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HOUSE BILL 2690

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Kristiansen, Blake, Klippert, Ericks, Hope, O'Brien, Pearson, Bailey, Rodne, Shea, Kretz, Roach, Sullivan, Campbell, Kelley, McCune, Morrell, Kessler, Warnick, and Hurst

Read first time 01/12/10. Referred to Committee on Judiciary.

1            AN ACT Relating to prohibiting the use of voluntary intoxication as  
2 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 RCW  
7 to read as follows:

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

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

29 **Sec. 2.** RCW 9A.16.090 and 1975 1st ex.s. c 260 s 9A.16.090 are  
30 each amended to read as follows:

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

1 the fact of voluntary intoxication be used by a defendant to  
2 demonstrate the lack of any particular mental state that is an element  
3 of a crime charged. Nothing in this section prohibits the prosecution  
4 from introducing evidence of a defendant's intoxication.

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

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

9 (1) Kinds of Culpability Defined.

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

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

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

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

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

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

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

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

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

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

35 (d) CRIMINAL NEGLIGENCE. A person is criminally negligent or acts  
36 with criminal negligence when ((he or she)) the person fails to be  
37 aware of a substantial risk that a wrongful act may occur and ((his or

1 ~~her~~) the failure to be aware of such substantial risk constitutes a  
2 gross deviation from the standard of care that a reasonable person  
3 would exercise in the same situation.

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

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

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

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

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