



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3502

Introduced 2/23/2005, by Rep. Chapin Rose

SYNOPSIS AS INTRODUCED:

720 ILCS 570/402

from Ch. 56 1/2, par. 1402

720 ILCS 570/410

from Ch. 56 1/2, par. 1410

730 ILCS 166/35

Amends the Illinois Controlled Substances Act and the Drug Court Treatment Act. Provides that whenever any person, who has not previously been convicted of or placed on probation or court supervision for any offense relating to cannabis or controlled substances, pleads guilty to or is found guilty of possession of methamphetamine or any salt of an optical isomer of methamphetamine arising from an act or acts that did not involve a crime of violence, the person shall be referred to a drug court program for treatment under the Drug Court Treatment Act. If the person successfully completes the program, the court shall discharge the person and dismiss the proceedings against him or her. If the person does not successfully complete the drug court program, he or she shall be sentenced as a Class X felony offender.

LRB094 08201 RLC 38388 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

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

4 Section 5. The Illinois Controlled Substances Act is
5 amended by changing Sections 402 and 410 as follows:

6 (720 ILCS 570/402) (from Ch. 56 1/2, par. 1402)

7 Sec. 402. Except as otherwise authorized by this Act, it is
8 unlawful for any person knowingly to possess a controlled or
9 counterfeit substance. A violation of this Act with respect to
10 each of the controlled substances listed herein constitutes a
11 single and separate violation of this Act.

12 (a) Except as otherwise provided in subsection (a-5) with
13 respect to possession of methamphetamine or any salt of an
14 optical isomer of methamphetamine, any ~~Any~~ person who violates
15 this Section with respect to the following controlled or
16 counterfeit substances and amounts, notwithstanding any of the
17 provisions of subsections (c) and (d) to the contrary, is
18 guilty of a Class 1 felony and shall, if sentenced to a term of
19 imprisonment, be sentenced as provided in this subsection (a)
20 and fined as provided in subsection (b):

21 (1) (A) not less than 4 years and not more than 15
22 years with respect to 15 grams or more but less than
23 100 grams of a substance containing heroin;

24 (B) not less than 6 years and not more than 30
25 years with respect to 100 grams or more but less than
26 400 grams of a substance containing heroin;

27 (C) not less than 8 years and not more than 40
28 years with respect to 400 grams or more but less than
29 900 grams of any substance containing heroin;

30 (D) not less than 10 years and not more than 50
31 years with respect to 900 grams or more of any
32 substance containing heroin;

1 (2) (A) not less than 4 years and not more than 15
2 years with respect to 15 grams or more but less than
3 100 grams of any substance containing cocaine;

4 (B) not less than 6 years and not more than 30
5 years with respect to 100 grams or more but less than
6 400 grams of any substance containing cocaine;

7 (C) not less than 8 years and not more than 40
8 years with respect to 400 grams or more but less than
9 900 grams of any substance containing cocaine;

10 (D) not less than 10 years and not more than 50
11 years with respect to 900 grams or more of any
12 substance containing cocaine;

13 (3) (A) not less than 4 years and not more than 15
14 years with respect to 15 grams or more but less than
15 100 grams of any substance containing morphine;

16 (B) not less than 6 years and not more than 30
17 years with respect to 100 grams or more but less than
18 400 grams of any substance containing morphine;

19 (C) not less than 6 years and not more than 40
20 years with respect to 400 grams or more but less than
21 900 grams of any substance containing morphine;

22 (D) not less than 10 years and not more than 50
23 years with respect to 900 grams or more of any
24 substance containing morphine;

25 (4) 200 grams or more of any substance containing
26 peyote;

27 (5) 200 grams or more of any substance containing a
28 derivative of barbituric acid or any of the salts of a
29 derivative of barbituric acid;

30 (6) 200 grams or more of any substance containing
31 amphetamine or any salt of an optical isomer of
32 amphetamine;

33 (6.5) (A) not less than 4 years and not more than 15
34 years with respect to 15 grams or more but less than

1 100 grams of a substance containing methamphetamine or
2 any salt of an optical isomer of methamphetamine;

3 (B) not less than 6 years and not more than 30
4 years with respect to 100 grams or more but less than
5 400 grams of a substance containing methamphetamine or
6 any salt of an optical isomer of methamphetamine;

7 (C) not less than 8 years and not more than 40
8 years with respect to 400 grams or more but less than
9 900 grams of a substance containing methamphetamine or
10 any salt of an optical isomer of methamphetamine;

11 (D) not less than 10 years and not more than 50
12 years with respect to 900 grams or more of any
13 substance containing methamphetamine or any salt of an
14 optical isomer of methamphetamine;

15 (7) (A) not less than 4 years and not more than 15
16 years with respect to: (i) 15 grams or more but less
17 than 100 grams of any substance containing lysergic
18 acid diethylamide (LSD), or an analog thereof, or (ii)
19 15 or more objects or 15 or more segregated parts of an
20 object or objects but less than 200 objects or 200
21 segregated parts of an object or objects containing in
22 them or having upon them any amount of any substance
23 containing lysergic acid diethylamide (LSD), or an
24 analog thereof;

25 (B) not less than 6 years and not more than 30
26 years with respect to: (i) 100 grams or more but less
27 than 400 grams of any substance containing lysergic
28 acid diethylamide (LSD), or an analog thereof, or (ii)
29 200 or more objects or 200 or more segregated parts of
30 an object or objects but less than 600 objects or less
31 than 600 segregated parts of an object or objects
32 containing in them or having upon them any amount of
33 any substance containing lysergic acid diethylamide
34 (LSD), or an analog thereof;

35 (C) not less than 8 years and not more than 40
36 years with respect to: (i) 400 grams or more but less

1 than 900 grams of any substance containing lysergic
2 acid diethylamide (LSD), or an analog thereof, or (ii)
3 600 or more objects or 600 or more segregated parts of
4 an object or objects but less than 1500 objects or 1500
5 segregated parts of an object or objects containing in
6 them or having upon them any amount of any substance
7 containing lysergic acid diethylamide (LSD), or an
8 analog thereof;

9 (D) not less than 10 years and not more than 50
10 years with respect to: (i) 900 grams or more of any
11 substance containing lysergic acid diethylamide (LSD),
12 or an analog thereof, or (ii) 1500 or more objects or
13 1500 or more segregated parts of an object or objects
14 containing in them or having upon them any amount of a
15 substance containing lysergic acid diethylamide (LSD),
16 or an analog thereof;

17 (7.5) (A) not less than 4 years and not more than 15
18 years with respect to: (i) 15 grams or more but less
19 than 100 grams of any substance listed in paragraph
20 (1), (2), (2.1), (3), (14.1), (19), (20), (20.1), (21),
21 (25), or (26) of subsection (d) of Section 204, or an
22 analog or derivative thereof, or (ii) 15 or more pills,
23 tablets, caplets, capsules, or objects but less than
24 200 pills, tablets, caplets, capsules, or objects
25 containing in them or having upon them any amount of
26 any substance listed in paragraph (1), (2), (2.1), (3),
27 (14.1), (19), (20), (20.1), (21), (25), or (26) of
28 subsection (d) of Section 204, or an analog or
29 derivative thereof;

30 (B) not less than 6 years and not more than 30
31 years with respect to: (i) 100 grams or more but less
32 than 400 grams of any substance listed in paragraph
33 (1), (2), (2.1), (3), (14.1), (19), (20), (20.1), (21),
34 (25), or (26) of subsection (d) of Section 204, or an
35 analog or derivative thereof, or (ii) 200 or more
36 pills, tablets, caplets, capsules, or objects but less

1 than 600 pills, tablets, caplets, capsules, or objects
2 containing in them or having upon them any amount of
3 any substance listed in paragraph (1), (2), (2.1), (3),
4 (14.1), (19), (20), (20.1), (21), (25), or (26) of
5 subsection (d) of Section 204, or an analog or
6 derivative thereof;

7 (C) not less than 8 years and not more than 40
8 years with respect to: (i) 400 grams or more but less
9 than 900 grams of any substance listed in paragraph
10 (1), (2), (2.1), (3), (14.1), (19), (20), (20.1), (21),
11 (25), or (26) of subsection (d) of Section 204, or an
12 analog or derivative thereof, or (ii) 600 or more
13 pills, tablets, caplets, capsules, or objects but less
14 than 1,500 pills, tablets, caplets, capsules, or
15 objects containing in them or having upon them any
16 amount of any substance listed in paragraph (1), (2),
17 (2.1), (3), (14.1), (19), (20), (20.1), (21), (25), or
18 (26) of subsection (d) of Section 204, or an analog or
19 derivative thereof;

20 (D) not less than 10 years and not more than 50
21 years with respect to: (i) 900 grams or more of any
22 substance listed in paragraph (1), (2), (2.1), (3),
23 (14.1), (19), (20), (20.1), (21), (25), or (26) of
24 subsection (d) of Section 204, or an analog or
25 derivative thereof, or (ii) 1,500 or more pills,
26 tablets, caplets, capsules, or objects containing in
27 them or having upon them any amount of a substance
28 listed in paragraph (1), (2), (2.1), (3), (14.1), (19),
29 (20), (20.1), (21), (25), or (26) of subsection (d) of
30 Section 204, or an analog or derivative thereof;

31 (8) 30 grams or more of any substance containing
32 pentazocine or any of the salts, isomers and salts of
33 isomers of pentazocine, or an analog thereof;

34 (9) 30 grams or more of any substance containing
35 methaqualone or any of the salts, isomers and salts of
36 isomers of methaqualone;

1 (10) 30 grams or more of any substance containing
2 phencyclidine or any of the salts, isomers and salts of
3 isomers of phencyclidine (PCP);

4 (10.5) 30 grams or more of any substance containing
5 ketamine or any of the salts, isomers and salts of isomers
6 of ketamine;

7 (11) 200 grams or more of any substance containing any
8 substance classified as a narcotic drug in Schedules I or
9 II which is not otherwise included in this subsection.

10 (a-5) Whenever any person who has not previously been
11 convicted of, or placed on probation or court supervision for
12 any offense under this Act or any law of the United States or
13 of any State relating to cannabis or controlled substances,
14 pleads guilty to or is found guilty of possession of
15 methamphetamine or any salt of an optical isomer of
16 methamphetamine arising from an act or acts that did not
17 involve a crime of violence as defined in Section 2 of the
18 Crime Victims Compensation Act, the person shall be referred to
19 a drug court program for treatment under the Drug Court
20 Treatment Act. If the person successfully completes the
21 program, the court shall discharge the person and dismiss the
22 proceedings against him or her. If the person does not
23 successfully complete the drug court program, he or she shall
24 be sentenced as a Class X felony offender.

25 (b) Any person sentenced with respect to violations of
26 paragraph (1), (2), (3), (6.5), (7), or (7.5) of subsection (a)
27 involving 100 grams or more of the controlled substance named
28 therein, may in addition to the penalties provided therein, be
29 fined an amount not to exceed \$200,000 or the full street value
30 of the controlled or counterfeit substances, whichever is
31 greater. The term "street value" shall have the meaning
32 ascribed in Section 110-5 of the Code of Criminal Procedure of
33 1963. Any person sentenced with respect to any other provision
34 of subsection (a), may in addition to the penalties provided
35 therein, be fined an amount not to exceed \$200,000.

36 (c) Except as otherwise provided in subsection (a-5) with

1 respect to possession of methamphetamine or any salt of an
2 optical isomer of methamphetamine, any ~~Any~~ person who violates
3 this Section with regard to an amount of a controlled or
4 counterfeit substance not set forth in subsection (a) or (d) is
5 guilty of a Class 4 felony. The fine for a violation punishable
6 under this subsection (c) shall not be more than \$25,000.

7 (d) Any person who violates this Section with regard to any
8 amount of anabolic steroid is guilty of a Class C misdemeanor
9 for the first offense and a Class B misdemeanor for a
10 subsequent offense committed within 2 years of a prior
11 conviction.

12 (Source: P.A. 91-336, eff. 1-1-00; 91-357, eff. 7-29-99;
13 92-256, eff. 1-1-02.)

14 (720 ILCS 570/410) (from Ch. 56 1/2, par. 1410)

15 Sec. 410. (a) Whenever any person who has not previously
16 been convicted of, or placed on probation or court supervision
17 for any offense under this Act or any law of the United States
18 or of any State relating to cannabis or controlled substances,
19 pleads guilty to or is found guilty of possession of a
20 controlled or counterfeit substance under subsection (c) of
21 Section 402, the court, without entering a judgment and with
22 the consent of such person, may sentence him to probation.

23 (b) When a person is placed on probation, the court shall
24 enter an order specifying a period of probation of 24 months
25 and shall defer further proceedings in the case until the
26 conclusion of the period or until the filing of a petition
27 alleging violation of a term or condition of probation.

28 (c) The conditions of probation shall be that the person:
29 (1) not violate any criminal statute of any jurisdiction; (2)
30 refrain from possessing a firearm or other dangerous weapon;
31 (3) submit to periodic drug testing at a time and in a manner
32 as ordered by the court, but no less than 3 times during the
33 period of the probation, with the cost of the testing to be
34 paid by the probationer; and (4) perform no less than 30 hours
35 of community service, provided community service is available

1 in the jurisdiction and is funded and approved by the county
2 board.

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

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

9 (2) pay a fine and costs;

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

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

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

17 (6) support his dependents;

18 (6-5) refrain from having in his or her body the
19 presence of any illicit drug prohibited by the Cannabis
20 Control Act or the Illinois Controlled Substances Act,
21 unless prescribed by a physician, and submit samples of his
22 or her blood or urine or both for tests to determine the
23 presence of any illicit drug;

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

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

26 (ii) attend school;

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

28 (iv) contribute to his own support at home or in a
29 foster home.

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

33 (f) Upon fulfillment of the terms and conditions of
34 probation, the court shall discharge the person and dismiss the
35 proceedings against him.

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

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

6 (h) There may be only one discharge and dismissal under
7 this Section or Section 10 of the Cannabis Control Act with
8 respect to any person.

9 (i) If a person is convicted of an offense under this Act
10 or the Cannabis Control Act within 5 years subsequent to a
11 discharge and dismissal under this Section, the discharge and
12 dismissal under this Section shall be admissible in the
13 sentencing proceeding for that conviction as evidence in
14 aggravation.

15 (j) This Section applies to persons referred to a drug
16 court program under subsection (a-5) of Section 402 of this
17 Act.

18 (Source: P.A. 91-696, eff. 4-13-00.)

19 Section 10. The Drug Court Treatment Act is amended by
20 changing Section 35 as follows:

21 (730 ILCS 166/35)

22 Sec. 35. Violation; termination; discharge.

23 (a) If the court finds from the evidence presented
24 including but not limited to the reports or proffers of proof
25 from the drug court professionals that:

26 (1) the defendant is not performing satisfactorily in
27 the assigned program;

28 (2) the defendant is not benefitting from education,
29 treatment, or rehabilitation;

30 (3) the defendant has engaged in criminal conduct
31 rendering him or her unsuitable for the program; or

32 (4) the defendant has otherwise violated the terms and
33 conditions of the program or his or her sentence or is for
34 any reason unable to participate;

1 the court may impose reasonable sanctions under prior written
2 agreement of the defendant, including but not limited to
3 imprisonment or dismissal of the defendant from the program and
4 the court may reinstate criminal proceedings against him or her
5 or proceed under Section 5-6-4 of the Unified Code of
6 Corrections for a violation of probation, conditional
7 discharge, or supervision hearing.

8 (b) Upon successful completion of the terms and conditions
9 of the program, the court may dismiss the original charges
10 against the defendant or successfully terminate the
11 defendant's sentence or otherwise discharge him or her from any
12 further proceedings against him or her in the original
13 prosecution.

14 (c) A person participating in a drug court program under
15 subsection (a-5) of Section 402 of the Illinois Controlled
16 Substances Act who is found not to be performing satisfactorily
17 in the assigned program is guilty of a Class X felony.

18 (Source: P.A. 92-58, eff. 1-1-02.)