



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 20 (Substitute S-1)
House Bill 4713 (Substitute S-1)
Sponsor: Senator Mike Shirkey (S.B. 20)
Representative Edward McBroom (H.B. 4713)
Senate Committee: Judiciary
House Committee: Oversight and Ethics (H.B. 4713)

Date Completed: 10-27-15

CONTENT

Senate Bill 20 (S-1) would amend Chapter 1 of the Revised Statutes of 1846, titled "Of the statutes", specify that if a statute defining an offense prescribed a culpable mental state but did not specify the element to which it applied, the prescribed mental state would apply to each element that required a culpable mental state.

House Bill 4713 (S-1) would amend Chapter 1 of the Revised Statutes of 1846 to do the following:

- Provide that a person would not be guilty of a criminal offense unless liability was based on an act or an omission to perform an act that the person was capable of performing, and the person had the requisite degree of culpability for each element of the offense.
- Provide that culpability would not be required for a person to be guilty of an offense if the underlying statute plainly imposed strict liability.
- Provide that an element of a criminal offense would have to be established through a showing of intent, knowledge, or recklessness if the statute defining the element neither specified culpability nor imposed strict liability.
- Specify that if that a statute provided that negligence sufficed to establish an element of the offense, then intent, knowledge, or recklessness would be sufficient to satisfy that element.
- Specify that if knowledge sufficed to establish an element of an offense, then intent would be sufficient.
- Provide that it would not be a defense to a crime that the defendant was under the influence of an alcoholic liquor, drug, or other substance or compound, except under certain circumstances.

Each bill specifies that its provisions would not apply to crimes established under various statutes, including the Michigan Penal Code and the Michigan Vehicle Code.

Each bill would take effect 90 days after its enactment, and would apply only to crimes committed on or after the date of enactment. The bills are tie-barred to each other.

Senate Bill 20 (S-1)

Default Standard

Under the bill, if a statute defining an offense prescribed a culpable mental state but did not specify the element to which it applied, the prescribed mental state would apply to each material element of the offense that necessarily required a culpable mental state. The bill states that the mere absence of a state of mind for an element of a covered offense could not be construed to mean that the Legislature affirmatively intended not to require the prosecution to prove any state of mind.

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

Applicability

The bill would not apply to, and could not be construed to affect, crimes under any of the following:

- The Michigan Vehicle Code.
- Article 7 (Controlled Substances) of the Public Health Code.
- The Identity Theft Protection Act.
- The Michigan Penal Code.
- Chapter 752 of the Michigan Compiled Laws.

(Chapter 752 of the Michigan Compiled Laws contains the Health Care False Claims Act and a number of other Public Acts on a variety of subjects, including interstate law enforcement intelligence organizations, the use of travel aids by blind individuals, chemical agents, obscene materials, riots, fraudulent access to computers, and unauthorized recordings. Most of the Public Acts in Chapter 752 impose criminal penalties for particular offenses.)

House Bill 4713 (S-1)

Default Standard, Degrees of Culpability

Under the bill, except as otherwise provided, a person would not be guilty of a criminal offense unless both of the following applied: a) the person's criminal liability was based on conduct that included either a voluntary act or an omission to perform an act or duty that the person was capable of performing; and b) the person had the requisite degree of culpability for each element of the offense as to which a culpable mental state was specified by the language defining the offense.

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

If the statutory language defining a criminal offense did not specify any degree of culpability and plainly indicated a purpose to impose strict criminal liability for the conduct described in the statute, then culpability would not be required for a person to be guilty of the offense. The fact that a subsection of a statute plainly imposed strict liability for an offense defined in that subsection would not by itself plainly impose strict criminal liability for an offense defined in another subsection of that statute that did not specify a degree of culpability.

If statutory language defining an element of a criminal offense that was related to knowledge or intent or as to which mens rea could reasonably be applied neither specified culpability nor plainly imposed strict liability, the element of the offense would be established only if a person acted with intent, knowledge, or recklessness. This would not relieve the prosecution of the

burden of proving the culpable mental state required by any definition incorporated into the offense.

If a statute defining a criminal offense provided that negligence sufficed to establish an element of the offense, then intent, knowledge, or recklessness also would be sufficient culpability to satisfy that element. If knowledge sufficed to establish an element of an offense, then intent also would be sufficient.

The bill would define "intent" as a desire or will to act with respect to a material element of an offense if both of the following circumstances exist: a) the element involves the nature or 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; and b) the element involves the attendant circumstances, and the person is aware of the existence of those circumstances or believes or hopes that they exist.

"Knowledge" would mean awareness or understanding with respect to a material element of an offense if both of the following exist: a) the element involves the nature of the attendant circumstances of the person's conduct, and the person is aware that his or her conduct is of that nature or that those circumstances exist; and b) the element involves a result of the person's conduct, and the person is aware that it is practically certain that his or her conduct will cause that result.

"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.

"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.

Intoxication or Impairment as a Defense

Under the bill, it would not be a defense to a crime that the defendant was, 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 alcoholic liquor, drug, or other substance or compound. However, it would be an affirmative defense to a specific intent crime, for which the defendant would have 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 have become intoxicated or impaired.

Crimes Under Specific Statutes

The bill would not apply to, and could not be constructed to affect crimes under the same statutes as listed in Senate Bill 20 (S-1).

Proposed MCL 8.9a (S.B. 20)
Proposed MCL 8.9 (H.B. 4713)

BACKGROUND

Mens Rea

In general, the concept of crime has three basic components: "actus reus" ("guilty act"), "mens rea" ("guilty mind"), and a concurrence. In other words, an unlawful act and an unlawful intent must occur together in order to constitute a crime. Accordingly, a person who commits a criminal act, but does so without the requisite mens rea, is not guilty of the crime.

At common law, mens rea was usually described as an intent to commit a prohibited act. Common law burglary, for example, was defined as the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony therein. "Intent", however, was not always the necessary mens rea. Most jurisdictions defined the common law crime of murder as an unlawful homicide with malice aforethought. In this instance, the mens rea is malice aforethought.¹

As common law definitions of crimes gave way to statutory definitions, the standards of culpability became more diverse.² The Model Penal Code, for example, uses five states of mens rea: purpose, knowledge, recklessness, negligence, and strict liability. The first four and similar words used in statutes, e.g., with intent or willfully, describe a mental state, or impute a mental state to the defendant based on the underlying conduct and circumstances. To convict an individual of a crime with one of the first four mental states, or a similar mental state, a prosecutor must prove that the defendant engaged in the proscribed conduct, and did so under the requisite mental state.

Strict liability, on the other hand, does not include a mental state. A person is guilty of the crime for having committed the act. Generally speaking, civil violations, e.g., speeding, are strict liability offenses. However, since the mid- to late-1800s, strict liability as a function of criminal law has developed primarily in the fields of regulatory law, because it is generally perceived that these laws might not be effective without penalties and strict application. The modern presence of strict liability crimes is apparent in statutes governing the sales of adulterated food,³ sales of misbranded articles, traffic and motor vehicle regulations, and similar laws passed for public safety and health.

General Intent v. Specific Intent

Crimes are generally split into one of two categories: specific intent and general intent. Specific intent is an intent other than to do the prohibited act, and is required to establish guilt for the crime. General intent, on the other hand, is simply the intent to perform an act prohibited by law. The difference is whether the defendant intended the act's result. An example is the difference between the crimes of manslaughter (an unlawful homicide) and an assault with the intent to commit murder. Although manslaughter is generally committed with intent to kill, the prosecution must prove that the defendant intended to do an act prohibited by law, but need not prove that it was done with the intent to kill. However, in order to convict an individual of assault with the intent to commit murder, the underlying criminal act (assault) must be proven, and it also must be demonstrated that there was an underlying intent to cause a result (to commit murder).

Legislative Analyst: Jeff Mann

¹ While Michigan defines the degrees of murder by statute, the underlying crime of murder is still one of common law origins. See, e.g., *People v. Potter*, 5 Mich 1 (1858).

² The terms "culpability", "mens rea", and "mental state" are often used interchangeably.

³ Strict liability is well demonstrated by the prohibitions and penalty provisions of Chapter 5 of Michigan's Food Law. Section 5101 specifies a number of violations; Section 5107 provides the penalties. Specifically, the penalty set forth in Section 5107(1) is based on strict liability.

FISCAL IMPACT

The bills would have a positive fiscal impact on State and local government, although the magnitude of the impact is unknown. It cannot be known how many future statutes will be written without a culpable mental state standard. A decrease in misdemeanor and felony prosecutions and convictions could free up resource demands on local court systems, community supervision, and correctional facilities. For any decrease in prison intakes, in the short term, the marginal savings to State government would be approximately \$3,764 per prisoner per year. In the long term, if the reduced intake of prisoners reduced the total prisoner population enough to allow the Department of Corrections to close a housing unit or an entire facility, the marginal savings to State government would be approximately \$34,550 per prisoner per year. Any associated decrease in fine revenue would reduce revenue to public libraries.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.