



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 849

(Patron – Davis)

LD #: 24104763

Date: 01/11/2024

Topic: Probation terms and sentences for technical violations

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)*
- **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

* 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 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.

Currently, for a first technical violation of probation, the court cannot impose a sentence of active incarceration. For a second technical violation, there is a presumption against incarceration; if the defendant cannot be safely diverted, the court may impose an active sentence of up to 14 days. Exceptions are provided for violations related to the possession of firearms or absconding from supervision. A first technical violation related to possession of a firearm or absconding is treated as a second technical violation for the purposes of sentencing and the court may impose a sentence of up to 14 days. For a third or subsequent technical violation, or a second or subsequent violation for possession of firearms or absconding, the court is not restricted and may re-impose any or all of the probationer's revocable time.

The proposal amends § 19.2-306.1 that went into effect July 1, 2021, so that the penalty for a first technical violation of probation would be limited to no more than 30 days. The penalty for a second technical violation of probation would be limited to no more than 90 days. The proposal continues to treat first violations related to possession of a firearm or absconding as second technical violations and a second or subsequent such violation as a third technical violation for sentencing purposes. The court may revoke the suspension and impose or resuspend any or all of the sentence previously suspended for any third or subsequent technical violation of probation.

Analysis:

According to Sentencing Revocation Report (SRR)/Probation Violation Guidelines (PVG) data for fiscal year (FY) 2023, 36.9% of probation violations were for conduct defined as technical in § 19.2-306.1. Another 14.4% of probation violations were for conduct not defined as technical nor were they associated with convictions for new crimes; these violations are sometimes called “special” condition violations. The remaining 46% were for violations arising due to new convictions incurred by the probationer. See table below.

Following enactment of the new law in 2021, a number of questions arose regarding interpretation and application of § 19.2-306 and § 19.2-306.1. 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. Thus, the table below is a result of a variety of interpretations.

**Types of Probation Violations and Sentencing Outcomes
FY2023**

Type of Violation	Number of Cases	Percentage of Violations	Percent Receiving Incarceration Term	Median Sentence (Months)*
First Technical	1,504	14.0%	12.7%**	.46***
Second Technical	774	7.2%	72.4%	.46
Third Technical	608	5.7%	78.8%	11.00
First Absconding or Possession of Firearm	991	9.2%	76.3%	.46
Second Absconding or Possession of Firearm	377	0.8%	85.9%	8.00
Special Condition	1,548	14.4%	72.9%	6.00
New Misdemeanor Conviction	2,213	20.6%	75.3%	6.00
New Felony Conviction	2,739	25.5%	83.0%	12.00
Overall	10,754	100.0%	68.6%	6.00

* Median sentence is based on 7,378 cases that could be identified as having active sentences of one day or more.

** This figure includes violations committed prior to July 1, 2021.

** Only 191 cases in this category resulted in actual time to serve. All the others were sentenced to zero days.

The Sentencing Commission’s SRR/PVG data for FY2023 indicate that, excluding first technical violations, the overall median sentence for probation violators given an active term of incarceration to serve was 6.0 months. By comparison, FY2020-FY2021 data (prior to the sentence caps for technical violations) indicate that, for offenders given an active sentence to serve for technical violations, the overall median sentence was 6.0 months. During FY2020-FY2021, 70.7% of probation violators with technical violations received a sentence of more than 14 days (the limit set in current law for most probationers who commit a second technical violation).

Between June 2022 and September 2023, the Court of Appeals of Virginia issued opinions in nine cases that directly relate § 19.2-306.1. Several questions regarding the application of the new law have been addressed. Practices of judges, probation officers, and others in regards to probation violators continue to change to reflect emerging case law. Reports from state Probation and Parole Officers suggest that the behavior and conduct of individuals on probation has changed under the new law, as well.¹

¹ For example, Probation and Parole officers have reported that probationers are aware that a judge cannot impose more than 14 days the first time they abscond from supervision.

Due to evolving case law, the Sentencing Commission modified its policies in 2023 and now requires circuit court judges to determine if the restrictions of § 19.2-306.1 apply and to ensure that their sentences are compatible with the requirements of the statute and current case law. If the judge determines that the caps specified by § 19.2-306.1 do not apply, the Commission’s Probation Violation Guidelines provide the judge with a sentence recommendation based on analysis of recent revocation sentencing data. In essence, the Guidelines recommendation reflects the typical, or average, sentence for a probation violation, given the nature of the violation and the behavior of the probationer during the current and previous periods of probation.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal increases the amount of time that may be imposed for first and second technical violations to 30 and 90 days, respectively, which only increases the amount of local responsible (jail) time that the court may impose for such violations. Thus, the proposal is not expected to increase state prison bed space needs of the Commonwealth.

Local adult correctional facilities. Because of the increase in the amount of local-responsible (jail) time that may be imposed, the proposal may increase overall jail bed space needs. The extent to which judges may adjust their sentencing practices under the proposed higher maximum sentences is not known. Therefore, the impact on jail beds cannot be quantified.

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. These Guidelines were developed based on analysis of sentencing outcomes in revocation cases and were designed to provide judges with a benchmark of the typical, or average, outcome in similar cases. Currently, the judge is responsible for determining if the restrictions of § 19.2-306.1 apply and for ensuring that the sentence for the violation is compatible with the requirements of the statute and current case law. If the judge determines that the caps specified by § 19.2-306.1 do not apply, the Guidelines provide the judge with a sentence recommendation based on analysis of recent revocation sentencing data. If the proposed legislation is enacted, the Commission would adjust the Probation Violation Guidelines as necessary to reflect statutory requirements.

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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.