

Colorado Commission on Criminal and Juvenile Justice
Sentencing Reform Task Force

Sentence Structure Working Group
MINUTES

October 19, 2021 / 2:00PM-5:00PM
Virtual Meeting

ATTENDEES:

WORKING GROUP MEMBERS

Michael Dougherty, *Working Group Leader*, District Attorney, 20th Judicial District (JD)
Maureen Cain, Office of the State Public Defender
Christie Donner, Colorado Criminal Justice Reform Coalition
Jessica Jones, Defense Attorney
Tom Raynes, Colorado District Attorneys' Council
Dan Rubinstein, District Attorney, 21st JD
Lisa Wayne, Defense Attorney

ABSENT

Valarie Finks, Crime Victim Compensation, 1st JD

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

<p>Welcome & Agenda <i>Michael Dougherty, Working Group Leader</i></p>	<p>Discussion</p> <p>Michael Dougherty, Working Group Leader, welcomed the Working Group members. He outlined the agenda, explaining that the primary purpose of the meeting is to review the Study Group’s work to date regarding the creation of the General Felony Sentencing Grid.</p> <p>Michael explained that before starting the work on the General Felony Sentencing Grid, he wanted to revisit the issue of Possession of Weapon by a Previous Offender (POWPO).</p>
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<p>Issue/Topic</p> <p>Possession of Weapon by a Previous Offender (POWPO) <i>Michael Dougherty, Working Group Leader</i></p> <p>ACTION</p> <p>Working Group to review possible POWPO revisions at a future meeting</p>	<p>Discussion</p> <p>Michael reminded everyone that Senate Bill 2021-271 <i>Concerning the Adoption of the 2021 Recommendations of the Colorado Criminal and Juvenile Justice Commission Regarding Sentencing for Offenses</i>, resulted from the work of this group, the Sentencing Reform Task Force, and the full Commission.</p> <p>Despite the overwhelming support of the legislation, a recent, substantive issue has been raised (behind the scenes) around §18-12-108, C.R.S. <i>Possession of weapons by previous offender</i> (POWPO) and whether the new list of POWPO offenses is too narrow. This has come to light recently with the increase in violent crime, specifically firearm-related deaths. Michael reminded the group that, although S.B. 21-271 is not scheduled to go into effect until March 2022, its related changes will allow people more access to firearms at a time when (at least in Denver) there is an increase in firearm-related violence.</p> <p>With the work currently underway on this new felony grid, the group can simultaneously reconsider possible revisions regarding any POWPO-specific offenses that should be restored on the list due to the present risk to public safety. Michael expressed that, at some point in the next month or two, he hopes the working group can reconsider the list of offenses while maintaining the original intent to reduce criminalizing those who can reasonably, safely and legally possess a firearm.</p> <p>Maureen added that POWPO also included a broad definition of weapon (firearm, “nunchucks,” bow-and-arrow, etc.) and that there might also be value in narrowing that definition to avoid over-charging. Also, last year there were recommendations regarding changes for juvenile POWPO adjudications, that failed to make it into S.B. 21-271. It is important to ensure that those changes are included and that juveniles are permitted a restoration of rights, specifically for those entering the military.</p> <p>Michael noted the possibility that a legislator may decide independently to introduce a bill to revert the POWPO provisions to that of the previous statute. With that in mind, it would be beneficial for this group to proactively address the issue.</p> <p>Jessica Jones asked why the issue had garnered such attention and Tom Raynes explained that both liberal and conservative district attorneys have expressed concerns about the coming POWPO changes.</p>
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<p>Issue/Topic Possession of Weapon by a Previous Offender (POWPO) <i>Michael Dougherty,</i> <i>Working Group Leader</i> (continued)</p>	<p>Michael emphasized that implementation was originally set for March 2022 for exactly this reason: to allow time to determine whether there might be unintended consequences or elements that had been overlooked in SB 21-271. While some clerical issues have been identified in the amendments, the revised POWPO list may indeed be too narrow. He reiterated that the concerns are not driven by politics but simply by the opportunity that time affords to review the coming changes.</p> <p>Maureen shared that, while she is mindful of evidence-based decision-making around this topic, she also considers client impact and over-incarceration important factors. Michael added that a critical part of the proposal and recommendation development process has been the feedback gleaned from stakeholders.</p>
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<p>Issue/Topic Recommendation Development Timeline and Work Plan <i>Maureen Cain,</i> <i>Working Group member</i></p>	<p style="text-align: center;">Discussion</p> <p>Maureen Cain raised the issue of the projected timeline for recommendation development by the Working Group. She explained the Study Group is almost finished with the crime severity analysis and hopes to have proposed sentencing ranges by the end of October, or the beginning of November. However, enough time must be allotted for the proposed ranges to be submitted to the data analysts to determine the resulting prison population impact. After that analysis, the goal would be to schedule an initial presentation to the Sentencing Reform Task Force at the December 8 or January 12 meetings, with a final presentation and vote in January. This may require two meetings of the Task Force in either December or in January. The Task Force may also request two meetings of the Commission in January to present all the elements of the recommendation to allow a vote by the Commission at its February 11 meeting.</p> <p>Jes Jones revisited the overall plan of work tasks discussed previously by the Working Group. Specifically, she requested an update on the decision to bifurcate the proposed grid changes (“general” felonies vs. “victim/person” felonies) across two legislative sessions (2022 and 2023) or to complete the planned tasks for this year but to wait and present a complete package in 2023.</p> <p>Michael replied that, considering only the time remaining before the next legislative session, there simply is too little time to complete the work on both felony grids this year. Regarding the option to delay for another year and present all the work in a single package, Michael emphasized the importance of capitalizing on the current momentum and finalizing the “general” felony grid.</p> <p>Christie Donner added that, if the two grids are combined, it could result in a “1000-page bill,” which from a practical aspect would be overwhelming for legislators. “Chunking” the work into two separate proposals is more digestible and, in the end, may have a greater chance of success. Tom emphasized that, first, the recommendations must successfully pass through the Task Force and Commission members. Similar to the thoughts shared by Christie, separate</p>
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<p>Issue/Topic Recommendation Development Timeline and Work Plan <i>Maureen Cain,</i> <i>Working Group member</i> (continued)</p> <p>ACTION Study/Working Group to identify descriptive labels for the “general” felony grid and “person” felony grid at a future meeting</p>	<p>proposals are more likely to be digestible for Commission and Task Force members, allowing them to be more comfortable with the proposals.</p> <p>The “packaging” of the felony grids regarding crimes against persons was discussed, and whether it is better to use the term “person” or “victim.” Michael shared that Tom previously proposed using the terms “General Felony Grid” and “Aggravated Felony Grid.” Maureen and Christie noted that this could spark confusion when the term “aggravated” is used in conjunction with sentencing ranges. Maureen suggested the word “Enhanced” might be used. There is also some concern that particular offenses in the “general” category might have impacts on victims and the distinctions need greater clarity as these two “packages” are developed.</p> <p>After brainstorming ideas, the group did not decide regarding the naming of the grids. The Study and Working Groups will continue to think about the best ways to label these grids at a future meeting.</p>
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<p>Issue/Topic General Felony Table <i>Michael Dougherty,</i> <i>Working Group Leader</i></p> <p>ACTION Working Group members to review the offenses table and provide feedback at the next meeting</p>	<p style="text-align: center;">Discussion</p> <p>Michael introduced the next portion of the meeting concerning the “general” felony table. He acknowledged that the Working Group obviously had little time to review the draft grid, relative to the great deal of time the Study Group had spent to create it. He offered to provide an overview, review discussion points and answer any initial questions. He suggested that Working Group members study the table on their own and offer input, thoughts, and concerns at the next meeting. He thanked Maureen and her intern in particular for setting up the table. He also thanked Tom for convening a group of DA’s to offer input and guidance during the process.</p> <p>Michael displayed the proposed “general” felony grid, and offered highlights and discussion points as follows:</p> <ul style="list-style-type: none"> ● The table shows categories of general felony crimes, but the Study Group has yet to discuss the sentencing ranges for each level of felony. ● The grid outlines General Felony 1 (GF1) through General Felony 5 (GF5), with GF5 being less serious offenses. ● The Study Group has yet to determine whether the GF5 should be offenses that would <i>not</i> include a sentence to prison. ● The grid contains the following eight labeled columns: <ul style="list-style-type: none"> - Statutory Citation - Recommended Classification - Crime - # Sentenced to DOC - Elements - Average Length of Stay in DOC (CY18 & 19) - # of Times Filed FY20 - # Releases from DOC facilities - Current Classification ● Maureen clarified that the figures in the grid were from Fiscal Year 2020. However, any derived from the Department of Corrections were based on Calendar Years. Although these spans do not align, this hopefully provides an approximate “picture” of the data for each offense. ● Figures for FY 2020 are still forthcoming from the Judicial Department for the column labeled, “# Sentenced to DOC.”
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<p style="text-align: center;">Issue/Topic General Felony Table <i>Michael Dougherty,</i> <i>Working Group Leader</i> (continued)</p> <p style="text-align: center;">ACTION Add race, gender, and ethnicity data in the grid, where possible</p>	<ul style="list-style-type: none"> ● The ‘Length of Stay in DOC’ column reflects the time from the first admission to DOC to the first parole, but does not include when there was a parole revocation. ● This grid was modeled after the one created for Senate Bill 21-271, and Maureen asked the group to let her know if they believe there are any other data points that would be beneficial to include. ● Lisa Wayne asked whether data on race and gender “breakdowns” might be included. Christie thought the data might be available but that additional “splits” of the data will require multiple sub-analysis and could really increase the complexity of the table, if applied to all offenses (where, in some cases, there may be really small numbers). It may be feasible to revise the display specifically for the crimes and categories with the larger number of crimes. Tom added that there are inaccuracies in the numbers for ethnicity and race, particularly for the “Hispanic” and “White” distinctions. ● Lisa acknowledged the added complexity, but, given the current environment and concerns, it seems irresponsible NOT to include such data, particularly in regard to sentencing. ● Jack Reed clarified that the race and ethnicity data in the court filings are fraught with errors, but that the DOC data is more reliable (referring to the DOC information displayed in the final two columns). ● Tom shared that he would like to see similar demographic data reported for crime victims, and that there are many nuanced components to the data. ● Jack shared that the Community Law Enforcement Action Reporting Act (CLEAR Act) report provides additional data that may be useful and more accurate. ● Maureen summarized that race and gender should be available, at least, for the column, “# of Times Filed FY20,” and, possibly, race, ethnicity and gender in the columns, “# Sentenced to DOC” and “Average Length of Stay.” ● Continuing the description of the table, Maureen pointed out that the black/bold items signify changes/recommendations where the entire Study Group agreed. Items where there is still concern, are highlighted in yellow or red. ● Maureen identified particular examples of offenses where the Study Group discussions have been or will be more extensive: <ul style="list-style-type: none"> - §12-20-407(1)(a), C.R.S. <i>Unauthorized Practice of Profession or Occupation</i> was deleted in S.B. 21-271, but the Study Group, having identified some fairly serious crimes in that category, and are re-evaluating some offenses. - §18-12-108, C.R.S. <i>Possession of weapons by previous offender (POWPO)</i>, as mentioned previously, will be discussed more thoroughly soon. - §18-12-109(2), C.R.S. <i>Possession, use, removal of explosives or incendiary devices</i>, currently an F4, will be bifurcated reclassifying the possession-related offenses as a GF4 and the manufacturing-related offenses as a GF3. - §18-4-409, C.R.S. <i>Aggravated motor vehicle theft (MVT)</i> is being studied to determine whether this offense should be value-based and whether to change the wording from “Aggravated MVT” to “First Degree MVT.” The term, “Second Degree MVT” could apply to offenses without aggravation. - Relatedly, a new misdemeanor category is under consideration for “unauthorized use of a motor vehicle for less than 24 hours” when the vehicle is returned without damage (instances of “joyriding”).
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<p>Issue/Topic General Felony Table <i>Michael Dougherty,</i> <i>Working Group Leader</i> (continued)</p> <p>ACTION Study Group members will continue to work on the grid and develop the proposed sentencing ranges</p>	<p>- The reclassification of money laundering, forgery, and insurance fraud have been discussed; however, classifications of identity theft and criminal possession are still on the task agenda. Aldo under review are the crimes of escape and “walk-aways.”</p> <p>Maureen explained that there is still much work to be done by the Study Group and asked Working Group members to review the work thus far and provide feedback at the next meeting.</p> <p>Lisa Wayne noted that there are some crimes she has never even seen charged in 36 years of practicing law. She felt there were many redundant crimes that may result in “over-charging” individuals with multiple counts. Tom replied that the group is trying to identify, address and eliminate those instances. Maureen identified the categories of fraud, identity theft, and forgery as emblematic of this problem.</p> <p>Christie described that the length of stay data excludes those transitioning through community corrections. Accounting for transitions placements in the length of stay data will be necessary to properly set sentence ranges and will help inform improvements in the reentry and transition process. Maureen pondered whether those transitioning through community corrections to parole had longer stays than those who parole directly from prison.</p> <p>Michael thanked the Study Group their efforts and information about the proposed reclassifications. The Study Group is scheduled for a 1.5 day meeting next week to complete more entries in the table.</p>
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<p>Issue/Topic Public Comment & Adjourn <i>Michael Dougherty,</i> <i>Working Group Leader</i></p>	<p>Discussion</p> <p>In response to Michael’s call for public comment, Kristen Hilkey (Parole Board Chair) requested the Working Group review the memo submitted by the Parole Board. The memo requested that the group identify what portion of the sentence is punitive and what portion is rehabilitative. Such distinctions might help victims, and maybe even offenders, better understand the purpose and lengths of sentences. Presumably, the “punitive portion” would be a fixed percentage of the sentence; the “rehabilitative portion” would flexibly allow individuals to earn time reductions based on progress in programs and reductions in risk level.</p> <p>Michael thanked Kristen for her input.</p> <p>Hearing no further comment, Michael adjourned the meeting.</p>
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Next Meeting

Tuesday, November 2, 2021 / 3:00PM – 5:00PM (Virtual Meeting)

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