



H.B. 318

123rd General Assembly
(As Introduced)

Reps. Willamowski, Taylor, Buchy, Buehrer, Clancy, Corbin, Flannery, Grendell, Hoops, Jacobson, Jones, Ferderber, Maier, Netzley, Padgett, Pringle, Schuring, Terwilleger, Tiberi, Trakas, Young

BILL SUMMARY

- Subjects and intoxicated person to criminal liability for the person's conduct while intoxicated.
- Prohibits a person from asserting intoxication as a defense to a criminal charge.
- States that intoxication does not negate the existence of a culpable mental state specified as an element of an offense unless the person charged did not know at the time of consuming, smoking, sniffing, injecting, or otherwise ingesting the substance that caused the intoxication that the substance was an intoxicating substance.

CONTENT AND OPERATION

Existing law

Liability in the criminal law

Under existing law, a person is not guilty of an offense unless both of the following apply (sec. 2901.21(A)): (1) the person's liability is based on conduct that includes either a voluntary act or an omission to perform an act or duty that the person is capable of performing, and (2) the person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section of the Revised Code defining the offense.

Culpable mental states

The criminal law of Ohio specifies four culpable mental states: "purposely," "knowingly," "recklessly," and "negligently" (sec. 2901.22-- not in the bill):

(1) A person acts *purposely* when it is the person's specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the person's specific intention to engage in conduct of that nature.

(2) A person acts *knowingly*, regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(3) A person acts *recklessly* when, with heedless indifference to the consequences, the person perversely disregards a known risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person perversely disregards a known risk that such circumstances are likely to exist.

(4) A person acts *negligently* when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that the person's conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that such circumstances may exist.

Operation of the bill

Under the bill, a person who is intoxicated is subject to criminal liability for the person's conduct while intoxicated. A person may not assert intoxication as a defense to an offense with which the person is charged. The bill further states that intoxication is not a factor that negates the existence of a culpable mental state specified as an element of an offense unless the person charged with the offense, at the time the person consumed, smoked, sniffed, injected, or otherwise ingested the substance that caused the intoxication, did not know that the substance was an intoxicating substance. (Sec. 2901.21(C).)

COMMENT

The common law rule in American jurisprudence is that voluntary intoxication is not a defense to any crime. Courts, however, have developed an exception to the rule that applies when a person is accused of a crime the definition of which involves some specific intent or the operation of other mental processes. If the intoxication is so great as to preclude the formation of the intent or other mental state, the defendant may offer proof of intoxication to negate that element of the crime. In these instances, the trier of fact may consider voluntary intoxication in determining whether or not the act was committed purposely, with prior calculation and design, or knowingly. The state, however, is not relieved of its burden to prove every element of the offense beyond a reasonable doubt. Whether to instruct the jury on intoxication as a defense in such an instance is a matter within the discretion of the trial court. *State v. Wilson* (1996), 74 Ohio St.3d 381, 393-394; *State v. Wolons* (1989), 44 Ohio St.3d 64; *State v. Fox* (1981), 68 Ohio St.2d 53; *Long v. State* (1923), 109 Ohio St. 77.

In *Montana v. Egelhoff* (1996), 518 U.S. 37, the United States Supreme Court held that a Montana statute did not violate the Due Process clause by providing, in part, that voluntary intoxication "may not be taken into consideration in determining the existence of a mental state which is an element of [a criminal] offense."

HISTORY

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