

**Colorado Commission on Criminal and Juvenile Justice  
Sentencing Reform Task Force**

**Sentence Structure Working Group  
MINUTES**

August 24, 2021 / 2:00PM-5:00PM  
Virtual Meeting

**ATTENDEES:**

**WORKING GROUP MEMBERS**

Michael Dougherty, District Attorney, 20<sup>th</sup> Judicial District, *Leader*  
Maureen Cain, Office of the State Public Defender  
Christie Donner, Colorado Criminal Justice Reform Coalition  
Valarie Finks, Crime Victim Compensation, 1<sup>st</sup> Judicial District  
Jessica Jones, Defense Attorney  
Tom Raynes, Colorado District Attorneys' Council  
Lisa Wayne, Defense Attorney

**ABSENT**

Dan Rubinstein, District Attorney, 21<sup>st</sup> Judicial District

**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  
Kevin Ford, Division of Criminal Justice

**GUESTS**

Kristen Hilkey, Parole Board  
Chad Dilworth, Parole Board  
Anne Andrews, Parole Board

<p><b>Welcome &amp; Agenda</b>  <i>Michael Dougherty,                  Working Group Leader</i></p>	<p><b>Discussion</b></p> <p>Michael Dougherty, Working Group Leader, welcomed Working Group members along with members of the Parole Board and Parole Board staff.</p> <p>Michael called the meeting to order and outlined the agenda.</p> <p>He explained that overall there’s been strong support for more certainty in sentencing in Colorado, and a system that is fair to victims, the community and offenders alike. An additional component to certainty in sentencing is to examine parole periods and how long someone should serve on parole.</p> <p>Michael added that Colorado currently has a sentencing grid for drug and sex offenses, and the goal is to add two remaining grids, one for general felonies and one for victim related felonies.</p>
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<p><b>Issue/Topic</b>                  Report Out from Study Group  <i>Michael Dougherty and                  Maureen Cain</i></p>	<p><b>Discussion</b></p> <p>Michael shared that he and Tom Raynes met with all of the elected DA’s and advised them of the work that is underway regarding the four sentencing grids, and that once all offenses are categorized into the grids the Working Group will begin looking at severity.</p> <p>Maureen Cain noted that she has yet to share a draft of the sentencing scheme summary document (with updated revisions) from the last meeting, but that it will be distributed shortly.</p> <p>Valarie Finks asked about a couple of lines in the draft document that show offenses being deleted, including one about animal cruelty. Tom replied those changes are in an effort to eliminate second and subsequent offense provisions. Maureen added that a new column has been included in the charts which delineates the number of times a crime was charged.</p>
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<p><b>Issue/Topic</b>                  Discussion with                  Parole Board Representatives  <i>Kristen Hilkey, PB Chair                  Chad Dilworth, PB Vice Chair                  Anne Andrews, PB Analyst</i></p>	<p><b>Discussion</b></p> <p>Kristen Hilkey addressed the group and shared that she’s fairly pessimistic about potential changes to the parole system. She explained that Colorado experimented with eliminating discretionary parole in the past, and that it failed and resulted in an increased prison population. She simply wants to ensure the same thing doesn’t happen again, and she wants to ensure there is a mechanism in place to incentivize people who are in prison.</p> <p>Michael asked Kristen if the period of time she’s referring to is 1984 to 1985. Kristen clarified that from 1979 to 1984 the sentencing scheme included:</p> <ul style="list-style-type: none"> <li>• A determinate sentencing scheme with no discretion (unless sex or habitual offense)</li> <li>• All other inmates paroled after serving 50% of their sentence</li> <li>• Parole period of one year consecutive to the sentence</li> </ul> <p>Then in 1985, the Parole Board was restored in order to create the opportunity for people to parole discretionarily. This provided incentives to inmates and</p>
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<p><b>Issue/Topic</b>                  Discussion with                  Parole Board Representatives  <i>Kristen Hilkey, PB Chair</i>  <i>Chad Dilworth, PB Vice Chair</i>  <i>Anne Andrews, PB Analyst</i>                  (continued)</p> <p><b>ACTION</b>                  - Anne Andrews (Parole Board) to pull and provide parole data.</p>	<p>helped manage the prison population.</p> <p>Kristen shared that she’s received feedback from victims and that, in the long run, they actually don’t like a truth-in-sentencing system. Michael noted that alternatively, he recently watched a family endure four hearings (two parole and two community corrections) in the span of 18 months, which was also an extremely difficult process for them. It’s important to strike a balance of victims having a voice and not being overloaded with hearings. Kristen replied she believes there are ways to improve the system without reverting to a scheme that previously didn’t work.</p> <p>Michael asked Kristen whether there is data available on percentage of violations, when those violations took place during the parole period, the nature of the violations, etc. Parole Board Analyst Anne Andrews shared that she will pull data for the group.</p> <p>Tom added that Kristen’s concerns are not new and are analogous to the concerns regarding the proposed sentencing changes, both have been cyclical in their ineffectiveness. Over the last 100-years, there has been cycles of wide discretion in sentencing vs. mandatory sentencing, and a similar swing in parole. The goal is to replace the ineffective processes with better approaches. Kristen replied that the current Parole Board is more professionalized than in the past, and is also not driven by political appointees.</p> <p>Michael asked Kristen for her thoughts on how to improve the parole system and if there are any other states with good models. Kristen replied that the issues stem from the model of supervision in use. She was a probation officer and supervisor for 15 years, and in her opinion, there are numerous parole officers who still operate under a containment model of supervision vs. a case management model. She believes both models should be in play to maximize successful outcomes for different types of offenders.</p> <p>Chad Dilworth emphasized the importance of designing a system that balances punishment with consistency in incentives throughout the system. There is value in incentivizing behavior change, and the Parole Board can serve as the lynchpin to incentivize people with effective programs and reward them for participation.</p> <p>Michael pointed out Colorado’s three-year return to prison rate (48%), which indicates a need form improvement and puts the state in the bottom 10 in the country.</p> <p>Christie Donner clarified that the 1979-1984 mandatory release system was mandatory “at half”, which resulted in the diminishment of the truth-in-sentencing piece. After that, the system swung to 50% discretionary based on the crime, which also had challenges. Colorado then overlaid a mandatory/ discretionary system simultaneously, which is part of the current problem. What has worked or failed in the past is highly contextual to the period. The</p>
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<p style="text-align: center;"><b>Issue/Topic</b></p> <p>Discussion with Parole Board Representatives <i>Kristen Hilkey, PB Chair</i> <i>Chad Dilworth, PB Vice Chair</i> <i>Anne Andrews, PB Analyst</i> (continued)</p>	<p>goal now is to take the strengths of the various aspects of the system over the years and create clarity around the whole package.</p> <p>Kristen replied that her hesitancy with the elimination of discretionary parole release is that it doesn't provide incentives for people to participate in programs and, consequently, DOC will eliminate programming due to this consequent lack of need. Christie strongly countered that she didn't believe DOC would discontinue programming. Michael replied that data would inform these types of discussions and that it would also help to have DOC at the table. Tom added that a person who participates in a DOC program simply to get out six months earlier wouldn't necessarily result in a successful parolee.</p> <p>Maureen offered to revisit the progression of events in 1984/1985 to offer a clearer picture of all the factors that influenced system changes and resulting outcomes. Maureen emphasized the importance of incorporating programming into any of these proposed changes. She also added that she's working with Travis Trani in DOC Operations about the proposed 30% earned time.</p> <p>Tom added the following questions into the chat:</p> <ul style="list-style-type: none"> <li>• As far as time periods for parole, do we need 3 years or do we achieve max return/results at 18-24 months?</li> <li>• Do you think it should be based on just the crime as it is now, or some combination of the sentence given and the risk each inmate presents?</li> <li>• Can you envision some inmates who don't need any parole period or something very minimal, 90 days, etc.?</li> </ul> <p>Chad explained that basing decisions off someone's risk/needs instead of just the current crime is most effective. Parole is a unique opportunity to address those needs with someone while they're transitioning into the community. He agreed with Kristen's earlier comment that the current parole system is not based on a case management model and addressing needs, but the outdated surveillance model. Colorado punishes people for not doing what they're supposed to do, but doesn't do a good job of motivating people who don't want to change. One of the core principles of effective supervision is motivation, not surveillance. Chad emphasized the Parole Board is currently incentivizing both Parole and DOC to use effective practices. DOC struggles to assess needs and match treatment effectively.</p> <p>Maureen said that people return to prison and jail because the <i>system</i> is not using effective intervention models. Chad replied that most people who get revoked are absconders and new crime violators.</p> <p>Kristen explained there are very few options for people who are addicted to meth, paranoid, menacing the community, and a risk to public safety. There is no infrastructure in the community to interrupt/address these behaviors.</p> <p>Michael noted an increase in property crimes and motor vehicle theft, along with the lack of drug and mental health treatment in communities in Colorado (where Colorado also falls in the bottom 10).</p>
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<p><b>Issue/Topic</b>                  Discussion with                  Parole Board Representatives  <i>Kristen Hilkey, PB Chair</i>  <i>Chad Dilworth, PB Vice Chair</i>  <i>Anne Andrews, PB Analyst</i>                  (continued)</p>	<ul style="list-style-type: none"> <li>• The system is not very sophisticated in dealing with high risk individuals. Not because we don't know how to treat high risk, but because we don't implement the programs we know to be effective. The result is only having one tool to deal with them which is incapacitation, which is not a very effective long term too. It's the most expensive option and it typically makes people work over time.</li> <li>• One challenge with DOC earned time is that inmates get time for ANY program they engage in, regardless of if that program is addressing a need the inmate has. Matching effective treatment with assessed needs continues to be a challenge for DOC.</li> </ul> <p>Michael thanked Kristen, Anne and Chad for providing valuable insight during the meeting and looks forward to continuing collaboration.</p>
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<p><b>Issue/Topic</b>                  Ongoing Stakeholder Efforts by                  the Working Group  <i>Working Group members</i></p>	<p style="text-align: center;"><b>Discussion</b></p> <p>Maureen asked Christie to share the information she gathered from her conversation with the Second Chance Center. Christie said the SCC agreed with the importance of keeping incentives like earned time in place. There are also discussions about the possibility of keeping a transition opportunity in place for people prior to hitting their "hard out" date, possibly six months prior to MRD. There are few transition opportunities for people who aren't eligible for or accepted into community corrections. Christie asked Kristen if the Board could be a "thought partner" around these various issues and more diversified options aligned with people's risks/needs.</p> <p>Tom shared that he is arranging for a Sheriff's representative to participate in a listening session, and hopefully a police representative as well. There will likely be two community corrections representative available to participate as well. Damien Angel shared that there has been no response from Violence Free Colorado.</p>
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<p><b>Next Steps &amp; Adjourn</b>  <i>Michael Dougherty</i></p>	<p style="text-align: center;"><b>Discussion</b></p> <p>Michael outlined next steps and explained the updated sentencing grid list will be distributed and then then the Working Group will begin looking at severity level.</p> <p>He reminded everyone the next meeting is scheduled for September 7, 2021 at 3pm <b><i>(This meeting was subsequently postponed to September 14!)</i></b>.</p> <p>Hearing no further comment, Michael adjourned the meeting.</p>
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**Next Meeting**  
***(This meeting was subsequently postponed to September 14!)***  
 Tuesday, September 7, 2021 / 3:00PM – 5:00PM  
 Virtual Meeting  
 Meeting information will be emailed to members  
 and posted at, [colorado.gov/ccjj/ccjj-meetings](http://colorado.gov/ccjj/ccjj-meetings)