

# **"WHAT YOU ARE FACING"**

BY JOEL WIENEKE

## **FELONIES**

Indiana law provides ranges for felony sentences based on the severity of the crime. The sentence given to any offender is left to the discretion of the judge, who considers the nature of the offense and the character of the defendant. The judge can give any sentence between the minimum and maximum range; however, the judge begins with the advisory sentence and adds or subtracts time within the range, depending on certain circumstances. A mitigating circumstance (such as lack of criminal history) can support giving a lesser sentence. An aggravating circumstance (such as violation of a position of trust) can support giving a longer sentence. In my experience, a defendant's prior criminal history is a primary consideration by the judges in Putnam County.

Here are the sentencing ranges for felonies:

- Murder:** 45 to 65 years; 55 is the advisory sentence (IC 35-50-2-3)
- Class A Felony:** 20 to 50 years; 30 is the advisory sentence (IC 35-50-2-4)
- Class B Felony:** 6 to 20 years; 10 is the advisory sentence (IC 35-50-2-5)
- Class C Felony:** 2 to 8 years; 4 is the advisory sentence (IC 35-50-2-6)
- Class D Felony:** 180 days to 3 years; 1 ½ years is the advisory sentence [can seek entry as Class A misdemeanor if no such treatment less than three years prior and offense is not domestic battery or possession of child porn](IC 35-50-2-7)

All Felonies also carry a possible fine of up to \$10,000.

A court can suspend time below the minimum sentence to probation in some instances, but there are many exceptions which prohibit the court from doing so.

There are also enhancements, which, if charged by the prosecutor, can be used to increase the Defendant's sentence.

- **Habitual Offender:**
  - not less than the advisory for the underlying offense, but not more than 3 times the advisory, not to exceed 30 years (IC 35-50-2-8(h))
- **Habitual Substance:**
  - at least 3 years, but not more than 8 years (IC 35-50-2-10)
- **Use of Firearm:**
  - additional 5 years (IC 35-50-2-11)
- **Use of Firearm Controlled Substance:**
  - additional 5 years, up to 10 years if sawed-off shotgun, up to 20 years if machine gun, silencer/muffler (can be in addition to “use of firearm” enhancement) (IC 35-50-2-13)
- **Repeat Sex Offender:**
  - additional fixed = advisory of underlying offense, but not more than 10 years (IC 35-50-2-14)
- **Criminal Gang Enhancement:**
  - additional term equal to the longest sentence imposed for the underlying felonies (IC 35-50-2-15)
- **Termination of Pregnancy:**
  - additional 6 to 20 years (IC 35-50-2-16)

## **MISDEMEANORS**

All misdemeanor sentences can be suspended in part or full. There are no minimum or advisory sentences—just maximum sentences.

**Class A Misdemeanor:** Up to 1 year, and/or a \$5,000 fine (IC 35-50-3-2)

**Class B Misdemeanor:** Up to 180 days, and/or a \$1,000 fine (IC 35-50-3-3)

**Class C Misdemeanor:** Up to 60 days, and/or a \$500 fine (IC 35-50-3-4)

## **OTHER FACTORS WHICH EFFECT SENTENCING**

### **Consecutive v. Concurrent:**

Where a person has committed multiple crimes, he may be ordered to serve the sentences either consecutively or concurrently. If a defendant receives consecutive sentences, it means s/he must complete one sentence before s/he begins serving another (i.e., the sentences are “stacked”). If a defendant receives concurrent sentences, it means that s/he serves both sentences at the same time. Different factors control whether multiple sentences should be served consecutive or concurrent to each other.

### **Credit Time:**

Most offenders will receive one day of credit time for each day they serve, which means they will actually serve  $\frac{1}{2}$ , or 50%, of their executed sentence. “Credit time” is often referred to as “day-for-a-day” credit or “good time credit” and can be taken away if the offender misbehaves while incarcerated.

### **Probation:**

When a court “suspends” a portion of an offender’s sentence, the time suspended (up to 10 years) is served on probation. There is no credit time for probation, so a person ordered to probation for two years is subject to the terms of probation for two actual years. If at any time while on probation a person violates a term of his probation, that person can be ordered to serve up to the full amount of time suspended to probation (even if the violation is committed on the last day of probation). Terms of probation in Putnam County usually include: obeying all laws, not using drugs or alcohol, maintaining employment or doing community service, reporting periodically to a probation officer, notifying a probation officer of any change in address, and paying restitution, fines, or fees. Judges in Putnam County typically sentence defendants to at least some period of probation in most cases.

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