



COLORADO

Commission on Criminal & Juvenile Justice

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November 17, 2023

TO: The General Assembly
FROM: The Commission on Criminal and Juvenile Justice
Stan Hilkey, Chair
RE: Senate Bill 2023-088, Final Report

Background. The General Assembly passed and Governor Polis signed *Senate Bill 2023-088, Concerning an Offender's Eligibility for Release from Confinement*, that mandated that the Commission submit a report on its study of sentencing reform. However, prior to its passage, the House Judiciary Committee on May 7, 2023 postponed indefinitely *Senate Bill 2023-158, Concerning the Continuation of the Colorado Commission on Criminal and Juvenile Justice*. The sunset of the Commission resulted in the suspension of all ongoing work by the Commission and its committees. In a signing statement related to *S.B.23-088*, Governor Polis stated,

While I support this legislation and believe that it is valuable, it will be very difficult for the CCJJ to fully complete the requirements in this bill due to its statutory repeal date of September 1, 2023. Due to the failure of the legislature to reauthorize CCJJ, the CCJJ will be hosting its final meeting in early June of this year [*Note: This June 9 meeting was subsequently canceled*]. While the bill was amended to change the reporting deadline from January 21, 2024 to June 30, 2023 to take into consideration the General Assembly's actions, the above circumstances and expedited timeline will limit the CCJJ from fulfilling the requirements of Senate Bill 2023-088.

The Commission staff have prepared this brief memo to recount the recent efforts regarding the sentencing matters raised in *S.B.23-088* that were completed and those that were planned but, due to the sunset, will remain incomplete.

Mandates. *S.B.23-088* mandated that the Commission:

- Submit a report to the General Assembly concerning the Commission's study of sentencing reform on or before June 30, 2023.
- The report is requested to include:
 - A summary of the [*sentencing reform*] work to date;
 - An update on the status of the efforts to address clarity and certainty in the current criminal sentencing scheme, including ways to provide the public, including victims, defendants, and their families, clarity regarding the amount of time that must be served on each sentence imposed by the court prior to a defendant's parole eligibility.





Process. The Commission seated the Sentencing Reform Task Force on September 9, 2020 to address several requests in the *2020 Gov. Polis Biennial Letter*, and subsequently added topics derived from the *2022 Biennial Letter*. These biennial letters were pursuant to *House Bill 2018-1287*. While the Task Force created several working groups to address a variety of criminal justice topics included in these letters, it assigned the primary responsibility for the study and drafting of recommendations related to sentencing reform to the Sentence Structure Working Group.

Summary of Sentencing Reform Work to Date. The Sentencing Reform Task Force and its Sentence Structure Working Group completed and submitted to the Commission eight recommendations on the topic of sentencing-related reforms prior to the Commission’s sunset. The following are the eight recommendations that were approved by the Commission, each of which were drafted into bills that were passed by the General Assembly and signed by the Governor (*most recent listed first*):

Bill	CCJJ Recommendation
S.B. 2023-097	<p>FY23-SR #02. Amend and Append Motor Vehicle Theft Provisions [Statutory]</p> <p>Amends, appends, deletes and replaces several provisions of statute related to motor vehicle theft. The elements for motor vehicle theft in the first degree and second degree are changed and motor vehicle theft in the third degree is created. The penalties for motor vehicle theft are no longer based on the value of the vehicle or vehicles stolen. Motor vehicle theft in the first degree is a class 3 felony, motor vehicle theft in the second degree is a class 4 felony, and motor vehicle theft in the third degree is a class 5 felony. The recommendation creates the offense "unauthorized use of a motor vehicle" and makes it a class 1 misdemeanor, or a class 5 felony for a second or subsequent offense. These revisions comprise changes to the following elements of statute: §18-4-409, §18-4-409.5, §18-17-103, §19-1-304 and §42-2-202, C.R.S.</p>
H.B. 2023-1293	<p>FY23-SR #03. Reclassify Selected Felony Crimes [Statutory]</p> <p>Amends, appends, deletes and replaces multiple provisions of Colorado criminal statutes related to selected General Felonies, Enhanced Felonies, the re-classification or removal of felonies, and the elimination of specific aggravators for "second and subsequent offense or repeat offender." This recommendation includes three basic concepts and the associated statutory revisions:</p> <ol style="list-style-type: none"> 1) Amend and "right-size" felony offenses so that the classification of the offense is balanced and properly aligned with the level of seriousness of the prohibited behavior. 2) Eliminate "second and subsequent" increased felony classifications as necessary, given the wide ranges available in the current sentencing scheme, excluding certain criminal offenses where the classification of the crime should be increased when criminal behavior is repeated. 3) Amend the language defining felony offenses when the current statutory language does not properly capture the proper mental state or actions that should be required for commission of that offense.





Bill	CCJJ Recommendation
H.B. 2023-1292	<p>FY23-SR# 04. Change Felony Crime Classifications and Sentence Enhancement Provisions of the Criminal Code [Statutory]</p> <p>Amends and appends multiple provisions of statute related to felony crimes, including revisions of post-conviction review and sentence reconsideration. This recommendation comprises three elements that each include a Description, a Discussion and Proposed Statutory Language for the following:</p> <ul style="list-style-type: none"> - ELEMENT 4.1. Mandatory Consecutive Sentencing and Post-Conviction Review includes revisions and/or amendments to §18-1.3-406 and §24-4.1-302/§24-4.1-302.5, C.R.S. - ELEMENT 4.2. Habitual Sentences includes revisions and/or amendments to §18-1.3-801 and §24-4.1-302/§24-4.1-302.5, C.R.S. - ELEMENT 4.3. Extraordinary Risk includes revisions and/or amendments to §18-1.3-401, C.R.S.
H.B. 2022-1257	<p>FY22-SR #06. Revise Penalties for Unauthorized Practice of Certain Professions or Occupations [Statutory]</p> <p>Amend §12-20, C.R.S., to include a new statutory section with additional professions, the practice of which without a license, should be a felony due to a public safety risk. These crimes shall be a Class 6 Felony.</p>
"	<p>FY22-SR #07. Revise Value Basis for Theft of Public Benefits [Statutory]</p> <p>Amend Colorado Revised Statutes related to theft of public benefits to clarify that the amount of theft is based on the amount of benefits paid for which the person is not legally entitled. More specifically, the level of criminal offense is based on the amount of benefits received by the person for which the person is not entitled and does not include the amount the person is entitled to receive.</p>
"	<p>FY22-SR #08. Add Prison as an Intermediate Sanction Confinement Facility (Statutory)</p> <p>Amend §17-2-103, C.R.S., to grant statutory authority to the Executive Director of the Colorado Department of Corrections to confine parolees in a prison facility, in addition to utilizing jails, for the purpose of confinement as an intermediate sanction for up to 14 days without filing a complaint seeking revocation of parole. This will provide the Department of Corrections and parole officers additional options for swift and sure intermediate sanctions.</p>
"	<p>FY22-SR #09. Revise Felony Offenses Eligible for the Crime of POWPO [Statutory]</p> <p>Amend §18-12-108, C.R.S., Possession of Weapons by Previous Offenders to include additional non-VRA felony offenses (See Appendix A) based on public safety considerations.</p>
S.B. 2021-271	<p>FY21-SR #01. Revise Misdemeanor Sentencing and Offenses [Statutory]</p> <p>Amends, appends, deletes and replaces several provisions of statute related to misdemeanor sentencing and offenses. This recommendation comprises three elements with an extensive array of associated statutory revisions and supporting documents:</p> <ul style="list-style-type: none"> - Change the misdemeanor sentencing scheme - Align current misdemeanor crimes - Reclassify felony offenses

The Commission website provides details of the progression of this work by the Sentencing Reform Task Force and the Sentence Structure Working Group (ccjj.colorado.gov/ccjj-srtf) and the compilation of the related recommendations summarized above (ccjj.colorado.gov/ccjj-recgrp-srtf).





Update on Clarity and Certainty in Criminal Sentencing. The topic of clarity and certainty in sentencing was included as a guiding concept from the early meetings of the Sentencing Reform Task Force. During the second meeting on October 7, 2020, the Sentence Structure Working Group offered a presentation describing their goals, throughout which sentence clarity and certainty was a central concept:

- **Improve Consistency and Certainty.** That those who have committed similar crimes, if sentenced to imprisonment, should be sentenced to similar time lengths based upon the crime that was committed and the circumstances surrounding the crime; aggressively address truth in sentencing where offenders who are sentenced to imprisonment will serve the sentence which is imposed by the court, minus the good time which they can earn. Create a system where good time calculations are clear to all and will not exceed 25% to 30% of the sentence.
- **Balance approaches of rehabilitation & punishment (i.e. “just desserts”).** While the justice system will never totally resolve the differing views on that topic achieving “balance” is a reasonable goal.
- **Simplify sentencing.** Reduce sentence ranges to more consistent and reasonable ranges. There has been a growing disproportionality due to the wide range of sentencing options available. Over-incarceration and over-criminalization may occur, in many circumstances driven by technical violations.
- **Review the crimes and re-classify as needed.** Crimes are often classified based on resources available during specific legislative sessions, by anecdote and/or political concerns, not thoughtful comparison or analysis.

Prior to addressing these clarity and certainty goals, the Sentencing Reform Task Force and Sentence Structure Working Group efforts focused on laying the necessary groundwork reflected in the recommendations and consequent legislation listed in the summary table above. That work continued until the CCJJ was not re-authorized during the 2023 legislative session. Some elements of clarity and certainty in sentencing were addressed in the previous recommendations summarized above on: misdemeanor crime classification and sentences, felony crime reclassification, and sentence enhancement provisions.

The remaining topics to be addressed included:

- sex offense crimes and classification,
- sentence ranges,
- comprehensive felony classification scheme, and
- additional statutory provisions to enhance clarity and certainty of sentences (for example, earned time, parole eligibility, and community transition timing and options).

The presentation referenced above that summarized the planned work of the Sentence Structure Working Group is available at, cdpsdocs.state.co.us/ccjj/committees/SRTF/Materials/2020-10-07_CCJJ-SRTF-PrelimWork-StructureWG.pdf and is appended below.

The work on these final elements, which are central to the issue of sentencing clarity and certainty, were scheduled to occur between June 2023 and January 2024. The sunset of the Commission prevented that work from occurring.

