecuted under sections 1332 or 1333 if the official proceeding involved in

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before Congress, unless the facts of such violation are reported to either House of Congress while Congress is in session, or, when Congress is not in session, a statement of the facts constituting such violation is reported to and filed with the President of the Senate or the Speaker of the House. If the report is made while Congress is in session and the appropriate House has not ordered, the President of the Senate or the Speaker of the House, as the case may be, shall certify, or if the report is made when Congress is not in session, such officer may certify, the statement of facts under the seal of the appropriate House to the appropriate United States Attorney, whose duty it shall be to bring the matter before the grand jury for its action.

(5) Lack of Certification in Bar. Failure to comply with the certification requirements of this section is a bar to prosecution. The defendant shall have the burden of proving such failure to comply by a preponderance of the evidence, and shall be entitled to have the issue determined by the court out of the presence of the jury, if any, and to exclusion of any reference to the need or fact of certification from the attention of the jury.

Comment

Subsections (1), (2) and (3) of this section adapt the certification provisions to prosecution now applicable to Congressional committees under 5 U.S.C. §§ 191 and 194, to judicial and grand jury contempt. The Congressional power to retain intact in subsection (1), with modifications to codify judicial construction of the existing provisions. As under the existing Congressional statute, a duty is imposed on the appropriate United States Attorney to act on the judicial recommendation. As part of the scheme of reform in the legislative area, this section would preserve the power of the judiciary, as well as that of Congress, over its proceedings, by requiring certification by the official tribunal before a prosecution could be instituted. When a member of the House or Senate is charged with contempt of Congress, the House or Senate may, and in its discretion, shall, consider it. When other proceedings are involved, action by the United States Attorney is required only when the judge affirmatively recommends such action. Otherwise, certification is only a condition precedent to the exercise of usual prosecutorial discretion. Subsection (1) makes failure to certify a bar to prosecution, as it is in current law when Congress is in session. See Working Papers, pp. 825-89.

§ 1351. Perjury.

(1) Offense. A person is guilty of perjury, a Class C felony, if, in an official proceeding, he makes a false statement under oath
or equivalent affirmation, or swears or affirms the truth of a false statement previously made, when the statement is material and he does not believe it to be true.

(2) Corroboration. No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by the testimony of one person.

(2) Proof. Commission of perjury need not be proved by any particular number of witnesses or by documentary or other types of evidence.

(3) Inconsistent Statements. Where in the course of one or more official proceedings, the defendant made a statement under oath or equivalent affirmation inconsistent with another statement made by him under oath or equivalent affirmation to the degree that one of them is necessarily false, both having been made within the period of the statute of limitations, the prosecution may set forth the statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant to be true. Proof that the defendant made such statements shall constitute a prima facie case that one or the other of the statements was false; but in the absence of sufficient proof of which statement was false, the defendant may be convicted under this section only if each of such statements was material to the official proceeding in which it was made.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the official proceeding is a federal official proceeding.

Comment

This section retains the basic definition of perjury under 18 U.S.C. §501, including the requirement of materiality, but makes some significant changes with respect to proof. Section 1352 deals with nonmaterial false statements under oath.

Under this section, culpability is sufficiently established by proof that the defendant did not believe the statement to be true; affirmative evidence need not be shown. Thus the section follows existing law which treats statements as perjury when made with reckless disregard as to truth or falsity. "Statement" is defined in §1003 to include a representation concerning a state of mind if the state of mind is a separate subject of the statement. Under §1352 materiality of the statement is a question of law; thus it is provided that culpability is not required with respect to that element of the offense. The definition of "materiality" in §1352 preserves the broad formulation of the concept under existing law.

In accordance with prevailing criteria of existing law and the trend in recent state revisions, the two witness corroboration rule in perjury cases is eliminated; but conviction may yet be had for perjury when proof of falsity is "solely upon contradiction by the testimony of one person." The bracketed alternatives reflect the view of a substantial body of opinion in the Commission, embodied in P.L. 95-543 (18 U.S.C. §1352) with respect to "false declaration" below federal courts and grand juries and proceedings before boards, the requirement of any corroboration is omitted and that this offense should be treated like any other crime in that regard.

Subsection (1) covers a provision of P.L. 95-543 (18 U.S.C. §1352) which was added to all perjury prosecutions. When two statements (material statements made in the course of one or more official proceedings, proof as to which of the two statements is false is not required; proof of inconsistency establishes a prima facie case of falsity. The procedure is limited to perjury prosecutions, however, and is not available to support convictions for making false statements under §1353.

Section 1353 minimizes the effect of irregularities in proceedings and provides a retrench defense. A separate provision for subornation of perjury is unnecessary in the proposed Code. Successful subornation would make the actor an accomplice. Unlawful subornation is covered by the general subdivision statute (§1360). This is in accord with recent state revisions.

See Working Papers, pp. 695-96.

§ 1352. False Statements.

(1) False Swearing in Official Proceedings. A person is guilty of a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true.

(2) Other Falsities in Governmental Matters. A person is guilty of a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true:

(a) makes a false written statement, when the statement is material and he does not believe it to be true;

(b) intentionally creates a false impression in a written application for a pecuniary or other benefit, by omitting information necessary to prevent a material statement therein from being misleading;

(c) submits or invites reliance on any material writing which he knows to be forged, altered or otherwise lacking in authenticity;

(d) submits or invites reliance on any sample, specimen, map, boundary-mark or other object which he knows to be false in a material respect; or

(e) uses a trick, scheme or device which he knows to be misleading in a material respect.
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Statement in Criminal Investigation. This section does not apply to information given during the course of an investigation into possible commission of an offense unless the information is given in an official proceeding or the declarant is otherwise under a legal duty to give the information. Inapplicability under this subsection is a defense.

(4) Definition. A matter in a governmental matter if it is within the jurisdiction of a government agency or an office, agency or other establishment in the legislative or the judicial branch of government.

(5) Jurisdiction. There is federal jurisdiction over an offense defined in:

(a) subsection (1) when the official proceeding is a federal official proceeding;
(b) subsection (2) when the government is the government of the United States, or the government is a state or local government and the declarant is otherwise under a legal duty to give the information.

Comment

Subsection (1) applies to official proceedings, so does the offense of perjury (§ 1001), but doesn't apply to criminal activity. In effect, it is a fraud on the government.

Subsection (2) applies to official proceedings, so does the offense of perjury (§ 1001), but doesn't apply to criminal activity. In effect, it is a fraud on the government.

(b) subsection (2) when the government is the government of the United States, or the government is a state or local government and the declarant is otherwise under a legal duty to give the information.

§ 1353. False Statement Obstructing the Foreign Relations of the United States.

A person is guilty of a Class B felony if, in relation to a dispute between a foreign government and the United States, he makes a false statement under oath or equivalent affirmation, when the statement is material and he does not believe it to be true:

(a) with knowledge that it may be used to influence the actions or conduct of any foreign government or public servant thereof to the injury of the United States; or

(b) with intent to influence any measure of or action by the United States to the injury of the United States.

Comment

This section substantially re-enacts present 18 U.S.C. § 1004, using the Code's grading and terminology.

§ 1354. False Reports to Security Officials.

(1) Offense. A person is guilty of a Class A misdemeanor if he:

(a) gives false information in a law enforcement officer with intent to falsely implicate another; or

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§ 1355. General Provisions for Sections 1351 to 1354.

(1) Materiality. Falsehood is material under sections 1351, 1352, 1353 and 1354 regardless of the admissibility of the statement or the value of evidence, if it could have affected the course or outcome of the official proceeding or the disposition of the matter in which the statement is made. Whether a falsehood is material in a given factual situation is a question of law. It is no

§ 1355a. Defense that the declarant mistakenly believed the falsehood to be immaterial.

(2) Irregularity of No Defense. It is no defense to a prosecution under sections 1351, 1352 or 1354 that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made under oath or affirmation at a time when the actor represented it as being so sworn shall be deemed to have been duly sworn or affirmed.

(3) Defense of Retraction. It is a defense to a prosecution under sections 1351, 1352, 1353 or 1354 that the actor retracted the falsehood in the course of the official proceeding or matter in which it was made, if in fact he did so before it became manifest that the falsehood was or would be exposed and before the falsehood substantially affected the proceeding or the matter.

(4) Definition of "Statement." In sections 1351, 1352 and 1353 "statement" means any representation, but includes a representation of opinion, belief or other state of mind, only if the representation clearly relates to a state of mind apart from or in addition to any facts which are the subject of the representation.

Comment

This section offers a convenient method of dealing with matters common to §§1351-1354. The provisions on materiality are derived from existing decisional law. To avoid frivolous verdicts, subsection (2) provides a defense based on irregularities short of total lack of jurisdiction. Subsection (3) represents a change in existing law which is consistent with the approval of recent state revisions and with P.L. 95-442 (28 U.S.C. § (26A). In its application to false statements in courts and grand jury proceedings, retraction is encouraged in order that the truth be learned; retraction must occur before it is manifest that the lie is or would be discovered and before the proceeding is substantially affected. See Working Papers, pp. 613-16.

§ 1356. Tampering With Public Records.

(1) Offense. A person is guilty of a Class A misdemeanor if he:

(a) knowingly makes a false entry in or false alteration of a government record; or

(b) knowingly without lawful authority destroys, conceals, removes or otherwise impedes the verity or availability of a government record.

(2) Definition. In this section "government record" means:

(a) any record, document or thing belonging to, or received or kept by the government for information or record;
§ 1361. Bribery and Intimidation

(1) Offense. A person is guilty of bribery, a Class C felony, if he knowingly offers, gives or agrees to give to another, or solicits, accepts or agrees to accept from another, a thing of value as consideration for:

(a) the recipient's official action as a public servant; or

(b) the recipient's violation of a known legal duty as a public servant.

(2) Defense Provided. It is a defense to a prosecution under this section that the recipient was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(3) Prima Facie Case. A prima facie case is established under this section upon proof that the actor knew that a thing of pecuniary value was offered, given or agreed to be given by, or solicited, accepted or agreed to be accepted from, a person having an interest in an imminent or pending (a) examination, investigation, arrest, or judicial or administrative proceeding, or (b) bid, contract, claim, or application, and that interest could be affected by

§ 1362. Unlawful Rewarding of Public Servants

(a) Receiving Unlawful Reward. A public servant is guilty of a Class A misdemeanor if he accepts, agrees or accepts to accept a thing of pecuniary value for:
give, a thing of pecuniary value as consideration for approval or disapproval by a public servant or party official of a person for: (a) appointment, employment, advancement or retention as a public servant; or (b) designation or nomination as a candidate for elective office.

Comment
This section prohibits payments to, or receipt of payments by, public servants or party officials for action, respecting federal employment or endorsement for federal elective office. Coverage of political endorsements is added to existing provisions governing federal employment, federal political contributions (§ 18 U.S.C. § 1933), and related matters, including (1) payment to cover payments to political parties; and the inclusion in the definition of "thing of value" (§ 186) of payments to one other than the actual recipient should be adequate for this purpose. Existing provisions in 5 U.S.C. § 731 governing employment agencies will be located outside Title 1b, possibly subject to the regulatory offense provisions (§ 1006). See Working Papers, pp. 316-317.

§ 1365. Trading in Special Influence
A person is guilty of a Class A misdemeanor if he knowingly offers, gives or agrees to give, a thing of pecuniary value for exciting, or procuring another to excite, special influence upon a public servant with respect to his legal duty or official action as a public servant. "Special influence" means power to influence through kinship or by reason of position as a public servant or party official, as defined in section 1364.

Comment
This section, together with § 1363, which deals with unlawful compensation for services in government matters, carries forward in the proposed Code provisions dealing with some of the more egregious misconduct covered by the prophylactic provisions of Chapter 11 of Title 18. "Special influence" has been limited to comparatively well-defined relationships, other than extended to include "familial or other relationship, apart from the merits of the transaction" (cfr. A.L.I. Model Penal Code § 203.7). The purpose of the limitation is

§ 1363. Unlawful Compensation for Assistance in Government Matters

(1) Receiving Unlawful Compensation. A public servant is guilty of a Class A misdemeanor if he solicits, accepts or agrees to accept a thing of pecuniary value as compensation for advice or other assistance in preparing or promoting a bill, contract, claim or other matter which is or is likely to be subject to his official action.

(2) Giving Unlawful Compensation. A person is guilty of a Class A misdemeanor if he knowingly offers, gives or agrees to give a thing of pecuniary value to a public servant, receipt of which is prohibited by this section.

Comment
This section covers aspects of existing prophylactic provisions in Chapter 11 of Title 18 (principally 18 U.S.C. §§ 201, 202 and 203) prohibiting payment to, and receipt of payment by, public servants for professional advice or assistance concerning matters over which the public servant has discretionary authority. Other restrictions on payment to or receipt of compensation by public servants or as to their activities are regarded as regulatory measures to be transferred to Title 5 (Government Organization and Employee). See Working Papers, pp. 466-468.

§ 1364. Trading in Public Office and Political Endorsement

(1) Offense. A person is guilty of a Class A misdemeanor if he solicits, accepts or agrees to accept, or offers, gives or agrees to
§ 1386. Threatening Public Servants.

(1) Threats Relating to Official Proceedings or to Secure Breach of Duty. A person is guilty of a Class C felony if he threatens harm to another with intent to influence his official action as a public servant in a pending or prospective judicial or administrative proceeding held before him, or with intent to influence him to violate his duty as a public servant.

(2) Other Threats. A person is guilty of a Class C felony if, with intent to influence another's official action as a public servant, he threatens:
   (a) to commit any crime or to do anything unlawful;
   (b) to accuse anyone of a crime;
   (c) to expose a secret or publish an amended fact, whether true or false, tending to subject any person, living or deceased, to hatred, contempt or ridicule, or to impair another's credit or business reputation.

(3) Defense Precluded. It is no defense to a prosecution under this section that a person who the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction or for any other reason.

Comment

This section, prohibiting coercion of public servants in their official functions, consolidates a number of existing federal provisions dealing with threats to public officials. The consolidated offense, which encompasses bribery ([§ 1381]), follows the formulation of that provision in covering all public servants and eliminating the requirement that a proceeding be pending (18 U.S.C. §§ 1951, 1956) and the need to prove the victim was in fact a public servant at the time harm was threatened.

This section replaces Class C felony status some threats which would not constitute offenses or would constitute misdemeanors attend a threat to governmental integrity.

The distinction between subsection (1) and (2) is that (1) covers any "harm" (see definition in § 100), whereas (2) deals with selected egregious harms not including, for example, social and political dis

§ 1386. Federal Jurisdiction Over Offenses in Sections 1381 to 1387.

(1) Federal Bribery and Intimidation. There is federal jurisdiction over offenses defined in:

(a) sections 1381, 1382, 1385, and 1386 when the official action or duty involved is in a federal public servant;

advantages, lawful termination of commercial relations, and the like. All threats of a lawful nature are to be allowed to stand and are not to be held unlawful. However, threats of a unlawful nature are to be held unlawful. These threats are to be held unlawful in order to render the transaction criminal. See Working Papers, pp. 95-96.

§ 1387. Retaliation.

A person is guilty of a Class A misdemeanor if he harms another by an unlawful act in retaliation for or on account of the service of another as a public servant, witness or informant. "Informant" means a person who has communicated information to the government in connection with any government function.

Comment

This section, like § 1381 (physical obstruction of government functions), may have its greatest utility as a jurisdictional base for prosecution of more serious offenses such as murder, aggravated assault and kidnapping pursuant to § 2332a. A retaliatory-type offense greatly concerns the integrity of the criminal justice system. A retaliatory crime places lower offices in the Class A misdemeanor category, but nonviolent unprovoked conduct, such as arson and robbery, is criminalized. "Retaliatory" offenses as well as crimes, under both state and federal law. Existing law is breached by all public servants and all informants, not only those involved in criminal matters. Harm to property, as well as harm to the person, is covered, as is the case under 18 U.S.C. §§ 1341, 1343, and 1345, which deal with harm to witnesses, informers, priests and judicial officials, and 18 U.S.C. § 174, which deals with conspiracies to harm officials.

An issue under this section is whether the government should be required to prove that the official action against which the defendant retaliated was unlawful. For example, should this section purport retaliation against "jury duty" by a witness? It would appear prudent not to make this an issue in these cases, although the consideration might be relevant to the exercise of discretion in prosecution or sentencing.

See Working Papers, pp. 95-96.
§ 1369. Definitions for Sections 1361 to 1365.

In sections 1361 through 1365 "thing of value" and "thing of pecuniary value" do not include (a) salary, fees and other compensation paid by the government in behalf of which the official action or legal duty is performed, or (b) concurrence in official action in the course of legitimate compromise among public servants.

Comment

A provision prohibiting bribery in the course of business is a valuable tool for state and local officials. However, it is important to note that this section does not apply to certain types of official actions. For example, it does not apply to actions taken in the course of legitimate compromise among public servants. It is important to carefully consider the scope of this provision in order to ensure that it is being used effectively to prevent corruption.

§ 1372. Unlawful acts in the course of official duties.

(1) Bribery. A person who offers, promises, gives, or agrees to give anything of value to another person to influence the vote of that person in an election or to influence any other official act of that person in his official capacity shall be guilty of bribery.

Comment

The prohibition on bribery extends to all official acts, including those taken in the course of legitimate compromise among public servants. This provision is an important tool for preventing corruption and ensuring that state and local officials are acting in the best interests of the public.
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guilty of a Class A misdemeanor if during employment as a federal public servant, or within one year thereafter, in contemplation of official action by himself as a federal public servant or by an agency of the United States with which he is or has been associated as a federal public servant, or in reliance on information to which he has or had access only in his capacity as a federal public servant, he:
(a) acquires a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action;
(b) speculates or wagers on the basis of such information or official action; or
(c) aids another to do any of the foregoing.

(2) Taking Official Action After Speculation. A person is guilty of a Class A misdemeanor if as a federal public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

Comment

This section, as a conflict of interest and self-dealing offense applicable to all public servants, is new to federal law, although there are a few existing prohibitions of similar import applicable to specific employee categories with respect to specific matters (Agriculture Department, 5 U.S.C. § 1157; Small Business Administration, 15 U.S.C. § 664(c); Internal Revenue Service, 90 U.S.C. § 7705). Subsection (1) is based on the view that, during a person's federal service and for a period thereafter, he should be barred from making the prohibited acquisitions and speculations, or helping another to do so, regardless of whether the official action occurs. It is derived from the A.L.I. Model Penal Code § 214.2. The requirement of a one-year period is derived from provisions of 18 U.S.C. § 205, which deals with disqualification of former officials from certain activities.

Subsection (2), which overlaps subsection (1), is intended primarily to reach the person who has made the acquisition or speculation (or helped another to do so) prior to entering federal service but in contemplation of something he intends to do as a public servant. Because there is no federal connection at the time of the acquisition or speculation, the focus of the proscription is on proceeding with the official action when benefit therefrom is likely to occur. A principal issue, similar to the issue raised by § 1371, is whether the conduct covered should be the subject of a general criminal proscription or of narrower specific prohibitions.

See Working Papers, pp. 734-35.

§ 1381
IMPERSONATING OFFICIALS

§ 1381. Impersonating Officials.

(a) Offense. A person is guilty of an offense if he falsely pretends to be:

(a) a public servant or foreign official and acts as if to exercise the authority of such public servant or foreign official; or

(b) a public servant or a former public servant or a foreign official and thereby obtains a thing of value.

(b) Defense Precluded. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.

(c) Definition. In this section "foreign official" means an official of a foreign government of a character which is customarily accredited as such to the United States, the United Nations or the Organization of American States, and includes diplomatic and consular officials.

(d) Grade. An offense under subsection (1)(a) is a Class A misdemeanor. An offense under subsection (1)(b) is a Class B misdemeanor.

(3) Jurisdiction.

(a) There is federal jurisdiction over an offense of impersonation of a public servant, present or former, defined in this section when the public servant is a federal public servant. Notwithstanding the provisions of section 323, an offense of impersonation of a foreign official defined in this section extends to any such offense committed anywhere within the United States or the special maritime or territorial jurisdiction as defined in section 323.

Comment

The existing laws regarding impersonation of officials to be replaced by this provision (18 U.S.C. §§ 926, 927, 931) attempt unambiguously to encompass both the injury, in itself relatively minor, to the federal government which occurs when the credentials of federal officials are understood, and the harm which impersonation of an official may cause to another. The existing felony treatment of the offense is too severe; and the maximum of three years is too low for the lesser cases of impersonating a minor fraud. Under the proposed Code, by virtue of the "piggyback" jurisdictional provision (§ 201(b)), the minor, undifferentiated impersonation can be classified as a misdemeanor, but retain a vehicle for prosecution of the more serious crimes. The section expands the definition of "foreign official" to
Chapter 14. Internal Revenue and Customs Offenses

Introduction Note
Pursuant to the policy of integrating into the proposed Code all sections of the offenses the present Chapter incorporates the principal tax offenses now located in Title 26, with the exceptions of those relating to finance, which are incorporated in Chapter 15. Many minor offenses, especially of a regulatory character, will remain in the revenue code. The serious statutory offenses are presently located in Title 26, and they are consolidated here in a single section or covered by other provisions of the proposed Code.

INTERNAL REVENUE OFFENSES

§ 1801. Tax Evasion.
(1) Offense. A person is guilty of tax evasion if:
(a) with intent to evade any tax, he files or causes the filing of a tax return or information return which is false as to a material matter;
(b) with intent to evade payment of any tax which is due, he removes or conceals assets;
(c) with intent to evade payment, he fails to account for or pay over when due taxes previously collected or withheld, or received from another with the understanding that they will be paid over to the United States;
(D) with intent to evade any tax, he removes, destroys, mutilates, alters or tampers with any property in the custody, control or possession of the United States or any agent thereof;
(e) with intent to evade any tax, he knowingly fails to file an income, excise, estate or gift tax return when due; or
(f) he otherwise attempts in any manner to evade or defeat any income, excise, estate or gift tax.

(2) Grading. Tax evasion is:
(a) a Class III felony if the amount of the tax deficiency exceeds $5,000; and
(b) a Class C felony if the amount of the tax deficiency exceeds $100.
Otherwise it is a Class A misdemeanor.

Comment
This section is principally derived from the existing broadly-defined tax evasion offenses, 28 U.S.C. § 251. That provision itself is substantially re-enacted as a “catch-all” in paragraph (f) of subsection (1).
Explanation of the possibility of replacing the broad definition with specific provisions of conduct which constitutes tax evasion led to the formulation of these paragraphs, taking into account, as well, the provisions of 26 U.S.C. § 7206, which deals with material false statements, aid and assistance, and removal and substitution of property in violation of both general and specific formulations in the section recognition that such broad language provides notice, utility in prosecution, and convenience in changing convictions, and the general terms means that all means of evasion are prohibited. The issue remains, however, whether the broad formulation should be restricted to the extent that it makes a felony of, for example, any misleading statements to investigators. Such conduct might be explicitly excluded, 26 U.S.C. § 7206 (the general false statements provision).

The requirement of an intent to evade any tax in subsection (1)(a) reflects two principal changes in existing law. One is the elimination of an intent to defraud liability to be established even when there is no tax deficiency, contrary to present judicial interpretation of 26 U.S.C. § 7201. The other is that the making of false material statements will not, as in all cases, be felonious, as it presently is under 26 U.S.C. § 7206, without intent to evade. The existence of such intent to defraud situations distinguishes tax evasion from the general false statement misdemeanor provision.

The grading of tax evasion is a change from present law, parallels the treatment of other frauds against the government prosecutable under the theft provisions (26 U.S.C. § 7212). If grading comparable to present law were retained (making tax evasion a Class C felony in all cases), it might be preferable to include some taxes covered by subsection (1)(a) and (1) and to treat substantial evasion of selective taxes covered by those paragraphs under an addition to § 1461(b), making unlawful trafficking in a taxable object a Class C felony if the actor acts with intent to evade the tax and the tax which would have been due, on the object involved.

The general provisions on complexity and facilitation in the proposed Code [§ 68 and 692] make it unnecessary to carry forward in this section explicit references to prepare and aiding in the preparation of the return. Also, explicit intent provisions relating to any activity and to subscribing and mailing the return, if needed, would be incorporated in an amendment of 26 U.S.C. § 2007, where they would apply in all offenses.


1402. Knowing Disruptcy of Tax Obligations.

A person is guilty of an offense if he is shown to have known that the object has been or is being imported, manufactured, procured, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.

1402. Unlawful Trafficking in Taxable Objects.

(a) Person is guilty of an offense if he is shown to have possessed, maintained, controlled, held, retained, imported, sold or otherwise disposed of a taxable object, knowing that the object has been or is being imported, manufactured, procured, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.

(b) Person is guilty of an offense if he is shown to have possessed, maintained, controlled, held, retained, imported, sold or otherwise disposed of a taxable object, knowing that the object has been or is being imported, manufactured, procured, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.

(c) Person is guilty of an offense if he is shown to have possessed, maintained, controlled, held, retained, imported, sold or otherwise disposed of a taxable object, knowing that the object has been or is being imported, manufactured, procured, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.

(d) Person is guilty of an offense if he is shown to have possessed, maintained, controlled, held, retained, imported, sold or otherwise disposed of a taxable object, knowing that the object has been or is being imported, manufactured, procured, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.

(e) Person is guilty of an offense if he is shown to have possessed, maintained, controlled, held, retained, imported, sold or otherwise disposed of a taxable object, knowing that the object has been or is being imported, manufactured, procured, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.

(f) Person is guilty of an offense if he is shown to have possessed, maintained, controlled, held, retained, imported, sold or otherwise disposed of a taxable object, knowing that the object has been or is being imported, manufactured, procured, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.

(g) Person is guilty of an offense if he is shown to have possessed, maintained, controlled, held, retained, imported, sold or otherwise disposed of a taxable object, knowing that the object has been or is being imported, manufactured, procured, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.

(h) Person is guilty of an offense if he is shown to have possessed, maintained, controlled, held, retained, imported, sold or otherwise disposed of a taxable object, knowing that the object has been or is being imported, manufactured, procured, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.

(1) Person is guilty of an offense if he is shown to have possessed, maintained, controlled, held, retained, imported, sold or otherwise disposed of a taxable object, knowing that the object has been or is being imported, manufactured, procured, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.
Comment
The tax evasion offenses cover evasion of taxes, as well as income, taxes; but they do not permit adequate enforcement, with respect to evasion taxes because of the difficulties involved in determining who is obliged to pay the tax or file the return, and the amount of tax owed. The principal problem involves "sneakingly," because the tax on liquor may run as high as 90 times the cost of production, and liquor is relatively easy to produce. Title 26 contains many offenses relating to liquor production, most of them felonies. See 26 U.S.C. §§ 5661-68. The section, together with the definitions in § 1409 and the presumptions in § 1408, carries forward such offenses in a simplified form. (Compare this section with the illicit drug trafficking offenses in §§ 1412-13.) Trafficking in other taxable objects, e.g., beer, wine, tobacco, are also covered by this section, but, since they do not pose the same problems as liquor trafficking, are graded as Class B misdemeanors, unless they qualify for specified statutory penalties.

The counterfeiting provisions of Title 26 are carried forward almost intact from the Anti-Counterfeiting Act of 1967, 81 Stat. 413, 26 U.S.C. §§ 251, 261. Other offenses would remain in Title 26, as misdemeanors or subject to the regulatory offense provisions (§ 1409), if made applicable by amendment of Title 26.

The grading of liquor trafficking distinguish between channels operation and those engaged in by persons qualified under Title 26, so that violation by the latter of the various pre-prohibition regulatory provisions will not be felonious unless an intent to evade the tax. See comment in § 1408, supra, for an additional to the grading provision form as an alternative to the coverage of excise tax evasion under the grading scheme in that section.

The definition of the offense prohibits any trafficking on a violation, even though taxed, has occurred; and even existing laws prohibit the same result. Accordingly, an affirmative defense is provided in subsection (b) where trafficking occurs after the taxes have been paid. The last clause—stating that it is no defense if the trafficking occurs before the taxes are due—is inserted to make clear that the defense is not available when the violations, such as with regard to registration, are not committed as a result of law enforcement.


§ 1404. Possession of Unlawfully Distilled Spirits.
A person is guilty of a Class B misdemeanor if he possesses distilled spirits, knowing that a tax imposed thereon or on the trafficking thereof has not been paid.

Comment
A principal change in policy with respect to the liquor tax laws proposed in the Code is to remove the penalty of felony treatment, for the consumer of contaminated liquor, present under existing laws (26 U.S.C. §§ 5652(a)(11), 5654(a)). While discrimination between those who buy liquor at retail and who purchase liquor at the wholesale level was not more difficult, such discrimination is recognized as appropriate even in the taxation area, where the article itself is contraband and

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§ 1405. Presumptions Applicable to Sections 1403 and 1404.
(a) Containers, Stamps, Certificates and Labels. For purposes of sections 1403 and 1404, proof that a person was found in possession of an object therein described, which object was not in the container required by statute or a regulation issued pursuant thereto, or which did not bear a stamp, certificate or label required by statute or a regulation issued pursuant thereto, gives rise to a presumption of the culpability specified in those sections and that the tax was not paid.

(b) Presence at Still or Distilling Apparatus. For the purpose of section 1403, possession of an apparatus described in this section places the burden of proof on the owner of the apparatus.

The presumptions in this section are intended as an aid to enforcement of §§ 1403 and 1404; but developments in the law as to the constitutionality of presumptions (see Turner v. United States, 354 U.S. 60, 316 (1957), may require a different approach. The presumptions set forth in subsection (b) appear to be valid under the test laid down in United States v. Greer, 356 U.S. 63, 76 (1958), in which the Supreme Court considered the validity of the presumption (26 U.S.C. § 4401(b)) from which the subsection is derived. The validity of the principles expressed in subsection (a)—that possession of a certain quality of distilled spirits or property trafficking—appears to be more dubious; the amount may be decisive. Subsection (c) appears to present the same difficulties; but it should be noted that it has been derived from existing statutes which make the conduct there described offenses in themselves, without...
§ 1409. Definitions for Sections 1401 to 1409.

In sections 1401 to 1409:
(a) "object" includes certificates and other documents;
(b) "possession" includes custody or control, jointly or severally exercised;
(c) "product" and "manufacture", and variants thereof, include the gathering together of equipment or materials for the purpose of producing or manufacturing, as the case may be;
(d) "tax" means a tax imposed by a federal statute, an excise tax imposed by a federal statute, and any penalty, additional tax, additional amount, or interest thereon, but does not include tariffs or customs duties or tolls, levies or charges which are not denominated a "tax" by a federal statute;
(e) "tax return" means a written report of the taxpayer's tax obligations which is required to be filed by a federal statute or regulation based pursuant thereto. The term includes reports of taxes withheld or collected, income tax returns, estates and gift tax returns, excess and other tax returns of any individual, corporation or other entity required to file returns and pay taxes in conjunction with a tax return, but does not include interim reports, information returns or returns of estimated taxes;
(f) "taxable object" means an object upon which the manufacture, production, removal, possession, import, sale or transfer of which a tax is imposed;
(g) "traffics in" means produces, manufactures, possesses with intent to transfer, transfers, dispenses, imports, exports with intent to transfer, sells or offers or agrees to do any of the foregoing.

Comment

Note that the definitions of "tax return" and "tax" include taxes and returns which may be required outside of Title 26. "Tax return," for general purposes, entitles collaterals documents such as interim reports and information and returns and estimates of tax returns, and also criminal sanctions for failure to file such documents. Note that when information of information returns is § 1402(14), showing that false material statements with intent to evade, is thus required to reach such means of evasion, 150
chapter of the variety of characterizations in existing law: "smuggling," "illegally introduced," "brings in," "imports," and in 18 U.S.C. § 445, and terms such as not presenting for inspection, unloading, landing, etc., used in other statutes or in regulations.

The proposed Code would make attempted smuggling an offense for the first time in federal law. Litigation over whether preparatory acts are criminal would focus on whether such acts are substantial steps under the attempt statute or whether they are the operation of other provisions. When, as is generally the case, those designed to frustrate examination, such as concealment under a false bottom or in a container, would constitute attempted evasion, if an examination does not actually take place.

Section 1411 does not contain the provision in 18 U.S.C. § 445 that possession of smuggled goods warrants conviction unless "explained in the satisfaction of the jury." Under the definitions of the Code, the provision, if preserved, would constitute a "prima facie case." It is rejected here, although possession, depending on the circumstances, could constitute a prima facie case, it should not constitute one in all cases.

The definition of "object" in subsection (3)(c) is intended to avoid the kind of litigation which has arisen with respect to the word "warrant," in existing 18 U.S.C. § 445 (petitive bird). Existing policy with respect to various island possessions is carried forward in the definition of "United States" in subsection (4).

Smuggling under 18 U.S.C. § 445 is now punishable by up to five years in prison, and since that provisionBraun to bring in 15 merchantable objects contrary to law, it permits felony treatment of a wide variety of offenses. The offense is intended to catch the nature of the article introduced, although other statutes provide for different types of offenses.

Felony penalties for all smuggling are not retained although it may be argued that the Bureau of Customs needs broad discretion for effective enforcement and that different values of felony penalties are necessary in the enforcement scheme. In fact, official policies of the Bureau of Customs tend to accentuate the harsh provisions of 18 U.S.C. § 445. Minor tourist smuggling is dealt with by permitting payment of the duty or by confiscation of the contraband. Civil penalties and forfeitures are also used. Section 1411 distinguishes between conduct deserving of felony treatment and that for which misdemeanor treatment would be adequate. Most tourists seem to know how the Bureau exercises its discretion. With realistic penalties, misdemeanor prosecutions of tourists might be undertaken and respect for the law increased.

The basic premise for distinguishing between felonious and non felonious smuggling-value, amount of duty and crime—are considered to be the factors that distinguish between professional and amateur, producers and users, big and small, etc. Subsection (3)(a) grafts a felony broaching the importation of dangerous contraband, e.g., the creation of a new label under which another statute is based on the theory that such grading, which has taken into account the nature of a specific object, is more discriminat
PROHIBITION OF FEDERAL RIGHTS CRIMES GENERALLY

§ 1501. Conspiracy Against Rights of Citizens.

A person is guilty of a Class A misdemeanor if, under color of any law, statute, ordinance, regulation, or custom, he intentionally subjects any inhabitant of any state:

(a) to the deprivation of any right, privilege or immunity secured or protected by the Constitution or laws of the United States; or

(b) to different punishments, pains or penalties on account of such inhabitant being an alien, or by reason of his color or race, than are prescribed for the punishment of citizens.

Comment

Sections 1501 and 1503 preserve post-Civil War civil rights legislation provisionally embodied in 28 U.S.C. §§ 241 and 242. Present sections have been carried forward virtually without change because, as written, they were regarded as the basic provisions to which the specific provisions of the Civil Rights Act of 1968 (carried forward by subsequent sections of this Chapter) were supplementary. The sections are also important because their generalities afford opportunity for continued case-by-case development of the civil rights law. "Willfully" in present § 242 has been changed, however, to "intentionally" in Code § 1503 to adopt the culpability requirement articulated in *Sweatt v. United States*.
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Title 21, U.S.C. 6101 (1965), that there be shown a specific intent to deprive the victim of his federal rights, not merely, for example, to beat or murder him. The definition of "state," in Code § 1503 embraces "state, territory, or District" in present § 1501.

Some Commissioners favor a modernization of these provisions, by, among other things (1) broadening present § 1501 to include any person, whether or not a citizen; (2) delaying the requirement of proof of present § 1501 that at least two persons commit the offense; and (3) deleting as superfluous the final clause of present § 154 (Code § 1502(b)), which unnecessarily spells out that there is a federal right not to be subjected to discriminatory practices. Cf. Study Dev. § 150.

Other Commissioners favor deletion of these provisions entirely on the grounds that they do not meet modern standards of due process. In the definitions of the language, their major provisions are covered by other provisions in the Code, and no crimes in the area, if any, should not be created by judicial construction but expressly by the Code.

Present § 1541 is a delay carrying up to ten years' imprisonment; present § 1542 is a misdemeanor with a one-year maximum. Both sections authorize imprisonment "of the person" from the commission of the offense. Under the Code, both offenses are classified as Class A misdemeanors because of the provision for a "private" action (§ 1505 (a)), under which the civil rights offender would be subject to civil action for any offense as aggravated assault, kidnapping, and murder, committed in the course of violating §§ 1501 and 1502. This jurisdiction thus gives federal law enforcement full power to deal appropriately with the whole range of deprivations of federal rights from the minor to the most serious.

Proceeding sections of this Chapter deal with a variety of specific civil rights and elections offenses most of which have been and might be embraced within the provisions of §§ 1501 and 1502. These two sections will continue to provide a new for further development of federal protection of federal rights by judicial interpretation. Note that §§ 1501 and 1502 apply to any form of "injury or intimidation," there is no requirement of "forceful" interference or discrimination such as appears in the more specific provisions below.


INTERFERENCE WITH PARTICIPATION IN SPECIFIED ACTIVITIES

Introductory Note

Sections 3311 through 3320 are largely a reenactment of criminal provisions of the Civil Rights Act of 1964, now found in 18 U.S.C. §§ 245, dealing with federally protected activities generally, and 42 U.S.C. § 2000, dealing with fair housing practices. The Code sections are only intended to effect technical variations from the language of the present law. The various subsections of 18 U.S.C. § 245 have been reorganized into separate sections for purposes of clarity. The provisions of 18 U.S.C. §§ 245 and 42 U.S.C. § 2000 have been integrated and duplications between them and within 18 U.S.C. § 245 have been eliminated. In addition, matters which are ambiguous under existing

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law have been treated explicitly, e.g., in subparagraphs (b) (ii) and (iii) of § 1511, and matters treated under Code provisions having general application are not repeated in these sections. Cf., Federal jurisdiction not precluding (Code § 1501); Federal jurisdiction precluding (Code § 1501); jurisdiction of courts of public duty (Code § 1501); jurisdiction of private persons (Code 1501); jurisdiction of any person for violation of any of the provisions of 18 U.S.C. §§ 1511-1521; 42 U.S.C. § 1981(a), which authorize federal prosecution for forcible or intimidate interference, in the course of any of the crimes of a citizen, with "any person engaged in a business" affecting interstate commerce, to permit treatment of the same as an aspect of federal jurisdiction under the Code's civil provisions; bringing the fair housing provisions of 42 U.S.C. § 1983 under the general requirement of 18 U.S.C. § 245 that the Attorney General expressly authorize prosecutions under these sections (Code § 1504).

Although the principal text carries forward existing law, some Commissioners favor changes which had been rejected at the time of its enactment. One change would be expansion of the scope of existing law by adding the phrase "or by economic coercive measures" to § 1511 so that civil suits can be virtually as effective and harmful a means of deprivation of civil rights as the right to vote or to run for office. The Commissioner declined, however, that the difficulties of enforcement or such a change might have been changed in possible benefit. Another change favored by some would be to extend the scope of existing law by including it applicable only to conduct under color of law, on the ground that the only valid justification for federal intervention today is the failure of state process, and (ii) by requiring intent to interfere with a described right, in order to provide a nexus in all cases between the prohibited conduct and the federal interest. Such enactment would be accompanied by a recommendation that Congress consider legislation making federal investigative assistance available for civil rights cases which would be federal offense were "color of law" not required.

The offenses in §§ 1511-15 are classified as misdemeanors for reasons set forth in the comment to § 1501. Note the arbitrary difference in civil rights interference in existing treatment provisions between 18 U.S.C. §§ 245 and 245: the former authority up to ten years' imprisonment unconditionally, whereas the latter authorizes only $1,000 body injury results.

To the extent that §§ 1511 through 1516 may vary from the wording of their provisions in present law, they do so only marginally and such minor differences are not intended to effect anything beyond a modification of present law.

See Working Papers, pp. 779-780.

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INTERFERENCE WITH ELECTIONS, FEDERAL OR FEDERALLY ASSISTED PROGRAMS AND EMPLOYMENT

A person is guilty of a Class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force
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or by economic coercion), intentionally injures, intimidates or
interferes with another because he is or has been, in or in order to
intimidate him or any other person from:

(a) voting for any candidate or issue or qualifying to vote,
qualifying or campaigning as a candidate for elective office,
qualifying or acting as a poll watcher or other election offi-
cial, in any primary, special, or general election;

(b) participating in or enjoying the benefits of any program,
service, facility, or activity provided or administered by the
United States, or receiving federal financial assistance, in-
cluding (i) serving as a grand or petit juror in any court of
the United States or attending court in connection with such
possible service, or (ii) qualifying for or operating in a con-
tractual relationship with the federal government, or (iii)
qualifying for or enjoying the benefits of a federal loan or federal

Comment

This is largely a re-enactment of paragraph (1) of 18 U.S.C. § 245
(1), part of the Civil Rights Act of 1960. Paragraph (2) of 18 U.S.C.
§ 245 (b) is picked up in § 1515, infra. The relation between the
two sections is as follows. This section deals with a list of federal
rights protected against impairment regardless of motive or content;
§ 1515 protects certain federal rights but only when the infor-
mation is discriminatory on the basis of race, color, religion or na-
tional origin. This section's list of rights essentially comprises those
that are deemed distinctively federal, e.g., to vote, hold a federal job or
benefit; the § 1515 list embraces such assets as the right to attend a
school, hold a job, enjoy public accommodations. Such rights are left
to be vindicated by state penal law except where discrimination is
involved.

As indicated in the Introductory Note preceding § 1511, the
bracketed phrase "or by economic coercion" was inserted by a substi-
tutional body of opinion in the Commission, because of the importance
of economic pressure in causing people to forego registration, voting
and other rights. Opposition to the ban on economic coercion, focused on
the vulnerability of employers and landlords to false charges in cases of
discharge or eviction that might actually have been due to legiti-
mate business reasons. One counterargument was to confuse the
economic coercion offense to cases of threat or to sue economic coercion to prevent
exercise of rights; requiring proof of threat would eliminate any
ambiguity as to the motivation of an economic injury. The possibility
of false claims of threats, however, would remain.

See Working Papers, pp. 779-80, 786.

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A person is guilty of a Class A misdemeanor if, whether or not
acting under color of law, he, by force or threat of force (or by
economic coercion), intentionally injures, intimidates or interfer-

with another because of his race, color, religion or national
origin and because he is or has been, in or in order to intimidate him
or any other person from:

(a) enrolling in or attending any public school or public
college;

(b) participating in or enjoying any benefit, service, privi-
lege, program, facility or activity provided or administered by
any state or subdivision thereof;

(c) serving, or attending upon any court of any state in
connection with possible service, as a grand or petit juror;

(d) enjoying the goods, services, facilities, privileges,
advantages, or accommodations of any inn, motel, hotel, or
other establishment which provides lodging to transient guests,
or of any restaurant, cafeteria, cafeteria, lunch counter,
meat market, or other facility which serves the public and
which is principally engaged in selling food or beverages for
consumption on the premises, or of any gasoline station, or of
any motion picture house, theater, concert hall, sports area,
arena, stadium or any other place of exhibition or entertainment
which serves the public, or of any other establishment which
serves the public and (i) which is located within the premises
of any of the aforesaid establishments or within the premises
of which is physically located any of the aforesaid establish-
ments, and (ii) which holds itself out as serving patrons of
such establishment. Nothing in this paragraph shall limit the
lawful action in support of such guest policy as he chooses to
adopt of a proprietor of any establishment which provides
lodging to transient guests, or to any employee acting on behalf
of such proprietor, with respect to the enjoyment of the goods,
services, facilities, privileges, advantages, or accommodations
of such establishment if such establishment is located within
a building which contains not more than five rooms for rent
or hire and which is actually occupied by the proprietor or his
residence;

(e) applying for or enjoying employment, or any perquisite
thereof, by any private employer or any agency of any

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§ 1513. Interference With Persons Aiding Civil Rights to Others.

A person is guilty of a Class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force (or by economic coercion), intentionally injures, intimidates or interferes with another because he is or has been, or in order to intimidate him or any other person from, furnishing aid, or participating in any benefit or activity described in section 1511 or to participate without discrimination on account of race, color, religion, or national origin in any benefit or activity described in section 1512.

Comment

This section corresponds to paragraph (4) of 18 U.S.C. § 1951(b). Paragraph (4) protects persons who are willing to assist federal rights, e.g., to provide of nondiscriminatory housing, but who may be subjected to intimidation or retaliation for that willingness.

§ 1514. Discriminatory Interference With Speech or Assembly Related to Civil Rights Activities.

A person is guilty of a Class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force (or by economic coercion), intentionally injures, intimidates or interferes with another because he is or has been, or in order to intimidate him or any other person from, participating lawfully in speech or peaceful assembly opposing any denial of opportunity to participate in any benefit or activity described in section 1511 or to participate without discrimination on account of race, color, religion, or national origin in any benefit or activity described in section 1512.

Comment

This section picks up the final clause of paragraph (3) of 18 U.S.C. § 245(b). It protects speeches and demonstrations in favor of the exercise of civil rights. Among the issues raised by the following: Should this specific federal penal protection of First Amendment rights be limited to the rights listed in §§ 1511 and 1512? There has been some demand for broader protection. See Final Report of National Commission on Causes and Prevention of Violence, p. 76 (Dec. 1967), which recommends federal injunctive remedies. Congress' inten-
§ 1521. Attorney General Certification for Prosecutions Under Sections 1811 to 1815.

No prosecution shall be instituted for offenses defined in sections 1811 to 1815 unless the Attorney General certifies that a prosecution by the United States is in the public interest and necessary to secure substantial justice. Nothing in this section shall be construed, however, to limit the authority of federal officers, or a federal grand jury, to investigate possible violations of sections 1811 to 1815. [Comment

This section covers forward parts of subsection (a) of 18 U.S.C. § 184. Other parts of that subsection are covered by general provisions in the Code, e.g., § 3 104 (Attorney General's certification), and § 3 06 (prosecuting intent to pre-suit state jurisdiction). See Working Papers, pp. 80-94.

ARMS OF FEDERAL OFFICIAL AUTHORITY


A federal public servant acting under color of law or a person acting under color of federal law is guilty of a Class A misdemeanor if he intentionally:

(a) subjects another to unlawful violence or detention; or
(b) exceeds his authority in making an arrest or a search and seizure.

[Comment

Paragraph (a) makes a specific offense of the kind of mistaken service on the part of law enforcement or prison officials that has been most often dealt with under the general provisions of 18 U.S.C. § 1346. It also covers all other official abuses of power. In connection with providing the service to individuals is that the victims of federal constitutional rights. In its application to federal officials, to those purporting to exercise federal official authority, and to those persons acting in concert with federal officials, it reflects the view that similar actions by state or local officials or under color of state or local law should not be exempt from federal prosecution beyond what is permitted under 18 U.S.C. §§ 841-845 (Code §§ 341-348), (f) United States v. Price, 80 U.S. 647 (1868) and Williams v. United States, 341 U.S. 27 (1951). A substantial body of opinion in the Commission, however, supported the ex parte denial of access to a federal forum for federal officials in matters of this kind. Paragraph (b) retains in a more generalized form the misdemeanor regarding searches and seizures presently found in 18 U.S.C. §§ 2254-26.

Note that "piggishness" (subsection (b)) will permit appropriate proceedings and punishment of offenses such as larceny, espionage, and kidnapping in connection with uproarious offenses covered by § 1521. General official offenses against official proceedings found in state and local legislation, e.g., A.L.L. Model Penal Code § 3031, do not appear to be required in view of the fact that the flexible provisions of 18 U.S.C. §§ 208-42 are retained in proposed §§ 1511 and 1522.


PROTECTION OF POLITICAL PROCESSES

§ 1531. Safeguarding Elections.

A person is guilty of a Class A misdemeanor if, in connection with any primary, general or special election, he:

(a) makes or induces any false voting registration;

(b) offers, gives, or agrees to give a thing of pecuniary value or agrees to give a thing of pecuniary value or agrees to give a thing of pecuniary value or agrees to give a thing of pecuniary value or agrees to give a thing of pecuniary value; or

(c) solicits, accepts or agrees to accept a thing of pecuniary value or agrees to consent to conduct prohibited under paragraphs (a) or (b) or

(d) otherwise obstruct or interferes with the lawful conduct of such election or registration therefor.
§ 1532. Deprivation of Federal Benefits for Political Purposes.
A person is guilty of a Class A misdemeanor if he intentionally withholds from or deprives another or threatens to withhold from or deprive another of the benefit of any federal program or federally-supported program, or a federal government contract, with intent to interfere with, restrain, or coerce any person in the exercise of his right to vote for any candidate or issue at any election, or in the exercise of any other political right.

Comment
This section derives primarily from 18 U.S.C. § 1009, which draws some elements from 29 U.S.C. §§ 203, 211, and 607. The earlier legislation, speaking in terms of "work relief" appropriations, is generalized to prohibit the withholding or depriving of any federal benefits, even those not directly related to employment or the benefit of the beneficiary thereof or others. See Working Papers, p. 813.

§ 1533. Misuse of Personal Authority for Political Purposes.
A federal public servant is guilty of a Class A misdemeanor if he discharges, promotes, or degrades another federal public servant, for giving or withholding or neglecting to make a contribution of money or other thing of value for any political purpose.

Comment
This section continues existing law under 18 U.S.C. § 938. It makes it a criminal offense to disrupt an election by the use of public authority, such as firing or promoting employees to do political work, or by other means to suppress or encourage voting. The new section is intended to be a general one, applicable to any federal public servant, including judges, marshals, and postmasters.

(1) Solicitation by Federal Public Servant. A federal public servant is guilty of a Class A misdemeanor if he solicits a contribution for any political purpose from another federal public servant, or, in response to such a solicitation, he makes a political contribution to another federal public servant.

(2) Solicitation in Federal Facility. Any person is guilty of a Class A misdemeanor if he solicits or receives a political contribution in a federal building or facility.

Comment
This section carries forward existing law as expressed in 18 U.S.C. §§ 602, 603, and 937, excepting, however, the provision of § 937 that appeared to make it criminal for any federal employee to volunteer a political contribution to any other federal employee or to a Senator or Congressman. It would remain criminal to make such a contribution in response to a solicitation. The purpose here is to give the solicited employee a firm base for resisting such solicitation.

While the provisions may reach the limits of desirability and even constitutionality in restricting political rights (see Yick Wo v. Hopkins, 118 U.S. 356 (1886); United States v. Mitchell, 316 U.S. 800 (1942); cf. United Public Workers v. Mitchell, 326 U.S. 354 (1946)), it is nevertheless desirable to protect federal public servants from political coercion.


§ 1535. Troops of Polls.
A public servant is guilty of a Class C felony if he orders, brings, keeps, or has under his authority or control any troops at any place where a general or special election or primary election is held, unless such force is necessary to repel armed invasion or violent interference with the election process.

Comment
This section carries forward existing law in 18 U.S.C. § 939. It is designed to prevent intimidation of the electorate by the mere presence of armed forces at the polls. Although §§ 1350, 1351(a) and 1351(d) of the proposed Code safeguard against actual intimidation of voters or interference with the conduct of an election, it was thought desirable to retain this long-established section of the statute to provide a penalty for the threat of force. Section 1351(d) of the proposed Code has been dropped in view of the coverage of the sections referred to above.

Under 18 U.S.C. § 939, the only exception to the prohibition of military force at the polls is where "force is necessary to repel armed invasion of the United States." It seems appropriate to permit use of
FOREIGN POLITICAL CONTRIBUTIONS

§ 1551. Political Contributions by Agents of Foreign Principals.

1. Contributor. An agent of a foreign principal is guilty of a Class C felony if, directly or indirectly, in his capacity as such agent he knowingly makes a contribution or promise to make a contribution, in connection with any primary, special, or general election, or political convention or caucus held to select candidates for any political office.

2. Recipient. A person is guilty of a Class C felony if he knowingly solicits, accepts or agrees to accept any contribution prohibited by subsection (1).

3. Definitions. In this section:
   (a) "foreign principal" has the meaning prescribed in 22 U.S.C. § 612(b), but does not include a person who is a citizen of the United States;
   (b) "agent of a foreign principal" means a person who acts as an agent, representative, employee, or servant, or a person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any substantial portion of whose activities are directly or indirectly supervised, directed, or controlled by a foreign principal.

Comment

This provision would incorporate into the proposed Code 18 U.S.C. § 238(d), which prescribes the transportation in interstate or foreign commerce of persons employed as strikers, or who are in the employ of persons employed as strikers, in order to induce them to engage in any labor dispute. The jurisdictional reach of the statute would be extended to include any person engaged in the transportation of such persons, regardless of whether they are employees of the person demanding the acts or are employees of the person furnishing the transportation. The provision would also extend the jurisdictional reach of the statute to include any person engaged in the transportation of persons who are not employees of the person demanding the acts or furnishing the transportation.

§ 1552. Strikebreaking.

1. Offense. A person is guilty of a Class A misdemeanor if he intentionally, by force or threat of force, obstructs or interferes with:
   (a) peaceful picketing by employees during any labor controversy affecting wages, hours, or conditions of labor; or
   (b) the exercise by employees of any of the rights of self-organization or collective bargaining.

2. Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a) or (b) of section 216.

Comment

This provision would incorporate into the proposed Code 18 U.S.C. § 1951, which prescribes the transportation in interstate or foreign commerce of persons employed as strikers, or in the employ of persons employed as strikers, in order to induce them to engage in any labor dispute. The jurisdictional reach of the statute would be extended to include any person engaged in the transportation of such persons, regardless of whether they are employees of the person demanding the acts or are employees of the person furnishing the transportation. The provision would also extend the jurisdictional reach of the statute to include any person engaged in the transportation of persons who are not employees of the person demanding the acts or furnishing the transportation.
§ 1561. Interception of Wire or Oral Communications.

(1) Offense. A person is guilty of a Class C felony if he:
   (a) intentionally intercepts any wire or oral communication by use of any electronic, mechanical, or other device; or
   (b) intentionally discloses to any other person or intentionally uses the contents of any wire or oral communication, knowing that the information was obtained through the interception of a wire or oral communication.

(2) Defense. It is a defense to a prosecution under this section that:
   (a) the actor was authorized to intercept, disclose or use, as the case may be, the wire or oral communication under [18 U.S.C. §§ 2515 & 2516(1)(a) & (b)];
   (b) the actor was (i) a person acting under color of law to intercept a wire or oral communication and (ii) he was a party to the communication or one of the parties to the communication had given prior consent to such interception;
   (c) the actor was a party to the communication or one of the parties to the communication had given prior consent to such interception and (d) such communication was not intercepted for the purpose of committing a crime or other unlawful harm;
   (d) the provisions of [18 U.S.C. § 2511(5)] apply.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (c), (e), (f) or (g) of section 201.

Comment

This section and §§ 1562 and 1565 substantially revise 18 U.S.C. §§ 1960–19, enacted June 19, 1963, (a) as those provisions define crimes of wiretapping and eavesdropping; but changes have been made to integrate the existing criminal provisions into the proposed Code. The section does not prevent explicit coverage in 18 U.S.C. §§ 2511 and 2512 of attempts to commit the prohibited acts, and of provocation of others to commit such acts. Such conduct will come within the general attempt and solicitation provisions (§§ 32, 133). The stated defense in subsection (f), corresponding to exceptions in current law, is the functional equivalent of subsection (3) (a) to provisions dealing with procedure for obtaining a judicial order for wiretapping or eavesdropping and accepting certain communications personnel, e.g., swat teams. Those provisions will have different section numbers, whether they are reached in the new Title 18 or are transferred to Title 47, which regulates telecommunications. Subsection (2)(d) makes it clear that the national security stamp.
§ 1563 Definitions for Sections 1561 to 1563.

In sections 1561 to 1563:

(a) "wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications;

(b) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;

(c) "intercept" means the aural acquisition of the contents of any wire or oral communication through the use of an electronic, mechanical, or other device;

(d) "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than:

(i) any telephones or telegraph instruments, equipment or facility, or any component thereof, furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business;

(ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties.

§ 1564 Interpretation of Correspondence.

(1) "Offense. A person is guilty of a Class A misdemeanor if, knowing that a letter, postal card, or other written private correspondence has not yet been delivered in the person to whom it is directed, and knowing that he does not have the consent of the sender or receiver of the correspondence, he:

(a) damages or destroys the correspondence, with intent to prevent its delivery;

(b) opens or reads sealed correspondence, with intent to discover its contents;

(c) knowing that sealed correspondence has been opened or read in violation of paragraph (b), intentionally divulges its contents, in whole or in part, or a summary of any portion thereof.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (c), (e), or (f) of section 201.

§ 1565 Provisions of this Code shall have the meaning prescribed for the term "communications common carrier" by 47 U.S.C. § 1510.

§ 1566 Intentional obstruction of correspondence.

(1) Offense. A person who intentionally obstructs correspondence, in whole or in part, with the intent to prevent its delivery, knowing that such correspondence is not subject to interception under circumstances justifying such expectation, is guilty of a Class A misdemeanor.

(2) Provisions of this Code shall have the meaning prescribed for the term "communications common carrier" by 47 U.S.C. § 1510.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (c), (e), or (f) of section 201.

Comment

This section substantially re-makes 18 U.S.C. § 1701, prescribing intentional obstruction of correspondence. The text here somewhat extends the present offense by including a prohibition against disclosure of the contents of a sealed communication after it has been opened. This parallels the prohibition in § 1564(1)(b) against disclosure of information obtained by wiretapping or eavesdropping. Other provisions of the proposed Code deal with aspects of the present statute which are not within the concept of invasion of privacy. Thus the first provisions cover taking of both letters and packages, for which a felony penalty is generally provided (§ 1705), and the criminal mischief provisions (§ 1706) cover damage to packages. The gen-
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oral justification for execution of public duty (§ 606) will make execution of, for example, a search warrant a defense.

The offense defined in this section is a felony under existing law. Grading it as a Class A misdemeanor, while interrupting information, obtained by electronic eavesdropping remains a felony, reflects the view that the persons committing the latter are likely to be more professional and to constitute a greater threat, not only because their conduct is preempted but also because the invasion of privacy they cause is unexpected and almost impossible to guard against.

This section exists only in states in the United States and Section 1192 applies to coverage in all private correspondence. See N.Y. Penal Law § 236-4.

Chapter 16. Offenses Involving Danger To The Person

§ 1801. Murder.

A person is guilty of murder, a Class A felony, if he:

(a) intentionally or knowingly causes the death of another human being;

(b) causes the death of another human being under circumstances manifesting extreme indifference to the value of human life;

(c) acting either alone or with one or more other persons, commits or attempts to commit treason, offenses defined in sections 1062 or 1186, espionage, sabotage, robbery, burglary, kidnapping, felonious restraint,聚众, rape, aggravated involuntary sodomy, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prosecution under this paragraph in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(i) did not commit the homicidal act or in any way solicit, command, induce, procure, counsel or aid the commission thereof; and

(ii) was not armed with a firearm, destructive device, dangerous weapon or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury; and

(iii) reasonably believed that no other participant was armed with such a weapon; and

(iii) reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Paragraphs (a) and (b) shall be inapplicable in the circumstances covered by paragraph (3) of section 1052.

Comment:

This section provides for only a single class of murder, replacing the definition in 18 U.S.C. § 1111. The degree system, originally an important and useful method of discriminating between capital and noncapital murder, has broken down with the decline of capital pro-
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which there is reasonable excuse. The reasonableness of the excuse shall be determined from the viewpoint of a person in his situation under the circumstances as he believes them to be. An emotional disturbance is excusable, within the meaning of this paragraph, if it is occasioned by any provocation, event or condition for which the offender was not culpably responsible.

Comment

These principal innovators in the definition of manslaughter in 18 U.S.C. § 1112 are noted by this section:
(1) Actual "voluntary manslaughter" is broadened to include anything that amounts to "extreme emotional disturbance." For example, the effects of seduction or of female relatives might suffice. But extreme emotional disturbance must be shown only with reference to manslaughter if the actor has culpably brought about his own mental disturbance, such as by involving himself in a crime, or if the crime is not reasonable, such as when public events provide an assassination (Cf. § 5004(c) (1) and A.L.R. Model Penal Code § 302(2)(c) for alternative formulations designed to exclude exonerating excuse.
(2) The existing federal offenses of "involuntary manslaughter" is, in the proposed Code, divided into two categories: (a) involving "recklessness," punishable equally with voluntary manslaughter; but proof that the defendant was aware that his act was unreasonably calculated to cause death or serious bodily harm is required. The other category, designated "negligent homicide" under § 1603, involves a lesser (but still serious) penalty and proof of criminal negligence is required. See § 302 for definitions of recklessness and negligence.
(5) Pursuance of existing law designating as manslaughter any killing "in the commission of an unlawful act" are deleted. They amount to an ordinance and undeniable "inexcusable manslaughter" analogous to the "felony murder" rule, and do not necessarily describe existing law as enforced by the courts.
See 1588 for federal jurisdiction.
§ 1603. Negligent Homicide

A person is guilty of manslaughter, a Class B felony, if he:
(1) recklessly causes the death of another human being; or
(2) neglects the death of another human being under circumstances which would be murder, except that he causes the death under the influence of extreme emotional disturbance for

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The existence of the relevant facts or risks, such as disregard involving a gross deviation from acceptable standards of conduct. A person acts 'recklessly' in the other 'risk' to which, if he acts in intentional or purposeful disregard of or indifference to an actual or reasonably probable result that he is aware is because he: (a) willfully causes bodily injury to another human being; or (b) negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon

§ 1612  AGGRAVATED ASSAULT

(1) Offense. A person is guilty of an assault if he:

(a) willfully causes bodily injury to another human being;
(b) knowingly causes bodily injury to another human being with a dangerous weapon or other weapon; or
(c) attempts or complete an assault with another human being while attempting to kill another human being;
(d) uses a firearm or a weapon;
(e) uses a firearm or a weapon;
(f) uses a firearm or a weapon;
(g) uses a firearm or a weapon;
(h) uses a firearm or a weapon;
(i) uses a firearm or a weapon;
(j) uses a firearm or a weapon;
(k) uses a firearm or a weapon;
(l) uses a firearm or a weapon;
(m) uses a firearm or a weapon;
(n) uses a firearm or a weapon;
(o) uses a firearm or a weapon;
(p) uses a firearm or a weapon;
(q) uses a firearm or a weapon;
(r) uses a firearm or a weapon;
(s) uses a firearm or a weapon;
(t) uses a firearm or a weapon;
(u) uses a firearm or a weapon;
(v) uses a firearm or a weapon;
(w) uses a firearm or a weapon;
(x) uses a firearm or a weapon;
(y) uses a firearm or a weapon;
(z) uses a firearm or a weapon;

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(a) Any person who attempts to acquire a firearm or other weapon
(b) Any person who uses a firearm or other weapon
(c) Any person who uses a firearm or other weapon
(d) Any person who uses a firearm or other weapon
(e) Any person who uses a firearm or other weapon
(f) Any person who uses a firearm or other weapon
(g) Any person who uses a firearm or other weapon
(h) Any person who uses a firearm or other weapon
(i) Any person who uses a firearm or other weapon
(j) Any person who uses a firearm or other weapon
(k) Any person who uses a firearm or other weapon
(l) Any person who uses a firearm or other weapon
(m) Any person who uses a firearm or other weapon
(n) Any person who uses a firearm or other weapon
(o) Any person who uses a firearm or other weapon
(p) Any person who uses a firearm or other weapon
(q) Any person who uses a firearm or other weapon
(r) Any person who uses a firearm or other weapon
(s) Any person who uses a firearm or other weapon
(t) Any person who uses a firearm or other weapon
(u) Any person who uses a firearm or other weapon
(v) Any person who uses a firearm or other weapon
(w) Any person who uses a firearm or other weapon
(x) Any person who uses a firearm or other weapon
(y) Any person who uses a firearm or other weapon
(z) Any person who uses a firearm or other weapon;
§ 1613. Reckless Endangerment.

(1) Offense. A person is guilty of an offense if he creates a substantial risk of serious bodily injury or death to another. The offense is a Class C felony if the circumstances manifest his extreme indifference to the value of human life. Otherwise it is a Class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a) or (b) of section 201 or when the offense is committed in the course of committing or in immediate flight from the commission of any other offense over which federal jurisdiction exists.

Comment

Although existing federal law penalizes some particular forms of endangering, e.g., boarders with motor carriers (18 U.S.C. § 22), this present section is new in generalizing the offense. The operation of dams, nuclear facilities, transportation facilities, etc. obviously affords more opportunities for negligently endangering life in circumstances that would subject the actor to murder penalties if death resulted. This section will also cover reckless driving. This section has a special "myopic" jurisdiction which includes offenses outside this Code, unlike § 166 (f), which is limited to endangering offenses defined in this Code. There is no limitation on the offense of violation of federal safety regulations, e.g., those governing the interstate shipment of flammable fluids. See Working Papers, 150-27, 568-27, 570.

§ 1614. Terrorism.

(1) Offense. A person is guilty of a Class C felony if:

(a) threatens to commit any crime of violence or act dangerous to human life, or

(b) falsely informs another that a situation dangerous to human life or commission of a crime of violence is imminent knowing that the information is false, with intent to keep another human being in sustained fear for his or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such injury, disruption or inconvenience.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (c), (d), (e), (f) or (g) of section 201.

Comment

This section has a dual purpose: (1) it reaches, in one consolidated statute, efforts to terrorize a person by a threat serious enough to cause sustained fear, for example, through mailed threats to kidnap or murder, presently prescribed in 18 U.S.C. §§ 875-77; and (2) it reaches acts of public terrorism, such as bomb scares, presently prescribed in 18 U.S.C. §§ 840, 857(d). More remote threats, not intended to terrorize or disrupt, and not recklessly resulting in public disruption or in the creation of sustained fear in an individual, are dealt with as lesser crimes under § 1617 and 1618. See Working Papers, pp. 670, 837.

§ 1615. Threats Against the President and Successors to the Presidency.

A person is guilty of a Class C felony if he threatens to commit any crime of violence against the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in order of succession in the order of President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States:

(a) by a communication addressed to or intended to come to the attention of such official or his staff; or

(b) under any circumstances in which the threat is likely to be taken seriously as an expression of settled purpose.

"Threat" includes any knowingly false report that such violence is threatened or imminent. "President-elect" and "Vice President-elect" have the meanings prescribed in section 120(c).

Comment

Existing law, 18 U.S.C. § 851, punishes, by up to five years' imprisonment, the making of threats against the President or successors to the Presidency. The Supreme Court has recently held that, in order to differentiate criminal conduct from privileged speech, the use of threatening language is not speech unless the President must constitute a "real" threat of physical violence, not just "political hyperbole." Watts v. United States, 394 U.S. 705 (1969). Yet, even if the threat is not seriously meant, the President should be protected from the detrimental effect upon Presidential activity and movement that may re-
§ 1616. Menacing.  
(1) Offense. A person is guilty of a Class A misdemeanor if he knowingly places or attempts to place another human being in fear of menacing him with imminent serious bodily injury.  
(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (c) or (d) of section 202.

Comment
The term "menacing" has replaced the common law term "assault" to denote the offense of actual or intentional injury to the person injuring another. The term "menacing" is employed to denote certain aggressive failings within traditional assaults. However, the section is narrower than common law assault since it is limited to menacing imminent serious bodily injury. Nevertheless, an attempt to commit any bodily injury will be an offense under this statute (1301) and simple assault (1311) provisions. Conduct which might include menacing, e.g., "intimidation" and "threat", is proscribed in other sections, in some instances with more severe penalties. See, for example, civil rights offenses (1304-05, 1311-13), robbery (1322), definitions of "menacing" for kidnapping and related offenses (1683(a)). See Working Papers, p. 877.

§ 1617. Criminal Coercion.  
(1) Offense. A person is guilty of a Class A misdemeanor if, with intent to compel another to engage in or refrain from conduct, he threatens to:  
(a) commit any crime;  
(b) accuse anyone of a crime

(c) expose a secret or publish an asserted fact, whether true or false, tending to subject any person, living or deceased, to hatred, contempt or ridicule, or to impair another's credit or business reputation; or  
(d) take or withhold official action as a public servant, or cause a public servant to take or withhold official action.

(2) Defense. It is an affirmative defense for a prosecution under this section that the actor believed, whether or not mistakenly:  
(a) that the primary purpose of the threat was to cause the other to conduct himself in his own best interests; or  
(b) that a purpose of the threat was to cause the other to desist from misbehavior, engage in behavior from which he could not lawfully abstain, make good a wrong done by him, or refrain from taking any action or refraining from taking any action for which he was disqualified.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section:  
(a) under paragraphs (a), (b), (c), or (d) of section 201;  
(b) when the threat is to accuse anyone of a federal crime or to commit a federal crime; or  
(c) when the threat in subsection (1)(d) involves federal official action.

Comment
This provision is intended to consolidate and replace existing "blackmail" and criminal coercion statutes (18 U.S.C. §§ 872-27). Certain forms of coercion are covered by rape and extortion legislation. See §§ 1311, 1312, 1313, 1314; see also threatening public servants (§ 1309); witnesses (§ 1301); informants (§ 1302). In view of the availability of felony penalties for such categories of aggravated coercion, the basic criminal section here is classified as a misdemeanor.  

Federal jurisdiction under subsection (3) parallels existing law, but is somewhat expanded to reach coercive threats to federal employees not covered by proposed § 1308, as well as threats by federal employees concerning their official duties for which there is jurisdiction under existing law. See, e.g., 50 U.S.C. § 872.

See Working Papers, pp. 109, 1090, 1091-92, 1191.

§ 1618. Harassment.
(1) Offense. A person is guilty of an offense if, with intent to frighten or harass another, he:  
(a) communicates in writing or by telephone a threat to commit any violent felony;  
(b) makes a telephone call anonymously or in otherwise offensive language; or
(c) makes repeated telephone calls, whether or not a
conviction ensues, with no purpose of legitimate communication.
(2) Grading. The offense is a Class A misdemeanor if it is
under paragraphs (a) or (b) of subsection (1). Otherwise it is a Class B
misdemeanor.
(3) Jurisdiction. There is a federal jurisdiction over an offense
defined in this section under paragraphs (a) or (c) of section 201.

Comment
This provision substantially re-enacts present 47 U.S.C. § 321, con-
erning harassing telephone calls, but 18 U.S.C. §§ 226-23, concern-
ing the mailing of threats, to the extent that the threats are designed
to harass or disturb but do not amount to more serious acts of ter-
rorizing or annoyance, covered by proposed §§ 161 and 1617, respec-
tively. Grading is made different between fraud and annoyance.

§ 1610. Consent as a Defense.
(1) When a defense. When conduct is an offense because it
causes or threatens bodily injury, consent to such conduct or to
the infliction of such injury by all persons injured or threatened
by the conduct is a defense if:
(a) neither the injury inflicted nor the injury threatened is
such as to jeopardize life or seriously impair health;
(b) the conduct and the injury are reasonably foreseeable
hazards of joint participation in a lawful athletic contest or
competitive sport;
(c) the conduct and the injury are reasonably foreseeable
hazards of an occupation or profession or of medical or sci-
entific experimentation conducted by recognized methods, and
the persons subjected to such conduct or injury, having been
made aware of the risks involved, consent to the performance
of the conduct or the infliction of the injury.
(2) Ineffective Consent. Assent does not constitute consent,
within the meaning of this section, if:
(a) it is given by a person who is legally incompetent to au-
 thorize the conduct charged to constitute the offense and such
incompetence is manifest or known to the actor;
(b) it is given by a person who by reason of youth, mental
-illness or defect, or intoxication is manifestly unable or known
to the actor to be unable to make a reasonable judgment as to
the nature or harmfulness of the conduct charged to constitute
the offense; or
(c) it is induced by force, fraud or deception.

§ 1631. Kidnapping and Related Offenses.
(1) Offense. A person is guilty of kidnapping if he abducts
another or, having abducted another, continues to restrain him,
with intent to do the following:
(a) hold him for ransom or reward;
(b) use him as a shield or hostage;
(c) hold him in a condition of involuntary servitude;
(d) terrorize him or a third person;
(e) commit a felony or attempt to commit a felony; or
(f) interfere with the performance of any government or
political function.
(2) Grading. Kidnapping is a Class A felony unless the actor
voluntarily releases the victim alive in a safe place prior to
trial, in which case it is a Class B felony.

Comment
The existing federal kidnapping statute (18 U.S.C. § 1201) pro-
hibits the taking of another person across state lines not only for
the purpose of holding him for ransom and reward, the kind of conduct
which it originally was addressed, but for any purpose. It is gen-
erally recognised as having too broad a reach, particularly in light
of the fact that the maximum penalty is life imprisonment. The pro-
posed kidnapping provision, which requires both abduction (defined
in § 1201) and a specific criminal purpose, eliminates only the most
serious crimes of unlawful restraint.

The policy of existing federal law has been to make the highest
penalty for kidnapping applicable when the victim has not been re-
sumed unharmed. This might encourage the kidnapper to kill the
victim who has suffered a minor injury, or to hold him until he has
recovered. Accordingly, the distinction between Class A and Class B
felony grading adopted here is whether or not the victim was released
alive in a safe place. However, if kidnapping is not to be a capital
effort (cf. Ashwern v. United States, 100 U.S. 277 (1879) ), the distinc-
tion may lose some of its significance for the kidnapper. In that event,
§ 1632. Federal Jurisdiction Over Kidnapping and Related Offenses.

(1) Generally. There is federal jurisdiction over an offense defined in sections 1201 or 1202 under paragraphs (a), (b), (c), (d), or (f) of section 2101, or when the victim is a member of the immediate family of the President of the United States, the President-elect, or if there is no President, the officer next in the order of succession to the office of President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States. "President-elect" and "Vice President-elect" have the meanings prescribed in section 2101(c).

(2) Involuntary Servitude. Federal jurisdiction over an offense defined in sections 1201(c) or 1202(c) extends to any such offense committed anywhere within the United States or within the special maritime or territorial jurisdiction of the United States, as defined in section 2101.
§ 1635. Usurping Control of Aircraft.

(1) Offense. A person in guilty of a Class A felony if, by force or threat of force, he usurps control of an aircraft in flight.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b) or (f) of section 201.

Comment
This section carries forward the existing air piracy offense (18 U.S.C. § 1112(e)). The jurisdiction in the existing statute—"air piracy of aircraft with wrongful intent"—has been encompassed in this section by the term "usurping," which has a legislative and judicial history with respect to mutiny aboard a vessel (18 U.S.C. § 1501). Cf. § 1156 in the proposed Code. Jurisdiction provided for the offense in existing law—when the aircraft is within the special aircraft jurisdiction of the United States, as defined in 18 U.S.C. § 1308(2)—has been expressly carried forward as part of the definition of "special maritime and territorial jurisdiction of the United States" (18 U.S.C. § 1305(g)). Note that, by virtue of such general incorporation of the Title 18 (criminal) provisions, all offenses defined in the proposed Code will be subject to federal jurisdiction when committed aboard such aircraft. This dovetails the need for such a single Title 18, other than as provided in this section. See Working Papers, p. 656.

§ 1639. Definitions for Sections 1631 to 1639.
In sections 1631 to 1639:
(a) "usurping" means to restrict the movements of a person unlawfully and without consent, so as to interfere substan-

§ 1641. Rape.

(1) Offense. A male who has sexual intercourse with a female under his control in violation of her will:
(a) causes her to submit by force or threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on anyone knowing;
(b) by his substantially imperaled power to apprehend or control her conduct by administering or employing without her knowledge intoxicants or other means with intent to prevent resistance;
(c) by the victim is less than ten years old.
(2) Grading. Rape is a Class A felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, or if he commits violates subsection (f)(1)(c), or if the victim is not a voluntary companion of the actor and has not previously permitted him sexual liberties. Otherwise rape is a Class B felony.

Comment
In addition to possessing forcible acts of rape accomplished by force or threat of serious harm, presently covered by 18 U.S.C. § 2281,
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this section explicitly describes intercourse obtained through the drugging of an unwilling victim and any sexual intercourse, whether or not forcible, with a child under the age of ten. The age-level is intended to express the strong societal condemnation of intercourse with a pre-pubescent child, even nonforcibly, such conduct being graded as equivalent to forcible rape. An issue is whether the age level is appropriate; should it be set at 12; or is the age of 16 proper, considering the trend toward earlier onset of puberty and the variety of circumstances and attitudes toward such acts? Or should the requirement be, for Class A felony treatment, that intercourse with the child was accomplished by threat, force, or intimidation?

The section introduces into federal criminal law the important distinction between voluntary by a stranger and the tresspassious category of rape by "boyfriend". The latter category involves difficult issues regarding consent, the degree of sexual contact permitted prior to actual intercourse, and therefore the lesser "outrage" by consensual will. Under subsection (2) such cases, although punishable at the very serious level of Class B felony, are excluded from the highest category of offense. See also subsection 1844(c) and ALI Model Penal Code § 212.1. See §§ 1641-22 for additional applicable provisions. See Working Papers, pp. 902-20.

§ 1643. Aggravated Involuntary Sodomy.

(1) Offense. A person who engages in deviate sexual intercourse with another, or who causes another to engage in deviate sexual intercourse, is guilty of an offense if:

(a) he compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, or to be infected on any human being;

(b) he has substantially impaired the victim's power to apprise or control his or her conduct by administering or employing without his or her knowledge intoxicants or other means with intent to prevent resistance; or

(c) the victim is less than ten years old.

(2) Grading. The offense is a Class A felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, or if the conduct violates subsection (b). If the victim is not a voluntary companion of the actor and has not previously permitted his sexual liberties. Otherwise the offense is a Class B felony.

Comment

This provision is new to federal law. It is based on the premise that deviate acts of sodomy are aggravations no dangerous or debasing to forcible acts of rape. The definition and grading of the crime therefore parallel the rape provisions (§ 1641). See §§ 1646-20 for additional applicable provisions. See Working Papers, p. 871.

§ 1644. Involuntary Sodomy.

A person who engages in deviate sexual intercourse with another, or who causes another to engage in deviate sexual intercourse, is guilty of a Class C felony if:

(a) he knows that the other person suffers from a mental disease or defect which renders him incapable of understanding the nature of her conduct; or

(b) he knows that the other person is not aware of a sexual act being committed upon her, or knows that she submits because she mistakenly supposes that he is her husband; or

(c) he compels her to submit by any threat that would render a female of reasonable firmness incapable of resisting.

Comment

This provision parallels § 1842, which deals with imposition on females. See §§ 1648-50 for additional applicable provisions. See Working Papers, p. 871.

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§ 1645. Corrupting of Minors.

(1) Offense. A male who has sexual intercourse with a female not his wife or any person who engages in deviate sexual intercourse with another or causes another to engage in deviate sexual intercourse is guilty of an offense if the other person is less than sixteen years old and the actor is at least five years older than the other person.

(2) Grading. The offense is a Class C felony, except when the actor is less than twenty-one years old, in which case it is a Class A misdemeanor.

Comment

This section replaces the prior statutory rape provision which proscribed intercourse (even consensual) with girls less than 16 years old (18 U.S.C. § 2242). It proscribes intercourse and sodomy by older persons with boys or girls less than 16, but does not criminalize sexual experimentation among generational peers. It is not an offense when the actor is less than five years senior to the sexual partner. A further distinction in grading is made between adult corruptors of youth and younger offenders: a person over 21, who commits this crime is guilty of a felony; if the offender is under 21, the crime is a misdemeanor. If the younger is subjected by an adult for the purpose of sexual abuse, the crime is designated to kidnapping (§ 1201) and that would not be the result in the case of a younger offender, whose crime falls within the statutory rape range. See §§ 1642-50 for additional applicable provisions. Note particularly § 1642(d), which provides a defense for conduct which is not criminal under the law of a surrounding state. See Working Papers, pp. 871-72, 1968.

§ 1646. Sexual Abuse of Wards.

A male who has sexual intercourse with a female not his wife or any person who engages in deviate sexual intercourse with another or causes another to engage in deviate sexual intercourse is guilty of a Class A misdemeanor if:

(a) the other person is in official custody or detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person; or

(b) the other person is less than twenty-one years old and the actor is his or her parent, guardian or otherwise responsible for general supervision of the other person's welfare.

Comment

The need for definition of these sexual crimes for federal purposes is discussed in the comments to § 1641, infra. See §§ 1648-50 for additional applicable provisions. See Working Papers, p. 872.

§ 1647. Sexual Assault.

A person knowingly has sexual contact with another not his spouse, or causes such other to have sexual contact with him, is guilty of a Class B misdemeanor if:

(a) he knows that the contact is offensive to the other person;

(b) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct;

(c) the other person is less than ten years old;

(d) he has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge intoxicants or other means for the purpose of preventing resistance;

(e) the other person is in official custody or detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over him or her;

(f) the other person is less than twenty-one years old and the actor is his or her parent, guardian or otherwise responsible for general supervision of the other person's welfare; or

(g) the other person is less than sixteen years old and the actor is not less than twenty-one years old.

Comment

This provision on minor sexual offenses parallels the proposed felony provisions on sexual misconduct, involving actual or attempted intercourse, normal or deviate. There is some opinion that minor sex crimes should be left to state law, penalized for federal offenses by § 109; but the great variety of state laws on sexual offenses, and the differences in penalties from one state to another make it hard for some consistency in definition of what constitutes criminal sexual misconduct in federal analysis. See §§ 1648-50 for additional applicable provisions. See Working Papers, pp. 872-75.

§ 1648. General Provisions for Sections 1641 to 1647.

(1) Mistake as to Age. In sections 1641 to 1647: (a) when the criminality of conduct depends on a child's being below the age of ten, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than ten; (b) when criminality depends on the child's being below a critical age older than ten, it is an affirmative defense that the actor reasonably believed the child to be of the critical age or above.

(2) Spouse Relationships. In sections 1641 to 1647, when the
definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as man and
wife, regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart
under a decree of judicial separation. Where the definition of an
offense excludes conduct with a spouse or conduct by a female,
this shall not preclude conviction of a spouse or female as accom-
plice in an offense which he or she causes another person, not
within the exclusion, to perform.

(3) Prompt Complaint. No prosecution may be instituted or
maintained under sections 1641 to 1647 unless the alleged offense
was brought to the notice of public authority within three months
of its occurrence or, where the alleged victim was less than six-
teen years of age or otherwise incompetent to make complaint,
within three months after a parent, guardian or other competent person
specifically interested in the victim, other than the alleged of-
fender, learned of the offense.

(4) State Law. Sections 1642 to 1647 shall not apply to con-
donct which is not criminal under the law of a state within which
the conduct occurs. Inapplicability under this subsection is a
defense.

(5) Testimony of Complainants. No person shall be convicted
of any felony under sections 1641 to 1646 upon the uncorroborated
testimony of the alleged victim. Corroboration may be circum-
stantial. In a prosecution before a jury for an offense under sec-
tions 1641 to 1647, the jury shall be instructed to evaluate the testi-
mony of a victim or complaining witness with special care in view
of the emotional involvement of the witness and the difficulty of
determining the truth with respect to alleged sexual activities
carried out in private.

Comment

These provisions are designed to clarify special problems of proof
which arise in cases of sexual offenses. They are adapted from modern
code revisions on this subject. Note, especially, that under subsec-
ction (1) a reasonable mistake that a sexual partner is over 16, when age is
relevant, will exculpate the offender; mistakes as to the age of a child
under 10 cannot exculpate. Subsection (2) on spousal relationships, is
designed to exculpate persons intentionally living in common-law rela-

tionships from charges of “rape,” seduction by pretended marriage,
however, is an offense under § 1649.

A substantial body of opinion in the Commission favors deletion
of subsection (3), requiring prompt complaint, on the ground that
it deals inflexibly with a matter which should be dealt with as a
question of credibility. A substantial body of opinion in the Commis-

sion favors addition of bracketed subsection (b) on the ground that

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