

# SENTENCING

Comparison Chart

Prior to June 30, 2014

July 1, 2014 and After

Class	Range	Advisory	Range @ 50 %	Level	Range	Advisory	Range @ 75%
Murder	45-65	55	22.5-32.5	Murder	45-65	55	33.75-48.75
A	20-50	30	10-25	1	20-40	30	15-30
A	20-50	30	10-25	2	10-30	17.5	7.5-22.5
B	6-20	10	3-10	3	3-16	9	2.25-12
B	6-20	10	3-10	4	2-12	6	1.5-9
C	2-8	4	1-4	5	1-6	3	.75-4.5
D	0.5-3	1.5	0.25-1.5	6	0.5-2.5	1	0.25-1.25 (50%)

## Credit Time Credit Time Classifications

Class	Assigned	Serve : Earn	% Served
A	Misdemeanants Level 6	1:1	50%
B	All but Credit Restricted Felons and Level 6 and Misdemeanants	3:1	75%
C	Credit Restricted Felons	6:1	85.7%
D	Disciplinary Sanction	1:0	100%

# **Doctrine of Amelioration Does Not Apply**

## **1-1-5.5-21 Affect of P.L.158-2013 or P.L.168-2014 legislation**

(a) A SECTION of P.L.158-2013 or P.L.168-2014 does not affect:

- (1) penalties incurred;
- (2) crimes committed; or
- (3) proceedings begun;

before the effective date of that SECTION of P.L.158-2013 or P.L.168-2014. Those penalties, crimes, and proceedings continue and shall be imposed and enforced under prior law as if that SECTION of P.L.158-2013 or P.L.168-2014 had not been enacted.

(b) The general assembly does not intend the doctrine of amelioration (see *Vicory v. State*, 400 N.E.2d 1380 (Ind. 1980)) to apply to any SECTION of P.L.158-2013 or P.L.168-2014.

## **1-1-5.5-22 Affect of P.L.217-2014 legislation**

(a) A SECTION of P.L.217-2014 does not affect:

- (1) penalties incurred;
- (2) crimes committed; or
- (3) proceedings begun;

before the effective date of that SECTION of P.L.217-2014. Those penalties, crimes, and proceedings continue and shall be imposed and enforced under prior law as if that SECTION of P.L.217-2014 had not been enacted.

(b) The general assembly does not intend the doctrine of amelioration (see *Vicory v. State*, 400 N.E.2d 1380 (Ind. 1980)) to apply to any SECTION of P.L.217-2014.

**35-50-2-2.2. Suspension; probation**

(a) Except as provided in subsection (b) or (c), the court may suspend any part of a sentence for a felony.

(b) If a person is convicted of a Level 2 felony or a Level 3 felony, except a Level 2 felony or a Level 3 felony concerning a controlled substance under IC 35-48-4, and has any prior unrelated felony conviction, the court may suspend only that part of a sentence that is in excess of the minimum sentence for the:

- (1) Level 2 felony; or
- (2) Level 3 felony.

(c) The court may suspend only that part of a sentence for murder or a Level 1 felony conviction that is in excess of the minimum sentence for murder or the Level 1 felony conviction.

### 35-38-1-17 Reduction or suspension of sentence

(a) This section does not apply to a credit restricted felon.

(b) Not later than three hundred sixty-five (365) days after:

- (1) a convicted person begins serving the person's sentence; and
  - (2) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned;
- the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing. The court must incorporate its reasons in the record.

(c) If more than three hundred sixty-five (365) days have elapsed since the convicted person began serving the sentence, the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing. The court must incorporate its reasons in the record.

(d) If the court sets a hearing on a petition under this section, the court must give notice to the prosecuting attorney and the prosecuting attorney must give notice to the victim (as defined in IC 35-31.5-2-348) of the crime for which the convicted person is serving the sentence.

(e) The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.2.

(f) The court may deny a request to suspend or reduce a sentence under this section without making written findings and conclusions.

(g) The court is not required to conduct a hearing before reducing or suspending a sentence under this section if:

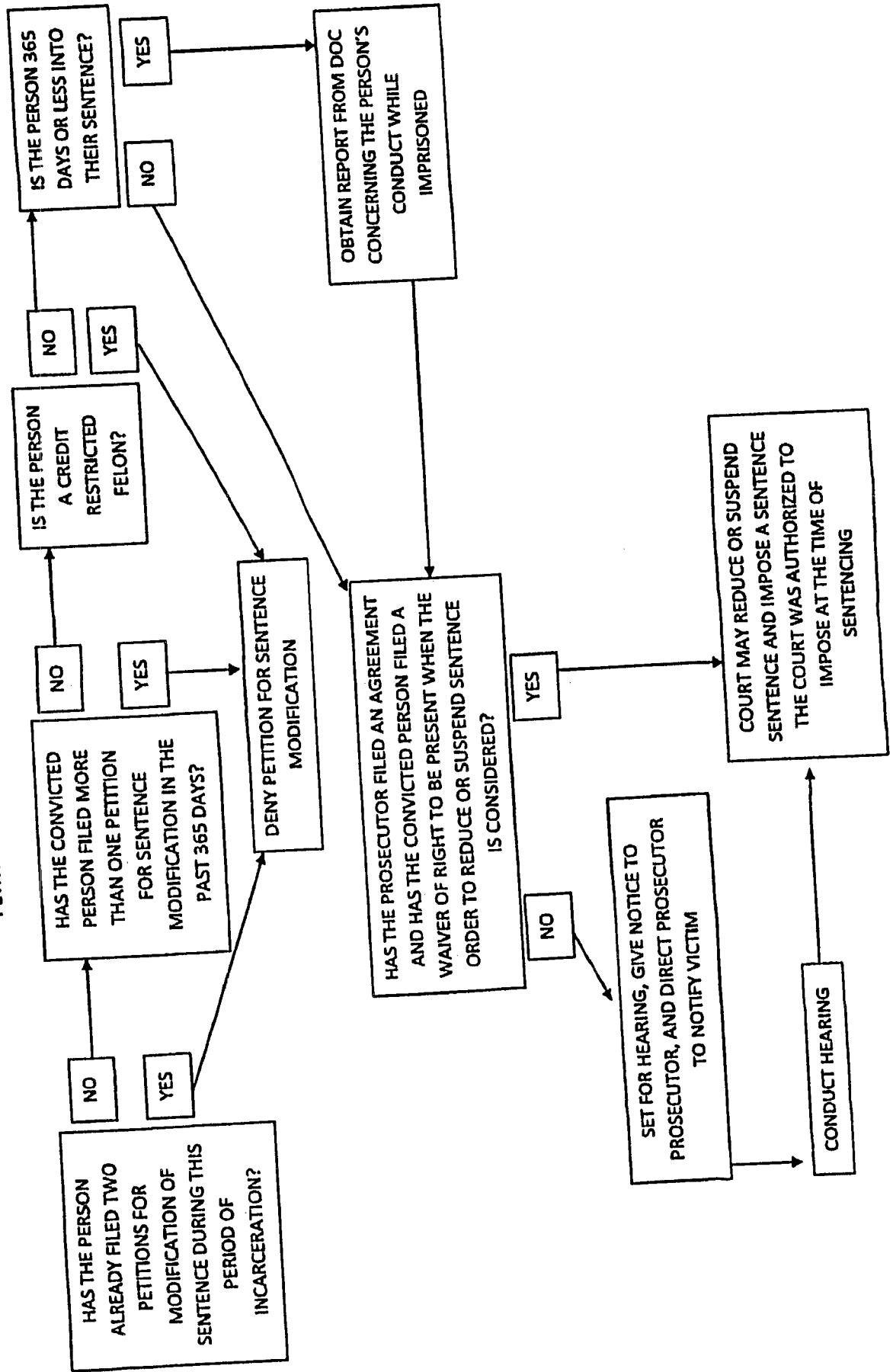
- (1) the prosecuting attorney has filed with the court an agreement of the reduction or suspension of the sentence; and
- (2) the convicted person has filed with the court a waiver of the right to be present when the order to reduce or suspend the sentence is considered.

(h) A convicted person may file a petition for sentence modification under this section:

- (1) not more than one (1) time in any three hundred sixty-five (365) day period; and
- (2) a maximum of two (2) times during any consecutive period of incarceration.

(i) A person may not waive the right to sentence modification under this section as part of a plea agreement. Any purported waiver of the right to sentence modification under this section in a plea agreement is invalid and unenforceable as against public policy. This subsection does not prohibit the finding of a waiver of the right to sentence modification for any other reason, including failure to comply with the provisions of this section.

PETITION FOR SENTENCE MODIFICATION IC § 35-38-1-17



**35-38-3-3 Persons convicted of misdemeanor; commitment; local facilities**

(a) Except as provided by subsection (b), a person convicted of a misdemeanor may not be committed to the department of correction.

(b) Upon a request from the sheriff, the commissioner may agree to accept custody of a misdemeanant:

(1) if placement in the county jail:

(A) places the inmate in danger of serious bodily injury or death; or

(B) represents a substantial threat to the safety of others;

(2) for other good cause shown; or

(3) if a person has more than five hundred forty-seven (547) days remaining before the person's earliest release date as a result of consecutive misdemeanor sentences.

(c) After June 30, 2014, and before July 1, 2015, a court may not commit a person convicted of a Level 6 felony to the department of correction if the person's earliest possible release date is less than ninety-one (91) days from the date of sentencing, unless the commitment is due to the person violating a condition of probation, parole, or community corrections by committing a new criminal offense.

(d) After June 30, 2015, a court may not commit a person convicted of a Level 6 felony to the department of correction if the person's earliest possible release date is less than three hundred sixty-six (366) days from the date of sentencing, unless the commitment is due to the person violating a condition of probation, parole, or community corrections by committing a new criminal offense.



**35-38-1-1.5 ... Level 6 felony; conversion to Class A misdemeanor**

(a) A court may enter judgment of conviction as a Level 6 felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor if the person fulfills certain conditions. A court may enter a judgment of conviction as a Level 6 felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor only if the person pleads guilty to a Level 6 felony that qualifies for consideration as a Class A misdemeanor under IC 35-50-2-7, and the following conditions are met:

- (1) The prosecuting attorney consents.
- (2) The person agrees to the conditions set by the court.

(b) For a judgment of conviction to be entered under subsection (a), the court, the prosecuting attorney, and the person must all agree to the conditions set by the court under subsection (a).

(c) The court is not required to convert a judgment of conviction entered as a Level 6 felony to a Class A misdemeanor if, after a hearing, the court finds:

- (1) the person has violated a condition set by the court under subsection (a); or
- (2) the period that the conditions set by the court under subsection (a) are in effect expires before the person successfully completes each condition.

However, the court may not convert a judgment of conviction entered as a Level 6 felony to a Class A misdemeanor if the person commits a new offense before the conditions set by the court under subsection (a) expire.

(d) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court under subsection (a).

(e) The entry of a judgment of conviction under this section does not affect the application of any statute requiring the suspension of a person's driving privileges.

(f) This section may not be construed to diminish or alter the rights of a victim (as defined in IC 35-40-4-8) in a sentencing proceeding under this chapter.