

See: Minutes of Subcommittee No. 1  
4/18/69, p. 2, Vol. X  
Tape #72

CRIMINAL LAW REVISION COMMISSION  
208 Agriculture Building  
Salem, Oregon

ARTICLE 2, GENERAL PRINCIPLES OF CRIMINAL LIABILITY

Culpability

Preliminary Draft No. 3; March 1969

Reporter: Donald L. Paillette

Subcommittee No. 1

ARTICLE 2, GENERAL PRINCIPLES OF CRIMINAL LIABILITY

Culpability

Preliminary Draft No. 3; March 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 and includes the conscious possession or control of property.

(3) "Omission" means a failure to perform an act the performance of which 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," when used with respect to a result or to conduct described by a statute defining a crime, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.

(8) "knowingly" or "with knowledge", when used with respect to conduct or to a circumstance described by a statute defining a crime, means that a person acts with an awareness that his conduct is of a nature so described

( Existing  
( Law  
( ORS  
( 161.010  
( Intention:  
( 161.010 (1)  
( 163.010  
( et seq.  
( 166.220  
( Knowingly:  
( 161.010 (7)  
( Reckless:  
( 483.992 (1)  
( 163.020 (2)  
( Negligent:  
( 161.010 (2)  
( 30.115 (2)

or that a circumstance so described exists.

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

(See P.D. #2, February 1969)

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.

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 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 that necessarily requires a culpable mental state.

(3) Notwithstanding the provisions of subsection (2) of this section, a culpable mental state is not required if:

(a) the offense constitutes a violation, unless a culpable mental state is expressly included in the definition of the offense; or

(b) the statute defining a crime clearly indicates a legislative intent to dispense with any culpable mental state requirement.

COMMENTARY: GENERAL REQUIREMENTS OF CULPABILITY

(See P.D. #2, February 1969)

This section has been amended pursuant to recommendations of the subcommittee. In subsection (1) the modifying adverb, "physically", has been deleted. The phrase, "that necessarily requires a culpable mental state," has been added to make it clear that the draft does not require scienter with respect to an element relating solely to the statute of limitations, jurisdiction, venue, etc., which may be elements of the crime but do not require a culpable mental state on the part of the actor.

Section 3. Construction of Statutes with Respect to Culpability Requirements. (1) If a statute defining a crime pres-

cribes 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 that necessarily requires a culpable mental state.

(2) Except as provided in subsection (3) of Section 2 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. The new language has been added to make the section consistent with the changes in Section 2.

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.

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

(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

(	Existing
(	Law
(	ORS
(	136.400
(	

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 of 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 Section 715 and MPC Section 2.03. 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 Section 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.

Section 5. Ignorance or Mistake. Ignorance or mistake as to a matter of fact or law is a defense if:

- (1) the ignorance or mistake negatives the culpable mental state required for the commission of a crime; or
- (2) the statute defining a crime or a statute related thereto expressly provides that the ignorance or mistake constitutes a defense or exemption; or
- (3) the state of mind created by the ignorance or mistake supports a defense of justification as defined in Article \_\_\_\_.

COMMENTARY; IGNORANCE OR MISTAKE

This section states the three types of situations in which ignorance or mistake as to a matter of fact or law is a defense.

Subsections(1) and (2) are a restatement of principles set out in MPC Section 2.04. Subsection (3) is based on New York Revised Penal Law Section 15.20 and contains a reference to the Article on justification which, it is assumed, will provide that a reasonable mistake of fact will justify certain acts that would otherwise be criminal, i.e., use of physical force in defense of a person.

The Draft does not encompass the elaborate provisions relating to mistake of law that appear in the MPC, New York and Michigan sections directed at the violator who relies upon an official, but erroneous, statement of the law. Such a defense really amounts to a limited exception to the position stated in Section 3(4) that knowledge of illegality is not an element of an offense. As the ALI observes, there is some statutory and case support for such defenses but, also much contrary authority. (See Comments, MPC T.D. #4, p.138). Your reporter could uncover no reported Oregon cases in which the question was raised.

It is submitted that it is highly unlikely, at least, that a person who acts upon an honest and good faith reliance on an official statement of the law would have the requisite culpability under the provisions of the Draft to be guilty of an offense requiring mens rea or scienter. An attempt to establish statutory guidelines for this kind of case might well create more problems than it solves by opening the door to spurious defenses based on technicalities. Such a situation seems best left to the sound judgment of the prosecutors and courts of this state.