

Keep People Safe & Improve Lives
**Swift and Certain (SAC) Count &
Underlying 21 Designation**



The Department of Corrections (DOC) is seeking statutory changes to improve the process for sanctioning individuals who commit violations of conditions of community custody. This request will result in sanctions for violation behavior being guided by the behavior and the individual’s risk need and responsivity factors rather than a rigid violation count.

Issue

SAC Count – Under current law, an individual’s first low-level violation while on community custody can result in the imposition of a non-confinement sanction, and subsequent low-level violations may be sanctioned to no more than three days confinement. Statute requires that after an individual commits five low-level violations, each subsequent low-level violation must be considered a high-level violation addressed through a DOC hearing and subject to a sanction of up to 30 days in jail. These counting rules apply regardless of the seriousness of the violation, the impact jail confinement will have on the individual’s stability in the community, and the likelihood that the sanction will prevent future violation behavior.

Underlying 21 – Current law includes additional requirements for addressing violations that constitute new crimes by individuals on supervision for one of 21 underlying offenses (“Underlying 21”) listed in statute. These requirements increase complexity for staff and require sanctions that are not based on the violation behavior.

Proposed Changes

This proposal aligns with the principles of Swift and Certain (SAC) and risk-need-responsivity by allowing sanctions for low-level violations to be guided by the violation behavior and the individual’s unique risk, needs, and responsivity factors rather than a rigid SAC count requirement.

- Removes language regarding responses to violation behavior that differentiates sanctions based solely on the number of low-level violations, creating a system that is fair and just given the personal liberty impacts.
 - DOC will continue to define low level and high level violations in policy, as well as factors that may mitigate or aggravate a specified response. Violation level will be based on risk and the seriousness of the behavior. Clear definitions promote consistent responses to violations.
 - DOC will outline in policy a range of allowable sanctions, which will include both confinement and non-confinement options consistent with RCW 9.94A.633.
 - Community Corrections Officers will continue to impose sanctions for low level violations. High level violations will continue to be addressed through a DOC hearing/review, with sanctions imposed by the presiding Hearing Officer.
- Removes language associated the Underlying 21 requirements.
 - DOC will address violation behavior for this population consistent with the process for other

Advantages to Proposed Changes

SAC Count – Removing the SAC count shifts the focus to the individual’s risk and violation behavior. Sanctions would be more effective at influencing positive behavior change when guided by the violation behavior and the individual’s unique risk, needs, and responsivity factors.

Allowing sanctions to be selected from a range of options will give staff the ability to identify the most appropriate response to:

- Target identified risk or need areas
- Limit disruption to prosocial activities/influences (e.g., employment, programming, treatment)
- Address criminogenic need through a meaningful and impactful sanction
- Choose sanctions commensurate with the behavior

Fact:

Research indicates that the *certainty* of a sanction and the *swiftness* with which it is applied have greater influence to change behavior than the severity of a sanction.

Underlying 21 – Removing the Underlying 21 designation allows consistent treatment of violations for all individuals. It eliminates the complexity associated with ensuring a unique response to a small portion of violations committed by a small subgroup of individuals. It also resolves the inconsistencies within statute that govern violation response for these individuals.

Underlying Felony Offenses – (does not include Interstate Compact, Insanity Acquittal, or Less Restrictive Alternative)

- Assault 1 (RCW 9A.36.011)
- Assault of a child 1 or 2 (RCW 9A.36.120 and RCW 9A.36.130)
- Burglary 1 (RCW 9A.44.083)
- Child Molestation 1 (RCW 9A.44.083)
- Commercial sexual abuse of a minor (RCW 9.68A.100), or Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
- Dealing in depictions of a minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Homicide by abuse (RCW 9A.32.055)
- Indecent liberties by forcible compulsion (RCW 9A.44.100 (1)(a))
- Indecent liberties with a person incapable of consent (RCW 9A.44.100 (1)(b))
- Kidnapping 1 (RCW 9A.40.020)
- Murder 1 or 2 (RCW 9A.32.030 and RCW 9A.32.050)
- Rape 1 or 2 (RCW 9A.44.040 and RCW 9A.44.050)
- Rape of a child 1 or 2 (RCW 9A.44.073 and RCW 9A.44.076)
- Robbery 1 (RCW 9A.56.200)
- Sexual exploitation of a minor (RCW 9.68A.040)
- Vehicular homicide while under the influence of intoxicating liquor or any drug (RCW 46.61.520 (1)(a))