

SUMMARY OF PRELIMINARY WORK STRUCTURE WORKING GROUP

October 7, 2020

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Presented to the Sentencing Reform Task Force
Colorado Commission on Criminal and Juvenile Justice

Discussion of history of CCJJ and goals for sentencing – Purpose of sentencing was enacted in a bill sponsored by Rep Claire Levy

18-1-102.5. Colorado Revised Statutes

1) The purposes of this code with respect to sentencing are:

- (a) To punish a convicted offender by assuring the imposition of a sentence he deserves in relation to the seriousness of his offense;
- (b) To assure the fair and consistent treatment of all convicted offenders by eliminating unjustified disparity in sentences, providing fair warning of the nature of the sentence to be imposed, and establishing fair procedures for the imposition of sentences;
- (c) To prevent crime and promote respect for the law by providing an effective deterrent to others likely to commit similar offenses;
- (d) To promote rehabilitation by encouraging correctional programs that elicit the voluntary cooperation and participation of convicted offenders;
- (e) To select a sentence, a sentence length, and a level of supervision that addresses the offender's individual characteristics and reduces the potential that the offender will engage in criminal conduct after completing his or her sentence; and
- (f) To promote acceptance of responsibility and accountability by offenders and to provide restoration and healing for victims and the community while attempting to reduce recidivism and the costs to society by the use of restorative justice practices.

ADDITIONAL/OPERATIONAL GOALS WE DEFINED

- ▶ Consistency/Certainty: That those who have committed similar crimes, if sentenced to imprisonment, would be sentenced to similar time lengths based upon the crime that was committed, and the circumstances surrounding it; and that we aggressively address truth in sentencing - offenders who are sentenced to imprisonment will serve the sentence which is imposed by the court, minus the good time which they can earn. That good time is clear to all and it will not exceed 25% to 30% of the sentence.
- ▶ Balance the rehabilitation/punishment (just desserts) approaches (We will never totally resolve the differing views on that so need to balance.)
- ▶ Simplify
- ▶ Reduce sentence ranges to more consistent and reasonable ranges. Growing disproportionately high. Over-incarceration/over-criminalization (in many circumstances driven by technical violations)
- ▶ Review the crimes and re-classify as needed. Crimes are often classified based on resources available that legislative session, anecdote and/or political concerns not thoughtful comparison or analysis

ENGAGED IN

REVIEW OF OTHER STATES AND THE SENTENCING SCHEMES AVAILABLE AND THE UNDERLYING PHILOSOPHIES – DETERMINATE, INDETERMINATE GRIDS, NATURE OF GRIDS, EARNED TIME, ETC. SOME OF STATES REVIEWED: KANSAS, NORTH CAROLINA, UTAH, OREGON, MINNESOTA, MASSACHUSETTS, NEW JERSEY, SOME NEW MEXICO

AND

REVIEW OF THE HISTORY OF SENTENCING IN COLORADO

**REVIEW OF ALL CRIMES FELONY, MISDEMEANOR AND TRAFFIC
IN COLORADO – FIRST TOOK A QUICK LOOK
LEGISLATIVE COUNCIL PUBLICATION
THIS WAS A NOT A “IN DEPTH” REVIEW BUT A LOOK AT HOW
OFFENSES COULD BE SORTED**

**PRELIMINARY DECISION THAT 4 FELONY GRIDS SEEMED THE MOST MEANINGFUL,
CONSISTENT AND MANAGEABLE GIVEN COLORADO SENTENCING LAWS AT THIS TIME.**

**THIS MULTI- GRID SYSTEM WAS ENVISIONED BY THE CCJJ WHEN IN 2012-2013 WHEN
THE DRUG GRID WAS ORIGINALLY DESIGNED.**

**DRUG, PROPERTY/OTHER, PERSON, AND SEX OFFENSES JUMP OUT AS THE 4 GRIDS IN
THIS APPROACH.**

**CONFIRMED THAT OTHER STATES ARE SIMILAR -- WITH MULTIPLE GRIDS ESPECIALLY
THOSE WITH RECENT STUDIES OF THEIR SENTENCING SYSTEM**

**STARTED THE ANALYSIS OF WHAT CRIMES WOULD GO IN WHAT
BUCKETS IN THE POSSIBLE 4 GRID SYSTEM**

**COPVID DELAYS AND THEN ULTIMATELY THE GOVERNOR'S LETTER WAS RECEIVED AND
WAS MORE COMPREHENSIVE**

IMPORTANT

Recognition that Governor's letter addresses elements that we cannot address in this structure analysis that we had started— elements of restorative justice and behavioral health – those need to be discussed by other groups. Our emphasis would be on the structure of the grids, the numbers in the boxes and amount of time served.

Hoping that other working groups would decide to look at those decision-making issues. How sentencing choices are made, should there be presumptive probation categories, presumptive incarceration, what are we to do with habitual sentencing, is COV sentencing the right way to go, diversion decisions, do we have the right alternative programs for felony sentencing and do we have the right “off-ramps”?

**AFTER COVID DELAY AND THE GOVERNOR'S LETTER TO CCJJ,
DISCUSSION RETURNED TO FELONY SENTENCING DISCUSSION
AND PRELIMINARY DECISION THAT WE WOULD LOOK AT
MONTHS RATHER THAN YEARS IN FELONY SENTENCING
RANGES .**

PRELIMINARY DECISION THAT WE WOULD LOOK AT REVISION OF PAROLE SYSTEM INSTEAD OF COMBINATION SYSTEM OF DISCRETIONARY AND MANDATORY PAROLE (WHICH IS NOT BEST PRACTICES). THE CURRENT SYSTEM IN PLACE CAN RESULT IN UNFAIRNESS AND INCONSISTENCY.

INITIATION OF CRIME SEVERITY ANALYSIS – PROCESS RECOMMENDED BY CSG AND ANALYSIS IN OTHER STATES

**AFTER LOOKING AT CRIME LISTS AND THE SCOPE OF WORK
FOR CRIME SEVERITY, AT THIS POINT WE MADE
PRELIMINARY DETERMINATION THAT DUE TO TIME FRAME
IN GOVERNOR'S LETTER AND DESIRE TO HAVE SOME
PRODUCT FOR 2021 SESSION THAT WE WOULD FIRST LOOK
AT THE MISDEMEANOR AND TRAFFIC OFFENSES AND RE-
STRUCTURE THOSE.**

STARTED TO STUDY MISDEMEANOR AND TRAFFIC
CASES. GOT DATA DUMP FROM JUDICIAL ON THESE
CASES. DISCUSSION OF WHAT THE STRUCTURE OF
MISDEMEANOR/MISDEMEANOR TRAFFIC SENTENCES
SHOULD LOOK LIKE. REVIEW OF 50 STATES
MISDEMEANOR SENTENCING RANGES

**DETERMINE WHAT FELONIES COULD BE MISDEMEANORS.
DISCUSSION OF HOW TO SIMPLIFY THE SCHEME.
PERSON/VICTIM CRIMES EMPHASIZED FOR MORE SERIOUS
SENTENCES.**

**NOTE: IN ENGAGEMENT IN AN IN-DEPTH REVIEW OF CRIMES,
WE SOLICIT REVIEW BY DA OFFICES AND PD OFFICES TO GET
INPUT FROM PRACTITIONERS TO OUR WORK AND ANALYSIS.
THIS WAS IN IN LINE WITH RECOMMENDATIONS FROM CSG IS
GET BOOTS ON THE GROUND INPUT AND FACT BASED
SCENARIOS.**

OUR IMMEDIATE NEXT STEPS: CONTINUE THE CRIME ANALYSIS WORK AND DEVELOP MISDEMEANOR AND TRAFFIC MISDEMEANOR SCHEDULES FOR THE COMING LEGISLATIVE SESSION AND SYSTEM TO DEVELOP INPUT AND ADDRESS THE CONCERNS OF STAKEHOLDERS.

WE CONTINUE TO STUDY THE DATA FROM JUDICIAL AND DOC /WORKING WITH SHERIFFS ABOUT MISDEMEANOR SENTENCING AND JAIL NEEDS AND USE OF RECENT JAIL ALTERNATIVES. AND TIME CREDITS.

IN SUMMARY: We are reviewing felony, misdemeanor and traffic offenses in Colorado with an eye towards restructuring the felony/misdemeanor sentencing grids, reclassifying offenses where appropriate, and eliminating redundant offenses. Other working groups could potentially examine how sentencing choices are made, diversion decisions, certain sentencing enhancers, development of alternative programs on felony sentencing, and whether we have the right “off-ramps.” That could include all kinds of community supervision including the use of probation and Community Corrections.

DISCUSSION AND QUESTIONS?

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