



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2403

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

SYNOPSIS AS INTRODUCED:

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

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

Amends the Unified Code of Corrections. Provides that the court may extend any period of probation, conditional discharge, or supervision beyond the limits set forth in the statute for the payment of any unpaid fines, fees, and costs.

LRB094 17713 RLC 53012 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 5-6-2 and 5-6-4 as follows:

6 (730 ILCS 5/5-6-2) (from Ch. 38, par. 1005-6-2)

7 Sec. 5-6-2. Incidents of Probation and of Conditional
8 Discharge.

9 (a) When an offender is sentenced to probation or
10 conditional discharge, the court shall impose a period under
11 paragraph (b) of this Section, and shall specify the conditions
12 under Section 5-6-3.

13 (b) Unless terminated sooner as provided in paragraph (c)
14 of this Section or extended pursuant to paragraph (e) of this
15 Section, the period of probation or conditional discharge shall
16 be as follows:

17 (1) for a Class 1 or Class 2 felony, not to exceed 4
18 years;

19 (2) for a Class 3 or Class 4 felony, not to exceed 30
20 months;

21 (3) for a misdemeanor, not to exceed 2 years;

22 (4) for a petty offense, not to exceed 6 months.

23 Multiple terms of probation imposed at the same time shall
24 run concurrently.

25 (c) The court may at any time terminate probation or
26 conditional discharge if warranted by the conduct of the
27 offender and the ends of justice, as provided in Section 5-6-4.

28 (d) Upon the expiration or termination of the period of
29 probation or of conditional discharge, the court shall enter an
30 order discharging the offender.

31 (e) The court may extend any period of probation or
32 conditional discharge beyond the limits set forth in paragraph

1 (b) of this Section upon a violation of a condition of the
2 probation or conditional discharge, for the payment of an
3 assessment required by Section 10.3 of the Cannabis Control
4 Act, Section 411.2 of the Illinois Controlled Substances Act,
5 or Section 80 of the Methamphetamine Control and Community
6 Protection Act, or for the payment of restitution as provided
7 by an order of restitution under Section 5-5-6 of this Code,
8 and may extend any period of probation or conditional discharge
9 for the payment of any unpaid fines, fees, and costs.

10 (f) The court may impose a term of probation that is
11 concurrent or consecutive to a term of imprisonment so long as
12 the maximum term imposed does not exceed the maximum term
13 provided under Article 8 of this Chapter. The court may provide
14 that probation may commence while an offender is on mandatory
15 supervised release, participating in a day release program, or
16 being monitored by an electronic monitoring device.

17 (Source: P.A. 93-1014, eff. 1-1-05; 94-556, eff. 9-11-05.)

18 (730 ILCS 5/5-6-4) (from Ch. 38, par. 1005-6-4)

19 Sec. 5-6-4. Violation, Modification or Revocation of
20 Probation, of Conditional Discharge or Supervision or of a
21 sentence of county impact incarceration - Hearing.

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

26 (1) in the case of probation violations, order the
27 issuance of a notice to the offender to be present by the
28 County Probation Department or such other agency
29 designated by the court to handle probation matters; and in
30 the case of conditional discharge or supervision
31 violations, such notice to the offender shall be issued by
32 the Circuit Court Clerk; and in the case of a violation of
33 a sentence of county impact incarceration, such notice
34 shall be issued by the Sheriff;

35 (2) order a summons to the offender to be present for

1 hearing; or

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

6 Personal service of the petition for violation of probation
7 or the issuance of such warrant, summons or notice shall toll
8 the period of probation, conditional discharge, supervision,
9 or sentence of county impact incarceration until the final
10 determination of the charge, and the term of probation,
11 conditional discharge, supervision, or sentence of county
12 impact incarceration shall not run until the hearing and
13 disposition of the petition for violation.

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

29 (c) The State has the burden of going forward with the
30 evidence and proving the violation by the preponderance of the
31 evidence. The evidence shall be presented in open court with
32 the right of confrontation, cross-examination, and
33 representation by counsel.

34 (d) Probation, conditional discharge, periodic
35 imprisonment and supervision shall not be revoked for failure
36 to comply with conditions of a sentence or supervision, which

1 imposes financial obligations upon the offender unless such
2 failure is due to his willful refusal to pay. The court may
3 extend any period of probation, conditional discharge, or
4 supervision beyond the limits set forth in paragraph (b) of
5 Section 5-6-2 for the payment of any unpaid fines, fees, and
6 costs.

7 (e) If the court finds that the offender has violated a
8 condition at any time prior to the expiration or termination of
9 the period, it may continue him on the existing sentence, with
10 or without modifying or enlarging the conditions, or may impose
11 any other sentence that was available under Section 5-5-3 of
12 this Code or Section 11-501 of the Illinois Vehicle Code at the
13 time of initial sentencing. If the court finds that the person
14 has failed to successfully complete his or her sentence to a
15 county impact incarceration program, the court may impose any
16 other sentence that was available under Section 5-5-3 of this
17 Code or Section 11-501 of the Illinois Vehicle Code at the time
18 of initial sentencing, except for a sentence of probation or
19 conditional discharge. If the court finds that the offender has
20 violated paragraph (8.6) of subsection (a) of Section 5-6-3,
21 the court shall revoke the probation of the offender. If the
22 court finds that the offender has violated subsection (o) of
23 Section 5-6-3.1, the court shall revoke the supervision of the
24 offender.

25 (f) The conditions of probation, of conditional discharge,
26 of supervision, or of a sentence of county impact incarceration
27 may be modified by the court on motion of the supervising
28 agency or on its own motion or at the request of the offender
29 after notice and a hearing.

30 (g) A judgment revoking supervision, probation,
31 conditional discharge, or a sentence of county impact
32 incarceration is a final appealable order.

33 (h) Resentencing after revocation of probation,
34 conditional discharge, supervision, or a sentence of county
35 impact incarceration shall be under Article 4. Time served on
36 probation, conditional discharge or supervision shall not be

1 credited by the court against a sentence of imprisonment or
2 periodic imprisonment unless the court orders otherwise.

3 (i) Instead of filing a violation of probation, conditional
4 discharge, supervision, or a sentence of county impact
5 incarceration, an agent or employee of the supervising agency
6 with the concurrence of his or her supervisor may serve on the
7 defendant a Notice of Intermediate Sanctions. The Notice shall
8 contain the technical violation or violations involved, the
9 date or dates of the violation or violations, and the
10 intermediate sanctions to be imposed. Upon receipt of the
11 Notice, the defendant shall immediately accept or reject the
12 intermediate sanctions. If the sanctions are accepted, they
13 shall be imposed immediately. If the intermediate sanctions are
14 rejected or the defendant does not respond to the Notice, a
15 violation of probation, conditional discharge, supervision, or
16 a sentence of county impact incarceration shall be immediately
17 filed with the court. The State's Attorney and the sentencing
18 court shall be notified of the Notice of Sanctions. Upon
19 successful completion of the intermediate sanctions, a court
20 may not revoke probation, conditional discharge, supervision,
21 or a sentence of county impact incarceration or impose
22 additional sanctions for the same violation. A notice of
23 intermediate sanctions may not be issued for any violation of
24 probation, conditional discharge, supervision, or a sentence
25 of county impact incarceration which could warrant an
26 additional, separate felony charge. The intermediate sanctions
27 shall include a term of home detention as provided in Article
28 8A of Chapter V of this Code for multiple or repeat violations
29 of the terms and conditions of a sentence of probation,
30 conditional discharge, or supervision.

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

36 (Source: P.A. 93-800, eff. 1-1-05; 93-1014, eff. 1-1-05;

1 94-161, eff. 7-11-05.)