Statutes

# Chapter 3

## Omissions

### Vermont Statutes Annotated Title 12, Chapter 23, § 519. Emergency Medical Care

A person who knows another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others.

A Wisconsin statute is much less demanding and makes it a misdemeanor for any person to fail to summon or to provide assistance.

### Wisconsin Laws 940.34. Duty to Aid Endangered Crime Victim

1. (1) . . .
2. (2) Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim. A person need not comply with this subsection if any of the following apply:
3. (a) Compliance would place him or her in danger.
4. (b) Compliance would interfere with duties the person owes to others.
5. (c) Assistance is being summoned or provided by others.

A Rhode Island law requires individuals to provide reasonable assistance to an individual who is exposed to, or who has suffered, grave physical harm.

### Rhode Island Public Laws Section 11–56–1. Duty to Render Assistance

Any person at the scene of an emergency who knows that another person is exposed to, or has suffered, grave physical harm shall, to the extent that he or she can do so without danger or peril to himself or herself or to others, give reasonable assistance to the exposed person. Any person violating the provisions of this section shall be guilty of a petty misdemeanor and shall be subject to imprisonment for a term of not exceeding six (6) months, or by a fine of not more than five hundred dollars ($500), or both.

Consider the advisability of such statutes in light of the reasons behind the American bystander rule. Compare these statutes to the broad language of the *German criminal code:*

### Section 330c. Failure to Render Aid

Anybody who does not render aid in an accident or common danger or in an emergency situation, although aid is needed and under the circumstances can be expected of him, especially if he would not subject himself thereby to any considerable danger, or if he would not thereby violate other important duties, shall be punished by imprisonment for a term not to exceed one year or a fine.

# Chapter 4

## The Statutory Standard: The Law of Parties

Consider how the Pennsylvania and Texas statutes have modified the common law of parties:

### 18 Pennsylvania Consolidated Statutes Section 306. Liability for Conduct of Another; Complicity

. . .

(1) General rule--A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(2) Conduct of another--A person is legally accountable for the conduct of another person when:

. . .

(a) he is an accomplice of such other person in the commission of the offense.

(b) Accomplice defined--A person is an accomplice of another person in the commission of an offense if:

(3) with the intent of promoting or facilitating the commission of the offense, he. . . . aids or agrees to attempt to aid such other person in planning or committing it.

. . .

(4) Prosecution of accomplice only--An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

### Texas Penal Code Section 7.01. Parties to Offenses

(1) A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

(2) Each party to an offense may be charged with commission of the offense.

(3) All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

## The Statutory Standard: Accessory Liability and Intent

New York punishes knowingly assisting a crime as criminal facilitation and treats this as a less serious offense than the crime that the defendant facilitated. A separate statute addresses accomplice liability. Note the differing *intent standards*.

### New York Section 115.00. Criminal Facilitation in the Fourth Degree

A person is guilty of criminal facilitation in the fourth degree when, believing it probable that he or she is rendering aid

(1) to a person who intends to commit a crime, he engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony. . . .

. . .

Criminal facilitation in the fourth degree is a Class A misdemeanor.

### New York Section 20.00. Criminal Liability for Conduct of Another

When one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in criminal conduct.

## The Statutory Standard: Accessory after the Fact

Compare the common law standard for accessory after the fact with the California Penal Code:

### California Penal Code Sections 30–32.

Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony.

Consider the Florida statute and the limitation on the liability of family members:

### Florida Statutes Section 777.03(1).

Any person not standing in the relation of husband or wife, parent or grandparent, child or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who maintains or assists the principal or accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a felony or been accessory thereto before the fact, with intent that the offender avoids or escapes detection, arrest, trial or punishment, is an accessory after the fact.

## The Statutory Standard: Corporate Liability

Consider these selected portions of the Texas statute on corporate liability.

### Texas Code Annotated Section 7.22.

(1) If conduct constituting an offense is performed by an agent acting in behalf of a corporation . . . and within the scope of his office or employment, the corporation . . . is criminally responsible for the offense defined. . . .

(a) in this code where corporations and associations are made subject thereto;

(b) by law . . . in which a legislative purpose to impose criminal responsibility on corporations . . . plainly appears . . .

(c) by law . . . for which strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations plainly appears.

(2) A corporation or association is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed or recklessly tolerated by . . . a majority of the governing board . . . a high managerial agent acting in behalf of the corporation . . . and within the scope of his office or employment. . . .

### Texas Code Annotated Section 7.24.

It is an affirmative defense to prosecution of a corporation or association . . . that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

# Chapter 5

## The Statutory Standard: Criminal Attempts

### Wyoming Statutes Annotated Section 6-1-301(a)(i). Attempt . . .

A person is guilty of an attempt to commit a crime if:

(i) With the intent to commit the crime, he does any act which is a substantial step toward commission of the crime. A “substantial step” is conduct which is strongly corroborative of the firmness of the person’s intention to complete the commission of the crime; or. . . .

## The Statutory Standard: Attempts and Intent

Consider the broad approach to a criminal intent in Iowa.

### Iowa Code Section 707.11. Attempt to Commit Murder

A person commits a . . . felony when, with the intent to cause the death of another person . . . the person does any act by which the person expects to set in motion a force or chain of events which will cause or result in the death of the other person. . . .

## The Statutory Standard: Renunciation of Attempt

Compare the rule on abandonment with the Arizona statute that requires notification to the police.

### 13-1005. Renunciation of Attempt. . .

(1) In a prosecution for attempt . . . it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the attempt. . . .

(2) A renunciation is not voluntary and complete . . . if it is motivated in whole or in part by:

(a) A belief that circumstances exist which increase the probability of immediate detection or apprehension of the accused or another participant in the criminal enterprise or which render more difficult the accomplishment of the criminal purpose; or

(b) A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim, place or another but similar objective.

(3) A warning to law enforcement authorities is not timely . . . unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the conduct or result. An effort is not reasonable within the meaning of this section unless the defendant makes a substantial effort to prevent the conduct or result.

## The Statutory Standard

The Iowa conspiracy statute is fairly representative of state statutes.

### Iowa Code Section 706.1. Conspiracy

A person commits conspiracy with another if, with the intent to promote or facilitate the commission of a crime which is an aggravated misdemeanor or felony, the person does either of the following:

Agrees with another that they or one or more of them will engage in conduct constituting the crime of an attempt or solicitation to commit the crime.

Agrees to aid another in the planning or commission of the crime or of an attempt or solicitation to commit the crime.

It is not necessary for the conspirator to know the identity of each and every conspirator.

A person shall not be convicted of conspiracy unless it is alleged and proven that at least one conspirator committed an overt act evidencing a design to accomplish the purpose of the conspiracy by criminal means.

A person shall not be convicted of conspiracy if the only other person or persons involved in the conspiracy were acting at the behest of or as agents of a law enforcement agency in an investigation of the criminal activity alleged at the time of the formation of the conspiracy.

The Illinois conspiracy statute has an interesting provision regarding co-conspirators that reflects the unilateral approach to criminal agreements:

### Illinois Laws Section 720 5/8-2. Solicitation, Conspiracy, and Attempt

(1) . . .

(2) Co-conspirators.

It shall not be a defense to conspiracy that the person or person with whom the accused is alleged to have conspired:

(1) Has not been prosecuted or convicted, or

(2) Has been convicted of a different offense, or

(3) Is not amenable to justice, or

(4) Has been acquitted, or

(5) Lacked the capacity to commit an offense. . . .

## The Statutory Standard: Solicitation

Examine the North Dakota statute on solicitation. Pay special attention to the crimes covered in the statute, the corroboration requirement, the provision for an overt act, and the punishment of solicitation.

### North Dakota Century Code 12.1-06-03.

1. A person is guilty of criminal solicitation if he commands, induces, entreats, or otherwise attempts to persuade another person to commit a particular felony, whether as principle or accomplice, with intent to promote or facilitate the commission of that felony, under circumstances strongly corroborative of that intent, and if the person solicited commits an overt act in response to the solicitation. . . .

2. It is no defense to a prosecution under this section that the person solicited could not be guilty of the offense because of lack of responsibility or culpability, or other incapacity or defense.

3. Criminal solicitation is an offense of the class directly below that of the offense solicited.

# Chapter 6

## The Statutory Standard: Self-Defense

Note the stress on reasonable belief, proportionality, imminence, retreat, and forcible felony in the Utah self-defense statute.

### Utah Code Annotated Section 76–2-402. Force in Defense of Person--Forcible Felony Defined

(1) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other’s imminent use of unlawful force. However, that person is justified in using force intended or likely to cause death or serious bodily injury only if he or she reasonably believes that force is necessary to prevent death or serious bodily injury to himself or a third person as a result of the other’s imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2) A person is not justified in using force . . . if he or she . . .

(a)(i) was the aggressor or was engaged in combat by agreement unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and notwithstanding, the other person continues or threatens to continue the use of unlawful force. . . .

(3) For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault . . . [and] any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury.

## The Statutory Standard: Police Use of Force

Statutory Provision: The Missouri Statute that addresses the use of force by a police officer in making an arrest is fairly representative of laws governing the execution of public duties.

### Missouri Revised Statutes Section 563.046. Law Enforcement Officer’s Use of Force in Making an Arrest

(1) A law enforcement officer need not retreat or desist from efforts to effect the arrest, or from efforts to prevent the escape from custody, of a person he reasonably believes to have committed an offense because of resistance or threatened resistance of the arrestee. In addition to the use of physical force authorized under other sections of this chapter, he is . . . justified in the use of such physical force as he reasonably believes is immediately necessary to effect the arrest or to prevent the escape from custody.

(2) The use of any physical force in making an arrest is not justified . . . unless the arrest is lawful or the law enforcement officer reasonably believes the arrest is lawful.

(3) A law enforcement officer in effecting an arrest or in preventing an escape from custody is justified in using deadly force only. . . .

. . .

(4) When he immediately believes that such use of deadly force is immediately necessary to effect the arrest and also reasonably believes that the person to be arrested:

(a) Has committed or attempted to commit a felony; or

(b) Is attempting to escape by use of a deadly weapon; or

(c) May otherwise endanger life or inflict serious physical injury unless arrested without delay.

(5) The defendant shall have the burden of injecting the issue of justification under this section.

## Statutory Standard

Consider the Arizona statute on resisting an illegal arrest.

### Arizona Revised Statutes Annotated Section 13–404. Justification: Self-Defense

. . .

B. The threat or use of physical force against another is not justified:

. . .

2. To resist an arrest that the person knows or should know is being made by a peace officer or by a person acting in a peace officer’s presence and at his direction, whether the arrest is lawful or unlawful, unless the physical force used by a peace officer exceeds that allowed by law. . . .

**DEFENSE OF THE HOME**

California, Homeowners Bill of Rights.

**Section 198.5: Excusable homicide.**

Any person using force intended or likely to cause death or great bodily injury within his or her residence shall be presumed to have held a reasonable fear of imminent peril of death or great bodily injury to self, family, or a member of the household when that force is used against another person, not a member of the family or household, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence and the person using the force knew or had reason to believe that an unlawful and forcible entry occurred.

As used in this section, great bodily injury means a significant or substantial physical injury.

**Fla. Stat. § 776.013 (2011**)

776.013. Home protection; use of deadly force; presumption of fear of death or great bodily harm

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person’s will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(2) The presumption set forth in subsection (1) does not apply if:

(a) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or

(c) The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(d) The person against whom the defensive force is used is a law enforcement officer, as defined in § 943.104 (14) who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

(4) A person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(5) As used in this section, the term:

(a) “Dwelling” means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) “Residence” means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c) “Vehicle” means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

## The Statutory Standard: Necessity

The Model Penal Code provision is followed by more than 20 states. Compare the Model Penal Code to the Wisconsin statute:

### Wisconsin Statutes Section 939.47. Necessity

Pressure of natural forces which causes the actor reasonably to believe that his or her act is the only means of preventing imminent public disaster or imminent death or great bodily harm to the actor or another and which causes him or her so to act, is a defense to a prosecution for any crime based on that act, except that if the prosecution is for first-degree intentional homicide, the degree of the crime is reduced to second-degree intentional homicide.

Another approach is illustrated by the complex New York statute. Note the prohibition of the reliance on necessity by individuals motivated by social and political considerations.

### New York Penal Law Section 35.05. Justification; Generally

Unless otherwise limited by the ensuing provisions of this article defining justifiable use of physical force, conduct which would otherwise constitute an offense is justifiable and not criminal when:

(1) . . .

(2) Such conduct is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. The necessity and justifiability of such conduct may not result upon considerations pertaining only to the morality and advisability of the statute . . . [T]he court shall rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a defense.

## The Statutory Standard

The Montana Criminal Code provision vests considerable discretion in courts concerning the justification defense of consent.

### Montana Code Annotated Section 45–2-211. Consent as a Defense

(1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

## The Statutory Standard: Intoxication Defense

### Florida Statutes Section 775.051. Voluntary Intoxication; Not a Defense; Evidence Not Admissible for Certain Purposes

Voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substance . . . is not a defense to any offense proscribed by law. Evidence of a defendant’s voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense, except when the consumption, injection, or use of a controlled substance . . . was pursuant to a lawful prescription issued to the defendant by a practitioner.

## The Statutory Standard

Consider the Iowa statute on duress.

### Iowa Code Section 704.10. Compulsion

No act, other than an act by which one intentionally or recklessly causes physical injury to another, is a public offense if the person so acting is compelled to do so by another’s threat or menace of serious injury, provided that the person reasonably believes that such injury is imminent and can be averted only by the person doing such an act.

Maine’s de minimis statute, Maine Revised Statu­tes Annotated title 17-A, section 12, provides, in pertinent part:

1. The court may dismiss a prosecution if, . . . having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds the defendant’s conduct:

A. Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the crime; or

B. Did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; or

C. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in defining the crime.

# Chapter 7

Texas executes more individuals than any other state.Portions of the Texas statute are reprinted below:

## Texas Penal Code Annotated Section 19.03. Capital Murder

(1) A person commits an offense if the person commits murder as defined under Section 19.02(b)(1) [intentionally, knowingly or a dangerous act committed during or in furtherance of a felony] and:

(a) the person murders a peace officer or fireman who is acting in . . . official duty and who the person knows is a peace officer or fireman;

(b) the person intentionally commits the murder in the course of . . . kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction or retaliation or terroristic threat. . . .

(c) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder. . . .

(d) the person commits the murder while escaping . . . from a penal institution;

(e) the person, while incarcerated in a penal institution murders another . . . who is employed in the institution . . . with the intent to establish, maintain, or participate in a combination or in the profits of a combination;

(f) the person . . . while incarcerated for an offense [of murder or capital murder] murders another; or while serving a sentence of life imprisonment . . . murders another. . . .

(g) the person murders more than one person . . . during the same criminal transaction . . . or the murders are committed pursuant to the same scheme or course of conduct. . . .

(h) the person murders an individual under six years of age.

(i) An offense under this section is a capital felony.

## Felony Murder

The State of Washington provides that a killing committed in the course of, in furtherance of, or in flight from robbery, rape, burglary, and kidnapping constitutes first-degree murder subject to life imprisonment. Wash. Rev. Code § 9A.32.030. The second-degree murder statute contains the same text as the first-degree statute, but does not limit liability to specific felonies. Note the defenses listed in the Washington law.

### Washington Revised Code Section 9A.32.050. Murder in the Second Degree

(1) A person is guilty of murder in the second degree when:

(a) . . .

(b) He or she commits or attempts to commit any felony . . . and, in the course of and in furtherance of such crime or in the immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants; except that in any prosecution . . . in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, . . . cause or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument . . . capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed . . .; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

# Chapter 8

Consider the following excerpt from the Pennsylvania criminal code (18 Pa. Cons. Stat.). How has Pennsylvania changed the common law of rape?

## Section 3101. Definitions

“Forcible compulsion.” Compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person’s death. . . .

“Sexual intercourse.” In addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; emission is not required.

## Section 3104. Evidence of Victim’s Sexual Conduct

Evidence of specific instances of the alleged victim’s past sexual conduct . . . shall not be admissible in prosecutions.

## Section 3105. Prompt Complaint

Prompt reporting to public authority is not required.

## Section 3106. Testimony of Complainants

The testimony of the complainant need not be corroborated . . . [N]o instructions shall be given cautioning the jury to view the complainant’s testimony in any other way than that in which all complainants’ testimony is viewed.

## Section 3107. Resistance Not Required

The alleged victim need not resist the actor . . . however, . . . nothing in this section shall be construed to prohibit a defendant from introducing evidence that the alleged victim consented to the conduct in question.

## Section 3121. Rape

Offense defined. A person commits a felony of the first degree [punishable by a maximum term of imprisonment of up to 20 years] when he or she engages in sexual intercourse with a complainant:

(1) By forcible compulsion.

(2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.

(3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.

(4) Where the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants, or other means for the purpose of preventing resistance.

(5) Who suffers from a mental disability which renders the complainant incapable of consent.

(6) Who is less than 13 years of age.

## Section 3214.1. Sexual Assault

A person commits a felony of the second degree [punishable by a term of imprisonment, the maximum is which is not more than 10 years] when that person engages in sexual intercourse . . . with a complainant without the complainant’s consent.

## The Statutory Standard

Consider the difference between the Utah Code and the common law of rape.

### Section 76–5-402. Rape

(1) A person commits rape when the actor has sexual intercourse with another person without the victim’s consent.

(2) This section applies whether or not the actor is married to the victim.

(3) Rape is a felony of the first degree [punishable by 5 years-to-life in prison].

### Section 76–5-402.2. Object Rape

A person who, without the victim’s consent, causes the penetration, however slight, of the genital or anal openings of another person who is 14 years or older, by any foreign object, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the sexual desire of any person, commits an offense which is punishable as a felony of the first degree.

### Section 76–5-404. Forcible Sexual Abuse

A person commits forcible sexual abuse if the victim is 14 years of age or older and, under circumstances not amounting to rape, object rape, sodomy, or attempted rape or sodomy, the actor touches the anus, buttocks, or any part of the genitals of another, or touches the breast of a female, or otherwise takes indecent liberties with another, or causes another to take indecent liberties with the actor or another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, without the consent of the other, regardless of the sex of any participant.

Forcible sexual abuse is a felony of the second degree [punishable by 1-to-15 years in prison].

### Section 76–5-405. Aggravated Sexual Assault--Penalty

(1) A person commits aggravated sexual assault if in the course of a rape or attempted rape, object rape or attempted object rape, forcible sodomy or attempted forcible sodomy, or forcible sexual abuse or attempted forcible sexual abuse the actor:

(a) causes bodily injury to the victim;

(b) uses or threatens the victim with use of a dangerous weapon. . . .

(c) compels, or attempts to compel, the victim to submit to rape, object rape, forcible sodomy, or forcible sexual abuse, by threat of kidnapping, death, or serious bodily injury to be inflicted imminently on any person; or

(d) is aided or abetted by one or more persons.

(2) Aggravated sexual assault is a first-degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life imprisonment. . . .

# Chapter 9

## The Statutory Standard: Burglary

The Massachusetts burglary statute incorporates both the breaking and entry and the statutory burglary approaches to burglary. Compare and contrast the following articles.

***Section 14:*** Whoever breaks and enters a dwelling house in the night time with intent to commit a felony, or whoever, after having entered with such intent, breaks such dwelling house in the night time, any person being then lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking or entry, or so arming himself in such house, or making an actual assault on a person lawfully therein, shall be punished by imprisonment in the state prison for life or for any term of not less than ten years. . . .

Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. Whoever commits a subsequent such offense shall be punished by imprisonment in the state prison for life or for term of years, but not less than 20 years. The sentence imposed upon a person who, after being convicted of any offense mentioned in this section, commits the like offense, or any other of the offenses therein mentioned, shall not be suspended, nor shall he be placed on probation.

***Section 15:*** Whoever breaks and enters a dwelling house in the night time, with the intent mentioned in the preceding section, or, having entered with such intent, breaks such dwelling house in the night time, the offender not being armed, nor arming himself in such house, with a dangerous weapon, nor making as assault upon a person lawfully therein, shall be punished by imprisonment in the state prison for not more than twenty years and, if he shall have been previously convicted of any crime named in this or the preceding section, for not less than five years.

***Section 16:*** Whoever, in the night time, breaks and enters a building, ship, vessel or vehicle, with intent to commit a felony, or who attempts to or does break, burn, blow up or otherwise injures or destroys a safe, vault or other depository of money . . . or other valuables in any building, vehicle or place, with intent to commit a larceny or felony . . . shall be punished by imprisonment in the state prison for not more than twenty years or in a jail or house of correction for not more than two and one-half years.

***Section 16A:*** Whoever in the night time or day time breaks and enters a building, ship, vessel or vehicle with intent to commit a misdemeanor shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months.

***Section 17:*** Whoever, in the night time, enters without breaking, or breaks and enters in the day time, a building, ship, vessel, or vehicle, with intent to commit a felony, the owner or any other person lawfully therein being put in fear, shall be punished by imprisonment in the state prison for not more than ten years. Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than five years or in the house of correction for not more than two and one-half years.

## The Statutory Standard: Arson

Compare the Illinois arson statute with common law arson.

### Illinois 720 ILCS 5/201. Arson

A person commits arson when, by means of fire or explosive, he knowingly:

(1) Damages any real property, or any personal property having a value of $150 or more, of another. . . .

(2) With intent to defraud an insurer, damages any property, or any personal property having a value of $150 or more.

(3) Arson is a Class 2 felony (3–7 years in prison).

### Illinois 720 ILCS 5/20–1.1. Aggravated Arson

* A person commits aggravated arson when in the course of committing arson he knowingly damages . . . any building or structure . . . including . . . a house trailer, watercraft, motor vehicle, or railroad car, and (1) he knows or reasonably should know that one or more persons are present . . . (2) any persons suffer great bodily harm, or personal disability or disfigurement as a result of the fire or explosion or (3) a fireman or policeman . . . acting in the line of duty, is injured. . . .
* Aggravated arson is a Class X felony (6–30 years in prison).

### Illinois 720 ILCS 5/20–1 Residential Arson

(1) . . . In the course of committing an arson, a person knowingly damages partially or totally, any building or structure that is the dwelling place of another.

(2) Residential arson is a Class 1 felony (4–15 years in prison).

## The Statutory Standard: Criminal Mischief

The Florida criminal mischief statute illustrates the broad definition of criminal mischief under state statutes.

### Florida Statutes Section 806.13

(1) (a) A person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including . . . the placement of graffiti thereon or other acts of vandalism. . . .

(2) Any person who willfully and maliciously defaces, injures or damages . . . any church, synagogue, mosque, or other place of worship, or any religious article . . . commits a felony of the third degree. . . .

(3) Whoever . . . willfully destroys or substantially damages any public telephone . . . commits a felony of the third degree.

(4) Any person who willfully and maliciously defaces, injures or damages . . . a sexually violent predator detention or commitment facility . . . commits a felony of the third degree. . . .

(5) (a) . . .

(5) (b) . . .

(6) (a) Any person who violates this section when the violation is related to the placement of graffiti, in addition to any other criminal penalty, shall be required to pay a fine. . . .

## The Statutory Standard: Larceny

The Mississippi statute follows the common law of larceny.

### Mississippi Code Section 97–17–41. Grand Larceny

1. Every person who shall be convicted of taking and carrying away, feloniously, the personal property of another, of the value of Five Hundred Dollars . . . or more, shall be guilty of grand larceny, and shall be imprisoned . . . for a term not exceeding ten . . . years; or shall be fined not more than Ten Thousand Dollars . . . or both.
2. Every person who shall be convicted of taking and carrying away, feloniously, the property of a church synagogue, temple or other established place of worship, of the value of Five Hundred Dollars . . . or more, shall be guilty of grand larceny, and shall be imprisoned . . . for a term not exceeding ten . . . years, or shall be fined not more than Ten Thousand Dollars . . . or both.

## The Statutory Standard: Embezzlement

### South Dakota Laws Section 22–30A-10. Misappropriation of Property Held in Trust

Any person, who has been entrusted with the property of another and who, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of his or her trust, is guilty of theft. . . .

## The Statutory Standard: False Pretenses

Can you explain the relationship between this Vermont statute on “antiquities and rarities” and false pretenses?

### Vermont Statutes Section 2023. Simulating Objects of Antiquity or Rarity

A person who, with the purpose of defrauding anyone or with the knowledge that he is facilitating a fraud to be perpetrated by anyone, makes or alters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess shall be imprisoned for not more than one year or fined not more than $1,000.00 or both.

## The Statutory Standard: Identity Theft

### Florida Statutes Section 817.568. Criminal Use of Personal Identification Information

1. (1) . . .
2. (2) (a) Any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual’s consent, commits the offense of fraudulent use of personal identification information, which is a felony of the third degree. . . .
3. (b) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual without first obtaining that individual’s consent commits a felony of the second degree, . . . if the pecuniary benefit, the value of services received, the payment sought to be avoided or the amount of the injury or fraud perpetrated is $5,000 or more or if the person fraudulently uses the personal identification information of 10 or more individuals without their consent. Notwithstanding any other provision of law, the court shall sentence any person convicted . . . to a mandatory minimum sentence of 3 years’ imprisonment.
4. (c) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual without first obtaining that individual’s consent commits a felony of the first degree . . . if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $50,000 or more or if the person fraudulently uses the personal identification information of 20 or more individuals without their consent. Notwithstanding any other provision of the law, the court shall sentence any person convicted of committing the offense described . . . to a mandatory minimum sentence of 5 years’ imprisonment. . . . If the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $100,000 or more or if the person fraudulently uses the personal identification information of 30 or more individuals without their consent . . . the court shall sentence any person convicted of committing the offense described . . . to a mandatory minimum sentence of 10 years’ imprisonment.

## The Statutory Standard: Computer Crime

### Pennsylvania Consolidated Statutes Section 3933. Unlawful Use of Computer

(a) A person commits the offense of unlawful use of a computer if he, whether in person, electronically or through the intentional distribution of a computer virus:

(1) accesses, exceeds authorization to access, alters, damages or destroys any computer, computer system, computer network, computer software, computer program or data base or any part thereof, with the intent: to interrupt the normal functioning of an organization or to devise or execute any scheme or artifice to defraud or deceive or control property or services by means of false or fraudulent pretenses, representations or promises;

(2) intentionally and without authorization accesses, alters, interferes with the operation of, damages or destroys any computer, computer data base or any part thereof;

(3) intentionally or knowingly and without authorization gives or publishes a password, identifying code, identification number or other confidential information about a computer, computer system, computer network or data base.

(4) intentionally or knowingly engages in a scheme or artifice, including, but not limited to, a denial of service, attack upon any computer, computer system, computer network, computer software, computer program, computer server or data base or any part thereof.

(b) Grading. An offense under subsection (a)(1) is a felony of the third degree. An offense under subsection (a)(2),(3) or (4) is a misdemeanor of the first degree.

(c) . . .

(d) Restitution. Upon conviction . . . for the intentional distribution of a computer virus, the sentence shall include an order for the defendant to reimburse the victim for:

1. (1) the cost or repairing or . . . replacing the affected computer, computer network . . . software . . . program or data base.
2. (2) lost profit. . . .
3. (3) the cost of replacing or restoring the data lost or damaged.

## The Statutory Standard: Receiving Stolen Property

### Florida Statutes Section 812.019

(1) Any person who traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen shall be guilty of a felony of the second degree [punishable by up to fifteen years in prison].

(2) Any person who initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property shall be guilty of a felony of the first degree [punishable by up to thirty years in prison].

## The Statutory Standard: Forgery

Consider how the South Carolina statute applies and expands the law of forgery.

### South Carolina Code 16–13–15

(A) It is unlawful for any person to falsify or alter a transcript, a diploma, or the high school equivalency diploma known as the GED from any high school, college, university, or technical college of this State, from the South Carolina Department of Education, or from any other transcript or diploma issuing entity.

(B) It is also unlawful for any person to use in this State a falsified or altered transcript, diploma or high school equivalency diploma known as the GED from the South Carolina Department of Education, or from any in-state or out-of-state high school, college, university or technical school, or from any other transcript or diploma issuing entity with the intent to defraud or mislead another person.

(C) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

## The Statutory Standard: Robbery

### California Penal Code: Sections 211–212. Robbery

211. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

212. The fear mentioned . . . may be either:

(1) The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family; or,

(2) The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery.

A number of states punish the crime of home invasion. Why is this singled out from the other types of robbery? Is this offense already punished by the crime of burglary?

### Florida Statutes Section 812.135. Home-Invasion Robbery

(1) “Home-invasion robbery” means any robbery that occurs when the offender enters a dwelling with the intent to commit a robbery, and does commit a robbery of the occupants therein.

(2)(a) If in the course of committing the home-invasion robbery the person carries a firearm or other deadly weapon, the person commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment. . . .

# Chapter 15

## The Statutory Standard

Compare the Texas disorderly conduct statute to the laws previously discussed.

### Texas Code Section 42.01. Disorderly Conduct

1. (1) A person commits an offense if he intentionally or knowingly:

(a) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(b) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(c) creates by chemical means, a noxious and unreasonable odor in a public place;

(d) abuses or threatens a person in a public place in an obviously offensive manner;

(e) makes unreasonable noise in a public place other than a sport shooting range . . . or in or near a private residence that he has no right to occupy;

(f) fights with another in a public place;

(g) discharges a firearm in a public place other than a public road or a sport shooting range . . . ;

(h) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;

(i) discharges a firearm on or across a public road;

(j) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act; or

(k) for a lewd or unlawful purpose:

(i) enters on the property of another and looks into a dwelling . . . through any window or other opening. . . .

(ii) while on the premises of a hotel . . . looks into a guest room. . . .

(iii) while on the premises of a public place, looks into an area such as a restroom or shower stall or changing or dressing room that is designed to provide privacy to a person using the area. . . .

(2) It is a defense to prosecution . . . that the actor had significant provocation for his abusive or threatening conduct. . . .

## The Statutory Standard

Consider these statutory provisions on the crime of riot.

### Ohio Laws Section 2917.03. Riot

(A) No person shall participate with four or more others in a course of disorderly conduct. . . .

(1) With purpose to commit or facilitate the commission of a misdemeanor . . . ;

(2) With purpose to intimidate a public official or employee into taking or refraining from official action, or with purpose to hinder, impede, or obstruct a function of government;

(3) With purpose to hinder, impede, or obstruct the orderly process of administration or instruction at an educational institution, or to interfere with or disrupt lawful activities carried on at such institution.

(B) No person shall participate with four or more others with purpose to do an act with unlawful force or violence, even though such an act might otherwise be lawful. . . .

(C) Whoever violates this section is guilty of . . . a misdemeanor of the first degree.

### Section 2917.02. Aggravated Riot

(A) No person shall participate with four or more others in a course of disorderly conduct. . . .

(1) With purpose to commit or facilitate the commission of a felony;

(2) With purpose to commit or facilitate the commission of any offense of violence;

(3) When the offender or any participant to the knowledge of the offender has on or about the offender’s or participant’s person or under the offender’s or participant’s control, uses, or intends to use a deadly weapon or deadly ordnance. . . .

(B) (1) No person, being an inmate in a detention facility, shall violate . . . (A)(1), (2), or (3). . . .

(C) Whoever violates this section is guilty of aggravated riot . . . a felony. . . .

## The Statutory Standard

The California statute on loitering provides:

### California Penal Code Section 653(g)

Every person who loiters about any school or public place at or near which children attend or normally congregate and who remains at any school or public place at or near which children attend or normally congregate, or who reenters or comes upon a school or place within seventy-two hours after being asked to leave by the chief administrative official of that school . . . [or by member of the security patrol, city police officer, or sheriff] is a vagrant and is punishable by a fine of not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail not exceeding six months, or by both the fine and the imprisonment. . . . “Loiter” means to delay, to linger, or to idle about a school or public place without lawful business for being present.

## The Statutory Standard

### Pennsylvania Statutes Section 5903. Obscene and Other Sexual Materials and Performances

(1) No person, knowing the obscene character of the materials or performances involved, shall:

(a) display or cause or permit the display of any explicit sexual materials . . . in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare, or in any business or commercial establishment where minors . . . will probably be exposed to view all or any part of such material;

(b) sell, lend, distribute, exhibit, give away or show any obscene material to any person 18 years of age or older or offer to sell, lend, distribute, transmit, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, transmit, exhibit or give away or show any obscene materials to any person 18 years of age or older, or knowingly advertise any obscene material in any manner;

(c) design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials;

(d) write, print, publish, utter, or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained or had;

(e) produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity;

(f) hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection;

(g) knowingly take or deliver in any manner any obscene material into a State correctional institution, county prison, regional prison facility or any other type of correctional facility [other sections address possession of such material in a penal institution and permitting such material to enter any such institution]. . . .

(2) No person shall knowingly disseminate by sale, loan or otherwise explicit sexual materials to a minor . . . material which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.