



VIRGINIA CRIMINAL SENTENCING COMMISSION



Probation Violation Guidelines
Revision Project:
Additional Surveys

March 25, 2019

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.



VIRGINIA CRIMINAL
SENTENCING COMMISSION



VIRGINIA CRIMINAL SENTENCING COMMISSION

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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%.**





Take Always

- **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 Always

- **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 meeting, the Commission approved additional surveys to seek input from Probation Officers, Commonwealth’s Attorneys, and defense attorneys.**

- **Purpose:**
 - **To include perspectives of court stakeholders in probation violation guidelines revision project;**

 - **To identify problematic factors on current violation guidelines (i.e., factors difficult to score accurately);**

 - and**

 - **To identify factors and sources of information that are consistently available to preparers.**



Survey of Probation Officers, Commonwealth's Attorneys, and Defense Attorneys - Draft -

Probation Violation Guidelines Survey Introduction

In 2003, the General Assembly directed the Virginia Criminal 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 designed and implemented a research plan to examine historical sanctioning practices for violations of community supervision not involving a new conviction. Using the results of this empirical study, the Commission developed historically-based discretionary sentencing guidelines applicable to these offenders. These guidelines took effect on July 1, 2004, and were refined in 2007. Since 2010, use of the probation violation guidelines has been required by language in the Appropriation Act adopted by the General Assembly.

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 has 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 perspectives of judges, prosecutors, defense attorneys and probation officers. Responding to the survey will provide the Commission with valuable information to improve the utility of the guidelines.

Completion of the survey should take about 15 minutes. **The survey does not include any identifying information and responses to the survey will be completely anonymous.**

The Commission looks forward to receiving your input on this important project.

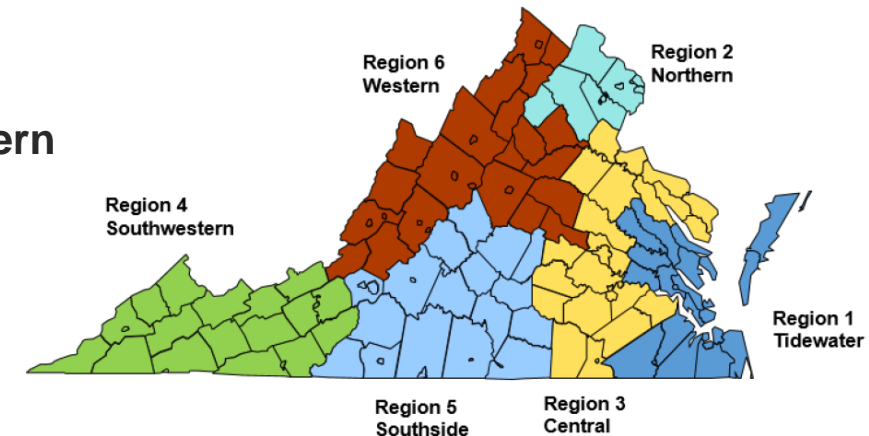
Survey of Probation Officers, Commonwealth's Attorneys, and Defense Attorneys - Draft -

The survey questions pertain only to supervised probation violation hearings for offenders who were placed on probation for a felony offense.

Responses should be based on local practices in your main jurisdiction and the primary court where you practice or work.

Q1: In which region are you located?

- Region 1 – Tidewater
- Region 2 – Northern
- Region 3 – Central
- Region 4 – Southwestern
- Region 5 – Southside
- Region 6 – Western



Q2: What is your job title?

- Commonwealth's Attorney
- Probation Officer
- Defense Attorney
- Public Defender
- Other _____



Q3: In your primary court, is a probation violation usually handled by the original sentencing judge or is a probation violation usually handled by any judge in the jurisdiction?

- Original sentencing judge
- Any active judge
- Any judge, including retired judges

Q4: In your primary court, if a probation officer initiates supervised probation revocation proceedings for a Condition 1 (new law) violation, when is the request usually made?

- When the offender has been arrested, but not convicted, of the new charge(s)
- After the offender has been convicted of the new charge(s)
- After indictment by true bill for the new offense
- It varies depending on: (Please describe)



Q5: In your primary court, are probation officers routinely present during violation hearings when the original offense was a felony?

- Yes
- No

Q6: Does your primary court have a Drug Court program?

- Yes
- No

Q7: Does your primary jurisdiction have a Public Defender Office?

- Yes
- No



Q8: How often do you think probationers, in your primary jurisdiction, are released on bond (PR, secured, cash bond or prerelease supervision) after being arrested for a probation violation?

- Always
- Very Often
- Sometimes
- Rarely
- Never

Q9: How long is the typical probation violator, not released on bond, incarcerated from the time they are arrested on the PB15 or Probation Violation Capias, until the violation hearing?

- 0 days
- 1 day to 1 week
- More than 1 week to 1 month
- Over 1 month to 3 months
- Over 3 months to 6 months
- Over 6 months to 1 year
- Over 1 year



Q10: In your opinion, do judges in your primary court view certain violations of probation, other than a new law violation, as more serious than others?

- No - All technical conditions are viewed at same seriousness level (Go to Question 11)**
- Yes - Probation technical conditions are viewed at different seriousness levels (Please rank below)**

If you answered yes, please rank the top three (3) technical violations of probation based on your opinion of what conditions the judges in your primary court view as the most serious violations (anything other than Condition 1: a new law violation).



**Conditions
of Probation -**

**Other than
Condition 1:
New law
violation**

- ___ **Condition 2: Report any arrest, including traffic tickets, within 3 days to the Probation and Parole Officer.**
- ___ **Condition 3: Maintain regular employment and I will notify the Probation and Parole Officer promptly of any changes in my employment.**
- ___ **Condition 4: Report in person or by telephone to the Probation and Parole office listed below within three working days of my release from incarceration, and as otherwise instructed thereafter.**
- ___ **Condition 5: Permit the Probation and Parole Officer to visit my home and place of employment.**
- ___ **Condition 6: Follow the Probation and Parole Officer's instructions and will be truthful, cooperative, and report as instructed.**
- ___ **Condition 7: Use alcoholic beverages to the extent that it disrupts or interferes with my employment or orderly conduct.**
- ___ **Condition 8: Use, possess, distribute controlled substances or paraphernalia**
- ___ **Condition 9: Use, own, possess, transport or carry a firearm**
- ___ **Condition 10: Change my residence without the permission of the Probation and Parole Officer. I will not leave the State of Virginia or travel outside of a designated area without permission of the Probation and Parole Officer.**
- ___ **Condition 11: Abscond from supervision**
- ___ **Special Conditions (treatment, financial (i.e., court costs, restitution), education, etc.)**
- ___ **Special Sex Offender Conditions (established by the Court or Probation Officer)**



Q11: Do the judges in your primary court consider the following new convictions as a violation of Condition 1 (new law violation)?

- | | | |
|---|---------------------------|--------------------------|
| A. Traffic infractions (e.g., speeding) | <input type="radio"/> Yes | <input type="radio"/> No |
| B. Class 3 & 4 misdemeanors (penalty: fine only) | <input type="radio"/> Yes | <input type="radio"/> No |
| C. Unclassed misdemeanors (e.g., contempt, 10 days) | <input type="radio"/> Yes | <input type="radio"/> No |
| D. Class 1 & Class 2 misdemeanors (up to 6 or 12 months) | <input type="radio"/> Yes | <input type="radio"/> No |
| E. Felony convictions | <input type="radio"/> Yes | <input type="radio"/> No |



Q12: In your primary court, does the number of prior probation violations influence the length and type of sentence imposed for a probation violation?

- Yes (Go to Question 12 A)**
- No (Go to Question 13)**

Q12 A: If YES, when is a prior probation violation most likely to influence the length and type of sentence imposed for a probation violation?

- Only if the previous violations are violations of the current underlying offense**
- All violations in the defendant's criminal history are considered by the court**
- Varies (Please explain) _____**



Q13: Thinking about the current probation violation guidelines, are there any factors that are problematic to score accurately?

- Original Disposition**
- Previous Adult Revocations**
- New Arrest(s)**
- Never Reported or Unsuccessful Discharge from a Program (Community Service, Employment Program Residential, Detention or Diversion - currently does not include CCAP)**
- Conditions Violated**
- Length Absconded**
- Original Offense Type**
- Months Until First Noncompliant Incident**
- Unsuccessful Discharge from Detention & Diversion (not CCAP)**
- Never Reported to Drug Treatment/Drug Education Program**
- Positive Drug Test**
- Sex Offender Restrictions**

Please explain why any factor identified above is difficult to score:



Q14: What other factors, not currently on the probation violation guidelines, should be on the probation violation guidelines? Think of factors that are routinely used by the judge or judges in your primary court to determine the length of sentence imposed for violation of probation.



Q15: What information is routinely provided to the judge in your primary court before or during the violation hearing? (Check all that apply)

- Major Violation Report prepared by the Probation Officer
- Testimony from the probationer
- Testimony from the Probation Officer
- Testimony from other parties
- Probation Violation Guidelines (for “technical” violators only)
- Previous court records
- COMPAS risk/needs assessment results
- Other (Please specify) _____

Q16: Does the amount of suspended time that the court may impose impact the effective sentence (active time) given for a violation?

- Yes
- No

What influence, if any, does the amount of revocable time remaining (if known by the court) affect the sentencing decision of the judge(s) in your primary court? _____



Q17: How do judges in your primary court typically structure a probation violation sentence?

- Reimpose all/some of the revocable time then re-suspend all/some of the time and specify terms and conditions of supervised probation**
- 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)**
- Both of the above, depending on the circumstances**
- Other (Please specify)**



Q18: Does the availability of alternatives other than incarceration influence the type and length of sentence imposed for probation violations by the judge(s) in your primary court?

- No
- Yes

In what way(s) does the availability of alternatives influence the type and length of sentence for violations? _____

Q19: What alternatives are used in your primary court in place of imposing a prison or jail sentence for probation violations?

- CCAP (Detention and Diversion)
- Drug Court
- Treatment
- Community Service
- Litter Control
- Other _____



Q20: In your opinion, in what circumstances should the probation violation guidelines apply? (Check all that apply)

- Violations arising from technical violations only**
- Violations arising from a new misdemeanor arrest**
- Violations arising from a felony arrest**
- Violations arising from a new misdemeanor conviction**
- Violations arising from a new felony conviction**

Q21: Please describe any other factors you believe judges in your primary court consider when sanctioning probation violators. Please include how the probation violation guidelines should be adjusted to better reflect your judge(s) sentencing decisions.

Q22: What do you think would make the probation guidelines more helpful?



Survey of Probation Officers, Commonwealth's Attorneys, Defense Attorneys

- **Next Steps:**
 - **Revise the survey as needed.**
 - **Once approved by Commission members, administer the survey to the court stakeholder groups.**
 - **Present the results of the survey to the Commission in June 2019.**



