



Community Custody Terms: Violation Response

2021 Report to the Legislature

As required by [RCW 72.09.312](#)

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This Department of Corrections report to the Legislature is directed by [RCW 72.09.312](#) and contains information on violations of community custody conditions and the sanctions imposed for violations under [RCW 9.941A.737](#).

Contents

Foreword.....	2
Executive Summary.....	3
Background	3
Implementation of SHB 2417	4
COVID-19 Impacts	4
Governor Proclamation 20-35	5
Contact Standards and Supervision Activities	5
Jail Bed Availability.....	5
SAC Violation and Sanction Responses by Region	5
Violation Categories	6
SAC Sanction Categories	8
Confinement Sanctions.....	9
Nonconfinement Sanctions.....	10
Elevated Violations.....	10
Warrants Issued for Violations.....	11
Underlying 21 Offenses.....	11
Attachment A.....	12
Attachment B.....	13

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Foreword

“The department shall track and collect data and information on violations of community custody conditions and the sanctions imposed for violations under [RCW 9.94A.737](#), which includes, but is not limited to, the following:

(a) The number and types of high-level violations and the types of sanctions imposed, including term lengths for confinement sanctions;

(b) The number and types of low-level violations and the types of sanctions imposed, including nonconfinement sanctions, confinement sanctions, and term lengths for confinement sanctions;

(c) The circumstances and frequency at which low level violations are elevated to high level violations under [RCW 9.94A.737\(2\)\(b\)](#);

(d) The number of warrants issued for violations;

(e) The number of violations resulting in confinement under [RCW 9.94A.737\(5\)](#), including the length of the confinement, the number of times new charges are filed, and the number of times the department received written notice that new charges would not be filed;

(f) Trends in the rate of violations, including the rate of all violations, high level violations, and low level violations; and

(g) Trends in the rate of confinement, including frequency of confinement sanctions and average stays.

The department shall submit a report with a summary of the data and information collected under this section, including statewide and regional trends, to the governor and appropriate committees of the legislature by November 1, 2021, and every November 1st of each year thereafter.”

[RCW 72.09.312](#)

Executive Summary

Research has indicated that the certainty of a sanction and the swiftness with which it is applied has greater influence to change behavior than the severity of a sanction. Substitute House Bill (SHB) 2417 allowed for sanctions to be selected from a range of options, giving 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; and,
- Choose sanctions commensurate with the behavior.

In fiscal year 2021 (July 1, 2020 through June 30, 2021), there were 29,135 violations with approximately 50 percent categorized as high-level and 50 percent categorized as low-level. Approximately 95 percent of high-level violations and 19 percent of low-level violations resulted in a confinement sanction. The remaining violations were addressed with a nonconfinement sanction, such as a structured thinking report.

The initial goal of the shift from a rigid standardized response to an individual's violation behavior was to influence positive behavior change more effectively. The COVID-19 pandemic significantly altered department operations, with a focus on public health and ensuring the health and safety of departmental staff, supervised individuals and the community. As a result, limited conclusions can be drawn from the initial FY 2021 data provided in this report.

Background

Community custody is the portion of a person's criminal sentence served in the community under the supervision of the Department of Corrections (DOC) following, or in lieu of, a term of confinement in a state correctional facility or local county jail.

The term of community custody is ordered by the courts and varies depending upon the crime of conviction. While on community custody, a person is subject to conditions imposed by both the court and the department, and in some cases, the Indeterminate Sentencing Review Board (ISRB). If a person violates those conditions, they may be subject to sanctions.

In 2012, new requirements for sanctioning violations of community custody were established for individuals under the department's jurisdiction. These are commonly referred to as "swift and certain" (SAC) sanctions. The SAC sanctions generally rely upon immediate and brief confinement sanctions in lieu of long-term confinement sanctions. The department is required to classify types of violations as "low level" or "high level," as well as establish aggravating and mitigating factors in policy.

In 2020, the legislature amended the SAC statute to: allow for nonconfinement sanctions for low-level violations; remove the requirement that after an individual commits five violations under community custody, each subsequent violation must be addressed through a departmental violation hearing and is subject to a sanction of up to 30 days in jail or revocation/return; and amend that individuals on supervision for one of 21

underlying offenses whose violation constitutes a new crime may be released from confinement when a prosecuting attorney provides written notice to the department that charges will not be filed.

The Community Corrections Division supports the department's mission of improving public safety by positively changing lives by helping improve lives today for better communities tomorrow. The method by which the department supervises individuals in the community has continued to evolve over time – lean budgets, public policy changes, rigorous research, advancement of the social sciences and critical incidents in the community have shaped what community-based corrections looks like today.

Implementation of SHB 2417

Department policy [DOC 460.130 Response to Violations and New Criminal Activity](#) was revised to incorporate the amendments to the SAC statute. A list of approved nonconfinement sanctions for low-level and mitigated high-level violations was added to the policy. Three (3) new aggravating factors were also added to elevate low-level violations to a high-level response for individuals with five (5) prior violation responses. Additional revisions were made to improve processes, create efficiencies and incorporate current practices.

Updates were also required for the department's primary data system, Offender Management Network Information (OMNI), which is used to track data on incarcerated and supervised individuals, including violation responses. The system had been programmed to require a high-level response for fifth and subsequent violations unless the process was mitigated, which needed to be removed based on the statute change. The system also loads allowable sanctions and aggravating factors, so the new approved options needed to be added.

Mandatory training on the policy and system changes was conducted the first two weeks of August 2020 for all division community corrections officers (CCOs) and supervisors. The training was instructor-led and conducted in a virtual format due to in-person meeting restrictions in place as part of the COVID-19 response. The training material has since been incorporated into the department's Community Corrections Officer Academy (CCOA) for new employee training.

The system changes launched the evening of August 27, 2020. The revised policy took effect the following day, August 28, 2020, to ensure the system updates were in place for staff to immediately apply the policy changes.

A formal quality assurance process was then developed to support fidelity and verify adherence to the policy updates, with an initial focus on low-level violation responses. The process includes review of a random ten percent (10%) sample of low-level processes to identify and recognize the good work of division staff adhering to the policy changes and to provide additional coaching where further support is needed. Reviews began in February 2021 and were suspended in June 2021 to accommodate the launch of SHB 2393 (2020), introducing supervision compliance credit (SCC) in the community.

COVID-19 Impacts

Throughout the COVID-19 pandemic, the department has been working closely with the Department of Health (DOH), the Office of Financial Management (OFM), State Human Resources Division, the State Emergency

Management Division and other state agencies in developing plans to maintain the health and safety of departmental employees, those under supervision and our communities.

In March 2020, in response to directives from the Governor and the Secretary, CCD made some significant changes in how it monitors and supervises individuals in the community. These temporary changes in supervision had a direct and immediate impact to the department's violation response.

Governor Proclamation 20-35

On March 30, 2020, Governor Inslee issued Proclamation [20-35](#), allowing for early implementation of SHB 2417. This proclamation waived and suspended strict compliance with [RCW 9.94A.737\(2\)\(b\)](#), requiring the arrest and imprisonment of low-level community custody offenders to increase space in jails and correctional institutions and allow for more adequate social distancing.

Contact Standards and Supervision Activities

CCD has focused supervision efforts on those cases deemed highest risk or posing a substantial threat to community safety. Field contacts were only conducted for a specified list of high-risk individuals within designated supervision categories and for investigations. All other field work was significantly reduced and/or suspended.

The department temporarily suspended: all warrant sweeps and apprehension activities that were not deemed a significant public safety risk; responses to law enforcement to meet for a transfer of custody following a law enforcement-initiated arrest; and hospital watches at the request of law enforcement.

Jail Bed Availability

The COVID-19 pandemic further reduced already-limited access to county jail beds for detaining supervised individuals sanctioned to confinement. Jail facilities were also implementing their own modified operations to address staffing shortages and maintain adequate social distancing within their populations.

SAC Violation and Sanction Responses by Region¹

Tracking data pertaining to individuals who violate the conditions of their community supervision and identifying trends has been particularly challenging due to the complexities within the violator process, ongoing changes in policies and processes, and data limitations.

Attachment A outlines, in response to requirements (1) (a) and (b), the SAC responses to violations. For fiscal year 2021 (July 1, 2020 through June 30, 2021), there were 29,135 violation responses, with approximately 50 percent categorized as high level and 50 percent categorized as low level.

¹ Region reflects the department's three operating regions for Community Corrections: East, Northwest (NW), and Southwest (SW). East Region includes Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima counties. NW Region includes Clallam, Island, Jefferson, King, San Juan, Skagit, Snohomish and Whatcom counties. SW Region includes Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Pierce, Skamania, Thurston and Wahkiakum counties.

Responses are listed as low-level when all the violations addressed in the response are low, or when all high-level violations addressed in the response have been mitigated. Responses are listed as high-level when one or more violation addressed in the response is high, or when all violations addressed in the response are low, but the response has been aggravated. In FY 2021, about 10 percent of the violation responses listed as high-level were aggravated responses for low-level violations.

Violation responses resulting in a confinement sanction are categorized as confinement. Violation responses resulting in one or more nonconfinement sanctions are categorized as nonconfinement.

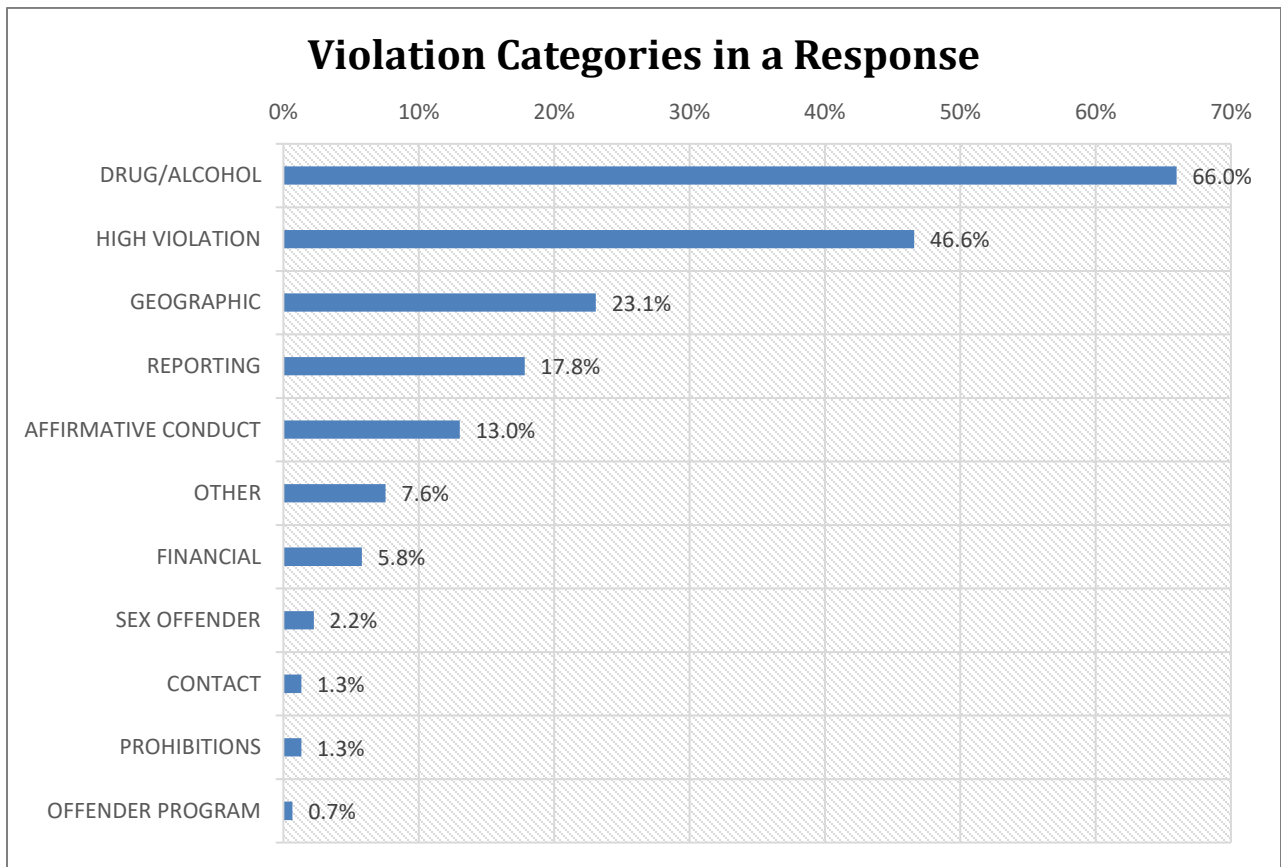
Attachment B shows, in response to requirement (1) (f), the percentage of the SAC eligible community supervision population that violated each month and the associated response level, by region, for fiscal year 2021. During the reporting period, on average approximately seven percent of SAC supervised individuals had one or more high-level violation process, approximately six percent had one or more low-level violation process, and less than one-half percent had both high-level and low-level processes in a given month.

The COVID-19 pandemic had impacts on violation discovery and response, so the FY 2021 data should not be viewed as typical for the SAC eligible population. Community measures taken to combat the spread of COVID-19 likely had effects on the movement, access and actions of supervised individuals in the community, potentially affecting violation rates. Additionally, the department and its criminal justice partners implemented modified operations to protect staff safety and public health during the pandemic, which likely resulted in fewer violations being discovered and addressed during the reporting period. As operations continue to resume to normalcy for the department and its criminal justice partners, and as community restrictions relax, violation responses will rise as behaviors change and agency responses resume to more typical operations.

Violation Categories

The chart below shows, in response to requirements (1) (a) and (b), the violations addressed in fiscal year 2021 by violation type. The violation categories overlap, as there can be multiple violations addressed in a single response. The percentages were calculated by dividing the number of responses containing a given violation category by the total number of responses.

All high-level violation behaviors are reflected in the “high violation” category. These are for violations listed in the “Behavior Accountability Guide (Attachment 1)” of departmental policy [DOC 460.130 Responding to Violations and New Criminal Activity](#).



The remaining violation categories reflect low-level violation behaviors:

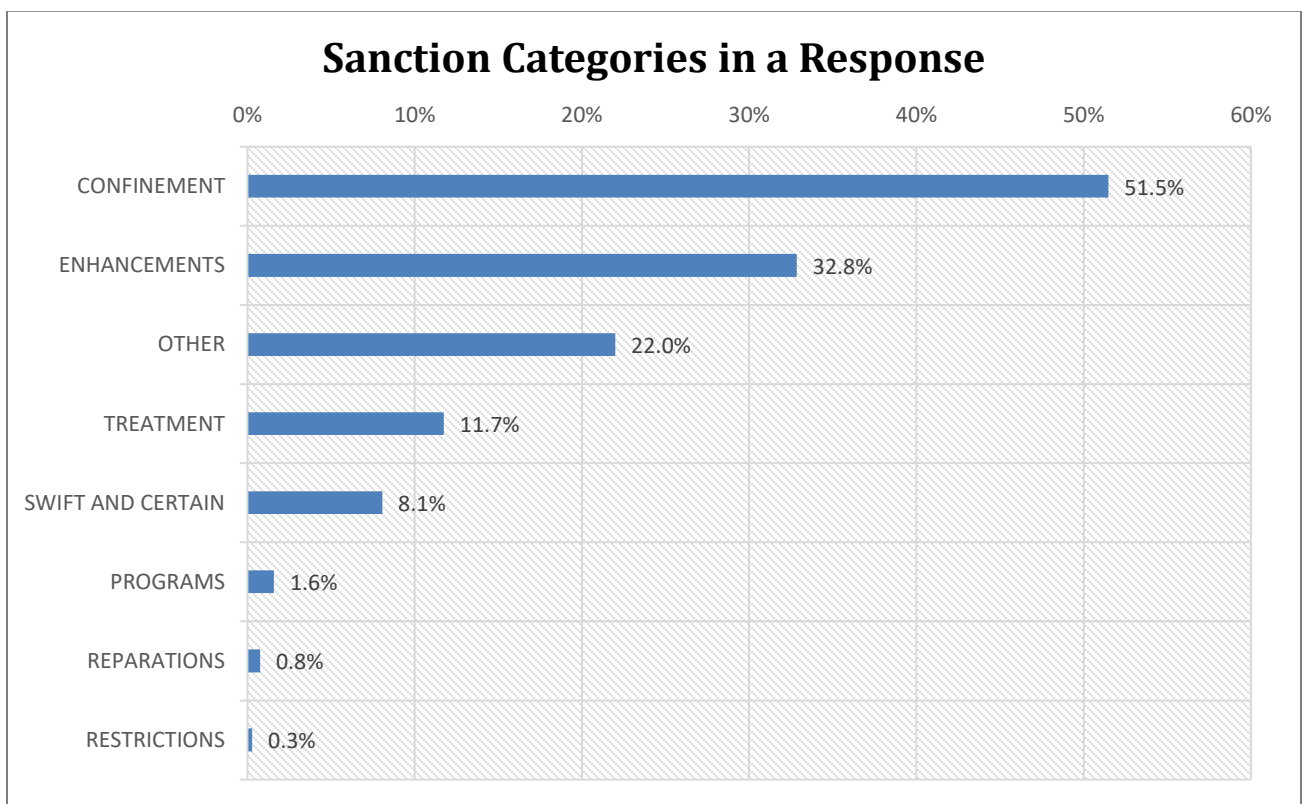
- “Drug/Alcohol” includes violations relating to prohibited substances, such as use/possession of controlled substances, interfering with the testing process, and failing to enter/comply with related treatment
- “Geographic” includes violations relating to prohibited locations/establishments and unauthorized changes in residence/employment
- “Reporting” includes violations relating to failure to report/absconding from supervision
- “Affirmative conduct” includes new law violations² as well as violations of failing to initiate/complete programming or treatment
- “Financial” includes non-payment of legal financial obligations or cost of supervision fees
- “Sex Offender” includes violations relating to conditions specific to individuals on supervision for a sex offense, such as failure to register or failure to comply with polygraph requirements or geographic restrictions
- “Contact” includes prohibited contact violations
- “Prohibitions” includes prohibited acts such as possessing drug/gang paraphernalia or taking unauthorized actions when CCO approval is required

² Excludes new law violations for individuals on supervision for one of 21 underlying offenses listed in the SAC statute. New law violations for that population are reflected in the “high violation” percentage, as the SAC statute specifies those violations must be addressed through a high-level violation process.

- “Offender Program” includes violations for failing to complete/participate in required programming
- “Other” captures various violations that do not align with the other violation categories, such as failing to complete original jail time, and violations that are unique to certain populations or responses, such as facility rule violations occurring while an individual is in confinement for a previous matter

SAC Sanction Categories

The chart below, in response to requirements (1) (a) and (b), shows the SAC sanction categories for fiscal year 2021. The sanction categories overlap, as there may be more than one sanction in a single response if the violation is addressed through a low-level process and nonconfinement sanctions are imposed. The percentages were calculated by dividing the number of responses containing a given sanction category by the total number of responses.



There are two categories for confinement sanctions:

- “Confinement” represents total confinement in a jail or departmental violator facility of up to 30 days, imposed through a departmental violation hearing by a hearing officer in the department’s Hearing Unit, which resides outside of the Community Corrections Division. The sanction is imposed for a high-level or aggravated low-level violation response.

- “Swift and certain” represents total confinement in a jail or departmental violator facility of up to three days. The sanction is imposed for a low-level or mitigated high-level violation response.

The remaining categories are nonconfinement sanctions for low-level or mitigated high-level violation responses:

- “Enhancement” sanctions constitute additional supervision activities, such as increased reporting or urinalysis/breathalyzer testing and structured thinking reports.
- “Treatment” sanctions include scheduling evaluation for treatment (e.g., substance use disorder, domestic violence, mental health, anger management, etc.).
- “Programs” sanctions include referrals for employment or educational programming, participating in a sober support group, or scheduling to participate in cognitive behavior interventions or other programming.
- “Reparations” include service-oriented sanctions like work crew and community service, or a participation in a victim or DUI panel. Restrictions include curfew and travel/geographic restrictions.
- “Other” includes various sanction options unique to certain populations or responses, such as facility sanctions for violations occurring while an individual is in confinement for a previous matter, as well as instances when no sanction is imposed.

Confinement Sanctions

Confinement is the only sanction imposed for high-level violation processes and remains a sanction option for low-level processes as well, and when combined it represented the highest percentage sanction imposed overall.

In fiscal year 2021, 59.5 percent of all violation responses resulted in a confinement sanction. Approximately 95 percent of high-level violations and 19 percent of low-level violations resulted in a confinement sanction. Confinement sanctions for high-level violations could not exceed 30 days per violation process during the reporting period, and confinement sanctions for low-level violation processes could not exceed three days. The table below breaks out, in further response to requirements (1) (a) and (b), the average number of days sanctioned to confinement each month, by region.

REGION	2020						2021						Average
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
EAST REGION	14.7	15.0	14.4	15.9	16.9	13.1	14.1	14.5	13.7	14.7	14.6	15.5	14.7
NW REGION	18.1	18.3	18.3	17.4	18.0	17.9	17.5	17.1	18.2	17.1	16.8	15.6	17.6
SW REGION	18.1	17.5	16.3	16.6	16.6	16.8	16.5	17.4	16.6	16.8	16.5	15.6	16.8
STATEWIDE	17.0	17.0	16.3	16.7	17.1	16.0	16.0	16.3	16.4	16.2	16.0	15.6	16.4

Nonconfinement Sanctions

A list of approved nonconfinement sanctions were added to departmental policy [DOC 460.130 Response to Violations and New Criminal Activity](#) as part of the implementation. Additional sanction options can be approved by a community corrections supervisor (CCS).

Common nonconfinement sanctions generally include daily reporting, increased urinalysis (UA)/breathalyzer (BA) testing and assignment to work crew or community service. However, during the reporting period, nonconfinement sanction options that limited in-person contact between staff and supervised individuals were common, such as writing a structured thinking report.

Elevated Violations

Prior to the 2020 amendment of the SAC statute, once an individual committed and was sanctioned for five (5) low-level violations, all subsequent low-level violations were to be addressed as high-level violations and subject to a confinement sanction of up to 30 days unless mitigated, per departmental policy. The statute no longer requires a high-level response for these subsequent violations, though allows the response to be elevated to a high level as outlined in departmental policy.

The department incorporated the process of elevating low-level violations into its existing process for aggravating low-level violations, per the SAC statute. Three (3) new aggravating factors were established to elevate a low-level violation to a high-level response for individuals with five (5) prior violation responses:

- Ongoing refusal to comply with case plan
- Refusal to comply with prior interventions to address the violation behavior
- Posing a significant risk to public safety while failing to comply with a departmental directive

The table below shows, in response to requirement (1) (c), the frequency at which low-level violation processes were elevated using one of these approved aggravating factors.

Elevating Factor	Count	Percent of Total High-Level Responses
Ongoing Refusal to Comply with Case Plan	135	0.9%
Refusal to Comply with Prior Interventions to Address the Violation Behavior	59	0.4%
Posing a Significant Risk to Public Safety While Failing to Comply with a Department Directive	19	0.1%
Total	213	1.4%

Warrants Issued for Violations

The table below shows, in response to requirement (1) (d), the departmental warrants issued for violations in FY 2021, by region, for the SAC eligible population, along with some additional populations as noted below.

REGION	WARRANT TYPE	COUNT
EAST REGION	COMMUNITY CUSTODY FAILURE TO REPORT	5,865
	MIS/MCC FAILURE TO REPORT	19
	EAST REGION Total	5,884
NW REGION	CCI ESCAPE	2
	COMMUNITY CUSTODY FAILURE TO REPORT	5,800
	MIS/MCC FAILURE TO REPORT	288
	NW REGION Total	6,090
SW REGION	CCI ESCAPE	3
	COMMUNITY CUSTODY FAILURE TO REPORT	8,127
	HOME DETENTION ESCAPE	2
	MIS/MCC FAILURE TO REPORT	176
	SW REGION Total	8,308
Grand Total		20,282

“MIS/MCC failure to report” includes warrants on both SAC-eligible misdemeanor community custody (MCC) causes as well as misdemeanor (MIS) causes that remain under court jurisdiction.

“CCI escape” represents warrants entered for community custody inmate (CCI) causes that began before SAC was implemented, however, upon apprehension, the related violations are addressed as high-level violations in a departmental violation hearing.

Apprehending supervised individuals with an active warrant often involves a collaborative effort between the department and local law enforcement. For supervised individuals who are known to pose a high risk to public safety, a referral is made to the department’s Community Response Unit (CRU) for assistance in locating and arresting the individual. CRU is comprised of teams of specialists, several of whom are assigned to a U.S. Marshals Service (USMS) task force. The primary mission of the USMS is to investigate and arrest, as part of joint law enforcement operations, individuals who have active warrants for their arrest.

Underlying 21 Offenses

[RCW 9.94A.737\(5\)](#) requires a heightened response to violations that constitute a new crime for individuals with certain underlying felony convictions listed in the statute, often referred to as the “underlying 21” or “U21” offenses. In these instances, the individual must be held in total confinement pending the sanction hearing and remain there until the sanction expires or the prosecuting attorney files charges or notifies the department in writing that charges will not be filed, whichever occurs first.

During the reporting period, in response to requirement (1) (e), no individual with any of the specified underlying felony convictions had a violation process addressed outlined in RCW 9.9A.737(5).

Attachment A –

The table below shows SAC responses to violations for fiscal year 2021 (July 1, 2020 through June 30, 2021), and is responsive to requirement (1) (a) and (b).

REGION	RESPONSE TYPE	HIGH-LEVEL			LOW-LEVEL			Grand Total
		CONFINEMENT	NON-CONFINEMENT	TOTAL	CONFINEMENT	NON-CONFINEMENT	TOTAL	
EAST REGION	LOW-LEVEL HEARING	680	206	886	647	25	672	672
	NEGOTIATED SANCTION	3,545	11	3,556	37	4	41	927
	STIPULATED AGREEMENT				220	1	221	3,777
	EAST REGION Total	4,225	217	4,442	904	4,130	5,034	9,476
NW REGION	LOW-LEVEL HEARING	1,725	169	1,894	775	13	788	788
	NEGOTIATED SANCTION	2,554	10	2,564	26	3	29	1,923
	STIPULATED AGREEMENT				59	1	60	2,624
	NW REGION Total	4,279	179	4,458	860	3,585	4,445	8,903
SW REGION	LOW-LEVEL HEARING	1,229	188	1,417	907	34	941	941
	NEGOTIATED SANCTION	4,165	9	4,174	30	2	32	1,449
	STIPULATED AGREEMENT				100		100	4,274
	SW REGION Total	5,394	197	5,591	1,037	3,942	4,979	10,570
OTHER	LOW-LEVEL HEARING	8	154	162	4		4	4
	NEGOTIATED SANCTION	16	2	18		2	2	164
	STIPULATED AGREEMENT							18
	OTHER Total	24	156	180	4	2	6	186
Grand Total		13,922	749	14,671	2,805	11,659	14,464	29,135

Attachment B -

The table below shows the percentage of the SAC eligible community supervision population that violated each month and the associated response level, by region for fiscal year 2021 (July 1, 2020 through June 30, 2021). This is responsive to requirement (1) (f).

REGION	RESPONSE LEVEL	2020						2021						Average
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
EAST REGION	HIGH-LEVEL ONLY	5.2%	5.4%	7.8%	6.6%	6.4%	6.7%	6.9%	6.8%	5.8%	6.3%	6.4%	7.9%	6.5%
	LOW-LEVEL ONLY	7.4%	7.6%	6.2%	6.2%	5.2%	6.1%	6.3%	6.6%	8.1%	7.8%	7.6%	7.9%	6.9%
	BOTH	0.2%	0.4%	0.5%	0.4%	0.3%	0.4%	0.4%	0.5%	0.5%	0.3%	0.4%	0.4%	0.4%
	NONE	87.1%	86.7%	85.5%	86.8%	88.1%	86.7%	86.4%	86.0%	85.6%	85.5%	85.6%	83.9%	86.2%
NW REGION	HIGH-LEVEL ONLY	5.7%	7.5%	7.8%	7.7%	7.1%	7.5%	6.1%	6.6%	8.2%	5.7%	6.8%	7.7%	7.0%
	LOW-LEVEL ONLY	6.3%	6.0%	6.3%	6.3%	5.8%	6.4%	6.2%	6.2%	7.3%	6.7%	6.6%	6.9%	6.4%
	BOTH	0.3%	0.3%	0.6%	0.6%	0.4%	0.4%	0.3%	0.5%	0.5%	0.4%	0.4%	0.7%	0.5%
	NONE	87.7%	86.2%	85.3%	85.4%	86.7%	85.7%	87.4%	86.7%	84.1%	87.2%	86.1%	84.6%	86.1%
SW REGION	HIGH-LEVEL ONLY	6.3%	7.3%	7.8%	7.7%	6.4%	6.5%	5.4%	5.7%	7.3%	6.5%	5.8%	6.4%	6.6%
	LOW-LEVEL ONLY	4.6%	4.6%	5.4%	5.8%	4.5%	5.6%	5.0%	5.6%	5.5%	5.5%	5.3%	6.4%	5.3%
	BOTH	0.2%	0.3%	0.3%	0.4%	0.2%	0.3%	0.3%	0.3%	0.4%	0.4%	0.3%	0.5%	0.3%
	NONE	88.9%	87.9%	86.5%	86.1%	89.0%	87.6%	89.3%	88.4%	86.7%	87.6%	88.7%	86.6%	87.8%
STATEWIDE	HIGH-LEVEL ONLY	5.8%	6.7%	7.8%	7.4%	6.6%	6.9%	6.1%	6.3%	7.1%	6.2%	6.3%	7.3%	6.7%
	LOW-LEVEL ONLY	6.0%	5.9%	5.9%	6.1%	5.1%	6.0%	5.7%	6.1%	6.8%	6.6%	6.4%	7.1%	6.1%
	BOTH	0.2%	0.3%	0.5%	0.5%	0.3%	0.4%	0.3%	0.4%	0.5%	0.4%	0.3%	0.5%	0.4%
	NONE	88.0%	87.0%	85.8%	86.1%	88.0%	86.8%	87.9%	87.2%	85.6%	86.8%	87.0%	85.1%	86.8%