



VIRGINIA CRIMINAL SENTENCING COMMISSION



Revision of Probation Violation Guidelines Update

June 5, 2017


Sentencing Revocation Report (SRR)

A probation officer completes the front of the SRR and indicates the condition(s) the offender has violated.

All violations being handled together should be recorded on one SRR.

The judge completes the back of the form, indicating the outcome of the hearing and the sanctions imposed.

Implemented in 1997, the SRR is the only source of detailed violation information that can be analyzed.



Sentencing Revocation Report

Date Form Completed: _____

IMSP Case

◆ OFFENDER _____

First: _____ Middle: _____

Last: _____ Suffix: [][][][]

Date of Birth: [][]/[][]/[][][][] Social Security Number: [][][]-[][][]-[][][][][]

SID/CCRE: _____ CORIS Offender ID: _____

◆ COURT _____

Judicial Circuit: [][] City/County: _____ FIPS Code: [][][]

Judge's Name: _____ [][][][]

Office Use Only

◆ MOST SERIOUS ORIGINAL FELONY OFFENSE INFORMATION _____

Primary Offense _____ VCC [][][]-[][][][][] Sentencing Date (Original) [][]/[][]/[][][][]

PSI NUMBER: _____

◆ ORIGINAL DISPOSITION INFORMATION _____

No Incarceration
 Detention or Diversion Center Incarceration (no active incarceration)
 Jail or Prison

◆ TYPE OF REVOCATION (check all that apply) _____

Probation
 Post-Release
 Good Behavior
 Suspended Sentence
 Community-Based Program

◆ CONDITIONS CITED IN VIOLATION (check all that apply) _____

- 1. Fail to obey all Federal, State, and local laws and ordinances →
- 2. Fail to report any arrests within 3 days to probation officer
- 3. Fail to maintain employment or to report changes in employment
- 4. Fail to report as instructed
- 5. Fail to allow probation officer to visit home or place of employment
- 6. Fail to follow instructions and be truthful and cooperative
- 7. Use alcoholic beverages
- 8. Use, possess, distribute controlled substances or paraphernalia
- 9. Use, own, possess, transport or carry firearm
- 10. Change residence or leave State of Virginia without permission
- 11. Abscond from supervision
- Fail to follow special conditions (specify) _____

Complete if there are any new law or ordinance violations:
VCCs for most serious convictions

[][][]-[][][][][]

[][][]-[][][][][]

Location of Arrest:

Virginia
 Out of State or Federal

Legislative Directive for Probation Violation Guidelines 2003 Appropriations Act

- In 2003, the General Assembly directed the Commission to develop discretionary sentencing guidelines for probation violators returned to court for reasons other than a new criminal conviction (“technical violations”).
- To develop these guidelines, the Commission examined historical judicial sanctioning practices in revocation hearings.
- In its *2003 Annual Report*, the Commission recommended that the probation violation guidelines be implemented statewide and the recommendation was accepted by 2004 General Assembly.
- Statewide use began July 1, 2004.



Technical Violator Study (2003-2004)

- **Sample of 600 technical probation violators was drawn from the Commission's Sentencing Revocation Report (SRR) database.**
- **Supplemental information was gathered on factors of interest that were not contained in the automated data.**
 - **Staff reviewed major violation reports prepared by probation officers for the court.**
- **Based on additional review, 72 cases were excluded from the study because the offenders were on parole or the files contained insufficient information.**
- **Final sample was 528 cases.**



2003 Study: Supplemental Data Collection Instrument



1

Offender Name: Smith, Robert
Orig. Date: 01/22/2000

Rev. Date: 12/13/2001

86789

Basic Instructions:

For numbers, use actual number if known, otherwise; none = 0, > 1 = 55, > 2 = 66, Continuous = 77, unknown = 99, never [reported] = 100. For unknown dates, use 99/99/99. Please check or put X in boxes if applicable.

GENERAL INFORMATION:

Data Source: *(mark all that apply)*

Request for Capias / Probation Revocation letter Status Report (initiated revocation report)

Original Sentence Date: _____ Date placed under active supervision/release from jail: _____

Date of capias/show cause report: _____ Date of first non-compliance incident: _____

Transferred to another district for supervision? If yes, District # _____ (out of state = 50, unknown = 99)

Number of prior revocations _____ If yes, date of 1st _____ Date of most recent _____

Number of requests for Capias/Revocations _____

NEW LAW VIOLATIONS – Conditions 1 or 2 (while on current sample probation period)

	Person	Property	Drug	Traffic	Traffic Infraction	Other
Number of Misdemeanors	_____	_____	_____	_____	_____	_____
Number of Felonies	_____	_____	_____	_____	_____	_____
Date of 1 st law violation: _____	Arrest: <input type="checkbox"/>	Conviction: <input type="checkbox"/>	Failed to report arrest or conviction <input type="checkbox"/>			
Date of most recent law violation: _____	Arrest: <input type="checkbox"/>	Conviction: <input type="checkbox"/>				

EMPLOYMENT – Condition 3

Length of time fail to work (weeks): _____ Number of job changes during sample period? _____
Fail to report job changes: Number of times fired during sample period? _____

FAIL TO REPORT – Conditions 4 or 6

Number of Probation Officer visits missed: _____ Number Attempted Contacts by PO: _____
Number of times *never reported* to program other (mark number on left for all that all that apply – DO NOT USE CODING SCHEME)
 _____ Employment _____ Residential _____ Financial _____ Community _____ Property Crime
 _____ Education _____ Religious _____ Other (_____)
 Number of times *failed to attend* program other than listed above (all that apply):
 _____ Employment _____ Residential _____ Financial _____ Community _____ Property Crime
 _____ Education _____ Religious _____ Other (_____)
 Number of *unsuccessful discharges* from program other than listed above (all that apply):
 _____ Employment _____ Residential _____ Financial _____ Community _____ Property Crime
 _____ Education _____ Religious _____ Other (_____)
 Number of times *not in compliance* with program other than listed above (all that apply):
 _____ Employment _____ Residential _____ Financial _____ Community _____ Property Crime
 _____ Education _____ Religious _____ Other (_____)

MENTAL/PHYSICAL HEALTH – Conditions 4 or 6

	Medical	Mental Health	Sex Offender Treatment
Treatment/program (completed) _____	_____	_____	_____
A. Never reported (number) _____	_____	_____	_____
B. Fail to attend _____	_____	_____	_____
C. Unsuccessful Discharge (number) _____	_____	_____	_____
D. Non-compliance (number) _____	_____	_____	_____
E. Leave without approval _____	_____	_____	_____
Fail to be honest or follow instructions _____	_____	_____	_____
Fail testing (include polygraph or other) _____	_____	_____	_____
Number of incidents reported to probation officer By:			
A. Law Enforcement (arrest, citation, conviction) _____	_____	_____	_____
B. Employer _____	_____	_____	_____
C. Family/Friend/Domestic _____	_____	_____	_____
D. Observed (By PO) _____	_____	_____	_____
Other Problem _____, _____, _____	_____	_____	_____

2003 Study: Supplemental Data Collection Instrument

DRUGS/ALCOHOL/SUBSTANCE ABUSE – Conditions 4, 6, 7, or 8 (please fill in all that are applicable)

	Drugs	Alcohol	Substance Abuse
Treatment/program (completed) _____	_____	_____	_____
a. Never reported (number) _____	_____	_____	_____
b. Fail to attend _____	_____	_____	_____
c. Unsuccessful Discharge (number) _____	_____	_____	_____
d. Non-compliance (number) (incl drug screens) _____	_____	_____	_____
e. Leave without approval _____	_____	_____	_____
Number of tests failed: _____	_____	_____	_____
Number of admissions of Use: _____	_____	_____	_____
Fail to be honest or follow instructions _____	_____	_____	_____
Number of incidents reported to probation officer by:			
a. Law Enforcement (<i>arrest, citation, conviction</i>) _____	_____	_____	_____
b. Employer _____	_____	_____	_____
c. Family/Friend/Domestic _____	_____	_____	_____
d. Observed (by PO) _____	_____	_____	_____
Date of 1 st failed test/admission: _____	Date of most recent failed test/admission: _____		

Drug paraphernalia found in residence or on offender

Type of drug found in screening/admitted use (mark all that apply):

Marijuana Cocaine Hallucinogens Opiates Heroin Synthetic Drugs Ecstasy
 Amphetamines Barbiturates Methamphetamine Oxycontin Alcohol Others _____

FAIL TO FOLLOW INSTRUCTIONS OR BE HONEST – Conditions 6 (mark all that apply):

Associate with prohibited people:	Education requirements:	<input type="checkbox"/> Life skills
<input type="checkbox"/> Friends	<input type="checkbox"/> GED	<input type="checkbox"/> Go to Prohibited Areas
<input type="checkbox"/> Victims	<input type="checkbox"/> Vocational	<input type="checkbox"/> Violate Curfew
<input type="checkbox"/> Minors	<input type="checkbox"/> Other _____	<input type="checkbox"/> Restitution/Court Costs
<input type="checkbox"/> Other _____		

RESIDENCE/ABSCOND – Conditions 9 or 11

Date of last contact with defendant: _____ Number of Changes of residence _____

Absconded to: Outside state (other than transfer) Another city within the state Did not leave area Unknown

OTHER:

Successful *Completion of Program*

Type of Program (mark number on left for all that apply):

_____ Employment _____ Residential _____ Education _____ Financial _____ Alternatives
 _____ Community _____ Religious _____ Property Crime _____ Other (_____)

Reports to Probation Officer about (mark number on left for all that apply):

_____ Domestic abuse _____ Drug abuse _____ Alcohol abuse _____ Behavioral problems
 _____ Employment problems _____ Not maintaining authorized residence _____ Other: (_____)



Probation Violation Guidelines (PVG)

Revised in FY2008

Probation Violation Guidelines ❖ Section A Offender Name: _____

◆ Original Disposition was Incarceration _____ If YES, add 1 →

◆ Original Felony Offense Type *select the type of most serious original felony offense*

A. Person	15
B. Property	3
C. Traffic/Weapon	24
D. Other	1
E. Drug	13

Score ↓

◆ Previous Adult Probation Revocation Events

Number of Violation Events: 1 - 2	7
3 or more	10

↓

◆ New Felony Arrests

Number of Counts: 1 - 3	4
4 or more	18

↓

◆ Never Reported to/Unsuccessful Discharge from following Programs

Community service, day reporting, employment programs and/or residential programs.....	15
Detention or Diversion Center.....	18

↓

◆ Condition Violated *score only the violation receiving the highest points*

2. Fail to report any arrests within 3 days to probation officer	17
3. Fail to maintain employment/report changes in employment	17
4. Fail to report as instructed	18
5. Fail to allow probation officer to visit home or place of employment	17
6. Fail to follow instructions and be truthful and cooperative	18
7. Use alcoholic beverages to excess	17
8. Use, possess, distribute controlled substances or paraphernalia	31
9. Use, own, possess, transport or carry firearm	17
10. Change of residence or leave Commonwealth of Virginia	1
11. Abscond from supervision	34
Fail to follow special conditions (sex offender)	19
Fail to follow special conditions (other than sex offender conditions)	11

↓

◆ Absconded 13 months or more _____ If YES, add 5 →

Total Score →

If total is 36 or less, the recommendation is Probation/No Incarceration.
If total is 37 or more, go to Section C Worksheet.

Probation Violation Guidelines ❖ Section C Offender Name: _____

◆ Original Felony Offense Type *select the type of most serious original felony offense*

A. Person	13
B. Property	4
C. Weapon	16
D. DWI or Habitual Offender	3
E. Other	1
F. Drug	5

Score ↓

◆ Previous Adult Probation Revocation Events

Number of Violation Events: 1 - 2	4
3 or more	16

↓

◆ New Arrests for Crimes Against Person

Number of Counts: 0	0
1	4
2	15
3 - 4	30
5 or more	38

↓

◆ New Arrests for Nonperson Crimes

Number of Counts: 0 - 1	0
2	9
3 - 4	12
5 or more	19

↓

◆ Months until First Noncompliant Incident

10 months or less	28
11 months to 22 months	22
23 months or more	0

↓

◆ Unsuccessful Discharge from Detention Center Program _____ If YES, add 30 →

◆ Never Reported to Drug Treatment/Drug Education Program

Number: 1 - 2	9
3 or more	16

↓

◆ Positive Drug Test or Signed Admission (not marijuana or alcohol) — If YES, add 10 →

◆ Violated Sex Offender Restrictions _____ If YES, add 5 →

◆ Time Absconded

2 months or less	0
3 months to 24 months	9
25 months or more	12

↓

Total Score →

See Probation Violation Guidelines Section C Recommendation Table for guidelines sentence range.

Preparation of Sentencing Revocation Report (SRR) and Probation Violation Guidelines (PVG)

Since July 1, 2010, the Appropriation Act has specified that a Sentencing Revocation Report and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306.

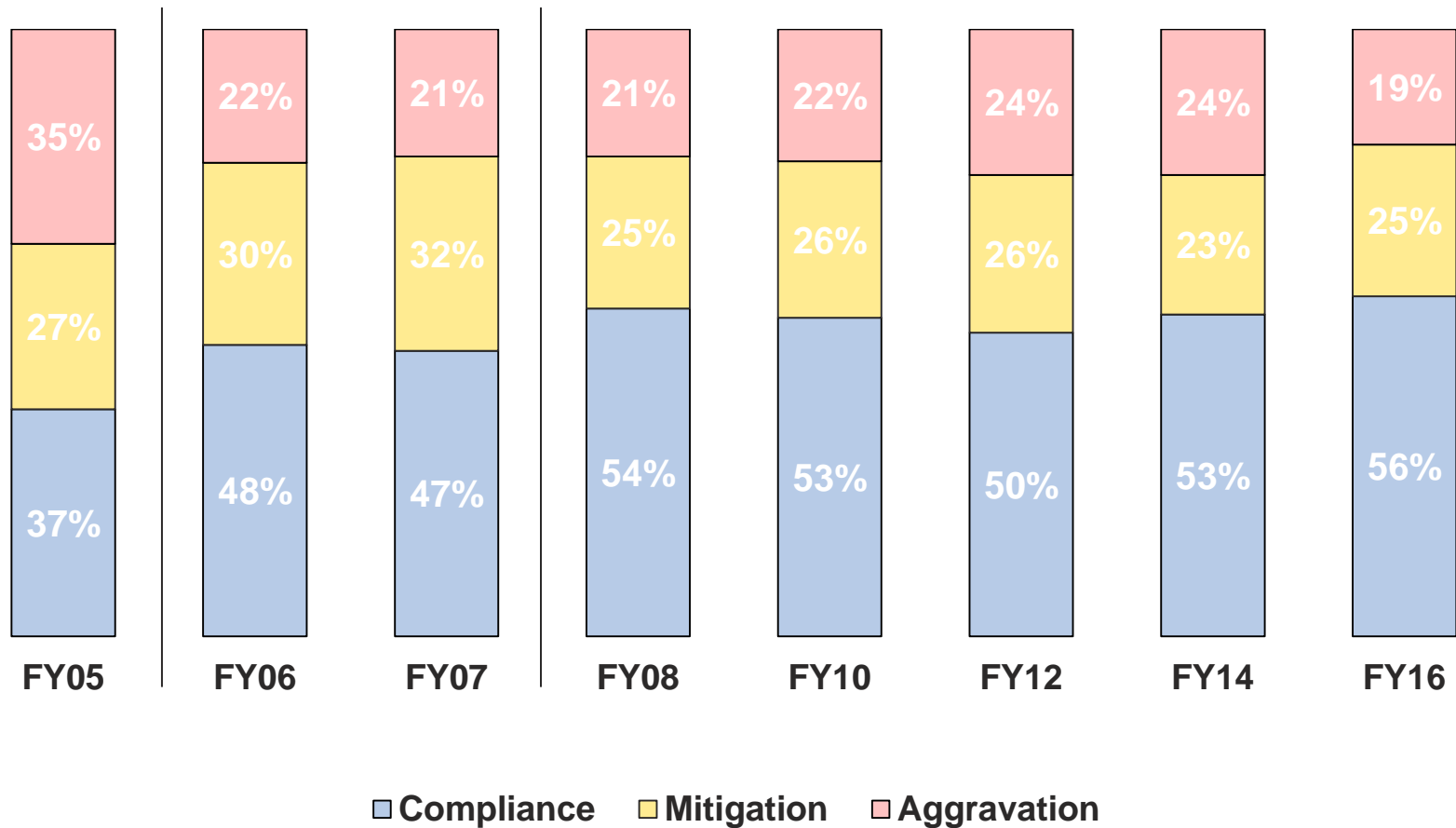
**See Item 42 of Chapter 836
(Appropriation Act) adopted by
the 2017 General Assembly**



Probation Violation Guidelines for Technical Violations

Compliance by Fiscal Year

FY2005 – FY2016



Note: Analysis includes only cases in which the probationer was found in violation and the probation officer indicated the specific conditions violated. Analysis excludes cases with scoring errors.

Senate Finance Committee Survey (2014)

SENATE OF VIRGINIA

Senate Finance Committee

Parole Abolition and Sentencing Reform: A 20-Year Retrospective

Dick Hickman, Deputy Staff Director
Senate Finance Committee
April 13, 2015



Surveys of Key Stakeholders

- SFC staff conducted a series of surveys in September 2014 to determine the opinions of key stakeholders as to the effectiveness of Virginia's sentencing guidelines:
 - **Circuit Court Judges:** 54 percent response rate (69 out of 128);
 - **Chief Probation Officers:** 93 percent response rate (40 out of 43);
 - **Commonwealth's Attorneys:** 58 percent response rate (70 out of 120);
 - **Chief Public Defenders:** 100 percent response rate (25 out of 25); and,
 - **Criminal Defense Attorneys:** 26 percent response rate (35 out of 135 surveys sent to all private criminal defense attorneys who had attended a sentencing commission guidelines training class in the last two years).
- The response rate was good, with the exception of the private defense attorneys. There is no reason to believe the results would be substantially different with a higher response rate.



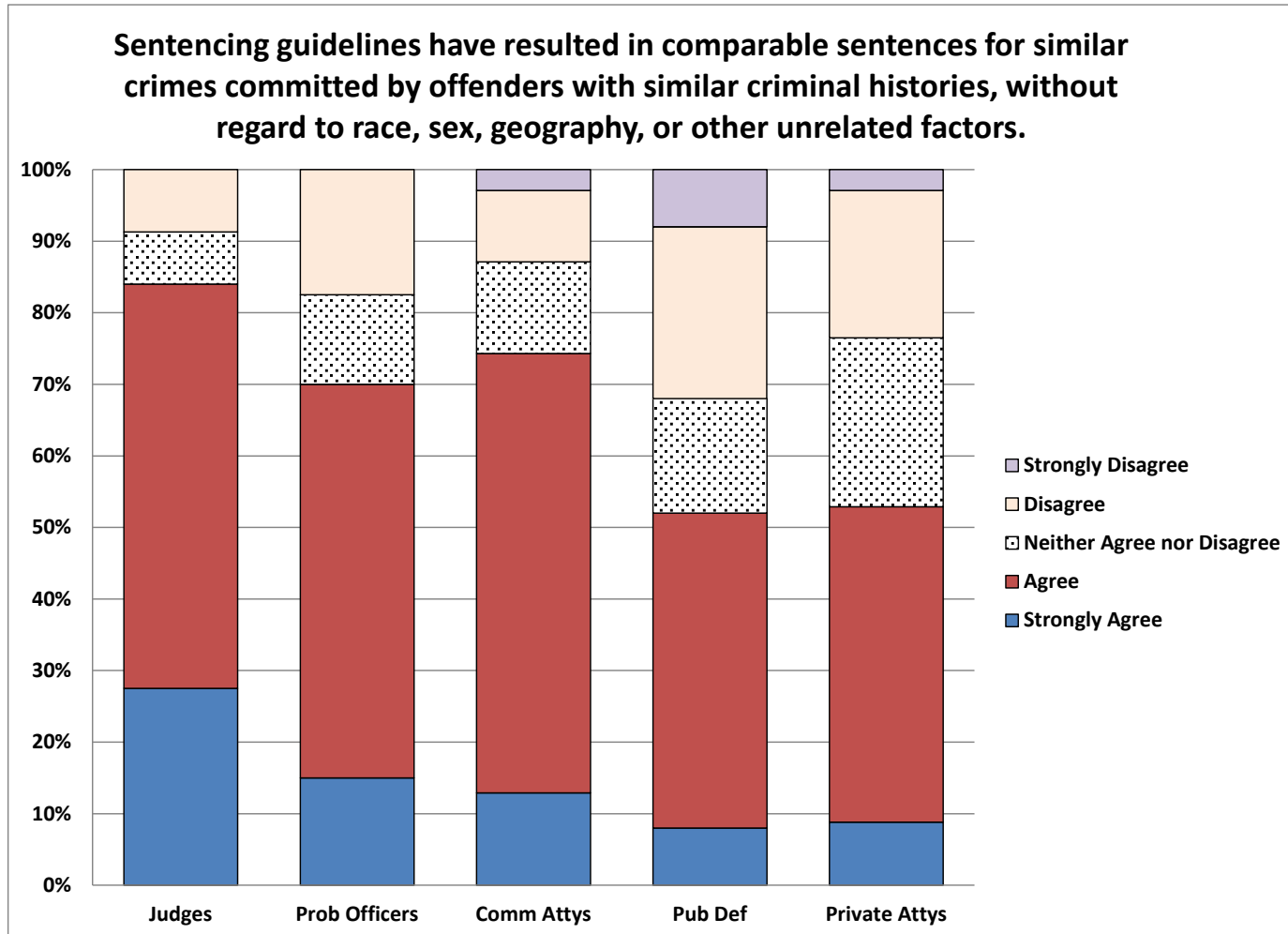
SENATE FINANCE COMMITTEE

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As part of its 20-year retrospective of Virginia's truth-in-sentencing system, the staff of the Senate Finance Committee conducted a series of surveys in September 2014 to determine the opinions of key stakeholders as to the effectiveness of Virginia's sentencing guidelines.

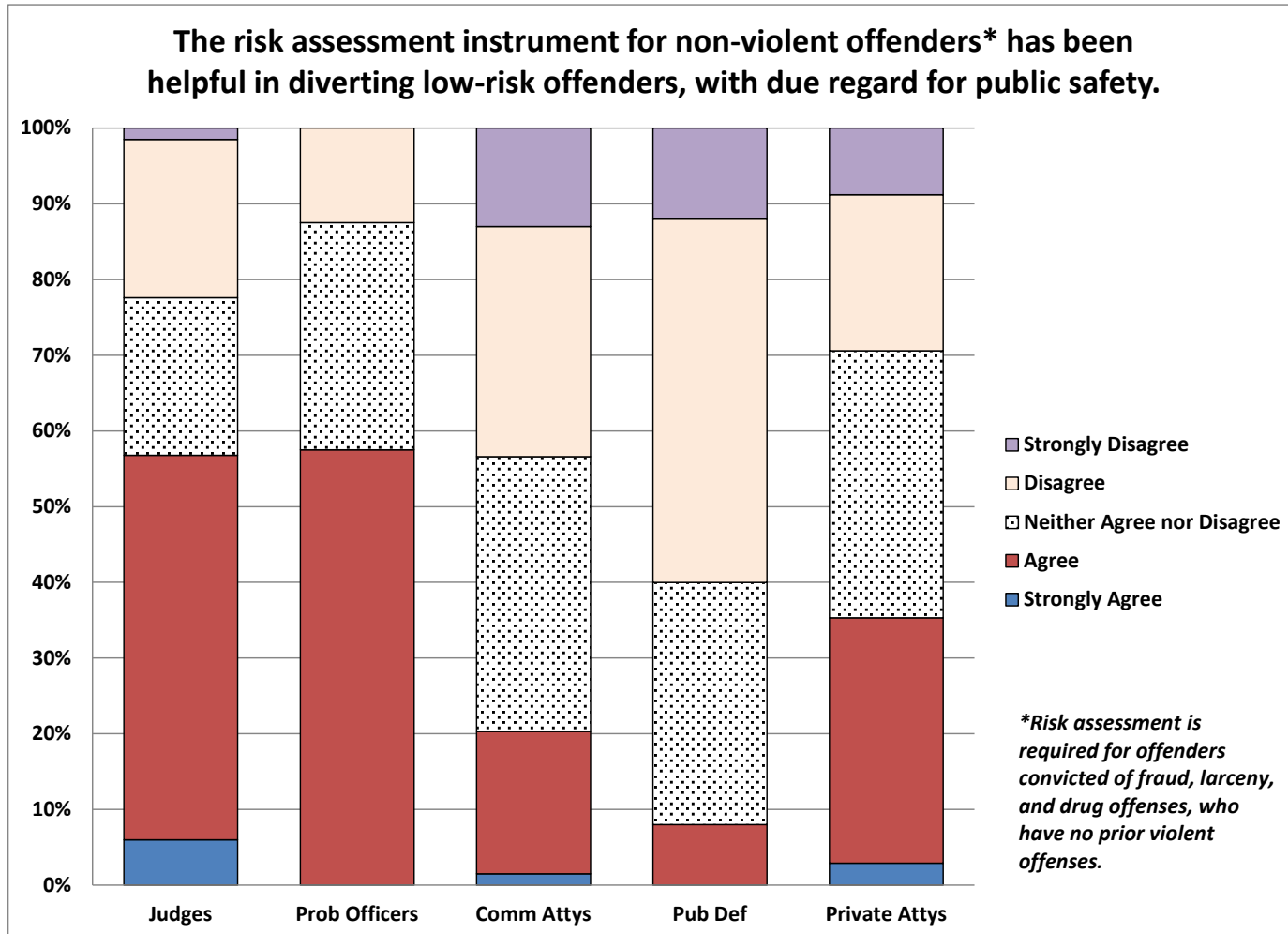
Source: Dick Hickman, Deputy Staff Director, Senate Finance Committee, presentation to the Virginia Criminal Sentencing Commission, 04/13/2015

Senate Finance Committee Survey (2014)



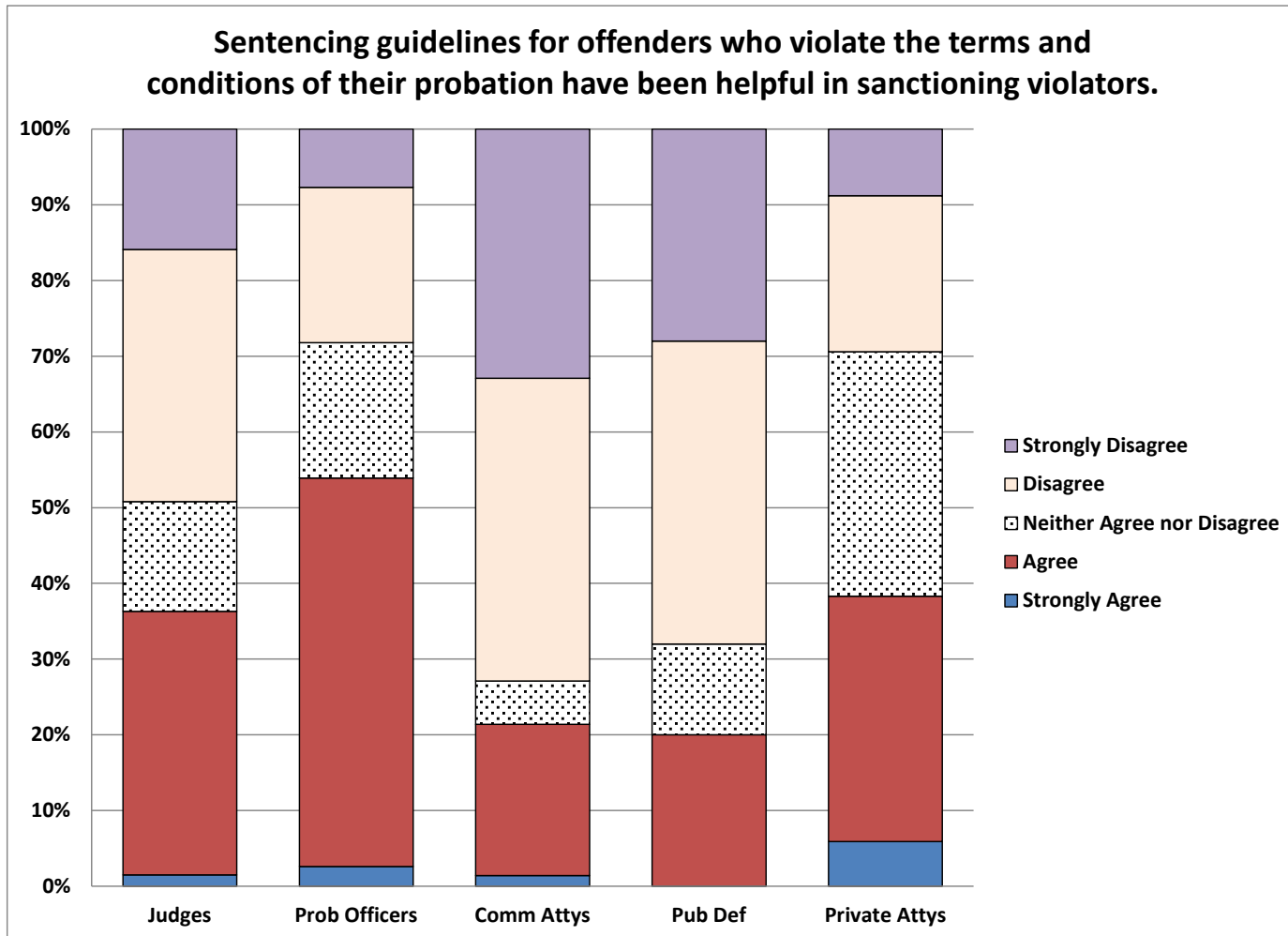
Source: Dick Hickman, Deputy Staff Director, Senate Finance Committee, presentation to the Virginia Criminal Sentencing Commission, 04/13/2015

Senate Finance Committee Survey (2014)



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Senate Finance Committee Survey (2014)



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Senate Finance Committee Survey (2014)

Judge Comments Regarding Probation Violation Guidelines

#	Comments:
1	I would say that at least half of the time, they're entirely counter-intuitive. For example, if I remember correctly, they seem to recommend more punishment for violations occurring early in probation, rather than late. I expect certain defendant's to have trouble at first, particularly if there are substance abuse issues. I am more concerned about the defendant who tested positive after two years of probation than I am after two weeks
2	The most common violation is a new conviction; in which case the guidelines don't apply.
3	Guidelines are not applicable when the underlying violation is based on any new conviction. As many violations have underlying new convictions, it would be helpful to have the guidelines apply in that instance.
4	Most probation violations that this court deals with involves multiple reasons for violation, which generally includes a new conviction. With a new conviction, guidelines do not apply so there is never a sentencing range for those offenses.
5	In my opinion these guidelines are very low and somewhat encourage recidivism because the guidelines direct the Court in most cases to sentence an individual many times over a long period of time, revoking small portions of their suspended sentences. Probationers understand this fact, in my opinion, and fail to take seriously the consequences of violating probation.
6	I find probation guidelines to be problematic and in need of additional fine tuning from the Guideline Commission
7	They are helpful , but at times are lower than the original sentencing guidelines .
8	The guidelines too often recommend lengthy sentences for technical violations by drug users.
9	I have generally found these to be unhelpful, unlike the guidelines in sentencing, and I frequently do not follow them. They have no guidelines where there is a new offense, and they do not seem to address the issues present in other types of violations. If I were to make one single recommendation to the Sentencing Commission, it would be to completely overhaul these guidelines.
10	Sentencing for a probation violation is much more diverse as the sentence depends on the nature of the case and defendant's particular background.

Senate Finance Committee Survey (2014)

Judge Comments Regarding Probation Violation Guidelines

11	There is no way to make this uniform.
12	The revocation guidelines are almost of no value in imposing sanctions for violations. They are ridiculously lenient, and simply don't reflect any necessity of vindicating the authority of the court.
13	I don't feel as comfortable with these guidelines. No real consideration for multiple violators. No guidance when convicted of new crimes.
14	These are not nearly as reliable or helpful as the sentencing guidelines on conviction.
15	Sometimes they do not make sense. The probation violation guidelines, albiet voluntary, are at variance with court orders which clearly state a defendant will be of good behavior and comply with probation rules. While the guidelines do not apply to new violations of the law, they seem to minimize the rule of law in the court order. In other words, if someone has three years good behavior and probation and they continue to use drugs, the guidelines frequently say something like a three month active jail sentence would be appropriate instead of the full three years.
16	It is only used for Class #1 offenders (criminal offences as a violation) and sometimes seems hard to fathom. I will say thought it has gotten much better since it was first instituted.
17	There is a curious anomaly in those guidelines. If the probationer has a subsequent conviction (e.g., reckless driving), the guidelines do not apply. If not, they do. I have had probationers with a subsequent conviction be treated more lightly than those without because of the impact of the guidelines. I am not saying they cannot be helpful, but they are flawed.
18	Guidelines for individuals who violate probation are invariably so low or so high as to be worthless.
19	It makes no sense to me for a probationer to have violated probation and the PO to have attempted sanctions and/or treatment and to have guidelines recomend probation no incarceration
20	Unlike the other guidelines which are excellent, the guidelines for offenders who violate the terms & conditions of their probation are almost useless.
21	not applicable with new violations of law and for "technical " violations the sanction is often probation it seems. This means any predisposition incarceration is the only sanction if followed

Considerations for Revision of Probation Violation Guidelines

- **Although past amendments to the probation violation guidelines have increased compliance, the compliance rate remains relatively low.**
- **Multiple criminal justice practitioners have requested that the Commission revise the guidelines associated with probation violations, including:**
 - **Modifying existing factors,**
 - **Accounting for additional factors beyond those currently covered, and**
 - **Expanding probation violation guidelines to cover “New Law” (Condition 1) violators.**



Considerations for Revision of the Probation Violation Guidelines

- **In addition, the Commission has received feedback from judges regarding an issue of proportionality.**
 - **In some instances, the probation violation guidelines recommend a relatively lengthy sentence for a technical violation, while a probation violation handled alongside a new felony conviction often does not increase the sentencing guidelines recommendation significantly.**
 - **If a probation violation is handled separately from the new conviction, no guidelines apply.**



Challenges for Revision of the Probation Violation Guidelines

- **The Commission is not receiving SRRs and PVGs for all of the revocation hearings handled in circuit court.**
- **Sanctioning practices for probation violations continue to vary substantially.**
- **The Commission has received requests to add factors to the probation violation guidelines that are not currently recorded on those forms.**
- **The Department of Corrections frequently adapts its policies and is currently introducing a new tool for probation officers that is expected to change the way officers handle violation behaviors.**



Virginia Department of Corrections Administrative Response Matrix (ARM)

- **The Department of Corrections (DOC) has received a federal grant to pilot test a new tool developed in District #9 (Charlottesville area) to guide probation officers in selecting specific incentives and sanctions when responding to supervision events.**
 - **Administrative Response Matrix (ARM)**
- **According to DOC, the tool incorporates a risk/needs assessment of the offender and the assigned severity of the violation in determining responses to technical violations.**

Virginia Department of Corrections Administrative Response Matrix (ARM)

- **According to DOC, use of the ARM is expected to increase consistency in officer responses, reduce the number of violations heard in court, and produce cost savings in jail and prison beds used for technical violators.**
- **Pilot testing officially will begin in early 2018 and testing will continue into 2021.**

Virginia Department of Corrections Administrative Response Matrix (ARM)

ARM Pilot Sites

Caseload Size	Eastern	Central	Western
Small	Emporia (District #38)	Farmville (District #24)	Rocky Mount (District #37)
Medium	Suffolk (District #6)	Charlottesville (District #9) Henrico (District #32)	Norton (District #18)
High	Norfolk (District #2)	Fairfax (District #29)	Radford (District #28)

Implications of ARM Pilot Project for the Probation Violation Guidelines

- **Through use of the ARM, the population of probation violators returned to court in the pilot sites may have different characteristics in the future.**
 - **If so, judicial sanctioning practices may appear different.**
 - **Revising probation violation guidelines based on historical data may not reflect judicial practices going forward.**

DOC's Community Corrections Alternative Program (CCAP) through Detention and Diversion Centers

- **DOC is making substantial changes to its Detention and Diversion Center Programs**
- **According to DOC, the changes bring the programs in line with current evidence-based practices.**
- **The goal is to provide enhanced, individualized services for offenders on probation and better meet the needs of the sentencing courts.**
- **Offenders assessed to have moderate treatment needs must complete a minimum of 200 core treatment hours for successful program completion (approx. 22 - 28 weeks).**
- **Offenders assessed to have high treatment needs must complete a minimum of 300 treatment hours for successful program completion (approx. 42 - 48 weeks).**

Implications of CCAP for the Probation Violation Guidelines

- **Currently, there are factors on the probation violation guidelines relating to offenders who fail to complete Detention and/or Diversion Center Programs after being ordered by the court to do so.**
- **These factors will not be scored for offenders who fail to complete CCAP.**
 - **According to DOC, the population of offenders participating in CCAP will be different than those who have traditionally participated in Detention/Diversion Centers.**

Input from Commission Members

- **Staff is seeking input from Commission members to guide and shape:**
 - **Judge survey;**
 - **Data collection; and**
 - **Data analysis.**



Factors That May Affect Sentencing for Probation Violations

Probationer

- Number of Violations
- Type of Violation(s)
- Relationship btwn. Type of Viol. & Other Factors
- Responses to Interventions
- Length Between Violations
- Risk of Recidivating (Actuarial & Clinical)
- Treatment Needs
- Type of Original Offense
- Prior Record (Including # of Prior Revocations)
- Pending Violation(s) in Other Courts
- Attitude

Probation Officer/DOC Policy

- Type of Interventions Attempted
- Number of Interventions Attempted
- When Probationer Returned to Court
- What Information Reported to Court

Prior Judicial Action

- Type of Prior Sentences
- Length of Prior Sentences
- Amount of Suspended Time
- Amount of Revocable Time



Other Factors

- Local Resources
- Treatment Options
- Treatment Availability/Beds
- Judicial Philosophy
- Procedural Differences
- Sentencing/Probation Violation Guidelines

Questions

- **Should the Commission opt for a point-forward data collection process?**
- **How does the Commission collect data on factors that judges deem important when sanctioning a violation?**
 - **Survey to get judicial input regarding important factors?**
 - **What data sources will contain the information?**
- **Should the Commission recommend a change to the sentencing guidelines to discontinue scoring probation violations as additional offenses?**



Questions

- **Should the Commission consider three categories of violations that come before a court?**
 - **Technical, new conviction, new arrest with court case pending**

- **Would judges be open to other formats for the probation violation guidelines (e.g., matrix/grid)?**

