

**Sentencing Reform Task Force
MINUTES**

November 10, 2021 / 1:30PM-4:00PM
Virtual Meeting

ATTENDEES

TASK FORCE MEMBERS

Michael Dougherty, *TF Co-chair*/District Attorney, 20th Judicial District
Maureen Cain, Office of the State Public Defender
Terri Carver, State Representative/House District 20
Christie Donner, Colorado Criminal Justice Reform Coalition
Valerie Finks, Victim Compensation Program/DA Office, 1st Judicial District
Kristen Hilkey, Adult Parole Board
Jessica Jones, Defense Attorney
Sarah Keck, Court Services/Judicial Branch
Andrew Matson, Colorado CURE
Greg Mauro, Denver 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
Glenn Tapia, Director, Div. of Probation Services/Judicial Branch

GUEST (Member of the Sentencing Alternatives/Decisions and Probation Working Group)

Jenifer Morgan, Chief Probation Officer, 17th Judicial District

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
Jeff Chostner, District Attorney/10th Judicial District
Bob Gardner, State Senator/Senate District 12
Julie Gonzales, State Senator/Senate District 34
Serena Gonzales-Gutierrez, State Representative/House District 4
Kazi Houston, Rocky Mountain Victim Law Center
Henry Jackson, Metro State University
Rick Kornfeld, *TF Co-chair*/Defense Attorney
Dan Rubinstein, District Attorney/21st Judicial District
Lisa Wayne, Defense Attorney
Dean Williams, Colorado Department of Corrections

<p>Welcome & Agenda Welcome, Approval of Minutes, and Agenda <i>Michael Dougherty, Task Force Co-chair</i></p>	<p>Discussion</p> <p>Michael Dougherty welcomed attendees and explained that Co-chair Rick Kornfeld was absent due to a work conflict. Michael provided an overview of the agenda and highlighted that members will review and potentially vote on recommendations from the Sentencing Alternatives/Decisions & Probation Working Group.</p> <p>Michael provided an overview of the revised timeline for the Sentence Structure Working Group (and its Sentence Structure Study Group), explaining the number of scheduled meetings has been increased to complete work prior to the upcoming legislative session. He added that there is a tentative Sentencing Reform Task Force meeting scheduled for December 15, 2021. The additional meeting will enable the Task Force to forward approved recommendations to the full Commission in a timely fashion. A motion was offered and seconded by members to approve the October 6, 2021 minutes, which were unanimously approved.</p>
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<p>Issue/Topic Report Out: Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i></p> <p>ACTION Sentence Structure Working Group will distribute the proposed General Felonies chart to Task Force members</p>	<p>Discussion</p> <p>Michael provided an overview of the work of the Sentence Structure Working Group (WG). He reminded everyone that the WG is developing a proposed felony grid, specifically addressing “General” Felonies. The grid will include sentencing ranges that account for “earned time” set at a specific amount for all individuals incarcerated at the Department of Corrections (DOC) to build more consistency and certainty into the sentences being served.</p> <p>The goal of the work is to reduce current sentence <i>ranges</i> but still to maintain the approximate time served and provide greater certainty on the “front end.” He added that, while at first glance it may sound like sentences will be reduced, in reality, the goal is simply more certainty. The WG has analyzed a significant amount of data from DOC regarding <i>imposed</i> sentences vs. the average length of stay (LOS) of sentences. Additionally, the WG is reclassifying these “General” Felonies based on five felony levels, rather than the current six.</p> <p>Maureen Cain added that the WG plans to distribute the “General” Felony chart to Sentencing Reform Task Force members in the coming weeks to allow time to review and study the proposed changes. The chart includes the following elements: the current crime, the citation, the name of the crime, elements of the crime, the number of times it is filed, current classification, proposed classification, and the number of people sentenced to DOC and the average LOS for the crime. DCJ researchers are also currently analyzing the information by race, ethnicity, and gender – which will be included in an upcoming iteration of the chart.</p>
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Issue/Topic	Discussion
<p data-bbox="110 216 537 352"> Recommendation Presentation: Sentencing Alternatives/Decisions & Probation Working Group <i>Glenn Tapia, WG Leader</i> </p> <p data-bbox="110 678 537 846"> ACTION Recommendation FY22-SR #01. <i>This recommendation was approved and will be forwarded to the full Commission.</i> </p>	<p data-bbox="565 216 1518 493"> Michael introduced Glenn Tapia (WG Leader) and explained that he will present the recommendations drafted by the Sentencing Alternatives, Decisions & Probation Working Group (WG). Glenn outlined that he will summarize each recommendation in turn, call for discussion on it, and make any agreed-upon edits/revisions at that time. Glenn added that two WG members were in attendance to assist with questions: Jenifer Morgan (Chief Probation Officer, 17th Judicial District) and Heather McClure (Lived Experience; Adams County CJ Council). </p> <p data-bbox="565 535 1485 598"> The recommendation titles are presented below in bold followed by bulleted highlights, with questions and comments following. </p> <p data-bbox="565 640 1502 672"> Recommendation FY22-SR #01. Define the Purposes of Probation (Statutory) </p> <ul data-bbox="573 678 1518 1024" style="list-style-type: none"> ● This recommendation is derived from the Governor’s 2020 Biennial Letter to the Commission that included a request to statutorily define the Purposes of Probation. These proposed “Purposes” are similar to others that exist in statute, Purposes of Parole and Purposes of Community Corrections, that were recommended by the Commission and subsequently codified. ● Glenn explained that there is a national trend for probation to focus more on behavior change and accountability and less on punishment and retribution. This recommendation is steeped in that philosophy. The goal is to restore and repair harm to victims and communities, to reduce risk, and to be cost effective. <p data-bbox="565 1066 873 1098"> <u>Questions and Comments</u> </p> <p data-bbox="565 1104 1510 1346"> Maureen Cain directed Task Force members to a document she distributed in response to this recommendation. She explained that she edited/reorganized the list of purposes. Glenn asked Maureen whether the proposed changes reflect the same content, but just more concisely. Maureen agreed and highlighted the importance of the following underlying concepts in the purposes: behavior change, accountability, cost-effectiveness, rights of victims, and sentencing alternatives. </p> <p data-bbox="565 1388 1485 1524"> Tom Raynes preferred to see clearer language that addresses probationer accountability. He would also prefer to include language that promotes Probation’s role in public safety. Jes Jones noted that she preferred the more concise, bulleted text offered by Maureen. </p> <p data-bbox="565 1566 1518 1629"> The group agreed to use Maureen’s revision of the purposes, with the following modifications: </p> <ul data-bbox="581 1640 1453 1776" style="list-style-type: none"> - Maintain the “public safety” language (the first bullet) from the original recommendation, and - Add phrasing to Maureen’s third bullet which reads “To hold persons accountable for their behavior through supervision...” <p data-bbox="565 1818 1477 1881"> Michael asked for any additional feedback or suggestions and, hearing none, requested a motion and second to move the recommendation to a vote. </p>

<p>Issue/Topic</p> <p>Recommendation Presentation: Sentencing Alternatives/Decisions & Probation Working Group <i>Glenn Tapia, WG Leader</i> (continued)</p> <p>ACTION</p> <p>Recommendation FY#22-SR #02. <i>This recommendation to be returned to the Working Group for additional consideration.</i></p>	<p>Having received such, and with no further discussion, the vote outcome was as follows:</p> <p>Recommendation FY22-SR #01. Define the Purposes of Probation (Statutory)</p> <ul style="list-style-type: none"> ● Support: 13 ● Do not support: 0 ● Abstain: 1 <p>Rec. FY22-SR #01 was approved for submission to the Commission.</p> <p>Recommendation FY#22-SR #02. Develop a Swift Reparative Intervention Program for Persons Convicted of a Petty Offense (Statutory):</p> <ul style="list-style-type: none"> ● Glenn reminded Task Force members of the data that show, on an average day, 650 people are on probation (including 127 juveniles) for a case where the most serious convicted charge is a petty offense. ● The successful completion rate is 50% with an average sentence of one year and a cost to the person on probation of \$1,000-\$1,500. ● The Working Group determined that a petty offense should be addressed by a “petty response.” The recommendation creates a fourth option for the courts that is swift, reparative, proportional, and fair, and that is an alternative to the current options of fines, probation, and jail. ● The resulting proposal would provide a Swift Reparative Intervention Program (SRIP) for Persons Convicted of a Petty Offense. Options for the Court would include: a fine of no more than \$500, a jail term not to exceed 10 days, a term of probation not to exceed 6 months, and/or the SRIP. ● Based on local need and design, an SRIP could include service-oriented options, restorative justice processes, and/or behavioral intervention options that would be administratively monitored and managed via social service programs and entities rather than formally supervised in the criminal justice system. <p><u>Questions and Comments</u></p> <p>Maureen Cain offered that she is not in support of creating a new program and another level of bureaucracy, stating that Probation can already coordinate such interventions via unsupervised probation or other avenues. Tom agreed with Maureen, adding there funding for programs is limited and that ample alternatives exist within Diversion and other programs.</p> <p>Kristen Hilkey shared that in her 15 years as a probation officer there were numerous times a petty offender was sentenced to Probation, but without any guardrails around supervision. Without an alternative program like this, judges will continue to sentence people with petty offenses to probation for extended periods of time where they are often over-supervised and at a high cost to personal finances. Kristen added that “unsupervised probation” does not actually exist and that she is 100% in support of the recommendation.</p> <p>Christie Donner asked Glenn why the WG did not determine that Probation could already address this need without creating a new program.</p> <ul style="list-style-type: none"> ○ Glenn explained that, as Kristen mentioned, when there is a sentence to “unsupervised probation,” there is no intake, no terms and conditions, no
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<p style="text-align: center;">Issue/Topic</p> <p>Recommendation Presentation: Sentencing Alternatives/Decisions & Probation Working Group <i>Glenn Tapia, WG Leader</i> (continued)</p>	<p>supervision, no services, and no check-ins. It is an imaginary concept. Because there is no actual probation intervention, the court is sentencing someone to an option that is confusing and does not exist. Jenifer Morgan added that the goal is to provide some clarification and reality to a process of “unsupervised probation” that is assumed, incorrectly, to exist.</p> <p>Michael pointed out a conflict in the recommendation between text that defines, “a jail term not to exceed 10 days,” and other text that states, “state imprisonment not to exceed 6 months.” Glenn replied that the “6 months” wording is an error and will be corrected.</p> <p>Heather McClure shared that the reasoning behind the request for a grant program and funds for SRIP is to make money available to localities for resources and service navigation (typically via Human Services), which is a very difficult and complicated process for probationers.</p> <p>Glenn added offered an example of the disproportional nature of sentences to probation for petty offenses. For example, a person who stole a \$45 pair of sunglasses can be assessed \$1,500 during a year on probation. In these cases, the punishment is not proportional to the crime. Jes Jones replied that the interventions suggested by the SRIP program still feels like a disproportionately heavy response to a petty offense.</p> <p>Christie noted the apparent large investment in infrastructure to provide supervision for only 650 people. She questioned the new expenditure given the existing support provided under the Offender Services Cash Fund, which has a \$13 million fund balance and which is already at the disposal of the Judicial Department.</p> <ul style="list-style-type: none"> o Glenn replied that the funds are only available for those actually on <i>supervised</i> probation, and, if they are in SRIP, they wouldn’t be on probation. The point is to provide a non-probation option. <p>Kristen pointed out that programs in the Department of Human Services (DHS) offer a better option to help persons with a petty offense to navigate services than probation/corrections officers.</p> <p>Greg Mauro shared that he was struggling with the creation a new program to address an issue applicable to a relatively small number of cases and that it feels like a systemic response that is overcorrecting the problem. He asked whether the WG considered simply eliminating probation as an option for petty offenders.</p> <ul style="list-style-type: none"> o Glenn replied that many stakeholders requested that probation remain an option for petty cases where probation services would be appropriate. <p>Maureen pointed out that the new law affecting petty offenses [<i>resulting from S.B. 2021-271</i>] is not yet in effect and she predicted that many of these cases would probably conclude with credit for time served.</p> <p>Christie asked whether: the probation term could be capped at six months, the SRIP program be removed, and the rest of the statute left “as is.” That would</p>
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<p style="text-align: center;">Issue/Topic</p> <p>Recommendation Presentation: Sentencing Alternatives/Decisions & Probation Working Group <i>Glenn Tapia, WG Leader</i> (continued)</p> <p style="text-align: center;">ACTION</p> <p>Recommendation FY22-SR #03. <i>This recommendation was approved and will be forwarded to the full Commission.</i></p>	<p>address some of the concerns raised and still identify a path forward. The Task Force discussed the option of returning the recommendation to the Working Group for further study and consideration of the feedback offered.</p> <p>Without conducting a vote, by general agreement, Task Force members concurred that the will remains to explore the concept further and agreed to return Recommendation FY22-SR #02 to the WG for additional consideration.</p> <p>Recommendation FY22-SR #03 - Increase Access to Telehealth Services (Policy):</p> <ul style="list-style-type: none"> ● In considering barriers to success on Probation, the WG explored barriers to telehealth and supported increased access to telehealth services as: a) a supplement to weekly outpatient treatment, and/or b) an aftercare option for those completing inpatient treatment. ● This proposal requests that relevant state agencies modernize their respective regulatory and funding structures in order to facilitate easier, broader, and more permanent access to telehealth services for those on community supervision. ● Additional benefits of telehealth include improving access to services in rural communities and access to services for non-English speakers. ● The proposal also calls for: clearer communication between agencies and providers; revised standards to incentivize providers to build capacity for telehealth services; standards around licensing, certification, and service delivery to maintain or increase the quality of services and to remove duplicative or conflicting requirements for providers. <p><u>Questions and Comments</u></p> <p>Christie Donner asked whether recommendation elements were duplicative of the work being done by the Behavioral Health Task Force (BHTF). She added that the issue is less about modernizing regulatory and funding structures and more about modernizing complex technology, broadband, and e-records systems. She believed there is a similar recommendation under development by the BHTF that is geared more toward Medicaid-covered services and not specific criminal justice entities that address sex offender or domestic violence related standards and services.</p> <ul style="list-style-type: none"> ○ Glenn clarified that the recommendation is directed to agencies that have temporarily lifted regulatory standards to allow telehealth options, based on waivers or “practice variances.” The proposal recommends that state agencies implement permanent standards that allow telehealth options. <p>Tom was supportive because, as a policy recommendation, it is a statement of support, but not a mandate.</p> <p>Glenn asked for any additional feedback or suggestions and, hearing none, requested a motion and a second to approve the recommendation. A motion and a second were offered and, with no further discussion, the vote outcome was as follows:</p>
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<p style="text-align: center;">Issue/Topic</p> <p>Recommendation Presentation: Sentencing Alternatives/Decisions & Probation Working Group <i>Glenn Tapia, WG Leader</i> (continued)</p> <p style="text-align: center;">ACTION</p> <p>Recommendation FY22-SR #04. <i>This recommendation to be returned to the Working Group for additional consideration.</i></p>	<p>Recommendation FY22-SR #03. Increase Access to Telehealth Services (Policy)</p> <ul style="list-style-type: none"> ● Support: 13 ● Do not Support: 0 ● Abstain: 0 <p>Rec. FY22-SR #03 was approved for submission to the Commission.</p> <p>Recommendation FY22-SR #04 - Improve Collaborative Treatment for Justice-Involved People (Statutory):</p> <ul style="list-style-type: none"> ● Glenn explained that this recommendation was very much aligned with behavioral health reforms taking place as part of the creation of the Behavioral Health Administration. Stakeholders involved in that creation have been consulted. ● Glenn emphasized the importance of treatment quality and fidelity and that, currently, neither the justice system nor the behavioral health system provides good measures of quality, and that the systems operate in silos. ● Treatment providers are not incentivized or encouraged to treat justice-involved individuals under the current regulatory structure, and they don't necessarily understand the criminal justice system. ● Ideal outcomes in this area would include integrated service delivery and information sharing and improved treatment matching. ● This proposal is a <i>legislative recommendation</i> requiring that state criminal justice system and behavioral health agencies collaborate with input from local jails and behavioral health entities to integrate ASAM (American Society of Addiction Medicine), Social Determinates of Health, and Risk/Need/Responsivity frameworks for more effective treatment matching and service delivery. ● The proposal recommends better alignment of treatment matching criteria and the development of fiscal and regulatory methods to incentivize behavioral health providers to accept and treat justice-involved people. <p><u>Questions and Comments</u></p> <p>Maureen Cain believed that many of the recommendation components do not belong in statute, but that the topic is important and that it reflects a huge problem in service coordination. It includes statutory mandates for an agency that does not yet exist. Finally, she felt the proposal did not fit the directive from the Commission to the Sentencing Reform Task Force.</p> <p>Christie Donner expressed discomfort with the proposed treatment provider endorsement process. She felt that "approved treatment provider" (ATP) lists in criminal justice violate the Patient's Rights Act under the rules of Health Care Policy and Financing (HCPF). People have a right to choose a provider under Medicaid and it is a violation of HCPF policy for criminal justice agencies to limit patient choice to an ATP list. She asked whether the WG could instead focus on the extent to which Probation could integrate its processes with Medicaid. An obvious conflict is that Medicaid services are based on "medical necessity," which does not correspond with risk assessments by probation officers. Christie also felt the WG and Task Force should focus attention on the efficacy of the \$20 million provided to Judicial through the Correctional Treatment Cash Fund.</p>
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<p style="text-align: center;">Issue/Topic</p> <p>Recommendation Presentation: Sentencing Alternatives/Decisions & Probation Working Group Glenn Tapia, WG Leader (continued)</p>	<ul style="list-style-type: none"> - Seek a probation revocation in accordance with sections §16-11-205, C.R.S., Arrest of probationer revocation, and §16-11-206, C.R.S., Revocation Hearing; - Immediately increase the level of supervision; - Increase the number of drug screenings for the illegal or unauthorized use of controlled substances; - Refer the probationer to a substance use disorder treatment program. <ul style="list-style-type: none"> ● Therefore, if one is under intensive probation supervision (ISP) and has a second positive drug test, the only option is immediate arrest or revocation. These statutes do not reflect a modern understanding of the trajectory and complex reality of substance abuse recovery. ● §16-11-209 is counter to a different provision [§16-11.5-102. <i>Substance abuse assessment-standardized procedure</i>] that requires the development of a continuum of flexible intervention options to treat substance abuse. ● The WG proposes more flexibility and behavioral health options for those who test positive for drugs, rather than primarily punitive responses. ● Glenn shared preliminary findings and draft recommendations from a study by the Crime and Justice Institute (CJI; cjinstitute.org/) of the Colorado Division of Probation: <ul style="list-style-type: none"> ○ Those who are revoked typically have 3 or more violations and that the most common reasons for revocation are, 1) missed UAs, 2) positive UAs, and 3) missed appointments with the probation officer. Revocations due to new offenses are often for drug or DUI offenses. ○ Additionally, not all Colorado jurisdictions are using the optional graduated sanctions and incentives model (<i>Strategies for Behavior Change</i>). Of those who report using the model, only 41% have recorded entries in the program’s tracking system. ○ CJI indicated that more consistent use of the model would be advantageous; however, the program is actually in conflict with the statutorily required punitive sanctions as detailed above. ○ Relatedly, CJI will recommend that Colorado law be revised from punitive-oriented responses to therapeutic/recovery-focused responses to substance abuse-related violations. ● This recommendation would replace the limited, finite, punitive responses to violations and with individualized behavioral responses. <p><u>Questions and Comments</u></p> <p>Although supporting the recommendation concept, Maureen Cain identified multiple issues with the “Proposed Statutory Language.” Michael Rourke agreed with Maureen that there were several inconsistencies and errors.</p> <p>Tom Raynes proposed that the WG rework this section and re-present the recommendation at the next Task Force meeting. Maureen offered to revise it with the assistance of Michael and Tom and will do so in time for the next Task Force meeting.</p> <p>The Task Force agreed to the revision plan and the intent to reconsider Recommendation FY22-SR #05 at the December Task Force meeting.</p>
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Issue/Topic	Public Comment
<p data-bbox="224 254 427 281">Public Comment</p> <p data-bbox="138 287 513 315"><i>Michael Dougherty, WG Leader</i></p> <p data-bbox="147 430 503 457">Next Steps and Adjournment</p> <p data-bbox="125 464 532 529"><i>Richard Stroker, CCJJ Consultant & Michael Dougherty, WG Leader</i></p> <p data-bbox="277 644 370 672">ACTION</p> <p data-bbox="121 678 529 848">Sentencing Reform Task Force will present two recommendations (FY22-SR #01 & FY22-SR #03) for preliminary consideration by the Commission on Nov. 12.</p> <p data-bbox="277 926 370 953">ACTION</p> <p data-bbox="115 959 535 1098">Sentencing Reform Task Force to consider one revised recommendation (FY22-SR #05) for vote at the December 8 meeting.</p> <p data-bbox="277 1176 370 1203">ACTION</p> <p data-bbox="115 1209 535 1417">Sentencing Reform Task Force returned two recommendations (FY22-SR #02 & FY22-SR #04) for further study by the Sentencing Alternatives/Decisions & Probation Working Group.</p>	<p data-bbox="565 254 1507 319">Michael solicited public comment, and, hearing none, moved to the conclusion of the meeting.</p> <p data-bbox="971 396 1105 424">Conclusion</p> <p data-bbox="565 430 1495 674">Richard Stroker, CCJJ Consultant, thanked Glenn and the Sentencing Alternatives/Decisions & Probation Working Group (WG) for all their effort on the recommendations. Richard summarized that two recommendations approved by the Task Force during the meeting will be forward to the full Commission for preliminary presentation on Friday, November 12, 2021:</p> <ul style="list-style-type: none"> <li data-bbox="565 606 1357 634">- Recommendation FY22-SR #01. Define the Purposes of Probation <li data-bbox="565 642 1414 669">- Recommendation FY22-SR #03. Increase Access to Telehealth Services <p data-bbox="565 714 1515 814">Of the three remaining recommendations presented, the WG will revise and re-present one recommendation at the next Task Force meeting and two will be returned to the WG for additional study:</p> <p data-bbox="565 856 959 884">REVISION and RE-PRESENTATION</p> <ul style="list-style-type: none"> <li data-bbox="565 890 1396 955">- Recommendation FY22-SR #05. Implement Individualized Behavioral Responses to Probation Violations <p data-bbox="565 999 911 1026">RECONSIDERATION & STUDY</p> <ul style="list-style-type: none"> <li data-bbox="565 1033 1451 1098">- Recommendation FY#22-SR #02. Develop a Swift Reparative Intervention Program for Persons Convicted of a Petty Offense, and <li data-bbox="565 1106 1495 1171">- Recommendation FY22-SR #04. Improve Collaborative Treatment for Justice-Involved People <p data-bbox="565 1213 1515 1352">Michael Dougherty thanked Glenn and the members of the Sentencing Alternatives/Decisions & Probation Working Group for the tremendous amount of time and effort in the preparation of all five of the recommendations and for their ongoing work on the “returned” recommendations.</p> <p data-bbox="565 1394 1471 1495">Michael thanked everyone for their time and, hearing no further comment, adjourned the meeting. The next meeting of the Sentencing Reform Task is December 8, 2021 from 1:30 to 4:00 pm.</p>

Next Meeting

Wednesday, December 8, 2021 / 1:30-4:00pm (Virtual meeting)

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