

2C:2-8

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:2-8 (Pathological intoxication - in criminal trial - defendant must prove by preponderance of evidence)

LAWS OF: 1983

CHAPTER: 306

Bill No: S1583

Sponsor(s): Perskie

Date Introduced: June 28, 1982

Committee: Assembly: Judiciary, Law, Public Safety & Defense

Senate: Judiciary

Amended during passage: Yes A amendments during passage denoted by asterisks

Date of Passage: Assembly: April 25, 1983

Date of Approval: August 26, 1983 Senate: November 29, 1982

Following statements are attached if available:

Sponsor statement: Yes (Below)

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: ~~No~~ Yes

Following were printed:

Reports: No

Hearings: No

Sponsor's statement:

This bill would require that a defendant who claims pathological intoxication as a defense to a criminal charge must prove that defense by a preponderance of the evidence.

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SENATE, No. 1583

STATE OF NEW JERSEY

INTRODUCED JUNE 28, 1982

By Senator PERSKIE

Referred to Committee on Judiciary

AN ACT concerning intoxication as a defense to a criminal charge
and amending N. J. S. 2C:2-8.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2C:2-8 is amended to read as follows:

2 2C:2-8. Intoxication. a. Except as provided in subsection d. of
3 this section, intoxication of the actor is not a defense unless it
4 negatives an element of the offense.

5 b. When recklessness establishes an element of the offense, if
6 the actor, due to self-induced intoxication, is unaware of a risk of
7 which he would have been aware had he been sober, such unaware-
8 ness is immaterial.

9 c. Intoxication does not, in itself, constitute mental disease
10 within the meaning of chapter 4.

11 d. Intoxication which (1) is not self-induced or (2) is patho-
12 logical is an affirmative defense if by reason of such intoxication
13 the actor at the time of his conduct ***[lacks substantial and ade-**
14 **quate capacity either to appreciate its wrongfulness or to conform**
15 **his conduct to the requirement of law]** * *did not know the nature*
16 *and quality of the act he was doing, or if he did know it, that **he*
16A *did not know** what he was doing was wrong*. Intoxication under*
16B *this subsection must be proved by ***[a preponderance of the]****
16C **clear and convincing* evidence.*

17 e. Definitions. In this section unless a different meaning plainly
18 is required:

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted October 18, 1982.**

****—Assembly committee amendment adopted January 27, 1983.**

19 (1) "Intoxication" means a disturbance of mental or physical
20 capacities resulting from the introduction of substances into the
21 body;

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

27 (3) "Pathological intoxication" means intoxication grossly ex-
28 cessive in degree, given the amount of the intoxicant, to which the
29 actor does not know he is susceptible.

1 2. This act shall take effect immediately.

SENATE, No. 1583

STATE OF NEW JERSEY

INTRODUCED JUNE 28, 1982

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Referred to Committee on Judiciary

AN ACT concerning intoxication as a defense to a criminal charge
and amending N. J. S. 2C:2-8.

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9 c. Intoxication does not, in itself, constitute mental disease
10 within the meaning of chapter 4.

11 d. Intoxication which (1) is not self-induced or (2) is patho-
12 logical is an affirmative defense if by reason of such intoxication
13 the actor at the time of his conduct lacks substantial and adequate
14 capacity either to appreciate its wrongfulness or to conform his
15 conduct to the requirement of law. *Intoxication under this sub-*
16 *subsection must be proved by a preponderance of the evidence.*

17 e. Definitions. In this section unless a different meaning plainly
18 is required:

Matter printed in italics thus is new matter.

19 (1) "Intoxication" means a disturbance of mental or physical
20 capacities resulting from the introduction of substances into the
21 body;

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23 substances which the actor knowingly introduces into his body, the
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28 cessive in degree, given the amount of the intoxicant, to which the
29 actor does not know he is susceptible.

1 2. This act shall take effect immediately.

STATEMENT

This bill would require that a defendant who claims pathological intoxication as a defense to a criminal charge must prove that defense by a preponderance of the evidence.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO

SENATE, No. 1583

[OFFICIAL COPY REPRINT]

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 20, 1983

In *State v. Galiano*, 178 N. J. Super. 393 (App. Div., 1981), the Appellate Division ruled that in a criminal case, the State must disprove an affirmative defense when there has been evidence supporting such defense unless the code specifically requires the defendant to prove that affirmative defense by a preponderance of evidence or some other standard. This requirement has proven troublesome to prosecutors with regard to N. J. S. 2C:2-8 which defines the defense of intoxication and which is presently silent as to whether the defendant has the burden of proving intoxication.

This bill, in its present form, is intended to be the same as the amended version of Assembly Bill No. 1544 in its amended form. These bills add language to N. J. S. 2C:2-8 to provide that a defendant who claims intoxication as a defense to a criminal charge must prove that defense by clear and convincing evidence.

As originally drafted, this bill would have required proof by a preponderance of the evidence.

The Division of Criminal Justice suggested to both the Senate and Assembly Judiciary Committees that a defendant should have to prove intoxication "by a clear and convincing evidence"; a higher standard than by the preponderance of the evidence. The rationale for this higher standard is that while a successful insanity defense releases a defendant of criminal responsibility, it still would result in a special verdict of not guilty by reason of insanity and the possible commitment of that person. A successful defense of intoxication would result, however, in an outright acquittal. This suggestion was adopted by the committee and Senate Bill No. 1583 in its amended form reflects this.

The Division of Criminal Justice also suggested that the definition of intoxication be modified. Presently, intoxication, which is not self-induced or is pathological, is a defense if as a result of the intoxication the person "lacks substantial and adequate capacity either to appreciate its wrongfulness or conform his conduct to the requirement of law."

Criminal Justice contended that the quoted language is reflective of the American Law Institute for insanity, and as such should be deleted since the ALI test was rejected by the Legislature in favor of the M'Naughton test when the penal code was enacted. Criminal Justice suggested substituting language paralleling the M'Naughton test in place of the deleted language. This suggestion was also adopted by the committee by amendment to the bill.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1583

with Senate committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 13, 1982

In *State v. Galiano*, 178 N. J. Super 393, (App. Div., 1981), the Appellate Division ruled that in a criminal case, the State must disprove an affirmative defense when there has been evidence supporting such defense unless the code specifically requires the defendant to prove that affirmative defense by a preponderance of evidence or some other standard. This requirement has proven troublesome to prosecutors with regard to N. J. S. 2C:2-8 which defines the defense of intoxication and which is presently silent as to whether the defendant has the burden of proving intoxication. In order to address this situation, Senate Bill No. 1583, as amended, would add language to N. J. S. 2C:2-8 to provide that a defendant who claims intoxication as a defense to a criminal charge must prove that defense by clear and convincing evidence.

As originally drafted, Senate Bill No. 1583 would have required that a defendant to prove intoxication by a preponderance of the evidence. "By a preponderance of the evidence" is the traditional standard placed on criminal defendants with regard to what are termed affirmative defenses such as insanity. The Division of Criminal Justice suggested that a defendant should have to prove intoxication "by a clear and convincing evidence"; a higher standard than by the preponderance of the evidence. The rationale for this higher standard is that while a successful insanity defense releases a defendant of criminal responsibility, it still would result in a special verdict of not guilty by reason of insanity and the possible commitment of that person. A successful defense of intoxication would result, however, in an outright acquittal. This suggestion was adopted by the committee.

The Division of Criminal Justice also suggested that the definition of intoxication also be modified. Presently intoxication which is not self-induced or is pathological is a defense if as a result of the intoxication the person "lacks substantial and adequate capacity either to appreciate its wrongfulness or conform his conduct to the requirement of law." Criminal Justice contended that the quoted language is reflective

of the American Law Institute test for insanity, and as such should be deleted since the ALI test was rejected by the Legislature in favor of the M'Naughton test when the penal code was enacted. Criminal Justice suggested substituting language paralleling the M'Naughton test in place of the deleted language. This suggestion was also adopted by the committee.

Bill Signings

Friday, August 26, 1983

Page Two

S-1810 sponsored by Senate President Carmen A. Orechio, D-Essex, which prohibits the consumption of alcoholic beverages while operating a motor vehicle or while riding as a passenger in a motor vehicle. The bill also prohibits having an unsealed container in the car. The law carries a mandatory fine of \$200 for a first offense.

S-1583, sponsored by former State Senator Steven P. Perskie, D-Atlantic, substituted by State Senator John F. Russo, D-Ocean, which provides that a defendant who claims intoxication which is either pathological or not self-induced as a defense to a criminal charge must prove that defense by clear and convincing evidence.

S-227, also sponsored by Senator Orechio, which mandates the establishment of a New Jersey Drug Abuse Advisory Council within the Department of Health.

S-1488, sponsored by State Senator Leonard T. Connors, Jr., R-Ocean, which permits a local authority to establish a deferred compensation for its employees.

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