

# **Virginia Criminal Sentencing Commission**

## **IMMEDIATE SANCTION PROBATION PILOT PROGRAM EVALUATION**

**To The General Assembly**



**Commonwealth of Virginia**

**Richmond, December 20, 2016**

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# Commonwealth of Virginia

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## Supreme Court of Virginia Virginia Criminal Sentencing Commission

December 20, 2016

TO: The Honorable Terence R. McAuliffe  
Governor of Virginia

The Honorable Donald W. Lemons  
Chief Justice of Virginia

The Honorable Thomas K. Norment, Jr.  
Co-Chairman, Senate Finance Committee

The Honorable David B. Albo  
Chairman, House Courts of Justice Committee

The Honorable S. Chris Jones  
Chairman, House Appropriations Committee

The Honorable Emmett W. Hanger, Jr.  
Co-Chairman, Senate Finance Committee

The Honorable Mark D. Obenshain  
Chairman, Senate Courts of Justice Committee

The Virginia General Assembly adopted budget language in 2012 extending the provisions of § 19.2-303.5 of the *Code of Virginia* and authorizing the creation of up to four Immediate Sanction Probation pilot programs (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). The Immediate Sanction Probation Program targets nonviolent offenders who violate the conditions of probation while under supervision in the community but have not been charged with a new crime. In the budget provision, the Sentencing Commission is assigned the responsibility of selecting the pilot sites, implementing the program, and evaluating the results.

The Commission's evaluation of the Immediate Sanction Probation pilot program is complete. Accordingly, we respectfully submit this report for your consideration.

The Sentencing Commission wishes to sincerely thank all of those in the field whose dedication and diligent work have made implementation of the pilot program possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward L. Hogshire".

Edward L. Hogshire  
Circuit Judge, Ret.

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## **Preface**

In May 2012, the General Assembly adopted Appropriation language to extend the provisions of § 19.2-303.5 and to authorize the creation of up to four Immediate Sanction Probation pilot programs (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). The Immediate Sanction Probation Program targets nonviolent offenders who violate the conditions of probation while under supervision in the community but have not been charged with a new crime. The provision directed the Virginia Criminal Sentencing Commission to select up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth's Attorney in each locality. It further charged the Commission with developing guidelines and procedures for the program, administering program activities, and evaluating the results. Although the legislation was slated to expire on July 1, 2015, the 2015 General Assembly modified budget language to extend the provisions until July 1, 2016 (Item 47 of Chapter 665 of the 2015 Acts of Assembly). In 2016, the General Assembly extended the sunset date further to July 1, 2017 (House Bill 608 and Item 50 of Chapter 780 of the 2016 Acts of Assembly).

The program evaluation required by this provision must be presented to the Governor, Chief Justice, the Chairmen of the House and Senate Courts of Justice Committees, the House Appropriations Committee, and the Senate Finance Committee. Appropriation language set the due date for the report as November 1, 2016. Obtaining, cleaning, and analyzing the data for the evaluation was a complex process, which delayed completion of the report until December 20, 2016.

This document contains the Commission's evaluation of the Immediate Sanction Probation Program and the report is respectfully submitted to fulfill the requirements of Item 50 of Chapter 780 of the 2016 Acts of Assembly.

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## Executive Summary

The Hawaii Opportunity Probation with Enforcement (HOPE) program was established in 2004 with the goal of enhancing public safety and improving compliance with the rules and conditions of probation among offenders being supervised in the community. HOPE targets higher risk probationers and requires that each violation of the conditions of supervision is met with a swift and certain, but mild, sanction. A rigorous evaluation of HOPE completed in 2009 found a significant reduction in technical violations (such as drug use and missed appointments), lower recidivism rates, fewer probation revocations, and reduced use of prison beds among HOPE participants compared to similar offenders supervised on regular probation. Interest in Hawaii's swift-and-certain sanctions model spread. As of July 2015, there were swift-and-certain sanctions programs operating in at least 29 states across the country.

The 2010 General Assembly passed legislation which established the basic parameters for swift-and-certain sanctions programs in Virginia (§ 19.2-303.5). In May 2012, the General Assembly adopted budget language to extend the provisions of § 19.2-303.5 and to authorize the creation of up to four Immediate Sanction Probation Programs (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). This provision charged the Virginia Criminal Sentencing Commission with selecting the pilot sites, developing guidelines and procedures for the program, administering program activities, and evaluating the results. As no additional funding was appropriated for this purpose, the pilot project was implemented within existing agency budgets and local resources. The General Assembly has since extended the sunset date to July 1, 2017, which enabled the pilot sites to continue the program until the 2017 General Assembly has reviewed the Commission's evaluation and determined whether to continue the program in the future.

Since the 2009 HOPE evaluation, a number of programs based on the HOPE model have been evaluated. Results of these studies have been mixed. A longer term evaluation of HOPE completed in 2016, as well as evaluations in Washington State, Arkansas, Michigan, and Kentucky found that the HOPE approach yielded positive results, such as lower recidivism rates and reduced use of incarceration. However, a recent large-scale evaluation of a four-site replication of the HOPE model, funded by the Bureau of Justice Assistance (BJA) and the National Institute of Justice (NIJ), did not produce similar results. According to this evaluation, there were no statistically significant differences, overall, between the HOPE and probation-as-usual groups in the likelihood of arrest, new conviction, or probation revocation. Similarly, an evaluation of a Delaware program based on the HOPE model found that the program was not successful in reducing substance use or new crimes among probationers.

The Commission designed Virginia's Immediate Sanction Probation Program based on the parameters established by the General Assembly's statutory and budgetary language and the key elements of the swift-and-certain sanctions model pioneered in Hawaii. Implementing Virginia's program with as much fidelity as possible to the swift-and-certain sanctions model provided the best opportunity to determine if the positive results observed in HOPE and other programs would emerge in Virginia. Thus, the Immediate Sanction Program targets offenders who are at risk for recidivating

or failing probation. Working with the Secretary of Public Safety and Homeland Security and the Department of Corrections, the Commission identified four pilot sites (Henrico County, the City of Lynchburg, City of Harrisonburg/Rockingham County, and Arlington County), which became operational between November 2012 and January 2014. The Commission developed policies and procedures to provide a framework for the program, including eligibility criteria and a mechanism for expedited hearings for program violations. In each site, Commission staff organized and participated in multiple meetings to facilitate and support local implementation of the program.

As of October 1, 2016, 288 probationers across the four pilot sites had been placed into the Immediate Sanction Probation Program. In order to allow for a sufficient follow-up period to track participants for recidivism, the 200 eligible participants who were placed into the program before July 1, 2015, were selected for the evaluation cohort. The majority (76%) were at medium to high risk of recidivating and all had a history of technical violations prior to program placement. Low risk probationers were only placed in the program after committing at least three violations while on regular supervision, indicating a higher risk for revocation. More than 80% of participants violated at least once after program placement, committing an average of 2.7 violations each. The most common violation during program participation was drug use. As of October 1, 2016, 39% of the evaluation cohort had completed the program. Nearly all of the program completers had been violation-free for 12 months, the measure established by the Commission for “successful completion.” Judges allowed seven participants who had not reached the 12-month violation-free mark to complete the program, due to individual circumstances of these participants.

The Commission used standards established in the 2016 evaluation of the BJA/NIJ-funded HOPE replication project to measure the swiftness and certainty of sanctions imposed during Virginia’s pilot program. For swiftness, pilot sites were assessed based on the percentage of violations heard by the court within three days. Approximately half (47%) of program violations in Virginia’s pilot sites were heard by the court within the three-day window. This is below the minimum of 60% established by the evaluators of the HOPE replication project. Regarding the certainty of sanctions, Immediate Sanction judges responded to violations by imposing a jail sanction for 100% of the violations brought to court, per the program’s design. Judges utilized jail sanctions as envisioned by the Commission, with more than 94% of sanctions falling within the recommended range. Nearly 93% of the jail sanctions imposed were at or below the maximum sanction of 19 days used by evaluators of the HOPE replication project.

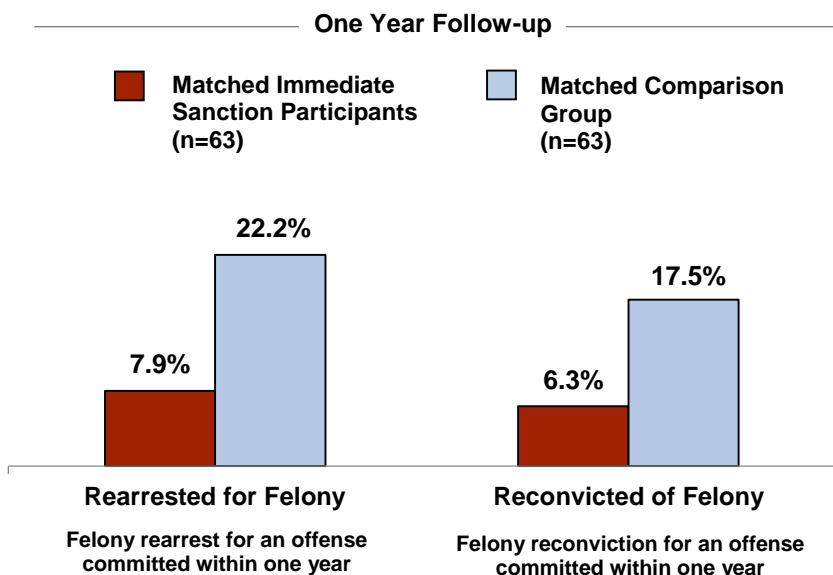
The Commission tracked the evaluation cohort for one year following placement into the Immediate Sanction Program. At the one-year mark, 9.7% of the participants in the evaluation cohort had been arrested for a new felony. Only 6.2% had a new felony conviction based on an offense committed during the follow-up period. Participants whose primary drug of use was opiates (including heroin) recidivated at a higher rate than other participants.

For the evaluation, the Commission developed a quasi-experimental design, often used in evaluations of criminal justice programs. Quasi-experimental designs identify a comparison group that is as similar as possible to the program or treatment group in terms of baseline (pre-intervention) characteristics. To reduce the risk of bias (i.e., the possibility that participants are systematically different from nonparticipants), the Commission used commonly accepted statistical techniques to create a valid comparison group. Constructing the comparison group for this evaluation was a two-

stage process. In the first stage, the Commission identified jurisdictions that were similar to the pilot sites across a number of community-level characteristics, such as crime rates, demographics, and judicial practices in sanctioning technical probation violators. In the second stage, the Commission developed a pool of potential comparison offenders from within the selected comparison jurisdictions. Using tightly controlled matching procedures, the final sample included 63 participants in the evaluation cohort matched to 63 comparison probationers, for a total of 126 subjects. Participants for whom no matched comparison probationer could be found were not included in the subsequent analyses.

At one year from program placement or, in the case of the comparison group, one year from the date the probationer would have become eligible for placement, 7.9% of the 63 participants in the matched sample had been rearrested for a felony offense versus 22.2% of the comparison group. Thus, Immediate Sanction participants were less likely than comparison probationers to be rearrested for a felony during the one-year follow-up. Immediate Sanction participants were also less likely than comparison probationers to be reconvicted of a felony following the arrest (6.3% for participants versus 17.5% for the comparison group). The Commission conducted survival analysis, which measures the time until a recidivist event occurs, to determine if these differences were statistically significant. The results of the survival analysis are mixed. This analysis revealed that Immediate Sanction participants were less likely to be rearrested for a felony over time than those in the comparison group and were free of felony arrests for a longer period of time. When controlling for relevant factors, including street time (i.e., the time that the individual was not in jail serving sanctions, etc., and, thus, was in the community with the opportunity to recidivate), this finding remained statistically significant ( $p < .05$ ). However, when examining the time until rearrest for an offense that resulted in a felony conviction, the differences between participants and the comparison group were not statistically significant after controlling for other factors. Due to the small sample size and relatively low occurrence of recidivism, the results of the Commission’s analyses are not generalizable to the population.

**Recidivism Rates for the Immediate Sanction Probation Evaluation Cohort and Matched Comparison Group**



Immediate Sanction participants were more likely to be free of felony arrests for a longer period of time than comparison offenders, even when controlling for other factors like street time (significant at  $p < .05$ ). Time to an arrest resulting in felony reconviction was not statistically significant after controlling for other factors.

The Commission also compared probation revocation rates. Immediate Sanction participants in the matched evaluation cohort had their probation revoked at a higher rate than comparison offenders (30.2% compared to 23.8%). Not only were participants more likely to be revoked, sentences imposed for revocations were more severe for program participants. Immediate Sanction participants in the matched evaluation cohort were much more likely to receive a prison term when revoked than offenders in the comparison group. The stark differences in the outcomes for revocations had a considerable impact on the cost analysis, which revealed that the Immediate Sanction Probation Program in Virginia costs more than traditional probation. This finding suggests that differences in probation and judicial practices or differences in the amenability of certain offender populations may influence the outcomes and costs of implementing programs based on the HOPE model (Lattimore et al., 2016a).

Implementing and maintaining a new program that diverges substantially from existing practice is very challenging. Over the course of the pilot program, the Commission noted a number of successes but also some difficulties that were not entirely overcome. Successes are listed below.

- Ensuring that violations are addressed immediately and cases are handled swiftly requires extensive collaboration and coordination among many criminal justice agencies and offices. The majority of stakeholders in the pilot sites demonstrated a commitment to working with each other, and the Commission, to give the pilot program the best opportunity to succeed despite the lack of funding.
- Local stakeholders executed an entirely new structure for handling violations in an expedited fashion, where such a process had not existed previously.
- Virginia's Immediate Sanction Probation pilot program achieved a number of the key targets of the HOPE model:
  - The majority of the individuals placed in the program had scored medium to high on the COMPAS recidivism risk scale. Low risk probationers placed in the program had committed numerous violations while on regular supervision, placing them at higher risk for revocation.
  - For participants who violated program rules, 100% of the violations resulted in a jail sanction and these sanctions were served immediately following the hearing. Nearly all were within the range recommended by the Commission and were at or below the maximum sanction established in the evaluation of the BJA/NIJ-funded HOPE replication project.
- The vast majority of participants who completed the program were released from any remaining supervised probation obligation. Release from supervision for successful completers serves as an incentive for participants in the program.

The successes of the pilot sites should not be overlooked. They are a testament to the dedication and extensive collaboration of the more than 100 stakeholders in the local pilot sites. A number of challenges remained, however, and some key targets were not reached. These are described below.

- The number of program candidates referred by probation staff was lower than expected. This may be due, in part, to the eligibility criteria, which excluded those with obligations to courts outside of the pilot jurisdictions and, by statute, those on probation for an offense defined as violent in § 17.1-805. Also, the Commission had no ability to ensure that all eligible probationers in the pilot sites were referred to the program. The lower-than-expected number of referrals posed a challenge for the evaluation.
- Other evaluators have found that strong local leadership is very important to the successful implementation and continued fidelity to the HOPE model. While the Commission met with local stakeholders regularly from program implementation through June 2015 to provide guidance and assistance in addressing obstacles, the pilot program likely would have benefitted from the leadership of a highly-involved local stakeholder serving as a champion in each of the pilot sites. While not possible given the Commission's budget constraints, having an on-site project coordinator in each location, such as that provided to sites participating in the BJA/NIJ-funded HOPE replication, would have been beneficial for program fidelity and data collection.
- Arguably the most significant difference between Virginia's Immediate Sanction Probation Program and Hawaii's HOPE program (and the recent four-site replication of HOPE) has been the lack of resources for substance abuse services, particularly residential/inpatient options. Moreover, the availability of treatment resources varies considerably across jurisdictions in Virginia and, in at least one pilot site, very few treatment services are available for probationers under supervision in the community.
- Limited staff resources presented additional challenges at times. The intense supervision of new participants, in conjunction with immediate arrests, hearings, and jail time for violations, meant that existing resources were stretched thin. Relatively high turnover, particularly in the probation offices, at times made it difficult to maintain an experienced corps of program personnel.
- The Commission observed some inconsistencies across the pilot sites in the supervision practices of Immediate Sanction probation officers, for example, the extent to which the results of handheld urinalyses were sent to the centralized laboratory for confirmation prior to effecting an arrest.
- Similar to the findings of the HOPE replication project, Virginia's pilot sites had difficulty bringing participants to a violation hearing within three days, in large part because of participants who failed to show up at scheduled appointments or who absconded. Although the pilot sites were successful in implementing a much faster process to bring a violation before the court, none of the sites achieved the minimum 60% target for the percentage of violations handled within three days recommended by the evaluators of the HOPE replication project. Examining the data further revealed that while roughly half (47.3%) of violation hearings occurred within three days of the violation, the vast majority (92.5%) of hearings were held within three business days following arrest. This ranged from 84.7% of violations in Lynchburg to 100% in Henrico. Whether the stakeholders had selected set days and times to conduct these hearings (e.g., every Monday, Wednesday, and Friday at 1:00 p.m.) as well as judicial caseload and other factors may have played a role in this variation across pilot sites.

Maintaining fidelity to the model over the long term is particularly challenging for a program of this kind. Given that the Immediate Sanction Program is a significant departure from current practice and the need for buy-in from a large number of stakeholders, strict adherence to program protocols may be difficult to maintain over time. Current policies of the Department of Corrections allow for discretion of the probation officer in the supervision of his or her caseload and, in some respects, encourage Virginia's 43 probation districts to develop localized practices. A program like HOPE, which requires strict adherence to uniform protocols and removes discretion from the officer in the handling of violations, may be difficult to implement and sustain in the context of traditional probation in Virginia.

While evaluations of Hawaii's HOPE program and others have found lower recidivism rates and reduced use of incarceration for probationers, the Commission's analysis of Virginia's pilot program yielded mixed results. The analysis suggested that Immediate Sanction participants were more likely to be free of felony arrests for a longer period of time than comparison offenders ( $p < .05$ ). While Immediate Sanction participants were also less likely than comparison probationers to be reconvicted for a new felony, the relationship between program participation and subsequent felony reconviction was not statistically significant after controlling for other factors. Moreover, participants in the Immediate Sanction Program were more likely to have their probation revoked than comparison probationers and, when revoked, were much more likely to receive a prison term than those in the comparison group. Cost analysis indicated that the Immediate Sanction Probation Program costs more than traditional probation in Virginia. The Commission's evaluation is limited by the small sample size and the relatively low occurrence of recidivism; therefore, the results are not generalizable to the population. Data limitations, most notably for individuals on traditional probation, meant that certain aspects of the program, such as utilization of treatment services, could not be included in the recidivism or cost analysis.

At the close of 2016, a growing number of swift-and-certain sanctions programs have been evaluated and, while this has greatly contributed to the body of research on this model of community supervision, mixed results have emerged. Several studies found positive program effects, while at least two recent studies (including the large-scale HOPE replication project) did not. Additional research is needed to determine why some swift-and-certain sanctions programs are effective at lowering recidivism and reducing the use of incarceration and others are not and, in particular, for which offender populations this approach is most effective.

## **Introduction**

In 2004, Judge Steven Alm of Hawaii's First Circuit established the Hawaii Opportunity Probation with Enforcement (HOPE) program. The HOPE program was created with the goal of enhancing public safety and improving compliance with the rules and conditions of probation among offenders being supervised in the community. Targeting higher risk probationers, the HOPE program applies swift and certain, but mild, sanctions for each violation of the conditions of supervision. The approach was markedly different from probation as it was being conducted in Hawaii at that time.

According to the National Institute of Justice, the HOPE approach is grounded in research which suggests that deferred and low-probability threats of severe punishment are less effective in changing behavior than immediate and high-probability threats of mild punishment (see, e.g., Grasmick & Bryjak, 1980; Nichols & Ross, 1990; Paternoster, 1989). In other words, the certainty of a punishment, even if it is moderate, has a stronger deterrent effect than the fear of a more severe penalty if there is a possibility of avoiding the punishment altogether. Punishment that is both swiftly and consistently applied sends a strong message to probationers about personal responsibility and accountability. Immediacy is a vital tool in shaping behavior because it can be used to clearly link the behavior with the consequence.

The swift-and-certain sanctions model developed in Hawaii, now often referred to as swift, certain and fair (SCF) probation, has several key features. Operational details may vary from program to program, but certain components are central to the swift-and-certain sanctions formula. These are:

- Higher risk probationers under supervision in the community are identified for participation in the program.
- The judge gives an official warning that probation terms will be strictly enforced and that each violation will result in jail time.
- Program participants are closely monitored to ensure that there are no violations.
- New participants undergo frequent, unannounced drug testing. For offenders testing negative, frequency of testing is gradually reduced.
- Participants who violate the rules or conditions of probation are swiftly arrested and brought to jail.
- The court establishes an expedited process for dealing with violations (usually within three business days).
- For each violation, the judge orders a short jail term. The sentence for a violation is modest (usually only a few days in jail) but virtually certain and served immediately.

Successful implementation of a swift-and-certain sanctions program requires a significant amount of collaboration and coordination across numerous stakeholders representing multiple agencies and offices. Each stakeholder must be engaged, informed, and willing to participate. Without buy-in and continued cooperation from all stakeholders, as well as strong leadership, a swift-and-certain sanctions program can be nearly impossible to implement and sustain with fidelity to the program model. Critical stakeholders include:

- Judges,
- Prosecutors,
- Probation officers and the Corrections management team,
- Defense attorneys,
- Law enforcement,
- Jail officials,
- Court clerks, and
- Treatment providers.

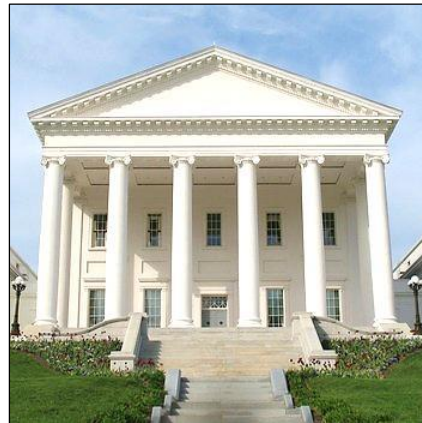
In 2009, a federally-funded evaluation of HOPE was completed using a randomized controlled trial, which is considered to be the most rigorous form of evaluation (this method is frequently used in clinical trials in medicine). After a one-year follow up period, evaluators found a significant reduction in technical violations (such as drug use and missed appointments) among HOPE participants, as well as lower recidivism rates, compared to similar offenders supervised on regular probation. In a separate study, researchers found that HOPE participants and regular probationers served about the same number of jail days for supervision violations, but HOPE participants used significantly fewer prison beds than regular probationers. Evaluators concluded that, during the one year follow-up period, many HOPE participants successfully changed their behavior, leading to increased compliance and lower recidivism.

After the release of the HOPE evaluation in 2009, interest in Hawaii's swift-and-certain sanctions model spread. In 2011, the Bureau of Justice Assistance and the National Institute of Justice partnered to provide grant funding to four jurisdictions to replicate and evaluate Hawaii's program model. As of July 2015, there were swift-and-certain sanctions programs operating in at least 29 states across the country.

Policymakers in Virginia also became interested in Hawaii's approach to dealing with probation violators. In 2010, the General Assembly adopted legislation authorizing the creation of up to two Immediate Sanction Probation Programs with key elements modeled after the HOPE program (see § 19.2-303.5 of the *Code of Virginia*). The 2010 legislation did not designate a particular agency to lead or coordinate the effort. Although supporting legislation existed, an Immediate Sanction Probation Program had not been formally established by 2012. Nonetheless, many Virginia officials remained interested in launching such a program in the Commonwealth.



In May 2012, the General Assembly adopted budget language to extend the provisions of § 19.2-303.5 and to authorize the creation of up to four Immediate Sanction Probation programs (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). This provision directed the Virginia Criminal Sentencing Commission to select up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth's Attorney in each locality. It charged the Commission with developing guidelines and procedures for the program and administering program activities in the pilot sites. The legislative mandate further required the Commission to evaluate the results of the program. As no additional funding was appropriated for this purpose, the pilot program has been implemented within existing agency budgets and local resources. Although the legislation was slated to expire on July 1, 2015, the 2015 General Assembly modified budget language to extend the provisions until July 1, 2016, to allow the two newest pilot sites sufficient time to test the program (Item 47 of Chapter 665 of the 2015 Acts of Assembly). In 2016, the General Assembly extended the sunset date to July 1, 2017 (House Bill 608 and Item 50 of Chapter 780 of the 2016 Acts of Assembly), which enabled the pilot sites to continue the program until the 2017 General Assembly has reviewed the Commission's evaluation and determined whether to continue the program in the future.



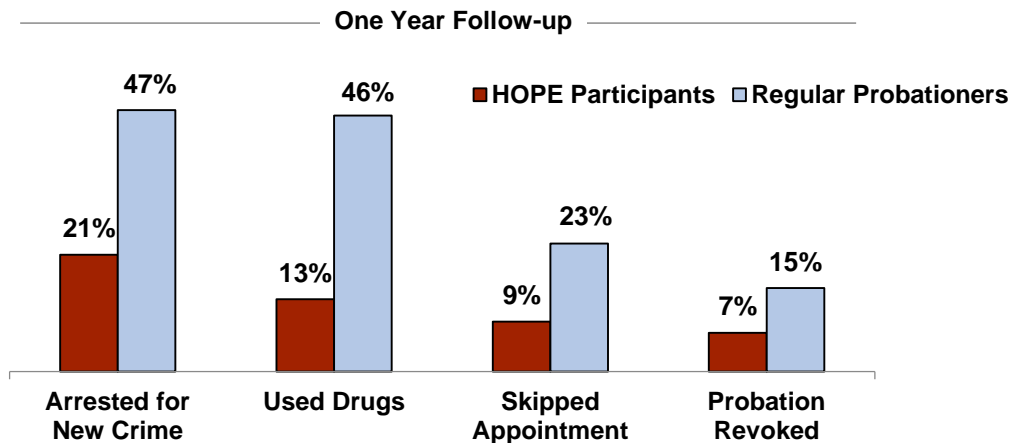
Per § 19.2-303.5, the Immediate Sanction Probation Program is designed to target nonviolent offenders who violate the conditions of supervised probation but have not been charged with a new crime. These violations, often referred to as “technical violations,” include using illicit drugs, failing to report as required, and failing to follow the probation officer’s instructions. As in Hawaii, the goal is to reduce recidivism and improve compliance with the conditions of probation by applying swift and certain, but mild, sanctions for each violation. Improving compliance with probation rules and lowering recidivism rates enhances public safety and may reduce the likelihood that offenders ultimately will be sentenced to prison or lengthy jail terms.

## Evaluations of Swift-and-Certain Sanctions Programs to Date

A growing number of swift-and-certain sanctions programs have been evaluated and this has greatly contributed to the body of research on this model of community supervision. Evaluations of swift-and-certain sanctions programs reviewed in this section employed an experimental or quasi-experimental research design in order to assess the effectiveness and generalizability of the program model. Experimental designs, such as randomized controlled trials, are powerful techniques for evaluating cause-and-effect relationships. Many researchers consider experiments the "gold standard" against which all other research designs should be judged. This design is considered to be the most rigorous form of evaluation as it ensures that any differences in outcomes are attributable to the program/intervention and not to other factors. Often, however, random assignment is not possible or practical, so it is necessary to implement a quasi-experimental research design, using specialized statistical techniques to create a matched comparison group. Evaluations based on such rigorous scientific approaches are described below.

The 2009 evaluation of Hawaii's HOPE program utilized a randomized controlled trial in which probationers were randomly assigned to either HOPE or to probation as usual. After a one-year follow-up period, HOPE participants were found to have significant reductions in positive drug tests, missed appointments, and new arrests compared to individuals on probation as usual (Figure 1). In addition, evaluators found that, while jail bed utilization for HOPE participants was similar when compared to those on traditional probation, the substantial reduction in revocations observed among HOPE probationers resulted in a significantly lower rate of prison sanctions issued for this group.

**Figure 1**  
**Hawaii Opportunity Probation with Enforcement (HOPE) Program**  
**Evaluation Outcomes**



Source: Hawken, A. & Kleiman, M. (2009). *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*.

In 2016, evaluators of Hawaii's program released the results of a long-term follow-up of the original subjects of the earlier evaluation. Those who participated in HOPE were less likely to have incurred new charges over the 76-month follow-up period than the control group; however, the magnitude of the difference was smaller than the gap observed in the one-year follow-up window used previously, and reductions in drug arrests accounted for most of the difference (Hawken et. al., 2016). Additionally, the return-to-prison rate remained significantly lower for HOPE participants than the control group over the longer follow-up period. HOPE participants also showed a slightly greater likelihood to appear for substance abuse treatment. HOPE was found to economize on supervision resources, as HOPE probationers were more likely to receive successful early termination from supervision.

A 2011 evaluation of the Washington Intensive Supervision Program (WISP) for higher-risk parolees in Seattle revealed that participants spent fewer days in jail pre- and post-adjudication, as well as fewer days in prison for sanctions, than individuals under traditional supervision (Hawken & Kleiman, 2011). The study, which was based on random assignment of parolees, also found a lower recidivism rate (defined as a subsequent conviction during a six-month follow-up period) among WISP participants. This evaluation was based on a small participant cohort and a short follow-up period, which may limit the generalizability of the findings.

More recently, Washington State adopted a Swift and Certain (SAC) policy statewide for offenders on community supervision. Using a quasi-experimental design (statistically matching participants to a control group) and a one-year follow-up period, SAC participants incurred fewer incarceration days after a violation, had reduced odds of recidivism, experienced greater treatment program utilization, and had a reduced propensity of committing violations over time. As a result, SAC participation was associated with lower correctional costs (Hamilton et al., 2015; Hamilton et al, 2016). Further analysis revealed a cost-benefit ratio of 1:16, indicating a \$16 return on investment for every dollar spent on SAC participants.

In Arkansas, a preliminary evaluation of the state's five SWIFT (Supervision with Intensive Enforcement) pilot programs used statistical matching to construct a comparison group of non-SWIFT probationers. SWIFT probationers, during the first six-months after placement in the program, served less time in jail, on average, for violations than the matched comparison group (Kunkel & White, 2013). Despite being drug tested more frequently, the SWIFT participants tested positive at a lower rate. The short follow-up period and the small number of subjects did not permit a reliable comparison of rearrest rates.

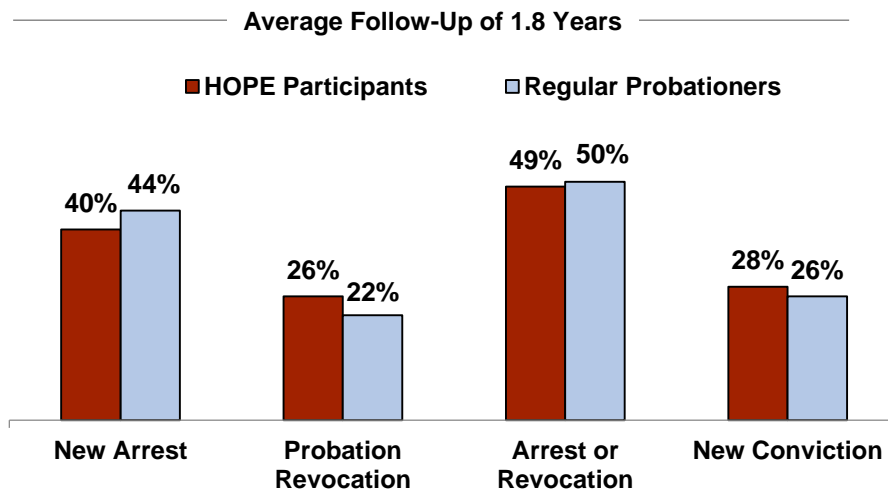
A similar study conducted on Michigan's Swift and Sure Sanctions Program (SSSP) found reduced incarceration and recidivism among participants compared to the control group. Moreover, differences in recidivism remained statistically significant after controlling for a number of offender characteristics (DeVall, Lanier & Hartmann, 2013). Participation in Kentucky's SMART (Supervision, Monitoring, Accountability, Responsibility, and Treatment) program was associated with a reduction in the number of probation violations, positive drug screens, and days incarcerated compared to individuals on traditional probation (Shannon et al., 2015). Early evaluation results from Arizona's Swift Accountable Fair Enforcement (SAFE) program suggest that the program is associated with a lower rate of positive drug tests for SAFE probationers than for those on probation as usual (Maricopa County Adult Probation Department,

2012). In addition, significantly fewer SAFE participants had a new arrest during supervision compared to those on probation as usual. In Georgia, an evaluation of the Probation Options Management (POM) program indicated a significant reduction in the number of days spent in jail and associated costs for probationers (Speir et al., 2007).

Recent efforts in Delaware to implement a new probation program (Decide Your Time, or DYT) based on many of the principles of the swift-and-certain model were evaluated using a randomized controlled trial. The DYT program was not successful in reducing substance use or crime among the targeted population (O’Connell et al., 2016). Moreover, “judicial practices, client eligibility, logistics, and cooperation with secure facilities all posed noteworthy issues for program implementation” (O’Connell et al., 2011, p. 261).

In 2011, the Bureau of Justice Assistance and the National Institute of Justice partnered to provide grant funding and assistance to four jurisdictions to replicate and evaluate the HOPE program model. Assistance included support for implementation and technical assistance to facilitate fidelity to the HOPE model. In fall 2011, HOPE (renamed Honest Opportunity Probation with Enforcement) programs were implemented in Saline County, Arkansas; Essex County, Massachusetts; Clackamas County, Oregon; and Tarrant County, Texas. More than 1,500 probationers were randomly assigned to either HOPE or probation as usual. As shown in Figure 2, the recently-completed evaluation found that rearrest, reconviction and revocation rates were largely similar between those on HOPE probation and those on traditional probation (Lattimore et al., 2016b). There were no statistically significant differences, overall, between the HOPE and probation-as-usual groups in the likelihood of these outcomes (Lattimore et al., 2016a). The results suggest that the HOPE/SCF type programs can be successfully implemented to produce greater accountability among probationers; however, the lower recidivism rates found in the 2009 evaluation of Hawaii’s program could not be replicated in the four grant-funded sites.

**Figure 2**  
**Bureau of Justice Assistance/National Institute of Justice-Funded HOPE Replication**  
**Evaluation Outcomes**



Source: Lattimore, P., Dawes, D., Tueller, S., MacKenzie, D., Zajac, G., & Arsenault, E. (2016). *Summary Findings from the National Evaluation of the Honest Opportunity Probation with Enforcement Demonstration Field Experiment*.

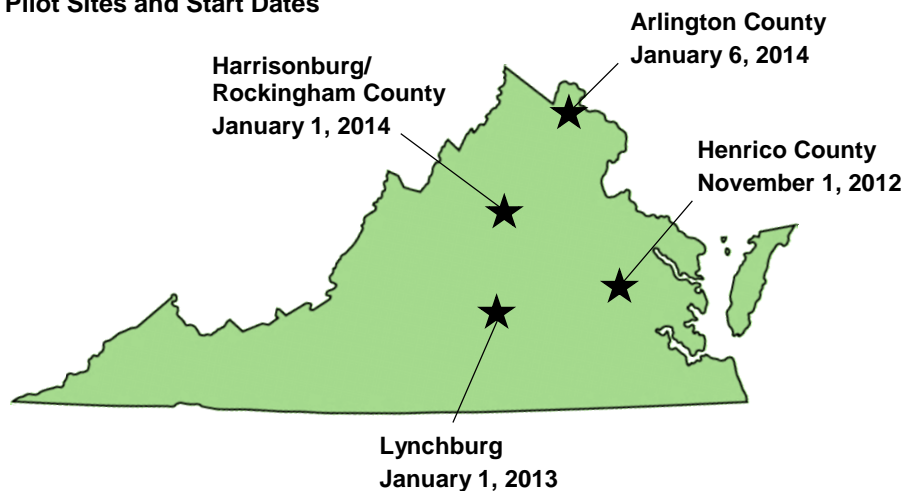
## Design and Implementation of Virginia's Immediate Sanction Probation Program

The Commission designed Virginia's Immediate Sanction Probation Program based on the parameters established by the General Assembly's statutory and budgetary language and the key elements of the swift-and-certain sanctions model pioneered in Hawaii. Implementing the pilot program with as much fidelity as possible to the tenets of the swift-and-certain sanctions model provided the best opportunity to determine if the positive results observed elsewhere would emerge in Virginia.

### *Selection of Pilot Sites*

Commission staff worked closely with the Office of the Secretary of Public Safety and Homeland Security and the Department of Corrections (DOC) to identify potential pilot sites for the Immediate Sanction Probation Program. The Commission wished to test the program in jurisdictions in different regions of the state and in a mix of urban/suburban/rural localities. In addition, the Commission hoped to test the program in various settings and therefore considered whether potential sites had a Public Defender Office or a drug court. The size of the probation population in each jurisdiction was also important, as small probation populations may not yield a sufficient number of eligible candidates to conduct a thorough evaluation of the program. In several localities, one or more officials had expressed interest to the Secretary or to the Commission's director. Such local interest was highly desired. After consideration of these factors, the Commission approached stakeholders in Henrico County, the City of Lynchburg, and the City of Newport News. Henrico and Lynchburg agreed to participate, with start dates of November 1, 2012, and January 1, 2013, respectively. The stakeholders in Newport News elected not to participate in the pilot project. Subsequent meetings were held in the Cities of Hampton and Chesapeake, but neither locality opted to move forward with a pilot program. Finding pilot sites was a challenge to implementing the Immediate Sanction Probation Program, with local officials citing the lack of additional funding and potential increase in workload as their primary concerns. By the end of 2013, Arlington County and the City of Harrisonburg/Rockingham County agreed to participate as the third and fourth pilot sites. Pilot programs in these two sites became operational in January 2014.

**Immediate Sanction Probation Program  
Pilot Sites and Start Dates**



## ***Implementation Support***

In each site, Commission staff organized and participated in multiple meetings prior to the start date to brief local officials and staff on the program and to facilitate decisions about operational details. To support and facilitate the implementation of the program in each pilot site, the Commission:

- Developed guidelines and procedures and prepared an implementation manual;
- Prepared a warning script for judges to use when placing probationers into the program;
- Created forms to help stakeholders with administrative processes and to gather data for the evaluation;
- Assisted with development of template court orders for the program;
- Ensured a point-of-contact was identified for each office/agency involved in the locality's pilot program and produced a contact list for each pilot site;
- Identified a payment process for court-appointed attorneys working with the program in Henrico, Harrisonburg/Rockingham, and Arlington;
- Trained dozens of defense attorneys on the program's target population, purposes, and procedures.
- Collaborated with DOC, the Compensation Board, jail staff, and Circuit Court Clerks to add new codes in automated systems so that program participants could be tracked; and
- Met with all probation officers in Lynchburg, Henrico, Arlington, and Harrisonburg/Rockingham to explain the program and encourage the identification and referral of candidates.

Commission staff also organized regular meetings with stakeholders in all four pilot sites. These meetings were beneficial to review and refine procedures, examine the progress of the participants, and identify and resolve any issues or concerns as they arose. Stakeholders were encouraged to work together to develop solutions that were satisfactory to everyone. Commission staff also communicated with local stakeholders, particularly the Immediate Sanction probation officers, on an ongoing basis. This provided an opportunity to address questions from probation staff and to receive valuable feedback on the program from probation officers. Stakeholders were encouraged to call the Commission to discuss emergent issues at any time.

### ***Eligibility Criteria***

To be considered for the Immediate Sanction Probation Program, offenders must meet certain criteria. In § 19.2-303.5, the General Assembly specifies that the offender must not be on probation for a violent offense defined in § 17.1-805. The Sentencing Commission set additional criteria for the pilot program. To be eligible, an offender must:

- Be 18 years of age or older,
- Be on supervised probation for a felony conviction (not given a deferred disposition, as that does not include a suspended term of incarceration),
- Have a recent risk/needs assessment on file (based on the COMPAS instrument currently utilized by the DOC for supervision planning),
- Not have been diagnosed with a severe mental health issue (these offenders may not be able to fully comprehend the consequences for violations enough to modify behavior),
- Not have any pending charges, and
- Be supervised in the same jurisdiction where the offender was originally sentenced.

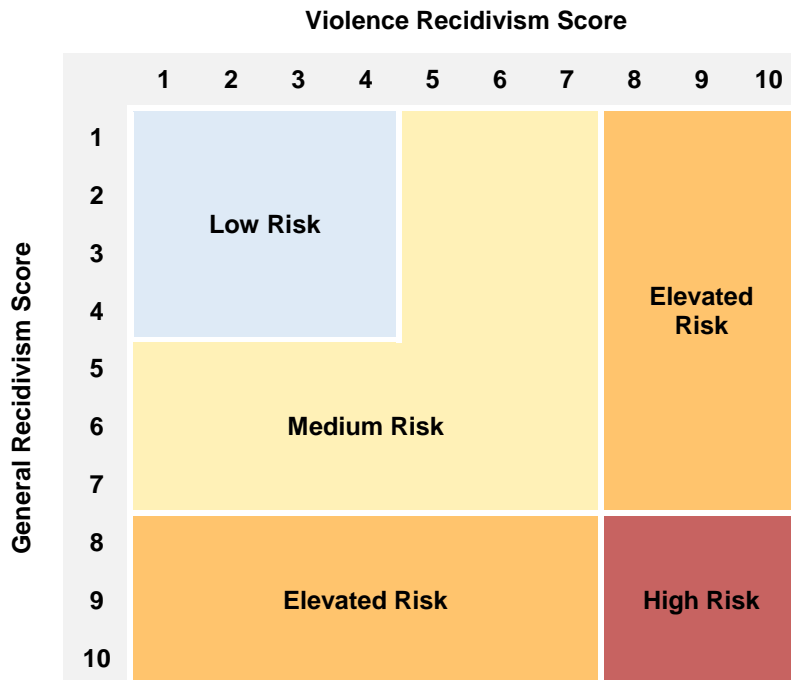
Since the program was implemented in only four pilot sites, this last eligibility criteria ensures that judges in the pilot sites have jurisdiction over the cases and can swiftly impose sanctions.

### ***Identifying Higher Risk Probationers***

Selecting higher risk probationers is an important aspect of the swift-and-certain sanctions model. Since swift-and-certain sanctions programs involve intense monitoring and are more time and resource-intensive than regular probation, targeting higher-risk offenders allows for the most efficient use of resources. In addition, criminological research has shown that placing low-risk offenders in programs designed for high-risk offenders may actually increase their likelihood to recidivate (see, e.g., Andrews & Bonta, 2007; Lowenkamp & Latessa, 2004; Lowenkamp, Latessa, & Holsinger, 2006).

To be a candidate for Virginia's Immediate Sanction Probation Program, an offender must be identified as being at-risk for recidivating or failing probation (i.e., they are at risk for having their probation revoked due to noncompliance with the conditions of supervision). To measure recidivism risk, DOC probation officers administer the COMPAS risk/needs assessment instrument. COMPAS is currently used by probation officers to develop supervision plans and to determine the most appropriate supervision level for an offender. COMPAS contains two recidivism risk scales: risk of violent recidivism and risk of general recidivism. Based on the probationer's scores on these two scales, he or she is categorized as low risk, medium risk, elevated risk, or high risk, as shown in Figure 3.

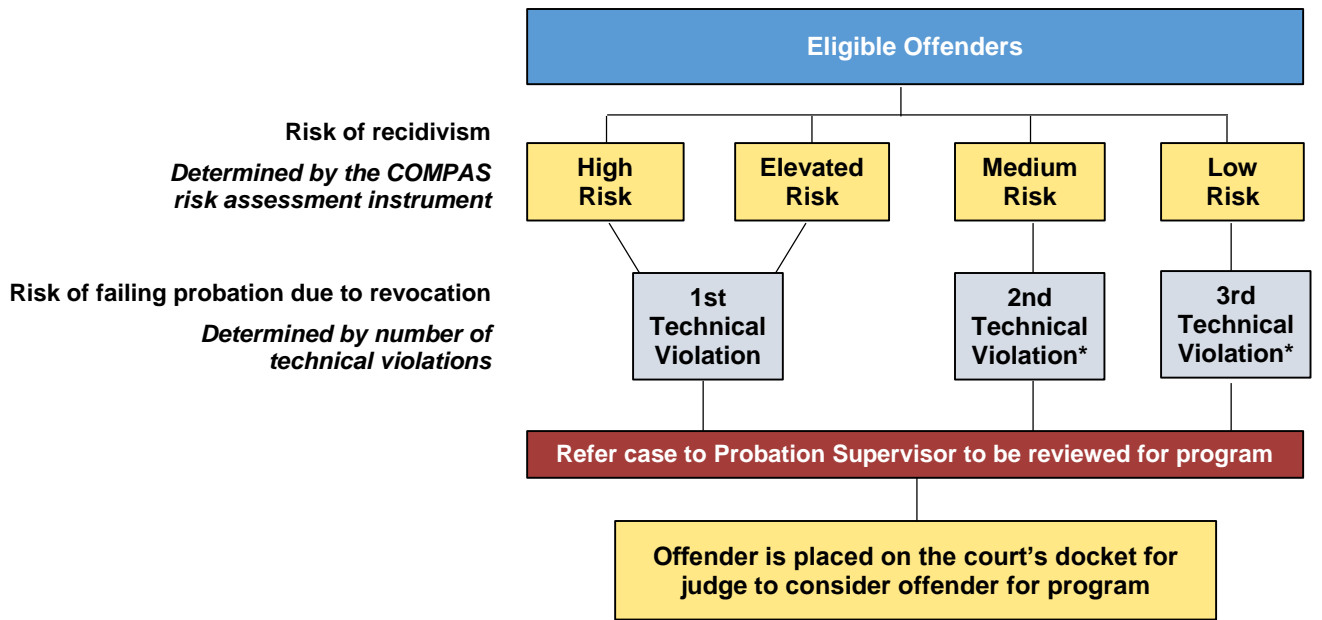
**Figure 3**  
**COMPAS Recidivism Risk Scales and Risk Classification**



Risk of recidivating is then used in conjunction with risk for failing probation (measured by the number of technical violations the offender is alleged to have committed) to identify candidates for the pilot program. The Commission developed a framework for integrating these two measures of risk, which is shown in Figure 4. An eligible probationer who has been identified through COMPAS as high risk or elevated risk becomes a candidate for the Immediate Sanction Probation Program upon the first alleged technical violation. Because these probationers are already at the highest risk for recidivism compared to other probationers, the threshold in terms of technical violations is set at one. For a probationer identified as medium risk on COMPAS, the probation officer handles the first violation based on DOC policy, using the officer's experience and skills in working with probationers. However, upon the second alleged technical violation, a medium risk offender becomes a candidate for the program. For a probationer who is found to be at low risk for recidivism on COMPAS, the probation officer continues to work with the offender for the first two technical violations but, upon the third violation, the probationer becomes a candidate for the program. While COMPAS indicated that such a probationer was low risk for recidivating, the offender's behavior of repeated technical violations suggests that he or she is at increasing risk of failing probation (i.e., having his or her probation revoked). Once identified as a candidate, the probationer can be referred to the court for a review hearing. As noted above, offenders on supervised probation for a violent felony offense (as defined § 17.1-805) are not eligible for the program and, therefore, are excluded from this process.



**Figure 4**  
**Identifying Candidates for the Immediate Sanction Probation Program**  
**Based on Two Risk Measures**



\* Violations occurring on different dates

### ***Candidate Review Hearing***

Once identified as a candidate for the program, a probationer usually appears before the judge within seven days for a review hearing. These hearings are conducted much like traditional Show Cause (violation) hearings. A Public Defender, court-appointed attorney, or private attorney is present when candidate review hearings are conducted. When possible, the attorney meets with the probationer prior to the review hearing to discuss the program's requirements. The presence of all parties at the review hearing assists in impressing upon the probationer the seriousness of the matter.

At the candidate review hearing, the judge decides whether or not to place the probationer in the Immediate Sanction Program. If the court decides not to place the offender in the program, the judge continues the hearing on the probation violation so it may be handled under existing practices. If the judge determines that an eligible offender is a good candidate for the program and there is sufficient evidence to find that the offender violated a term or condition of probation, the judge orders that the Show Cause be continued upon the condition that the offender successfully complete the Immediate Sanction Probation Program.

## ***Official Warning***

The warning is a critical piece of the swift-and-certain sanctions model. Participating in a swift-and-certain sanctions program is different from regular probation and it is important to explain this to the probationer. As part of the warning hearing, the judge:

- Stresses the importance of the probationer taking charge of his life and accepting responsibility for his actions;
- Clearly lays out the consequences for violation in advance; and
- Expresses a message toward the probationer that the judge wants the probationer to succeed.

The goal is to instill in the probationer that one's own choices (rather than the probation officer's or the Judge's) result in the consequences and that the offender has the power to change his or her behavior. Frequently referred to as one's "internal locus of control" and "self-efficacy," these beliefs are considered to be strong predictors of behavioral change. It is important that judges use the same language and communicate a consistent message to each probationer who is placed in the Immediate Sanction Probation Program. The Commission developed a standardized script for the judges' use. The script, which is based on the one used in Hawaii's HOPE program, can be found in Appendix 3.

## ***Participant Supervision***

Program participants are closely monitored to ensure compliance with all terms and conditions of probation. New participants are subject to frequent, unannounced drug testing (four to six times per month for at least the first month). Handheld drug testing units are used because immediate results are necessary to swiftly sanction the participant for drug use. For offenders testing negative, frequency of testing is gradually reduced. In addition, the probation officers frequently verify treatment participation, if applicable, employment status/efforts, and payment of court costs and restitution. Like the drug testing schedule, the frequency of probation appointments is gradually reduced after periods of compliance, as well. Immediate Sanction probation officers also reinforce the message expressed by the court during the warning hearing and violation hearings. As in Hawaii, Virginia's probation officers use several techniques, including Motivational Interviewing and Cognitive Behavioral approaches, to guide the offender toward improving his or her choices going forward. The probation officers also use their extensive training and experience to assist the offender in identifying triggers and creating strategies to prevent future violations.

The Commission emphasized the need for uniformity in the supervision of program participants and in responses to violations. As a result, the Commission requested that DOC assign a seasoned probation officer who was already working in each pilot site as the Immediate Sanction probation officer, with a goal of having one officer dedicated to the supervision of the offenders participating in the pilot program. DOC has used existing resources to provide one additional probation officer for each pilot site.

### ***Violations While Participating in the Program***

When a violation is detected, the supervising probation officer immediately issues a PB-15 authorizing the offender's arrest. The arrest is made as quickly as possible. For example, an offender who tests positive for drug use is arrested in the probation office and taken to jail. If an offender fails to show up for an appointment with his or her probation officer, law enforcement locates the participant in the community as quickly as possible and takes the offender to jail. The probationer remains in jail while awaiting the expedited hearing. By quickly executing arrests, law enforcement officers are integral to ensuring that program violations are met with swift and certain sanctions. Jail staff also assist by ensuring the quick transport of candidates and program participants between jail and court.

### ***Expedited Hearings for Violations***

An expedited process for handling Immediate Sanction Probation violations has been established by the court in each pilot site. The expedited hearings are conducted multiple days of the week so that participants will not wait long in jail before having a violation heard by the court. Violation hearings are usually held within three business days following arrest. This expedited process diverges significantly from the normal probation violation process in Virginia, which can take weeks or even months in some jurisdictions. Court hearings associated with the Immediate Sanction Probation Program tend to be brief. Based on a sample of court hearings conducted in Henrico and Lynchburg, violation hearings last, on average, eight minutes each. This is comparable to the length of hearings in Hawaii's HOPE program.

Pursuant to § 19.2-303.5, the court conducts an expedited hearing except under certain circumstances. An expedited hearing is not conducted when:

- It is alleged that the offender committed a new crime or infraction,
- It is alleged that the offender absconded for more than seven days,  
or
- The offender, the Commonwealth's Attorney, or the court objects to the expedited hearing.

Per § 19.2-303.5, if an expedited hearing is not held, the violation is handled through the normal process (i.e., full Show Cause hearing). If the violation is handled through the normal process, the probationer may receive a substantially longer sentence than he or she would receive during an expedited hearing, up to and including the full amount of the suspended sentence in the offender's case.

### ***Access to Defense Counsel***

A Public Defender (if an office exists in the site) is assigned to each session in which the court will hold expedited hearings. If no Public Defender Office exists in a pilot site, a cadre of court-appointed attorneys has been established to provide counsel. The offender can call a private attorney or elect to waive counsel, if he or she chooses. Access to defense counsel was built into

Virginia's Immediate Sanction Probation pilot program for two reasons. First, § 19.2-303.5 allows all parties, including the offender, to object to the expedited violation hearing, in which case the matter proceeds to a full Show Cause hearing and could result in the judge re-imposing the probationer's entire suspended sentence. Second, the presence of both the prosecution and defense is important for emphasizing the seriousness of the matter for the offender and creating a perception of fairness about the process.

In Lynchburg, defense counsel has been provided by the Public Defender Office. Since Henrico and Harrisonburg/Rockingham do not have a Public Defender Office, defense counsel has been provided by numerous court-appointed attorneys who have agreed to work with the Immediate Sanction Program. The Arlington stakeholders have utilized a blended approach, with the Public Defender Office representing individuals who were represented by their office on the underlying offenses or in instances in which the original attorney no longer wishes to represent the offender. Otherwise, the private or court-appointed attorney who represented the participant on the underlying felony charge is given the opportunity to represent the probationer.

***Jail Time for Violations***

Following the HOPE model, technical violations committed by probationers participating in the program result in certain jail time. When the court holds an expedited hearing and finds sufficient evidence that the participant violated a condition of probation, the judge orders the participant to serve a specified number of days in jail, based on the graduated sanctions shown in Figure 5. Per § 19.2-303.5, the maximum sentence that can be ordered during an expedited hearing is 30 days. The offender's probation is not revoked during the expedited hearing and, throughout the offender's participation in the program, the pending Show Cause order is continued. The incarceration ranges provide judges with some discretion based on the violation and circumstances surrounding it, with increasing severity for subsequent violations. The sanction recommended for each violation is usually served in addition to time served in jail awaiting the expedited hearing (for which the target is three days or less). As noted above, if an expedited hearing is not held, the violation is handled through the normal process, where the probationer may receive a substantially longer sentence (up to his or her entire suspended sentence).

**Figure 5  
Recommended Incarceration for Violations  
of the Immediate Sanction Probation Program**

<b>Program Violation</b>	<b>Recommended Incarceration Range</b>
<b>1<sup>st</sup> violation</b>	<b>3-7 days</b>
<b>2<sup>nd</sup> violation</b>	<b>5-10 days</b>
<b>3<sup>rd</sup> violation</b>	<b>7-14 days</b>
<b>4<sup>th</sup> violation</b>	<b>10-20 days</b>
<b>5<sup>th</sup> violation</b>	<b>15-25 days</b>
<b>6<sup>th</sup>+ violation</b>	<b>20-30 days</b>

### ***Substance Abuse Treatment***

In Hawaii, the HOPE program has been shown to be extremely useful for distinguishing between offenders who are able to cease drug use through the imposition of brief, but certain, jail stays and those who are unable to do so due to addiction issues. A participant who requests treatment or continues to use drugs in spite of the knowledge that he or she will be drug-tested regularly and sanctions will be imposed for continued use, would be a likely candidate for substance abuse services. Used in this way, the swift-and-certain sanctions model relies on actual offender behavior rather than a substance abuse screening or offender self-report to signal a potential need for treatment services. Individuals who use drugs recreationally but are able to stop on their own generally do so in the face of regular, random drug testing and certainty of sanctions for use. Those who continue to test positive in spite of the consequences for this behavior are identified as those most likely to need services. This approach to identifying offenders with treatment needs has been called "behavioral triage" (Hawken, 2010).

Commission staff spoke with treatment providers in the pilot jurisdictions to explain the purposes of the pilot program as well as to ask for their assistance with participants who request treatment or who demonstrate, by their behavior, that they need treatment. Overall, treatment providers have been supportive of the program and have used it to enhance the services they provide to participants enrolled in treatment. Based on experiences in the two oldest pilot sites (Henrico and Lynchburg), the Commission added substance abuse and mental health treatment providers as integral stakeholders in Virginia's pilot program in 2014.

Arguably the most significant difference between Virginia's Immediate Sanction Probation Program and Hawaii's HOPE program has been the lack of resources for substance abuse services, particularly residential/inpatient options. In Hawaii, extensive resources are available to HOPE participants. No additional treatment resources were provided for Virginia's pilot program. Moreover, the availability of treatment resources varies considerably across jurisdictions.

### ***Removal from Program***

The court may remove a participant from the Immediate Sanction Probation Program at any time. If a participant is convicted of a new felony, the rules promulgated by the Commission require that he or she be removed from the program. If this occurs, the violation is handled through a full Show Cause hearing and sanctioning of the offender is left to the discretion of the court.

### ***Successful Completion***

If a participant has been violation-free for 12 months, the probationer is considered to have "successfully completed" the Immediate Sanction Probation Program. In comparison to other swift-and-certain sanctions programs, the minimum program length of one year is relatively brief. However, if a participant violates a condition of supervision, the length of time in the program is generally extended to allow for sufficient step down practices and to ensure that the probationer has developed the tools necessary to remain successful in the community long term. Participants who are violation-free for twelve months may be returned to regular probation supervision, placed on a less-restrictive level of supervision or, at the judge's discretion, released from supervision.

## **Program Referrals**

The number of program candidates identified by probation staff has been lower than initially expected. This may be attributable, at least in part, to the eligibility criteria. For instance, the eligibility criteria established by the Commission excludes probationers who have obligations to courts outside of the pilot jurisdiction. Because the program was implemented in only four pilot sites, this eligibility criteria was necessary in order to ensure that judges in the pilot sites had sole jurisdiction over the cases and can impose sanctions swiftly. This criteria reduced the pool of eligible candidates. This was a particular issue in Henrico and Arlington, where a higher percentage of the probation caseload have obligations to multiple courts simultaneously or are being supervised as a courtesy for another jurisdiction (i.e., the offender has a court obligation in Chesterfield County but he is supervised by the Henrico probation office, where he resides).

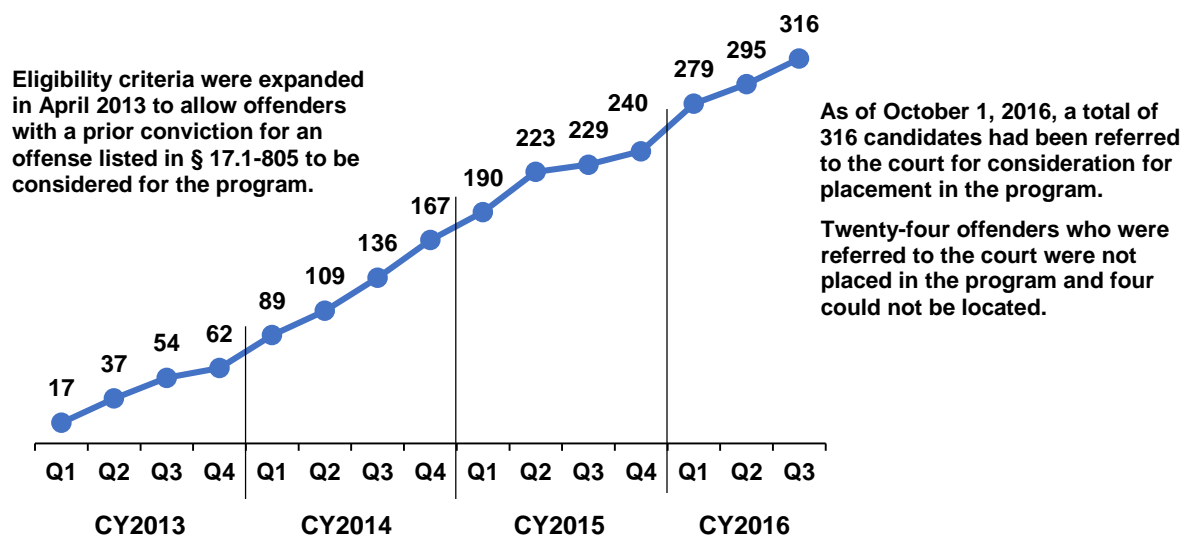
Another eligibility criteria further reduced the pool of eligible probationers. Per § 19.2-303.5, offenders on probation for a violent crime, as defined in § 17.1-805, are not eligible for the program. As initially designed, the Commission also excluded offenders with a prior conviction for an offense listed in § 17.1-805. During ongoing meetings in the pilot sites, members of multiple stakeholders groups indicated that they had identified probationers who they felt would respond well to the structure of the Immediate Sanction Program, but the offenders were ineligible due to a prior violent offense (a prior burglary was frequently cited, and burglary is defined as a violent offense in § 17.1-805). Based on feedback from stakeholders, the Commission initiated discussions with the Secretary of Public Safety and Homeland Security, Commonwealth's Attorneys, and several others. Commission staff also conducted a comprehensive review of eligibility criteria and evaluation findings for similar swift-and-certain sanctions programs around the country. After careful consideration, the Commission expanded the criteria to allow offenders with a prior conviction for an offense listed in § 17.1-805 to be considered for the program. Following the expansion of the eligibility criteria in April 2013, the number of potential candidates referred to the court increased. To assist the probation officers in identifying eligible candidates in these jurisdictions, DOC administration provided lists of probationers who, based on automated data, might meet the eligibility criteria.

Stakeholders in Lynchburg developed an innovative approach to expand the pool of eligible offenders. The probation district there covers several jurisdictions (the City of Lynchburg as well as Amherst, Campbell, and Nelson Counties). Participants in the Lynchburg pilot program must have an obligation to Lynchburg Circuit Court. However, probation staff identified offenders believed to be good candidates for the program who lived just outside the Lynchburg City line. At the suggestion of Lynchburg stakeholders, the Commission approached the Sheriffs in the neighboring Amherst and Campbell Counties, who agreed to assist with the pilot program by quickly executing Lynchburg's PB-15 arrest warrants in their respective jurisdictions. As a result, the pool of potential program participants for Lynchburg's pilot was expanded to include those living outside the Lynchburg City limits.

Probation officers in each pilot site were tasked with identifying eligible candidates for the program. Probation officers were asked, once a candidate is identified, to quickly prepare a Major Violation Report detailing the nature of the alleged violations. The Major Violation Report is then submitted to the court as part of the referral process. Achieving a quick turn-around in the preparation of the Major Violation Report proved to be challenging in districts that have experienced significant staff reductions in recent years, where probation officers have large caseloads, or where officers prepare a high volume of Pre-Sentence Investigation Reports. To encourage referrals, the Commission presented materials to all of the probation officers in each of the pilot sites and responded to questions about the program. In addition to the district-wide efforts to encourage referrals for the program, the Immediate Sanction probation officers also played a significant role in encouraging fellow probation officers to refer potential candidates by assisting in the identification of possible candidates, answering questions regarding the program, and helping other officers complete the necessary paperwork for referrals (e.g., the Major Violation Report). Ultimately, however, the Commission could not ensure that all eligible candidates were identified and referred to the court.

Between November 1, 2012, and October 1, 2016, a total of 316 candidates for the Immediate Sanction Program were identified by probation staff and referred to the court for placement consideration (Figure 6). Pursuant to § 19.2-303.5, the judge ultimately determines if the probationer will participate in the program. The vast majority (288, or 91%) of candidates referred to the court were placed in the program by the judge.

**Figure 6**  
**Cumulative Number of Candidates for the Immediate Sanction Probation Program**  
**Referred to the Court by Quarter**  
**(as of October 1, 2016)**



## Program Placements, Removals, and Completions

As of October 1, 2016, 288 probationers across the four pilot sites had been placed into the Immediate Sanction Probation Program (99 in Henrico, 80 in Lynchburg, 92 in Harrisonburg/Rockingham, and 17 in Arlington). As shown in Figure 7, 125 of the 288 participants had been removed from the program by October 1, 2016, without successfully completing the program. Most (112) were terminated for noncompliance with the conditions of probation. However, nine individuals were removed because they received approval to move out of the pilot jurisdiction and, therefore, were no longer eligible to participate in the program. Four were administratively removed (two participants died and two, after placement, were subsequently determined to be ineligible to participate). As of October 1, 2016, 77 participants had completed the program and were released. Nearly all (91%) of the program completers had been violation-free for 12 months, meeting the Commission’s definition of “successful completion.” Seven were allowed to complete the program without reaching the 12-month violation-free mark due to individual circumstances of these participants, based on the judge’s discretion. There were 86 participants still active in the program on October 1, 2016.

In Arlington, substantially fewer probationers were placed into the Immediate Sanction Program than in the other pilot sites. Arlington has the smallest supervised population of the four pilot sites and has a large percentage of probationers with obligations to courts outside of Arlington, which makes them ineligible for the program.

**Figure 7**  
**Immediate Sanction Probation Program Participants**  
**(as of October 1, 2016)**

Locality	Number of Probationers Placed into the Program	Number of Participants Removed	Number of Completions	Number of Current Participants
Henrico (start date: November 1, 2012)	99	53	19	27
Lynchburg (start date: January 1, 2013)	80	21	32	27
Harrisonburg/ Rockingham (start date: January 1, 2014)	92	45	19	28
Arlington (start date: January 6, 2014)	17	6	7	4
<b>Total</b>	<b>288</b>	<b>125</b>	<b>77</b>	<b>86</b>

Of the 125 participants removed from the program: 112 were terminated due to noncompliance, 9 moved out of the jurisdiction, and 4 were administratively removed.

Of the 77 participants who completed the program: 70 had been violation-free for 12 months, 68 were also removed from supervised probation.



## Evaluation Cohort

Recidivism analysis is an important component of a program evaluation of this kind. In order to allow for a sufficient follow-up period to track participants for recidivism, Immediate Sanction participants who were placed into the program before July 1, 2015, were selected for the evaluation cohort. This provides a one-year follow-up after placement in the program for all individuals in the evaluation cohort. Moreover, based on the Commission's program design, it requires a minimum of one year to successfully complete the program. As of July 1, 2015, 202 offenders had been placed into the Immediate Sanction Probation Program. However, two of these individuals did not actually meet the eligibility criteria to participate in the program and, therefore, were removed from the sample, leaving 200 participants in the evaluation cohort.

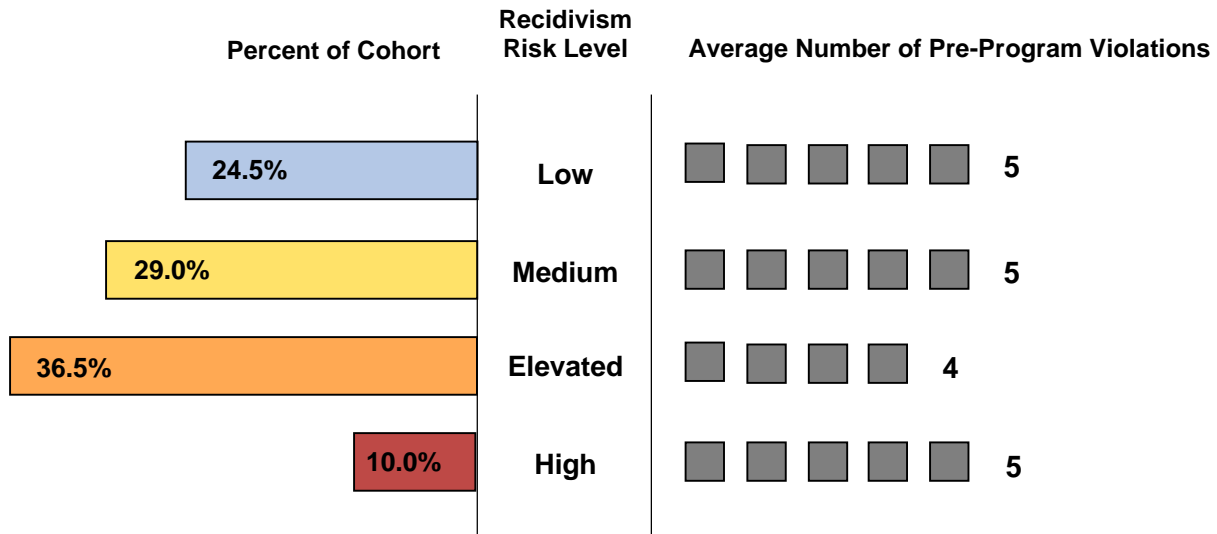
The Immediate Sanction Program is designed to target probationers identified as being at-risk for recidivating or failing probation. To measure recidivism risk, probation officers administer the COMPAS risk/needs assessment instrument. The largest share of probationers in the evaluation cohort were identified as having an elevated recidivism risk (36.5%) based on COMPAS (Figure 8). Treated the same as high risk offenders for the purposes of placement into the Immediate Sanction Program, these offenders need only one technical violation to become a candidate for the program. On average, however, these offenders had accumulated four technical violations prior to being placed in the program.

Only 10.0% of probationers in the evaluation cohort were identified as high risk on the COMPAS recidivism scale. The small proportion of high risk probationers referred to the program is likely due to the fact that many of the probationers who are classified as high risk by COMPAS are on probation for a violent offense listed in § 17.1-805, which statutorily precludes them from participating in the Immediate Sanction Program. Offenders in the high-risk category had accumulated five violations on average by the time they were referred to the court to be placed in the program.

A large share (29.0%) of the evaluation cohort fell into the medium recidivism risk category. Although individuals in this risk category qualified for the program after two technical violations, these offenders had an average of five violations prior to program placement. Low risk offenders accounted for 24.5% of the evaluation cohort. Low-risk offenders cannot become candidates for the program until they have accumulated at least three technical violations. Participants in the evaluation cohort who were identified as low risk by COMPAS had accumulated an average of five such violations at the time they were placed in the Immediate Sanction Probation Program.

**Figure 8  
EVALUATION COHORT**

**Recidivism Risk Level and Average Number of Pre-Program Violations Accumulated at Time of Program Placement**



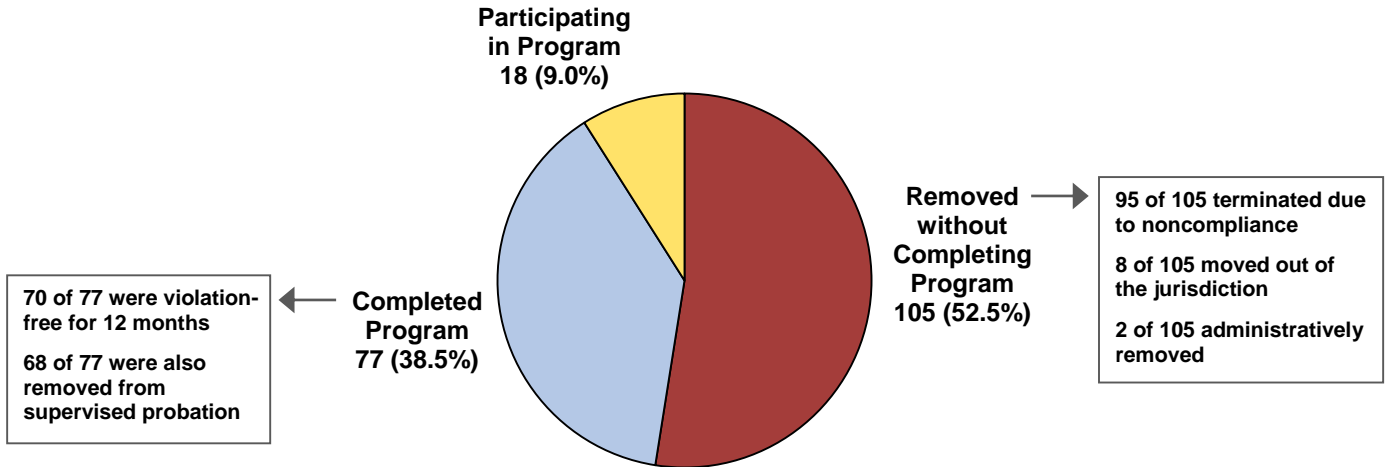
The evaluation cohort is composed of the 200 eligible candidates placed into the Immediate Sanction Probation Program before July 1, 2015.

Nearly all (92.5%) of the participants in the evaluation cohort had been cited for using, possessing, or distributing drugs or drug paraphernalia prior to placement. This is Condition 8 of DOC’s Conditions of Probation. A copy of DOC’s Conditions of Probation can be found in Appendix 4. The second most frequently occurring violation, failing to report to the probation office as instructed, was cited in 38% of the cases, followed by failing to follow instructions and be truthful and cooperative (37%). Staff explored whether the number of positive drug screens prior to program placement was related to the number of positive screens that occurred following program placement. However, no statistically significant relationship was observed between these two measures.

As of October 1, 2016, well over a third (38.5%) of the evaluation cohort had completed the Immediate Sanction Program (Figure 9). Nearly all of those completing the program had been violation-free for 12 months, the measure established by the Commission for “successful completion.” Seven participants who had not reached the 12-month violation-free mark were allowed to complete the program. Given the individual circumstances of these participants, the judge considered the participant’s overall performance in the program and agreed that the participant’s needs and the interests of public safety had been met. By October 1, 2016, approximately half (52.5%) of the cohort had been removed from the program without completing it. Of those, the vast majority were terminated due to noncompliance. Eight participants moved out of the jurisdiction and the responsibility for their supervision was transferred, making them ineligible to continue in the program. On October 1, 2016, 9% of the evaluation cohort (only 18 individuals) were still active in the program.

**Figure 9**  
**EVALUATION COHORT**

**Status in Immediate Sanction Probation Program**  
**(as of October 1, 2016)**



The evaluation cohort is composed of the 200 eligible candidates placed into the Immediate Sanction Probation Program before July 1, 2015.

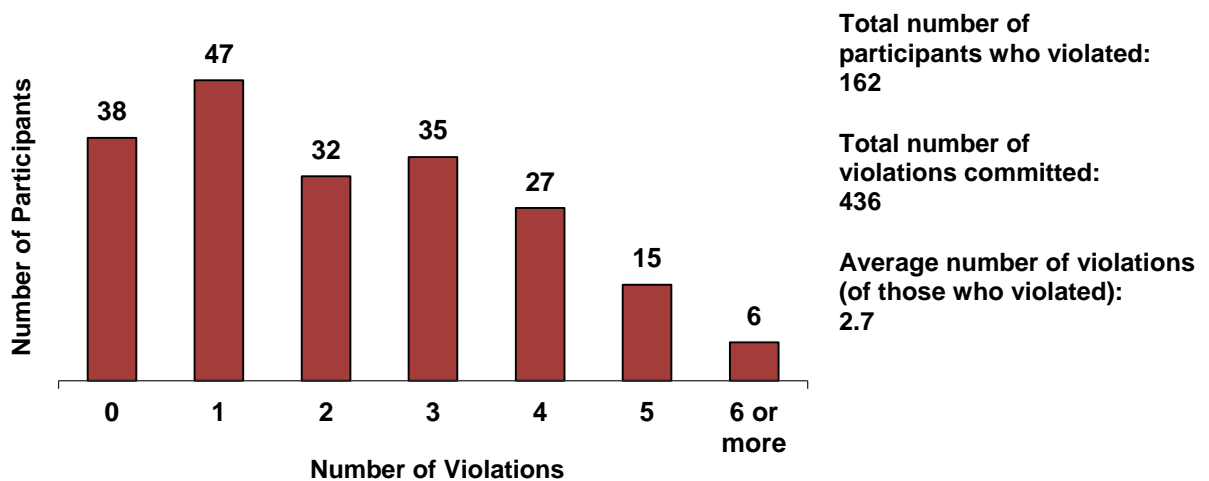
## Violations, Terminations, and Completions

By October 1, 2016, all of the 200 individuals in the evaluation cohort had been in the Immediate Sanction Probation Program for at least one year. Approximately one in five (19%) remained violation free after program placement (Figure 10). All of these individuals had committed at least one violation prior to entering the program, with most having committed multiple violations. In response to the judge's warning at the time of program placement regarding strict enforcement of probation conditions in the Immediate Sanction Program and jail time for violations, together with intense monitoring and drug testing by the probation officer, these individuals changed their behavior and complied with all of the conditions of community supervision during the follow-up period. The majority (81%) of participants committed at least one violation after placement in the program. Program violations were expected as many participants needed the experience of immediate consequences for violations to begin to modify their behavior while under supervision.

Of the 162 participants in the evaluation cohort who committed at least one violation after being placed in the program, 47 committed a single violation (Figure 10). Another 32 offenders committed two violations, while 35 offenders have had three violations in the program. The observed decline in the number of subsequent program violations may be associated with a number of factors, including increased compliance with the conditions of probation following sanctions. In addition, for participants in the evaluation cohort who were terminated, judges removed them after a median of three violations; as a result, the decline in program violations after three may be due, in part, to removal of participants.

**Figure 10**  
**EVALUATION COHORT**

**Number of Program Violations**  
**(as of October 1, 2016)**



The evaluation cohort is composed of the 200 eligible candidates placed into the Immediate Sanction Probation Program before July 1, 2015.

As shown in Figure 11, when participants in the evaluation cohort committed a violation, they were most frequently cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation). Violations of Condition 8, which were cited in two-thirds (66.3%) of the program violations, may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. The second most frequently cited violation was failing to follow the probation officer’s instructions, which was recorded in 25% of program violations. Violations in this category include failure to remain in the lobby of the probation office while the drug screen results were developing or failing to report to substance abuse treatment as instructed. Participants failed to report for appointments with the Immediate Sanction probation officer in 24.1% of the violations. These percentages do not add to 100% because a participant may be cited for violating more than one condition in a single violation event.

**Figure 11  
EVALUATION COHORT**

**Types of Program Violations (as of October 1, 2016)\***

<b>Condition(s) Cited in Violation Report</b>	<b>Percent</b>
<b>Use, Possess, etc., Drugs</b>	<b>66.3%</b>
<b>Fail to Follow Instructions</b>	<b>25.0%</b>
<b>Fail to Report as Instructed</b>	<b>24.1%</b>
<b>Abscond from Supervision</b>	<b>11.9%</b>
<b>Use Alcohol to Excess</b>	<b>8.5%</b>
<b>New Crime or Infraction</b>	<b>7.1%</b>
<b>Change Residence w/o Permission</b>	<b>4.6%</b>
<b>Special Conditions of Probation</b>	<b>1.8%</b>
<b>Fail to Report Arrest</b>	<b>1.8%</b>
<b>Fail to Maintain Employment</b>	<b>0%</b>
<b>Fail to Allow Officer to Visit</b>	<b>0%</b>
<b>Possess Firearm</b>	<b>0%</b>

\* These numbers do not add to 100% because a probationer may be cited for violation of more than one condition.

The evaluation cohort is composed of the 200 eligible candidates placed into the Immediate Sanction Probation Program before July 1, 2015.

The Commission examined program violations to determine the types of drugs for which participants were testing positive most often. Overall, participants most frequently tested positive for marijuana, which was identified in 32.2% of the Condition 8 violations (Figure 12). This was followed by cocaine (29.1%) and opiates, including heroin (24.6%). However, this varied by pilot site. Opiates/heroin were identified most often in Henrico, while amphetamines were identified most often in Harrisonburg/Rockingham. In Lynchburg, marijuana was identified more than any other drug, followed closely by cocaine. Arlington participants most frequently tested positive for cocaine.

**Figure 12  
EVALUATION COHORT**

**Types of Drugs Associated with Program Violations  
(as of October 1, 2016)\***

<b>Drug(s) Cited in Violation Report</b>	<b>Percent</b>
<b>Marijuana</b>	<b>32.2%</b>
<b>Cocaine (including Crack)</b>	<b>29.1%</b>
<b>Opiates (including Heroin)</b>	<b>24.6%</b>
<b>Amphetamines/Methamphetamine</b>	<b>11.1%</b>
<b>Other Drugs</b>	<b>12.5%</b>

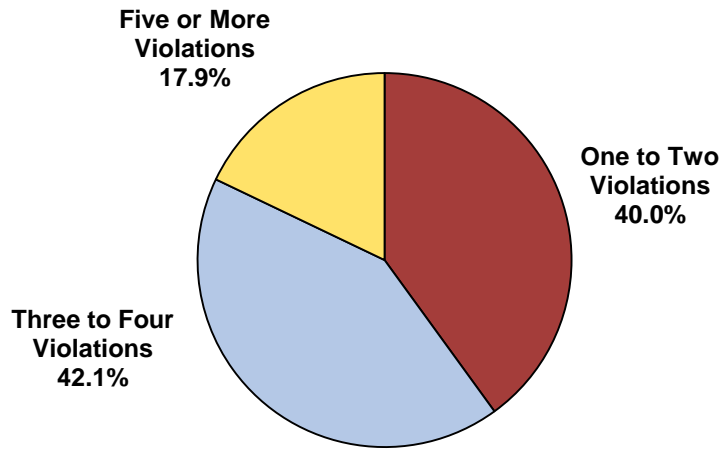
\* These numbers do not add to 100% because a probationer may be cited for use of more than one drug.

As of October 1, 2016, 77 (38.5%) of the participants in the evaluation cohort had completed the program following substantial periods of compliance. Of these, 70 (90.9%) had been violation-free for 12 months. Only seven were allowed to complete the program without reaching the 12-month mark, at the judge's discretion, due to individual circumstances of these participants. Although successful participants are not required to attend the final hearing, during which the initial probation violation is dismissed, 65 (84.4%) of the graduates elected to be present. For the majority of program completions (88.3%), the judge also removed the probationer from any remaining supervised probation obligation.

The Commission did not establish any rule or recommendation which would require judges to terminate a participant after a particular number of program violations. The sanctions table created by the Commission recommends ranges through the sixth (or subsequent) violation. The discretion to remove a participant rested with the judge. The Commission observed that Immediate Sanction judges allowed very few participants who reached four violations to remain in the program. Overall, 40% of the 95 terminated participants (i.e., removed due to noncompliance) were removed on their first or second program violation (Figure 13). Included in this figure are participants charged with a new offense or who had absconded. An additional 42.1% were removed on their third or fourth program violation. The remaining 17.9% were terminated for a fifth or subsequent violation.

**Figure 13  
EVALUATION COHORT**

**Number of Program Violations Accumulated at Time of Termination  
(as of October 1, 2016)**



Analysis based on the 95 participants in the evaluation cohort who were terminated for noncompliance.

The evaluation cohort is composed of the 200 eligible candidates placed into the Immediate Sanction Probation Program before July 1, 2015.

In terms of post-removal sanctions, 42.1% of the participants terminated for noncompliance received a jail term (a term of incarceration up to 12 months), for which the median sentence length was six months. An additional 34.7% were given a prison term (incarceration term of one year or more), and the median sentence ordered was 1.5 years. Prison sentences ranged from one year up to five years. Another 20.0% did not receive additional active incarceration after removal from the program for the probation violation; however, several of these probationers received incarceration terms for new offenses. As of October 1, 2016, three participants were currently pending sentencing. In some instances, the court also ordered former participants to complete other programs following removal from the Immediate Sanction Program. Thirteen people were referred for drug court evaluations. Although three of these were found to be ineligible for drug court, the remaining ten were placed into a drug court program. Seven were sentenced to a Detention or Diversion Center program, three were ordered to complete residential/inpatient drug treatment, three were recommended for placement in a Therapeutic Community, and four were ordered into a jail-based drug treatment program.

There were some differences across the four pilot sites in the number of violations, terminations and completions (Figure 14). However, lower than expected referrals to the Immediate Sanction Program resulted in a small evaluation cohort, which does not permit a reliable comparison of outcomes across the four pilot sites.

**Figure 14  
EVALUATION COHORT**

**Immediate Sanction Probation Program Participants, Violations, and Outcomes  
by Pilot Site**

(as of October 1, 2016)

<b>Locality</b>	<b>Number of Offenders Placed into the Program</b>	<b>Number of Participants who Violated</b>	<b>Total Number of Violations</b>	<b>Number of Participants Removed</b>	<b>Number of Active Participants</b>	<b>Number of Completions</b>
<b>Henrico (start date: November 1, 2012)</b>	<b>69</b>	<b>59</b>	<b>168</b>	<b>47</b>	<b>3</b>	<b>19</b>
<b>Lynchburg (start date: January 1, 2013)</b>	<b>58</b>	<b>45</b>	<b>98</b>	<b>18</b>	<b>8</b>	<b>32</b>
<b>Harrisonburg/ Rockingham (start date: January 1, 2014)</b>	<b>56</b>	<b>47</b>	<b>143</b>	<b>34</b>	<b>3</b>	<b>19</b>
<b>Arlington (start date: January 6, 2014)</b>	<b>17</b>	<b>11</b>	<b>27</b>	<b>6</b>	<b>4</b>	<b>7</b>
<b>Total</b>	<b>200</b>	<b>162</b>	<b>436</b>	<b>105</b>	<b>18</b>	<b>77</b>

The evaluation cohort is composed of the 200 eligible candidates placed into the Immediate Sanction Probation Program before July 1, 2015.



## Measuring Swiftess and Certainty

Swiftess in response to violations and certainty of sanctions for noncompliance are key features of the program model. The Commission collected data on measures of swiftess and certainty in order to assess the ability of the pilot sites to achieve these critical components. The Commission began tracking measures of swiftess and certainty on March 8, 2013, approximately four months after the first pilot site (Henrico) started and two months after the second site (Lynchburg) became operational. This allowed the early sites sufficient time to test and refine the new procedures before measurement began.

As part of the design of the Immediate Sanction Probation Program, the Commission established a target of three days between detection of the violation and the expedited court hearing to address the violation. This is the same standard established by evaluators of the recent four-site HOPE replication project and, similar to the findings of the replication project, Virginia's pilot sites had difficulty bringing participants to a violation hearing within three days. Overall, this standard was met in approximately half (47.3%) of the violations (Figure 15). Results in Henrico, Harrisonburg/Rockingham and Arlington were roughly comparable (ranging from 45.5% to 54.1%). Lynchburg was able to meet the target in only 32% of the violations. Based on work by previous researchers, which found that fidelity levels of at least 60% are capable of producing measurable, positive program effects, evaluators of the NIJ/BJA four-site replication project established 60% as the minimum standard by which the four replication sites would be measured. None of the pilot sites in Virginia were able to meet that target. In large part, this is due to participants who failed to show up at scheduled drug tests or appointments or who absconded. When a participant fails to report, a PB-15 is issued immediately and sent to law enforcement officers, who search for the participant in the community. The time that it takes law enforcement to locate and arrest the probationer affects the percentage of violations that can be handled within the three-day window. Examining the data further revealed that while 47.3% of violation hearings occurred within three days of the violation, the vast majority (92.5%) of hearings were held within three business days following arrest. This ranged from 84.7% of violations in Lynchburg to 100% in Henrico. Whether the stakeholders had selected set days and times to conduct these hearings (e.g., every Monday, Wednesday, and Friday at 1:00 p.m.) as well as judicial caseload and other factors may have played a role in this variation across pilot sites.

The average time between the violation and the court hearing was four days, although the average ranged from three days in Henrico and Harrisonburg/Rockingham to six days in Lynchburg (Figure 15). Breaking down the time between violation and hearing, the average time between violation and arrest was less than one day. Many participants were arrested in the probation office immediately after a positive drug test. However, for a significant number of participants, it was necessary for law enforcement to search for the participant in the community. Following arrest, pilot sites proceeded with the violation hearing within two days, on average. While the average time between violation and arrest, as well as arrest and hearing, was two days in Lynchburg, the average amount of time between the violation and hearing was six days in this pilot site. This is due to the fact that, in instances where there was a shorter period of time between the violation and arrest, there was often a longer period of time between the arrest and hearing and vice versa.

**Figure 15**  
**EVALUATION COHORT**

**Measures of Swiftness for the Immediate Sanction Probation Program**  
**(based on expedited hearings held on or after March 8, 2013)**

	Lynchburg	Henrico	Harrisonburg/ Rockingham	Arlington	Total
<b>Percent of violation hearings held within 3 days of violation</b>	32.0%	54.1%	51.4%	45.5%	47.3%
<b>Avg. time between violation and hearing</b>	6 days	3 days	3 days	4 days	4 days
<b>Avg. time between violation and arrest</b>	2 days	<1 day	<1 day	<1 day	<1 day
<b>Avg. time between arrest and hearing</b>	2 days	1 day	2 days	2 days	2 days
<b>Avg. time between arrest and hearing – business days</b>	1 day	1 day	2 days	2 days	2 days

The evaluation cohort is composed of the 200 eligible candidates placed into the Immediate Sanction Probation Program before July 1, 2015.

Regarding the certainty aspect of the program, judges working with the Immediate Sanction Program in all of the pilot sites responded to violations by imposing a jail sanction in 100% of the violations, per the program’s design (Figure 16). All the pilot sites met the target. Another important aspect of the swift-and-certain sanctions model is dosage. Sanctions for program violations should be relatively short. According to NIJ, the model is grounded in research which suggests that deferred and low-probability threats of severe punishment are less effective in changing behavior than immediate and high-probability threats of mild punishment. By statute, judges are limited to a maximum of 30 days for violations handled in an expedited hearing. In designing the program, the Commission established recommended ranges to guide judges on sanctions but still provide room for some discretion based on the violation and circumstances surrounding it. The recommended range for the first program violation is three to seven days. The recommendation increases for subsequent violations, with a range of 20 to 30 days for the sixth or subsequent violation. In practice, Immediate Sanction judges utilized jail sanctions as envisioned by the Commission. For the first program violation, the sanction ordered by the judges averaged three days. The average sanction for a second violation was seven days and, for the third, it was 10 days. The fourth violation resulted in an average sanction of 15 days and, for the 10 participants who had a fifth violation and were allowed to remain in the program, the average sanction was 20 days. One offender who had a sixth violation was allowed to remain in the program and received a sentence of 30 days, the maximum allowed by § 19.2-303.5. Sanction days ordered by the judges have been within the ranges recommended by the Commission in 94.4% of the expedited violation hearings. For the four-site HOPE replication project, evaluators set a sanction of no more than 19 days as the standard for measuring a program’s fidelity to the HOPE model. In Virginia, 93.2% of the sanctions were 19 days or less.

**Figure 16  
EVALUATION COHORT**

**Measures of Certainty and Consistency for the Immediate Sanction Probation Program  
(based on expedited hearings held on or after March 8, 2013)**

	Lynchburg	Henrico	Harrisonburg/ Rockingham	Arlington	Total
<b>Percent of violations resulting in a jail term</b>	100%	100%	100%	100%	100%
<b>Average length of sentence for 1st violation</b>	3 days	4 days	5 days	3 days	3 days
<b>Average length of sentence for 2nd violation</b>	5 days	8.5 days	7 days	10 days	7 days
<b>Average length of sentence for 3rd violation</b>	9 days	13 days	10 days	20 days	10 days
<b>Average length of sentence for 4th violation</b>	11 days	20 days	15 days	20 days	15 days
<b>Average length of sentence for 5th violation</b>	17.5 days	20 days*	21.5 days	Missing	20 days
<b>Average length of sentence for 6th or subseq. violation</b>	N/A	N/A	30 days*	N/A	30 days*

\* represents one case

The evaluation cohort is composed of the 200 eligible candidates placed into the Immediate Sanction Probation Program before July 1, 2015.

## **Recidivism within the Evaluation Cohort**

The goal of the Immediate Sanction Probation Program is to improve probationers' compliance with the rules and conditions of supervision in the community and to enhance public safety. Therefore, recidivism analysis is a critical part of the evaluation of Virginia's pilot program. The Commission requested criminal history information from the Virginia State Police for the 200 Immediate Sanction Probation participants in the evaluation cohort. This allowed the Commission to identify arrests and convictions for offenses committed after placement in the program. Five participants in the evaluation cohort had to be excluded from the recidivism analysis because criminal history data could not be found for those individuals. Thus, the recidivism analysis was based on 195 participants in the evaluation cohort.

To examine recidivism, the Commission tracked participants in the evaluation cohort for one year following placement into the program. Given the time needed to find localities willing to serve as pilot sites and the time required for participants to successfully complete the program, insufficient time has passed to examine recidivism for a longer period or recidivism following completion or termination from the program. Evaluators of Hawaii's HOPE program faced the same challenge when conducting their study in 2009 and therefore elected to track participants for one year following placement in the HOPE program.

The Commission computed several measures of recidivism: rearrest for a misdemeanor, rearrest for a felony, reconviction for a misdemeanor, and reconviction for a felony. The rearrest rates capture arrests for offenses occurring within one year following placement in the program. Reconviction rates capture arrests for offenses occurring within one year of placement that resulted in conviction. The conviction could be for the offense as originally charged or a lesser offense.

Recidivism rates for the 195 participants in the evaluation cohort for whom criminal history information could be located are shown in Figure 17. The Commission found that 10.8% of these participants were rearrested for a misdemeanor and 9.7% were rearrested for a felony within one year of entering the program. More than 13% were convicted of a misdemeanor committed during the one-year follow-up period. The misdemeanor reconviction rate is higher than the misdemeanor arrest rate, as some individuals arrested for a felony were ultimately convicted of a misdemeanor-level offense. Only 6.2% were convicted of a felony stemming from an offense committed during the follow-up period.

**Figure 17  
EVALUATION COHORT**

**Rates of Recidivism  
Based on One Year Post-Placement Follow-up**

<b>Measure</b>	<b>Rate</b>
<b>Rearrest for Misdemeanor</b>	<b>10.8%</b>
<b>Rearrest for Felony</b>	<b>9.7%</b>
<b>Reconviction for Misdemeanor</b>	<b>13.3%</b>
<b>Reconviction for Felony</b>	<b>6.2%</b>

**Rearrest rates capture arrests for offenses committed within one year following placement in the program.**

**Reconviction rates capture arrests for offenses committed within one year of placement that resulted in conviction.**

**Some individuals arrested for a felony were subsequently convicted of a misdemeanor.**

**Analysis is based on 195 of the 200 participants in the evaluation cohort for whom criminal history information could be located.**

The Commission explored the extent to which recidivism rates varied based on the most serious offense for which the participant was on probation or by the participant’s prior felony record. For this phase of the analysis, the Commission selected felony reconviction as the measure of recidivism. This is the measure most often used by the Commission in conducting recidivism research. In addition, the Commission examined the extent to which these offenders had their probation revoked during the first year after entry into the program. As shown in Figure 18, felony reconviction rates did not vary considerably for property, drug and other non-person crimes, ranging from 5.6% to 7.1%. Individuals on probation for a violent offense as defined in § 17.1-805 are ineligible to participate in the Immediate Sanction Probation Program, but there are a small number of participants on probation for offenses that are categorized as a person crime in the analysis. None of the participants who were on supervision for a person crime were reconvicted of a felony offense. While reconviction rates did not vary considerably by offense group, differences in revocation rates were revealed in the analysis. Participants on supervision for a felony categorized as “Other” in Figure 18 were revoked at the highest rate (35.7%). The “Other” category includes offenses such as felony driving while intoxicated and weapons offenses. Property and drug offenders were revoked at approximately the same rate (26.8% and 26.7%, respectively). Participants on probation for person crimes had the lowest revocation rate (22.2%).

Examining prior record, the Commission found that felony reconviction rates did not vary substantially for participants with up to four prior felony sentencing events (rates ranged from 4.2% to 7.6%). In contrast, participants with the most extensive prior record (five or more felony sentencing events) had a felony reconviction rate of 20% (Figure 18). Participants with no prior felony record (prior to the offense for which they were on probation) were the least likely to be revoked (22.1%), while offenders with at least one prior felony sentencing event were revoked at rates of 30% or more.

**Figure 18**  
**EVALUATION COHORT**

**Felony Reconviction Rates and Revocation Rates  
by Offense Type and Prior Felony Record**

**Based on One Year Post-Placement Follow-up**

	<b>Felony Reconviction Rate</b>	<b>Revocation Rate</b>
<b>Most serious offense for which the participant is on probation</b>		
Person	0.0%	22.2%
Property	5.6%	26.8%
Drug	6.9%	26.7%
Other	7.1%	35.7%
<b>Prior felony sentencing events</b>		
None	4.2%*	22.1%
One to Two	7.6%	30.3%
Three to Four	4.2%*	37.5%
Five or More	20.0%	30.0%

\* Represents one case

Analysis is based on 195 of the 200 participants in the evaluation cohort for whom criminal history information could be located.

The Commission also compared recidivism and revocation rates based on the primary drug of use identified for each participant. Primary drug of use was determined based on the drug for which the offender tested positive most often. Since 178 of the 195 participants tested positive for a controlled substance either prior to or following program placement, the primary drug of use could be identified. However, the primary drug of use, if any, for the remaining 17 participants could not be determined. As shown in Figure 19, felony reconviction rates were highest among opiate users (17.9%). Opiate users also had their probation revoked at the highest rate within the one-year follow-up (50%).

During the pilot project, some stakeholders expressed concern about the suitability of opiate users for the Immediate Sanction Program. It was thought that these individuals would require interventions beyond that of the Immediate Sanction Program to address addiction issues. Two of the pilot sites, Henrico and Arlington, also have a drug court program, which was seen by some Immediate Sanction judges as a preferred option for opiate abusers. The high revocation rate may reflect, in part, participants who were removed from the Immediate Probation Program, revoked, and referred to drug court.

The Commission examined felony reconviction rates relative to each participant’s COMPAS substance abuse score which, according to the developer, is a “general indicator of substance abuse problems” (Northpointe, 2012). Felony reconviction rates were fairly comparable across COMPAS substance abuse scores and did not exhibit a particular pattern. However, participants with high scores on the COMPAS substance abuse scale were revoked far more often than those with lower scores.

**Figure 19  
EVALUATION COHORT**

**Felony Reconviction Rates and Revocation Rates  
by Primary Drug of Use and COMPAS Substance Abuse Score**

**Based on One Year Post-Placement Follow-up**

	<b>Felony Reconviction Rate</b>	<b>Revocation Rate</b>
<b>Drug Type*</b>		
Opiates	17.9%	50.0%
Amphetamines/Methamphetamine	6.7%	26.7%
Cocaine	4.5%	28.8%
Marijuana	3.4%	13.8%
Other Drugs	0.0%	36.4%
<b>COMPAS Substance Abuse Score</b>		
Low	5.7%	22.9%
Medium	8.7%	19.6%
High	5.3%	31.6%

\* Primary drug of use, if any, could not be determined for 17 of the 195 participants in the analysis.

Analysis is based on 195 of the 200 participants in the evaluation cohort for whom criminal history information could be located.

## **Construction of a Matched Comparison Group**

The Immediate Sanction Probation Program targets a specific subset of the probation population, namely offenders who are at risk of recidivating or failing probation. To best assess the effect of program participation on recidivism, the Commission developed a comparison group of similar probationers who did not participate in the Immediate Sanction Program.

Conducting a randomized controlled trial is the most scientifically rigorous form of evaluation, but it is often not possible in the criminal justice field to use an experimental design involving random assignment to program and comparison groups. For this evaluation, the Commission utilized a quasi-experimental design, often used in evaluations of criminal justice programs. Quasi-experimental designs identify a comparison group that is as similar as possible to the program or treatment group in terms of baseline (pre-intervention) characteristics. There are a variety of statistical techniques for creating a valid comparison group, such as regression discontinuity design or propensity score matching, which reduce the risk of bias (the possibility that participants are systematically different from nonparticipants). Using these techniques, a comparison group is designed to capture what would have been the outcomes without the program or intervention. In this way, the effectiveness of the program in achieving the desired outcomes can be assessed.

Constructing the comparison group for this evaluation was a two-stage process. In the first stage, the Commission identified jurisdictions that were similar to the pilot sites across a number of community-level characteristics:

- Crime rates,
- Population density,
- Poverty rate,
- Demographic characteristics,
- Most prevalent drug, and
- Judicial practices in sanctioning technical probation violators.

Using a statistical matching technique (K-Nearest Neighbor analysis), the Commission identified five potential matching jurisdictions for each pilot site that were found to be similar on the characteristics listed above. With additional data provided by the Department of Corrections, the Commission compared characteristics of the probation population and probation supervision practices in each pilot site and the possible comparison districts. The Commission found that practices vary somewhat from probation district to probation district. The Commission considered factors such as:



- Date the probation district implemented evidence-based practices (a significant initiative in Virginia),
- Average length of time probationers are kept on supervision,
- Successful probation completion rates,
- Frequency of drug testing,
- Distribution of COMPAS recidivism risk scores among probationers (except for Arlington, due to missing data),
- Proportion of probationers in certain levels of supervision, and
- Rate at which probationers are returned to court for violations.

Finally, the Commission considered the number of potentially eligible candidates in each possible comparison site so that the comparison jurisdictions would provide a sufficient number of probationers as potential matches for Immediate Sanction participants. Through this process, the Commission selected one comparison jurisdiction for each Immediate Sanction Probation pilot site. These are shown in Figure 20.

**Figure 20**  
**Immediate Sanction Probation Pilot Sites and Selected Comparison Jurisdictions**

<b>Pilot Site</b>	<b>Comparison Jurisdiction</b>
<b>Arlington County</b>	<b>Fairfax County/City</b>
<b>Henrico County</b>	<b>Chesterfield County</b>
<b>Lynchburg City</b>	<b>Roanoke City</b>
<b>Harrisonburg/Rockingham County</b>	<b>Washington County</b>

In the second stage, after comparison jurisdictions were identified, staff obtained data from the Department of Corrections for 3,709 probationers in the comparison jurisdictions. To determine if these probationers met all of the eligibility criteria for the Immediate Sanction Program, the Commission first analyzed a data file containing all of the supervision obligations for the potential comparison probationers to identify those who only had court obligations in the comparison jurisdiction and not to other courts. This was an important eligibility criteria for pilot program participants. The Commission then screened out probationers in the comparison sites who were on probation for an offense defined as violent in § 17.1-805, as required by § 19.2-303.5. Probationers whose supervision for an eligible offense overlapped with an ineligible offense were held out of the potential comparison pool until such date as they were on probation only for an eligible offense. Next, the Commission determined which probationers began community supervision on or after the earliest start date of participants in the pilot program in the jurisdiction with which it was matched. After identifying potentially eligible probationers in the comparison jurisdictions, 2,052 possible comparison offenders remained.

Next, the Commission reviewed criminal history data from the Virginia State Police for the 2,052 probationers in the possible comparison group. For 103 of these individuals, criminal history information could not be located, bringing the pool of potential comparison probationers to 1,949 offenders.

With this dataset of potential comparison probationers and the 195 Immediate Sanction participants remaining in the evaluation cohort, the Commission performed Coarsened Exact Matching (CEM). CEM is a statistical method that matches cases (in this situation, participants in the Immediate Sanction Program and individuals on traditional probation in the comparison jurisdictions) based on selected characteristics. Immediate Sanction participants and potential comparison probationers were matched on race, gender, age, COMPAS recidivism risk level, the type of crime for which they were on probation, number of prior felony sentencing events, and three indicators reflecting whether or not an individual's record contained a prior felony conviction for a crime against the person, a drug crime, and/or a property crime. The CEM yielded 309 potential comparison offenders who matched 111 members of the evaluation cohort. The 84 participants for whom no matched comparison probationers could be found were not included in the subsequent analyses.

The Commission next reviewed probation case notes to ensure that potential comparison probationers had accrued the requisite number of technical violations (given their COMPAS recidivism risk level) to be referred to the Immediate Sanction Probation Program, had it existed in their jurisdictions. Additional file review was performed to determine if the probationers identified as potential matches had severe mental health diagnoses or pending charges on the date they reached eligibility for the program, which would preclude entrance into the program. If a participant had multiple matched offenders remaining, the Commission selected the first eligible match in the dataset.

For 48 of the 111 participants remaining at this stage, the Commission could not identify a suitable match because none of the potential comparison probationers would have been eligible for program placement, either based on their number of technical violations relative to their COMPAS recidivism risk level, severe mental health diagnoses, or because they had pending charges. For each eligible comparison probationer, the Commission identified the date on which the comparison probationer would have been eligible to be placed in the Immediate Sanction Program, had it existed in that jurisdiction. This corresponded to the date of the violation that would have triggered referral to the program. The final sample included 63 members of the evaluation cohort who were matched to 63 comparison offenders, for a total of 126 subjects.

### *Characteristics of Matched and Unmatched Participants*

To assess whether the final sample of 63 participants could be utilized to approximate the relative success of the full evaluation cohort, the Commission compared the characteristics of the 63 Immediate Sanction participants who were matched to comparison offenders to the 132 members of the evaluation cohort who were not matched (the unmatched group). Two statistically significant differences between the matched and unmatched participant groups are notable: members of the matched group were more likely to be male (82.5% in the matched group and 71.2% in the unmatched group) and more likely to be on supervision for a drug felony (74.6% for the matched group and 40.9% for the unmatched group). However, subsequent recidivism analysis revealed that neither gender nor offense type (drug versus property) had a statistically significant correlation with recidivism in the Commission’s analysis. This may be an artifact of the low number of cases in the participant cohort.

As shown in Figure 21, the matched and unmatched program participants were largely similar across outcome measures. Matched and unmatched participants were reconvicted of a felony at nearly the same rate (6.3% versus 6.1%) and completed the Immediate Sanction Program at approximately the same rate (39.7% versus 37.1%). The median number of days spent in jail serving sanctions for program violations was also close (7 days versus 9 days). Differences were greater for felony rearrest rates (7.9% versus 10.6%), revocation rates (30.2% versus 25.8%), and the median sentence for revocations during the one-year follow-up period. These differences may limit the generalizability of the Commission’s findings.

**Figure 21**  
**Group Differences for Matched and Unmatched**  
**Immediate Sanction Probation Program Participants**

————— One Year Follow-up —————

	Matched Program Participants (n=63)	Unmatched Program Participants (n=132)
<b>Rearrested for New Felony</b>	7.9%	10.6%
<b>Reconvicted for New Felony</b>	6.3%	6.1%
<b>Immediate Sanction Program Completion Rate</b>	39.7%	37.1%
<b>Median Program Violation Sanction Days</b>	7 days	9 days
<b>Revocation</b>	30.2%	25.8%
<b>Median Total Time Sentenced for Revocations</b>	9.5 months	6 months

Rearrest rates capture arrests for offenses committed within one year following placement in the program.

Reconviction rates capture arrests for offenses committed within one year of placement that resulted in conviction.

### *Characteristics of Matched Participants and Comparison Group*

Reflecting the Commission’s tightly controlled matching procedures, the 63 participants and the 63 probationers in the matched comparison group were alike based on gender, race, age group, COMPAS risk level, offense type, and multiple prior record measures (Figure 22). The 126 subjects at this stage of the analysis were mostly male (82.5%), half were white (50.8%), and most were between the ages of 22 and 29. The majority of probationers (74.6%) were on supervision for a drug felony as their most serious charge. Most (71.4%) did not have a prior felony record.

**Figure 22**  
**Characteristics of the Matched Immediate Sanction Probation Participants**  
**and the Matched Comparison Group**

	<b>Matched Participants n=63</b>	<b>Matched Comparison Group n=63</b>
<b>Gender</b>		
Male	82.5%	82.5%
Female	17.5%	17.5%
<b>Race</b>		
White	50.8%	50.8%
Non-White	49.2%	49.2%
<b>Age</b>		
18-21	6.3%	6.3%
22-29	57.1%	57.1%
30-43	28.6%	28.6%
44+	7.9%	7.9%
Median	28 years	27 years
<b>COMPAS Risk Level</b>		
Low	19.0%	19.0%
Medium	31.7%	31.7%
Elevated/High	49.2%	49.2%
<b>Most Serious Offense</b>		
Drug Felony	74.6%	74.6%
Property Felony	17.5%	17.5%
Person Felony	4.8%	4.8%
Other Felony	3.2%	3.2%
<b>Prior Criminal Record</b>		
Felony Drug Conviction	20.6%	20.6%
Felony Property Conviction	11.1%	11.1%
Felony Person Conviction	0.0%	0.0%
<b>Prior Felony Sentencing Events</b>		
None	71.4%	71.4%
One to Two	23.8%	23.8%
Three or more	4.8%	4.8%

## **Analysis of Recidivism and Other Outcomes**

With the remaining evaluation cohort and the matched comparison group, the Commission conducted analyses to assess the effect of participation in the Immediate Sanction Program on recidivism. For this portion of the analysis, the Commission focused on two recidivism measures:

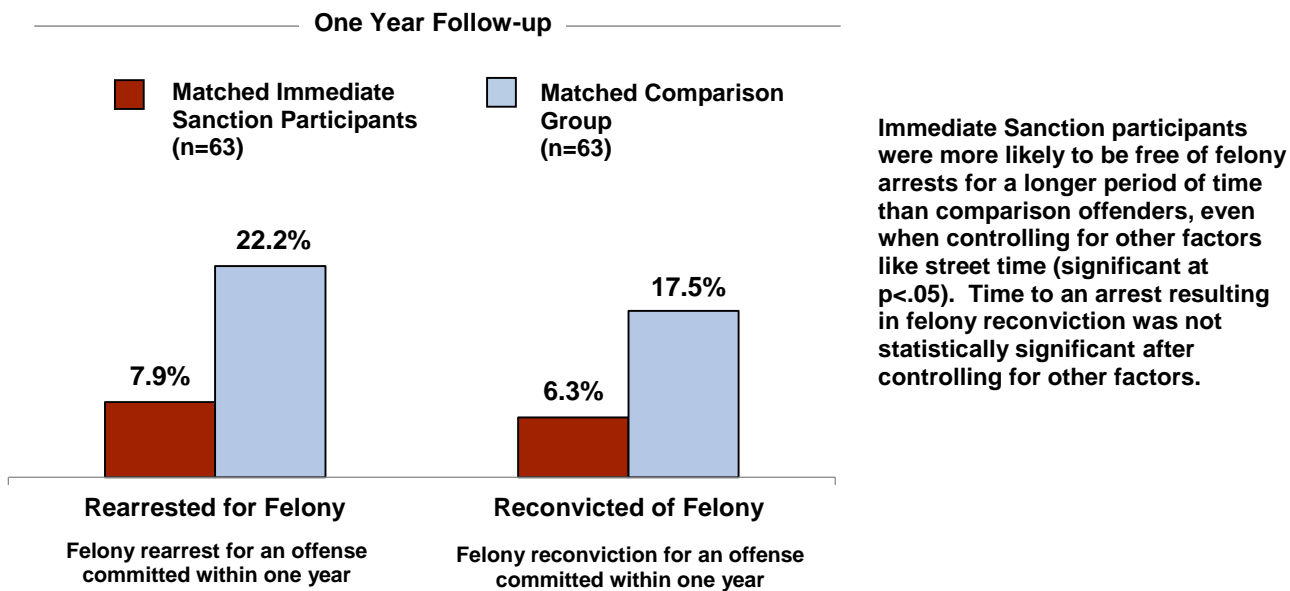
- Felony rearrest for an offense committed within the one-year follow-up, and
- Felony reconviction for an offense committed within the one-year follow-up.

Rearrest and reconviction for misdemeanors were not analyzed at this stage because many misdemeanors, such as driving on a suspended license, were generally considered by Immediate Sanction judges as less serious in nature and did not mean the participant had to be removed from the Immediate Sanction Program. Felony rearrest was examined because, with felony case processing time in Virginia averaging 10.5 months from arrest to sentencing, some of the participants who entered late in the pilot period and were arrested for a new felony may not have been convicted yet.

At one year from program placement or, in the case of the comparison group, one year from the date the probationer would have become eligible for placement, 7.9% of the 63 participants in the matched sample had been rearrested for a felony offense versus 22.2% of the comparison group (Figure 23). Thus, Immediate Sanction participants were less likely than comparison probationers to be rearrested for a felony during the one-year follow-up period. Immediate Sanction participants were also less likely than comparison probationers to be reconvicted of a felony following the arrest (6.3% for participants versus 17.5% for the comparison group).

The Commission conducted survival analysis, which measures the time until a recidivist event occurs, to determine if these differences were statistically significant. The results of the survival analysis are mixed. This analysis revealed that Immediate Sanction participants were less likely to be rearrested for a felony over time than those in the comparison group and were free of felony arrests for a longer period of time. When controlling for relevant factors, including street time (i.e., the time that the individual was not in jail serving sanctions, etc., and, thus, was in the community with the opportunity to recidivate), this finding remained statistically significant ( $p < .05$ ). However, when examining the time until rearrest for an offense that resulted in a felony conviction, the differences between participants and the comparison group were not statistically significant after controlling for other factors. Due to the small sample size and relatively low occurrence of recidivism, the results of the Commission's analyses are not generalizable to the population.

**Figure 23**  
**Recidivism Rates for the Immediate Sanction Probation Evaluation Cohort**  
**and Matched Comparison Group**



The Commission also examined probation revocation rates. Immediate Sanction participants in the matched sample had their probation revoked at a higher rate than comparison offenders (Figure 24). Approximately 30% of program participants had their probation revoked within one year of placement, while 23.8% of comparison offenders were revoked. Immediate Sanction participants have more extensive contact with the court because every alleged violation is taken before a judge. Thus, the amount of judicial contact that Immediate Sanction participants have relative to comparison offenders may account for the higher revocation rate. Furthermore, judicial philosophy varied across Immediate Sanction judges and some judges terminated participants after fewer program violations than did their counterparts. Some judges saw Immediate Sanction Probation as the last chance for probationers who were not performing well on regular probation and, therefore, may have been less tolerant of program violations than others.

Not only were Immediate Sanction participants more likely to be revoked, sentences imposed for revocations were more severe for program participants (Figure 24). Among participants in the matched sample who were revoked within one year, more than half (52.6%) received a prison term compared to only 13.3% of the comparison offenders. Probationers in the comparison group were more likely to receive a jail term than a prison term when revoked. The higher revocation rate and the harsher sanctions for revocations received by Immediate Sanction participants may have contributed to the relatively low recidivism rates for the participant group, as an individual is less likely to commit a new offense while incarcerated. The stark differences in the outcomes regarding revocations had a considerable impact on the costs of the Immediate Sanction Program compared to traditional probation, which is discussed in the next section.

**Figure 24**  
**Revocation Rates and Associated Sentencing Outcomes**

	<b>Immediate Sanction Probation Evaluation Cohort (n=63)</b>	<b>Matched Comparison Group (n=63)</b>
<b>Revocation of Probation within 1 Year</b>	<b>30.2%</b>	<b>23.8%</b>

**Sentencing Outcomes for Individuals for Whom Probation Was Revoked  
Within One Year**

	<b>Immediate Sanction Probation Evaluation Cohort (n=19)</b>		<b>Matched Comparison Group (n=15)</b>	
	<b>Percent</b>	<b>Median</b>	<b>Percent</b>	<b>Median</b>
<b>No Incarceration</b>	<b>21.1%</b>	<b>n/a</b>	<b>13.3%</b>	<b>n/a</b>
<b>Jail (Incarceration up to 12 Months)</b>	<b>26.3%</b>	<b>6 mos.</b>	<b>73.3%</b>	<b>4 mos.</b>
<b>Prison (Incarceration of 1 Year or More)</b>	<b>52.6%</b>	<b>1.1 yrs.</b>	<b>13.3%</b>	<b>1.4 yrs.</b>

***Study Limitations***

The primary limitations of the Commission’s study are its small sample size and the relatively low occurrence of recidivism in the sample, which limit the generalizability of the results to populations beyond the sample studied. In addition, the follow-up time for the recidivism analysis was relatively short because of the recent implementation of the program. Therefore, the Commission was unable to examine post-program (completion or removal) recidivism rates for all participants and had to focus on time from program placement/eligibility.

Additionally, some information that may have affected a probationer’s outcome was not available for analysis. Data regarding other outcomes, such as positive drug screens and missed probation appointments, were not consistently available for the comparison group and, therefore, could not be analyzed.

## Cost Analysis

Cost-benefit analysis (CBA) is a systematic approach to estimating and comparing benefits and costs of a policy or decision. It is comprehensive in that it captures all costs and benefits associated with a program or decision. Costs include direct and indirect costs, intangible costs, opportunity costs, and the cost of potential risks. Benefits include all direct and indirect revenues and intangible benefits. While cost-benefit analysis is a valuable tool because it is so comprehensive, conducting a cost-benefit analysis can be data-intensive and time-intensive. Many research questions can be answered using a less exhaustive type of analysis (Vera Institute of Justice, 2014). Cost-savings analysis, sometimes called fiscal impact analysis, is a comprehensive study of all governmental revenues, expenditures, and savings that result from a policy or program; unlike cost-benefit analysis, this type of study does not measure the societal effects of the investment beyond the budget (Vera Institute of Justice). Another option, cost analysis, provides a complete accounting of the expenses related to a given policy or program. Although cost analysis is a necessary component of a cost-benefit analysis, it can be performed independently (Vera Institute of Justice). Given data limitations for the Commission's study, particularly the lack of data for probationers in the comparison group, the analysis presented in this section is most like a cost analysis of the Immediate Sanction Probation Program vis-à-vis traditional probation.

The Commission estimated costs associated with supervision, violations, revocations, recidivism, incarceration, and victimization. The analysis accounts for the following costs:

- Probation officer time (for supervision and in court for placement, violation and revocation hearings);
- Law enforcement (time spent locating candidates and arresting violators);
- Court hearings (time of judge, prosecutor, defense attorney, and court clerks in placement, violation and revocation hearings);
- Criminal trials (for recidivists);
- Jail days served for violations, revocations, and new crimes;
- Prison days served for revocations and new crimes; and
- Victimization costs for new crimes committed.

Costs associated with probation officers, law enforcement, and court stakeholders were based on salary information for each group and the time spent on relevant activities, as reported in the Immediate Sanction Probation stakeholder survey. Salary data was gathered from various sources as detailed in the table below. Salaries for Commonwealth's attorneys, members of the Sheriff's Office, and Clerk's Office staff were based on the salaries reported by the Compensation Board and do not include any local supplements.



Victimization costs were based on new crimes committed by Immediate Sanction participants and individuals on traditional probation during the one-year follow-up period and estimations of victimization costs calculated by McCollister, French, and Fang (2010), adjusted to 2015 values. These include both tangible costs, such as monetary cost to the victim and economic crime career costs, as well as intangible costs attributable to pain and suffering.

Cost information for drug screens administered by the probation office was requested from the Department of Corrections but never received. Therefore, the cost analysis does not include the cost of drug testing Immediate Sanction participants or individuals on traditional probation.

To determine the per-probationer cost of Immediate Sanction Probation, the Commission examined the 200 eligible participants who were placed in the program prior to July 1, 2015. This cutoff date was selected to allow for a one-year follow-up period for recidivism analysis and enabled the Commission to include estimations of costs associated with recidivism and victimization in the analysis. To calculate the per-probationer cost of comparable individuals on traditional probation, the Commission examined the comparison group of 63 probationers matched to the Immediate Sanction participants and identified recidivism events occurring within a year after they met the eligibility criteria.

Figure 25 presents the costs of traditional probation and the Immediate Sanction Program per probationer/participant by various cost categories. Immediate Sanction supervision is more intensive, particularly when the probationer is first placed in the program, and this requires more of the officer's time per probationer. Overall, the cost of the Immediate Sanction Probation Program exceeded traditional probation (\$60,224.74 and \$6,553.69, respectively). The greatest disparity between the two figures is in the victimization cost. This disparity resulted from Immediate Sanction participants who, despite having a lower recidivism rate, committed more serious felonies when they recidivated. Most notably, one Immediate Sanction participant was convicted of second-degree murder. This one case substantially increased the victimization costs for the Immediate Sanction Program. Due to the low sample size and the relative rarity of murder/manslaughter cases in Virginia (0.1% of offenses based on the 2015 Virginia State Police *Crime in Virginia* report), as well as the large impact of this one case, the Commission conducted a second analysis without the participant who committed second-degree murder. Removal of this extreme case decreased the estimated cost of the Immediate Sanction Program to \$11,925.22 per participant, still considerably higher than the cost of traditional probation.

Other than victimization, the higher costs of the Immediate Sanction Program were associated with higher supervision costs and more trips through the court system for violations than individuals on traditional probation. The benefits of reduced jail and prison costs that materialized in studies of other swift-and-certain sanctions programs, such as Hawaii's HOPE program, were not observed for the Immediate Sanction Program. This is due, in part, to the fact that Immediate Sanction participants were significantly more likely to receive a prison sentence if they were revoked during the one-year follow-up period compared to those on traditional probation. In addition, despite the lower recidivism rate, the Immediate Sanction participants that recidivated had more serious new offenses than those in the comparison group, leading to higher victimization costs.

**Figure 25**  
**Cost Analysis of Traditional Probation and the Immediate Sanction Probation Program**  
**(Cost per probationer/participant in 2015 dollars)**

Type of Cost	Traditional Probation	Immediate Sanction Probation <sup>a</sup>	Immediate Sanction Probation (excluding outlier) <sup>a</sup>
Probation <sup>b</sup>	\$1,373.00	\$2,984.55	\$2,984.55
Court <sup>c</sup>	\$133.41	\$411.79	\$411.79
Law Enforcement <sup>d</sup>	\$12.10	\$36.31	\$36.31
Drug Tests <sup>e</sup>	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>
Jail/Prison <sup>f</sup>	\$5,003.37	\$8,611.84	\$8,148.59
Victimization <sup>g</sup>	\$31.81	\$48,180.25	\$343.98
<b>Total</b>	<b>\$6,553.69</b>	<b>\$60,224.74</b>	<b>\$11,925.22</b>

<sup>a</sup> The Immediate Sanction Program victimization estimate was heavily influenced by a second-degree murder offense committed by an Immediate Sanction participant. This offense accounted for \$47,836.27 (99.3%) of the Immediate Sanction Program victimization estimate. This was an outlier in the victimization analysis. Therefore, the cost is reported both with and without this outlier.
<sup>b</sup> Cost for traditional probation per probationer was obtained from the Virginia Department of Corrections Budget Office (2015). Immediate Sanction cost per probationer was calculated based on salaries and benefits for Immediate Sanction probation officers provided by the Department of Corrections.
<sup>c</sup> Court costs were based on median salaries provided by the Virginia State Compensation Board, the Virginia Indigent Defense Commission, as well as Item 42 of Chapter 780 of the 2016 Acts of Assembly, and estimated time per probationer spent by the Judge, Commonwealth's attorneys, defense attorneys, Clerks of court, and Sheriff's deputies during the study period based on the Immediate Sanction Program stakeholder survey. Cost per criminal trial (for recidivism events) was estimated based on data from the Supreme Court of Virginia's 2015 <i>State of the Judiciary</i> Report.
<sup>d</sup> Law enforcement costs were based on median salaries provided by the law enforcement agencies in the pilot jurisdictions and estimated time per probationer spent by officers during the study period, based on the Immediate Sanction Program stakeholder survey.
<sup>e</sup> Drug test costs were not provided by the Department of Corrections by the time of publication.
<sup>f</sup> Jail cost was gathered from the Virginia Compensation Board's FY 2015 Jail Cost Report. Prison cost was based on the average operating cost per offender within the DOC from the DOC Management Information Summary Annual Report for the fiscal year ending June 30, 2015.
<sup>g</sup> Victimization costs were based on McCollister, et al. (2010) updated to 2015 values based on the BLS Inflation Calculator ( <a href="http://www.bls.gov/data/inflation_calculator.htm">http://www.bls.gov/data/inflation_calculator.htm</a> )

## **Survey of Stakeholders**

Throughout the pilot program, the Commission sought feedback from Immediate Sanction Probation stakeholders. This was usually done in stakeholder meetings held on a regular basis in each pilot site and via frequent communication with individual stakeholders. For the evaluation, the Commission sent an electronic survey to the Immediate Sanction stakeholders to solicit opinions to questions about program design and implementation, as well as suggestions for changes to the program. Surveys were sent to Immediate Sanction probation officers, other probation staff in the pilot sites, judges, prosecutors and defense attorneys working with the Immediate Sanction Program, law enforcement charged with locating candidates and arresting Immediate Sanction violators, select staff in the jails and Clerk's Offices, and local treatment providers. The complete survey can be found in Appendix 5. In total, 47 of the 109 stakeholders who were contacted responded to the survey, for a response rate of 43.1%. Several themes emerged from the survey results and these are discussed below.

### ***Program Design and Implementation***

The HOPE approach is based on the concept that, for certain probationers, the threat of a brief jail stay imposed reliably and immediately has a much greater deterrent effect than the threat of a severe punishment that is delayed and uncertain. Stakeholders were asked the extent to which they agreed with this concept. The majority (80.5%) of the respondents agreed or strongly agreed with the concept of the program model. In addition, 11 individuals indicated that their opinion had changed over the course of the pilot program, with eight noting a positive change in their opinion. These results suggest that there is broad support among stakeholders for the HOPE/swift-and-certain sanctions concept. Moreover, when asked whether they believe the Immediate Sanction Program has a place within the current probation system, respondents agreed overwhelmingly (92.3%).

For the most part, stakeholders felt that key features of the pilot program's design were appropriate. For example, when asked whether they believe the Immediate Sanction Program targets the appropriate population, 70% of respondents agreed or strongly agreed. While most stakeholder groups on average agreed with this statement, those who disagreed or strongly disagreed were most frequently Clerk's Office employees, defense attorneys, and DOC officials, excluding the Immediate Sanction probation officers. Stakeholders were asked if the recommended sentence ranges for program violations were appropriate in most instances. Overall, 72.2% of the 41 respondents who answered this question agreed or strongly agreed. Few stakeholders were neutral on this question. Nearly 20%, however, disagreed or strongly disagreed with the sanction ranges for program violations, with some stakeholders preferring shorter terms and others wanting longer terms of incarceration. One stakeholder noted a desire to have violators serve jail time on the weekends, which is not currently permitted for felons in Virginia. The majority (74.5%) of respondents felt that probationers who are eligible for the Immediate Sanction Program should be represented by counsel at placement hearings and that participants should be represented at violation hearings, as the pilot program was designed.

For the pilot program, the Commission requested that DOC assign one probation officer to oversee the Immediate Sanction caseload. When surveyed, the majority (78.7%) of stakeholders thought that one or two people in each office should be assigned to handle Immediate Sanction cases. Twenty-eight respondents supplied specific comments regarding this question and most indicated that having one or two staff members assigned would provide better consistency and fidelity to the program model. The remaining 21.3% believed that the work should be spread out over multiple staff members, so that the program has a better chance of becoming self-sustaining and would not be dependent on the presence of one or two people. Those who believed that Immediate Sanction cases should be distributed among several people expressed concerns regarding individual workloads and the need for flexibility.

When asked specifically about the impact of the Immediate Sanction Program on workload, the responses were mixed and tended to vary by stakeholder group. Roughly half of the stakeholders (56.1%) indicated that the Immediate Sanction Program requires a little more work than traditional probation. Only 4.9% reported that the Immediate Sanction Program requires much more work than traditional probation. In response to this question, 39% said that Immediate Sanction cases are neither more nor less work. In general, staff from Clerk's offices, defense attorneys, jail staff, and probation management indicated that Immediate Sanction cases involved a little more work. Immediate Sanction probation officers were split, with two reporting that Immediate Sanction cases were a little more work and two saying they were much more work than a regular probation case. Generally, judges and law enforcement reported that the Immediate Sanction Program was neither more nor less work than traditional probation cases. Many stakeholders noted that the workload can vary greatly from case to case.

The majority of stakeholders in the pilot jurisdictions indicated that they would like to continue the program in their jurisdiction, if given the option. More than 92% of the respondents reported that they would like to see the Immediate Sanction Program implemented on a more permanent basis in their jurisdiction.

### ***Barriers and Suggestions for Program Changes***

Respondents were given the opportunity to provide comments about barriers to successful implementation of the Immediate Sanction Program. Twenty-three people responded to this question and the most frequent answer was the low number of referrals to the program. Three of the Immediate Sanction probation officers noted that a lack of referrals was a major barrier for the program. Immediate Sanction probation officers and probation supervisors reported that expanded eligibility for the program would be helpful for implementation, since it would likely increase the number of referrals. Some respondents also stated that there was a perceived lack of buy-in from other stakeholders, which meant the program could not function as intended. In addition, two defense attorneys noted that they believed some participants were not given enough chances before they were removed from the program, particularly when their violations had to do with positive drug screens.

One common theme among stakeholder responses was the desire to expand the eligibility criteria. A number of stakeholders suggested that probationers on supervision for a violent offense should be eligible for placement in the Immediate Sanction Program. Other suggestions included that the program be made available pre-trial or at the beginning of a supervised probation term (rather than after a certain number of technical violations).

Another common theme in stakeholder responses related to drug-involved offenders. Some stakeholders indicated that probationers who tested positive for certain controlled substances should not be placed in the Immediate Sanction Program. Several stakeholders expressed concern regarding opiate users in particular and indicated that this population seemed to struggle most in the Immediate Sanction Program, suggesting that these individuals may be better served by other programs, such as drug court. Data for the evaluation cohort indicate that, on average, opiate-using probationers were removed on their second program violation, which may be reflective of this perception among stakeholders.

Other suggested changes included allowing for flexibility in the recommended sanctions to allow for participants to detox in jail when necessary and giving probation officers, Commonwealth's attorneys, and the court more discretion in handling violations.

## **Successes, Challenges, and Observations**

Implementing and maintaining a new program that diverges substantially from existing practices is very challenging. Over the course of the pilot program, the Commission noted a number of successes but also some difficulties that were not entirely overcome. Based on the pilot program experience, the Commission has a number of observations regarding the sustainability of the program in Virginia.

### ***Successes***

Ensuring that violations are addressed immediately and cases are handled swiftly requires extensive collaboration and coordination among many criminal justice agencies and offices. Breakdowns in communication or commitment to the program within any office can hinder the ability of the program to operate in a swift and certain manner. Although achieving such seamless communication can pose a significant challenge in some jurisdictions, the majority of stakeholders in the pilot sites demonstrated a commitment to working with each other, and the Commission, and giving the pilot program the best opportunity to succeed despite the lack of funding for the new program. The willingness and ability of local stakeholders to establish an entirely new structure for handling violations in an expedited fashion, where such a process had not existed before, was critical.

Virginia's Immediate Sanction Probation pilot program achieved several of the key targets of the HOPE/swift-and-certain sanctions model. These targets reflect the central programmatic components of the HOPE model. The program is designed for offenders who are at risk for recidivating or failing probation. More than 75% of the individuals placed in the program had scored medium to high on the COMPAS recidivism risk scale. Low risk probationers were only placed in the program after committing an average of five violations while on regular supervision, indicating a higher risk for revocation. The pilot program met this key marker. Furthermore, for participants who violated program rules, 100% of the violations resulted in a jail sanction and these sanctions were served immediately following the hearing. Moreover, more than 94% of the sanctions were within the range recommended by the Commission and 93% were at or below the maximum sanction established in the evaluation of the BJA/NIJ-funded HOPE replication project. Finally, the vast majority of individuals who completed the program were released from any remaining supervised probation obligation. Release from supervision for successful completers serves as an incentive for individuals participating in the program.

Following the HOPE model, the Commission designed Virginia's Immediate Sanction Probation Program to provide defense counsel to eligible probationers at placement hearings and to participants at violation hearings. Based on the Commission's observations, the use of a Public Defender Office or, where no Public Defender Office exists, a cadre of court-appointed attorneys

worked equally well. The Commission noted that the court-appointed attorneys who agreed to work with the program organized themselves and created a schedule to ensure coverage at all hearings.

The successes of the pilot sites should not be overlooked. They are a testament to the dedication and extensive collaboration of the more than 100 stakeholders in the local pilot sites. A number of challenges remained, however, and some key targets were not reached.

### *Challenges*

While there was considerable interest in the swift-and-certain sanctions model, finding localities willing to participate as pilot sites took time. Because no funding was appropriated for Virginia's pilot project, it was implemented within existing agency budgets and local resources. Since many agencies and offices have undergone reductions in staff since 2007 and some offices experience a relatively high rate of turnover, taking on the responsibilities of a new program was not seen as feasible by some local officials. Three jurisdictions that the Sentencing Commission approached to pilot this program decided not to participate, citing the lack of additional funding and potential increase in workload as their primary concerns.

The number of program candidates referred by probation staff was lower than expected. This may be attributable, in part, to the eligibility criteria. For instance, stakeholders in at least two of the pilot sites indicated that the eligibility criteria excluding offenders who have obligations to courts outside of the pilot jurisdiction significantly reduced the pool of eligible candidates. This eligibility criterion was established for the pilot programs to ensure that judges in the pilot sites had jurisdiction over the cases and could swiftly impose sanctions for violations. Stakeholders in the pilot sites have indicated that other eligibility criteria further reduce the pool of eligible offenders. For example, per § 19.2-303.5, offenders on probation for a violent crime, as defined in § 17.1-805, are not eligible for the program. Several stakeholders suggested that some probationers currently being supervised for a violent offense, particularly burglary, may respond well to the structure provided by the program. Research from the HOPE program in Hawaii and a similar program in Washington State indicates that offenders who are currently on supervision in the community for a violent offense may respond equally well to the close scrutiny and the swiftness and certainty of sanctions imposed in this type of program.

Probation districts piloting the Immediate Sanction Program have also faced the challenge of ensuring that most, if not all, eligible candidates are referred to the court to be considered for placement in the program. The program relies heavily upon the probation officers in each district to identify offenders on their caseload who meet the eligibility criteria and have accumulated the requisite number of violations. Probation officers are asked, once a candidate is identified, to quickly prepare a Major Violation Report detailing the nature of the alleged violations; the Major Violation Report is then submitted to the court as part of the referral process. Achieving a quick turn-around in the preparation of the Major Violation Report has proven to be challenging in districts that have experienced staff reductions in recent years, where probation officers have large caseloads, or where officers prepare a high volume of Pre-Sentence Investigation Reports. To

encourage referrals and ensure that any questions or concerns expressed by probation officers are addressed, the Commission prepared and presented materials to all of the probation officers in each of the pilot sites. In addition, the Immediate Sanction probation officers also encouraged fellow probation officers to refer potential candidates by assisting in the identification of possible candidates, answering questions regarding the program, and helping other officers complete the necessary paperwork for referrals. Ultimately, however, the Commission had no ability to ensure that all eligible probationers in the pilot sites were referred to the program.

In Arlington, a significant number of probationers under supervision by the district office are effectively homeless. The pilot program in Arlington accepted a few homeless individuals into the program, but this proved challenging in terms of finding the participants when they did not report for scheduled appointments with the Immediate Sanction probation officer.

Other evaluators have found that strong local leadership is very important to the successful implementation and continued fidelity to the HOPE program model. While the Commission met with local stakeholders regularly from program implementation through June 2015 to provide guidance and assistance in addressing obstacles, the pilot program likely would have benefitted from the leadership of a highly-involved local stakeholder serving as a champion in each of the pilot sites. While not possible given the Commission's budget constraints, having an on-site project coordinator in each location, such as that provided to sites participating in the BJA/NIJ-funded HOPE replication, would have been extremely beneficial for program fidelity and data collection.

Arguably the most significant difference between Virginia's Immediate Sanction Probation Program and Hawaii's HOPE program (and the recent four-site replication of HOPE) has been the lack of resources for substance abuse services, particularly residential/inpatient options. Moreover, the availability of treatment resources varies considerably across jurisdictions in Virginia and, in at least one pilot site, very few treatment services are available for probationers under supervision in the community.

Limited staff resources presented additional challenges at times. In general, the intense supervision of new participants, in conjunction with immediate arrests, hearings, and jail time for violations, can place stress on stakeholders with limited resources and existing resources can be stretched thin. Relatively high turnover in local Immediate Sanction stakeholders made it difficult to maintain an experienced corps of program personnel at times.

The Commission observed some inconsistencies across the pilot sites in supervision practices of the Immediate Sanction probation officers, for example, in the extent to which the results of handheld urinalyses were sent to the centralized laboratory for confirmation prior to effecting an arrest.

Similar to the findings of the HOPE replication project, Virginia's pilot sites had difficulty bringing participants to a violation hearing within three days, in large part because of participants who failed to show up at scheduled appointments or who absconded. Although the pilot sites were successful in implementing a much faster process to bring a violation before the court, none of the sites achieved the minimum 60% target for the percentage of violations handled within three days



recommended by the evaluators of the HOPE replication project. Examining the data further revealed that while roughly half (47.3%) of violation hearings occurred within three days of the violation, the vast majority (92.5%) of hearings were held within three business days following arrest. This ranged from 84.7% of violations in Lynchburg to 100% in Henrico. Whether the stakeholders had selected set days and times to conduct these hearings (e.g., every Monday, Wednesday, and Friday at 1:00 p.m.) as well as judicial caseload and other factors may have played a role in this variation across pilot sites.

Maintaining fidelity to the program model over the long term is particularly challenging for a program of this kind. Given that the program is a significant departure from current practice and the need for buy-in from a large number of stakeholders, strict adherence to program protocols may be difficult to maintain over time. For the NIJ/BJA-funded replication of HOPE, each jurisdiction received a full-time on-site project coordinator to administer the program and support fidelity to the model throughout the project. Commission staff attempted to fill this role for each pilot site, but this often proved difficult to do. In addition, current policies of the Department of Corrections allow for discretion of the probation officer in the supervision of his or her caseload and, in some respects, encourage Virginia's 43 probation districts to develop localized practices. A program like HOPE, which requires strict adherence to protocols and removes discretion from the officer in the handling of violations, is difficult to implement and sustain in the context of traditional probation in Virginia.

### ***Program Impact and Limitations of the Evaluation***

While evaluations of Hawaii's HOPE program and others have found lower recidivism rates and reduced use of incarceration for probationers, the Commission's analysis of Virginia's pilot program yielded mixed results. The analysis suggested that Immediate Sanction participants were more likely to be free of felony arrests for a longer period of time than comparison offenders ( $p < .05$ ). While Immediate Sanction participants were also less likely than comparison probationers to be reconvicted for a new felony, the relationship between program participation and subsequent felony reconviction was not statistically significant after controlling for other factors. Moreover, participants in the Immediate Sanction Program were more likely to have their probation revoked than comparison probationers and, when revoked, were much more likely to receive a prison term than those in the comparison group. This result had a substantial impact on the cost analysis, which revealed that Immediate Sanction Probation in Virginia cost more than traditional probation, even when victimization costs are not included. This finding suggests that differences in probation and judicial practices or differences in the amenability of certain populations may influence outcomes and costs of implementing programs based on the HOPE model (Lattimore, et al., 2016a).

It is important to note that the Commission's evaluation is limited in several ways. The Commission's evaluation is limited by the small sample size and the relatively low occurrence of recidivism; therefore, the results are not generalizable to the population. In addition, the follow-up time for the recidivism analysis was relatively short because of the program's recent implementation. Therefore, the Commission was unable to examine post-program (completion or removal) recidivism rates for all participants and had to focus on time from program

placement/eligibility. Data limitations, most notably for individuals on traditional probation, meant that certain aspects of the program, such as utilization of treatment services, could not be included in the recidivism or cost analysis.

At the close of 2016, a growing number of swift-and-certain sanctions programs have been evaluated and, while this has greatly contributed to the body of research on this model of community supervision, mixed results have emerged. Several studies found positive program effects, while at least two recent studies (including the large-scale HOPE replication project) did not. Additional research is needed to determine why some swift-and-certain sanctions programs are effective at lowering recidivism and reducing the use of incarceration and others are not and, in particular, for which offender populations this approach is most effective.

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## **Appendices**

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**Appendix 1**  
**Legislative Directive**

**Virginia Criminal Sentencing Commission**  
**Item 50 of Chapter 780 of the 2016 Acts of Assembly**

Authority: Title 17.1, Chapter 8, Code of Virginia

A. For any fiscal impact statement prepared by the Virginia Criminal Sentencing Commission pursuant to § 30-19.1:4, Code of Virginia, for which the commission does not have sufficient information to project the impact, the commission shall assign a minimum fiscal impact of \$50,000 to the bill and this amount shall be printed on the face of each such bill, but shall not be codified. The provisions of § 30-19.1:4, paragraph H. shall be applicable to any such bill.

B.1. Notwithstanding the provisions of § 19.2-303.5 of the Code of Virginia, the provisions of that section shall not expire on July 1, 2016, but shall continue in effect until July 1, 2017, and may be implemented in up to four sites.

2. The Virginia Criminal Sentencing Commission, with the concurrence of the chief judge of the circuit court and the Commonwealth's attorney of the locality, shall designate each immediate sanction probation program site. The Virginia Criminal Sentencing Commission shall develop guidelines and procedures for implementing the program, administer the program, and evaluate the results of the program. As part of its administration of the program, the commission shall designate a standard, validated substance abuse assessment instrument to be used by probation and parole districts to assess probationers subject to the immediate sanction probation program. The commission shall also determine outcome measures and collect data for evaluation of the results of the program at the designated sites. The commission shall present a report on the implementation of the immediate sanction probation program, including recidivism results to the Chief Justice, Governor, and the Chairmen of the House and Senate Courts of Justice Committees, the House Appropriations Committee, and the Senate Finance Committee by November 1, 2016.

C. The clerk of each circuit court shall provide the Virginia Criminal Sentencing Commission case data in an electronic format from its own case management system or the statewide Circuit Case Management System. If the statewide Circuit Case Management System is used by the clerk, when requested by the Commission, the Executive Secretary of the Supreme Court shall provide for the transfer of such data to the Commission. The Commission may use the data for research, evaluation, or statistical purposes only and shall ensure the confidentiality and security of the data. The Commission shall only publish statistical reports and analyses based on this data as needed for its annual reports or for other reports as required by the General Assembly. The Commission shall not publish personal or case identifying information, including names, social security numbers and dates of birth, that may be included in the data from a case management system. Upon transfer to the Virginia Criminal Sentencing Commission, such data shall not be subject to the Virginia Freedom of Information Act.

**Appendix 2**  
**Section 19.2-303.5 of the *Code of Virginia***

§ 19.2-303.5. (Expires July 1, 2017) Immediate sanction probation programs.

There may be established in the Commonwealth up to four immediate sanction probation programs in accordance with the following provisions:

1. As a condition of a sentence suspended pursuant to § 19.2-303, a court may order a defendant convicted of a crime, other than a violent crime as defined in subsection C of § 17.1-805, to participate in an immediate sanction probation program.
2. If a participating offender fails to comply with any term or condition of his probation and the alleged probation violation is not that the offender committed a new crime or infraction, (i) his probation officer shall immediately issue a noncompliance letter pursuant to § 53.1-149 authorizing his arrest at any location in the Commonwealth and (ii) his probation violation hearing shall take priority on the court's docket. The probation officer may, in any event, exercise any other lawful authority he may have with respect to the offender.
3. When a participating offender is arrested pursuant to subdivision 2, the court shall conduct an immediate sanction hearing unless (i) the alleged probation violation is that the offender committed a new crime or infraction; (ii) the alleged probation violation is that the offender absconded for more than seven days; or (iii) the offender, attorney for the Commonwealth, or the court objects to such immediate sanction hearing. If the court conducts an immediate sanction hearing, it shall proceed pursuant to subdivision 4. Otherwise, the court shall proceed pursuant to § 19.2-306.
4. At the immediate sanction hearing, the court shall receive the noncompliance letter, which shall be admissible as evidence, and may receive other evidence. If the court finds good cause to believe that the offender has violated the terms or conditions of his probation, it may (i) revoke no more than 30 days of the previously suspended sentence and (ii) continue or modify any existing terms and conditions of probation. If the court does not modify the terms and conditions of probation or remove the defendant from the program, the previously ordered terms and conditions of probation shall continue to apply. The court may remove the offender from the immediate sanction probation program at any time.
5. The provisions of this section shall expire on July 1, 2017.

**Appendix 3**  
**Immediate Sanction Probation Program**  
**Warning Script Used at Placement Hearing**

## **Immediate Sanction Probation Warning Script**

You have been placed in a program called Immediate Sanction Probation. You have been put in this program because you have not been doing your part and following the rules of probation. When you are on probation instead of serving time in prison, you are making a deal with the judge to follow the rules. You are the one responsible for making sure that you comply with the rules of probation. If you choose not to follow the rules of probation, from this point on, there will be immediate consequences.

From now on, if you fail a drug test, if you fail to meet with your probation officer when you are supposed to, or if you don't comply with any other term of your probation, such as attending treatment if you have been told to go, you will be arrested and you will go to jail. This will happen for each and every violation.

You will be frequently drug tested. Your probation officer will advise you when to come in for testing. If you test positive, you will be arrested on the spot, held in custody, and we will have a hearing a couple of days later. If you use drugs, you will go to jail. If you miss a drug test or a scheduled appointment or don't comply with any other condition of probation, a police officer or Sheriff's deputy will find you and arrest you. They will arrest you at work or home or wherever, and you will go to jail. If you continue to violate the conditions of supervision, I can remove you from the program and revoke your probation. If that happens, I may give you a prison sentence.

I understand that things happen in life. If your car breaks down on the way to the probation office, push it to the side of the road, call your probation officer, tell him or her that you will be late, and get on the bus. If you or your child is at the Emergency Room, call your probation officer to reschedule your appointment and be ready to bring proof of the medical treatment when you come for that appointment.

All of your actions in life have consequences, good or bad. If you confront your problems and learn to change your thinking and your behavior, you will be able to follow the rules of probation and be able to remain free in society. The more responsible you are, the more freedom you will have. The less responsible you are, the less freedom you will have. If you violate the rules, there will be consequences, and they will happen right away. It's all about your choices.

Do you understand everything I just said? Do you have any questions for me?

I wish you success on probation after today and hope I don't see you back in a courtroom anytime soon.

**Appendix 4**  
**Virginia Department of Corrections'**  
**Conditions of Probation**

DEPARTMENT OF CORRECTIONS  
DIVISION OF OPERATIONS

**CONDITIONS OF PROBATION/POST RELEASE SUPERVISION**

**TO:** \_\_\_\_\_

**VACCIS#:** \_\_\_\_\_

**VSP#:** \_\_\_\_\_

**Under the provisions of the Code of Virginia, the Court has placed you on probation/post release supervision this date \_\_\_\_\_ for a period of \_\_\_\_\_ by the Honorable \_\_\_\_\_, Judge, presiding in the \_\_\_\_\_ Court at \_\_\_\_\_.**

**Special conditions ordered by the Court are:**

**Offense & Sentence:**

**Probation conditions are as follows:**

1. I will obey all Federal, State and local laws and ordinances.
2. I will report any arrest, including traffic tickets, within 3 days to the Probation and Parole Officer.
3. I will maintain regular employment and I will notify the Probation and Parole Officer promptly of any changes in my employment.
4. I will report in person, by telephone, and as otherwise instructed by my Probation and Parole Officer.
5. I will permit the Probation and Parole Officer to visit my home and place of employment.
6. I will follow the Probation and Parole Officer's instructions and will be truthful, cooperative, and report as instructed.
7. I will not use alcoholic beverages to the extent that it disrupts or interferes with my employment or orderly conduct.
8. I will not unlawfully use, possess, or distribute controlled substances, or related paraphernalia.
9. I will not use, own, possess, transport, or carry a firearm.
10. I will not 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 the permission of the Probation and Parole Officer.
11. I will not abscond from supervision. I understand I will be considered an absconder when my whereabouts are no longer known to my supervising officer.

**Your minimum date of release from supervision is \_\_\_\_\_ but you will remain under supervision until you receive a final release.**

**You are being placed on probation/post release supervision subject to the conditions listed above. The Court may revoke or extend your probation/post release supervision and you are subject to arrest upon cause shown by the Court and/or by the Probation and Parole Officer.**

**You will report as follows:**

**I have read the above, and/or had the above read and explained to me, and by my signature or mark below, acknowledge receipt of the Conditions of Probation and agree to the conditions set forth.**

**SIGNED:** \_\_\_\_\_

\_\_\_\_\_  
**PROBATION & PAROLE OFFICER**

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_



**Appendix 5**  
**Stakeholder Survey Questions**

Survey Questions

1. Please indicate your pilot site.

- Arlington/Falls Church
- Harrisonburg/Rockingham
- Henrico County
- Lynchburg City

2. Which stakeholder group do you belong to?

- Judge
- Judges' Chambers
- Clerk's Office
- Commonwealth's Attorney
- Defense Attorney
- Immediate Sanction Probation Officer
- Probation and Parole – Other
- Jail Staff
- Law Enforcement
- Treatment Provider

3. To what extent do you agree or disagree with the following statement:

For some probationers, the threat of a brief jail stay imposed reliably and immediately has a much greater deterrent effect than the threat of a severe punishment that is delayed and uncertain.

Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

4. Did this opinion change over the course of working with the Immediate Sanction Probation Program?

- Yes
- No

5. In what way did your opinion change over the course of working with the Immediate Sanction Probation Program?

6. To what extent do you agree or disagree with the following statement:

The Immediate Sanction Probation Program targeted the appropriate population of probationers.

Strongly Disagree      Disagree      Neither Agree nor Disagree      Agree      Strongly Agree

Comments

7. Please list any groups of probationers that you feel **should** have been eligible for the Immediate Sanction Probation Program but were not.

- 1.
- 2.
- 3.

8. Please list any groups of probationers you feel **should not** have been eligible but were.

- 1.
- 2.
- 3.

9. The recommended range of jail days for program violations are shown below:

- 1st violation: 3-7 days
- 2nd violation: 5-10 days
- 3rd violation: 7-14 days
- 4th violation: 10-20 days
- 5th violation: 15-25 days
- 6th+ violation: 20-30 days

To what extent do you agree or disagree with the following statement:

The length of recommended jail days for violations was appropriate in most instances.

Strongly Disagree      Disagree      Neither Agree nor Disagree      Agree      Strongly Agree

Comments

10. For program participants, should a violation of **ANY** of the conditions of probation result in a short jail sentence?

- Yes
- No

11. In what cases should a different sanction in lieu of incarceration be available?

12. Who should have the discretion to determine whether a non-jail sanction is imposed?

- Judge
- Probation & Parole
- Other (please specify)

13. When should participants be represented by counsel? Please mark all that apply.

- Placement hearings
- In-program violation hearings
- Graduation

Comments

14. Which of these do you agree more with:

- (1) One or two people within each office should be assigned to handle Immediate Sanction Probation Program cases.
- (2) Work associated with the Immediate Sanction Probation Program should be spread out among several staff members.

15. Why?

16. To what extent do you agree or disagree with the following statement:

I feel the warning hearings successfully communicated the rules and expectations of the Immediate Sanction Probation Program to the probationer.

Strongly Disagree    Disagree    Neither Agree nor Disagree    Agree    Strongly Agree    N/A

17. What parts of the official warning hearing do you feel were most effective?

18. What parts of the official warning hearing could be improved?

19. To what extent do you agree or disagree with the following statement:

The messages communicated during the violation hearings were effective in reinforcing the tenets of the Immediate Sanction Probation Program.

Strongly Disagree    Disagree    Neither Agree nor Disagree    Agree    Strongly Agree    N/A

Comments

20. How has the Immediate Sanction Probation Program affected your workload?

Much less work    A little less    Neither more nor less work    A little more work    Much more work

21. We would like to estimate the extra amount of time each stakeholder spends on activities relating to the Immediate Sanction Probation Program. This can include entering probationer information into databases, meeting with clients, preparing for hearings, time spent during hearings, etc.

On average, how much time do you typically spend per probationer when a candidate is being brought before the court for a placement hearing?

- Less than 15 minutes
- 15-29 minutes
- 30-44 minutes
- 45-59 minutes
- 1 hour - 1 hour 14 min.
- 1 hour 15 min. - 1 hour 29 min.
- 1 hour 30 min. - 1 hour 44 min.
- 1 hour 45 min. - 1 hour 59 min.
- 2 hours or more
- Not Applicable Other (please specify)

22. On average, how much time do you typically spend per probationer when a participant is being brought before the court for an **expedited** violation hearing?

- Less than 15 minutes
- 15-29 minutes
- 30-44 minutes
- 45-59 minutes
- 1 hour - 1 hour 14 min.
- 1 hour 15 min. - 1 hour 29 min.
- 1 hour 30 min. - 1 hour 44 min.
- 1 hour 45 min. - 1 hour 59 min.
- 2 hours or more
- Not Applicable Other (please specify)

23. On average, how much time do you typically spend per probationer when a participant is being brought before the court for a **non-expedited** violation hearing?

- Less than 15 minutes
- 15-29 minutes
- 30-44 minutes
- 45-59 minutes
- 1 hour - 1 hour 14 min.
- 1 hour 15 min. - 1 hour 29 min.
- 1 hour 30 min. - 1 hour 44 min.
- 1 hour 45 min. - 1 hour 59 min.
- 2 hours or more
- Not Applicable Other (please specify)

24. What barriers did you encounter that you feel impeded successful implementation of the Immediate Sanction Probation Program?

25. What suggestions Please list any best practices you have identified during the Immediate Sanction

26. Please list any best practices you have identified during the Immediate Sanction Probation Program implementation that you would recommend to another jurisdiction interested in starting an Immediate Sanction Probation Program.

1.
2.
3.
4.
5.



27. Section 19.2-303.5 contains certain parameters for the program. What changes to the statute would you recommend, if any? If none, please leave field blank.

§ 19.2-303.5. (Expires July 1, 2017) Immediate sanction probation programs. There may be established in the Commonwealth up to four immediate sanction probation programs in accordance with the following provisions:

1. As a condition of a sentence suspended pursuant to § 19.2-303, a court may order a defendant convicted of a crime, other than a violent crime as defined in subsection C of § 17.1-805, to participate in an immediate sanction probation program.

2. If a participating offender fails to comply with any term or condition of his probation and the alleged probation violation is not that the offender committed a new crime or infraction, (i) his probation officer shall immediately issue a noncompliance letter pursuant to § 53.1-149 authorizing his arrest at any location in the Commonwealth and (ii) his probation violation hearing shall take priority on the court's docket. The probation officer may, in any event, exercise any other lawful authority he may have with respect to the offender.

3. When a participating offender is arrested pursuant to subdivision 2, the court shall conduct an immediate sanction hearing unless (i) the alleged probation violation is that the offender committed a new crime or infraction; (ii) the alleged probation violation is that the offender absconded for more than seven days; or (iii) the offender, attorney for the Commonwealth, or the court objects to such immediate sanction hearing. If the court conducts an immediate sanction hearing, it shall proceed pursuant to subdivision 4. Otherwise, the court shall proceed pursuant to § 19.2-306.

4. At the immediate sanction hearing, the court shall receive the noncompliance letter, which shall be admissible as evidence, and may receive other evidence. If the court finds good cause to believe that the offender has violated the terms or conditions of his probation, it may (i) revoke no more than 30 days of the previously suspended sentence and (ii) continue or modify any existing terms and conditions of probation. If the court does not modify the terms and conditions of probation or remove the defendant from the program, the previously ordered terms and conditions of probation shall continue to apply. The court may remove the offender from the immediate sanction probation program at any time.

5. The provisions of this section shall expire on July 1, 2017.

28. To what extent do you agree or disagree with the following statement:

Based on my experiences, I believe that the Immediate Sanction Probation Program is effective in changing certain probationer's behaviors.

Strongly disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

29. Do you believe that the Immediate Sanction Probation Program has a place within the current probation system?

- Yes
- No

30. Why or why not?

31. If given the option, would you choose to continue the Immediate Sanction Probation Program on a more permanent basis in your jurisdiction?

- Yes
- No

32. Why or why not?

33. Do you have any other thoughts about the Immediate Sanction Probation Program?

