

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To specify the state of mind required for conviction for criminal offenses that lack an expressly identified state of mind, and for other purposes.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.**

**S. 2123**

To reform sentencing laws and correctional institutions, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH (for himself and Mr. CRUZ)

Viz:

1 At the appropriate place, insert the following:

2 **SEC. \_\_\_\_ . STATE OF MIND ELEMENT FOR CRIMINAL OF-**  
3 **FENSES.**

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

7 **“§ 28. State of mind when not otherwise specifically**  
8 **provided**

9 “(a) DEFINITIONS.—In this section—

10 “(1) the term ‘covered offense’—

11 “(A) means an offense—

1 “(i) specified in—

2 “(I) this title or any other Act of  
3 Congress;

4 “(II) any regulation; or

5 “(III) any law (including regula-  
6 tions) of any State or foreign govern-  
7 ment incorporated by reference into  
8 this title or any other Act of Con-  
9 gress; and

10 “(ii) that is punishable by imprison-  
11 ment, a maximum criminal fine of at least  
12 \$2,500, or both; and

13 “(B) does not include—

14 “(i) any offense set forth in chapter  
15 47 or chapter 47A of title 10;

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

18 “(iii) any offense that involves con-  
19 duct which a reasonable person would  
20 know inherently poses an imminent and  
21 substantial danger to life or limb;

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

24 “(A) if the element involves the nature of  
25 the conduct of a person or the attendant cir-

1           cumstances, that the person is aware that the  
2           conduct of the person is of that nature or that  
3           such circumstances exist; and

4           “(B) if the element involves a result of the  
5           conduct of a person, that the person is aware  
6           that it is practically certain that the conduct of  
7           the person will cause such a result;

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

13          “(4) the term ‘willfully’, as related to an ele-  
14          ment of an offense, means that the person acted  
15          with knowledge that the person’s conduct was un-  
16          lawful.

17          “(b) DEFAULT REQUIREMENT.—Except as provided  
18          in subsections (c) and (d), a covered offense shall be con-  
19          strued to require the Government to prove beyond a rea-  
20          sonable doubt that the defendant acted—

21          “(1) with the state of mind specified in the text  
22          of the covered offense for each element for which the  
23          text specifies a state of mind; and

1           “(2) willfully, with respect to any element for  
2           which the text of the covered offense does not speci-  
3           fy a state of mind.

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

12          “(d) EXCEPTIONS.—

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

15                         “(A) any element for which the text of the  
16                         covered offense makes clear that Congress af-  
17                         firmatively intended not to require the Govern-  
18                         ment to prove any state of mind with respect to  
19                         such element;

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

22                                 “(i) subject matter jurisdiction over  
23                                 the covered offense; or

24                                 “(ii) venue with respect to trial of the  
25                                 covered offense; or

1           “(C) any element of a covered offense, to  
2           the extent that applying subsections (b)(2) and  
3           (c) to such element would lessen the degree of  
4           mental culpability that the Government is re-  
5           quired to prove with respect to that element  
6           under—

7                   “(i) precedent of the Supreme Court  
8                   of the United States; or

9                   “(ii) any other provision of this title,  
10                  any other Act of Congress, or any regula-  
11                  tion.

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

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

21                   “(1) without regard to whether the provision or  
22                   provisions specifying the covered offense are enacted,  
23                   promulgated, or finalized before, on, or after the  
24                   date of enactment of this section; and

25                   “(2) that occurred—

1           “(A) on or after the date of enactment of  
2 this section; or

3           “(B) before the date of enactment of this  
4 section, unless—

5           “(i) applying this section to such cov-  
6 ered offense would—

7           “(I) punish as a crime conduct  
8 that was innocent when done;

9           “(II) increase the punishment for  
10 the covered offense; or

11           “(III) deprive a person charged  
12 with the covered offense of any de-  
13 fense available according to law at the  
14 time the covered offense occurred;

15           “(ii) a jury has been empaneled and  
16 sworn in a prosecution for the covered of-  
17 fense before the date of enactment of this  
18 section;

19           “(iii) the first witness has been sworn  
20 in a prosecution for the covered offense  
21 tried without a jury before the date of en-  
22 actment of this section; or

23           “(iv) a sentence has been imposed fol-  
24 lowing a plea of guilty or nolo contendere

1                   in a prosecution for the covered offense be-  
2                   fore the date of enactment of this section.

3           “(f) **SUBSEQUENTLY ENACTED LAWS.**—No law en-  
4 acted after the date of enactment of this section shall be  
5 construed to repeal, modify the text or effect of, or super-  
6 sede in whole or in part this section, unless such law spe-  
7 cifically refers to this section and explicitly repeals, modi-  
8 fies the text or effect of, or supersedes in whole or in part  
9 this section.”.

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

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