

# FINAL BILL REPORT

## ESSB 5305

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### PARTIAL VETO

C 290 L 98

Synopsis as Enacted

**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).

**Senate Committee on Health & Long-Term Care**  
**House Committee on Criminal Justice & Corrections**

**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.

A person is guilty of rape in the second degree when the person engages in sexual intercourse with another person when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated.

A person is guilty of indecent liberties when he knowingly causes another person who is not his spouse to have sexual contact with him or another by forcible compulsion when the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless.

**Summary:** 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 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.

It is specified 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.

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

**Votes on Final Passage:**

Senate	42	0	
House	98	0	(House amended)
Senate	47	0	(Senate concurred)

**Effective:** July 1, 1998

**Partial Veto Summary:** Provisions regarding the crimes of second degree rape and indecent liberties in situations involving the use of a controlled substance are vetoed. Also vetoed is the requirement that sexual assault investigators receive training regarding the use of sedating substances in committing sexual assaults.