



# Fiscal Impact Statement for Proposed Legislation

## Virginia Criminal Sentencing Commission

### House Bill No. 400

(Patron – Griffin)

LD #: 24103402

Date: 01/03/2024

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 1 of the Acts of Assembly of 2023, 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 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; for these violations, the court may impose a sentence of up to 14 days for the first violation.

The proposal repeals § 19.2-306.1 that went into effect July 1, 2021, and amends §§ 19.2-303, 19.2-303.1 and 19.2-306. The proposed repeal of § 19.2-306.1 would eliminate the definition of technical violations from the *Code* and remove the sentence caps for a first or second technical violations. The proposal also removes limitations defined in §§ 19.2-303 and 19.2-303.1 on the lengths of a period of probation and a period of suspension of a sentence that may be fixed by the court. Under current law, a court may fix the period of probation for up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned and any period of supervised probation shall not exceed five years from the release of the defendant from any active period of incarceration, with some exceptions.

In addition, the proposal removes the provision of § 19.2-306 that prohibits a court from conducting a hearing to revoke a suspended sentence unless the court notifies the defendant to appear before the court

within 90 days of receiving a notice of the alleged violation. The bill restores the period for a court to issue the process to appear from six months to one year after the expiration of the period of probation or the period of suspension. Under the proposal, if the court originally suspended the imposition of sentence, the court must revoke the suspension and impose a sentence; if the court suspended the execution of a sentence, the court must revoke the suspension and impose the original sentence.

**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) <sup>a</sup>
First Technical	1,504	14.0%	12.7% <sup>b</sup>	.46 <sup>c</sup>
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

<sup>a</sup> Median sentence is based on 7,378 cases that could be identified as having active sentences of one day or more.

<sup>b</sup> This figure includes violations committed prior to July 1, 2021.

<sup>c</sup> 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.<sup>1</sup>

<sup>1</sup> 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.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By removing the caps on sentences for technical violations, 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. Because case law and practices of judges, probation officers, and others continue to evolve, current data are insufficient to estimate the impact of the proposal.

**Local adult correctional facilities.** Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined. It is important to note that the typical sentence for any violation of probation is a jail sentence.

**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.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**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.**