**STORAGE NAME**: h0421.cp
**DATE**: February 16, 1999

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

**BILL #**: HB 421

**RELATING TO**: Evidence

**SPONSOR(S)**: Representative Lacasa

**COMPANION BILL(S)**: S902(s)

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

(1) CRIME AND PUNISHMENT
(2) JUDICIARY
(3)
(4)
(5)

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I. SUMMARY:

Creates section 90.959 which provides that voluntary intoxication resulting from the consumption of alcohol or a controlled substance is not a defense to any offense. Evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense except when the use of a controlled substance was pursuant to a lawful prescription.

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 office with violence are general intent crimes. Frye

B. EFFECT OF PROPOSED CHANGES:

The bill creates section 90.959 which provides that evidence of a defendant's voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense. However, if the intoxication was caused by a controlled substance which was taken pursuant to a lawful prescription issued by a practitioner, the evidence can be admitted.

In Montana v. Egelhoff, 518 U.S. 37, 116 S.Ct. 2013 (1996), the United States Supreme Court held that the Montana statute banning the voluntary intoxication defense did not violate due process. The provisions of HB 421 are substantially similar to those contained in the Montana statute.

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?

N/A

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

N/A

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

N/A

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. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

      N/A

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

      N/A

4. Individual Freedom:

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

      N/A

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

      N/A

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?

      N/A

   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 section 90.959.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that defendant was insane at time of offense.

Section 2: Provides effective date of October 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 determine the economic impact of this bill. This bill removes a defense in criminal cases and may have a slight economic impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Section 18 is inapplicable to the bill because it deals with a criminal statute.

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 may submit evidence of his intoxication when the intoxication occurred as a result of the defendant taking a controlled substance prescribed by a practitioner is part of the involuntary intoxication defense which already exists in Florida. The principle behind this defense is that a person would not expect that they would become intoxicated by taking a substance which has been prescribed to them, if they take the substance according to the prescription. Brancaccio v. State, 698 So.2d 597 (Fla. 4th DCA 1997). The defense does not just apply to a defendant who becomes intoxicated after taking his or her prescription. 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.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

| Prepared by: | Staff Director: |
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| Trina Kramer | J. Willis Renuart |