

REVISED PROPOSED AMENDMENT: GHB
(Proposed Amendment 11, User Friendly, Volume Two)

Synopsis of Revised Proposed Amendment: *This revised proposed amendment implements the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000, Pub. L. 106–172 (the "Act"), which provides the emergency scheduling of gamma hydroxybutyric acid ("GHB") as a Schedule I controlled substance under the Controlled Substances Act when the drug is used illicitly. (There are approved applications of GHB under the Federal Food, Drug, and Cosmetic Act, for which the drug is scheduled in Schedule III.) The Act also amended section 401(b)(1)(C) of the Controlled Substances Act (21 U.S.C. § 841(b)(1)(C)) and section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. § 960(b)(3)) to provide penalties of not more than 20 years for an offense that involves GHB. Additionally, the Act added gamma butyrolactone ("GBL") to the list of List I chemicals in section 401(b)(1)(C) of the Controlled Substances Act (21 U.S.C. § 841(b)(1)(C)).*

Under the current structure of the Drug Quantity Table in §2D1.1, GHB and other Schedule I and II depressants, with statutory maximum terms of imprisonment of 20 years, are sentenced identically to Schedule III substances, which have a five-year statutory maximum. The guidelines provide a maximum offense level of level 20 for these substances, which equates to a sentencing range of 33 to 44 months for offenders with minimal or no criminal history (Criminal History Category I). The lack of penalty distinctions between offenses with such divergent statutory maxima raises proportionality concerns. Recognizing the need to provide higher penalties for the more serious offenses involving Schedule I and II depressants, the proposed amendment eliminates the maximum base offense level of level 20 in the Drug Quantity Table of §2D1.1 for Schedule I and II depressants (including GHB). The same change is made with respect to flunitrazepam, which, for sentencing purposes, is tied to Schedule I and II depressants.

The revised proposed amendment also amends the Chemical Quantity Table in §2D1.11 to include GBL, a precursor for GHB, as a List I chemical. Offense levels for GBL were established in the same fashion as other list I chemicals. The offense level for a specific quantity of GHB that can be produced from a given quantity of GBL, assuming a 50 percent yield, was determined using the Drug Quantity Table in §2D1.1. From this offense level, six levels were subtracted. This result identifies the corresponding offense level in the Chemical Quantity Table in §2D1.11.

The revised proposed amendment also adds Iodine to the Chemical Quantity Table in response to a recent classification of iodine as a List II chemical. Iodine is used to produce hydrogen iodide which, in the presence of water, becomes hydriodic acid, a list I chemical that is a reagent used in the production of amphetamine and methamphetamine. The penalties for Iodine were established based upon its conversion to hydriodic acid.

Please note that this revised proposed amendment differs from the Federal Register version only with respect to the proposed quantities of iodine. These new quantities correspond to the increased quantities of hydriodic acid provided in the proposed emergency List I Chemicals amendment. (If the Commission determines that proposed quantities for the List I chemicals should be different from what is proposed, the quantities of iodine presented in this proposed amendment would have been changed accordingly.)

Proposed Amendment:

Part I: Uncap Schedule I and II Depressants

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

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(c) DRUG QUANTITY TABLE

Controlled Substances and Quantity*	Base Offense Level
<p>(1) * * *</p> <p>M 600 KG or more of Hashish Oil-;</p> <p>M 30,000,000 units or more of Schedule I or II Depressants;</p> <p>M 1,875,000 units or more of Flunitrazepam.</p>	Level 38
<p>(2) * * *</p> <p>M At least 200 KG but less than 600 KG of Hashish Oil-;</p> <p>M At least 10,000,000 but less than 30,000,000 units of Schedule I or II Depressants;</p> <p>M At least 625,000 but less than 1,875,000 units of Flunitrazepam.</p>	Level 36
<p>(3) * * *</p> <p>M At least 60 KG but less than 200 KG of Hashish Oil-;</p> <p>M At least 3,000,000 but less than 10,000,000 units of Schedule I or II Depressants;</p> <p>M At least 187,500 but less than 625,000 units of Flunitrazepam.</p>	Level 34
<p>(4) * * *</p> <p>M At least 20 KG but less than 60 KG of Hashish Oil-;</p> <p>M At least 1,000,000 but less than 3,000,000 units of Schedule I or II Depressants;</p> <p>M At least 62,500 but less than 187,500 units of Flunitrazepam.</p>	Level 32

(5) * * * **Level 30**
M At least 14 KG but less than 20 KG of Hashish Oil-;
M At least 700,000 but less than 1,000,000 units of Schedule I or II Depressants;
M At least 43,750 but less than 62,500 units of Flunitrazepam.

(6) * * * **Level 28**
M At least 8 KG but less than 14 KG of Hashish Oil-;
M At least 400,000 but less than 700,000 units of Schedule I or II Depressants;
M At least 25,000 but less than 43,750 units of Flunitrazepam.

(7) * * * **Level 26**
M At least 2 KG but less than 8 KG of Hashish Oil-;
M At least 100,000 but less than 400,000 units of Schedule I or II Depressants;
M At least 6,250 but less than 25,000 units of Flunitrazepam.

(8) * * * **Level 24**
M At least 1.6 KG but less than 2 KG of Hashish Oil-;
M At least 80,000 but less than 100,000 units of Schedule I or II Depressants;
M At least 5,000 but less than 6,250 units of Flunitrazepam.

(9) * * * **Level 22**
M At least 1.2 KG but less than 1.6 KG of Hashish Oil-;
M At least 60,000 but less than 80,000 units of Schedule I or II Depressants;
M At least 3,750 but less than 5,000 units of Flunitrazepam.

(10) * * * **Level 20**
M At least 800 G but less than 1.2 KG of Hashish Oil;
M ~~40,000 or more~~ At least 40,000 but less than 60,000 units of Schedule I or II Depressants or Schedule III substances;
M ~~2,500 or more~~ At least 2,500 but less than 3,750 units of Flunitrazepam.

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Commentary

Application Notes: * * *

10. * * *

DRUG EQUIVALENCY TABLES

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Flunitrazepam **

1 unit of Flunitrazepam = 16 gm of marihuana

~~*** Provided, that the combined equivalent weight of flunitrazepam, all Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances shall not exceed 99.99 kilograms of marihuana.~~

The minimum offense level from the Drug Quantity Table for flunitrazepam individually, or in combination with any Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances is level 8.

Schedule I or II Depressants***

1 unit of a Schedule I or II Depressant = 1 gm of marihuana

~~*** Provided, that the combined equivalent weight of all Schedule I or II depressants, Schedule III substances, Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed 59.99 kilograms of marihuana.~~

(2) Adding GBL and Iodine to the Chemical Quantity Table in §2D1.11.

§2D1.11. Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy

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(d) CHEMICAL QUANTITY TABLE*

Listed Chemicals and Quantity	Base Offense Level
(1) <u>List I Chemicals</u> 400 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone; 10,000 KG or more of Gamma-butyrolactone;	Level 30
(2) <u>List I Chemicals</u> At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone; At least 3,000 KG but less than 10,000 KG of Gamma-butyrolactone;	Level 28
<u>List II Chemicals</u>	

1300 KG or more of Toluene-;
376.2 G or more of Iodine.

(3) List I Chemicals

Level 26

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At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 1,000 KG but less than 3,000 KG of Gamma-butyrolactone;

List II Chemicals

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At least 390 KG but less than 1300 KG of Toluene-;
At least 125.4 G but less than 376.2 G of Iodine.

(4) List I Chemicals

Level 24

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At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 700 KG but less than 1,000 KG of Gamma-butyrolactone;

List II Chemicals

At least 1.1 KG but less than 3.3 KG of Acetic Anhydride;
At least 117.5 KG but less than 352.5 KG of Acetone;
At least 2 KG but less than 6 KG of Benzyl Chloride;
At least 107.5 KG but less than 322.5 KG of Ethyl Ether;
At least 120 KG but less than 360 KG of Methyl Ethyl Ketone;
At least 1 KG but less than 3 KG of Potassium Permanganate;
At least 130 KG but less than 390 KG of Toluene-;
At least 87.8 G but less than 125.4 G of Iodine.

(5) List I Chemicals

Level 22

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At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;
At least 400 KG but less than 700 KG of Gamma-butyrolactone;

List II Chemicals

At least 726 G but less than 1.1 KG of Acetic Anhydride;
At least 82.25 KG but less than 117.5 KG of Acetone;
At least 1.4 KG but less than 2 KG of Benzyl Chloride;
At least 75.25 KG but less than 107.5 KG of Ethyl Ether;
At least 84 KG but less than 120 KG of Methyl Ethyl Ketone;
At least 700 G but less than 1 KG of Potassium Permanganate;
At least 91 KG but less than 130 KG of Toluene-;
At least 50.2 G but less than 87.8 G of Iodine.

(6) List I Chemicals

Level 20

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At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

At least 100 KG but less than 400 KG of Gamma-butyrolactone;

List II Chemicals

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At least 52 KG but less than 91 KG of Toluene-;

At least 12.5 G but less than 50.2 G of Iodine.

(7) List I Chemicals

Level 18

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At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

At least 80 KG but less than 100 KG of Gamma-butyrolactone;

List II Chemicals

At least 110 G but less than 440 G of Acetic Anhydride;

At least 11.75 KG but less than 47 KG of Acetone;

At least 200 G but less than 800 G of Benzyl Chloride;

At least 10.75 KG but less than 43 KG of Ethyl Ether;

At least 12 KG but less than 48 KG of Methyl Ethyl Ketone;

At least 100 G but less than 400 G of Potassium Permanganate;

At least 13 KG but less than 52 KG of Toluene-;

At least 10 G but less than 12.5 G of Iodine.

(8) List I Chemicals

Level 16

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At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

At least 60 KG but less than 80 KG of Gamma-butyrolactone;

List II Chemicals

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At least 10.4 KG but less than 13 KG of Toluene-;

At least 7.5 G but less than 10 G of Iodine.

(9) List I Chemicals

Level 14

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At least 1.8 KG but less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

At least 40 KG but less than 60 KG of Gamma-butyrolactone;

List II Chemicals

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At least 7.8 KG but less than 10.4 KG of Toluene-;

At least 5 G but less than 7.5 G of Iodine.

(10) List I Chemicals

Level 12

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Less than 1.8 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Less than 40 KG of Gamma-butyrolactone;

List II Chemicals

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Less than 7.8 KG of Toluene-;

Less than 5 G of Iodine.

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