

# **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 Probation and Parole Officer. These sanctions include, but are not limited to:
    - i. Graduated sanction thinking report or other intervention that addresses criminal thinking/behavior;<sup>1</sup>
    - ii. Apology (verbal or written);
    - iii. Verbal warning;
    - iv. Relapse prevention plan;
    - v. Written essay/educational activities; and
    - vi. Increased staff contacts with the offender 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;

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<sup>1</sup> This includes, behavior chain, cost-benefit analysis, cognitive restructuring, structured skill building, and/or problem solving which address criminogenic needs.

- 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. Imposition 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:
    - i. first technical violation; or
    - ii. 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):
    - i. commits a risk-related technical violation; or
    - ii. 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:
    - i. is being supervised because of a conviction of a crime listed in 13 V.S.A. § 5301(7); or
    - ii. 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.