



VIRGINIA CRIMINAL SENTENCING COMMISSION



Probation Violation Guidelines Judicial Survey Results

November 7, 2018

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.



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 40 of Chapter 2
(Appropriation Act) adopted by
the 2018 General Assembly,
Special Session I**



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 1 - 2	7
Events: 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 1 - 2	4
Events: 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.

New Study Approved

- **Although past amendments to the probation violation guidelines have increased compliance, the compliance rate remains relatively low (58% in FY2018).**
- **In 2016, the Commission approved a new study that will provide the foundation needed to revise the guidelines used in revocation cases.**
- **The goal is to improve the utility of the probation violation guidelines for Virginia's judges.**



Judicial Survey

As part of the study, the Commission approved a survey to seek input and guidance from circuit court judges.

Survey content was approved in November 2017.



Probation Violation Guidelines Judicial Survey

In 2003, the General Assembly directed the Sentencing Commission to develop discretionary sentencing guidelines for felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (i.e., technical violators). The General Assembly's mandate specified that violation guidelines were to be based on an examination of historical judicial sanctioning patterns in revocation hearings. Pursuant to the 2003 directive, the Commission examined sanctioning practices for violations of community supervision not involving a new conviction. Using the results of this empirical study, the Commission developed historically-based sentencing guidelines applicable to these offenders. These guidelines took effect on July 1, 2004, and were refined in 2007.

Judicial concurrence with the supervised probation violation guidelines has remained significantly lower than the overall compliance rate with the sentencing guidelines for felony offenses. The Commission recently approved a new study of probation violations that will provide the foundation needed to revise the guidelines used in revocation cases. To do this, the Commission is seeking input and guidance from circuit court judges through a survey. Responding to the survey will provide the Commission with valuable information to improve the utility of the guidelines for Virginia's judges.

The survey does not include any identifying information and responses to the survey will be completely anonymous.

To complete the online survey, click on the link below. You will also receive a paper version of the survey in the mail should you prefer to take the survey on paper.

While the online survey allows you to skip questions, having more information will better assist the Commission in revising the probation violation guidelines.

"OK" buttons will appear following some of the survey questions. Simply click the "OK" button when you are ready to proceed to the next question. Click "NEXT" when you are ready to proceed to the next page of the survey.

Completion of the survey should take less than 30 minutes. You may complete a portion of the survey and return later to finish the rest. Responses are saved when a respondent clicks the "NEXT" button on each page of the survey (i.e., responses are not saved as each question is answered but rather as each page is completed). To return to the survey, click the link below again and it will return you to the page of the survey where you left off.

The Commission looks forward to receiving your input by **Friday, October 5, 2018**. Your assistance is greatly appreciated.

To proceed to the survey, please click on the link below:

https://www.surveymonkey.com/r/VCSC_PVG

Judicial Survey Responses

- **The survey was sent to all 165 active circuit court judges on September 14.**
 - **Reminder was sent on on October 2.**
- **Judges had the option of taking the survey online through Survey Monkey or on paper.**
- **Overall, 148 judges responded to the survey.**
 - **Response rate was 89.7%.**
 - **102 surveys were completed online and 46 surveys were completed on paper.**
 - **Average completion time for the online survey was between 23 and 24 minutes.**
 - **Average completion rate was 91%.**

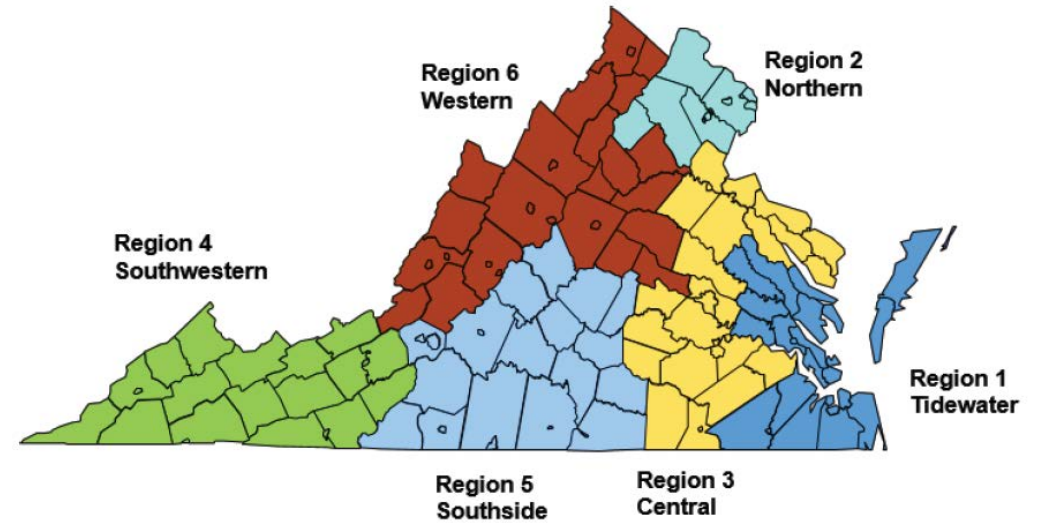
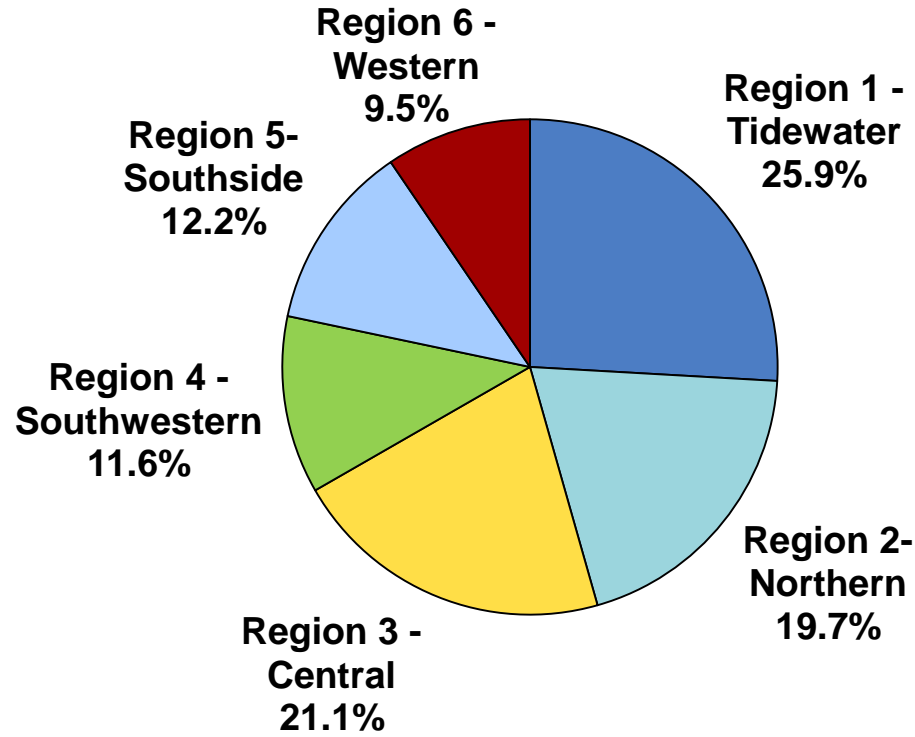




Judicial Survey Results

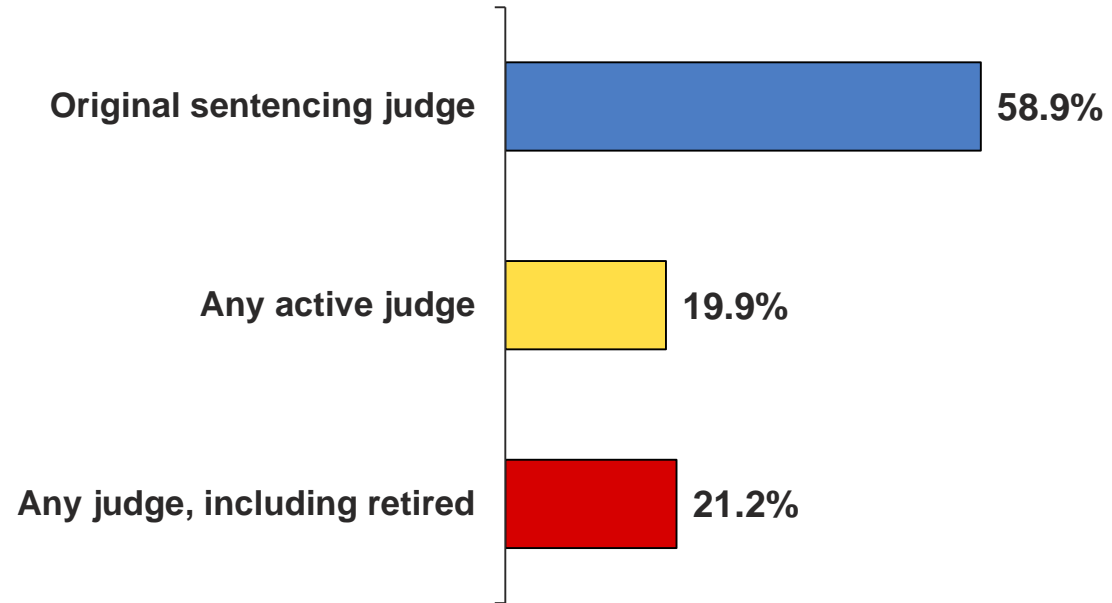
Q1: In which region do you sit most often?

Answered: 147 Skipped: 1



Q2: In the jurisdiction in which you sit most often, is a probation violation usually handled by the original sentencing judge or is a probation violation usually handled by any judge in the jurisdiction?

Answered: 146 Skipped: 2



Q3: In the jurisdiction in which you sit most often, if a probation officer initiates supervised probation revocation proceedings for a Condition 1 (new law) violation, at what point do you usually hold the hearing for the alleged violation?

Answered: 147 Skipped: 1

	Percent
When the offender has been arrested, but not convicted, of the new charge(s)	4.1%
After the offender has been convicted of the new charge(s)	81.0%
It varies depending on: (please describe)	15.0%



Q3: In the jurisdiction in which you sit most often, if a probation officer initiates supervised probation revocation proceedings for a Condition 1 (new law) violation, at what point do you usually hold the hearing for the alleged violation?

[It varies depending on: \(please describe\)](#)

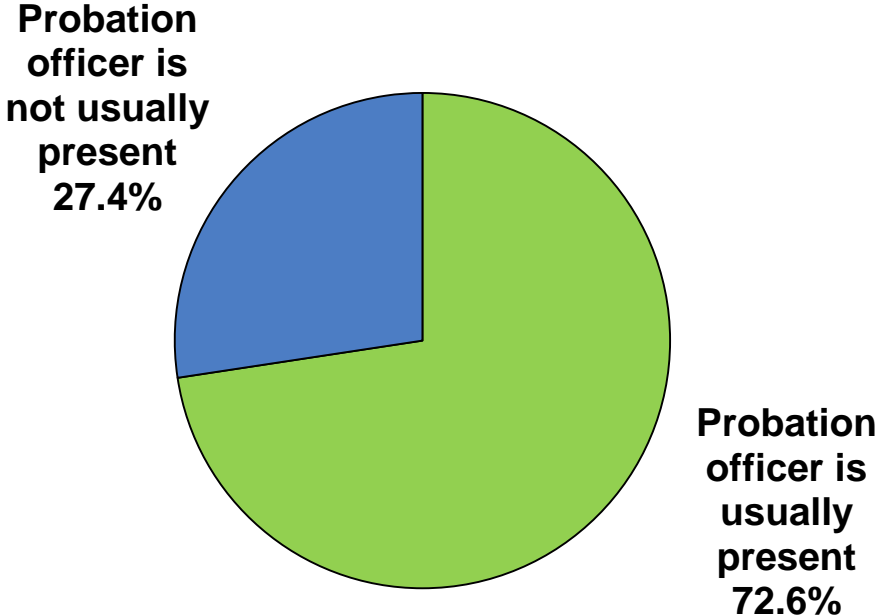
22 RESPONSES

- **Often the parties will present an agreed disposition on the probation violation charge, for the Court's consideration, even if the Condition 1 (new law) violation charge is still pending for trial. If no such agreement has been reached, often the probation violation case is continued until after the new charge's trial date is scheduled.**
- **The number, nature and seriousness of the new charge or charges. However, generally, the Court will await final adjudication of the probation violation until the new charge or charges have been resolved.**
- **If new charge is in my court, I sentence at the same time as the conviction for the new charge. If it is in another jurisdiction, I just treat it as a charge and handle the revocation most times, unless the new conviction is going to be heard in the very near future and there is a request to hold the probation violation.**
- **Whether there are additional violations that can be addressed separately or if the Commonwealth can present testimony and other competent evidence of the crime charged and chooses to do so.**
- **If defense counsel loves to continue until sentencing of new charge, we usually grant the continence.**

**SELECTED
RESPONSES SHOWN**

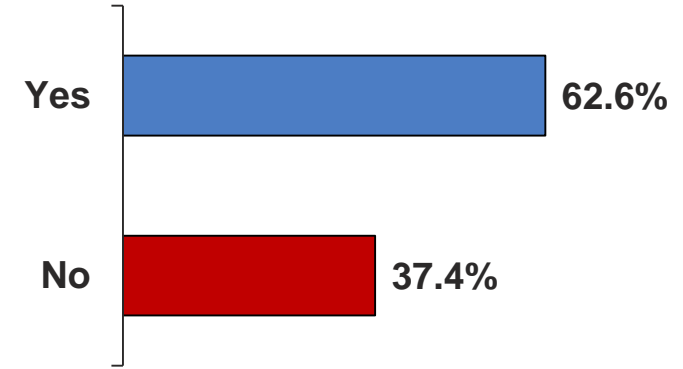
Q4: In the jurisdiction in which you sit most often, are probation officers routinely present during violation hearings when the original offense was a felony?

Answered: 146 Skipped: 2



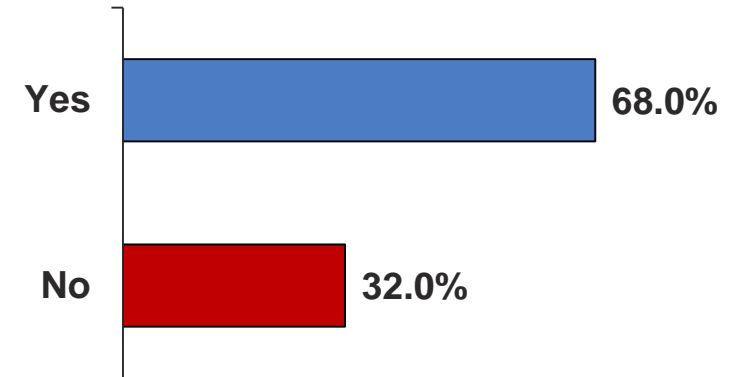
Q5: Does the jurisdiction in which you sit most often have a Public Defender Office?

Answered: 147 Skipped: 1



Q6: Does the jurisdiction in which you sit most often have a Drug Court program?

Answered: 147 Skipped: 1



**Q7: What sources of information do you routinely use when determining what the punishment will be for a supervised probation violation?
(Please check all that apply)**

Answered: 145 Skipped: 3

Answer Choices	Percent
Major Violation Report prepared by the Probation Officer	99.3%
Testimony from the probationer	89.7%
Probation Violation Guidelines (for “technical” violators only)	88.3%
Previous court records	73.1%
Testimony from the Probation Officer	62.1%
Testimony from other parties	46.9%
COMPAS risk/needs assessment results	21.4%
Other (please specify)	17.2%



**Q7: What sources of information do you routinely use when determining what the punishment will be for a supervised probation violation?
(Please check all that apply)**

Other (please specify)

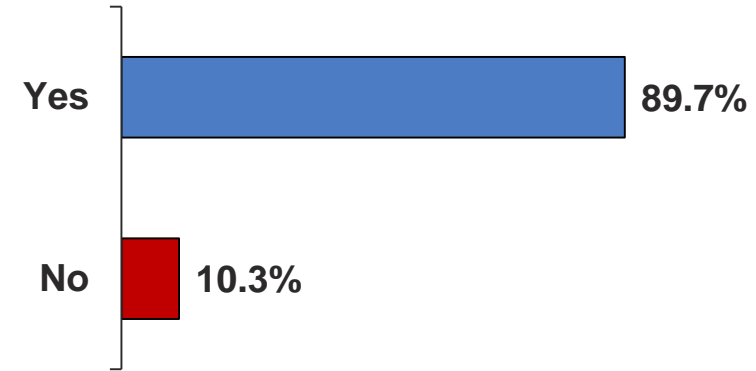
25 RESPONSES

- **History of case/prior violations (7)**
- **Information and/or recommendations from attorneys (6)**
- **Mental health or substance abuse issues and availability of alternative programs to address them (5)**
- **Reports from probation officers, substance abuse programs, etc. (5)**
- **Other (2)**



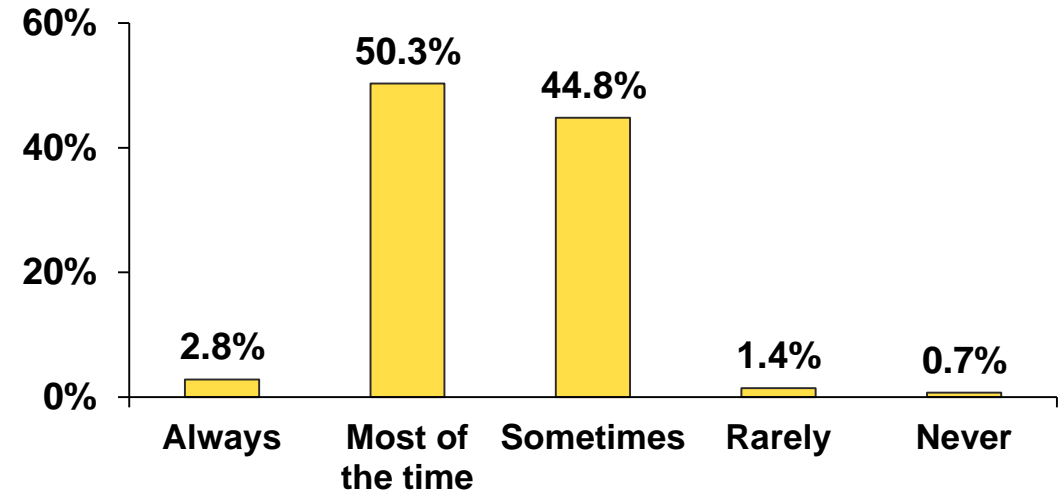
Q8: While the underlying sentence cannot be increased, if a probationer is brought back to court multiple times for violations stemming from the same original offense, do you typically increase the punishment for a violation at each successive revocation?

Answered: 145 Skipped: 3



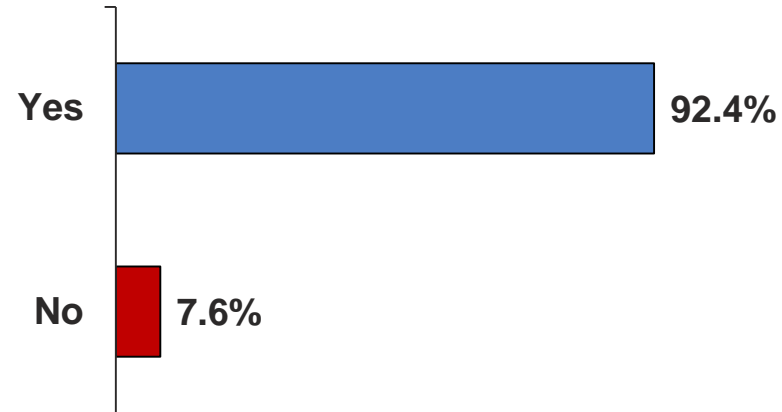
Q9: For offenders found in violation of supervised probation, do you believe that the sanction should include at least one day in jail?

Answered: 145 Skipped: 3



Q10: Are there circumstances in which you might not order a probation violator to serve any pre/post-jail time related to the revocation?

Answered: 145 Skipped: 3



If YES please describe such circumstances:

116 RESPONSES

- Technical/minor violation, doing well otherwise (41)
- Defendant has substance abuse and/or mental health issues, alternative sanctions are more appropriate (25)
- Depends on the circumstances of the case (17)
- Has made or is making a serious effort at rehabilitation (15)
- Other (9)



Q11: When sentencing supervised probation violators, how do you typically structure the sentence?

Answered: 145 Skipped: 3

Answer Choices	Percent
Reimpose all/some of the revocable time then re-suspend all/some of the time and specify terms and conditions of supervised probation	37.9%
Impose a term for the violator to serve and continue on supervised probation (either the same terms and conditions previously imposed or with added conditions)	10.3%
Both of the above, depending on the circumstances	46.3%
Other (please specify)	3.4%



Q11: When sentencing supervised probation violators, how do you typically structure the sentence?

Other (please specify)

5 RESPONSES

- And perhaps increase the level of supervision, order treatment (if not already in place) or a behavior modification class to address conduct.
- Revoke the amount of time he should have received in the beginning (what a jury would have done) and take him off probation "see you next crime."
- Re-impose all time, re-suspend some of time and place on supervised probation with conditions previously imposed or with added conditions.
- All of the above but it's also not uncommon to impose a sentence and terminate probation as well.
- Generally revoke significant portion of time and terminate probation



**Q12: Under what circumstances might you release an individual with one or more previous violations from probation supervision prior to the end of the supervision term set forth at the original sentencing hearing?
(Please check all that apply)**

Answered: 145 Skipped: 3

Answer Choices	Percent
Individual has had sufficient period of compliance	74.5%
Individual successfully completed program/treatment	69.7%
Individual has a new conviction for which he will receive more incarceration time that what he could receive for the violation	38.6%
Individual has a new felony conviction for which he will be supervised	42.8%
Individual is no longer a risk to public safety (e.g., health issues, age)	67.6%
Individual is not amenable to supervision	75.9%
Other (please describe)	18.6%



**Q12: Under what circumstances might you release an individual with one or more previous violations from probation supervision prior to the end of the supervision term set forth at the original sentencing hearing?
(Please check all that apply)**

Other (please describe)

27 RESPONSES

- Recommendation of probation officer and/or Commonwealth's Attorney (10)
- Other (6)
- Individual needs to relocate out-of-state (i.e., for job opportunity) (4)
- Individual not amenable to supervision (3)
- New convictions (2)
- Has no revocable time remaining on sentence (2)



Q13: When sentencing individuals for violations of supervised probation, please indicate the importance of each of the following factors in your sentencing decision. Use the scale shown below, where 1 means “not at all important” and 5 means “extremely important.” Mark the number that best fits your opinion. Mark “N/A” if a factor is not applicable or is not typically an issue in your jurisdiction.



Factors related to the original offense and original sentencing hearing

Answered: 146 Skipped: 2

	NOT AT ALL IMPORTANT 1	2	SOMEWHAT IMPORTANT 3	4	EXTREMELY IMPORTANT 5	N/A	TOTAL	WEIGHTED AVERAGE
Type of original felony offense for which the individual is on probation	0.0%	0.0%	9.6%	35.6%	54.6%	0.0%	146	4.45
Original sentence ordered by the court	2.7%	2.1%	26.7%	39.7%	28.8%	0.0%	146	3.90
Sentencing guidelines recommendation for original offense	7.5%	21.2%	31.5%	26.0%	11.6%	2.1%	146	3.13

Q14: When sentencing individuals for violations of supervised probation, please indicate the importance of each of the following factors in your sentencing decision.



Factors related to violation behaviors generally

	NOT AT ALL IMPORTANT 1	2	SOMEWHAT IMPORTANT 3	4	EXTREMELY IMPORTANT 5	N/A	TOTAL	WEIGHTED AVERAGE
Violation of sex offender restrictions ordered by the court (excluding registry provisions)	0.0%	0.7%	3.4%	22.6%	70.6%	2.7%	146	4.68
Violation of sex offender restrictions ordered by the probation officer	0.0%	1.4%	3.4%	23.3%	70.6%	1.4%	146	4.65
Violation behavior that is similar to underlying offense (alcohol, driving)	0.0%	0.0%	2.1%	38.4%	58.9%	0.7%	146	4.57
Probationer has made positive progress in treatment/program	0.0%	1.4%	3.4%	33.6%	61.0%	0.7%	146	4.55
Probationer never reported to a program ordered by the court	0.0%	0.0%	7.5%	30.8%	61.6%	0.0%	146	4.54

Q14:
continued



**Factors
related to
violation
behaviors
generally**

	NOT AT ALL IMPORTANT 1	2	SOMEWHAT IMPORTANT 3	4	EXTREMELY IMPORTANT 5	N/A	TOTAL	WEIGHTED AVERAGE
Probationer never reported to a program as instructed by probation officer	0.0%	0.7%	8.2%	31.5%	58.9%	0.7%	146	4.50
Number of repeated violations of the same type	0.0%	0.7%	6.9%	35.2%	55.9%	1.4%	145	4.48
Total number of revocations stemming from this felony offense	0.0%	0.7%	8.2%	38.4%	52.1%	0.7%	146	4.43
Number of violations during the current sup. period (since last revoc.)	0.0%	0.7%	13.0%	39.7%	45.9%	0.7%	146	4.32
Absconded and left region (since last revocation)	1.4%	2.1%	13.7%	31.5%	50.0%	1.4%	146	4.28
Length of time absconded (since last revocation)	0.7%	4.8%	8.2%	42.5%	43.8%	0.0%	146	4.24
Unsuccessful discharge from a residential program for non-medical reasons (e.g., detention center)	0.7%	1.4%	13.0%	48.0%	36.3%	0.7%	146	4.19
Actions taken by probation officer to address violations prior to hearing	0.0%	4.8%	24.7%	39.7%	30.8%	0.0%	146	3.97

Q14:
continued



**Factors
related to
violation
behaviors
generally**

	NOT AT ALL IMPORTANT 1	2	SOMEWHAT IMPORTANT 3	4	EXTREMELY IMPORTANT 5	N/A	TOTAL	WEIGHTED AVERAGE
Number of positive drug tests/admissions of use	0.0%	4.1%	25.5%	41.4%	29.0%	0.0%	145	3.95
Length of time between the last violation hearing and commission of new violation(s)	0.0%	5.5%	24.0%	46.6%	23.3%	0.7%	146	3.88
Number of different conditions violated	2.1%	6.9%	29.2%	36.1%	25.0%	0.7%	144	3.76
Months until the first noncompliance incident	0.7%	10.3%	27.6%	44.1%	15.9%	1.4%	145	3.65
Probationer admitted to violations/substance use	0.7%	6.9%	38.4%	36.3%	17.8%	0.0%	146	3.64
Absconded but did not incur any new arrests (since last revocation)	2.1%	11.7%	25.5%	42.8%	17.9%	0.0%	145	3.63
Absconded but stayed in area (since last revoc.)	6.2%	9.6%	27.4%	39.0%	17.8%	0.0%	146	3.53
Failure to pay restitution	0.7%	19.9%	39.0%	28.8%	11.6%	0.0%	146	3.31
Failure to pay fines/costs	22.9%	46.5%	22.9%	7.6%	0.0%	0.0%	144	2.15

Q15: When sentencing individuals for violations of supervised probation, please indicate the importance of each of the following factors in your sentencing decision.



Factors related to substance use

	NOT AT ALL IMPORTANT 1	2	SOMEWHAT IMPORTANT 3	4	EXTREMELY IMPORTANT 5	N/A	TOTAL	WEIGHTED AVERAGE
Number of positive tests/admiss. for heroin	0.0%	1.4%	15.9%	40.7%	42.1%	0.0%	145	4.23
Number of positive tests/admiss. for meth	0.0%	2.1%	17.9%	39.3%	40.0%	0.7%	145	4.18
Probationer has an addiction - drugs or alcohol	0.0%	3.5%	16.6%	44.1%	35.9%	0.0%	145	4.12
Actively engaged in treatment at time of viol.	0.7%	2.8%	16.6%	44.8%	34.5%	0.7%	145	4.10
Number of positive tests/admiss. for cocaine	0.0%	2.1%	20.0%	46.9%	31.0%	0.0%	145	4.07
Number of positive tests/admissions for prescription opioids	0.0%	4.8%	18.6%	42.1%	34.5%	0.0%	145	4.06
Probationer has a substance use history prior to the offense for which he/she is on probation	1.4%	4.8%	26.2%	44.1%	23.5%	0.0%	145	3.83
Number of positive tests/admiss. for marijuana	1.4%	26.2%	38.6%	25.5%	8.3%	0.0%	145	3.13

Q16: When sentencing individuals for violations of supervised probation, please indicate the importance of each of the following factors in your sentencing decision.



Factors related to new offense behavior

	NOT AT ALL IMPORTANT 1	2	SOMEWHAT IMPORTANT 3	4	EXTREMELY IMPORTANT 5	N/A	TOTAL	WEIGHTED AVERAGE
New felony conviction	0.0%	0.0%	3.5%	19.3%	77.2%	0.0%	145	4.74
New arrest is the same type as the original felony (e.g., property, violent, etc.)	0.7%	2.1%	6.9%	27.6%	62.8%	0.0%	145	4.50
New felony arrest	8.3%	12.4%	15.2%	28.3%	33.8%	2.1%	145	3.68
New misdemeanor conviction	0.7%	11.7%	37.9%	39.3%	10.3%	0.0%	145	3.47
New misdemeanor arrest	12.4%	18.6%	43.5%	22.1%	1.4%	2.1%	145	2.81

Q17: When sentencing individuals for violations of supervised probation, please indicate the importance of each of the following factors in your sentencing decision.



Factors related to prior record

	NOT AT ALL IMPORTANT 1	2	SOMEWHAT IMPORTANT 3	4	EXTREMELY IMPORTANT 5	N/A	TOTAL	WEIGHTED AVERAGE
Number of prior probation revocations in adult record	0.0%	3.5%	11.7%	42.1%	42.1%	0.7%	145	4.24
Number of prior felony conv. in criminal record	0.7%	2.8%	15.9%	37.9%	42.1%	0.7%	145	4.19
Length of criminal record (time period over which criminal record spans)	0.7%	5.6%	13.9%	38.9%	40.3%	0.7%	144	4.13
Number of opportunities for rehab. not successfully completed (lifetime)	0.7%	4.1%	13.8%	44.1%	36.6%	0.7%	145	4.13
Number of prior state-responsible prison sentences served (1 yr.+)	0.7%	6.2%	23.5%	43.5%	25.5%	0.7%	145	3.88
Number of prior local-responsible jail sentences served (1 day-12 mos.)	2.1%	20.0%	35.9%	33.1%	8.3%	0.7%	145	3.26
Number of prior misd. conv. in criminal record	2.8%	20.7%	49.0%	22.8%	4.8%	0.0%	145	3.06
Juvenile record of delinquency	7.6%	33.8%	37.9%	17.9%	2.8%	0.0%	145	2.74

Q18: When sentencing individuals for violations of supervised probation, please indicate the importance of each of the following factors in your sentencing decision.



Factors related to probationer characteristics, behavior, family and peers

	NOT AT ALL IMPORTANT 1	2	SOMEWHAT IMPORTANT 3	4	EXTREMELY IMPORTANT 5	N/A	TOTAL	WEIGHTED AVERAGE
Gang member or activity	0.0%	2.8%	8.4%	35.0%	51.1%	2.8%	143	4.38
Offender’s positive behaviors (e.g., attending Tx, NA/AA mtgs., employed)	0.0%	2.8%	6.3%	44.8%	45.5%	0.7%	143	4.34
Employment status (emp. or working regularly?)	0.0%	1.4%	19.4%	40.3%	38.2%	0.7%	144	4.16
Probationer’s cooperativeness with PO	0.0%	2.8%	17.4%	42.4%	36.8%	0.7%	144	4.14
Positive support network (e.g., family, friends)	0.0%	5.6%	28.7%	39.9%	24.5%	1.4%	143	3.84
Stability of residence	2.1%	7.9%	30.7%	38.6%	20.7%	0.0%	140	3.68
Used disrespectful language toward PO/court	3.5%	7.6%	32.6%	33.3%	21.5%	1.4%	144	3.63
Anti-social peers	6.3%	15.3%	35.4%	25.7%	14.6%	2.8%	144	3.28
Age of probationer	2.1%	18.2%	45.5%	29.4%	3.5%	1.4%	143	3.14
Probationer has children to care for/support	8.3%	25.7%	41.0%	20.8%	4.2%	0.0%	144	2.87
Gender of probationer	78.3%	8.4%	7.0%	1.4%	0.7%	4.2%	143	1.31

Q19: When sentencing individuals for violations of supervised probation, please indicate the importance of each of the following factors in your sentencing decision.



Factors related to the violation hearing

	NOT AT ALL IMPORTANT 1	2	SOMEWHAT IMPORTANT 3	4	EXTREMELY IMPORTANT 5	N/A	TOTAL	WEIGHTED AVERAGE
Treatment/prog. resources available in juris.	0.7%	2.1%	18.3%	39.4%	38.0%	1.4%	142	4.14
Time served in jail pending viol. hearing (if any)	1.4%	10.6%	35.9%	38.7%	13.4%	0.0%	142	3.52
PV guidelines rec. (for a technical violation)	7.0%	9.8%	30.8%	35.7%	16.1%	0.7%	143	3.44
Probationer is serving/will serve time for new offense	4.2%	12.0%	35.9%	28.9%	16.9%	2.1%	142	3.43
Been revoked / violation pending in another court	4.2%	12.6%	32.9%	36.4%	12.6%	1.4%	143	3.41
Risk and/or needs assessment (e.g., DOC's COMPAS tool)	5.6%	13.4%	27.5%	28.9%	12.7%	12.0%	142	3.34
Amount of revocable time remaining	8.4%	12.6%	35.0%	28.7%	14.7%	0.7%	143	3.29
Recommendation of Commonwealth's attorney	2.1%	20.4%	42.3%	31.7%	3.5%	0.0%	142	3.14
Request of defense attorney	4.2%	23.9%	40.9%	29.6%	1.4%	0.0%	142	3.00

Q20: Please describe any other factors you consider when sanctioning probation violators that were not listed in the previous factor questions.

- **None/Not applicable (24)**
- **Offender issues (i.e., substance abuse, mental health issues, employment, family situation) (11)**
- **Defendant attitude/effort to comply with probation (9)**
- **Defendant criminal history (4)**
- **Information from probation officers/alternative sanction programs (4)**



Q21: When you determine the sentence for a supervised probation violation, what three factors are most important to you?

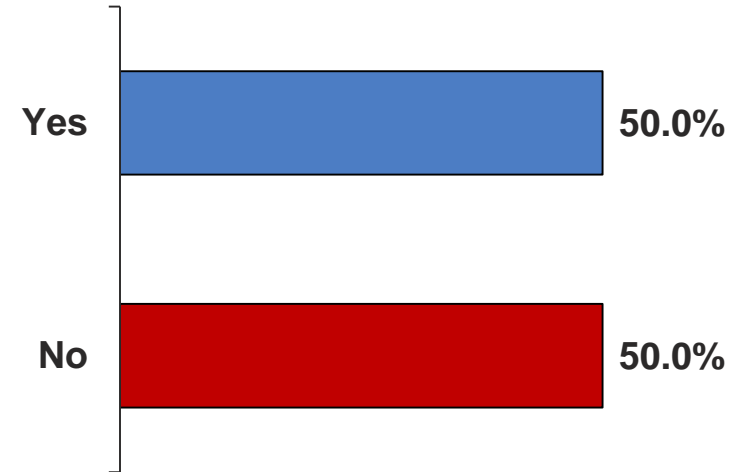
Answered: 128 Skipped: 20 Total responses 380

- 1. Nature of the violation (89)**
- 2. Offender circumstances (attitude, rehab potential, living situation, etc.) (76)**
- 3. Prior violations/revocations (63)**
- 4. Underlying offense (35)**
- 5. Other (32)**
- 6. New convictions (27)**
- 7. Drug use/availability of alternatives (26)**
- 8. Prior record (22)**
- 9. Guidelines (10)**



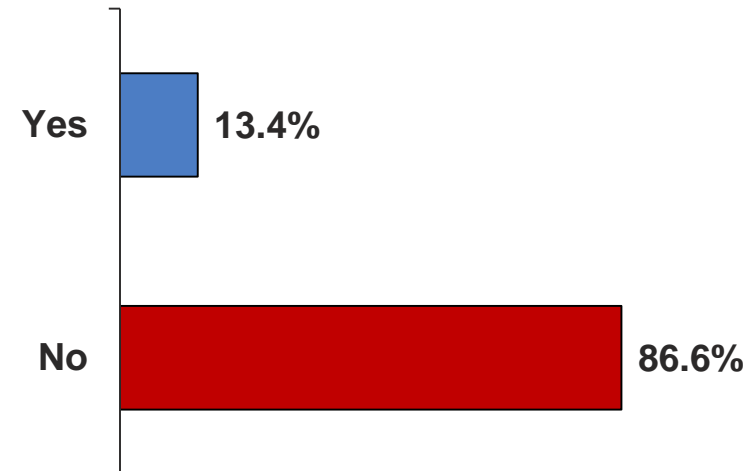
Q22: In the jurisdiction in which you sit most often, do you feel that sufficient and effective alternatives to incarceration are available for the court?

Answered: 142 Skipped: 6



Q23: Is there information you regularly ask from the probation officer or the probationer in court that is not in the Major Violation Report (MVR)?

Answered: 142 Skipped: 6



Q24: When sanctioning probation violators, in what way(s) does the amount of revocable time remaining affect your sentencing decision?

Answered: 121 Skipped: 27

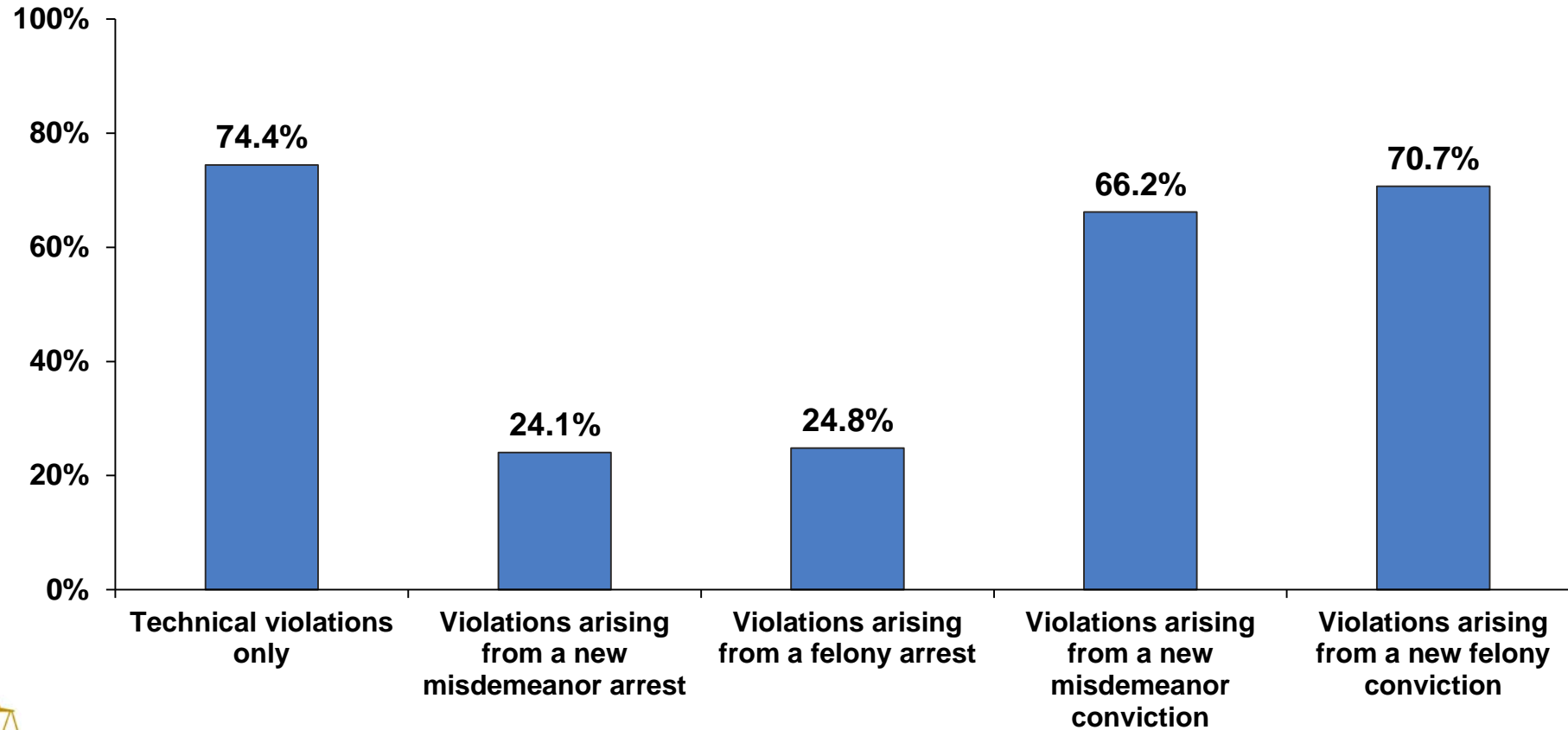
- 1. It has no or minimal effect on sentencing decision (53)**
 - a. The amount of revocable time is usually unreasonably high**
 - b. Decision is made based on the unique circumstances of each case**
- 2. It may have some effect on determining sentence in certain situations (29)**
- 3. The amount of revocable time indicates the severity of the crime/dictates the maximum time available to sentence (17)**
- 4. Will impose some and suspend the rest/the suspended time acts as a deterrent for future violations (11)**
- 5. It is a factor when considering whether therapeutic community and other programs are available for the defendant (4)**
- 6. Other (7)**



Q25: In your opinion, in what circumstances should the probation violation guidelines apply?

(Please check all that apply)

Answered: 133 Skipped: 15



Q26: What format would you prefer for probation violation guidelines?

Answered: 137 Skipped: 11

Option	Percent
No preference	46.7%
Worksheets listing factors to be scored (current format)	45.3%
Grid or matrix (e.g., a two-dimensional table taking into consideration fewer factors)	2.9%
Other (please specify)	5.1%



Other (please specify)

7 RESPONSES

- Grid and I'd like to know more about how the various factors are weighed.
- I would like to see what others judges do with new convictions.
- Worksheet now OK, but would be helpful if the sheets included the charts showing sentence recommendations on it because sheets are often altered depending on what violations are found.
- Have not given thoughtful consideration to the format prior to this survey.
- Figure out a way to lessen guideline when its only substance abuse related violations.
- I would prefer not to have them at all.
- I really don't see any need for them whatsoever. After handling criminal cases in one position or another for almost 35 years, I believe I have a pretty good idea what time is appropriate.



Q27: What do you think would make the probation violation guidelines more helpful?

Answered: 82 Skipped: 66

- 1. Nothing/no opinion (18)**
- 2. Other (16)**
- 3. Eliminate them/they are not helpful (12)**
- 4. Make them for all circumstances (include new convictions) (12)**
- 5. Add factors/provide additional information (9)**
- 6. Make scoring clearer/easier to understand (5)**
- 7. Eliminate “probation/no incarceration” recommendation (3)**
- 8. Eliminate “guidelines do not apply” situations (3)**
- 9. Guidelines recommendations are too high (2)**
- 10. Make them more similar to sentencing guidelines (2)**



Q28: Is there anything else you would like to communicate to the Sentencing Commission regarding probation violation guidelines?

Answered: 76 Skipped: 72

- 1. No/Not Applicable (38)**
- 2. Other (15)**
- 3. Usefulness of guidelines is limited (9)**
 - a. Violations occur for many different reasons that need to be assessed in each case**
- 4. Guidelines are helpful (3)**
- 5. Commission should look at availability of resources for treatment/other programs (3)**
- 6. Eliminate the probation violation guidelines (2)**
- 7. Guidelines are too high (2)**
- 8. After a certain number of violations, the guidelines should not apply (2)**
- 9. Probation/No Incarceration should not be an option (2)**





Take Aways

- **The Commission achieved a very high response rate and completion rate.**
- **The majority of responding judges felt that the guidelines should cover violations stemming from technical violations, as well as new felony and new misdemeanor convictions.**
- **In determining punishment for probation violations, responding judges most often consider: major violation reports, testimony from the probationer, and probation violation guidelines.**
- **The responding judges structure the sentence for a probation violation in a variety of ways (not consistent across the Commonwealth).**
- **In regard to the amount of revocable time remaining, the largest share of responding judges said it had no or minimal effect on the sentencing decision.**
- **The vast majority of responding judges (90%) indicated that if a probationer is brought back to court multiple times for violations stemming from the same original offense, they typically increase the punishment for a violation at each successive revocation.**



Take Aways

- Responding judges cited a number of reasons they might release a probationer with violations prior to end of the supervision term.
- Only half of responding judges felt sufficient and effective alternatives to incarceration were available.
- Responding judges provided some insight into the factors that, on average, are weighed the most heavily in sanctioning probation violators. Examples:
 - Type of original felony offense
 - Violation of sex offender restrictions
 - Violation behavior that is similar to underlying offense
 - Progress in treatment
 - Never reported to court-ordered program
 - Positive tests/admissions for heroin or meth use
 - New felony convictions
 - Number of prior adult probation revocations
 - Gang membership or activity

Other Sources of Input

- **At its September 2018, the Commission approved additional surveys to seek input from Commonwealth’s Attorneys, probation officers and defense attorneys.**
 - **Surveys will be developed during the winter and presented to the Commission members for their review at the April 2019 meeting.**



