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DATE: March 3, 1999

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS

BILL #: CS/HB 421/485.

RELATING TO: Evidence

SPONSOR(S): Committee on Crime & Punishment and Representatives Lacasa and Hart.

COMPANION BILL(S): S902(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
(2) JUDICIARY
(3)
(4)
(5)

I. SUMMARY:

This committee substitute 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.

The bill with two amendments, was made a committee substitute for HB 421 and HB 485.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Voluntary Intoxication Relevant to Specific Intent

In Florida, there are two different types of crimes - general and specific intent crimes. A specific intent crime requires proof of an intent "to accomplish the precise act which the law prohibits." Frey v. State, 708 So.2d 918 (Fla. 1998). On the other hand, for a general intent crime, it is "not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated." Id. Voluntary intoxication is recognized in Florida as a defense to a specific intent crime. According to the Florida Standard Jury Instruction 3.04(g):

> The use of alcohol or drugs to the extent that it merely arouses passions, diminishes perceptions, releases inhibitions or clouds reason and judgment does not excuse the commission of a criminal act.
>
> However, where a certain mental state is an essential element of a crime, and a person was so intoxicated that he was incapable of forming that mental state, the mental state would not exist and therefore the crime could not be committed.

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

Voluntary Intoxication Relevant to Insanity

In Florida, insanity is a defense to a criminal offense. According to the Florida Supreme Court:

> The legal test of insanity in Florida, for criminal purposes, has long been the so-called "M'Naghten Rule." Under the M'Naghten Rule an accused is not criminally responsible if, at the time of the alleged crime, the defendant was by reason of mental infirmity, disease, or defect unable to understand the nature and quality of his act or its consequences or was incapable of distinguishing right from wrong.

Hall v. State, 568 So.2d 882, 888 (Fla. 1990). In Street v. State, 636 So.2d 1297, the defendant was intoxicated due to the use of cocaine at the time that he committed a number of crimes. In the opinion, the Florida Supreme Court stated that the trial court properly refused to allow an

expert to testify that the defendant was suffering from the mental infirmity of "cocaine psychosis" because the defendant had not raised an insanity defense. Thus, it is possible that courts would allow a defendant to claim that his or her intoxication was a "mental infirmity, disease or defect" that rendered the defendant unable to understand the nature or consequences of his or her actions if the defendant raised the insanity defense.

B. EFFECT OF PROPOSED CHANGES:

The committee substitute 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 to demonstrate a lack of "specific intent" for those crimes such as first degree murder which require specific intent.

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. Lower Taxes:

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:

None.

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 committee substitute. This committee substitute 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 committee substitute because it deals with a criminal statute.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce anyone's revenue raising authority.

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

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

V. COMMENTS:

The segment of the committee substitute 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:

On March 3, 1999, the Committee on Crime and Punishment met and Representative Lacasa offered two amendments to the bill. The first amendment clarifies that in order for a defendant to use the defense of voluntary intoxication when the consumption of the controlled substance was pursuant to a prescription, the prescription had to have been issued to the defendant and not to another person.

The second amendment removed reference to the bill as creating section 90.959 of Florida Statute. This was offered in order that the new statute be placed somewhere other than in chapter 90, which is the evidence code.

A third amendment, relating to the hiring, leasing or obtaining personal property with the intent to deprive, offered by Representatives Crist and Hart was withdrawn.

The Crime and Punishment Committee adopted the remaining two amendments and the bill, with its amendments was made a committee substitute for HB 421 and HB 485.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:	Staff Director:
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