



VIRGINIA CRIMINAL SENTENCING COMMISSION



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.

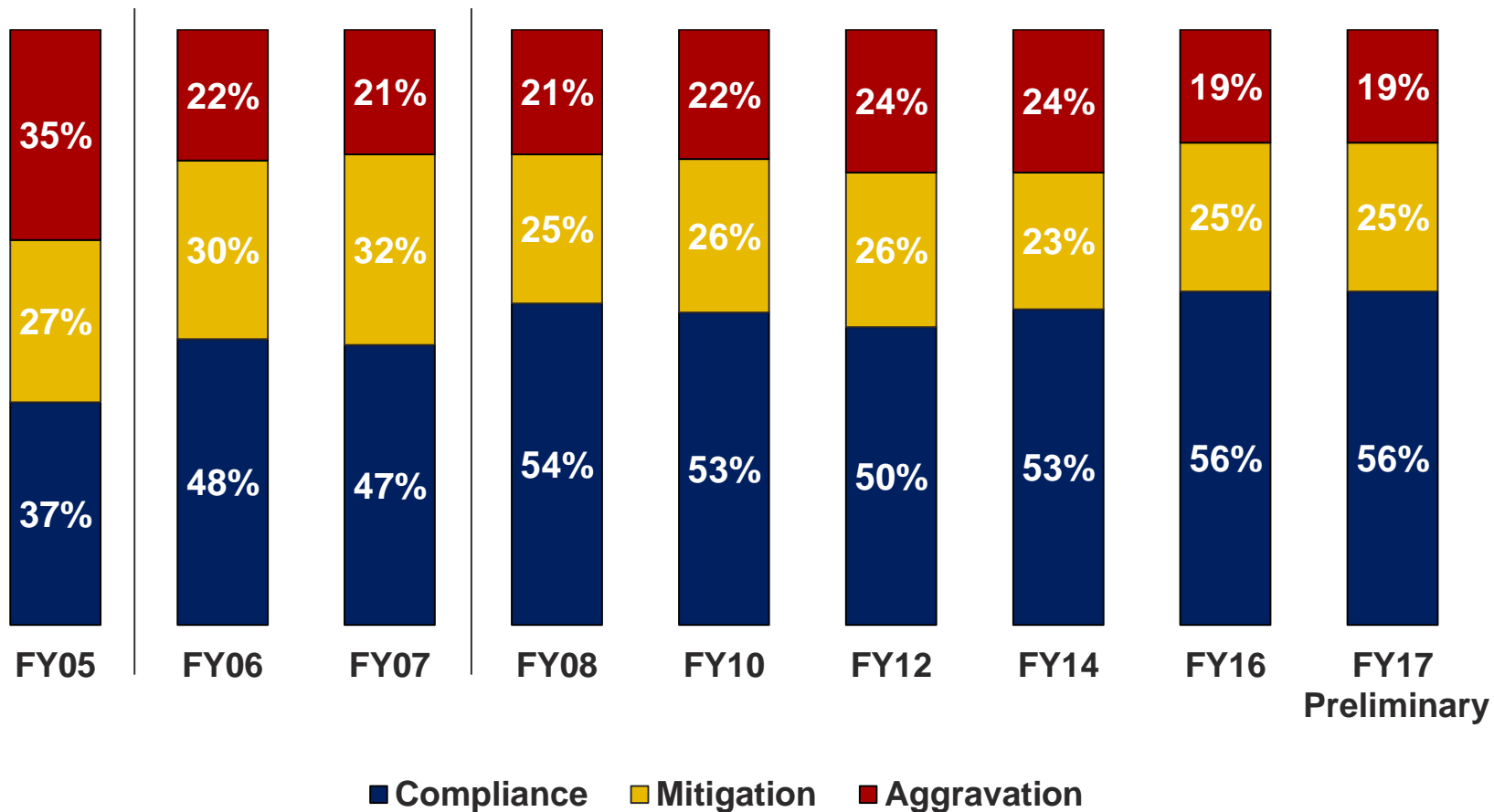
**See Item 42 of Chapter 836
(Appropriation Act) adopted by
the 2017 General Assembly**



Probation Violation Guidelines for Technical Violations

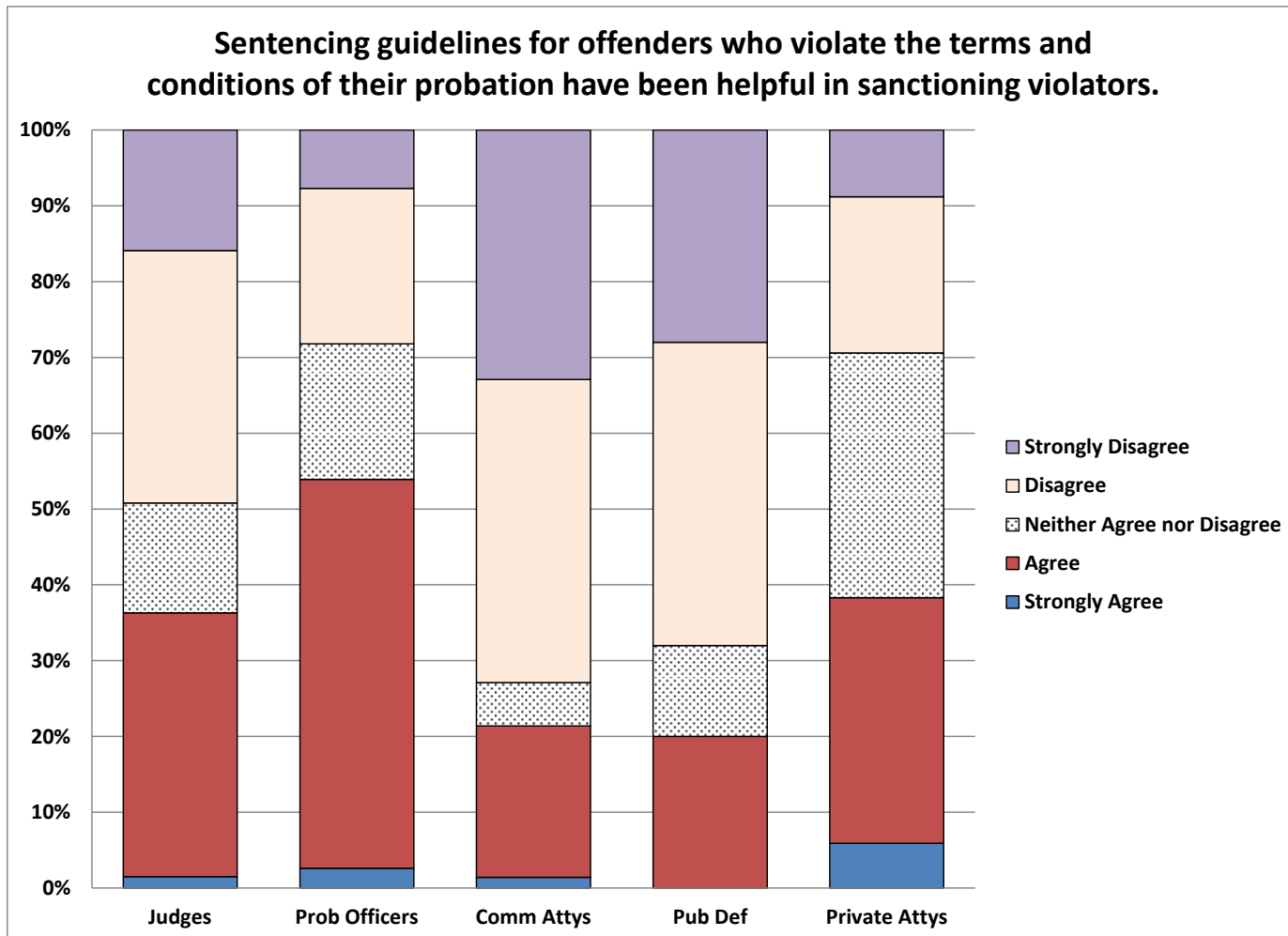
Compliance by Fiscal Year

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

◆ OFFENDER _____

First: _____ Middle: _____

Last: _____ Suffix: [][][][]

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

SID/CCRE: _____ CORIS Offender ID: _____

◆ COURT _____

Judicial Circuit: [][][] City/County: _____ FIPS Code: [][][][]

Judge's Name: _____ [][][][][]
Office Use Only

◆ MOST SERIOUS ORIGINAL FELONY OFFENSE INFORMATION _____

Primary Offense _____ VCC [][][][][][][][][][][][][] Sentencing Date (Original) [][]/[][]/[][][][][]

PSI NUMBER: _____

◆ ORIGINAL DISPOSITION INFORMATION _____

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

◆ TYPE OF REVOCATION (check all that apply) _____

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

◆ 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 Events: 1 - 2	7
3 or more	10

↓

◆ New Felony Arrests

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

↓

◆ Never Reported to/Unsuccessful Discharge from following Programs

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

↓

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

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

↓

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

Total Score →

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

Probation Violation Guidelines ❖ Section C Offender Name: _____

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

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

Score ↓

◆ Previous Adult Probation Revocation Events

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

↓

◆ New Arrests for Crimes Against Person

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

↓

◆ New Arrests for Nonperson Crimes

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

↓

◆ Months until First Noncompliant Incident

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

↓

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

◆ Never Reported to Drug Treatment/Drug Education Program

Number: 1 - 2	9
3 or more	16

↓

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

◆ Violated Sex Offender Restrictions _____ If YES, add 5 →

◆ Time Absconded

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

↓

Total Score →

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



Proposed Judicial Survey

Introduction

In 2003, the General Assembly directed the Virginia Criminal Sentencing Commission to develop discretionary sentencing guidelines for felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (i.e., technical violators). The General Assembly's mandate specified that violation guidelines were to be based on an examination of historical judicial sanctioning patterns in revocation hearings. Pursuant to the 2003 directive, the Commission designed and implemented a research plan to examine historical sanctioning practices for violations of community supervision not involving a new conviction. Using the results of this empirical study, the Commission developed historically-based discretionary sentencing guidelines applicable to these offenders. These guidelines took effect on July 1, 2004, and were refined in 2007. Since 2010, use of the probation violation guidelines has been required by language in the Appropriation Act adopted by the General Assembly.

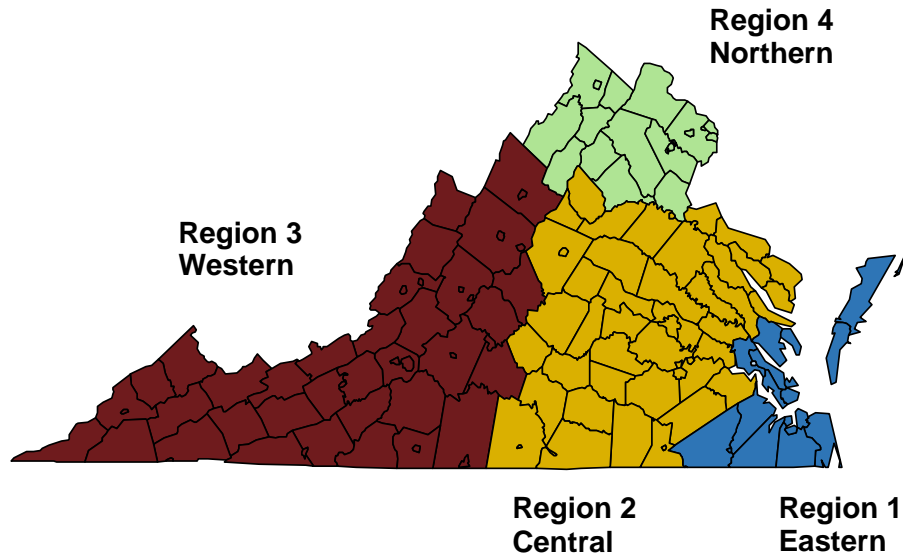
Judicial concurrence with the supervised probation violation guidelines has remained significantly lower than the overall compliance rate with the sentencing guidelines for felony offenses. The Commission recently approved a new study of probation violations that will provide the foundation needed to revise the guidelines used in revocation cases. To do this, the Commission is seeking input and guidance from circuit court judges through the survey that follows. Responding to the survey will provide the Commission with valuable information to improve the utility of the guidelines for Virginia's judges.

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

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

The first set of questions pertains to local practices in your jurisdiction.

1. In which region do you sit most often?



- Region 1 – Eastern
- Region 2 – Central
- Region 3 – Western
- Region 4 – Northern

2. In the jurisdiction in which you sit most often, is a probation violation usually handled by the original sentencing judge or is a probation violation usually handled by any judge in the jurisdiction?

- Original sentencing judge
- Any judge

3. In the jurisdiction in which you sit most often, if a probation officer initiates supervised probation revocation proceedings for a Condition 1 (new law) violation, at what point do you hold the hearing for the alleged violation?

- When the offender has been arrested, but not convicted, of the new charge(s)
- After the offender has been convicted of the new charge(s)
- It varies depending on _____

4. In the jurisdiction(s) in which you sit most often, are probation officers routinely present during violation hearings when the original offense was a felony?

- Yes
- No

The following questions ask about the way you approach supervised probation violation hearings and sanctions.

5. What sources of information do you **routinely** use when determining what the punishment will be for a supervised probation violation? (Please check all that apply)
- Major Violation Report prepared by the Probation Officer
 - COMPAS Risk/Needs Assessment Results
 - Testimony from:
 - Probationer
 - Probation Officer
 - Other Parties
 - Probation Violation Guidelines (for “technical” violators only)
 - Previous Court Records
 - Other (please specify): _____
6. If a probationer is brought back to court multiple times for violations stemming from the same original offense, do you typically increase the punishment at each successive revocation?
- Yes
 - No
7. For offenders found in violation of supervised probation, do you believe that the sanction should **always** include at least one day in jail?
- Yes
 - No
8. Are there circumstances in which you might not order a probation violator to serve any pre/post-jail time?
- Yes
 - No

If yes, please describe such circumstances.

9. When sentencing supervised probation violators, do you typically impose all/some of the revocable time and re-suspend time, or do you impose the term you want the violator to serve without suspending any time?
- Revoke all/some of the revocable time and re-suspend time
 - Impose the term I want the violator to serve without suspending any time

10. Are there circumstances under which you might release an individual with one or more violations from probation supervision prior to their end of the supervision term?

- Yes
- No

If yes, please describe such circumstances.

11. From your perspective, how important are the following goals when sentencing a probation violator? Use the scale shown below, where 1 means “not at all important” and 10 means “extremely important.” Circle the number that best fits your opinion.

	Not at all important			Somewhat important				Extremely important		
Rehabilitation	1	2	3	4	5	6	7	8	9	10
Punishment	1	2	3	4	5	6	7	8	9	10
Incapacitation	1	2	3	4	5	6	7	8	9	10
Deterrence of the probationer	1	2	3	4	5	6	7	8	9	10
Deterrence of other probationers	1	2	3	4	5	6	7	8	9	10

The following questions will tell the Commission which factors you consider when sentencing probation violations and how important those factors are in your sentencing decision.

12. When sentencing probation violators, please indicate the importance of each of the following factors in your sentencing decision. Use the scale shown below, where 1 means “not at all important” and 10 means “extremely important.” Circle the number that best fits your opinion.

	Not at all important			Somewhat important				Extremely important		
Type of original felony offense	1	2	3	4	5	6	7	8	9	10
Original sentence ordered by the court	1	2	3	4	5	6	7	8	9	10
Sentencing guidelines recommendation for original offense	1	2	3	4	5	6	7	8	9	10
Number of prior probation revocations in adult criminal record	1	2	3	4	5	6	7	8	9	10
Number of revocations associated with this specific felony offense	1	2	3	4	5	6	7	8	9	10
Number of violations during the current supervision period (since last revocation)	1	2	3	4	5	6	7	8	9	10
Probationer absconded during the current supervision period (since last revocation)	1	2	3	4	5	6	7	8	9	10
Number of different conditions violated	1	2	3	4	5	6	7	8	9	10
Number of repeated violations of the same type	1	2	3	4	5	6	7	8	9	10

New misdemeanor arrest	1	2	3	4	5	6	7	8	9	10
New felony arrest	1	2	3	4	5	6	7	8	9	10
Whether the new arrest is the same type as the original felony (e.g., property, violent, etc.)	1	2	3	4	5	6	7	8	9	10
New misdemeanor conviction	1	2	3	4	5	6	7	8	9	10
New felony conviction	1	2	3	4	5	6	7	8	9	10
Sentence given for the new conviction (if the probation violation is based on a new offense)	1	2	3	4	5	6	7	8	9	10
Violation behavior that is similar to underlying offense (e.g., alcohol, driving)	1	2	3	4	5	6	7	8	9	10
Number of positive drug tests/admissions for heroin	1	2	3	4	5	6	7	8	9	10
Number of positive drug tests/admissions for cocaine	1	2	3	4	5	6	7	8	9	10
Number of positive drug tests/admissions for methamphetamine	1	2	3	4	5	6	7	8	9	10
Number of positive drug tests/admissions for marijuana	1	2	3	4	5	6	7	8	9	10
Number of positive drug tests/admissions for prescription opioids	1	2	3	4	5	6	7	8	9	10
Length of time absconded	1	2	3	4	5	6	7	8	9	10
Absconded but stayed in area	1	2	3	4	5	6	7	8	9	10
Absconded and left region	1	2	3	4	5	6	7	8	9	10
Absconded but did not incur any new arrests	1	2	3	4	5	6	7	8	9	10
Months until the first noncompliance incident	1	2	3	4	5	6	7	8	9	10
Length of time between the last violation hearing and commission of new violation(s)	1	2	3	4	5	6	7	8	9	10
Unsuccessful discharge from a residential program for non-medical reasons (e.g., detention center)	1	2	3	4	5	6	7	8	9	10
Probationer never reported to a program ordered by the court	1	2	3	4	5	6	7	8	9	10
Probationer never reported to a program as instructed by probation officer	1	2	3	4	5	6	7	8	9	10
Violation of sex offender restrictions ordered by the court (excluding registry provisions)	1	2	3	4	5	6	7	8	9	10
Violation of sex offender restrictions ordered by the probation officer	1	2	3	4	5	6	7	8	9	10
Probationer has a substance abuse history prior to the offense for which he/she is on probation	1	2	3	4	5	6	7	8	9	10
Probationer's cooperativeness with probation officer	1	2	3	4	5	6	7	8	9	10
Probationer used disrespectful language toward probation officer or court	1	2	3	4	5	6	7	8	9	10
Probationer was actively engaged in treatment at the time of violation	1	2	3	4	5	6	7	8	9	10
Probationer has made positive progress in a treatment/program	1	2	3	4	5	6	7	8	9	10
Prosocial support network (e.g., family, friends)	1	2	3	4	5	6	7	8	9	10
Gang membership or activity	1	2	3	4	5	6	7	8	9	10
Anti-social peers	1	2	3	4	5	6	7	8	9	10

Probationer admitted to violations/substance use	1	2	3	4	5	6	7	8	9	10
Amount of revocable time remaining	1	2	3	4	5	6	7	8	9	10
Treatment/program resources available in your jurisdiction(s)	1	2	3	4	5	6	7	8	9	10
Type of prior convictions in criminal record	1	2	3	4	5	6	7	8	9	10
Number of prior misd. convictions in criminal record	1	2	3	4	5	6	7	8	9	10
Number of prior felony convictions in criminal record	1	2	3	4	5	6	7	8	9	10
Number of prior state-responsible prison sentences served (sentences of 1 year or more)	1	2	3	4	5	6	7	8	9	10
Number of prior local-responsible jail sentences served (sentences of 1 day to 12 months)	1	2	3	4	5	6	7	8	9	10
Length of criminal record (time period over which criminal record spans)	1	2	3	4	5	6	7	8	9	10
Juvenile record of delinquency	1	2	3	4	5	6	7	8	9	10
Failure to pay fines/costs	1	2	3	4	5	6	7	8	9	10
Failure to pay restitution	1	2	3	4	5	6	7	8	9	10
Age of probationer	1	2	3	4	5	6	7	8	9	10
Gender of probationer	1	2	3	4	5	6	7	8	9	10
Probationer has children to care for/support	1	2	3	4	5	6	7	8	9	10
Employment status (Is the probationer currently employed or been working regularly?)	1	2	3	4	5	6	7	8	9	10
Stability of residence	1	2	3	4	5	6	7	8	9	10
Offender's positive behaviors (e.g., attending treatment or NA/AA meetings, employed, etc.)	1	2	3	4	5	6	7	8	9	10
Length of time served in jail awaiting hearing (if any)	1	2	3	4	5	6	7	8	9	10
Number of opportunities for rehabilitation not successfully completed (lifetime)	1	2	3	4	5	6	7	8	9	10
Probation violation guidelines recommendation (for a technical violation)	1	2	3	4	5	6	7	8	9	10
Risk and/or needs assessment for probationer (e.g., DOC's COMPAS tool)	1	2	3	4	5	6	7	8	9	10
Probationer has an addiction to drugs or alcohol	1	2	3	4	5	6	7	8	9	10
Probationer has a violation pending in another court	1	2	3	4	5	6	7	8	9	10
Probationer is serving/will serve time for a new offense	1	2	3	4	5	6	7	8	9	10

13. Please describe any other factors you consider when sanctioning probation violators that are not listed above (if any).

14. When you determine the sentence for a supervised probation violation, what three factors are most important to you?

#1 _____

#2 _____

#3 _____

15. When sanctioning probation violators, how does the lack of treatment/program resources affect your sentencing decision?

- More likely to incarcerate in jail
- More likely to incarcerate in prison
- Less likely to incarcerate
- No impact
- Other _____

16. When are you most likely to order incarceration for a positive drug test, admission of use, or failure to cooperate? Please mark the statement that best describes your approach.

- A violation that occurs within the first three months of supervision
- A violation that occurs after two years of supervision with compliance in between
- Does not matter

17. Generally speaking, how important is each condition of probation in terms of its impact on your sentencing decision? Please rank the conditions of probation by assigning a 1 to the most important and 12 to the least important.

- _____ Fail to obey all Federal, State, and local laws and ordinances
- _____ Fail to report any arrests within 3 days to probation officer
- _____ Fail to maintain employment or to report changes in employment
- _____ Fail to report within three days of release or as instructed thereafter
- _____ Fail to allow probation officer to visit home or place of employment
- _____ Fail to follow instructions, be truthful, cooperative, and report as instructed
- _____ Use alcoholic beverages to extent it disrupts or interferes with employment or conduct
- _____ Use, possess, distribute controlled substances or paraphernalia
- _____ Use, own, possess, transport or carry firearm
- _____ Change residence or leave State of Virginia without permission
- _____ Abscond from supervision
- _____ Fail to follow special conditions set by the court

18. Is there information you regularly ask from the probation officer or the probationer in court that is not in the Major Violation Report (MVR)? If so, what?

- Yes
- No

If yes, please elaborate.

19. When sanctioning probation violators, in what way(s) does the amount of revocable time remaining affect your sentencing decision?

The final set of questions pertains to the implementation and use of probation violation guidelines.

20. In your opinion, should the probation violation guidelines apply when the probationer:

- Has committed a technical violation(s) only Yes No
- Has been **arrested** for a new misdemeanor Yes No
- Has been **arrested** for a new felony Yes No
- Has been **convicted** of a new misdemeanor Yes No
- Has been **convicted** of a new felony Yes No

21. What format would you prefer for probation violation guidelines?

- Worksheets listing factors to be scored (current format)
- Grid or matrix (e.g., a two-dimensional table taking into consideration fewer factors)
- Other _____
- No preference

22. Analysis of the data suggests there is considerable variation in the amount of imposed and suspended time, and thereby the amount of revocable time, given to similarly-situated offenders (i.e., those with similar offenses and criminal records). Because the amount of revocable time may affect the sanctions judges give for probation violations, it may also affect the development of probation violation guidelines based on historical data. Should this be addressed in a systematic way?

- Yes
- No

If yes, how so?

23. Is there anything else you would like to communicate to the Sentencing Commission regarding probation violation guidelines?
