# HOUSE BILL REPORT
# HB 1471

**As Reported by House Committee On:**
Judiciary

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

**Brief Description:** Prohibiting the use of voluntary intoxication as a defense against a criminal charge.

**Sponsors:** Representatives Kristiansen, O'Brien, Pettigrew, Haler, Pearson, Kretz, Lovick, Ericks, Sells, Rodne, Campbell, Moeller, Morrell, Goodman and Ross.

**Brief History:**
**Committee Activity:**
Judiciary: 1/30/07, 2/13/07 [DP].

**Brief Summary of Bill**

- Prohibits a criminal defendant from using the fact of voluntary intoxication as evidence to demonstrate the lack of a mental state that is an element of a criminal charge.
- Amends the definitions of "intent," "knowledge," and "recklessness," to include situations where the defendant is voluntarily intoxicated and acts in a manner that would be considered intentional, knowing, or reckless if the defendant were not intoxicated.

## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 8 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Ross and Williams.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Flannigan, Moeller and Pedersen.

**Staff:** Anne Woodward (786-7119); Edie Adams (786-7180).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:**

Voluntary intoxication does not excuse a person from his or her criminal behavior. However, Washington courts may consider evidence of voluntary intoxication in cases where the intoxication may have prevented the criminal defendant from forming a particular mental state that is an element of the charged crime. "Voluntary intoxication" has been interpreted as intoxication not caused by force or fraud, and includes intoxication resulting from alcohol or drug dependence. *Seattle v. Hill.*

In a criminal case, the prosecution must prove every element of the crime charged beyond a reasonable doubt. Most crimes require some degree of culpability as an element of the crime. There are four kinds of culpability defined in the criminal code: intent, knowledge, recklessness, and criminal negligence. The first three kinds of culpability—intent, knowledge, and recklessness—involve a "state of mind." Voluntary intoxication may be used by a criminal defendant as evidence to rebut the existence of these states of mind. Intoxication may not be used in cases where the level of culpability involves criminal negligence, because criminal negligence does not require a particular state of mind.

Under the Sentencing Reform Act, the sentencing court may consider evidence of involuntary intoxication as a mitigating circumstance to support an exceptional sentence below the standard range sentence. Involuntary intoxication in this circumstance does not include intoxication that is the result of addiction or dependency. *State v. Hutshell.*

In 1996, the United States Supreme Court held that a Montana statute which prohibited voluntary intoxication from being taken into consideration to determine the mental state of a criminal defendant did not violate the Federal Due Process Clause. *Montana v. Egelhoff.*

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**Summary of Bill:**

A defendant may not introduce evidence of his or her voluntary intoxication as evidence to demonstrate the lack of a mental state that is an element of a charged crime. The prohibition on the use of evidence of voluntary intoxication includes, but is not limited to, alcohol or any drug. The prosecution may continue to introduce evidence of the defendant's intoxication.

The definitions of intent, knowledge, and recklessness are amended to specify that a person acts intentionally, knowingly, or recklessly if the person acts in a manner that would be considered intentional, knowing, or reckless if the person were not intoxicated.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) This issue dates back to the 19th century, when it was against the law to use voluntary intoxication as grounds for a defense. If a person gets voluntarily intoxicated, then that person should be held responsible if it leads to criminal behavior. A person who voluntarily makes this decision knowing it will result in poor judgement should not be able to receive a lower sentence.

If this law is passed, then maybe people will think before they act. This bill will hold people accountable for their actions. Victims and their families need their rights back by not giving an exception to someone who has committed a crime while voluntarily intoxicated. The alcohol or drugs did not commit the crime; the person with the bad judgement committed the crime. The debate on this issue tends to ignore what really matters—the victim and family members who had no culpability in the situation.

Legislation very similar to this bill has been upheld by the U.S. Supreme Court. The state Supreme Court is not always predictable, but state constitutional analysis suggests that this bill would be upheld since the bill changes the definitions of the mental states. There are several crimes, such as robbery and assault, where if the mental state is not provable because of voluntary intoxication, there is no lesser crime with which to charge the defendant. Premeditation is one mental state that is not affected by this bill.

(Opposed) The desire to hold people who are voluntarily intoxicated responsible for their crimes is understandable. However, Washington has long recognized that people should be punished according to their mental culpability without regard to whether their mental culpability has been reduced due to mental disease or any other reason. It is a sound principle that people who intend to commit their crimes should be punished more severely than people who do not intend to commit their crimes. Washington has also recognized that while intoxication is not a defense to a crime, it may be considered to determine whether the defendant intended to commit the crime or not.

There are issues with the constitutionality of this bill. Prior decisions of the Washington Supreme Court indicate that this bill would violate both the state due process clause and the jury trial guarantee, since a defendant has a right to present evidence in his defense. This bill is unfair. The prosecutor would be allowed to present evidence of intoxication if it chose to do so, whereas the defense would not. The defense should be allowed to present any evidence that would mitigate the crime in any manner, and the jury is entitled to make its decision based on full information. The jury should be trusted to make this determination.

This bill is not necessary because juries are reluctant to accept defenses based on voluntary intoxication, or mental disease. In order to even present evidence at trial related to voluntary intoxication, the defense must present substantial evidence that the intoxication in fact impaired the ability to form the intent. It is very rare that juries accept diminished capacity defenses. In those cases where they have, the facts are extraordinary.

**Persons Testifying:** (In support) Representative Kristiansen, prime sponsor; Russ Hauge, Kitsap County Prosecuting Attorney; Seth Fine, Deputy Prosecuting Attorney, Snohomish County; Paul Rubio and Ana Rubio.

(Opposed) C. Wesley Richards, Washington Defenders Association and Washington Criminal Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** None.