HOUSE BILL REPORT
HB 1672

As Reported By House Committee On:
Law & Justice

Title: An act relating to prohibiting the use of voluntary intoxication as a defense against a criminal charge.

Brief Description: Prohibiting the use of intoxication as a defense.

Sponsors: Representatives Bush, Sheahan, Ballasiotes, Koster, O'Brien, Quall, McDonald, Costa, Carrell, Johnson, DeBolt, Sherstad, Clements, Talcott, Reams, Thompson, Backlund, Delvin, Honeyford, Smith, Mulliken, McMorris, Cody, Scott, Pennington, Kastama, Boldt, Dunn, Hickel, Sheldon, Buck, Benson, Keiser, Blalock, Lambert and Cooke.

Brief History:
Committee Activity:
Law & Justice: 2/25/97, 3/4/97 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Radcliff; Sherstad and Skinner.

Minority Report: Without recommendation. Signed by 2 members: Representatives Constantine, Assistant Ranking Minority Member; and Lantz.

Staff: Bill Perry (786-7123).

Background: Under statutory and case law, a person's intoxication cannot be a defense to a criminal charge. However, by virtue of a statute, a person's intoxication may be evidence that the person lacked the requisite mental state to commit a crime.

Under the criminal code, there are four distinct levels of culpability related to criminal acts. An act may be (1) intentional, (2) knowing, (3) reckless, or (4) negligent. The first three of these are referred to as states of mind.– A statute provides that the intoxication of a defendant may be used to negate any of these states of mind. That is, for instance, a defendant may try to convince a jury that he or she

was so drunk that he or she was incapable of forming intent to commit the act charged. Voluntary intoxication is not an affirmative defense– available to a defendant in the same way as the insanity defense or self-defense. In and of itself, proof of intoxication does not lead to a not guilty verdict. Such proof may, however, convince a jury that the prosecution has failed to prove a necessary element of the crime charged (*i.e.*, the necessary state of mind–). The net effect may well be a verdict of not guilty. In some instances proof of intoxication may result in conviction of a lesser crime. That is, the jury may conclude that the defendant was too drunk to form intent– but nonetheless acted recklessly.–

While intoxication evidence is available to rebut the mental states of intent, knowledge, or recklessness, it is not applicable in crimes involving criminal negligence. This is so because criminal negligence is not a description of a state of mind.– Criminal negligence is defined as failure to be aware of a substantial risk– where that failure is a gross deviation from the care a reasonable person would have taken in the same situation. Since this negligence requires no particular level of awareness, it cannot be negated by intoxication. The state supreme court has described criminal negligence as a catchall category in which the actor's state of mind is irrelevant. *State v. Coates*.

Under the Sentencing Reform Act, evidence of *involuntary* intoxication may be used as a mitigating circumstance to justify an exceptional sentence below the standard sentencing range. However, such involuntary intoxication does not include intoxication that is the result of addiction or dependency. *State v. Hutsell*.

The United States Supreme Court recently upheld a Montana statute that prohibits a defendant from introducing evidence of intoxication to negate evidence of the state of mind element of a crime. In a five-to-four decision, the Court held that the due process clause of the federal constitution does not guarantee the right of a defendant to have all relevant evidence introduced. A restriction on the introduction of such evidence is unconstitutional only when it violates a fundamental principle of justice that is deeply rooted in the traditions and conscience of our culture. Prohibiting evidence of intoxication does not meet this test. *Montana v. Egelhoff*.

Summary of Substitute Bill: Evidence of voluntary intoxication may not be used by a defendant in a criminal trial to show the lack of any particular mental state that is an element of the crime charged. The definitions of the states of mind of "intent," knowledge," and "recklessness" are amended to include acts done while voluntarily intoxicated, if but for the intoxication the required mental state would have been present. The definition of "knowledge" is also amended to be consistent with court interpretation of the term.

Substitute Bill Compared to Original Bill: The substitute bill adds the changes to the definitions of states of mind.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill holds people responsible for their actions. People who voluntarily get drunk should not be able to use their drunkenness as an excuse.

Testimony Against: None.

Testified: Representative Bush, prime sponsor; Tom McBride, Washington Association of Prosecuting Attorneys (pro); Marsh Pugh, Washington State Patrol (pro); and Bill Hanson, Washington State Patrol Troopers Association (pro).