

Vermont Department of Corrections
Final Adopted Rule #10-041
Graduated Sanctions for Technical Violations of Probation
In Lieu of Court Referral
November 23, 2010

1. AUTHORITY

~~28 V.S.A. § 256. The law requires that the Department adopt rules pursuant to chapter 25 of Title 3 that establish graduated sanction guidelines for probation violations as an alternative to arrest or citation under section 301 of this title.~~

2. PURPOSE

~~The purpose of this administrative rule is to follow legislative intent outlined in H. 792 allowing the Vermont Department of Corrections to impose graduated sanctions in response to technical violations of probation in lieu of filing a formal violation of probation with the sentencing Court. Department of Corrections' policy is also to facilitate successful completion of probation for offenders under their supervision before requesting judicial intervention. This rule will establish guidelines for staff in response to offender violation behavior.~~

3. APPLICABILITY/ACCESSIBILITY

~~All individuals and groups affected by the operations of the Vermont Department of Corrections may have access to this rule.~~

4. DEFINITIONS

~~Graduated Sanctions: Community based interventions utilizing a three level matrix, imposed upon offenders who violate conditions of probation in lieu of a formal violation of probation process.~~

~~Level 1, 2 and 3 Sanctions—Graduated responses that provide clear guidance and consistency to staff when responding to severity. Sanctions are progressive in nature and commensurate with the level of violation behavior beginning at level 1 and progressing to level 3.~~

~~Level 1, 2 and 3 Violations—Progressive levels of technical violations based on the severity of the behavior. Level 1 is the lowest severity of behavior and level 3 is the highest. Violation levels increase as the severity of the behavior increases. In some instances repetitions of the same violation behavior can raise the levels from lower to higher depending on the behavior and number of repeated violations.~~

~~Non Risk-related Violation: A violation of a condition of probation which is not directly related to the risk to re-offend or to the underlying offense.~~

~~Probation: A suspended or deferred sentence imposed by a court under which an offender found guilty of a crime upon verdict or plea is subject to conditions imposed by the court and placed under supervision of the Commissioner of Corrections.~~

~~Risk-related Violation: A violation of a condition of probation which is directly related to the offender's risk to re-offend or to the underlying offense.~~

~~Technical Violation: A violation of a Court-ordered condition of probation other than new criminal behavior.~~

~~Violation of Probation (VOP): A finding by the Court, in accordance with 28 V.S.A. § 302.~~

5. POLICY

~~A. The Vermont Department of Corrections provides supervision that incorporates the use of case management and offender accountability. Department of Corrections staff supports opportunities for probationers that result in the successful completion of probation.~~

~~i. A graduated sanctions matrix (*Attachment 1*) that corresponds to the offender's level of risk will be used at appropriate intervals to address technical violations. These interventions have as their goal the use of the least restrictive option necessary to bring the offender into compliance with Court requirements of their probation.~~

~~ii. Graduated Sanction should be the response to technical violations of probation conditions except where a graduated sanction is deemed inappropriate, or the behavior is:~~

~~a) Part of an established pattern that is reflected in the history of the offender and is associated with a significant and imminent threat to victim or public safety;~~

~~or~~

~~b) Represented by repeated non-compliance with probation conditions and/or previously imposed graduated sanctions.~~

~~B. Department staff will respond to non-compliant behavior with an approach that includes a combination of risk control and risk reduction strategies designed to provide a proportionate consequence for non-compliant behavior.~~

~~C. Risk control strategies are directed at deterring future non-compliant behavior by holding offenders accountable through reprimands, warnings, or the~~

imposition of more intrusive/restrictive requirements to serve as negative consequences for their behavior.

- D. Risk reduction strategies are directed at promoting future compliance by assisting the offender through the provision of information, education, training, counseling, or treatment designed to bring about positive changes in the circumstances that led to the non-compliant behavior.
- E. Multiple or severe violations will be reported to the Court through the filing of a formal violation of probation (VOP). Consistent with public, victim and offender safety, staff will bring offenders on probation to Court for a technical violation of probation (VOP) only after exhausting appropriate casework interventions.
- F. Violations of probation conditions must be documented in electronic case notes and processed in the graduated sanctions database.

6. Graduated Sanctions Process

- A. If an offender violates Court imposed probation conditions that are not risk-related and pose no foreseeable risk of harm related to public or victim safety, graduated sanctions as established in this rule may be used before recommending partial or complete revocation of the suspended sentence (*Attachment I.*)
- B. The purpose of graduated sanctions is to ensure that the sanction imposed on an offender for failing to follow conditions is commensurate with the behavior causing the violation; and to provide a variety of non-incarcerative options to staff that address risk, public and victim safety, and offense severity. It also allows the probationer to continue working toward the satisfactory completion of probation conditions while remaining in the community. This ensures that an offender is maintained at the least restrictive level of supervision consistent with public safety.
- C. When considering graduated sanctions in response to violation behavior, Department staff will review:
 - The seriousness of the violation and the offender's overall behavior, including, but not limited to, the risk the new behavior presents to the community, the victim and the offender;
 - The ability of the proposed intervention to promote compliance with Court requirements and foster offender understanding of the impact of the violation behavior;
 - The offender's history of compliance while under supervision.
- D. The Department will bring a person on probation before the Court on a violation of probation in order to enforce compliance with court-established conditions when:

- ~~It is in the interest of public, victim, or offender safety; or~~
- ~~Lesser non-judicial remedies utilizing Level 1, 2 and 3 graduated sanctions have failed; or~~
- ~~When the offender is convicted of a listed or violent offense and the behavior is risk-related.~~

E. ~~Department staff shall consider all possible alternative sanctions prior to returning the offender to Court through the formal violation of probation (VOP) process.~~

Note: These graduated sanctions do not apply to new criminal convictions for violent offenses.

7. Formal Violations of Probation

- A. ~~This rule does not preclude the Court from imposing sanctions as part of a formal violation of probation process consistent with V.S.A. 28 §304(e) as an alternative to revocation and imposition of the original sentence.~~
- B. ~~This rule does not preclude Department staff from recommending revocation or for initiating the immediate arrest of a probationer, consistent with V.S.A. 28 § 301(2) if, in the judgment of Department of Corrections staff, there is a serious violation of probation.~~

Attachment 1: Response to Probation Violation Sanction Guidelines

Below are guidelines for responses to probation violations relating to the imposition of graduated sanctions for probationers. The following list of sanctions, while not all inclusive, should be utilized when appropriate. Sanctions consist of actions available to the Probation Officer through community based interventions. However, sanctions do not always occur in a linear fashion, and are not exclusive to those sanctions listed below. Each violation should be considered on a case-by-case basis consistent with the offender's risk and needs, in coordination with conditions set forth by the Court. The Level 1, 2, and 3 violations listed are not all inclusive and may include, but are not limited to, other behaviors regarding the violations of conditions as set by the Court.

Level 1 Violations	Level 1 Sanctions
<ul style="list-style-type: none"> ➤ Failure to report as instructed ➤ Out of Place ➤ 1st positive drug/alcohol test ➤ Refusal of drug/alcohol test ➤ Missed treatment/programming group ➤ Unemployment or failure to seek employment within 45 days ➤ Failure to fulfill financial obligations ➤ Failure to follow case plan/ORP ➤ Failure to complete community service ➤ Curfew Violation 	<ul style="list-style-type: none"> ➤ Graduated Sanction Thinking Report ➤ Apology (verbal or written) ➤ Verbal warning ➤ Develop Relapse Prevention Plan ➤ Written essay/educational activities ➤ Increase contacts for up to 30 days ➤ Increase curfew restrictions for up to 30 days ➤ Use of schedules for up to 30 days ➤ DOC work crew
Level 2 Violations	Level 2 Sanctions
<ul style="list-style-type: none"> ➤ Multiple Level 1 violations ➤ Non compliance with Special Conditions not indicated above ➤ Continued substance abuse or 2nd positive drug/alcohol test ➤ Continued missed treatment/programming group ➤ Failure to comply with Level 1 sanctions ➤ Contact with restricted persons (Non Sex Offender/Domestic Violence) ➤ Tampering with electronic monitoring equipment 	<ul style="list-style-type: none"> ➤ Referral for treatment assessment ➤ Community Service Work for up to 80 hours ➤ Community Restitution Work Crew for up to 10 days ➤ Curfew/Restriction to residence ➤ Increased reporting as directed for Alco-sensor, drug testing, employment search, or other related activity ➤ Activities to address risk behaviors (self help) ➤ Loss of curfew/placed on schedule ➤ Modification of the case plan to address risk-related behavior ➤ Any Level 1 sanction ➤ Use of Electronic Monitoring Equipment along with Level 1 sanction for up to 60 days
Level 3 Violations	Level 3 Sanctions
<ul style="list-style-type: none"> ➤ Multiple Level 2 violations ➤ Failure to comply with Level 2 sanctions ➤ Non-threatening contact with victim ➤ Suspension or placed on probation in treatment/programming group ➤ Misdemeanor behavior (Non risk/Non-violent) ➤ Out of Place for more than 24 hours 	<ul style="list-style-type: none"> ➤ Use of Electronic Monitoring Equipment along with Level 2 sanction for up to 60 days. ➤ Modified Conditions of Probation (risk related)

Graduated Sanctions for Violations of Probation

AUTHORITY

This rule is adopted pursuant to 28 V.S.A. §§ 256(b), 304(e), and 1162(b)(2).

PURPOSE

This rule establishes graduated sanction guidelines for probation violations as an alternative to arrest, revocation, and imposition of the original sentence.

DEFINITIONS

As used in this Rule, “technical violation” means a probationer’s or youthful offender’s violation of a court-ordered condition of probation, other than a condition that the probationer pay restitution to the Department of Corrections (DOC) or a violation which constitutes a new crime.

As used in this Rule, “graduated sanction” means a community-based intervention imposed by DOC in response to a probationer’s or youthful offender’s technical violation in lieu of incarceration.

GRADUATED SANCTIONS

Applicability

1. DOC may impose graduated sanctions for technical violations in lieu of filing a probation violation complaint for:
 - a. Adult offenders on probation; and
 - b. Youthful offenders on probation, when authorized by the court.
2. DOC shall not impose graduated sanctions in response to a probationer’s or youthful offender’s technical violations when deemed inappropriate because the behavior is:
 - a. Part of a pattern of non-compliance and poses an imminent threat to victim or public safety; or
 - b. Part of the probationer’s or youthful offender’s repeated non-compliance and graduated sanctions have been ineffective in compelling compliance.
3. DOC will file a violation of probation complaint when:
 - a. It is in the interest of public, victim, or the probationer’s or youthful offender’s safety; or
 - b. Previous imposition of graduated sanctions has not compelled the probationer’s or youthful offender’s compliance; or
 - c. When the probationer or youthful offender is convicted of a new crime.

Imposition of Graduated Sanctions

1. When considering whether to impose graduated sanctions in response to non-compliant behavior, DOC staff will review:
 - a. The seriousness of the violation and the probationer's or youthful offender's overall behavior, including the risk of harm the new behavior presents to the community, victim, and probationer or youthful offender;
 - b. The likelihood the proposed sanction will ensure the probationer's or youthful offender's compliance with probation conditions and understanding of the impact of the non-compliant behavior; and
 - c. The probationer's or youthful offender's history of compliance with probation conditions.
2. Graduated sanctions shall be commensurate with the severity of the non-compliant behavior. Repeated non-compliant behavior will result in progressively restrictive graduated sanctions or the filing of a probation violation complaint.
3. Graduated sanctions may include risk control and/or risk-reduction strategies designed to provide a proportionate consequence for non-compliant behavior.
 - a. Risk control strategies deter non-compliant behavior through the imposition of reprimands, warnings, or more restrictive requirements; and
 - b. Risk-reduction strategies promote compliant behavior by providing the probationer or youthful offender information, education, training, counseling, or treatment.
4. Types of graduated sanctions:
 - a. Level 1 sanctions are the least restrictive sanctions and focus on discussions between the probationer or youthful offender and the supervising Correctional Services Specialist. These sanctions include, but are not limited to:
 - i. Graduated sanction thinking report or another Effective Practices in Community Supervision (EPICS) intervention;
 - ii. Apology (verbal or written);
 - iii. Verbal warning;
 - iv. Relapse prevention plan;
 - v. Written essay/educational activities; and
 - vi. Increase contacts for up to 30 days.
 - b. Level 2 sanctions impose additional restrictions on the probationer or youthful offender and utilize restorative justice principles to address risk-related, non-compliant behavior. These sanctions include, but are not limited to:
 - i. Referral for treatment assessment;
 - ii. Community service work for up to forty hours;
 - iii. Curfew and/or restriction to residence;
 - iv. Increased reporting as directed for alcohol use monitoring, drug testing, employment search, or other related activity;

- v. Activities to address risk behaviors, such as self-help;
 - vi. Loss of curfew or restriction to scheduled activities;
 - vii. Use of electronic monitoring equipment in conjunction with a Level 1 sanction(s); and
 - viii. Any Level 1 sanction used in conjunction with a Level 2 sanction.
- c. Level 3 sanctions address risk-related, non-compliant behavior by imposing any combination of Level 1 and Level 2 sanctions.
5. Applicability of graduated sanctions:
- a. Level 1 sanctions shall be imposed for a probationer's or youthful offender's:
 - a. first technical violation; or
 - b. any subsequent violation, unless graduated sanctions have been deemed inappropriate, or the probationer or youthful offender has committed a technical violation in the preceding 90 days.
 - b. Level 2 sanctions shall be imposed when a probationer or youthful offender who is not being supervised because of a conviction of a crime listed in 13 V.S.A. § 5301(7):
 - a. commits a risk-related technical violation; or
 - b. commits a technical violation within 90 days after a previous violation.
 - c. Level 3 sanctions shall be imposed when a probationer or youthful offender commits a technical violation and:
 - a. is being supervised because of a conviction of a crime listed in 13 V.S.A. § 5301(7); or
 - b. is not being supervised because of a conviction of a crime listed in 13 V.S.A. § 5301(7) and has previously received a Level 2 sanction.
6. This rule does not preclude DOC staff from filing a probation violation complaint or initiating the immediate arrest of a probationer or youthful offender pursuant to 28 V.S.A. § 301(2) if the non-compliant behavior constitutes a serious violation of probation.