

Changes in the Sentencing Code

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**St. Joseph County Bar Association
Local Practice Seminar**

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CRIMINAL CODE REVISION

**House Enrolled Act 1006
Effective July 1, 2014
(MAYBE)**

Converts CLASS A- CLASS D Felonies to Level 1-6 Felonies

- Misdemeanor Classifications Unchanged
- Murder – Unchanged

Current Code	HEA 1006
Murder	Murder
Class A	Levels 1 & 2
Class B	Levels 3 & 4
Class C	Level 5
Class D	Level 6

- Attempted Murder – Level 1

Sentencing Range Comparison

Class	Current	Level	New
Murder	45-65	Murder	45-65
A	20-50	1	20-50
		2	10-30
B	6-20	3	3-20
		4	2-12
C	2-8	5	1-6
D	5-3	6	5-2.5

Advisory Sentence Comparison

Class	Current	Level	New
Murder	55	Murder	55
A	30	1	30
		2	17.5
B	10	3	6
		4	4
C	4	5	2
D	1.5	6	1

RATIONALE FOR REVISIONS

- Some crime were disproportional;
- Hit the worst offenders harder;
- Hit recidivists harder; and
- Give some first offenders an opportunity to reform (i.e. low level drug offenses and property crimes)

- 251 felonies - essentially unchanged by SEA 1006
- 65 felonies - sentence decreased
- 28 felonies - sentence increased

Examples – Crimes for Which Sentence Increased

- **Manslaughter**
- **Rape & Other Sex Crimes**
- **Child Molesting & Other Sex Offenses Involving Children**

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Examples – Crimes for Which Sentence Decreased

- **Arson**
- **Residential Burglary -B Felony (6-20) - to Level 4 (2-12)**
- **Theft Less than \$750 (1st offense) CAM**
- **Forgery & Fraud Offenses - Class C (2-8) to Level 6 (.5-2.5)**
- **First Time Drug and Narcotic Offenses Involving Less than 3 Grams - Area of biggest reductions**

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DRUG OFFENSES – Enhanced in 2 Ways

1 = Enhancing Circumstances (I.C. 35-48-1-16.5)

- **Prior Dealing Controlled Substance Conviction (not marijuana);**
- **Offense Committed With a Firearm;**
- **Committed the Offense -- On a school bus or w/ 500 feet of school or public park when person under 18 reasonably be expected to be present**
- **Delivered or financed delivery to person under 18 at least 3 years the junior of the person committing the crime; and**
- **Manufactured or financed the manufacture**

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DRUG OFFENSES – Enhanced in 2 Ways (cont’d)

#2 By Weight

- If amount is at least 3 grams but less than 10 grams or if less than 3 grams and Enhancing Circumstance exists – UP ONE LEVEL
- If amount greater than 10 grams but less than 28 grams or at least 3 but less than 10 grams and Enhancing Circumstance exists – UP TWO LEVELS
- If the amount is at least 28 grams or at least 10 but less than 28 grams and an Enhancing Circumstance Exists – UP THREE LEVELS

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DRUG OFFENSES (Con’t) – AN EXAMPLE

- Dealing Cocaine or a Narcotic Drug
- Less than 3 Grams – LEVEL 5 FELONY (1-6 years)
- At least 3 but less than 10 grams or less than 3 grams with Enhancing Circumstance – LEVEL 4 FELONY (2-12 years)
- Greater than 10 but less than 28 grams or at least 3 but less than 10 grams with Enhancing Circumstance – LEVEL 3 FELONY (3-20 years)
- At least 28 grams or at least 10 but less than 28 grams with Enhancing Circumstance – LEVEL 2 FELONY (10-30 years)

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I.C.35-48-4-11

**Knowingly or Intentionally Possess Marijuana,
Hashish, Salvia or a Synthetic Drug
CLASS B MISDEMEANOR**

**With Prior Conviction - Level 6 Felony
At Least 30 Grams of Marijuana
Or at Least 2 Grams
Hash Oil, Hashish, Salvia or a Synthetic Drug -
Level 6 Felony**

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CHANGES OF NOTE

- Arson
 - Separate Counts for Multiple Victims
- Burglary
 - Breaking and Entering coupled with commission of a Felony after entering = Burglary (Need not prove prior intent)
 - Same penalty whether structure occupied or not
- I.C. 35-42-5-2 Carjacking REPEALED [See: Criminal Confinement]
- I.C. 35-42-4-2 Crime of Criminal Deviate Conduct REPEALED
- However, "other sexual conduct" now = an act involving
 - 1) A sex organ of one person and the mouth or anus of another person or
 - 2) Penetration of the sex organ or anus of a person by an object[See: Rape]

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CHANGES OF NOTE (cont'd)

- CHECK DECEPTION, INSURANCE FRAUD, and MEDICAID FRAUD
 - Threshold \$750.00 - \$49,999.00 - LEVEL 6 Felony (.5-2.5)
 - Less than \$750 = Misdemeanor
 - FMV at least \$50,000 - LEVEL 5 Felony (1-6)
- THEFT
 - Threshold \$750.00 - \$49,999.00 Level 6 Felony (.5-2.5)
 - Less than \$750 = Misdemeanor
 - FMV at least \$50,000 - Level 5 Felony (1-6)
 - Permits State to aggregate multiple thefts to reach threshold
 - Auto Theft & Receiving Stolen Property Level 6 Felony despite dollar amount

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CHANGES OF NOTE (cont'd)

- BATTERY
 - Adds CC Officer to definition of "Public Safety Official"
- GAMING CRIME
 - Attempted Entry into Gaming Facility by Person Less than 21- CCI (from CAM)

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SENTENCING

Suspendibility

**Long List of Offenses in IC 35-50-2-2
REMOVED**

NEW 35-50-2-2.2 provides:

- All sentences are suspendible except:
 - Minimum for Levels 1&2 with prior unrelated felony
 - Minimum for Murder

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SENTENCING (Cont'd)

Habitual Offenders

**Habitual Offender Statute – I.C. 35-50-2-8
(HSO Repealed)**

- All Felonies Qualify, Including drug offenses and Title 9 Offenses (Including Misdemeanors enhanced to a Felony)
- No right to additional *Voir Dire*
- "Enhancement" not Sentence
- Attaches to Highest Crime Charged
- If Highest Crime Set Aside, Attaches to Next Highest Felony

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HABITUAL OFFENDER STATUTE (con't)

Three Sections

- Murder through Level 4 Felonies
 - 2 Prior Unrelated Felonies
 - At Least One Not a Level 6 Felony or CDF
- Level 5 Felonies
 - Same as Above
 - Not More than 10 Years have elapsed between completion of any sentence on a Level 5 or 6 Felony and commission of current offense
- Level 6 Felonies
 - 3 Prior Unrelated Felony Offenses
 - Not more than 10 years have elapsed between completion of any sentence on a Level 5 or 6 Felony and commission of current offense

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NO HABITUAL OFFENDER IF...

- Current offense is misdemeanor enhanced to felony in same proceeding as HO solely because person has prior conviction
- BUT
Prior unrelated felony conviction may be used to support an HO determination even if the sentence for prior unrelated offense was enhanced for any reason, including an enhancement because the person has been convicted of another offense

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SENTENCING
HABITUAL OFFENDER

- Penalties
 - Murder through Level 4:
between 0-20 years
 - Level 5 & 6 Felonies : 0-6 years
 - Non-suspendible

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OTHER SENTENCING ENHANCEMENTS

- I.C. 35-50-2-11: Firearms (unchanged)
- I.C. 35-50-2-15: Gang Affiliation
 - Language Clarified
 - Appears will be easier to prove
- I.C. 35-50-2-9 Criminal Confinement
 - Added as Aggravating Circumstance - LWOP and DP

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CREDIT TIME CHANGES
Earned/Education Credit Time Changes

- Associates/Bachelor's Degrees must be earned (vs. received) during period of incarceration
- Not more than 1 year for Associates Degree
- Not more than 2 years for Bachelor's Degree
- Vocational credit increased from ½ year to 1 year
- Credit time earned must be proportional to time served & earned while incarcerated

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ADDITIONAL CREDIT TIME CHANGES

- **Earned/Education Credit Changes (I.C.35-50-6-3.3)**
 - Maximum Education Credit Time one can earn is the lesser of:
 - 2 years or
 - 1/3 of executed sentence

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CREDIT TIME CLASSIFICATIONS

Current – Four Class System (I.C. 35-50-6-3)

- Class 1 – 1 day for 1 day (good time)
- Class 2 - 1 day for 2 days
- Class 3 – No credit
- Class 4 – 1 days for 6 days (credit restricted felon)

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CREDIT TIME CLASSIFICATION CHANGES

New 3 Class System (I.C. 35-50-6-3.1)

- Class A – 1 day for 3 days (good time)
- Class B - 1 day for 6 days (credit restricted felon)
- Class C - No credit

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ANOTHER CHANGE OF NOTE
SENTENCE MODIFICATION

“At any time” post-sentence but only if modification does not negate terms of binding plea agreement

Must incorporate reasons for modification into record

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PROJECTED IMPACT

- Potentially will send additional offenders to rehab under local supervision (Probation/CC)
- If so, significant impact on local funding
- Expect next year’s criminal update to be **IMPLEMENTATION OF HEA 1006**

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SUMMER STUDY COMMISSION



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