

SENTENCE REVOCATION

PROCEDURE FOR REVOKING A SENTENCE

730 ILCS 5/5-6-4

By Judge Miller

NOTIFYING THE DEFENDANT

Option 1

When a petition to revoke a sentence is filed charging a violation of a condition, the court may:

- 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;
- In the case of conditional discharge or supervision violations, such notice to the offender shall be issued by the Circuit Court Clerk;
- In the case of a violation of a sentence of county impact incarceration, such notice shall be issued by the Sheriff;

NOTIFYING THE DEFENDANT

Option 2 & 3

(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.

SENTENCE IS TOLLED

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.

CAN THE DEFENDANT BE HELD IN CUSTODY?

The statute seems to give conflicting direction.

Initially, the statute directs the court to release a defendant whose alleged violation is a status offense.

Then, the statute further states that IF the defendant is NOT RELEASED, the hearing shall be within 14 days.

PRETRIAL RELEASE

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.

TIME LIMIT FOR HEARING

(Status Offenses)

**IF THE ALLEGED VIOLATION DOES NOT
ALLEGE A NEW OFFENSE:**

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.

People v. Basurto, 2024 IL App (2d) 230512

In People v. Basurto, 2024 IL App (2d) 230512, the court found that because defendant was charged with a probation violation and because the alleged violation was not a detainable offense, defendant was entitled to pretrial release as contemplated in article 110 of the Criminal Code pending his hearing on the State's petition to revoke his probation.

Thus, the court should have considered what factors would be appropriate to reasonably ensure the appearance of defendant as required or the safety of the community.

People v. Dyer, 2024 IL App (4th) 231524

Here, the State's November 8, 2023, petition to revoke probation did not allege that defendant committed a new criminal offense. Thus, defendant was entitled to pretrial release pending the hearing on this petition, and his release was not governed by article 110 of the Code.

The defendant may be detained pending the adjudication of the State's amended petition only if detention is warranted under section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)); otherwise the court must release defendant from custody with authorized conditions pending the adjudication of the amended petition.

Although article 110 presumes all persons are eligible for pretrial release,), it allows detention, upon the State's petition, for those charged with detainable offenses (see *id.* § 11-6.1(a)).

TIME LIMIT FOR HEARING (New Offense Alleged)

If 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 (Speedy Trial)

THE HEARING

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.

FAILURE TO PAY (FINANCIAL)

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.

WHAT DOES THE COURT CONSIDER?

The court shall consider all relevant circumstances, including, but not limited to, the nature and seriousness of the violation or criminal act alleged.

RESENTENCING OPTIONS

If the court finds that the offender has violated a condition, it may

1. Continue him on the existing sentence, with or without modifying or enlarging the conditions, or;

2. Impose any other sentence that was available 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 at the time of initial sentencing, except for a sentence of probation or conditional discharge.

SEX OFFENDER PROBATION

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.

Paragraph (8.6) of Subsection (a) of Section 5-6-3

(8.6) if convicted of a sex offense as defined in the Sex Offender Management Board Act, refrain from residing at the same address or in the same condominium unit or apartment unit or in the same condominium complex or apartment complex with another person he or she knows or reasonably should know is a convicted sex offender or has been placed on supervision for a sex offense; the provisions of this paragraph do not apply to a person convicted of a sex offense who is placed in a Department of Corrections licensed transitional housing facility for sex offenders;

SEX OFFENDER SUPERVISION

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.

Subsection (o) of Section 5-6-3.1

(o) An offender placed on supervision for a sex offense as defined in the Sex Offender Management Board Act shall refrain from residing at the same address or in the same condominium unit or apartment unit or in the same condominium complex or apartment complex with another person he or she knows or reasonably should know is a convicted sex offender or has been placed on supervision for a sex offense. The provisions of this subsection (o) do not apply to a person convicted of a sex offense who is placed in a Department of Corrections licensed transitional housing facility for sex offenders.

REVOCACTION IS APPEALABLE

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

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