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HOUSE BILL 1973

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State of Washington                      65th Legislature                      2017 Regular Session

By Representative Klippert

Read first time 02/06/17. Referred to Committee on Judiciary.

1            AN ACT Relating to prohibiting the use of voluntary intoxication  
2 as a defense against a criminal charge; amending RCW 9A.16.090 and  
3 9A.08.010; adding a new section to chapter 9A.16 RCW; and creating a  
4 new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 9A.16  
7 RCW to read as follows:

8            The legislature finds that voluntary intoxication from alcohol  
9 and drugs and the pain and suffering that often result are  
10 increasingly serious problems which have reached a crisis point both  
11 in this state and throughout the nation. The overwhelming prevalence  
12 of alcohol and drug use and their critical connections with crime and  
13 violence are obvious and irrefutable. In *Mont. v. Egelhoff*, 518 U.S.  
14 37; 116 S. Ct. 2013; 135 L. Ed. 2d 361 (1996), the United States  
15 supreme court addressed the relevancy of voluntary intoxication to  
16 considerations of mens rea. In *Egelhoff*, the court noted the long  
17 common law tradition of excluding intoxication evidence and held that  
18 the combination of that tradition, the number of states that still  
19 employed the common law doctrine, and the deference accorded to  
20 states in instituting their criminal justice systems justified the  
21 evidentiary restriction. The legislature finds that it has the

1 constitutional prerogative to define crimes, that their definitions  
2 control unless an express constitutional provision unambiguously  
3 requires otherwise, that excluding evidence of intoxication in  
4 criminal cases deters the commission of crimes while intoxicated, and  
5 that under both state and federal rules of evidence, there are a  
6 number of evidentiary exclusions that have been found constitutional,  
7 including the danger of misleading the jury or unfair prejudice, and  
8 various hearsay exclusions. The legislature further finds that  
9 individuals are personally responsible for the choices they make and  
10 the forces they set in motion, and that a person who is in a  
11 voluntarily intoxicated condition or state is criminally responsible  
12 for his or her conduct. The legislature intends by this act to  
13 unequivocally and solely provide a legislative redefinition of the  
14 mens rea element for specific and general intent crimes where  
15 voluntary intoxication is alleged as part of a defense, that a  
16 voluntary intoxicated condition or state is not a defense to any  
17 criminal offense, and that voluntary intoxication may not be taken  
18 into consideration in determining the existence of a mental state  
19 which is an element of the offense unless the defendant proves that  
20 he or she did not know that it was an intoxicating substance when he  
21 or she consumed the substance causing the condition or state. The  
22 legislature does not intend by this act to shift the burden of the  
23 prosecution to the defendant, nor does it intend to reduce the burden  
24 of the prosecution in proving the defendant intentionally, knowingly,  
25 or recklessly committed the crime under circumstances that would  
26 otherwise establish intent, knowledge, or recklessness but for the  
27 defendant's voluntary intoxication.

28 **Sec. 2.** RCW 9A.16.090 and 2011 c 336 s 355 are each amended to  
29 read as follows:

30 (1) No act committed by a person while in a state of voluntary  
31 intoxication shall be deemed less criminal by reason of his or her  
32 condition, but whenever the actual existence of any particular mental  
33 state is a necessary element to constitute a particular species or  
34 degree of crime, the fact of his or her intoxication may be taken  
35 into consideration in determining such mental state. Voluntary  
36 intoxication is not a defense to any criminal charge, nor may the  
37 fact of voluntary intoxication be used by a defendant to demonstrate  
38 the lack of any particular mental state that is an element of a crime

1 charged. Nothing in this section prohibits the prosecution from  
2 introducing evidence of a defendant's intoxication.

3 (2) This section applies to voluntary intoxication produced by  
4 any agent including, but not limited to, alcohol or any drug.

5 **Sec. 3.** RCW 9A.08.010 and 2009 c 549 s 1002 are each amended to  
6 read as follows:

7 (1) Kinds of Culpability Defined.

8 (a) INTENT. A person acts with intent or intentionally when ((he  
9 ~~or she~~));

10 (i) The person acts with the objective or purpose to accomplish a  
11 result which constitutes a crime; or

12 (ii) The person is voluntarily intoxicated and acts in a manner  
13 that would be considered intentional if the person were not  
14 intoxicated.

15 (b) KNOWLEDGE. A person knows or acts knowingly or with knowledge  
16 when:

17 (i) ((~~he or she~~)) The person is aware of a fact, facts, or  
18 circumstances or result described by a statute defining an offense;  
19 ((~~or~~))

20 (ii) ((~~he or she~~)) The person has information which would lead a  
21 reasonable person in the same situation to believe that facts exist  
22 which facts are described by a statute defining an offense; or

23 (iii) The person is voluntarily intoxicated and acts in a manner  
24 that would be considered knowing if the person were not intoxicated.

25 (c) RECKLESSNESS. A person is reckless or acts recklessly when  
26 ((~~he or she~~));

27 (i) The person knows of and disregards a substantial risk that a  
28 wrongful act may occur and ((~~his or her~~)) the disregard of such  
29 substantial risk is a gross deviation from conduct that a reasonable  
30 person would exercise in the same situation; or

31 (ii) The person is voluntarily intoxicated and acts in a manner  
32 that would be considered reckless if the person were not intoxicated.

33 (d) CRIMINAL NEGLIGENCE. A person is criminally negligent or acts  
34 with criminal negligence when ((~~he or she~~)) the person fails to be  
35 aware of a substantial risk that a wrongful act may occur and ((~~his~~  
36 ~~or her~~)) the failure to be aware of such substantial risk constitutes  
37 a gross deviation from the standard of care that a reasonable person  
38 would exercise in the same situation.

1           (2) Substitutes for Criminal Negligence, Recklessness, and  
2 Knowledge. When a statute provides that criminal negligence suffices  
3 to establish an element of an offense, such element also is  
4 established if a person acts intentionally, knowingly, or recklessly.  
5 When recklessness suffices to establish an element, such element also  
6 is established if a person acts intentionally or knowingly. When  
7 acting knowingly suffices to establish an element, such element also  
8 is established if a person acts intentionally.

9           (3) Culpability as Determinant of Grade of Offense. When the  
10 grade or degree of an offense depends on whether the offense is  
11 committed intentionally, knowingly, recklessly, or with criminal  
12 negligence, its grade or degree shall be the lowest for which the  
13 determinative kind of culpability is established with respect to any  
14 material element of the offense.

15           (4) Requirement of (~~Willfulness~~) Willfulness Satisfied by Acting  
16 Knowingly. A requirement that an offense be committed (~~wilfully~~)  
17 willfully is satisfied if a person acts knowingly with respect to the  
18 material elements of the offense, unless a purpose to impose further  
19 requirements plainly appears.

20           NEW SECTION.   **Sec. 4.** This act applies prospectively only and  
21 not retroactively. It applies only to causes of action that arise on  
22 or after the effective date of this section.

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