

SENATE BILL REPORT

SHB 1672

As Reported By Senate Committee On:
Law & Justice, February 18, 1998

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: House Committee on Law & Justice (originally sponsored by 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: 3/27/97, 4/1/97 [DP]; 2/18/98 [DP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Goings, Kline, Long, Stevens and Thibaudeau.

Staff: Lidia Mori (786-7755)

Background: Under statutory and case law, a person's intoxication cannot be a defense to a criminal charge. However, by 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. Proof of intoxication may 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 be a verdict of not guilty. In some instances proof of intoxication may result in conviction of a lesser crime. The jury may conclude that the defendant was too drunk to form intent— but nonetheless acted recklessly.—

Intoxication evidence is available to rebut the mental states of intent, knowledge, or recklessness, but it is not applicable in crimes involving criminal negligence. This is 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*.

The United States Supreme Court, in *Montana v. Egelhoff*, 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. The court held prohibiting evidence of intoxication does not meet this test.

Summary of 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.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill prohibits the use of voluntary intoxication as a defense in a criminal prosecution. It is based on a Montana statute that has been held to be constitutional. Intoxication can currently be taken into consideration when a particular mental state is an element of a crime. Domestic violence and DUI charges are sometimes reduced or dropped due to the ability of the defense to argue the effects of intoxication.

Testimony Against: None.

Testified: Representative Bush, prime sponsor (pro).