



# VIRGINIA CRIMINAL SENTENCING COMMISSION

DRAFT



## **Revision of Probation Violation Guidelines and Proposed Judicial Survey**

**September 11, 2017**

# Legislative Directive for Probation Violation Guidelines 2003 Appropriations Act

- In 2003, the General Assembly directed the Commission to develop discretionary sentencing guidelines for probation violators returned to court for reasons other than a new criminal conviction (“technical violations”).
- To develop these guidelines, the Commission examined historical judicial sanctioning practices in revocation hearings.
- In its *2003 Annual Report*, the Commission recommended that the probation violation guidelines be implemented statewide and the recommendation was accepted by 2004 General Assembly.
- Statewide use began July 1, 2004.



## Technical Violator Study (2003-2004)

- **Sample of 600 technical probation violators was drawn from the Commission's Sentencing Revocation Report (SRR) database.**
- **Supplemental information was gathered on factors of interest that were not contained in the automated data.**
  - **Staff reviewed major violation reports prepared by probation officers for the court.**



# **Preparation of Sentencing Revocation Report (SRR) and Probation Violation Guidelines (PVG)**

**Since July 1, 2010, the Appropriation Act has specified that a Sentencing Revocation Report and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306.**

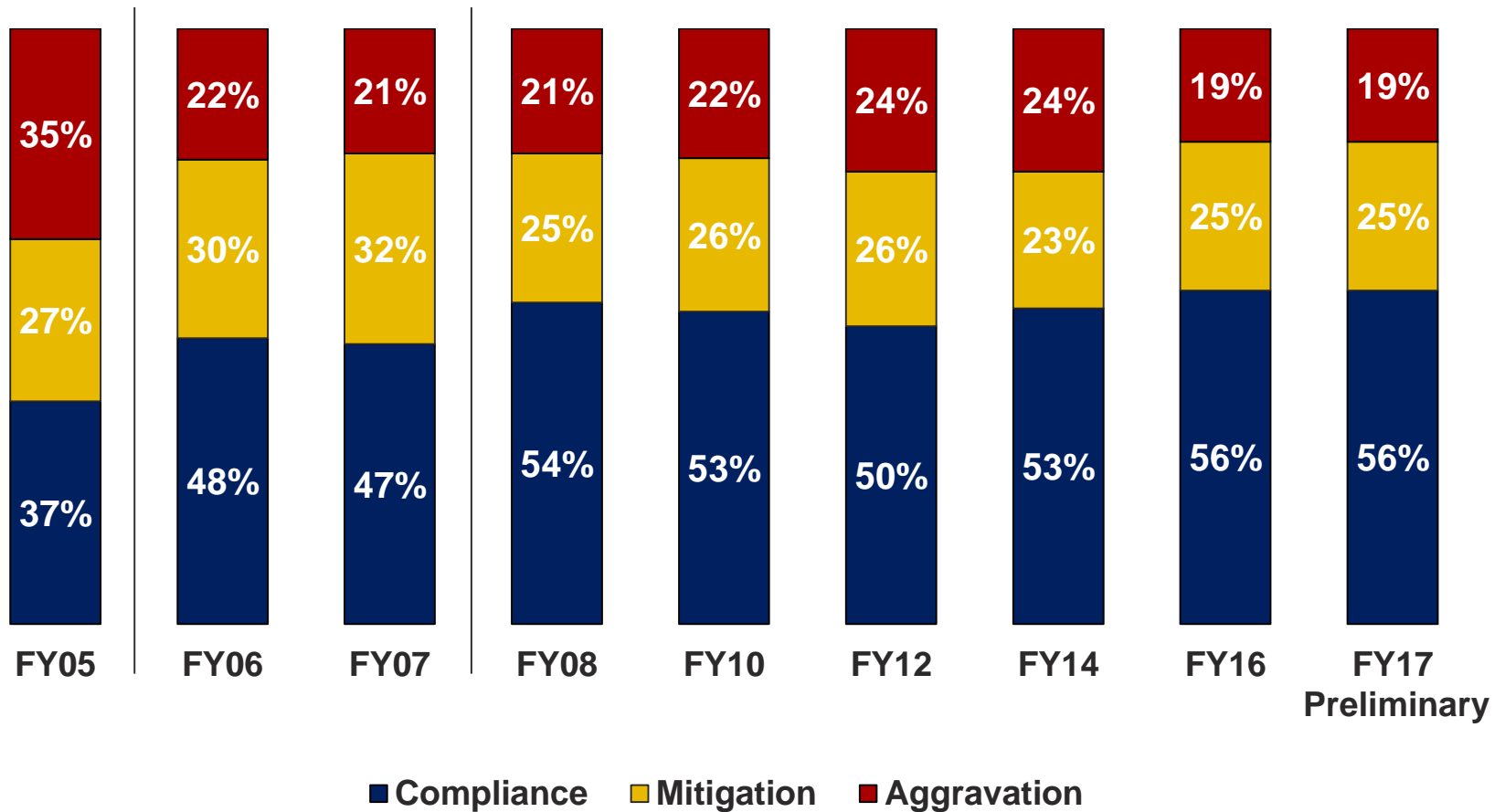
**See Item 42 of Chapter 836  
(Appropriation Act) adopted by  
the 2017 General Assembly**



# Probation Violation Guidelines for Technical Violations

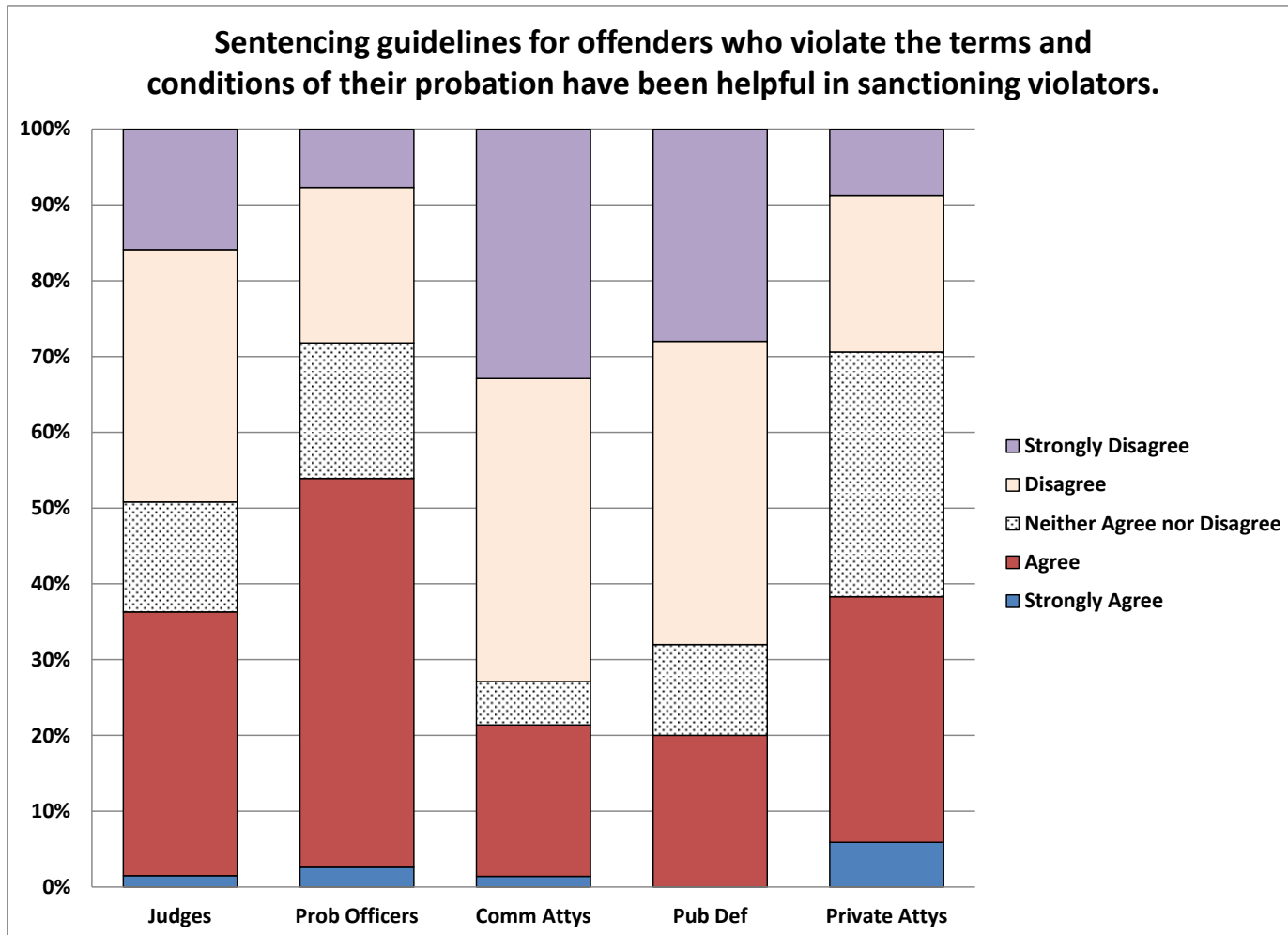
## Compliance by Fiscal Year

### FY2005 – FY2017 (preliminary)



Note: Analysis includes only cases in which the probationer was found in violation and the probation officer indicated the specific conditions violated. Analysis excludes cases with scoring errors.

# Senate Finance Committee Survey (2014)



Source: Dick Hickman, Deputy Staff Director, Senate Finance Committee, presentation to the Virginia Criminal Sentencing Commission, 04/13/2015

# Probation Violation Guidelines

## Most Frequently Cited Departure Reasons

### FY2017 (preliminary)

#### Mitigation Reasons

	Number	Percent
MISSING	518	43.8%
RECOMMENDATION OF CA	134	11.3%
SENTENCED TO ALTERNATIVE	113	9.5%
PROGRESS IN REHAB	104	8.8%
JUDICIAL DISCRETION	74	6.3%
GOOD REHAB POTENTIAL	66	5.6%
FACTS OF CASE	51	4.3%
OFFENDER HEALTH	51	4.3%
SG REC TOO HIGH	47	4.0%
SUBSTANCE ABUSE ISSUES/ NEEDS REHAB	44	3.7%
PLEA AGREEMENT	39	3.3%
FINANCIAL OBLIGATIONS	25	2.1%
1ST REVOCATION	24	2.0%

(Number=1,180)

#### Aggravation Reasons

	Number	Percent
MISSING	369	41.7%
2nd OR SUBSEQ REVOCATION	98	11.1%
FAIL TO FOLLOW INSTR	76	8.6%
SUBSTANCE ABUSE ISSUES	56	6.3%
AGG FACTS/FLAGRANCY	46	5.2%
ABSCONDED	44	5.0%
RECOMMENDATION OF CA	43	4.9%
PLEA AGREEMENT	41	4.6%
POOR REHAB ATTEMPT/ POTENTIAL	38	4.3%
NEEDS REHAB THROUGH JAIL/PRISON	35	4.0%
USE, ETC. DRUG/ALCOHOL	30	3.4%
FINANCIAL OBLIGATIONS	28	3.2%
SG REC TOO LOW	24	2.7%

(Number=897)

# Considerations for Revision of Probation Violation Guidelines

- Although past amendments to the probation violation guidelines have increased compliance, the compliance rate remains relatively low.
- Multiple criminal justice practitioners have requested that the Commission revise the guidelines associated with probation violations, including:
  - Modifying existing factors,
  - Accounting for additional factors beyond those currently covered, and
  - Expanding probation violation guidelines to cover “New Law” (Condition 1) violators.





# Considerations for Revision of the Probation Violation Guidelines

- In addition, the Commission has received feedback from judges regarding an issue of proportionality.
  - In some instances, the probation violation guidelines recommend a relatively lengthy sentence for a technical violation, while a probation violation handled alongside a new felony conviction often does not increase the sentencing guidelines recommendation significantly.
  - If a probation violation is handled separately from the new conviction, no guidelines apply.




# Sentencing Revocation Report (SRR)

A probation officer completes the front of the SRR and indicates the condition(s) the offender has violated.

All violations being handled together should be recorded on one SRR.

The judge completes the back of the form, indicating the outcome of the hearing and the sanctions imposed.

Implemented in 1997, the SRR is the only source of detailed violation information that can be analyzed.



## Sentencing Revocation Report

Date Form Completed: \_\_\_\_\_

IMSP Case

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**◆ OFFENDER** \_\_\_\_\_

First: \_\_\_\_\_ Middle: \_\_\_\_\_

Last: \_\_\_\_\_ Suffix: [ ][ ][ ][ ]

Date of Birth: [ ][ ]/[ ][ ]/[ ][ ][ ][ ] Social Security Number: [ ][ ][ ]-[ ][ ][ ]-[ ][ ][ ][ ][ ]

SID/CCRE: \_\_\_\_\_ CORIS Offender ID: \_\_\_\_\_

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**◆ COURT** \_\_\_\_\_

Judicial Circuit: [ ][ ] City/County: \_\_\_\_\_ FIPS Code: [ ][ ][ ]

Judge's Name: \_\_\_\_\_ [ ][ ][ ][ ]  
Office Use Only

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**◆ MOST SERIOUS ORIGINAL FELONY OFFENSE INFORMATION** \_\_\_\_\_

Primary Offense \_\_\_\_\_ VCC [ ][ ][ ]-[ ][ ][ ][ ][ ] Sentencing Date (Original) [ ][ ]/[ ][ ]/[ ][ ][ ][ ]

PSI NUMBER: \_\_\_\_\_

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**◆ ORIGINAL DISPOSITION INFORMATION** \_\_\_\_\_

No Incarceration     Detention or Diversion Center Incarceration (no active incarceration)     Jail or Prison

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**◆ TYPE OF REVOCATION (check all that apply)** \_\_\_\_\_

Probation     Post-Release     Good Behavior     Suspended Sentence     Community-Based Program

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**◆ 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 days to probation officer
- 3. Fail to maintain employment or to report changes in employment
- 4. Fail to report as instructed
- 5. Fail to allow probation officer to visit home or place of employment
- 6. Fail to follow instructions and be truthful and cooperative
- 7. Use alcoholic beverages
- 8. Use, possess, distribute controlled substances or paraphernalia
- 9. Use, own, possess, transport or carry firearm
- 10. Change residence or leave State of Virginia without permission
- 11. Abscond from supervision
- Fail to follow special conditions (specify) \_\_\_\_\_

Complete if there are any new law or ordinance violations:  
VCCs for most serious convictions

[ ][ ][ ]-[ ][ ][ ][ ][ ]

[ ][ ]/[ ][ ]/[ ][ ][ ][ ]

Location of Arrest:

Virginia     Out of State or Federal

# Probation Violation Guidelines (PVG)

## Revised in FY2008

### Probation Violation Guidelines ❖ Section A Offender Name: \_\_\_\_\_

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

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

A. Person .....	15
B. Property .....	3
C. Traffic/Weapon .....	24
D. Other .....	1
E. Drug .....	13

Score ↓

◆ Previous Adult Probation Revocation Events

Number of Violation 1 - 2 .....	7
Events: 3 or more .....	10

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◆ New Felony Arrests

Number of Counts: 1 - 3 .....	4
4 or more .....	18

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◆ Never Reported to/Unsuccessful Discharge from following Programs

Community service, day reporting, employment programs and/or residential programs.....	15
Detention or Diversion Center.....	18

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◆ Condition Violated *score only the violation receiving the highest points*

2. Fail to report any arrests within 3 days to probation officer .....	17
3. Fail to maintain employment/report changes in employment .....	17
4. Fail to report as instructed .....	18
5. Fail to allow probation officer to visit home or place of employment .....	17
6. Fail to follow instructions and be truthful and cooperative .....	18
7. Use alcoholic beverages to excess .....	17
8. Use, possess, distribute controlled substances or paraphernalia .....	31
9. Use, own, possess, transport or carry firearm .....	17
10. Change of residence or leave Commonwealth of Virginia .....	1
11. Abscond from supervision .....	34
Fail to follow special conditions (sex offender) .....	19
Fail to follow special conditions (other than sex offender conditions) .....	11

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◆ Absconded 13 months or more \_\_\_\_\_ If YES, add 5 →

**Total Score** →

If total is 36 or less, the recommendation is Probation/No Incarceration.  
If total is 37 or more, go to Section C Worksheet.

### Probation Violation Guidelines ❖ Section C Offender Name: \_\_\_\_\_

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

A. Person .....	13
B. Property .....	4
C. Weapon .....	16
D. DWI or Habitual Offender .....	3
E. Other .....	1
F. Drug .....	5

Score ↓

◆ Previous Adult Probation Revocation Events

Number of Violation 1 - 2 .....	4
Events: 3 or more .....	16

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◆ New Arrests for Crimes Against Person

Number of Counts: 0 .....	0
1 .....	4
2 .....	15
3 - 4 .....	30
5 or more .....	38

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◆ New Arrests for Nonperson Crimes

Number of Counts: 0 - 1 .....	0
2 .....	9
3 - 4 .....	12
5 or more .....	19

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◆ Months until First Noncompliant Incident

10 months or less.....	28
11 months to 22 months .....	22
23 months or more .....	0

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◆ Unsuccessful Discharge from Detention Center Program \_\_\_\_\_ If YES, add 30 →

◆ Never Reported to Drug Treatment/Drug Education Program

Number: 1 - 2 .....	9
3 or more .....	16

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◆ Positive Drug Test or Signed Admission (not marijuana or alcohol) — If YES, add 10 →

◆ Violated Sex Offender Restrictions \_\_\_\_\_ If YES, add 5 →

◆ Time Absconded

2 months or less .....	0
3 months to 24 months .....	9
25 months or more .....	12

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**Total Score** →

See Probation Violation Guidelines Section C Recommendation Table for guidelines sentence range.



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## Proposed Judicial Survey

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