

MODIFYING A SENTENCE

MOTION TO REDUCE SENTENCE. A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within 30 days after the sentence is imposed. A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the circuit court clerk within 30 days following the imposition of sentence. A motion not filed within that 30-day period is not timely. The court may not increase a sentence once it is imposed. A notice of motion must be filed with the motion. The notice of motion shall set the motion on the court's calendar on a date certain within a reasonable time after the date of filing.

730 Ill. Comp. Stat. Ann. 5/5-4.5-50 (d)

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

730 Ill. Comp. Stat. Ann. 5/5-6-4

State's attorney has authority to file motion to amend conditions of probation, even though statute states that court, probation officer, or defendant may move to modify probationary conditions; because motion to amend probation constitutes continuation of criminal case, People continue to be represented by state's attorney in all proceedings concerning such motion, and this point is so basic that legislature did not deem it necessary to mention authority of state's attorney.

People v. Birt, App. 4 Dist.1995, 211 Ill.Dec. 418, 274 Ill.App.3d 805, 655 N.E.2d 321.

Trial court may grant motion to modify probation after notice and hearing.

People v. Birt, App. 4 Dist.1995, 211 Ill.Dec. 418, 274 Ill.App.3d 805, 655 N.E.2d 321.

Where probation officer or court moves to modify conditions of probation in a manner more burdensome to defendant, defendant has the right to notice, counsel, and to present relevant evidence.

People v. Tipton, 1981, 58 Ill.Dec. 772, 88 Ill.2d 256, 430 N.E.2d 1023.

In Tipton, the supreme court construed section 5–6–4(f) of the Code as vesting “the trial courts with authority to deal with changing conditions during the probation periods.” (Tipton, 88 Ill.2d at 264–65)

The supreme court further discussed modification of probation in People v. Dinger (1990), 136 Ill.2d 248, 257, wherein the court wrote the following: “[M]odification of probation may be made upon the petitioner's showing that there are sufficient reasons to warrant modification of the sentence.”

In Strickland (211 Ill.App.3d at 192–96) this court discussed section 5–6–4(f) of the Code at length and held as follows:

“As opposed to a probation revocation proceeding, which implicates many of the procedural concerns of criminal due process [citations], the process due a defendant in a probation modification proceeding requires only ‘notice and a hearing.’ The State has neither the burden of going forward with the evidence nor of proving the desirability of the modification it may be seeking. * * *

People v. Birt, 274 Ill. App. 3d 805, 810, 655 N.E.2d 321, 324–25 (1995)

The trial court may grant a motion to modify probation under section 5–6–4(f) of the Code, after notice and a hearing. Further, we specifically reject defendant's argument that the basis for a modification must be either a change in conditions or in defendant's behavior since the original sentencing hearing. To so hold would be inconsistent with the remedial purposes of a probationary sentence **and would unduly restrict the trial court as it seeks to use probationary conditions to achieve the defendant's rehabilitation.**

People v. Birt, 274 Ill. App. 3d 805, 810–11, 655 N.E.2d 321, 325 (1995)