

**Sentencing Reform Task Force
MINUTES**

January 26, 2022 / 1:30PM-3:00PM
Virtual Meeting

ATTENDEES

TASK FORCE MEMBERS

Rick Kornfeld, *TF Co-chair*/Defense Attorney
Michael Dougherty, *Task Force Co-chair*, District Attorney/20th Judicial District
Maureen Cain, Office of the State Public Defender
Chad Dilworth, Adult Parole Board
Christie Donner, Colorado Criminal Justice Reform Coalition
Valerie Finks, Victim Compensation Program/DA Office, 1st Judicial District
Kazi Houston, Rocky Mountain Victim Law Center
Jessica Jones, Defense Attorney
Sarah Keck, Court Services/Judicial Branch
Brian Mason, District Attorney/17th Judicial District
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
Dan Rubinstein, District Attorney/21st Judicial District
Dean Williams, Colorado Department of Corrections

GUESTS

STAFF

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

ABSENT

Taj Ashaheed, Second Chance Center
Terri Carver, State Representative/House District 20
Bob Gardner, State Senator/Senate District 12
Julie Gonzales, State Senator/Senate District 34
Serena Gonzales-Gutierrez, State Representative/House District 4
Henry Jackson, Metro State University
Glenn Tapia, Director, Div. of Probation Services/Judicial Branch
Lisa Wayne, Defense Attorney

<p>Welcome & Agenda Welcome, Approval of Minutes, and Agenda <i>Michael Dougherty, Task Force Co-chair</i></p>	<p>Discussion Michael Dougherty, Task Force Co-chair, welcomed attendees and asked for a motion to approve the January 12, 2022 minutes. Members moved, seconded and unanimously approved the minutes and Michael reviewed the agenda.</p>
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<p>Issue/Topic Public Comment <i>Michael Dougherty, Task Force Co-chair</i></p>	<p>Public Comment</p> <p>Michael solicited public comment in general and if there was any specific to Recommendation FY22-SR #09. <i>Revise Felony Offenses Eligible for the Crime of POWPO (Statutory)</i>, which was distributed prior to the meeting.</p> <p>Fran Lanzer, Executive Director of the Colorado chapter of Mothers Against Drunk Driving (MADD) thanked the Sentencing Reform Task Force (SRTF) for their work on misdemeanor reform and Senate Bill 2021-271. He also thanked Michael Dougherty and Task Force Co-chair Rick Kornfeld for their “op-ed” piece to the Denver Post, agreeing with the sentiments expressed therein that this Task Force and the Commission on Criminal and Juvenile Justice (CCJJ) are where the study and analysis of sentencing reform measures should take place. He offered that MADD is available and looks forward to participating in the continuing work on felony crimes. Michael replied that MADD’s input and direction will be very welcome as the Sentence Structure Working Group and SRTF continue efforts on the felony sentencing grid.</p> <p>District Attorney John Kellner (18th JD) offered feedback on <i>Recommendation FY22-SR #09 (POWPO; see below)</i>. He thanked the Task Force and all of those who collaborated in creating an additional list of non-VRA crimes that should be included in the POWPO offense category. He asked whether the group would consider expanding the list. D.A. Kellner reported that he had spoken with a number of Police Chiefs and Sheriffs who are concerned that offenses such as <i>§18-4-409, C.R.S., Aggravated Motor Vehicle Theft</i> and the distribution of “hard drugs” (for example, see related statutes in <i>Part 4 of §18-18, C.R.S., Offenses and Penalties</i>) would not be predicate offenses under this POWPO revision.</p> <p>D.A. Kellner continued that, specifically, the Regional Anti-Violence Enforcement Network (RAVEN) uses POWPO to disrupt violence before it occurs, and that they focus primarily on people who have used a firearm in the past. Per RAVEN, their ability to file cases for POWPO would be significantly limited under the parameters of the changes in <i>S.B. 21-271</i>, resulting in filing only 32% of their cases in 2019, 50% of their cases in 2020, and 42% of their cases in 2021. He encouraged the Task Force to add Aggravated Motor Vehicle Theft and Distribution of Drugs to the list of POWPO eligible offenses.</p> <p>No further public comment was offered.</p>
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Issue/Topic	Discussion
<p data-bbox="212 216 440 243">Final Presentation:</p> <p data-bbox="217 249 435 277"><i>Recommendation</i></p> <p data-bbox="196 283 456 310">FY22-SR #09. POWPO</p> <p data-bbox="115 317 537 344">Sentence Structure Working Group</p> <p data-bbox="139 350 513 378">Michael Dougherty, WG Leader</p> <p data-bbox="277 499 375 527">ACTION</p> <p data-bbox="115 533 537 667">The SRTF will provide a preliminary presentation of Recommendation FY22-SR #09 to the Commission on January 28, 2022</p>	<p data-bbox="565 216 1516 350">On behalf of the Sentence Structure Working Group (WG), Michael provided a brief update on the “Clean-up” bill before presenting <i>Recommendation FY22-SR #09. Revise Felony Offenses Eligible for the Crime of POWPO* (Statutory). (* Possession of Weapons by Previous Offenders)</i></p> <p data-bbox="565 390 748 420">“Clean-up” bill</p> <ul data-bbox="581 426 1516 919" style="list-style-type: none"> • Michael reminded the group that <i>Senate Bill 2021-271 (Misdemeanor Reform)</i> has an implementation date of March 2022, and the purpose of the implementation delay was to allow for the identification of gaps, omissions and/or mistakes in the extraordinarily detailed 350-page bill. • The technical “Clean-up” bill for S.B. 21-271 will be sponsored by Representative Weissman. A separate POWPO provision that will be included in the bill is specific to juveniles adjudicated for offenses that have a prohibition on possession of a firearm. • This item was previously approved by the Task Force and the Commission, but was inadvertently excluded from <i>S.B. 21-271</i>. That provision, which prohibits the possession of a weapon, automatically sunsets ten years after the completion of sentence, or earlier if granted by the court upon a petition for good cause (for example, someone trying to enter the military with a juvenile offense on their record). <p data-bbox="565 995 1406 1062">FY22-SR #09. Revise Felony Offenses Eligible for the Crime of POWPO (Statutory)</p> <p data-bbox="565 1100 938 1129">Recommendation FY22-SR #09</p> <p data-bbox="565 1136 1471 1243">Amend §18-12-108, C.R.S., Possession of Weapons by Previous Offenders to include additional non-VRA felony offenses based on public safety considerations.</p> <p data-bbox="565 1287 1500 1459">Michael explained that, in addition to the work on the “Clean-up” bill, the WG reviewed POWPO-eligible offenses and, upon considering similar laws in other states, along with receiving feedback from a variety of stakeholders (including the District Attorney community and Ceasefire Colorado), concluded the following:</p> <ul data-bbox="581 1465 1516 1921" style="list-style-type: none"> • Under <i>S.B. 21-271</i>, the POWPO-eligible offenses were reduced from every felony to felonies with direct impact on public safety. The feedback from stakeholders yielded additional felonies that should be included. • After taking that feedback into consideration, the WG recommended adding a list of 61 offenses, rather than limiting the list to strictly VRA offenses. Specifically, the expanded list includes offenses with potential impact on public safety. • Michael described that there was input and feedback from multiple viewpoints. He noted that some in the DA community, like DA Kellner earlier in the meeting, feel the list should be expanded and others who feel the list should be reduced. • Michael reported that the District Attorney’s voted on this list at their monthly board meeting and unanimously supported the proposal 22-0.

<p>Issue/Topic Final Presentation: <i>Recommendation</i> FY22-SR #09. POWPO Sentence Structure Working Group Michael Dougherty, WG Leader (continued)</p>	<ul style="list-style-type: none"> ● He added that <i>S.B. 21-271</i> also secured mandatory prison sentences for those who use or threaten the use of a weapon while committing POWPO, and also added 2nd Degree Burglary of a Dwelling as a VRA offense, as part of the compromise and consensus around POWPO changes in <i>S.B. 21-271</i>. <p>Michael outlined that if the SRTF approves the proposal, it will go to the CCJJ for a presentation and vote, with the goal of moving it to the legislature as soon as possible in order to precede the March 1, 2022 implementation deadline. Michael asked for discussion and feedback from the Task Force.</p> <p><u>DISCUSSION</u></p> <ul style="list-style-type: none"> ● Michael Rourke explained that, although he is one of the D.A.s who felt the list of offenses is actually a bit too long, he still supported the work and the proposal in its current state. He did not support D.A. Kellner’s suggestion to include Aggravated Motor Vehicle Theft because he felt it falls outside the realm of public safety considerations and urged the Task Force not to amend the list any further. He also did not support the inclusion of distribution of hard drugs. ● Dan Rubinstein agreed with Michael Rourke, adding that Aggravated Motor Vehicle Theft did not appear to fit the public safety criterion for inclusion. He added that while the legislature has, at times, acknowledged that Drug Dealing with Guns is something that is very dangerous and comes with significant public safety risk, he will vote against amending the list in the spirit of prior compromise. Dan suggested, however, that the CCJJ be made aware of these concerns if the recommendation is indeed approved in its current state. Michael Dougherty shared that regardless of the outcome of considerations today, he will highlight the concern at the Commission presentation. Dan believed that an amendment pertaining to drug dealing would be better received if it was specific to DF1 and DF2 distribution. <p>To honor D.A. Kellner’s suggestion, Brian Mason offered a motion to amend the list to add Aggravated Motor Vehicle Theft and distribution of “hard drugs” to the POWPO eligible list. Kazi Houston seconded the motion.</p> <ul style="list-style-type: none"> ● Andrew Matson referenced there are existing POWPO “guardrails” and that, after a certain amount of time, a person should have restored access to certain societal privileges. ● Michael Dougherty shared that while the concerns from D.A.s Kellner and Mason are valid, he will vote against the amendment for the same reasons D.A.s Rubenstein and Rourke shared, and that the goal was to tie this proposal directly to public safety. ● Christie Donner recalled there was a significant amount of debate on this issue and that extreme caution should be exercised when permanently depriving someone of a constitutional right. She added that her experience with POWPO is often used in a pretextual manner, and that she would be curious to see the RAVEN data with a breakout for race and ethnicity. ● Kazi explained that while she appreciates the nuance in the discussion, her position on behalf of victims is to be mindful of and to support efforts that
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<p>Issue/Topic Final Presentation: <i>Recommendation</i> FY22-SR #09. POWPO Sentence Structure Working Group Michael Dougherty, WG Leader (continued)</p> <p>ACTION The SRTF will provide a final presentation of three recommendations, FY22-SR #06, #07, & #08, to the Commission on January 28, 2022</p>	<p>reduce victimization, and that reduced access to firearms reduces victimization. She would support the amendment.</p> <ul style="list-style-type: none"> D.A. Mason emphasized that, while he supports the collaborative nature that resulted in this proposal, he has a lot of experience in his jurisdiction with gun crime, which is why he offered the motion. <p>Michael Dougherty solicited additional discussion and, hearing none, called for a vote on the amendment, yielding the following result: VOTE: <i>Recommendation FY22-SR #09. POWPO – AMEND/ADD Aggravated Motor Vehicle Theft & Distribution of “Hard Drugs”</i> 3 Support 12 Do not support 1 Abstain 9 Absent <i>Rec. FY22-SR #09. POWPO – AMEND/ADD Aggravated Motor Vehicle Theft & Distribution of “Hard Drugs”</i> was not approved for inclusion in the recommendation.</p> <p>Michael asked for a motion to approve the full recommendation (<i>Recommendation FY22-SR #09</i>) with the list of 61 additional POWPO-eligible offenses. A motion was made and seconded to approve the recommendation, and with no further discussion, the vote was as follows: VOTE: <i>Recommendation FY22-SR #09. Revise Felony Offenses Eligible for the Crime of POWPO (Statutory)</i> 14 Support 0 Do not support 1 Abstain 10 Absent <i>Rec. FY22-SR #09</i> was approved for submission to the Commission.</p> <p>Michael explained that the POWPO recommendation will be presented to the Commission for initial consideration at its upcoming meeting on Friday, January 28, 2022 with a vote planned for February 11. The Task Force will also present for final consideration three other recommendations for a vote by CCJJ as follows: - <i>Recommendation FY22-SR #06. Revise Penalties for Unauthorized Practice of Certain Professions or Occupations [Statutory]</i> - <i>Recommendation FY22-SR #07. Revise Value Basis for Theft of Public Benefits [Statutory]</i> - <i>Recommendation FY22-SR #08. Add Prison as an Intermediate Sanction Confinement Facility (Statutory)</i></p> <p>Michael added that the Sentence Structure Working Group continues its work on a “general felony” grid (felony levels and sentence ranges) and the classification of “general” offenses and what is being referred to as “enhanced felonies,” including consideration of presumptive and aggravated ranges. The WG is also exploring certainty in sentencing and overall sentencing reform including such topics as the role and timing of discretionary parole, habitual offenses, and mandatory consecutive sentences.</p>
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Issue/Topic	Discussion
<p>Potential Reactivation: Sentence Progression Working Group Rick Kornfeld, TF Co-chair Michael Dougherty, TF Co-chair</p> <p>ACTION</p> <p>SRTF Task Force Co-chairs will convene a small group to develop a preliminary plan to reactivate the Sentence Progression Working Group and report the preliminary plan to the SRTF members for review.</p>	<p><i>[This discussion focuses on the potential reactivation of the Sentence Progression Working Group that the SRTF placed on hiatus on July 7, 2021.]</i></p> <p>Michael shared that, as a result of discussions with Dean Williams, Rick Kornfeld and others, they propose reactivating the Sentence Progression Working Group from hiatus to explore “off-ramps” from prison (prison-to-community transition options) and community corrections, among other issues. Michael described that, at the time of the hiatus, this Working Group (WG) was exploring transition options for and release timing of inmates in the Department of Corrections. That WG previously offered a draft proposal on February 10, 2021 that did not receive support from the SRTF and subsequently the WG was placed on hiatus.¹</p> <p>D.A. Brian Mason and Emily Fleishman from the Public Defender’s Office have expressed interest in possibly co-chairing a reactivated Sentence Progression Working Group. With that said, Michael Dougherty asked Task Force members for feedback on the topic.</p> <p>Michael Rourke recalled that, when the group originally began its hiatus, it was due in part to overlap in the study areas of the Sentence Progression and the Sentence Structure Working Groups.</p> <p>Greg Mauro (<i>Working Group Co-Leader at the point of the hiatus</i>) agreed with Michael Rourke and added that it was difficult for the Sentence Progression Working Group to study sentence progression, especially issues surrounding sentence conclusion, because, at that time, there were ambiguous messages regarding changes to the release from prison to parole. He and Kristen Hilkey (WG Co-leaders) had established a working structure, including a representative membership and a proposed scope and direction of the work. He suggested the existing Sentence Progression Working Group be consulted before any reconfiguration or reconstitution of the group is undertaken.</p> <p>Maureen Cain agreed that the interdependent role and mission of the two Working Groups be explored in greater detail. She also recommended the inclusion of more people to represent community groups.</p> <p>Michael asked Task Force members for consent to convene the SRTF Co-chairs (Michael and Rick), Greg Mauro and a few representative Task Force members to discuss a scope of work and membership of this reactivated Sentence Progression Working Group. Task Force members agreed and Michael will report the discussion at a subsequent meeting of the Task Force.</p>

¹ Subsequent to Feb. 10, 2021, the Sentence Progression Working Group (SPWG) reevaluated the rejected recommendation, continued its study of community transition options, and proposed a refocused scope of work. This revised scope of work and a plan to accomplish the work was presented June and July 2021 by the SPWG to the SRTF (for information and discussions regarding the scope of work and the work plan, see the minutes of the SPWG on July 6, 2021 and the minutes of the SRTF on June 9, 2021 and July 7, 2021). Due to the interdependency of the issues being explored by the Sentence Structure Working Group (SSWG), the SRTF placed the SPWG on hiatus on July 7, 2021 until more of these interdependent issues were settled within the SSWG.

Issue/Topic	Conclusion
<p data-bbox="115 216 532 348">Next Steps and Adjournment <i>Richard Stroker, CCJJ Consultant & Rick Kornfeld & Michael Dougherty, Task Force Co-chairs</i></p> <p data-bbox="115 499 540 810">ACTION Sentencing Reform Task Force will present one preliminary recommendation (FY22-SR #09) and three final recommendations (FY22-SR #06, FY22-SR #07, and FY22-SR #08) for consideration at the next Commission meeting on January 28, 2022</p>	<p data-bbox="565 216 1500 386">Richard Stroker, CCJJ Consultant, summarized that <i>Recommendation FY22-SR #09. Revise Felony Offenses Eligible for the Crime of POWPO</i>, approved by the Task Force during the meeting will be forwarded to the Commission for initial presentation on Friday, January 28, 2022. CCJJ will hear the final presentation and vote on the following SRTF recommendations:</p> <ul data-bbox="565 390 1500 600" style="list-style-type: none"> - <i>Recommendation FY22-SR #06. Revise Penalties for Unauthorized Practice of Certain Professions or Occupations [Statutory]</i> - <i>Recommendation FY22-SR #07. Revise Value Basis for Theft of Public Benefits [Statutory]</i> - <i>Recommendation FY22-SR #08. Add Prison as an Intermediate Sanction Confinement Facility (Statutory)</i> <p data-bbox="565 642 1474 779">Richard added that there will be an attempt to determine the scope of work and membership for a reactivated Sentence Progression Working Group. He reminded everyone that Greg Mauro and Kristen Hilkey were serving as Co-chairs of that group previous to the hiatus.</p> <p data-bbox="565 821 1511 1062">Maureen asked about next steps for recommendations that have already been approved by the Commission. CCJJ staff described that the Commission Chair will raise this issue with Commissioners and typically (if a legislative recommendation is supported by the Governor’s Office) the CDPS Legislative Liaison will assist in identifying potential sponsors interested in drafting a bill. If that does not occur, the Commission Chair will reach out to Commissioners and others to identify interested legislators.</p> <p data-bbox="565 1104 1511 1167">With no further business, Michael adjourned the meeting. The next meeting of the Sentencing Reform Task Force is February 9, 2022 at 1:30pm.</p>

Next Meeting

Wednesday, February 9, 2022 / 1:30-4:00pm (Virtual meeting)

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