

Probation or non-prison sentences

The sections in red are my personal comments.

### I. 730 ILCS 5/5-6-1

(a) Except where specifically prohibited by other provisions of this Code, the court shall impose a sentence of probation or conditional discharge upon an offender unless, having regard to the nature and circumstance of the offense, and to the history, character and condition of the offender, the court is of the opinion that:

- (1) his imprisonment or periodic imprisonment is necessary for the protection of the public; or
- (2) probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice; or
- (3) a combination of imprisonment with concurrent or consecutive probation when an offender has been admitted into a drug court program under Section 20 of the Drug Court Treatment Act is necessary for the protection of the public and for the rehabilitation of the offender.

#### § 5-5-3.1. Factors in Mitigation.

(a) The following grounds shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment:

- (1) The defendant's criminal conduct neither caused nor threatened serious physical harm to another.
- (2) The defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another.
- (3) The defendant acted under a strong provocation.
- (4) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense.
- (5) The defendant's criminal conduct was induced or facilitated by someone other than the defendant.
- (6) The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained.
- (7) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime.
- (8) The defendant's criminal conduct was the result of circumstances unlikely to recur.
- (9) The character and attitudes of the defendant indicate that he is unlikely to commit another crime.
- (10) The defendant is particularly likely to comply with the terms of a period of probation.
- (11) The imprisonment of the defendant would entail excessive hardship to his dependents.
- (12) The imprisonment of the defendant would endanger his or her medical condition.
- (13) The defendant was intellectually disabled as defined in Section 5-1-13 of this Code.
- (14) The defendant sought or obtained emergency medical assistance for an overdose and was convicted of a Class 3 felony or higher possession, manufacture, or delivery of a

controlled, counterfeit, or look-alike substance or a controlled substance analog under the Illinois Controlled Substances Act or a Class 2 felony or higher possession, manufacture or delivery of methamphetamine under the Methamphetamine Control and Community Protection Act.

(b) If the court, having due regard for the character of the offender, the nature and circumstances of the offense and the public interest finds that a sentence of imprisonment is the most appropriate disposition of the offender, or where other provisions of this Code mandate the imprisonment of the offender, the grounds listed in paragraph (a) of this subsection shall be considered as factors in mitigation of the term imposed.

§ 5-5-3.2. Factors in Aggravation and Extended-Term Sentencing.

(a) The following factors shall be accorded weight in favor of imposing a term of imprisonment or may be considered by the court as reasons to impose a more severe sentence under Section 5-8-1 or Article 4.5 of Chapter V:

- (1) the defendant's conduct caused or threatened serious harm;
- (2) the defendant received compensation for committing the offense;
- (3) the defendant has a history of prior delinquency or criminal activity;
- (4) the defendant, by the duties of his office or by his position, was obliged to prevent the particular offense committed or to bring the offenders committing it to justice;
- (5) the defendant held public office at the time of the offense, and the offense related to the conduct of that office;
- (6) the defendant utilized his professional reputation or position in the community to commit the offense, or to afford him an easier means of committing it;
- (7) the sentence is necessary to deter others from committing the same crime;
- (8) the defendant committed the offense against a person 60 years of age or older or such person's property;
- (9) the defendant committed the offense against a person who is physically handicapped or such person's property;
- (10) by reason of another individual's actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin, the defendant committed the offense against (i) the person or property of that individual; (ii) the person or property of a person who has an association with, is married to, or has a friendship with the other individual; or (iii) the person or property of a relative (by blood or marriage) of a person described in clause (i) or (ii). For the purposes of this Section, "sexual orientation" means heterosexuality, homosexuality, or bisexuality;
- (11) the offense took place in a place of worship or on the grounds of a place of worship, immediately prior to, during or immediately following worship services. For purposes of this subparagraph, "place of worship" shall mean any church, synagogue or other building, structure or place used primarily for religious worship;
- (12) the defendant was convicted of a felony committed while he was released on bail or his own recognizance pending trial for a prior felony and was convicted of such prior felony, or the defendant was convicted of a felony committed while he was serving a period of probation, conditional discharge, or mandatory supervised release under subsection (d) of Section 5-8-1 for a prior felony;

(13) the defendant committed or attempted to commit a felony while he was wearing a bulletproof vest. For the purposes of this paragraph (13), a bulletproof vest is any device which is designed for the purpose of protecting the wearer from bullets, shot or other lethal projectiles;

(14) the defendant held a position of trust or supervision such as, but not limited to, family member as defined in Section 11-0.1 of the Criminal Code of 2012, teacher, scout leader, baby sitter, or day care worker, in relation to a victim under 18 years of age, and the defendant committed an offense in violation of Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-11, 11-14.4 except for an offense that involves keeping a place of juvenile prostitution, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012 against that victim;

(15) the defendant committed an offense related to the activities of an organized gang. For the purposes of this factor, “organized gang” has the meaning ascribed to it in Section 10 of the Streetgang Terrorism Omnibus Prevention Act;

(16) the defendant committed an offense in violation of one of the following Sections while in a school, regardless of the time of day or time of year; on any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity; on the real property of a school; or on a public way within 1,000 feet of the real property comprising any school: Section 10-1., 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-14.4, 11-15.1, 11-17.1, 11-18.1, 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-6, 12-6.1, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or 33A-2, or Section 12-3.05 except for subdivision (a)(4) or (g)(1), of the Criminal Code of 1961 or the Criminal Code of 2012;

(16.5) the defendant committed an offense in violation of one of the following Sections while in a day care center, regardless of the time of day or time of year; on the real property of a day care center, regardless of the time of day or time of year; or on a public way within 1,000 feet of the real property comprising any day care center, regardless of the time of day or time of year: Section 10-1., 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-14.4, 11-15.1, 11-17.1, 11-18.1, 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-6, 12-6.1, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or 33A-2, or Section 12-3.05 except for subdivision (a)(4) or (g)(1), of the Criminal Code of 1961 or the Criminal Code of 2012;

(17) the defendant committed the offense by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer. For the purpose of this Section, “community policing volunteer” has the meaning ascribed to it in Section 2-3.5 of the Criminal Code of 2012;

(18) the defendant committed the offense in a nursing home or on the real property comprising a nursing home. For the purposes of this paragraph (18), “nursing home” means a skilled nursing or intermediate long term care facility that is subject to license by the Illinois Department of Public Health under the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Act of 2013, or the ID/DD Community Care Act;

(19) the defendant was a federally licensed firearm dealer and was previously convicted of a violation of subsection (a) of Section 3 of the Firearm Owners Identification Card Act and has now committed either a felony violation of the Firearm Owners Identification Card Act or an act of armed violence while armed with a firearm;

(20) the defendant (i) committed the offense of reckless homicide under Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012 or the offense of driving under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof under Section 11-501 of the Illinois Vehicle Code or a similar provision of a

local ordinance and (ii) was operating a motor vehicle in excess of 20 miles per hour over the posted speed limit as provided in Article VI of Chapter 11 of the Illinois Vehicle Code;

(21) the defendant (i) committed the offense of reckless driving or aggravated reckless driving under Section 11-503 of the Illinois Vehicle Code and (ii) was operating a motor vehicle in excess of 20 miles per hour over the posted speed limit as provided in Article VI of Chapter 11 of the Illinois Vehicle Code;

(22) the defendant committed the offense against a person that the defendant knew, or reasonably should have known, was a member of the Armed Forces of the United States serving on active duty. For purposes of this clause (22), the term “Armed Forces” means any of the Armed Forces of the United States, including a member of any reserve component thereof or National Guard unit called to active duty;

(23) the defendant committed the offense against a person who was elderly, disabled, or infirm by taking advantage of a family or fiduciary relationship with the elderly, disabled, or infirm person;

(24) the defendant committed any offense under Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012 and possessed 100 or more images;

(25) the defendant committed the offense while the defendant or the victim was in a train, bus, or other vehicle used for public transportation;

(26) the defendant committed the offense of child pornography or aggravated child pornography, specifically including paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012 where a child engaged in, solicited for, depicted in, or posed in any act of sexual penetration or bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in a sexual context and specifically including paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) of Section 11-20.1B or Section 11-20.3 of the Criminal Code of 1961 where a child engaged in, solicited for, depicted in, or posed in any act of sexual penetration or bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in a sexual context;(27) the defendant committed the offense of first degree murder, assault, aggravated assault, battery, aggravated battery, robbery, armed robbery, or aggravated robbery against a person who was a veteran and the defendant knew, or reasonably should have known, that the person was a veteran performing duties as a representative of a veterans' organization. For the purposes of this paragraph (27), “veteran” means an Illinois resident who has served as a member of the United States Armed Forces, a member of the Illinois National Guard, or a member of the United States Reserve Forces; and “veterans' organization” means an organization comprised of members of which substantially all are individuals who are veterans or spouses, widows, or widowers of veterans, the primary purpose of which is to promote the welfare of its members and to provide assistance to the general public in such a way as to confer a public benefit; or

(28) the defendant committed the offense of assault, aggravated assault, battery, aggravated battery, robbery, armed robbery, or aggravated robbery against a person that the defendant knew or reasonably should have known was a letter carrier or postal worker while that person was performing his or her duties delivering mail for the United States Postal Service.

**In practice, a defendant charged with a misdemeanor, that is a not a violent or serious offense, will be placed on supervision or conditional discharge. Conditional discharge is a type of non-reporting probation. The defendant is under the jurisdiction of the court for the length of**

conditional discharge, but he does not have to report to a probation officer. Conditional discharge is a conviction where supervision allows a defendant to avoid a conviction. In felony cases, defendants are usually placed on probation, if they are not sentenced to the Illinois Department of Corrections (IDOC). Felony defendants are sometimes placed on conditional discharge in cases where monitoring by a probation officer is not necessary.

(b) Multiple terms of probation imposed at the same time shall run concurrently. (unless another statute allows for a consecutive sentences)

(f) The court may impose a term of probation that is concurrent or consecutive to a term of imprisonment so long as the maximum term imposed does not exceed the maximum term provided under Article 4.5 of Chapter V or Article 8 of this Chapter.

## II. 730 ILCS 5/5-6-3

(a) The conditions of probation shall be that the person:

For example:

- (1) not violate any criminal statute of any jurisdiction;
- (2) report to or appear in person before such person or agency as directed by the court;
- (3) refrain from possessing a firearm or other dangerous weapon where the offense is a felony or, if a misdemeanor, the offense involved the intentional or knowing infliction of bodily harm or threat of bodily harm;
- (4) not leave the State without the consent of the court

For full list see **730 ILCS 5/5-6-3(a)(1)-(12)**

(b) The Court may in addition to other reasonable conditions relating to the nature of the offense or the rehabilitation of the defendant as determined for each defendant in the proper discretion of the Court require that the person:

For example:

- (1) serve a term of periodic imprisonment under Article 7 for a period not to exceed that specified in paragraph (d) of Section 5-7-1;
- (2) pay a fine and costs;
- (3) work or pursue a course of study or vocational training;
- (4) undergo medical, psychological or psychiatric treatment; or treatment for drug addiction or alcoholism;
- (5) attend or reside in a facility established for the instruction or residence of defendants on probation;
- (6) support his dependents;

For full list see **730 ILCS 5/5-6-3(b)(1)-(18)**

(e) [T]he court shall not require as a condition of the sentence of probation or conditional discharge that the offender be committed to a period of imprisonment in excess of 6 months. This 6 month limit shall not include periods of confinement given pursuant to a sentence of county impact incarceration under Section 5-8-1.2.

A defendant may be sentenced to probation and a term in the county jail concurrently, but the county jail sentence may not exceed 180 days. So, a defendant may be sentenced to one year probation and 180 days in the county jail (along with other conditions listed above).

### III. Probation by class of offense.

Class X felony: non-probationable.

Class 1 felony: probation not to exceed 4 years.

Class 2 felony: probation not to exceed 4 years.

Class 3 felony: probation not to exceed 30 months.

Class 4 felony: probation not to exceed 30 months.

Class A misdemeanor: probation not to exceed 2 years.

Class B misdemeanor: probation not to exceed 2 years.

Class C misdemeanor: probation not to exceed 2 years.

Petty offense: no probation option.

Business offense: no probation option.

### IV. "Common" offenses and situations where probation is not a sentencing option. **730 ILCS 5/5-5-3**

1. Murder
2. Attempted first degree murder.
3. Residential burglary
4. Delivery of 5 grams or more of cocaine or fentanyl.
5. Delivery of 3 grams or more of heroin.
6. A Class 2 or greater felony if the offender had been convicted of a Class 2 or greater felony within the past 10 years.
7. Unlawful Use of Weapons, Unlawful Use of Weapon by a Felon, and Aggravated Unlawful Use of Weapons when imprisonment is prescribed.
8. Criminal Sexual Assault.
9. Aggravated Battery causing great bodily harm or permanent disability or disfigurement to an individual 60 years or older.
10. A forcible felony if the offense was related to the activities of an organized gang.
11. A Class 1 felony committed while on probation for a felony.

The entire list can be found at **730 ILCS 5/5-5-3(c)(2)(A)-(DD)**

### V. Special types of probation

1. **720 ILCS 550/10** – cannabis: First Offender probation for those who possess or deliver 30 grams or less of cannabis, or possession of cannabis sativa plant.
  - a. Upon successful completion, the court shall discharge the person and dismiss the proceedings against him.
  - b. Offender may only receive this sentence once.
  - c. Sometimes referred to as "710 probation". I believe 710 was the section number before the statutes were renumbered.
2. **720 ILCS 570/410** – controlled substances: First Offender probation for those who possess less than 15 grams of cocaine or heroin, 200 grams of peyote, 200 grams for barbituric acid,

200 grams of amphetamine, 15 grams of LSD, and others drugs listed in **720 ILCS 570/402(a)**.

- a. Upon successful completion, the court shall discharge the person and dismiss the proceedings against him.
  - b. Offender may only receive this sentence once.
  - c. **Sometimes referred to as “410” or “1410” probation.**
3. Drug Court – **730 ILCS 166/1**
- a. Upon successful completion, the court may dismiss the original charges or successfully terminate defendant’s sentence.
4. Veterans and Servicemembers Court – **730 ILCS 167/1**
- a. Upon successful completion, the court may dismiss the original charges or successfully terminate defendant’s sentence.
5. Mental Health Treatment Court – **730 ILCS 168/1**
- a. Upon successful completion, the court may dismiss the original charges or successfully terminate defendant’s sentence.
6. Intensive probation – **not statutory. The defendant is placed on probation and in the beginning, for approximately 6 months, there is more monitoring such as more frequent probation office visits and drug tests. This is often used as a sentence of last resort before the defendant before he is sentenced to IDOC.**
7. TASC probation – **20 ILCS 301/40-5**: for addicts or alcoholics unless:
- a. the crime is a crime of violence;
  - b. the offense is non-probationable;
  - c. the person does not have 2 or more convictions of a crime of violence;
  - d. other criminal proceedings alleging commission of a felony are pending against the person;
  - e. the person is on probation or parole and the appropriate authority does not consent;
  - f. the person was admitted to a designated program on 2 prior occasions within any consecutive 2-year period;
  - g. the person has been convicted of residential burglary and has a record of one or more felony convictions;
  - h. the crime is a DUI; or
  - i. the crime is a reckless homicide in which the death consists of the driving of a motor vehicle by a person under the influence of alcohol or drugs.
8. Adult Redeploy program – **730 ILCS 190/20**: for prison-bound non-violent offenders.
9. Diversion programs – allows a defendant to go through a restorative justice program, and avoid a conviction if the program is successfully completed. Depending on the jurisdiction it may be called Pre-Trial Diversion, Second Chance, Deferred Prosecution, First Offender Probation, or something else.
10. Cook County has several specialty courts/probation programs, but they are variations of the programs listed above.

**If a probationer violates a term of probation, the probation officer (PO) can impose an immediate sanction, with the probationer’s consent. Sanctions could include more office**

visits, electronic home monitoring, more substance abuse treatment, or any other condition except for jail. If the PO does not choose to offer an immediate sanction or the probationer does not consent to an immediate sanction, then the PO must file a request with the State's Attorney's Office to file a petition to revoke probation (PTR). The probationer would be entitled to a hearing. A PTR hearing is a quasi-criminal proceeding where the rules of evidence are relaxed, and the probationer may be called to testify for the prosecution. There is no right to a jury. If the probationer is found by the judge to have violated his probation, the probationer would be resentenced on the original charge. The re-sentence could be a sentence to IDOC, a longer term of probation, or termination of probation. The probationer would receive credit for any time served in jail on his re-sentence.