

IPAC MEMO
COMPARISON OF PENALTIES
CURRENT INDIANA CRIMINAL CODE
AND HB 1006

Date of Memo: 4-3-13

The purpose of this memo is to compare the penalties associated with the felony criminal offenses set forth in HB 1006 (as that bill exists on 4-3-13) and the penalties associated with such felony criminal offenses contained within the current Indiana Criminal Code.

With respect to this comparison, there are two major variables to be considered. First, HB 1006 changes the basic structure of felony criminal penalties with its change from Murder plus four (4) felony classes to Murder plus six (6) felony classes. Second, HB 1006 changes the “standard” credit time provisions from one (1) day of credit for every one (1) day served (requiring the actual service of 50% of the stated term of imprisonment) to one (1) day of credit for every three (3) days served (requiring the actual service of 75% of the stated term of imprisonment).

In order to make the sentence comparison set forth in this memo, one must have an understanding of the basic term of imprisonment structure of both the current Indiana Criminal Code and the current provisions of HB 1006.

The *current* Indiana Criminal Code sets forth the following stated ranges of imprisonment and the actual ranges to be served after standard credit time, for each of the felony classes:

<u>Felony Class</u>	<u>Stated Range of Imprisonment Current Code</u>	<u>Actual Time Served</u>
Murder	45-65	22.5 – 32.5
Class A felony	20-50	10 – 25
Class B felony	6-20	3 – 10
Class C felony	2-8	1 – 4
Class D felony	.5-3	.25 – 1.5

HB 1006 (as it exists on 4-3-13) sets forth the following stated ranges of imprisonment and actual ranges to be served after standard credit time, for each of the felony classes:

<u>Felony Class</u>	<u>Stated Range of Imprisonment</u> <u>HB 1006</u>	<u>Actual Time Served</u>
Murder	45-65	33.75 – 48.75
Level 1 felony	20-50	15 – 37.5
Level 2 felony	10-30	7.5 – 22.5
Level 3 felony	3-20	2.25 – 15
Level 4 felony	2-12	1.5 – 9
Level 5 felony	1-6	.75 – 4.5
Level 6 felony	.5-2.5	.375 – 1.875

HB 1006 reclassified most of the current Class D felonies to Level 6 felonies and reclassified most of the current Class C felonies to Level 5 felonies. For purposes of this memo, such reclassification does not constitute a change in the actual time served for such offenses. In other words, even after the reclassification of the Class D felony and Class C felony offenses and the change in the credit time provisions, the actual time served penalties for these felony offenses remain, essentially, the same. With respect to the remaining felony offenses (Murder and Level 1 felonies through Level 4 felonies), the offense will be listed as having an increased penalty if both the lower and upper ends of the “actual time served” range have increased. Similarly, the offense will be listed as having a decreased penalty if both the lower and upper ends of the “actual time served” range have decreased.

OFFENSES WITH
PENALTY INCREASES
HB 1006

Given the parameters set forth above, the following felony criminal offenses set forth in HB 1006 have increased “actual time served” penalties:

<u>Offense</u>	<u>Reasons for Increase</u>	<u>Number of DOC Commitments – 2012</u>
Murder 35-42-1-1	Stated range remains same – decrease in credit for time served	100

Attempted Murder Class A felony 35-41-5-1	Stated range remains same – decrease in credit for time served	24
Conspiracy to Commit Murder Class A felony 35-41-5-2	Stated range remains same – decrease in credit for time served	Unknown
Voluntary Manslaughter Class B felony 35-42-1-3	Class B felony increased to Level 2 felony	10
Involuntary Manslaughter Class D felony 35-42-1-4	Class D felony increased to Level 5 felony	0
Aggravated Battery 35-42-2-1.5	HB 1006 creates new Level 1 enhancement for offense resulting in death	N/A
Railroad Mischief Class B felony 35-42-2-5.5	Class B felony increased to Level 2 felony	0
Rape Class A felony 35-42-4-1 Criminal Deviate Conduct Class A felony 35-42-4-2	Class A felony increased to Level 1 felony	41
Child Molesting Class A felony 35-42-4-3	Class A felony increased to Level 1 felony	210
Child Molesting Class C felony 35-42-4-3	Class C felony increased to Level 4 felony	354
Vicarious Sexual Gratification Class C felony 35-42-4-5	Class C felony increased to Level 4 felony	1
Vicarious Sexual Gratification Class D felony 35-42-4-5	Some Class D felonies increased to Level 5 felony	Unknown
Child Solicitation Class D felony 35-42-4-6	Class D felony increased to Level 5 felony	23
Child Solicitation 35-42-4-6	HB 1006 adds a new Level 5 felony offense	N/A

Sexual Battery Class C felony 35-42-4-8	Class C felony increased to Level 4 felony	1
Sexual Misconduct With a Minor Class A felony 35-42-4-9	Stated range remains same – decrease in credit for time served	1
Sexual Misconduct With a Minor Class B felony 35-42-4-9	One Class B felony increased to Level 2 felony	235 NOTE: Some of these will be affected
Burglary Class A felony 35-43-2-1	One Class A felony increased to Level 1 felony	31 NOTE: Some of these will be affected.
Theft Class C felony 35-43-4-2	Class C felony (Level 5 felony) amount reduced from \$100,000 to \$50,000	21 NOTE: A few of these may be affected
Check Deception 35-43-5-5	HB 1006 adds a new Level 5 offense for over \$50,000	N/A
Medicaid Fraud Class C felony 35-43-5-7.1	Class C felony (Level 5 felony) amount reduced from \$100,000 to \$50,000	0
Insurance Fraud Class C felony 35-43-5-7.2	Class C felony (Level 5 felony) amount reduced from \$100,000 to \$50,000	3 NOTE: A few of these may be affected
Check Fraud Class C felony 35-43-5-12	Class C felony (Level 5 felony) amount reduced from \$100,000 to \$50,000	1
Disarming a Law Enforcement Officer Class A felony 35-44.1-3-2	Stated range remains same – decrease in credit for time served	0
Neglect of a Dependent Class A felony 35-46-1-4	Stated range remains same – decrease in credit for time served	9
Neglect by a Child Care Provider	HB 1006 creates a new section with a Level 6 felony	N/A
Boarding an Aircraft With a Firearm	HB 1006 creates a new Level 4 felony	N/A
Use of Regulated Explosives	HB 1006 creates a new Level 5 felony	N/A

**OFFENSES WITH
PENALTY DECREASES
HB1006**

Given the parameters set forth above, the following felony criminal offenses set forth in HB 1006 have decreased “actual time served” penalties:

<u>Offense</u>	<u>Reasons for Decrease</u>	<u>Number of DOC Commitments -- 2012</u>
Voluntary Manslaughter Class A felony 35-42-1-3	Class A felony decreased to Level 2 felony	33
Battery Class A felony 35-42-2-1	Class A felony decreased to Level 2 felony	5
Kidnapping Class A felony 35-42-3-2	Kidnapping redefined. Some Class A felonies now Level 6 felony, Level 5 felony, Level 3 felony or Level 2 felony	7 NOTE: A few of these may be affected
Interference With Custody Class B felony 35-42-3-4	Class B felony decreased to Level 4 felony	0
Human Sexual Trafficking Class A felony 35-42-3.5-1	Class A felony decreased to Level 2 felony	0
Human Sexual Trafficking Class B felony 35-42-3.5-1	Some Class B felonies decreased to Level 4 felonies	0
Vicarious Sexual Gratification Class A felony 35-42-4-5	Class A felony decreased to Level 2 felony or Level 3 felony	0
Child Solicitation Class B felony 35-42-4-6	Class B felony eliminated (prior conviction required). Now a Level 5 felony	2
Sexual Misconduct With a Minor Class B felony 35-42-4-9	Some Class B felonies decreased to Level 4 felonies	235 NOTE: Some of these will be affected
Robbery Class A felony 35-42-4-1	Class A felony decreased to Level 2 felony	45

Arson Class A felony 35-43-1-1	Class A felony decreased to Level 2 felonies and Level 3 felonies	4
Arson Class B felony 35-43-1-1	Class B felony decreased to Level 4 felony	70
Tampering With Water Supply Class A felony 35-43-1-5	Class A felony decreased to Level 2 felony	0
Tampering With Water Supply Class B felony 35-43-1-5	Some Class B felonies decreased to Level 4 felonies	0
Burglary Class A felony 35-43-2-1	Some Class A felonies decreased to Level 2 felonies and Level 3 felonies	31
Burglary Class B felony 35-43-2-1	Standard dwelling Burglary reduced from a Class B felony to a Level 4 felony	1,834 NOTE: Most of these would be affected
Theft Class D felony 35-43-4-2	Basic offense decreased from Class D felony to Class A misdemeanor. Level 6 felony if Theft is over \$750 or if defendant has a prior	4,056 NOTE: A significant number of these would be affected
Forgery Class C felony 35-43-5-2	Basic offense decreased from Class C felony to Level 6 felony	879
Welfare Fraud Class D felony 35-43-5-7	Changed dollar amount for felony from range of \$250 - \$2,500 to range of \$750 to \$50,000	3 NOTE: Some of these may be affected
Medicaid Fraud Class D felony 35-43-5-7.1	Basic offense decreased from Class D felony to Class A misdemeanor. Level 6 felony has dollar amount range from \$750 to \$50,000	0
Children's Insurance Fraud Class D felony 35-43-5-7.2	Basic offense decreased from Class D felony to Class A misdemeanor. Level 6 felony has dollar amount range from \$750 to \$50,000	0

Check Fraud Class D felony 35-43-5-12	Basic offense decreased from Class D felony to Class A misdemeanor Level 6 felony has dollar amount range from \$750 to \$50,000	68 NOTE: Some of these will be affected
Inmate Fraud Class C felony 35-43-5-20	Class C felony broken into Level 5 felony and Level 6 felony	1
Conversion of Title Insurance Funds Class B felony 35-43-9-7	Class B felony decreased to Level 4 felony	0
Legend Drug Deception Class A felony 35-43-10-4	Class A felony decreased to Level 2 felony	0
Manufacture of Police or Fire Insignia Class B felony 35-44.1-2-8	Class B felony decreased to Level 4 felony	0
Resisting Law Enforcement Class A felony 35-44.1-3-1	Class A felony decreased to Level 2 felony	0
Escape Class B felony 35-44.1-3-4	Class B felony decreased to Level 4 felony	5
Inmate in Possession of a Dangerous Device Class B felony 35-44.1-3-7	Class B felony decreased to Level 4 felony	0
Sexual Misconduct With Service Provider Class B felony 35-44.1-3-10	Class B felony decreased to Level 4 felony	0
Promoting Prostitution Class B felony 35-45-4-4	Class B felony decreased to Level 4 felony	0
Consumer Product Tampering Class B felony 35-45-8-3	Class B felony decreased to Level 4 felony	0
Stalking Class B felony 35-45-10-5	Class B felony decreased to Level 4 felony	0

Money Laundering Class B felony 35-45-15-5	Class B felony decreased to Level 4 felony	0
Malicious Mischief Class B felony 35-45-16-2	Class B felony decreased to Level 4 felony	0
Incest Class B felony 35-46-1-3	Class B felony decreased to Level 4 felony	0
Carrying a Handgun Without a License Class C felony 35-47-2-1	Class C felony remains a Level 5 felony. However, the protected zone around school property reduced from 1,000 feet to 500 feet	189 NOTE: Some of these will be affected
Possession of a Firearm by a Serious Violent Felon Class B felony 35-47-4-5	Class B felony decreased to Level 4 felony	228
Operating a Loaded Machine Gun Class B felony 35-47-5-9	Class B felony decreased to Level 4 felony	0
Disrupting Operation of an Aircraft Class A felony 35-47-6-1.6	Class A felony decreased to Level 2 felony	0
Disrupting Operating of an Aircraft Class B felony 35-47-6-1.5	Class B felony decreased to Level 4 felony	0
Dangerous Control of a Firearm Class B felony 35-47-10-6	Class B felony decreased to Level 4 felony	0
Permitting Child to Possess Firearm Class B felony 35-47-10-7	Class B felony decreased to Level 4 felony	0
Terrorism Class A felony 35-47-12-1	Class A felony decreased to Level 2 felony	0
Terroristic Mischief Class B felony 35-47-12-3	Class B felony decreased to Level 4 felony	0

Possession of Explosive Class B felony 35-47.5-5-3	Class B felony decreased to Level 4 felony	0
Distribution of Destructive Device Class B felony 35-47.5-5-5	Class B felony decreased to Level 4 felony	0
Hindering Detection of Destructive Device Class B felony 35-47.5-5-7	Class B felony decreased to Level 4 felony	0
Possession of a Destructive Device to Intimidate Class A felony 35-47.5-5-8	Class A felony decreased to Level 2 felony	0
Dealing in Cocaine or a Narcotic Drug Class A felony 35-48-4-1	Class A felony reduced to Level 4 felony, Level 3 felony or Level 2 felony, depending upon a number of circumstances	152
Dealing in Cocaine or a Narcotic Drug Class B felony 35-48-4-1	Basic Class B felony reduced to Level 5 felony	878
Dealing in Methamphetamine Class A felony 35-48-4-1.1	Class A felony reduced to Level 4 felony, Level 3 felony or Level 2 felony, depending upon a number of circumstances	62
Dealing in Methamphetamine Class B felony 35-48-4-1.1	Basic Class B felony reduced to a Level 5 felony	494
Dealing in a Schedule I, II or III Controlled Substance Class A felony 35-48-4-2	Class A felony reduced to Level 4 felony, Level 3 felony or Level 2 felony depending upon a number of circumstances	38
Dealing in a Schedule I, II or III Controlled Substance Class B felony 35-48-4-2	Basic Class B felony reduced to a Level 5 felony	431
Dealing in a Schedule IV Controlled Substance Class B felony 35-48-4-3	Class B felony reduced to a Level 5 felony or a Level 4 felony depending upon a number of circumstances	6

Dealing in a Schedule IV Controlled Substance Class C felony 35-48-4-3	Basic Class C felony decreased to a Level 6 felony	54
Dealing in a Schedule V Controlled Substance Class B felony 35-48-4-4	Class B felony decreased to Level 6 felony, Level 5 felony or Level 4 felony, depending upon a number of circumstances	0
Dealing in a Schedule V Controlled Substance Class D felony 35-48-4-4	Basic Class D felony decreased to Class A misdemeanor	0
Possession of Cocaine or a Narcotic Drug Class A felony 35-48-4-6	Class A felony decreased to a Level 5 felony, a Level 4 felony or a Level 3 felony depending upon a number of circumstances	3
Possession of Cocaine or a Narcotic Drug Class B felony 35-48-4-6	Class B felony decreased to a Level 5 felony depending upon a number of circumstances	108
Possession of Methamphetamine Class A felony 35-48-4-6.1	Class A felony decreased to Level 5 felony, a Level 4 felony or a Level 3 felony depending upon a number of circumstances	3
Possession of Methamphetamine Class B felony 35-48-4-6.1	Class B felony decreased to a Level 5 felony depending upon a number of circumstances	48
Possession of a Schedule I, II, III or IV Controlled Substance Class C felony 35-48-4-7	Class C felony decreased to a Level 6 felony and only applicable with enhancing circumstances	89
Possession of a Schedule I, II, III or IV Controlled Substance Class D felony 35-48-4-7	Basic Class D felony decreased to a Class A misdemeanor	826

SUMMARY

1. HB 1006 increases the penalties for 28 felony offenses, increasing the penalties for up to 1,065 yearly commitments to the Indiana Department of Correction.
2. HB 1006 decreases the penalties for 65 felony offenses, decreasing the penalties for up to 10,887 yearly commitments to the Indiana Department of Correction.

There are three (3) categories of felony offenses (Theft, Burglary, and Controlled Substances Offenses) which would constitute approximately 81% of the anticipated potential reduction in the length of the yearly commitments to the Indiana Department of Correction.

3. HB 1006 reclassifies approximately 251 felony offenses, where the penalty for such felony offenses is essentially unchanged.

OTHER VARIABLES

In attempting to compare the penalties associated with the felony criminal offenses set forth in HB 1006 to the current felony criminal offense penalties, there are two other major variables to consider.

First, IC 35-50-2-2 is amended by HB 1006 to provide that a sentence for a felony offense may be suspended unless:

1. The offense is Murder; or
2. The offense is a Level 1 felony or a Level 2 felony AND the defendant has a prior unrelated felony conviction.

This amendment provides for much greater discretion for a trial judge to suspend the term of imprisonment for a felony offense. Prosecutors anticipate that this provision will significantly decrease the number of defendants sent to the Indiana Department of Correction each year, particularly for the Level 5 felonies and Level 6 felonies.

Second, IC 35-50-2-8 is amended by HB 1006 to provide increased use of the habitual offender sentence enhancement. Prosecutors anticipate that this may cause a moderate increase in the length of the terms of imprisonment for repeat drug dealers.

DISCLAIMER

This memo was prepared by the Indiana Prosecuting Attorneys Council for informational purposes only and is not intended nor should be construed to offer support for or opposition to HB 1006 or any other legislation being considered by the Indiana General Assembly.