

HOUSE BILL REPORT

ESSB 5305

As Reported By House Committee On:
Criminal Justice & Corrections

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:

Criminal Justice & Corrections: 2/24/98, 2/25/98 [DPA].

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 12 members: Representatives Ballasiotes, Chair; Benson, Vice Chair; Koster, Vice Chairman; Quall, Ranking Minority Member; O'Brien, Assistant Ranking Minority Member; Cairnes; Dickerson; Hickel; McCune; Mitchell; Radcliff; and Sullivan.

Staff: Mark Hamilton (786-7310).

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. The drug has been used to sedate women prior to raping them.

Under the state Uniform Controlled Substances Act, the degree of restriction 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 restricted. The penalty for violations involving a controlled substance varies depending on the schedule on which the substance is placed.

Flunitrazepam is a Schedule IV substance under the state Uniform Controlled Substances Act.

In 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*.

Summary of Amended Bill: *Crimes related to Flunitrazepam.* 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.

Specifically, the manufacture, delivery, or possession with intent to manufacture or deliver *flunitrazepam* is criminalized. Enhanced penalties are permitted for distributing *flunitrazepam*. Finally, those convicted of manufacture, delivery, or possession with intent to manufacture or deliver *flunitrazepam* are not eligible for "first-time offender" status in sentencing.

Sex Crimes Redefined. The crimes of rape in the second degree and indecent liberties are redefined to include instances in which substance-induced physical helplessness or mental incapacity is caused by the perpetrator.

Investigatory Training. Provision is included for training of personnel who investigate sex crimes to recognize the presence of sedating substances and chain of custody procedures for use of such evidence in court.

Amended Bill Compared to Original Bill: Removes provisions relating to chemical treatment for certain sex crimes. Rewords the language clarifying the definitions of the crimes of rape in the second degree and indecent liberties to include circumstances when a victim's helplessness or incapacity is induced by a controlled substance and the perpetrator has knowledge of that helplessness or incapacity. Adds effective date of July 1, 1998. Adds severability clause.

Appropriation: None.

Fiscal Note: Requested on February 25, 1998.

Effective Date of Amended Bill: The bill takes effect on July 1, 1998.

Testimony For: (Pro, with concerns) *Regarding the substance-induced sexual assault provisions:* Because Rohypnol is odorless and tasteless when mixed with a drink, Rohypnol-induced rapes are becoming more prevalent throughout the state. However, while it is important to address this problem, the rapist is not always the person who gives the victim the drug. Thus, the bill would not cover accomplices or gang-style rapes.

(Neutral, with concerns) *Regarding the sex offender treatment provisions:* Depo-provera is not a "magic bullet" for treatment of all sex offenders, but is useful adjunct to

treatment. Its best effect is seen on those who are obsessive-compulsive, who are more typically pedophiles than rapists. Antiandrogen treatments are most effective on those with repetitious fantasies and behavior. Existing laws could encompass the type of treatment that this bill would permit. Compliance and monitoring would be problematic areas.

Testimony Against: *Regarding the sex offender treatment provisions:* Medical treatment should not be court-mandated, but should be prescribed on an individual basis in conjunction with a total treatment plan. It should be based on medical criteria, not imposed by a court. The Senate's amendment (adding Sec. 4) does not fit within the title of the bill, and would fail scope and object review. The amendment is unconstitutional, because the government may not require the involuntary injection of a citizen. As there is no severability clause, if one section were declared invalid, the entire bill could be held invalid.

Testified: *Pro (with concerns):* Suzanne Brown, Washington Coalition of Sexual Assault Programs. *Expressing Concerns:* Beth Anderson, Department of Corrections; Dr. Arthur Gordon, Twin Rivers Corrections Center; Maureen Saylor, R.N., M.A., representing the Washington chapter of the Association for the Treatment of Sexual Abusers, and Lang Taylor, M.A., both Certified Sex Offender Treatment Providers. *Con (Sec. 4 only):* Jerry Sheahan, American Civil Liberties Union of Washington.