

As Reported by the Senate Criminal Justice Committee

130th General Assembly

Regular Session

2013-2014

Am. S. B. No. 361

Senator Seitz

Cosponsors: Senators Eklund, Obhof, LaRose, Bacon, Patton

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A B I L L

To amend sections 2901.21 and 2901.22 and to enact 1
section 2901.20 of the Revised Code to clarify 2
when strict criminal liability is imposed or a 3
degree of culpability is required for the 4
commission of an offense, to modify the concept of 5
acting recklessly, and to require that future acts 6
creating criminal offenses specify the requisite 7
degree of culpability. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2901.21 and 2901.22 be amended and 9
section 2901.20 of the Revised Code be enacted to read as follows: 10

Sec. 2901.20. (A) Every act enacted on or after the effective 11
date of this section that creates a new criminal offense shall 12
specify the degree of mental culpability required for commission 13
of the offense. A criminal offense for which no degree of mental 14
culpability is specified that is enacted in an act in violation of 15
this division is void. 16

(B) Division (A) of this section does not apply to the 17
amendment of a criminal offense that existed on the effective date 18
of this section, but it does apply to a new criminal offense added 19

to a statute that existed on the effective date of this section. 20

Sec. 2901.21. (A) Except as provided in division (B) of this 21
section, a person is not guilty of an offense unless both of the 22
following apply: 23

(1) The person's liability is based on conduct that includes 24
either a voluntary act, or an omission to perform an act or duty 25
that the person is capable of performing; 26

(2) The person has the requisite degree of culpability for 27
each element as to which a culpable mental state is specified by 28
the ~~section~~ language defining the offense. 29

(B) When the ~~section~~ language defining an offense does not 30
specify any degree of culpability, and plainly indicates a purpose 31
to impose strict criminal liability for the conduct described in 32
the section, then culpability is not required for a person to be 33
guilty of the offense. The fact that one division of a section 34
plainly indicates a purpose to impose strict liability for an 35
offense defined in that division does not by itself plainly 36
indicate a purpose to impose strict criminal liability for an 37
offense defined in other divisions of the section that do not 38
specify a degree of culpability. 39

(C)(1) When the ~~section~~ language defining an element of an 40
offense that is related to knowledge or intent or to which mens 41
rea could fairly be applied neither specifies culpability nor 42
plainly indicates a purpose to impose strict liability, 43
~~recklessness is sufficient culpability to commit the offense~~ the 44
element of the offense is established only if a person acts 45
recklessly. 46

(2) Division (C)(1) of this section does not apply to 47
offenses defined in Title XLV of the Revised Code. 48

(3) Division (C)(1) of this section does not relieve the 49

prosecution of the burden of proving the culpable mental state 50
required by any definition incorporated into the offense. 51

~~(C)~~(E) Voluntary intoxication may not be taken into 52
consideration in determining the existence of a mental state that 53
is an element of a criminal offense. Voluntary intoxication does 54
not relieve a person of a duty to act if failure to act 55
constitutes a criminal offense. Evidence that a person was 56
voluntarily intoxicated may be admissible to show whether or not 57
the person was physically capable of performing the act with which 58
the person is charged. 59

~~(D)~~(F) As used in this section: 60

(1) Possession is a voluntary act if the possessor knowingly 61
procured or received the thing possessed, or was aware of the 62
possessor's control of the thing possessed for a sufficient time 63
to have ended possession. 64

(2) Reflexes, convulsions, body movements during 65
unconsciousness or sleep, and body movements that are not 66
otherwise a product of the actor's volition, are involuntary acts. 67

(3) "Culpability" means purpose, knowledge, recklessness, or 68
negligence, as defined in section 2901.22 of the Revised Code. 69

(4) "Intoxication" includes, but is not limited to, 70
intoxication resulting from the ingestion of alcohol, a drug, or 71
alcohol and a drug. 72

Sec. 2901.22. (A) A person acts purposely when it is ~~his~~ the 73
person's specific intention to cause a certain result, or, when 74
the gist of the offense is a prohibition against conduct of a 75
certain nature, regardless of what the offender intends to 76
accomplish thereby, it is ~~his~~ the offender's specific intention to 77
engage in conduct of that nature. 78

(B) A person acts knowingly, regardless of ~~his~~ purpose, when 79

~~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 112
Revised Code are hereby repealed. 113