

SB3802



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3802

Introduced 2/14/2020, by Sen. Robert F. Martwick

SYNOPSIS AS INTRODUCED:

720 ILCS 550/10	from Ch. 56 1/2, par. 710
720 ILCS 570/410	from Ch. 56 1/2, par. 1410
720 ILCS 646/70	
730 ILCS 5/5-6-3.4	

Amends the Cannabis Control Act, the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, and the Unified Code of Corrections. In provisions relating to probation for persons who have not been previously convicted of a felony offense, removes provisions requiring probation to be 24 months or at least 24 months and specified conditions of probation. Effective immediately.

LRB101 18860 RLC 68318 b

A BILL FOR

1 AN ACT concerning criminal justice.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Cannabis Control Act is amended by changing
5 Section 10 as follows:

6 (720 ILCS 550/10) (from Ch. 56 1/2, par. 710)

7 Sec. 10. (a) Whenever any person who has not previously
8 been convicted of any felony offense under this Act or any law
9 of the United States or of any State relating to cannabis, or
10 controlled substances as defined in the Illinois Controlled
11 Substances Act, pleads guilty to or is found guilty of
12 violating Sections 4(a), 4(b), 4(c), 5(a), 5(b), 5(c) or 8 of
13 this Act, the court may, without entering a judgment and with
14 the consent of such person, sentence him to probation.

15 (b) When a person is placed on probation, the court shall
16 enter an order specifying a period of probation ~~of 24 months,~~
17 and shall defer further proceedings in the case until the
18 conclusion of the period or until the filing of a petition
19 alleging violation of a term or condition of probation.

20 (c) (Blank). ~~The conditions of probation shall be that the~~
21 ~~person: (1) not violate any criminal statute of any~~
22 ~~jurisdiction; (2) refrain from possession of a firearm or other~~
23 ~~dangerous weapon; (3) submit to periodic drug testing at a time~~

1 ~~and in a manner as ordered by the court, but no less than 3~~
2 ~~times during the period of the probation, with the cost of the~~
3 ~~testing to be paid by the probationer; and (4) perform no less~~
4 ~~than 30 hours of community service, provided community service~~
5 ~~is available in the jurisdiction and is funded and approved by~~
6 ~~the county board. The court may give credit toward the~~
7 ~~fulfillment of community service hours for participation in~~
8 ~~activities and treatment as determined by court services.~~

9 (d) The court may, in addition to other conditions, require
10 that the person:

11 (1) make a report to and appear in person before or
12 participate with the court or such courts, person, or
13 social service agency as directed by the court in the order
14 of probation;

15 (2) pay a fine and costs;

16 (3) work or pursue a course of study or vocational
17 training;

18 (4) undergo medical or psychiatric treatment; or
19 treatment for drug addiction or alcoholism;

20 (5) attend or reside in a facility established for the
21 instruction or residence of defendants on probation;

22 (6) support his dependents;

23 (7) refrain from possessing a firearm or other
24 dangerous weapon;

25 (7-5) refrain from having in his or her body the
26 presence of any illicit drug prohibited by the Cannabis

1 Control Act, the Illinois Controlled Substances Act, or the
2 Methamphetamine Control and Community Protection Act,
3 unless prescribed by a physician, and submit samples of his
4 or her blood or urine or both for tests to determine the
5 presence of any illicit drug;

6 (8) and in addition, if a minor:

7 (i) reside with his parents or in a foster home;

8 (ii) attend school;

9 (iii) attend a non-residential program for youth;

10 (iv) contribute to his own support at home or in a
11 foster home.

12 (e) Upon violation of a term or condition of probation, the
13 court may enter a judgment on its original finding of guilt and
14 proceed as otherwise provided.

15 (f) Upon fulfillment of the terms and conditions of
16 probation, the court shall discharge such person and dismiss
17 the proceedings against him.

18 (g) A disposition of probation is considered to be a
19 conviction for the purposes of imposing the conditions of
20 probation and for appeal, however, discharge and dismissal
21 under this Section is not a conviction for purposes of
22 disqualification or disabilities imposed by law upon
23 conviction of a crime (including the additional penalty imposed
24 for subsequent offenses under Section 4(c), 4(d), 5(c) or 5(d)
25 of this Act).

26 (h) A person may not have more than one discharge and

1 dismissal under this Section within a 4-year period.

2 (i) If a person is convicted of an offense under this Act,
3 the Illinois Controlled Substances Act, or the Methamphetamine
4 Control and Community Protection Act within 5 years subsequent
5 to a discharge and dismissal under this Section, the discharge
6 and dismissal under this Section shall be admissible in the
7 sentencing proceeding for that conviction as a factor in
8 aggravation.

9 (j) Notwithstanding subsection (a), before a person is
10 sentenced to probation under this Section, the court may refer
11 the person to the drug court established in that judicial
12 circuit pursuant to Section 15 of the Drug Court Treatment Act.
13 The drug court team shall evaluate the person's likelihood of
14 successfully completing a sentence of probation under this
15 Section and shall report the results of its evaluation to the
16 court. If the drug court team finds that the person suffers
17 from a substance abuse problem that makes him or her
18 substantially unlikely to successfully complete a sentence of
19 probation under this Section, then the drug court shall set
20 forth its findings in the form of a written order, and the
21 person shall not be sentenced to probation under this Section,
22 but shall be considered for the drug court program.

23 (Source: P.A. 99-480, eff. 9-9-15; 100-3, eff. 1-1-18; 100-575,
24 eff. 1-8-18.)

25 Section 10. The Illinois Controlled Substances Act is

1 amended by changing Section 410 as follows:

2 (720 ILCS 570/410) (from Ch. 56 1/2, par. 1410)

3 Sec. 410. (a) Whenever any person who has not previously
4 been convicted of any felony offense under this Act or any law
5 of the United States or of any State relating to cannabis or
6 controlled substances, pleads guilty to or is found guilty of
7 possession of a controlled or counterfeit substance under
8 subsection (c) of Section 402 or of unauthorized possession of
9 prescription form under Section 406.2, the court, without
10 entering a judgment and with the consent of such person, may
11 sentence him or her to probation.

12 (b) When a person is placed on probation, the court shall
13 enter an order specifying a period of probation ~~of 24 months~~
14 and shall defer further proceedings in the case until the
15 conclusion of the period or until the filing of a petition
16 alleging violation of a term or condition of probation.

17 (c) (Blank). ~~The conditions of probation shall be that the~~
18 ~~person: (1) not violate any criminal statute of any~~
19 ~~jurisdiction; (2) refrain from possessing a firearm or other~~
20 ~~dangerous weapon; (3) submit to periodic drug testing at a time~~
21 ~~and in a manner as ordered by the court, but no less than 3~~
22 ~~times during the period of the probation, with the cost of the~~
23 ~~testing to be paid by the probationer; and (4) perform no less~~
24 ~~than 30 hours of community service, provided community service~~
25 ~~is available in the jurisdiction and is funded and approved by~~

1 ~~the county board. The court may give credit toward the~~
2 ~~fulfillment of community service hours for participation in~~
3 ~~activities and treatment as determined by court services.~~

4 (d) The court may, in addition to other conditions, require
5 that the person:

6 (1) make a report to and appear in person before or
7 participate with the court or such courts, person, or
8 social service agency as directed by the court in the order
9 of probation;

10 (2) pay a fine and costs;

11 (3) work or pursue a course of study or vocational
12 training;

13 (4) undergo medical or psychiatric treatment; or
14 treatment or rehabilitation approved by the Illinois
15 Department of Human Services;

16 (5) attend or reside in a facility established for the
17 instruction or residence of defendants on probation;

18 (6) support his or her dependents;

19 (6-5) refrain from having in his or her body the
20 presence of any illicit drug prohibited by the Cannabis
21 Control Act, the Illinois Controlled Substances Act, or the
22 Methamphetamine Control and Community Protection Act,
23 unless prescribed by a physician, and submit samples of his
24 or her blood or urine or both for tests to determine the
25 presence of any illicit drug;

26 (7) and in addition, if a minor:

1 (i) reside with his or her parents or in a foster
2 home;

3 (ii) attend school;

4 (iii) attend a non-residential program for youth;

5 (iv) contribute to his or her own support at home
6 or in a foster home.

7 (e) Upon violation of a term or condition of probation, the
8 court may enter a judgment on its original finding of guilt and
9 proceed as otherwise provided.

10 (f) Upon fulfillment of the terms and conditions of
11 probation, the court shall discharge the person and dismiss the
12 proceedings against him or her.

13 (g) A disposition of probation is considered to be a
14 conviction for the purposes of imposing the conditions of
15 probation and for appeal, however, discharge and dismissal
16 under this Section is not a conviction for purposes of this Act
17 or for purposes of disqualifications or disabilities imposed by
18 law upon conviction of a crime.

19 (h) A person may not have more than one discharge and
20 dismissal under this Section within a 4-year period.

21 (i) If a person is convicted of an offense under this Act,
22 the Cannabis Control Act, or the Methamphetamine Control and
23 Community Protection Act within 5 years subsequent to a
24 discharge and dismissal under this Section, the discharge and
25 dismissal under this Section shall be admissible in the
26 sentencing proceeding for that conviction as evidence in

1 aggravation.

2 (j) Notwithstanding subsection (a), before a person is
3 sentenced to probation under this Section, the court may refer
4 the person to the drug court established in that judicial
5 circuit pursuant to Section 15 of the Drug Court Treatment Act.
6 The drug court team shall evaluate the person's likelihood of
7 successfully completing a sentence of probation under this
8 Section and shall report the results of its evaluation to the
9 court. If the drug court team finds that the person suffers
10 from a substance abuse problem that makes him or her
11 substantially unlikely to successfully complete a sentence of
12 probation under this Section, then the drug court shall set
13 forth its findings in the form of a written order, and the
14 person shall not be sentenced to probation under this Section,
15 but shall be considered for the drug court program.

16 (Source: P.A. 99-480, eff. 9-9-15; 100-3, eff. 1-1-18; 100-575,
17 eff. 1-8-18.)

18 Section 15. The Methamphetamine Control and Community
19 Protection Act is amended by changing Section 70 as follows:

20 (720 ILCS 646/70)

21 Sec. 70. Probation.

22 (a) Whenever any person who has not previously been
23 convicted of any felony offense under this Act, the Illinois
24 Controlled Substances Act, the Cannabis Control Act, or any law

1 of the United States or of any state relating to cannabis or
2 controlled substances, pleads guilty to or is found guilty of
3 possession of less than 15 grams of methamphetamine under
4 paragraph (1) or (2) of subsection (b) of Section 60 of this
5 Act, the court, without entering a judgment and with the
6 consent of the person, may sentence him or her to probation.

7 (b) When a person is placed on probation, the court shall
8 enter an order specifying a period of probation ~~of 24 months~~
9 and shall defer further proceedings in the case until the
10 conclusion of the period or until the filing of a petition
11 alleging violation of a term or condition of probation.

12 (c) (Blank). ~~The conditions of probation shall be that the~~
13 ~~person:~~

14 ~~(1) not violate any criminal statute of any~~
15 ~~jurisdiction;~~

16 ~~(2) refrain from possessing a firearm or other~~
17 ~~dangerous weapon;~~

18 ~~(3) submit to periodic drug testing at a time and in a~~
19 ~~manner as ordered by the court, but no less than 3 times~~
20 ~~during the period of the probation, with the cost of the~~
21 ~~testing to be paid by the probationer; and~~

22 ~~(4) perform no less than 30 hours of community service,~~
23 ~~if community service is available in the jurisdiction and~~
24 ~~is funded and approved by the county board. The court may~~
25 ~~give credit toward the fulfillment of community service~~
26 ~~hours for participation in activities and treatment as~~

1 ~~determined by court services.~~

2 (d) The court may, in addition to other conditions, require
3 that the person take one or more of the following actions:

4 (1) make a report to and appear in person before or
5 participate with the court or such courts, person, or
6 social service agency as directed by the court in the order
7 of probation;

8 (2) pay a fine and costs;

9 (3) work or pursue a course of study or vocational
10 training;

11 (4) undergo medical or psychiatric treatment; or
12 treatment or rehabilitation approved by the Illinois
13 Department of Human Services;

14 (5) attend or reside in a facility established for the
15 instruction or residence of defendants on probation;

16 (6) support his or her dependents;

17 (7) refrain from having in his or her body the presence
18 of any illicit drug prohibited by this Act, the Cannabis
19 Control Act, or the Illinois Controlled Substances Act,
20 unless prescribed by a physician, and submit samples of his
21 or her blood or urine or both for tests to determine the
22 presence of any illicit drug; or

23 (8) if a minor:

24 (i) reside with his or her parents or in a foster
25 home;

26 (ii) attend school;

1 (iii) attend a non-residential program for youth;

2 or

3 (iv) contribute to his or her own support at home
4 or in a foster home.

5 (e) Upon violation of a term or condition of probation, the
6 court may enter a judgment on its original finding of guilt and
7 proceed as otherwise provided.

8 (f) Upon fulfillment of the terms and conditions of
9 probation, the court shall discharge the person and dismiss the
10 proceedings against the person.

11 (g) A disposition of probation is considered to be a
12 conviction for the purposes of imposing the conditions of
13 probation and for appeal, however, discharge and dismissal
14 under this Section is not a conviction for purposes of this Act
15 or for purposes of disqualifications or disabilities imposed by
16 law upon conviction of a crime.

17 (h) A person may not have more than one discharge and
18 dismissal under this Section within a 4-year period.

19 (i) If a person is convicted of an offense under this Act,
20 the Cannabis Control Act, or the Illinois Controlled Substances
21 Act within 5 years subsequent to a discharge and dismissal
22 under this Section, the discharge and dismissal under this
23 Section are admissible in the sentencing proceeding for that
24 conviction as evidence in aggravation.

25 (j) Notwithstanding subsection (a), before a person is
26 sentenced to probation under this Section, the court may refer

1 the person to the drug court established in that judicial
2 circuit pursuant to Section 15 of the Drug Court Treatment Act.
3 The drug court team shall evaluate the person's likelihood of
4 successfully completing a sentence of probation under this
5 Section and shall report the results of its evaluation to the
6 court. If the drug court team finds that the person suffers
7 from a substance abuse problem that makes him or her
8 substantially unlikely to successfully complete a sentence of
9 probation under this Section, then the drug court shall set
10 forth its findings in the form of a written order, and the
11 person shall not be sentenced to probation under this Section,
12 but shall be considered for the drug court program.

13 (Source: P.A. 99-480, eff. 9-9-15; 100-3, eff. 1-1-18; 100-575,
14 eff. 1-8-18.)

15 Section 20. The Unified Code of Corrections is amended by
16 changing Section 5-6-3.4 as follows:

17 (730 ILCS 5/5-6-3.4)

18 Sec. 5-6-3.4. Second Chance Probation.

19 (a) Whenever any person who has not previously been
20 convicted of any felony offense under the laws of this State,
21 the laws of any other state, or the laws of the United States,
22 and pleads guilty to, or is found guilty of, possession of less
23 than 15 grams of a controlled substance; possession of less
24 than 15 grams of methamphetamine; or a probationable felony

1 offense of possession of cannabis, theft, retail theft,
2 forgery, deceptive practices, possession of a stolen motor
3 vehicle, burglary, possession of burglary tools, disorderly
4 conduct, criminal damage or trespass to property under Article
5 21 of the Criminal Code of 2012, criminal trespass to a
6 residence, an offense involving fraudulent identification, or
7 obstructing justice; or possession of cannabis, the court, with
8 the consent of the defendant and the State's Attorney, may,
9 without entering a judgment, sentence the defendant to
10 probation under this Section.

11 (a-1) Exemptions. A defendant is not eligible for this
12 probation if the offense he or she pleads guilty to, or is
13 found guilty of, is a violent offense, or he or she has
14 previously been convicted of a violent offense. For purposes of
15 this probation, a "violent offense" is any offense where bodily
16 harm was inflicted or where force was used against any person
17 or threatened against any person, any offense involving sexual
18 conduct, sexual penetration, or sexual exploitation, any
19 offense of domestic violence, domestic battery, violation of an
20 order of protection, stalking, hate crime, and any offense
21 involving the possession of a firearm or dangerous weapon. A
22 defendant shall not be eligible for this probation if he or she
23 has previously been adjudicated a delinquent minor for the
24 commission of a violent offense as defined in this subsection.

25 (b) When a defendant is placed on probation, the court
26 shall enter an order specifying a period of probation ~~of not~~

1 ~~less than 24 months~~ and shall defer further proceedings in the
2 case until the conclusion of the period or until the filing of
3 a petition alleging violation of a term or condition of
4 probation.

5 (c) The conditions of probation shall be that the
6 defendant:

7 (1) not violate any criminal statute of this State or
8 any other jurisdiction;

9 (2) refrain from possessing a firearm or other
10 dangerous weapon;

11 (3) make full restitution to the victim or property
12 owner under Section 5-5-6 of this Code;

13 (4) obtain or attempt to obtain employment;

14 (5) pay fines and costs;

15 (6) attend educational courses designed to prepare the
16 defendant for obtaining a high school diploma or to work
17 toward passing high school equivalency testing or to work
18 toward completing a vocational training program;

19 (7) submit to periodic drug testing at a time and in a
20 manner as ordered by the court, ~~but no less than 3 times~~
21 ~~during the period of probation,~~ with the cost of the
22 testing to be paid by the defendant; and

23 (8) perform ~~a minimum of 30 hours of~~ community service.
24 The court may give credit toward the fulfillment of
25 community service hours for participation in activities
26 and treatment as determined by court services.

1 (d) The court may, in addition to other conditions, require
2 that the defendant:

3 (1) make a report to and appear in person before or
4 participate with the court or such courts, person, or
5 social service agency as directed by the court in the order
6 of probation;

7 (2) undergo medical or psychiatric treatment, or
8 treatment or rehabilitation approved by the Illinois
9 Department of Human Services;

10 (3) attend or reside in a facility established for the
11 instruction or residence of defendants on probation;

12 (4) support his or her dependents; or

13 (5) refrain from having in his or her body the presence
14 of any illicit drug prohibited by the Methamphetamine
15 Control and Community Protection Act, the Cannabis Control
16 Act, or the Illinois Controlled Substances Act, unless
17 prescribed by a physician, and submit samples of his or her
18 blood or urine or both for tests to determine the presence
19 of any illicit drug.

20 (e) Upon violation of a term or condition of probation, the
21 court may enter a judgment on its original finding of guilt and
22 proceed as otherwise provided by law.

23 (f) Upon fulfillment of the terms and conditions of
24 probation, the court shall discharge the person and dismiss the
25 proceedings against the person.

26 (g) A disposition of probation is considered to be a

1 conviction for the purposes of imposing the conditions of
2 probation and for appeal; however, a discharge and dismissal
3 under this Section is not a conviction for purposes of this
4 Code or for purposes of disqualifications or disabilities
5 imposed by law upon conviction of a crime.

6 (h) A person may only have one discharge and dismissal
7 under this Section within a 4-year period.

8 (i) If a person is convicted of any offense which occurred
9 within 5 years subsequent to a discharge and dismissal under
10 this Section, the discharge and dismissal under this Section
11 shall be admissible in the sentencing proceeding for that
12 conviction as evidence in aggravation.

13 (j) Notwithstanding subsection (a), if the court finds that
14 the defendant suffers from a substance abuse problem, then
15 before the person is placed on probation under this Section,
16 the court may refer the person to the drug court established in
17 that judicial circuit pursuant to Section 15 of the Drug Court
18 Treatment Act. The drug court team shall evaluate the person's
19 likelihood of successfully fulfilling the terms and conditions
20 of probation under this Section and shall report the results of
21 its evaluation to the court. If the drug court team finds that
22 the person suffers from a substance abuse problem that makes
23 him or her substantially unlikely to successfully fulfill the
24 terms and conditions of probation under this Section, then the
25 drug court shall set forth its findings in the form of a
26 written order, and the person shall be ineligible to be placed

1 on probation under this Section, but shall be considered for
2 the drug court program.

3 (Source: P.A. 99-480, eff. 9-9-15; 100-3, eff. 1-1-18; 100-575,
4 eff. 1-8-18.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.