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**HOUSE BILL 1973**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representative Klippert

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

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

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

The legislature finds that voluntary intoxication from alcohol and drugs and the pain and suffering that often result are increasingly serious problems which have reached a crisis point both in this state and throughout the nation. The overwhelming prevalence of alcohol and drug use and their critical connections with crime and violence are obvious and irrefutable. In *Mont. v. Egelhoff,* 518 U.S. 37; 116 S. Ct. 2013; 135 L. Ed. 2d 361 (1996), the United States supreme court addressed the relevancy of voluntary intoxication to considerations of mens rea. In *Egelhoff,* the court noted the long common law tradition of excluding intoxication evidence and held that the combination of that tradition, the number of states that still employed the common law doctrine, and the deference accorded to states in instituting their criminal justice systems justified the evidentiary restriction. The legislature finds that it has the constitutional prerogative to define crimes, that their definitions control unless an express constitutional provision unambiguously requires otherwise, that excluding evidence of intoxication in criminal cases deters the commission of crimes while intoxicated, and that under both state and federal rules of evidence, there are a number of evidentiary exclusions that have been found constitutional, including the danger of misleading the jury or unfair prejudice, and various hearsay exclusions. The legislature further finds that individuals are personally responsible for the choices they make and the forces they set in motion, and that a person who is in a voluntarily intoxicated condition or state is criminally responsible for his or her conduct. The legislature intends by this act to unequivocally and solely provide a legislative redefinition of the mens rea element for specific and general intent crimes where voluntary intoxication is alleged as part of a defense, that a voluntary intoxicated condition or state is not a defense to any criminal offense, and that voluntary intoxication may not be taken into consideration in determining the existence of a mental state which is an element of the offense unless the defendant proves that he or she did not know that it was an intoxicating substance when he or she consumed the substance causing the condition or state. The legislature does not intend by this act to shift the burden of the prosecution to the defendant, nor does it intend to reduce the burden of the prosecution in proving the defendant intentionally, knowingly, or recklessly committed the crime under circumstances that would otherwise establish intent, knowledge, or recklessness but for the defendant's voluntary intoxication.

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

(1) No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his or her condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his or her intoxication may be taken into consideration in determining such mental state. Voluntary intoxication is not a defense to any criminal charge, nor may the fact of voluntary intoxication be used by a defendant to demonstrate the lack of any particular mental state that is an element of a crime charged. Nothing in this section prohibits the prosecution from introducing evidence of a defendant's intoxication.

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

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

(1) Kinds of Culpability Defined.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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