

# **Proposals for the Immediate Sanction Probation Pilot Project**



**Presented to the  
Virginia Criminal Sentencing Commission  
September 10, 2012**

# Directive for Immediate Sanction Probation Pilot Project (2012)

## 2012 SPECIAL SESSION I VIRGINIA ACTS OF ASSEMBLY — CHAPTER 3

### Virginia Criminal Sentencing Commission (160)

50.	Adjudicatory Research, Planning, and Coordination (32400)	1,049,479	1,050,457
-----	---	-----------	-----------

**Authority:** Title 17.1, Chapter 8, Code of Virginia; Section 19.2-303.6, Code of Virginia

**B.1.** Notwithstanding the provisions of § 19.2-303.5, Code of Virginia, the provisions of that section shall not expire on July 1, 2012, but shall continue in effect until July 1, 2014, 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 preliminary 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 October 1, 2013.



# Provisions of § 19.2-303.5 (Enacted in 2010)

§ 19.2-303.5. (Expires July 1, 2014) Immediate sanction probation programs.

There may be established in the Commonwealth up to ~~two~~<sup>four</sup> 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.



## Provisions of § 19.2-303.5 (Enacted in 2010)

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, ~~2012~~ **2014**.



# ACTIVITIES TO DATE

**June 2012**

**Secretary of Public Safety Marla Decker and Deputy Secretary Tewolde spoke to Commission**

**July – August 2012**

**Developed proposals and list of potential pilot sites**

**August 2012**

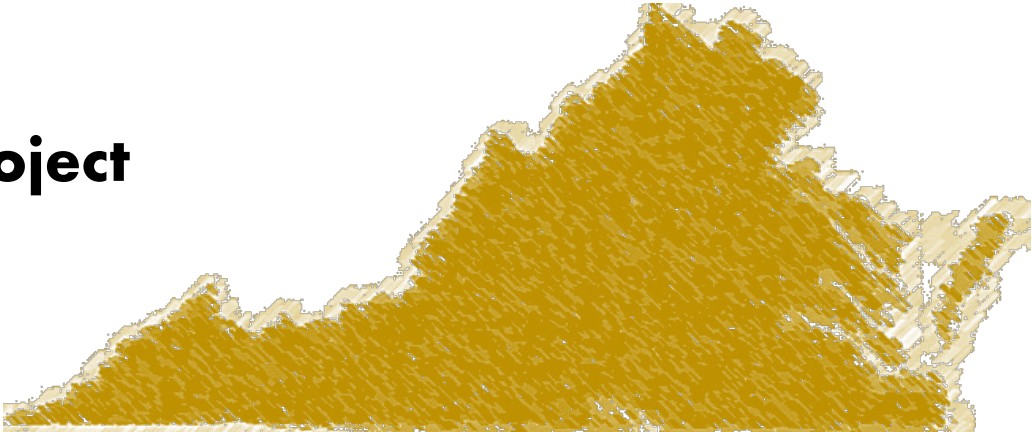
**Met with Secretary's Office to review proposals, key components, and objectives**

**Received input from DOC administration**



---

# Proposals for Pilot Project



# Who are the key players?

- **Judges**
- **Commonwealth's Attorney and Staff**
- **Probation Officers**
- **Public Defender's Office /  
Court-Appointed Attorneys**
- **Sheriff's Office and Police Departments**
- **Magistrates**
- **Clerk of Court and Staff**



# What offenders are eligible?

- **Adults 18 years of age or older  
(not juveniles tried as adults in circuit court)**
- **No current or prior violent convictions,  
defined by § 17.1-805, as an adult or juvenile**
- **Convicted of a felony (not given deferred  
disposition)**
- **Must be supervised in the same jurisdiction  
where the offender was sentenced**





# What offenders are eligible?

- Offenders starting probation supervision (directly from court or after incarceration)

OR

- Offenders already on probation supervision

————— AND —————

- Offenders must be identified as at-risk for failing probation



# How will risk be determined?

- **Currently, probation officers administer the COMPAS risk/needs assessment to determine supervision level**
- **In July 2012, more than 71% of probationers had a COMPAS completed**



# How does an offender get into the program?

For new probationers identified as **HIGH RISK (10%)** or **MEDIUM RISK WITH OVERRIDE CONSIDERATION (20%)**

- Upon 1st alleged technical violation, the offender will be placed on the docket to be reviewed as a candidate for the program
- Probation will prepare noncompliance letter and the offender will be arrested in accordance with existing procedures

**Note: Offenders with a current or prior violent felony conviction (per § 17.1-805) would be excluded from this process**



# How does an offender get into the program?

For new probationers identified as **MEDIUM RISK** (33%)

- Upon 2<sup>nd</sup> alleged technical violation (unless judge specifies otherwise or probation officer cites reason), the offender will be placed on the docket as a candidate for the program

For new probationers identified as **LOW RISK** (37%)

- Upon 3<sup>rd</sup> alleged technical violation (unless judge specifies otherwise or probation officer cites reason), the offender will be placed on the docket as a candidate for the program

Note: Offenders with a current or prior violent felony conviction (per § 17.1-805) would be excluded from this process

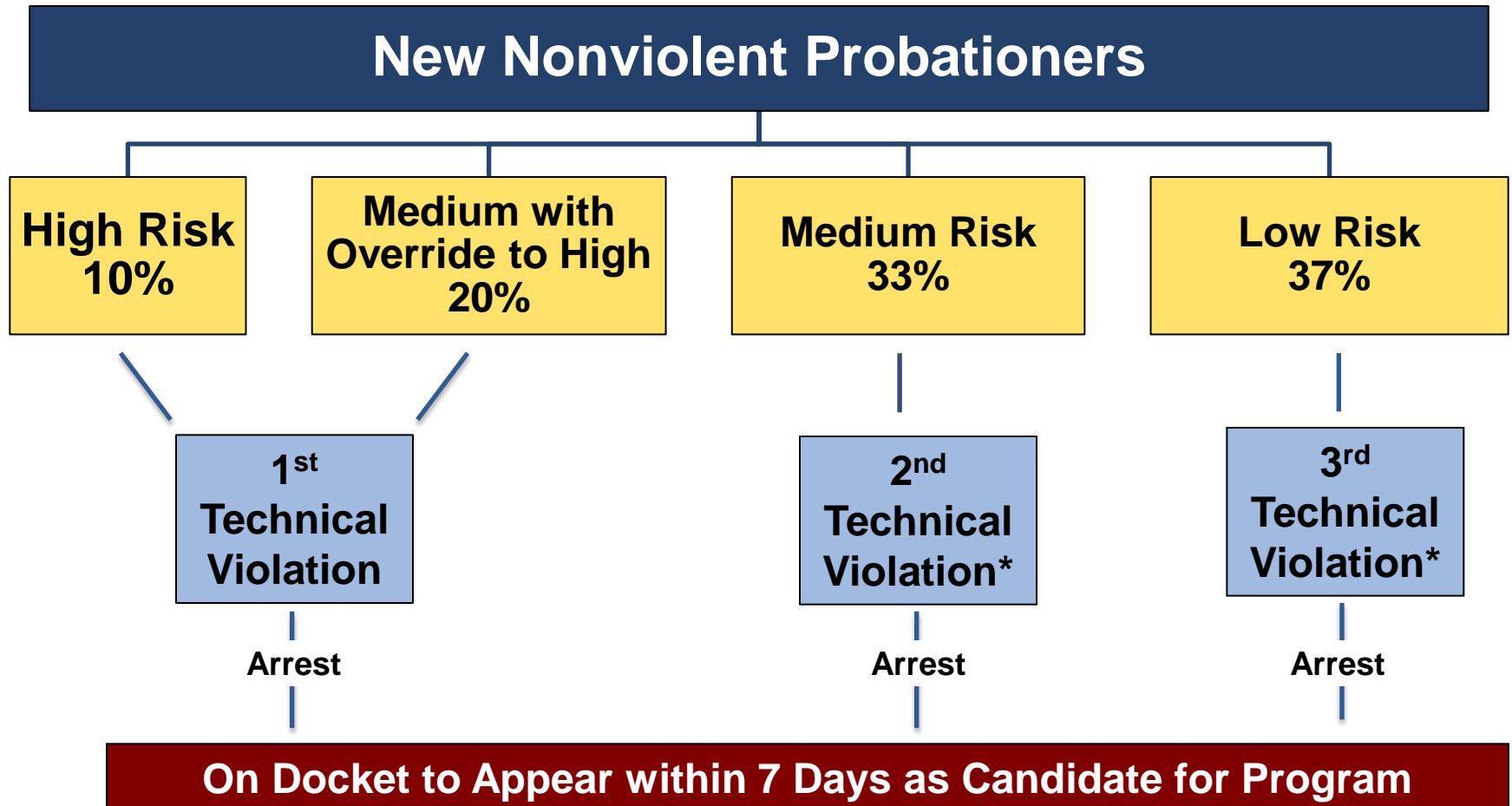


# How does an offender get into the program?

- **Once on the docket, the offender should appear before the judge within seven (7) days of arrest for review hearing**
- **The judge may place the offender in the program or handle the violation under existing practice**



# How does an offender get into the program?



\* Violations occurring on different dates

# How does an offender get into the program?

**For existing probationers already on supervision**

- **A nonviolent offender with an alleged technical violation may be placed on the docket as a candidate for the program based on the same criteria as new probationers**
- **These offenders will be tracked separately for the evaluation**

<b>High risk / Medium risk with override consideration</b>	<b>Upon 1<sup>st</sup> alleged technical violation</b>
<b>Medium risk</b>	<b>Upon 2<sup>nd</sup> alleged technical violation (i.e., has a prior technical)</b>
<b>Low risk</b>	<b>Upon 3<sup>rd</sup> alleged technical violation (i.e., has two prior technicals)</b>

# How does an offender get into the program?

- **Public defender, court-appointed attorney, or private attorney should be present at review hearings**
- **At the review hearing, the judge may place the offender in the program (modify conditions of probation accordingly)**
  - **May also require offender to serve 3 to 7 days in jail or sentence him to time served (not a “freebie”)**
- **Give official warning or schedule a formal warning hearing (script to be prepared by Commission to ensure all offenders hear the same warning)**





# What will the warning hearing entail?

## Excerpts from HOPE Warning Hearing Script

**You are being brought here to court today so I can clearly spell out what the consequences will be if you don't follow the rules of probation.**

**From now on, if any of these things happen -- if you fail a drug test, if you fail to meet with your probation officer when you are supposed to, or you fail with other terms of your probation..., you will go to jail.**

**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 missed a drug test or a scheduled appointment or don't comply the other conditions of probation, I will issue a bench warrant for your arrest...**

**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.**



# How will drug testing be conducted?

- **Offenders will be frequently drug tested when first entering the program**
  - **4 to 6 times per month for first month**
- **For offenders testing negative, frequency of testing will gradually be reduced**



**Commission will work with DOC staff to develop step-down schedule for drug testing**



# What happens when a violation is detected?

- Program participants shall be frequently reviewed by probation staff to ensure no violations of the terms or conditions
- Upon detection of a violation, the probation officer shall immediately issue a noncompliance letter pursuant to § 53.1-149, authorizing arrest of the participant at any location in the Commonwealth



Should employment and failure to pay fines and costs be exceptions?

- Magistrates deny bail or set high bail



# How will the expedited hearings be conducted?

- **Court must conduct an expedited hearing unless**
  - **Alleged that the offender committed a new crime or infraction,**
  - **Alleged that the offender absconded more than 7 days, or**
  - **Offender, Commonwealth's Attorney, or the court objects to the hearing**

**If so, the violation will be handled through the normal process**

**(per § 19.2-303.5)**



# How will the expedited hearings be conducted?

- Ideally, the expedited hearings will be conducted multiple days of the week so that an offender does not wait in jail more than 48 to 72 hours before appearing (unless taken in on a Friday or holiday)
- Will work with Chief Judge to determine how this should be achieved in terms of docketing

**Example: Monday, Wednesday, and Friday mornings  
9:00-9:30 am**

- Expedited hearings should be brief (likely to average about 7 minutes each)



**Will one judge in the pilot jurisdiction oversee all immediate sanction violation hearings or will all judges handle these hearings?**



# What access will the defendant have to defense counsel?

- **Ideally, a public defender (if an office exists in the site) should be assigned to each session in which the court will hold expedited hearings**
- **If no public defender office in that locality, a cadre of court-appointed attorneys should be assigned to cover these sessions**
- **The offender can call a private attorney**
- **Offender can waive counsel**



# What are the consequences for violations?

- **Mandatory jail time for violations while in the program**
- **Judge will modify conditions of probation to include jail time**
  - **Commission will develop a simple form to be used for this purpose**
  - **Offender will not be revoked**



# Mandatory jail time for program violations

<b>Program Violation</b>	<b>Mandatory Incarceration</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 &amp; subsequent</b>	<b>20-30 days</b>

**If repeated positive drug tests, the court may order a full substance abuse assessment**

**If addicted, the defendant may be referred to substance abuse treatment (if suitable) or drug court (if available)**

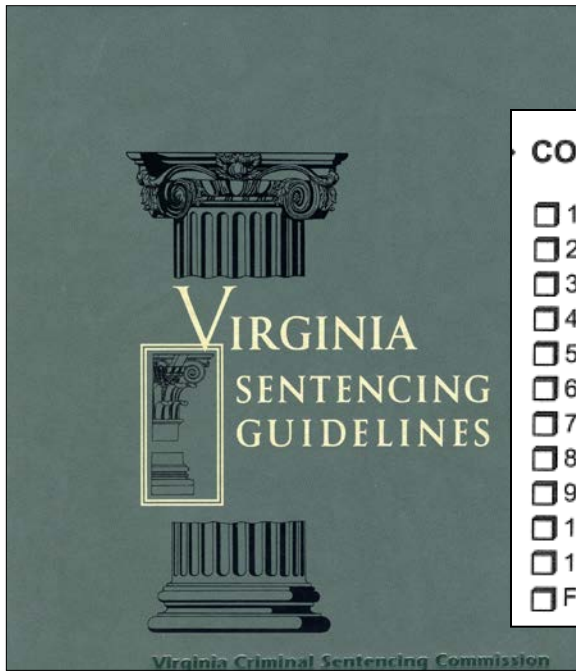
**The court may remove the offender from the program at any time**





# What about the current Probation Violation Guidelines?

The Commission's probation violation guidelines, which apply to technical violations, will not be used for program participants



**CONDITIONS CITED IN VIOLATION (check all that apply)**

- 1. Fail to obey all Federal, State, and local laws and ordinances
- 2. Fail to report any arrests within
- 3. Fail to maintain employment or
- 4. Fail to report as instructed
- 5. Fail to allow probation officer to
- 6. Fail to follow instructions and be
- 7. Use alcoholic beverages
- 8. Use, possess, distribute control
- 9. Use, own, possess, transport or
- 10. Change residence or leave Sta
- 11. Abscond from supervision
- Fail to follow special conditions (s

**Probation Violation Guidelines** Section A Offender Name: \_\_\_\_\_

◆ Original Disposition was Incarceration \_\_\_\_\_ If YES, add 1 →

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

A. Drug .....	13	Score ↓ <input type="text"/>
B. Person .....	15	
C. Traffic/Weapon .....	24	
D. Other .....	1	
E. Property .....	3	

◆ Previous Adult Probation Revocation Events \_\_\_\_\_

Number of Violation Events:		↓ <input type="text"/>
1 - 2 .....	7	
3 or more .....	10	

◆ New Felony Arrests \_\_\_\_\_

Number of Counts:		↓ <input type="text"/>
1 - 3 .....	4	
4 or more .....	18	



# How can an offender be removed from the program?

- The court may remove the offender from the program at any time
- If an offender has gone 12 months since his/her last violation, offender should be considered as having “successfully completed” the program
  - May return to regular caseload, or be placed on Level 3 supervision or unsupervised probation, or be released from supervision if approved by judge

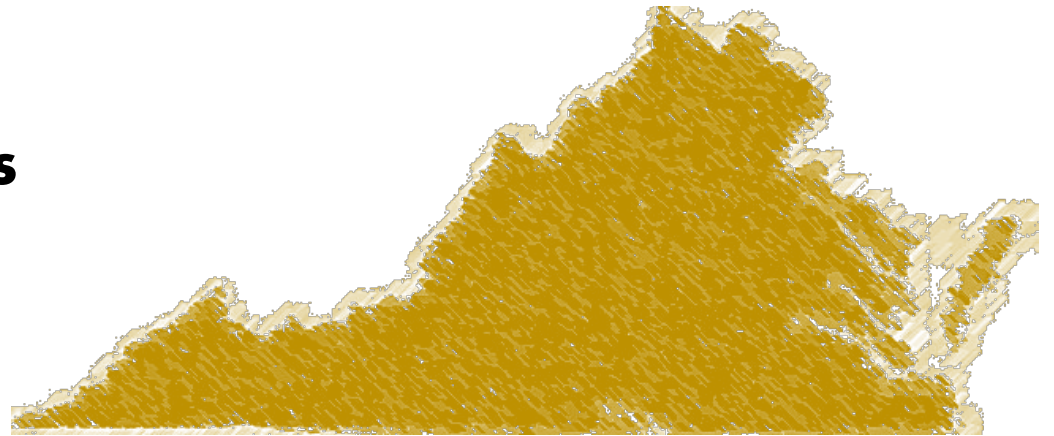


Should a conviction for any new offense result in automatic removal from program?



---

## **Selection of Pilot Sites**

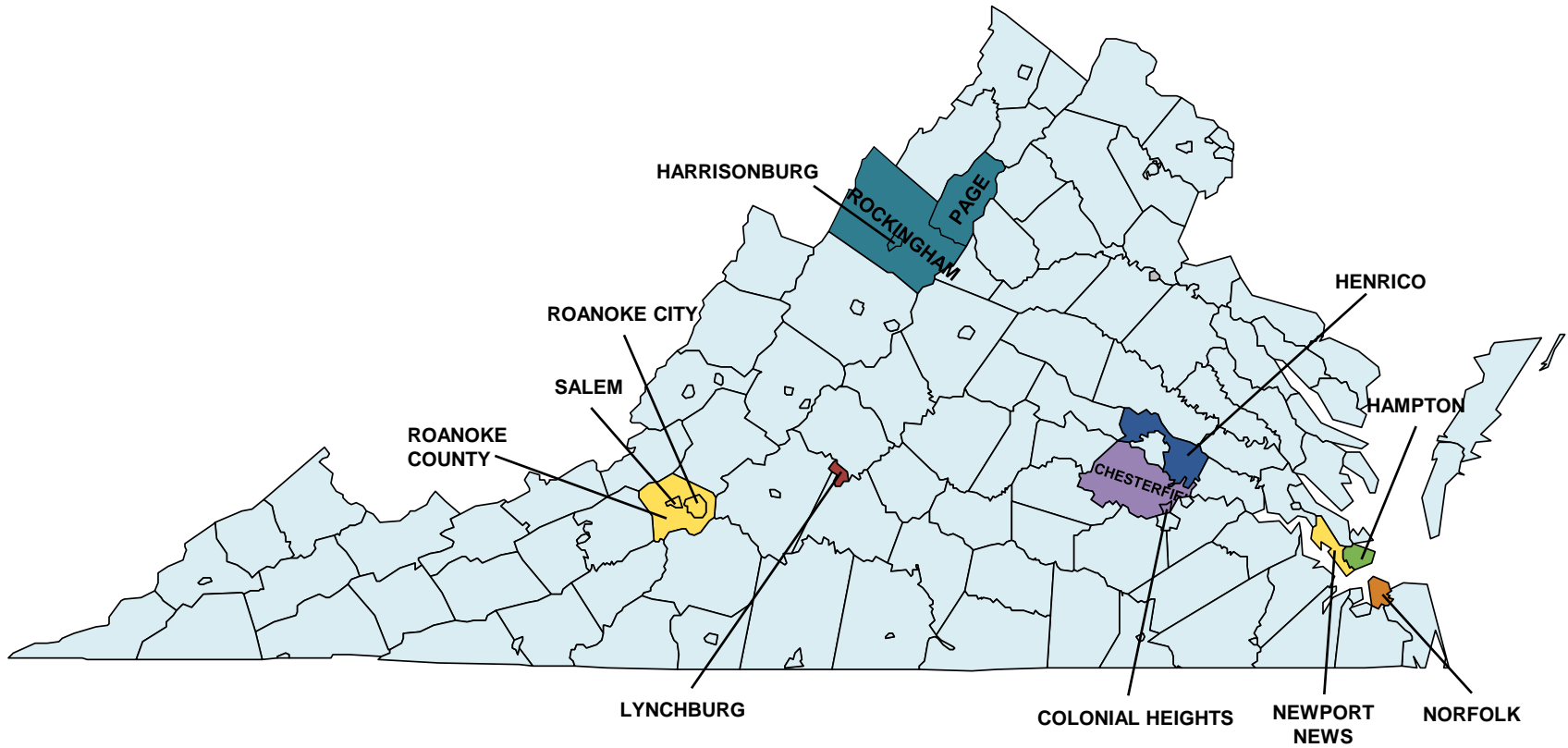





# How will pilot sites be selected?

- **Consensus and commitment from key players**
- **Sufficient volume of technical violators**
- **Regional representation**
- **At least one locality with a public defender's office and one without**
- **At least one locality with a drug court and one without**
- **Substance abuse treatment resources (will need to work within existing DOC treatment agreements)**






# What localities are being considered?



	Tidewater/Eastern Region			Central Region		Western Region		
	Hampton	Norfolk	 Newport News	Chesterfield / Colonial Heights	 Henrico	Harrisonburg/ Rockingham/ Page	 Lynchburg Only	Roanoke City/ Roanoke County/ Salem
Expressed Interest	✓	✓			✓	✓	✓	
Public Defender's Office	✓	✓	✓				✓	Roanoke Only
True Circuit						✓ (Page shares judge w/ Winchester)		✓ (Roanoke County shares judge w/ Salem)
Single Circuit	✓	✓	✓	✓	✓	Splits Circuit 26	Splits Circuit 24	✓
Single P&P District	✓	✓	✓	✓	✓	✓		✓
Drug Court	✓	✓	✓	✓	✓			✓
Chief Judge	Christopher W. Hutton	Junius P. Fulton, III	Timothy S. Fisher	Frederick G. Rockwell, III	Lee A. Harris, Jr.	Thomas J. Wilson, IV	John T. Cook	Clifford R. Weckstein
Commonwealth's Attorney	Anton Bell	Gregory Underwood	Howard Gwynn	William Davenport & William Bray	Shannon Taylor	Marsha Garst & Kenneth Alger	Michael Doucette	Donald Caldwell, Edwin R. Leach & Thomas Bowers
Circuit Court Clerk	Linda Batchelor Smith	George E. Schaefer	Rex A. Davis	Judy Worthington & Stacy Stafford	Yvonne Smith	Chaz Evans-Haywood & C. R. Wilson	Eugene Wingfield	Brenda Hamilton, Steven McGraw & Chance Crawford
Chief PO	Mary Knight	Kathryn Clark Hall	Laura Dobson	Stephen N. Holmes	Scott E. Ridge	Lionel Davenport	Mary B. Basten	D. Paul Keiser

## Characteristics of Potential Pilot Sites

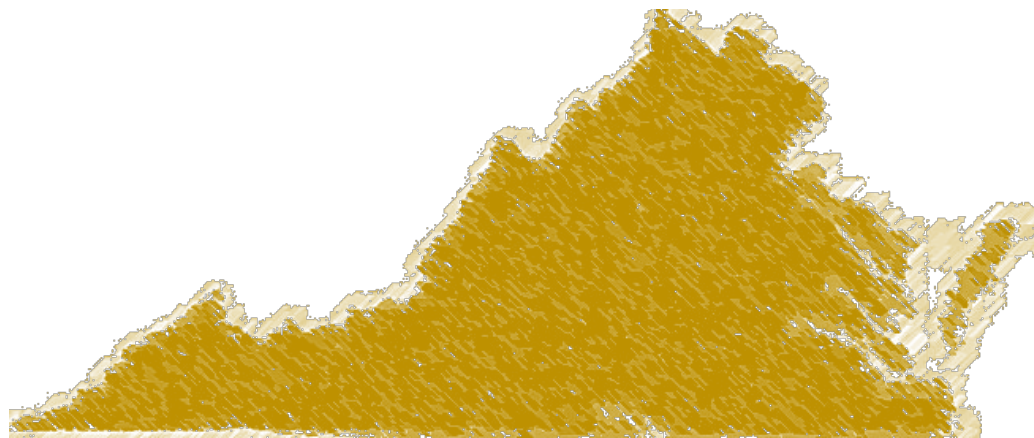
	Tidewater/Eastern Region			Central Region		Western Region		
	Hampton	Norfolk	 Newport News	Chesterfield/ Colonial Heights	 Henrico	Harrisonburg/ Rockingham/ Page	 Lynchburg Only	Roanoke City/ Roanoke Co./ Salem
<b>Avg. number of new probation cases per year FY2010-FY2012 (approx.)*</b>	395	943	597	824	506	386	638 <sup>†</sup>	688
<b>Avg. number of technical probation revocations per year * FY2009-FY2011</b>	163	216	140	132	124	56	73	119
<b>Approx. number of 1<sup>st</sup> technical probation revocations per year *</b>	133	190	117	112	114	49	66	106
<b>Total number of active probationers on June 30, 2011</b>	1,085	3,099	1,334	1,116	1,093	1,047	1,168 <sup>†</sup>	1,755
<b>Rate of technical revocations = technical revocations / active probationers</b>	18.3%	8.7%	12.8%	15.0%	13.4%	6.8%	13.8% <sup>†</sup>	8.9%

\* Excludes offenders convicted of a violent offense as defined in § 17.1-805

<sup>†</sup> Figure represents entire probation district

---

## **Next Steps**





# WORK PLAN

**September 2012**

**Present proposals to Sentencing Commission**

**Brief interested policy makers (Delegate Bell and Senators Howell and Norment)**

**Meet with Chief Judge, Commonwealth's Attorney, and other key players in proposed pilot sites**

**Finalize pilot sites**

**Produce manual, warning script, and forms and select substance abuse assessment instrument**

**Design data collection system**



# WORK PLAN

<b>October 2012</b>	<b>Conduct training sessions in pilot sites</b>
<b>November 2012</b>	<b>Program start date November 1</b>
<b>November 2012 - September 2013</b>	<b>Assist pilot sites Conduct monthly meetings with judges, prosecutors, probation officers, and other key players</b>
<b>August 2013 - September 2013</b>	<b>Conduct analysis Prepare report</b>
<b>October 1, 2013</b>	<b>Report due date</b>

