CH. 39
PROBATION, PERIODIC IMPRISONMENT, CONDITIONAL DISCHARGE & SUPERVISION

§39-1
Generally

Illinois Supreme Court

People v. Horrell, 235 Ill.2d 235, 919 N.E.2d 952 (2009) Where the defendant was sentenced to a term of probation on one count of a multi-count indictment, and the probation term was to commence during the mandatory supervised release period imposed as part of concurrent prison terms for several other counts, the probation term was a permissible concurrent sentence and not a consecutive sentence to the prison term.[1] The court noted that a mandatory supervised release term is a required part of every prison sentence, and that a defendant who is serving a MSR term remains under sentence even after he is physically released from prison. Thus, a probation sentence to be served at the same time as an MSR term on another offense is clearly a concurrent sentence.

The court declined to consider what sentence could potentially be imposed if the trial court eventually decided to revoke probation, holding that such questions were not before the court in this appeal. (See also **APPEAL**, §2-6(a)).

People v. Sheehan, 168 Ill.2d 298, 659 N.E.2d 1339 (1995) A DUI offense may be used to enhance a subsequent offense to a felony even where defendant successfully completed a sentence of supervision.

1. By using the term "committed" rather than "convicted" in the section authorizing enhancement of a third misdemeanor DUI to a felony, the legislature intended that *any* DUI violation could be used, even if supervision had been completed and no conviction was entered.

2. The Court rejected the argument that the supervision statute prohibits enhancement of an offense with a violation for which supervision was successfully completed. Illinois law allows offenses for which defendant has completed supervision to be used for enhancement in other situations; furthermore, though the supervision statute provides that supervision is not a "conviction" for purposes of "disqualification or disabilities imposed by law," that provision refers only to rights that are lost as a matter of law upon conviction (such as the rights to vote, possess a firearm, and hold public office).

People v. Wendt, 163 Ill.2d 346, 645 N.E.2d 179 (1994) Although there is no specific legislative authorization, the Unified Code of Corrections permits imposition of a probation sentence to be served consecutively to a term of imprisonment. But see, **People v. Williams**, 179 Ill.2d 331, 688 N.E.2d 1153 (1997) (consecutive terms of imprisonment and probation were improper where there was only one conviction).

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[1]Under 730 ILCS 5/5-6-2(f), a probation sentence to be served after the MSR term had been completed would be an impermissible consecutive sentence.

Fitzsimmons v. Norgle, 104 Ill.2d 369, 472 N.E.2d 802 (1984) Chapter 38, §1005-5-3(c)(2)(F) (now 730 ILCS 5/5-5-3(c)(2)(F)), which precludes probation when a defendant is convicted of a Class 2 felony and has a prior Class 2 felony conviction within 10 years, applies to all "convictions," regardless whether they were obtained after transfers from juvenile court. See also, **People v. Wanke**, 311 Ill.App.3d 801, 726 N.E.2d 142 (2d Dist. 2000) (730 ILCS 5/5-5-3(c)(2)(F) prohibits probation only if a conviction for the prior offense was entered before the instant offense occurred); **People v. Daniels**, 194 Ill.App.3d 648, 551 N.E.2d 297 (1st Dist. 1990) (Chapter 38, §1005-5-3(c)(2)(F) applies to prior out-of-state convictions that are equivalent to Class 2 or greater felonies under Illinois law).

People v. Boykin, 94 Ill.2d 138, 445 N.E.2d 1174 (1983) A defendant who is found guilty of a misdemeanor following a trial is eligible for sentence of supervision.

People ex rel. Carey v. Bentivenga, 83 Ill.2d 537, 416 N.E.2d 259 (1981) A trial court lacks authority to place a defendant on probation when the sentencing statute prohibits such a disposition for the offense of which defendant was convicted. See also, **People v. Breen**, 62 Ill.2d 323, 342 N.E.2d 31 (1976).

Illinois Appellate Court

People v. Begay, 2018 IL App (1st) 150446 Where defendant had completed his probation sentence, he lacked standing under the Post-Conviction Hearing Act to file a petition under even though he was subject to the requirements of the Sex Offender Registration Act. SORA is not punishment and therefore does not constitute "imprisonment" sufficient to bring defendant within the reach of the Act.

People v. Clendenny, 2016 IL App (4th) 150215 The trial court sentenced defendant to 30 months' probation, including 18 months of periodic imprisonment. The court agreed to allow defendant to be released for work, alcohol treatment, and to be present at the birth of his child. In describing the sentence, the court used the terms "periodic imprisonment" and "work release" interchangeably.

Defendant argued that the 18 months of periodic imprisonment was improper because the maximum term of work release is 12 months. The Appellate Court rejected this argument, holding that defendant's periodic imprisonment with release for work, alcohol treatment, and the birth of his child, did not equally compare with participation in a county work-release program.

A work-release program is guided by specific parameters and subject to specific rules, sanctions, wages, and working conditions. By contrast, the conditions of defendant's periodic imprisonment were more lenient and flexible, allowing defendant much greater independence than a work-release program. Although the trial court referred to the probation condition as "work release," that did not establish that the court was actually imposing work release within the meaning of the statute.

Defendant's sentence was affirmed.

People v. Daly, 2014 IL App (4th) 140624 Generally, Illinois law creates a presumption in favor of probation. For most offenses, 730 ILCS 5/5-6-1(a) requires a sentence of probation unless the court finds that a prison sentence is necessary for the protection of the public or that probation would deprecate the seriousness of the offense. In making the latter determination, the trial court is statutorily required to consider the nature and circumstances of the offense and the history, character and condition of the offender. The trial court is presumed to have considered only proper sentencing factors unless the record affirmatively shows otherwise.

The trial court abused its discretion when it rejected probation and imposed a 42-month-sentence for reckless homicide. First, the trial court repeatedly stated that the public policy of the aggravated DUI statute requires incarceration, yet the aggravated DUI counts were dismissed. Second, the trial court ignored the circumstances of the reckless homicide offense of which defendant was convicted. Third, the trial court stated that it was imposing incarceration in order to deter similar offenses. However, the Illinois Supreme Court has found that deterrence has little significance where an offense involves unintentional conduct. **People v. Martin**, 119 Ill. 2d 453, 519 N.E.2d 884 (1988). Fourth, the trial judge ignored the defendant's history, character and rehabilitative potential. Fifth, the trial court's comments at sentencing indicated a predisposition against probation for certain types of offenders. Sixth, the trial judge considered as aggravation a factor inherent in the offense of reckless homicide where it did not merely note the decedent's death in passing, but clearly focused on the death when imposing incarceration.

The Appellate Court reduced defendant's sentence to probation and remanded the cause with directions to impose appropriate probation conditions. Furthermore, to remove any suggestion of unfairness, the court ordered that the case be assigned to a different judge on remand.

People v. Saleh, 2013 IL App (1st) 121195 An order of supervision is not a final judgment of conviction. If a defendant successfully completes supervision, the charges are dismissed and the result resembles an acquittal. If supervision is not completed successfully, defendant may be found guilty and sentenced. There is a final judgment of conviction only upon revocation of supervision.

Supreme Court Rule 402A provides that in proceedings to revoke supervision in which the defendant admits to the violation or offers to stipulate that the evidence is sufficient to revoke supervision, the trial court must admonish defendant and determine that he understands: (1) the specific allegations in the petition to revoke supervision; (2) his right to a hearing with counsel present, including appointed counsel if he is indigent and the underlying offense is punishable by imprisonment; (3) the right to confront and cross-examine adverse witnesses and present witnesses and evidence on his behalf at the hearing; (4) the State must prove the alleged violation by a preponderance of the evidence; (5) on admitting a violation or stipulating that the evidence is sufficient to revoke, there will be no hearing, and defendant has waived his right to a hearing, to confront and cross-examine adverse witnesses, and to present witnesses and evidence on his behalf; (6) the sentencing range for the underlying offense. The court must also determine that the admission is voluntary, not based on any coercion or promise, and that there is a factual basis for the plea.

The court must substantially comply with Rule 402A by an affirmative showing in the record that the defendant understood each of the required admonitions. A court's compliance with the rule is reviewed *de novo*.

The court did not substantially comply with Rule 402A when it accepted defendant's stipulation that the evidence was sufficient to revoke his supervision. The court did not determine that defendant understood the allegations of the petition by its inquiry whether defendant had discussed the reasons for the violation with his attorney and understood the allegations. The court did not inform defendant of his right to a hearing at which he could confront adverse witnesses and present his own evidence, and at which the State had the burden of proof. He was not told that he was waiving these rights by stipulating. The court did not confirm that the stipulation was voluntary or that there was a factual basis. Although the court did inform defendant of the sentencing range for the offense when he was placed on supervision, that was almost two years prior to the revocation proceeding.

The court remanded with directions that the defendant be allowed to withdraw his stipulation and for further proceedings.

People v. McKinney, 2012 IL App (1st) 103364 The Veterans Court Act (730 ILCS 167/1) establishes a veterans court and corresponding programs which allow a veteran who is charged with a crime to obtain dismissal of the charges, termination of his sentence, or discharge from further proceedings in exchange for completing a program which may include substance abuse, mental health, or other treatment. Admission to a veterans court program requires the agreement of the prosecutor and the defendant, as well as the approval of the veterans court. A defendant is ineligible for the veterans court program if he is charged with a crime of violence, is unwilling to participate in the program, has committed a crime of violence within the past ten years (excluding time of incarceration), or has previously completed or been discharged from such a program.

Under the plain language of the Veterans Court Act, a defendant is not required to be eligible for probation in order to participate in a veterans court program. The court found that the Veterans Court Act provides an independent basis for probation and conditional discharge which does not rely on the requirements of the Unified Code of Corrections. Thus, as a Class 2 offender who was being sentenced as a Class X offender due to prior convictions, defendant was eligible for the veterans court program although he would not have been eligible for probation had he been sentenced under the Unified Code of Corrections.

Because the defendant entered his guilty plea in the mistaken belief that he was ineligible for veterans court, the trial court abused its discretion by denying the motion to withdraw the plea. The trial court's ruling was reversed and the cause remanded for further proceedings.

People v. Bresley, 341 Ill.App.3d 274, 793 N.E.2d 951 (2d Dist. 2003) The trial court imposed an unauthorized sentence for DUI when it placed defendant on "court supervision, terminating satisfactorily instanter." Although 730 ILCS 5/5-6-3.1 does not provide a minimum period of supervision, the requirement that the period be "reasonable" precludes a sentence of supervision that terminates immediately. Because the supervision term was unauthorized, the sentence was void, and the court could *sua sponte* address the issue.

People v. Johnson, 338 Ill.App.3d 213, 788 N.E.2d 152 (1st Dist. 2003) Rejecting the authority of **People v. Young**, 334 Ill.App.3d 795, 779 N.E.2d 293 (1st Dist. 2002), the court concluded that a defendant who is ineligible for probation under the Unified Code of Corrections cannot be sentenced to T.A.S.C. probation. Because the order of probation was void due to defendant's ineligibility for probation, a subsequent order revoking probation and imposing an eight-year sentence was also void. Defendant could withdraw his guilty plea and face trial, if he so chose.

People v. Lipscomb, 332 Ill.App.3d 322, 772 N.E.2d 936 (1st Dist. 2002) Under **In re Sneed**, 72 Ill.2d 326, 381 N.E.2d 272 (1978), the length of a probation term cannot ordinarily be extended without notice, a hearing, and a finding that defendant violated his probation.

People v. Redman, 122 Ill.App.3d 787, 462 N.E.2d 21 (4th Dist. 1984) A trial judge may properly order a sentence of probation to run consecutively to a previously imposed sentence of probation. (Note: 730 ILCS 5/5-6-2(b) provides that multiple terms of probation "*imposed at the same time* shall run concurrently").

§39-2
Fourth Amendment and Exclusionary Rule

United States Supreme Court
U.S. v. Knights, 534 U.S. 112, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001) The Fourth Amendment is not violated by a warrantless search of a probationer's residence based on reasonable suspicion that he is involved in a criminal offense.

Illinois Supreme Court
People v. Dowery, 62 Ill.2d 200, 340 N.E.2d 529 (1975) Evidence obtained in violation of the Fourth Amendment is not *per se* subject to exclusion at a probation revocation hearing. But, "if police harassment is shown the judiciary may impose appropriate sanctions to deter misconduct." See also, **People v. Accardo**, 139 Ill.App.3d 813, 487 N.E.2d 664 (2d Dist. 1985); **People v. Grubb**, 143 Ill.App.3d 822, 493 N.E.2d 699 (4th Dist. 1986) (supervision revocation proceedings).

Illinois Appellate Court
People v. Thornburg, 384 Ill.App.3d 625, 895 N.E.2d 13 (2d Dist. 2008) A probation officer may conduct a warrantless search of a probationer's home where there is reasonable suspicion of wrongdoing. The court upheld the trial court's suppression of three pornographic DVDs found in defendant's bedroom, noting that the probation officers admitted they had no reason to believe that defendant was involved in any sort of criminal activity. The court rejected the probation officer's belief that reasonable suspicion to conduct a probation search is provided by the mere fact a probationer has been convicted of a sex offense.

The Computer Use Agreement which defendant entered as a condition of probation permitted a suspiciousness search of his computer. The agreement provided that defendant was not to use the internet for sexual purposes and was subject to unannounced examinations of his computer, software, and other electronic devices.

The probation condition requiring the Computer Use Agreement satisfied 735 ILCS 5/5-6-3(b), which authorizes reasonable probation conditions which relate to the nature of the offense or the rehabilitation of defendant. Because defendant had been convicted of a sex offense, a condition that he refrain from using the internet for sexual purposes and agree to unannounced computer searches was reasonable.

People v. Holliday, 318 Ill.App.3d 106, 743 N.E.2d 587 (3d Dist. 2001) Because defendant established that the search occurred as the result of police harassment, evidence obtained during the search should have been suppressed at the probation revocation hearing.

People v. Stewart, 242 Ill.App.3d 599, 610 N.E.2d 197 (5th Dist. 1993) Defendant failed to show harassment based on his probationary status where the officer did not even know defendant was a probationer until after the stop was made, and the subsequent detention was based on defendant's conduct after the stop.

§39-3
Denial of

§39-3(a)
Generally

Illinois Supreme Court

People v. Cox, 82 Ill.2d 268, 412 N.E.2d 541 (1980) The Court remanded for reconsideration of the sentence because the trial judge failed to indicate, as required by Ch. 38, §1005-6-1 (now 730 ILCS 5/5-6-1), that imprisonment was necessary for the protection of the public or that probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice. But, the Court noted that substantial compliance with §1005-6-1 may exist even if the trial judge does not specially state his or her conclusion in the statutory language.

People v. Kuesis, 83 Ill.2d 402, 415 N.E.2d 323 (1980) The record supported the trial court's opinion that imprisonment was necessary to protect the public or that probation would deprecate the seriousness of the offense (burglary). Although it is preferable for the trial court to "state expressly which basis it is relying upon for refusing to sentence a defendant to probation or conditional discharge," the trial court substantially complied with the statute. See also, **People v. Roberts**, 115 Ill.App.3d 384, 450 N.E.2d 451 (2d Dist. 1983) (record revealed substantial compliance with the statutory requirements). But see **People v. Turner**, 110 Ill.App.3d 519, 442 N.E.2d 637 (1st Dist. 1982) (the record "is completely silent as to the judge's reasoning in not imposing a sentence of probation," so there was neither actual nor substantial compliance with the statute); **People v. Free**, 112 Ill.App.3d 449, 445 N.E.2d 529 (4th Dist. 1983) (new sentencing hearing was required because the judge did not substantially comply with statute).

Illinois Appellate Court

People v. Daly, 2014 IL App (4th) 140624 Generally, Illinois law creates a presumption in favor of probation. For most offenses, 730 ILCS 5/5-6-1(a) requires a sentence of probation unless the court finds that a prison sentence is necessary for the protection of the public or that probation would deprecate the seriousness of the offense. In making the latter determination, the trial court is statutorily required to consider the nature and circumstances of the offense and the history, character and condition of the offender. The trial court is presumed to have considered only proper sentencing factors unless the record affirmatively shows otherwise.

The trial court abused its discretion when it rejected probation and imposed a 42-month-sentence for reckless homicide. First, the trial court repeatedly stated that the public policy of the aggravated DUI statute requires incarceration, yet the aggravated DUI counts were dismissed. Second, the trial court ignored the circumstances of the reckless homicide offense of which defendant was convicted. Third, the trial court stated that it was imposing incarceration in order to deter similar offenses. However, the Illinois Supreme Court has found that deterrence has little significance where an offense involves unintentional conduct. **People v. Martin**, 119 Ill. 2d 453, 519 N.E.2d 884 (1988). Fourth, the trial judge ignored the defendant's history, character and rehabilitative potential. Fifth, the trial court's comments at sentencing indicated a predisposition against probation for certain types of offenders. Sixth, the trial judge considered as aggravation a factor inherent in the offense of reckless homicide where it did not merely note the decedent's death in passing, but clearly focused on the death when imposing incarceration.

The Appellate Court reduced defendant's sentence to probation and remanded the cause with directions to impose appropriate probation conditions. Furthermore, to remove any suggestion of unfairness, the court ordered that the case be assigned to a different judge on remand.

People v. Mikesell, 12 Ill.App.3d 382, 297 N.E.2d 590 (4th Dist. 1973) When a reviewing court finds that the trial court abused its discretion or acted arbitrarily in denying probation, the cause should be remanded to a different judge for further sentencing hearing. Accord, **People v. Hill**, 14 Ill.App.3d 20, 302 N.E.2d 373 (5th Dist. 1973).

§39-3(b)
Proper

Illinois Supreme Court

People v. Anderson, 112 Ill.2d 39, 490 N.E.2d 1263 (1986) The judge's comment, "[I]f periodic imprisonment were available I would consider periodic imprisonment, but periodic imprisonment is not available either through the State or through the County," referred to the "practical unavailability of periodic imprisonment facilities" and was not evidence that the judge erroneously believed that periodic imprisonment was legally unavailable for the offense.

The Court also rejected defendant's contention that the lack of periodic imprisonment facilities in the county violated equal protection under the Illinois Constitution because there was no evidence of purposeful or invidious discrimination.

People v. Waud, 69 Ill.2d 588, 373 N.E.2d 1 (1977) The trial judge properly exercised his discretion in finding that probation would deprecate the seriousness of the crime and was inappropriate in light of the seriousness of the offenses (six counts of forgery), defendant's position as a high school principal, and the potential for disrespect for the administration of justice. See also, **People v. Echols**, 146 Ill.App.3d 965, 497 N.E.2d 321 (1st Dist. 1986) (trial court did not abuse its discretion in denying probation for indecent liberties); **People v. Ruskey**, 149 Ill.App.3d 482, 501 N.E.2d 146 (1st Dist. 1986) (robbery); **People v. Hammock**, 68 Ill.App.3d 34, 385 N.E.2d 796 (5th Dist. 1979) (voluntary manslaughter).

§39-3(c)
Improper

Illinois Supreme Court

People v. Cross, 77 Ill.2d 396, 396 N.E.2d 812 (1979) The Court ordered a new sentencing hearing because the trial judge, who sentenced defendant to the minimum term of imprisonment, was under the misapprehension that periodic imprisonment was not authorized.

People v. Rege, 64 Ill.2d 473, 356 N.E.2d 537 (1976) Denial of probation was remanded for reconsideration because the judge may have considered the prosecutor's incorrect statement that the offense was the most serious cannabis offense possible.

People v. Bolyard, 61 Ill.2d 583, 338 N.E.2d 168 (1975) The denial of probation for defendant, who was convicted of indecent liberties with a child, was arbitrary because it was based on the trial judge's belief that perpetrators of certain crimes, including indecent liberties, should not receive probation. Defendant was entitled to a new hearing before another judge. See also, **People v. Kendrick**, 104 Ill.App.3d 426, 432 N.E.2d 1054 (1st Dist. 1982).

Illinois Appellate Court

People v. Scarbrough, 2015 IL App (3d) 130426 Under 730 ILCS 5/5-6-1(j), a defendant who has been charged with driving while his license is revoked (625 ILCS 6-303(a)) is ineligible for supervision if: (1) his license was revoked because of a violation of 625 ILCS 11-501 (driving under the influence); and (2) he has a prior conviction under section 6-303 within the last 10 years.

Defendant entered a blind guilty plea to driving on a revoked license. The trial court sentenced him to 12 months of conditional discharge with 30 days in jail, finding that he was ineligible for supervision. On appeal, defendant argued that he was eligible for supervision for two reasons: (1) his license had not been revoked because of a section 11-501 violation; and (2) his prior conviction under section 6-303 had not occurred within the last 10 years. The Appellate Court upheld defendant's sentence, rejecting both of his arguments.

People v. Daly, 2014 IL App (4th) 140624 Generally, Illinois law creates a presumption in favor of probation. For most offenses, 730 ILCS 5/5-6-1(a) requires a sentence of probation unless the court finds that a prison sentence is necessary for the protection of the public or that probation would deprecate the seriousness of the offense. In making the latter determination, the trial court is statutorily required to consider the nature and circumstances of the offense and the history, character and condition of the offender. The trial court is presumed to have considered only proper sentencing factors unless the record affirmatively shows otherwise.

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People v. Martin, 119 Ill. 2d 453, 519 N.E.2d 884 (1988). Fourth, the trial judge ignored the defendant's history, character and rehabilitative potential. Fifth, the trial court's comments at sentencing indicated a predisposition against probation for certain types of offenders. Sixth, the trial judge considered as aggravation a factor inherent in the offense of reckless homicide where it did not merely note the decedent's death in passing, but clearly focused on the death when imposing incarceration.

The Appellate Court reduced defendant's sentence to probation and remanded the cause with directions to impose appropriate probation conditions. Furthermore, to remove any suggestion of unfairness, the court ordered that the case be assigned to a different judge on remand.

People v. Brooks, 69 Ill.App.3d 18, 386 N.E.2d 1160 (4th Dist. 1979) On direct appeal, the court remanded the case for a new sentencing hearing before a different judge. On remand, the judge again denied probation and imposed the same sentence of imprisonment. On the second appeal, the court found that the judge "treated this defendant as falling within a category of offenders unfavored by the sentencing judge and . . . arbitrarily imposed a sentence of imprisonment and denied probation." Case remanded for resentencing before a different judge.

People v. Short, 66 Ill.App.3d 172, 383 N.E.2d 723 (5th Dist. 1978) It is "patently unjust" to deny probation because of an inability to make immediate restitution.

People v. Honn, 47 Ill.App.3d 378, 362 N.E.2d 90 (4th Dist. 1977) The trial court abused its discretion by denying probation for defendants, who were convicted of delivering controlled substances, because defendants were "most likely occasional petty distributors who are at least candidates for probation," and there was no indication that imprisonment was necessary to protect the public or that defendants were in need of correctional treatment. Court remanded for resentencing before a different judge.

§39-4
Conditions of

§39-4(a)
Generally

Illinois Supreme Court

People v. Tipton, 88 Ill.2d 256, 430 N.E.2d 1023 (1981) The trial court is authorized to impose, as a condition of probation, a delayed imprisonment term to be served at the end of the probation period. But, the court questioned the advisability of imposing that imprisonment at or near the end of the probationary period absent unusual circumstances or defendant's request.

If the original order of probation does not provide for the possibility of remission, no hearing is necessary prior to defendant serving the delayed imprisonment. If defendant in such circumstances himself moves to modify the term of imprisonment or other conditions of probation, due process is satisfied if defendant is permitted to appear personally and present any supporting documentary evidence. The trial court, in its discretion, may allow defendant to be represented by counsel and call witnesses.

Also, no constitutional provision is offended by placing upon defendant the burden of establishing that the modification should be made. But if the terms of the delayed imprisonment are expressly subjected to a remission hearing fixed in the original order of probation, and where the probation officer or the court itself moves to modify the conditions of probation, due process requires that defendant be afforded a hearing, the right to notice, the right to counsel and the right to present relevant evidence.

Illinois Appellate Court

In re J.P., 2019 IL App (1st) 181087 Respondent challenged a condition of probation that restricted her contact with gang members. The Appellate Court rejected the argument, distinguishing **In re Omar F.**, 2017 IL App (1st) 171073, and **In re J'Lavon T.**, 2018 IL App (1st) 180228, because unlike the blanket bans in those cases, the juvenile court here explained that the condition was limited to activity that "further[s] or promotes the function of a street gang." This language narrowed the restriction and kept it from being overbroad in violation of due process.

Nor did the court err in ordering the removal of a gang tattoo from respondent's face, though remand was required to determine whether her other tattoos were gang related and therefore subject to the removal order. Tattoo removal, an authorized probation condition under 705 ILCS 405/5-715, does not violate due process when reasonably related to a juvenile's rehabilitation. Here, defendant's tattoo above her eye identified her as a Latin King, and her membership in the Latin Kings was directly related to her criminal conduct. Moreover, the removal is related to rehabilitation because it was aimed at making it easier to find gainful employment.

In re Omar F., 2017 IL App (1st) 171073 Trial courts have broad discretion to impose reasonable probation conditions aimed at fostering rehabilitation and protecting the public, whether or not the conditions are expressly authorized by statute. The court's discretion in setting probation conditions is limited by constitutional safeguards, however. In determining whether a probation condition is proper, the overriding concern is reasonableness.

To be reasonable, a probation condition must not be overly broad considering the desired goal and the means of achieving that goal. When assessing the reasonableness of a condition of probation, it is appropriate to consider whether the condition is related to the nature of the offense or the rehabilitation of the probationer. Other factors include whether the probation condition reasonably relates to the rehabilitative purpose of the legislation, whether the value to the public in imposing the condition manifestly outweighs the impairment to the probationer's constitutional rights, and whether there are alternative conditions that would be less disruptive to the probationer's constitutional rights but still comport with the purposes of conferring probation.

A probationary condition is overbroad and therefore unreasonable when there is no valid purpose for a restriction and no means by which the probationer may obtain exemption from the restriction for legitimate purposes.

Where the probationer was ordered to avoid contact with gang members and gang activity, clear his social media of gangs and drugs, and not post or appear in any pictures with gang members, the condition was overbroad and unreasonable. The court acknowledged that the "no gang contact" provision was a valid condition of probation because it was reasonably related to rehabilitation and was expressly authorized by 705 ILCS 405/5-715(2)(s). The court also concluded that the term "contact" could be extended to include an individual's online presence.

However, the blanket order requiring the respondent to "stay away" from and have "no contact" with gang members and remove any social media posts involving gang members was overbroad. The court noted that there was no method by which the respondent could obtain an exemption from the restrictions for legitimate purposes such as those based on familial, employment, or educational relationships, and no explanation of the specific conduct which would result in a probation violation.

The overbroad probation condition constituted plain error under both the first and second prongs of the plain error rule. First, the evidence that defendant was involved in gang activity was closely balanced. Second, because the blanket prohibition against contact with gangs was "simply too general and overbroad to provide a juvenile with clear parameters about how to comply with the conditions of his probation," the integrity of the judicial process was affected.

People v. Morger, 2016 IL App (4th) 140321 Defendant was sentenced to 48 months' probation with certain probation conditions checked on the form sentencing order, including that the probation was to be served on "Sex Offender Probation under the additional conditions provided by Court Services." Defendant signed an acknowledgment which stated that additional probation conditions could be imposed.

Four days later, the probation department imposed 24 additional conditions. The Appellate Court held that defendant was improperly sentenced.

The power to impose sentence belongs to the judiciary, and may not be delegated to a third party. Thus, probation conditions must be imposed by the trial judge. Here, the trial judge could have imposed the additional conditions by including them in the probation order, informing defendant of the special conditions, and giving him a copy of the order. However, it was improper to allow the probation department to impose conditions several days after the sentencing hearing.

Because the lower court delegated to the probation department the power to determine probation conditions, resentencing was required.

People v. Clendenny, 2016 IL App (4th) 150215 The trial court sentenced defendant to 30 months' probation, including 18 months of periodic imprisonment. The court agreed to allow defendant to be released for work, alcohol treatment, and to be present at the birth of his child. In describing the sentence, the court used the terms "periodic imprisonment" and "work release" interchangeably.

Defendant argued that the 18 months of periodic imprisonment was improper because the maximum term of work release is 12 months. The Appellate Court rejected this argument, holding that defendant's periodic imprisonment with release for work, alcohol treatment, and the birth of his child, did not equally compare with participation in a county work-release program.

A work-release program is guided by specific parameters and subject to specific rules, sanctions, wages, and working conditions. By contrast, the conditions of defendant's periodic imprisonment were more lenient and flexible, allowing defendant much greater independence than a work-release program. Although the trial court referred to the probation condition as "work release," that did not establish that the court was actually imposing work release within the meaning of the statute.

People v. Goossens, 2015 IL 118347 Probation conditions may be either mandatory or discretionary. Discretionary conditions may be conditions that are specifically authorized by statute or conditions that are not explicitly authorized.

Thus, 730 ILCS 5/5-6-3(a) lists several mandatory conditions which are to be imposed for all probation sentences. Furthermore, 730 ILCS 5/5-6-3(b) provides that in addition to other reasonable conditions relating to the nature of the offense or the rehabilitation of the defendant, the trial court may impose any of several specified conditions, including that the defendant support his dependents. (730 ILCS 5/5-6-3(b)(6)).

The court concluded that where the trial court imposes a discretionary condition of probation that is specifically listed in 730 ILCS 5/5-6-3(b), there is no requirement that the condition relate to the offense for which probation is imposed. Thus, the trial court had discretion to require as a condition of probation that defendant become current in child support in another case, although that condition was not in any way related to intimidation, the offense for which the probation sentence was being imposed.

The court overruled **People v. Campbell**, 325 Ill.App.3d 569, 758 N.E.2d 504 (4th Dist. 2001), which held that all probation conditions, including those that are specifically listed in 730 ILCS 5/5-6-3(b), must relate to the nature of the offense.

People v. Crabtree, 2015 IL App (5th) 130155 A condition of probation is permissible if there is some connection between the condition and the underlying offense. In evaluating whether a probation condition is constitutional, courts consider whether: (1) the condition reasonably relates to the intended purpose of fostering rehabilitation, (2) the value to the public of imposing the condition manifestly outweighs any impairment of the probationer's constitutional rights, and (3) there are alternative means that are less damaging to the probationer's constitutional rights but which would satisfy the purposes of placing the defendant on probation.

People v. Moore, 2013 IL App (3d) 110474 Defendant was placed on probation for burglary and ordered to pay restitution to the complainant in the two counts for which he was convicted, and also to a separate complainant named in two counts which were dropped as part of a plea agreement. The State filed a petition to revoke probation and requested that defendant's bond be applied first to restitution. The trial court agreed and checked the box in the sentencing order which stated that bond was to be applied first to restitution. However, the court left the section blank which would have required defendant to pay restitution, and did not check the box indicating that restitution was being ordered.

When probation is revoked, an entirely new sentence is imposed. Thus, upon revocation of probation the defendant is no longer subject to the original conditions of probation, including to pay restitution. When probation was revoked the original restitution order ceased to exist. Although at the resentencing the trial judge left blank the portion of the sentencing order establishing restitution, it addressed the issue of restitution during the sentencing hearing and responded to the State's request by checking the box in the sentencing order applying defendant's bond first to restitution. Under these circumstances, the trial judge intended to reestablish a restitution order. Thus, defendant was subject to a restitution order after probation was revoked.

However, the provision requiring restitution on the dismissed counts was improper. Generally, a defendant can be required to pay restitution for conduct which did not result in conviction only if the plea agreement includes defendant's agreement to pay such restitution. Because there was no such agreement here, the order requiring restitution concerning the dismissed counts was vacated.

The court also concluded that the trial court erred by applying defendant's bond to restitution rather than to paying court costs. 730 ILCS 5/5-5-6(e) provides that the trial court may "require the defendant to apply the balance of his cash bond, ***after payment of court***

costs, and any fine that may be imposed[,] to the payment of restitution." Under the plain language of the statute, the trial judge lacks authority to apply defendant's bond to restitution in preference to court costs and fines. Therefore, the portion of the sentencing order applying the bond first to restitution is void because it violates the plain language of the statute.

People v. Renner, 321 Ill.App.3d 1022, 748 N.E.2d 1272 (5th Dist. 2001) A probation condition that drug test results would be admissible in revocation proceedings was unauthorized by statute, and if authorized, would have violated defendant's right to confront witnesses.

Defendant did not waive her right to confrontation by pleading guilty and accepting probation, which included the unauthorized condition. The waiver was not knowing and intentional, for defendant was not informed of the waiver provision before she pleaded guilty, and the waiver was never mentioned in court until the revocation proceedings were initiated.

Defendant's failure to move to withdraw her plea did not constitute acquiescence of the probation condition. A defendant need not move to withdraw a guilty plea where the sentence is outside the range to which the parties agreed.

People v. Goleash, 311 Ill.App.3d 949, 726 N.E.2d 194 (4th Dist. 2000) For purposes of 730 ILCS 5/5-6-3(a)(1), which requires as a condition of probation that the probationer "not violate any criminal statute of any jurisdiction," a statute creates a "criminal" offense if a jail sentence is authorized. Because driving with a revoked license is a Class A misdemeanor carrying a possible sentence of up to one year imprisonment, and under certain circumstances may constitute a Class 4 felony for which a sentence of up to three years can be imposed, it is clearly a "criminal" offense.

People v. Birt, 274 Ill.App.3d 805, 655 N.E.2d 321 (4th Dist. 1995) The State's Attorney has authority to file a motion to modify the conditions of probation, though 730 ILCS 5/5-6-4(f) appears to limit the filing of such motions to the probation officer and the probationer.

The court also rejected defendant's argument that the trial judge may increase the severity of probation conditions only where the change is based on defendant's conduct since the original sentencing hearing. The trial court has authority to modify probation to "deal with changing conditions during the probation periods" (**People v. Tipton**, 88 Ill.2d 256, 430 N.E.2d 1023 (1981)). Therefore, upon notice and a hearing, the trial court may modify probation conditions for any reason that will aid defendant's rehabilitation.

Finally, the trial court did not abuse its discretion by modifying the probation to require defendant to: (1) sign confidentiality releases to permit communication between the probation office and a counseling agency, and (2) avoid consuming alcohol beverages while on probation. The modifications were appropriate where the agency that was providing counseling recommended both changes as essential for successful completion of the counseling program.

People v. Thomas, 217 Ill.App.3d 416, 577 N.E.2d 496 (4th Dist. 1991) A probation sentence that required defendant to serve 10 days' imprisonment at the start of his probation term and 30 days' imprisonment at the end of that term, with the provision that the probation department had authority to waive the latter period, improperly delegated to the probation department authority to decide whether defendant would be incarcerated. Determining the terms and conditions of probation is a judicial function that cannot be delegated unless clearly authorized by law.

People v. Burke, 136 Ill.App.3d 593, 483 N.E.2d 674 (4th Dist. 1985) When ordering imprisonment to be served at the end of a probation period, "it would be better practice when such an order is entered with the possibility of remission to specify a date of hearing at which the court would consider remitting all or part of the imprisonment imposed as a condition of probation."

People v. Williams, 96 Ill.App.3d 588, 421 N.E.2d 1039 (4th Dist. 1981) The trial court properly required defendant to complete 80 hours of public service work under the supervision of the county probation department. The requirement that the work be performed under the supervision of the probation department was not an improper delegation of authority.

People v. Susberry, 68 Ill.App.3d 555, 386 N.E.2d 361 (1st Dist. 1979) The conditions of probation should not be merely orally stated, but should be spelled out in the probation order in clear and unmistakable detail. See also, **People v. Brown**, 137 Ill.App.3d 453, 484 N.E.2d 945 (3d Dist. 1985) (reversing revocation of probation because the trial court only orally stated the condition). But see, **People v. Glover**, 140 Ill.App.3d 958, 489 N.E.2d 491 (2d Dist. 1986) (providing that §1005-6-3(c) is directory, though probationers should receive written conditions, and upholding probation revocation, due to defendant committing a crime while on probation, though the trial court did not specifically advise defendant of the mandatory probation condition that he not violate criminal statutes, because defendant failed to allege or show any prejudice resulting from the court's deficient admonishments).

§39-4(b)
Proper

Illinois Supreme Court

People v. Pearson, 2020 IL App (2d) 180182 As a condition of his probation, defendant was required to submit to urine testing for drug and alcohol use. During testing on the date in question, a testing company employee observed defendant dispensing his sample, which had the appearance of urine, from a plastic device. The employee discarded the sample and reported his observation to the sheriff's department, and defendant was arrested. A deputy recovered the plastic device, a "Whizzinator," from a garbage can near a bench where defendant had been handcuffed. Defendant was convicted of defrauding a drug or alcohol screening test under 720 ILCS 5/17-57(a)(2).

On appeal, defendant challenged the sufficiency of the evidence because the State had not offered any proof that the substance submitted was not actually defendant's own urine. Section 17-57(a)(2) provides that it is unlawful to "substitute or spike a sample...with the intent of attempting to foil or defeat a drug or alcohol screening test." The Appellate Court rejected defendant's contention that the statute does not preclude a defendant from submitting a previously-collected sample of his own urine, as such a construction would defeat the purpose of the statute. A person's urine changes over time, especially based on what that person has consumed, and a previously-collected "clean" sample could be used to defeat the test. Thus, the statute does not require proof that the substance submitted was not the urine of the person being tested. And the statute properly allows the inference of criminal intent where a device like a Whizzinator is used to provide the sample.

In re J.W., 204 Ill.2d 50, 787 N.E.2d 747 (2003) The probation condition barring J.W., a minor, from living in the community where the offenses occurred was reasonable and, therefore, constitutional. The condition clearly related to the offenses, and removing defendant from the area would be in his best interest and aid the rehabilitation of his victims. Also, because J.W.'s family expressed a willingness to move out of the community, the condition "was not so much a restriction imposed by the court as it was an affirmation of the parent's expressed intent to leave the community." See also, **People v. Pickens**, 186 Ill.App.3d 456, 542 N.E.2d 1253 (4th Dist. 1989) (condition of probation barring defendant, who plead guilty to prostitution, from entering a 50-block area of Champaign, was reasonable).

Illinois Appellate Court

In re T.B., 2020 IL App (1st) 191041 The condition of respondent's probation prohibiting gang activity, or social media posts furthering gang activity, were neither unreasonable nor unconstitutional. Respondent argued that a gang-focused condition was unreasonable where nothing in his background showed gang involvement. But defendant was a teenager who committed the robbery with a group of peers, and regardless, it is no more unreasonable to restrict gang activity without proof of gang membership than it would be to require school attendance without proof of truancy.

Nor was the condition unconstitutional. Respondent failed to specify how the condition was vague, and unlike probation conditions that limit contact with gang members, there is no overbreadth concerns when the condition specifically targets actual gang activity. Finally, a condition restricting social media use by prohibiting the advancement of gang activity or display of gang signs did not violate freedom of speech, as it was reasonably related to rehabilitation.

In re J.R., 2019 IL App (1st) 190661 Probation conditions restricting social media use were not vague or overbroad. The judge clearly explained that the restrictions applied only to gang-related posts**.** The court had no obligation to specify exceptions for innocuous contact. The restrictions were also reasonably related to the nature of the offense and to the juvenile's rehabilitation, where the record showed he was at least influenced by gangs and used a gun to commit an armed robbery. The restrictions also furthered a compelling state interest of value to the public, and the court had no alternative, less subversive means to accomplish these goals.

In re J.P., 2019 IL App (1st) 181087 Respondent challenged a condition of probation that restricted her contact with gang members. The Appellate Court rejected the argument, distinguishing **In re Omar F.**, 2017 IL App (1st) 171073, and **In re J'Lavon T.**, 2018 IL App (1st) 180228, because unlike the blanket bans in those cases, the juvenile court here explained that the condition was limited to activity that "further[s] or promotes the function of a street gang." This language narrowed the restriction and kept it from being overbroad in violation of due process.

Nor did the court err in ordering the removal of a gang tattoo from respondent's face, though remand was required to determine whether her other tattoos were gang related and therefore subject to the removal order. Tattoo removal, an authorized probation condition under 705 ILCS 405/5-715, does not violate due process when reasonably related to a juvenile's rehabilitation. Here, defendant's tattoo above her eye identified her as a Latin

King, and her membership in the Latin Kings was directly related to her criminal conduct. Moreover, the removal is related to rehabilitation because it was aimed at making it easier to find gainful employment.

In re K.M., 2018 IL App (1st) 172349 Minor challenged probation conditions that he "have no contact with gangs, guns, or drugs" and that he clear his social media of "anything that looks like gangs, guns, or drugs." The blanket no-contact provision was similar to that found unconstitutional in **In re Omar F.**, 2017 IL App (1st) 171073, and would have included even innocent or incidental contact within its scope. The Court remanded for the juvenile court to issue a revised probation order.

The Court upheld the social media restriction, disagreeing with **Omar F.** The Court concluded that the restriction only minimally curtailed the minor's First Amendment rights and that it was reasonably related to rehabilitation.

The dissenting justice would not have reached the issue because it was not raised below. Instead, the dissent would have required the minor to first seek modification of probation from the juvenile court because the Juvenile Court Act provides for ongoing review. The dissent also would have declined to consider the constitutionality of the condition because the minor did not challenge the authorizing statute [705 ILCS 405/5-715(2)(s)].

In re Jawan S., 2018 IL App (1st) 172955 Probation conditions that minor "refrain from all illegal gang, guns, [and] drug activity" and that "none shall be displayed on his social media" were upheld. The Court distinguished **In re Omar F.**, 2017 IL App (1st) 171073, because the condition here was limited to "illegal" activity, as opposed to the broad condition in **Omar F.** which would have included even innocent or incidental contact within its scope. The social media restriction was also proper because its curtailment of First Amendment rights was minimal and was reasonably related to the needs of rehabilitation.

The Court also rejected a challenge to the constitutionality of 705 ILCS 405/5-715(2)(s) which provides that a juvenile court may include a probation condition that a minor refrain from gang contact. The statute is not mandatory, but rather merely authorizes certain probation conditions at the court's discretion. Here, the court properly tailored the no-gang conditions such that they were not overbroad.

People v. Crabtree, 2015 IL App (5th) 130155 A condition of probation is permissible if there is some connection between the condition and the underlying offense. In evaluating whether a probation condition is constitutional, courts consider whether: (1) the condition reasonably relates to the intended purpose of fostering rehabilitation, (2) the value to the public of imposing the condition manifestly outweighs any impairment of the probationer's constitutional rights, and (3) there are alternative means that are less damaging to the probationer's constitutional rights but which would satisfy the purposes of placing the defendant on probation.

730 ILCS 5/5-6-3(a)(8.7), (8.9), and (11) provide that where the defendant is convicted of certain sexual offenses and receives probation, the conditions of probation "shall" include that defendant refrain from communicating with or contacting by means of the Internet any unrelated person whom the defendant reasonably believes to be under 18 years of age, refrain from accessing or using a social networking website, and refrain from using "scrub" software on any computer. The court noted that these conditions are mandatory and are not unconstitutional in this case although defendant did not use a computer to commit the offense for which a probation term was ordered. Because defendant was sentenced for the sexual abuse of a young girl, the court concluded that probation conditions limiting the use of

computers, the Internet, and social networking web sites were reasonably related to the goals of deterrence, protection of the public, and defendant's rehabilitation.

People v. Goossens, 2014 IL App (3d) 120680 Under the Unified Code of Corrections, the period of probation for a Class 3 felony shall not exceed 30 months. 730 ILCS 5/5-4.5-40(d). The Code lists several mandatory conditions of probation as well as other conditions that the court may impose at its discretion. Among the discretionary conditions, the court may impose reasonable conditions relating to the nature of offense. 730 ILCS 5/5-6-3(b). The Code also identifies specific conditions that the court may impose, including a requirement that defendant support his dependants. 730 ILCS 5/5-6-3(b)(6).

Defendant was convicted of intimidation, a Class 3 felony, and sentenced to two years of probation. As a condition of his probation, he was ordered to become current with his child support. Defendant argued that the child-support condition was unauthorized because it: (1) made the probation term indeterminate in violation of the maximum probation period of 30 months; and (2) did not reasonably relate to the offense of intimidation. The Appellate Court rejected both arguments.

First, the court held that the child-support condition did not make the probation term any more indeterminate than fines and fees imposed as part of probation, since a defendant might fail or refuse to pay them during the probation term. Noting that defendant cited no case law in support of his argument, the court declined to find that the child-support condition made his term impermissibly indeterminate.

The court also held that the limitation of being related to the nature of the offense only applied to the general, non-specific conditions of section 5-6-3(b). It did not apply to the specific conditions enumerated in the statute, including the specific condition of child support listed in section 5-6-3(b)(6). Thus the child support condition did not need to be reasonably related to the underlying offense. The court noted its disagreement with **People v. Campbell**, 325 Ill. App. 3d (2001), where the Fourth District held that all of the conditions, both specific and non-specific, in section 5-6-3(b) must be related to the nature of the offense.

The order of probation was affirmed.

People v. Wells, 90 Ill.App.3d 320, 413 N.E.2d 218 (3d Dist. 1980) The trial court properly imposed, as a condition of probation, that defendant either work or spend at least six hours a day looking for work. See also, **People v. Cottrell**, 141 Ill.App.3d 364, 490 N.E.2d 950 (4th Dist. 1986).

§39-4(c)
Improper

Illinois Supreme Court

People v. Morger, 2019 IL 123643 Section 5-6-3(a)(8.9) of the Code of Corrections, requiring as a condition of probation that any sex offender refrain from accessing or using a social networking website, is overbroad and facially unconstitutional. Although **Packingham v. North Carolina**, 582 U.S. ___, 137 S. Ct. 1730 (2017), is factually distinguishable in that the social media ban in that case lasted throughout the defendant's post-custodial registration period, the Illinois Supreme Court found the principles espoused in **Packingham** more broadly applicable. In particular, the **Packingham** court made clear that social media is fundamental to freedom of speech, likening it to "the modern public square." Thus, even if the ban on social media is part of a probation sentence rather than a condition of registration, it cannot survive the intermediate scrutiny applicable to content-neutral speech restrictions.

To survive intermediate scrutiny, a law must be narrowly tailored to serve a significant governmental interest; it must not burden substantially more speech than is necessary to further the government's legitimate interests. Here, where the social media ban applies to offenders who, like the defendant here, did not use the internet to facilitate the offense, it is not sufficiently narrow. Nor does it serve the government interest of rehabilitation, as a social media ban will make it harder for an offender to reform. The legislature had alternative means to further its interest in protecting the public from offenders who use social media to facilitate their crimes, such as allowing for the ban to be imposed at the judge's discretion or prohibiting offenders from contacting minors using the internet.

In re J.W., 204 Ill.2d 50, 787 N.E.2d 747 (2003) The condition banishing J.W. from entering the community for any purpose was unconstitutionally overbroad because it did not provide a means by which J.W. could enter the area for legitimate purposes. A restriction on a probationer's travel into a specific geographical area is reasonable, and therefore constitutional, if there is a valid purpose for the restriction and a means by which the probationer may obtain exemption from the restriction for legitimate purposes. See also, **People v. Rizzo**, 362 Ill.App.3d 444, 842 N.E.2d 727 (2d Dist. 2005); **People v. Harris**, 238 Ill.App.3d 575, 606 N.E.2d 392 (1st Dist. 1992).

People v. Meyer, 176 Ill.2d 372, 680 N.E.2d 315 (1997) As a condition of probation, the trial court ordered that at each entrance to defendant's property defendant was to erect a sign reading: "Warning! A Violent Felon lives here. Enter at your own Risk." This sign-posting requirement was not authorized by Illinois law. The primary purpose of probation is to benefit society by restoring defendant to useful citizenship, and the sign-posting condition was unreasonable because it might have hindered defendant's rehabilitation. Also, the sign-post requirement contained "a strong element of public humiliation or ridicule," which is not a purpose of probation, and might have adversely affected defendant's relatives who resided at or visited the property.

Illinois Appellate Court

In re J'Lavon T., 2018 IL App (1st) 180228 Following adjudication of delinquency for armed robbery, probation conditions that the minor have no gang contact and make no social media posts on anything related to a gang were held to be overbroad. As a general matter, restrictions on gang contact and social media were related to rehabilitation and were valid conditions where the minor's mother said he was hanging with the "wrong crowd" and noted negative peer influences as a reason for his criminal conduct. However, the conditions were overbroad where there was no exception for contact or social media posts with a legitimate purpose, following **In re Omar F.**, 2017 IL App (1st) 171073. The court distinguished **In re R.H.**, 2017 IL App (1st) 171332, where the court upheld a similar social media restriction because there the minor was in a gang, used social media to taunt rival gang members, and posted pictures of himself displaying gang signs and smoking cannabis.

Second-prong plain error review was warranted. The gang conditions were so vague as to affect the integrity of the dispositional hearing, and the trial court failed to provide a fair process for determining what gang-related restrictions were reasonable.

In re Omar F., 2017 IL App (1st) 171073 In determining whether a probation condition not specifically authorized by statute is proper, the overriding concern is reasonableness. To be reasonable, a probation condition must not be overly broad considering the desired goal and the means of achieving that goal. When assessing the reasonableness of a condition of probation, it is appropriate to consider whether the condition is related to the nature of the offense or the rehabilitation of the probationer. Other factors include whether the probation condition reasonably relates to the rehabilitative purpose of the legislation, whether the value to the public in imposing the condition manifestly outweighs the impairment to the probationer's constitutional rights, and whether there are alternative conditions that would be less disruptive to the probationer's constitutional rights but still comport with the purposes of conferring probation.

A probationary condition is overbroad and therefore unreasonable when there is no valid purpose for a restriction and no means by which the probationer may obtain exemption from the restriction for legitimate purposes.

Where the probationer was ordered to avoid contact with gang members and gang activity, clear his social media of gangs and drugs, and not post or appear in any pictures with gang members, the condition was overbroad and unreasonable. The court acknowledged that the "no gang contact" provision was a valid condition of probation because it was reasonably related to rehabilitation and was expressly authorized by 705 ILCS 405/5-715(2)(s). The court also concluded that the term "contact" could be extended to include an individual's online presence.

However, the blanket order requiring the respondent to "stay away" from and have "no contact" with gang members and remove any social media posts involving gang members was overbroad. The court noted that there was no method by which the respondent could obtain an exemption from the restrictions for legitimate purposes such as those based on familial, employment, or educational relationships, and no explanation of the specific conduct which would result in a probation violation.

The court found that the overbroad probation condition constituted plain error under both the first and second prongs of the plain error rule. First, the evidence that defendant was involved in gang activity was closely balanced. Second, because the blanket prohibition against contact with gangs was "simply too general and overbroad to provide a juvenile with clear parameters about how to comply with the conditions of his probation," the integrity of the judicial process was affected.

People v. Morger, 2016 IL App (4th) 140321 Defendant was sentenced to 48 months' probation with certain probation conditions checked on the form sentencing order, including that the probation was to be served on "Sex Offender Probation under the additional conditions provided by Court Services." Defendant signed an acknowledgment which stated that additional probation conditions could be imposed.

Four days later, the probation department imposed 24 additional conditions. The Appellate Court held that defendant was improperly sentenced.

The power to impose sentence belongs to the judiciary, and may not be delegated to a third party. Thus, probation conditions must be imposed by the trial judge. Here, the trial judge could have imposed the additional conditions by including them in the probation order, informing defendant of the special conditions, and giving him a copy of the order. However, it was improper to allow the probation department to impose conditions several days after the sentencing hearing.

Because the lower court delegated to the probation department the power to determine probation conditions, resentencing was required.

People v. Moore, 2013 IL App (3d) 110474 Defendant was placed on probation for burglary and ordered to pay restitution to the complainant in the two counts for which he was convicted, and also to a separate complainant named in two counts which were dropped as part of a plea agreement. The State filed a petition to revoke probation and requested that defendant's bond be applied first to restitution. The trial court agreed and checked the box in the sentencing order which stated that bond was to be applied first to restitution. However, the court left the section blank which would have required defendant to pay restitution, and did not check the box indicating that restitution was being ordered.

When probation is revoked, an entirely new sentence is imposed. Thus, upon revocation of probation the defendant is no longer subject to the original conditions of probation, including to pay restitution. When probation was revoked the original restitution order ceased to exist. Although at the resentencing the trial judge left blank the portion of the sentencing order establishing restitution, it addressed the issue of restitution during the sentencing hearing and responded to the State's request by checking the box in the sentencing order applying defendant's bond first to restitution. The court concluded under these circumstances, the trial judge intended to reestablish a restitution order. Thus, defendant was subject to a restitution order after probation was revoked.

However, the provision requiring restitution on the dismissed counts was improper. Generally, a defendant can be required to pay restitution for conduct which did not result in conviction only if the plea agreement includes defendant's agreement to pay such restitution. Because there was no such agreement here, the order requiring restitution concerning the dismissed counts was vacated.

The court also concluded that the trial court erred by applying defendant's bond to restitution rather than to paying court costs. 730 ILCS 5/5-5-6(e) provides that the trial court may "require the defendant to apply the balance of his cash bond, ***after payment of court costs, and any fine that may be imposed***[,] to the payment of restitution." Under the plain language of the statute, the trial judge lacks authority to apply defendant's bond to restitution in preference to court costs and fines. Therefore, the portion of the sentencing order applying the bond first to restitution is void because it violates the plain language of the statute.

People v. Campbell, 325 Ill.App.3d 569, 758 N.E.2d 504 (4th Dist. 2001) Illinois sentencing law does not authorize the reimposition of unpaid fees from a previous offense when conditional discharge is ordered for a subsequent, unrelated offense. 730 ILCS 5/5-6-3, which allows payment of a fine and costs as conditions of a sentence of conditional discharge, applies only to costs which "relate to the nature of the offense," and "all conditions of a sentence of conditional discharge must be related to the specific offense for which the defendant is sentenced."

People v. Ortiz, 321 Ill.App.3d 920, 748 N.E.2d 793 (2d Dist. 2001) Defendant's sentence of 30 months' intensive probation, with the condition that he serve 18 months of periodic imprisonment with six months stayed, with release only for employment and substance abuse treatment, exceeded the authorized sentence range.

Under 730 ILCS 5/5-7-1(d), a term of periodic imprisonment may not exceed one year if the person "is committed to a county correctional institutional or facility, and in conjunction with that sentence participate[s] in a county work release program comparable to the work and day release program provided for" by the Department of Corrections. Because the conditions of probation included release from custody solely for work and drug treatment, the

12-month limit on periodic imprisonment applied. The court rejected the State's argument that defendant who is sentenced to probation, as opposed to work release, is not subject to the 12-month restriction on periodic imprisonment. The court stressed that under the State's argument, a trial judge could order imprisonment for the maximum term of probation so long as the probation order required that defendant be released periodically.

People v. Farrell, 277 Ill.App.3d 74, 659 N.E.2d 992 (4th Dist. 1995) A condition that defendant refrain from engaging in any activity that had the reasonable potential to cause pregnancy violated 730 ILCS 5/5-5-3(k), which prohibits the trial court from requiring a defendant "to be implanted or injected with or to use any form of birth control." Because the condition imposed by the trial court "effectively mandated that [defendant] use a form of birth control, namely, abstinence," reversal was required. However, a probation condition requiring defendant to submit to a pregnancy test every two months was reasonable.

People v. Clark, 196 Ill.App.3d 89, 553 N.E.2d 80 (4th Dist. 1990) A conditional discharge sentence that required defendant to serve "periodic imprisonment" terms totaling more than 150 days (with one 12-hour period of release) was improper. The eight-month term could not be construed as periodic imprisonment. The court did not structure any periodic releases into the prison term other than the single 12-hour period of release, and the court did not disclose any purpose that disposition would permit defendant to serve.

People v. Johnson, 174 Ill.App.3d 812, 528 N.E.2d 1360 (4th Dist. 1988) As a condition of supervision pursuant to defendant's DUI conviction, the court required defendant (and defendant agreed) to place a newspaper advertisement containing her booking photo and an apology. The court vacated the condition, finding that the effect of publication goes beyond the intent of the statute and possibly adds public ridicule as a condition. Such a publication may have a psychological or psychiatric effect on defendant, and an adverse effect on defendant would be inconsistent with rehabilitation and with the statutory provision allowing the court to require psychological or psychiatric treatment.

People v. Hancock, 143 Ill.App.3d 1027, 493 N.E.2d 730 (3d Dist. 1986) Incident to probation, defendant was ordered to pay restitution within three and a half years or serve the last six months of the term in jail. The court vacated the portion of the sentence regarding six months' imprisonment because, instead of attempting to insure that defendant complied with his probationary terms, the court anticipated a willful violation and predetermined defendant's fate if he violated the financial obligations. Any willful violation of defendant's restitution order is best handled by a petition to revoke probation. See also, **People v. Smith**, 145 Ill.App.3d 262, 495 N.E.2d 605 (3d Dist. 1986).

People v. Burmeister, 147 Ill.App.3d 218, 497 N.E.2d 1212 (2d Dist. 1986) Defendant was sentenced to concurrent probation terms with the condition that he serve 120 days' imprisonment followed by a 150-day term of periodic imprisonment. The court vacated the periodic imprisonment portion of the probation orders. Periodic imprisonment cannot be imposed if the court imposes a sentence of imprisonment in excess of 90 days. Thus, either the imprisonment term or the periodic imprisonment term had to be vacated. Because defendant had already served the 120-day imprisonment term, the court vacated the 150-day term of periodic imprisonment. See also, **People v. Evans**, 124 Ill.App.3d 634, 464 N.E.2d

1083 (1st Dist. 1984); **People v. McMullen**, 88 Ill.App.3d 611, 410 N.E.2d 1174 (4th Dist. 1980).

People v. Roper, 116 Ill.App.3d 821, 452 N.E.2d 748 (1st Dist. 1983) Following a bench trial, defendant was found guilty of two counts of battery and was placed on supervision with the condition that he spend 24 hours in jail. The statute authorizing a disposition of supervision does not "contemplate the imposition of a jail term as compatible with an order of supervision." Accordingly, the condition of supervision was vacated.

People v. Dunn, 43 Ill.App.3d 94, 356 N.E.2d 1137 (4th Dist. 1976) Condition of probation that defendant cut his hair and maintain its length in a manner approved by his probation officer was improper; such a condition was not authorized by statute and had no connection to the traffic offense of which defendant had been convicted.

People v. Wright, 41 Ill.App.3d 364, 353 N.E.2d 711 (5th Dist. 1976) As a condition of probation, defendant had to pay certain court costs and a fine, as well as surrender his car to the county (for which he would receive a credit toward the fine). The trial court lacked authority to order payment of the fine through a conveyance of defendant's property, as such an order violates public policy, and the prosecutor exceeded his authority by securing the car for the use of the sheriff's office.

People v. Brown, 133 Ill.App.2d 861, 272 N.E.2d 252 (5th Dist. 1971) While a condition prohibiting a probationer from using alcoholic beverages or frequenting bars is a common provision in probation orders, it was improper in this case. Defendant made his living as a bartender, and there was no connection between his employment and the crime of which he had been convicted.

§39-5
Violation and Revocation of

§39-5(a)
Generally

United States Supreme Court

Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983) The court reversed revocation of probation based on defendant's inability to pay fines and restitution. Probation may be revoked if a probationer willfully refuses to pay or fails to make a bona fide effort to acquire the resources to pay. If a probationer cannot pay a fine or restitution despite good faith efforts to do so, the court must consider alternate measures of punishment other than imprisonment. If the alternate measures are not adequate to meet the State's interest in punishment and deterrence, only then may the court imprison a probationer who has made sufficient bona fide efforts to pay.

Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) Prior to revocation, a probationer is entitled to: (1) a preliminary hearing to determine whether there is probable cause to believe that he has violated probation, and (2) a final hearing with a minimum of: (a) written notice of claimed violations, (b) disclosure of the evidence against him, (c) the opportunity to be heard and present witnesses, (d) the right to confront and cross-examine witnesses (unless the hearing officer finds good cause for not allowing confrontation), (e) a neutral and detached hearing body, and (f) a written statement of evidence relied on for revoking probation. See also, **People v. Morales**, 2 Ill.App.3d 358, 276 N.E.2d 391 (1st Dist. 1971) (the procedure for revoking probation requires that accused receive notice, a copy of the charge, an opportunity to be heard, and a conscientious judicial determination with the right to counsel); **People v. Renner**, 321 Ill.App.3d 1022, 748 N.E.2d 1272 (5th Dist. 2001). See also, **People v. Bedell**, 253 Ill.App.3d 322, 624 N.E.2d 1308 (1st Dist. 1993) (trial court erred by revoking probation in absence of petition to revoke).

Douglas v. Buder, 412 U.S. 430, 93 S.Ct. 2199, 37 L.Ed.2d 52 (1973) Revocation of probation for failure to report "all arrests" was denial of due process where the "arrest" was the issuance of a traffic citation.

Illinois Supreme Court

People v. Hammond & Alberty, 2011 IL 110044 A probation officer has authority to file a petition charging a violation of a condition of probation. Therefore, no separation of powers violation occurred where the probation officer filed a petition informing the trial court and prosecutor of a probation violation and asking the judge to determine whether probation should be revoked and a different sentence imposed. Although the probation officer has discretion to file a petition concerning a probation violation, the court acknowledged that the authority to proceed with or dismiss the petition rests with the State's Attorney, who has the burden to prove the violation in a contested case.

Under 730 ILCS 5/5-6-1(i), a probation officer may, with the concurrence of his or her supervisor, offer intermediate sanctions for probation violations. In addition, 730 ILCS 5/5-6-1 requires the Chief Judge of each circuit to adopt a system of structured, intermediate sanctions for probation violations. Once intermediate sanctions are completed, probation may not be revoked for the same violation.

The court concluded that §5-6-1 does not violate the separation of powers doctrine despite the fact that the State's Attorney does not have veto power over the probation officer's decision to offer intermediate sanctions. The court concluded that §5-6-4 adopts a diversionary procedure intended to avoid revocation and the attendant costs to the criminal justice system. Thus, §5-6-4 represents the legislature's definition, as an exercise of its power to define crimes and sentences, of the circumstances in which revocation can be sought. Such action by the legislature does not implicate powers of the executive branch.

The court noted other circumstances in which the State's Attorney's general authority to prosecute crimes has been limited without violating the separation of powers doctrine, including statutes giving discretion to juvenile police officers to handle juvenile offenses through station adjustments and the discretion of police officers to issue warnings in lieu of traffic citations.

No separation of powers violation occurred although the local court rules in question here required, as a default, that probation officers offer intermediate sanctions for probation violations unless the failure to do so can be justified to the trial judge. Such rules merely structure the probation officer's exercise of discretion, and do not infringe on any power of the executive branch.

People v. Colon, 225 Ill.2d 125, 866 N.E.2d 207 (2007) Collateral estoppel does not preclude litigation of a probation revocation petition after defendant has been acquitted in a criminal trial based on the same conduct.

People v. Lindsey, 199 Ill.2d 460, 771 N.E.2d 399 (2002) Neither the Illinois constitutional right against self-incrimination nor due process is violated where the State calls a probationer as a witness at the hearing on a petition to revoke his probation. Accord, **People v. Miller**, 199 Ill.2d 541, 771 N.E.2d 386 (2002). But see, **People v. Martin**, 226 Ill.App.3d 753, 589 N.E.2d 815 (4th Dist. 1992) (State may call defendant as witness at his own revocation hearing provided that his testimony will not incriminate him in other proceedings).

People v. McCracken, 159 Ill.2d 463, 639 N.E.2d 1270 (1994) Defendant was not entitled to have his probation revocation reversed merely because the record failed to show that he was formally served with a copy of the revocation petition or that his attorney was fully informed of the allegations of the petition. Both defendant and his attorney appeared and participated in the trial court proceedings without raising any objection to any lack of notice or knowledge, and there was no showing that defendant was prejudiced even if there was a lack of formal notice.

People v. Dinger, 136 Ill.2d 248, 554 N.E.2d 1376 (1990) A defendant does not have the right to petition the trial court to revoke his or her probation.

People v. Allegri, 109 Ill.2d 309, 487 N.E.2d 606 (1985) The defense of insanity is not available in a probation revocation proceeding. See also, **People v. Cooper**, 146 Ill.App.3d 596, 497 N.E.2d 157 (3d Dist. 1986) (intoxication not available as defense).

People v. Davis, 65 Ill.2d 157, 357 N.E.2d 792 (1976) Judge at probation revocation hearing properly took judicial notice of defendant's prior conviction, although not proved with formality, because defendant did not deny the conviction or that he was the person convicted.

People v. Barker, 62 Ill.2d 57, 338 N.E.2d 385 (1975) A waiver of counsel at a probation revocation proceeding should not be allowed unless the court determines, by addressing defendant in open court, that defendant understands:

> "(1) the purpose of the revocation proceeding and the nature of the violation of the condition of probation upon which it is based; (2) that he has the right of confrontation, cross-examination and representation by counsel and that if he is indigent he has the right to appointed counsel; (3) the minimum and maximum sentence which may be imposed if the probation is revoked."

See also, **People v. Gazelle**, 165 Ill.2d 93, 649 N.E.2d 381 (1995); **People v. Roberts**, 56 Ill.App.3d 126, 371 N.E.2d 1284 (4th Dist. 1978) (defendant's purported waiver of counsel at a probation revocation hearing was not knowing and understanding).

Illinois Appellate Court

People v. Vargas, 2025 IL App (2d) 240609 Defendant's challenge to her probation revocation was moot because she completed her sentence. While she argued that the case was still relevant because "the revocation may affect any future sentencing hearings," the appellate court rejected this justification. Defendant's argument was premised entirely on what might happen in a future criminal case that might never arise. Pursuant to **Spencer v. Kemna**, 523 U.S. 1, 7 (1998), a collateral consequence justifying continuation of the appeal beyond the sentence must be some "concrete and continuing" injury. Defendant also forfeited an argument that she suffered immigration consequences from the probation revocation by failing to raise the argument in her opening brief. Regardless, those consequences were too speculative to meet the **Spencer** standard.

People v. Tolliver, 2021 IL App (1st) 190129 A court cannot indefinitely extend a period of probation based on the filing of a petition for violation of probation ("VOP"). Here, three months before the expiration of an 18-month term of probation, the State filed a petition for VOP alleging incomplete community service and failure to pay fines. At a proceeding where defendant appeared without counsel, the court continued the matter without a hearing. At subsequent court dates over the next several months, the court continued the petition for VOP, and by extension the probation term, even after defendant established that he had completed the terms of his probation. Ultimately, defendant was convicted of a crime, and, in addition to the sentence for that offense, was separately found guilty of three counts of VOP, for which he received a total term of 10 years in prison.

On appeal, defendant argued that, while no objection was lodged below, the finding of VOP and subsequent sentences were void because the trial court did not have authority to extend the term of his probation without a hearing that comported with due process. The State argued that defendant was not denied due process because defendant's probation term was not extended beyond the original expiration date but instead was properly tolled by the filed petitions for VOP.

Citing **People v. Castleberry**, 2015 IL 116916, the Appellate Court concluded that any error below would render the sentence voidable, not void. The trial court had jurisdiction when it entered its order, regardless of whether it complied with due process. The court instead reviewed the issue for plain error.

The Appellate Court found obvious error. The trial court cannot alter the length of a defendant's probation term without notice and hearing and a finding that defendant has violated his probation. Pursuant to 730 ILCS 5/5-6-2(d), upon the expiration or termination of the period of probation or of conditional discharge, the court must enter an order discharging the defendant. Here, the court repeatedly continued the case based on the pending petition for VOP, even after learning that defendant had completed the terms of his probation, and without ever requiring the State to prove its allegations. This had the effect of extending the probation term whether the court formally did so or not.

Although the Supreme Court in **In re Thompson**, 79 Ill. 2d 262 (1980), has upheld a VOP entered after expiration of the probation term, based on the filing of the petition prior to expiration, the Appellate Court found **Thompson** distinguishable. **Thompson** makes clear that the purpose of tolling under the Code is to preserve the court's jurisdiction, not as a later justification for the failure to timely conduct the requisite violations hearing. The trial court here violated due process. This was plain error and required the reversal of defendant's convictions and sentences.

People v. Khan, 2021 IL App (1st) 190051 While the Illinois Supreme Court has never held that Rule 401(a) applies to probation revocation proceedings, similar requirements have been imposed. Specifically, for a court to find a knowing and voluntary waiver of counsel in probation revocation proceedings, the court should address the defendant in open court and determine that he or she understands: (1) the purpose of the revocation proceedings and the nature of the violation(s) alleged; (2) that the defendant has the rights of confrontation, cross-examination, and representation by counsel to be provided at no cost if the defendant is indigent; and (3) the minimum and maximum penalties.

Here, defendant was not properly admonished, and accordingly his waiver of counsel was not knowing and voluntary. The court told defendant that the alleged probation violation was a new DUI charge, when it was actually defendant's failure to report to his probation officer that was at issue. And, the court did not advise defendant of the applicable sentencing range on the probation violation prior to his counsel waiver, although it did tell him the sentencing range for the new DUI charge. Defendant's counsel waiver was invalid as to the probation revocation, even though it was upheld as to the new DUI charge.

People v. Curry, 2019 IL App (3d) 160783 Defendant entered a fully negotiated guilty plea to a charge of aggravated DUI in exchange for two years of probation; at the time of the plea, he was misadvised that the maximum prison sentence for the charge was 2 years, when the actual sentencing range was 3-to-14 years. Subsequently, defendant's probation was revoked, and he was sentenced to 3 years of imprisonment.

Although defendant received a longer prison sentence than he had been admonished about at the time of the plea, the Appellate Court was without jurisdiction to vacate the plea because a motion to withdraw plea had not been filed within 30 days of the original sentencing and the erroneous admonishments did not render the plea void. Likewise, the Appellate Court could not reduce defendant's sentence to 2 years to conform to the admonishments because that would be an unauthorized sentence.

The Court did vacate defendant's admission to the petition to revoke probation, however, because the 402A admonishments were defective. Defendant had not been advised of his right to present witnesses and evidence at a hearing on the petition to revoke, that the State had the burden of proving the violation, or that he had a right to counsel at such a hearing. The circuit court also failed to determine that defendant understood the applicable sentence range. While defendant did not raise this issue below, it is not subject to forfeiture. Citing **In re Westly A.F., Jr.**, 399 Ill. App. 3d 791 (2000), the Court concluded that it is not defendant's responsibility to ensure his own admonishment in accordance with due process.

People v. Gullens, 2017 IL App (3d) 160668 One of the purposes of conditional discharge is to benefit society by restoring a defendant to useful citizenship. Conditional discharge serves as a form of punishment and a method for rehabilitating a defendant.

Defendant, who had a prior felony conviction, discovered that either his brother or his friend had stolen a firearm from a gun store. Defendant took possession of the firearm for approximately 10 minutes while he returned it to the store. The trial court revoked his conditional discharge for committing the offense of possession of a firearm by a felon.

The Appellate Court held under the unique circumstances of this case, the purposes of defendant's conditional discharge were served by his continued liberty. Though defendant technically committed the offense of felon in possession of a weapon, he acted to avoid the greater harm of a stolen firearm being out on the street. Defendant's actions thus actually served to protect the public.

The court reversed the revocation of defendant's conditional discharge.

People v. Fischer, 2013 IL App (1st) 110193 Defendant was sentenced to probation with the condition that he complete a sex-offender treatment program. The State filed a petition for violation of probation (VOP), alleging that defendant had not completed his treatment program. At the VOP hearing, the trial court found that defendant had properly complied with the terms of his probation, but through no fault of his own could not complete the treatment program before his probation expired. The court allowed the State to file the VOP and continued the matter for a status hearing to allow defendant time to complete his program. After his initial probationary period had ended, defendant committed violations which led to more VOPs and ultimately the revocation of his probation and a three-year sentence of imprisonment.

Defendant argued on appeal that the trial court violated his right to due process by improperly extending his term of probation without first determining whether he had violated any conditions of his probation. The Appellate Court disagreed, holding that the trial court did not extend defendant's probation, but instead merely tolled his probation during the pendency of the State's petitions for violation of probation. Alternatively, even if the probation had been extended, such action was a proper modification of probation rather than a revocation.

The Appellate Court also held that even assuming the trial court effectively extended defendant's probation, such action constituted a modification of probation rather than a revocation. Under 730 ILCS 5/5-6-4(f), the trial court may modify the conditions of probation to deal with changing conditions during the probationary period. As opposed to revocation, which implicates many procedural concerns of due process, a defendant is only entitled to notice and a hearing before his probation is modified. The State has no burden of proving the desirability of the modification.

Here, defendant received notice of the hearing on the VOP and at the hearing he was allowed to present evidence and witnesses and to be represented by counsel. At that hearing, the trial court determined that defendant could not effectively complete his sex-offender treatment program by the end of his term of probation. The trial court thus properly exercised its discretion by modifying the length of defendant's probation to allow him time to complete his treatment program. Such modification, conducted after notice and a hearing, did not violate defendant's due process rights.

People v. Moore, 2013 IL App (3d) 110474 Defendant was placed on probation for burglary and ordered to pay restitution to the complainant in the two counts for which he was convicted, and also to a separate complainant named in two counts which were dropped as part of a plea agreement. The State filed a petition to revoke probation and requested that defendant's bond be applied first to restitution. The trial court agreed and checked the box in the sentencing order which stated that bond was to be applied first to restitution. However, the court left the section blank which would have required defendant to pay restitution, and did not check the box indicating that restitution was being ordered.

When probation is revoked, an entirely new sentence is imposed. Thus, upon revocation of probation the defendant is no longer subject to the original conditions of probation, including to pay restitution.

Thus, when probation was revoked the original restitution order ceased to exist. Although at the resentencing the trial judge left blank the portion of the sentencing order establishing restitution, it addressed the issue of restitution during the sentencing hearing and responded to the State's request by checking the box in the sentencing order applying defendant's bond first to restitution. The court concluded under these circumstances, the trial judge intended to reestablish a restitution order. Thus, defendant was subject to a restitution order after probation was revoked.

However, the provision requiring restitution on the dismissed counts was improper. Generally, a defendant can be required to pay restitution for conduct which did not result in conviction only if the plea agreement includes defendant's agreement to pay such restitution.

Because there was no such agreement here, the order requiring restitution concerning the dismissed counts was vacated.

The court also concluded that the trial court erred by applying defendant's bond to restitution rather than to paying court costs. 730 ILCS 5/5-5-6(e) provides that the trial court may "require the defendant to apply the balance of his cash bond, ***after payment of court costs, and any fine that may be imposed***[,] to the payment of restitution." Under the plain language of the statute, the trial judge lacks authority to apply defendant's bond to restitution in preference to court costs and fines. Therefore, the portion of the sentencing order applying the bond first to restitution is void because it violates the plain language of the statute.

In re Christopher P., 2012 IL App (4th) 100902 When no direct appeal is taken from an order of probation, and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of that order in an appeal from a subsequent revocation of probation unless the underlying judgment of conviction is void.

Respondent appealed from an order denying him sentencing credit upon his commitment to the Department of Juvenile Justice following revocation of probation. Because this order was entered when a new sentence was imposed upon revocation of probation, and the appeal from the resentencing order was timely filed, the Appellate Court had jurisdiction to consider the issue.

In re Darius L., 2012 IL App (4th) 120035 When no direct appeal is taken from an order of probation, and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of that order in an appeal from a subsequent revocation of probation unless the underlying judgment of conviction is void.

Respondent appealed from an order denying him sentencing credit upon his commitment to the Department of Juvenile Justice following revocation of probation. Because this order was entered when a new sentence was imposed upon revocation of probation, and the appeal from the resentencing order was timely filed, the Appellate Court had jurisdiction to consider the issue.

People v. Keller, 399 Ill.App.3d 654, 926 N.E.2d 890 (1st Dist. 2010) Noting a conflict in authority, the court concluded that a probation officer has authority to file a petition charging a probation violation. Compare, **People v. Herrin**, 385 Ill.App.3d 187, 895 N.E.2d 1075 (3d Dist. 2008).

People v. Konwent, 405 Ill.App.3d 794, 939 N.E.2d 1018 (2d Dist. 2010) 730 ILCS 5/5-6-4(d) provides that probation, conditional discharge, periodic imprisonment and supervision may not be revoked for failure to comply with a financial obligation unless the failure is due to a willful refusal to pay. However, the failure to comply with a non-financial condition may result in revocation even if the violation was not willful. "Probation is a privilege that may be revoked when the defendant's acts, culpable or otherwise, require revocation to serve 'the ends of justice.'"

Thus, the trial court was not required to find that defendant willfully failed to return on time from work release in order to find that a probation violation had occurred. The court noted, however, that while the lack of culpability was not a factor in determining whether a probation violation had been proven, it was relevant to the trial court's decision whether to revoke probation and in imposing a new sentence.

People v. Herrin, 385 Ill.App.3d 187, 895 N.E.2d 1075 (3d Dist. 2008) The probation officer engaged in the unauthorized practice of law, and usurped the authority of the State's Attorney, when he filed a motion to revoke defendant's probation. 55 ILCS 5/3-9005(i)(1) places sole authority to file petitions to revoke probation with the State's Attorney.

People v. Thoman, 381 Ill.App.3d 268, 886 N.E.2d 518 (5th Dist. 2008) Under 730 ILCS 5/5-6-4(a), a probation term is tolled by: (1) personal service of a petition to revoke probation on defendant, (2) issuance of a summons or warrant by the trial court, or (3) issuance of an order by the trial court directing a designated agency to issue a notice to appear. Because tolling extends jurisdiction, which would have ended at the expiration of the probation term, the statutory provision must be strictly construed. The circuit clerk's mailing of a notice to appear on a probation revocation petition did not toll the probation term or extend the trial court's jurisdiction because the clerk mailed the notice without being directed to do so by the court. Thus, the trial court acted properly by dismissing the petition to revoke for lack of jurisdiction.

People v. Bredemeier, 346 Ill.App.3d 557, 805 N.E.2d 261 (5th Dist. 2004) The State can appeal from the dismissal of a petition to revoke probation under Supreme Court Rule 301, which governs civil appeals.

People v. Sherrod, 279 Ill.App.3d 383, 664 N.E.2d 1066 (3d Dist. 1996) The trial court did not err in conducting revocation hearing *in absentia*. Minimal due process requires that every defendant be advised that he can be tried *in absentia*. Here, the admonition certificate that defendant signed upon his arrest was sufficient notice to allow the probation revocation hearing to proceed in defendant's absence; the certificate informed defendant that the trial could be held in his absence at any time before "final disposition" of the charge, and final disposition of a probation sentence does not occur until the term is completed and defendant discharged.

People v. White, 273 Ill.App.3d 638, 653 N.E.2d 426 (3d Dist. 1995) Although there is no specific speedy trial provision for a probation revocation *unless* defendant is incarcerated *solely* for the alleged probation violation, defendant was entitled to have a revocation hearing "within a reasonable time." The factors used to determine whether the constitutional right to a speedy trial has been violated are also relevant to whether a probation revocation hearing has been held in a timely manner.

Here, the four-year delay in notifying defendant of the petition to revoke probation was presumptively prejudicial. Also, the State offered no explanation for the delay, and defendant could not have been expected to assert his right to a speedy hearing where he was unaware that the petition had been filed.

See also, **People v. Bredemeier**, 346 Ill.App.3d 557, 805 N.E.2d 261 (5th Dist. 2004) (finding six-year-delay between filing of petition to revoke probation and hearing on the petition was unreasonable where the State made no attempt to provide a prompt hearing, though it could have, defendant repeatedly requested a hearing, and defendant suffered prejudice because he lost the opportunity to have his sentence on the probation revocation run concurrently to an unrelated sentence he was serving when the State filed the petition).

People v. Bedenkop, 252 Ill.App.3d 419, 625 N.E.2d 123 (1st Dist. 1993) The State petitioned to revoke defendant's probation on grounds that she failed to "appear and report."

After a probation officer testified at the revocation hearing, the trial court, on its own motion, enlarged the grounds to include defendant's cocaine use and defendant's giving birth to a cocaine-addicted baby. Defendant was not afforded due process at the revocation hearing. Because the revocation petition was based solely on failing to report, defendant did not have notice that the hearing would consider allegations concerning cocaine usage. Also, the trial court erroneously required defendant to give self-incriminating information.

Further, the trial court admitted completely irrelevant information about defendant's failure to cooperate with a drug assessment, and apparently became aware of defendant's cocaine usage by reading the presentence report before the revocation hearing. Finally, it was unclear whether the trial court revoked defendant's probation based on her failure to report, her cocaine usage, or her infant's cocaine addiction.

People v. Prusak, 200 Ill.App.3d 146, 558 N.E.2d 696 (2d Dist. 1990) The trial judge revoked defendant's probation on grounds that he followed the letter of the order (seek psychiatric treatment and comply with the recommended treatment) but did not follow the spirit of the order (because he, like many sex offenders, insisted that he did not remember committing the sexual assault). The court reversed the revocation order, noting there was no precedent affirming a revocation of probation when the conditions imposed have been fully performed, but the "spirit" of the order has not been satisfied. The court also found that defendant did not violate the condition of probation, though he did not accept responsibility for his sexual misconduct.

In re D.P., 165 Ill.App.3d 346, 519 N.E.2d 32 (4th Dist. 1988) Though the filing of a petition to revoke *during the probation term* tolls the period of probation and allows a hearing and revocation after the date on which the term was set to expire, the order of revocation was void because the State did not file a petition to revoke probation before the probation term expired. Also, a bench warrant for respondent's arrest "cannot be equated with . . . a petition to revoke probation."

People v. Martinez, 150 Ill.App.3d 516, 501 N.E.2d 1003 (2d Dist. 1986) The trial court lacked jurisdiction to revoke defendant's probation because the probation term of one year expired the day before the State filed the petition to revoke. See also, **People v. Redell**, 253 Ill.App.3d 322, 624 N.E.2d 1308 (1st Dist. 1993).

People v. Holt, 151 Ill.App.3d 337, 502 N.E.2d 767 (4th Dist. 1986) Defendant's probation was improperly revoked for his failure to pay court costs. The State did not charge that the failure to pay court costs was willful, the trial judge did not admonish the *pro se* defendant before his admission that such failure must be willful, and there was no proof on willfulness.

People v. Austin, 116 Ill.App.3d 95, 451 N.E.2d 593 (2d Dist. 1983) Revocation of probation was reversed where defendant's public defender, who represented him at a preliminary hearing on the revocation petition, subsequently became a judge and presided over the hearing at which defendant's probation was revoked.

People v. Link, 98 Ill.App.3d 208, 424 N.E.2d 101 (3d Dist. 1981) The court reversed the revocation of probation where the petition failed to charge an offense.

People v. Green, 91 Ill.App.3d 127, 414 N.E.2d 237 (2d Dist. 1980) The issuance of a bench warrant tolls only the running of the probation period, not the conditions of probation. Thus, defendant was properly chargeable with violating a term of his probation that followed the issuance of a bench warrant for his arrest.

People v. Crawford, 85 Ill.App.3d 366, 406 N.E.2d 861 (5th Dist. 1980) As a matter of fundamental fairness, defendant was denied due process by a 17-month delay between the alleged violation and the filing of a petition to revoke probation. See also, **People v. Powell**, 89 Ill.App.3d 801, 412 N.E.2d 47 (3d Dist. 1980).

People v. Compton, 77 Ill.App.3d 1008, 397 N.E.2d 187 (5th Dist. 1979) The available remedy for the State's failure to bring an incarcerated defendant to a hearing on a petition to revoke probation within 14 days of defendant's arrest is an immediate release from custody, not a dismissal of the charge.

People v. Huff, 44 Ill.App.3d 273, 357 N.E.2d 1380 (4th Dist. 1976) The State is not obliged to delay probation revocation proceedings until a trial is held on the criminal offense that constitutes the probation violation.

People v. Williams, 10 Ill.App.3d 428, 294 N.E.2d 61 (2d Dist. 1973) Delay of 14 to 16 months in filing supplemental petition for revocation of probation was not so unreasonable as to deprive the court of jurisdiction.

§39-5(b) Sufficiency of Proof

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People v. Konwent, 405 Ill.App.3d 794, 939 N.E.2d 1018 (2d Dist. 2010) 730 ILCS 5/5-6-4(d) provides that probation, conditional discharge, periodic imprisonment and supervision may not be revoked for failure to comply with a financial obligation unless the failure is due to a willful refusal to pay. However, the failure to comply with a non-financial condition may result in revocation even if the violation was not wilful. "Probation is a privilege that may be revoked when the defendant's acts, culpable or otherwise, require revocation to serve 'the ends of justice.'"

Thus, the trial court was not required to find that defendant wilfully failed to return on time from work release in order to find that a probation violation had occurred. The court noted, however, that while the lack of culpability was not a factor in determining whether a probation violation had been proven, it was relevant to the trial court's decision whether to revoke probation and in imposing a new sentence.

Illinois Appellate Court

People v. Moore, 335 Ill.App.3d 616, 781 N.E.2d 493 (1st Dist. 2002) The State failed to establish a sufficient chain of custody to establish that defendant had violated his probation by committing the offense of delivery of a controlled substance.

People v. Woznick, 278 Ill.App.3d 826, 663 N.E.2d 1037 (4th Dist. 1996) The *corpus delicti* rule does not apply to probation revocation proceedings. Thus, the trial court did not err by revoking probation based solely on defendant's voluntary admission that he had violated the conditions of probation.

People v. Keck, 226 Ill.App.3d 937, 590 N.E.2d 529 (3d Dist. 1992) The State failed to prove that defendant willfully failed to pay fine imposed as a condition of probation where defendant's failure to maintain steady employment and $1.20-per-day smoking habit were not sufficient evidence of defendant's bad faith in trying to pay the fine and where the State did not rebut defendant's evidence that he had no money left after paying his living expenses. See also, **People v. Smolk**, 40 Ill.App.3d 281, 352 N.E.2d 269 (1st Dist. 1976). Compare, **People v. Cottrell**, 141 Ill.App.3d 364, 490 N.E.2d 950 (4th Dist. 1986) (judge properly found that defendant willfully failed to meet financial obligations).

People v. Kelley, 129 Ill.App.3d 920, 473 N.E.2d 572 (3d Dist. 1985) After defendant pled guilty and was sentenced to probation, the State learned that defendant's real name was "Taylor" rather than "Kelley" and that he had a prior burglary conviction in Florida. The trial court revoked probation on the ground that defendant had committed the offense of forgery when he acknowledged receipt of the conditions of probation and signed the certificate as "Kelley." The appellate court reversed, finding that defendant did not commit forgery. The court also concluded that, "even if the act of using an alias constituted a crime, which it doesn't, there was no evidence which established that the specific offense of forgery occurred during the defendant's period of probation."

People v. Clark, 313 Ill.App.3d 957, 731 N.E.2d 432 (3d Dist. 2000) Where a probation order required defendant to obtain a drug and alcohol evaluation, but the organization that was to do the evaluation refused to proceed until defendant paid its fee, probation could be revoked only if the failure to pay the fee was willful because the failure to comply with a probation condition imposing a financial obligation justifies revocation only if there was a willful refusal to pay. Here, the failure to obtain the evaluation was due to a willful refusal to pay, for defendant earned income during the period in which he was ordered to obtain an evaluation, but chose not to do so.

People v. Davis, 123 Ill.App.3d 349, 462 N.E.2d 824 (4th Dist. 1984) Defendant was sentenced to probation conditioned on securing inpatient treatment for drug and alcohol problems, but the trial court revoked probation because there were no treatment facilities willing to accept defendant for inpatient treatment. The court upheld the revocation, though there was no evidence that defendant had engaged in culpable or willful misconduct, because circumstances beyond a defendant's control may provide an adequate basis for probation revocation where, as here, such circumstances frustrate the purpose of probation. See also, **People v. Salamon**, 126 Ill.App.3d 1066, 468 N.E.2d 168 (2d Dist. 1984) (trial court properly revoked probation where defendant never notified drug treatment program of his whereabouts).

People v. Welch, 78 Ill.App.3d 184, 397 N.E.2d 94 (1st Dist. 1979) The trial court improperly revoked defendant's probation, due to defendant's failure to maintain treatment at the Illinois Psychiatric Institute, because there was no showing, by a preponderance of the evidence, that defendant was solely culpable for the probation violation where defendant presented unrebutted testimony that he went to the Institute but the receptionist rejected him and defendant's probation officer did not try to help him in obtaining treatment.

People v. Bullard, 52 Ill.App.3d 712, 367 N.E.2d 1017 (2d Dist. 1977) The trial court abused its discretion in revoking probation on grounds that defendant failed to pay restitution where the trial court failed to determine whether the failure to pay was willful.

People v. Malone, 41 Ill.App.3d 914, 354 N.E.2d 911 (2d Dist. 1976) The trial judge erred by revoking probation solely on the basis of an evidence deposition. The trial court did not authorize the taking of the deposition, there was no notice to defense counsel and there was no evidence that the person who gave the deposition would be unavailable at the revocation hearing.

People v. Hannah, 31 Ill.App.3d 1087, 335 N.E.2d 84 (3d Dist. 1975) The trial court erred in revoking probation based solely on a stipulation of another conviction where that conviction was subsequently reversed and dismissed. See also, **People v. Kaplan**, 7 Ill.App.3d 155, 287 N.E.2d 246 (1st Dist. 1972).

People v. Harder, 59 Ill.2d 563, 322 N.E.2d 470 (1975) The State failed to prove that defendant's failure to make restitution was willful where defendant testified that she could not pay due to her husband's injury and unemployment and because she was the sole support of her family. See also, **People v. Davis**, 216 Ill.App.3d 884, 576 N.E.2d 510 (2d Dist. 1991).

The Court also refused to allow revocation based upon a probation officer's statement to the trial judge that defendant had failed to report as required in the probation order. The probation officer was not sworn as a witness; thus, his statement "carried no more weight than a statement made to the court by a prosecutor." Also, neither defendant nor her counsel admitted to this allegation.

People v. Ford, 25 Ill.App.3d 747, 324 N.E.2d 6 (1st Dist. 1975) A transcript of complaining witness's testimony, to which she testified at defendant's trial for a crime that he committed while he was on probation and which did not demonstrate that the complainant had an adequate opportunity to view her assailant, was insufficient evidence to sustain revocation of probation.

People v. Lewis, 28 Ill.App.3d 777, 329 N.E.2d 390 (1st Dist. 1975) Revocation of probation was reversed where the only evidence admitted at the hearing was hearsay. But see, **People v. Collins**, 14 Ill.App.3d 446, 302 N.E.2d 709 (1st Dist. 1973) (admission of hearsay evidence was harmless).

People v. Crowell, 53 Ill.2d 447, 292 N.E.2d 721 (1973) The State is required to prove a violation of probation by a preponderance of the evidence. See also, **People v. Williams**, 229 Ill.App.3d 677, 593 N.E.2d 1111 (3d Dist. 1992) (trial court erred by placing burden on defendant to prove that he was in compliance with probation conditions; furthermore, revocation petition was inadequate where it failed to specify condition defendant allegedly violated).

People v. Young, 125 Ill.App.2d 154, 259 N.E.2d 834 (3d Dist. 1970) The State failed to establish that defendant violated his probation by writing a check after his checking account was closed; no testimony established that defendant was given notice that the account had been closed. See also, **People v. Leigh**, 45 Ill.App.3d 563, 359 N.E.2d 1059 (4th Dist. 1977) (reversing revocation of probation, based on theft, because the State failed to prove theft by a preponderance of the evidence); **People v. Figueroa**, 30 Ill.App.3d 656, 333 N.E.2d 586 (1st Dist. 1975) (reversing revocation of probation, based on auto theft, where there was no competent evidence to prove defendant "acted without authority").

§39-5(c)
Stipulation to or Admission of Violation

Illinois Supreme Court

People v. Tufte, 165 Ill.2d 66, 649 N.E.2d 374 (1995) Supreme Court Rule 605(d) does not apply to defendants who admit to the allegations of a petition to revoke probation, conditional discharge, or periodic imprisonment. Instead, such defendants are specifically authorized by Supreme Court Rule 604(b) to file a notice of appeal without further motions in the trial court. See also, **People v. Butcher**, 288 Ill.App.3d 120, 679 N.E.2d 1260 (4th Dist. 1997); **People v. Lappin**, 335 Ill.App.3d 418, 780 N.E.2d 744 (4th Dist. 2002); **People v. Bonds**, 317 Ill.App.3d 411, 740 N.E.2d 519 (4th Dist. 2000).

Illinois Appellate Court

People v. Gomez, 2026 IL App (2d) 240688 When a defendant offers to stipulate that evidence is sufficient to revoke probation, Rule 402A requires certain admonishments be provided to him. While literal compliance with Rule 402A is preferred, substantial compliance is sufficient to satisfy due process. The failure to properly admonish a defendant, alone, does not require automatic reversal. Instead, courts look to whether real justice has been denied or whether defendant was prejudiced by the incomplete admonishments.

Here, the court failed to strictly comply with Rule 402A in that the judge failed to inform defendant that at any hearing on the State's petition to revoke he would have the right to confront and cross-examine witnesses and to present witnesses and evidence on his behalf. The appellate court found that the absence of this admonishment defeated the State's claim of substantial compliance where the record did not otherwise show that defendant understood this right.

Remand was not required, however, because defendant did not allege prejudice or the denial of real justice due from the imperfect admonishments. In reaching this conclusion, the court rejected defendant's claim that he was not required to establish prejudice or a denial of real justice. The record plainly established that defendant committed the revoking conduct – DUI – and thus he violated the probation term that he remain law-abiding during the period of probation. Accordingly, he would have had no viable defense, and even perfect, literal compliance with Rule 402A would not have changed the outcome here.

People v. Tibbs, 2025 IL App (4th) 240378 Defendant's appeal, asking the court to reverse and remand for a new conditional discharge remission hearing, was moot where defendant had completed serving his sentence and thus he could not be granted effectual relief. Nevertheless, the appellate court applied the public interest exception to the mootness doctrine because the question presented – whether he was denied due process due to the State being relieved of its burden of proof at the hearing – was one of a public nature, an authoritative determination of the issue was desirable for future guidance where it was an issue of first impression, and the question was likely to recur because remission hearings are not uncommon.

The court concluded that defendant was not denied due process here. While the State did not offer any evidence at the remission hearing to prove defendant failed to complete a term of his conditional discharge, such evidence was unnecessary because defense counsel admitted defendant's non-compliance at the outset of the hearing. Where a defendant admits to facts at a remission hearing that the State would have otherwise been required to prove, such that the admission eliminates the necessity of evidence which the State is required to produce, the defendant cannot claim a denial of due process.

People v. Bailey, 2021 IL App (1st) 190439 The requirement that a defendant object and include an alleged error in a written post-trial motion does not apply where the claim is that the trial court failed to properly admonish a defendant before accepting an admission to a probation violation. Such a claim is not subject to forfeiture. It would be unfair to require a defendant to ensure the accuracy and completeness of his own admonitions.

Here, the trial court failed to admonish defendant about the applicable sentencing range and failed to tell defendant that he would be subjected to a two-year term of mandatory supervised release, when accepting his admission to a probation violation in exchange for a 10-year prison sentence. This failed to substantially comply with Supreme Court Rule 402A. Relying on **People v. Whitfield**, 217 Ill. 2d 177 (2005), the appellate court vacated the sentence and remanded to the circuit court for defendant to either withdraw his admission or accept a sentence of eight years of imprisonment plus two years of mandatory supervised release.

People v. Saleh, 2013 IL App (1st) 121195 An order of supervision is not a final judgment of conviction. If a defendant successfully completes supervision, the charges are dismissed and the result resembles an acquittal. If supervision is not completed successfully, defendant may be found guilty and sentenced. There is a final judgment of conviction only upon revocation of supervision.

Supreme Court Rule 402A provides that in proceedings to revoke supervision in which the defendant admits to the violation or offers to stipulate that the evidence is sufficient to revoke supervision, the trial court must admonish defendant and determine that he understands: (1) the specific allegations in the petition to revoke supervision; (2) his right to a hearing with counsel present, including appointed counsel if he is indigent and the underlying offense is punishable by imprisonment; (3) the right to confront and cross-examine adverse witnesses and present witnesses and evidence on his behalf at the hearing; (4) the State must prove the alleged violation by a preponderance of the evidence; (5) on admitting a violation or stipulating that the evidence is sufficient to revoke, there will be no hearing, and defendant has waived his right to a hearing, to confront and cross-examine adverse witnesses, and to present witnesses and evidence on his behalf; (6) the sentencing range for the underlying offense. The court must also determine that the admission is voluntary, not based on any coercion or promise, and that there is a factual basis for the plea.

The court must substantially comply with Rule 402A by an affirmative showing in the record that the defendant understood each of the required admonitions. A court's compliance with the rule is reviewed *de novo*.

The court did not substantially comply with Rule 402A when it accepted defendant's stipulation that the evidence was sufficient to revoke his supervision. The court did not determine that defendant understood the allegations of the petition by its inquiry whether defendant had discussed the reasons for the violation with his attorney and understood the allegations. The court did not inform defendant of his right to a hearing at which he could confront adverse witnesses and present his own evidence, and at which the State had the burden of proof. He was not told that he was waiving these rights by stipulating. The court did not confirm that the stipulation was voluntary or that there was a factual basis. Although the court did inform defendant of the sentencing range for the offense when he was placed on supervision that was almost two years prior to the revocation proceeding.

The court remanded with directions that the defendant be allowed to withdraw his stipulation and for further proceedings.

People v. Dowding, 388 Ill.App.3d 936, 904 N.E.2d 1022 (2d Dist. 2009) The trial judge improperly admonished defendant that he was required to file a motion to withdraw his admission to a probation revocation. A sentence on a negotiated guilty plea may be appealed only if defendant moves to withdraw the plea; however, a sentence imposed on an admission to a petition to revoke probation may be appealed by a motion to reconsider the sentence, whether the original guilty plea was negotiated or open.

People v. Ellis, 375 Ill.App.3d 1041, 874 N.E.2d 980 (2d Dist. 2007) Under Supreme Court Rule 402A (which was adopted in 2003), a defendant who intends to admit to a petition to revoke probation must receive certain admonitions, including the sentencing range for the underlying offense. Substantial compliance with Rule 402A is established where there is a specific and affirmative showing in the record that defendant understood each of the required admonitions. Defendant did not receive adequate admonitions concerning the minimum authorized sentence where he was erroneously admonished that he was eligible for probation when, in fact, he was required to be sentenced as a Class X offender. Accordingly, the revocation of probation was vacated and the cause remanded with directions to allow defendant to withdraw his admission to the revocation petition. See also, **People v. Butcher**, 288 Ill.App.3d 120, 679 N.E.2d 1260 (4th Dist. 1997) (admonitions were insufficient to provide due process where the trial court failed to ascertain whether defendant's admission to revocation petition was based upon any promises by the State); **People v. Hall**, 198 Ill.2d 173, 760 N.E.2d 971 (2001) (defendant was denied due process where the trial court failed to advise him, before accepting an admission to a probation revocation petition, that he was entitled to a hearing or what such a hearing would involve).

People v. Lipscomb, 332 Ill.App.3d 322, 772 N.E.2d 936 (1st Dist. 2002) Although defendant signed a "contract" permitting the trial court to modify or revoke probation upon noncompliance with a special drug treatment probation program, such a "contract" satisfies due process only if defendant was adequately advised of the rights he would surrender. Because defendant was not admonished about the effect of the "contract" on his right to contest an alleged probation violation, the "contract" did not allow the trial court to extend defendant's probation term, without a petition to revoke having been filed, when defendant failed to complete the treatment program. The court reached this conclusion although defendant was present in court and agreed to the extended probation term. Because the extension of probation was invalid, a petition to revoke filed during the extended period was improper.

People v. Winston, 316 Ill.App.3d 618, 737 N.E.2d 304 (2d Dist. 2000) Where the trial court failed to properly admonish a guilty plea defendant in accordance with Supreme Court Rule 605(b), and defendant subsequently appealed from revocation of the probation term imposed on the plea, the cause should be remanded for proper admonishments and to allow defendant to move to withdraw the plea. **People v. Goleash**, 311 Ill.App.3d 949, 726 N.E.2d 194 (4th Dist. 2000) (trial court erred by accepting defendant's stipulation to violation without admonishing defendant and by misstating the State's burden of proof).

People v. Steele, 283 Ill.App.3d 413, 670 N.E.2d 757 (1st Dist. 1996) At a probation revocation hearing, the trial court violated due process by directly asking defendant whether he had violated his probation, and by interpreting defendant's refusal to answer as an admission that a violation had occurred. See also, **People v. Marion**, 275 Ill.App.3d 494, 656 N.E.2d 440 (3d Dist. 1995) (trial court erred in interpreting defendant's remark as an admission to petition, and the proceeding was fundamentally unfair where there was no hearing, defendant was never informed that she was waiving her rights to present evidence and confrontation, she was not apprised of the maximum sentence, or asked whether her "admission" had been induced by promises by the prosecution.

§39-5(d) Contempt of Court

Illinois Appellate Court

People v. Budzynski, 333 Ill.App.3d 433, 775 N.E.2d 275 (4th Dist. 2002) A trial court may use its contempt power to enforce probation conditions that "survive independently of the probation order"; however, only sanctions which are sentencing alternatives under 730 ILCS 5/5-5-3(b) survive the probation order. Where the State's petition to hold defendant in contempt for failing to comply with a probation condition was filed after the probation term had expired, and the condition in question did not survive the probation order because it was not a sentencing alternative under §5-5-3(b), the trial court lacked subject-matter jurisdiction to enforce the condition by using its contempt powers.

Holding a probationer in contempt for failing to complete a probation condition involves indirect criminal contempt, because the sanction is intended as a punishment for misconduct that occurred outside the presence of the court.

People v. Goleash, 311 Ill.App.3d 949, 726 N.E.2d 194 (4th Dist. 2000) The trial court erred by holding defendant in indirect criminal contempt for violating probation, because the only charge filed by the State was a revocation petition which did not advise defendant that criminal sanctions were being sought.

People v. Gallinger, 191 Ill.App.3d 488, 548 N.E.2d 78 (4th Dist. 1989) The trial court found defendant in contempt and sentenced him to five months' imprisonment for committing a battery while on probation. While the contempt power of the circuit court is a proper sanction for a violation of probation, "the broad powers of the court under statutory law are better suited for the enforcement, management, and modification of a sentence of probation."

Here, defendant committed indirect criminal contempt, thus requiring certain due process protections that were not afforded.

Defendant's notice of appeal erroneously stated that the judgment appealed from was the "revocation of probation and sentence." Because the notice of appeal "fairly informs the prosecution of the issues on review," the "technical defect in the form of the notice of appeal is not fatal to the jurisdiction of the reviewing court."

People v. Bertalot, 164 Ill.App.3d 89, 518 N.E.2d 467 (3d Dist. 1987) Contempt proceedings may be used either during or after the expiration of a probationary period to recover fines, costs, restitution, or other money that was owed under the conditions of probation. But, contempt proceedings may be used to enforce non-monetary conditions of probation only during the term of probation. Here, the probation condition that defendant allegedly violated was a non-monetary condition; thus, contempt proceedings after the probation term expired were improper. Compare, **People v. Wilson**, 293 Ill.App.3d 339, 687 N.E.2d 1182 (4th Dist.

1997) (contempt power may be used after expiration of probation period to punish violation of conditions that "survive" the probation term; conditions that are authorized as separate sanctions for criminal offense "survive" expiration of the probation term).

§39-6
Sentencing after Revocation

United States Supreme Court

Black v. Romano, 471 U.S. 606, 105 S.Ct. 2254, 85 L.Ed.2d 636 (1985) Generally, due process does not require that the trial judge, in revoking probation, explain on the record his consideration and rejection of alternatives to incarceration. But, certain circumstances, such as a probationer's failure to pay a fine or restitution through no fault of his own, may require consideration of such alternatives.

Illinois Supreme Court

People v. Whitfield, 228 Ill.2d 502, 888 N.E.2d 1166 (2007) (mod. op. on den. of reh., 4/23/08) Though trial judges have discretion to allow credit for time served on probation if probation is revoked and defendant is sentenced to prison, the legislature has not authorized credit for time served on a void term of probation, and the Supreme Court's supervisory authority should not be used to bring about that purpose. Also, the Court rejected the argument that double jeopardy is violated if a defendant placed on a void term of probation does not receive credit for time served against a subsequently-imposed, statutorily mandated prison sentence.

Illinois Appellate Court

People v. Boyd, 2026 IL App (3d) 250149 Following probation revocation proceedings, defendant was sentenced to a seven-year term of imprisonment. On appeal, he argued that the court considered an improper sentencing range in imposing that sentence, noting that the court believed that the range was 3-to-14 years but that he had been admonished at his original plea hearing that the applicable range was 3-to-7 years.

The State first argued that defendant's failure to include this specific issue in his post-sentencing motion rendered it waived on appeal pursuant to Supreme Court Rule 604(d). But, Rule 604(d) compliance is not required prior to taking an appeal following probation-revocation proceedings. Accordingly, defendant's claim was not waived. It was, however, forfeited by defendant's failure to include it in his motion to reduce sentence. Nevertheless, the issue was reviewable as a matter of plain error.

The record demonstrated that the court misunderstood the sentencing range at the post-revocation sentencing hearing. Defendant was admonished only of the non-extended range at the time of his plea, but at resentencing, the State requested a 10-year sentence, which fell in the extended-term range. And, the sentencing judge commented that the State's request was understandable, though he ultimately imposed a sentence at the very top of the non-extended range. The appellate court found that the sentencing judge's comments at sentencing demonstrated that the judge was "arguably influenced by the State's misrepresentation as to the applicable range," and that misunderstanding constituted second-prong plain error because it affected the fairness of defendant's sentencing hearing. Defendant's sentence was vacated and the matter remanded for a new sentencing hearing.

People v. Miller, 2021 IL App (2d) 190093 Six-year sentence imposed after defendant's probation was revoked was not improper punishment for the revoking conduct. Defendant had been convicted of violation of order of protection, and the revoking conduct involved acts of violence committed against the same victim. The Appellate Court found that the sentencing judge properly referenced the revoking conduct when considering defendant's rehabilitative potential. And, since both the original offense and the revoking conduct involved the same victim, the revoking conduct was "inextricably linked" to defendant's violation of his probation conditions.

People v. Pina, 2019 IL App (4th) 170614 A sentence following probation revocation should punish the conduct giving rise to the original conviction, not the conduct that led to the revocation of probation. But the trial court may consider a defendant's conduct while on probation, including the conduct giving rise to the revocation, as part of the assessment of rehabilitative potential.

Here, the sentencing court made several references to defendant's drug use while on probation, but the Appellate Court rejected defendant's plain error claim. The court held that it was entirely appropriate for the court to comment on and consider defendant's actions on probation as it related to her rehabilitative potential.

The Appellate Court also rejected defendant's claim that her five-year sentence violated the original plea agreement, which included a three-year cap. The cap applied only to the original sentencing hearing. Defendant cannot complain that she did not receive the benefit of the bargain when she herself did not abide by the bargain.

People v. Varghese, 391 Ill.App.3d 866, 909 N.E.2d 939 (2d Dist. 2009) When imposing a sentence upon revocation of probation, the trial court may properly consider the defendant's conduct while on probation as evidence of rehabilitative potential. However, the court may not punish the defendant for the conduct which gave rise to the probation violation. If such conduct constitutes a separate offense, the defendant should be charged and tried for that offense instead of having his sentence increased after revocation of probation for a different offense.

In determining whether the trial court improperly punished the defendant for conduct while on probation, reviewing courts consider whether the sentence was within the authorized statutory range, whether the sentence was consistent with that of other defendants with similar criminal backgrounds, and whether the record clearly shows that the trial court considered the original offense.

Where defendant was sentenced to two years probation for aggravated criminal sexual abuse, but upon revocation of probation was sentenced to seven years imprisonment, the record showed that the sentence was based on the conduct which resulted in revocation rather than on the original offense. The trial court did not focus on the original offense, but instead concentrated on the conduct which was the basis of the revocation petition – that defendant used the Internet to arrange a meeting with a 16-year-old girl. Because the trial court improperly commingled charged and uncharged conduct rather than focusing on the original offense, the sentence was vacated and the cause remanded for resentencing.

People v. Gray, 363 Ill.App.3d 897, 845 N.E.2d 113 (4th Dist. 2006) 730 ILCS 5/5-4-1(b), which provides that the judge who presided at the trial or who accepted the plea of guilty "shall impose a sentence" upon a probation revocation unless he or she is no longer sitting in the judge of the court, is directory rather than mandatory. Therefore, the presiding judge did not err, when sentencing defendant on two negotiated guilty pleas, by also imposing a sentence on a probation revocation that had been ordered by a different judge who was still sitting. The court also concluded that substitution of a longer sentence by the judge who had ordered the revocation violated 730 ILCS 5/5-8-1(c), which provides that a trial court may not increase a sentence once it has been imposed.

People v. Taylor, 368 Ill.App.3d 703, 859 N.E.2d 20 (2d Dist. 2006) Under 730 ILCS 5/5-8-2(b), an extended term may be imposed on a guilty plea only if, when the plea was entered, defendant knew that such a sentence "was a possibility." Where at the time of the plea, the court said only that certain sentences could be imposed "if extended term applies," the admonishments were insufficient.

People v. Witte, 317 Ill.App.3d 959, 740 N.E.2d 834 (4th Dist. 2000) A defendant who was ineligible for an extended term when he was placed on probation could not receive an extended term when his probation was revoked, even if in the interim he has been convicted of crimes that would make him eligible for an extended term on a subsequent conviction. Under 730 ILCS 5/5-6-4(e), upon revocation of probation, a defendant may receive any sentence "that was available . . . at the time of initial sentencing."

The court rejected the argument that for sentencing purposes, the conviction date for the instant offense was the date on which probation was revoked, not the date on which probation was ordered. Although **People v. Lemons**, 191 Ill.2d 155, 729 N.E.2d 49 (2000) adopts such a rule for determining whether prior convictions occurred within 10 years of a subsequent conviction, the **Lemons** rule is inapplicable when determining what sentences are available upon revocation of a term of probation.

People v. Brady, 172 Ill.App.3d 1079, 527 N.E.2d 590 (4th Dist. 1988) The court upheld the sentence imposed following probation revocation, though there was no updated presentence report, where the probation had been imposed only six months earlier and the judge had considered a presentence report at that time. Defendant did not allege any deficiencies in the prior report and was afforded an opportunity to provide additional information.

People v. Gaurige, 168 Ill.App.3d 855, 522 N.E.2d 1306 (1st Dist. 1988) The court vacated sentence of imprisonment and remanded for a new sentencing hearing because it was impossible to determine whether the trial court abused its discretion where the record did not show what factors, beyond the act resulting in revocation of probation, the trial court considered in imposing the sentence.

The trial judge erred by denying defendant credit for the time he spent in custody while awaiting his probation revocation hearing. A defendant is entitled to credit for time spent in custody as a result of the offense for which the sentence is imposed.

People v. Farmer, 176 Ill.App.3d 436, 531 N.E.2d 137 (5th Dist. 1988) If a trial court sentences a defendant, upon revocation of probation, without a presentence investigation report and the parties did not agree to a specific sentence, defendant is entitled to resentencing on the probation revocation, not on the initial sentence of probation.

People v. Rollins, 166 Ill.App.3d 843, 520 N.E.2d 1255 (5th Dist. 1988) Defendant was originally sentenced to 30 months' probation and six months' periodic imprisonment. Upon revocation of probation, defendant was sentenced to 30 months' probation with the condition of six months in jail. Defendant was not entitled to credit against his second probation sentence for the time served on the first probation term. "[W]here 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. Otherwise, a court might be more inclined to sentence the defendant to imprisonment if an extended term of probation would be unavailable." Also, defendant was not entitled to credit against his six-month jail sentence for the time he served on prior periodic imprisonment. The court noted that the total incident of probation did not exceed the maximum penal sentence to which defendant could be subjected by his conviction.

People v. Farmer, 176 Ill.App.3d 436, 531 N.E.2d 137 (5th Dist. 1988) At the time of the commission of the offense, the pertinent statute provided that a defendant was entitled to credit for the time she served on probation unless the court ordered otherwise. But at the time defendant was sentenced following the probation revocation, the statute provided that such credit was not to be given unless the court so ordered. Defendant was not entitled to application of the statute in effect at the time of the offense because the amendment to the statute involved a procedural rather than a substantive change. See also, **People v. Smith**, 197 Ill.App.3d 88, 554 N.E.2d 730 (3d Dist. 1990) (statute "in effect when the defendant was actually sentenced for the offense" controlled whether defendant was entitled to credit for time spent on drug treatment supervision).

People v. Harris, 105 Ill.2d 290, 473 N.E.2d 1291 (1985) A presentence report is required before a trial court can sentence a defendant on a felony conviction following revocation of probation. But, one is not required "if *both* parties agree to the imposition of a specific sentence and a finding is made for the record regarding the defendant's prior history of criminality." That defendant Harris purported to waive the presentence report is insignificant, "as the requirement is not a defendant's personal right." Although neither defendant objected to the lack of a presentence report in the trial court, the issue was not waived. A presentence report cannot be waived except under the exception to the statute. It was also improper for the trial court to, at the time defendant Harris was originally sentenced, predetermine Harris's sentence upon revocation of probation. Compare, **People v. Bedell**, 253 Ill.App.3d 322, 624 N.E.2d 1308 (1st Dist. 1993) (trial court did not improperly determine the sentence to be imposed in the event of a probation revocation where the judge's remarks were "merely an attempt to impress upon defendant" the importance of complying with probation).

People v. Young, 138 Ill.App.3d 130, 485 N.E.2d 443 (4th Dist. 1985) If the sentence upon revocation of probation is within the statutory range for the original offense, a reviewing court will not set aside the sentence unless the court is strongly persuaded that the sentence was imposed as a penalty for the conduct that was the basis of the revocation, and not for the original offense. A trial court can consider defendant's conduct up to the time of sentencing, which includes conduct that resulted in the probation revocation, in determining an appropriate sentence upon revocation of probation. See also, **People v. Wilcox**, 281 Ill.App.3d 494, 666 N.E.2d 1226 (3d Dist. 1996). But see **People v. Witte**, 317 Ill.App.3d 959, 740 N.E.2d 834 (4th Dist. 2000) (a trial court may consider the conduct that resulted in the revocation only as evidence of rehabilitative potential); **People v. Deskin**, 47 Ill.App.3d 328, 361 N.E.2d 1188 (3d Dist. 1977) (though the trial court may consider defendant's conduct on probation in assessing his rehabilitative potential, the sentence imposed following the revocation of probation must be for the original crime and where, as here, there is commingling of matters relating to the original offense with the conduct that gave rise to the probation revocation, a new sentencing hearing is required); **People v. Bedenkop**, 252 Ill.App.3d 419, 625 N.E.2d 123 (1st Dist. 1993) (trial court improperly based sentence after revocation on defendant's conduct while on probation); **People v. Bullion**, 21 Ill.App.3d 297, 314 N.E.2d 731 (5th Dist. 1974) (the sentence imposed upon revocation may not be used to punish defendant for the criminal activity that caused the revocation).

People v. Rolland, 73 Ill.App.3d 531, 392 N.E.2d 163 (5th Dist. 1979) After trial court revoked defendant's conditional discharge for his failure to pay a $50 installment of his fine, the trial court resentenced defendant to a fine of $500. The court erred in imposing the $500 fine. The trial court obviously did not consider defendant's financial resources and ability to pay, as it was statutorily required to do, considering that defendant could not even pay $50. Also, the additional fine had no relationship to either the seriousness of the offenses or the objectives of restoring defendant to useful citizenship.

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