

West's Smith-Hurd Illinois Compiled Statutes Annotated

Chapter 730. Corrections

Act 5. Unified Code of Corrections (Refs & Annos)

Chapter V. Sentencing

Article 6. Sentences of Probation and Conditional Discharge (Refs & Annos)

730 ILCS 5/5-6-4
Formerly cited as IL ST CH 38 ¶ 1005-6-4

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

Effective: January 1, 2023

Currentness

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

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

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

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

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

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.

(b) The court shall conduct a hearing of the alleged violation. The court shall admit the offender to pretrial release pending the hearing unless the alleged violation is itself a criminal offense in which case the offender shall be admitted to pretrial

release on such terms as are provided in the Code of Criminal Procedure of 1963, as amended.¹ In any case where an offender remains incarcerated only as a result of his alleged violation of the court's earlier order of probation, supervision, conditional discharge, or county impact incarceration such 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 of the Code of Criminal Procedure of 1963, as amended.²

(c) 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.

(d) 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.

(e) 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 under Article 4.5 of Chapter V of this Code or Section 11-501 of the Illinois Vehicle Code at the time of initial sentencing. If the court finds that the person has failed to successfully complete his or her sentence to a county impact incarceration program, the court may impose any other sentence that was available under Article 4.5 of Chapter V of this Code or Section 11-501 of the Illinois Vehicle Code at the time of initial sentencing, except for a sentence of probation or conditional discharge. If the court finds that the offender has violated paragraph (8.6) of subsection (a) of Section 5-6-3, the court shall revoke the probation of the offender. If the court finds that the offender has violated subsection (o) of Section 5-6-3.1, the court shall revoke the supervision of the offender.

(f) 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.

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

(h) Resentencing after revocation of probation, conditional discharge, supervision, or a sentence of county impact incarceration shall be under Article 4.³ The term 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. 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.

(i) Instead of filing a violation of probation, conditional discharge, supervision, or a sentence of county impact incarceration, an agent or employee of the supervising agency with the concurrence of his or her supervisor may serve on the defendant a

Notice of Intermediate Sanctions. The Notice shall contain the technical violation or violations involved, the date or dates of the violation or violations, and the intermediate sanctions to be imposed. Upon receipt of the Notice, the defendant shall immediately accept or reject the intermediate sanctions. If the sanctions are accepted, they shall be imposed immediately. If the intermediate sanctions are rejected or the defendant does not respond to the Notice, a violation of probation, conditional discharge, supervision, or a sentence of county impact incarceration shall be immediately filed with the court. The State's Attorney and the sentencing court shall be notified of the Notice of Sanctions. Upon successful completion of the intermediate sanctions, a court may not revoke probation, conditional discharge, supervision, or a sentence of county impact incarceration or impose additional sanctions for the same violation. A notice of intermediate sanctions may not be issued for any violation of probation, conditional discharge, supervision, or a sentence of county impact incarceration which could warrant an additional, separate felony charge. The intermediate sanctions shall include a term of home detention as provided in Article 8A of Chapter V of this Code⁴ for multiple or repeat violations of the terms and conditions of a sentence of probation, conditional discharge, or supervision.

(j) When an offender is re-sentenced after revocation of probation that was imposed in combination with a sentence of imprisonment for the same offense, the aggregate of the sentences may not exceed the maximum term authorized under Article 4.5 of Chapter V.

(k)(1) On and after the effective date of this amendatory Act of the 101st General Assembly, this subsection (k) shall apply to arrest warrants in Cook County only. An arrest warrant issued under paragraph (3) of subsection (a) when the underlying conviction is for the offense of theft, retail theft, or possession of a controlled substance shall remain active for a period not to exceed 10 years from the date the warrant was issued unless a motion to extend the warrant is filed by the office of the State's Attorney or by, or on behalf of, the agency supervising the wanted person. A motion to extend the warrant shall be filed within one year before the warrant expiration date and notice shall be provided to the office of the sheriff.

(2) If a motion to extend a warrant issued under paragraph (3) of subsection (a) is not filed, the warrant shall be quashed and recalled as a matter of law under paragraph (1) of this subsection (k) and the wanted person's period of probation, conditional discharge, or supervision shall terminate unsatisfactorily as a matter of law.

Credits

P.A. 77-2097, § 5-6-4, eff. Jan. 1, 1973. Amended by P.A. 78-939, § 1, eff. July 1, 1974; P.A. 79-1334, § 1, eff. Aug. 2, 1976; P.A. 79-1360, § 28, eff. Oct. 1, 1976; P.A. 80-1031, § 11, eff. Sept. 22, 1977; P.A. 80-1099, § 3, eff. Feb. 1, 1978; P.A. 81-815, § 1, eff. Jan. 1, 1980; P.A. 85-628, § 1, eff. Jan. 1, 1988; P.A. 89-198, § 20, eff. July 21, 1995; P.A. 89-587, § 10, eff. July 31, 1996; P.A. 89-647, § 5, eff. Jan. 1, 1997; P.A. 90-14, Art. 2, § 2-50, eff. July 1, 1997; P.A. 93-800, § 15, eff. Jan. 1, 2005; P.A. 93-1014, § 5, eff. Jan. 1, 2005; P.A. 94-161, § 5, eff. July 11, 2005; P.A. 95-35, § 5, eff. Jan. 1, 2008; P.A. 95-1052, § 90, eff. July 1, 2009; P.A. 96-1200, § 5, eff. July 22, 2010; P.A. 101-406, § 5, eff. Jan. 1, 2020; P.A. 101-652, § 10-280, eff. Jan. 1, 2023.

Formerly Ill.Rev.Stat.1991, ch. 38, ¶ 1005-6-4.

Footnotes

1

725 ILCS 5/100-1 et seq.

2

725 ILCS 5/103-5.

3

730 ILCS 5/5-4-1 et seq.

4

730 ILCS 5/5-8A-1 et seq.

730 I.L.C.S. 5/5-6-4, IL ST CH 730 § 5/5-6-4

Current through P.A. 103-566 of the 2023 Reg. Sess. Some statute sections may be more current, see credits for details.

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