

**HOUSE BILL ANALYSIS
ESSB 5305**

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).

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

Hearing Date: February 24, 1998.

Prepared By: Mark G. Hamilton, Counsel (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*.

Medroxyprogesterone acetate, commonly known as Depo-Provera 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 a man's sex drive and eventually causes his testicles to shrink. The effects of the drug wear off if usage is discontinued. 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 recidivism for male offenders.

Summary: *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.

Chemical Treatment for Certain Sex Offenses. A court may impose, as a condition of release for non-persistent offenders, treatment the court finds appropriate to reduce the likelihood of recidivism of the offender. Such treatment may include the use of *medroxyprogesterone acetate*, together with any other mental health or chemical dependency treatment. This applies to those convicted of (1) rape in the first or second degree; (2) rape of a child in the first degree; and (3) child molestation in the first degree, if it is the offender’s second conviction of child molestation in the first degree.

Hearing prior to 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 determines 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 and successful use of the treatment regimen in no way reduces 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.

Rules Authority:

No.

Fiscal Note:

Requested for engrossed substitute bill; available for original bill.

Effective Date:

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