

## Unintentional Intoxication: s 28

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Unintended ingestion of an intoxicant disordering the mind: s 28(1) and s 27

**The defendant says he was intoxicated<sup>1</sup> through no fault of his own at the time when he did the things which constitute the charge against him. If that is so, you will need to consider if the liquor (or drugs) which caused this intoxication<sup>2</sup> disordered his mind.**

**Every person is presumed to be of sound mind until the contrary is proved.<sup>3</sup> As the defendant contends that he was not of sound mind, he must prove that.<sup>4</sup> He does not have to prove that beyond reasonable doubt. It is enough that he satisfy you that it was more probable than not that he was not of sound mind when (insert event). Proving this involves three steps.**

**The first step is to prove that his intoxication was caused without any intention on his part.**

**The second step is to prove that the intoxication disordered his mind. The medical evidence provides guidance about the effect of drugs on how the mind functions. Among people there is a range within which normal, ordered minds function. The defendant must satisfy you that his mind was functioning so differently at the time that you can say it was disordered. You should consider all of the evidence, including the medical opinions, in considering whether his mind was disordered at the time he is alleged to have (insert essence of prosecution case).**

**The third step is to decide whether the defendant's disordered mind had one or more of the following consequences:-**

**Did it deprive him of the capacity to understand what he was doing, or did it deprive him of the capacity to control his actions, or did it deprive him of the capacity to know that he ought not to do the act<sup>5</sup> in question?**

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<sup>1</sup> When appropriate to the state of disorder, substitute “stupefied” for “intoxicated” throughout the direction.

<sup>2</sup> Substitute “stupefaction” for “intoxication” where appropriate.

<sup>3</sup> *Criminal Code*, s 26.

<sup>4</sup> *R v Foy* [1960] Qd R 225 at 240.

<sup>5</sup> Substitute “make the omission”, where appropriate.

**Again, you will be guided by the medical evidence.**

**It is not necessary to explain further what is involved in a loss of understanding of what he was doing, or of a loss of control of his actions. A loss of the ability to know what he did was wrong means that, because of intoxication, he was quite incapable of taking into account the considerations which go to make right or wrong.<sup>6</sup>**

**If the defendant satisfies you that it was more probable than not that, because of unintended intoxication, his mind was disordered so that he was deprived of one or more of these capacities, you should find him "not guilty on account of unsoundness of mind".<sup>7</sup>**

**The essence of the evidence you need to consider in deciding these issues is:**

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<sup>6</sup> *R v Porter* (1933) 55 CLR 182 at 190.

<sup>7</sup> Section 647 and *R v Smith* [1949] St R Qd 126.