

SENATE BILL NO. 891

May 30, 2024, Introduced by Senator BAYER and referred to the Committee on Finance, Insurance, and Consumer Protection.

A bill to amend 1846 RS 1, entitled
"Of the statutes,"
by amending section 9 (MCL 8.9), as added by 2015 PA 250.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) Except as otherwise provided in this section, a
2 person is not guilty of a criminal offense committed on or after
3 January 1, 2016 unless both of the following apply:

4 (a) The person's criminal liability is based on conduct that
5 includes either a voluntary act or an omission to perform an act or
6 duty that the person is capable of performing.

1 (b) The person has the requisite degree of culpability for
2 each element of the offense as to which a culpable mental state is
3 specified by the language defining the offense.

4 (2) If the statutory language defining a criminal offense does
5 not specify any degree of culpability and plainly imposes strict
6 criminal liability for the conduct described in the statute, then
7 culpability is not required for a person to be guilty of the
8 offense. The fact that a subsection of a statute plainly imposes
9 strict liability for an offense defined in that subsection does not
10 by itself plainly impose strict criminal liability for an offense
11 defined in another subsection of that statute that does not specify
12 a degree of culpability.

13 (3) Except as provided in subsection (4), if statutory
14 language defining an element of a criminal offense that is related
15 to knowledge or intent or as to which mens rea could reasonably be
16 applied neither specifies culpability nor plainly imposes strict
17 liability, the element of the offense is established only if a
18 person acts with intent, knowledge, or recklessness.

19 (4) Subsection (3) does not relieve the prosecution of the
20 burden of proving the culpable mental state required by any
21 definition incorporated into the offense.

22 (5) If a statute defining a criminal offense provides that
23 negligence suffices to establish an element of the offense, then
24 intent, knowledge, or recklessness is also sufficient culpability
25 to satisfy that element. If recklessness suffices to establish an
26 element of an offense, then knowledge or intent is also sufficient
27 culpability to satisfy that element. If knowledge suffices to
28 establish an element of an offense, then intent is also sufficient
29 culpability to satisfy that element.

1 (6) It is not a defense to a crime that the defendant was, at
2 the time the crime occurred, under the influence of or impaired by
3 a voluntarily and knowingly consumed alcoholic liquor, drug,
4 including a controlled substance, other substance or compound, or
5 combination of alcoholic liquor, drug, or other substance or
6 compound. However, it is an affirmative defense to a specific
7 intent crime, for which the defendant has the burden of proof by a
8 preponderance of the evidence, that ~~he or she~~ **the defendant**
9 voluntarily ingested a legally obtained and properly used
10 medication or other substance and did not know and reasonably
11 should not have known that ~~he or she~~ **the defendant** would become
12 intoxicated or impaired.

13 (7) This section does not apply to, and ~~shall~~ **must** not be
14 construed to affect, crimes under any of the following:

15 (a) The Michigan vehicle code, 1949 PA 300, MCL 257.1 to
16 257.923.

17 (b) The public health code, 1978 PA 368, MCL 333.1101 to
18 333.25211.

19 (c) The identity theft protection act, 2004 PA 452, MCL 445.61
20 to ~~445.79e~~ **445.80c**.

21 (d) The Michigan penal code, 1931 PA 328, MCL 750.1 to
22 750.568.

23 (e) Chapter 752 of the Michigan Compiled Laws.

24 (8) If a statute defining an offense prescribes a culpable
25 mental state but does not specify the element to which it applies,
26 the prescribed culpable mental state applies to each material
27 element of the offense that necessarily requires a culpable mental
28 state.

29 (9) The mere absence of a specified state of mind for an

1 element of a covered offense ~~shall~~**must** not be construed to mean
2 that the legislature affirmatively intended not to require the
3 prosecution to prove any state of mind.

4 (10) As used in this section:

5 (a) "Culpable" means sufficiently responsible for criminal
6 acts or negligence to be at fault and liable to punishment for
7 commission of a crime.

8 (b) "Intent" means a desire or will to act with respect to a
9 material element of an offense if both of the following
10 circumstances exist:

11 (i) The element involves the nature of a person's conduct or a
12 result of that conduct, and it is the person's conscious object to
13 engage in conduct of that nature or to cause that result.

14 (ii) The element involves the attendant circumstances, and the
15 person is aware of the existence of those circumstances or believes
16 or hopes that they exist.

17 (c) "Intoxicated or impaired" includes, but is not limited to,
18 a condition of intoxication resulting from the ingestion of
19 alcoholic liquor, a controlled substance, or alcoholic liquor and a
20 controlled substance. As used in this subdivision:

21 (i) "Alcoholic liquor" means that term as defined in section
22 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL
23 436.1105.

24 (ii) "Controlled substance" means that term as defined in
25 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

26 (iii) "Ingestion" means to have eaten, drunk, ingested, inhaled,
27 injected, or topically applied, or to have performed any
28 combination of those actions, or otherwise introduced into the
29 body.

1 (d) "Knowledge" means awareness or understanding with respect
2 to a material element of an offense if both of the following
3 circumstances exist:

4 (i) The element involves the nature or the attendant
5 circumstances of the person's conduct, and the person is aware that
6 ~~his or her~~ **the person's** conduct is of that nature or that those
7 circumstances exist.

8 (ii) The element involves a result of the person's conduct, and
9 the person is aware that it is practically certain that ~~his or her~~
10 **the person's** conduct will cause that result.

11 (e) "Negligence" means the failure to use reasonable care with
12 respect to a material element of an offense to avoid consequences
13 that are the foreseeable outcome of the person's conduct with
14 respect to a material element of an offense and that threaten or
15 harm the safety of another.

16 (f) "Recklessness" means an act or failure to act that
17 demonstrates a deliberate, willful, or wanton disregard of a
18 substantial and unjustifiable risk without reasonable caution for
19 the rights, safety, and property of others.

20 Enacting section 1. This amendatory act does not take effect
21 unless Senate Bill No. 888 of the 102nd Legislature is enacted into
22 law.