



Colorado Commission on Criminal and Juvenile Justice Legislative Fact Sheet Support SB21-271

Concerning the adoption of the 2021 recommendations of the CCJJ
regarding classification and sentencing of offenses

Sponsors: Senators Gardner and Gonzales & Representative Roberts

May 2021

Background

There has not been a comprehensive review of sentencing laws in Colorado since 1985. Over the ensuing decades, many new crimes have been created and other changes have been made to various sentencing laws which have resulted in Colorado's sentencing statutes becoming outdated, misaligned, and inconsistent in their application. Also, there have been strong concerns from many different stakeholders about the lack of certainty that exists regarding the amount of time a person will serve when sentenced to incarceration.

In June 2020, Governor Polis requested that the Colorado Commission on Criminal & Juvenile Justice (CCJJ) undertake a comprehensive review of sentencing laws to ensure that our sentencing scheme is rational, just, equitable, consistent, and reflects our shared values, including:

- maximizing public safety
- providing restoration and healing for victims
- ensuring fair and consistent treatment
- promoting acceptance of responsibility and accountability
- eliminating disparities based on race, ethnicity, gender, geography, socio-economic status, disability, or any other intersecting identities
- seeking rehabilitation as the goal in every case regardless of sentence and reducing recidivism, and
- reserving incarceration and detention for the most serious cases

The Governor emphasized that some of the work be completed to allow consideration by the General Assembly during the 2021 legislative session. The CCJJ created the Sentencing Reform Task Force (SRTF) which started its analysis with a comprehensive review of the misdemeanor and petty level of offenses. The recommendations developed by the SRTF were unanimously approved by the CCJJ and have been introduced as a package in SB21-271.

Framework for misdemeanor sentencing grid

In undertaking this analysis, the SRTF was guided by the following framework:

- Conduct a practical review and data analysis of what actually happens in criminal cases where a specific offense is charged
- Promote consistency and certainty in sentences
- Simplify crimes and sentencing
- Eliminate redundant offenses
- Develop a unified misdemeanor sentencing grid
- Reevaluate sentencing ranges
- Have a rational basis for classifying misdemeanors in the different offense levels based on harm, seriousness of offense, and nuances in different fact patterns
 - M1 Misdemeanors: direct, physical harm to a victim
 - M2 Misdemeanors: crimes against property
 - Misdemeanor offenses with financial loss to a victim will mirror the value thresholds in the theft statute and be consistent
 - Petty offenses allow for short jail sentence

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- Unclassified misdemeanors would be fine only

Specific crimes were also identified that should be reclassified from misdemeanor to felony or vice versa based on harm, seriousness of offense, or nuances in different fact patterns. For example:

Vehicular Homicide and Assault - DWAI Vehicular Homicide and DWAI Vehicular Assault with Serious Bodily Injury can currently only be charges as misdemeanor traffic offenses. SB21-271 would reclassify both as felony offenses.

Introduction of contraband – Under current law, Introduction of Contraband is a class 4 felony that applies equally to alcohol, explosives, marijuana, and wigs. This recommendation differentiates between “dangerous instruments” (like weapons) that would remain a class 4 felony, items that might facilitate escape or controlled substances would be a class 6 felony, and all other items would be a class 2 misdemeanor.

SB21-271 Summary

New Misdemeanor Sentencing Grid

The SRTF reviewed almost 1,000 offenses covering Title 1 through Title 44 and did a state-by-state review of misdemeanor sentencing ranges. Colorado’s current misdemeanor sentencing range is high compared with other states. The recommended sentencing range of up to 364 days is the most common range in all 50 states. Seven states have a lower range and five states have a higher range.

Misdemeanor 1	Up to 364 days jail	Fine Treatment options Useful public service
Misdemeanor 2	Up to 120 days	Fine Treatment options Useful public service
Petty Offense	Up to 10 days	Fine Useful public service
Infraction or unclassified misdo	n/a	Fine Useful public service

Fines for Misdemeanors

In current law, there is wide variance in the fine amount, even for crimes that are within the same level. This appears to often be a function of the long time period over which different fines were established. SB271 would standardize the fine amount across the misdemeanor crime categories.

M1	Up to \$1,000
M2	Up to \$750
Traffic M1	Up to \$1,000
Traffic M2	Up to \$750
Drug M1	Up to 1,000
Drug M2	Up to \$750

DUI and Traffic Misdemeanors

Since DUI sentencing has recently be revised, there are no changes to DUI sentencing, except for minor clarifications related to work release and alternative sentences when extraordinary circumstances are determined by the Court. Sentencing and sentence ranges for DUI/DWAI is stand alone and

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encompassed within the DUI statute. Driving offenses are classified as Class 1 and Class 2 traffic misdemeanors or traffic infractions. Title 42 (Vehicles and Traffic) crimes that are not offenses committed while operating a motor vehicle are classified as criminal misdemeanors, petty offenses or civil infractions. SB271 aligns the sentencing ranges for traffic misdemeanors with the same range as for criminal misdemeanors.

Jail earned time credits

There is wide variance among different jails on the amount and criteria for awarding earned time credits to people serving a jail sentence. In order to promote statewide consistency and greater certainty, SB271 sets the maximum of seven days for each thirty days served in jail that may be deducted for earned time with a possible additional three days if an inmate is designated as a trustee. All or part of any earned time awarded is subject to forfeiture if the inmate is found to have violated any rules or has not faithfully accepted or completed the duties assigned.

Clarification of alternative sentencing language for misdemeanors

In current law, there are several sentencing alternatives available to the court and several options available to the jails regarding day-release. However, current law is not inclusive of the options that are actually available in the community. SB271 adds behavioral health treatment and reentry programs to the list of those alternatives and day-release options.

Delayed effective date

The statutory changes would apply to crimes committed on or after **March 1, 2022** in order to allow for modifications to case management systems, court documents, and to allow adequate time to train law enforcement, prosecutors, defense counsel, judges, probation, and jail personnel. This time period will also provide an opportunity to allow for additional analysis and identify needed statutory “clean-up” prior to the effective date.

Colorado Commission on Criminal & Juvenile Justice Members

*(members who are also on the Sentencing Task Force are indicated by **)*

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Misdemeanor Sentencing Ranges by State

STATE	MISDEMEANOR LEVEL	MAX JAIL
Alabama	Class A	0-1 year
	Class B	0-6 months
	Class C	0-3 months
Alaska	Class A	0-1 year
	Class B	0-90 days
Arizona	Class 1	0-6 months
	Class 2	0-4 months
Arkansas	Class A	0-1 year
	Class B	0-90 days
	Class C	0-30 days
California	Gross Misdemeanor	0-364 days
	Standard Misdemeanor	0-6 months
Colorado	Class 1	0-18 months
	Class 2	0-12 months
	Class 3	0-6 months
Connecticut	Class A	0-1 year
	Class B	0-6 months
	Class C	0-3 months
	Class D	0-30 days
Delaware	Class A	0-1 year
	Class B	0-6 months
	Unclass	0-30 days
Florida	1st Degree	0-1 year
	2nd Degree	0-60 days
Georgia	Misdemeanor	0-12 months
Hawaii	Misdemeanor	0-1 year
	Petty Misdemeanor	0-30 days
Idaho	Misdemeanor	0-6 months
Illinois	Class A	0-364 days
	Class B	0-6 months
	Class C	0-15 days
Indiana	Class A	0-11 months
	Class B	0-6 months
	Class C	0-30 days
Iowa	Aggravated Misdemeanor	0-2 years prison
	Serious Misdemeanor	0-1 year jail
	Simple Misdemeanor	0-30 days jail
Kansas	Class A	0-1 year
	Class B	0-6 months
	Class C	0-30 days
Kentucky	Class A	0-12 months
	Class B	0-90 days
	Mini B	0-45 days

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STATE	MISDEMEANOR LEVEL	MAX JAIL
Louisiana	Misdemeanor	0-6 months
Maine	Class D	0-1 year
	Class E	0-6 months
Maryland	Misdemeanor	Blend 0-12 months jail or up to 18 months prison
Massachusetts	Misdemeanor	Blend 0-2.5 years prison or 0-1 year jail
Michigan	High Ct Misdemeanor	0-2 years prison
	Misdemeanor	0-1 year jail
	Misdemeanor	0-93 days jail
Minnesota	Misdemeanor	0-90 days
Mississippi	Misdemeanor	0-1 year
Missouri	Class A	0-1 year
	Class B	0-6 months
	Class C	0-15 days
Montana	Misdemeanor	0-1 year
Nebraska	Class I	0-1 year
	Class II	0-6 months
	Class III	0-3 months
Nevada	Gross Misdemeanor	0-364 days
	Misdemeanor	0-6 months
New Hampshire	Level A	0-1 year
	Level B	Fine only up to \$1,200
New Jersey	Disorderly Person	0-6 months
	Petty Disorderly	0-30 days
New Mexico	Misdemeanor	6 months-1 year
	Petty Misdemeanor	0-6 months
New York	Class A	0-1 year
	Class B	0-3 months
	Unclassified	
	Misdemeanor	0-15 days
North Carolina	Class 1	1-150 days
	Class 2	1-60 days
	Class 3	1-30 days
North Dakota	Class A	0-360 days
	Class B	0-30 days
Ohio	Class 1	0-180 days
	Class 2	0-90 days
	Class 3	0-60 days
	Class 4	0-30 days
Oklahoma	Misdemeanor	0-1 year
Oregon	Class A	0-364 days
	Class B	0-6 months
	Class C	0-30 days
Pennsylvania	1st	2.5-5 years prison

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STATE	MISDEMEANOR LEVEL	MAX JAIL
	2nd	1-2 years prison
	3rd	6-12 months prison
	Summary Offense	90 days jail
Rhode Island	Misdemeanor	0-1 year
	Petty Misdemeanor	0-6 months
South Carolina	Class A	0-3 years
	Class B	0-2 years
	Class C	0-1 year
South Dakota	Class 1	0-1 year
	Class 2	0-30 days
Tennessee	Class A	0-11 months
	Class B	0-6 months
	Class C	0-30 days
Texas	Class A	0-1 year
	Class B	0-180 days
	Class C	Fine only up to \$500
Utah	Class A	0-364 days
	Class B	0-6 months
	Class C	0-90 days
Vermont	Misdemeanor by Crime	Max 2 years
Virginia	Class 1	0-12 months
	Class 2	0-6 months
	Class 3	Fine only up to \$500
	Class 4	Fine only up to \$250
Washington	Gross Misdemeanor	90 days - 1 year
	Misdemeanor	0-90 days
West Virginia	Class A	0-12 months
	Class B	0-6 months
	Class C	Fine only up to \$500
Wisconsin	Class A	0-9 months
	Class B	0-90 days
	Class C	0-30 days
Wyoming	High Misdemeanor	0-1 year
	Low/Petty Misdemeanor	0-6 months