

AN ACT

To amend sections 2901.21 and 2901.22 and to enact section 2901.20 of the Revised Code to clarify when strict criminal liability is imposed or a degree of culpability is required for the commission of an offense, to modify the concept of acting recklessly, and to require that future acts creating criminal offenses specify the requisite degree of culpability.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2901.21 and 2901.22 be amended and section 2901.20 of the Revised Code be enacted to read as follows:

Sec. 2901.20. (A) Every act enacted on or after the effective date of this section that creates a new criminal offense shall specify the degree of mental culpability required for commission of the offense. A criminal offense for which no degree of mental culpability is specified that is enacted in an act in violation of this division is void.

(B) Division (A) of this section does not apply to the amendment of a criminal offense that existed on the effective date of this section, but it does apply to a new criminal offense added to a statute that existed on the effective date of this section.

Sec. 2901.21. (A) Except as provided in division (B) of this section, a person is not guilty of an offense unless both of the following apply:

(1) The person's 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;

(2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the ~~section~~ language defining the offense.

(B) When the ~~section~~ language defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense. The fact that one

division of a section plainly indicates a purpose to impose strict liability for an offense defined in that division does not by itself plainly indicate a purpose to impose strict criminal liability for an offense defined in other divisions of the section that do not specify a degree of culpability.

(C)(1) When the section language defining an element of an offense that is related to knowledge or intent or to which mens rea could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense the element of the offense is established only if a person acts recklessly.

(2) Division (C)(1) of this section does not apply to offenses defined in Title XLV of the Revised Code.

(3) Division (C)(1) of this section does not relieve the prosecution of the burden of proving the culpable mental state required by any definition incorporated into the offense.

~~(C)~~(E) Voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense. Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. Evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged.

~~(D)~~(F) As used in this section:

(1) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of the possessor's control of the thing possessed for a sufficient time to have ended possession.

(2) Reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor's volition, are involuntary acts.

(3) "Culpability" means purpose, knowledge, recklessness, or negligence, as defined in section 2901.22 of the Revised Code.

(4) "Intoxication" includes, but is not limited to, intoxication resulting from the ingestion of alcohol, a drug, or alcohol and a drug.

Sec. 2901.22. (A) A person acts purposely when it is ~~his~~ the person's specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is ~~his~~ the offender's specific intention to engage in conduct of that nature.

(B) A person acts knowingly, regardless of ~~his~~ purpose, when ~~he~~ the person is aware that ~~his~~ the person's conduct will probably cause a certain

result or will probably be of a certain nature. A person has knowledge of circumstances when ~~he~~ the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

(C) A person acts recklessly when, with heedless indifference to the consequences, ~~he~~ perversely the person disregards a ~~known~~ substantial and unjustifiable risk that ~~his~~ the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, ~~he~~ perversely the person disregards a ~~known~~ substantial and unjustifiable risk that such circumstances are likely to exist.

(D) A person acts negligently when, because of a substantial lapse from due care, ~~he~~ the person fails to perceive or avoid a risk that ~~his~~ the person's conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, ~~he~~ the person fails to perceive or avoid a risk that such circumstances may exist.

(E) When the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, or purpose is also sufficient culpability for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability for such element.

SECTION 2. That existing sections 2901.21 and 2901.22 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. S. B. No. 361

130th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____