

VIRGINIA CRIMINAL SENTENCING COMMISSION

**Report on the Operation and Costs of Established
Immediate Sanction Probation Programs**

TO THE GENERAL ASSEMBLY



**COMMONWEALTH OF VIRGINIA
Richmond
2012**

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HON. F. BRUCE BACH
CHAIRMAN

Commonwealth of Virginia



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Supreme Court of Virginia

January 12, 2012

The Honorable Thomas K. Norment, Jr.
Chairman
Senate Courts of Justice Committee
General Assembly Building, Room 621
Richmond, Virginia 23219

The Honorable David B. Albo
Chairman
House Courts of Justice Committee
General Assembly Building, Room 529
Richmond, Virginia 23219

Dear Senator Norment and Delegate Albo:

In 2010, the Virginia General Assembly adopted legislation authorizing the creation of two immediate sanction probation programs established in accordance with Chapter 845 of the 2010 Acts of Assembly. These immediate sanction probation programs are designed to target nonviolent offenders who violate the conditions of probation while under supervision in the community but have not been charged with a new crime. These violations are often referred to as "technical probation violations."

Chapter 845 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to report to the Chairmen of the Senate and House Courts of Justice Committees on the operation and costs of any established immediate sanction program. To date, no such program has been established in the Commonwealth. Nonetheless, this report is respectfully submitted to satisfy the requirements of Chapter 845 of the 2010 Acts of Assembly.

Please contact Meredith Farrar-Owens, the Commission's Deputy Director, at (804) 371-7626 should you have questions regarding this report.

Sincerely,

A handwritten signature in cursive script, appearing to read "F. Bruce Bach".

F. Bruce Bach

Authority

This report has been prepared and submitted to fulfill the requirements of Chapter 845 of the 2010 Acts of Assembly. This provision requires the Virginia Criminal Sentencing Commission to report to the Chairmen of the Senate and House Courts of Justice Committees by January 12, 2012, on the operation and costs of any immediate sanction program established pursuant to the Chapter. This document contains the Sentencing Commission's report, as required by the provisions in the Chapter.

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Immediate Sanction Probation Programs in Virginia

In 2010, the Virginia General Assembly adopted legislation authorizing the creation of two immediate sanction probation programs established in accordance with Chapter 845 of the 2010 Acts of Assembly. These immediate sanction probation programs are designed to target nonviolent offenders who violate the conditions of probation while under supervision in the community but have not been charged with a new crime. These violations are often referred to as “technical probation violations.” Technical violations include, but are not limited to, using drugs, failing to report to the probation officer as required, failing to follow the probation officer’s instructions, or failing to pay court costs or court-ordered restitution. According to Sentencing Commission data, more than 4,500 felony offenders were returned to court in fiscal year 2011 solely for technical violations.

As outlined in the authorizing legislation, the immediate sanction program is a new approach for handling technical probation violators in Virginia. The program is intended to provide for swift and certain punishment for technical violations. It is based on the concept that swift and certain punishment for bad behavior has a greater deterrent effect than punishment that is delayed, uncertain, and unspecified. The program has three key elements:

- The program targets nonviolent felony offenders who commit technical probation violations while under supervision in the community. Offenders who have been convicted of a violent felony (as defined in § 17.1-805) are not eligible to participate. Those charged with a new crime committed while on probation cannot participate in the program. Probationers who have absconded for more than seven days are also excluded.
- For offenders participating in the program, probation officers would have no discretion. An officer must have an offender immediately arrested upon any alleged violation of the conditions of probation and the officer must return an offender to court for each and every alleged violation. This swift and certain response to each violation does not occur uniformly today.
- The legislation calls for an immediate sanction, or expedited, hearing in the court. If the court finds good cause to believe that the offender has violated the terms of probation, the judge may revoke up to 30 days of the previously suspended sentence.

Thus, the immediate sanction program has elements of swiftness and certainty of punishment that may be lacking in the current approach to handling technical violations.

Virginia's immediate sanction probation program is similar to a program established in Honolulu, Hawaii, in 2004. The Hawaii Opportunity Probation with Enforcement (HOPE) program was created by Judge Steven Alm of Hawaii's First Circuit with the goal of enhancing public safety and improving compliance with probation supervision conditions. The program uses a swift and certain (but mild) sanctions model to discourage probation violations. The HOPE program targets offenders who violate the conditions of probation while under supervision in the community but have not been charged with a new crime.

In Hawaii, the judge conducts warning hearings for new probationers to tell them that probation terms will be strictly enforced. Hawaii's program includes frequent, unannounced drug testing. An expedited process for dealing with violations was established in the court and offenders who violate the terms of probation are immediately arrested and brought before the judge within 72 hours. The judge applies sanctions in a certain, swift, and consistent manner for every violation. The sentence is modest (usually only a few days in jail) but it is mandatory and is served immediately. A recent evaluation of the HOPE program¹ found a reduction in technical violations and drug use among the participating probationers, as well as lower recidivism rates.

Lawmakers in Virginia became interested in Hawaii's approach to dealing with technical probation violators in 2009. In 2010, the General Assembly adopted legislation supporting the HOPE concept and authorizing up to two pilot sites for an immediate sanction probation program with key elements modeled after Hawaii's HOPE program (Chapter 845 of the 2010 Acts of Assembly).

State and local budget reductions, however, appear to have prevented implementation of a pilot project in Virginia. As of January 12, 2012, no such pilot program has yet been established in the Commonwealth. Nonetheless, many Virginia officials remain interested in launching an immediate sanction probation program, if funding is made available.

Chapter 845 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to report to the Chairmen of the House and Senate Courts of Justice Committees on the operation and costs of any immediate sanction program established in the Commonwealth, including statistics on the characteristics of the participants and the outcomes of their participation. Although no program has been established to date, the Sentencing Commission respectfully submits this report, as required by the provisions in the Chapter.

¹ Hawken, Angela and Kleiman, Mark, "Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE," 2009 <<https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>>. 12 January 2012.

Appendix

Chapter 845 of the 2010 Acts of Assembly

CHAPTER 845

An Act to establish up to two pilot immediate sanction probation programs.

[H 927]

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That there may be established in the Commonwealth up to two immediate sanction probation programs in accordance with the following provisions:*

A. As a condition of a sentence suspended pursuant to §19.2-303 of the Code of Virginia, a court may order a defendant convicted of a crime, other than a violent crime as defined in subsection C of § 17.1-805 of the Code of Virginia, to participate in an immediate sanction probation program.

B. If a participating offender fails to comply with any term or condition of his probation and the alleged probation violation is not that the offender committed a new crime or infraction, (i) his probation officer shall immediately issue a noncompliance letter pursuant to § 53.1-149 of the Code of Virginia authorizing his arrest at any location in the Commonwealth and (ii) his probation violation hearing shall take priority on the court's docket. The probation officer may, in any event, exercise any other lawful authority he may have with respect to the offender.

C. When a participating offender is arrested pursuant to subsection B, the court shall conduct an immediate sanction hearing unless (i) the alleged probation violation is that the offender committed a new crime or infraction; (ii) the alleged probation violation is that the offender absconded for more than seven days; or (iii) the offender, attorney for the Commonwealth, or the court objects to such immediate sanction hearing. If the court conducts an immediate sanction hearing, it shall proceed pursuant to subsection D. Otherwise, the court shall proceed pursuant to § 19.2-306 of the Code of Virginia.

D. At the immediate sanction hearing, the court shall receive the noncompliance letter, which shall be admissible as evidence, and may receive other evidence. If the court finds good cause to believe that the offender has violated the terms or conditions of his probation, it may (i) revoke no more than 30 days of the previously suspended sentence and (ii) continue or modify any existing terms and conditions of probation. If the court does not modify the terms and conditions of probation or remove the defendant from the program, the previously ordered terms and conditions of probation shall continue to apply. The court may remove the offender from the immediate sanction probation program at any time.

2. That the Virginia Criminal Sentencing Commission shall report to the Chairmen of the House and Senate Courts of Justice Committees on or before January 12, 2012, on the operation and costs of any established immediate sanction probation program, including statistics on the characteristics of the participants and the outcomes of their participation.

3. That the Virginia Criminal Sentencing Commission may calculate the impact of a revocation of a suspended sentence for a participant in an immediate sanction probation program differently than the revocation of a sentence pursuant to § 19.2-306 of the Code of Virginia.

4. That the provisions of this act shall expire on July 1, 2012.

