

Is Intoxication ever a Defence?

Being drunk or drug-affected can cause you to do things you wouldn't normally do, so you might be wondering if this has any impact on how the court deals with offences committed while an offender was intoxicated.

If you were intoxicated when you committed an offence, this may be taken into account in some circumstances.

According to the law, intoxication includes not only alcohol but also drugs, or any other substance which can intoxicate.

Intoxication which is not self-induced is generally a defence, and a person who fits into this category will not be held criminally liable for their actions.

However, the use that can be made of intoxication will vary depending on whether or not the alleged offence requires the prosecution to prove a 'specific intent'.

Specific intent

If you are accused of committing a crime where specific intent is an element of the offence, it means that the prosecution must prove not only that you committed the act, but that you had the necessary *intention* to commit the crime.

There are in fact, two parts to offences requiring specific intent that must be proved: the physical act and the mental element of intent.

Examples of offences where specific intent is necessary include murder, kidnapping and recklessly causing grievous bodily harm with intent.

If a person who was intoxicated at the time that they killed

another person is acquitted of murder, self-induced intoxication cannot be used to acquit them of manslaughter.

If an offence falls within the specific intent category, evidence of intoxication is [allowed in court](#).

Evidence of self-induced intoxication can be taken into account when determining whether or not the person had the required intention to commit the crime.

However, if the person resolved to commit the offence before becoming intoxicated, or did so in order to strengthen their resolve, this does not apply.

In other words, the prosecution must prove that, despite being intoxicated, the accused person intended to commit the crime.

So if a person, although intoxicated, can still be proved to have had the requisite intent to commit the crime, they may be convicted of an offence of specific intent.

If you are convicted of a crime that you committed while intoxicated, intoxication at the time of the offence cannot be considered during sentencing to allow you a more lenient punishment, according to the [Crimes \(Sentencing Procedure\) Act](#).

Other offences

Some offences don't require a mental element – the offence is complete by the action.

For these offences, intoxication is not a defence, unless it was not self-induced.

Intoxication cannot be taken into account to consider whether or not the relevant behaviour was voluntary.

In situations where intoxication forms part of the offence, such as drink-driving, self-induced intoxication will

obviously not be taken into account as a mitigating factor.

What about the one-punch laws?

The [one-punch laws](#) that were introduced the beginning of the year amped up the potential penalties for drunken assaults resulting in death, which now involve mandatory sentencing of at least 8 years in jail and a maximum of 25 years.

The legislation specifically targets those who are intoxicated as part of the NSW governments move to crack down on drug and alcohol-fuelled violence.

According to the [Crimes Act 25A](#), a person who assaults another by intentionally hitting them with their body or an object resulting in death can receive 20 years imprisonment.

If, however the offender was intoxicated at the time of the incident, they may be sentenced instead to a prison sentence up to 25 years but with a minimum of 8 years.

As counter-intuitive as it may seem, far from being a defence, intoxication actually increases the severity of the crime, and increases the punishment.

The exception is of course, if the intoxication was not self-induced.

Self defence

If a person committed an offence while acting in self-defence, their state of intoxication may be considered.

But it can only be considered in determining if the person believed they were in danger and needed to defend themselves – it cannot be considered when determining if their response to the perceived threat was reasonable.

This means that the fact a person was intoxicated when they wrongly concluded that they were in danger; however how this

person responded to the perceived danger, whether real or not, cannot be excused by intoxication.

Their response must be judged against that of the reasonable, and sober, person.