
Detailed Fiscal Analysis

Provisions 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. An exception would be made if the person charged with the offense, at the time the person consumed, smoked, sniffed, injected, or otherwise ingested the substance, did not know the substance was an intoxicating substance.

Existing Law

Under existing law, a person is not guilty of an offense unless both of the following apply:

- (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 as specified by section 2901.21 (A) of the Ohio Revised Code. "Culpability" means purpose, knowledge, recklessness or negligence, as defined in section 2901.22 of the Revised Code.

Prevalence of Voluntary Intoxication as a Defense

The bill codifies when intoxication may be used as a defense to a crime. Under the common American rule, voluntary intoxication is *not* a defense to any crime. However, some courts have recognized a specific exception to this rule. A defendant could offer proof of intoxication as a basis to argue that a specific intent or mental state could not be formed. Voluntary intoxication could be factored into deciding whether an act was committed purposely, with prior calculation and design, or knowingly. A recent U.S. Supreme Court decision, *Montana v. Egelhoff*, validates the elimination of this exception by state statute. This bill eliminates the exception in Ohio unless the person did not know that the substance taken was an intoxicating substance.

According to the Ohio Prosecuting Attorneys Association, voluntary intoxication is rarely "effectively" used by defense counsel. Although many judges allow the evidence of intoxication, it does not appear to have a measurable impact upon either the number or outcome of prosecutions, nor the level of incarcerations.

Furthermore, the Cleveland Prosecutor's office reported that voluntary intoxication is rarely used as an actual defense. Often times, this form of defense is argued during the mitigation process but not as a defense in trial. In addition, Scioto County's Prosecutor Office had one case, in the past fifteen years, brought to court with voluntary intoxication as a defense to a charge of a criminal act.

State Fiscal Effects

Because this defense has not been effectively used in Ohio, there should be no fiscal effect on the state.

County Fiscal Effects

This bill will most likely not affect the length of trials, but it may ease the burdens upon prosecution of these cases. Counties will likely experience a negligible savings by clarifying that voluntary intoxication is an invalid defense, and eliminating this exception from possibly being used in Ohio's courts.

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