

BAR CONSUMPTION OF ALCOHOL OR DRUGS AS A DEFENSE

House Bill 5398 (Substitute H-3) First Analysis (12-12-01)

**Sponsor: Rep. Ruth Johnson
Committee: Criminal Justice**

THE APPARENT PROBLEM:

The common law rule regarding whether voluntary intoxication is a legal defense to a crime says that it is not a defense to a general intent crime (first-degree criminal sexual conduct, second-degree murder), but that it is a defense to a specific intent crime (most assault charges, armed robbery, breaking and entering). This difficult issue leaves courts to struggle to apply the rule on a case-by-case basis, and this can result in similar cases being decided very differently from region to region. In *People v Langworthy*, 416 Mich 630, 642 (1982), the Michigan Supreme Court urged “the Legislature to consider the intoxicated-offender problem and to modernize Michigan law on this subject.”

Apparently, several other states have recently addressed the issue of excusing criminal behavior by drunk or high individuals by rewriting their laws to ban voluntary intoxication as a legal defense to any crime. At the urging of the Prosecuting Attorneys Association of Michigan and the Oakland County Prosecutor’s Office, legislation has been introduced to specify that voluntary intoxication could not be offered as a defense in a criminal action.

THE CONTENT OF THE BILL:

The bill would amend the Code of Criminal Procedure to specify that it would not be a defense to any crime that, at the time the crime was allegedly committed, an individual was under the influence of or impaired by a voluntarily or knowingly consumed alcohol, drug, or controlled substance, any other substance or compound, or a combination of alcohol, drug, or other substance and compound.

It *would* be an affirmative defense that an individual voluntarily consumed a legally obtained and properly used medication or other substance and did not know and reasonably should not have known that he or she would become intoxicated or impaired.

The bill would define “consumed” as meaning to have eaten, drunk, ingested, inhaled, injected, or topically applied, or to have performed any combination of those actions, or otherwise introduce into the body. “Controlled substance” is defined in the Public Health Code (MCL 333.7104).

MCL 760.37

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill could increase state and local correctional costs to the extent that it enabled additional convictions to be obtained. (12-12-01)

ARGUMENTS:

For:

Years ago, judges and juries looked a bit kindly on defendants who admitted that their criminal actions were conceived and executed while under the influence of alcohol or drugs. After all, in their defense, had they been sober, they would not have committed the crime. However, public tolerance of people excusing criminal behavior on the influence of drugs or alcohol has waned in recent years, especially considering that drinking or using drugs until one is beyond self control is actually within one’s control. Judges and juries of late are no longer buying into the defense of “I’m not responsible because I was drunk.” However, under current common law rules, voluntary intoxication is still allowed to be offered as an affirmative defense to some crimes, even violent ones such as armed robbery. It is time that the penal law be updated to reflect this change in public opinion, and hold persons responsible for criminal actions, regardless of their state of sobriety.

Against:

People have a right to offer a defense, and it would appear that the bill would strip away a legally accepted defense.

Response:

Reportedly, the majority of crimes are committed by people when under the influence of alcohol or drugs. But, no one has to drink or take drugs to the point where they are no longer able to control their actions or choices. Further, if people have a substance abuse problem, many successful programs are available. For these reasons, even though common law allows some crimes to offer voluntary intoxication as a defense in determining guilt, the word is that judges and juries alike are no longer accepting intoxication as an excuse for criminal behavior, but are instead holding people responsible for their actions – whether done when drunk, high, or sober. However, intoxication could, under the bill, still be used as a mitigating factor when considering an appropriate sentence. In short, ten other states have sent a clear message that people will be held responsible for their actions, and not just their actions when sober. It is time for Michigan to send a similar message - to say that excusing criminal behaviors because the perpetrators were drunk or high is no longer an acceptable public policy.

Against:

Removing an allowable affirmative defense would seem to appear unconstitutional.

Response:

The bill was modeled after the legislation enacted by the ten other states who have modified their laws to remove voluntary intoxication as a legal defense to a criminal action. At least one of the state's laws has withstood a constitutional challenge. (See *Montana v Egelhoff*, 817 U.S. 37 (1996).)

Against:

Regarding alcohol consumption, many people know and stay within their limits. However, if using a prescribed or over-the-counter medication, such as cold medications, they may experience an unintended reaction even with just a small amount of alcohol. The committee substitute seems to allow an affirmative defense for such a scenario, but closer reading would appear to apply only to a legally obtained and properly used medication or other substance causing an unintended intoxication or impairment, and not to a situation in which a person might combine use of a medication with one or two drinks and experience intoxication or impairment. In fact, the bill could be understood to say that because alcohol was combined with another substance or compound, and that both substances were knowingly consumed, that the person would be barred from offering intoxication as a defense. The bill should be clarified so that people who are indeed attempting to

be responsible when using legal medications are not inadvertently affected by the bill.

POSITIONS:

The Department of State Police supports the bill. (12-11-01)

The Prosecuting Attorneys Association of Michigan supports the bill. (12-11-01)

The Oakland County Prosecutor's Office supports the bill. (12-11-01)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.