



# Ohio Legislative Service Commission

## Final Analysis

Aida S. Montano

### Am. S.B. 361

130th General Assembly  
(As Passed by the General Assembly)

**Sens.** Seitz, Eklund, Obhof, LaRose, Bacon, Patton, Brown, Burke, Coley, Faber, Hite, Jordan, Kearney, Lehner, Sawyer, Schiavoni, Skindell, Turner, Uecker

**Reps.** Anielski, Baker, Blessing, Brenner, Burkley, Butler, Carney, Duffey, Grossman, Hackett, Hayes, Huffman, Mallory, Pelanda, Retherford, Rogers, Scherer, Slaby, Stautberg, Stinziano, Terhar, Thompson, Wachtmann, Young, Batchelder

**Effective date:** March 23, 2015

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## ACT SUMMARY

- Requires every act that creates a new criminal offense to specify the degree of mental culpability required for the commission of the offense and provides that a criminal offense for which no degree of mental culpability is specified that is enacted in an act in violation of this provision is void.
- Specifies that the above requirement does not apply to the amendment of an offense that existed on the act's effective date (March 23, 2015), but applies to a new offense added to a statute that existed on that date.
- Provides that, if one division of a section plainly indicates a purpose to impose strict liability for an offense, that does not by itself plainly indicate a purpose to impose strict criminal liability for an offense defined in other divisions of the section that do not specify a degree of culpability.
- Modifies former law by providing that when language defining an element of an offense that is related to knowledge or intent or to which mens rea could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, the element of the offense is established only if a person acts recklessly, and provides exceptions to this rule.
- Expands former law's mental state of "knowingly" by providing that when knowledge of a particular fact is an element of an offense, knowledge is established

if a person subjectively believes that there is a high probability of its existence and fails to ask or tries to avoid learning the fact.

- Modifies former law's mental state of "recklessly" by providing that, with heedless indifference to the consequences, a person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result instead of a known risk, as under former law.

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## **CONTENT AND OPERATION**

### **Mental culpability for new offenses**

The act requires that every act enacted on or after the act's effective date (March 23, 2015) that creates a new criminal offense specify the degree of mental culpability required for commission of the offense. A criminal offense for which no degree of mental culpability is specified that is enacted in an act in violation of this provision is void. This requirement does not apply to the amendment of an offense that existed on the act's effective date, but it does apply to a new offense added to a statute that existed on that date.<sup>1</sup>

### **Criminal liability; culpability**

The act modifies one of former law's requirements for a person to be guilty of an offense by providing that the person must have the requisite degree of culpability for each element as to which a culpable mental state is specified by the language (instead of "section") defining the offense.<sup>2</sup> Culpability is not required for a person to be guilty of the offense when the language (instead of "section") defining an offense does not specify a degree of culpability and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section. The fact that one division of a section plainly indicates a purpose to impose strict liability for an offense defined in that division does not by itself plainly indicate a purpose to impose strict criminal liability for an offense defined in other divisions of the section that do not specify a degree of culpability.<sup>3</sup>

The act modifies former law by providing that when language defining an element of an offense that is related to knowledge or intent or to which mens rea could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, the element of the offense is established only if a person acts recklessly.

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<sup>1</sup> R.C. 2901.20.

<sup>2</sup> R.C. 2901.21(A).

<sup>3</sup> R.C. 2901.21(B).



Under former law, if the section neither specified culpability nor plainly indicated a purpose to impose strict liability, recklessness was sufficient culpability to commit the offense. The act's provision does not apply to offenses under the Motor Vehicle, Aeronautics, and Watercraft Law and does not relieve the prosecution of the burden of proving the culpable mental state required by any definition incorporated into the offense.<sup>4</sup>

### Degrees of mental culpability

The act expands continuing law which specifies when a person acts knowingly. Under the act, when knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to ask or tries to avoid learning the fact. Under continuing law, a person acts knowingly, regardless of 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.<sup>5</sup>

The act modifies former law by providing that a person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable 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 disregards a substantial and unjustifiable risk that such circumstances are likely to exist. Former law specified that a person acted recklessly or was reckless with respect to circumstances when the person "perversely disregards a known risk."<sup>6</sup>

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## HISTORY

ACTION	DATE
Introduced	09-08-14
Reported, S. Criminal Justice	12-04-14
Passed Senate (32-0)	12-04-14
Reported, H. Judiciary	12-17-14
Passed House (88-0)	12-17-14

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<sup>4</sup> R.C. 2901.21(C).

<sup>5</sup> R.C. 2901.22(B).

<sup>6</sup> R.C. 2901.22(C).

