



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB0181

Introduced 1/19/2007, by Rep. Timothy L. Schmitz

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-6-4
730 ILCS 5/5-7-2

from Ch. 38, par. 1005-6-4
from Ch. 38, par. 1005-7-2

Amends the Unified Code of Corrections. Provides that 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.

LRB095 04214 RLC 24255 b

1 AN ACT concerning criminal law.

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

4 Section 5. The Unified Code of Corrections is amended by
5 changing Sections 5-6-4 and 5-7-2 as follows:

6 (730 ILCS 5/5-6-4) (from Ch. 38, par. 1005-6-4)

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

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

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

23 (2) order a summons to the offender to be present for

1 hearing; or

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

6 Personal service of the petition for violation of probation
7 or the issuance of such warrant, summons or notice shall toll
8 the period of probation, conditional discharge, supervision,
9 or sentence of county impact incarceration until the final
10 determination of the charge, and the term of probation,
11 conditional discharge, supervision, or sentence of county
12 impact incarceration shall not run until the hearing and
13 disposition of the petition for violation.

14 (b) The court shall conduct a hearing of the alleged
15 violation. The court shall admit the offender to bail pending
16 the hearing unless the alleged violation is itself a criminal
17 offense in which case the offender shall be admitted to bail on
18 such terms as are provided in the Code of Criminal Procedure of
19 1963, as amended. In any case where an offender remains
20 incarcerated only as a result of his alleged violation of the
21 court's earlier order of probation, supervision, conditional
22 discharge, or county impact incarceration such hearing shall be
23 held within 14 days of the onset of said incarceration, unless
24 the alleged violation is the commission of another offense by
25 the offender during the period of probation, supervision or
26 conditional discharge in which case such hearing shall be held

1 within the time limits described in Section 103-5 of the Code
2 of Criminal Procedure of 1963, as amended.

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

8 (d) Probation, conditional discharge, periodic
9 imprisonment and supervision shall not be revoked for failure
10 to comply with conditions of a sentence or supervision, which
11 imposes financial obligations upon the offender unless such
12 failure is due to his willful refusal to pay.

13 (e) If the court finds that the offender has violated a
14 condition at any time prior to the expiration or termination of
15 the period, it may continue him on the existing sentence, with
16 or without modifying or enlarging the conditions, or may impose
17 any other sentence that was available under Section 5-5-3 of
18 this Code or Section 11-501 of the Illinois Vehicle Code at the
19 time of initial sentencing. If the court finds that the person
20 has failed to successfully complete his or her sentence to a
21 county impact incarceration program, the court may impose any
22 other sentence that was available under Section 5-5-3 of this
23 Code or Section 11-501 of the Illinois Vehicle Code at the time
24 of initial sentencing, except for a sentence of probation or
25 conditional discharge. If the court finds that the offender has
26 violated paragraph (8.6) of subsection (a) of Section 5-6-3,

1 the court shall revoke the probation of the offender. If the
2 court finds that the offender has violated subsection (o) of
3 Section 5-6-3.1, the court shall revoke the supervision of the
4 offender.

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

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

13 (h) Resentencing after revocation of probation,
14 conditional discharge, supervision, or a sentence of county
15 impact incarceration shall be under Article 4. The term ~~Time~~
16 ~~served~~ on probation, conditional discharge or supervision
17 shall not be credited by the court against a sentence of
18 imprisonment or periodic imprisonment unless the court orders
19 otherwise. The amount of credit to be applied against a
20 sentence of imprisonment or periodic imprisonment when the
21 defendant served a term or partial term of periodic
22 imprisonment shall be calculated upon the basis of the actual
23 days spent in confinement rather than the duration of the term.

24 (i) Instead of filing a violation of probation, conditional
25 discharge, supervision, or a sentence of county impact
26 incarceration, an agent or employee of the supervising agency

1 with the concurrence of his or her supervisor may serve on the
2 defendant a Notice of Intermediate Sanctions. The Notice shall
3 contain the technical violation or violations involved, the
4 date or dates of the violation or violations, and the
5 intermediate sanctions to be imposed. Upon receipt of the
6 Notice, the defendant shall immediately accept or reject the
7 intermediate sanctions. If the sanctions are accepted, they
8 shall be imposed immediately. If the intermediate sanctions are
9 rejected or the defendant does not respond to the Notice, a
10 violation of probation, conditional discharge, supervision, or
11 a sentence of county impact incarceration shall be immediately
12 filed with the court. The State's Attorney and the sentencing
13 court shall be notified of the Notice of Sanctions. Upon
14 successful completion of the intermediate sanctions, a court
15 may not revoke probation, conditional discharge, supervision,
16 or a sentence of county impact incarceration or impose
17 additional sanctions for the same violation. A notice of
18 intermediate sanctions may not be issued for any violation of
19 probation, conditional discharge, supervision, or a sentence
20 of county impact incarceration which could warrant an
21 additional, separate felony charge. The intermediate sanctions
22 shall include a term of home detention as provided in Article
23 8A of Chapter V of this Code for multiple or repeat violations
24 of the terms and conditions of a sentence of probation,
25 conditional discharge, or supervision.

26 (j) When an offender is re-sentenced after revocation of

1 probation that was imposed in combination with a sentence of
2 imprisonment for the same offense, the aggregate of the
3 sentences may not exceed the maximum term authorized under
4 Article 8 of this Chapter.

5 (Source: P.A. 93-800, eff. 1-1-05; 93-1014, eff. 1-1-05;
6 94-161, eff. 7-11-05.)

7 (730 ILCS 5/5-7-2) (from Ch. 38, par. 1005-7-2)

8 Sec. 5-7-2. Modification and Revocation. (a) A sentence of
9 periodic imprisonment may be modified or revoked by the court
10 if:

11 (1) the offender commits another offense; or

12 (2) the offender violates any of the conditions of the
13 sentence; or

14 (3) the offender violates any rule or regulation of the
15 institution, agency or Department to which he has been
16 committed.

17 (b) If the offender violates the order of periodic
18 imprisonment, the Department of Corrections, the sheriff, or
19 the superintendent of the house of corrections shall report
20 such violation to the court.

21 (c) The court shall not modify or revoke a sentence of
22 periodic imprisonment unless the offender has been given
23 written notice and afforded a hearing under Section 5-6-4. If
24 the offender is incarcerated as a result of his alleged
25 violation of the court's prior order, such hearing shall be

1 held within 14 days of the onset of said incarceration. Where a
2 sentence of periodic imprisonment is revoked, the court may
3 impose any other sentence that was available at the time of
4 initial sentencing. ~~That part of the term under paragraph (d)~~
5 ~~of Section 5-7-1 which has been served under the sentence of~~
6 ~~periodic imprisonment shall be credited against a sentence of~~
7 ~~imprisonment.~~

8 (Source: P.A. 80-1099.)