

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

**Sentencing Alternatives/Decisions & Probation Working Group**  
**MINUTES**

December 3, 2021 / 8:30AM-11:30AM  
Virtual Meeting

**ATTENDEES:**

**WORKING GROUP MEMBERS**

Glenn Tapia, Director, *Working Group Leader*, Probation Services/ Judicial Branch  
Kristin Heath, Assistant Director, Jefferson County Justice Services  
Kazi Houston, Rocky Mountain Victim Law Center  
Heather McClure, Adams County Division of Community Safety and Well-Being  
Clay McKisson, Judge/ 3<sup>rd</sup> Judicial District  
Jenifer Morgen, Chief Probation Officer/ 17<sup>th</sup> Judicial District (JD)  
Greg Otte, Deputy Chief Parole Officer/ 8<sup>th</sup> JD  
Megan Ring, Office of the State Public Defender  
Elaina Shively, District Attorney's Office/ 20<sup>th</sup> JD  
Abigail Tucker, Psychologist/ Mental health services provider and consultant

**STAFF**

Richard Stroker, CCJJ Consultant  
Laurence Lucero, Division of Criminal Justice  
Stephane Waisanen, Division of Criminal Justice

**ABSENT**

Chris Gallo, Deputy District Attorney/ 18<sup>th</sup> JD  
Matthew James, Denver District Attorney's Office

**GUESTS**

Issue/Topic	Discussion
<p><b>Welcome &amp; Agenda</b>  <i>Glenn Tapia,</i>                      Working Group Leader                      Sentencing Alternatives/Decision &amp; Probation Working Group</p>	<p>Glenn Tapia, Working Group (WG) Leader, welcomed attendees to the meeting. Glenn provided an overview of the meeting agenda and explained that some fairly detailed and time-sensitive decisions are necessary. The two primary goals for the meeting are as follows:</p> <ul style="list-style-type: none"> <li>● Review the Sentencing Reform Task Force (SRTF) revision to the statutory language in <i>Recommendation FY22-SR #05. Individualized Behavioral Responses &amp; Violations [Policy]</i>, which is related to §16-11-209, C.R.S., <i>Duties of probation officers.</i></li> <li>● Discuss feedback from the SRTF on the following proposals:                             <ul style="list-style-type: none"> <li>- <i>Recommendation FY22-SR #02. Develop a Swift Reparative Intervention Program for Persons Convicted of a Petty Offense (Statutory)</i>, and</li> <li>- <i>Recommendation FY22-SR #04. Improve Collaborative Treatment for Justice-Involved People (Statutory).</i></li> </ul> </li> </ul> <p>Glenn added that, time permitting, the group might also discuss over/under-supervision of Sex Offender Intensive Supervision Probation (SOISP). Glenn also informed the group that the SRTF approved <i>Recommendation FY22-SR #01. Define the Purposes of Probation (Statutory)</i> with minor revisions and approved <i>Recommendation FY22-SR #03. Increase Access to Telehealth Services (Policy)</i>. Glenn will provide the preliminary presentation of these two recommendations on behalf of the SRTF at the December 10 Commission meeting.</p> <p>Megan Ring relayed significant concerns about the scope of work this WG has undertaken and whether it is consistent with the original mandate from the SRTF. She added that creating these recommendations takes a lot of work to, in the end, have the SRTF send recommendations back that are not consistent with what they want. Glenn replied that the scope of work was approved by both the SRTF and the full Commission. Megan felt the number of recommendations returned to the WG was atypical. She reported that Maureen Cain and others on the SRTF are frustrated because they feel the work is out of scope.</p> <p>Dr. Abigail Tucker replied that she believed the level of interaction and feedback from the SRTF is actually appropriate and typical. Richard Stroker, CCJJ Consultant, believed the WG efforts are consistent with directions from the Commission and the SRTF. WG members agreed that a method to explore the issue of scope was to review the SRTF feedback and determine whether it provided examples of these reported scope problems.</p>

Issue/Topic	Discussion
<p>SRTF feedback on...                      Recommendation FY22-SR #05 -                      Review of statutory revisions  <i>Glenn Tapia, Working Group Leader</i></p>	<p>Regarding, <b><i>Recommendation FY22-SR #05. Implement Individualized Behavioral Responses to Probation Violations (Statutory)</i></b>, Glenn shared proposed edits from members of the Sentencing Reform Task Force (SRTF). He first summarized the feedback from the SRTF and then led the Working Group (WG) in discussion of the recommendation.</p>



<p><b>Issue/Topic</b>  <b>Issue/Topic</b>                  SRTF feedback on...                  Recommendation FY22-SR #05 -                  Review of statutory revisions  <i>Glenn Tapia, Working Group Leader</i>                  (continued)</p> <p><b>ACTION</b>                  Working Group will create a new policy recommendation addressing supervision practices after the first of the year</p>	<p>simply be relegated to the policy and standards of the State Court Administrator’s Office (SCAO). Even though this recommendation included content that is similar to provisions of <i>Senate Bill 19-108. Juvenile Justice Reform</i>, SRTF members felt there was more detail than is necessary.</p> <p>The group reviewed sundry other edits in this category and agreed to accept all of the modifications.</p> <p><u>Questions and Comments</u>                  Seeing no specific objections to the SRTF revisions, Glenn suggested accepting the revisions and members concurred.</p> <p>Richard Stroker suggested the group might retain the deleted policy and procedure provisions from the proposed statutory language and create a new policy recommendation. These policy statements, regarding supervision activities, still have value and the recommendation could be to encourage their addition in any new revision of the probation standards.</p> <p>Members favored the suggestion and agreed to create an additional policy recommendation. Glenn suggested that this new policy recommendation could be drafted after the start of the new year.</p>
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<p><b>Issue/Topic</b>                  SRTF feedback on...                  Recommendation FY22-SR #02  <i>Glenn Tapia, Working Group Leader</i></p>	<p style="text-align: center;"><b>Discussion</b></p> <p>Regarding, <b><i>Recommendation FY22-SR #02. Develop a Swift Reparative Intervention Program for Persons Convicted of a Petty Offense (Statutory)</i></b>, Glenn summarized the feedback from the Sentencing Reform Task Force (SRTF) and then led a discussion of the feedback by Working Group (WG) members.</p> <p>The feedback from the SRTF was that the Swift Reparative Intervention Program for Persons Convicted of a Petty Offense (SRIP) program was too bureaucratic, too detailed, and represented too much effort for a fairly small number of qualifying offenses. SRTF members did not support creating a new grant program to enable actions that the courts can already take.</p> <p>In its current form, Glenn doubted that the SRIP recommendation would ever be approved by the SRTF and offered four options to WG members:</p> <ol style="list-style-type: none"> <li>1. Leave the recommendation unchanged and re-present it to the SRTF, although it is unlikely to be approved,</li> <li>2. Recommend that no petty offenses be eligible for probation,</li> <li>3. Do nothing, meaning that all petty offenses will be eligible for probation, or</li> <li>4. Recommend petty offenses be eligible for only six months of probation, or recommend six-month terms as a finite sentence to probation.</li> </ol> <p><u>Questions and Comments</u>                  Kazi asked for a recap of the problem this recommendation was proposed to solve. Glenn reminded members that <i>S.B. 21-271. Misdemeanor Sentencing Reform</i> collapsed the two categories of petty offense into one, therefore making all petty offenses eligible for probation (previously, Petty I offenses were eligible, but not Petty II offenses). When the law becomes effective in</p>
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<p><b>Issue/Topic</b>                  SRTF feedback on...                  Recommendation FY22-SR #02  <i>Glenn Tapia, Working Group Leader</i>                  (continued)</p>	<p>March 2022, it is unclear exactly how many petty offenses will become probation eligible because some previous misdemeanors are now petty offenses and some petty offenses are now minor [civil] infractions. Therefore, the issue is whether all petty offenses, including minor petty offenses that were not previously eligible, should become eligible for probation. This SRIP recommendation was created as an alternative to the binary choice (eligible or ineligible) that would allow an intervention for those petty offenders that courts feel may need additional assistance to be successful.</p> <p>Glenn added that, personally, he felt that probation was not necessary for those convicted of a petty offense. Megan noted that, with additional offenses shifted to the petty level, it is very problematic that jail is still a sentencing option. She proposed that probation remain an option when someone needs support, rather than sending individuals to jail.</p> <p>Jenifer preferred those convicted of a petty offense not be probation eligible, but, if they remain eligible, to choose the “do nothing” option. If probation is capped at six months and someone’s risk/needs assessment indicates a need for more longer probation, it is likely that might exceed a six-month time period. If probation is the right placement for someone with multiple petty offenses, or someone whose level of risk is not commensurate with the crime they committed, then retain status quo and allow Probation to perform assessments and determine program assignment that is appropriate and not time limited.</p> <p>Dr. Tucker replied that, if six months is not sufficient, individuals shouldn’t be on probation in the first place. Such a circumstance appears to be misaligned with the purpose of probation. She would prefer that people with a petty offense not be eligible for probation, and, furthermore, that jail not be an option either.</p> <p>Elaina Shively explained that from the DA perspective, eliminating the probation option and leaving jail as the only option for the court is problematic. Also, if risk/need/responsivity should be the guiding tenet to determine sentencing alternatives, and not the offense committed, then labeling all petty offenses ineligible for probation is not a logical or evidence-based position. Additionally, there may be cost considerations for a “third alternative” (like SRIP) that may result in a reduction in probation supervision numbers...once accounting for the number of folks currently on probation for petty offenses, the number on probation for misdemeanors that will soon be petty offenses, the number of misdemeanors now labeled, “unclassified,” and the petty offenses to be shifted to civil infraction. If probation numbers drop, this may result in an associated reduction of the probation budget. Elaina also was concerned that, if the probation and/or jail options are eliminated, there will be a “down-stream impact” on, for example, diversion programs that may become the default option to provide supervision for these petty cases. She believes it is too sweeping and too broad to eliminate the probation option currently available to judges. Sweeping changes that totally eliminate particular</p>
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<p><b>Issue/Topic</b>                  SRTF feedback on...                  Recommendation FY22-SR #02  <i>Glenn Tapia, Working Group Leader</i>                  (continued)</p>	<p>options without the infrastructure to support the change could result in some potentially huge unintended consequences.</p> <p>Kazi recalled there was general agreement among WG members that “a petty offense calls for a petty response.” However, it was also important to address the needs of people who cannot independently navigate the service environment in order to be compliant with probation conditions. This proposal was originally created to anticipate these problems with service navigation.</p> <p>Megan noted that, after listening to the discussion, she has returned to the stance to make petty offenses ineligible for probation. Glenn agreed and noted that an aspect of the original scope of work underlying the proposal was to identify and address the potential for over-supervision.</p> <p>Judge McKisson explained there is a Class 4 Drug Felony statute that outlines how judges can only consider a prison sentence when service options have been exhausted. He offered that there could be similar language applicable to the framework for petty offenses that would guide judges when the jail option would be appropriate. He was concerned about some offense circumstances, like indecent exposure or repeat offenses, if probation eligibility were eliminated.</p> <p>Elaina pondered a cost savings approach where the proposal might suggest reallocating funds from probation to treatment options. She also mentioned the low probation completion rate for individuals on probation for petty offenses and how repeated stints in jail are wildly ineffective to address the needs of “frequent flyers” (high-need/ high system utilizers). Jenifer reminded members that over-supervision results in negative consequences and worse outcomes, especially when the crime determines the intervention, rather than risk and needs. Echoing Jenifer’s comments, Kazi mentioned the research the group had reviewed in earlier meetings regarding the negative effects of over-supervision. Abigail shared the related experience of the search for the root causes of repeated visits to ERs by health care providers.</p> <p>Glenn asked whether the group would like to continue to explore the recommendation topic in general and, if so, whether it was an urgent agenda item for the upcoming legislative session or a topic to explore over a longer timeline. Megan suggested that the topic not be rushed, but to instead include the topic in the larger goal of exploring over-supervision. The group continued to discuss timing options and whether to take no action on the topic at all.</p> <p>Glenn reiterated that, if the group does nothing, any petty offense occurring on or after March 1, 2022 would be eligible for probation. Data show that a probation sentence is typically one year with an expense of approximately \$1,000 to \$1,500 per person, at a 50% success rate. This recalls a previous observation that a petty crime, for example, a stolen pair of \$45 sunglasses, can result in \$1,500 of disproportionate supervision costs to a probationer.</p>
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<p><b>Issue/Topic</b> SRTF feedback on... Recommendation FY22-SR #02 <i>Glenn Tapia, Working Group Leader</i> (continued)</p>	<p>Glenn concurred that the “human issue,” regardless of the number affected, still warrants urgent attention. Doing the right thing for people and for the criminal justice system outweighs the absolute necessity to wait for conclusive data of the number affected by the misdemeanor bill implementation.</p> <p>Glenn proposed taking Richard’s advice to table this proposal until the group can explore over-supervision in general. WG members agreed with that plan.</p>
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<p><b>Issue/Topic</b> SRTF feedback on... Recommendation FY22-SR #04 <i>Glenn Tapia, Working Group Leader</i></p> <p><b>ACTION</b> The Working Group and CCJJ staff will revise the proposal as a policy recommendation</p>	<p style="text-align: center;"><b>Discussion</b></p> <p>Regarding <b>Recommendation FY22-SR #04. Improve Collaborative Treatment for Justice-Involved People (Statutory)</b>, Glenn explained that feedback from the Sentencing Reform Task Force (SRTF) focused on the perceived prematurity of this proposal that involves the new Behavioral Health Administration (BHA). It was felt the SRTF would prefer a policy recommendation, rather than a statutory recommendation, given that the BHA will not be implemented until FY 2023. The WG has two choices: retain the document, with some modification, as a statutory recommendation or rework the document as a policy recommendation.</p> <p>Richard shared that converting the recommendation to policy maintains the group’s hard work and may lead to approval by the SRTF, but preserving the recommendation as statutory may result in rejection by the SRTF. Dr. Tucker proposed asking the SRTF members for additional details regarding their policy vs. legislative preferences and that she would like the WG to build consensus with the SRTF.</p> <p>Glenn shared that this recommendation, with some exceptions, corresponds with the Governor’s Office plan for the BHA. Glenn also offered to share this recommendation with a WG from the Office of Behavioral Health (OBH) that he was invited to join, which is working to improve the intersection of justice and behavioral health. Richard felt the policy recommendation would reflect criminal justice interests and could be given to the OBH group to support its BHA planning work. Dr. Tucker was apprehensive to “hand off” the recommendation to the OBH/WG. She worried that the recommendation intent or elements may be altered by a different (non-CCJJ) group.</p> <p>Glenn reiterated the SRTF preference for a policy recommendation and that some SRTF members probably did not delve into the recommendation details simply because the recommendation was statutory. Jenifer agreed that the negative feedback primarily concerned the “bad timing” of a statutory recommendation and agreed that the policy approach appears preferable.</p> <p>Glenn summarized that there is time, working with the CCJJ/Division of Criminal Justice staff, to revise the proposal to a policy document that could be re-presented to the SRTF, possibly in January. The WG agreed with this plan.</p>
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<b>Issue/Topic</b>	<b>Discussion</b>
Public Comment, Next Steps & Adjourn <i>Glenn Tapia,</i> <i>Working Group Leader</i>	Glenn opened the floor for public comment. No public comment or concerns were offered.  The Working Group will reconvene on January 7, 2022.  Hearing no further comment, Glenn adjourned the meeting.

**Next Meeting**

Next Meeting - Friday, January 7, 2021 / 9:00am – 11:30am (Virtual Meeting)

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