

**Vermont Department of Corrections Final Adopted Rule #06037**  
***Graduated Sanction Guidelines for Probation Violations***  
***DOC Policy #346***  
**Effective November 24, 2006**

## **I. AUTHORITY**

28 V.S.A. § 304(e). The law requires that the Department adopt rules to provide “graduated sanction guidelines for probation violations as an alternative to revocation and imposition of the original sentence.”

## **II. PURPOSE**

The purpose of this administrative rule is to offer the Court graduated sanction guidelines to consider in violation of probation proceedings. However, the Department of Corrections’ policy is also to facilitate successful completion of probation for offenders under their supervision before requesting judicial intervention. It will do this by establishing guidelines for staff in response to offender violation behavior.

## **III. APPLICABILITY/ACCESSIBILITY**

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

## **IV. DEFINITIONS**

Alternative Dispute Resolution: Techniques other than formal appeals or judicial processes that include advanced verbal communication techniques, negotiation, mediation or other practices to resolve a dispute; i.e. problem resolution techniques.

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 legal sanction used to sentence offenders. A procedure under which an offender, found guilty of a crime upon verdict or plea, is released by the Court from confinement, subject to conditions imposed by the Court and under supervision of the Commissioner of Corrections.

Restorative Justice: An approach focusing on repairing the harm caused by the offender to victim and community, involving community members and the offender, and inviting the victim to participate.

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 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.

## **V. POLICY**

### **1. Considerations Prior to Requesting Court Intervention**

Department of Corrections staff supports opportunities for probationers that result in successful completion of probation. 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. 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.

Consistent with conditions of probation, these casework interventions may include: increased supervision, referrals to programming or counseling, referral for intra-agency case coordination, alternative dispute resolution processes, job search assistance, drug and/or alcohol testing, consistent with Court-imposed probation conditions, or a request for modification of probation when the offender agrees.

### **2. Graduated Sanctions Guidelines for Court Intervention**

If an offender violates Court-imposed probation conditions, graduated sanctions as established in this rule may be used before recommending partial or complete revocation of the suspended sentence. (See *Attachments*.) The purpose of graduated sanctions is to provide a variety of non-incarcerative (or short term incarcerative) options to the Court that address risk, public and victim safety, and offense severity, while allowing the probationer to continue working towards the completion of probation conditions in the community.

The process for recommending graduated sanctions follows:

- A. 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 have failed.
  
- B. When bringing a violation of probation before the Court, DOC staff will make recommendations that are consistent with:
  - Public safety, to include the safety of the victim;
  - Restorative justice principles to include reparation to the victim or community;

- The nature of the original offense.
- C. When considering graduated sanction recommendations to the Court, DOC 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 under supervision.

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

Nothing in this rule precludes a recommendation for revocation or for 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.

## **VI. REVIEW**

A review of departmental directives associated with this rule will be completed with any necessary updates of relevant documents and procedures within one (1) year of this rule taking effect.

**ATTACHMENT 1**

**Sanction List for Misdemeanors and Felonies (Original Conviction)**

<b>1</b>	<b>Addition of Community Service Hours as new condition of probation</b>
<b>2</b>	<b>Added conditions of probation --program requirements; e.g., substance abuse assessment</b>
<b>3</b>	<b>Added conditions of probation -- risk restrictions; e.g., in case of substance abuse, offender cannot go to a bar</b>
<b>4</b>	<b>Partial revocation of probation -- sentenced to DOC Community Work Service Crew</b>
<b>5</b>	<b>Partial revocation of probation -- incarceration time to serve on original sentence</b>
<b>6</b>	<b>Partial revocation of probation -- incarceration time to serve in addition to any new sentence</b>

<b>ATTACHMENT 2</b>				
<b>Graduated Sanctions Recommendations to the Court</b>				
<i>Note:</i> Numbers refer to the list of sanctions on Attachment 1				
	<b>Original Conviction - Misdemeanor</b>			
	<b>Non-Violent Crime</b>		<b>Violent Crime</b>	
<b>VIOLATION BEHAVIOR (VOP)</b>	<b>1<sup>ST</sup> VOP</b>	<b>2<sup>ND</sup> OR ADDITIONAL VOP</b>	<b>1<sup>ST</sup> VOP</b>	<b>2<sup>ND</sup> OR ADDITIONAL VOP</b>
<b>Technical (Non-Risk Condition)</b> E.g., non payment of fine, failure to complete Community service	1. Community service hours 4. DOC work crew	4. DOC work crew 5. Partial revocation, incarceration	1. Community service hours 4. DOC work crew	4. DOC work crew 5. Partial revocation, incarceration
<b>Technical (Risk Condition)</b> Behavior related to risk of re-offense E.g., program failure, violation of no contact.	1. Community service hours 2. Added program conditions 3. Added risk restriction conditions 4. DOC work crew 5. Partial revocation, incarceration	4. DOC work crew 5. Partial revocation, incarceration	1. Community service hours 2. Added program conditions 4. DOC work crew 5. Partial revocation, incarceration	4. DOC work crew 5. Partial revocation, incarceration
<b>NEW CRIMINAL CONVICTION</b>				
<b>Non-violent offense Misdemeanor or Felony</b>	4. DOC work crew 5. Partial revocation, incarceration	4. DOC work crew 5. Partial revocation, incarceration	1. Community service hours 2. Added program conditions. 4. DOC work crew 5. Partial revocation, incarceration	4. DOC work crew 5. Partial revocation, incarceration

<b>ATTACHMENT 3</b>				
<b>Graduated Sanctions Recommendations to the Court</b>				
<i>Note: Numbers refer to the list of sanctions on Attachment 1.</i>				
<b>Original Conviction - Felony</b>				
	<b>Non-Violent</b>		<b>Violent</b>	
<b>VIOLATION BEHAVIOR</b>	<b>1<sup>ST</sup> VOP</b>	<b>2<sup>ND</sup> OR ADDITIONAL VOP</b>	<b>1<sup>ST</sup> VOP</b>	<b>2<sup>ND</sup> OR ADDITIONAL VOP</b>
<b>Technical (Non-Risk Condition)</b> E.g., non payment of fine, failure to complete community service	1. Community service hours 4. DOC work crew	4. DOC work crew 5. Partial revocation with incarceration	1. Community service hours 4. DOC work crew 5. Partial revocation with incarceration	4. DOC work crew 5. Partial revocation with incarceration
<b>Technical (Risk Condition)</b> Behavior related to risk of re-offense; E.g., program failure, violation of no contact	1. Community service hours 2. Added program conditions 3. Added risk restriction conditions 4. DOC work crew 5. Partial revocation with incarceration	4. DOC work crew 5. Partial revocation with incarceration	NA	NA
<b>NEW CRIMINAL CONVICTION</b>				
Non-violent offense Misdemeanor only	1. Community service hours 2. Added program conditions 3. Added risk restriction conditions 4. DOC work crew 5. Partial revocation with incarceration	5. Partial revocation with incarceration	5. Partial revocation with incarceration	6. Partial revocation with incarceration, additional time