



Sub. H.B. 318*
123rd General Assembly
(As Reported by S. Judiciary)

Reps. Willamowski, Taylor, Buchy, Buehrer, Clancy, Corbin, Flannery, Grendell, Hoops, Jacobson, Jones, Ferderber, Maier, Netzley, Padgett, Pringle, Schuring, Terwilleger, Tiberi, Trakas, Young, DePiero, Jerse, Goodman, Damschroder, Roman, Hollister, Carey, Jordan, Evans, D. Miller, Cates, Aslanides, Olman, Metzger, Harris, Widener, Calvert, Vesper, Salerno

BILL SUMMARY

- Provides that voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense.
- States that voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense.
- Provides that evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged.
- Defines "intoxication."

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 (R.C. 2901.21(A)): (1) the person's liability is based on conduct

* *This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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" (R.C. 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, voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense. The bill further states that voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. The bill also provides that evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged. (R.C. 2901.21(C).) (See **COMMENT.**)

The bill specifies that "intoxication," as used in the above-discussed provisions of the bill includes, but is not limited to, being under the influence of alcohol, a drug, or alcohol and a drug (R.C. 2901.21(D)(4)).

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 of the United States Constitution 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

ACTION	DATE	JOURNAL ENTRY
Introduced	04-29-99	p. 500
Reported, H. Criminal Justice	11-10-99	p. 1356
Passed House (88-1)	12-09-99	pp. 1444-1445
Reported, S. Judiciary	---	---

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