

See: Minutes of Subcommittee No. 1  
3/4/69, p. 1, Vol. X  
Tape #69

CRIMINAL LAW REVISION COMMISSION  
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ARTICLE 2, GENERAL PRINCIPLES OF CRIMINAL LIABILITY

Culpability

Preliminary Draft No. 2; February 1969

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Subcommittee No. :

ARTICLE 2, GENERAL PRINCIPLES OF CRIMINAL LIABILITY

Culpability

Preliminary Draft No. 2; February 1969

Section 1. Culpability; definitions. As used in this     , unless the context may require otherwise:

(1) "Act" means a bodily movement.

(2) "Voluntary act" means a bodily movement performed consciously as a result of effort or determination, and includes the possession of property if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it.

(3) "Omission" means a failure to perform an act as to which a duty of performance is imposed by law.

(4) "Conduct" means an act or omission and its accompanying mental state.

(5) "To act" means either to perform an act or to omit to perform an act.

(6) "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as these terms are defined in sections (7), (8), (9) and (10) of this section.

(7) "Intentionally" or "with intent" means that with respect to a result or to conduct described by a statute defining a crime a person acts with a conscious objective to cause that result or to engage in that conduct.

(8) "Knowingly" or "with knowledge" means that with respect to conduct or to a circumstance described by a statute defining a crime a person acts with an awareness that his conduct is of that nature or that the circumstance exists.

(9) "Recklessly" means that with respect to a result or to a circumstance described by a statute defining a crime a person is aware

Existing  
Law

ORS

161.010

Intentional:  
161.010 (1)  
163.010  
et seq.  
166.220

Knowingly:  
161.010 (1)

Reckless:  
483.992 (1)  
163.020 (2)

Negligent:  
161.010 (2)  
30.115 (2)

of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(10) "Criminal negligence" or "criminally negligent" means that with respect to a result or to a circumstance described by a statute defining a crime a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

#### COMMENTARY; CULPABILITY; DEFINITIONS

This section is taken from New York Revised Penal Law Sections 15.00 - 15.05. The same definitions appear in Michigan Revised Criminal Code Sections 301, 305.

Subsection (1) requires bodily movement. Subsection (2) defines a voluntary act to be a bodily movement done volitionally and consciously, and includes the possession of property provided the person knew he has physical control long enough to have been able to end it.

Subsections (3), (4) and (5) make it clear that omissions are included when a duty of performance is imposed by law.

Subsection (6) defines "culpable mental state" as including those terms set forth subsequently in the section.

The culpable mental states defined in subsections (7), (8), (9) and (10) are the same as those selected in Preliminary Draft No. 1 with certain verbal changes. The definitions are derived from New York Revised Penal Law §15.05 and §305 of the Michigan proposal. The rationale is the same as that of Model Penal Code §2.02 and the California definitions.

Subsection (8), the definition of "knowingly" has been changed to eliminate any reference to result of conduct and to restrict the term to awareness of the nature of one's conduct or of the existence of specified circumstances (e.g. that property is stolen, that one has no right to enter a building, etc.). As the New York commentary points out:

"Under the formulations of the Model Penal Code (§2.02 [2bii]) and the Illinois Criminal Code (§4-5 [b]) 'knowingly' is, in one phase, almost synonymous with 'intentionally' in that a person achieves a given result 'knowingly' when he 'is practically certain' that his conduct will cause that result. This distinction between 'knowingly' and 'intentionally' in that context appears highly technical or semantic, and the Revised Penal Law does not employ the word 'knowingly' in defining result offenses. Murder of the common law variety, for example, is committed intentionally or not at all."

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Section 2. General Requirements of Culpability. (1) The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is physically capable of performing.

(2) Except as provided in subsection (3) of this section, a person is not guilty of a crime unless he acts with a culpable mental state with respect to each material element of the crime.

(3) A culpable mental state is not required for an offense that is a violation, or if the statute defining a crime clearly indicates a legislative intent to dispense with any culpable mental state requirement.

COMMENTARY: GENERAL REQUIREMENTS OF CULPABILITY

Subsection (1) enunciates the elementary principle that, no matter how an offense is defined, the minimal requirement for criminal liability is conduct which includes a "voluntary" act or omission. This excludes all "involuntary" acts such as reflex actions, acts committed during hypnosis, epileptic fugue, etc. Also excluded are omissions to perform an act or duty which one is physically incapable of performing. The subsection is based on language in New York §15.10.

Subsection (2) is a restatement of Section 1 of Preliminary Draft No. 1 and resembles language in New York §15.15.

Subsection (3) is the same as Section 5 of Preliminary Draft No. 1 with minor verbal changes.

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Section 3. Construction of Statutes with Respect to Culpability

Requirements. (1) If a statute defining a crime prescribes a culpable mental state but does not specify the element to which it applies, the prescribed culpable mental state applies to each material element of the crime.

(2) Except as provided in subsection (3) of Section 3 of this Article, if a statute defining a crime does not prescribe a culpable mental state, culpability is nonetheless required and is established only if a person acts intentionally, knowingly or recklessly.

(3) If a statute defining a crime expressly requires a culpable mental state to establish an element of an offense, that element also is established if a person acts with a greater culpable mental state than that which is required by the statute.

(4) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of an offense unless the statute clearly so provides.

COMMENTARY; CONSTRUCTION OF STATUTES

Subsection (1) of this section is a restatement of subsection (1) of Section 3 of Preliminary Draft No. 1.

Subsection (2) is basically the same as Section 4 of Preliminary Draft No. 1.

Subsection (3) is a simplified version of subsection (2) of Section 3 of the earlier draft.

Subsection (4) appeared as subsection (3) of Section 3 in Preliminary Draft No. 1.

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Section 4. Intoxication. (1) As used in this section, unless the context may require otherwise:

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Law  
ORS  
136.400

(a) "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

(b) "Self-induced intoxication" means intoxication caused by substances that a person knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under circumstances that would afford a defense to a charge of crime.

(c) "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which a person does not know he is susceptible.

(2) Except as provided in subsection (5) of this section, intoxication is not a defense to a criminal charge, but in any prosecution for a crime, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

(3) When recklessness establishes an element of the crime, if the defendant, due to self-induced intoxication, is unaware of a risk which he would have been aware had he been sober, such unawareness is immaterial.

(4) Intoxication does not, in itself, constitute mental disease or defect within the meaning of \_\_\_\_\_.

(5) Intoxication that is not self-induced or that is pathological is a defense to a criminal charge if by reason of such intoxication the defendant at the time of his conduct lacks substantial capacity either to appreciate its criminality or to conform his conduct to the requirement of law.

COMMENTARY; INTOXICATION

This section is based on Michigan Revised Criminal Code §715 and MPC §2.08. The Responsibility Draft contains no section relating to intoxication and the Reporter and Subcommittee No. 3 assumed that the subject would be covered in the Culpability Draft.

The definition of "intoxication" in subsection (1) (a) is intended to cover not only alcoholic beverages, but drugs, glue sniffing, and other substances, as well. As the Michigan commentary states, "The emphasis is on the result the substance produces, not its classification."

The definitions of "self-induced intoxication" in (1) (b) and "Pathological intoxication" in (1) (c) are intended to furnish guidelines for determining when "involuntary" intoxication may be a defense to a criminal charge under subsection (5).

Subsection (2) substantially restates ORS 136.400:

"Intoxication as a defense. No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition; but whenever the actual existence of any particular motive, purpose or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the defendant was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act."

Subsection (3) is taken from §2.08 (2) of the Model Penal Code and provides, in effect, that a defendant is no less reckless if he is unaware of a risk because of self-induced intoxication.

Subsections (4) and (5) are interrelated to the provisions of the Responsibility draft. Subsection (4) restates the traditional idea that "voluntary" intoxication is not "insanity". (See, State v. Zorn, 22 Or 591 (1892); State v. Blodgett, 50 Or 329, 92 P. 820 (1907)). Subsection (5) codifies the converse proposition that intoxication which is not "voluntary" is a defense if, as a result thereof, the defendant lacks substantial capacity to appreciate the criminality of his conduct or to conform to the requirement of law.

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TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

Section 2.08. Intoxication.

(1) Except as provided in Subsection (4) of this Section, intoxication of the actor is not a defense unless it negatives an element of the offense.

(2) When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

(3) Intoxication does not, in itself, constitute mental disease within the meaning of Section 4.01.

(4) Intoxication which (a) is not self-induced or (b) is pathological is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its criminality [wrongfulness] or to conform his conduct to the requirements of law.

(5) Definitions. In this Section unless a different meaning plainly is required:

(a) "intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;

(b) "self-induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime;

(c) "pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible.

Text of Michigan Revised Criminal Code

Section 715. Intoxication.

(1) Intoxication of the actor is not a defense to a criminal charge, except as provided in subsection (3), but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

(2) Intoxication does not, in itself, constitute mental disease or defect within the meaning of section 705.

Text of Michigan Revised Criminal Code (cont.)

(3) A person is not criminally responsible for his conduct if by reason of intoxication that is not self-induced or that is pathological, at the time he acts, he lacks capacity to conform his conduct to the requirements of law.

(4) "Intoxication" as used in this section means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

(5) "Self-induced intoxication" means intoxication caused by substances that the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under circumstances that would afford a defense to a charge of crime.

(6) "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible.

Text of New York Revised Penal Law

Section 15.25. Effect of intoxication upon liability

Intoxication is not, as such, a defense to a criminal charge; but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.