

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

**Sentence Structure Working Group
MINUTES**

January 4, 2022 / 3:00PM-5:00PM
Virtual Meeting

ATTENDEES

WORKING GROUP MEMBERS

Michael Dougherty, *Working Group Leader*, District Attorney, 20th Judicial District (JD)
Maureen Cain, Office of the State Public Defender
Christie Donner, Colorado Criminal Justice Reform Coalition
Jes Jones, Defense Attorney
Tom Raynes, Colorado District Attorneys' Council
Dan Rubinstein, District Attorney, 21st JD

ABSENT

Valarie Finks, Crime Victim Compensation, 1st JD
Lisa Wayne, Defense Attorney

GUESTS

Eileen McCarron, Colorado Ceasefire
Chad Dillworth, CO State Board of Parole
Anne Andrews, CO State Board of Parole

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

Issue/Topic	Discussion
<p>Welcome & Agenda <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.</p> <p>Michael outlined that the meeting would include a review and recap of current work, discussion of the 2022 work plan, and perspectives on planning for the upcoming legislative session.</p>

Issue/Topic	Discussion
<p>Recap/Review of Current Work <i>Michael Dougherty, Working Group Leader</i></p>	<p>Michael highlighted the following points regarding ongoing work to consider when determining the next steps for the remainder of 2022:</p> <ul style="list-style-type: none"> ○ Given that it is already January 2022 and with the legislative session imminent, it doesn't appear that the "General Felony" Sentencing proposal, habitual sentencing and parole changes will be completed in time for the session. The option to complete part of the work this legislative session has been discussed, but Michael believed it would be problematic to present proposed general felony sentence ranges without the other elements. ○ Rick Kornfeld, Sentencing Reform Task Force Co-chair, has provided feedback that he agrees with the plan to present a "full package," rather than individual pieces. Additionally, feedback from the Colorado District Attorneys' Council (CDAC) indicates a preference for a complete package, including the habitual sentencing and parole elements, before signing off on a General Felony proposal. ○ There are other sentencing issues in Colorado that have garnered intense attention, which may result in legislation. One of those issues is the highly publicized 110-year sentence of the truck driver, which was then commuted to a 10-year sentence by Governor Polis. <p>Michael asked Maureen to provide an update on the "Clean-Up" bill, which will include technical fixes to <i>Senate Bill 2021-271. Misdemeanor Reform</i>. Maureen explained that the bill will address elements of S.B. 21-271 that require technical corrections and additions. These amendments will not be inconsistent with the original intent of the associated recommendation (<i>FY21-SR #01. Revise Misdemeanor Sentencing and Offenses</i>) approved by the Colorado Commission on Criminal and Juvenile Justice (CCJJ). The major focus of the Clean-Up bill is to develop a civil infraction "pay-over-the-counter" option similar to the one available to pay traffic infraction fees. There are six to seven other items that were overlooked during the development of the previous misdemeanor proposal. There is a commitment of support from the Governor's Office and legislative leadership for the Clean-Up bill and it should move quickly through the legislative process.</p> <p>Jes Jones asked whether there was feedback following the Dec. 8, 2021 SRTF meeting that included an overview of the "General Felony" proposal. Michael replied there was no specific feedback and that it seems the Task Force is waiting to hear more details.</p>

<p>Issue/Topic Recap/Review of Current Work <i>Michael Dougherty,</i> <i>Working Group Leader</i> (continued)</p>	<p>Jes shared her impression that Task Force members appeared comfortable with the overview and understood that additional work was necessary before a final draft proposal could be presented. Michael agreed and noted that CDAC members are also very interested in seeing the future work and the details in the final product. Maureen added that, in future presentations of the “General Felony” proposal, it will be important to compile and present the issues that motivated the initiative. Christie Donner agreed, pointing out that many people are aware that Colorado’s sentencing structure has become one of the most convoluted in the country and the extent of reforms that will be necessary to “unpack” decades of overlapping and conflicting policies and systems (for example, four different kinds of earned time, a system with both discretionary and mandatory parole, etc.)</p> <p>Michael explained that, with all of these issues in mind, he would like the Working Group to discuss and develop a proposed course of action to complete and advocate for the work. He offered that the group might propose some discrete sentencing-related items this session, while continuing to work on the interdependent pieces of the broad proposal.</p>
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<p>Issue/Topic Presentation: Draft Concepts <i>Maureen Cain, WG Member</i></p> <p>ACTION The Working Group agreed to draft recommendations on the following topics for presentation to the Task Force:</p> <ul style="list-style-type: none"> - Title 12 Professions - Theft of Public Benefits - Technical Parole Violations/ Prison Facility - POWPO 	<p>Discussion</p> <p>In an effort to identify potential “discrete” items, Maureen referred members to a rough draft of such items derived from work by the Sentence Structure Study Group that might be developed into recommendations. Maureen introduced each of the preliminary and tentative concepts: POWPO (Possession of a Weapon by a Previous Offender); Juvenile Adjudications and POWPO; Title 12 Modifications; Theft of “Public Benefits” Offenses; Diversity of “Off-Ramps;” Technical Parole Violations/Prison as Intermediate Sanction Facility; and Mandatory Consecutive Sentences. The summary below includes: a brief concept description, a summary of any related discussion/questions about the concept, and the decision whether to draft the concept as a recommendation for submission to the Sentencing Reform Task Force.</p> <p><u>POWPO (Possession of Weapons by Previous Offenders)</u> Description: Senate Bill 21-271 made significant changes to POWPO that are scheduled to go into effect on March 1, 2022. After discussions with District Attorneys, Colorado Ceasefire, and other stakeholders dedicated to gun safety, the Study Group reviewed the list of VRA offenses included in the crime of POWPO and, with stakeholder feedback, identified additional non-VRA crimes for inclusion on the list of eligible offenses for commission of that crime.</p> <p>Discussion/Questions: Michael explained that the goal of the proposal is to ensure that the offense list enhances public safety without “over-felonizing” POWPO. Given general concerns in the community over an unrelated surge in gun violence, another goal was to avoid a reversion to the prior version of POWPO that basically included all felonies as eligible crimes.</p> <p>Michael displayed the list of approximately 63 different offenses to be added as “POWPO eligible.” Maureen reported feedback that some were concerned</p>
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<p style="text-align: center;">Issue/Topic</p> <p>Presentation: Draft Concepts Maureen Cain, WG Member (continued)</p>	<p>by the inclusion of sedition, advocating overthrow of government, and insurrection and obstruction. Michael noted that those crimes are rarely if ever charged, but favored their inclusion. Michael would like to move ahead and approve this POWPO list so these changes can be forwarded to the SRTF and addressed in the legislature before the March implementation date.</p> <p>Eileen McCarron (Colorado Ceasefire) asked whether this proposal would be part of the “Clean-Up” bill or whether it would stand alone. Michael replied that, due to its substantive nature, it would be a separate proposal.</p> <p><i>Develop a recommendation for the Task Force?</i> The Working Group agreed to develop a recommendation for submission to the Task Force.</p> <p><u>Juvenile Adjudications and POWPO</u> <i>Description:</i> The CCJJ (in FY21-SR #01 mentioned above) previously approved a modification to statute that would allow for a juvenile adjudicated of an offense for which possession of a weapon was prohibited to petition the court for reinstatement of those rights. That provision was overlooked and not included in S.B. 2021-271. Maureen explained that the CCJJ recommendation included the following language: “juveniles adjudicated for the above offenses will have a ban on possession of a firearm which will automatically sunset 10 years or if granted by the court upon petition after completion of sentence (for example, if person is entering the military).”</p> <p><i>Discussion/Questions:</i> Eileen McCarron asked for clarification of the term, “10 years,” and Dan clarified that the 10 years would start upon discharge of the sentence, but that someone can apply early, if they are trying to join the military.</p> <p><i>Develop a recommendation for the Task Force?</i> This provision, having already received CCJJ approval as a part of FY21-SR #01, needs no further action.</p> <p><u>Title 12 Modifications</u> <i>Description:</i> After conducting a review of “general felony” offenses to determine felony classification assignment, the Study Group recommended that particular professional licensure violations be classified as felonies for the first offense due to risks to public safety.</p> <p><i>Discussion/Questions:</i> Michael noted that the offenses listed are rarely charged and he believed the licensing agencies would generally support the proposal.</p> <p>Dan Rubinstein concurred with the proposed list but advocated for the inclusion of “practicing law without a license.” He reported that stakeholders who work with people involved in immigration issues have encountered individuals claiming to be lawyers and charging for services that they are not qualified to provide or for services that are never provided. Maureen was</p>
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<p style="text-align: center;">Issue/Topic</p> <p>Presentation: Draft Concepts Maureen Cain, WG Member (continued)</p>	<p>unsure whether practicing law without a license fit the “public safety rubric” used to select the professions on the list. Michael concurred with both statements that such individuals were taking advantage of vulnerable clients, but the public safety connection was tenuous. In response to an observation that ethics boards usually handle such situations, Dan pointed out that ethics panels in the legal profession only have jurisdiction over actual lawyers, not those pretending to be lawyers.</p> <p>Christie noted the gray area between professional legal services and advocates who offer help to navigate the legal system. She worried that legal system “navigators” could be inadvertently affected by such a provision. Christie asked whether the Department of Regulatory Agencies (DORA) had been consulted on this issue. Michael agreed feedback from DORA would be beneficial.</p> <p>Although the group continued to discuss and reiterate the pros and cons, they did not reach consensus. Michael suggested the group revisit the issue at the next meeting.</p> <p><i>Develop a recommendation for the Task Force?</i> Setting aside issue of “law practice,” Michael asked whether there was support for developing a recommendation on the existing concept. The Working Group was in support of the general proposal, but agreed that the “law practice” issue required further discussion and that DORA should be consulted before that specific element is forwarded to the Task Force.</p> <p><u>Theft of “Public Benefits” Offenses</u> <i>Description:</i> This proposal would recommend that statutory language be amended to clarify that the amount of theft in these circumstances would be based on the amount of benefits paid for which the person is not legally entitled.</p> <p><i>Discussions/Questions:</i> Michael noted that the concept could be developed into a recommendation fairly easily, based on the content of the current proposal and the work Dan Rubinstein and the Study Group has completed regarding theft.</p> <p><i>Develop a recommendation for the Task Force?</i> With no concerns expressed by members, Michael suggested the group draft a recommendation.</p> <p><u>Diversity of “Off-Ramps”</u> <i>Description:</i> This proposal addressed expanding the existing options for the transition of qualified prison inmates to community placements prior to their release to parole. The proposal requests that the CO Dept. of Corrections (CDOC) explore and develop such options. Maureen explained that this requires a statutory change, but the Study Group was unsure whether to specifically name the community stakeholders to work with CDOC to identify additional transition placement options.</p>
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<p style="text-align: center;">Issue/Topic</p> <p>Presentation: Draft Concepts <i>Maureen Cain, WG Member</i> (continued)</p>	<p>Discussion/Questions:</p> <p>Jes felt that this CDOC effort would help inform the ongoing efforts of the Working Group.</p> <p>Christie pointed out that, if it resulted in legislation, the proposal would likely include a fiscal note, which would present a challenge to its passage. Michael added that he would like to speak with Dean Williams (CDOC Executive Director) and ask whether there were already ongoing efforts in this area.</p> <p>Michael asked whether the proposal might be beyond the task scope of the Working Group and about the propriety of legislating a mandate to CDOC. Maureen pointed out that sentencing reforms include the processes at the end of the sentence and such an effort is necessary to enhance reentry success. She added that lot of legislation includes mandates to state agencies. Michael reiterated his intent to speak to Mr. Williams about the proposal.</p> <p>Chad Dilworth (Vice Chair, Parole Board) explained that community entities, rather than CDOC, are responsible for the placement options and services for those transitioning from prison. CDOC is not responsible or in a position to develop these resources. The proposal requires CDOC to develop options that are not in their purview and that community entities would provide. Chad emphasized that CDOC initiates the referrals, but does not develop most of the resources in the community. Additionally, sober living homes, community corrections facilities and other treatment facilities can only receive transition clients who are approved by local community corrections boards. Some programs, like work release and ISP-I (Intensive Supervision Program- Inmate) are within CDOC’s purview.</p> <p>Christie replied that this proposal is intended for the entities to define the “off-ramps,” describing the existing landscape and identifying the gaps. Chad countered that the draft concept requires CDOC to “develop a comprehensive plan... and provide additional and more diverse transition placements,” and that CDOC doesn’t acquire and provide these things. Christie agreed that this should be worded differently.</p> <p>CCJJ staff recapped the evolution of the Sentence Progression Working Group (SPWG) (also created by the Sentencing Reform Task Force), noting that the initial work was to explore a single alternate “off-ramp” to the community, but there were reactions similar to Chad’s. Specifically, that it was difficult to determine what community entity would be responsible for the services provided to those in that “off-ramp.” The SPWG efforts shifted from the single “off-ramp” proposal to the whole transition process, including transition timing, eligibility, options, services, and gaps in the related services. The group went on hiatus because the Task Force and the Sentence Structure Working Group felt that the work was premature, given that ongoing “front-end” sentencing reforms could affect the “back-end” options and decisions.</p>
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<p style="text-align: center;">Issue/Topic</p> <p>Presentation: Draft Concepts Maureen Cain, WG Member (continued)</p>	<p><i>Develop a recommendation for the Task Force?</i> Michael summarized that the concept requires more discussion and requires feedback from CDOC before it can be developed further.</p> <p><u>Technical Parole Violations/Prison as Intermediate Sanction Facility</u> <i>Description:</i> This proposal would grant CDOC the authority temporarily to house parolees to serve a Swift & Sure sanction when jail space is unavailable.</p> <p><i>Discussion/Questions:</i> Jes asked whether this would “open the door” to allow individuals to serve a felony sentence in jail, rather than CDOC? This proposal is specific to those who have been released from prison to parole and have violated a parole rule (labeled a “technical parole violation;” TPV). Christie responded that currently CDOC can pay jails to house people serving a Swift & Sure sanction (a penalty of up to 14 days for a TPV). This practice was complicated by the pandemic due to reduced bed availability and/or the unwillingness of jails to manage the short stays of this additional population. Currently, CDOC cannot effectively operationalize Swift & Sure across all areas of the state. This represents a “both/and” statutory option that augments the existing jail option with the option to utilize a CDOC facility for these individuals. The proposal requires a statutory change because currently only jails are authorized as the housing option for the Swift & Sure sanction.</p> <p><i>Develop a recommendation for the Task Force?</i> The Working Group agreed to draft a recommendation from this concept that will be forwarded to the Task Force for consideration. Maureen offered to help draft the recommendation.</p> <p><u>Mandatory Consecutive Sentences</u> <i>Description:</i> This concept of Mandatory Consecutive Sentences focuses on the much publicized “truck driver case” mentioned previously.</p> <p><i>Discussion/Questions:</i> Maureen felt the issue would be the subject of legislation and that the Commission (and therefore the Task Force and Working Group) should address the issue for the upcoming legislative session. Michael would like the group to develop a proposal while acknowledging that the short timeline presents a major challenge to develop a proposal that could be vetted by stakeholders and receive broad acceptance in time for the current legislative session.</p> <p>Jes noted that, while she has opposed bifurcating the work on felony sentencing and offenses, she agreed that, due to the intense focus on the issue, the Commission should offer a position via a recommendation. Tom Raynes agreed with Jes’ thoughts, but emphasized that it will take a lot of work to come to a thoughtful consensus, rather than a “knee-jerk” response. Tom added that this issue alone was worthy of an entire work session.</p> <p>Members offered multiple potential solutions including the federal model of a sentencing “safety valve,” expanding the sentence reconsideration option, or</p>
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<p>Issue/Topic Presentation: Draft Concepts Maureen Cain, WG Member (continued)</p>	<p>addressing prosecutorial discretion. Maureen believed whichever option was chosen could be added to the Clean-Up bill.</p> <p>Develop a recommendation for the Task Force? Michael summarized the group’s desire to pursue a proposal. The Working Group agreed that this issue should be addressed now with the hope of presenting a proposal to the Task Force in time for this legislative session.</p> <p><i>Note: Members briefly discussed unrelated, ongoing legislative initiatives to address the issues surrounding fentanyl use and distribution. Tom Raynes described three potential fentanyl bills that are currently being discussed.</i></p>
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Issue/Topic	Discussion
<p>Public Comment & Adjourn Michael Dougherty, Working Group Leader</p>	<p>No public comment was offered.</p> <p>Michael summarized that good progress on efforts is occurring, even though the “General Felony” Sentencing proposal will be delayed. He and Maureen will work with CCJJ staff to format the following approved concepts for presentation as recommendations to the Task Force: Title 12 Modifications, Theft of “Public Benefits” Offenses, Technical Parole Violations/Prison as Intermediate Sanction Facility, and POWPO (Possession of a Weapon by a Previous Offender).</p> <p>The Study Group will expand its meeting schedule to attempt to address and develop these pending concepts for discussion by the Working Group: Diversity of “Off-Ramps” and Mandatory Consecutive Sentences.</p> <p>Michael solicited any additional comment. Maureen asked Jack Reed (Interim Research Director, Division of Criminal Justice) if he might share the Crime Analysis Study prepared in October 2021 with the Working Group and/or Task Force. Jack replied that he plans to share that study with the CCJJ at either its January or February meeting, but that he will also send the updated PowerPoint to the Working Group.</p> <p>Jes reminded members that a term still must be identified to label the “non-general” felonies that are not included among the “General Felony” offenses (or among those categorized as Sex offenses or Drug offenses).</p> <p>With no further business, Michael adjourned the meeting. The next meeting of the Sentence Structure Working Group is on January 18, 2022 at 3pm.</p>

Next Meeting

Tuesday, January 18, 2022 / 3:00PM – 5:00PM (Virtual Meeting)

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

[NOTE: The January 18 meeting of the Sentence Structure Working Group was subsequently canceled. The next scheduled meeting is February 1, 2022 at 3pm.]