



# *ENACTMENT NEWS*

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## **Senate Bill 361**

### **Criminal Liability – Degree of Culpability**

Effective March 19, 2015

On December 19, 2014, Governor Kasich signed into law Senate Bill 361 (Seitz), which creates certain mens rea requirements for new criminal offenses, and modifies when the default mens rea of “recklessness” applies to certain elements of existing offenses. The law will become effective March 19, 2015.

#### Required Mens Rea Specification

SB 361 requires all statutes creating new criminal offenses to specify the degree of mental culpability, or mens rea, required for the commission of the offense. If no such mens rea is specified, then the offense is void. This requirement does not apply to traffic offenses, to existing criminal offenses for which mens rea is already clearly stated, or to offenses that plainly indicate a purpose to impose strict liability. Further, the bill clarifies that the fact that one division of a section plainly indicates a purpose to impose strict liability for an offense in that division does not, by itself, indicate a purpose to impose strict liability for offenses defined in other divisions of the section that do not specify the required mens rea.

#### Default Mens Rea for Existing Offenses

Existing law establishes “recklessly” as the mens rea that is sufficient when no culpability or intent to impose strict liability is indicated. The bill clarifies that the “recklessly” default applies when language in a statute defining an element of an offense that is related to knowledge or intent, or to which mens rea could fairly be applied, neither specifies the required culpability nor plainly indicates the intent to impose strict liability.

#### Definitions of “Knowingly” and “Recklessly”

SB 361 modifies the existing definitions of the mental states of “knowingly” and “recklessly.” When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person 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. The bill clarifies that a person acts recklessly when the person disregards a “substantial and unjustifiable” risk.

#### Attempted Nucklos Fix

The Judicial Conference worked with the sponsor of SB 361 to include an amendment that would change the definition of “affirmative offense” in response to the Supreme Court’s decision in *State v. Nucklos*, 121 Ohio St.3d 3232, 2009-Ohio-792, 904 N.E.2d 512. The amendment was ultimately not included in the bill, as some legislators felt the issue should be addressed as a stand-alone bill during the next General Assembly.