

STORAGE NAME: h0485.cp

DATE: March 1, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 485

RELATING TO: Criminal Law

SPONSOR(S): Representative Hart

COMPANION BILL(S): S54(l)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
- (2) JUDICIARY
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill creates section 90.4051 which provides that voluntary intoxication is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state that is an element of an offense. The bill also provides that if the defendant proves to the trial court by a preponderance of the evidence that he or she did not know that a substance was an intoxicating substance when he ingested the substance, the trial court may allow the evidence to be submitted to the jury.

Creates enhanced penalties if the victim of a felony is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian.

A very similar bill, HB 421, also provides for the elimination of the voluntary intoxication defense.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Voluntary intoxication is recognized in Florida as a defense to a specific intent crime. Frey v. State, 708 So.2d 918 (Fla. 1998). Specific intent is an intent "to accomplish the precise act which the law prohibits." Id. Voluntary intoxication is a defense to a crime when a certain mental state is an essential element of a crime, and a person was so intoxicated that he or she was incapable of forming that mental state. Florida Standard Jury Instruction 3.04(g). Voluntary intoxication is not a statutory defense but has developed through case law.

The burden is on a defendant to come forward with evidence that he was intoxicated at the time of the offense. If a defendant submits any evidence that the defendant was intoxicated at the time of the offense, the jury must be given a voluntary intoxication instruction. Leschka v. State, 695 So.2d 535 (Fla. 2nd DCA 1997). "Evidence of alcohol consumption prior to the commission of the crime does not, by itself, mandate the giving of a jury instruction with regard to voluntary intoxication." Watkins v. State, 519 So.2d 760, (Fla. 1st DCA 1988). However, if a defendant comes forward with evidence that he was intoxicated at the time of the offense and the trial court refuses to read the voluntary intoxication instruction to the jury, the case is often reversed on appeal. For example, in Leschka, the defendant and the victim testified to the use of intoxicants and evidence was submitted to the jury which indicated that the defendant was intoxicated. The trial court allowed the defense to argue voluntary intoxication to the jury but would not instruct the jury on the defense. The Second District reversed the conviction finding that "the amount of evidence of intoxication presented crossed the threshold of legal sufficiency so that the appellant should have had the jury instructed on his defense of voluntary intoxication." Leschka, 695 So.2d at 536.

In recent concurring opinions in a Florida Supreme Court case, Justice Harding and Justice Grimes recommended that either the Court or legislature consider abolishing the voluntary intoxication defense. Frey v. State, 708 So.2d 918 (Fla. 1998). These justices also noted the difficulty in determining whether a crime is a specific or a general intent crime and therefore whether the voluntary intoxication defense applies. See also Carter v. State, 710 So.2d 110 (Fla. 4th DCA 1998) (noting that "the distinction between specific and general intent crimes is not an easy one."). For example, first degree murder, robbery, kidnapping, aggravated assault and battery are specific intent crimes while arson, second-degree murder, false imprisonment and resisting a police officer with violence are general intent crimes. Frye

B. EFFECT OF PROPOSED CHANGES:

Section 1 of the bill provides that voluntary intoxication is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state that is an element of the offense. The bill also provides that if the defendant, outside the presence of the jury, proves to the trial court by a preponderance of the evidence that he or she did not know that the substance he or she consumed was an intoxicating substance, the court may allow the evidence to be submitted to the jury.

The bill defines the term "intoxicating substance" as a substance "capable of producing intoxication" and defines the term "intoxication" as "a disturbance of physical or mental capacities resulting from the introduction of a substance into the body."

Section 2 of the bill provides for the reclassification of a felony if the victim of the felony is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian. The reclassification would be as follows:

1. A felony of the third degree shall be punishable as if it were a felony of the second degree.
2. A felony of the second degree shall be punishable as if it were a felony of the first degree.
3. A felony of the first degree shall be punishable as if it were a life felony.

Lineal consanguinity is defined in Black's Law Dictionary as follows:

That kind of consanguinity which subsists between person of whom one is descended in a direct line from the other; as between a particular person and his father, grandfather, great-grandfather, and so upward, in the direct ascending line; or between the same person and his son, grandson, great-grandson, and so downwards in the direct descending line.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates sections 90.4051 and 775.0852.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates section 90.4051 which provides that voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of an offense.

Section 2: Provides for enhanced penalties if the victim of a felony is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian.

Section 3: Provides for effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not met to consider whether the provision enhancing penalties for crimes committed against victims related by lineal consanguinity to the defendant will increase costs to the Department of Corrections.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because the bill is a criminal law, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The segment of the bill that provides that a defendant who proves to the trial court that he or she did not know that a substance was an intoxicating substance when he or she consumed the substance may have the evidence considered by the jury is similar to the involuntary intoxication defense which already exists in Florida. For example, in *Carter v. State*, 710 So.2d 110 (Fla.4th DCA 1998), the defendant claimed that his friend gave him what he thought were four ibuprofen tablets. The defendant's friend testified that she inadvertently gave the defendant some of her lawfully prescribed psychiatric medicine. The Fourth District reversed the conviction, ruling that the defendant should have received an involuntary intoxication instruction. However, this bill provides that in order to use this

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defense, the defendant must prove to the trial court outside of the presence of the jury that he or she did not know the substance was intoxicating by a preponderance of the evidence. This is different from the general rule which provides that "[w]here there is any evidence introduced at trial which supports the theory of the defense, a defendant is entitled to have the jury instructed on the law applicable to his theory of defense when he so requests." Arthur v. State, 717 So.2d 193, 23 Fla. L. Weekly D2162, (Fla. 5th DCA 1998).

This bill eliminates the voluntary intoxication defense and creates enhanced penalties for felonies in which the victim is related by lineal consanguinity to the defendant. Combining this provision and the provision eliminating voluntary intoxication may violate the single subject requirement of Article III, Section 6 of the Florida Constitution.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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