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SPRINGFIELD

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FILE NO. 84-002

CRIMINAL LAW AND PROCEDURE:
Conditions of Probation and
Conditional Discharge

MOTOR VEHICLES:
Reports of Participation in
Driver Remedial or
Rehabilitative Programs

Honorable Donald D. Bernardi
State's Attorney, Livingston County
Livingston County Courthouse
Pontiac, Illinois 61764

Dear Mr. Bernardi:

I have your letter in which you ask the following questions regarding the prosecution of persons charged with the offense of driving while under the influence of alcohol pursuant to section 11-501 of The Illinois Vehicle Code (Ill. Rev. Stat. 1982 Supp., ch. 95 1/2, par. 11-501, as amended by Public Act 83-204, effective January 1, 1984):

1. If a defendant pleads guilty to a related offense other than driving while under the influence of alcohol, may the court properly sentence the defendant to a term of probation or conditional discharge which, as a condition thereof, permits the defendant to drive a motor vehicle only for purposes of employment?
2. If a defendant pleads guilty to a related offense other than driving while under the influence of alcohol, and is ordered by the court to attend a driver rehabilitation program, must the circuit clerk forward this information to the Secretary of State pursuant to section 6-204 of The Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95 1/2, par. 6-204, as amended by Public Act 83-208, effective January 1, 1984)?

For the reasons hereinafter stated, it is my opinion that a court may impose restrictions upon the use of a motor vehicle as a condition of probation or conditional discharge where such a condition is reasonably related to the nature of the underlying offense, as in the situation described in your first question. In response to your second question, it is my opinion that circuit clerks are required to notify the Secretary of State whenever a driver is ordered to attend a driver remedial or rehabilitative program in relation to an arrest for a violation of section 11-501 of The Illinois Vehicle Code. The fact that the defendant is ordered to attend such a program upon a plea of guilty to an offense other than driving while under the influence of alcohol does not abrogate the clerk's duty, where the arrest leading to the plea of guilty involved an alleged violation of section 11-501 of The Illinois Vehicle Code.

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Section 5-6-1 of the Unified Code of Corrections (Ill. Rev. Stat. 1981, ch. 38, par. 1005-6-1, as amended by Public Act 83-207, effective January 1, 1984) provides in pertinent part:

"Sentences of Probation and of Conditional Discharge and Disposition of Supervision. (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.

(b) The court may impose a sentence of conditional discharge for an offense if the court is of the opinion that neither a sentence of imprisonment nor of periodic imprisonment nor of probation supervision is appropriate.

* * *

Section 5-6-3 of the Unified Code of Corrections (Ill. Rev. Stat. 1981, ch. 38, par. 1005-6-3, as amended by Public Acts 83-1047 and 83-1061, effective July 1, 1984) sets forth mandatory and optional conditions of probation and conditional discharge. Optional conditions may be imposed in the discretion of the sentencing court. Before addressing the application of the specific provisions of section 5-6-3 to your

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question, I believe that it is appropriate to review the legislative history of that section, in order to clarify an apparent omission in its reproduction in both official compilations and unofficial codifications.

Section 5-6-3 of the Unified Code of Corrections, as contained in Illinois Revised Statutes 1981 (State Bar Association Edition, 1982) provides:

"Conditions of Probation and of Conditional Discharge. (a) The conditions of probation and of conditional discharge shall be that the person:

- (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; and
- (3) refrain from possessing a firearm or other dangerous weapon.

(b) The Court may in addition to other conditions require that the person:

- (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;
- (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;

(7) permit the probation officer to visit him at his home or elsewhere to the extent necessary to discharge his duties;

(8) and in addition, if a minor:

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

(ii) attend school;

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

(iv) contribute to his own support at home or in a foster home;

(9) make restitution in an amount not to exceed actual out of pocket expenses or loss proximately caused by the conduct of the defendant. The court shall, in a pre-sentencing hearing, determine the amount and conditions of payment. Cash bond, in excess of actual court cost, may be made available as security for the amount of restitution at the discretion of the court. Where the conditions of payment have not been satisfied, the court, at any time prior to the expiration or termination of the period of probation or of conditional discharge, may impose an additional period not to exceed 2 years, during which the conditions of payment alone shall remain in force. The court shall retain all of the incidents of the original sentence, including the authority to modify or enlarge the conditions and to revoke the sentence of probation or of conditional discharge if the conditions of payment are violated during such additional period;

(10) perform some reasonable public service work such as but not limited to the picking up of litter in public parks or along public highways or the maintenance of public facilities.

(11) serve a term of home confinement. In addition to any other applicable condition of probation or conditional discharge, the conditions of home confinement shall be that the offender:

(i) remain within the interior premises of the place designated for his confinement during the hours designated by the court;

(ii) admit any person or agent designated by the court into the offender's place of confinement at any time for purposes of verifying the offender's compliance with the conditions of his confinement;

(12) comply with the terms and conditions of an order of protection issued to a victim by the court pursuant to the Illinois Domestic Violence Act, as now or hereafter amended.

(c) An offender sentenced to probation or to conditional discharge shall be given a certificate setting forth the conditions thereof.

(d) The 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.

Persons committed to imprisonment as a condition of probation or conditional discharge shall not be committed to the Department of Corrections.

(e) The court may combine a sentence of periodic imprisonment under Article 7 with a sentence of probation or conditional discharge.

(f) Jurisdiction over an offender may be transferred from the sentencing court to the court of another circuit with the concurrence of both courts. Further transfers or retransfers of jurisdiction are also authorized in the same manner. The court to which jurisdiction has been transferred shall have the same powers as the sentencing court.

(g) Neither the State, any unit of local government, nor any official or employee thereof acting in the course of his official duties shall be liable for any tortious acts of any person placed on probation who is given any public service work as a condition of probation, except for willful misconduct or gross negligence on the part of such governmental unit, official, or employee.

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(h) No person assigned to a public service employment program shall be entitled to any compensation." (Emphasis added.)

(See also Ill. Ann. Stat., ch. 38, par. 1005-6-3 (Smith-Hurd 1982).) Although section 5-6-3 has been amended subsequent to the latest codification of the Illinois Revised Statutes (State Bar Edition) by Public Acts 83-1047 and 83-1061, effective July 1, 1984, neither amendment revised the language in question.

Review of the legislative history of this section shows that the language of subsection 5-6-3(b) of the Unified Code of Corrections emphasized above is erroneous because of the apparently inadvertent omission of certain amendatory language originally added by Public Act 80-1387, effective June 27, 1978 (Laws 1978, 1355). This amendatory language has not been stricken or repealed by subsequent amendments to section 5-6-3, and therefore should be considered to be part of the statute for purposes of its application, regardless of its omission from published sources.

The specific language of subsection 5-6-3(b) in question was, prior to its amendment by Public Act 80-1387, identical to that currently found in the codifications of that section. (See, e.g., Ill. Rev. Stat. 1977, ch. 38, par. 1005-6-3.) Section 3 of Public Act 80-1387 amended, inter alia, subsection 5-6-3(b) of the Unified Code of Corrections to provide:

" * * *

(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:

* * *

(Emphasis added.)

Beginning with Public Act 81-1021, effective September 24, 1979 (Laws 1979, 3904), and continuing in subsequent amendatory Acts, the codification of section 5-6-3 of the Unified Code of Corrections omitted the language added to subsection (b) by Public Act 80-1387. Nothing in the text of Public Act 81-1021, or the floor debates concerning its passage, indicates that it was the intent of the General Assembly to repeal the language in question. Further, section 5 of "AN ACT to revise the law in relation to the construction of the statutes" (Ill. Rev. Stat. 1981, ch. 1, par. 1104) provides:

"In construing an amendatory Act printed in any volume of the session laws published after January 1, 1969, matter printed in italics shall be construed as new matter added by the amendatory Act, and matter shown crossed with a line shall be construed as matter deleted from the law by the amendatory Act."

The official compilation of Public Act 81-1021 in the session laws (Laws 1979, 3904, 3905-06) does not contain any deletion of the language in question as required by statute.

It appears that the incorporation in Public Act 81-1021 of the language of subsection 5-6-3 of the Unified Code

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of Corrections as it existed prior to amendment by Public Act 80-1387 was a mere error, which has been perpetuated in subsequent amendments to that section. The intent of the General Assembly is the law. (City of Decatur v. German (1924), 310 Ill. 591, 595.) Therefore, since there has been no intent by the General Assembly to repeal the specific language added to subsection 5-6-3(b) of the Unified Code of Corrections by Public Act 80-1387, I believe that the provision must be read and construed to contain it. I will respond to your first question in light of this construction.

Section 5-6-3 of the Unified Code of Corrections enumerates certain conditions which a court must incorporate in an order of probation or conditional discharge, and other conditions which a court may impose in its discretion. Limitation of the privilege of operating a motor vehicle is not a condition enumerated therein. A court is not, however, limited to imposing only conditions which are specifically enumerated. Rather, under section 5-6-3 of the Unified Code of Corrections, it is within the sound discretion of the court to determine the conditions upon which probation or conditional discharge will be granted (see People v. Williams (1981), 96 Ill. App. 3d 588, 590), and in its discretion the court may impose conditions which are not specifically enumerated if such conditions are reasonably related to or rationally connected with the offense

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charged. People v. Whittington (1980), 87 Ill. App. 3d 504, 506; People v. Hubble (1980), 81 Ill. App. 3d 560, 565-66; People v. Dunn (1976), 43 Ill. App. 3d 94, 96.

In cases involving the offense of driving while under the influence of alcohol, there is a rational connection between the offense alleged and a condition of probation or conditional discharge which limits the times and purposes for which an offender may operate a motor vehicle. Section 5-6-3 of the Unified Code of Corrections specifically authorizes a court to impose as conditions of probation or conditional discharge reasonable conditions relating to the nature of the offense. Such a condition would be reasonably related to either the offense of driving while under the influence of alcohol, or a related offense to which the defendant plead guilty as part of a negotiated plea agreement. An order of probation or conditional discharge so providing is analogous to the issuance of a restricted driving permit by the Secretary of State to a person whose driving privilege has been suspended or revoked under the provisions of The Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95 1/2, par. 1-100 et seq.), the primary difference being that a court may enforce its order only through the procedures specified for modification or revocation of probation or conditional discharge. (See Ill. Rev. Stat. 1981, ch. 38, par. 1005-6-4.) Therefore, it is my opinion that

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should a person charged with driving while under the influence of alcohol plead guilty to a related offense other than that originally charged, the court may, in its discretion, order as a condition of probation or conditional discharge granted to the defendant, a limitation upon his privilege to operate a motor vehicle as the court deems appropriate.

In response to your second question, section 6-204 of The Illinois Vehicle Code provides in pertinent part:

"When Court to forward License and Reports.

(a) For the purpose of providing to the Secretary of State the records essential to the performance of the Secretary's duties under this Code to revoke or suspend the drivers license and privilege to drive motor vehicles of persons found guilty of the criminal offenses or traffic violations which this Code recognizes as evidence relating to unfitness to safely operate motor vehicles, the following duties are imposed upon public officials:

* * *

4. A report of any disposition of court supervision for a violation of Sections 6-303, 11-401, 11-501 or a similar provision of a local ordinance, 11-503 and 11-504 shall be forwarded to the Secretary of State.

* * *

(d) For the purpose of providing the Secretary of State with records necessary to properly monitor and assess driver performance and assist the courts in the proper disposition of repeat traffic law offenders, the clerk of the court shall forward to the Secretary of State, on a form prescribed by the Secretary, records of driver's participation in a driver remedial or rehabilitative program which was required, through a court order or court supervision, in relation to the driver's arrest for a violation of Section 11-501 of this Code or a similar provision of

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a local ordinance. Such reports shall be sent within ten (10) days after the driver's referral to such driver remedial or rehabilitative program. Such reports shall be recorded to the driver's file, but shall not be released to any outside source and shall be used only to assist in assessing driver performance and for the purpose of informing the courts that such driver has been previously referred to a drivers remedial or rehabilitative program.

* * *

(Emphasis added.)

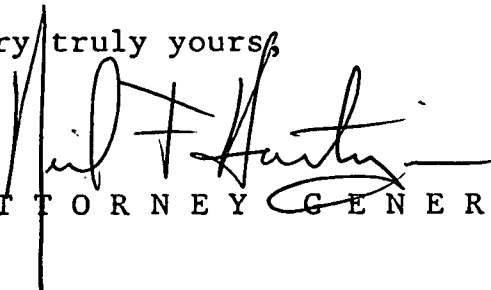
The plain language of section 6-204 of The Illinois Vehicle Code requires, inter alia, that circuit clerks notify the Secretary of State whenever a driver is required by court order to participate in a driver remedial or rehabilitative program, and the court order results from an arrest for driving while under the influence of alcohol. When the language of a statutory provision is unambiguous, it must be given effect in accordance with its plain terms. Finley v. Finley (1980), 81 Ill. 2d 317, 326; Bovinette v. City of Mascoutah (1973), 55 Ill. 2d 129, 133; Nordine v. Illinois Power Co. (1965), 32 Ill. 2d 421, 428.

It is clear that where a person is arrested for a violation of section 11-501 of The Illinois Vehicle Code, and thereafter enters a plea of guilty to a related offense and is ordered by the court to participate in a driver remedial or rehabilitative program, such participation is related to the original arrest for purposes of section 6-204. Therefore, it

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is my opinion that in such cases a circuit clerk must forward the required records of participation as specified in section 6-204 of The Illinois Vehicle Code.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Neil F. Hartley". The signature is written in dark ink and is positioned above the typed name.

A T T O R N E Y G E N E R A L