



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2402

Introduced 1/18/2006, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-6-4
730 ILCS 5/5-7-2

from Ch. 38, par. 1005-6-4
from Ch. 38, par. 1005-7-2

Amends the Unified Code of Corrections. Provides that the amount of credit to be applied against a sentence of imprisonment or periodic imprisonment when the defendant served a term or partial term of periodic imprisonment shall be calculated upon the basis of the actual days spent in confinement rather than the duration of the term.

LRB094 18564 RLC 53898 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Unified Code of Corrections is amended by
5 changing Sections 5-6-4 and 5-7-2 as follows:

6 (730 ILCS 5/5-6-4) (from Ch. 38, par. 1005-6-4)

7 Sec. 5-6-4. Violation, Modification or Revocation of
8 Probation, of Conditional Discharge or Supervision or of a
9 sentence of county impact incarceration - Hearing.

10 (a) Except in cases where conditional discharge or
11 supervision was imposed for a petty offense as defined in
12 Section 5-1-17, when a petition is filed charging a violation
13 of a condition, the court may:

14 (1) in the case of probation violations, order the
15 issuance of a notice to the offender to be present by the
16 County Probation Department or such other agency
17 designated by the court to handle probation matters; and in
18 the case of conditional discharge or supervision
19 violations, such notice to the offender shall be issued by
20 the Circuit Court Clerk; and in the case of a violation of
21 a sentence of county impact incarceration, such notice
22 shall be issued by the Sheriff;

23 (2) order a summons to the offender to be present for
24 hearing; or

25 (3) order a warrant for the offender's arrest where
26 there is danger of his fleeing the jurisdiction or causing
27 serious harm to others or when the offender fails to answer
28 a summons or notice from the clerk of the court or Sheriff.

29 Personal service of the petition for violation of probation
30 or the issuance of such warrant, summons or notice shall toll
31 the period of probation, conditional discharge, supervision,
32 or sentence of county impact incarceration until the final

1 determination of the charge, and the term of probation,
2 conditional discharge, supervision, or sentence of county
3 impact incarceration shall not run until the hearing and
4 disposition of the petition for violation.

5 (b) The court shall conduct a hearing of the alleged
6 violation. The court shall admit the offender to bail pending
7 the hearing unless the alleged violation is itself a criminal
8 offense in which case the offender shall be admitted to bail on
9 such terms as are provided in the Code of Criminal Procedure of
10 1963, as amended. In any case where an offender remains
11 incarcerated only as a result of his alleged violation of the
12 court's earlier order of probation, supervision, conditional
13 discharge, or county impact incarceration such hearing shall be
14 held within 14 days of the onset of said incarceration, unless
15 the alleged violation is the commission of another offense by
16 the offender during the period of probation, supervision or
17 conditional discharge in which case such hearing shall be held
18 within the time limits described in Section 103-5 of the Code
19 of Criminal Procedure of 1963, as amended.

20 (c) The State has the burden of going forward with the
21 evidence and proving the violation by the preponderance of the
22 evidence. The evidence shall be presented in open court with
23 the right of confrontation, cross-examination, and
24 representation by counsel.

25 (d) Probation, conditional discharge, periodic
26 imprisonment and supervision shall not be revoked for failure
27 to comply with conditions of a sentence or supervision, which
28 imposes financial obligations upon the offender unless such
29 failure is due to his willful refusal to pay.

30 (e) If the court finds that the offender has violated a
31 condition at any time prior to the expiration or termination of
32 the period, it may continue him on the existing sentence, with
33 or without modifying or enlarging the conditions, or may impose
34 any other sentence that was available under Section 5-5-3 of
35 this Code or Section 11-501 of the Illinois Vehicle Code at the
36 time of initial sentencing. If the court finds that the person

1 has failed to successfully complete his or her sentence to a
2 county impact incarceration program, the court may impose any
3 other sentence that was available under Section 5-5-3 of this
4 Code or Section 11-501 of the Illinois Vehicle Code at the time
5 of initial sentencing, except for a sentence of probation or
6 conditional discharge. If the court finds that the offender has
7 violated paragraph (8.6) of subsection (a) of Section 5-6-3,
8 the court shall revoke the probation of the offender. If the
9 court finds that the offender has violated subsection (o) of
10 Section 5-6-3.1, the court shall revoke the supervision of the
11 offender.

12 (f) The conditions of probation, of conditional discharge,
13 of supervision, or of a sentence of county impact incarceration
14 may be modified by the court on motion of the supervising
15 agency or on its own motion or at the request of the offender
16 after notice and a hearing.

17 (g) A judgment revoking supervision, probation,
18 conditional discharge, or a sentence of county impact
19 incarceration is a final appealable order.

20 (h) Resentencing after revocation of probation,
21 conditional discharge, supervision, or a sentence of county
22 impact incarceration shall be under Article 4. The term ~~Time~~
23 ~~served~~ on probation, conditional discharge or supervision
24 shall not be credited by the court against a sentence of
25 imprisonment or periodic imprisonment unless the court orders
26 otherwise. The amount of credit to be applied against a
27 sentence of imprisonment or periodic imprisonment when the
28 defendant served a term or partial term of periodic
29 imprisonment shall be calculated upon the basis of the actual
30 days spent in confinement rather than the duration of the term.

31 (i) Instead of filing a violation of probation, conditional
32 discharge, supervision, or a sentence of county impact
33 incarceration, an agent or employee of the supervising agency
34 with the concurrence of his or her supervisor may serve on the
35 defendant a Notice of Intermediate Sanctions. The Notice shall
36 contain the technical violation or violations involved, the

1 date or dates of the violation or violations, and the
2 intermediate sanctions to be imposed. Upon receipt of the
3 Notice, the defendant shall immediately accept or reject the
4 intermediate sanctions. If the sanctions are accepted, they
5 shall be imposed immediately. If the intermediate sanctions are
6 rejected or the defendant does not respond to the Notice, a
7 violation of probation, conditional discharge, supervision, or
8 a sentence of county impact incarceration shall be immediately
9 filed with the court. The State's Attorney and the sentencing
10 court shall be notified of the Notice of Sanctions. Upon
11 successful completion of the intermediate sanctions, a court
12 may not revoke probation, conditional discharge, supervision,
13 or a sentence of county impact incarceration or impose
14 additional sanctions for the same violation. A notice of
15 intermediate sanctions may not be issued for any violation of
16 probation, conditional discharge, supervision, or a sentence
17 of county impact incarceration which could warrant an
18 additional, separate felony charge. The intermediate sanctions
19 shall include a term of home detention as provided in Article
20 8A of Chapter V of this Code for multiple or repeat violations
21 of the terms and conditions of a sentence of probation,
22 conditional discharge, or supervision.

23 (j) When an offender is re-sentenced after revocation of
24 probation that was imposed in combination with a sentence of
25 imprisonment for the same offense, the aggregate of the
26 sentences may not exceed the maximum term authorized under
27 Article 8 of this Chapter.

28 (Source: P.A. 93-800, eff. 1-1-05; 93-1014, eff. 1-1-05;
29 94-161, eff. 7-11-05.)

30 (730 ILCS 5/5-7-2) (from Ch. 38, par. 1005-7-2)

31 Sec. 5-7-2. Modification and Revocation. (a) A sentence of
32 periodic imprisonment may be modified or revoked by the court
33 if:

34 (1) the offender commits another offense; or

35 (2) the offender violates any of the conditions of the

1 sentence; or

2 (3) the offender violates any rule or regulation of the
3 institution, agency or Department to which he has been
4 committed.

5 (b) If the offender violates the order of periodic
6 imprisonment, the Department of Corrections, the sheriff, or
7 the superintendent of the house of corrections shall report
8 such violation to the court.

9 (c) The court shall not modify or revoke a sentence of
10 periodic imprisonment unless the offender has been given
11 written notice and afforded a hearing under Section 5-6-4. If
12 the offender is incarcerated as a result of his alleged
13 violation of the court's prior order, such hearing shall be
14 held within 14 days of the onset of said incarceration. Where a
15 sentence of periodic imprisonment is revoked, the court may
16 impose any other sentence that was available at the time of
17 initial sentencing. ~~That part of the term under paragraph (d)~~
18 ~~of Section 5-7-1 which has been served under the sentence of~~
19 ~~periodic imprisonment shall be credited against a sentence of~~
20 ~~imprisonment.~~

21 (Source: P.A. 80-1099.)