

2001 DRAFTING REQUEST

Senate Amendment (SA-AB464)

Received: 02/21/2002

Received By: rryan

Wanted: Soon

Identical to LRB:

For: Gary George (608) 266-2500

By/Representing: Dan Rossmiller

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - drugs

Extra Copies:

Submit via email: YES

Requester's email: Sen.George@legis.state.wi.us

Carbon copy (CC:) to: Dan.Rossmiller@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Date rape drugs

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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| /1 | rryan 02/28/2002 | jdyer 02/28/2002 | rschluet 02/28/2002 | _____ | lrb_docadmin 02/28/2002 | lrb_docadmin 02/28/2002 | |

FE Sent For:

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| /? | rryan | 1/28 jld |  |  | | | |
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Handwritten: 1/28 jld

Handwritten signatures

Handwritten: 2-28-2

FE Sent For:

<END>

FAX COVER SHEET

Columbia Hospital Pharmacy
2025 East Newport Avenue
Milwaukee, WI 53211
Telephone: (414) 961-3070
Fax: (414) 961-5521

Date: 2/13/02

To: Dan Rosmiller

Fax: 608-266-7381

From: Cindy Benning

Comments: Hope this is clear. Any questions,
please call. Thank you for your interest.
414-961-3873

This Fax contains 2 pages, including this cover sheet.

Suggested amendment to SS 961 to encompass illicit use of GHB, GBL and 1-4BD

Bolded are additions, strick-out, deletions

961.14 (5) **Depressants.** Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ad) 1,4-Butanediol (commonly known as "1,4-BD), when intended for human consumption

(ag) Gamma-hydroxybutyric acid (commonly known as gamma hydroxybutyrate or "GHB") and ~~gamma-butyrolactone~~ or, except those substances specifically listed in subparagraphs (ad) and (aj) of this paragraph, any substance that is metabolically converted to gamma-hydroxybutyric acid.

(aj) Gamma-butyrolactone (commonly known as "GBL"), when intended for human consumption.

This section is copied from 21CFR 1308.13(c)(5)

961.18(3) (?)

Any drug product containing gamma hydroxybutyric acid including salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug and Cosmetic Act

February 15, 2002

The Honorable Gary George
Chair of the Judiciary,
Consumer Affairs and Campaign Finance Reform Committee
State Senate
State of Wisconsin
State Capitol, Room 118 South
Madison, WI 53707

Dear Senator George:

On behalf of the law enforcement community, rape crisis advocates and the estimated 2,600 Wisconsin residents who suffer from the rare disease called narcolepsy, I am seeking your committee's consideration of AB 464 and an accompanying amendment proposed by the Controlled Substances Board. The proposal would help solve several significant problems caused by the current statutes regarding the control of various forms of gamma hydroxybutyrate, or GHB.

The federal government and many state authorities now recognize that unlike most available legal or illegal drugs, GHB comes in several forms:

- **An easily made, home-brewed concoction** used by body-builders as a muscle enhancer, rave party-goers as a euphoric when mixed with alcohol and by sexual predators to facilitate sexual assault. Recipes and supply kits are available on the Internet, but use of homemade GHB has been decreasing. This substance is currently listed in Schedule I in Wisconsin.
- **Commonly used industrial chemicals** that when consumed are naturally converted into GHB in the body. The use of these GHB substitutes by body builders, partygoers and sexual predators is rising. The most common examples are gamma butyrolactone (GBL — a substance currently controlled by Wisconsin law) and 1,4 butanediol (1,4 BD — a substance *not* currently controlled by Wisconsin law), which are produced in millions of pounds each year for legitimate industrial use.
- **A promising, FDA-sanctioned investigative new drug for the treatment of cataplexy**, a disabling symptom of narcolepsy. Cataplexy is the complete loss of muscle control. It affects about 65 percent of the estimated 2,600 Wisconsin residents with narcolepsy. The pharmaceutical formulation is being developed by Orphan Medical, a Minnesota-based developer of therapies to treat rare diseases. FDA action is anticipated this April.

Wisconsin's current statutes pose three problems for industry, law enforcement and patient groups.

Issue #1: Industrial Use of GBL

In 1998, Wisconsin was ahead of most of the country when it recognized the danger to public health posed by the recreational use of GHB and GBL by listing the substances in Schedule I.

However, the legislature did not realize at the time that placing GBL in Schedule I would create regulatory problems for Wisconsin industries that commonly use GBL in the processing of plastics, cosmetics, and computer equipment.

Issue #2: 1,4 BD Loophole

Meanwhile, law enforcement and crime labs in Wisconsin report increases in the abuse of 1,4 BD, another GHB substitute. Like GBL, 1,4 BD is a chemical legitimately used by industry, but unlike GBL, 1,4 BD is uncontrolled in Wisconsin. Prosecutors do not have the necessary tools to deal with those who abuse 1,4 BD for its GHB effects.

Solution

Both of the above problems can be addressed by listing GBL and 1,4 BD in Schedule I "when intended for human ingestion." This language protects legitimate use by industry while providing law enforcement with laws to combat illicit consumption of these chemicals for their GHB effects.

Issue #3: Allowing Narcolepsy Patients Access to Life-Changing Medication

In 2000, Congress distinguished illicit GHB from a doctor prescribed formula of GHB in the federal Controlled Substances Act. FDA-approved medical GHB was listed in Schedule III, thus allowing narcolepsy patients suffering from cataplexy access to this life-changing medication. Homemade GHB and industrial chemicals abused for their GHB effects were placed in Schedule I.

Solution

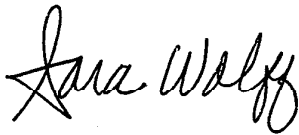
Wisconsin may wish to adopt a similar schedule by placing FDA-approved medical GHB in Schedule III. Under Wisconsin law, illicit use of the medical product would still be punishable with Schedule I penalties.

The amendment drafted by the Controlled Substance Board to AB 464 offers a simple solution to address the problems currently facing industry, law enforcement and narcolepsy patients in Wisconsin.

As most of the provisions in AB 464 concerning enhanced penalties were adopted last session, the thrust of AB 464 lies in the fact that it brings penalties for abuse of MDMA (or Ecstasy — one of the fastest growing drugs of abuse among young people) in line with that of GHB, Flunitrazepam and Ketamine.

Please consider using AB 464 as an opportunity for the Senate Judiciary Committee to also provide law enforcement with the tools to combat the newest form of illicit GHB abuse. Without some action, use of 1,4 BD for its GHB effects will continue to be legal in Wisconsin.

Sincerely,

A handwritten signature in cursive script that reads "Sara Wolff". The signature is written in black ink and is positioned above the printed name.

Sara Wolff
for Orphan Medical



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State Legislatures

Title: Legal Chemicals Being Used for Date Rape.

Summary: Twenty states have passed laws to protect women from the effects of the date rape drug, GHB, but almost as soon as the statutes were signed, criminals found ways to use perfectly legal substitutes. These odorless, tasteless chemicals mix easily in drinks and render the victim unconscious. GHB also has cropped up on college campuses and at rave (all-night dance) parties.

Source: State Legislatures
Date: 02/01/2001
Price: \$2.95
Document Size: Very Short (337 words)
Document ID: UU20010305150003820
Subject(s): Acquaintance rape--Laws, regulations, etc.; Women--Crimes against; Drugs--Laws, regulations, etc.; Gamma-hydroxybutyrate--Usage
Citation Information: (ISSN: 0147-6041), Vol. 27 No. 2 Pg. 9
Document Type: Article

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State Legislatures

Legal Chemicals Being Used for Date Rape.

Twenty states have passed laws to protect women from the effects of the date rape drug, GHB, but almost as soon as the statutes were signed, criminals found ways to use perfectly legal substitutes. These odorless, tasteless chemicals mix easily in drinks and render the victim unconscious. GHB also has cropped up on college campuses and at rave (all-night dance) parties.

To combat these GHB substitutes, legislators in Pennsylvania strengthened their "analogue" statutes by enlarging them to include chemicals that have "substantially similar structures or substantially similar effects."

A prior state law, one of the strongest date rape statutes in the nation, makes use of any substance to facilitate sexual assault a first-degree felony. Senator Jane Earl and Representative Thomas Gannon used that law as a springboard to successfully draft the new law that bans analogue drugs such as the GHB substitutes. The lawmakers also said that legislators should turn to an overlooked part of the federal Controlled Substances Act, which allows enactment of a "controlled substance analogue statute."

One of the more worrisome analogues of GHB is a widely used chemical solvent, gamma butyrolactone (GBL). Last year, more than 140 million pounds of GBL was produced for industrial uses. It's not supposed to be used as a drug. But drink GBL and it turns into GHB inside the body. It can be sold as GHB for three times its price by dealers.

Another chemical, 1,4 BD (1,4 butanediol) has also appeared on the illicit drug scene. It too turns to GHB when ingested. Last year, more than 800 million pounds of 1,4 BD were made for use as an industrial degreaser and in making plastics.

Scientific papers easily available on the Internet have identified other legal chemicals that turn to GHB after ingestion. And it's only a matter of time before drug dealers switch to using them. Earl and Gannon say that an analogue statute modeled after the federal language is the best way states can get out in front of this issue.

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State of Wisconsin
2001 - 2002 LEGISLATURE

LRBa13232

RLR:.....

jld

By Friday 3/1/02
~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SENATE AMENDMENT,

TO 2001 ASSEMBLY BILL 464

D-note

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 5: delete the material inserted by assembly amendment 1 and
3 substitute "prohibitions related to certain controlled substances".

4 2. Page 2, line 1: before that line insert:

5 "SECTION 1g. 961.14 (5) (ac) of the statutes is created to read:

6 961.14 (5) (ac) 1,4-Butanediol, commonly known as "1,4-BD," if it is intended
7 for ingestion by humans.

8 SECTION 1m. 961.14 (5) (ag) of the statutes is amended to read:

9 961.14 (5) (ag) Gamma-hydroxybutyric acid (commonly known as gamma
10 hydroxybutyrate or "GHB") and ~~gamma-butyrolactone~~ except any drug product
11 containing gamma-hydroxybutyric acid that is approved by the U.S. Department of
12 Health and ^{human} Social Services under 21 USC 355 or 356.

1 SECTION 1r. 961.14 (5) (aj) of the statutes is created to read:

2 961.14 (5) (aj) Gamma-butyrolactone if it is intended for ingestion by humans.

3 SECTION 1v. 961.18 (3) (bm) of the statutes is created to read:

4 961.18 (3) (bm) Any drug product containing gamma-hydroxybutyric acid that

5 is approved by the U.S. Department of Health and ^{human} ~~Social~~ Services under 21 USC 355

6
INS 2-6
7

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1323/1dn

RLR:.....

JLD

Dan Rossmiller:

✓
The treatment of GBL and 1,4-BD in this amendment is different from the treatment of these substances under federal law. Under federal law, a drug may be designated as a "controlled substance" or as a "listed chemical." Federal law prohibits the manufacture, distribution, or possession of controlled substances, except by certain persons. However, under federal law, activities related to listed chemicals are regulated rather than prohibited. In 2000, the federal government designated GHB as a controlled substance and designated GBL as a listed chemical. (See 65 FR 13235-13238 and 65 FR 21645-21647.) Federal law does not designate 1,4-BD as either a controlled substance or a listed chemical. In addition, the federal government suggested in supplementary material to the April 24, 2000, federal rule concerning GBL that GBL and 1,4-BD could possibly be treated as analogs of GHB for purposes of prosecution. (See 65 FR 21645-21467.) Under Wisconsin law, the manufacture, distribution, and possession of an analog of a controlled substance is prohibited. *

In order to be consistent with federal law, you may wish to remove GBL from the controlled substances schedule and leave 1,4-BD off the controlled substances schedule. Please note that, as treated in the amendment, GBL and 1,4-BD are the only substances for which there is a qualifier stating that the substances are only controlled if intended for human ingestion.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

1

1. Page 7, line 25: ~~before that line insert~~, after page 1, line 10, of the material

2

inserted by assembly amendment 2, insert :

3

"SECTION 12m. 961.41 (3g) (f) of the statutes is amended to read:

4

961.41 (3g) (f) If a person possesses or attempts to possess

5

gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-Butanediol, ketamine or

6

flunitrazepam, the person may be fined not more than \$5,000 or imprisoned for not

7

more than 2 years or both."

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1323/1dn
RLR:jld:rs

February 28, 2002

Dan Rossmiller:

The treatment of GBL and 1,4-BD in this amendment is different from the treatment of these substances under federal law. Under federal law, a drug may be designated as a "controlled substance" or as a "listed chemical." Federal law prohibits the manufacture, distribution, or possession of controlled substances, except by certain persons. However, under federal law, activities related to listed chemicals are regulated rather than prohibited. In 2000, the federal government designated GHB as a controlled substance and designated GBL as a listed chemical. (See 65 FR 13235-13238 and 65 FR 21645-21647.) Federal law does not designate 1,4-BD as either a controlled substance or a listed chemical. In addition, the federal government suggested in supplementary material to the April 24, 2000, federal rule concerning GBL that GBL and 1,4-BD could possibly be treated as analogs of GHB for purposes of prosecution. (See 65 FR 21645-21647.) Under Wisconsin law, the manufacture, distribution, and possession of an analog of a controlled substance is prohibited.

In order to be consistent with federal law, you may wish to remove GBL from the controlled substances schedule and leave 1,4-BD off the controlled substances schedule. Please note that, as treated in the amendment, GBL and 1,4-BD are the only substances for which there is a qualifier stating that the substances are only controlled if intended for human ingestion.

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