

Colorado Commission on Criminal and Juvenile Justice
Sentencing Reform Task Force

Sentence Structure Working Group
MINUTES

December 6, 2022 / 3:00PM-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
Valarie Finks, Crime Victim Compensation/ 1st JD
David Kaplan, Defense Attorney
Tom Raynes, Colorado District Attorneys' Council

STAFF

Richard Stroker, CCJJ Consultant
Stephané Waisanen, CCJJ Staff, Division of Criminal Justice
Laurence Lucero, CCJJ Staff, Division of Criminal Justice
Kevin Ford, Division of Criminal Justice

ABSENT

Jessica Jones, Defense Attorney
Dan Rubinstein, District Attorney/ 21st JD

GUESTS

Anne Andrews, Staff, Colorado State Board of Parole
J.R. Hall, Chair, Colorado State Board of Parole
Mike Tessean, Director, Colorado State Board of Parole

Issue/Topic	Discussion
<p>Welcome <i>Michael Dougherty, Working Group Leader</i></p>	<p>Michael Dougherty, Working Group Leader, welcomed participants and provided an update on behalf of the Study Group. The group is working on proposals related to the following crimes and sentencing issues: Motor Vehicle Theft, Extreme Indifference, Mandatory Consecutive Sentence, Habitual Offender Sentences, Vehicular Homicide, and the reclassification of specific felony crimes.</p> <p>Michael reiterated that due to an increase in auto theft crimes in Colorado, the Governor’s Office has asked the Commission in the <i>2022 Biennial Letter</i>¹ to review the sentencing scheme for auto theft crimes.</p>

Issue/Topic	Discussion
<p>Reclassify Selected Felony Crimes <i>Maureen Cain, WG Member</i></p>	<p>Maureen Cain reviewed the crimes in <i>Reclassify Selected Felony Crimes</i> with the group and highlighted the following with revised/added language noted in bold:</p> <ul style="list-style-type: none"> • Crimes listed #1 - #60 are crime classification changes from the General Felony chart. • Sentencing Reform Task Force will vote in January 2023. • Crimes listed #61 - #72 are crime classification changes for the Enhanced Felony Chart that was shared with the SRTF in November 2022. • §62 18-13-123(5) – Illegal use of GHB and ketamine – F3 delete second and subsequent – It shall be unlawful for a peace officer to compel, direct or unduly influence any person to administer GHB ketamine upon any other person in the course of an arrest. See HB21-1251. • §72 18-2-202 – Second-degree assault – (1)(c) delete COV status; 1(f) add to COV crimes but delete the mandatory consecutive (make the same other crimes in this section that are COV but not mandatory); (f.5) delete words: annoy, threaten or alarm – same actions sane as in (h). • The Study Group is not recommending four classification grids at this time (General, Enhanced, Drug, and Sex Offenses). • Currently, will preserve the Class I – VI structure for all crimes excluding drug crimes which have had a separate grid since 2013. • Working Group will continue to work on the grids and certainty/clarity in sentencing.

Issue/Topic	Discussion
<p>Overview of the Auto Theft Proposal by District Attorneys <i>Tom Raynes, Working Group Member</i></p>	<p>Tom Raynes presented the District Attorneys’ <i>Auto Theft Bill draft</i> to the Working Group and stated that both the Sentence Structure Working Group and District Attorneys are proposing changes in the value basis of a stolen vehicle and the monetary amount regarding damage to a vehicle. Below is the District Attorneys’ auto theft draft:</p> <p>1st Degree Auto Theft – F3 (four to twelve years) – Knowingly obtains, exercises control over, receives or retains a vehicle and <i>knows or reasonably should have</i></p>

¹ See the CCJJ website: ccjj.colorado.gov/ccjj-mandates

<p>Issue/Topic Overview of the Auto Theft Proposal by District Attorneys Tom Raynes, Working Group Member (continued)</p>	<p><u>known</u> (not in current auto theft statute) <i>the act was without authorization</i> AND,</p> <ul style="list-style-type: none"> • Has ONE prior conviction for auto theft (In current law and the Structure Working Group version there is only one way to get an F3 and that is with two prior convictions), OR • Is on bond for auto theft OR (currently an F4 in the Study Group), • Causes bodily injury to another OR (currently an F4 in the Working Group), • Uses/attempts to use the vehicle in the commission of another crime (not traffic offense – currently an F4 in the Study Group). <p>Second Degree Auto Theft – F4 (two to six years) – Knowingly obtains, exercises control over, receives or retains a vehicle and <i>knows or reasonably should have known the act was without authorization</i> AND</p> <ul style="list-style-type: none"> • Retains possession or control for more than 24 hours OR, • Alters or disguises the appearance OR, • Alters or removes VIN OR, • Uses unauthorized/stolen etc., license plates OR, • Causes more than \$500 damage (Study Group’s damage value is \$2,000). <p>Third Degree Auto Theft – F5 (one to 3 years) – Knowingly obtains, exercises control over, receives, or retains a vehicle and knows or reasonably should have known the act was without authorization – NO requirement of any aggravators.</p> <p>Unauthorized Use of MV – M1 (0-364 days, identical to the WG version) – Obtains exercises control over, receives or retains vehicle and <i>knows or reasonably should have known</i> the act was without authorization AND</p> <ul style="list-style-type: none"> • Does not commit any other non-traffic offense AND, • The vehicle is returned to the owner within 24 hours with no damage.
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<p>Issue/Topic Overview of the Auto Theft Proposal by the Study Group Michael Dougherty, Working Group Leader</p>	<p style="text-align: center;">Discussion</p> <p>Michael presented an overview of the current draft by the Sentence Structure Study Group of the <i>Motor Vehicle Theft</i>: proposal:</p> <ul style="list-style-type: none"> • Eliminate language/label of <u>Aggravated</u> Motor Vehicle Theft. • Create First degree MV Theft – F4; <ul style="list-style-type: none"> ▪ Takes a motor vehicle (eliminate retaining control over 24 hours), AND ▪ Attempts to alter or disguise/alters or disguised VIN or appearance of a vehicle, OR ▪ Uses in the commission of another non-traffic crime, OR ▪ Causes damage <u>in excess</u> of 2000 dollars, OR ▪ Cause bodily injury to another person while in control of the vehicle, OR. ▪ Removes the MV from the state to avoid apprehension, ▪ Displays other license plates, OR ▪ Takes a handicapped vehicle with handicapped plates. • Create 2nd degree MV theft – All other MV theft without aggravators – F5.
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<p>Issue/Topic Overview of the Auto Theft Proposal by the Study Group <i>Michael Dougherty,</i> <i>Working Group Leader</i> (continued)</p>	<ul style="list-style-type: none"> • Create unauthorized taking of a MV – Taking MV without authorization and retaining possession for less than 24 hours and returns within 24 hours to the location it was removed from or the home location of the vehicle without any aggravators, • Twice previously convicted – F3 (current law) <p>Note: This proposal eliminates the Class 6 Felony and reclassifies it to a Class 5 Felony. Similarly, misdemeanor filings would be reclassified to a Class 5 Felony.</p> <p>This proposal also changes the current aggravated MV theft (with one aggravating factor) from a class 5 Felony to a class 4 Felony when a vehicle is valued at less than 20k.</p> <p>Maureen mentioned that the Working Group will offer an update tomorrow to the Sentencing Reform Task Force tomorrow on the work related to the reclassification of certain felony crimes and <i>Motor Vehicle Theft</i>.</p>
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<p>Issue/Topic Next Steps & Adjourn <i>Michael Dougherty,</i> <i>WG Leader</i></p>	<p style="text-align: center;">Discussion</p> <p>Michael informed members that the Working Group will offer a Question and Answer session on Friday, December 16, 2022, at 1:30 pm to the members of the Sentencing Reform Task Force, Commission, stakeholders, and the public on matters related to motor vehicle theft.</p> <p>Michael asked if there were any additional questions or comments, and with none, he thanked the group for their contributions and adjourned the meeting.</p>
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Next Meeting

Tuesday, January 10, 2023 / 3:00 pm – 5:00 pm

Details of the next meeting will be forwarded to the group and posted on the CCJJ web and calendar (ccjj.colorado.gov/ccjj-meetings & ccjj.colorado.gov/ccjj-calendar).