MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representatives Brown (20th), Hopkins To: Judiciary B

HOUSE BILL NO. 1149

AN ACT TO PRESCRIBE CONDITIONS UNDER WHICH STRICT CRIMINAL LIABILITY SHALL BE IMPOSED AND FOR WHICH A DEGREE OF MENTAL CULPABILITY IS REQUIRED FOR COMMISSION OF AN OFFENSE; TO DEFINE TERMS RELATED TO DETERMINING THE LEVEL OF MENTAL CULPABILITY TO BE IMPOSED FOR CRIMINAL OFFENSES; TO PROVIDE THAT THE REQUIREMENT FOR THE SPECIFICATION OF THE REQUISITE DEGREE OF CULPABILITY SHALL NOT APPLY RETROACTIVELY TO CRIMINAL OFFENSES ESTABLISHED BEFORE JULY 1, 2019; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) From and after July 1, 2021, every act that creates a new criminal offense shall specify the degree of mental culpability required for commission of the offense. Any act adopted in violation of this section for which no degree of mental culpability is specified for a criminal offense shall be void.

(2) The provisions of subsection (1) of this section shall not apply to any amendment to a criminal offense that was effective on July 1, 2021, but shall apply only to new criminal offenses added to a statutory provision that existed on July 1, 2021.

SECTION 2. As used in Chapter 3, Title 97, Mississippi Code of 1972, the following words shall have the meaning ascribed in this section, unless context clearly requires otherwise:

(a) "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.

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

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

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

(e) "Culpability" or "culpable mental state" means purposely, knowingly, recklessly or with criminal negligence as defined in Section 4 of this act.

SECTION 3. (1) Except as provided in subsection (2) of this section, a person is not guilty of an offense unless both of the following apply:

(a) The individual's liability is based on conduct that included either a voluntary act, or an omission to perform an act or duty that the person is capable of performing; and

(b) The individual has the requisite degree of culpability for each element as to which a culpable mental state

is specified in the statutory provision creating and defining the offense.

(2) When the statutory provision creating and defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct, then culpability is not required for a person to be guilty of the offense. Any subpart of statutory provision which imposed strict criminal liability for an offense created thereunder, shall not impose strict criminal liability for an offense created in other subparts of the same statutory provision which do not specify a degree of culpability.

(3) (a) When a statutory provision creating and defining an element of an offense that is related to knowledge or intent or to which mens rea could fairly be applied neither specifies culpability nor indicates a purpose to impose strict criminal liability, the element of the offense is established only if an individual acts recklessly.

(b) Paragraph (a) of this subsection shall not relieve the prosecution of the burden of proving the culpable mental state required by any definition incorporated into the offense.

(4) Voluntary intoxication may not be considered in determining the existence of a mental state that is an element of a criminal offense. Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. Evidence that a person was voluntarily intoxicated may

be admissible to show whether or not the person was physically capable of performing the act with which the person is charged.

SECTION 4. (1) An individual acts purposely when it is the individual's specific intention to cause a certain result, or, when the essence of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender's specific intention to engage in conduct of that nature.

(2) An individual acts knowingly, regardless of purpose, when the individual is aware that his conduct will probably cause a certain result or will probably be of a certain nature. An individual has knowledge of circumstances when he is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if an individual subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

(3) An individual acts recklessly when, with heedless indifference to the consequences, the individual disregards a substantial and unjustifiable risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. An individual is reckless with respect to circumstances when, with heedless indifference to the consequences, the individual

disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

(4) An individual acts negligently when, because of a substantial lapse from due care, the individual fails to perceive or avoid a risk that his conduct may cause a certain result or may be of a certain nature. An individual is negligent with respect to circumstances when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that such circumstances may exist.

(5) When a statutory provision defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge or purpose are also sufficient culpability standards for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose are also sufficient culpability standards for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability standard for such element.

SECTION 5. Sections 1 through 4 of this act shall be codified in Chapter 3, Title 97, Mississippi Code of 1972.

SECTION 6. This act shall take effect and be in force from and after July 1, 2021.