

feedback

FROM THE FIELD

2021

What's New

V C S C



Feedback from the Field



MODIFY RECOMMENDATION

Substantial Assistance, Acceptance of Responsibility or Expression of Remorse



CASE DETAILS WORKSHEET

Source of Information



PROBATION VIOLATION GUIDELINES

Confusion over Legislative Requirements vs. VCSC Requirements



UNINTENDED CONSEQUENCES

PB-15s, Capias Requests, Show Cause Orders, Extraditions, Appointment of Counsel

The staff of the Commission has been traveling the state presenting seminars on the 2021 changes since May 1.



MODIFY RECOMMENDATION



Issue: How to modify the sentencing guidelines to reflect a historically based sentence when a defendant provides substantial assistance or accepts responsibility and expresses remorse

Recommendation

Modify the Guidelines Ranges for Assistance and Responsibility Case:
Reduce the Low-End of the Recommendation Range to Probation When the Recommendation is 3 Years or Less and Reduce the Low-End of the Recommendation Range by 50% for All Other Recommendation Groups
- **November 4, 2020**

VCSC
June 7, 2021



**NOT SIMILAR TO
FEDERAL GUIDELINES**



**BASED ON
DEPARTURE REASONS**



◆ Final Disposition Fill In After Sentence Has Been Pronounced

Modification of Recommendation Based on Substantial Assistance, Acceptance of Responsibility or Expression of Remorse

The decision to modify the guidelines recommendation must be made by the judge. If the recommended low end is 3 years or less, the low end is adjusted to no incarceration. If recommended low end is more than 3 years, the low end is reduced by 50%.

If accepted by the court the

Adjusted Range is: _____ TO _____
Years Months Days Years Months Days

◆ SENTENCE

Total Time <u>Imposed</u> Before Suspension	<input type="checkbox"/> Life Sentence +	<table border="1"><tr><td>Years</td><td>Months</td><td>Days</td></tr><tr><td> </td><td> </td><td> </td></tr></table>	Years	Months	Days				<input type="checkbox"/> Sentenced to Time Served
Years	Months	Days							
Total <u>Effective</u> Time to Serve	<input type="checkbox"/> Life Sentence +	<table border="1"><tr><td>Years</td><td>Months</td><td>Days</td></tr><tr><td> </td><td> </td><td> </td></tr></table>	Years	Months	Days				
Years	Months	Days							
<input type="checkbox"/> Incarceration Sentence to Run Concurrently With Another Event									
<input type="checkbox"/> Restitution \$ _____ <input type="checkbox"/> Fine \$ _____									

Post Release

Post Release Incarceration Term § 18.2-10 (suspended) (6 months to 3 years)	<table border="1"><tr><td>Years</td><td>Months</td><td>Days</td></tr><tr><td> </td><td> </td><td> </td></tr></table>	Years	Months	Days			
Years	Months	Days					
Post Release Supervision Period § 19.2-295.2(A)..... (6 months to 3 years)	<table border="1"><tr><td>Years</td><td>Months</td><td>Days</td></tr><tr><td> </td><td> </td><td> </td></tr></table>	Years	Months	Days			
Years	Months	Days					

Probation (Sentenced to no time, probation up to statutory maximum, Sentenced to incarceration, probation up to 5 years)

Probation Period (Supervised) § 19.2-303 Indefinite

Years	Months	Days



Federal Sentencing Guidelines and Acceptance of Responsibility

2019 Sourcebook of Federal Sentencing Statistics

Acceptance of Responsibility (§ 3E1.1)	Percent of Cases	Guilty Pleas	Percent of Cases
Offender accepted responsibility (-3 levels)	56.5%	US Total	97.6%
Offender accepted responsibility (-2 levels)	39.8%	Fourth Circuit	96.9%
Offender did not accept responsibility	3.7%	Virginia	96.8%





Issue: How to modify the sentencing guidelines to reflect a historically based sentence when a defendant provides substantial assistance or accepts responsibility and expresses remorse

▪ **Accepts Responsibility & Assistance Cases Identified**

Federal Probation Officer
Makes the Determination
Based on Established Criteria

– Departure Codes, Provided by the Judge, Were Used

• **FY2016-FY2020 (Number of Cases: 122,627)**

– Providing Substantial Assistance = **889** Sentencing Events

– Accepting Responsibility/Remorse = **580** Sentencing Events

– 16 Sentencing Events Included Both Departure Reasons

– 9 Cases Had Errors and Were Removed From the Analysis

– **1,428** Sentencing Events Identified as **Mitigating** (1.1% of Total Cases)

Notes: Plea agreements may take both circumstances into consideration and recommend a sentence within the guidelines. There are still cases when defendants provide assistance or accepts responsibility, and the judges or plea agreements result in sentences above the guidelines. Staff has added departure codes to better capture those aggravating cases.



MODIFY RECOMMENDATION



Issue: Must the guidelines recommendation be reduced for every defendant who pleads guilty?

Background: It is probably true that every defendant who accepts responsibility pleads guilty but not every defendant who pleads guilty accepts responsibility. This factor was developed based on judges departing from the guidelines because of actions of the defendants that were sufficient for judges to determine that departing was appropriate. Judges did not depart in every case that a defendant plead guilty. Reducing the recommendation based on the method of adjudication would not be true to historical practice.

V C S C
June 7, 2021

Discussion

How does the Commission advise judges and attorneys about the development of this factor? Is it the desire of the Commission that the factor should be used to accurately reflect the research and historical judicial sentencing practices?



1. Availability of bond information
2. Negotiate what details are revealed
3. Defense may be hesitant to provide information.

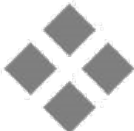


Sentencing Guidelines Case Details Worksheet

**SOURCE OF
INFORMATION**

CASE DETAILS

2. Defendant Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Handicapped: _____
3. Type of Counsel: Retained Court Appointed Public Defender Other
4. Pretrial Status: Secured Bond Unsecured Bond Own Recognizance Confinement Third Party Release Unknown
5. Pretrial Supervision by Pretrial Services Agency: No Yes Yes, ordered but did not complete/attend
6. Posttrial Status: Secured Bond Unsecured Bond Own Recognizance Confinement Third Party Release Unknown
7. Source of Bond: Personal Family Other Bonding Company N/A Unknown



Sentencing Guidelines

Case Details Worksheet

1. Defendant's Name: _____

2. Defendant Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Handicapped: _____

3. Type of Counsel: Retained Court Appointed Public Defender Other

4. Pretrial Status: Secured Bond Unsecured Bond Own Recognizance Confinement Third Party Release Unknown

5. Pretrial Supervision by Pretrial Services Agency: No Yes Yes, ordered but did not complete/attend

6. Posttrial Status: Secured Bond Unsecured Bond Own Recognizance Confinement Third Party Release Unknown

7. Source of Bond: Personal Family Other Bonding Company N/A Unknown

8. Total Time Served Prior to Sentencing: Years _____ Months _____ Days _____

9. Number of Codefendants: _____

10. Legal Status at Offense (check all that apply):

- Escaped Inmate Mandatory Parole Discretionary Parole
- Geriatric Release - § 53.1-40.01 Post Release - §19.2-295.2 Probation Bond
- Recognizance Community Program Pre-Trial Supervision Good Behavior
- Juvenile Probation Juvenile Parole Summons Other _____ None

11. Weapon Use: None Possessed Used to Injure Used to Threaten (Includes by voice, note, text, etc.)

12. Weapon Type: Firearm Knife Explosive Simulated/Feigned Weapon Blunt Object
 Note/Verbal Vehicle Animal Other _____ N/A

13. Offender's Role Alone Leader Accomplice Police Officer/LEO Not Determined

14. Value of Property Taken/Damaged: Highest value for one item \$ _____ Total value of all items \$ _____

15. Location: Bank Business Residence Street/Outside Automobile Other _____ N/A

16. Injury to Victim: Death Life Threatening Serious Physical Physical
 Emotional Threatened None N/A

17. Victim Relationship to Offender: None/Stranger Known Friend
 Family Police Officer/LEO Other _____

18. Victim Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Handicapped: _____



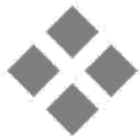
Availability of Bond Information

Users have asked for the best source of information on the type of bond.



The Supreme Court's Case Information System often identifies pretrial status, but not type of bond.

DC-330 – Recognizance Form (OCRA)



Sentencing Guidelines

Case Details Worksheet

1. Defendant's Name: _____

2. Defendant Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Handicapped: _____

3. Type of Counsel: Retained Court Appointed Public Defender Other

4. Pretrial Status: Secured Bond Unsecured Bond Own Recognizance Confinement Third Party Release Unknown

5. Pretrial Supervision by Pretrial Services Agency: No Yes Yes, ordered but did not complete/attend

6. Posttrial Status: Secured Bond Unsecured Bond Own Recognizance Confinement Third Party Release Unknown

7. Source of Bond: Personal Family Other Bonding Company N/A Unknown

8. Total Time Served Prior to Sentencing: Years _____ Months _____ Days _____

9. Number of Codefendants: _____

10. Legal Status at Offense (check all that apply):

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Escaped | <input type="checkbox"/> Inmate | <input type="checkbox"/> Mandatory Parole | <input type="checkbox"/> Discretionary Parole |
| <input type="checkbox"/> Geriatric Release - § 53.1-40.01 | <input type="checkbox"/> Post Release - §19.2-295.2 | <input type="checkbox"/> Probation | <input type="checkbox"/> Bond |
| <input type="checkbox"/> Recognizance | <input type="checkbox"/> Community Program | <input type="checkbox"/> Pre-Trial Supervision | <input type="checkbox"/> Good Behavior |
| <input type="checkbox"/> Juvenile Probation | <input type="checkbox"/> Juvenile Parole | <input type="checkbox"/> Summons | <input type="checkbox"/> Other _____ <input type="checkbox"/> None |

11. Weapon Use: None Possessed Used to Injure Used to Threaten (Includes by voice, note, text, etc.)

12. Weapon Type: Firearm Knife Explosive Simulated/Feigned Weapon Blunt Object
 Note/Verbal Vehicle Animal Other _____ N/A

13. Offender's Role Alone Leader Accomplice Police Officer/LEO Not Determined

14. Value of Property Taken/Damaged: Highest value for one item \$ _____ Total value of all items \$ _____

15. Location: Bank Business Residence Street/Outside Automobile Other _____ N/A

16. Injury to Victim: Death Life Threatening Serious Physical Physical
 Emotional Threatened None N/A

17. Victim Relationship to Offender: None/Stranger Known Friend
 Family Police Officer/LEO Other _____

18. Victim Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Handicapped: _____

2

Negotiate What Details are Revealed

Attorneys have indicated that if the Commonwealth prepares the Case Details Worksheet, some details may not be revealed to the court (e.g., material facts, firearm use, injury, etc.) because of an agreement.

Note: The Case Details Worksheet was designed to replicate information provided in a presentence report.

11. **Weapon Use:** None Possessed Used to Injure Used to Threaten (Includes by voice, note, text, etc.)

12. **Weapon Type:** Firearm Knife Explosive Simulated/Feigned Weapon Blunt Object
 Note/Verbal Vehicle Animal Other _____ N/A

13. **Offender's Role** Alone Leader Accomplice Police Officer/LEO Not Determined

14. **Value of Property Taken/Damaged:** Highest value for one item \$ _____ Total value of all items \$ _____

15. **Location:** Bank Business Residence Street/Outside Automobile Other _____ N/A

16. **Injury to Victim:** Death Life Threatening Serious Physical Physical
 Emotional Threatened None N/A

17. **Victim Relationship to Offender:** None/Stranger Known Friend
 Family Police Officer/LEO Other _____

18. **Victim Information:** Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Handicapped: _____

19. **Type of Primary Drug:** _____ **Quantity of Primary Drug:** _____

20. **Number of Felony Juvenile Adjudications:** Person _____ Property _____ Drug _____ Other _____

Source for Question #21: Defense Attorney Defendant PSI/PSR Commonwealth's Attorney Probation Officer

21. **Other factors known at the time of sentencing** (*check all that apply*) Yes Treatment: (in or completed treatment)

a. **Drug abuse** (admitted, family information, documented in reports)..... prior to offense after arrest

b. **Alcohol abuse** (admitted, family information, documented in reports)..... prior to offense after arrest

c. **Mental health issues** (admitted, family information, documented in reports)..... prior to offense after arrest

d. **Under the Influence of drugs/alcohol at the time of the offense**

e. **Employment (Last 2 years):** Full or part-time for at least 18 months Full-time student Disabled
 Stay-at-home spouse/parent Retired Unemployed/Not stable

f. **Housing (Last 2 years):** Stable/same residence 1+ yrs Multiple Changes Homeless at the time of the offense

g. **Provides support:** Enter Number dependents or family members supported _____

h. **Education:** Less than High school High school/GED Technical Training Some College
 College Degree Post-graduate/Professional Currently Enrolled (School, College Training)

i. **Military:** Active Reserve Honorably Discharged Undesirable Discharge
 Medical Discharge General Discharge Bad Conduct Discharge

j. **Defendant's Response:** Accepts Responsibility Sought Treatment Developed Rehabilitation Plans
 Remorseful Paid All or Part Restitution

k. **Other:** _____

3

Defense May be Hesitant to Provide Information

Question 21 was designed, in part, to provide the court with possible reasons for mitigation. Also, some factors were added to start the discussion about appropriate alternatives. Defense attorneys are concerned about how damaging details may be used in the current and future sentencing events.

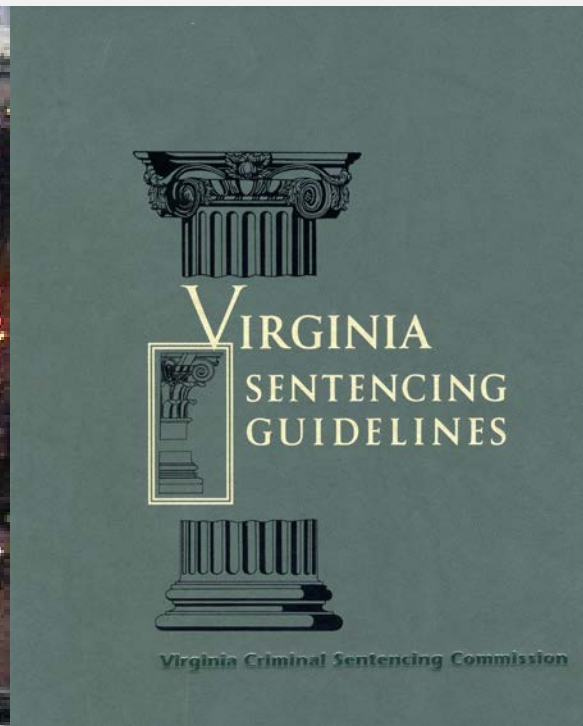


PROBATION VIOLATION GUIDELINES

STATUTORY REQUIREMENTS VS GUIDELINES RECOMMENDATIONS

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-303, 19.2-303.1, and 19.2-306 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-306.1 as follows:



**Confusion
Over
Requirements vs.
Recommendations**

PROBATION VIOLATIONS

TYPE OF VIOLATION	Statutory Requirement			Recommendation	
	No Time	0-14 Days*	Up to Revocable Time	Exceptions**	Guidelines
First Technical Violation of Conditions 2-8 & 10	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Second Technical Violation of Conditions 2-8 & 10		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
First Technical Violation of Condition 9 or 11		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Second Technical Violation of Condition 9 or 11			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Third Technical Violation of Conditions 2-8 & 10			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Special Condition Violations					<input checked="" type="checkbox"/>
New Law Violation (Condition 1)			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>

Adjusted to reflect statute | Historically Based

1-New Law, 2-Report Arrest, 3-Employment, 4-Report, 5-Visit, 6-Instructions, 7-Alcohol, 8-Drugs, 9-Firearm, 10-Residence, 11-Abscond, Special Conditions

* Presumption is no time
 ** Court-ordered Program or Evaluation (drug, alcohol or mental health)



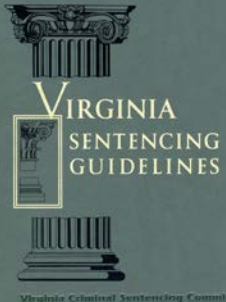
STATUTORY REQUIREMENTS VS. SG RECOMMENDATIONS



PROBATION VIOLATION GUIDELINES

STATUTORY REQUIREMENTS VS GUIDELINES RECOMMENDATIONS

1. Judges are requesting probation violation guidelines be completed at the time a capias is requested.
2. Historically based guidelines will always recommend, one day or time served.
3. Preparing the guidelines in advance will continue the current problem of the court using inaccurate and outdated guidelines at sentencing.
4. Will knowing the statutory requirements provide the court the information needed to issue a capias or show cause? Should details on the number of previous technical violations (and need for services) be part of the capias request?
5. Users are looking for legislative policy changes that are not within the purview of the Commission.

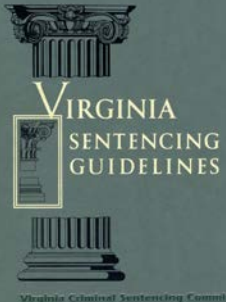
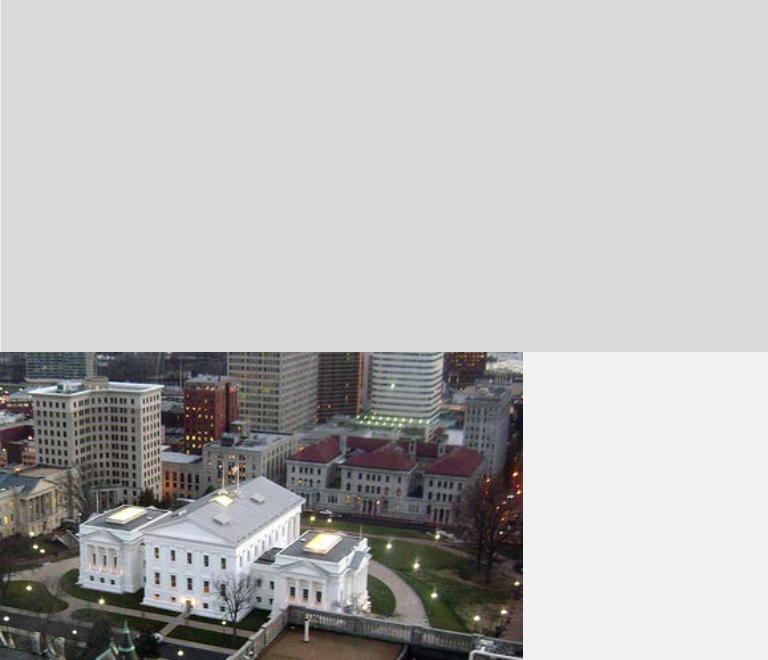




PROBATION VIOLATION GUIDELINES

SPECIAL CONDITIONS VS SPECIAL INSTRUCTIONS

1. The major violation report includes violation of special conditions/instructions (e.g., sex offender, gang, etc.) if cited in the court order or executed by probation and parole.
2. The statute defines Condition 6 (fail to follow instructions) as technical.
3. Probation Officers are being told and attorneys for the Commonwealth are being trained that violation of special conditions can only be used to determine the appropriate guidelines if the special condition is cited in the court order. (What is the difference between ordered by the court or authorized by the court? Is “other restrictions deemed appropriate by the probation officer” a special condition?)
4. Question: Is it the initial court order? **OR** May the judge find the defendant in violation of special conditions or instructions, as detailed in the major violation report, at the time of the violation hearing?





PROBATION VIOLATION GUIDELINES

SPECIAL CONDITIONS VS SPECIAL INSTRUCTIONS

Example: If special sex offender instructions D is alleged to have been violated in the Major Violation Report (i.e., contact with a minor), the recommendation will be different based on the type of condition and number of prior technical violations.

An important goal of Virginia’s guidelines is to reduce unwarranted sentencing disparity. Unwarranted and dramatic differences in sentences imposed in similar cases are generally condemned for a variety of reasons. It is unjust for similarly situated offenders convicted of the same offense to receive markedly different sanctions.

- (Page 1 – Introduction, Sentencing Guidelines Manual)



Recommendation Score _____ →

Go to SRR Cover sheet and fill out the violation guidelines recommendation range.

Score	Guidelines Sentence	Score	Guidelines Sentence
<input checked="" type="checkbox"/> 0-3.....	No Time	<input type="checkbox"/> 19 to 33.....	3 months to 1 year
<input checked="" type="checkbox"/> 4-12.....	0 to 14 days	<input type="checkbox"/> 34 to 43.....	1 year to 1 year 6 months
<input type="checkbox"/> 13-18.....	Time Served to 6 months	<input type="checkbox"/> 44 or more.....	1 year to 4 years

Condition 6 Violation
Statutory Requirement

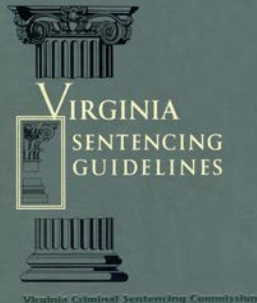
With the same information in the Major Violation Report there will be two different recommendations for similarly situated individuals. The difference is based on what conditions are alleged to have been violated (Condition 6 or Special Conditions).

Recommendation Score _____ →

Go to SRR Cover Sheet and fill out the violation guidelines recommendation range.

Score	Guidelines Sentence
<input type="checkbox"/> Under 19.....	Time served to 6 months
<input checked="" type="checkbox"/> 19 to 33.....	3 months to 1 year
<input checked="" type="checkbox"/> 34 to 43.....	1 year to 1 year 6 months
<input checked="" type="checkbox"/> 44 or more.....	1 year to 4 years

Special Condition Violation
Historically Based Recommendation

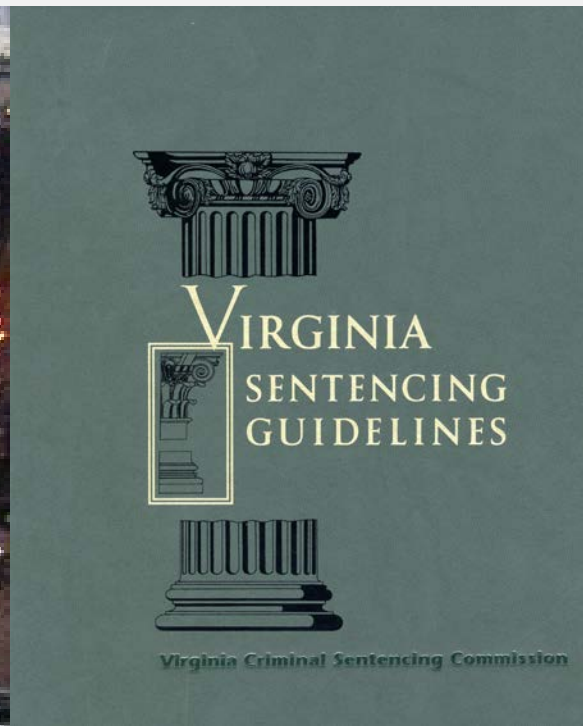




PROBATION VIOLATION GUIDELINES

REQUEST TO MODIFY THE COVER SHEET AND WORKSHEET

The changes do not impact the recommendations as proposed in the 2020 Annual Report. Changes are requested to encourage the accurate scoring of all factors on the guidelines. Other changes are requested to resolve confusion on why some factors are not scored.



**Confusion
Over
Requirements vs.
Recommendations**



Sentencing Revocation Report (SRR) - Felony Supervision/Good Behavior/Suspended Sentence Violations

◆ OFFENDER _____

First: _____ Middle: _____ Last: _____ Suffix: _____

Date of Birth: _____ SSN: _____ SID/CCRE: _____ CORIS Offender ID: _____

◆ COURT _____

Judicial Circuit: _____ City/County: _____ Docket Number: _____ FIPS Code: _____

◆ TYPE OF REVOCATION _____

(Complete SRR and Guidelines): State Supervised Probation for Felony

(Complete SRR only, guidelines do not apply): Local Probation Good Behavior /Suspend Sentence CCAP Procedural

(NOTE: This form is not completed for First Offender Violations, Deferred Finding Violations or Parole Violations)

Technical Violation: 1st 2nd 3rd or subsequent

Special Conditions Yes

New Law Violation: Felony Misdemeanor

◆ CONDITIONS CITED IN VIOLATION BY PROBATION/PAROLE OFFICER (check all that apply)

- 1. Fail to obey all Federal, State, and local laws.
- 2. Fail to report any arrests within 3 days to PO.
- 3. Fail to maintain employment or to report changes.
- 4. Fail to report as instructed
- 5. Fail to allow probation officer to visit home or job.
- 6. Fail to follow instructions, 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 Virginia without permission
- 11. Abscond from supervision
- Fail to follow special conditions (specify) _____

Special Sex Offender Conditions
(Enter Letter for Condition(s) Violated):

Special Gang Member Conditions
(Enter Letter for Condition(s) Violated):

◆ TREATMENT, SANCTIONS, EDUCATIONAL PROGRAMS & ALTERNATIVES UTILIZED (For Judicial Review)

	Enrolled, Ordered	Completed	Not Completed	Ineligible
Anger management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CCAP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Community Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drug Screens increased/ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employment Skills Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gang Supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Incarceration - jail or prison	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increase in supervision level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mental health counseling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parenting class	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recidivist Prevention Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reprimand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Salvation Army Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sex offender treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Specialty Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse Program, Jail/DOC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment, inpatient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment, outpatient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment: AA or NA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thinking for a Change	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Voice Verification Biometrics Monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

◆ DATE ARRESTED FOR THIS VIOLATION: ____/____/____

◆ PRETRIAL CONFINEMENT FOR THIS VIOLATION No

Confined Since Arrest for Violation Dates Confined ____/____/____ to ____/____/____ Dates Confined ____/____/____ to ____/____/____
(For Judicial Review. There is no indication that the times served will be applied to this case)

◆ PRETRIAL STATUS RELEASE :

Bond: ___Secured ___Unsecured Own Recognizance Third Party Release N/A

◆ RECOMMENDATION RANGE: No Time

Time Served to

(Note to Judge: If you find the defendant has good rehabilitation potential, mark the box on the disposition page.
The low end of the recommendation will be time served or zero additional days.)

- 9. Use, own, possess, transport or carry firearm
- 10. Change residence or leave Virginia without permission
- 11. Abscond from supervision
- Fail to follow special conditions (specify)

Special Sex Offender Conditions */Instructions*
 (Enter Letter for Condition(s) Violated):

Special Gang Member Conditions */Instructions*
 (Enter Letter for Condition(s) Violated):

Reprimand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Salvation Army Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sex offender treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Specialty Court _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse Program, Jail/DOC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment, inpatient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment, outpatient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse treatment: AA or NA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thinking for a Change	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Voice Verification Biometrics Monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

◆ **DATE ARRESTED FOR THIS VIOLATION:** ____/____/____

◆ **PRETRIAL CONFINEMENT FOR THIS VIOLATION** No

Confined Since Arrest for Violation Dates Confined ____/____/____ to ____/____/____ Dates Confined ____/____/____ to ____/____/____
 (For Judicial Review. There is no indication that the times served will be applied to this case)

◆ **PRETRIAL STATUS RELEASE :**

Bond: ____Secured ____Unsecured Own Recognizance Third Party Release N/A

◆ **RECOMMENDATION RANGE:** No Time
 Time Served

				to					
Years	Months	Days			Years	Months	Days		

(Note to Judge: If you find the defendant has good rehabilitation potential, mark the box on the disposition page.
 The low end of the recommendation will be time served or zero additional days.)

Probation Violation Guidelines Worksheet ❖ TV 3/SCV

Third or Subsequent Technical Violation or Any Special Condition Violations

Offender Name: _____

Base Guidelines on the Current Most Serious Primary Offense: - - Original Sentencing was Incarceration/CCAP

ICOTS Case for Supervision of Current Primary Transferred to: State Abv: _____

Amount of Total Revocable Time at Hearing Sentencing: Life +

Years Months Days

(This Court Only)

1 Dates (use to score factors three and four)

Earliest Original Sentencing Date _____ Start of Current Supervision Period _____

2 Number of Felony Revocation Events for Current Offense(s) (This Court Only)

→

Current Revocation Event Only2
 One Revocation Event Prior to Current Revocation Event12
 Two or More Revocation Events Prior to Current Revocation Event24

3 Prior Felony Revocation(s) Before Original Sentencing Date (This Court Only)

↓

One Prior Felony Revocation18
 Two or More Prior Felony Revocations19

4 Felony Offense Conviction(s) Between

Original Sentencing Date and Start of Current Supervision (ALL Courts) — If YES, add 13 →

→

5 Condition 8 Violation: Drug Violation

— If YES, add 7 →

→

6 Condition 11 Violation: Abscond

— If YES, add 10 →

→

Last date whereabouts were known ___/___/___ Date whereabouts verified ___/___/___

7 Primary Offense VCC Prefix of SEX, RAP, OBS or

Violation of Sex Offender Special Conditions (Court or DOC)

/Instructions

— If YES, add 22 →

→

Probation Violation Guidelines Worksheet **TV1/2**

First or Second Technical Violation

Offender Name: _____

Base Guidelines on the Current Most Serious Primary Offense: Original Sentencing was Incarceration/CCAP

ICOTS Case for Supervision of Current Primary Transferred to: State Abv: _____

Amount of Total Revocable Time at Hearing Sentencing: Life +

(This Court Only)

1 Dates (use to score factors three and four)

Earliest Original Sentencing Date _____ Start of Current Supervision Period _____

2 Number of Felony Revocation Events for Current Offense(s) (This Court Only)

Conditions 2, 3, 4, 5, 6, 7, 8 or 10 Current Revocation Event Only 2 Points Prior Revocation Event 11	Conditions 9 or 11 Current Revocation Event Only 4 Points Prior Revocation Event 12	<input type="text"/> <input type="text"/>
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3 Felony Offense Convictions Between Original Sentencing Date and Start of Current Supervision Period (ALL Courts)

Conditions 2, 3, 4, 5, 6, 7, 8 or 10 Do Not Score	Conditions 9 or 11 If 1st Violation 0 Points If 2nd Violation 13	<input type="text"/> <input type="text"/>
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4 Prior Felony Revocation(s) Before Original Sentencing Date (This Court Only)

Conditions 2, 3, 4, 5, 6, 7, 8 or 10 One or More Prior Felony Revocation Events 1	Conditions 9 or 11 If 1st Violation One or More Prior Felony Revocation Events 1 Points If 2nd Violation One or More Prior Felony Revocations Events 18 Two or More Prior Felony Revocations Events 19	<input type="text"/> <input type="text"/>
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5 Condition 8 Violation: Drug Violation

Conditions 2, 3, 4, 5, 6, 7, 8 or 10 Do Not Score	Conditions 9 or 11 If 1st Violation 1 Points If 2nd Violation 7	<input type="text"/> <input type="text"/>
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6 Condition 11 Violation: Abscond

Conditions 2, 3, 4, 5, 6, 7, 8 or 10 Do Not Score	Conditions 9 or 11 If 1st Violation 3 Points If 2nd Violation 10	<input type="text"/> <input type="text"/>
---	---	---

Last Date whereabouts were known ___/___/___ Date whereabouts verified ___/___/___

7 Primary Offense VCC Prefix of SEX, RAP, OBS

Conditions 2, 3, 4, 5, 6, 7, 8 or 10 Do Not Score	Conditions 9 or 11 If 1st Violation 1 Points If 2nd Violation 22	<input type="text"/> <input type="text"/>
---	---	---

Recommendation Score

Recommendation Table

Score	Guidelines Sentence	Score	Guidelines Sentence
<input type="checkbox"/> 0-3	No Time	<input type="checkbox"/> 19 to 33	3 months to 1 year
<input type="checkbox"/> 4-12	0 to 14 days	<input type="checkbox"/> 34 to 43	1 year to 1 year 6 months
<input type="checkbox"/> 13-18	Time Served to 6 months	<input type="checkbox"/> 44 or more	1 year to 4 years

Go to SRR Cover sheet and fill out the violation guidelines recommendation range.

6 Condition 11 Violation: Abscond

Conditions 2, 3, 4, 5, 6, 7, 8 or 10

Do Not Score

Conditions 9 or 11

Points

If 1st Violation 3
 If 2nd Violation 10

Last Date whereabouts were known ___/___/___ Date whereabouts verified ___/___/___

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Primary Offense VCC Prefix of SEX, RAP, OBS

Conditions 2, 3, 4, 5, 6, 7, 8 or 10

Do Not Score

Conditions 9 or 11

Points

If 1st Violation 1
 If 2nd Violation 22

--	--

Recommendation Score

--	--	--

Recommendation Table

Go to SRR
 Cover sheet
 and fill out the
 violation guidelines
 recommendation
 range.

Score	Guidelines Sentence	Score	Guidelines Sentence
<input type="checkbox"/> 0-3.....	No Time/ <i>Statutory Requirement</i>	<input type="checkbox"/> 19 to 33.....	3 months to 1 year
<input type="checkbox"/> 4-12.....	0 to 14 days/ <i>Statutory Requirement</i>	<input type="checkbox"/> 34 to 43.....	1 year to 1 year 6 months
<input type="checkbox"/> 13-18.....	Time Served to 6 months	<input type="checkbox"/> 44 or more.....	1 year to 4 years



PB-15, CAPIAS & APPOINTMENT OF COUNSEL

Impact of no time for violations and the ability to hold someone facing no incarceration



EXTRADITION

The penalty for the first violation for absconding is the presumption of no time up to 14 days



Virginia Crime Codes

State Police Requirement to Track Driving Under the Influence of Marijuana



Possible

**UNINTENDED
CONSEQUENCES**



PB-15s and CAPIAS REQUESTS



Issue: Can a defendant be held on a PB-15 or capias for the first technical violation of Conditions 2-8 & 10? Does the exception for an evaluation or court ordered program have any influence on the decision?

Background: Probation Officers are concerned that they will not be able to selectively use PB-15s to address public safety concerns (e.g., safety of family members) and for the defendant's safety (e.g., overdoses). Attorneys and others want clarification on the use of a capias for the first technical violation of conditions 2-8 & 10.

V C S C
June 7, 2021

Discussion

Is this a procedural issue that the Commission can help resolve or is it a policy decision for the legislature and the court? Do the exception provisions in the *Code* have any impact on holding a defendant on a capias? Will this lead to disparity in time served based on how the court allows or uses PB-15s, capias requests and show causes?



APPOINTMENT OF COUNSEL



Issue: For the first technical violation of Conditions 2-8 & 10 will counsel be needed or appointed? The first technical violation of 2-8 & 10, by statute, will be limited to no time.

Background: Some attorneys are concerned that the statutory requirements will result in counsel not being appointed for first violations of Conditions 2-8 & 10. Others believe that in order to preserve the first violation conviction for use in determining a second or subsequent technical violation, counsel will need to be appointed.

VCSC
June 7, 2021

Discussion

It is believed that this concern has been addressed in case law and the new statutory requirements will have no impact. Is that the consensus of the Commission?



EXTRADITION OF ABSCONDERS TO VIRGINIA



Issue: By statute, for the first violation of Condition 11 (Absconding) a defendant can be sentenced to up to 14 days. However, the presumption is no time will be imposed. The evaluation or court ordered program exception also applies to absconder cases. Will the Commonwealth be willing to pay the cost of extradition?

Background: Except for interstate compact cases, the Commonwealth decides when a defendant will be extradited back to Virginia. In some cases, the Commonwealth may limit the distance (e.g., east of the Mississippi River).

V C S C
June 7, 2021

Discussion

This is a rhetorical question about what may or may not happen to absconders facing sentencing for a probation violation on or after July 1, 2021.



MARIJUANA VIRGINIA CRIME CODES



Issue: The enabling legislation for the legalization of marijuana requires the tracking of any increase in driving under the influence arrests and convictions. The State Police is tasked with this requirement and requested 24 new VCCs be added. The VCCs were added for commercial and non-commercial DUIs.

Background: Currently, there are VCCs for driving under the influence of drugs. There is no one good source for the type of drug used.

V C S C
June 7, 2021

Discussion

The VCCs have been added and are included in the Uniformed Statute Table used by all Virginia criminal justice agencies and courts. Unfortunately, the request came after the VCC Book was being published. An addendum will be shipped with each VCC Book.

feedback

FROM THE FIELD

2021

What's New

V C S C

