

# SENATE BILL No. 637

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-1-17.

**Synopsis:** Modification of sentences. Provides that a defendant may receive a sentence modification after serving 365 days of an executed sentence if the defendant has served at least ten years or one-third of the executed sentence or demonstrates a pattern of behavior consistent with rehabilitation.

**Effective:** July 1, 2005.

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### Breaux

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January 24, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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## SENATE BILL No. 637



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 35-38-1-17 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) Within three  
 3 hundred sixty-five (365) days after:  
 4 (1) the defendant begins serving **his the defendant's** sentence;  
 5 (2) a hearing at which the defendant is present and of which the  
 6 prosecuting attorney has been notified; and  
 7 (3) obtaining a report from the department of correction  
 8 concerning the defendant's conduct while imprisoned;  
 9 the court may reduce or suspend the sentence. The court must  
 10 incorporate its reasons in the record.  
 11 (b) If more than three hundred sixty-five (365) days have elapsed  
 12 since the defendant began serving the sentence and after a hearing at  
 13 which the convicted person is present, the court may reduce or suspend  
 14 the sentence, subject to the approval of the prosecuting attorney.  
 15 However, if in a sentencing hearing for a defendant conducted after  
 16 June 30, 2001, the court could have placed the defendant in a  
 17 community corrections program as an alternative to commitment to the



1 department of correction, the court may modify the defendant's  
2 sentence under this section without the approval of the prosecuting  
3 attorney to place the defendant in a community corrections program  
4 under IC 35-38-2.6.

5 **(c) Notwithstanding the requirement under subsection (b) of the**  
6 **prosecuting attorney's approval, the court may reduce or suspend**  
7 **the executed sentence of a defendant if more than three hundred**  
8 **sixty-five (365) days have elapsed since the defendant began**  
9 **-serving the executed sentence if the:**

10 **(1) defendant has served at least ten (10) years or one-third**  
11 **(1/3) of the executed sentence; or**

12 **(2) court determines the defendant has demonstrated a**  
13 **pattern of behavior consistent with rehabilitation based upon:**

14 **(A) a report from the department of correction concerning**  
15 **the defendant's conduct while imprisoned;**

16 **(B) the successful completion of a diploma, degree, or**  
17 **program under IC 35-50-6-3.3; or**

18 **(C) any other evidence the court considers relevant.**

19 **The court shall use the expected release date (as defined in**  
20 **IC 11-8-1-8.5) of the defendant in determining whether the**  
21 **defendant has served at least ten (10) years or one-third (1/3) of the**  
22 **executed sentence under subdivision (1).**

23 ~~(c)~~ **(d)** The court must give notice of the order to reduce or suspend  
24 the sentence under this section to the victim (as defined in  
25 IC 35-35-3-1) of the crime for which the defendant is serving the  
26 sentence.

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

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

31 ~~(f)~~ **(g)** Notwithstanding subsections (a) and (b), the court is not  
32 required to conduct a hearing before reducing or suspending a sentence  
33 if:

34 (1) the prosecuting attorney has filed with the court an agreement  
35 of the reduction or suspension of the sentence; and

36 (2) the defendant has filed with the court a waiver of the right to  
37 be present when the order to reduce or suspend the sentence is  
38 considered.

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