

PETITION TO REVOKE

PROBATION & CONDITIONAL DISCHARGE

By Judge Miller

WHO MAY FILE A PETITION TO MODIFY PROBATION?

- The conditions of probation, of conditional discharge and of supervision may be modified by the court on motion of the probation officer or on its own motion or at the request of the offender after notice and a hearing.
- 730 ILCS 5/5-6-4(f)
- (Notice that the STATE is NOT listed)

OF COURSE THE STATE CAN FILE FOR MODIFICATION

- **State's attorney has authority to file a motion to amend conditions of probation.**
- **A motion to amend probation constitutes continuation of criminal case. The People continue to be represented by the 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, 274 Ill.App.3d 805, 655 N.E.2d 321, Ill.App. 4 Dist.,1995.**

WHO PURSUES A MOTION FILED BY THE COURT OR PROBATION?

- **Once the motion is filed, the State's Attorney has total charge of the State's interests to the same extent as if he had filed the motion in the first place.**
- **People v. Birt, 274 Ill.App.3d 805, 655 N.E.2d 321, Ill.App. 4 Dist.,1995**

WHO MAY FILE A PETITION TO REVOKE?

- The Legislature gave defendant the right to petition for **modification** of probation. 730 ILCS 5/5-6-4.
- Defendant did not have authority to initiate probation revocation proceedings, even though relevant statute was silent as to who could bring petition charging violation of conditions of probation.
- People v. Dinger, 136 Ill.2d 248, 144 Ill.Dec. 88, 554 N.E.2d 1376 (1990)

CAN A PROBATION OFFICER FILE A PETITION TO REVOKE?

- “The duty of each State's attorney shall be: To commence and prosecute all actions civil and criminal, in the circuit court for his county, in which the people of the State or county may be concerned.” 55 ILCS 5/3–9005(a)(1) (West 2006).
- A probation officer cannot file a pleading that charges a probation violation and seeks revocation. Such action constitutes the unauthorized practice of law and usurps the State's attorney's prerogative.
- People v. Herrin, 385 Ill.App.3d 187, 895 N.E.2d 1075, Ill.App. 3 Dist.,2008

INITIATION OF PROCEEDINGS

- **Per 730 ILCS 5/5-6-4, except in cases where conditional discharge or supervision was imposed for a petty offense - when a petition is filed charging a violation of a condition, the court may:**
 - 1. order the issuance of a notice to the offender.**
 - 2. order a summons to the offender.**
 - 3. order a warrant for the offender's arrest.**

WHAT ARE THE DUE PROCESS CONCERNS?

- By statute Illinois requires notice to the probationer of a petition charging a violation of probation; a court hearing on the alleged violation; the right to be heard and confront and cross-examine witnesses; the right to representation by counsel in all circumstances; and the State has the burden to go forward with evidence and prove the violation by a preponderance of the evidence. **730 ILCS 5/5-6-4(a) through (c).**
- **People v. Bell, 296 Ill.App.3d 146, 694 N.E.2d 673, Ill.App. 4 Dist.,1998**

ARRAIGNMENT

- **Procedure on Arraignment.** Before any person is tried for the commission of an offense he shall be called into open court, informed of the charge against him, and called upon to plead thereto. If the defendant so requests the formal charge shall be read to him before he is required to plead. An entry of the arraignment shall be made of record.
- **725 Ill. Comp. Stat. Ann. 5/113-1**

WAIVER OF COUNSEL

- **The court shall not permit a waiver of counsel by a person accused of a crime punishable by imprisonment in the penitentiary without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:**
 - **(1) the nature of the charge;**
 - **(2) the minimum and maximum sentence prescribed by law . . . And**
 - **(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.**
- **People v. Barker, 23 Ill. App. 3d 598, 600, 319 N.E.2d 550, 552 (1974) aff'd, 62 Ill. 2d 57, 338 N.E.2d 385 (1975)**

SAMPLE ARRAIGNMENT/ADMONISHMENTS

- **You were previously placed on PROBATION for the offense of BATTERY.**
- **The original charge is a Class A Misdemeanor with a possible sentence of up to ONE Year in Jail**
- **Up to TWO years Probation, Conditional Discharge, or Court Supervision**
- **Up to a Fine of \$2500**
- **The State has alleged that you have violated the terms of your Probation by failing to report to the Probation Department on January 8, 2015, and testing positive for THC on January 15, 2015.**
- **At a bench trial, if the State is successful in proving by preponderance of the evidence that you have violated the terms of your Probation, then the Court may impose any sentence that was available at the time of your initial sentencing.**
- **Is there an ADMISSION or a DENIAL to the Petition?**

ADMISSIONS TO PETITION TO REVOKE

PART 1

- **A trial court must ensure a defendant seeking to admit a petition to revoke probation, conditional discharge, or supervision, understands the following:**
- **(1) the specific allegations in the petition to revoke probation, conditional discharge or supervision;**
- **(2) that the defendant has the right to a hearing with defense counsel present, and the right to appointed counsel if the defendant is indigent and the underlying offense is punishable by imprisonment;**
- **(3) that at the hearing, the defendant has the right to confront and cross-examine adverse witnesses and to present witnesses and evidence in his or her behalf;**

ADMISSIONS TO PETITION TO REVOKE

PART 2

- (4) that at the hearing, the State must prove the alleged violation by a preponderance of the evidence;
- (5) that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, there will not be a hearing on the petition to revoke probation, conditional discharge or supervision, so that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, the defendant waives the right to a hearing and the right to confront and cross-examine adverse witnesses, and the right to present witnesses and evidence in his or her behalf; and
- (6) the sentencing range for the underlying offense for which the defendant is on probation, conditional discharge or supervision.” Ill. S.Ct. R. 402A(a) (eff.Nov.1, 2003).
- People v. Hall, 198 Ill.2d 173, 181, 760 N.E.2d 971, 975 (2001),

PLEA ADMONISHMENTS

(Domestic Battery)

- Age - Education - Read - Write
- Mental or Physical Impairment
- Under the influence of any drugs or alcohol?
- Have you had the opportunity to discuss these matters with your attorney

- The Allegation to which you are Admitting is _____ . Are you admitting that allegation?

- The original charge is a Class A Misdemeanor with a possible sentence of up to ONE Year in Jail; Up to TWO years Probation or Conditional Discharge; Up to a Fine of \$2500

- You are advised that an individual convicted of Domestic Battery may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition in violation of the Federal Gun Control Act of 1968.

- If you are not a citizen of the United States, you are advised that a conviction for this offense may have the consequence of deportation, exclusion from the United States, or denial of naturalization under the laws of the United States.

- You have the right to persist in your denial and proceed to trial.

PLEA ADMONISHMENTS - 2

- **The State would need to prove that you are guilty by preponderance of the evidence.**
- **You would have the right to cross-examine witnesses and to call witnesses in your own behalf.**
- **You would have the right to testify.**
- **You would have the right to remain silent if asked questions tending to incriminate you in any other proceedings.**
- **Do you understand that by admitting the Petition you are waiving all of these rights?**
- **Has anyone threatened you in any way, or offered you anything other than what has been stated here in open court?**
- **Are you doing this of your own free will?**
- **I will accept the admission and sentencing agreement as knowingly, understandably, and voluntarily made.**
- **The defendant is convicted and sentenced as agreed.**

APPEAL RIGHTS

- You a have a right to appeal.
- Prior to taking an appeal you must file in this court within 30 days of today, a written motion asking to have the sentence reconsidered, or to have the judgment vacated and for permission to withdraw your admission. Your motion must set forth all the grounds or reasons for the request.
- If your motion is granted, the sentence will be modified or the admission, sentence and judgment will be vacated. A hearing date will then be set.
- If you are indigent, a copy of the transcript of the proceedings at the time of the plea and sentence will be provided without cost. Also, counsel will be appointed to assist you with the preparation of the motions.
- In any appeal taken from the judgment on the admission to the Petition - any issue or claim of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the admission - shall be deemed waived.
- Do you understand these rights?

DOES THE FILING OF A PETITION TOLL THE TERM?

- **Yes. Personal service of the petition for violation of probation or the issuance of such warrant, summons or notice shall toll the period of probation, conditional discharge, supervision, or sentence of county impact incarceration until the final determination of the charge, and the term of probation, conditional discharge, supervision, or sentence of county impact incarceration shall not run until the hearing and disposition of the petition for violation.**
- **730 ILCS 5/5-6-4**

WHAT DOES “**toll the period**” MEAN?

- The statute is intended to toll the term or period of probation, to enable the court to continue jurisdiction if the charges of probation violation are not resolved prior to the close of the stated probationary terms.
- A defendant remains bound to follow the conditions of his probation prior to adjudication of the revocation issue.
- People v. Green, 91 Ill.App.3d 127, 414 N.E.2d 237, Ill.App., 1980.

CAN THE STATE FILE A PETITION TO REVOKE AFTER THE TERM EXPIRES?

- **Unless the sentence is tolled by a Petition to Revoke, the court has no authority to revoke a defendant's probation after the period of probation has expired.**
- **People v. Martinez, 150 Ill.App.3d 516, 501 N.E.2d 1003, Ill.App. 2 Dist.,1986.**

WHEN DOES A PROBATION TERM LEGALLY EXPIRE?

- **A one year term of probation expires as of midnight on the 365th day following the imposition of the sentence.**
- People v. Martinez, 150 Ill.App.3d 516, 501 N.E.2d 1003, Ill.App. 2 Dist.,1986.

SPEEDY TRIAL

- If the defendant is incarcerated due to the Petition, the hearing shall be held **within 14 days** of the onset of said incarceration, unless the alleged violation is the commission of another offense by the offender during the period of probation, supervision or conditional discharge in which case such hearing shall be held within the time limits described in Section 103-5
- 730 ILCS 5/5-6-4

SPEEDY TRIAL FOR DEFENDANTS IN THE D.O.C.

- See Intrastate Detainers - 730 ILCS 5/3-8-10
- Section 103-5 applies to persons committed to DOC. , who have **untried complaints, charges or indictments** pending in any county of this State, and such person shall include in the demand under subsection (b), a statement of the place of present commitment, the term, and length of the remaining term, the charges pending against him or her to be tried and the county of the charges, and the demand shall be addressed to the state's attorney of the county where he or she is charged with a copy to the clerk of that court and a copy to the chief administrative officer of the Department of Corrections institution or facility to which he or she is committed.

SPEEDY TRIAL FOR DEFENDANTS IN THE D.O.C.

- **A PTR is NOT an untried complaint, charge or indictment.**
- **A defendant has the right to a probation revocation hearing within a reasonable time.**
- **State's delay in giving the Defendant notice of the petition to revoke probation was unreasonable and a violation of Defendant's right to due process of law.**
- **People v. White, 273 Ill.App.3d 638, 653 N.E.2d 426, Ill.App. 3 Dist.,1995.**

BURDEN OF PROOF Part 1

- **The State has the burden of going forward with the evidence and proving the violation by the preponderance of the evidence.**
- **The evidence shall be presented in open court with the right of confrontation, cross-examination, and representation by counsel.**
- **730 ILCS 5/5-6-4(c)**

BURDEN OF PROOF

Part 2

- Probation, conditional discharge, periodic imprisonment and supervision shall not be revoked for failure to comply with conditions of a sentence or supervision, which imposes financial obligations upon the offender **unless such failure is due to his *willful* refusal to pay.**
- 730 ILCS 5/5-6-4(d)

WILLFUL VIOLATION?

- **Willfulness is not an element of a probation violation (except one involving a financial obligation) and, therefore, probation may be revoked for nonculpable conduct.**
- **Probation is a privilege that may be revoked when the defendant's acts, culpable or otherwise, require revocation to serve the 'ends of justice'**
- **People v. Konwent, 405 Ill.App.3d 794 (2d Dist. 2010)**

IS HEARSAY ADMISSIBLE?

- **Evidentiary rules are not applied with full force to probation revocation proceedings.**
People v. Allegri, 127 Ill.App.3d 1041, 83 Ill.Dec. 192, 469 N.E.2d 1126 (1984).
- **Hearsay evidence is not competent evidence in probation revocation proceedings; therefore, hearsay testimony is not competent to sustain the State's burden of proof, at least not over the defendant's objection.** In re N.W., 293 Ill.App.3d at 799, 228 Ill.Dec. 157, 688 N.E.2d at 859

ARE PROBATION RECORDS ADMISSIBLE AS A BUSINESS RECORD EXCEPTION?

- **MAYBE**
- **A document is not admissible as evidence under the business record exception if it “has been made by anyone during an investigation of an alleged offense or during any investigation relating to pending or anticipated litigation of any kind.” 725 ILCS 5/115–5(c)(2)**

BUSINESS RECORD EXCEPTION

- except during a hearing to revoke a sentence of probation or conditional discharge or an order of court supervision that is based on a ***technical violation*** of a sentencing order when the hearing involves a probationer or defendant who has transferred or moved from the county having jurisdiction over the original charge or sentence.
- 725 ILCS 5/115–5(c)(2)

WHAT IS A “TECHNICAL VIOLATION?”

- **For the purposes of subsection (c), “technical violation” means a breach of a sentencing order but does not include an allegation of a subsequent criminal act asserted in a formal criminal charge.**

ARE URINE TESTS CONDUCTED BY PROBATION ADMISSIBLE?

- This matter was addressed in People v. Gill, 2012 IL App (1st) 103662-U, 2013 WL 436151 Ill.App. 1 Dist.,2013.

PEOPLE v. GILL Part 1

- **The State was required to show by a preponderance of the evidence that defendant tested positive for cannabis.**

PEOPLE v. GILL Part 2

- **The evidence presented in support of that proposition was that Officer Thomas referred defendant for drug testing, that the referral form was returned with defendant's signature and identifying numbers and with the signature of the technician who received and tested defendant's testing sample, and that the test result with the same identifying numbers were positive for cannabis.**

PEOPLE v. GILL Part 3

- **Officer Thomas did not conduct or observe the collection or testing of defendant's sample, so that her testimony that the test results were positive concerned an out-of-court statement—the result from the technician who conducted the testing—offered for the truth of the matter asserted.**

PEOPLE v. GILL Part 4

- **Moreover, Officer Thomas's testimony about the test result was double hearsay, in that she did not testify that the technician reported the result to her but instead that the result was entered by another person into defendant's probation record from which she had read it.**

PEOPLE v. GILL Part 5

- **The State attempted to introduce the drug test results as a Business Record Exception to the Hearsay Rule.**
- **The foundation for a business record may be established through the testimony of any person familiar with the business and its mode of operation; the witness need not be the author of the document, and the author need not be unavailable to testify.**

PEOPLE v. GILL Part 6

- **Defendant argued that the report was prepared in anticipation of litigation, which would irredeemably place it outside the business records exception.**

PEOPLE v. GILL Part 7

- **The Defendant further argued that the admission of hearsay evidence violated his Constitutional right to confront the witnesses against him.**

PEOPLE v. GILL Part 7

- The Court found that the results from the random drug testing were **NOT** prepared in anticipation of litigation.
- People v. Gill, 2012 IL App (1st), 103662-U, 2013 WL 436151, Ill.App. 1 Dist.,2013.

PEOPLE v. GILL Part 8

- **There was no reason to infer that only positive results are entered into the probationers record.**
- **It is positive results that could lead to further litigation.**
- **However, testimony at the hearing needs to be supplemented with the actual record entries. Testimony alone will NOT suffice.**

PEOPLE v. GILL Part 8

- However, the revocation was reversed because: **“The only evidence actually presented during the hearing to the court was Officer Thomas's testimony, not the documents upon which she based that testimony. Stated another way, her double-hearsay testimony was not validated by the documents in question.”**

TASC REPORTS

- A TASC case manager's file report was properly admitted into evidence, through the testimony of the case manager's supervisor.
- The Appellate Court found that the supervisor's testimony was admitted as foundation for the report to be admitted as a Business Record Exception to the hearsay rule.
- People v. Jeffers, 2015 IL App (1st) 132371-U
Rule 23 Opinion.

RULE 23 CASES

- The Fourth Circuit has a rule that allows trial courts to consider its unpublished Rule 23 decisions. Osman v. Osman, 359 Ill. App.3d 367.
- However the Second District specifically excluded parties from citing Rule 23 cases except in the very limited exceptions listed in Supreme Court Rule 23(e). Dicosola v. Dicosola, 2011 IL App (2d) 101084U
- Most hearings do NOT fall into this exception.

RULE 23 - EXCEPTION

- However, a nonprecedential written order entered under of Rule 23 on or after January 1, 2021, may be cited for persuasive purposes. When cited, a copy of the order shall be furnished to all other counsel and the court.

CRAWFORD ISSUES

- **Crawford does not apply in probation revocation hearings as they are not criminal prosecutions under the Sixth Amendment. U.S. v. Washington, 336 F. App'x 343, 346 (4th Cir.2009).**
- **The Illinois Supreme Court held that a probationer could be compelled to testify at a probation-revocation hearing, since the proceeding was civil in nature. People v. Lindsey, 199 Ill.2d 460, 470, 264 Ill.Dec. 695, 771 N.E.2d 399 (2002).**

ANOTHER RULE 23 & HEARSAY

- Hearing on whether to revoke supervised release is not part of criminal prosecution, and full panoply of rights to defendant under Federal Rules of Evidence does not apply; thus, hearsay testimony is admissible so long as it is reliable.
- People v. Gayles, 2014 IL App (1st) 113207-U, citing United States v. Pratt, 52 F.3d 671 (7th Cir.1995)

TREATMENT INCIDENT REPORTS

- **Incident report prepared by staff of rehabilitation facility in which juvenile on probation for drug offense was housed, following juvenile's unauthorized departure, was admissible as business record at hearing on state's motion to revoke juvenile's probation. In re V.T. Ill 306 Ill.App.3d 817, 715 N.E.2d 314, Ill.App. 2 Dist.,1999**

In re V.T. Part 2

- **The state established proper foundation through testimony of a facility employee and of facility's practices. Incident report was not equivalent of prison incident report; report was not prepared in anticipation of discipline and was not prepared by law enforcement officer, and information contained therein did not call into question motivation, recall, or soundness of conclusions of report's author.**

In re V.T. Part 3

- **Although the witness had no personal knowledge of respondent's escape, she testified that an unusual incident report is prepared when, among other events, one of the children assigned to the facility fails to take medication, runs away, or attacks others. A staff member who witnesses the event prepares the report and delivers it to the child's supervisor. The witness explained that she also receives copies of these reports and that the facility prepares them in the regular course of business.**

In re V.T. Part 4

- **The Second District concluded that the trial court did not abuse its discretion in admitting the report in this case because it was not prepared in anticipation of future discipline or litigation which would remove it from the business record exception to the hearsay rule. The report merely described how respondent left the facility, and it recommended that a missing persons report be filed. The facility also allowed respondent an opportunity to return and complete the counseling program.**

CAN DEFENDANT WAIVE FUTURE CONFRONTATION RIGHTS?

- Waiver of a constitutional right is valid only if it is clearly established that there was an intentional relinquishment or abandonment of a known right; such waivers must not only be voluntary but also must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.
- People v. Renner, 321 Ill.App.3d 1022, 748 N.E.2d 1272, Ill.App. 5 Dist.,2001.

CONFRONTATION RIGHTS -- PART 2

- In Renner the Defendant was sentenced to probation. Paragraph 19 of the probation order stated :
“The defendant agrees that any written or printed laboratory result from a certified laboratory shall be admissible in any proceeding to revoke this order of probation.”

CONFRONTATION RIGHTS -- PART 3

- **The State subsequently filed a Petition to Revoke alleging the Defendant has consumed an illegal substance while on probation.**
- **The State attempted to introduce Labcorp's report confirming the presence of THC in the Defendant's urine, without testimonial foundation, but instead relied upon Defendant's agreement incorporated within the probation order.**

CONFRONTATION RIGHTS -- PART 4

- **The Appellate Court stated that the probation order imposed a condition not provided by statute.**
- **Even if such provision had been provided by statute, the court would have found that defendant's right to confront the witnesses against her was violated.**
- **A waiver of a constitutional right is valid only if it is clearly established that there was an intentional relinquishment or abandonment of a known right.**

KEY POINTS FOR RULING— part 1

- At a probation hearing, the State has the burden of going forward with the evidence and proving the violation of probation by a preponderance of the evidence, while using only competent evidence. People v. Renner, 321 Ill.App.3d 1022, 1025 (2001).
- Hearsay evidence is not competent evidence in probation revocation proceedings. People v. Renner, 321 Ill.App.3d 1022, 1025 (2001).
- The constitutional protection due to a defendant at the probation revocation stage, however, is not as strict as that due to a nonconvicted person. People v. Allegri, 127 Ill.App.3d 1041 (1984).

KEY POINTS FOR RULING— part 2

- Only "minimum requirements" of due process need be applied at a probation revocation hearing. *People v. Acevedo*, 216 Ill. App. 3d 195, 200, 576 N.E.2d 949, 159 Ill. Dec. 1026 (1991).
- At a probation revocation proceeding, the defendant is awaiting resentencing, not sentencing. *People v. Allegri*, 127 Ill.App.3d 1041 (1984).
- Evidentiary rules are not applied with full force to probation revocation proceedings. *People v. Allegri*, 127 Ill.App.3d 1041 (1984).
- The State's standard of proof is lower as it needs to demonstrate only by a preponderance of the evidence that the act giving rise to the petition to revoke probation occurred. *People v. Allegri*, 127 Ill.App.3d 1041 (1984).

CAN THE STATE CALL THE DEFENDANT AS A WITNESS?

- **Calling defendant as witness at a probation revocation hearing does not violate the Fifth Amendment right against self-incrimination, provided that testimony elicited would not incriminate the defendant in any other proceeding.**
- **People v. Bell, 296 Ill.App.3d 146, 694 N.E.2d 673, Ill.App. 4 Dist.,1998.**

WHAT QUESTIONS MAY THE PROSECUTOR ASK THE DEFENDANT?

- State may call defendant to testify at probation revocation hearing to elicit testimony which would show that the defendant had violated conditions of his probation but which would not incriminate him in any other proceedings without violating defendant's privilege against self-incrimination.
- People v. Martin, 226 Ill.App.3d 753, 589 N.E.2d 815, Ill.App. 4 Dist.,1992.

FIFTH AMENDMENT PART 1

- Since a probation revocation hearing is civil, the Fifth Amendment right to remain silent does not apply in the same manner as in criminal cases.
- When the privilege against self incrimination is raised in a civil context, the party claiming it is required to testify or suffer certain consequences by remaining silent.
- People v. Neckopulos, 284 Ill.App.3d 660, 672 N.E.2d 757, Ill.App. 3 Dist.,1996.

FIFTH AMENDMENT PART 2

- If the party refuses to testify, the court can draw negative inferences against the party. The fact finder does not violate the Fifth Amendment by “drawing whatever inference from [a party's] silence that the circumstances warrant.”
- Baxter v. Palmigiano, 425 U.S. 308, 318, 47 L.Ed.2d 810, 821, 96 S.Ct. 1551, 1557 (1976)

MAY THE JUDGE ASK QUESTIONS DURING THE HEARING?

- A trial judge has the right to question witnesses in order to elicit the truth or to bring enlightenment on material issues which seem obscure.
- People v. Wesley, 18 Ill.2d 138, 163 N.E.2d 500, Ill. 1960

CAUTION RE: JUDGE QUESTIONING

- **Questions from the court invariably lead at least one of the parties to the case to feel that the judge is unfairly favoring the opponent, whether any such favoritism was intended or not. In addition, such questions often form the basis for appeals.**
- People v. Falaster, 273 Ill.App.3d 694, 653 N.E.2d 467, Ill.App. 5 Dist.,1995.

CAN A JUDGE QUESTION THE DEFENDANT ABOUT THE ALLEGATION?

- Action of trial court in asking defendant during probation violation hearing if he had reported to his probation officer resulted in violation of defendant's due process rights.
- Even though forcing defendant to respond would not expose him to future criminal liability, to require defendant to respond to a question which would compel him to admit very thing that was essence of hearing would violate defendant's right to fundamental fairness.
- People v. Steele, 283 Ill.App.3d 413, 670 N.E.2d 757, Ill.App. 1 Dist.,1996.

RESENTENCING

Part 1

- **If the court finds that the offender has violated a condition at any time prior to the expiration or termination of the period, it may continue him on the existing sentence, with or without modifying or enlarging the conditions, or may impose any other sentence that was available at the time of the initial sentencing.**
- **730 ILCS 5/5-6-4(e)**

RESENTENCING

Part 2

- **The term spent on probation, conditional discharge or supervision shall not be credited by the court against a sentence of imprisonment or periodic imprisonment unless the court orders otherwise.**
- **730 ILCS 5/5-6-4(f)**

RESENTENCING Part 3

- The court, may impose any length of probation upon revocation that was available originally, regardless of the amount of the previously served probation. Thus, where a probationer has completed a substantial portion of his probation and then commits an egregious violation of probation, the court in its discretion may order the maximum term anew to rehabilitate the errant probationer.
- People v. Rollins, 121 Ill.2d 582, 526 N.E.2d 837, 122 Ill.Dec. 444 (Ill. Jun 03, 1988)

RESENTENCING Part 4

- **When a defendant is admitted to probation and that probation is revoked, the trial court may sentence the defendant to any sentence that would have been appropriate for the original offense. Prior decisions have stated that a defendant may not be sentenced on revocation of probation for the conduct which constituted the probation violation, and be thereby punished for it (People v. Bullion (1974), 21 Ill.App.3d 297, 314 N.E.2d 731); but that it is proper for the trial court to consider the defendant's conduct on probation in assessing his rehabilitative potential.**

RESENTENCING CONSIDERATIONS

- When defendant's probationary sentence is revoked, record must clearly show that court considered original offense when imposing sentence.
- In imposing sentence on revocation of probation, trial judge may consider actions of defendant while on probation **which reasonably bear on his potential for rehabilitation**, and thus the sentence imposed after revocation need not be the same sentence the court would have imposed if probation had never been granted, but must be for the original crime and not for any possible crime committed after probation.
- People v. Koppen (1975), 29 Ill.App.3d 29, 329 N.E.2d 421.

TERM OF PROBATION

- **Class 1 or Class 2 Felony – Not more than 4 years.**
- **Class 3 or Class 4 Felony – Not More than 30 months.**
- **Misdemeanor – Not more than 2 years.**
- **Petty Offense – Not more than 6 months.**

CAN PROBATION BE MODIFIED AS PART OF A NEGOTIATED PLEA ?

- **“Our supreme court has declared that plea agreements, and especially negotiated plea agreements for fully negotiated pleas where the parties have agreed on the appropriate sentence, are generally governed by contract law.”**
- **People v. Donelson 2011 IL App (1st) 092594, 960 N.E.2d 1229, 356 Ill.Dec. 106.**

COURT CAN'T MODIFY A NEGOTIATED PLEA

- The court has no discretion to modify the previously imposed adult sentence where it was imposed as part of a negotiated plea agreement.
- People v. Donelson 2011 IL App (1st) 092594, 960 N.E.2d 1229, 356 Ill.Dec. 106.

COURT CAN MODIFY PROBATION IN CERTAIN CIRCUMSTANCES

- The trial court clearly has specific authority to modify conditions of probation under section 5-6-4(f)” The legislature appears to have intended that section to vest the trial courts with authority to deal with changing conditions during the probation periods.
- People v. Tipton, Ill.2d 256, 430 N.E.2d 1023 1981

MODIFICATION OF NEGOTIATED SENTENCE – PART 1

- **People v. Birt, 274 Ill.App.3d 805, 811, 211 Ill.Dec. 418, 655 N.E.2d 321 (1995).**
- **In November 1993, defendant, Rex Birt, pleaded guilty to aggravated criminal sexual abuse pursuant to an agreement with the State that the trial court would sentence him to three years' probation, subject to various conditions.**
- **The State filed a motion to amend the terms of defendant's probation by adding the condition that he undergo sex-offender counseling and cooperate with any recommendations the counselors might make. The Appellate Court held that the trial court may grant a motion to modify probation under section 5–6–4(f) of the Code, after notice and a hearing.**

MODIFICATION OF NEGOTIATED SENTENCE – PART 2

- **The Court specifically rejected 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.**
- **The Court noted that interpreting section 5–6–4(f) of the Code as defendant urged would contradict the legislative intent to give trial courts the flexibility needed to make probation as meaningful and significant as possible.**

MODIFICATION OF SENTENCE

- The law seems to state that a sentence cannot be increased after imposition. So, the State usually needs to file a Petition to Revoke to request resentencing.
- However, the trial court may grant a motion to modify probation if the modification is consistent with the remedial purposes of a probationary sentence. **The trial court may modify 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)