

Colorado Commission on Criminal and Juvenile Justice

**Sentencing Reform Task Force
MINUTES**

August 11, 2021 / 1:30PM-4:00PM
Virtual Meeting

ATTENDEES:

TASK FORCE MEMBERS

Rick Kornfeld, *TF Co-chair*/Defense Attorney
Michael Dougherty, *TF Co-chair*/District Attorney, 20th Judicial District
Maureen Cain, Office of the State Public Defender
Valerie Finks, Victim Compensation Program, DA Office, 1st Judicial District
Julie Gonzales, State Senator (Senate District 34)
Serena Gonzales-Gutierrez, State Representative (House District 4)
Kristen Hilkey, Adult Parole Board
Kazi Houston, Rocky Mountain Victim Law Center
Jessica Jones, Defense Attorney
Matt Lewis, Mesa County Sheriff
Andrew Matson, Colorado CURE
Greg Mauro, Division of Community Corrections
Heather McClure, Adams County Division of Community Safety & Well-Being
Tom Raynes, Colorado District Attorneys' Council
Michael Rourke, District Attorney, 19th Judicial District
Aaron Greco and Amber Pedersen for Dean Williams, Department of Corrections

STAFF

Richard Stroker, CCJJ Consultant
Jack Reed, Division of Criminal Justice
Damien Angel, Division of Criminal Justice
Kevin Ford, Division of Criminal Justice
Laurence Lucero, Division of Criminal Justice
Stephane Waisanen, Division of Criminal Justice

ABSENT

Taj Ashaheed, Second Chance Center
Terri Carver, State Representative (House District 20)
Jeff Chostner, District Attorney, 10th Judicial District
Christie Donner, Colorado Criminal Justice Reform Coalition
Bob Gardner, State Senator (Senate District 12)
Henry Jackson, Metro State College
Sarah Keck, Court Services Glenn Tapia, Division of Probation Services
Dan Rubinstein, District Attorney, 21st Judicial District
Glenn Tapia, Judicial Branch/ Director, Div. of Probation Services
Lisa Wayne, Defense Attorney

<p>Welcome & Agenda Welcome, Approval of Minutes, and Agenda <i>Rick Kornfeld & Michael Dougherty, Task Force Co-chairs</i></p>	<p>Discussion Rick Kornfeld welcomed the group and provided an overview of the agenda. A motion was offered and seconded to approve the minutes from July 7, 2021. Task Force members unanimously approved the minutes. Both Rick and Michael Dougherty noted the importance of the recent signing of Senate Bill 2021-271 (Misdemeanor Sentencing Reform), and shared that Governor Polis complimented the Sentencing Reform Task Force and Commission on their work regarding the legislation.</p>
--	--

<p>Issue/Topic Report: Sentencing Alternatives, Decisions & Probation Working Group <i>Dr. Abigail Tucker, WG Member</i></p> <p>ACTION The working group will finalize both recommendations for presentation to the SRTF in September</p>	<p>Discussion Dr. Abigail Tucker provided an update on behalf of the Sentencing Alternatives, Decisions & Probation Working Group. She offered a general overview of two draft recommendations and explained that Glenn Tapia will provide a more detailed presentation at the September Task Force meeting.</p> <p>Recommendation Regarding Telehealth:</p> <ul style="list-style-type: none"> • This proposal is specific to improving outcomes for individuals on probation via telehealth. • It aims to improve accessibility of telehealth treatment and to this as a permanent option for providers (rather than solely in response to the pandemic). • The proposal includes clinical recommendations and recommendations for the justice system. <p>Recommendation Regarding Improving Treatment Outcomes for Individuals who are on Probation</p> <ul style="list-style-type: none"> • This proposal is in response to the high rate of unsuccessful completion of individuals on legal supervision, many of whom also have a co-occurring mental health, substance abuse and/or intellectual/developmental disability issues. • The recommendation addresses the expectations of treatment providers and the role of state agencies. • The main concept is to create an endorsement option whereby treatment providers that serve justice-involved individuals could access streamlined administrative expectations and reimbursement norms, in order to avoid the need to contract in different ways with different justice agencies. In return for the endorsement, the justice system would be ensured that treatment providers meet expectations regarding training and competencies. <p>Maureen Cain shared that Glenn Tapia presented data to the Sentence Structure Working Group, outlining the disparity of successful completion rates between people who have a behavioral health issue vs. those who do not. She asked whether the working group is studying/identifying those populations for whom probation doesn't make sense from the start (e.g., behavioral health),</p>
--	--

<p style="text-align: center;">Issue/Topic Report: Sentencing Alternatives, Decisions & Probation Working Group <i>Dr. Abigail Tucker, WG Member</i> (continued)</p>	<p>and whether the group is looking at revocation rates for the behavioral health population. Dr. Tucker replied that the final recommendation will address those elements, and that the group explored the standard Terms and Conditions of Probation document, highlighting areas that don't appear to be working very well.</p> <p>Dr. Tucker explained that the work is centered on developing a swift, restorative, intervention for persons convicted of a petty offense, or other minor offenses. The group has been looking at ways the intervention might be a complete redirection from the justice system, as well as self-directed options such as access to treatment, community services and other options.</p> <p>Maureen noted that, based on SB 21-271, the possible penalty for a petty offense is 10 days in jail, therefore those with a petty offense won't even get probation. Dr. Tucker replied that there is an intention for assessment-driven, rather than offense-driven, supervision. She added that she will take the issue of revocations back to the Working Group for more follow-up. Maureen said it will be important to distinguish between risk-reduction violations versus rule-breaking violations, and that responses should be different in terms of potential sanctions.</p> <p>Jessica Jones added that revocation reports often only show that a person failed supervision, rather than also including information on behavioral health issues and the efforts someone might have made prior to the failure. Dr. Tucker replied she will share that feedback at the next Working Group meeting. She also shared that the Working Group is determining whether final recommendations should be directed to legislative change or to agency policy.</p> <p>The Working Group will finalize these recommendations for presentation to the SRTF and possibly the CCJJ in October 2021.</p>
--	--

<p style="text-align: center;">Issue/Topic Report: Sentence Structure Working Group <i>Michael Dougherty, WG Leader and Maureen Cain, WG Member</i></p>	<p style="text-align: center;">Discussion</p> <p>Maureen provided an update on behalf the Sentence Structure Working Group, describing the recent listening sessions and the progress on the review of felony offenses and felony sentencing. A summary of the highlights include:</p> <ul style="list-style-type: none"> • The Working Group has conducted a third listening session (on July 27, 2021), gathering feedback from stakeholders across the system. This most recent session included: <ul style="list-style-type: none"> - Liz Porter Merrill/Restorative Justice Council. She described the work of the council and the research and benefits of RJ - Dan and Barb West/Family of incarcerated person. They spoke about mental health issues and second chances for those reentering the community - Ty Petersburg and Heather Dugan/Department of Parks and Wildlife representatives. They highlighted concerns regarding specific crimes for the department in crime classification - Glenn Tapia/Probation Services – Glenn presented important information on supervision and effective responses for certain populations
--	--

<p style="text-align: center;">Issue/Topic</p> <p style="text-align: center;">Report: Sentence Structure Working Group <i>Michael Dougherty and Maureen Cain</i> (continued)</p> <p style="text-align: center;">ACTION</p> <ul style="list-style-type: none"> - Kristen Hilkey to work with Aaron Greco on technical violation data. - Damien Angel to forward working documents to Task Force members for review. - Members of the Parole Board agreed to provide more information and possibly a presentation to the Working Group. 	<ul style="list-style-type: none"> • The Working Group is still hoping to hear from Sheriffs, Police Chiefs, Community Corrections, agencies from the Executive Branch, and additional victim groups. • Tom Raynes added that he’s scheduled to meet with the Sheriffs organization to explain the listening sessions and encourage them to participate in the process. • Maureen noted that the Working Group meets twice a month, but that the Study Group meets once per week. Robust discussions have been held in both but no final decisions have been made as of yet. • Maureen provided an overview of the work on felony offense categorization and outlined the following outcomes from the crime severity analysis: <ul style="list-style-type: none"> - Recommended 4 grids: Crimes Against Persons, General Felonies, Sex Offenses and Drug Offenses. - Reviewed the 600+ felony crimes. The group is sorting those according to the four grids. - The next step will be to evaluate the severity level within each grid. The Task Force may or may not adopt the current approach. The group must consider whether there are crimes where a prison sentence is not required and whether such crimes would be felonies or misdemeanors. - The group will likely recommend 3 types of sentencing ranges; presumptive, aggravated (will define what makes aggravated in statute), and, possibly, a habitual range to deal with habitual concerns, which would still need to be pled and proven. - The group’s goal is greater certainty in sentencing. It is proposed that the sentence imposed include earned time of 25% to 30% (to be determined by crime-type distinctions) to establish the mandatory release date. It is understood that sentence ranges will require modification to achieve the length of stay in current law. - Sentences will be in months not years. • During her presentation Maureen noted the following additional points regarding the categorization of roughly 600 felony crimes: <ul style="list-style-type: none"> - Difficult decisions were made in sorting the crimes, but the working group attempted to main a consistent categorization philosophy. The group is considering similar work being conducted in other states. - There are 100 - 125 crimes against persons that will undergo further review. - A decision will likely be made to subsume the mitigated range into the presumptive range. - Crimes against at-risk persons may be placed in an aggravated range, rather than an increased felony level. - Task Force members are encouraged to review the draft for inaccuracies or mis-categorizations. • Tom emphasized the discussion on actual ranges won’t take place until the issue of earned time and certainty in sentencing are addressed. • Maureen described this first phase of work as the ‘architectural design’ piece and the frame within which the group will operate. • Kristen Hilkey asked about the impact on the prison population if discretionary parole is eliminated. She also noted that those released to
--	---

<p style="text-align: center;">Issue/Topic</p> <p>Report: Sentence Structure Working Group <i>Michael Dougherty and Maureen Cain</i> (continued)</p>	<p>parole discretionarily have better outcomes than those released on their mandatory date. Maureen and Kristen debated the reasons why people on mandatory parole have a higher failure rate.</p> <ul style="list-style-type: none"> • Maureen added that there are several data requests underway to examine these issues in more detail. • Maureen finished the summary by outlining the Working Group’s discussion about parole: <ul style="list-style-type: none"> - The group is reviewing earned time on parole, early release from parole and the processes that lead to re-entry success - Technical parole violation and sanctions/incentives - Parole numbers - Processes in other states • Maureen described the background discussions that have informed the group regarding prison-release-to-parole processes (e.g., discretionary vs mandatory parole release) and parole procedures that must be integrated into the SRTF recommendations. The following discussion ensued: <ul style="list-style-type: none"> - The new crime felony recidivism rate is about 50% and has been for the last decade. The group is trying to tease out what percentage of technical violations are in fact misdemeanors. - Kristen reiterated that previous attempts to establish greater “truth in sentencing” can significantly increase prison populations. - She asked, given that history, why the group is raising this issue again and whether it is thought the Governor’s Office and Legislature would support the elimination of discretionary parole release and, consequently, the Parole Board. - Tom replied that the working group is focus is on <i>certainty</i> rather than on <i>truth</i> in sentencing/parole. The challenge is to create a better system to replace those that have not worked in the past. - Jessica Jones agreed that it’s important to be mindful of the big picture as everyone progresses through the system and to create a robust and meaningful recommendation for reform. - Maureen pointed out that the concept would be similar to the federal model and that earned time would still be in place, and people would lose earned time for bad behavior. Additionally, the Governor has asked to be apprised of the direction the Task Force is going with this issue and why. - The group still plans to conduct prison projection modeling. - Rick shared that in the federal system, a person can realize approximately 15% earned time. - Kristen stated it’s important for the group to be cognizant of the fact that everyone has different risk/needs that will need to be addressed during their parole period. - Is there evidence that parole actually reduces risk and for which subgroups of offenders? - Kristen shared the Parole Board has created a revocation system that delineates between: felony, felony technical, misdemeanor, misdemeanor technical, and technical only. - Aaron Greco said he would follow up with Kristen to provide data on revocations.
---	--

<p>Issue/Topic Report: Sentence Structure Working Group <i>Michael Dougherty and Maureen Cain</i> (continued)</p>	<p>Maureen reiterated that the Working Group had just begun this discussion this past week and will be conducting the bulk of the crime severity analysis in the next month.</p> <p>Michael asked Damien Angel to forward relevant working documents to the SRTF members. Michael summarized that the group is in the very early stages of the process but is excited about the work ahead. He added it will be helpful to have input from the Parole Board during the process.</p>
---	---

<p>Issue/Topic Public Comment <i>Michael Dougherty</i></p>	<p>Public Comment There were no members of the public present during this meeting.</p>
---	--

<p>Adjournment <i>Rick Kornfeld & Michael Dougherty</i></p>	<p>Conclusion Hearing no further comment from the group, Rick and Michael thanked everyone for their time and adjourned the meeting.</p> <p>The next meeting is scheduled for 9/8/2021 from 1:30pm to 4:00pm with details posted at ccjj.colorado.gov/ccjj-meetings.</p>
---	--

Next Meeting

September 8, 2021

Virtual Meeting

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