RE: Alternative Legislative Approaches to Address Technical Violations of Community Supervision

The Minnesota Department of Corrections has expressed concerns regarding the bill as currently drafted. Key considerations raised include the following:

- Operational and implementation challenges: Effective implementation of a statewide sanctions framework would likely require a comprehensive, unified data management system capable of tracking violations, sanctions, and outcomes across multiple agencies and jurisdictions. Stakeholders note that developing and maintaining such infrastructure could be costly and, without strong coordination, may result in inconsistent application, delays, or gaps in data.

- Training and administrative burden: Implementation would require substantial training for supervision officers, court personnel, and administrative staff, including guidance on decision-making standards, documentation, and use of new systems. Without dedicated resources and sufficient lead time, there is concern that application of the policy could vary significantly across jurisdictions.

- Fiscal impacts: The proposal may result in significant costs related to technology development, staffing, training, reporting, and ongoing administration. Further fiscal analysis is needed to fully understand the scope and scale of implementation expenses.

- Existing CSAC role and prior work: The Legislature has already established CSAC to study and make recommendations on community supervision policy. A CSAC subcommittee initially recommended the adoption of a graduated sanctions grid to deal with violations of community supervision. CSAC then subsequently issued a memorandum (discussed below) recommending against adopting a prescriptive statewide sanctions grid, noting potential limitations in supporting individualized, evidence-based supervision practices consistent with the risk-needs-responsivity model.

CSAC's Shift Explained[1]
In a memorandum issued after the subcommittee's initial recommendation for a grid, CSAC concluded that while structured sanctions grids can promote consistency, transparency, and proportionality in responses to violations, research does not demonstrate that sanctions alone produce meaningful behavioral change or reductions in recidivism. CSAC noted that traditional sanctioning grids generally focus on categorizing violations and prescribing responses but do not adequately incorporate the principles of the Risk-Need-Responsivity (RNR) model.

The memorandum further explains that sanction-driven frameworks may place too much emphasis on punitive responses and risk classifications while overlooking individualized factors. CSAC also cited research suggesting that custodial sanctions are generally no more effective than community-based sanctions in promoting compliance and that excessive reliance on punishment may undermine long-term behavior change efforts.

As a result, CSAC recommended replacing behavior response grids with a more individualized framework centered on cognitive-behavioral interventions, motivational interviewing, incentive-based practices, and individualized case planning. Under this approach, responses to technical violations would focus first on identifying and addressing the underlying causes of noncompliant behavior through evidence-based interventions rather than relying primarily on predetermined sanctions.

Although CSAC moved away from a formal sanctions grid, the memorandum states that accountability

[1] CSAC Shift from Grid.pdf

and consistency remain important objectives. In the memorandum CSAC emphasized distinguishing between technical violations and conduct that presents a genuine public safety risk, with sanctions reserved for situations in which intervention-based approaches have been insufficient.

Continued Policy Rationale for a Structured Graduated Sanctions Framework
The legislation, as amended, is consistent with CSAC's analysis and broader correctional research. While CSAC has emphasized individualized, cognitive-behavioral, and incentive-based supervision strategies, it also continues to recognize the importance of structured decision-making, consistency, transparency, and proportionality in responses to violations.

The bill is consistent with CSAC's analysis, particularly the importance of structured decision-making, proportional responses, and reducing unnecessary incarceration while maintaining public safety. The proposed framework advances these objectives by establishing statewide standards for responding to technical violations, including classification of violations, presumptive sanction ranges, and documentation requirements for departures.

These provisions are designed to address variability in how technical violations are handled across jurisdictions by creating a predictable baseline for responses while preserving discretion through written findings when departing from presumptive sanctions. The bill also directly addresses concerns regarding the overuse of incarceration for technical violations. It establishes a rebuttable presumption against incarceration, requires exhaustion of less restrictive sanctions prior to revocation, and limits custodial responses to circumstances involving demonstrable public safety risk or repeated noncompliance.

Finally, the graduated sanctions framework does not replace individualized supervision practices or evidence-based interventions. It simply establishes a consistent statewide structure within which cognitive-behavioral interventions, incentives, and case planning may continue to operate, ensuring that responses to technical violations are both standardized in baseline form and responsive in application.

Taken together, the proposal represents a hybrid approach: it preserves structured limits and statewide consistency in responses to technical violations, while still maintaining flexibility for individualized supervision and intervention-based practices.

Alternative Policy Approaches
If a statewide graduated sanctions grid is not tenable, the following are offered as potential options to achieve the shared goal of reducing incarceration and revocation for technical violations while maintaining structured accountability in community supervision. These approaches reflect alternative mechanisms for guiding responses to technical violations, including statutory limits on custodial sanctions and frameworks that prioritize community-based interventions while preserving public safety considerations.

1. *Technical Violation Custody Limits*

This proposal would establish statutory limits on the use of incarceration for technical violations of probation, parole, and supervised release.

Key provisions:

- Prohibiting revocation for a first technical violation absent a specific finding that the individual poses an immediate threat to public safety.
- Establishing maximum custodial sanctions for technical violations, such as:

    - Up to 3 days for a first violation;
    - Up to 7 days for a second violation; and
    - Up to 15 days for a third or subsequent violation.
- Requiring written findings before revocation may occur, including a determination that the individual poses an immediate and substantial risk to public safety and that lesser sanctions would be insufficient.

States Using Statutory Limits on Custodial Sanctions
Some states have enacted statutory caps or structured limits on incarceration for technical violations of probation, parole, or supervised release. These approaches typically restrict short-term jail sanctions and require escalating justification for longer or repeated custody responses.

2. **Michigan:** Michigan Compiled Laws § 771.4b includes a statutory rebuttable presumption that a court shall not issue a warrant for arrest for a technical probation violation and instead shall issue a summons or order to show cause — unless specific safety or compliance exceptions apply. Under Michigan law, an individual who commits a technical violation and is sentenced to temporary incarceration may be incarcerated under the following graduated sanctions scheme, with certain exemptions. For individuals on misdemeanor probation, only 5 (first violation), 10 (second violation), 15 (third violation) days of incarceration can be used as a punishment. For those on felony probation, these incarceration caps increase to 15 (first violation), 30 days (second violation), and 45 days (third violation). For fourth and subsequent technical violations, a defendant may be sentenced to a term of incarceration that does not exceed the total remaining eligible incarceration sentence. Notwithstanding, an individual on probation may not have their supervision revoked on the basis of a technical violation unless they have already been sanctioned for 3 or more technical violations and have committed a new one.[2]

3. **Tennessee:** Trial judges may temporarily revoke felony probation for a second technical violation and impose a term of incarceration of up to 15 days for a first revocation, 30 days for a second revocation, 90 days for a third revocation; or the remainder of the sentence for a fourth or subsequent revocation.[3]

4. **Louisiana:** At the time of sentencing the court makes a determination that allows certain individuals on probation qualify for graduated sanctions for technical violations under Louisiana's code. This sanctions regime includes not more than 15 days of incarceration for the first technical violation, not more than 30 days for a second technical violation, and not more than 45 days for a third or subsequent violation. For fourth and subsequent probation violations, people may also be revoked for up to 90 days for a custodial substance abuse treatment program.[4]

5. *Presumption Against Revocation*

This proposal would establish a statutory presumption that technical violations should be addressed through community-based interventions rather than revocation and incarceration.

Key provisions:

- Creating a rebuttable presumption that probation, parole, or supervised release should not be

[2] M.C.L.A. 771.4b
[3] Tenn. Code § 40-35-311(e)
[4] LSA-C.Cr.P. Art. 899.1 & Art. 900

revoked solely for a technical violation.

- Requiring courts and supervising authorities to consider available noncustodial responses before pursuing revocation, including:
    - Treatment and rehabilitative programming;
    - Increased reporting requirements;
    - Community service; and
    - Other appropriate community-based interventions.
- Requiring written findings when revocation is imposed, explaining why noncustodial sanctions were inadequate and why revocation is necessary.

States Using a Presumption Against Revocation Framework
Other states have adopted statutory language or structured policy frameworks that create a presumption that technical violations should not result in revocation, unless specific findings are made. These models generally require courts or supervision agencies to document why community-based sanctions are insufficient before incarceration is imposed.

- **Pennsylvania:** PA § 9771 creates an explicit presumption *against* incarceration for all technical violations, significantly restricting when someone can be incarcerated for a technical violation. Incarceration is only permitted upon revocation for technical violations that involve an *identifiable* threat to public safety, but only with *clear and convincing evidence.* In addition, Pennsylvania law has set limits on the duration of incarceration for technical violations through a graduated sanctions framework.[5]
- **New York:** Before a recent reform in NY, individuals on parole accused of a technical violation would be immediately taken to jail. With the passage of Less is More, individuals accused of most technical violations are simply given a written notice and an order to appear at an administrative parole hearing. Even further, if a technical violation is found to have occurred, incarceration rarely occurs. Instead, administrative sanctions may be applied – such as forfeiture of earned credits for a set period. In the select instances that incarceration is warranted, the length of time is capped.[6]

Conclusion
Across jurisdictions, these models reflect a broader policy trend toward reducing reliance on incarceration for technical violations. Statutory caps on custodial sanctions provide clear limits on jail use, while presumption-based frameworks preserve judicial and supervisory discretion but require documented justification for revocation. Both approaches are designed to reduce unnecessary incarceration while maintaining public safety and accountability within community supervision systems.

[5] PA § 9771
[6] NY State Senate Bill 2021-S1144A

Appendix A: Clean Copy of Graduated Sanctions Grid Legislation (Amended)

Section 243.05 is amended to read:
(2) technical violation" means any violation of a court order of probation or a condition of parole or supervised release, other than the commission of a new crime of which the individual is convicted or found guilty by a judge or jury or to which the individual pleads guilty or nolo contendere in a court of record

Section 1. **[244.52] SHORT TITLE.**
Sections 244.52 to 244.57 may be cited as the "Swift and Certain Sanctions Act."

Sec. 2. **[244.53] DEFINITIONS.**
(a) For purposes of sections 244.54 to 244.57, the following terms have the meanings given.
(b) "Commissioner" has the meaning given in section 244.195, subdivision
(c) "Community supervision agencies" means any state, county, or local department, agency, or authority responsible for supervising individuals under court-ordered community supervision, including probation, parole, or supervised release~~;~~.
(d) "Noncustodial sanction" means a sanction that does not involve confinement in a jail or prison.
(e) "Technical violation" has the meaning given in section 243.05, subdivision 1.
(f) "Validated risk assessment" means an assessment instrument demonstrated by scientific research to be accurate and reliable in assessing the risks and needs of the specific population on which the assessment was validated.

Sec. 3. **[244.54] GRADUATED SANCTIONS GRID; CREATION.**

Subdivision 1.**Creation.** By February 1, 2027, the commissioner of corrections shall establish and maintain a statewide graduated sanctions grid governing responses to technical violations of probation, parole, and supervised release.

Subd. 2.**Consultation.** In developing the grid, the commissioner must consult with:
(1) the Sentencing Guidelines Commission;
(2) community supervision agencies;
(3) the judicial branch;
(4) justice research entities with expertise in evidence-based supervision practices; and
(5) other individuals or organizations with demonstrated expertise in community supervision, behavioral health, or criminal justice policy, as identified by the commissioner.

Subd. 3.**General requirements.** The graduated sanctions grid must:
(1) classify technical violations into severity levels
(2) incorporate validated risk assessment results;
(3) provide presumptive and proportional sanctions that escalate with repeated violations; and
(4) prioritize noncustodial sanctions

Sec. 4. **[244.55] GRADUATED SANCTIONS GRID STRUCTURE; MANDATORY USE.**
Subdivision 1.**Structure.** (a) The graduated sanctions grid must be organized by:
(1) violation levels on the vertical axis
(2) levels on the horizontal axis: and
(3) graduated sanction response ranges that correspond to each violation and risk level, increasing in severity with the seriousness and frequency of violations and prioritizing noncustodial responses for lower-level violations.

Subd. 2.**Mandatory use.** (a) Beginning April 1, 2027, when responding to a technical violation, a supervising authority or court must apply the graduated sanctions grid. A departure from the presumptive sanction in the grid must only occur upon written findings by the supervising authority or court that:

(1) the presumptive sanction is insufficient to address continued noncompliance

(2) the violation presents an identifiable and immediate risk to public safety; or

(3) a less restrictive sanction is appropriate.

(b) There is a rebuttable presumption that incarceration is not an appropriate response to a technical violation.

(c) All sanctions imposed for technical violations must be documented and tracked by the supervising authority for purposes of progressive responses. Any departure based on risk level classification must be documented.

(d) The commissioner shall ensure that any risk assessment tool used in implementation of the graduated sanctions grid is periodically validated for accuracy and evaluated for disparate impact across demographic groups. The results of such validation and evaluation must be reported publicly. The commissioner shall establish procedures for periodic reassessment of an individual's risk classification.

Sec. 5. **[244.56] LIMITS ON REVOCATION.**

Subdivision 1.**Exhaustion requirement.** There is a rebuttable presumption that probation, parole, or supervised release shall not be revoked for a technical violation unless the supervising authority has:

(1) ~~e~~exhausted all ~~graduated~~ sanctions consistent with the grid~~;~~ or

(2) the individual poses an immediate and substantial threat to public safety that cannot be mitigated through noncustodial sanctions.

Sec. 6. **[244.57] DATA COLLECTION AND REPORTING.**

Subdivision 1.**Data collection.** The commissioner must collect data on:

(1) technical violations;

(2) sanctions imposed under the grid;

(3) the use of custodial sanctions;

(4) revocations; and

(5) disparities by race, ethnicity, and geography.

Subd. 2.**Annual report.** The commissioner must submit an annual report to the chairs and ranking minority members of the legislative committees with jurisdiction over public safety summarizing implementation of the graduated sanctions grid and outcomes resulting from use of the graduated sanctions grid.