

Colorado Commission on Criminal and Juvenile Justice
Sentencing Reform Task Force

Sentence Structure Working Group
Stakeholder Listening Session #4: Felony Sentencing

MINUTES

October 5, 2021 / 3:00PM-4:30PM
Virtual Meeting

ATTENDEES:

WORKING GROUP MEMBERS

Michael Dougherty, District Attorney, 20th Judicial District, *Leader*
Maureen Cain, Office of the State Public Defender
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

ABSENT

Christie Donner, Colorado Criminal Justice Reform Coalition
Lisa Wayne, Defense Attorney

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
Joe Varrin, Legal Intern, Office of the State Public Defender

GUESTS

Tim Hand, Larimer County Community Corrections
Brian Hulse, Intervention Community Corrections Services
David Martin, Morgan County Sheriff
Andrew Matson, Colorado CURE/Lived Experience
Steven Reams, Weld County Sheriff
Beth Stone, Family of Incarcerated Individual
Liz Stone, Family of Incarcerated Individual
Dianne Tramutola-Lawson, Colorado CURE

Note: The Sentence Structure Working Group also held Listening Sessions on: June 21, 2021 (#1), June 22, 2021 (#2), and July 27, 2021 (#3).

<p>Welcome & Agenda <i>Michael Dougherty, Working Group Leader</i></p>	<p style="text-align: center;">Discussion</p> <p>Michael Dougherty, Working Group Leader, welcomed Working Group members and guests, and gave an overview of the work to date. He reminded everyone the Sentence Structure Working Group has a Study Group that meets weekly and reports up to the Working Group. The Working Group meets every other week and reports to the Sentencing Reform Task Force, which is part of the Colorado Commission on Criminal and Juvenile Justice.</p> <p>The focus of the work currently is on certainty in sentencing in Colorado, and developing a felony sentencing grid that will provide more clarity in sentencing. As part of the work, there has been a significant outreach effort to all interested parties and stakeholders to gather information and input via Listening Sessions. Today’s 4th Listening Session will include perspectives from three groups: Sheriff’s representatives, individuals with lived experience in the criminal justice system, and representatives from Community Corrections.</p> <p>Michael explained that three questions were provided to each stakeholder group prior to the meeting as follows:</p> <ol style="list-style-type: none"> 1. What is your agency/organization’s role in the felony sentencing scheme and your comments on what is working or not working and why, and do you have suggestions for improvements? 2. What could be done differently to better meet the needs of victims and defendants from an accountability, healing and recidivism reduction perspective? 3. What could be done to have more certainty in sentencing when a prison sentence is imposed?
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<p>Stakeholder Input: Sheriffs <i>David Martin, Morgan County Sheriff Steven Reams, Weld County Sheriff</i></p>	<p style="text-align: center;">Discussion</p> <p>Sheriff Steven Reams of Weld County began the conversation by answering the three questions. His feedback included the following points:</p> <ul style="list-style-type: none"> ● There is a need for more certainty in sentencing, including a specified range of punishment for misdemeanors and felonies. Oftentimes, ranges vary greatly depending on whether someone fights their charge vs. simply pleading guilty. ● Victim’s should have greater input on sentence severity, so the perpetrator is held accountable for their actions. Often, the victim is the last person consulted. ● There should be more specificity regarding the sentence length and the actual time spent in prison for particular crime classifications. Currently, the ranges appear inconsistent and, oftentimes, the plea agreement process significantly alters the expected sentence. Again, victims should have a say in any sort of sentence reduction. <p>Maureen Cain noted that the Working Group is studying practices in other states. One item under discussion to the reduction in Colorado’s broad sentencing ranges, coupled with greater consistency in the actual time served. She asked Sheriff Reams if he believes that is an avenue the group should continue to pursue. The Sheriff strongly supported that path, but added that he does not support sentencing people convicted of felonies to county jails. Maureen pointed out that, by the time someone with a lower-level (e.g., Class</p>
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<p>Stakeholder Input: Sheriffs <i>David Martin, Morgan County Sheriff Steven Reams, Weld County Sheriff (continued)</i></p>	<p>6) felony gets to the Department of Corrections, they are often past the parole eligibility date and some have even passed the mandatory release date. The Sheriff agreed that, in those particular cases, an exception seems reasonable, and added that, in those cases, an element of “certainty in sentencing” is to ensure the victim thoroughly understands the concept of “credit for time served.”</p> <p>Sheriff Dave Martin of Morgan County noted he had not received the three questions prior to the meeting but offered the following feedback:</p> <ul style="list-style-type: none"> ● He concurred with the feedback offered by Sheriff Reams. ● He explained that Morgan County has a fairly small jail and emphasized that sentencing people with felony convictions to a small jail is burdensome and results in financial and staffing strains. ● As for improving sentencing in Colorado, having a more definitive range would help all parties more thoroughly understand sentencing outcomes. Victims will often focus on the higher end of the range and are surprised when a sentence falls at the lower end. <p>Maureen asked whether sentencing people with low-level felonies to county jails would be more feasible if the money were to follow the person and be reinvested at a county level. Sheriff Reams replied that, for his larger jail, the issue does not relate to capacity (space) concerns, but to the ability to provide meaningful, long-term programming. Sheriff Martin agreed in regard to programming, but added that for his smaller jail would have capacity (space) issues.</p> <p>Dan Rubinstein explained that the Working Group is currently considering an avenue where people with the lowest level of general felonies (not person, sex offense, or drug crimes) would serve their time, typically one year or less, in jail rather than prison. Additionally, the time served for pre-sentence confinement would reduce that length leaving probably a 90- to 180-day maximum sentence. Dan asked the Sheriffs whether that option would be acceptable if the jail were to receive the same rate of pay that a DOC receives for a bed.</p> <p>Sheriff Reams offered that it could be a possibility, especially if there were some sort of a system of specific jails (maybe larger jails) that could house the offender, rather than the jail in the jurisdiction where the offender is sentenced. However, the type of programming offered for those typically in jail during the pre-sentence period is wholly different than programming for post-sentence jail inmates.</p> <p>Maureen asked the Federal Government rate of pay to house inmates in a local jail. Dan believed that the Federal Government pays \$72/day.</p> <p>Michael thanked the Sheriffs for their contributions and moved to the next stakeholder group.</p>
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<p>Stakeholder Input: Individuals with lived experience in the criminal justice system <i>Andrew Matson, Colorado CURE</i> <i>Beth Stone, Family of Incarcerated Individual</i> <i>Liz Stone, Family of Incarcerated Individual</i> <i>Dianne Tramutola-Lawson, Colorado CURE</i></p>	<p>Discussion</p> <p>Michael introduced Andrew Matson and requested that Andrew introduce himself and his fellow panelists. Andrew introduced Liz and Beth Stone, explaining that Liz is the mother of an individual currently incarcerated as a habitual criminal and Beth is that individual’s wife. He also introduced Diane Tramutola-Lawson from Colorado CURE. Lastly, Andrew explained that he too was sentenced as a habitual criminal in 1990 [Mr. Matson served as the Lived Experience representative on the Colorado Commission on Criminal and Juvenile Justice from 2018-2021].</p> <p>Beth Stone introduced herself and shared a letter she wrote to the Working Group that included the following points:</p> <ul style="list-style-type: none"> ● Beth described that her husband is in his 8th year of a 160-year habitual offender sentence. She noted the extreme difficulty that comes with her husband having no out-date and no resulting motivation to improve himself. ● Beth explained that in 2005 she was 18-years old and involved in criminal activity that resulted in 19 felony charges. She received a sentence to the Peer 1 Treatment Program and was eventually pardoned by Governor Jared Polis and is currently a licensed Realtor. ● She shared her story to prove that it is possible for someone to redeem themselves, if given the chance. The habitual criminal law is a tough-on-crime law that does not allow for redemption and does not take factors like drug addiction into account. ● Colorado has one of the toughest habitual offender laws in the country. Currently, over 700 individuals are serving time in DOC as a habitual offender. ● While there should be punishment for a crime committed, she believes one should not serve a longer sentence on a Felony Class 3 than a sentence for a Felony Class 1 sentence. Habitual sentencing results in extremely disproportionate sentence periods. <p>Liz Stone also shared a letter she wrote to the Working Group, including the following:</p> <ul style="list-style-type: none"> ● Liz explained that since her son’s incarceration she has become an advocate for reforming habitual sentencing laws and the disproportionate sentences in Colorado. ● She provided background on mass incarceration and the original habitual sentencing law enacted in 1963 in Colorado, pointing out that more is spent on the Dept. of Corrections in the state than on Higher Education. ● Prisons are not just for punishment, but should provide an opportunity for rehabilitation and that Gov. Polis has noted the need in Colorado for the recalibration of sentences so that the punishment fits the conduct. ● Liz added Colorado’s prison population has exploded 800% since the 1970s due to antiquated tough-on-crime policies of the past. ● The growth in life sentences is due to habitual offender laws, mandatory minimums, elimination of parole, and the transfer of juveniles to the adult system.
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<p>Stakeholder Input: Individuals with lived experience in the criminal justice system</p> <p><i>Andrew Matson, Colorado CURE</i> <i>Beth Stone, Family of Incarcerated Individual</i> <i>Liz Stone, Family of Incarcerated Individual</i> <i>Dianne Tramutola-Lawson, Colorado CURE</i> (continued)</p>	<ul style="list-style-type: none"> ● Lastly, reform, rehabilitation, and reintegration make economic sense, considering DOC is the most expensive state agency. <p>Michael thanked Liz and Beth for their willingness to share their story. Maureen asked about the underlying crimes for the case in question and Liz replied they were non-violent, low-level felonies including motor vehicle theft and drug offenses.</p> <p>Liz noted the prior convictions were all in a short time period when her son was very young, and Beth shared that he received the habitual sentence when he was 28 years old. Maureen added that habitual criminal statutes will likely be an area of study by the Working Group and therefore it is informative to understand the details of habitual sentence circumstances.</p> <p>Dianne Tramutola-Lawson (Chair of Colorado CURE, coloradocure.org/) introduced herself and shared the following:</p> <ul style="list-style-type: none"> ● Dianne has worked for years with hundreds of families of people serving life sentences, habitual offender sentences, life without parole, and virtual life. She emphasized a critical component for any reform measures is to ensure they are retroactive. ● Vermont and Massachusetts both have legislation pending to address these very issues regarding eliminating life without parole. ● In Louisiana, ParoleProject.Org represents hundreds of previous “lifers” who were able to secure release and are doing well on “the outside.” ● Dianne recommended the Working Group read a book titled, <i>The Meaning of Life: The Case for Abolishing Life Sentences</i>,¹ which calls for a review of all sentences after 20 years. <p>Andrew concluded the panel discussion and offered the following:</p> <ul style="list-style-type: none"> ● He explained he was 24 years old when he went to prison and, as with Liz and Beth, he remembers well the pain and suffering his mother and wife went through at the time. ● Andrew was sentenced in 1990, following which the laws changed in 1992, he believes in part due to the massive campaign undertaken by his mother at the time. However, the change did not affect his sentence because the reform was not retroactive. With the said, Andrew emphasized the extreme importance of retroactive reforms. ● Andrew offered an impassioned plea to remember the potential of each individual living through incarceration. ● Andrew shared details of his personal history including years of extensive abuse and assault, which resulted in drug use, drug dealing, and an array of other criminal offenses. After completion of his first DOC sentence and a couple of successful years on the outside, he reoffended and as a young repeat offender accepted a 30-year plea bargain. ● He emphasized that people can change, and people do change and draconian sentencing practices punish and prevent people from reaching their potential and returning as contributing members of society.
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¹ See <https://www.sentencingproject.org/publications/meaning-life-case-abolishing-life-sentences/>

<p>Stakeholder Input: Individuals with lived experience in the criminal justice system <i>Andrew Matson, Colorado CURE</i> <i>Beth Stone, Family of Incarcerated Individual</i> <i>Liz Stone, Family of Incarcerated Individual</i> <i>Dianne Tramutola-Lawson, Colorado CURE</i> (continued)</p>	<ul style="list-style-type: none"> ● He offered a fervent appeal that the group bolster its work with the belief that we should not “throw people away.” He further entreated the group to strive to reform sentences and a sentencing structure that are just and allow for the opportunity for people to grow, develop, change and give back to society. <p>Michael thanked Andrew for sharing his story and for his continued participation and contributions to the Commission and the Sentencing Reform Task Force.</p> <p>Maureen discussed the details of Andrew’s case and confirmed that, as is true in many cases, none of the crimes that led to his habitual sentence were violent.</p>
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<p>Stakeholder Input: Community Corrections <i>Tim Hand, Larimer County Community Corrections</i> <i>Brian Hulse, Intervention Community Corrections Services</i></p>	<p style="text-align: center;">Discussion</p> <p>Michael introduced Brian Hulse (Intervention Community Corrections Services and Tim Hand (Larimer County Community Corrections) to offer feedback to the group.</p> <p>Brian explained that he and Tim perform the same work and all community corrections facilities are governed by the same standards. Together, they offered the following feedback and information:</p> <ul style="list-style-type: none"> ● Brian shared that community corrections provides almost exclusive supervision of felony-level offenders (as opposed to misdemeanants). ● Services are provided to some parolees and probationers as a condition of their sentence. Clients are received either as a Direct Sentence from Judicial or as a Transition client from the Department of Corrections. ● Brian offered a list of problems and dysfunctions in the system: <ul style="list-style-type: none"> - Community Corrections in the state of Colorado is facing historic bed vacancies. Pre-COVID capacity was at 90% and currently facilities are running at half-capacity. - Capacity is important because providing a wide array of services is critical and those services are not being utilized. - The reclassification of drug crimes from felonies to misdemeanors means those individuals are no longer eligible for services. - 2/3rds of those on probation are currently sentenced for misdemeanors and are therefore also not eligible for services. - Currently, there is no funding mechanism allowing for the placement of misdemeanants in community corrections. - The escape or “walk-away” crime from community corrections was reduced from a felony to a misdemeanor, and escapes are currently on the rise in facilities statewide. - Tim added that parole cases are currently skyrocketing, yet there still are empty community corrections beds. - He added that some complain about drug use in community corrections, but this simply reflects trends in drug use as a whole across Colorado. - Tim shared it is irresponsible, from his view, to not utilize community corrections as a step-down option for people in prison. He added that
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<p>Stakeholder Input: Community Corrections <i>Tim Hand, Larimer County Community Corrections</i> <i>Brian Hulse, Intervention Community Corrections Services</i> (continued)</p>	<p>community corrections is a critical component of the reentry process and provides a critical service to the DOC population.</p> <ul style="list-style-type: none"> - Tim also noted that, in his conversations with Glenn Tapia (Probation), there is agreement that there is a strong need for services designed for high risk and need misdemeanants, whose histories often include multiple felonies. - Community corrections facilities charge approximately \$17/day and it would be difficult for someone to get room and board for that amount anywhere else in the state. The low cost allows for rehabilitating persons to save money and provide restitution. <p>Maureen replied that the drug sentencing reform in 2013 included revisions where misdemeanants could be sentenced to community corrections for behavioral health treatment. She asked, with that in place, why community corrections has not been used for misdemeanants. Tim replied that misdemeanants can be treated in community corrections for behavioral health issues, which is funded by correctional treatment dollars (directed by the Correctional Treatment Board) but not through State appropriations via the Division of Criminal Justice. Glenn Tapia has made a commitment to remind Chief Probation Officers of this option for misdemeanants who need behavioral health treatment. Tim explained that, according to Glenn, misdemeanants with behavioral health issues are more likely to be repeatedly revoked and reinstated to Probation than referred to community corrections. Maureen offered that it seems to be less an issue of law and more an issue of practices.</p> <p>Brian offered a list of some of the things that he believes currently are working in the system including:</p> <ul style="list-style-type: none"> • Supervision around sex offense-specific cases and felony DUI offender cases work well in structured environments like community corrections. • Qualitative work being done under the umbrella of evidence-based practices is working well under community corrections standards. <p>Brian reiterated what Tim said about the problem of the prevalence of opioids, and fentanyl in particular, in Colorado. He noted that, almost weekly, a staff member is called to respond to overdoses. Brian also expressed concern over the reliance on telehealth and tele-psych treatment services for primary intervention, as he believes the quality of treatment has suffered.</p> <p>Tim noted he has 30 years of experience in community corrections and that Colorado’s system is the envy of many other states. He added, however, that DOC statistics show community corrections serves 1,040 individuals from DOC, which is a combined total of the ISP-I and residential community population. Tim explained it would be beneficial to split the two populations as the ISP-I program was designed to mirror the diversion program rather than transition. Previously, after completing the residential portion of their stay, a transition client would transition to ISP-I and independent living. Subsequently, those people were automatically paroled when they became eligible. Currently, ISP-I is not being utilized at its full capacity.</p>
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<p>Stakeholder Input: Community Corrections <i>Tim Hand, Larimer County</i> <i>Community Corrections</i> <i>Brian Hulse, Intervention</i> <i>Community Corrections Services</i> (continued)</p>	<p>In regards to “certainty in sentencing,” Brian explained that, with the multitude of re-entry pathways, there is a lack of clarity due to the different rules around the various avenues. Certainty exists but knowing the “ins and outs,” and being able to educate both victims and the community, is extremely difficult and cumbersome. Additionally, community corrections programs are structured purposefully to be open-ended, dependent on an individual’s progress, that can result in early release from (comm. corr.) programs or transition to other settings (like parole). The dynamic nature and dynamic factors that determine success in and the conclusion of a stint in community corrections makes it difficult to convey certainty in this aspect of sentencing.</p> <p>Maureen asked whether there is one ideal length of stay for those in residential community corrections. Brian replied length of stay can be anywhere from five to 24 months depending on the severity of the conviction, but ultimately the timeframe hinges on the risk, needs and responsivity of the individual, which means the length of stay is also unique to the individual.</p> <p>Michael thanked Brian and Tim for their presentations and explained that the Working Group may have additional questions as the work proceeds.</p>
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<p>Public Comment</p> <p>Next Steps & Adjourn <i>Michael Dougherty,</i> <i>Working Group Leader</i></p>	<p>Discussion</p> <p>Michael asked for any public comment and, seeing none, moved to the conclusion of the meeting.</p> <p>Michael thanked all of the attendees for the productive and informative meeting and mentioned that both the Sentencing Reform Task Force and the full Commission would be meeting later in the week.</p> <p>He reminded everyone the next meeting is scheduled for October 19, 2021 at 3pm. Hearing no further comment, Michael adjourned the meeting.</p>
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Next Meeting

Tuesday, October 19, 2021 / 3:00PM – 5:00PM

Virtual Meeting

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