House
Legislative
Analysis
Section

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BAR CONSUMPTION OF ALCOHOL OR DRUGS AS A DEFENSE

House Bill 5398 as enrolled
Public Act 366 of 2002
Sponsor: Rep. Ruth Johnson

House Committee: Criminal Justice
Senate Committee: Judiciary

Second Analysis (7-3-02)

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 this 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 the defendant was, at that time, under the influence of or impaired by a voluntarily and knowingly consumed alcohol, drug (including a controlled substance), other substance or compound, or combination of alcohol, drug, or other substance or compound.

It *would* be an affirmative defense to a specific intent crime, for which the defendant had the burden of proof by a preponderance of the evidence, that he or she 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 introduced into the body. "Controlled substance" is defined in the Public Health Code (MCL 333.7104).

The bill would take effect September 1, 2002.

MCL 760.37

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill could potentially increase state and local correctional costs to the extent that it increased the number of convictions. Local units incur the cost of incarceration in a local facility which may vary by county from $27 to $65 per day. The state incurs the cost of felony probation at $4.38 per day as well as the cost of incarceration in a state facility at an average annual cost of $25,000. (4-26-02)

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" or "I was too drunk to intend to commit the crime." 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. Perhaps more people will avail themselves of detox and treatment programs if they realize that crimes committed under the influence will be prosecuted just like all other criminal offenses.

In addition, the bill would still allow an affirmative defense of intoxication or impairment for certain criminal actions that arose from consuming legally obtained and properly used medications or other substances, such as herbal remedies. If a drug, when used properly, had an unintended effect that the person was unaware of (e.g., an acne drug has recently been implicated as a factor in several high profile criminal cases), and the person was charged with a specific intent crime (which generally requires the element of intent to commit that crime), an affirmative defense could be offered. Where the level of proof required to convict or acquit a defendant is proof beyond a reasonable doubt, the level of proof to substantiate an affirmative defense is by preponderance of the evidence.

This means that under the bill, the affirmative defense would not be available to a defendant who had ignored the warning label on a prescription drug, or over-the-counter medication, that cautioned against mixing the drug with alcohol or driving a car or engaging in certain activities because of known side-effects. Therefore, the bill would greatly restrict the availability of the affirmative defense. 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 appear to be unconstitutional.

Response:

The bill was modeled after the legislation enacted by the ten other states that 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)].

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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.