

STORAGE NAME: h0091s1.cp
DATE: March 10, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 91

RELATING TO: Controlled Substances

SPONSOR(S): Committee on Crime and Punishment and Representatives Ball, Stafford, K. Pruitt, and others

STATUTE(S) AFFECTED: Sections 893.03, 893.13, 893.135, 921.0012, F.S.

COMPANION BILL(S): SB 92 (identical)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

Last session, the Legislature retained flunitrazepam (Rohypnol) in Schedule IV of the Florida controlled substance schedules but provided that penalties for Schedule I substance offenses shall be applied to unlawful activity that involved flunitrazepam.

Flunitrazepam is not approved for medical use in the United States. In Europe and Latin America, flunitrazepam is used for the treatment of sleep disorders and as a pre-anesthetic medication to assist in the induction and maintenance of anaesthesia. US Customs now prohibits its importation. The substance is in Schedule IV in the U.S. substance control schedule.

Because of its strong sedative-hypnotic and amnesiac effects, flunitrazepam has become particularly attractive to sex offenders as a means of sedating people in order to commit sexual battery on them. The media refer to rohypnol, or "roofies" as it is known on the street, as the "date rape" drug. According to some Florida prosecutors, the substance is now contributing to DUI incidents at an alarming rate.

This past summer, the Attorney General used his emergency rule making powers to administratively place flunitrazepam in Schedule I. Unless the Legislature passes legislation rescheduling flunitrazepam into Schedule I, the Attorney General's Rule expires June 30, 1997.

The committee substitute transfers flunitrazepam from its current placement in Schedule IV and places it in Schedule I. It also creates the offense of trafficking in flunitrazepam, and provides various penalties, ranging from a first degree to a capital felony.

The committee substitute places four unscheduled substances into Schedule I, one substance into schedule II, and another substance into Schedule IV.

The Criminal Justice Estimating Conference found this the committee substitute's fiscal impact was indeterminate, but expected to be minimal.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. Controlled Substance Scheduling Criteria:

Section 893.03, F.S., classifies controlled substances into five categories, or schedules, to regulate their manufacture, distribution, and dispensation, while minimizing collateral interference with the legitimate business of doctors, pharmacists, and drug manufacturers. Florida's schedules are modeled after Title 21, Code of Federal Regulations, pt. 1308. Generally, the Florida Legislature's classification of controlled substances to the schedule parallels the classification at the federal level.

Schedule I substances are the most strictly controlled. They have a high potential for abuse and no currently accepted use in the United States. These substances are very difficult, if not impossible, to prescribe; and include such drugs as heroin, LSD, marijuana, and peyote.

Relative to Schedule I substances, Schedule II substances are easier to prescribe, but still have a high potential for abuse, have severely restricted medical use, and may pose a danger of severe psychological or physical dependence. Cocaine, morphine, amphetamine, methamphetamine, and PCP are examples of Schedule II substances. Substances in Schedule III have less potential for abuse than the substances in Schedules I and II, and have some accepted medical use. These substances may lead to moderate or low physical dependence or psychological dependence. Schedule III substances include limited quantities of some narcotic drugs, like codeine, and certain barbiturates.

Schedule IV substances have a relatively low potential for abuse and have currently acceptable medical uses. Use of these substances may lead to limited physical or psychological dependence. These substances include phenobarbital and diazepam (Valium).

Schedule V substances require the least regulation, as they pose the least threat for potential abuse and have a currently accepted medical use. However, abuse may lead to limited physical or psychological dependence. Substances in Schedule V include pyrovalerone, a stimulant, and narcotic compounds containing limited quantities of narcotic drugs combined with non-narcotic active medical ingredients.

2. Attorney General Delegated Authority to Reschedule Controlled Substances:

Section 893.035(2), F.S., gives the Attorney General the authority to adopt rules to schedule and transfer between schedules controlled substances upon a finding that a substance has the potential for abuse. The Attorney General must report such a rule change to the Legislature by March 1 of each year. s. 893.035(9), F.S. The Legislature must then adopt the rule change or else it expires on June 30th. s. 893.035(9), F.S.

3. Penalties for Controlled Substance Sale, Purchase, Possession and Trafficking:

Section 893.13, F.S., provides various penalties for unlawful sale, purchase and possession of controlled substances. Penalties are generally greater for substances

found in Schedules I and II, and less severe for substances found in Schedules III and IV. For example, the unlawful sale or purchase of a Schedule I and II drug is punishable as a second degree felony. s. 893.13(1)(a)1 & (2)(a)1, F.S. The unlawful sale or purchase of a Schedule III or IV drug is a third degree felony. s. 893.13(1)(a)2. & (2)(a)2., F.S.

Section 893.135 provides penalties for trafficking in various controlled substances. The penalties vary depending on the substance and the amount of the substance. The penalties range from a first degree felony to a capital felony. Some examples of the types of controlled substances covered by the trafficking statutes include: cannabis, cocaine, amphetamine, and methaqualone.

4. Flunitrazepam (Rohypnol):

Flunitrazepam is used for the treatment of sleep disorders and as a pre-anesthetic medication to assist in the induction and maintenance of anaesthesia. As a sedative, it is ten times more powerful than Valium. Flunitrazepam is known to have a rapid onset and duration of action. Because of its strong sedative-hypnotic and amnesiac effects, flunitrazepam has become particularly attractive to sex offenders as a means of sedating people in order to commit sexual battery on them. The media refer to rohypnol, or "roofies" as it is known on the street, as the "date rape" drug. According to some Florida prosecutors, the substance is now contributing to DUI incidents at an alarming rate.

Flunitrazepam is not approved for medical use in the United States. It is marketed and sold in 64 countries under the name "rohypnol" by the Swiss-based Hoffman-LaRoche. The company has not applied for FDA approval. According to the Treasury Department, rohypnol is smuggled into this country through South Florida and Texas from Mexico and Colombia where the drug is legally sold. Foreign tourist had been permitted to bring their own supply into this country of the drug, with a prescription. The Department of Treasury's Customs Service has ended this practice after receiving reports of widespread abuse.

a. *Florida Legislative History.* Last session, the Legislature retained flunitrazepam in Schedule IV of the Florida controlled substance schedules, s. 893.03(4), F.S. See Chapter 96-360, Laws of Florida. However, that law provided that, notwithstanding any other law, penalties for offenses in 893.03(1)(a) (Schedule I substances), shall be applied to unauthorized activity in s. 893.13, F.S., that involve flunitrazepam. See Chapter 96-360, Laws of Florida; s.893.13(12), F.S. (1996 Supp.)

b. *Attorney General's Rule.* Over the summer, the Attorney General took public testimony to determine whether to reschedule flunitrazepam through administrative rule. (The Legislature has delegated to the Attorney General the power to reschedule controlled substances through administrative rule. See page 2, above). After holding a public hearing, the Attorney General made the statutorily required findings and administratively placed flunitrazepam in Schedule I. Rule 2-40.002, F.A.C.

The Attorney General made the following findings. There is a widespread flunitrazepam abuse problem in Florida; the reported uses by sexual offenders places women in danger; increasingly it has become a popular drug among children and young adults, and, it is now in our schools; there is an increasing danger to motorist because the

substance's hypnotic-sedative effect render those under the influence of the substance unfit to drive. Report, *In Re: Proposed Rule*, AG No. 96-200625, pp. 2-3.

The Attorney General's Rule expires June 30, 1997, unless the Legislature passes legislation rescheduling flunitrazepam into Schedule I. s. 893.035(9), F.S.

c. *Federal Action*. Flunitrazepam is in Schedule IV in the U.S. substance control schedule. In 1996, a bill was introduced in the U.S. Congress to place flunitrazepam into Schedule I. The Congress kept flunitrazepam on Schedule IV but passed legislation making it a felony offense to use a controlled substance in the commission of a crime. As part of this legislation, the US Congress instructed the DEA to report back within 6 months on whether to reschedule flunitrazepam. H.R. 4137; Public Law 104-305. (Florida currently has a statute which aggravates any sexual battery committed by an offender who uses a controlled substance on an unwitting victim. s. 794.001(4)(d), F.S.)

d. *Other States*. In the past two years, Oklahoma, Idaho and Minnesota have placed flunitrazepam into Schedule I of their respective controlled substance acts.

5. Other Substances Scheduled in the Bill:

a. *Gamma-hydroxy-butyrate (GHB)*. GHB is believed to be a neurotransmitter, found naturally in every cell in the human body. It was first synthesized by a French scientist about 30 years ago. During the 1980s, GHB was available over the counter and popular among body-builders who believed it stimulated growth hormone release. In 1990, the San Francisco Bay Area Regional Poison Control Center released an investigative study describing various cases of acute poisonings from GHB. That year, the FDA issued a public warning on the use of GHB. The DEA reports that GHB "likely" contributed to three deaths within the past year.

GHB can cause intense drowsiness, abrupt sedation and deep sleep. It has been gaining popularity as a "recreational" drug offering alcohol like sensation. GHB is reputed to have a prosexual effect, gaining the label of a "sex drug". It is legal in Europe, and many doctors there prescribe it for treating alcoholism and narcolepsy. GHB is currently not scheduled in Florida.

GHB is not scheduled under the federal Controlled Substances Act. The DEA is currently collecting and reviewing data to support the placement of GHB in the Controlled Substances Act. Georgia and Rhode Island have placed GHB in Schedule I of their state controlled substances act.

On February 18, 1997, the FDA reissued its warning on GHB. The FDA warning stated: "Despite renewed claims that it is legal, GHB continues to be an unapproved and potentially dangerous drug and cannot be legally marketed in the U.S."

b. *Alpha-ethyltryptamine*. Alpha-ethyltryptamine is a central nervous system stimulant and a "tryptamine hallucinogen". It was marketed by Upjohn in the early 1960s as an antidepressant. Its street name is "Trip" or "ET". The death of a 19 year old girl in Arizona was attributed to acute alpha-ethyltryptamine toxicity. *Drug Resource Guide*, Florida National Guard. This substance is currently not scheduled in Florida. The DEA has used its administrative rule making powers to place this substance in Schedule I of its Controlled Substances Code. 21 C.F.R. s. 1308.11.

c. *2-Amino-5-phenyl-2-oxazoline (Aminorex)*. This substance produces a very long-lasting experience of about 16 hours that is said to be similar to caffeine and nicotine by increasing attention and intellectual capacities. It does not have any known therapeutic potential, rather it is called an "intellectual performance-enhancing drug." This substance is currently not scheduled in Florida. The DEA has used its administrative rule making powers to place this substance in Schedule I of its Controlled Substances Code. 21 C.F.R. s. 1308.11.

d. *4-Bromo-2, 5-dimethoxyphenethylamine*. This substance has been described as a "potent, synthetic hallucinogen." It is otherwise known as "Nexus", and is being sold in capsule form in many adult book and video stores as it is said to alleviate impotence and diminished libido. An oral dose of 10-20 mg. produces a state of intoxication and euphoria that lasts for 6 to 8 hours. This substance is currently not scheduled in Florida. The DEA has used its administrative rule making powers to place this substance in Schedule I of its Controlled Substances Code. 21 C.F.R. s. 1308.11.

e. *Methcathinone*. This substance is known by its street name "Cat". It is a "designer drug" known to have similar effects to those of the popular "Ecstasy". It is reported to give the user a euphoric high, increased alertness and creativity, as well as increased sexual arousal. Side effects however include auditory hallucinations, anxiety, depression, increased heart rate and high blood pressure. Death due to ventricular fibrillation has been reported. This substance is currently not scheduled in Florida. The DEA has used its administrative rule making powers to place this substance in Schedule I of its Controlled Substances Code. 21 C.F.R. s. 1308.11.

f. *Fenfluramine*. Fenfluramine has gained popularity in recent years as a "diet drug". The substance increases serotonin levels in the brain, producing a feeling of satiety after a meal. This substance has no known abuse potential at doses of 30 to 60 mg per day and is very short acting. However, at doses of 80 to 400 mg per day it has been associated "with euphoria, derealization and perceptual changes, with a potential for abuse." *Hospital Medicine*, November 1996, p. 34. This substance is currently not scheduled in Florida. The DEA has used its administrative rule making powers to place this substance in Schedule IV of its Controlled Substances Code. 21 C.F.R. s. 1308.11.

B. EFFECT OF PROPOSED CHANGES:

The committee substitute reclassifies flunitrazepam (Rohypnol), from schedule IV to Schedule I of the controlled substance listed in section 893.03, F.S. It deletes language inserted by the Legislature last year which provided Schedule I penalties for flunitrazepam, despite its placement in Schedule IV. It creates the offense of trafficking in flunitrazepam, and provides various penalties, ranging from a first degree to a capital felony.

The committee substitute makes it a first degree felony to sell, purchase or possess any mixture containing any of the substances in parts (a) and (b) of Schedule I.

The committee substitute also places four other substances in Schedule I; one substance in schedule II; and one substance in Schedule IV. These substances are currently not listed in the Schedules of controlled substances.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

By scheduling and rescheduling various controlled substances, the committee substitute will make presently lawful activity unlawful and unlawful activity will be punished more severely.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

1. Section One:

Amends section 893.03, F.S., by adding flunitrazepam; alpha-ethyltryptamine; 2-amino-5-phenyl-2-oxazoline (Aminorex); 4-Bromo-2, 5-dimethoxyphenethylamine; methcathinone to the list of Schedule I controlled substances. It adds gamma-hydroxy-butyrate (GHB) to the list of Schedule II controlled substances. It adds fenfluramine to the list of Schedule IV controlled substances and it removes flunitrazepam from that list.

2. Section Two:

Amends section 893.13, F.S., by modifying existing first degree felony offenses to include the sale, purchase or possession of any mixture containing any of the substances in parts (a) and (b) of Schedule I. Deletes language which provided that any unlawful activity involving flunitrazepam would be subject to the same penalties as violations for part (a) of Schedule I.

3. Section Three:

In section 893.13(g), F.S., creates the offense of trafficking in flunitrazepam which occurs when a person knowingly sells, purchases, manufactures, delivers or brings into this state, or is in possession of 4 grams or more of flunitrazepam. Provides various penalties and fines ranging from a first degree to a capital felony.

4. Section Four:

Amends section 921.0012, F.S., by placing the new offense of trafficking in more than 4 but less than 14 grams of flunitrazepam in Level 7 of the sentencing guidelines Offense Severity Ranking Chart. It places trafficking in more than 14 but less than 28 grams of flunitrazepam in Level 8 of the sentencing guidelines Offense Severity Ranking Chart.

5. Section Five:

Provides that the act shall take effect on July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

The committee substitute modifies several criminal offenses, creates the new crime of trafficking in flunitrazepam and schedules previously unscheduled drugs. To the extent that persons are arrested for, charged with, and convicted of the criminal offenses created and modified in this committee substitute there will be a fiscal impact on state and local governments. The impact at this time is indeterminate.

Section 921.0012(9)(b), F.S., requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine its impact on the state prison system. The CJEC reviewed this bill on February 21, 1997. The CJEC found that the impact of the bill was indeterminate, but anticipated to be minimal.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The committee substitute is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The committee substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from the original bill in only one way. The original bill places Gamma-hydroxy-butyrate (GHB) in schedule I. The committee substitute places GHB in schedule II.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

Abel Gomez

J. Willis Renuart