

**2003 DRAFTING REQUEST**

**Bill**

Received: 12/02/2002

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Steven Foti (608) 266-2401

By/Representing: Adam

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous  
Beverages  
Criminal Law - drugs

Extra Copies:

Submit via email: YES

Requester's email: Rep.Foti@legis.state.wi.us

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Voluntary intoxication defense

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**Instructions:**

See Attached

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**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>       | <u>Reviewed</u>                                  | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|--|--------------|----------------|------------------|-----------------|-----------------|
| /P1          | mdsida<br>12/16/2002 | kfollett<br>12/16/2002<br>kfollett<br>12/17/2002 |              | _____          |                  |                 | S&L             |
| /1           | Inorthro             |  | rschluet     | _____          | mbarman          | Inorthro        | S&L             |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u>     | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|------------------|----------------|------------------|-----------------|-----------------|
|              | 01/15/2004     |                 | 12/18/2002 _____ |                | 12/18/2002       | 01/15/2004      |                 |

FE Sent For:

**<END>**

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| /1           |                      |  | rschluet     | _____          | mbarman          |                 | S&L             |

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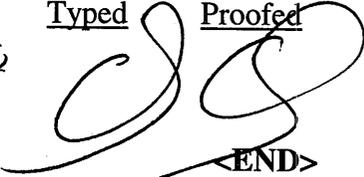
Topic:

Voluntary intoxication defense

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|--------------|----------------|-----------------|---|---|------------------|-----------------|-----------------|
|              |                | 11 kjt<br>12/17 |  |  |                  |                 |                 |

FE Sent For:

<END>

12-18-2

**Dsida, Michael**

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**From:** Raschka, Adam  
**Sent:** Monday, December 02, 2002 3:35 PM  
**To:** Dsida, Michael  
**Subject:** RE: Intoxication defense

Correct.

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Monday, December 02, 2002 3:30 PM  
**To:** Raschka, Adam  
**Subject:** RE: Intoxication defense

Just so we're on the same page -- you want to eliminate the possibility of anyone even offering this as a defense, right?

-----Original Message-----

**From:** Raschka, Adam  
**Sent:** Monday, December 02, 2002 2:35 PM  
**To:** Dsida, Michael  
**Subject:** RE: Intoxication defense

Mike, Rep. Foti would like to move forward at put this into drafting.

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Tuesday, November 26, 2002 9:19 AM  
**To:** Raschka, Adam  
**Subject:** Intoxication defense

Under s. 939.42, a person can claim a defense of voluntary intoxication if the intoxication was so severe that it rendered the person incapable of having the intent necessary to commit the crime involved. But I think that defense is rarely, if ever, used successfully. Even if it were, in cases involving death or great bodily harm, the person may still be convicted of recklessly causing that result. See ss. 939.24 (3), 940.06, and 940.23.

-----Original Message-----

**From:** Raschka, Adam  
**Sent:** Friday, November 22, 2002 4:30 PM  
**To:** Dsida, Michael  
**Subject:**

Mike,

Does Wisconsin currently forbid the use of voluntary intoxication as a defense to committing a crime? I read an article in a recent NCSL magazine that said Wisconsin does not have such a law, but 932.42 of the statutes causes me to question their assertion. If not, I would like to draft something similar to what Michigan has done with this subject matter.

<http://www.michiganlegislature.org/documents/2001-2002/billengrossed/house/pdf/2001-HEBS-5398.pdf>

Please give me a call if you have any questions.

Adam

**Adam Raschka**  
**Office of Majority Leader Steve Foti**  
**608-264-8516**  
**[adam.raschka@legis.state.wi.us](mailto:adam.raschka@legis.state.wi.us)**

## Are Poisons Lurking in Human Bodies?

Did you ever wonder what toxic pollutants might be flowing through your veins?

The Centers for Disease Control and Prevention (CDC) answers this question with the release of its first "National Report on Human Exposure to Environmental Chemicals."

The new data, which provide information on concentrations of 27 toxic substances in the U.S. population (more than 100 will be tracked in the future), is part of the National Health and Nutrition Examination Survey, the nation's most comprehensive study.

"This new resource is a significant development in the field of environmental health," says Health and Human Services Secretary Tommy G. Thompson. "It will help us to better track the exposures of Americans to chemicals in the environment and to measure the effectiveness of our public health efforts."

A team of health personnel and laboratory technicians using high-tech, state-of-the-art equipment, staff the mobile examination centers.

The exposure report provides legislators, policymakers and the general public with the first accurate glimpse of the chemicals Americans are exposed to, and will be a step toward making the connection between health and the environment. This first report includes data on substances such as lead, mercury, phthalates (chemicals used in soft plastics and cosmetics), second-hand smoke and pesticides.

Knowing what chemicals Americans are exposed to will determine the hazards and help public health officials and legislators develop sound policies. This type of monitoring has already proved vital in shaping lead poisoning prevention policy.

The study was used to show that the number of Americans with high levels of lead in their blood dropped by 78 percent between 1980 and 1984, demonstrating that prevention efforts were working.

"The good news is that blood lead levels continue to decline among children overall," says Eric Sampson of CDC's Environmental Laboratory and a co-author of the report. "However, other data show that children living in environments placing them at high risk for lead exposure remain a major public health concern."

The exposure report data shows that both lead and cotinine (a marker for second-hand cigarette smoke) levels decreased significantly, document-

ing that no-smoking policies and lead poisoning prevention work.

The report also showed that certain portions of the population may not be adequately protected from mercury and phthalates. Mercury is found in fish, and its main source is coal-fired power plants.

Phthalates are common in cosmetics, shampoo and soaps. Although the risks posed by exposure to them are unknown, some research suggests that phthalates may be linked to developmental and reproductive disorders, such as reduced sperm counts, testicular abnormalities and early puberty.

The report can be found at: [www.cdc.gov/nceh/dls/report](http://www.cdc.gov/nceh/dls/report)

## Too Drunk to Be Guilty

An enraged, drunken husband hits his wife. She ends up in the emergency room. An intoxicated, belligerent man barricades himself in his house and threatens police. But when taken to court, both plead that they were too intoxicated to know what they were doing.

Seem unbelievable? It's not. In sev-

eral states, people ranging from drunken teens trying to burn down their school to the man barricaded in his house in an armed standoff with police have argued they were too intoxicated to know what they were doing.

Michigan legislators last May followed 14 other states to slam the door on this obscure "voluntary intoxication defense."

"We're not saying this has been a successful defense," noted Michigan prosecutor Anica Letica. "What we're saying is that the repeal is better public policy."

In fact, Arkansas legislators said they excluded voluntary intoxication as a criminal defense because it was a public emergency. Such drunkenness, said lawmakers, was detrimental to the welfare and safety of their citizens, and a law excluding the defense was seen as necessary for the preservation of public peace, health and safety.

### NEVER TOO DRUNK IN THESE STATES

States that now forbid voluntary intoxication as a defense are:

|          |                |
|----------|----------------|
| Arizona  | Michigan       |
| Arkansas | Mississippi    |
| Delaware | Missouri       |
| Florida  | Montana        |
| Georgia  | Pennsylvania   |
| Hawaii   | South Carolina |
| Idaho    | Texas          |
| Oklahoma |                |



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Gen*

1 AN ACT ...; relating to: voluntary intoxication as a defense to criminal liability.

*Analysis by the Legislative Reference Bureau*

Under current law, if a person is intoxicated or drugged when he or she is alleged to have committed a crime, the intoxication or drugged condition is a defense to criminal liability if: 1) the person was involuntarily intoxicated or drugged at the time of the alleged offense and the person's condition rendered him or her incapable of distinguishing between right and wrong; or 2) the person's condition, whether voluntarily or involuntarily produced, made it impossible for him or her to have had the intent necessary to commit the crime. (Voluntary intoxication, however, is generally not a defense in the second situation if the offense charged is based on the person's criminal recklessness.) This bill eliminates the defense of voluntary intoxication.

*X*  
*X*

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 939.24 <sup>X</sup>(3) of the statutes is repealed.

3 SECTION 2. 939.42 <sup>X</sup>(intro.) of the statutes is amended to read:

1           **939.42 Intoxication.** (intro.) An intoxicated or a drugged condition of the  
2 actor is a defense only if such condition is involuntarily produced and does one of the  
3 following:

4           <sup>X</sup>  
History: 1987 a. 399.           **SECTION 3.** 939.42 (1) of the statutes is amended to read:

5           939.42 (1) ~~Is involuntarily produced and renders~~ Renders the actor incapable  
6 of distinguishing between right and wrong in regard to the alleged criminal act at  
7 the time the act is committed; ~~or.~~

8           <sup>X</sup>  
History: 1987 a. 399.           **SECTION 4.** 939.42 (2) of the statutes is amended to read:

9           939.42 (2) <sup>✓</sup> ~~Negatives~~ the existence of a state of mind essential to the crime,  
10 ~~except as provided in s. 939.24 (3).~~

11           History: 1987 a. 399.

(END)

**Northrop, Lori**

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**From:** Raschka, Adam  
**Sent:** Thursday, January 15, 2004 11:09 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB-0988/1 Topic: Voluntary intoxication defense

It has been requested by <Raschka, Adam> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-0988/1 Topic: Voluntary intoxication defense