

By Representative Hart

1 A bill to be entitled
2 An act relating to criminal law; creating s.
3 90.4051, F.S.; prohibiting consideration of
4 evidence of a defendant's voluntary
5 intoxication to determine the existence of a
6 mental state that is an element of a crime;
7 creating s. 775.0852, F.S.; requiring that an
8 enhanced penalty be imposed if the victim of a
9 felony is related by lineal consanguinity to
10 the defendant or is the defendant's legal
11 guardian; providing an effective date.

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13 WHEREAS, in *Montana v. Egelhoff*, 116 S.Ct. 2013 (1996),
14 the United States Supreme Court held that the Due Process
15 Clause of the Fourteenth Amendment was not violated by a
16 Montana law barring a jury in a criminal proceeding from
17 considering evidence of a defendant's voluntary intoxication
18 in determining the existence of a mental state that is an
19 element of a crime, and

20 WHEREAS, the court stated that a prohibition on such
21 evidence: accords with studies indicating that as many as half
22 of all homicides are committed by intoxicated offenders and
23 suggesting that drunks behave in accord with learned beliefs
24 that drunks are violent; deters drunkenness or irresponsible
25 behavior while drunk; ensures that persons incapable of
26 controlling violent impulses while intoxicated will go to
27 prison; and comports with and implements society's moral
28 perception that those who are voluntarily impaired shall be
29 responsible for the consequences of their impairment, and

30 WHEREAS, the Legislature finds that a prohibition on
31 such evidence advances the public interest in holding a

1 defendant accountable for his or her criminal behavior, while
2 also comporting with the defendant's right to due process of
3 law, and

4 WHEREAS, it is the intent of the Legislature to
5 prohibit a jury from considering evidence of a defendant's
6 voluntary intoxicated condition in determining whether he or
7 she possesses the requisite mental state to commit the crime
8 for which he or she is charged, NOW, THEREFORE,

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10 Be It Enacted by the Legislature of the State of Florida:

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12 Section 1. Section 90.4051, Florida Statutes, is
13 created to read:

14 90.4051 Responsibility; intoxication.--

15 (1) Notwithstanding s. 90.803 or any other law, a
16 person who is voluntarily in an intoxicated condition is
17 criminally responsible for his conduct. Voluntary intoxication
18 is not a defense to any offense and may not be taken into
19 consideration in determining the existence of a mental state
20 that is an element of the offense. If the defendant, outside
21 the presence of the jury, proves to the court by a
22 preponderance of the evidence that he or she did not know that
23 a substance was an intoxicating substance when he or she
24 consumed, smoked, inhaled, injected, or otherwise ingested the
25 intoxicating substance, the court may allow the evidence to be
26 submitted to the jury or considered by the court.

27 (2) As used in this section, the term "intoxicating
28 substance" means a substance capable of producing
29 intoxication, and the term "intoxication" means a disturbance
30 of physical or mental capacities resulting from the
31 introduction of a substance into the body.

1 Section 2. Section 775.0852, Florida Statutes, is
2 created to read:

3 775.0852 Felony committed against a family member;
4 enhanced penalties.--The penalty for any felony shall be
5 reclassified as provided in this section if the victim of the
6 felony is related by lineal consanguinity to the defendant or
7 if the victim is the defendant's legal guardian.

8 (1) A felony of the third degree shall be punishable
9 as if it were a felony of the second degree.

10 (2) A felony of the second degree shall be punishable
11 as if it were a felony of the first degree.

12 (3) A felony of the first degree shall be punishable
13 as if it were a life felony.

14 Section 3. This act shall take effect July 1, 1999.

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17 SENATE SUMMARY

18 Provides that voluntary intoxication is not a defense to
19 any criminal charge and may not be taken into
20 consideration in determining the existence of a mental
21 state that is an element of the offense. Provides for a
22 showing and introduction of evidence that the accused was
23 unaware, at the time of its ingestion, that a substance
24 is intoxicating. Provides for the penalty imposed for a
25 felony offense to be enhanced by one degree if the victim
26 of the felony is related by lineal consanguinity to the
27 defendant or if the victim is the defendant's legal
28 guardian.
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