

Colorado Commission on Criminal and Juvenile Justice
Sentencing Reform Task Force

Sentence Structure Working Group
MINUTES

August 10, 2021 / 3:00PM-5:00PM
Virtual Meeting

ATTENDEES:

WORKING GROUP MEMBERS

Michael Dougherty, District Attorney, 20th Judicial District, *Leader*
Maureen Cain, Office of the State Public Defender
Christie Donner, Colorado Criminal Justice Reform Coalition
Valarie Finks, Crime Victim Compensation, 1st Judicial District
Jessica Jones, Defense Attorney
Tom Raynes, Colorado District Attorneys' Council
Dan Rubinstein, District Attorney, 21st Judicial District
Lisa Wayne, Defense Attorney

ABSENT

STAFF

Jack Reed, Division of Criminal Justice
Damien Angel, Division of Criminal Justice
Laurence Lucero, Division of Criminal Justice
Stephane Waisanen, Division of Criminal Justice
Kevin Ford, Division of Criminal Justice

GUESTS

Carl Reynolds, The Council of State Governments
Jordan Sanchez, Brandeberry & McKenna Public Affairs

Issue/Topic	Discussion
<p>Welcome & Agenda <i>Maureen Cain for Michael Dougherty, Working Group Leader</i></p>	<p>Maureen Cain welcomed the group on behalf of Michael Dougherty, the Working Group Leader, who would be joining late. She called the meeting to order and outlined the agenda.</p>

Issue/Topic	Discussion
<p>Study Group Update <i>Michael Dougherty, Maureen Cain, Christie Donner, Tom Raynes, Dan Rubinstein</i></p> <p>ACTION Study Group members to continue to review the summary documents line by line for accuracy</p>	<p>Maureen provided an update on behalf of the Study Group that operates under the Sentence Structure Working Group. The following was discussed:</p> <ul style="list-style-type: none"> ● Listening Session #3 on July 27, 2021. The following stakeholders presented information to the Working Group: <ul style="list-style-type: none"> ○ Liz Porter-Merrill, Restorative Justice Council ○ Barbara and Dan West, Family of Incarcerated Individual ○ Ty Petersburg, Colorado Parks and Wildlife ○ Glenn Tapia, Division of Probation Services <p>Tom offered to contact additional stakeholders in the law enforcement community and Maureen requested that group members reach out to any other potential stakeholders to solicit additional feedback moving forward, possibly including Violence Free Colorado.</p> <p>Maureen explained the primary focus of the Study Group has been to review the existing felony crimes (approximately 600+ crimes) to create crime severity categories and an “architectural structure” for a proposed sentencing scheme.</p> <p>With that said, the group continues to recommend four ‘buckets’ of crime categories including:</p> <ul style="list-style-type: none"> ● Crimes Against Persons ● Sex Offenses ● General Felonies ● Drug Offenses <p>Maureen explained that the draft distributed today includes all the felonies from Class 1 through Class 6, designated by which crime goes into which crime category. She noted most are not drug offenses since there is already a drug grid in place. The next steps for the working group members are to review the chart and provide feedback. Maureen emphasized that the “Crimes Against Persons” group includes “Injury to a person or threat of injury to a person.” The discussion about this category was robust and included the issue of violence towards animals and where those crimes fit. In the end, violence towards animals was placed in the General Felonies category.</p> <p>Dan Rubinstein pointed out that some areas were split out because of the different ways in which a crime could be committed (e.g., threatening another individual to commit a crime, and/or damaged property) which adds to the complexity of this process. The weapons crimes were also nuanced in regards</p>

<p style="text-align: center;">Issue/Topic</p> <p style="text-align: center;">Study Group Update <i>Michael Dougherty, Maureen Cain, Christie Donner, Tom Raynes, Dan Rubinstein</i> (continued)</p>	<p>to instances such as weapons possession (a General Felony) vs. the actual use of a weapon against a person (Crimes Against Persons). Tom Raynes emphasized that the group was diligent about approaching this process objectively and regardless of any political philosophy. Dan agreed and added that there is built-in flexibility within each individual grid for any outlying instances.</p> <p>Maureen clarified that within each individual grid, the X axis will show the felony level and the Y axis will display mitigated range, presumptive range and aggravated range, along with a potential habitual range. For example, “Theft at Risk” would be an aggravator which would bump a crime from the presumptive range to the aggravated range in the General Crime Grid, and alternatively it could land as a different level of offense.</p> <p>Valerie Finks raised a question about the categorization of “Crime Against At-risk Person” with assault next to it, and why it’s listed in the “Other” category. Tom replied that it was likely miscategorized. He added that the Study Group is looking at grids from other states as well, but unlike many of those states, Colorado is trying to simplify the process and avoid a massive, overwhelming matrix.</p> <p>Christie Donner added that this grid is similar to the misdemeanor grid in that it includes theft category crimes with cut points for dollar amounts, which aligns (for consistency sake) with other theft cut points. She noted this will apply to the at-risk theft of an elder. Maureen shared that data from last year is currently being incorporated into the four grids, to show how many felonies fall into each of the categories.</p> <p>Valerie asked about “First degree Arson,” that is currently categorized as “Other.” Dan replied that this is one the group intends to bifurcate, if it’s an occupied structure, it would fall under person, whereas a vacant structure would fall under “Other.” Category corrections were made to the related crime entries.</p> <p>Jes Jones asked whether the group had started looking at ranges within the crime categories (“buckets”). Dan replied that they’re waiting until the parole (end of sentence) issue gets sorted out, and then they will look at the ranges. Maureen replied that the group is exploring 35% as the figure for earned time. The sentence minus 30% would be the mandatory release date (MRD), with no demarcation for parole eligibility date (PED). She added the current length of stay also has to be considered, if the sentencing model is changed to a truth-in-sentencing approach. Dan added that Crimes of Violence (COV) and non-COV distinctions will be eliminated as well.</p> <p>Jes asked about the proposed model for how sentences would be served at CDOC. Christie explained that the goal is to move to a truth-in-sentencing model with a “hard out date” (which would eliminate discretionary parole) while getting rid of categories such as extraordinary risk and revising the handling of technical parole violations, along with simplifying the process and</p>
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<p>Issue/Topic Study Group Update <i>Michael Dougherty, Maureen Cain, Christie Donner, Tom Raynes, Dan Rubinstein</i> (continued)</p>	<p>clarifying “off ramps” (transition to community options). Regarding “off ramps” the questions are:</p> <ul style="list-style-type: none"> ● At what point in the sentence are people eligible for an “off-ramp” (a pre-release transition to community as an inmate) prior to the MRD, and ● What are the off-ramp options other than community corrections? <p>Christie added she’s holding a focus group later in the week at Second Chance Center and will be bringing up some of these “back-end” (end of sentence) questions. However, there are no recommendations around this issue just yet.</p> <p><i>--Working Group Leader Michael Dougherty joined the meeting at this point--</i></p> <p>Christie shared that DCJ is pulling together data on average length of stay (LOS) in prison prior to first release, and average LOS on parole prior to successful termination. DOC is also compiling data on new crime returns while on parole categorized by crime type and felony level. This will include a breakout of misdemeanor technical parole violations.</p> <p>The group held a discussion on truth in sentencing, truth in parole, and the desire for a more certain and simple system. Discussion highlights include:</p> <ul style="list-style-type: none"> ● Maureen pointed out the group is committed to truth in sentencing on the court (“front end”) side, but struggling with the issue of certainty associated with length of stay in prison due to such “end of sentence” elements as parole periods, earned time (in prison and on parole), and whether there should be sentence-reducing incentives for good behavior. ● Christie highlighted the ongoing inadequacies of the current parole process for high risk/high needs populations. ● Valerie explained the importance of, and complications around, adequately keeping a victim apprised of a parolee’s status when it comes to an out date that tends to be fluid and uncertain. ● Tom summarized that the issue of victim notification will need to be addressed, regardless of the design of the sentence. ● Jes asked about the end-of-sentence processes in the federal system. ● Maureen believes that in the federal system, any violations go back to court, not a parole board. ● Lisa Wayne explained that in the federal system the majority of crimes are drug related and there is a high frequency of technical violations (TV). If someone violates they can get a new sentence (for the TV) <i>outside</i> of the original sentence. And, individuals are given multiple chances upon TV failures. ● Christie noted the general lack of support for victims post sentencing. ● Valerie offered to gather more information and report back to the group. <p>Michael asked the group to continue to review the draft documents line by line for accuracy and to ensure everyone is comfortable with the categories and the crimes in each category.</p> <p>Lisa asked about the interplay of juveniles, the sentencing scheme and direct file issues, and whether juveniles would have a different scheme. Tom</p>
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<p>Issue/Topic Study Group Update <i>Michael Dougherty, Maureen Cain, Christie Donner, Tom Raynes, Dan Rubinstein</i> (continued)</p>	<p>explained there are currently different schemes for juveniles. Maureen shared that early on there were discussions about a young adult sentencing scheme, but that this group hasn't addressed that to date. DOC is working with researchers to determine a possible expansion of YOS, programmatic issues and whether YOS should remain a place for youth who commit violent offenses.</p>
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<p>Issue/Topic Next Steps & Adjourn <i>Michael Dougherty</i></p>	<p style="text-align: center;">Discussion</p> <p>The next biweekly meeting is scheduled for August 24, 2021. The group agreed to start that meeting and subsequent meetings at 2:00pm, rather than the previously scheduled 3:00 PM.</p> <p>Hearing no further comment, Michael adjourned the meeting.</p>
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Next Meeting

Tuesday, August 24, 2021 / 2:00PM – 5:00PM
Virtual Meeting

Meeting information will be emailed to members
 and posted at, colorado.gov/ccjj/ccjj-meetings