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FISCAL IMPACT REPORT

SPONSOR Youngberg DATE TYPED 2/26/05 HB 713

SHORT TITLE Distribution of Rape Drugs SB _____

ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to the Controlled Substances Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Department of Health (DOH)
- Corrections Department (NMCD)
- Regulation and Licensing Department—Pharmacy Board (RLD)
- Public Defender Department (NMPD)
- Department of Public Safety (DPS)
- Health Policy Commission (HPC)
- Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 713 makes it a crime distribute gamma hydroxybutyric acid (GHB) or flunitrazepam (“roofies”, “R-2”, “Mexican Valium”, “circles”) which are common “date rape” drugs to another person without that person’s knowledge and with the intent to commit a crime against that person, including criminal sexual penetration. The penalty for the first offense of distributing GHB or “roofies” is made a third degree felony subject to six years imprisonment and up to a \$5,000 fine, and second and subsequent offenses are made a second degree felony subject to up to fifteen years imprisonment and up to a \$12,500 fine. The bill also makes it a fourth degree felony to possess any amount of GHB or “roofies”, a crime punishable by up to eighteen months imprisonment and up to a \$5,000 fine.

The bill also imposes additional penalties for possession of controlled substances within posted drug-free school zones. With respect to possession in drug-free zones, the bill makes it:

- a misdemeanor to possess one ounce or less of marijuana, punishable by up to a \$1,000 fine and/or 364 days imprisonment for the first offense;
- a fourth degree felony to possess one ounce or less of marijuana, punishable by up to eighteen months imprisonment and up to a \$5,000 fine for the second and subsequent offenses;
- a fourth degree felony to possess more than one ounce and less than eight ounces of marijuana, punishable by up to eighteen months imprisonment and up to a \$5,000 fine;
- a third degree felony to possess eight ounces or more of marijuana, punishable by up to six years imprisonment and up to a \$5,000 fine;
- a fourth degree felony to possess any amount of an other controlled substance enumerated in schedules I through IV of the Act, punishable by up to eighteen months imprisonment and up to a \$5,000 fine; and
- a third degree felony to possess phencyclidine (PCP) or schedule I and II narcotic drugs, punishable by up to six years imprisonment and up to a \$5,000 fine.

Significant Issues

According to DPS, GHB use among high school students is of particular concern, and crimes involving the use of date rape drugs are increasing among young people aged 18-to-25. Furthermore, sexual predators who administer GHB to their victims typically slip it into a drink, often at a bar or party. NMPD notes that additional criminal charges resulting from the date rape context could exceed the penalties described above.

TECHNICAL ISSUES

The bill amends sections of the Controlled Substances Act to provide that controlled substances added by the Board of Pharmacy to schedules I through IV of the Act by board rule be included in the statutory schedules of controlled substances. This provision allows for the board to amend the schedule by rule, rather than solely by statutory change.

OTHER SUBSTANTIVE ISSUES

According to the HPC, gamma hydroxybutyric acid (GHB) causes drowsiness, dizziness, nausea, and vital disturbances. Higher doses can cause unconsciousness, seizures, severe respiratory depression and coma. As of November 2000, the federal Drug Enforcement Agency reported 71 GHB-related deaths. GHB is considered a predatory drug because it renders the victim incapable of resisting, and may cause memory problems that could complicate case prosecution.

The HPC also notes that flunitrazepam is popular among teens and young adults at dance clubs and “raves”. The drug is readily available in pharmacies in Mexico and sells for as low as \$2 per dose to as much as \$30 per dose. The HPC notes that a significant effect of flunitrazepam is amnesia. The drug is included in the federal Drug-Induced Rape Prevention and Punishment Act.

According to DOH, recent drug seizures and anecdotal reporting indicate that distribution and abuse of flunitrazepam are increasing domestically, especially in southern and southwestern

States. The drug's low cost is of particular concern, since it is usually below \$5 per tablet, and its growing popularity among young people. Flunitrazepam is a benzodiazepine that is used in the short-term treatment of insomnia and as a sedative hypnotic and pre-anesthetic medication. It has physiological effects similar to diazepam (commonly known by its trade name, Valium®), although flunitrazepam is approximately 10 times more potent. Flunitrazepam is not manufactured or sold legally in the United States, although it is produced and sold legally by prescription in Europe and Latin America. The drug usually is smuggled into and transported within the United States through the mail or delivery services.

AMENDMENTS/ALTERNATIVES

The Department of Health recommends the following amendment: On page17, line 12: change "distribute" to "administer." Section 30-31-32 rightfully penalizes distribution (e.g., sale) of controlled substances. But, the context of Section B focuses on covert administration rather than sale or distribution of the substance.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The distribution, use and abuse of the date rape drugs GHB and flunitrazepam ("roofies") will not be treated as crimes carrying significant penalties and will continue to jeopardize the health, safety, and welfare of the citizens, especially young citizens, of the state.

DXM/lg