

1997 Assembly Bill 564

Date of enactment: **April 29, 1998**
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1997 WISCONSIN ACT 220

AN ACT to *renumber* 961.14 (5) (a) and 961.18 (4) (a); to *amend* 940.225 (4) (intro.), 948.13 (1) (a), 961.41 (3g) (b), 961.48 (4), 961.55 (1) (d) 3. and 973.034; and to *create* 940.225 (2) (cm), 940.225 (5) (ai), 961.14 (5) (ag), 961.18 (4) (ak) and 961.41 (3g) (f) of the statutes; **relating to:** sexual assault, the controlled substance flunitrazepam, making ketamine, gamma-hydroxybutyric acid and gamma-hydroxybutyrolactone controlled substances and providing penalties.

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

SECTION 1. 940.225 (2) (cm) of the statutes is created to read:

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

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

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

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

940.225 (5) (ai) "Intoxicant" means any controlled substance, controlled substance analog or other drug, any

combination of a controlled substance, controlled substance analog or other drug or any combination of an alcohol beverage and a controlled substance, controlled substance analog or other drug. "Intoxicant" does not include any alcohol beverage.

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

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

SECTION 4p. 961.14 (5) (a) of the statutes is renumbered 961.14 (5) (am).

SECTION 4q. 961.14 (5) (ag) of the statutes is created to read:

961.14 (5) (ag) Gamma-hydroxybutyric acid (commonly known as gamma hydroxybutyrate or "GHB") and gamma-hydroxybutyrolactone.

SECTION 4r. 961.18 (4) (a) of the statutes is renumbered 961.18 (4) (an).

SECTION 4t. 961.18 (4) (ak) of the statutes is created to read:

961.18 (4) (ak) Ketamine.

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

961.41 (3g) (b) Except as provided in pars. (c), (d) and (e) and (f), if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

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

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

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

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

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

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

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

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

SECTION 10. Initial applicability.

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