

Administrative Procedures – Final Proposed Rule Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency’s decisions to reject or adopt suggested changes received as public comment).

RECEIVED
APR 25 2018

BY:

All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Graduated Sanctions for Violations of Probation

Martha Maksym, on 4/24/18.
(signature) (date)

Printed Name and Title:

Martha Maksym, Deputy Secretary, Agency of Human Services

RECEIVED BY: _____

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Approval received by E-mail.
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:
Graduated Sanctions for Violations of Probation
2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE
17P-056

3. ADOPTING AGENCY:
Agency of Human Services

4. PRIMARY CONTACT PERSON:
(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Sarah Truckle

Agency: Agency of Human Services, Department of
Corrections

Mailing Address: NOB 2 South, 280 State Drive, Waterbury,
VT 05671-2000

Telephone: 802 477 - 3910 Fax: 802 241 - 0020

E-Mail: sarah.truckle@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://corrections.vermont.gov/about/policies>

5. SECONDARY CONTACT PERSON:
(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Dale Crook

Agency: Agency of Human Services, Department of
Corrections

Mailing Address: NOB 2 South, 280 State Drive, Waterbury,
VT 05671-2000

Telephone: 802 477 - 3910 Fax: 802 241 - 0020

E-Mail: dale.crook@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:
(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

Not applicable.

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

Not applicable.

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

28 V.S.A. § 256; 28 V.S.A. § 304(e); and 28 V.S.A. § 1162(b)(2).

8. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.**9. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.****10. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.****11. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.****12. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.****13. CONCISE SUMMARY (150 WORDS OR LESS):**

This rule establishes guidelines for the Vermont Department of Corrections' (DOC) imposition of graduated sanctions in response to probationers' and youthful offenders' violations of their probation conditions. Graduated sanctions provide the DOC an alternative to seeking revocation of probation in response to probations violations. When non-compliant probationers and youthful offenders can still be safely supervised in the community, graduated sanctions provide a mechanism for the DOC to respond to probation violations without incarceration.

14. EXPLANATION OF WHY THE RULE IS NECESSARY:

28 V.S.A. §256 requires the DOC to adopt rules that establish graduated sanction guidelines for probation violations as an alternative to arrest or citation. 28 V.S.A. §304(e) requires the DOC to adopt rules that establish graduated sanction guidelines for probation violations as an alternative to revocation and imposition of the original sentence.

28 V.S.A. § 1162(b)(2) requires the DOC to adopt rules that establish graduated sanction guidelines for a youthful offender who violates the terms of his or her probation.

15. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Vermont Judiciary; Defender General; Department for Children and Families; Department of State's Attorneys and Sheriffs; Victims and Center for Crime Victim Services; Offenders; Offenders' Families.

16. BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):

It is not anticipated that this rule will have a significant economic impact. The DOC currently utilizes graduated sanctions for probationers, this rule expands the use of graduated sanctions to youthful offenders. It is anticipated that DOC may realize savings from the ability to continue to supervise probationers and youthful offenders in the community after probation violations, rather than incarcerate them. However, these savings do not reduce the cost of running an instate facility as these costs are fixed. Any savings realized would be seen in the out of state costs which currently are \$72 per bed per day.

17. A HEARING WAS HELD.

18. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 2/21/2018

Time: 01:00 PM

Street Address: Ash Conference Room, NOB 2 South, 280 State Drive, Waterbury, VT

Zip Code: 05671-2000

Date:

Time: AM

Street Address:

Zip Code:

19. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

3/1/2016

20. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Graduated Sanction

Corrections

Offender

Violation

Final Proposed Rule Coversheet
Community Supervision
Probation
Youthful Offender

page 7

To: Senator Mark MacDonald, Chair of the Legislative Comm
Administrative Rules

From: Sarah Truckle, DOC Policy Manager, Vermont Department of Corrections

Re: Graduated Sanctions for Violations of Probation – Comments Received

Date: April 24, 2018

The Vermont Department of Corrections (DOC) received sixteen comments during the public comment period. The comments are listed below:

Springfield Probation and Parole Officer

1. What does APA mean?
2. Pages 6-8: Why do we need “when authorized by the court”? Does this mean it has to be on the YO Probation Order/Needs clarity?
3. Pages 6-8: Shall be in line with or in response with the severity vs. shall be commensurate
4. Pages 6-8: Combine 2 & 3 but remove the first line of 2 as it is redundant.
5. 4A – Change CSS to PPO
6. Should coincide with the punishment section of EPICS. According to the EPICS punishment section written essay and increase contacts for up to 30 days should be removed. Other EPIC choices: loss of privileges, loss of curfew, house arrest
7. 4B: Level 2 sanctions address risk related, non-compliant behavior by imposing any level 1 sanction (need just in case they fail)
8. Grids are helpful – is this possible
9. Are we reading it correctly that if you’re a listed offender, you move right to level 3?
10. 4B v. What are you referring such as self help?
11. A should be SA 1., 11

Courtney Gourley

1. I have been the DOC Court Liaison in Burlington for the past 3 years and work very closely with the States Attorneys, the Defense Attorneys and all Court staff. I know if a PO tried to impose a graduated sanction involving the addition of community service hours, the imposition of a curfew and/or restriction the residence, or use of electronic monitoring when we were not already given these conditions by the Court, we would face quite a backlash to say the least!

Maria Godleski

1. I don’t see where we have the authority to impose some of these sanctions. For example: how do I refer someone to treatment if they don’t have a must do treatment condition? I do understand a PO could meet with an offender more often, provide a verbal warning, teach them an EPICS skill, but mandating they do something without a supporting condition will be hard in many cases. Is the assumption this is how we will address it if they are willing?

Stephen Russell

1. The EPICS training manual specifically states EPICS Interventions are not to be used as punishments. It is certainly appropriate to address the offending behavior in an EPICS session but the EPICS session and GS process should be kept separate. This is not just semantics, The University of Cincinnati states using EPICS interventions as sanctions reduces offender by in to the EPICS process.

Laura Zelinger

1. I am wondering if a referral to a CJC might be an option for a level 1 sanction – I see that an apology is listed as an option and the CJC could offer a process (RJ panel) that could elicit a meaningful apology. There are some CJs who have used panels as the request of P&P to address negative behaviors when they are first appearing. Just a thought...

Jill Anderson

1. Per current Probation condition's given by the court about 95% of these sanctions we are unable to impose, rendering this amended rule nearly impossible or affective. The court is taking more and more responsibility away from the CSS's and placing the decisions on treatment providers or back on the court. Ie condition: Complete DV counseling to satisfaction of treatment provider. Where in the past CSS's had more control if offenders are non-compliant with their counseling.

To: Senator Mark MacDonald, Chair of the Legislative Comm
Administrative Rules

From: Sarah Truckle, DOC Policy Manager, Vermont Department of Corrections

Re: Graduated Sanctions for Violations of Probation

Date: April 24, 2018

The Vermont Department of Corrections (DOC) received sixteen comments during the public comment period. The following summarizes the comments received and the DOC's responses.

- Summary of Comment: Noting that given current practice of courts assigning probation conditions to the satisfaction of treatment providers and the court, it will be difficult for DOC staff to impose to sanctions, rendering the Rule largely ineffective.
- Summary of Comment: Expressed concern over DOC authority to impose some of the proposed sanctions as it will be difficult to mandate something without a supporting condition.
- Summary of Comment: Raised the potential for disapproval of DOC attempting to impose some of the proposed sanctions, such as community service and electronic monitoring, without these conditions being imposed by the court.
 - DOC Response: The concern is understood, however DOC is aligning the Rule with current law, which grants DOC the authority to impose graduated sanctions. Per 28 V.S.A. § 256, DOC is permitted to impose graduated sanctions for violations of probation in lieu of a probation violation complaint (except when the violation constitutes a new crime or is for failure to pay restitution to DOC). The statute also requires DOC to adopt rules that establish this. Since a rule promulgated through the Administrative Procedures Act (APA) has the force and effect of statute, by enacting § 256 the Legislature gave DOC the authority to impose graduated sanctions, and therefore it is not necessary that the court grant DOC that authority in the probation order. It is similar to 28 VSA § 202 which grants DOC authority to use electronic monitoring to supervise probationers – the probation order need not contain such a condition because statute grants DOC the authority to use it, at its discretion, for the supervision of all probationers. Once the Rule is adopted, the DOC will have authority outside of the court ordered supervision conditions for the duration of an imposed graduated sanction. It should be noted that the statute does not grant the authority to use incarceration as a sanction.
- Summary of Comment: Suggest including a Community Justice Center (CJC) referral to the list of possible Level 1 sanctions.
 - DOC Response: A CJC referral is an available option available at any level as determined on a case by case basis. This rule will not preclude the ability to make a referral to a CJC.
- Summary of Comment: Identifies that the Effective Practices in Community Supervision (EPICS) training manual, and the University of Cincinnati, specifically mention that EPICS interventions should not be used as a punishment.
 - DOC Response: Changing language in the Rule to reflect that EPICS won't be used as a punitive measure, however skills utilized in EPICS may be used to address non-compliant behavior.

- Summary of Comment: What does APA mean?
 - DOC Response: Administrative Procedure Act.
- Summary of Comment: Concerning Youthful Offender – why do we need court authorization? Does this mean it must be on the YO Probation Order?
 - DOC Response: The DOC is only able to use the graduated sanction process when authorized by the court in youthful offender cases.
- Summary of Comments: Suggested language change from “Graduated Sanctions shall be commensurate with the severity...” to “Graduated Sanctions shall be in line with or response with the severity...”
 - DOC Response: The original language is true to the intent.
- Summary of Comment: Suggest combining subsections 2 and 3, under the heading **Imposition of Graduated Sanctions** and remove the first sentence of subsection 2 as it is redundant.
 - DOC Response: Disagrees that the two subsections should be combined and/or edited for redundant language; they address two different things.
- Summary of Comment: Change Correctional Service Specialist (CSS) to Probation and Parole Officer (PPO).
 - DOC Response: Change was accepted.
- Summary of Comment: Language should coincide with the punishment section of EPICS; according to EPICS punishment section, written essay and increase contacts for up to 30 days should be removed. Other EPICS choices: Loss of privileges, loss of curfew, house arrest
 - DOC Response: Updating to include changes in EPICS language.
- Summary of Comment: In subsection 4 (b) under the heading **Imposition of Graduated Sanctions** – Level 2 sanctions address risk-related, non-compliant behavior by imposing any Level 1 sanctions (just in case they fail)
 - DOC Response: You can impose a Level 1 sanction in conjunction with a Level 2 sanction.
- Summary of Comment: Requested a Grid, as they are helpful to staff.
 - DOC Response: Grids will be provided to staff to operationalize the policy, however are not included in the APA rule filing.
- Summary of Comment: Looking for clarification – if a person is a listed offender, they move directly to Level 3 sanctions?
 - DOC Response: Yes, a listed offender would move directly to a Level 3 response.
- Summary of Comment: What is meant by referral for self help?
 - DOC Response: Self-help includes, but is not limited to Alcoholics Anonymous, Narcotics Anonymous, ALANON, or private counseling.
- Summary of Comment: A should be SA 1., 11
 - DOC Response: Agree, and have edited the rule for formatting.

280 STATE DRIVE
WATERBURY, VERMONT 05671-1000



OFFICE OF THE SECRETARY
TEL: (802) 241-0440
FAX: (802) 241-0450

AL GOBEILLE, SECRETARY
MARTHA MAKSYM, DEPUTY SECRETARY

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

TO: Jim Condos, Secretary of State
FROM: Al Gobeille, Secretary, Agency of Human Services 
DATE: Tuesday, January 17, 2017
SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

I hereby designate Deputy Secretary of Human Services Martha Maksym as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedure Act, 3 V.S.A. § 801 et seq.

Cc: Martha Maksym

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Graduated Sanctions for Violations of Probation

2. ADOPTING AGENCY:

Agency of Human Services

3. AGENCY REFERENCE NUMBER, IF ANY:

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

10-041, Graduated Sanctions for Technical Violations of Probation In Lieu of Court Referral, 11/8/2010.

**Proposed Rule: Graduated Sanctions for Violations of Probation, Agency of Human Services,
Department of Corrections**

Presented by: Sarah Truckle, Dale Crook, and Kurt Kuehl

Motion made to accept the rule by Diane Bothfeld, seconded by Dirk Anderson, and passed unanimously, with the following recommendations:

1. Administrative Rule Review: This page is for internal routing purposes only and doesn't need to be included in the filing.
2. Proposed Rule Coversheet, pages 2-3, #5: Expand on confidentiality.
3. Proposed Rule Coversheet, page 3, #7: Define previously what 'DOC' is.
4. Proposed Rule Coversheet, page 4, #10: Provide a point of context reference for the savings.
5. Economic Impact Statement: Where 'None' is stated, explain reasoning.
6. Public Input Statement, page 1, #3: Change 2017 to 2018.
7. Graduated Sanctions for Violations of Probation, page 2 of 3, #4(a)(i): Define 'EPICS'.

Administrative Procedures – Economic Impact Statement

Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

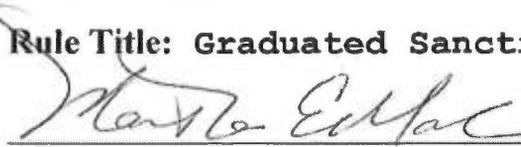
Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

Rule Title: Graduated Sanctions for Violations of Probation

 on 4/24/18.
(signature) (date)

Printed Name and Title:

Martha Maksym, Deputy Secretary, Agency of Human Services

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

Graduated Sanctions for Violations of Probation

2. ADOPTING AGENCY:

Agency of Human Services

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Vermont Judiciary; Defender General; Department for Children and Families; Department of State's Attorneys and Sheriffs; Victims and Victim's Services; Offenders; Offenders' Families.

It is not anticipated that this rule will have a significant economic impact. The DOC currently utilizes graduated sanctions for probationers; this rule expands the use of graduated sanctions to youthful offenders. It is anticipated that DOC may realize savings from the ability to continue to supervise probationers and youthful offenders in the community after probation violations, rather than incarcerate them. However, these savings do not reduce the cost of running an instate facility as these costs are fixed. Any savings realized would be seen in the reduction of contracted out-of-state incarceration costs, which currently are \$72 per bed per day.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:

None

5. COMPARISON:

COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

None

6. FLEXIBILITY STATEMENT:

COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

None

7. GREENHOUSE GAS IMPACT: EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:

a. TRANSPORTATION —

IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., “THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS” OR “LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE.”):

None

b. LAND USE AND DEVELOPMENT —

IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., “THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT.” OR “THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND /OR AGRICULTURAL LAND.”):

None

c. BUILDING INFRASTRUCTURE —

IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., “THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS.” OR “THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION.”):

None

d. WASTE GENERATION / REDUCTION —

IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., “THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS.” OR “AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A ‘METHANE TO ENERGY PROJECT.’ ”):

None

e. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

None

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

Graduated Sanctions for Violations of Probation

2. ADOPTING AGENCY:

Agency of Human Services

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Department of Corrections (DOC) has advised the Department for Children and Families (DCF) of the rule and has sent DCF a draft copy of the rule.

A public hearing was held on February 21, 2018.

Each correctional facility made an announcement to all inmates that a copy of the proposed rule was available for their review and comment in the law libraries. A printed copy of the proposed rule was kept in all DOC law libraries and made available to inmates upon request to the Inmate Law Librarian, Inmate Legal Assistant, or any other law library staff. A comment form was made available so that inmates could submit their comments.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The DOC notified the following stakeholders of the rule's filing and requested comments on its language:

Karen Vastine - DCF

Leslie Wisdom - DCF

Theresa Lay-Sleeper - DCF

Judge Brian Grearson - Judiciary

Theresa Scott - Judiciary

Dawn Sanborn - Judiciary

Judith Terp - Judiciary

Marshall Pahl - Defender General's Office

James Pepper - State's Attorney and Sheriffs

Ashley Hill - State's Attorney and Sheriffs

Lindy Boudreau - DCF

Administrative Procedures – Scientific Information Statement

Instructions:

In completing the Scientific Information Statement, an agency shall provide a brief summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

This form is only required when a rule relies on scientific information for its validity.

1. TITLE OF RULE FILING:

2. ADOPTING AGENCY:

3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:

Administrative Procedures – Incorporation by Reference Statement

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and why the full text was not reproduced within the rule.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Copies of incorporated materials will be held by the Office of the Secretary of State until adoption or formal withdrawal of the rule is complete. Materials will be returned to the agency upon completion of the rule.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I certify that the text of the matter incorporated has been reviewed by an official of the agency. I further certify that the agency has the capacity and intent to enforce the rule entitled:

Rule Title:

_____, on _____
(signature) (date)

Printed Name and Title:

1. TITLE OF RULE FILING:

2. ADOPTING AGENCY:

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

4. OBTAINING COPIES: (*EXPLAIN HOW THE MATERIAL(S) CAN BE OBTAINED BY THE PUBLIC, AND AT WHAT COST*):

5. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

6. REASONS FOR INCORPORATION BY REFERENCE (*EXPLAIN WHY THE AGENCY DECIDED TO INCORPORATE THE MATERIALS RATHER THAN REPRODUCE THE MATERIAL IN FULL WITHIN THE TEXT OF THE RULE*):

7. THE INCORPORATED MATERIALS HAVE BEEN REVIEWED BY THE FOLLOWING OFFICIAL OF THE AGENCY:

8. THE ADOPTING AGENCY REQUESTS THAT ALL COPIES OF INCORPORATED MATERIALS BE RETURNED TO THE AGENCY .

Run Spell Check

Graduated Sanctions for Violations of Probation

AUTHORITY

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

PURPOSE

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

DEFINITIONS

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

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

GRADUATED SANCTIONS

Applicability

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

Imposition of Graduated Sanctions

1. When considering whether to impose graduated sanctions in response to non-compliant behavior, DOC staff will review:
 - a. The seriousness of the violation and the probationer's or youthful offender's overall behavior, including the risk of harm the new behavior presents to the community, victim, and probationer or youthful offender;
 - b. The likelihood the proposed sanction will ensure the probationer's or youthful offender's compliance with probation conditions and understanding of the impact of the non-compliant behavior; and
 - c. The probationer's or youthful offender's history of compliance with probation conditions.
2. Graduated sanctions shall be commensurate with the severity of the non-compliant behavior. Repeated non-compliant behavior will result in progressively restrictive graduated sanctions or the filing of a probation violation complaint.
3. Graduated sanctions may include risk control and/or risk-reduction strategies designed to provide a proportionate consequence for non-compliant behavior.
 - a. Risk control strategies deter non-compliant behavior through the imposition of reprimands, warnings, or more restrictive requirements; and
 - b. Risk-reduction strategies promote compliant behavior by providing the probationer or youthful offender information, education, training, counseling, or treatment.
4. Types of graduated sanctions:
 - a. Level 1 sanctions are the least restrictive sanctions and focus on discussions between the probationer or youthful offender and the supervising ~~Correctional Services Specialist~~ Probation and Parole Officer. These sanctions include, but are not limited to:
 - i. Graduated sanction thinking report or another Effective Practices in Community Supervision (EPICS) intervention; other intervention that addresses criminal thinking/behavior;¹
 - 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;
 - iv. Increased reporting as directed for alcohol use monitoring, drug testing, employment search, or other related activity;

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

- v. Activities to address risk behaviors, such as self-help;
 - vi. ~~Less~~ 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:
 - a. i. first technical violation; or
 - b. 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):
 - a. i. commits a risk-related technical violation; or
 - b. ii. commits a technical violation within 90 days ~~after a~~ of a previous violation.
 - c. Level 3 sanctions shall be imposed when a probationer or youthful offender commits a technical violation and:
 - a. i. is being supervised because of a conviction of a crime listed in 13 V.S.A. § 5301(7); or
 - b. 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.

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.¹
 - ii. Apology (verbal or written);
 - iii. Verbal warning;
 - iv. Relapse prevention plan;
 - v. Written essay/educational activities; and
 - vi. Increased staff contact 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;
 - 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;

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

- 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 of 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.