



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1242 (Patron – Scott, D. L.)

LD #: 22104530

Date: 01/28/2022

Topic: Probation terms and sentences for technical violations

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
Cannot be determined \*\*
- **Juvenile Detention Facilities:**  
Cannot be determined \*\*

\*\* Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible (prison) and/or local-responsible (jail) beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

#### Summary of Proposed Legislation:

The 2021 General Assembly (Special Session I) passed legislation that limited the length of probation supervision, created new deadlines for notices of revocation hearings, defined technical violations, and restricted the time that may be imposed by a court when the defendant is found to have committed certain technical violations. Those provisions became effective on July 1, 2021.

The proposal amends §§ 19.2-303, 19.2-303.1 and 19.2-306.1 of the *Code of Virginia*. Under §§ 19.2-303 and 19.2-303.1, the proposal provides that the court may fix the period of probation and the period of suspension for up to two years for an offense punishable as a Class 1 or Class 2 misdemeanor if the sentence does not include any active period of incarceration. Currently, the limitation on periods of probation and periods of suspension is up to the statutory maximum period of imprisonment for any offense.

The proposal also makes changes to the definition of a technical violation under § 19.2-306.1 by specifying that a probationer's failure to maintain contact with the probation officer without reasonable excuse or justification whereby his whereabouts are no longer known to the probation officer shall not be treated as a technical violation. Accordingly, if the court finds the basis of a violation is a probationer's failure to maintain such contact without reasonable excuse or justification, then the court is not subject to the limitations on sentencing and may revoke the suspension and impose or resuspend any or all of the period previously suspended.

**Analysis:**

According to Sentencing Guidelines data for fiscal year (FY) 2019 and FY2020, 3% of felony offenders were given a probation supervision term of more than five years (the limit set in current law in effect since July 1, 2021). During that two-year period, the median probation term was 18 months.

Based on FY2019-FY2020 Sentencing Revocation Report data, the chart below identifies the conditions violated by probationers (excluding violations arising out of new law convictions). Among felony offenders who had their probation/suspended sentence revoked for technical violations, 73.5% received a sentence of more than 14 days (the limit set in current law for most probationers who commit a second technical violation). For offenders given an active sentence to serve for technical violations, the median sentence was 4.0 months.

For probationers whose violation is based on the failure to maintain contact with the probation officer whereby his whereabouts are no longer known to the probation officer, the Sentencing Revocation Report data system does not contain information on the specific behavior in which such failure to maintain contact is without reasonable excuse or justification.

<b>Conditions Violated (Excluding Violations Arising Out of New Law Convictions) FY2019-FY2020</b>	<b>Percentage</b>	<b>Number</b>
Fail to refrain from the use, possession, or distribution of controlled substances or related paraphernalia	64.8%	8,624
Fail to follow the instructions of the probation officer, be truthful and cooperative, and report as instructed	59.7%	7,951
Fail to maintain contact with the probation officer whereby the defendant's whereabouts are no longer known to the probation officer	31.4%	4,180
Fail to follow special conditions imposed or authorized by the court	20.7%	2,751
Fail to gain permission to change residence or remain in the Commonwealth or other designated area without permission of the probation officer	14.4%	1,917
Fail to report within three days of release from incarceration	11.9%	1,579
Fail to report any arrest, including traffic tickets, within three days	2.2%	287
Fail to refrain from the use of alcoholic beverages to the extent that it disrupts or interferes with the defendant's employment or orderly conduct	1.9%	257
Fail to notify the probation officer of any changes in employment	1.7%	227
Fail to permit the probation officer to visit home and place of employment	0.5%	66
Fail refrain from the use, ownership, possession, or transportation of a firearm	0.4%	52

Note: There were 13,317 technical violations identified in Fiscal Years 2019 and 2020. The percentages of conditions violated will not add to 100% because defendants are often cited for multiple violations of the signed probation conditions. This table does not identify cases based on the number of prior technical violations. The number of prior technical violations for the same underlying offenses cannot be determined with the existing data.

Because the legislation to establish the limits on supervised probation and sentences for technical violations only became effective on July 1, 2021, data are insufficient to examine practices emerging under current law. To the extent that interpretation and implementation of the current law have varied across the Commonwealth, the potential for disparity in the handling of revocations may have increased since its enactment. One Circuit Court judge in Virginia has ruled that the sentence limits specified in the new § 19.2-306.1 are unconstitutional. It is unclear the extent to which other judges may agree with that determination.

Following enactment of the legislation, the Commission adjusted the new Probation Violation Guidelines, which also took effect on July 1, 2021, to ensure they were compatible with the requirements of the new law. Specifically, the Guidelines were modified so that they will not recommend more incarceration time than permitted under the provisions of § 19.2-306.1.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposed legislation redefines a certain technical violation under § 19.2-306.1 so that it would remove restrictions on the time that may be imposed for a particular type of technical violation. By removing the restrictions, sentences for some probationers found to have committed technical violations may be higher than under current law. Should additional offenders receive state-responsible (prison) terms for probation violations (compared to current law), the proposal may increase the future prison bed space needs of the Commonwealth. However, current data are insufficient to estimate the number of individuals likely to be affected by the proposed changes. Therefore, the magnitude of the impact cannot be determined.

**Local adult correctional facilities.** Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

**Adult community corrections resources.** The impact on state community corrections resources and local community-based probation services cannot be estimated.

**Virginia’s Sentencing Guidelines.** The Sentencing Commission issued revised Probation Violation Guidelines, effective July 1, 2021. The Probation Violation Guidelines, which were revised based on analysis of sentencing outcomes in revocation cases, were designed to provide judges with a benchmark of the typical, or average, outcome in similar cases. The historically-based Guidelines were then modified to be compatible with the law that took effect on July 1, 2021, such that the Guidelines will not recommend more incarceration time than permitted under § 19.2-306.1. If the proposed legislation is enacted, the Commission would reflect any revised statute-based restrictions.

**Juvenile direct care.** According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal’s impact on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**