

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

**Sentence Structure Working Group**  
**Question & Answer Session: Motor Vehicle Theft**

**MINUTES**

December 16, 2022 / 1:30PM-2:30PM  
Virtual Meeting

**ATTENDEES**

**Sentencing Reform Task Force (SRTF) Members / Sentence Structure Working Group (WG) Members**

Michael Dougherty, *SRTF Co-chair, WG Leader*, District Attorney/ 20<sup>th</sup> Judicial District

Maureen Cain, Office of the State Public Defender (SRTF & WG)

Justin "JR" Hall, Colorado State Board of Parole (SRTF)

Jes Jones, Defense Attorney (SRTF & WG)

David Kaplan, Defense Attorney (SRTF & WG)

Jeffrey Nowacki, Colorado State University (SRTF)

Tom Raynes, Colorado District Attorneys' Council (SRTF & WG)

**CCJJ MEMBERS**

Shawn Day, Aurora Municipal Judge

Dave Hayes, Chief, Estes Park Police Department

Steve O'Doriso, Adams County Commissioner

**STAFF**

Jack Reed, Director, Division of Criminal Justice

Stephané Waisanen, CCJJ Staff, Division of Criminal Justice

Kevin Ford, Division of Criminal Justice

**ABSENT**

Dan Rubinstein, District Attorney, 21st JD (SRTF & WG)

Valarie Finks, Crime Victim Compensation, 1st JD (SRTF & WG)

**GUESTS**

Heather Garwood

Tristan Gorman

Anders Jacobson

Robert Jones

Karen Schweihs

Jasper Webb

Karen Yacuzzo

<b>Issue/Topic</b>	<b>Discussion</b>
<p>Welcome</p> <p><i>Michael Dougherty, Co-Chair, Sentencing Reform Task Force &amp; Leader, Sentence Structure Working Group</i></p>	<p>Michael Dougherty welcomed attendees from the Sentencing Reform Task Force (SRTF), CCJJ Commissioners, and members of the public.</p> <p>This Question and Answer Session was offered by members of the SRTF and the Sentence Structure Working Group to answer questions regarding a proposed revision of <i>Motor Vehicle Theft</i>. Attendees were also invited to ask questions regarding the <i>Reclassify Selected Felony Crimes</i> proposal [Note: There were no questions regarding this proposal and therefore there is no summary of questions and answers on this topic below.]</p>

<b>Issue/Topic</b>	<b>Discussion</b>
<p>Overview:</p> <p>Motor Vehicle Theft Proposal</p> <p><i>Michael Dougherty</i></p>	<p>Michael provided an overview of the Motor Vehicle Theft proposal. Michael referred to a Motor Vehicle Theft presentation provided at the CCJJ meeting on December 9.</p> <p><i>[The proposals are in draft form and are not appended here. A PowerPoint presentation of the concepts included in the Motor Vehicle Theft proposal was offered at a recent CCJJ meeting and is available on the Commission website under MEETINGS: Meetings-2022 (See the December 9, 2022 meeting tab) at, ccjj.colorado.gov/meetings-2022. The presentation is also appended below.]</i></p> <p>Michael expected that the <i>Motor Vehicle Theft</i> proposal and the <i>Reclassify Selected Felony Crimes</i> proposal will be prepared as formal recommendations and presented to the Sentencing Reform Task Force (SRTF) for a vote at the January 11, 2023 meeting. If approved, the SRTF will provide an initial (preliminary) presentation of these recommendations at the subsequent Commission meeting on January 13, 2023.</p> <p>Michael explained that, due to a substantial increase in auto theft crimes in Colorado, Governor Polis tasked the Commission in the 2022 Biennial Letter to examine auto theft sentences and to revisit provisions relating to the monetary value of a stolen vehicle.</p>

<b>Issue/Topic</b>	<b>Discussion</b>
<p>Question &amp; Answer</p> <p><i>Michael Dougherty, WG Leader &amp; Sentence Structure Working Group Members, and All</i></p>	<p>Jeffrey Nowacki, a Sentencing Reform Task Force member, asked whether there is an explanation for the low arrest/“clearance” rates* (lower than 10%) for Motor Vehicle Theft in many Colorado jurisdictions (* the ratio of arrests to known offenses; crimes that are not “cleared” remain unsolved.).</p> <p>Michael believed the low clearance rates are explained by the limited resources of law enforcement agencies and by the increase in violent crime cases that take investigation precedence over property crimes.</p>

<p style="text-align: center;"><b>Issue/Topic</b></p> <p style="text-align: center;">Question &amp; Answer <i>Michael Dougherty, WG Leader &amp; Sentence Structure Working Group Members, and All</i> (continued)</p>	<p>The Division of Criminal Justice provided the following data related to motor vehicle theft:</p> <ul style="list-style-type: none"> <li>• Number of motor vehicle theft filings and crime level (misdemeanor or felony).</li> <li>• Rate of conviction (over 80% for most counties in Colorado from 2018 - 2022).</li> <li>• Sentences imposed.             <ul style="list-style-type: none"> <li>○ 40% of the cases received sentences to probation.</li> <li>○ 20% of cases received sentences in correctional facilities.</li> </ul> </li> </ul> <p>Michael mentioned that the Working Group discussed a potential amendment to the statute as follows: <i>“Knowingly obtains, exercises control over, receives or retains the motor vehicle of another person; and the person knows or reasonably should have known that the act was without authorization.”</i></p> <p>What is the rationale for the phrase, <i>“knows or reasonably should have known”</i> and which seems an expansion of <i>mens rea</i>*? <i>(* Refers to the intention or knowledge of wrongdoing when determining the responsibility for a crime in order to convict a defendant of the crime.)</i></p> <p>Michael answered that the challenge in the “knowing element” and culpable state is that the law requires law enforcement and prosecutors to demonstrate/prove an individual knowingly obtained/exercised control over a stolen vehicle. It is often challenging to file auto theft charges unless there is a confession.</p> <p>Michael highlighted that the Working Group proposes the creation of a new misdemeanor category for cases when the vehicle is returned to the owner, or original location, or police recover the vehicle within 24 hours without damage and with no other non-traffic crimes committed while in possession of the vehicle.</p> <p>The Working Group discussed this “unauthorized use” crime with public defenders and police chiefs who agreed that this should be a “one-time” offense (a subsequent instance would not qualify for this misdemeanor charge/crime). The offense could still be used as a <i>prior</i>, if there are subsequent auto thefts and no other crimes are committed (for example, vehicular eluding and Driving Under the Influence [DUI]; traffic offenses would be excluded).</p> <p>Michael reiterated that the Working Group will continue its efforts on the motor vehicle theft and the felony reclassification proposals and referred to the timeline for consideration by the SRTF and the Commission (see above).</p>
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<b>Issue/Topic</b>	<b>Discussion</b>
<p>Next Steps &amp; Adjourn <i>Michael Dougherty</i></p>	<p>Michael reminded participants that the next Sentence Structure Working Group meeting is scheduled for Tuesday, January 10, 2023. The next Sentencing Reform Task Force follows on Wednesday, January 11, 2023.</p>
<p><b>Issue/Topic</b> Next Steps &amp; Adjourn <i>Michael Dougherty</i> (continued)</p>	<p>Michael acknowledged and thanked members of the Sentencing Reform Task Force and the Sentence Structure Working Group for their significant efforts.</p> <p>He also acknowledged and thanked members of the public for their attendance, interest and questions and solicited all participants to reach out to any Working Group member if there are additional questions.</p> <p>With no additional questions or comments, Michael thanked participants for their time and adjourned the Questions and Answer Session.</p>

### Next Meetings

Sentence Structure Working Group  
Tuesday, January 10, 2023 / 3:00-5:00pm

Sentencing Reform Task Force  
Wednesday, January 11, 2023 / 1:30-4:00 pm

Colorado Commission on Criminal and Juvenile Justice  
Friday, January 13, 2023 / 1:30-4:00 pm

Details of all these meetings will be forwarded to the respective group members  
and posted on the CCJJ website and calendar  
([ccjj.colorado.gov/ccjj-meetings](http://ccjj.colorado.gov/ccjj-meetings) & [ccjj.colorado.gov/ccjj-calendar](http://ccjj.colorado.gov/ccjj-calendar))

# Motor Vehicle Theft Update

## Sentencing Reform Task Force

DA Michael Dougherty, 20<sup>th</sup> Judicial District  
Co-Chair, Sentencing Reform Task Force

**Preliminary concepts presented to the  
Colorado Commission on Criminal and Juvenile Justice  
December 9, 2022**

# Purposes of Sentencing

§18-1-102.5, C.R.S.

(a) To punish a convicted offender by assuring the imposition of a sentence he deserves in relation to the seriousness of his offense;

(b) To assure the fair and consistent treatment of all convicted offenders by eliminating unjustified disparity in sentences, providing fair warning of the nature of the sentence to be imposed, and establishing fair procedures for the imposition of sentences;

(c) To prevent crime and promote respect for the law by providing an effective deterrent to others likely to commit similar offenses;

(d) To promote rehabilitation by encouraging correctional programs that elicit the voluntary cooperation and participation of convicted offenders;

(e) To select a sentence, a sentence length, and a level of supervision that addresses the offender's individual characteristics and reduces the potential that the offender will engage in criminal conduct after completing his or her sentence; and

(f) To promote acceptance of responsibility and accountability by offenders and to provide restoration and healing for victims and the community while attempting to reduce recidivism and the costs to society by the use of restorative justice practices

# What Started the SRTF?

- Formed per the Governor's letter of June 24, 2020, directing the CCJJ:
  - Develop improved guidelines for the disposition of cases
  - Ensure statewide consistency and more certainty in sentences
  - Ensure incentives for success throughout an offender's sentence and beyond
  - Recognize finite resources for jails and prisons

# The Motivation

- There had not been a comprehensive review of sentencing laws in Colorado since 1985.
- Over the ensuing decades, new crimes were created and other **changes were made** to various sentencing laws which have resulted in Colorado's sentencing statutes becoming **outdated, misaligned, and inconsistent** in their application.
- Also, the lack of certainty that exists regarding the amount of time a person will serve when sentenced to incarceration. Unfair to victims, offenders and the community.





# Christmas Tree of Sentencing

# Impact of Auto Thefts

- Auto Theft is a serious problem. It is hurting a lot of people. Colorado leads the nation in auto thefts. 86% statewide increase.
- From 2019 – 2021, 170% in Broomfield. 250% in Grand County. 60% in Boulder County. Our numbers in Boulder County are now decreasing...
- From the first quarter of 2022 - Denver (2), Aurora (3), Westminster (8), and Pueblo (9). These four cities combined, accounted for 53.3% of the vehicles stolen statewide in the first quarter of 2022.
- Denver and Pueblo are still in the top 5 in the nation.
- Car thefts vary in purpose, impact, timing, etc.

# What drives the number of auto thefts?

- Financial stress
- Substance abuse
- Mental health disorders
- Lack of treatment
- Homelessness
- Desire to commit other crimes ... And profit
- Crimes of opportunity – unlocked car doors and open garages
- Consequences
  - Summons v. Arrest?
  - PR bond v. Secured bond
  - **Sentencing**

# Arrest Clearance Rates

- Some jurisdictions, including Denver and Aurora, reported arrest clearance rates below 10%.
- What does that mean in terms of additional car thefts?
- How will changes to sentencing laws impact those numbers?

# Colorado Must Address Auto Theft

- Address behavioral health needs in our communities and justice system.
- **Decrease** the number of auto **thefts**.
- **Increase** the number of cases being **solved**.
- Protect the community and **hold people responsible** through prosecution of cases.
- Reinforce the rule of law.

# Letter from Governor Polis

[ccjj.colorado.gov/ccjj-mandates](https://ccjj.colorado.gov/ccjj-mandates)

- “I am particularly interested in having the Commission examine changes to auto theft sentencing, so that the repeat offenders and the most egregious perpetrators cannot easily return to communities to further inflict harm on the people of Colorado. Auto theft is devastating property crime for those affected, who often lose their only way to get to work or get to the store. In addition, it is frequently a precursor crime that is often used in the furtherance of violence and other crimes. Enhancing the penalties associated with auto theft, regardless of the value of the vehicle stolen, has the potential to make us safer and improve the quality of life in Colorado.
- “The Commission should especially revisit the criminal classification of auto theft as it relates to the monetary value of a stolen vehicle. The Commission should also examine updating the language to elevate the severity of the crime based on the number of prior offenses, specifically targeting prolific auto thieves. This is a top priority of mine, and even if the Commission does not come forward with recommendations this year, I will look to work with the legislature to enact reforms in this area in the upcoming session.”

# Goals for Today



Overview of current statute.



Work through list of possible changes.



Preview of possible proposals.



12/16 – Stakeholder input.



Next meeting: SRTF adopts recommendation.

# Agg Motor Vehicle Theft – 1<sup>st</sup> Degree

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(2) A person commits aggravated motor vehicle theft in the first degree if he or she **knowingly** obtains or exercises control over the motor vehicle of another without authorization or by threat or deception and:

(a) Retains possession or control of the motor vehicle for more than twenty-four hours; or

(b) Attempts to alter or disguise or alters or disguises the appearance of the motor vehicle; or

(c) Attempts to alter or remove or alters or removes the vehicle identification number; or

(d) Uses the motor vehicle in the commission of a crime other than a traffic offense; or

(e) Causes five hundred dollars or more property damage, including but not limited to property damage to the motor vehicle involved, in the course of obtaining control over or in the exercise of control of the motor vehicle; or

(f) Causes bodily injury to another person while he or she is in the exercise of control of the motor vehicle; or

(g) Removes the motor vehicle from this state for a period of time in excess of twelve hours; or

(h) Unlawfully attaches or otherwise displays in or upon the motor vehicle license plates other than those officially issued for the motor vehicle.

(3) (a) **Class 5 felony** if the value of the motor vehicle or motor vehicles involved is less than twenty thousand **dollars**;

(a.5) **Class 4 felony** if the value of the motor vehicle or motor vehicles involved is twenty thousand dollars or more but less than one hundred thousand **dollars**;

(b) **Class 3 felony** if the value of the motor vehicle or motor vehicles involved is more than **one hundred thousand dollars** or if the defendant has **twice previously been convicted** or adjudicated of charges separately brought and tried either in this state or elsewhere of an offense involving theft of a motor vehicle under the laws of this state, any other state, the United States, or any territory subject to the jurisdiction of the United States.

*Current statute: §18-4-409, C.R.S.*



# Agg Motor Vehicle Theft – 2<sup>nd</sup> Degree

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- None of the aggravators.
- **Class 5 felony** if the value of the motor vehicle or motor vehicles involved is twenty thousand dollars or more;
- **Class 6 felony** if the value of the motor vehicle or motor vehicles involved is two thousand dollars or more but less than twenty thousand dollars;
- **Class 1 misdemeanor** if the value of the motor vehicle or motor vehicles involved is less than two thousand dollars.

*Current statute: §18-4-409, C.R.S.*

# Motor Vehicle Theft: Filings 2018-June 2022

Law class	% within Case year						Total Cases
	Case year					Total	
	2018	2019	2020	2021	2022*		
Felony 3	2.6%	3.2%	3.9%	4.2%	5.0%	3.8%	989
Felony 4	10.3%	10.3%	10.8%	11.0%	10.8%	10.7%	2803
Felony 5	51.8%	51.0%	47.9%	46.6%	45.3%	48.5%	12753
Felony 6	32.1%	32.2%	34.5%	35.5%	35.4%	34.0%	8944
Felony	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1
Unclassified	0.1%	0.1%	0.1%	0.0%	0.2%	0.1%	24
Misd 1	2.7%	3.0%	2.6%	2.4%	3.1%	2.7%	718
Misd 2	0.3%	0.2%	0.2%	0.2%	0.2%	0.2%	59
Unknown	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	18
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	26309
Total cases	4991	4946	5864	6708	3800	26309	-

# Charges Associated with MVT '18 – '22

- Filings involving motor vehicle theft often include 'other property' crimes. These crimes include burglary, other thefts, fraud, and criminal trespassing.
- Other non-violent crimes accompanied a third of all filings. These crimes include custody violations, weapons, traffic misdemeanors and felonies, vehicular eluding, bribery, and tampering with evidence.
- Violent crimes accompanied almost 20% of these cases, including homicide, robbery, assault, and kidnapping.
- Overall, drug crimes comprised 19.9% of associated crimes.

# Case Dispositions from '18 – '22

Disposition	% within Case year						Total Cases
	Case year						
	2018	2019	2020	2021	2022*	Total	
Dismissed/ Not Guilty	16.1%	17.3%	18.2%	17.8%	16.8%	17.3%	3584
Convicted	83.9%	82.7%	81.8%	82.2%	83.2%	82.7%	17132
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	20716
Total cases	4602	4463	4867	4987	1797	20716	-

# Most Serious Conviction Level

Law class	% within Case year						Total Cases
	Case year					Total	
	2018	2019	2020	2021	2022*		
Felony 1	0.1%	0.0%	0.1%	0.0%	0.0%	0.0%	7
Felony 2	0.8%	0.7%	0.5%	0.5%	0.1%	0.6%	98
Felony 3	3.7%	4.0%	3.2%	2.4%	2.1%	3.2%	549
Felony 4	9.4%	10.2%	10.2%	8.7%	6.3%	9.3%	1594
Felony 5	25.4%	26.2%	25.2%	23.3%	21.1%	24.6%	4221
Felony 6	26.1%	24.7%	24.7%	28.7%	31.6%	26.6%	4551
Drug Felony	3.9%	3.8%	2.6%	2.3%	2.1%	3.1%	524
Misd 1	25.9%	26.1%	28.5%	29.4%	32.0%	27.9%	4784
Other misd. /PO	4.3%	3.9%	4.6%	4.5%	4.3%	4.3%	739
Traffic	0.4%	0.3%	0.4%	0.2%	0.5%	0.4%	61
Unclassified	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	4
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	17132
Total cases	3861	3691	3983	4101	1496	17132	-

# Most Serious Initial Sentence

Sentencing Penalties	% within Case year						Total Cases
	Case year					Total	
	2018	2019	2020	2021	2022*		
Community Corrections	8.5%	8.7%	10.2%	10.2%	8.3%	9.3%	1017
Community Service	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	3
Credit for Time Served	0.3%	0.1%	0.3%	0.1%	0.4%	0.2%	22
Division of Youth Services	2.2%	2.2%	1.4%	1.0%	1.3%	1.6%	179
DOC	18.6%	19.8%	21.2%	19.2%	20.7%	19.8%	2156
Else	0.5%	0.9%	0.4%	0.4%	0.8%	0.6%	60
Fines/fees	1.4%	1.5%	1.3%	1.0%	1.4%	1.3%	139
Jail	21.9%	23.3%	23.6%	24.6%	23.5%	23.4%	2545
Juvenile Detention	0.7%	0.4%	0.5%	0.1%	0.1%	0.4%	43
Probation/Deferral	45.8%	42.9%	41.2%	43.3%	43.6%	43.3%	4711
YOS	0.3%	0.0%	0.1%	0.1%	0.0%	0.1%	13
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	10888
Total cases	2400	2223	2556	2668	1041	10888	-

# Possible Changes to Consider





# Remove Value Thresholds



# Motor Vehicle Theft – New and Improved?

- If he or she **knowingly** obtains or exercises control over the motor vehicle of another without authorization or by threat or deception ...
- **Aggravators?**
- **Class 5 felony?**
- **Class 4 felony?**
- **Class 3 felony?**
- *If the defendant has been **once or twice** previously been **convicted**?*

# Motor Vehicle Theft – Possible Aggravators

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1. Attempts to alter or disguise/ alters or disguised VIN or appearance
2. Uses in the commission of another crime, not traffic
3. Causes damage in excess of 500 or 2000 dollars
4. Cause bodily injury to another person while in control of vehicle
5. Removes the MV from the state to avoid apprehension
6. Takes a handicapped vehicle with handicapped plates
7. Retains possession or control more than 24 hours
8. Uses unauthorized/stolen license plates
9. Is on bond for pending auto theft
10. ONE prior conviction for auto theft or TWO prior convictions

# Possible Offense Levels

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Class 3 Felony (4 – 12 years)

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Class 4 Felony (2 – 6 years)

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Class 5 Felony (1 – 3 years)

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Misdemeanor (0 - 364 days)

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What should the max sentence be for Auto Theft?

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What about Auto Thefts with no aggravators present?

# Create Misdemeanor Offense?

- Obtains, exercises control over, receives or retains vehicle without authorization AND
  - Does not commit any other offense other than traffic offense AND
  - The vehicle is returned to the owner, location, police ... **within 24 hours with no damage**
- Place to land for disposition purposes.

# Working Group Discussion

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- Class 3 for two prior convictions
- Class 4 with Aggravators:
  - Attempts to alter or disguise/ alters or disguised VIN or appearance of vehicle
  - Uses in the commission of another crime not traffic
  - Causes damage in excess of 2000 dollars
  - Cause bodily injury to another person while in control of vehicle
  - Removes the MV from the state to avoid apprehension
  - Displays other license plates
  - Takes a handicapped vehicle with handicapped plates
- Class 5 for MV without Aggravators
- Create new misdemeanor

# Other Discussions

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- Knowingly obtains, exercises control over, receives or retains vehicle and knows ***or reasonably should have known*** the act was without authorization
- Class 3 for one **or** two prior convictions
- Class 3 with some aggravators, Class 4 for other aggravators
- Class 5 for MV without Aggravators
- Create new misdemeanor or no misdemeanors

# Path Ahead

