

SENATE BILL REPORT

ESSB 5305

As Passed Senate, February 11, 1998

Title: An act relating to controlling drugs used to facilitate rape.

Brief Description: Controlling drugs used to facilitate rape.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Fairley, Wojahn, Goings, McAuliffe, Patterson and Kohl).

Brief History:

Committee Activity: Health & Long-Term Care: 2/7/97, 2/25/97 [DPS]; 1/30/98 [DPA].
Passed Senate, 3/19/97, 49-0.
Passed Senate, 2/11/98, 42-0.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: Do pass as amended.

Signed by Senators Deccio, Chair; Wood, Vice Chair; Benton, Fairley, Franklin, Strannigan and Wojahn.

Staff: Jonathan Seib (786-7427)

Background: Flunitrazepam, brand named Rohypnol, is a potent tranquilizer which produces a sedative effect, amnesia, muscle relaxation, and a slowing of psychomotor responses. Sedation occurs 20 to 30 minutes after administration and lasts for several hours. Illicit use of the drug in the United States has reportedly been on the increase since the early 1990s. Particular concern has been expressed over the use of the drug to sedate women prior to raping them.

Under the state Uniform Controlled Substances Act, the degree of control exercised over a controlled substance is dependent on the potential for abuse and the degree of psychic or physical dependency which may be caused by the substance. Substances are placed in five schedules to reflect the amount of control necessary, with schedule I being the most controlled, and schedule V being the least controlled. The penalty for violations involving a controlled substance varies depending on the schedule on which the substance is placed.

Flunitrazepam is currently listed as a schedule IV substance under the state Uniform Controlled Substances Act.

Since 1996, several actions were taken at the federal level, including the passage of legislation, to restrict and more severely penalize the illicit use of Flunitrazepam.

Depo-Provera, or medroxyprogesterone acetate, is a drug that, when administered to men, acts on the brain to inhibit hormones that stimulate the testicles to produce testosterone. Decreasing testosterone levels lowers the men's sex drive and eventually causes their testicles

to shrink. The effects of the drug wear off if the treatment is stopped. In women, medroxyprogesterone acetate acts as a contraceptive. Though not used in a penal context, several European countries have studied the use of the drug on sexual offenders, finding that its use has decreased the rate of recidivism for male offenders.

Summary of Bill: The criminal penalties for unlawful acts involving Flunitrazepam are made the same as the current penalties for unlawful acts involving controlled substances classified under Schedule II that are narcotics.

It is specified that the crime of second degree rape includes sexual intercourse with a person incapable of consent due to controlled substance-induced physical helplessness or mental incapacity caused by the perpetrator.

It is specified that the crime of indecent liberties includes sexual contact with a person incapable of consent due to controlled substance-induced physical helplessness or mental incapacity caused by the perpetrator.

Sexual assault investigators must receive training regarding the use of sedating substances in committing sexual assaults.

A defendant who is convicted of rape in the first degree, rape in the second degree, rape of a child in the first degree or a second conviction for child molestation in the first degree, and who is not determined to be a persistent offender, must be sentenced to treatment, including the administration of Medroxyprogesterone acetate, to reduce the likelihood of reoffense upon release.

At least 30 days prior to the offender's release, a hearing is held to determine whether imposition of the treatment regimen, including the administration of Medroxyprogesterone acetate. The offender is afforded full due process rights at the hearing including the right to counsel, the right to offer witnesses and experts, and the right to cross examine any witnesses who testify for the state.

If the court determines by a preponderance of the evidence that the treatment regimen, including the administration of medroxyprogesterone acetate, would reduce the likelihood of the offender reoffending, it shall impose the treatment to begin prior to the offender's release from custody. The treatment may be ordered for as long as the court feels is necessary. If the court determines that the treatment regimen is not necessary, imposition is suspended, but may be reimposed if the court subsequently determines that the treatment would be helpful.

Imposition of and successful use of the treatment regimen shall in no way reduce the time in confinement an offender would otherwise serve in custody.

An offender may seek termination of the treatment regimen, but must show by clear and convincing evidence that the criteria for maintaining the treatment program no longer exist and that the treatment program is no longer necessary.

Failure to maintain treatment as ordered is a level V, class B felony.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: None.

Testimony Against: None.

Testified: No one.

House Amendment(s): The House striking amendment makes the following changes to the bill:

- Provisions providing for chemical treatment for certain sex crimes are removed;
- Specifies that the crime of second degree rape includes sexual intercourse with a person incapable of consent by reason of being physically helpless or mentally incapacitated, including helplessness or incapacity induced by a controlled substance, and requires that the perpetrator know of the helplessness or incapacity;
- Specifies that the crime of indecent liberties includes sexual contact with a person incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless, including incapacity or helplessness induced by a controlled substance, and requires that the perpetrator know of the defect, incapacity, or helplessness.
- Adds a severability clause;
- Changes the effective date to July 1, 1998.