

Swift and Certain Sanctions Act

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Intent.} For states to deliver swift, certain and proportionate responses to violations of probation and parole, they need an array of institutional and community-based sanctions as well as the authority to assign—and reassign—offenders to those sanctions. This Act requires community corrections agencies to adopt a set of graduated sanctions and rewards to respond to violations and compliance with the conditions of supervision. This Act also establishes authority for agencies to impose graduated sanctions and rewards through an administrative process.

Section 2. {Definitions.} In this title:

(1) “Agency” means:

- (A) The Department of Corrections or the state agency responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail; and
- (B) Any regional, local or county governmental agencies responsible for supervising individuals placed on probation by a court or serving a period of parole or post-release supervision from prison or jail, provided such agencies receive state funding.

(2) “Chief supervision officer” means the highest ranking field probation or parole administrator in each judicial circuit.

(3) “Court” means a court of record having original criminal jurisdiction.

(4) “Community supervision” means

- (A) The placement of a defendant under a continuum of programs and sanctions, with conditions imposed by a court for a specified period during which:
 - (i) criminal proceedings are deferred without an adjudication of guilt;
 - (ii) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part; or
- (B) The placement of an individual under a continuum of programs and sanctions after release from prison or jail, with conditions imposed by the releasing authority for a specified period.

(5) “Supervision officer” means a person appointed or employed by the Agency to supervise individuals placed on community supervision.

(6) “Supervised individual” means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail.

(7) “Graduated sanction” means any of a wide range of non-prison offender accountability measures and programs, including, but not limited to, electronic supervision tools; drug and alcohol testing or monitoring; day or evening reporting centers; restitution centers; forfeiture of earned compliance credits; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to supervision officers; community service or work crews; secure or unsecure residential treatment facilities or halfway houses; and short-term or intermittent incarceration.

(8) “Positive reinforcement” means any of a wide range of rewards and incentives, including but not limited to awarding certificates of achievement, reducing reporting requirements, deferring a monthly supervision fee payment, awarding earned compliance credits, removing supervision conditions such as home detention or curfew, or asking the offender to be a mentor to others.

Section 3. {Policy on Community Supervision.} It is the policy of this state that supervised individuals shall be subject to:

(1) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community; or

(2) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

Section 4. {System of Graduated Sanctions.}

(1) The Agency shall, by [January 1, 201X], adopt a single system of graduated sanctions for violations of conditions of community supervision. The system shall set forth a menu of presumptive sanctions for the most common types of supervision violations, including but not limited to: failure to report; failure to pay fines, fees, and victim restitution; failure to participate in a required program or service; failure to complete community service; violation of a protective or no contact order; and failure to refrain from the use of alcohol or controlled substances. The system of sanctions shall take into account factors such as the severity of the current violation, the supervised individual’s previous criminal record, the number and severity of any previous supervision violations, the supervised individual’s assessed risk level, and the extent to which graduated sanctions were imposed for previous violations. The system also shall define positive reinforcements that supervised individuals will receive for compliance with conditions of supervision.

(2) The Agency shall establish by rules and regulations an administrative process to review and approve or reject, prior to imposition, graduated sanctions that deviate from those prescribed.

(3) The Agency shall establish by rules and regulations an administrative process to review graduated sanctions contested by supervised individuals under Section 6 of this Act. The review shall be conducted by an impartial Agency employee or representative who has been selected, appointed and trained to hear cases regarding graduated sanctions for violations of supervision conditions.

Section 5. {Conditions of Community Supervision.} For individuals placed on probation,

the judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may impose as a condition of community supervision that the Agency supervising the individual may, in accordance with Section 6 of this Act, impose graduated sanctions adopted by the Agency for violations of the conditions of community supervision.

Section 6. {Authority to Impose Graduated Sanctions.}

(1) Notwithstanding any rule or law to the contrary, the Agency may:

(A) Modify the conditions of community supervision for the limited purpose of imposing graduated sanctions; and

(B) Place a supervised individual who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for a period of not more than [five] days consecutively, and not more than [30] days in any one calendar year.

(2) A supervision officer intending to modify the conditions of community supervision by imposing a graduated sanction shall issue to the supervised individual a notice of the intended sanction. The notice shall inform the supervised individual of the technical violation or violations alleged, the date or dates of the violation or violations, and the graduated sanction to be imposed.

(3) The imposition of a graduated sanction or sanctions by a community supervision officer must comport with the system of graduated sanctions adopted by the Agency under Section 4 of this title. Upon receipt of the notice, the supervised individual shall immediately accept or object to the sanction or sanctions proposed by the officer. The failure of the supervised individual to comply with a sanction shall constitute a violation of probation, parole or post release supervision. If the supervised individual objects to the imposition of the sanction or sanctions, the individual is entitled to an administrative review to be conducted by the Agency within five days of the issuance of the notice. If the Agency affirms the recommendation contained in the notice, then the sanction or sanctions shall become effective immediately.

(4) If the graduated sanction involves confinement in a correctional or detention facility, confinement must be approved by the chief supervision officer, but the supervised individual may be taken into custody for up to [four] hours while such approval is obtained. If the supervised individual is employed, the supervision officer shall, to the extent feasible, impose this sanction on weekend days or other days and times when the supervised individual is not working.

(5) A sanction that confines a supervised individual in a correctional or detention facility for a period of more than [five] consecutive days, or extends the term of community supervision, may not be imposed as a graduated sanction, except pursuant to an order of the court or the releasing authority.

(6) A notice of a graduated sanction may not be issued for any violation of probation, parole or post-release supervision which could warrant an additional, separate felony charge. Notwithstanding this, a notice of a graduated sanction may be issued for a positive drug test.

(7) Upon successful completion of a graduated sanction or sanctions, a court may not revoke the term of community supervision or impose additional sanctions for the same violation.

(8) If a supervision officer modifies the conditions of community supervision by imposing a graduated sanction, the officer shall:

- (A) Deliver a copy of the modified conditions to the supervised individual;
- (B) File a copy of the modified conditions with the sentencing court or releasing authority; and
- (C) Note the date of delivery of the copy in the supervised individual's file.

Section 7. {Monitoring Graduated Sanctions.} The chief supervision officer shall review confinement sanctions recommended by supervision officers on a quarterly basis to assess any disparities that may exist among officers, evaluate the effectiveness of the sanction as measured by the supervised individuals' subsequent conduct, and monitor the impact on the Agency's number and type of revocations for violations of the conditions of supervision.

Section 8. {Severability Clause.}

Section 9. {Repealer Clause.}

Section 10. {Effective Date.}

