

ESTABLISH *MENS REA* AS DEFAULT STANDARD IN CRIMINAL STATUTES

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House Bill 4713 as introduced
Sponsor: Rep. Edward McBroom
Committee: Oversight and Ethics
Complete to 9-16-15

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

The bill would provide protection to a person accused of a crime for which no *mens rea* standard is currently provided by establishing a default *mens rea* standard and requiring *mens rea* to be satisfied for each element of a criminal offense in order to convict the person of a criminal offense. (*Mens rea*, translated from the Latin as "guilty mind," typically refers to criminal intent.) The bill applies only to some statutes and specifically does not apply to the Penal Code, Vehicle Code, controlled substances violations in the Public Health Code, and certain other specified laws.

BACKGROUND INFORMATION:

Historically, common law required proof of criminal intent in order to convict a person of a criminal offense. Thus, a person who did a prohibited act, but did not do so knowingly or intentionally, could be protected from criminal prosecution. Generally speaking, *mens rea* provisions served to determine the level of a person's culpability and differentiated between deliberate acts and unintentional acts.

As common laws through the decades have been codified into statute, *mens rea* requirements were not always specifically delineated, often leading to a strict liability interpretation. Strict liability means that a person who commits a prohibited act can be held criminally liable simply for committing that act even if the person did not mean to break any laws or was aware a law was being broken.

DETAILED SUMMARY:

The bill adds a new section to Chapter 1 of the Revised Statutes of 1846. Under the bill, a person could not be found guilty of a criminal offense unless:

1. The person's criminal liability is based on conduct that includes either a voluntary act or an omission to perform an act or duty that the person is capable of performing.
And
2. The person has the requisite degree of culpability for each element of the offense as to which a culpable mental state is specified by the language defining the offense. (For example, the statutory provision might specify that it is a crime to "knowingly," "intentionally," "negligently," or "recklessly" commit the prohibited act.)

Strict liability:

Culpability would not be required if the description of the criminal offense did not specify any degree of culpability but plainly imposed strict criminal liability for the prohibited conduct described in that provision (meaning a person could be found guilty just for committing the prohibited conduct regardless of whether they intended to commit a crime or were aware they were committing a crime). If one provision of a statute imposes strict criminal liability on a particular criminal offense, it would not automatically impose strict criminal liability on other criminal offenses in other provisions within that statute—thus each criminal offense provision in a statute would be considered separately as to the level of culpability or strict liability it establishes for each element of that offense.

Default *mens rea* standard:

If statutory language defining an element of a criminal offense related to either knowledge or intent or as to which *mens rea* could reasonably be applied neither specified culpability (e.g., recklessness or intent) nor plainly imposed strict liability, then the element of the offense would be established only if a person acts with intent, knowledge, or recklessness. (Thus, at a minimum, a person would need to act with recklessness in order for criminal culpability to attach.)

This provision would not relieve the prosecution of the burden of proving the culpable mental state required by any definition incorporated into the offense.

Further, when a statute defining a criminal offense provides that negligence suffices to establish an element of the offense, then intent, knowledge, or recklessness is also sufficient culpability to satisfy that element. (Thus, if the prosecution could prove that the person intended to commit the act or knew that the act was prohibited, negligence would not have to be proven because proof of either intent or knowledge would be sufficient to show that the person had met the threshold of being criminally culpable and was therefore criminally liable for his or her act.)

Similarly, if knowledge sufficed to establish an element of an offense, then intent would also be sufficient culpability to satisfy that element.

Defenses:

Being—at the time the crime occurred—under the influence of or impaired by a voluntarily and knowingly consumed alcoholic liquor, drug (including a controlled substance), other substance or compound, or combination of any of those substances would not be a defense to a crime.

However, it would be an affirmative defense to a specific intent crime (for which the defendant has the burden of proof by a preponderance of the evidence) that he or she voluntarily ingested 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.

Applicability/Exemptions to bill:

The bill only applies to crimes committed on or after the bill's effective date. Further, the bill would not apply to crimes under any of the following:

- ❖ The Michigan Vehicle Code (MCL 257.1-257.923)
- ❖ The Michigan Penal Code (MCL 750.1-750.568)
- ❖ Article 7 of the Public Health Code ("Controlled Substances", MCL 333.7101-333.7545)
- ❖ Chapter 752 of the Michigan Compiled Laws ("Crimes and Offenses," includes various statutes, some of which impose criminal penalties; e.g., death or injuries from firearms)

Definitions:

"Culpable" would mean sufficiently responsible for criminal acts or negligence to be at fault and liable to punishment for commission of a crime.

"Intent" would mean a desire or will to act with respect to a material element of an offense **if both** of the following applied:

- ❖ The element involves the nature of a person's conduct or a result of that conduct and it is the person's conscious object to engage in conduct of that nature or to cause that result.
- ❖ The element involves the attendant circumstances (e.g., the factual circumstances giving context to the act), and the person is aware of the existence of those circumstances or believes or hopes that they exist.

"Knowledge" would be defined to mean awareness or understanding with respect to a material element of an offense **if both** of the following circumstances existed:

- ❖ The element involves the nature or the attendant circumstances (e.g., the factual circumstances giving context to the act) of the person's conduct, and the person is aware that the conduct is of that nature or than those circumstances exist.
- ❖ The element involves a result of the person's conduct, and the person is aware that it is practically certain that the conduct will cause that result.

"Negligence" would mean the failure to use reasonable care with respect to a material element of an offense to avoid consequences that are the foreseeable outcome of the person's conduct with respect to a material element of an offense and that threaten or harm the safety of another.

"Recklessness" would mean a person's conscious disregard of a substantial and unjustifiable risk that a material element exists or will result from the person's conduct, if the risk is of a nature and degree that, considering the nature and purpose of the person's conduct and the circumstances known to the person, the person's disregard of the risk is a gross deviation from the standard of conduct that a law-abiding and reasonable person would observe in the person's situation.

"Intoxicated or impaired" includes, but is not limited to, a condition of intoxication resulting from the ingestion of alcohol, a controlled substance, or a combination of both. "Controlled substance" would mean the term as defined in the Public Health Code, which includes Schedule 1-5 drugs (MCL 333.7401).

"Ingestion" would mean 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.

FISCAL IMPACT:

The bill could result in a decrease in costs for state and local correctional systems. Costs would be decreased if there is a decrease in the number of people convicted due to the inability to establish *mens rea*. The amount of savings would depend on the number of people actually diverted from prison or jail sentences. The average cost of prison incarceration in a state facility is roughly \$35,600 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. There could also be a decrease in penal fine revenues which would decrease funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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