



**House  
Legislative  
Analysis  
Section**

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**SCHEDULE I CONTROLLED  
SUBSTANCES: ADD FLUNITRAZEPAM**

**House Bill 6067 as passed by the House  
Second Analysis (10-21-96)**

**Sponsor: Rep. Eric Bush  
Committee: Health Policy**

**THE APPARENT PROBLEM:**

*Flunitrazepam*, produced under the trade name Rohypnol, is a potent hypno-sedative member of the class of drugs known as *benzodiazepines*. These drugs are sedative in nature (causing drowsiness, lightheadedness, dizziness, confusion, and vertigo), with Valium being the most commonly known member of this class. However, gram for gram, Rohypnol is between 7 and 20 times stronger than Valium.

Because *Flunitrazepam*/Rohypnol is colorless, tasteless, and odorless and dissolves quickly in liquids, it has been implicated in an increasing number of rapes across the country. In these cases the assailant has apparently used the drug to incapacitate the victim by placing a dose of it in the victim's drink. Once the drug has been ingested, particularly if mixed with alcohol, the victim, within 10 - 20 minutes, is effectively unable to resist the rapist's attack. As a result of this misuse of the drug, the drug has become known in some circles as the "date-rape drug."

In addition, *flunitrazepam*/Rohypnol has increased in popularity as a recreational drug because of its low cost (between \$1.50 and \$5.00) and its effect when combined with alcohol or other drugs.

Because of its potential for abuse as an aid to rapists, as well as its increasing misuse as an enhancement for alcohol or other drugs, it has been suggested that *flunitrazepam*/Rohypnol should be made a schedule I controlled substance and penalties for its possession, sale or manufacture should be increased.

**THE CONTENT OF THE BILL:**

House Bill 6067 would amend the Public Health Code to add a drug called *flunitrazepam*, a.k.a. Rohypnol, to the list of Schedule I controlled substances. Currently, the drug *flunitrazepam* is administratively classified as a schedule IV drug. The bill would list *flunitrazepam* in a class of substances that have a depressant effect on the central nervous system and would include Rohypnol, methaqualone, Quaalude, and mecloqualone as trade or other names.

Schedule IV drugs are those that have a low potential for abuse or have a currently accepted medical use and as such carry lower penalties for the manufacture or possession with intent to deliver. Schedule I drugs, on the other hand, are those that have a high potential for abuse or have no approved medical use in the USA. The current punishment for manufacture or possession with intent to deliver a Schedule IV drug is up to four years imprisonment and/or a fine of up to \$2,000. The bill would further provide a more severe penalty for manufacture or possession with intent to deliver of *flunitrazepam* than is currently provided for other Schedule I controlled substances. Under the bill, the penalty would be imprisonment for 10-15 years, a fine of up to \$20,000, or both. In addition, the bill would enhance the penalty for simple possession of *flunitrazepam*, making it punishable by imprisonment for 3 to 5 years, a fine of up to \$4,000, or both.

The bill would also make it a felony to administer any dosage of *flunitrazepam* to another person without that person's consent, provided that the person delivering the drug also either committed, attempted to commit, or intended to commit first, second, or third degree criminal sexual conduct, or assault with intent to commit criminal sexual conduct. In such cases it would not matter whether the person receiving the drug was aware of its delivery, nor would it matter whether the person delivering the drug had been convicted of the criminal sexual conduct charge. An individual convicted of this felony would be subject to a mandatory prison sentence of no less than 13 years and four months and no more than 20 years. In addition, during the course of the serving his or her sentence, he or she would not be eligible for probation, suspension of sentence, or parole, nor would he or she be allowed to receive any reduction in the sentence through disciplinary credits or any other form of sentence credit reduction. Any term of imprisonment imposed for this violation would be required to run consecutively to any other term of imprisonment imposed for any other felony. Furthermore, a conviction and sentence for unconsented delivery of *flunitrazepam* could be given in addition to any other conviction and sentence imposed for any other

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violation arising out of the same transaction. For example, a person could be convicted and sentenced for both the unconsented delivery of *flunitrazepam* and for the commission of the underlying CSC crime arising out of the same transaction.

The bill would also remove the substance 2-methylamino-1-phenylpropan-1-one, a.k.a. CAT, methcathinone, or ephedrone, from the list of hallucinogenic substances and place it in a new category for substances that have a stimulant effect on the central nervous system. Finally, the bill would also make some technical changes to make the references to certain drugs clearer by changing the manner in which they are listed.

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### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, to the extent that the bill would increase the number of offenders sentenced to prison or increased the lengths of prison stays, it would increase costs for the Department of Corrections. (10-17-96)

### **ARGUMENTS:**

#### **For:**

According to the Miami Poison Control Center, *flunitrazepam/Rohypnol* has been implicated in approximately 300 rapes in Florida during the first six months of this year. Because the drug causes anterograde amnesia (the user's memory of what occurred during the time he or she was under the drug's influence is clouded or non-existent), can easily be given to an unsuspecting victim, and effectively eliminates the potential victim's ability to resist, it is an ideal drug for a would be rapist to use on an intended victim. In addition, because the drug is cheap and is manufactured by a pharmaceutical company (thus making it safe in the eyes of many) it is also subject to misuse by people who take it as a recreational drug.

In any event, however the drug is being misused, this sort of activity is clearly the type of action that the laws of this state should attempt to prevent. Making *flunitrazepam/Rohypnol* a Schedule I controlled substance and increasing the penalties for possession, sale and/or manufacture of the drug will have a chilling effect on its misuse, both as a recreational drug and as a tool for would be rapists. The drug clearly meets the criteria for Schedule I, as it has a high (and increasingly higher) potential for abuse and has no medically accepted use in the United States.

#### **Response:**

According to Hoffmann-La Roche, the pharmaceutical company that produces *flunitrazepam/Rohypnol*, the drug does have legitimate medically accepted uses. *Flunitrazepam/Rohypnol*, since its introduction in 1971, has been licensed for use in 64 countries around the world. It is prescribed by physicians worldwide and used by more than a million people each day as a sedative for treatment of severe sleep disorders or as a pre-anesthetic for some patients prior to surgical or diagnostic procedures.

According to Hoffmann-La Roche, *flunitrazepam/Rohypnol* has not been marketed in the United States, because at the time it was introduced the company felt that the U.S. market for this type of medication was already saturated with similar products, including one offered by Hoffmann-La Roche itself.

#### **Against:**

This legislation, by rescheduling one particular drug, will not help to prevent drug-aided rapes. While undoubtedly the use of any drug for the purpose of assisting rapists to overcome their victims is not to be tolerated, it is the behavior (using a drug to incapacitate someone and then to take advantage of that person sexually) that should be punished. Rescheduling *flunitrazepam* is hardly the best method sending the message that drugging someone and then raping them is not to be tolerated.

Rescheduling this particular drug will merely lead to the use of other drugs with similar sedative effects for the same improper purpose. In fact, according to the testimony of the drug's manufacturer, there are several other drugs that could and are being used for the same purpose with similar effect (gamma hydroxy butyrate, for example). At the very least, a more careful examination should be made regarding what other drugs have the potential for such misuse so that they could be included in the bill as well.

#### **Response:**

While other drugs *may* be used for similar purposes, this drug is known to be the drug of choice for those individuals who wish to incapacitate and then rape someone. This law is intended to halt or at least make more difficult the use of and access to this drug. Furthermore, the bill's provisions make a felony of and provide a strong penalty for the administration of any amount of *flunitrazepam* to an individual without their consent for the purpose of raping that individual. The significant penalty established for this felony will help to deter such individuals from committing these crimes.

#### **Rebuttal:**

The provisions of the bill making it a felony to use *flunitrazepam* as an aid to commit a CSC crime are not rational and will cause an unreasonable variation in

sentencing for substantially similar crimes. Under the bill, a rapist who used *flunitrazepam* to overcome his or her victim could face a mandatory sentence of no less than 13 years and four months and no more than 20 years; on the other hand, a rapist who used a different drug to overcome his or her victim would face no mandatory sentence and could receive no more than 15 years imprisonment. A far more reasonable and probably more effective change in the law would be to apply the punishment provided in the bill for the use of *flunitrazepam* in the commission a CSC crime to all such crimes regardless of what drug was used to incapacitate the intended victim.

Furthermore, the company that makes *flunitrazepam* is already attempting to make the drug less appealing as a rapist's tool by giving it a noticeable taste or odor, so as to limit its potential to be given to someone without their being aware of it. In addition, the company has attempted to prevent diversion of its product by decreasing its distribution to Mexico and Central America (apparently the lawful origin of much of the drug that enters the United States). As a result, potential rapists may already be turning to different drugs to subdue their victims which would allow them to essentially circumvent the provisions of this bill.

#### **POSITIONS:**

The Prosecuting Attorneys Association of Michigan supports the concept of the bill. (10-14-96)

Hoffmann-La Roche, a pharmaceutical company, opposes rescheduling *flunitrazepam*/Rohypnol as a Schedule I controlled substance. (10-21-96)

Analyst: W. Flory

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.