

Colorado Commission on Criminal and Juvenile Justice
Sentencing Reform Task Force

Sentence Structure Working Group
MINUTES

October 11, 2022 / 1:30PM-5:00PM
Virtual Meeting

ATTENDEES

WORKING GROUP MEMBERS

Michael Dougherty, *WG leader*, District Attorney/ 20th Judicial District (JD)
Maureen Cain, Office of the State Public Defender
Jessica Jones, Defense Attorney
David Kaplan, Defense Attorney
Tom Raynes, Colorado District Attorneys' Council
Dan Rubinstein, District Attorney/ 21st JD

STAFF

Stephané Waisanen, CCJJ Staff, Division of Criminal Justice
Jack Reed, Research Director, Division of Criminal Justice
Laurence Lucero, CCJJ Staff, Division of Criminal Justice

ABSENT

Valarie Finks, Crime Victim Compensation/ 1st JD

GUESTS

J.R. Hall, Chair/ Colorado State Board of Parole
Mike Tessean, Director/ Colorado State Board of Parole
Fran Lanzer, Jocelyn Rhymer, & Erin Agee / Colorado Mothers Against Drunk Driving (MADD)

Issue/Topic Welcome <i>Michael Dougherty, WG Leader</i>	Discussion Michael Dougherty, WG Leader welcomed all participants and reviewed the agenda.
Issue/Topic Vehicular Homicide Presentation: Mothers Against Drunk Driving <i>Fran Lanzer, Jocelyn Rhymer, & Erin Agee</i>	Discussion Fran Lanzer, Jocelyn Rhymer, and Erin Agee with Colorado Mothers Against Drunk Driving (MADD) presented on <i>Vehicular Homicide Recommendations</i> . The presentation focused on recommendations regarding 1 st degree, 2 nd degree, and aggravated vehicular homicide and the elements of aggravated driving and sentencing ranges. The full presentation is available under the “Materials - Working Groups” (Sentence Structure WG) tab at ccjj.colorado.gov/ccjj-srtf and is appended below.
Issue/Topic Enhanced Felony Severity Chart <i>Michael Dougherty WG leader, All</i>	Discussion Michael stated that the Study Group continues to review and analyze the felony-sentencing grid with focus on the development of a crime severity classification chart. Felonies in the Colorado Revised Statutes currently comprises six levels of felony class and the Study Group is preparing a five-level felony class model. The Study Group completed the review of the “General Felonies” and is about to complete an “Enhanced Felony” chart. The crimes will be separated into four charts: general felonies, sex offenses, drug felonies, and enhanced felonies. The Study Group has engaged in robust discussions about the classification of second-degree assault, kidnapping, first-degree murder, extreme indifference, and vehicular homicide. Maureen presented a working document for the Enhanced Felony crimes that illustrate current classifications and the recommended classifications from the Study Group. A separate chart was prepared for assault crimes. Jes expressed concerns about extreme indifference and the mental element of an individual’s intention to commit a crime. Is extreme indifference a mental state or an aggravating factor? Maureen mentioned the Study Group has discussed this issue and agreed with Jes’s question because extreme indifference can range from “knowingly” to “recklessly.” Michael added that the group has also discussed extreme indifference for homicide/murder. Lastly, Maureen presented a document titled, <i>Other States Homicide Statutes</i> illustrating other states’ approach to vehicular homicide extreme indifference.

Issue/Topic Public Comment <i>Michael Dougherty, WG Leader</i>	Public Comment Michael solicited public comment, and hearing none, moved to the conclusion of the meeting.
Issue/Topic Next Steps & Adjourn <i>Michael Dougherty, WG leader</i>	Discussion Michael anticipated that the crime severity chart proposal may be presented to the Sentencing Reform Task Force by November and ready for a vote by the meeting in December. Michael reminded participants that the Working Group meetings are recorded and posted on the CCJJ website for their reference. He asked if members had any questions, and with none, Michael adjourned the meeting.

Next Meeting

Tuesday, November 8, 2022 / 3:00 pm – 5:00 pm

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



Vehicular Homicide Recommendations

Mothers Against Drunk Driving Colorado

October 10, 2022

Presented to the Sentence Structure Working Group
of the Sentencing Reform Task Force (SRTF) of the Colorado Commission on Criminal and Juvenile Justice (CCJJ)

INTRODUCTIONS

- Fran Lanzer, Regional Executive Director
- Jocelyn Rhymer, Victim Services Director
- Erin Agee, MADD CO Legislative Committee member



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MADD'S MISSION

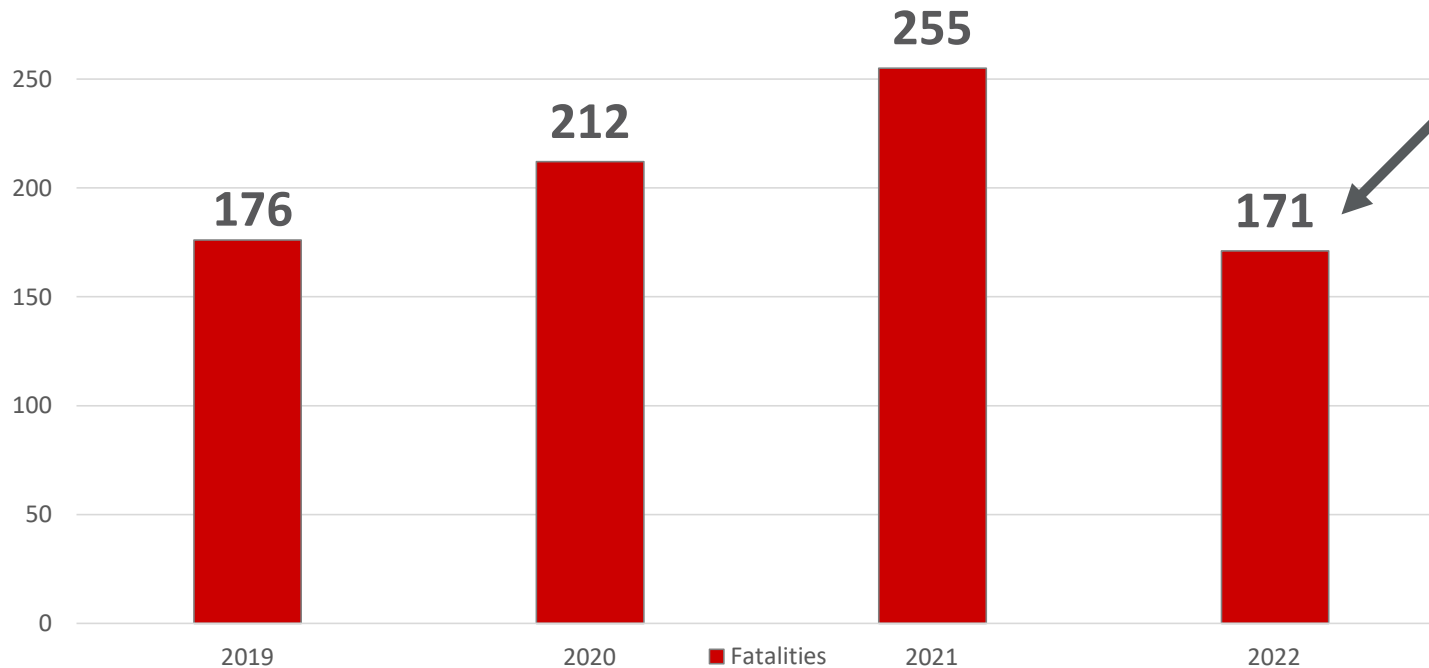
- End drunk driving
- Help fight drugged driving
- Support the victims of these violent crimes
- Prevent underage drinking



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MADD'S MISSION

Suspected Impairment Fatalities (CDOT Fatal Crash Data)



**Up 7.5%
vs 2021
(as of 8/31)**



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MADD'S MISSION



Dalton
Makepeace
McCreary



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MADD CO LEGISLATIVE COMMITTEE

- Erin Agee, aunt of Dalton Makepeace McCreary
- Barbara Brodt, daughter of Dorothy & Wesley Brodt
- Suzanne McClung, injured victim
- Matt Mitchell, Director of Strategic Partnerships at SOBRsafe
- Kimberly Mowat, daughter of Theresa & Newt
- Clara Shelton, sister of Sam Shelton
- Polli & Howard Small, parents of Ethan Small



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PUBLIC POLICY APPROACH

- Evidence-based solutions
- Save lives and prevent injuries
- Prevent repeat DUIs
- Advocate for victims & survivors



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DEVELOPING RECOMMENDATIONS

- Researched Vehicular Homicide laws in 50 states
- Build on case experience in CO
- Capture Crime of Violence cases
- Treat DUI & DWAI similarly
- Focused on Vehicular Homicide first



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DEVELOPING RECOMMENDATIONS

- Recommending 3 tiers similar to NY:
 - *2nd Degree Vehicular Homicide*
 - *1st Degree Vehicular Homicide*
 - *Aggravated Vehicular Homicide*
- Components of aggravated driving
- Increase the sentencing range



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INCREASING SENTENCE RANGES

Vehicular Homicide DUI (Current Class 3 felony)

- Maximum Sentence – 12 years
- 50% Parole Eligibility – 6 years
- Less good & earned time – **4.5 years**



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INCREASING SENTENCE RANGES

Vehicular Homicide DUI (if moved to Class 2 felony)

- Maximum Sentence – 24 years
- 50% Parole Eligibility – 12 years
- Less good & earned time – **9 years**



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2ND DEGREE VEHICULAR HOMICIDE

If a person operates or drives a motor vehicle in a reckless manner, and such conduct is the proximate cause of the death of another, such person commits vehicular homicide in the second degree.



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2ND DEGREE VEHICULAR HOMICIDE

- Sentencing Range: 4-12 years
- Probation Eligible: Yes
- Parole Eligibility: 50% of sentence less good time & earned time



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1ST DEGREE VEHICULAR HOMICIDE

- Impaired Driving: If a person commits DUI or DWAI, and such conduct is the proximate cause of the death of another, such person commits vehicular homicide in the first degree.
- Reckless Driving: If a person operates or drives a motor vehicle in a reckless manner, and such conduct is the proximate cause of the death of another, *and a component of aggravated driving exists*, such person commits vehicular homicide in the first degree.



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1ST DEGREE VEHICULAR HOMICIDE

- Sentencing Range: 8-24 years
- Probation Eligible: Yes
- Parole Eligibility: 50% of sentence less good time & earned time



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AGGRAVATED VEHICULAR HOMICIDE

If a person commits DUI or DWAI, and such conduct is the proximate cause of the death of another, *and a component of aggravated driving exists*, such person commits aggravated vehicular homicide.



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AGGRAVATED VEHICULAR HOMICIDE

- Sentencing Range: 16-40 years
- Probation Eligible: No
- Parole Eligibility: 75% of sentence less earned time
- Mirrors the current sentencing on 2nd Degree Murder cases



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AGGRAVATED DRIVING COMPONENTS

2nd Degree Vehicular Homicide + Aggravated Driving
= *1st Degree Vehicular Homicide*

1st Degree Vehicular Homicide + Aggravated Driving
= *Aggravated Vehicular Homicide*



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AGGRAVATED DRIVING COMPONENTS

Recommended:

- Causing the death of more than one other person (IL, NY, PA)
- Prior DUI or DWAI conviction in past 10 years (IN, NC, NY, OR, VT)
- Prior vehicular homicide, vehicular assault, or felony DUI conviction (OK, OR, NY)
- Failing to stop at the scene of the crash (FL)
- Causing the death of a child who is under the age of sixteen years (AZ & NY)



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AGGRAVATED DRIVING COMPONENTS

Recommended from CO Revised Statutes:

- Committing DUI or DWAI with at least one child in the vehicle (AKA child endangerment—which is considered child abuse under CRS 18-6-401)
- Causing the death of a vulnerable road user as defined in CRS 42-4-1402.5
- Committing vehicular unlawful termination of the pregnancy of another person as defined in CRS 18-3.5-107 (FL, MN, ND, OH, SD & WI)



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AGGRAVATED DRIVING

We had concerns about these:

- BAC of .15 or more: (AZ, LA & NY)
- Driving under revocation or suspension (GA & NY)
 - In 2020, 45% of drivers involved in fatal crashes had previously recorded suspensions or revocations according to NHTSA.
- Committing DUI or DWAI with two or more impairing substances



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RECAP

- Recommending 3 tiers similar to NY:
 - *2nd Degree Vehicular Homicide*
 - *1st Degree Vehicular Homicide*
 - *Aggravated Vehicular Homicide*
- Components of aggravated driving
- Increase the sentencing ranges



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Questions?