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

Mr. Lee introduced the following bill; which was read twice and referred to the Committee on

A BILL

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

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Mens Rea Reform Act
5 of 2021”.

6 SEC. 2. STATE OF MIND ELEMENT FOR CRIMINAL OF-
7 FENSES.

8 (a) IN GENERAL.—Chapter 1 of title 18, United
9 States Code, is amended by adding at the end the fol-
10 lowing:
§ 28. State of mind when not otherwise specifically provided

(a) DEFINITIONS.—In this section—

(1) the term 'covered offense'—

(A) means an offense—

(i) specified in—

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

(II) any regulation; or

(III) any law (including regulations) of any State or foreign government incorporated by reference into this title or any other Act of Congress; and

(ii) that is punishable by imprisonment, a maximum criminal fine of at least $2,500, or both; and

(B) does not include—

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

(ii) any offense incorporated by section 13(a) of this title;

(2) the term ‘knowingly’, as related to an element of an offense, means—

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

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

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

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

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

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

“(i) the person had knowledge of the
nature, attendant circumstances, object, or
result of his or her conduct; and

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

“(I) of that nature;
“(II) with that attendant circumstance;

“(III) with that object; or

“(IV) to cause such a result.

“(b) DEFAULT REQUIREMENT.—Except as provided in subsections (c) and (d), a covered offense shall be construed to require the Government to prove beyond a reasonable doubt that the defendant acted—

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

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

“(c) FAILURE TO DISTINGUISH AMONG ELEMENTS.—Except as provided in subsection (d), if the text of a covered offense specifies the state of mind required for commission of the covered offense without specifying the elements of the covered offense to which the state of mind applies, the state of mind specified shall apply to all elements of the covered offense, unless a contrary purpose plainly appears.

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

“(A) any element for which the text of the covered offense makes clear that Congress affirmatively intended not to require the Government to prove any state of mind with respect to such element;

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

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

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

“(C) any element of a covered offense, to the extent that applying subsections (b)(2) and (c) to such element would lessen the degree of mental culpability that the Government is required to prove with respect to that element under—

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

“(ii) any other provision of this title, any other Act of Congress, or any regulation.
“(2) MERE ABSENCE INSUFFICIENT.—For purposes of paragraph (1)(A), the mere absence of a specified state of mind for an element of a covered offense in the text of the covered offense shall not be construed to mean that Congress affirmatively intended not to require the Government to prove any state of mind with respect to that element.

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

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

“(2) that occurred—

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

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

“(i) applying this section to such covered offense would—

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

“(II) increase the punishment for the covered offense; or
“(III) deprive a person charged
with the covered offense of any de-
fense available according to law at the
time the covered offense occurred;
“(ii) a jury has been empaneled and
sworn in a prosecution for the covered of-
fense before the date of enactment of this
section;
“(iii) the first witness has been sworn
in a prosecution for the covered offense
tried without a jury before the date of en-
actment of this section; or
“(iv) a sentence has been imposed fol-
lowing a plea of guilty or nolo contendere
in a prosecution for the covered offense be-
fore the date of enactment of this section.
“(f) Subsequently Enacted Laws.—No law en-
acted after the date of enactment of this section shall be
construed to repeal, modify the text or effect of, or super-
sede in whole or in part this section, unless such law spe-
cifically refers to this section and explicitly repeals, modi-
ifies the text or effect of, or supersedes in whole or in part
this section.”.

(b) Technical and Conforming Amendment.—
The table of sections for chapter 1 of title 18, United
1  States Code, is amended by adding at the end the fol-
2  lowing:

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