

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

**Sentence Structure Working Group
MINUTES**

February 1, 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
Valarie Finks, Crime Victim Compensation, 1st JD Jes Jones, Defense Attorney
Jessica Jones, Defense Attorney
Tom Raynes, Colorado District Attorneys' Council
Dan Rubinstein, District Attorney, 21st JD

ABSENT

Christie Donner, Colorado Criminal Justice Reform Coalition
Lisa Wayne, Defense Attorney

GUESTS

Anne Andrews, CO State Board of Parole
Chad Dillworth, CO State Board of Parole
Fran Lanzer, Mothers Against Drunk Driving

STAFF

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 to the meeting. He outlined the agenda to include the meeting schedule for the coming months, the status of pending matters, and the work plan.</p>

Issue/Topic	Discussion
<p>Recap of Previous Work <i>Michael Dougherty, Working Group Leader</i></p> <p><i>POWPO- Possession of Weapons by Previous Offenders</i></p>	<p>Michael highlighted the following points regarding the status of recently completed work and the resulting recommendations:</p> <ul style="list-style-type: none"> ○ The first pending matter is the “Clean-up” bill, which includes technical fixes to <i>Senate Bill 2021-271</i>. Rep. Weissman is leading the bill drafting effort and it should be introduced soon. ○ <i>Recommendation FY22-SR #09. Revise Felony Offenses Eligible for the Crime of POWPO [Statutory]</i> was approved by the Sentencing Reform Task Force (SRTF) on Jan. 26, 2022 and a preliminary presentation was offered to the Commission (CCJJ) on Jan. 28, 2022. A final presentation to the CCJJ is planned on Feb. 11, 2022. It is hoped a related bill will be drafted, introduced, and passed before the <i>S.B. 21-271</i> implementation (3/1/22). ○ <i>Recommendations FY22-SR #06. Revise Penalties for Unauthorized Practice of Certain Professions or Occupations [Statutory, FY22-SR #07. Revise Basis for Theft of Public Benefits, and FY22-SR #08. Add Prison as an Intermediate Sanction Confinement Facility</i> were passed by both the SRTF (1/12/22) and the CCJJ (1/28/22). A bill to include these recommendations is anticipated in the current legislative session as well.

Issue/Topic	Discussion
<p>Discussion: Schedule/Timeline of Future Work <i>Michael Dougherty, Working Group Leader</i></p> <p>ACTION</p> <ul style="list-style-type: none"> -WG to present the crime severity chart for General felonies and Enhanced felonies, along with any research on discretionary parole, to the SRTF in April -WG to complete the crime severity chart for Sex-related offenses by the end May -Maureen, Dan and Jes to work on literature review regarding discretionary parole 	<p>Michael described the significant amount of work in the year ahead and suggested the Working Group (WG) begin to chart out its timeline and work plan for the coming months. He relayed that the Department of Corrections (DOC) has responded to the data request for length-of-stay information including mean, median and mode calculations, along with possible impact on the prison population. Additionally, work is nearly complete on the crime severity chart for General felonies but has not yet begun on Enhanced felonies. The issues of habitual offenses, mandatory consecutive sentences and extraordinary risk will also need to be addressed by the Working Group.</p> <p>Jessica Jones asked how the scope of work for the soon-to-be reactivated Sentence Progression Working Group might influence the timing and coordination of work by the Sentence Structure Working Group. Michael replied that a tentative plan is in place to identify members of the Sentence Progression WG but that he and Rick Kornfeld are scheduled to meet with Greg Mauro to finalize a plan. After that, the Sentence Progression WG will develop and present a proposed scope of work to the SRTF. Michael added that currently, the intent is for the Sentence Structure WG to address the sentencing grid (felony classes and ranges), discretionary parole, mandatory consecutive sentencing, habitual offenses and extraordinary risk factors. Alternatively, the Sentence Progression WG would focus on the prison “off-ramps” (transition options) to the community, specifically evaluating the timing</p>

<p style="text-align: center;">Issue/Topic</p> <p style="text-align: center;">Discussion: Schedule/Timeline of Future Work <i>Michael Dougherty,</i> <i>Working Group Leader</i> (continued)</p>	<p>of those transition points, the transition options that currently exist, and whether other options should be added. He emphasized the importance of the communication and collaboration between the two groups as the work progresses.</p> <p>Dan Rubinstein opined regarding the initial task to be accomplished. He suggested there should be presentations to and discussions with the SRTF to determine whether the WG can pursue the elimination of discretionary parole. Tom Raynes suggested working on that issue while simultaneously working on Enhanced felonies. Maureen Cain agreed with that plan and Tom suggested a presentation to the Task Force at its April meeting.</p> <p>The group discussed the process for developing the crime severity charts and what should be presented to the Task Force in April.</p> <ul style="list-style-type: none"> ○ Tom and Dan agreed that the work on the severity chart for Enhanced felonies should be ready for that presentation. ○ Maureen believed a critical element of the work on Enhanced crimes might be to separate the crimes of violence resulting from culpable mental states. ○ Jes agreed with the plan, but was hesitant for the group to submit another tentative and incomplete grid (that doesn't include sentence ranges) to the Task Force. ○ Maureen suggested following the same process that was used for the General felony chart and using a similar spreadsheet. Dan agreed and added that it was an effective and methodical approach. ○ The group agreed that there is value in simultaneously presenting the crime severity chart for General felonies and Enhanced felonies, along with any decision or recommendation about parole, to the SRTF in April. ○ The group agreed to follow the above phase(s) of work by categorizing Sex-related offenses in a crime severity chart by the end of May. ○ Regarding the topic of discretionary parole, Maureen suggested starting with a literature review, examining what has been effective in other states, and identifying speakers and support partners from the listening tours. She offered to begin this work and Dan and Jes agreed to help. ○ Chad Dilworth requested that the group consider the findings that indicate better outcomes are achieved through the existence of discretionary parole. A thorough review of all sides of the research on the issue is necessary. ○ Michael asked whether the crime severity chart should be addressed first, followed by identifying sentence ranges. The group agreed with that sequence. ○ Michael polled members regarding when to address mandatory consecutive sentences. All felt this should be delayed for a few months.
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Issue/Topic	Discussion
<p>Potential Related Bills <i>Maureen Cain,</i> <i>Working Group Member</i></p> <p>ACTION The CCJJ will conduct final consideration and vote of revised <i>Recommendation FY22-SR #09</i> (including all POWPO related provisions) at the Feb. 11 meeting.</p>	<p>Maureen returned to the earlier topic of bill drafts derived from the recent recommendations. She believed the current CCJJ proposals should be grouped in a specific manner and offered a related plan.</p> <p>Maureen described the two, often-mentioned elements from <i>Recommendation FY21-SR #01</i> regarding Possession of Weapons by Previous Offenders (POWPO) that were inadvertently omitted from <i>S.B. 21-271</i>. Namely, “juvenile adjudications regarding POWPO” and Special Offender-Gun. Maureen felt that, if these provisions were included in the “Clean-up” bill, there would be confusion regarding the intent of <i>Recommendation FY22-SR #09. Revise Felony Offenses Eligible for the Crime of POWPO.</i></p> <p>Maureen offered that two bills could be drafted in a clean manner, if titled according to these concepts, 1) “Concerning clean-up of the 2021 CCJJ recommendations as enacted in Senate Bill 2021-271” and 2) “Concerning the implementation of 2022 CCJJ recommendations.” Bill #1 would contain items that were approved by the Commission, but were either inadvertently omitted or required technical revisions or amendments. Bill #2 would contain all of the POWPO-related issues (including the two omitted provisions mentioned above).</p> <p>Tom supported this approach, noting that the inclusion of POWPO provisions in the “Clean-up” bill would likely spark unneeded complications. Dan and Tom suggested that the two omitted POWPO provisions (from <i>FY21-SR #01</i>) be included in the appendix of the current POWPO recommendation (<i>FY22-SR #09</i>) to simply reconfirm these elements (that were already approved by the Commission in 2021). In this way, both provisions would be included with the broader 2022 POWPO recommendation. Commission staff agreed to revise <i>Recommendation FY22-SR #09</i> to include the two previously-approved POWPO provisions.</p> <p>The group expressed concern whether the two bills would achieve passage by the legislature by the March 1, 2022 (<i>S.B. 21-271</i>) implementation deadline. Members felt “Bill #1” would probably meet the deadline, but “Bill #2” might not. Maureen will work diligently to facilitate a rapid legislative process.</p>

Issue/Topic	Discussion
<p>Public Comment & Adjourn <i>Michael Dougherty,</i> <i>Working Group Leader</i></p>	<p>Michael solicited any additional comment from members of guests. Seeing none, he stated that he and staff will confirm a meeting schedule for the coming months. With no further business, Michael adjourned the meeting. The next meeting of the Sentence Structure Working Group is February 15, 2022 at 3pm.</p>

Next Meeting

Tuesday, February 15, 2022 / 3:00PM – 5:00PM (Virtual Meeting)

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

(NOTE: The Feb. 15 meeting was subsequently canceled. The next regularly scheduled meeting is Mar. 1, 2022 at 3pm.)