COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Judiciary, to which was referred Senate Bill No. 355, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 15.

Delete pages 2 through 3.

Page 4, delete lines 1 through 24.

Page 7, between lines 19 and 20, begin a new paragraph and insert:

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

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

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

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

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

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

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

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

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

(4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2), an intoxicant, or a controlled substance (as defined in IC 35-48-1-9).

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

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

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

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

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

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

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

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

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

(4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2), an intoxicant, or a controlled substance (as defined in IC 35-48-1-9).

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

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

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

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

(4) the commission of the offense is facilitated by furnishing

the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2), an intoxicant, or a controlled substance (as defined in IC 35-48-1-9).

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

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

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

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2), an intoxicant, or a controlled substance (as defined in IC 35-48-1-9).

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

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

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

(2) a Class B felony if:

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

(B) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2), an intoxicant, or a controlled substance (as defined in IC 35-48-1-9); and

(3) a Class A felony if it results in serious bodily injury.

(b) A person eighteen (18) years of age or older who knowingly or

intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to:

(1) engage in sexual intercourse with another child under sixteen (16) years of age;

(2) engage in sexual conduct with an animal other than a human being; or

(3) engage in deviate sexual conduct with another person;

with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class C felony. However, the offense is a Class B felony if any child involved in the offense is less than fourteen (14) years of age, and it is a Class A felony if the offense is committed by using or threatening the use of deadly force, ~~or~~ **if it is committed** while armed with a deadly weapon, ~~or~~ if it results in serious bodily injury, **or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2), an intoxicant, or a controlled substance (as defined in IC 35-48-1-9).**

SECTION 6. IC 35-42-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. **(a)** A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person, touches another person when that person is:

(1) compelled to submit to the touching by force or the imminent threat of force; or

(2) so mentally disabled or deficient that consent to the touching cannot be given;

commits sexual battery, a Class D felony. ~~However, the~~

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

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

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

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2), an intoxicant, or a controlled substance (as defined in IC 35-48-1-9).

SECTION 7. IC 35-42-4-9, AS AMENDED BY P.L.216-1996, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 9. (a) A person at least eighteen (18) years of age

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

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

(2) a Class A felony if it is committed by using or threatening the use of deadly force, ~~or~~ **if it is committed** while armed with a deadly weapon, ~~or~~ if it results in serious bodily injury, **or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2), an intoxicant, or a controlled substance (as defined in IC 35-48-1-9).**

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

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

(2) a Class B felony if it is committed by using or threatening the use of deadly force, ~~or~~ while armed with a deadly weapon, **or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2), an intoxicant, or a controlled substance (as defined in IC 35-48-1-9).**

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

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

Page 9, after line 42, begin a new paragraph and insert:

"SECTION 10. [EFFECTIVE JULY 1, 1998] **(a) As used in this SECTION, "rape drug" means a drug that is used to facilitate commission of a sex offense.**

(b) The state police department, the Indiana criminal justice institute, and the state board of pharmacy shall work with interested parties to amend the Indiana recommended protocol for

the forensic and medical examination of sex offense victims to include the following:

(1) An explanation to a victim of common rape drugs, how the drugs are administered, and the effects of the drugs.

(2) An offer to a victim of testing for the presence of rape drugs.

(3) A consent form notifying the victim that all drugs taken will be disclosed by the drug test.

(c) This SECTION expires July 1, 1999.".

Delete page 10.

Renumber all SECTIONS consecutively.

(Reference is to SB 355 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 11, Nays 0.

Senator Bray, Chairperson