

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

**Sentence Structure Working Group  
MINUTES**

November 23, 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  
Jessica Jones, Defense Attorney  
Dan Rubinstein, District Attorney, 21<sup>st</sup> JD

**ABSENT**

Valarie Finks, Crime Victim Compensation, 1<sup>st</sup> JD  
Tom Raynes, Colorado District Attorneys' Council  
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>                  Michael Dougherty, Working Group Leader, welcomed members and noted that Tom Raynes, Valarie Finks, and Lisa Wayne would not attend the meeting. He reviewed the agenda and asked Maureen Cain to start with a review of the General Felony Chart document she distributed to group members.</p>
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<p><b>Issue/Topic</b>                  General Felony Chart  <i>Michael Dougherty,                  Working Group Leader                  &amp; Maureen Cain,                  Working Group Member</i></p>	<p><b>Discussion</b>                  Maureen explained that the General Felony Chart is the final draft that assigns offenses to the general felony classes. The Study Group continues to discuss the categorization of escape crimes due to recent changes in the escape provisions of statute, specifically shifting “escape” to “unauthorized absence.” Given that, some of the escape numbers were inaccurate. Study Group members will review and finalize escape crimes before it is presented at the next Sentencing Reform Task Force meeting. Referencing the chart, Maureen explained that if a crime was rarely or never charged, the Study Group did not spend a lot of time analyzing it.</p> <p>Michael outlined the offense characteristics in the chart as follows: Statutory Citation, Crime, Crime Elements, Number of Times Filed in FY20, Current Classification, Recommended Classification, Number Sentenced to DOC, and Average Length of Stay (LOS) in DOC based on CY2018 and CY2019 releases, and total number of releases from DOC facilities. Michael added that this chart is no different than the one Working Group members received at the last meeting. He indicated that the Study Group will soon transition to a robust discussion of the sentencing ranges that will be assigned to the general felony levels. Maureen pointed out that about 40 crimes on the general felony offense chart drive 85% of the prison population for general felonies.</p> <p>Jessica Jones asked about the process of focusing on the General Felony chart (with proposed reclassifications) for presentation to the Sentencing Reform Task Force without having first finalized the felony class sentence ranges.</p> <ul style="list-style-type: none"> <li>o Michael replied that the goal is to present the work in sections, starting first with examples of how the felony classes are applied to crimes. The plan is to gain support for this part of the work, then to present the ranges.</li> <li>o Christie Donner added that the Study Group is still in the process of gathering more data around the proposed sentencing ranges based on three different sentencing scenarios provided to researchers at DCJ to perform a prison population impact analysis. With that information, the Study Group will have the data it needs to set general felony class ranges.</li> <li>o Maureen added that the Study Group is deciding among strategies to present alternative sentencing range scenarios to the Task Force. When the options have been developed, the Study Group will present them to the Working Group to help identify the best approach.</li> </ul> <p>Michael asked Dan Rubinstein to help explain the factors that underlie the three sentence range scenarios being analyzed. Dan described the difference between the mean and the median of a distribution. Regarding sentences, the</p>
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<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><b>ACTION</b>                  General Felony Chart to be presented to the Sentencing Reform Task Force at its upcoming meeting</p>	<p>mean is the simple average of the distribution of sentence lengths and the median is the midpoint of the distribution of sentence lengths. The mean is more affected by outliers (for example, a few people with really long sentences) than the median. One must consider these issues of the “weight” of the average sentence lengths (i.e., where the bulk of numbers fall in the distribution) and outliers when determining what number best represents a distribution of sentence lengths for particular offenses. The Group’s certainty-in-sentencing goal is to account for the current practices that determine sentence length (for example, good time, earned time, discretionary parole, etc.), considering these “distribution factors” when establishing the new sentencing structure. However, Study Group members have realized “converting” from the old to the new scheme is not as straightforward as hoped. Whichever sentencing scenario is chosen, it must not significantly increase the prison population. The Study Group is determining the number of months appropriate for each felony class and the size of each class range.</p> <p>Maureen added that determinants in the “equation” include current average LOS, earned time calculations, and presumptive versus aggravated ranges. The Study Group is still waiting on the forthcoming DCJ analysis, along with the inclusion of some “bell curve scenarios” of the felony classes (i.e., the shape of the distribution of average sentence lengths by felony class). Maureen noted it is also more challenging to make decisions regarding the General Felony 1 category of crimes because the current ranges are so vast.</p> <p>Christie shared that, in the scenario she created, the starting number of months was lower for each presumptive class than the other two scenarios, but that her ranges were narrower, given her concern that broad ranges result in inconsistency of sentences for the same crime.</p> <p>At the conclusion of the discussion, Michael asked whether members supported the presentation of the grid and felony chart at the next Sentencing Reform Task Force meeting, if the analyses were completed in time. All those in attendance were in favor of that plan. Maureen added that at some point the group must also address other sentencing issues, like, habitual charges, consecutive sentences, and parole violations.</p>
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<p><b>Issue/Topic</b>                  Senate Bill 21-271 Clean Up  <i>Michael Dougherty,</i>  <i>Working Group Leader</i>  <i>Maureen Cain,</i>  <i>Working Group Member</i></p>	<p><b>Discussion</b>                  Michael shared that there are lingering issues to be addressed regarding Senate Bill 2021-271 (“<i>Misdemeanor Reform</i>”). The first issue is related to Possession of a Weapon by a Previous Offender (POWPO). Michael reminded the group that the bill included a delay in implementation in order to allow for tweaks and/or additions, particularly in instances that directly impact public safety. Community feedback indicates the need to amend the list of previous offenses that prohibit possession of a weapon. Ongoing discussions with District Attorneys, advocates, and other stakeholders are determining the specific offenses to include, in order to avoid the problem with the previous POWPO statute that included many offenses unnecessarily. The goal is to</p>
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<p><b>Issue/Topic</b> Senate Bill 21-271 Clean Up <i>Michael Dougherty,</i> <i>Working Group Leader</i> <i>Maureen Cain,</i> <i>Working Group Member</i> (continued)</p> <p><b>ACTION</b> The POWPO “clean-up” items will be prepared and presented to the Working Group, Task Force, and Commission.</p>	<p>construct a list that is consistent with the original intent to include only offenses with public safety implications.</p> <p>Michael explained that Eileen McCarron (Ceasefire; coloradoceasefire.org) has been working directly with the Study Group on a list of “prohibited offenses” to add to the POWPO statute. He reemphasized the need to keep the offense list focused on public safety concerns. Eileen commented that her organization compromised on some offenses, but in the end, they are satisfied with the proposed list. Michael will forward the list to Working Group members for discussion at a future meeting. After that, the list will comprise a new recommendation for presentation to the Sentencing Reform Task Force and, if approved, to the Commission.</p> <p>Maureen described another technical item from S.B. 21-271 that requires collaborative work with the Judicial Department, specifically regarding clarification of the process to handle civil infractions. S.B. 21-271 converted several minor offenses to civil infractions and a modified process and system must be created to address them. Currently, there is a process for paying traffic infractions, fish and wildlife infractions, etc., but there is no process for processing Title 18 civil infractions. Draft legislation has been created and will hopefully be introduced to the legislature early in the session.</p> <p>Dan elaborated on the problems with the civil infraction process. For traffic infractions, there is a process where unpaid fine notices are forwarded to a different agency with the responsibility to track these instances. S.B 21-271 didn’t include such processes for several categories of new civil infractions. Also, there are several different procedural rules (for criminal, for civil, and for infraction cases) and the Rules Committee must determine the applicable rules to be applied. None of this is controversial, but must be addressed legislatively for the implementation of S.B. 21-271 to occur smoothly.</p>
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<p><b>Issue/Topic</b> Public Comment &amp; Adjourn <i>Michael Dougherty,</i> <i>Working Group Leader</i></p>	<p><b>Discussion</b></p> <p>With no members of the public present to offer comment, Michael moved to the conclusion of the meeting.</p> <p>Michael summarized the meeting, explaining that data is forthcoming from DCJ on prison projections, that the POWPO list will be distributed to the Working Group, and that, after the DCJ analyses are reviewed and ranges are set, the General Felony Grid will be shared with the Sentencing Reform Task Force.</p> <p>Michael reminded members that the next meeting of the Sentence Structure Working Group is December 7, 2021 at 3pm and, with no further business, adjourned the meeting.</p>
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**Next Meeting**

Tuesday, December 7, 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)