

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

**Sentence Structure Working Group  
MINUTES**

November 9, 2021 / 2:00PM-5:00PM  
Virtual Meeting

**ATTENDEES:**

**WORKING GROUP MEMBERS**

Michael Dougherty, *Working Group Leader*, District Attorney, 20<sup>th</sup> Judicial District (JD)  
Maureen Cain, Office of the State Public Defender  
Christie Donner, Colorado Criminal Justice Reform Coalition  
Valarie Finks, Crime Victim Compensation, 1<sup>st</sup> JD  
Jessica Jones, Defense Attorney  
Tom Raynes, Colorado District Attorneys' Council  
Dan Rubinstein, District Attorney, 21<sup>st</sup> JD

**ABSENT**

Lisa Wayne, Defense Attorney

**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

**GUESTS**

Eileen McCarron, Colorado Ceasefire ([coloradoceasefire.org](http://coloradoceasefire.org))

<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 members and outlined the agenda. He explained that the Study Group had created a timeline of upcoming meetings and a plan of action, in order to meet Commission and legislative deadlines for the 2021/2022 legislative session. That timeline has been forwarded to all Working Group members and Michael asked everyone to review the details.</p> <p>Michael added that efforts are also underway regarding a clean-up bill to identify any gaps or mistakes in <i>Senate Bill 21-271. Misdemeanor Reform</i>, before the new law is set to go into effect in March 2022. This work includes changes to <i>§18-12-108. Possession of weapon by previous offenders (POWPO)</i> that directly impact public safety.</p> <p>Michael noted that Eileen McCarron (Colorado Ceasefire) had sent an email to the Working Group outlining issues of concern. Michael introduced Eileen and asked if she would like to offer comments. Ms. McCarron explained that not all of the pertinent serious felonies were covered by the Victim’s Rights Act (VRA) and that her interest is in drawing attention to these other offenses that are relevant to public safety. Michael stated that the group had not fully reviewed Ms. McCarron information. He added that the Study Group, and subsequently the Working Group, plans to have a robust discussion once members have a chance to review the document.</p> <p>Christie Donner asked Eileen if she might suggest research on the efficacy of prohibiting people with criminal records from having guns. Eileen replied the history of prohibiting firearm possession for people with felonies dates to 1968 and that there is a significant amount of published material on the practice. Eileen added that there was an effort last year to prohibit gun possession for individuals convicted of violent misdemeanors, including misdemeanor animal abuse. However, as it currently stands, felony animal abuse does not prohibit gun possession. Christie and Eileen agreed to connect offline to continue their discussion further.</p>
---	---

<p><b>Issue/Topic</b>                  General Felony Chart  <i>Michael Dougherty,                  Working Group Leader                  &amp; Maureen Cain,                  Working Group Leader</i></p>	<p><b>Discussion</b></p> <p>Michael oriented members to the General Felony Chart and added that he does not expect a vote on the chart today. The chart was displayed to the group with discussion points as follows:</p> <ul style="list-style-type: none"> <li>● Maureen Cain commented that the category of escape is not yet included in the grid and that discussions continue due to its complicated nature.</li> <li>● Regarding Motor Vehicle Theft (MVT), these crimes were divided into three different categories (aggravated “regular,” and unauthorized use). Of late, there is increased attention to MVT crimes and the approach is to acknowledge the harm that is not solely due to the value of the vehicle.                         <ul style="list-style-type: none"> <li>- Jes Jones asked about the MVT charge when the car is returned within 24-hours. Maureen explained the Study Group debated between 12 and 48 hours as the defining length of time, and that many other states use</li> </ul> </li> </ul>
---	--

<p><b>Issue/Topic</b>                  General Felony Chart  <i>Michael Dougherty,</i>  <i>Working Group Leader</i>  <i>&amp; Maureen Cain,</i>  <i>Working Group Member</i>                  (continued)</p>	<p>the 24-hour “return window” when addressing this issue (which is essentially joy-riding).</p> <ul style="list-style-type: none"> <li>• Dan Rubinstein explained that it was very easy for the Study Group to come to consensus around <i>where</i> crimes fell in relationship to each other as far as aggravation. The group had more difficulty when it came to putting numbers in the box regarding sentencing ranges.                         <ul style="list-style-type: none"> <li>- Jes asked whether it would be worth scheduling more stakeholder listening sessions once the sentencing ranges are solidified. Michael replied that time has indeed been built into the schedule for additional stakeholder meetings regarding sentencing.</li> </ul> </li> <li>• Christie Donner added that the work on the felony chart has been facilitated by the detailed methods developed last year to address misdemeanor crimes.</li> <li>• In regard to areas still under review, Christie reiterated that there is still work to be done on the crime of attempted escape. Maureen added to that list the crim of Unauthorized Practice without a License, which affects a multitude of jobs, from plumbers and beauticians to engineers and dentists.</li> </ul> <p>The discussion concluded with Maureen noting that the pending areas under consideration in the chart are indicated by the term, “Reviewing still.”</p>
---	---

<p><b>Issue/Topic</b>                  Sentencing Information and Length of Stay  <i>Michael Dougherty,</i>  <i>Working Group Leader</i>  <i>Maureen Cain,</i>  <i>Working Group Member</i></p>	<p style="text-align: center;"><b>Discussion</b></p> <p>Michael introduced the next topic, Sentencing Information and Length of Stay. He reminded Working Group members that the goal is to develop a “certainty in sentencing” model, which, in concept, is universally supported by fellow stakeholders in the criminal justice system. In this proposed grid, some offenses may drop in felony level, but the average sentence durations actually served will be similar to the current sentencing practices, albeit within narrower sentencing ranges. Michael asked Maureen to walk the group through this portion of the meeting.</p> <p>Maureen offered very preliminary analyses of average lengths of stay. Highlights of the presentation and discussion points are as follows:</p> <ul style="list-style-type: none"> <li>• Maureen explained the data utilized in the document are from releases during calendar years 2018 and 2019, via a combination of information from the Department of Corrections and the Division of Criminal Justice.</li> <li>• The data indicate that, within felony level, there is wide variation in the actual time served. In other words, for those receiving similar sentence lengths for the same crime within the same felony level, the actual time served varied widely. This suggests a system that is not very fair (for example, the actual Length of Stay (LOS) for the same crime could range from 19 months to 58 months).</li> <li>• The LOS in the analysis represented the entire period the person served, including pre-sentence confinement and any time spent on “inmate status” in community corrections (ComCorr) or Intensive Supervision Program (ISP).</li> <li>• The average pre-sentence confinement credit is 111.4 days. Approximately 32% of persons are released through ComCorr or ISP.</li> </ul>
---	---

<p><b>Issue/Topic</b>                  Sentencing Information and Length of Stay  <i>Michael Dougherty,</i>  <i>Working Group Leader</i>  <i>Maureen Cain,</i>  <i>Working Group Member</i>                  (continued)</p>	<ul style="list-style-type: none"> <li>● In general, the "general grid" plan is to reduce the number of felony levels from six to five, with Felony Class 6 crimes shifted to Felony Class 5 and so on [<i>Note: Some Felony Class 6 offenses were shifted to the Misdemeanor level in the work mentioned previously that led to S.B. 2021-271</i>].</li> <li>● Maureen explained that for each of these felony levels, which included separate summaries for presumptive and aggravated sentences, the review of data will include the number of cases (sentences) at each felony level and the average sentence length, the median sentence length (midpoint of the sentence length distribution) and the modal sentence length (the most common sentence length) for both the <i>actual sentence</i> and the <i>actual time served (LOS)</i>.</li> <li>● The Study Group wanted to present this preliminary data to the Working Group to allow a common understanding of the LOS metrics being used and the method of review being undertaken by the Study Group to construct new sentence ranges. Maureen briefly reviewed these metrics by felony level simply to orient members to the data under review.</li> <li>● Valarie Finks asked about the interplay between altering the ranges and the effect of other correctional practices that currently affect the LOS, like "good time" (<i>for example, an overall statutory reduction in time served...serving 50% for non-violent crimes or 75% for violent crimes</i>) and "earned time" (<i>for example, an institutional time credit for good behavior...earning a 12-day sentence reduction per month served</i>).                         <ul style="list-style-type: none"> <li>- Maureen replied that "good time" would be eliminated and "earned time" would be set at 10 days/month. Therefore, the sentence length minus "earned time" would determine the mandatory date of release to parole (MRD). There would no longer be a parole eligibility date (PED) prior to the MRD during which an inmate is eligible to be released "early" to parole by the parole board. All inmates would serve a sentence that concludes with the MRD (adjusted by earned time), followed by a required period of parole.</li> </ul> </li> <li>● In general, the goal is to reduce the size of ranges, while taking into consideration sentence "aggravation" and the severity of the crime (the felony level), both of which would increase the potential sentence range and the resulting sentence length.</li> <li>● Maureen described that the Study Group, in collaboration with the Office of Research and Statistics, is wrangling with the appropriate sentence ranges for each felony level, accounting for the elimination of "good time." Members will evaluate average sentences lengths served with and without "good time" to achieve appropriate sentence lengths that do not also negatively impact the prison population.</li> <li>● Maureen explained that even two fewer months on average in LOS per person for non-violent/non-person crimes can result in a "bed/capacity equivalent" of an entire prison and afford greater flexibility to address those who have committed more serious crimes.</li> <li>● Tom Raynes emphasized the importance of studying, digesting and understanding this data as described, as a foundation for proposing changes that avoid unintentionally making sentences too long or too short.</li> <li>● Christie added that the Study Group is also studying the "off-rams" (community transition) options and timelines, which would allow, prior to</li> </ul>
--	--

<p style="text-align: center;"><b>Issue/Topic</b></p> <p style="text-align: center;">Sentencing Information and Length of Stay <i>Michael Dougherty,</i> <i>Working Group Leader</i> <i>Maureen Cain,</i> <i>Working Group Member</i> (continued)</p>	<p>MRD, the referral and placement of enable eligible inmates in community-based programs.</p> <ul style="list-style-type: none"> <li>● Maureen noted the group also is studying parole revocation models in other states and has agreed on a Swift and Sure model for technical violations, and that, for specific classes of new crimes, a person will receive a new aggravated sentence but not serve out the remainder of the parole period.</li> <li>● This also includes simplifying the “back end” by shortening parole periods. Dan added that this simplification includes revamping the “parole hold” process invoked when an individual on parole commits a new crime for which ultimately the disposition of the new case results in a new conviction, or when the disposition involves an alternative sentence option, or the disposition of the new case concludes without an alternative sentence option or with no court action at all. Members further explored the details of these circumstance and how the process might be improved.</li> <li>● Christie expanded that this will change the dynamics of the parole board. There already exists limitations on who can be revoked to prison for a technical violation (e.g., no lower-level, non-person crimes). Currently, when there is a new crime and during the time the new crime is adjudicated, the parole board will revoke an individual to prison for the remainder of the parole period. Some individuals spend more time under the revocation order (in prison) than they would for the disposition of the new crime. Under this proposal, there will still be the parole hold where the parole period stops with no revocation to prison while the new case is resolved. Once the case is resolved, assuming no new prison sentence is applied, the individual completes any requirements related to the new case and then “returns” to parole to finish the remainder of the parole period.</li> <li>● In summary, Maureen noted that some of the higher classification crimes are actually drug crimes based on sentences prior to the establishment of the Drug Sentencing Grid (introduced in 2013). The analysis will probably require filtering these old drug sentences from the “general grid” data to eliminate the effects on the sentencing metrics described previously. Christie and Dan agreed that the drug and “general” offense LOS data should be separated.</li> </ul>
---	---

<p style="text-align: center;"><b>Issue/Topic</b></p> <p style="text-align: center;">Public Comment &amp; Adjourn <i>Michael Dougherty,</i> <i>Working Group Leader</i></p>	<p style="text-align: center;"><b>Discussion</b></p> <p>Michael explained that the Study Group will continue its work on the remaining sentencing matters as outlined. Maureen added that, at the next meeting of the Working Group, most, if not all, of the pending decisions will be presented for review by the members. According to the timeline, the first presentation of this work to the Sentencing Reform Task Force is scheduled for December 8.</p> <p>Michael called for any additional input from attendees and, seeing none, reminded members that the next meeting is scheduled on November 23, 2021. Michael then adjourned the meeting.</p>
---	--

**Next Meeting**

Tuesday, November 23, 2021 / 3:00PM – 5:00PM (Virtual Meeting)

Meeting information will be emailed to members and posted at, [colorado.gov/ccjj/ccjj-meetings](https://colorado.gov/ccjj/ccjj-meetings)