

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

**Sentence Structure Working Group  
MINUTES**

December 7, 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  
Tom Raynes, Colorado District Attorneys' Council  
Dan Rubinstein, District Attorney, 21<sup>st</sup> JD

**ABSENT**

Valarie Finks, Crime Victim Compensation, 1<sup>st</sup> JD  
Lisa Wayne, Defense Attorney

**STAFF**

Jack Reed, Interim Research Director, Division of Criminal Justice  
Stephane Waisanen, Sentence Structure Working Group Staff, Division of Criminal Justice  
Laurence Lucero, Sentencing Reform Task Force Staff, Division of Criminal Justice  
Kevin Ford, Commission Staff, Division of Criminal Justice

<b>Issue/Topic</b>	<b>Discussion</b>
<p><b>Welcome &amp; Agenda</b>  <i>Michael Dougherty,                      Working Group Leader</i></p>	<p>Michael Dougherty (Working Group Leader) welcomed members and noted that Valarie Finks and Lisa Wayne would be absent. He added that he, too, will have to leave the meeting early.</p> <p>Michael reviewed the agenda and offered sundry updates:</p> <ul style="list-style-type: none"> <li>○ The Study Group has reviewed the timeline and the significant amount of remaining work and determined they are a couple of weeks behind.</li> <li>○ An update of the current status of the work will be offered at the Sentencing Reform Task (SRTF) Force meeting tomorrow, Dec. 8, 2021.</li> <li>○ The Study Group has discussed whether to address the issue of habitual offenses in the current work phase and feedback from the Working Group will be sought on this issue during this meeting.</li> <li>○ The prison population projection analyses of the three sentencing grid options (with different sets of sentence ranges for felony levels) has been provided to the Study Group and these results are being reviewed.</li> </ul> <p>Michael asked Study Group members for any additional updates. Maureen Cain offered that the method to apply habitual penalties is under discussion. Also discussed is whether habitual general felony crimes can be addressed without simultaneously also addressing habitual violent crimes. They've concluded that the proposed grid cannot be finalized without also addressing habitual penalties for the general felonies. With that said, the Study Group plans to submit additional data analysis requests, which will require more time.</p>

<b>Issue/Topic</b>	<b>Discussion</b>
<p>Presentation Preview: Draft Recommendation FY22-SR #06  <i>Michael Dougherty, WG Leader &amp; Maureen Cain, WG Member</i></p>	<p>The preliminary draft of <i>Recommendation FY22-SR #06. Revise General Felony Sentencing and Offenses (Statutory)</i> was displayed and Michael indicated that the draft would be presented to the Sentencing Reform Task Force (SRTF) tomorrow. Maureen Cain described the three major elements of the preliminary draft, following which members discuss the proposal.</p> <p><b>Recommendation FY22-SR #06. Revise General Felony Sentencing and Offenses (Statutory)</b></p> <p>Maureen cautioned that the draft is incomplete and very preliminary and that the Study Group is still working on some of the language and concepts. Maureen outlined the first element as follows:</p> <p><u>ELEMENT #1: Proposed Changes to Sentencing Provisions</u></p> <ul style="list-style-type: none"> <li>● There is a separate General Felony grid with five levels, including a presumptive and aggravated sentencing range.</li> <li>● There is a chart of general felony crimes and, based on a crime severity analysis, each crime displays its current and newly assigned felony level.</li> <li>● Crimes designated as General Felony 5 (GF5, presumptive) would not be prison eligible, and instead would only be eligible for probation, community corrections, or a jail sentence. The jail sentence would not include post-</li> </ul>

<p style="text-align: center;"><b>Issue/Topic</b></p> <p style="text-align: center;">Presentation Preview: Draft Recommendation FY22-SR #06 <i>Michael Dougherty, WG Leader &amp; Maureen Cain, WG Member</i> (continued)</p>	<p>release supervision. If the GF5 is labeled, “aggravated,” it would become prison eligible.</p> <ul style="list-style-type: none"> <li>● There would be no severity level increases for any second and subsequent crimes or mandatory consecutive sentences for these general felony crimes.</li> <li>● Mandatory aggravators for GF crimes would include: if the defendant is on parole at the time of a new offense, if the defendant committed an escape while confined, and/or if there was a crime victim labeled as, “at-risk.” Non-person crime categorizations will be value-based.</li> <li>● Time served would be calculated as the “sentence imposed” minus any “time credits earned,” (such as pretrial confinement) resulting in a mandatory release date. There would be no discretionary parole. This contributes to the Working Group goal of enhancing certainty in sentencing.</li> <li>● Earned time would be 10 days per each 30 incarcerated days and DOC would retain some discretion to award this earned time. Details regarding the degree of discretion (i.e., all 10 days or a portion of the 10 days) are still under discussion. Additionally, disaster-relief related time credit could be appended.</li> <li>● Parole periods would be decreased for all general felony levels consistent with research. Parole periods would be: GF1 &amp; 2 - two years, GF3 &amp; 4 - 1 year, and GF5 - 9 months (for aggravated sentences only). The Parole Division has been briefed and is supportive of this proposal. The goal is for parole to serve primarily as a community support program.</li> <li>● There would be no return to prison for technical parole violations (i.e., rule violations). Sanctions for technical parole violations might include “swift and sure” stays in jail.</li> <li>● If while on parole a person is charged with a new offense at least at the level of a Misdemeanor 1 (M1) or any felony offense, the person would have a mandatory parole hold placed by the Department of Corrections (DOC) that cannot be lifted without DA consultation in the new case. For crimes other than an M1 or felony, the court could determine bond.</li> <li>● A crime committed while on parole would require a mandatory sentence within the aggravated range.</li> <li>● The Department of Corrections, along with all necessary stakeholders, would develop a comprehensive plan to provide more diverse transition placements (e.g., sober living, community stabilization programs, home detention, work release, etc.). Currently, there are too few options.</li> </ul> <p>The group did not address the statutory timeframe for referral to community corrections. That will be addressed in the next phase of work.</p> <p><u>ELEMENT #2: Proposed General Felony Sentencing Grid (Felony Levels and Sentence Ranges)</u></p> <p>Maureen explained that, although the number of felony levels has been decided (five), the final ranges have not been determined. A report was completed by Linda Harrison (DCJ), which shows the prison population impact for three different sentence grid scenarios developed by different members of the Study Group.</p>
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<p style="text-align: center;"><b>Issue/Topic</b></p> <p style="text-align: center;">Presentation Preview: Draft Recommendation FY22-SR #06 <i>Michael Dougherty, WG Leader &amp; Maureen Cain, WG Member</i> (continued)</p>	<ul style="list-style-type: none"> <li>• Jes Jones asked whether this version of the recommendation draft would be presented to the Task Force tomorrow, without first having identified the preferred sentencing grid and related sentence ranges. <ul style="list-style-type: none"> <li>○ Christie Donner replied that the Dec. 8 presentation would represent a “status update” of the preliminary recommendation and not the “official” preliminary recommendation presentation. The preliminary presentation would occur at a subsequent meeting, tentatively scheduled for January 5, 2022, with a final presentation and vote scheduled on January 12.</li> <li>○ Jessica was concerned and quite hesitant to present an incomplete proposal, predicting that the most important aspect of the proposal to Task Force members will be the sentence ranges. It didn’t make sense to her to present the proposal without that element.</li> <li>○ Tom Raynes agreed with those concerns.</li> <li>○ Christie Donner pointed out that, beyond the sentence ranges, there are several other important concepts in the recommendation reflecting stakeholder wishes, like eliminating discretionary parole and how to handle parole technical violations.</li> <li>○ Jes was insistent that an incomplete proposal would be confusing if it didn’t include all the necessary elements to aid in comprehension or didn’t include all the elements that people care about.</li> <li>○ Maureen described that the Task Force had only been provided cursory overviews of the work thus far. There is a lot of content agreed upon by the Working Group that could be shared even though all the details have not been worked out. She believed offering another brief summary would be insufficient and somewhat misleading regarding all the work that had been completed. Eventually, Task Force members will need the opportunity to ask the “hard questions” and the longer the details are delayed, the harder it will be for members to digest and contemplate the final recommendation.</li> </ul> </li> <li>• Jes added that, along with her primary concern regarding the sentencing grid, the terminology used to define the grids should be consistent and more certain. She felt this was necessary in order to prepare for the tough questions and she did not feel the group is ready for that discussion. <ul style="list-style-type: none"> <li>○ Dan agreed with Jes that some of these uncertainties should be resolved.</li> <li>○ Christie proposed that the three sentencing scenarios not be presented, given their tentative nature. She believed it would still be advantageous for them to have the details that are available, and that the information is not too “in the weeds” for people to understand. The Task Force must be informed at some point and they need time to digest the information.</li> </ul> </li> <li>• Tom summarized that, maybe the primary concern is not that the group will misunderstand the information, but rather that there are too many big components and details still undecided.</li> <li>• Christie reiterated that the upcoming presentation is merely a detailed overview of the components that will allow SRTF members an opportunity for consideration and questions. It will not involve a vote.</li> <li>• Maureen pointed out that the core of the recommendation is not about the sentencing ranges, but about abolishing discretionary parole and moving to a certainty-in-sentencing model. She added that none of the three sentence</li> </ul>
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<p style="text-align: center;"><b>Issue/Topic</b></p> <p style="text-align: center;">Presentation Preview: Draft Recommendation FY22-SR #06 <i>Michael Dougherty, WG Leader &amp; Maureen Cain, WG Member</i> (continued)</p> <p style="text-align: center;"><b>ACTION</b></p> <p>A summary document based on the draft recommendation will be prepared and presented to the Sentencing Reform Task Force. The document will include bullet points from the DCJ “scenario report,” additional bullet points from the Study Group, and the graph of prison population trend lines.</p> <p style="text-align: center;"><b>ACTION</b></p> <p>The Working Group will solicit potential labels from the Task Force for the “non-general” felonies.</p>	<p>range scenarios would increase the prison population, which is an important factor to present to the Task Force members.</p> <ul style="list-style-type: none"> <li>• Dan proposed taking the bullet point list from Linda Harrison’s report, appending any additional bullets deemed necessary, and adding the population projection graph displaying the three scenarios under consideration, without showing the sentence grid or the tentative sentence ranges. This would at least allow Task Force members an opportunity to become familiar with the overall concepts and components of the proposal.</li> <li>• Jessica replied that she would be in favor of that approach and that the prison population trend lines with the different scenarios is the most helpful information that demonstrates the minimal impact on prison population.</li> <li>• Tom noted that all the important concepts would be included and would demonstrate the good progress.</li> <li>• Christie agreed with this simplified approach but would like to include as much information as possible (e.g., the parole revocation piece). Christie agreed to work with staff to finalize this summary of the proposal for presentation to the Task Force.</li> </ul> <p>The discussion shifted to the identification of acceptable labels for the broad categories of felony crimes.</p> <ul style="list-style-type: none"> <li>• Jessica reiterated the importance of terminology and effectively labeling the group of crimes that aren’t General Felonies, be it labeled, Person Crimes, Violent Crimes or something else, to enhance consistency and specificity.</li> <li>• Dan noted that the Study Group had struggled with identifying labels for each of the felony categories/grids. He asked Working Group members to brainstorm some possible labels for the unnamed grid.</li> <li>• Maureen supported naming this other grid the “Enhanced Felony Grid.” Christie did not like that title because it implied that those crimes were taken more seriously than “General” Felony crimes. Tom added the modifier has to be distinguished from “General” one way or another.</li> <li>• Jessica noted that there is, in fact, a natural hierarchy of increased seriousness or concern regarding these “non-General” crimes.</li> <li>• Dan suggested including the Task Force members in the identification of an appropriate label. The Working Group agreed with Dan’s suggestion.</li> </ul> <p>Following the departure of Michael Dougherty, Dan Rubenstein led the remainder of the meeting.</p> <p>Dan asked whether there were any remaining issues to be addressed regarding the proposal.</p> <ul style="list-style-type: none"> <li>• Jes returned to a query from a previous meeting that the crime chart figures be broken out by gender and race.</li> <li>• Jack Reed (Interim Research Director, DCJ Office of Research and Statistics) replied that sentencing data are not included in the readily available demographic data from the CLEAR Act Report (Community Law Enforcement Action Reporting Act). This will require analyses that will require more time.</li> </ul>
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<b>Issue/Topic</b>	<b>Discussion</b>
Public Comment & Adjourn <i>Dan Rubinstein,            Working Group Leader</i>	<p>With no further agenda items, Dan solicited public comment. Seeing none, he moved to the conclusion of the meeting.</p> <p>Dan summarized the meeting, explaining that a brief summary of the draft recommendation will be prepared for presentation to the Sentencing Reform Task Force at its next meeting (<i>the following day on December 8, 2021</i>).</p> <p>The next meeting of the Sentence Structure Working Group is scheduled on December 21, 2021 at 3pm.</p> <p>With no further business, Dan adjourned the meeting.</p>

**Next Meeting**

Tuesday, December 21, 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)

***[NOTE: The December 21 meeting of the Sentence Structure Working Group was subsequently canceled. The next scheduled meeting is January 4, 2022 at 3pm.]***