

# SENATE BILL No. 355

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-12-74; IC 35-42-4-1; IC 35-38-1-7.1; IC 35-48-2-6.

**Synopsis:** Sex and substance abuse crimes. Requires state institutions of higher education to: (1) provide assistance to and cooperate with a student who reports a campus sex crime to a law enforcement agency; and (2) develop a written campus sex crimes policy. Specifies required contents for the policy. Makes rape a Class A felony instead of a Class B felony if a defendant facilitates the commission of the rape by furnishing the victim with a controlled substance. Allows a court to consider as an aggravating factor at sentencing the use of a sedating or hypnotic drug. Makes gamma hydroxybutyrate a Schedule II controlled substance. Requires the state police department, Indiana criminal justice institute, and Indiana state board of pharmacy to work with  
(Continued next page)

**Effective:** July 1, 1998.

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Simpson

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January 8, 1998, read first time and referred to Committee on Judiciary.

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Digest Continued

interested parties to amend the Indiana recommended protocol for the forensic and medical examination of sex offense victims to include an explanation of date rape drugs and an offer of testing for the drugs to sex offense victims.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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## SENATE BILL No. 355

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 20-12-74 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1998]:

4 **Chapter 74. Campus Sex Crime Information**

5 **Sec. 1. As used in this chapter, "campus" includes the following:**

6 **(1) A building or property:**

7 **(A) owned or controlled by an institution within the same**  
8 **contiguous geographic area as other buildings or property**  
9 **owned by the institution; and**

10 **(B) used by the institution in direct support of, or in a**  
11 **manner related to, the educational purposes of the**  
12 **institution.**

13 **(2) A building or property owned or controlled by a student**  
14 **organization recognized by an institution, including the**  
15 **following:**



- 1                   (A) A fraternity house.  
 2                   (B) A sorority house.  
 3                   (C) A cooperative house.  
 4                   (3) A building or property controlled by an institution that is  
 5                   owned by a third party.  
 6           Sec. 2. As used in this chapter, "campus sex crime" means a sex  
 7           crime described in IC 35-42-4 that occurs on a campus.  
 8           Sec. 3. As used in this chapter, "institution" means a university,  
 9           college, or other educational institution in Indiana that:  
 10           (1) exists for the purpose of providing programs of collegiate,  
 11           university, or other postsecondary education; and  
 12           (2) is supported in whole or in part by appropriations made  
 13           by the general assembly.  
 14           Sec. 4. As used in this chapter, "student" means an individual  
 15           who is enrolled in an institution on a full-time or part-time basis.  
 16           Sec. 5. An institution shall make efforts to:  
 17           (1) encourage a student who is the victim of a campus sex  
 18           crime to fully report the sex crime to appropriate law  
 19           enforcement agencies, including institutional police and local  
 20           police agencies; and  
 21           (2) provide assistance to and cooperate with the reporting  
 22           student while the report is investigated and resolved.  
 23           Sec. 6. (a) An institution shall develop a written comprehensive  
 24           campus sex crime policy to:  
 25           (1) address prevention and awareness of campus sex crimes;  
 26           and  
 27           (2) develop procedures that address campus sex crimes.  
 28           (b) In developing a policy described in subsection (a), an  
 29           institution must solicit information and suggestions from students,  
 30           faculty, and staff.  
 31           Sec. 7. The policy required under section 6 of this chapter must  
 32           include at least the following:  
 33           (1) A description of programs aimed at prevention and  
 34           awareness of campus sex crimes.  
 35           (2) A description of procedures to be followed when a campus  
 36           sex crime allegedly has occurred, including:  
 37           (A) persons whom a student should notify;  
 38           (B) the importance of preserving evidence necessary to  
 39           prove a sex crime; and  
 40           (C) authorities to whom a report should be made.  
 41           (3) Procedures for institutional disciplinary action in cases of  
 42           alleged campus sex crimes, including a clear statement of the

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- 1 following:
- 2 (A) That the accuser and the accused are entitled to the
- 3 same opportunities to have support persons or legal
- 4 counsel present, if the institution's policy allows the
- 5 presence of outside legal counsel, during an institutional
- 6 disciplinary proceeding.
- 7 (B) That the accuser and the accused will be informed of
- 8 the outcome of an institutional disciplinary proceeding
- 9 brought because of an alleged campus sex crime.
- 10 (C) A description of the jurisdiction, procedures, and time
- 11 deadlines of institutional disciplinary proceedings.
- 12 (4) Sanctions that may be imposed following the final
- 13 determination of an institutional disciplinary hearing
- 14 concerning a campus sex crime.
- 15 (5) Notification to students of the following:
- 16 (A) A student's right to notify the proper law enforcement
- 17 agencies, including institutional police and local police
- 18 agencies, and to be assisted by a representative of the
- 19 institution in notifying law enforcement agencies if the
- 20 student wishes to be assisted.
- 21 (B) Existing medical, advocacy, counseling, mental health,
- 22 and student services for victims of sex crimes, both on
- 23 campus and in the community.
- 24 (C) Options for, and available assistance in, changing
- 25 academic and living situations after an alleged campus sex
- 26 crime, if the change is requested by the student and is
- 27 available.
- 28 **Sec. 8. (a) An institution shall distribute the policy required**
- 29 **under section 6 of this chapter to students, faculty, and staff by**
- 30 **printing the policy in at least one (1) of the following publications**
- 31 **of the institution that are widely available to students and staff:**
- 32 (1) The institution's catalog.
- 33 (2) The institution's student handbook.
- 34 (3) The institution's staff handbook.
- 35 (b) In addition to the publication required under subsection (a),
- 36 an institution shall include on applications for admission or
- 37 employment a notification that a copy of the institution's campus
- 38 sex crimes policy is available upon request.
- 39 (c) An institution's law enforcement personnel, security
- 40 personnel, and counselors shall make a written copy of the
- 41 institution's campus sex crimes policy available to any student who
- 42 reports being the victim of a sex crime that:



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1 (1) involves another student; or

2 (2) occurs on campus.

3 **Sec. 9. This chapter may not be construed to limit or reduce a**  
4 **civil cause of action of a person.**

5 SECTION 2. IC 35-42-4-1 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) **Except as**  
7 **provided in subsection (b)**, a person who knowingly or intentionally  
8 has sexual intercourse with a member of the opposite sex when:

9 (1) the other person is compelled by force or imminent threat of  
10 force;

11 (2) the other person is unaware that the sexual intercourse is  
12 occurring; or

13 (3) the other person is so mentally disabled or deficient that  
14 consent to sexual intercourse cannot be given;

15 commits rape, a Class B felony. ~~However, the~~

16 (b) **An offense described in subsection (a)** is a Class A felony if:

17 (1) it is committed by using or threatening the use of deadly force;  
18 if

19 (2) it is committed while armed with a deadly weapon; ~~or if~~

20 (3) it results in serious bodily injury to a person other than a  
21 defendant; or

22 (4) **the commission of the offense is facilitated by furnishing**  
23 **the victim with a controlled substance (as defined in**  
24 **IC 35-48-1-9).**

25 SECTION 3. IC 35-38-1-7.1, AS AMENDED BY P.L.210-1997,  
26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 1998]: Sec. 7.1. (a) In determining what sentence to impose  
28 for a crime, the court shall consider:

29 (1) the risk that the person will commit another crime;

30 (2) the nature and circumstances of the crime committed;

31 (3) the person's:

32 (A) prior criminal record;

33 (B) character; and

34 (C) condition;

35 (4) whether the victim of the crime was less than twelve (12)  
36 years of age or at least sixty-five (65) years of age;

37 (5) whether the person violated a protective order issued against  
38 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its  
39 repeal) or IC 34-4-5.1; and

40 (6) any oral or written statement made by a victim of the crime.

41 (b) The court may consider the following factors as aggravating  
42 circumstances or as favoring imposing consecutive terms of

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- 1 imprisonment:
- 2 (1) The person has recently violated the conditions of any
- 3 probation, parole, or pardon granted to the person.
- 4 (2) The person has a history of criminal or delinquent activity.
- 5 (3) The person is in need of correctional or rehabilitative
- 6 treatment that can best be provided by commitment of the person
- 7 to a penal facility.
- 8 (4) Imposition of a reduced sentence or suspension of the
- 9 sentence and imposition of probation would depreciate the
- 10 seriousness of the crime.
- 11 (5) The victim of the crime was less than twelve (12) years of age
- 12 or at least sixty-five (65) years of age.
- 13 (6) The victim of the crime was mentally or physically infirm.
- 14 (7) The person committed a forcible felony while wearing a
- 15 garment designed to resist the penetration of a bullet.
- 16 (8) The person committed a sex crime listed in subsection (e) and:
- 17 (A) the crime created an epidemiologically demonstrated risk
- 18 of transmission of the human immunodeficiency virus (HIV)
- 19 and involved the sex organ of one (1) person and the mouth,
- 20 anus, or sex organ of another person;
- 21 (B) the person had knowledge that the person was a carrier of
- 22 HIV; and
- 23 (C) the person had received risk counseling as described in
- 24 subsection (g).
- 25 (9) The person committed an offense related to controlled
- 26 substances listed in subsection (f) if:
- 27 (A) the offense involved:
- 28 (i) the delivery by any person to another person; or
- 29 (ii) the use by any person on another person;
- 30 of a contaminated sharp (as defined in IC 16-41-16-2) or other
- 31 paraphernalia that creates an epidemiologically demonstrated
- 32 risk of transmission of HIV by involving percutaneous contact;
- 33 (B) the person had knowledge that the person was a carrier of
- 34 the human immunodeficiency virus (HIV); and
- 35 (C) the person had received risk counseling as described in
- 36 subsection (g).
- 37 (10) The person committed the offense in an area of a
- 38 consolidated or second class city that is designated as a public
- 39 safety improvement area by the Indiana criminal justice institute
- 40 under IC 36-8-19.5.
- 41 **(11) Before the commission of the crime, the person**
- 42 **administered to the victim of the crime, without the victim's**

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1           **knowledge, a sedating drug or a drug that had a hypnotic**  
 2           **effect on the victim, or the person had knowledge that such a**  
 3           **drug had been administered to the victim without the victim's**  
 4           **knowledge.**

5           (c) The court may consider the following factors as mitigating  
 6           circumstances or as favoring suspending the sentence and imposing  
 7           probation:

8           (1) The crime neither caused nor threatened serious harm to  
 9           persons or property, or the person did not contemplate that it  
 10          would do so.

11          (2) The crime was the result of circumstances unlikely to recur.

12          (3) The victim of the crime induced or facilitated the offense.

13          (4) There are substantial grounds tending to excuse or justify the  
 14          crime, though failing to establish a defense.

15          (5) The person acted under strong provocation.

16          (6) The person has no history of delinquency or criminal activity,  
 17          or the person has led a law-abiding life for a substantial period  
 18          before commission of the crime.

19          (7) The person is likely to respond affirmatively to probation or  
 20          short term imprisonment.

21          (8) The character and attitudes of the person indicate that the  
 22          person is unlikely to commit another crime.

23          (9) The person has made or will make restitution to the victim of  
 24          the crime for the injury, damage, or loss sustained.

25          (10) Imprisonment of the person will result in undue hardship to  
 26          the person or the dependents of the person.

27          (11) The person was convicted of a crime involving the use of  
 28          force against a person who had repeatedly inflicted physical or  
 29          sexual abuse upon the convicted person and evidence shows that  
 30          the convicted person suffered from the effects of battery as a  
 31          result of the past course of conduct of the individual who is the  
 32          victim of the crime for which the person was convicted.

33          (d) The criteria listed in subsections (b) and (c) do not limit the  
 34          matters that the court may consider in determining the sentence.

35          (e) For the purposes of this article, the following crimes are  
 36          considered sex crimes:

37          (1) Rape (IC 35-42-4-1).

38          (2) Criminal deviate conduct (IC 35-42-4-2).

39          (3) Child molesting (IC 35-42-4-3).

40          (4) Child seduction (IC 35-42-4-7).

41          (5) Prostitution (IC 35-45-4-2).

42          (6) Patronizing a prostitute (IC 35-45-4-3).



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- 1 (7) Incest (IC 35-46-1-3).
- 2 (f) For the purposes of this article, the following crimes are  
3 considered offenses related to controlled substances:
- 4 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).  
5 (2) Dealing in a schedule I, II, or III controlled substance  
6 (IC 35-48-4-2).  
7 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).  
8 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).  
9 (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).  
10 (6) Possession of a controlled substance (IC 35-48-4-7).  
11 (7) Dealing in paraphernalia (IC 35-48-4-8.5).  
12 (8) Possession of paraphernalia (IC 35-48-4-8.3).  
13 (9) Offenses relating to registration (IC 35-48-4-14).
- 14 (g) For the purposes of this section, a person received risk  
15 counseling if the person had been:
- 16 (1) notified in person or in writing that tests have confirmed the  
17 presence of antibodies to the human immunodeficiency virus  
18 (HIV) in the person's blood; and  
19 (2) warned of the behavior that can transmit HIV.
- 20 SECTION 4. IC 35-48-2-6 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) The controlled  
22 substances listed in this section are included in schedule II.
- 23 (b) Any of the following substances, except those narcotic drugs  
24 listed in other schedules, whether produced directly or indirectly by  
25 extraction from substances of vegetable origin, or independently by  
26 means of chemical synthesis, or by combination of extraction and  
27 chemical synthesis:
- 28 (1) Opium and opiate, and any salt, compound, derivative, or  
29 preparation of opium or opiate, excluding apomorphine,  
30 dextrorphan, nalbuphine, naloxone, naltrexone, and their  
31 respective salts but including:
- 32 (i) **(A)** raw opium (9600);  
33 (ii) **(B)** opium extracts (9610);  
34 (iii) **(C)** opium fluid extracts (9620);  
35 (iv) **(D)** powdered opium (9639);  
36 (v) **(E)** granulated opium (9640);  
37 (vi) **(F)** tincture of opium (9630);  
38 (vii) **(G)** codeine (9050);  
39 (viii) **(H)** ethylmorphine (9190);  
40 (ix) **(I)** etorphine hydrochloride (9059);  
41 (x) **(J)** hydrocodone (9193);  
42 (xi) **(K)** hydromorphone (9150);

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- 1            ~~(xii)~~ **(L)** metopon (9260);  
 2            ~~(xiii)~~ **(M)** morphine (9300);  
 3            ~~(xiv)~~ **(N)** oxycodone (9143);  
 4            ~~(xv)~~ **(O)** oxymorphone (9652); and  
 5            ~~(xvi)~~ **(P)** thebaine (9333).  
 6            (2) Any salt, compound, isomer, derivative, or preparation thereof  
 7            which is chemically equivalent or identical with any of the  
 8            substances referred to in subdivision (b)(1) of this section, but not  
 9            including the isoquinoline alkaloids of opium.  
 10           (3) Opium poppy and poppy straw.  
 11           (4) Cocaine (9041).  
 12           (5) Concentrate of poppy straw (the crude extract of poppy straw  
 13           in either liquid, solid, or powder form which contains the  
 14           phenanthrene alkaloids of the opium poppy) (9670).  
 15           (c) Opiates. Any of the following opiates, including their isomers,  
 16           esters, ethers, salts, and salts of isomers, esters, and ethers whenever  
 17           the existence of these isomers, esters, ethers, and salts is possible  
 18           within the specific chemical designation:  
 19           Alfentanil (9737)  
 20           Alphaprodine (9010)  
 21           Anileridine (9020)  
 22           Bezitramide (9800)  
 23           Bulk dextropropoxyphene (nondosage forms) (9273)  
 24           Dihydrocodeine (9120)  
 25           Diphenoxylate (9170)  
 26           Fentanyl (9801)  
 27           Isomethadone (9226)  
 28           Levomethorphan (9210)  
 29           Levorphanol (9220)  
 30           Metazocine (9240)  
 31           Methadone (9250)  
 32           Methadone-Intermediate, 4-cyano-2-dimethyl-amino-4,  
 33           4-diphenyl butane (9254)  
 34           Moramide-Intermediate, 2-methyl-3-morpholino-1,  
 35           1-diphenylpropane- carboxylic acid (9802)  
 36           Pethidine (Meperidine) (9230)  
 37           Pethidine-Intermediate- A, 4-cyano-1-methyl-4-phenylpiperidine  
 38           (9232)  
 39           Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate  
 40           (9233)  
 41           Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carbo  
 42           xylic acid (9234)

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- 1 Phenazodine (9715)  
 2 Piminodine (9730)  
 3 Racemethorphan (9732)  
 4 Racemorphan (9733)  
 5 Sufentanil (9740)  
 6 (d) Stimulants. Any material compound, mixture, or preparation  
 7 which contains any quantity of the following substances having a  
 8 potential for abuse associated with a stimulant effect on the central  
 9 nervous system:  
 10 (1) Amphetamine, its salts, optical isomers, and salts of its optical  
 11 isomers (1100).  
 12 (2) Methamphetamine, including its salts, isomers, and salts of its  
 13 isomers (1105).  
 14 (3) Phenmetrazine and its salts (1631).  
 15 (4) Methylphenidate (1724).  
 16 (e) Depressants. Unless specifically excepted by rule of the board  
 17 or unless listed in another schedule, any material, compound, mixture,  
 18 or preparation which contains any quantity of the following substances  
 19 having a depressant effect on the central nervous system, including its  
 20 salts, isomers, and salts of isomers whenever the existence of such  
 21 salts, isomers, and salts of isomers is possible within the specific  
 22 chemical designation:  
 23 Amobarbital (2125)  
 24 **Gamma hydroxybutyrate**  
 25 Pentobarbital (2270)  
 26 Phencyclidine (7471)  
 27 Secobarbital (2315)  
 28 (f) Immediate precursors. Unless specifically excepted by rule of the  
 29 board or unless listed in another schedule, any material, compound,  
 30 mixture, or preparation which contains any quantity of the following  
 31 substances:  
 32 (1) Immediate precursor to amphetamine and methamphetamine:  
 33 Phenylacetone (8501). Some trade or other names:  
 34 phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl  
 35 ketone.  
 36 (2) Immediate precursors to phencyclidine (PCP):  
 37 (i) (A) 1-phenylcyclohexylamine (7460); or  
 38 (ii) (B) 1-piperidinocyclohexanecarbonitrile (PCC) (8603).  
 39 (g) Hallucinogenic substances:  
 40 Dronabinol (synthetic) in sesame oil and encapsulated in a soft  
 41 gelatin capsule in a United States Food and Drug Administration  
 42 approved drug product (7369).



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1 SECTION 5. [EFFECTIVE JULY 1, 1998] (a) As used in this  
 2 SECTION, "institution" has the meaning set forth in  
 3 IC 20-12-74-3, as added by this act.  
 4 (b) Not later than January 1, 1999, an institution shall develop  
 5 the written comprehensive campus sex crime policy required under  
 6 IC 20-12-74-6, as added by this act.  
 7 (c) This SECTION expires January 2, 1999.  
 8 SECTION 6. [EFFECTIVE JULY 1, 1998] IC 35-42-4-1, as  
 9 amended by this act, applies to crimes committed after June 30,  
 10 1998.  
 11 SECTION 7. [EFFECTIVE JULY 1, 1998] (a) As used in this  
 12 SECTION, "date rape drugs" means drugs that are used to  
 13 facilitate commission of a sex offense, including the following:  
 14 (1) Flunitrazepam.  
 15 (2) Gamma hydroxybutyrate.  
 16 (b) The state police department, the Indiana criminal justice  
 17 institute, and the Indiana state board of pharmacy shall work with  
 18 interested parties to amend the Indiana recommended protocol for  
 19 the forensic and medical examination of sex offense victims to  
 20 include the following:  
 21 (1) An explanation to a victim of common date rape drugs,  
 22 how the drugs are administered, and the effects of the drugs.  
 23 (2) An offer to a victim of testing for the presence of date rape  
 24 drugs.  
 25 (c) This SECTION expires July 1, 1999.

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