

**Report of the
Virginia Criminal Sentencing Commission**

**VIRGINIA'S IMMEDIATE SANCTION
PROBATION PILOT PROGRAM
IMPLEMENTATION REPORT**

**To The Chief Justice, Governor and the
General Assembly**



Commonwealth of Virginia

Richmond, October 1, 2013

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Supreme Court of Virginia Virginia Criminal Sentencing Commission

October 1, 2013

TO: The Honorable Cynthia D. Kinser
Chief Justice of Virginia

The Honorable Robert F. McDonnell
Governor of Virginia

The Honorable Walter A. Stosch
Chairman, Senate Finance Committee

The Honorable Lacey E. Putney
Chairman, House Appropriations Committee

The Honorable Thomas K. Norment, Jr.
Chairman, Senate Courts of Justice Committee

The Honorable David B. Albo
Chairman, House Courts of Justice Committee

The Virginia General Assembly adopted budget language in 2012 extending the provisions of § 19.2-303.5 of the *Code of Virginia* and authorizing the creation of up to four Immediate Sanction Probation pilot programs (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). In that provision, the Sentencing Commission is assigned the responsibility of selecting the pilot sites, implementing the program, and evaluating the results.

The provision also requires the Sentencing Commission to present a report on the implementation of the pilot program to date. Accordingly, we respectfully submit this report for your consideration.

The Sentencing Commission wishes to sincerely thank all of those in the field whose dedication and diligent work have made implementation of the pilot programs possible.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Bruce Bach".

F. Bruce Bach
Chairman

Authority

During a Special Session in May 2012, the Virginia General Assembly adopted budget language to extend the provisions of § 19.2-303.5 of the *Code of Virginia* and to authorize the creation of an Immediate Sanction Probation program in up to four sites (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). The Immediate Sanction Probation program targets nonviolent offenders who violate the conditions of probation while under supervision in the community but have not been charged with a new crime. The provision directs the Virginia Criminal Sentencing Commission to select up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth's Attorney in each locality. It further charges the Sentencing Commission with developing guidelines and procedures for the program, administering the program, and evaluating the results.

The provision requires the Sentencing Commission to present a report on the implementation of the pilot program to the Chief Justice, Governor, and the Chairmen of the House and Senate Courts of Justice Committees, the House Appropriations Committee, and the Senate Finance Committee by October 1, 2013. This report has been prepared and submitted to fulfill these requirements.

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Executive Summary

In 2012, the Virginia General Assembly adopted budget language extending the provisions of § 19.2-303.5 of the *Code of Virginia* and authorizing the creation of an Immediate Sanction Probation program in up to four sites (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). Per § 19.2-303.5, the Immediate Sanction Probation program targets nonviolent offenders who violate the conditions of probation while under supervision in the community but are not charged with a new crime. These violations are often referred to as “technical probation violations.” The goal is to improve compliance with the conditions of probation and reduce recidivism by applying swift and certain, but mild, sanctions for each violation. Improving compliance with probation rules and lowering recidivism rates reduces the likelihood that offenders ultimately will be sanctioned with prison or lengthy jail terms. Implementing a swift-and-certain sanctions program is resource-intensive at the front end, with potential cost savings occurring later through fewer revocations, lower recidivism rates, and reduced use of jail and prison.

Per the General Assembly’s directive, the Virginia Criminal Sentencing Commission is assigned the responsibility for selecting up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth’s Attorney in each locality. The Sentencing Commission is also charged with developing guidelines and procedures for implementing the program, administering the program, and evaluating the results. Because supplemental funding was not included in the 2012-2014 budget, Virginia’s pilot project is being implemented within existing agency budgets and local resources. To support the pilot project, the Department of Corrections (DOC) is providing one new probation officer position for each pilot site. In addition, DOC has purchased handheld drug testing kits (“cup” tests), which provide the immediate test results necessary for the program.

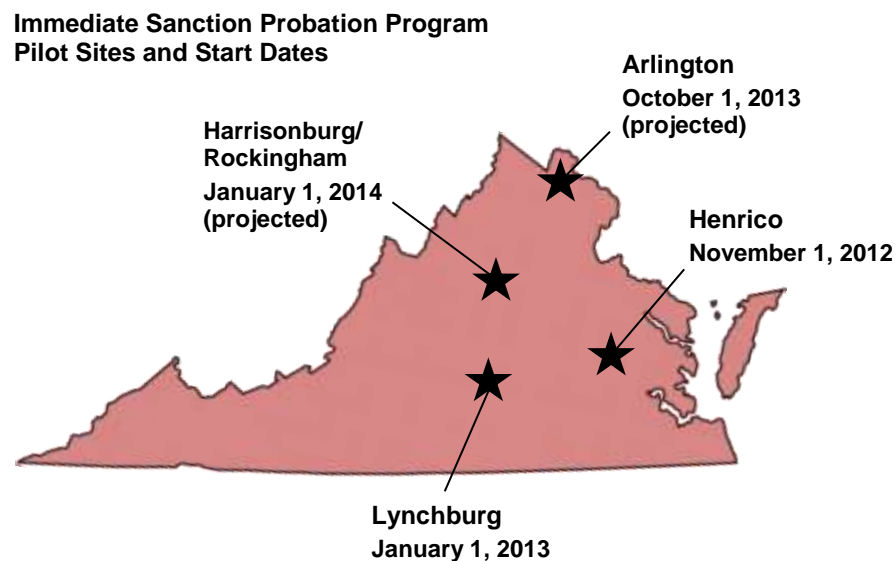
Key elements of Virginia’s pilot program are based on Hawaii’s Opportunity Probation with Enforcement (HOPE) program. A 2009 evaluation of HOPE found a significant reduction in technical violations and drug use among participants, as well as lower recidivism rates, compared to similar offenders supervised on regular probation. HOPE has become known as the swift-and-certain sanctions model. While the operational details may vary from program to program, certain features are central to the swift-and-certain sanctions formula. These are:

- Higher risk offenders are identified for participation in the program.
- The judge gives an official warning that probation terms will be strictly enforced and that each violation will result in jail time.
- Program participants are closely monitored to ensure that there are no violations.
- New participants undergo frequent, unannounced drug testing.
- Participants who violate the rules or conditions of probation are immediately arrested and brought to jail.
- The court establishes an expedited process for dealing with violations (usually within three business days).
- For each violation, the judge orders a short jail term. The sentence for a violation is modest (usually only a few days in jail) but virtually certain and served immediately.

The focus on higher risk probationers is an important aspect of the swift-and-certain sanctions model. These are offenders who are at-risk for committing a new offense and/or who are not performing well on regular probation. Since swift-and-certain sanctions programs involve intense monitoring and are more time and resource-intensive than probation as usual, targeting higher risk offenders allows for the most efficient use of resources.

To be a candidate for Virginia's Immediate Sanction Probation program, an offender must be identified as being at-risk for recidivating or failing probation. To measure recidivism risk, DOC probation officers administer the COMPAS risk/needs assessment instrument. This instrument is already being used by DOC to determine supervision levels for offenders entering probation. Recidivism risk is then used in conjunction with the number of technical violations the offender has committed to identify candidates for the program.

The Sentencing Commission worked closely with the Secretary of Public Safety's Office and the Department of Corrections to identify potential pilot sites for the Immediate Sanction Probation program. The Sentencing Commission considered several factors, including regional and urban/suburban/rural representation, the size of the probation population in each jurisdiction, and expressed interest from one or more local officials. Over the course of 12 months, seven localities were invited to participate in the pilot project. Four localities have agreed to partner with the Sentencing Commission to implement the pilot program: Henrico (start date of November 1, 2012), Lynchburg (start date of January 1, 2013), Arlington (projected start date of October 1, 2013), and Harrisonburg/Rockingham County (projected start date of January 1, 2014). Program start dates were set by the local stakeholders.



While describing the basic components of a swift-and-certain sanctions program is relatively simple, implementing such a program is challenging. Ensuring that violations are addressed immediately and cases are handled swiftly requires extensive collaboration and coordination among numerous stakeholder groups representing multiple agencies and offices, including Circuit Court judges, Court clerks, the Commonwealth's Attorney and his or her staff, defense attorneys, law enforcement, jailers, probation officers, and the Department of Corrections. The stakeholders in the selected pilot sites have excellent working relationships, which is essential to successfully implementing the program.

The Sentencing Commission has completed a number of tasks to support and facilitate the implementation of the program in each pilot site. The Sentencing Commission has developed guidelines and procedures, produced an *Implementation Manual*, written a warning script for judges to use when placing offenders in the program, created forms to help with administrative processes, assisted with the development of template court orders, ensured a point-of-contact was identified for each office/agency involved in the pilot program, identified a payment process for court-appointed attorneys working with the program, and worked with other agencies to develop new codes for automated systems so that program participants can be tracked. The Commission has met with all probation officers in Lynchburg, Henrico, and Arlington to explain the program and encourage the identification and referral of candidates. In addition, Commission staff organizes and participates in ongoing meetings and conference calls with local stakeholders to discuss potential solutions to challenges they face and to share updates on participant progress.

As with most pilot programs, some challenges have been encountered in the implementation of Virginia's Immediate Sanction Probation program. For instance, while there is considerable interest in the swift-and-certain sanctions model, finding localities willing to participate as pilot sites has taken some time. The pilot project is being implemented within existing budgets and resources and three jurisdictions approached by the Sentencing Commission declined to participate, citing resource constraints as one of the reasons. Additionally, in the two pilot sites operational at the time of this report (Henrico and Lynchburg), the number of program candidates identified by probation staff has been lower than initially expected. Stakeholders in one of the pilot sites have indicated that the eligibility criteria excluding offenders who have obligations to courts outside of the pilot jurisdiction significantly reduces the pool of eligible candidates. Subsequent analysis provided by DOC quantified the impact of this eligibility criteria for each Probation District. This criteria was established for the pilot program to ensure that judges in the pilot sites have jurisdiction over the cases and can swiftly impose sanctions. Should the program expand to additional localities in the future, options will be explored that may render this eligibility criteria unnecessary. Stakeholders have also indicated that other eligibility criteria reduce the pool of eligible offenders, most notably the restriction relating to violent offenders. Per § 19.2-303.5, offenders on probation for a violent crime as specified in § 17.1-805 are not eligible for the program. As initially designed, the Sentencing Commission also excluded offenders with a prior violent offense. Based on feedback from stakeholders in the pilot sites participating at that time (Henrico and Lynchburg), the Sentencing Commission initiated discussions with the Secretary of Public Safety's Office, Commonwealth's attorneys, and others. Additionally, a comprehensive review of eligibility criteria and evaluation findings for similar swift-and-certain sanctions programs was conducted. After careful consideration, the Commission expanded the criteria to allow offenders with a prior conviction for an offense listed in § 17.1-805 to be considered for the program. While these offenders can be considered, the judges determine if an offender is placed into the program.

Piloting a swift-and-certain sanctions program also presents specific challenges for Probation & Parole Districts. The intensive nature of this program, coupled with the need for an immediate response to every violation, can pose several administrative challenges for a participating District. For instance, establishing and executing a procedure for the frequent random drug testing of program participants that yields immediate results can be difficult. According to DOC personnel, drug testing of Immediate Sanction Probation participants cannot be incorporated into the Districts' existing drug testing protocol set up for testing a large number of probationers in a single day (known as "color code"). As a result, the Immediate Sanction

Probation officers must select drug testing dates and times, notify offenders when they need to report, collect the sample, and enter the drug screen results into a centralized tracking system. As the project continues to grow, the Sentencing Commission will continue to work with DOC and participating Probation & Parole Districts to develop efficiencies wherever possible.

Limited resources for substance abuse services may pose an additional challenge. The swift-and-certain sanctions model has been shown to be extremely useful for distinguishing between offenders who are able to cease drug use through the imposition of brief, but certain, jail stays and those who are unable to do so due to addiction issues. An offender who continues to use drugs in spite of regular drug testing, and who has been jailed multiple times for continued use while in the program, would be a likely candidate for additional interventions, such as substance abuse treatment. The court may refer a participant to substance abuse services or a drug court program, depending on the offender's suitability and the availability of treatment resources. While offenders with a diagnosis involving a severe mental illness are not eligible to participate in the program during the pilot phase, offenders with less serious mental health issues who are stable in regards to their medications may participate if they are otherwise eligible. Resources are limited, however, and substance abuse and mental health treatment options are not uniformly and consistently available across the pilot sites.

Despite the challenges, stakeholders in the participating pilot sites have demonstrated a strong competency and willingness to collaborate and to develop innovative solutions to overcome many of the challenges as they have arisen.

As of September 30, 2013, a total of 48 offenders had been placed into the Immediate Sanction Probation pilot program (25 in Henrico and 23 in Lynchburg; Arlington and Harrisonburg/Rockingham were not yet operational at the time of this report). More than half of the participants (27 of 48, or 56%) have not committed a violation since being placed in the program. This is significant given that all of the offenders had a record of technical violations (on average, participants had four technical violations prior to entering the program). Two participants have been removed from the program; one of these offenders was terminated due to noncompliance and given a prison sentence, while the other was allowed to move out of the pilot jurisdiction and could no longer participate in the program.

In addition to administering the program, the Sentencing Commission has been charged with completing an evaluation of the pilot project. Outcome measures will include recidivism rates and the use of jail and prison resources. It is also important for the evaluation process to determine if the pilot programs were able to achieve both swiftness and certainty in sanctioning program violators. For Henrico and Lynchburg combined, 54% of the program violations have been handled by the court within three days of the commission of the violation, with an average of 3.6 days between the violation and hearing. Once a participant is arrested for a violation, courts are conducting hearings within an average of 1.2 business days. All of the violations in the pilot programs have been met with jail sanctions, per the program's design, and the sanction days are consistently within the ranges recommended by the Sentencing Commission.

In the coming months, Sentencing Commission staff will assist the stakeholders in Arlington and Harrisonburg/Rockingham with the implementation of the Immediate Sanction Probation program in those sites. Staff will also continue to work closely with the existing programs in Henrico and Lynchburg. The evaluation phase of the Immediate Sanction Probation pilot project is expected to begin in July 2014.

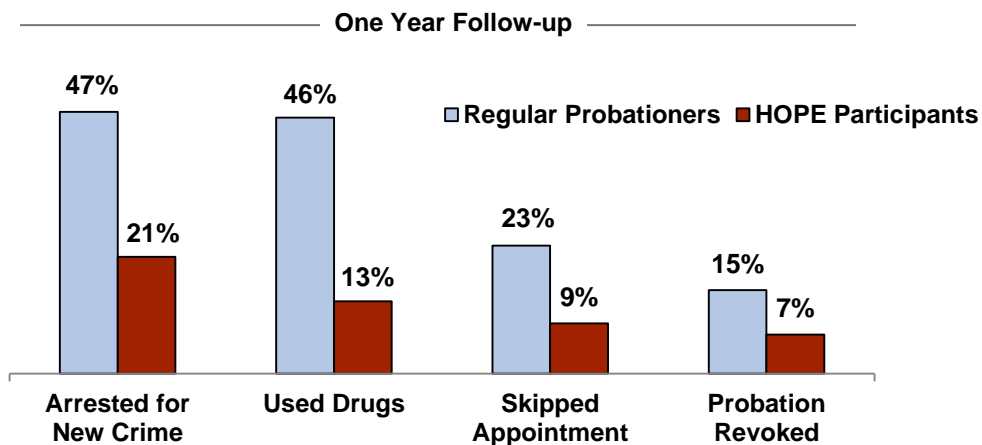
Introduction

In 2004, Judge Steven Alm of Hawaii's First Circuit established the Hawaii Opportunity Probation with Enforcement (HOPE) program. The HOPE program was created with the goal of enhancing public safety and improving compliance with the rules and conditions of probation among offenders being supervised in the community. Targeting higher risk probationers, the HOPE program applies swift and certain, but mild, sanctions for each violation of probation. The approach was markedly different from probation as it was being conducted in Hawaii at that time.

According to the National Institute of Justice, the HOPE approach is grounded in research which suggests that deferred and low-probability threats of severe punishment are less effective in changing behavior than immediate and high-probability threats of mild punishment (see, e.g., Grasmick & Bryjak, 1980; Nichols & Ross, 1990; Paternoster, 1989). In other words, the certainty of a punishment, even if it is moderate, has a stronger deterrent effect than the fear of a more severe penalty if there is a possibility of avoiding the punishment altogether. Furthermore, punishment that is both swiftly and consistently applied sends a strong message to probationers about personal responsibility and accountability, and the immediacy is a vital tool in shaping behavior.

In 2009, a federally-funded evaluation of HOPE was completed using a randomized control trial, which is considered to be the most rigorous form of evaluation (this method is frequently used in clinical trials in medicine). The study found a significant reduction in technical violations and drug use among participants, as well as lower recidivism rates, compared to similar offenders supervised on regular probation (Figure 1). In a separate study, researchers found that HOPE participants and regular probationers served about the same number of jail days for violations, but HOPE participants used significantly fewer prison beds than regular probationers. Evaluators observed that most HOPE participants successfully changed their behavior, leading to increased compliance and lower recidivism.

Figure 1
Hawaii Opportunity Probation with Enforcement (HOPE) Program
Evaluation Outcomes

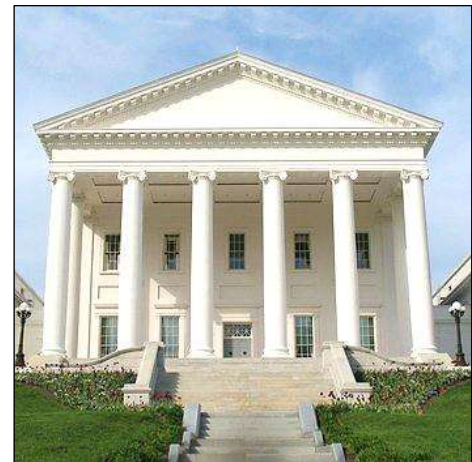


Source: Hawken, A. & Kleiman, M. (2009). Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE. www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf

After the release of the HOPE evaluation in 2009, interest in Hawaii’s swift-and-certain sanctions model spread. In 2011, the Bureau of Justice Assistance and the National Institute of Justice partnered to provide grant funding to four jurisdictions to replicate and evaluate Hawaii’s program model. As of September 2013, there were swift-and-certain sanctions programs operating in 18 states across the country. While many are still in the implementation or evaluation phase, preliminary reports from a number of programs are showing results similar to HOPE (see, e.g., Hawken & Kleiman, 2012; Carns & Martin, 2011; Loudenburg et al., 2012).

Policymakers in Virginia also became interested in Hawaii’s approach to dealing with probation violators. In 2010, the General Assembly adopted legislation authorizing the creation of up to two Immediate Sanction Probation programs with key elements modeled after the HOPE program (see § 19.2-303.5 of the *Code of Virginia*). The 2010 legislation did not designate a particular agency to lead or coordinate the effort. Although supporting legislation existed, an Immediate Sanction Probation program had not been formally established by 2012. Nonetheless, many Virginia officials remained interested in launching such a program in the Commonwealth.

In May 2012, the General Assembly adopted budget language to extend the provisions of § 19.2-303.5 and to authorize the creation of up to four Immediate Sanction Probation programs (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). This provision directs the Virginia Criminal Sentencing Commission to select up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth's Attorney in each locality. It further charges the Sentencing Commission with developing guidelines and procedures for the program, administering the program, and evaluating the results. As supplemental funding was not included in the 2012-2014 budget, the pilot project is being implemented within existing agency budgets and local resources.



Per § 19.2-303.5, the Immediate Sanction Probation program is designed to target nonviolent offenders who violate the conditions of supervised probation but have not been charged with a new crime. These violations, often referred to as “technical violations,” include using illicit drugs, failing to report as required, and failing to follow the probation officer’s instructions. As in Hawaii, the goal is to reduce recidivism and improve compliance with the conditions of probation by applying swift and certain, but mild, sanctions for each violation. Improving compliance with probation rules and lowering recidivism rates reduces the likelihood that offenders ultimately will be sentenced to prison or lengthy jail terms. The Department of Corrections (DOC) reports that, as of May 31, 2013, the state inmate population included 1,340 technical probation violators. In addition, DOC reports that 40% of the offenders sentenced to prison in FY2012 had been on probation at the time they committed a new offense. Reducing the number of probation violators who ultimately end up in prison, at a cost of \$25,000 to \$30,000 a year, allows the most expensive correctional resources to be reserved for violent and dangerous offenders. According to DOC, the average cost of supervising an offender in the community is \$1,355 per year. While the cost of Immediate Sanction Probation will exceed the average, due to the intensive nature of monitoring and drug testing for participants when they enter the program, the cost is still considerably less than the cost of prison.

Key Features and Stakeholders in the Swift-and-Certain Sanctions Model

The swift-and-certain sanctions model has several key features. Operational details may vary from program to program, but certain components are central to the swift-and-certain sanctions formula. These are:

- Higher risk offenders are identified for participation in the program.
- The judge gives an official warning that probation terms will be strictly enforced and that each violation will result in jail time.
- Program participants are closely monitored to ensure that there are no violations.
- New participants undergo frequent, unannounced drug testing (4 to 6 times per month for at least the first month). For offenders testing negative, frequency of testing is gradually reduced.
- Participants who violate the rules or conditions of probation are immediately arrested and brought to jail.
- The court establishes an expedited process for dealing with violations (usually within three business days).
- For each violation, the judge orders a short jail term. The sentence for a violation is modest (usually only a few days in jail) but virtually certain and served immediately.

Successful implementation of a swift-and-certain sanctions program requires a significant amount of collaboration and coordination across numerous stakeholders representing multiple agencies and offices. Each stakeholder must be engaged, informed, and willing to participate. Critical stakeholders include:

- Judges,
- Prosecutors,
- Probation officers and the Department of Corrections,
- Defense attorneys,
- Law enforcement,
- Jail officials, and
- Court clerks.

Without buy-in and continued cooperation from all stakeholders, a swift-and-certain sanctions program can be almost impossible to implement and sustain.

Design of Virginia's Immediate Sanction Probation Program

The Sentencing Commission has designed Virginia's Immediate Sanction Probation program based on the parameters established by the General Assembly's statutory and budgetary language and the key elements of the swift-and-certain sanctions model pioneered in Hawaii. Implementing Virginia's program with fidelity to the basic tenets of the swift-and-certain sanctions model provides the best opportunity to determine if the positive results observed in other states will emerge in Virginia as well.

Offender Eligibility Criteria

To be considered for the Immediate Sanction Probation program, offenders must meet certain criteria. In § 19.2-303.5, the General Assembly specifies that the offender must:

- Not be on probation for a violent offense defined in § 17.1-805.

The Sentencing Commission set additional criteria for the pilot program. To be eligible, an offender must:

- Be 18 years of age or older (there are presently a wide array of sanction options available for juveniles tried as adults in circuit court),
- Be on supervised probation for a felony conviction (not given a deferred disposition, as that does not include a suspended term of incarceration),
- Have a recent risk/needs assessment on file (based on the COMPAS instrument currently utilized by the Department of Corrections for supervision planning),
- Not have been diagnosed with a severe mental health issue (these offenders may not be able to fully comprehend the consequences for violations and be able to modify their behavior), and
- Be supervised in the same jurisdiction where the offender was originally sentenced.

Since the program is being implemented in only four pilot sites, this last eligibility criteria ensures that judges in the pilot sites have jurisdiction over the cases and can swiftly impose sanctions.

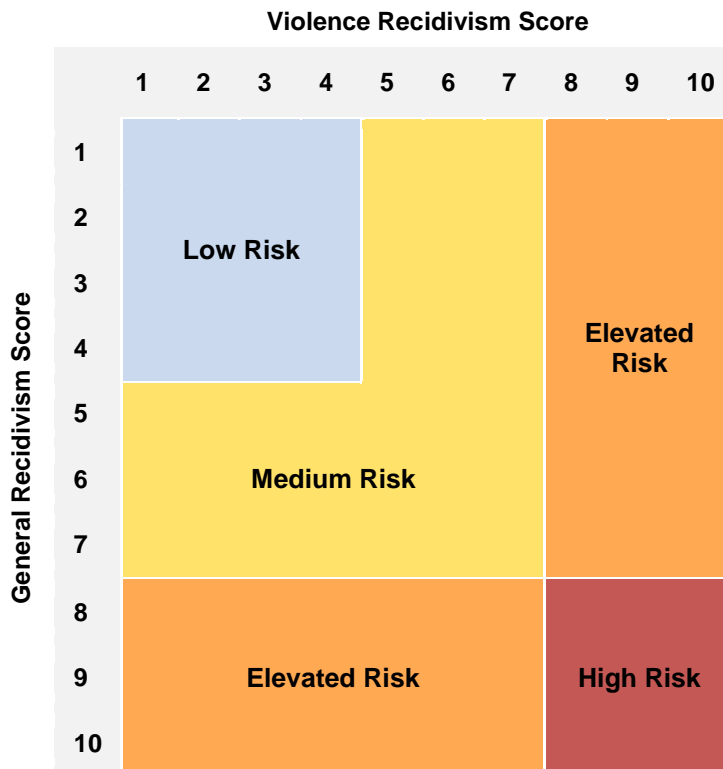
Identifying Higher Risk Probationers

Selecting offenders who are more likely to recidivate and/or fail on probation is an important aspect of the swift-and-certain sanctions model. These are offenders who are at-risk for committing a new offense or who are not performing well on regular probation (i.e., they are at risk for having their probation revoked due to the accumulation of multiple technical violations). Since swift-and-certain sanctions programs involve intense monitoring and are more time and resource-intensive than regular probation, targeting higher-risk offenders allows for the most efficient use of resources. In addition, criminological research has shown that placing low-

risk offenders in programs designed for high-risk offenders may actually increase their likelihood to recidivate (see, e.g., Andrews & Bonta, 2007; Lowenkamp & Latessa, 2004; Lowenkamp, Latessa, & Holsinger, 2006).

To be a candidate for Virginia’s Immediate Sanction Probation program, an offender must be identified as being at-risk for recidivating or failing probation. To measure recidivism risk, Department of Corrections (DOC) probation officers administer the COMPAS risk/needs assessment instrument. COMPAS is currently used by probation officers to develop supervision plans and to determine the most appropriate supervision level for an offender. COMPAS contains two recidivism risk scales: risk of violent recidivism and risk of general recidivism. Based on the offender’s scores on these two scales, he or she is categorized as low risk, medium risk, elevated risk, or high risk, as shown in Figure 2.

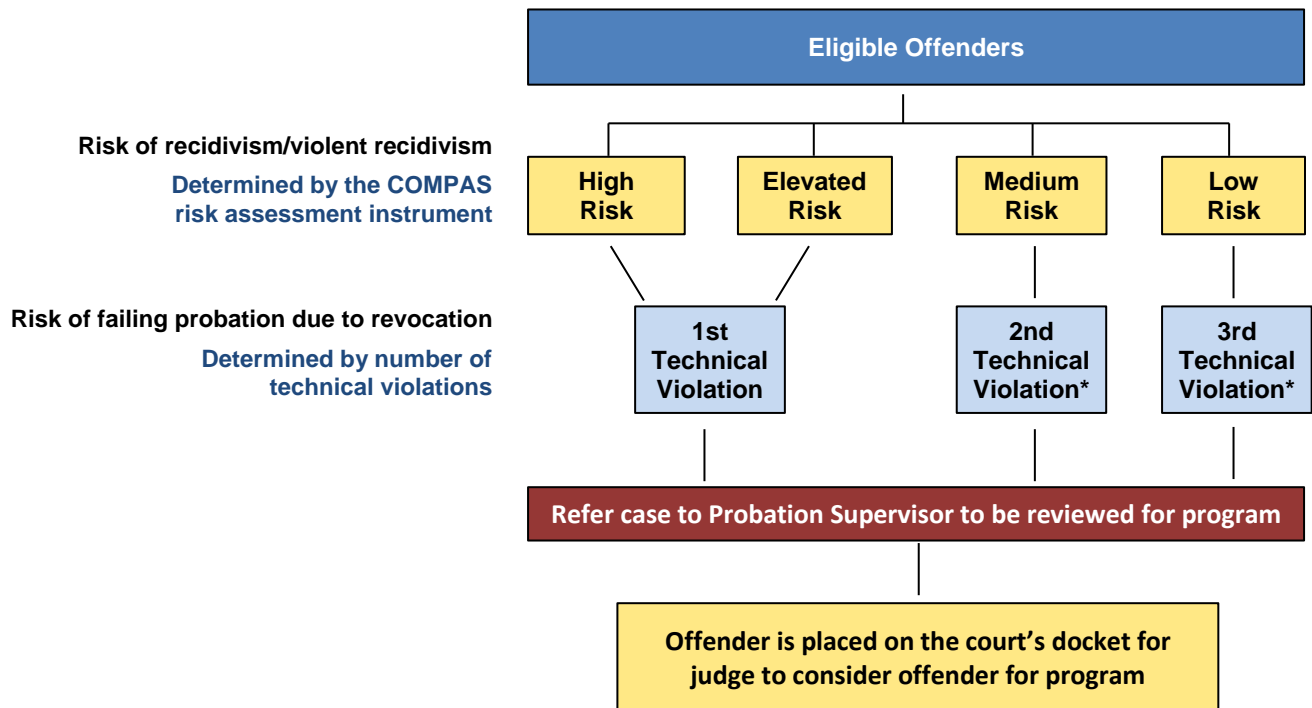
Figure 2
COMPAS Recidivism Risk Scales and Risk Classification



Risk of recidivating is then used in conjunction with risk for failing probation (measured by the number of technical violations the offender is alleged to have committed) to identify candidates for the pilot program. The Sentencing Commission has developed a framework for integrating these two measures of risk, which is shown in Figure 3. An eligible offender who has been identified through COMPAS as high risk or elevated risk becomes a candidate for the Immediate Sanction Probation program upon the first alleged technical violation. Because these offenders are already at the highest risk for recidivism compared to other probationers, the threshold in terms of technical violations is set at one. For an offender identified as medium risk on COMPAS, the probation officer handles the first violation based on DOC policy, using the officer’s experience and skills in working with probationers. However, upon the second alleged technical violation, a medium-risk offender becomes a candidate for the program. For an offender who is found to be at low risk for recidivism on COMPAS, the probation officer continues to work with the offender for the first two technical violations but, upon the third violation, the offender becomes a candidate for the program. While COMPAS indicated that such an offender was low risk for recidivating, the offender’s behavior of repeated technical violations suggests that he or she is at increasing risk of failing probation (i.e., having his or her probation revoked). Once identified as a candidate, the offender can be referred to the court for a review hearing.

As noted above, offenders on supervised probation for a violent felony offense (as defined § 17.1-805) are not eligible for the program and, therefore, are excluded from this process.

Figure 3
Identifying Candidates for the Immediate Sanction Probation Program
Based on Two Risk Measures



* Violations occurring on different dates

Candidate Review Hearing

Once identified as a candidate for the program, the offender usually appears before the judge within seven days for a review hearing. These hearings are conducted much like traditional Show Cause (violation) hearings. A Public Defender, court-appointed attorney, or private attorney is present when review hearings are conducted. When possible, the attorney meets with the offender prior to the review hearing to discuss the program's requirements. The presence of all parties at the review hearing assists in impressing upon the offender the seriousness of the matter.

At the review hearing, the judge decides whether or not to place the offender in the Immediate Sanction Probation Program. If the court decides not to place the offender in the program, the judge continues the hearing on the probation violation so it may be handled under existing practices. If the judge determines that an eligible offender is a good candidate for the program and there is sufficient evidence to find that the offender violated a term or condition of probation, the judge orders that the Show Cause be continued upon the condition that the offender successfully complete the Immediate Sanction Probation program. If the judge places the offender in the program, he or she may also order that the offender serve three to seven days in jail (or sentence the offender to time served) for the violation(s) that brought the offender before the court, prior to the offender beginning the program.

Official Warning

The warning hearing is a critical piece of the swift-and-certain sanctions model. Participating in a swift-and-certain sanctions program is different from regular probation and it is important to explain this to the offender. As part of the warning hearing, the judge:

- Stresses the importance of the probationer taking charge of his life and accepting responsibility for his actions;
- Clearly lays out the consequences for violation in advance; and
- Expresses a message toward the probationer that the judge wants the probationer to succeed.

The goal is to instill in the offender that one's own choices (rather than the probation officer's or the Judge's) result in the consequences and that the offender has the power to change his or her behavior. Frequently referred to as one's "internal locus of control" and "self-efficacy," these beliefs are considered to be strong predictors of behavioral change.

The judge may give the probationer the official warning immediately after ordering the probationer to complete the program or the judge may schedule a formal warning hearing with other probationers placed into the program. It is important that judges use the same language and communicate a consistent message to each probationer who is placed in the Immediate Sanction Probation program. For this reason, the Sentencing Commission has developed a standardized script for the judges' use. The script, which is based on the one used in Hawaii's HOPE program, is shown in Figure 4.

Figure 4
Immediate Sanction Probation Program Warning Script

Immediate Sanction Probation Warning Script

You have been placed in a program called Immediate Sanction Probation. You have been put in this program because you have not been doing your part and following the rules of probation. When you are on probation instead of serving time in prison, you are making a deal with the judge to follow the rules. You are the one responsible for making sure that you comply with the rules of probation. If you choose not to follow the rules of probation, from this point on, there will be immediate consequences.

From now on, if you fail a drug test, if you fail to meet with your probation officer when you are supposed to, or if you don't comply with any other term of your probation, such as attending treatment if you have been told to go, you will be arrested and you will go to jail. This will happen for each and every violation.

You will be frequently drug tested. Your probation officer will advise you when to come in for testing. If you test positive, you will be arrested on the spot, held in custody, and we will have a hearing a couple of days later. If you use drugs, you will go to jail. If you miss a drug test or a scheduled appointment or don't comply with any other condition of probation, a police officer or Sheriff's deputy will find you and arrest you. They will arrest you at work or home or wherever, and you will go to jail. If you continue to violate the conditions of supervision, I can remove you from the program and revoke your probation. If that happens, I may give you a prison sentence.

I understand that things happen in life. If your car breaks down on the way to the probation office, push it to the side of the road, call your probation officer, tell him or her that you will be late, and get on the bus. If you or your child is at the Emergency Room, call your probation officer to reschedule your appointment and be ready to bring proof of the medical treatment when you come for that appointment.

All of your actions in life have consequences, good or bad. If you confront your problems and learn to change your thinking and your behavior, you will be able to follow the rules of probation and be able to remain free in society. The more responsible you are, the more freedom you will have. The less responsible you are, the less freedom you will have. If you violate the rules, there will be consequences, and they will happen right away. It's all about your choices.

Do you understand everything I just said? Do you have any questions for me?

I wish you success on probation after today and hope I don't see you back in a courtroom anytime soon.

Participant Supervision

Program participants are closely monitored to ensure compliance with all terms and conditions of probation. New participants are subject to frequent, unannounced drug testing (four to six times per month for at least the first month). Handheld drug testing units are used because immediate results are necessary to swiftly sanction the participant for continued drug use. For offenders testing negative, frequency of testing is gradually reduced. In addition, the probation officers frequently verify treatment participation, if applicable, employment status/efforts, and payment of court costs and restitution. Like the drug testing schedule, the frequency of probation appointments may also be gradually reduced after periods of compliance.

Immediate Sanction Probation officers also reinforce the message expressed by the court during the warning hearing and violation hearings. As in Hawaii, Virginia's probation officers use several techniques, including Motivational Interviewing and Cognitive Behavioral approaches, to guide the offender toward improving his or her choices going forward. The probation officers also use their extensive training and experience to assist the offender in identifying triggers and creating strategies to prevent future violations.

Violations while Participating in the Program

When a violation is detected, the supervising probation officer immediately issues a PB-15 authorizing the offender's arrest. The swiftness aspect to this program means that an arrest should occur as soon as possible. For example, an offender who tests positive for drug use is arrested in the Probation & Parole District office and taken to jail. If an offender fails to show up for an appointment with his probation officer, law enforcement serves the warrant quickly and takes the offender to jail. The offender remains in jail while awaiting the expedited hearing.

Expedited Hearings for Violations

An expedited process for handling Immediate Sanction Probation violations has been established by the court in each pilot site. The expedited hearings are conducted multiple days of the week to ensure that offenders do not wait in jail more than 48 to 72 hours before appearing (unless arrested on a Friday or holiday). For example, hearings in Henrico and Lynchburg are usually held on Monday, Wednesday, and Friday from 1:00 to 1:30pm. Expedited hearings are typically brief, lasting approximately eight minutes each, so multiple hearings can be held within the 30-minute period.

Pursuant to § 19.2-303.5, the court conducts an expedited hearing except under certain circumstances. An expedited hearing is not conducted when:

- It is alleged that the offender committed a new crime or infraction,
- It is alleged that the offender absconded more than seven days, or
- The offender, the Commonwealth's Attorney, or the court objects to the expedited hearing.

If an expedited hearing is not held, the violation is handled through the normal process (i.e., full Show Cause hearing). In some jurisdictions in Virginia, it may be weeks or months until the violation is heard by the court. Some offenders are not granted or cannot make bail and they are held in jail until the hearing. If the violation is handled through the normal process, the offender may receive a substantially longer sentence than he or she would receive during an expedited hearing, up to and including the full amount of the suspended sentence in the offender's case.

Access to Defense Counsel

A Public Defender (if an office exists in the site) is assigned to each session in which the court will hold expedited hearings. If no Public Defender Office exists in a pilot site, a cadre of court-appointed attorneys is established to provide counsel. The offender can call a private attorney or elect to waive counsel, if he or she chooses.

Access to defense counsel was built into Virginia's Immediate Sanction Probation pilot program for two reasons. First, § 19.2-303.5 allows all parties, including the offender, to object to the expedited violation hearing, in which case the matter proceeds to a full Show Cause hearing, which could result in the judge re-imposing the offender's entire suspended sentence. Second, the presence of both the prosecution and defense is important for emphasizing the seriousness of the matter for the offender and creating a perception of fairness about the process. In addition, probation officers can use these elements to reinforce the message that the offender's own choices (rather than the probation officer's or the Judge's) resulted in the consequences.

Jail Time for Violations

Technical violations committed by offenders participating in the program result in certain jail time. When the court holds an expedited hearing and finds sufficient evidence that the participant violated a condition of probation, the judge orders the participant to a certain number of days in jail, based on the graduated sanctions shown in Figure 5. Per § 19.2-303.5, the maximum sentence that can be ordered during an expedited hearing is 30 days. The offender's probation is not revoked during the expedited hearing and, throughout the offender's participation in the program, the pending Show Cause order is continued. The incarceration ranges provide judges with some discretion based on the violation and circumstances surrounding it, with increasing severity for subsequent violations. The sanction recommended for each violation is usually served in addition to time served in jail awaiting the expedited hearing (which is typically three days or less).

Figure 5
Terms of Incarceration for Violations
of the Immediate Sanction Probation Program

Program Violation	Incarceration
1st violation	3-7 days
2nd violation	5-10 days
3rd violation	7-14 days
4th violation	10-20 days
5th violation	15-25 days
6th+ violation	20-30 days

As noted above, if an expedited hearing is not held, the violation is handled through the normal process, the result of which the offender may receive a substantially longer sentence (up to his or her entire suspended sentence).

Substance Abuse Treatment

The swift-and-certain sanctions model has been shown to be extremely useful for distinguishing between offenders who are able to cease drug use through the imposition of brief, but certain, jail stays and those who are unable to do so due to addiction issues. An offender who continues to use drugs in spite of the knowledge that they will be drug-tested regularly, and who has been jailed multiple times for continued use while in the Immediate Sanction Probation program, would be a likely candidate for substance abuse services. For participants in the Immediate Sanction Probation program who do not desist from drug or alcohol use in response to the frequent random drug tests and repeated jail sanctions, the court may order a full substance abuse assessment and refer the offender to substance abuse treatment or a drug court program, depending on the offender's suitability and the availability of treatment resources. In addition, the judge can consider a participant's request for substance abuse treatment.

Used in this way, the swift-and-certain sanctions model relies on actual offender behavior rather than a substance abuse screening or offender self-report to signal a potential need for treatment services. Offenders who use drugs recreationally but are able to stop on their own generally do so in the face of regular, random drug-testing and certainty of sanctions for use. Offenders who continue to test positive in spite of the consequences for this behavior are identified as those most likely to need services. This approach to identifying offenders with treatment needs has been called "behavioral triage" (Hawken, 2010).

Removal from Program

The court may remove an offender from the Immediate Sanction Probation program at any time. If a participant is convicted of a new felony, the Sentencing Commission requires that he or she be removed from the program. If this occurs, the violation is handled through a full Show Cause hearing and sanctioning of the offender is left to the discretion of the court.

Successful Completion

If an offender has gone 12 months since his or her last violation, the offender will be considered as having “successfully completed” the Immediate Sanction Probation program. The probationer may be returned to regular probation supervision, placed on a less-restrictive level of supervision or, at the judge’s discretion, released from supervision.

Program Implementation

In September 2012, the Sentencing Commission approved the design for Virginia's Immediate Sanction Probation pilot program. Sentencing Commission staff then moved forward with implementation, which began with identifying potential pilot sites.

Selection of Pilot Sites

Sentencing Commission staff worked closely with the Secretary of Public Safety's Office and the Department of Corrections to identify potential pilot sites for the Immediate Sanction Probation program. The Sentencing Commission wished to pilot test the program in jurisdictions in different regions of the state and in a mix of urban/suburban/rural localities. The size of the probation population in each jurisdiction was also important, as small probation populations may not yield a sufficient number of eligible candidates to conduct a thorough evaluation of the program. In several localities, one or more officials had expressed interest to the Secretary of Public Safety's Office or to the Sentencing Commission's director. Such local interest was highly desired. In addition, the Sentencing Commission hoped to test the program in various settings and therefore considered if potential sites had a Public Defender's Office or a drug court. After consideration of these factors, Sentencing Commission staff and the Deputy Secretary of Public Safety approached stakeholders in Henrico, Lynchburg, and Newport News to discuss their possible participation in the pilot project. Henrico and Lynchburg agreed to participate, with start dates of November 1, 2012, and January 1, 2013, respectively. The stakeholders in Newport News elected not to participate in the pilot project. Subsequent meetings were held in Hampton and Chesapeake, but neither locality elected to move forward with a pilot program. Finding pilot sites has been one of the challenges to implementing the Immediate Sanction Probation program. These challenges are discussed in the next section of the report. In July 2013, Arlington agreed to participate as a pilot site, with a projected start date of October 1, 2013. In September 2013, Harrisonburg agreed to become the fourth pilot site, with a projected start date of January 1, 2014. Start dates were set by local stakeholders.

In each site, Sentencing Commission staff organizes and participants in multiple meetings prior to the start date to brief officials and staff on the program and to facilitate decisions about operational details.

The stakeholders in each of the selected pilot sites have excellent working relationships, which has been essential to successfully implementing the program.

Immediate Sanction Probation Pilot Sites and Start Dates
Henrico County November 1, 2012
City of Lynchburg January 1, 2013
Arlington County October 1, 2013 (projected)
Harrisonburg/ Rockingham County January 1, 2014 (projected)

Implementation Support

The Sentencing Commission has completed a number of tasks to support and facilitate the implementation of the program in each pilot site. The Sentencing Commission has:

- Developed guidelines and procedures and prepared an *Implementation Manual*;
- Written a warning script for judges to use when placing offenders into the program;
- Created forms to help stakeholders with administrative processes and gather data for the evaluation;
- Assisted with development of template court orders for the program;
- Ensured a point-of-contact was identified for each office/agency involved in the locality's pilot program and produced a contact list for each pilot site;
- Identified a payment process for court-appointed attorneys working with the program in Henrico and Rockingham/Harrisonburg (as there is not a Public Defender's Office);
- Worked with DOC, the Compensation Board, and Clerks to add new codes in automated systems so that program participants can be tracked; and
- Met with all probation officers in Lynchburg, Henrico, and Arlington to explain the program and encourage the identification and referral of candidates.

Sentencing Commission staff have organized regular meetings (every four to six weeks) with stakeholders in Henrico and Lynchburg, the two programs up and running at the time of this report. These meetings are very beneficial to review procedures, examine the progress of the participants, and identify and resolve any issues or concerns as they arise. In this way, stakeholders work together to develop solutions that are satisfactory to everyone. In addition, at the request of DOC, Commission staff participate in weekly conference calls with both Henrico and Lynchburg Probation & Parole Districts to discuss potential candidates for the program. These calls provide opportunity to address questions from probation staff and to receive valuable feedback on the program from probation officers. Practitioners are also encouraged to call the Sentencing Commission to discuss emergent issues at any time. Sentencing Commission staff will continue to hold regular meetings and conference calls in Henrico and Lynchburg and will organize meetings, etc., in Arlington and Harrisonburg/Rockingham as those programs become operational.

Supervision and Drug Testing

During the planning phase, the Sentencing Commission emphasized the need for uniformity in the supervision of program participants and in responses to violations. As a result, DOC has assigned a seasoned probation officer currently working in each pilot site as the Immediate Sanction Probation officer. This officer is dedicated to the supervision of the offenders participating in the pilot program. DOC is utilizing existing resources to provide one new probation officer for each pilot site. According to DOC, the approximate cost (including benefits) for four probation officer positions for the pilot sites is \$219,679. With the additional position provided by DOC, a new probation officer can be hired to assist with the District's

regular caseload and other duties. The Sentencing Commission strongly supports this approach, as offenders participating in the program are those who are at higher risk of recidivism or failing probation, and therefore likely to be more challenging to supervise. Having an experienced and highly-skilled officer to supervise offenders in this program is preferred. In each pilot site, the probation officers selected to supervise Immediate Sanction Probation offenders have demonstrated a strong competency and willingness to innovate to overcome potential challenges that have arisen. Their extensive experience and training continue to prove invaluable not only to those in their respective jurisdictions, but also to the program as a whole. The work these officers have done to date should be commended.

The Department of Corrections is also using existing resources to support drug testing for the Immediate Sanction Probation program. DOC reports that, as a cost saving measure, it has moved away from using the handheld drug testing kits (“cup” tests), and now sends offender urine samples to the Department of General Services’ Division of Consolidated Laboratory Services (DCLS) for analysis. DCLS provides the test results to the Probation & Parole District approximately one week following submission of the sample. Because the Immediate Sanction Probation program is based on swift-and-certain sanctions, the DCLS process is untenable. For the pilot project, DOC has purchased the handheld testing kits, which have the advantage of providing the immediate test results necessary for the program. DOC has estimated the cost for these to be \$10,000 per year, based on current expenditures, the anticipated number of participants as the pilot expands from two to four sites, and the frequency of testing required for the program.

Implementing a swift-and-certain sanctions program is resource-intensive up front, largely due to the intense monitoring and frequent drug testing required by probation staff. Potential cost savings occur later through fewer revocations, lower recidivism rates, and reduced use of jail and prison.

Defense Counsel

In Lynchburg and Arlington, defense counsel is provided by the Public Defender’s Office. Since Henrico does not have a Public Defender’s Office, defense counsel is provided by six court-appointed attorneys who have agreed to work with the Immediate Sanction Program. Harrisonburg/Rockingham will also use court-appointed attorneys. For hearings associated with the Immediate Sanction Probation program, the court-appointed attorneys are paid at the same hourly rate as they are paid for traditional probation violation hearings (\$90 per hour). This program may result in additional hearings for some offenders, as they test the boundaries of the program and are brought back to court for each violation. During the pilot project, the Virginia Supreme Court is absorbing the cost of court-appointed attorneys for the Immediate Sanction Probation program. As of September 27, 2013, the expenditures for this purpose have totaled \$4,320 (\$1,492 in FY2013 and \$2,828 in FY2014).

Court Processes

The pilot sites have established an expedited court process for dealing with program candidates and violations. Immediate Sanction Probation hearings are held on multiple days of the week so that offenders will not spend long in jail before being considered for placement in the program or having a violation heard by the court. Hearings for violations occur swiftly (usually within three business days following arrest). This expedited process diverges significantly from the normal probation violation process in Virginia, which can take weeks or even months in some jurisdictions.

In Henrico and Lynchburg (the two programs operational at the time of this report), judges usually conduct Immediate Sanction Probation hearings on Monday, Wednesday, and Friday from 1:00 to 1:30 p.m. This time slot is designated for both candidate review hearings, where the judge considers whether or not to place the offender in the program, and program violations. If there are no candidates or violations to be heard on a given day, stakeholders simply use the time for normal work-related activities. Based on a sample of hearings conducted in Henrico and Lynchburg, the candidate review hearings last, on average, 9.5 minutes each, while violations have been handled in an average of 7.9 minutes. This is comparable to the length of hearings in Hawaii's HOPE program.

Law Enforcement

The law enforcement stakeholders have proven to be enthusiastic partners in piloting the Immediate Sanction Probation program. By quickly executing arrests, law enforcement officers are integral to ensuring that program violations are met with swift and certain sanctions. In the two pilot jurisdictions that were operational at the time of this report, police officers and Sheriff's deputies have demonstrated a high degree of commitment to upholding the tenets of the program and assisting in any way they can.

Jail staff have also assisted by ensuring the quick transport of candidates and program participants between jail and court. In particular, the cooperation of the five jails that comprise the Blue Ridge Regional Jail Authority has been essential to the Lynchburg pilot program.

Implementation Challenges

Establishing and successfully implementing a pilot program that diverges substantially from existing practices can be a difficult process and is not without challenges. Considerable groundwork must be laid prior to placing the first offender in the program. Once the program is operational, obstacles may be encountered and need to be addressed as quickly as possible.

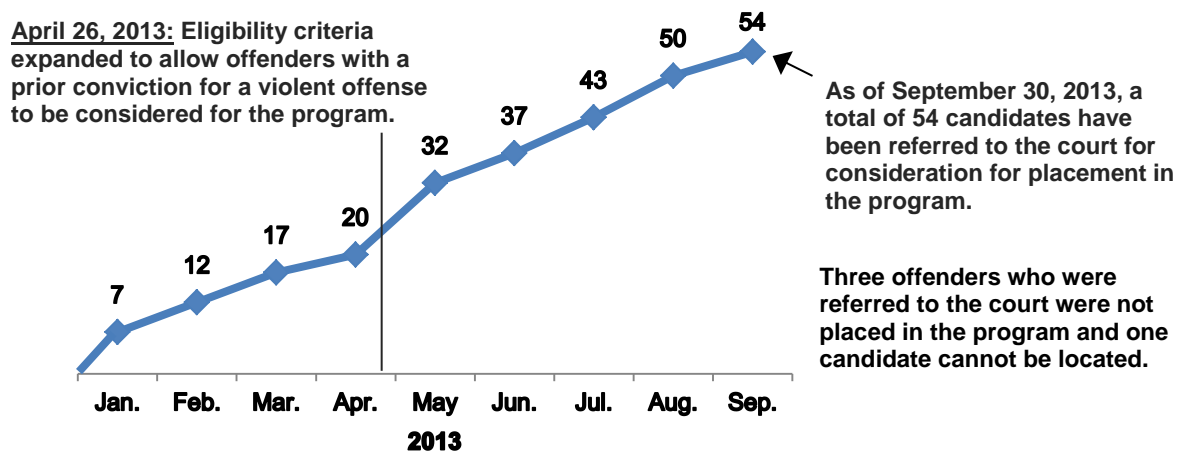
Ensuring that violations are addressed immediately and cases are handled swiftly requires extensive collaboration and coordination among many criminal justice agencies and offices. Breakdowns in communication or commitment to the program within any office can hinder the ability of the program to operate in a swift and certain manner. Although achieving such seamless communication can pose a significant challenge in some jurisdictions, stakeholders in the pilot sites have demonstrated a continued commitment to working with each other and giving the pilot program the best opportunity to succeed. During stakeholders' meetings in the pilot sites, new lines of communication, procedures, forms, and template court orders were designed and refined to ensure that the swiftness aspect of the program could be successfully achieved without overwhelming any of the partners. While both Henrico and Lynchburg have both reached a point of comfort with the practices developed in their respective jurisdictions, ongoing stakeholders meetings continue to prove beneficial in updating stakeholders on the progress of participants, addressing emerging challenges, and identifying potential efficiencies in existing practices.

As with most pilot programs, some challenges have been encountered in the implementation of Virginia's Immediate Sanction Probation pilot program. While there is considerable interest in the swift-and-certain sanctions model, finding localities willing to participate as pilot sites has taken some time. Supplemental funding was not included in the 2012-2014 budget; therefore, Virginia's pilot project is being implemented within existing agency budgets and local resources. Since many agencies and offices have undergone staff cuts in recent years and some offices experience a relatively high rate of turnover, taking on the responsibilities of new program may not be seen as feasible. Three jurisdictions that the Sentencing Commission approached to pilot this program decided not to participate, citing resource limitations as one of the reasons. For the jurisdictions that have agreed to undertake the challenge of piloting the Immediate Sanction Probation program, the stakeholders have remained dedicated to successfully implementing the program despite the extra workload. However, limited staff resources have presented additional challenges in the pilot sites. For example, Lynchburg has experienced some difficulties in maintaining a consistent schedule for the hearings because the city currently has only one circuit court judge. The lack of a consistent schedule can then cause issues for other stakeholders, who must adjust their schedules in a very short amount of time. Fortunately, the stakeholders in each pilot jurisdiction have demonstrated a clear understanding of the challenges faced by each office and a strong desire to cooperate and assist one another, where possible. In general, the intense supervision of new participants in conjunction with immediate arrests, hearings, and jail time for violations can place stress on stakeholders with limited resources and, if the program grows, existing resources may be stretched thin.

The number of program candidates identified by probation staff been lower than initially expected. Much of this may be attributable to the eligibility criteria. For instance, stakeholders in one of the pilot sites have indicated that the eligibility criteria excluding offenders who have obligations to courts outside of the pilot jurisdiction significantly reduces the pool of eligible candidates. This eligibility criteria was established for the pilot programs to ensure that judges in the pilot sites have jurisdiction over the cases and can swiftly impose sanctions. Should the program expand to additional localities in the future, options will be explored that may render this eligibility criteria unnecessary.

Stakeholders in the pilot sites have indicated that other eligibility criteria further reduce the pool of eligible offenders. For example, per § 19.2-303.5, offenders on probation for a violent crime, as defined in § 17.1-805, are not eligible for the program. As initially designed, the Sentencing Commission also excluded offenders with a prior offense listed in § 17.1-805. During ongoing stakeholder meetings in the pilot sites, several individuals indicated that they had identified offenders whom they felt would respond well to the structure of the Immediate Sanction Probation program, but the offenders were ineligible due to a prior violent offense (a prior burglary was frequently cited; burglary is defined as a violent offense in § 17.1-805). Based on feedback from stakeholders in the pilot sites participating at that time (Henrico and Lynchburg), the Sentencing Commission initiated discussions with the Secretary of Public Safety’s Office, Commonwealth’s attorneys, and several others. Sentencing Commission staff also conducted a comprehensive review of eligibility criteria and evaluation findings for similar swift-and-certain sanctions programs around the country. After careful consideration, the Sentencing Commission expanded the criteria to allow offenders with a prior conviction for an offense listed in § 17.1-805 to be considered for the program. Following the expansion of the eligibility criteria in April 2013, the number of potential candidates referred to the court increased. Figure 6 shows the cumulative number of candidates referred to the court, as of September 30, 2013. The judge ultimately determines if the offender will be placed into the program. For the majority of offenders referred to the court (91%), the judge has ordered the offender to complete in the Immediate Sanction Probation program.

Figure 6
Cumulative Number of Candidates for the Immediate Sanction Probation Program
Referred to the Court by Month
(as of September 30, 2013)



It has also been suggested that some offenders currently being supervised for a violent offense may respond well to the structure provided by the program, but they are statutorily excluded at this time. Research from the HOPE program in Hawaii and a similar program in Washington indicates that offenders who are currently on supervision in the community for a violent offense may respond equally well to the close scrutiny and the swiftness and certainty of sanctions imposed in this type of program. Expanding Virginia's pilot program to include offenders currently on probation for a violent offense would require legislative action.

Stakeholders in Lynchburg developed an innovative approach to expand the pool of eligible offenders. The Probation & Parole District there covers several jurisdictions (the City of Lynchburg as well as Amherst, Campbell, and Nelson Counties). Participants in the Lynchburg pilot program must have an obligation to Lynchburg Circuit Court. However, probation staff identified offenders believed to be good candidates for the program who lived just outside the Lynchburg City line. At the suggestion of Lynchburg stakeholders, the Sentencing Commission approached the Sheriffs in the neighboring Amherst and Campbell Counties, who agreed to assist with the pilot program by quickly executing Lynchburg's PB-15 arrest warrants in their respective jurisdictions. As a result, the pool of potential program participants for Lynchburg's pilot has been expanded to include those living outside the Lynchburg City limits. This is an excellent example of stakeholders innovating and collaborating to improve the implementation of the program in their jurisdiction.

Stakeholders have also provided feedback on the requirements for removing offenders from the program and, as a result, the Sentencing Commission approved a modification. Based on the Sentencing Commission's initial program design (approved September 2012), a participant convicted of any new offense would be removed from the program. After a participant who had been otherwise compliant was cited for driving on a suspended license, some of the stakeholders from Henrico attended the Sentencing Commission's June 10 meeting to request that judges be given some discretion regarding removal of participants who have been convicted of a new offense. The concern was that an offender participating in the program might be convicted of a minor misdemeanor offense, such as driving on a suspended license or being drunk in public. In most cases, however, an offender convicted of driving on a suspended license or certain other misdemeanor offenses is unlikely to serve significant jail time. If the offender were removed from the Immediate Sanction Probation program, he or she would likely return to regular probation, where supervision would be less intensive than when the offender was participating in the program. Under these circumstances, continuing the offender in the Immediate Sanction Probation program following release from jail could better serve public safety. The Sentencing Commission approved a change to provide judges with discretion as to whether or not to remove offenders convicted of a new misdemeanor. The Sentencing Commission continues to require that offenders convicted of a new felony be removed from the program.

Piloting a swift-and-certain sanctions program also presents specific challenges for Probation & Parole Districts. The intensive nature of this program, coupled with the need for an immediate response to every violation can pose several administrative challenges for a participating District. For instance, establishing and executing a procedure for the frequent random drug testing of participating offenders that yields immediate results can be difficult. In order to facilitate randomized drug testing for offenders on regular probation, DOC employs a standard drug testing protocol (known as “color code”), which is set up to drug test a large number of offenders in a single day. In order to notify probationers when their color is randomly selected, probationers call into an automated system to determine if they must report to give a urine sample on a given day. Most of the probation officers in each District take turns assisting in the collection of samples from probationers, which are then mailed to the Department of General Services’ Division of Consolidated Laboratory Services (DCLS). DCLS tests the samples and enters the results into a centralized tracking system, which notifies the supervising probation officer of the results. This procedure introduces a great deal of efficiency to the random drug testing process, especially in terms of identifying and notifying offenders when they need to report to be tested, collecting the samples, and entering the results into the database, with the workload being shared among many personnel. However, at least within the context of a swift-and-certain sanctions model, this system also adds an unacceptable delay between when the sample is taken and when the results are available to the probation officer. DOC has indicated that the color code protocol cannot be adapted to incorporate the use of handheld drug testing kits for offenders participating in the pilot program. According to DOC personnel, they cannot ensure that the handheld tests would be used for program participants if they were to be tested as part of the color code protocol, nor can they guarantee that participants who test positive would be arrested immediately (instead of being allowed to leave the District office after giving the sample, as regular probationers are permitted to do). As a result, the individual officer in each District dedicated to the Immediate Sanction Probation caseload must select drug testing dates and times, notify offenders when they need to report, collect the sample (or locate another probation officer to collect the sample from an offender of the opposite sex), and enter the drug screen results into a centralized tracking system. Especially in jurisdictions where the Immediate Sanction Probation officer is not the same gender as most of the probationers he or she supervises, close coordination is required within the District to ensure that other probation officers are available to monitor the collection of urine samples. The Immediate Sanction Probation officer must also fill in notes for frequent office visits and regularly verify treatment participation, employment status/efforts, etc. As the project continues to grow, the Sentencing Commission will continue to work with DOC and Probation & Parole Districts to develop efficiencies wherever possible.

Probation & Parole Districts piloting the Immediate Sanction Probation program have also faced the challenge of ensuring that most, if not all, eligible candidates are referred to the court to be considered for placement in the program. The program, as originally designed, relies heavily upon the probation officers in each District to identify offenders on their caseload who meet the eligibility criteria and have committed at least one recent technical violation. In addition to identifying eligible candidates, probation officers are asked to prepare a Major Violation Report relatively quickly after candidate identification; the Major Violation Report is

then submitted to the court as part of the referral process. Achieving a quick-turn around in the preparation of the Major Violation Report has proven to be challenging in Districts that have experienced significant staff cuts in recent years, where probation officers have large caseloads, or where officers prepare a high volume of Pre-Sentence Investigation reports. In order to encourage referrals and ensure that any questions or concerns expressed by probation officers are addressed, DOC asked the Sentencing Commission to prepare and present materials to all of the probation officers in each of the pilot sites. To this end, the Chief Probation & Parole Officer in District 13, which includes Lynchburg City, also established weekly staff meetings, where probation officers can discuss potential candidates for the program as well as the progress of participants. DOC asked Sentencing Commission staff to attend these meetings (telephonically), which provides the Commission the opportunity to address questions or concerns from probation staff and to receive valuable feedback on the program from probation officers. In fact, many of the suggestions for improvements to the program and ways to increase efficiency have stemmed from the weekly meetings with probation officers. Due to the success of these weekly meetings in Lynchburg, DOC asked Henrico Probation & Parole to conduct similar meetings. Depending on the topics discussed, these weekly meetings usually range from five to ten minutes in length. In addition to the District-wide efforts to encourage referrals for the program, the Immediate Sanction Probation officers also play a significant role in encouraging fellow probation officers to refer potential candidates by assisting in the identification of possible candidates, answering questions regarding the program, and helping other officers complete the necessary paperwork for referrals (i.e., the Major Violation Report).

Certain types of offenders can present unique challenges as well. For instance, some challenges have arisen in regards to supervising alcohol-abusing offenders within the context of the program. There does not appear to be an immediate test for alcohol use that may have taken place since the offender's last probation appointment, because alcohol is metabolized quickly by the body. Breathalyzers can test for current intoxication levels only. One suggestion has been to utilize SCRAM bracelets. SCRAM bracelets provide continuous monitoring of alcohol use by frequently testing for alcohol consumption through an offender's perspiration. An offender is required to upload the data from the SCRAM bracelet to the monitoring agency at least once per day, where the data is then analyzed and prepared in the form of a report. If a violation is detected, analysts are available to provide testimony regarding results, if necessary. The offender is charged for the cost of using this device. Participants with mental health issues can also prove to be more challenging to supervise. Many of these offenders require more intensive supervision, particularly since probation officers must confirm that the probationer is following the treatment regimen prescribed by the mental health treatment provider, such as participating in recommended counseling and taking all necessary medications. Within the context of the Immediate Sanction Probation program, offenders who have a severe mental health issue are not eligible to be placed in the program. However, offenders who exhibit less severe mental health problems may be considered for the program. For these offenders, failure to follow any instructions relating to mental health treatment would be treated the same as any other violation.

Limited resources for substance abuse services may pose an additional challenge. As described above, the swift-and-certain sanctions model has been shown to be very useful for distinguishing between offenders who use drugs but are not addicted to them and offenders with addiction issues. An offender who continues to use drugs in spite of regular drug testing, and who has been jailed multiple times for continued use while participating in the program, would be a likely candidate for additional interventions, such as substance abuse treatment. The Sentencing Commission has designed the pilot program such that the judge, in his or her discretion, may refer a participant to substance abuse services or a drug court program, depending on the offender's suitability and the availability of treatment resources. Offenders with a diagnosis involving a severe mental illness are not eligible to participate in the pilot program; however, offenders with less serious mental health issues who are stable in regards to their medications may participate if they are determined to be otherwise eligible. Resources are limited, however, and substance abuse and mental health treatment options are not uniformly and consistently available across the pilot sites. Limits in terms of available treatment options and stability of treatment providers can be a barrier to matching offenders who are identified as having addiction and/or mental health issues with the most appropriate treatment.

Despite the numerous challenges, stakeholders in the participating pilot sites have demonstrated the ability and willingness to collaborate and to develop innovative solutions to overcome many barriers as they arise.

Characteristics of Program Participants, Violations, and Sanctions to Date

As of September 30, 2013, a total of 48 offenders had been placed into the Immediate Sanction Probation pilot program (25 in Henrico and 23 in Lynchburg). The Arlington and Harrisonburg/Rockingham pilot sites were not operational at the time this report was prepared. For current participants, the length of participation ranges from 19 days to 8.6 months in Henrico (average of 4.8 months) and less than one day to 7.5 months in Lynchburg (average of 4.9 months).

More than half of the participants (27 of 48, or 56%) have not committed a violation since being placed in the program. This is similar to Hawaii’s HOPE program, where 52% of participants did not have a violation for drug use or a missed appointment during the 12 months they were tracked (Hawken & Kleiman, 2009). Although the data are still preliminary, this finding is significant given that all of these offenders had a record of technical violations prior to entering the Immediate Sanction Probation program (the average was four previous technical violations). The remaining 21 participants committed at least one violation after being placed in the program (Figure 7). As of September 30, 2013, there were a total of 38 violations among participants.

To date, only two participants have been convicted of a new offense. One was convicted of driving without an operator’s license, a misdemeanor, and allowed to remain in the program. The other was convicted of driving on a suspended license and failing to appear in court for that offense; this particular offender also had multiple technical violations while in the program and had not been truthful with the court. She was terminated from the program and given a prison sentence of 1.5 years. The only other offender removed from the program received approval to move out of the jurisdiction and was therefore ineligible to continue in the program.

Figure 7
Immediate Sanction Probation Program Participants
as of September 30, 2013

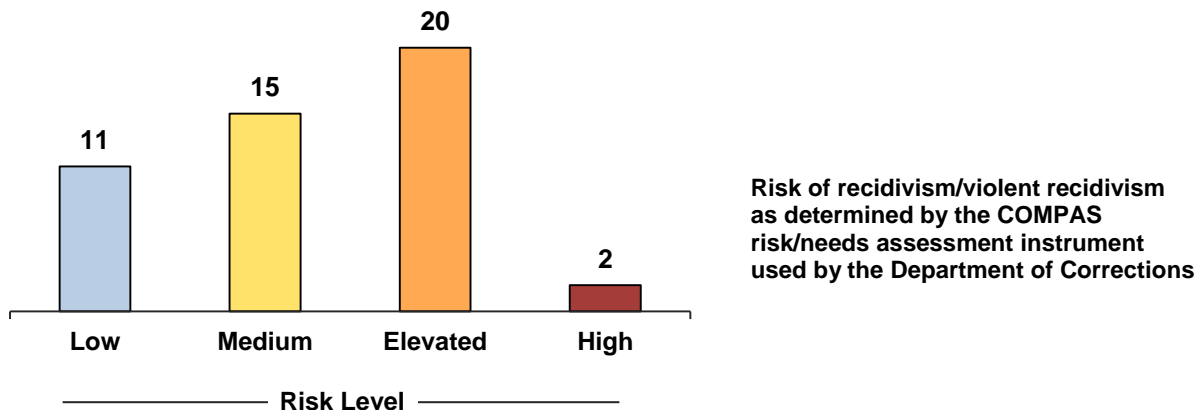
Locality	Number of Offenders Placed into the Program	Number of Participants who have Violated	Total Number of Violations	Number of Participants Removed	Number of Current Participants	Number of Pending Candidates
Henrico (start date: November 1, 2012)	25	12	19	2	23	1
Lynchburg (start date: January 1, 2013)	23	9	19	0	23	1
Total	48	21	38	2	46	2



**Of the two participants removed from the program:
 one offender was terminated and given a DOC sentence;
 the other offender moved out of the jurisdiction.**

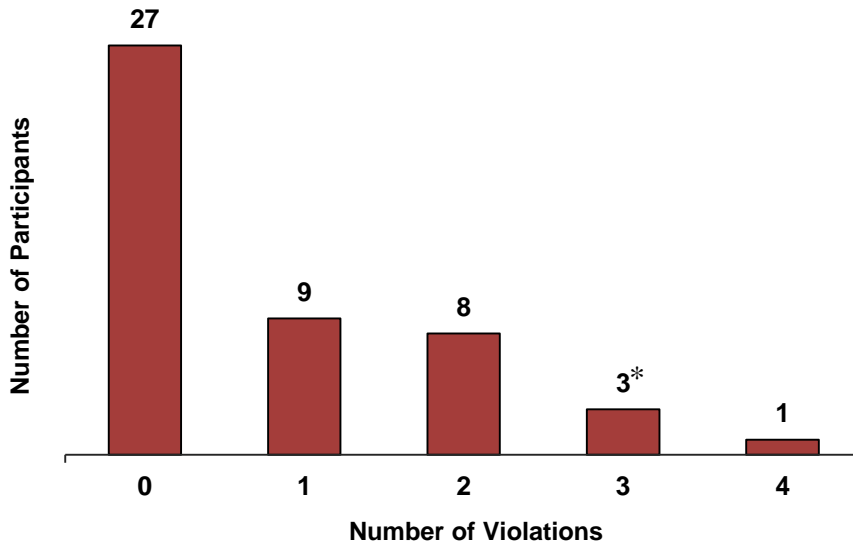
As noted earlier in this report, the Immediate Sanction Probation program focuses on higher risk probationers. The largest share of offenders placed into the program (20 of 48) have been identified as elevated risk (Figure 8). Treated the same as high risk offenders, these offenders need only one technical violation to become a candidate for the program. On average, however, these offenders had accumulated three technical violations prior to being placed in the program. Only two high risk offenders have been placed in the program. This is likely due to the fact that many of the probationers that are classified as high risk are on probation for a violent offense listed in § 17.1-805, which statutorily precludes them from participating in the Immediate Sanction Probation program. To date, 15 medium risk offenders have been placed into the program. Medium risk offenders qualify for the program after two technical violations. On average, these offenders had four violations prior to program placement. Eleven low risk offenders have been placed into the program. While needing three technical violations to become a candidate for the program, the low risk offenders had accumulated an average of four such violations at the time they were placed in the Immediate Sanction Probation program.

Figure 8
DOC Recidivism Risk Level for Offenders Placed
in the Immediate Sanction Probation Program
(as of September 30, 2013)



Of the 21 participants who have committed violations in the program, nine have committed a single violation (Figure 9). Another eight offenders have committed two violations, while three offenders have had three violations in the program. One offender has accumulated four violations. This individual was identified as being at high risk for recidivism and had a long history of substance use. She committed four violations quickly after being placed in the Immediate Sanction Probation program and received jail sanctions each time. She was allowed to remain in the program and, at the time this report was prepared, she had been violation-free for over five months. Research on the swift-and-certain sanctions approach in Hawaii and elsewhere indicates that many participating offenders change their behavior and begin to comply with the conditions of probation.

Figure 9
Number of Violations Committed by Participants
in the Immediate Sanction Probation Program
(as of September 30, 2013)



* One participant was removed after three violations.

In addition to implementing the Immediate Sanction Probation program, the Sentencing Commission has been charged with completing an evaluation of the pilot project. Outcome measures are being developed for the evaluation. Certainly, those outcome measures will include recidivism rates – how many participants were convicted of new offenses – and the use of jails and prison resources. In addition, it is important for the evaluation process to determine if the pilot sites were able to achieve both swiftness and certainty, critical elements of the program model.

To allow the pilot programs in Henrico and Lynchburg sufficient time to test and refine the new procedures, the Sentencing Commission began tracking measures of swiftness on March 8, 2013. Overall, more than half (54%) of the expedited hearings have been conducted by the court within three days following the commission of a violation (Figure 10). On average, the hearing took place within 3.6 days of the violation. If an offender tests positive for drug use, he or she is arrested immediately in the Probation & Parole District office. For offenders who fail to show up for a drug test or an appointment with the supervising officer, a PB-15 is issued immediately and sent to law enforcement officers, who search for the offender in the community (at home, work, and other possible locations). The time that it takes law enforcement to locate and arrest the offender affects the average time between violation and the court hearing. Breaking down the total 3.6 days from violation to hearing, the average time between violation and arrest has been 1.8 days and the average time between arrest and the hearing has been 1.8 days. Once a participant is arrested for a violation, courts are conducting hearings within an average of 1.2 business days. Based on this data, it appears that the stakeholders in both of the current pilot sites have been able to successfully achieve the swiftness aspect of the program model.

Figure 10
Measures of Swiftness for the Immediate Sanction Probation Program

	Lynchburg	Henrico	Total
Percent of violation hearings held within 3 days of violation	42.9%	64.3%	53.6%
Avg. time between violation and hearing	4.5 days	2.6 days	3.6 days
Avg. time between violation and arrest	2.5 days	1 day	1.8 days
Avg. time between arrest and hearing	2 days	1.6 days	1.8 days
Avg. time between arrest and hearing – <i>business days</i>	1.2 days	1.1 days	1.2 days
Number of Violations	14	14	28

These figures are based program violations committed on or after March 8, 2013

Regarding the certainty aspect of the program, 100% of the violations in the two operating pilot sites have been met with jail sanctions, per the program’s design (Figure 11). For the first violation in the program, the average sanction has been 3.7 days. For the second violation, the average sanction has been 6.1 days, while the average sanction for the third violation has been 8.3 days. The one offender who had a fourth violation in the program received 10 days in jail. Certainty has been achieved in the pilot sites and the sanction days are consistently within the ranges recommended by the Sentencing Commission for the program.

**Figure 11
Measures of Certainty and Consistency for Immediate Sanction Probation Program**

	Lynchburg	Henrico	Total
Percent of violations resulting in a jail term	100%	100%	100%
Average length of sentence for 1st violation	3 days	4.3 days	3.7 days
Average length of sentence for 2nd violation	5.2 days	7.2 days	6.1 days
Average length of sentence for 3rd violation	8.3 days	N/A	8.3 days
Average length of sentence for 4th violation	10 days*	N/A	10 days*

* represents one case

These figures are based program violations committed on or after March 8, 2013

Upcoming Activities

In the coming months, Sentencing Commission staff will assist the stakeholders in Arlington and Harrisonburg/Rockingham with the implementation of the Immediate Sanction Probation program in those sites. Staff will also continue to work closely with the existing programs in Henrico and Lynchburg.

While the formal evaluation has not yet begun, the Sentencing Commission has started planning for the evaluation phase. The Sentencing Commission is designing a rigorous evaluation of the pilot project. In addition to the measures of swiftness and certainty described above, the Sentencing Commission will capture data on new arrests and new convictions for offenders who have participated in the program, which will be used to calculate recidivism rates. The Sentencing Commission will also calculate the number of days participants spent in jail serving time on violations, as well as the number of days served in jail or prison by participants who ultimately have their probation revoked (i.e., offenders who do not successfully complete the program). The Sentencing Commission will identify a comparison group of similar offenders under regular probation supervision. Thus, the outcomes of the pilot program will be assessed by comparing the results of participants to those for a like group of offenders on regular probation. Although the most rigorous form of evaluation is the randomized control trial (an experimental design involving the random assignment of offenders to the program or to the comparison group, similar to a clinical trial in medicine), this sort of research design is difficult to achieve in criminal justice settings. The Commission's plan involves a quasi-experimental design often used in criminal justice evaluations. The evaluation phase of the Immediate Sanction Probation pilot project will begin in July 2014.

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Appendices

Appendix A
Legislative Mandate

**CHAPTER 3 of the 2012 Acts of Assembly (Special Session I)
Item 50**

Virginia Criminal Sentencing Commission

B.1. Notwithstanding the provisions of § 19.2-303.5, Code of Virginia, the provisions of that section shall not expire on July 1, 2012, but shall continue in effect until July 1, 2014, and may be implemented in up to four sites.

2. The Virginia Criminal Sentencing Commission, with the concurrence of the chief judge of the circuit court and the Commonwealth's attorney of the locality, shall designate each immediate sanction probation program site. The Virginia Criminal Sentencing Commission shall develop guidelines and procedures for implementing the program, administer the program, and evaluate the results of the program. As part of its administration of the program, the commission shall designate a standard, validated substance abuse assessment instrument to be used by probation and parole districts to assess probationers subject to the immediate sanction probation program. The commission shall also determine outcome measures and collect data for evaluation of the results of the program at the designated sites. The commission shall present a report on the implementation of the immediate sanction probation program, including preliminary recidivism results to the Chief Justice, Governor, and the Chairmen of the House and Senate Courts of Justice Committees, the House Appropriations Committee, and the Senate Finance Committee by October 1, 2013.

(Passed by the 2012 General Assembly)

§ 19.2-303.5. (Expires July 1, 2014) Immediate sanction probation programs.

There may be established in the Commonwealth up to two immediate sanction probation programs in accordance with the following provisions:

- 1. As a condition of a sentence suspended pursuant to § 19.2-303, a court may order a defendant convicted of a crime, other than a violent crime as defined in subsection C of § 17.1-805, to participate in an immediate sanction probation program.**
- 2. 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 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.**
- 3. When a participating offender is arrested pursuant to subdivision 2, 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 subdivision 4. Otherwise, the court shall proceed pursuant to § 19.2-306.**
- 4. 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.**
- 5. The provisions of this section shall expire on July 1, 2012.**

(Originally passed by the 2010 General Assembly and extended by the 2012 General Assembly)

