



1997 ASSEMBLY BILL 564

October 17, 1997 - Introduced by Representatives HOVEN, OTTE, HUEBSCH, RYBA, JENSEN, UNDERHEIM, WALKER, KREIBICH, BRANDEMUEHL, GARD, GREEN, MUSSER, PLALE, HASENOHRL, PLOUFF, PORTER, BOYLE, GRONEMUS, SYKORA and SERATTI, cosponsored by Senators MOEN, C. POTTER, BURKE, DECKER and WINEKE. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to amend** 940.225 (4) (intro.), 948.13 (1) (a), 961.41 (3g) (b), 961.48 (4),
2 961.55 (1) (d) 3. and 973.034; and **to create** 940.225 (2) (cm), 940.225 (5) (ai) and
3 961.41 (3g) (f) of the statutes; **relating to:** sexual assault, the controlled
4 substance flunitrazepam and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes the following changes in current law relating to sexual assault and the controlled substance flunitrazepam:

Sexual assault

Current law prohibits sexual assault. There are 4 degrees of sexual assault that are based on the circumstances of the offense, with first degree sexual assault being the most serious and carrying the greatest penalty.

Currently, a person is guilty of second degree sexual assault if he or she has sexual intercourse or sexual contact with another without the consent of the victim under any of the following circumstances: 1) the person uses force or violence or the threat of force or violence; 2) the person causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim; or 3) the person is aided or abetted by others.

In addition, a person is guilty of second degree sexual assault if he or she has sexual intercourse or sexual contact with another under any of the following circumstances: 1) the victim suffers from a mental illness or deficiency which renders him or her temporarily or permanently incapable of appraising his or her conduct, and the person knows of the victim's condition; 2) the victim is unconscious and the person knows the victim is unconscious; or 3) the person is an employe of an adult family home, a community-based residential facility, an inpatient health care facility or a state treatment facility and the victim is a patient or resident of the adult family home or other facility. Consent of the victim is not an issue in a case involving a second degree sexual assault under any of these circumstances.

A person convicted of second degree sexual assault under current law may be fined not more than \$10,000 or imprisoned for not more than 20 years or both.

Finally, under current law a person who has been convicted of a serious child sex offense may not engage in an occupation or participate in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age. A person who violates this prohibition against working or volunteering with children under 16 years of age may be fined not more than \$10,000 or imprisoned for not more than 10 years or both. The serious child sex offenses covered by this prohibition include a second degree sexual assault in which the victim is under 18 years of age and suffers from a mental illness or deficiency which renders him or her temporarily or permanently incapable of appraising his or her conduct.

This bill provides that a person is guilty of second degree sexual assault if he or she has sexual intercourse or sexual contact with a victim who is under the influence of an intoxicant to a degree which renders the victim incapable of appraising his or her conduct, and the person knows of the victim's condition. Consent of the victim is not an issue in a case involving a second degree sexual assault under these circumstances. A person convicted of committing second degree sexual assault under these circumstances will be subject to the penalty provided under current law for second degree sexual assault. In addition, a conviction for second degree sexual assault under these circumstances when the victim is under 18 years of age is a serious child sex offense for purposes of the prohibition against working or volunteering with children under 16 years of age.

Flunitrazepam

Current law places various restrictions on controlled substances (dangerous drugs). The substances are regulated based on their schedule designations. The legislature by law or the controlled substances board by rule places a controlled substance in schedule I, II, III, IV or V based on the substance's accepted medical use and the potential for abuse of the substance. Schedule IV includes substances that have a currently accepted medical use in treatment in the United States and that, if abused, lead to limited physical or psychological dependence. The penalty for unlawful possession of a schedule IV controlled substance is a fine of not more than \$500 or imprisonment of not more than 30 days or both.

The controlled substance flunitrazepam (a depressant) is placed in schedule IV. This bill increases the penalty for unlawful possession of flunitrazepam by providing that a person who unlawfully possesses flunitrazepam may be fined not more than \$5,000 or imprisoned for not more than 2 years or both.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 940.225 (2) (cm) Has sexual contact or sexual intercourse with a person who
2 is under the influence of an intoxicant to a degree which renders that person
3 incapable of appraising the person's conduct, and the defendant knows of such
4 condition.

5 **SECTION 2.** 940.225 (4) (intro.) of the statutes is amended to read:

6 940.225 (4) CONSENT. (intro.) "Consent", as used in this section, means words
7 or overt actions by a person who is competent to give informed consent indicating a
8 freely given agreement to have sexual intercourse or sexual contact. Consent is not
9 an issue in alleged violations of sub. (2) (c), (cm), (d) and (g). The following persons
10 are presumed incapable of consent but the presumption may be rebutted by
11 competent evidence, subject to the provisions of s. 972.11 (2):

12 **SECTION 3.** 940.225 (5) (ai) of the statutes is created to read:

13 940.225 (5) (ai) "Intoxicant" means any controlled substance, controlled
14 substance analog or other drug or any combination of a controlled substance,
15 controlled substance analog or other drug.

16 **SECTION 4.** 948.13 (1) (a) of the statutes is amended to read:

17 948.13 (1) (a) A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim
18 is under 18 years of age at the time of the offense, or a crime under s. 948.02 (1),
19 948.025 (1), 948.05 (1), 948.06 or 948.07 (1), (2), (3) or (4).

20 **SECTION 5.** 961.41 (3g) (b) of the statutes is amended to read:

21 961.41 (3g) (b) Except as provided in pars. (c), (d) ~~and~~, (e) and (f), if the person
22 possesses or attempts to possess a controlled substance or controlled substance
23 analog, other than a controlled substance included in schedule I or II that is a
24 narcotic drug or a controlled substance analog of a controlled substance included in

1 schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor,
2 punishable under s. 939.61.

3 **SECTION 6.** 961.41 (3g) (f) of the statutes is created to read:

4 961.41 (3g) (f) If a person possesses or attempts to possess flunitrazepam, the
5 person may be fined not more than \$5,000 or imprisoned for not more than 2 years
6 or both.

7 **SECTION 7.** 961.48 (4) of the statutes is amended to read:

8 961.48 (4) This section does not apply to offenses under s. 961.41 (3g) (a) 1. ~~and,~~
9 (b) and (f).

10 **SECTION 8.** 961.55 (1) (d) 3. of the statutes is amended to read:

11 961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41
12 (3g) (b), (c), (d) ~~or~~, (e) or (f); and

13 **SECTION 9.** 973.034 of the statutes is amended to read:

14 **973.034 Sentencing; restriction on child sex offender working with**
15 **children.** Whenever a court imposes a sentence or places a defendant on probation
16 regarding a conviction under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is
17 under 18 years of age at the time of the offense, or a conviction under s. 948.02 (1),
18 948.025 (1), 948.05 (1), 948.06 or 948.07 (1), (2), (3) or (4), the court shall inform the
19 defendant of the requirements and penalties under s. 948.13.

20 **SECTION 10. Initial applicability.**

21 (1) This act applies to offenses committed on or after the effective date of this
22 subsection.

23 (END)