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## The FAQs about Probation in Virginia

Navigating the Virginia criminal justice system can be scary and frustrating for anyone, even those who have some familiarity with the whole process. As understanding all of the probation requirements can be challenging and difficult, below are some of the most frequently asked questions related to probation in Virginia.

- 1. What is probation?** Probation is an alternative to a jail sentence, which offers the defendant a chance to serve their time under the supervision of a probation officer.
- 2. What is unsupervised probation? When can violations occur?** Unsupervised probation is a period of time when you **do not report to a probation officer**. A standard term of unsupervised probation is to be of good behavior and obey all laws and ordinances, so if you get even a speeding ticket you could trigger a violation of probation.
- 3. I recently took a plea deal for a felony charge and noticed that I waived my 4<sup>th</sup> amendment rights, giving law enforcement the ability to search me or my property any time. Is this normal?** Giving up one's 4th amendment right is **fairly standard with a Spotsylvania plea agreement** on a felony. The actual wording is that you "waive [your] Fourth Amendment Rights against unreasonable searches and seizures at any time and by any law enforcement officer during" the period of probation. The judge would have asked you a lot of questions to make sure that you fully understood the rights you were giving up or "waiving". A conviction would only have been entered if the judge was satisfied with your answers. This condition may be overly broad so if you are searched and something illegal is found on you or in your place of residence, you should say nothing and speak to a lawyer right away.
- 4. I was put on probation in November and in December I got in trouble again. I'm eight months pregnant and just received a notification that I have a probation revocation meeting is scheduled a week after I give birth. What will happen to my baby if I go to jail?** It is best to speak to an attorney about your situation as they will be in a much better position to not only advise you on what can be done but also what should be done in the event that you go to jail. In Virginia, **if a new mother does not make provisions for her baby** to be cared for and goes to jail, social services will step in.
- 5. If I call to reschedule a probation appointment because I am sick, can they violate me?** Your probation officer may require a **medical certificate confirming you are sick** but you really need to speak to your attorney and obtain confirmation that you won't be violated based on the specifics of your case.
- 6. I have been on probation for three years without problems, but I was recently charged with felony grand larceny. Will I get jail time for my first probation violation?** You do not need to be convicted of an offense while on probation to have a revocation of your suspended sentence; *Marshall v. Commonwealth*, 202 Va. 217 (1960). You should contact the **attorney who represented you on the original charge** right away!

- 7.** Can I go to jail for violating my probation with a speeding ticket? A term of your probation is to be of good behavior and **obey all laws and ordinances**. It is important to speak to the attorney who represented you on the original criminal charge for advice.
- 8.** I just looked online and there is a charge for probation violation with a status of "fugitive file". What does this mean? A "fugitive file" means an arrest warrant was issued for an alleged probation violation and it is a way to get you to court when there is no current address for you. It also means that that you will be taken into custody for the outstanding warrant. Regardless of whether you are taken into custody in court or at the probation office, the **probation officer will be notified** as it's their job to keep track of new charges and convictions.
- 9.** If I have thirty hours of community service and can't complete it because of a medical condition, what do I do? My experience with judges in these situations is that unless you are hospitalized, **there is some form of community service which can be done** regardless of a medical condition. Maybe you can do computer work (like sending out e-mails) for a charitable organization, if your medical condition does not interfere with you using a computer. Go online to the county government website, click on charitable organizations and contact them with ideas of your own regarding how you can provide a free service to their organization while completing your community service hours at the same time.
- 10.** My probation was transferred from Pennsylvania to Virginia. Do I have to take a polygraph in Virginia when it isn't a condition of my probation from Pennsylvania? When you transferred your probation to Virginia, you came under the control of the VA probation office. This means that you are now **bound by any new conditions your Virginia probation officer feels should be added**. Requiring a person on probation to take a lie detector is not common, but it is also not unheard of. If this is a serious concern for you, I suggest you retain a local criminal defense attorney in Virginia to look into the probation request, in light of your specific case.
- 11.** I transferred my probation from one county to another. Two months went by and I left messages with the new county and when I finally talked to someone, I was told to come in. When I went to their office, I received a probation violation for miscommunication on my transfer. What did I do wrong? In my experience, when transferring to another probation office (whether in state or out of state), a face-to-face appointment is required. I tell my clients that if they transfer and a meeting is not set up right away, they leave messages and if not returned, **contact the original probation office for help**. In your case, you should immediately contact your attorney who helped you with the underlying charge. If possible, print your phone screens indicating the efforts you made to contact your new probation office.
- 12.** Can my probation officer make me sign a release covering everything my therapist and I discuss, given there are no new charges or violations? A court order can include phrases such as "and follow any treatment as recommended by probation" but that **does not include a release of confidential notes between you and your therapist**. There may be a HIPPA issue here too, so it is recommended you either go back to the attorney who represented you or retain another experienced criminal defense attorney to review the court order, and speak to your probation officer. You don't want to make any missteps while on probation.
- 13.** I have a probation violation for failure of a drug screen, which is my third violation. How will this affect my 5 years suspended time? There is a good chance you will not be released without a bond hearing and that you will get all your backup time, despite there being guidelines in your case. **Guidelines are discretionary** in Virginia state court and not mandatory, so a judge can go above them (and frequently do when there are prior violations).

- 14.** Is it against the law to move in with a girlfriend in another state while on probation? She is not on probation and has never been in trouble either. Check with your probation officer **before moving out of state** to ensure that your case is closed since you have completed your probation. There is no law against living with someone, rather than marrying them. However, be sure that your girlfriend is over age of 18.
- 15.** I have been on probation since 2010 and will remain on probation until I pay all restitution. My work wants to send me one state away to head up a new location. While I was told by probation I can only leave for a total of 45 days, I need to be gone for a year for this job. What should I do? Speak to an attorney before speaking to your probation officer as a lawyer can look at the terms of your original court order and may be able to bring a post-sentence motion to amend a residency requirement. **Do not simply decide to move out of state** because then you will risk being violated.
- 16.** Can I leave the country for a week while on unsupervised probation? Unless the judge specifically stated that you had to **remain within the state** (which is unlikely), there should be no travel restrictions on you.
- 17.** Can I leave the country for vacation while on supervised probation? You need to ask yourself, why would you even **risk a violation if a condition of your probation** is to remain in the state? Instead of violating your supervised probation, speak to your probation officer about being able to leave for vacation on specified dates.
- 18.** How can I pay a court ordered restitution fine of \$4,000, when I don't have the money? Since restitution generally becomes a condition of your probation, you will be in violation of your probation if you do not at least make regular payments. If it is court ordered as a lump sum or even monthly payments, many courts will let you go back before them and amend the monthly amount to be paid, to fit your financial circumstances. In this situation, **speak to your probation officer**.
- 19.** If my probation officer recommends that probation should end early, will the judge most likely grant it? You are in a good position with your POs recommendation; however, you would be **even better off having a local criminal defense attorney** representing you in this situation as they will be familiar with any objections the judge might have and prepare responses to those objections, to increase your change of success.
- 20.** I finished all probation requirements for a drug conviction and my PO said she is sending all of my paperwork over to the courts. What happens next? How long will court be? Am I done drug testing? You should receive a notice from the court indicating your next court date. If you have to go to court, you wait for your name to be called and then the Judge will dismiss the charge. The **actual dismissal takes seconds**; how many people are in court that day will determine how long you have to wait before your name is called. Once the Judge dismisses the charge, you will then be **done with all drug testing**.

This Guide does not constitute legal advice and is meant for information purposes only. Information provided is current as of April 2016 and is subject to legislative change at any time. The author of this Guide is not responsible for providing updates when legislative changes occur.