

The Sentencing Commission has received a number of requests for copies of the Probation Violation Guidelines that were in effect prior to July 1, 2021, for use in certain revocation hearings. Please note that, per Commission policy, the Guidelines in effect at the time of the revocation hearing should be prepared and reviewed by the court. The Probation Violation Guidelines currently in effect were recommended by the Commission in 2020 and accepted by the 2021 General Assembly.

The Commission is aware that different interpretations of § 19.2-306.1, related to sentencing for technical violations of probation, have emerged in the courts. The Commission is also aware of the recent Virginia Court of Appeals decision in *Green v. Commonwealth*. Differences as to statutory interpretation are a separate issue from the applicability of the Probation Violation Guidelines.

The new Probation Violation Guidelines, effective July 1, 2021, were developed based on a comprehensive analysis of sentencing outcomes in recent revocation cases and were designed to provide judges with a recommendation reflective of the typical outcome in similar cases. Due to the General Assembly's enactment of § 19.2-306.1, the Commission adjusted the Probation Violation Guidelines to ensure they are compatible with the new law. The historically-based Guidelines were modified so they will not recommend more incarceration time than that specified in § 19.2-306.1 for first or second technical violations (see Probation Violations Guidelines Worksheet TV1/2). Worksheet TV3, however, was not adjusted in any way and it recommends sentences for technical violations that are based solely on analysis of recent sentencing practices in revocation cases. **Therefore, if a judge wishes to review Probation Violation Guidelines that have not been adjusted based on § 19.2-306.1, the judge may request that Worksheet TV3 be prepared.**

The probation violation worksheets and SWIFT have been modified to allow preparers, at the request of the judge, to complete the TV3 worksheet for any first or second technical violation. To bypass the requirements of § 19.2-306.1, preparers must check 1st or 2nd technical violation and the 3rd + or TV* box. Checking the 3rd + or TV* box will allow the users to complete the historically-based guidelines as requested by the judge.

Technical Violation 2-11: 1st 2nd 3rd+ or TV*
Technical Violation 9 or 11: 1st 2nd 3rd+ or TV*
Special Conditions: Yes
New Law Violation: Felony Misdemeanor

The TV3/SCV worksheet has been labeled as TV3/SCV/TV*. The TV* designation is to confirm that the worksheet is appropriate for any violation not impacted by § 19.2-306.1.

Probation Violation Guidelines Worksheet ~~TV3~~ TV3/SCV/TV*
Third or Subsequent Technical Violation or Any Special Condition Violations
***If requested by the court for 1st or 2nd Technical Violations**

Offender Name: _____

Should you have any questions regarding the Probation Violation Guidelines or the Commission's policy regarding their use, please contact the Commission's hotline at 804.225.4398 or text us at 804.393.9588.

