

# SENATE BILL No. 433

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-12-74; IC 35-42-4; 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 the required contents for the policy. Makes the following classification changes for offenses if the commission of the offense was facilitated by the administering to the victim, without the victim's knowledge, of a controlled substance: (1) Rape, from a Class B felony to a Class A felony. (2) Criminal deviate conduct, from a Class B felony to a Class A felony. (3) Child molesting, from a Class B felony or Class C felony to a Class A felony. (4) Sexual battery, from a Class D felony to a Class A felony.  
(Continued next page)

**Effective:** July 1, 1998.

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Simpson

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January 13, 1998, read first time and referred to Committee on Judiciary.

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Digest Continued

C felony. (5) Sexual misconduct with a minor, from a Class C felony to a Class A felony, or from a Class D felony to a Class B felony. Makes gamma hydroxybutyrate a Schedule II controlled substance. Requires the state police department, Indiana criminal justice institute, and state board of pharmacy to work with interested parties to amend the Indiana recommended protocol for the forensic and medical examination of sex offense victims to include an explanation of 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. 433



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, without the victim's knowledge, with a controlled**  
 24 **substance (as defined in IC 35-48-1-9).**

25 SECTION 3. IC 35-42-4-2 IS AMENDED TO READ AS  
 26 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) A person who  
 27 knowingly or intentionally causes another person to perform or submit  
 28 to deviate sexual conduct when:

29 (1) the other person is compelled by force or imminent threat of  
 30 force;

31 (2) the other person is unaware that the conduct is occurring; or

32 (3) the other person is so mentally disabled or deficient that  
 33 consent to the conduct cannot be given;

34 commits criminal deviate conduct, a Class B felony. ~~However, the~~

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

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

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

39 (3) it results in serious bodily injury to any person other than a  
 40 defendant; **or**

41 (4) **the commission of the offense is facilitated by furnishing**  
 42 **the victim, without the victim's knowledge, with a controlled**

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1 **substance (as defined in IC 35-48-1-9).**

2 SECTION 4. IC 35-42-4-3, AS AMENDED BY P.L.216-1996,  
3 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 1998]: Sec. 3. (a) A person who, with a child under fourteen  
5 (14) years of age, performs or submits to sexual intercourse or deviate  
6 sexual conduct commits child molesting, a Class B felony. However,  
7 the offense is a Class A felony if:

8 (1) it is committed by a person at least twenty-one (21) years of  
9 age; **or**

10 (2) it is committed by using or threatening the use of deadly force  
11 or while armed with a deadly weapon; **or if**

12 (3) it results in serious bodily injury; **or**

13 (4) **the commission of the offense is facilitated by furnishing**  
14 **the victim, without the victim's knowledge, with a controlled**  
15 **substance (as defined in IC 35-48-1-9).**

16 (b) A person who, with a child under fourteen (14) years of age,  
17 performs or submits to any fondling or touching, of either the child or  
18 the older person, with intent to arouse or to satisfy the sexual desires of  
19 either the child or the older person, commits child molesting, a Class  
20 C felony. However, the offense is a Class A felony if:

21 (1) it is committed by using or threatening the use of deadly force;  
22 **or**

23 (2) **it is committed** while armed with a deadly weapon; **or**

24 (3) **the commission of the offense is facilitated by furnishing**  
25 **the victim, without the victim's knowledge, with a controlled**  
26 **substance (as defined in IC 35-48-1-9).**

27 (c) It is a defense that the accused person reasonably believed that  
28 the child was sixteen (16) years of age or older at the time of the  
29 conduct.

30 SECTION 5. IC 35-42-4-5, AS AMENDED BY P.L.79-1994,  
31 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
32 JULY 1, 1998]: Sec. 5. (a) A person eighteen (18) years of age or older  
33 who knowingly or intentionally directs, aids, induces, or causes a child  
34 under the age of sixteen (16) to touch or fondle himself or another child  
35 under the age of sixteen (16) with intent to arouse or satisfy the sexual  
36 desires of a child or the older person commits vicarious sexual  
37 gratification, a Class D felony. However, the offense is:

38 (1) a Class C felony if a child involved in the offense is under the  
39 age of fourteen (14); **and it is**

40 (2) a Class B felony if:

41 (A) the offense is committed by using or threatening the use of  
42 deadly force or while armed with a deadly weapon; **or**



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- 1                   **(B) the commission of the offense is facilitated by**  
 2                   **furnishing the victim, without the victim's knowledge, with**  
 3                   **a controlled substance (as defined in IC 35-48-1-9); and**  
 4                   **(3) a Class A felony if it results in serious bodily injury.**  
 5                   (b) A person eighteen (18) years of age or older who knowingly or  
 6 intentionally directs, aids, induces, or causes a child under the age of  
 7 sixteen (16) to:  
 8                   (1) engage in sexual intercourse with another child under sixteen  
 9                   (16) years of age;  
 10                   (2) engage in sexual conduct with an animal other than a human  
 11                   being; or  
 12                   (3) engage in deviate sexual conduct with another person;  
 13 with intent to arouse or satisfy the sexual desires of a child or the older  
 14 person commits vicarious sexual gratification, a Class C felony.  
 15 However, the offense is a Class B felony if any child involved in the  
 16 offense is less than fourteen (14) years of age, and it is a Class A felony  
 17 if the offense is committed by using or threatening the use of deadly  
 18 force, **or if it is committed** while armed with a deadly weapon, **or** if it  
 19 results in serious bodily injury, **or if the commission of the offense is**  
 20 **facilitated by furnishing the victim, without the victim's**  
 21 **knowledge, with a controlled substance (as defined in**  
 22 **IC 35-48-1-9).**  
 23                   SECTION 6. IC 35-42-4-8 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) A person who,  
 25 with intent to arouse or satisfy the person's own sexual desires or the  
 26 sexual desires of another person, touches another person when that  
 27 person is:  
 28                   (1) compelled to submit to the touching by force or the imminent  
 29                   threat of force; or  
 30                   (2) so mentally disabled or deficient that consent to the touching  
 31                   cannot be given;  
 32 commits sexual battery, a Class D felony. ~~However, the~~  
 33 **(b) An offense described in subsection (a) is a Class C felony if:**  
 34 **(1) it is committed by using or threatening the use of deadly force;**  
 35 **or**  
 36 **(2) it is committed** while armed with a deadly weapon; **or**  
 37 **(3) the commission of the offense is facilitated by furnishing**  
 38 **the victim, without the victim's knowledge, with a controlled**  
 39 **substance (as defined in IC 35-48-1-9).**  
 40                   SECTION 7. IC 35-42-4-9, AS AMENDED BY P.L.216-1996,  
 41 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 1998]: Sec. 9. (a) A person at least eighteen (18) years of age

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1 who, with a child at least fourteen (14) years of age but less than  
 2 sixteen (16) years of age, performs or submits to sexual intercourse or  
 3 deviate sexual conduct commits sexual misconduct with a minor, a  
 4 Class C felony. However, the offense is:

5 (1) a Class B felony if it is committed by a person at least  
 6 twenty-one (21) years of age; and

7 (2) a Class A felony if it is committed by using or threatening the  
 8 use of deadly force, ~~or~~ **if it is committed** while armed with a  
 9 deadly weapon, ~~or~~ if it results in serious bodily injury, **or if the**  
 10 **commission of the offense is facilitated by furnishing the**  
 11 **victim, without the victim's knowledge, with a controlled**  
 12 **substance (as defined in IC 35-48-1-9).**

13 (b) A person at least eighteen (18) years of age who, with a child at  
 14 least fourteen (14) years of age but less than sixteen (16) years of age,  
 15 performs or submits to any fondling or touching, of either the child or  
 16 the older person, with intent to arouse or to satisfy the sexual desires of  
 17 either the child or the older person, commits sexual misconduct with  
 18 a minor, a Class D felony. However, the offense is:

19 (1) a Class C felony if it is committed by a person at least  
 20 twenty-one (21) years of age; and

21 (2) a Class B felony if it is committed by using or threatening the  
 22 use of deadly force, ~~or~~ while armed with a deadly weapon, **or if**  
 23 **the commission of the offense is facilitated by furnishing the**  
 24 **victim, without the victim's knowledge, with a controlled**  
 25 **substance (as defined in IC 35-48-1-9).**

26 (c) It is a defense that the accused person reasonably believed that  
 27 the child was at least sixteen (16) years of age at the time of the  
 28 conduct.

29 (d) It is a defense that the child is or has ever been married.

30 SECTION 8. IC 35-48-2-6 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) The controlled  
 32 substances listed in this section are included in schedule II.

33 (b) Any of the following substances, except those narcotic drugs  
 34 listed in other schedules, whether produced directly or indirectly by  
 35 extraction from substances of vegetable origin, or independently by  
 36 means of chemical synthesis, or by combination of extraction and  
 37 chemical synthesis:

38 (1) Opium and opiate, and any salt, compound, derivative, or  
 39 preparation of opium or opiate, excluding apomorphine,  
 40 dextrorphan, nalbuphine, naloxone, naltrexone, and their  
 41 respective salts but including:

42 (†) (A) raw opium (9600);



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- 1            ~~(ii)~~ **(B)** opium extracts (9610);  
 2            ~~(iii)~~ **(C)** opium fluid extracts (9620);  
 3            ~~(iv)~~ **(D)** powdered opium (9639);  
 4            ~~(v)~~ **(E)** granulated opium (9640);  
 5            ~~(vi)~~ **(F)** tincture of opium (9630);  
 6            ~~(vii)~~ **(G)** codeine (9050);  
 7            ~~(viii)~~ **(H)** ethylmorphine (9190);  
 8            ~~(ix)~~ **(I)** etorphine hydrochloride (9059);  
 9            ~~(x)~~ **(J)** hydrocodone (9193);  
 10           ~~(xi)~~ **(K)** hydromorphone (9150);  
 11           ~~(xii)~~ **(L)** metopon (9260);  
 12           ~~(xiii)~~ **(M)** morphine (9300);  
 13           ~~(xiv)~~ **(N)** oxycodone (9143);  
 14           ~~(xv)~~ **(O)** oxymorphone (9652); and  
 15           ~~(xvi)~~ **(P)** thebaine (9333).  
 16           (2) Any salt, compound, isomer, derivative, or preparation thereof  
 17           which is chemically equivalent or identical with any of the  
 18           substances referred to in subdivision (b)(1) of this section, but not  
 19           including the isoquinoline alkaloids of opium.  
 20           (3) Opium poppy and poppy straw.  
 21           (4) Cocaine (9041).  
 22           (5) Concentrate of poppy straw (the crude extract of poppy straw  
 23           in either liquid, solid, or powder form which contains the  
 24           phenanthrene alkaloids of the opium poppy) (9670).  
 25           (c) Opiates. Any of the following opiates, including their isomers,  
 26           esters, ethers, salts, and salts of isomers, esters, and ethers whenever  
 27           the existence of these isomers, esters, ethers, and salts is possible  
 28           within the specific chemical designation:  
 29           Alfentanil (9737)  
 30           Alphaprodine (9010)  
 31           Anileridine (9020)  
 32           Bezitramide (9800)  
 33           Bulk dextropropoxyphene (nondosage forms) (9273)  
 34           Dihydrocodeine (9120)  
 35           Diphenoxylate (9170)  
 36           Fentanyl (9801)  
 37           Isomethadone (9226)  
 38           Levomethorphan (9210)  
 39           Levorphanol (9220)  
 40           Metazocine (9240)  
 41           Methadone (9250)  
 42           Methadone-Intermediate, 4-cyano-2-dimethyl-amino-4,



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- 1 4-diphenyl butane (9254)  
 2 Moramide-Intermediate, 2-methyl-3-morpholino-1,  
 3 1-diphenylpropane- carboxylic acid (9802)  
 4 Pethidine (Meperidine) (9230)  
 5 Pethidine-Intermediate- A, 4-cyano-1-methyl-4-phenylpiperidine  
 6 (9232)  
 7 Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate  
 8 (9233)  
 9 Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carbo  
 10 xylic acid (9234)  
 11 Phenazodine (9715)  
 12 Piminodine (9730)  
 13 Racemethorphan (9732)  
 14 Racemorphan (9733)  
 15 Sufentanil (9740)  
 16 (d) Stimulants. Any material compound, mixture, or preparation  
 17 which contains any quantity of the following substances having a  
 18 potential for abuse associated with a stimulant effect on the central  
 19 nervous system:  
 20 (1) Amphetamine, its salts, optical isomers, and salts of its optical  
 21 isomers (1100).  
 22 (2) Methamphetamine, including its salts, isomers, and salts of its  
 23 isomers (1105).  
 24 (3) Phenmetrazine and its salts (1631).  
 25 (4) Methylphenidate (1724).  
 26 (e) Depressants. Unless specifically excepted by rule of the board  
 27 or unless listed in another schedule, any material, compound, mixture,  
 28 or preparation which contains any quantity of the following substances  
 29 having a depressant effect on the central nervous system, including its  
 30 salts, isomers, and salts of isomers whenever the existence of such  
 31 salts, isomers, and salts of isomers is possible within the specific  
 32 chemical designation:  
 33 Amobarbital (2125)  
 34 **Gamma hydroxybutyrate**  
 35 Pentobarbital (2270)  
 36 Phencyclidine (7471)  
 37 Secobarbital (2315)  
 38 (f) Immediate precursors. Unless specifically excepted by rule of the  
 39 board or unless listed in another schedule, any material, compound,  
 40 mixture, or preparation which contains any quantity of the following  
 41 substances:  
 42 (1) Immediate precursor to amphetamine and methamphetamine:



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- 1 Phenylacetone (8501). Some trade or other names:  
 2 phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl  
 3 ketone.
- 4 (2) Immediate precursors to phencyclidine (PCP):  
 5 (i) (A) 1-phenylcyclohexylamine (7460); or  
 6 (ii) (B) 1-piperidinocyclohexanecarbonitrile (PCC) (8603).
- 7 (g) Hallucinogenic substances:  
 8 Dronabinol (synthetic) in sesame oil and encapsulated in a soft  
 9 gelatin capsule in a United States Food and Drug Administration  
 10 approved drug product (7369).
- 11 SECTION 9. [EFFECTIVE JULY 1, 1998] (a) As used in this  
 12 SECTION, "institution" has the meaning set forth in  
 13 IC 20-12-74-3, as added by this act.
- 14 (b) Not later than January 1, 1999, an institution shall develop  
 15 the written comprehensive campus sex crime policy required under  
 16 IC 20-12-74-6, as added by this act.
- 17 (c) This SECTION expires January 2, 1999.
- 18 SECTION 10. [EFFECTIVE JULY 1, 1998] The following apply  
 19 to crimes committed after June 30, 1998:
- 20 (1) IC 35-42-4-1, as amended by this act.  
 21 (2) IC 35-42-4-2, as amended by this act.  
 22 (3) IC 35-42-4-3, as amended by this act.  
 23 (4) IC 35-42-4-5, as amended by this act.  
 24 (5) IC 35-42-4-8, as amended by this act.  
 25 (6) IC 35-42-4-9, as amended by this act.
- 26 SECTION 11. [EFFECTIVE JULY 1, 1998] (a) As used in this  
 27 SECTION, "rape drug" means a drug that is used to facilitate  
 28 commission of a sex offense.
- 29 (b) The state police department, the Indiana criminal justice  
 30 institute, and the state board of pharmacy shall work with  
 31 interested parties to amend the Indiana recommended protocol for  
 32 the forensic and medical examination of sex offense victims to  
 33 include the following:
- 34 (1) An explanation to a victim of common rape drugs, how the  
 35 drugs are administered, and the effects of the drugs.  
 36 (2) An offer to a victim of testing for the presence of rape  
 37 drugs.
- 38 (c) This SECTION expires July 1, 1999.

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