

Colorado Commission on Criminal and Juvenile Justice
Sentencing Reform Task Force

Sentence Structure Working Group
MINUTES

January 10, 2023 / 4:00PM-6:00PM
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
Jessica Jones, Defense Attorney
David Kaplan, Defense Attorney
Tom Raynes, Colorado District Attorneys' Council
Dan Rubinstein, District Attorney/ 21st JD

STAFF

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

ABSENT

Valarie Finks, Crime Victim Compensation/ 1st JD

GUESTS

Anne Andrews, Staff/ Colorado State Board of Parole
J.R. Hall, Chair/ Colorado State Board of Parole
Fran Lanzer, MADD
Jocelyn Rhymer, MADD
Mike Tessean, Director/ Colorado State Board of Parole

Issue/Topic	Discussion
<p>Welcome <i>Maureen Cain, WG member</i></p>	<p>On behalf of Michael Dougherty, Working Group Leader, Maureen Cain welcomed Working Group members.</p>

Issue/Topic	Discussion
<p>DRAFT: Motor Vehicle Theft Proposal <i>Maureen Cain, WG member</i></p>	<p>Maureen provided an update on the progress of the Study Group and presented a draft of <i>Motor Vehicle Theft and Unauthorized Use</i>.</p> <p>Under current law, the penalties for aggravated motor vehicle theft for either first or second-degree felony class are determined by the value of the stolen vehicle.</p> <p>The proposal changes the term of the offense from "<i>Aggravated Motor Vehicle Theft</i>" to "<i>Motor Vehicle Theft</i>." The elements for motor vehicle theft in the first degree and second degree are changed, and a "<i>Motor Vehicle Theft</i>" offense in the third degree is created. First-degree motor vehicle theft is a Class 3 felony, second-degree is a Class 4 felony, and third-degree is a Class 5 felony. The proposal also creates an "<i>Unauthorized Use of a Motor Vehicle</i>" offense, which would be a Class 1 misdemeanor, or a Class 5 felony for a second or subsequent offense.</p> <p>Tom Raynes added that the following definition had been inserted into the proposal to exclude other motor vehicles such as snowmobiles, motor boats etc.</p> <p><i>"Any self-propelled vehicle that is designed primarily for travel on public highways and that is generally and commonly used to transport persons or property over the public highways."</i></p>

Issue/Topic	Discussion
<p>DRAFT: Proposal on Homicide/Assault Classification, Mandatory Consecutive Sentencing, Habitual Sentences, & Extraordinary Risk <i>Maureen Cain, WG member</i></p>	<p>Maureen began by sharing that the Study Group reviewed various articles of the law and the Model Penal Code and examined other states' practices and data related to criminal classification and sentencing. The group met with Mothers Against Drunk Driving (MADD) and discussed inconsistencies in the Model Penal Code related to culpable mental state and vehicular homicide.</p> <p>Maureen presented an overview of the proposal that addressed <i>Homicide/Assault Classification, Mandatory Consecutive, Habitual, and Extraordinary Risk</i>.</p> <p>Homicide/Assault Classification Changes regarding Extreme Indifference</p> <ol style="list-style-type: none"> 1) 18-3-101(1) – maintain first-degree murder as a class 1 felony except for 18-3-101(1)d) extreme indifference. Insert the following language: First-degree murder in violation of (1)(d) is a class 2 felony and punishable as an extraordinary risk crime in the aggravated range (Note: the range is 24 to 64 years). Or call it second-degree murder as a class 2. Or create a new name: Extreme Indifference Murder – class 2 2) 18-3-101(1)(d)- Insert as a separate section - attempted extreme indifference homicide resulting in BI/SBI – F3

<p>Issue/Topic DRAFT: Proposal on Homicide/Assault Classification, Mandatory Consecutive Sentencing, Habitual Sentences, & Extraordinary Risk <i>Maureen Cain, WG member</i> (continued)</p>	<p>3) 18-3-101(1)(d) – attempted extreme indifference homicide - no injury - F4 <i>Note: this is to better align with current law 18-3 -202(1)(c) - extreme indifference first degree assault – intent to commit SBI and cause SBI is F3 – and attempted extreme indifference assault – F4.</i></p> <p>4) 18-3-107 – First-Degree murder of a PO, Firefighter or EMT in the performance of their duties. Re-write this section to eliminate references to the Death Penalty. Preserve extreme indifference homicide of PO FF or EMT as a class 1 felony but fix the Miller/Graham issue and make this crime 40 to life for juveniles.</p> <p>5) 8-12-107.5(3) Illegal discharge of a weapon – knowingly – F4 from F5 and recklessly – F5</p> <p>6) 18- 3-106 Vehicular Homicide – create an ER aggravated penalty range for aggravated VH (range will be: 10 to 32) for the following aggravating factors: VH qualifies as felony DUI, VH is committing while eluding or attempting to elude LE or VH is committing while in flight from the commission of another criminal felony offense not including a traffic offense. Preclude the filing of extreme indifference homicide for aggravated VH.</p> <p>Maureen added that the penalty range for aggravated vehicular homicide does not include the factor of blood alcohol content but rather the behavior of individuals and prior offenses.</p> <p>Mandatory Consecutive pursuant to 18-1.3-406 <u>Mandatory consecutive for single criminal episode</u> Create a Safety valve at sentencing – the court does not have to impose consecutive sentences for an offense for which the defendant has been convicted in a single criminal episode of multiple offenses if the following factors are proven by a preponderance of the evidence by the defendant at the sentencing hearing or stipulated to by the parties:</p> <ul style="list-style-type: none"> • Defendant has no prior VRA felony convictions and • Defendant is not use or possess a firearm or explosive in the commission of the offense or threaten the use of a firearm or explosive during the commission of the offense and • The defendants’ action did not result in SBI <p>Post-conviction review – 18-1.3-406 review when consecutive sentences are imposed for COV offenses arising out of the same incident. This is only for sentences imposed as mandatory consecutive. The current reconsideration for all mandatory sentences imposed pursuant to 18-1.3-406 remains the same.</p> <ul style="list-style-type: none"> • A defendant may file for a modification of the sentence after 3 calendar years up to 5 calendar years after the sentence is imposed • A defendant may only file once • A defendant is entitled to court appointed counsel and an evidentiary hearing • Mandatory victim notification and opportunity to be heard at hearing <p>Standard of review – court may modify sentence when the case involves substantial mitigating factors and defendant has demonstrated actions toward rehabilitation evidenced by positive programming and engagement at the DOC that justify a modification of sentence.</p> <p>Habitual Maintain current sentencing scheme with following changes:</p> <ul style="list-style-type: none"> • After serving 10 calendar years in DOC, defendant may request a reconsideration if the sentence imposed is greater than 24 years.
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<p>Issue/Topic DRAFT: Proposal on Homicide/Assault Classification, Mandatory Consecutive Sentencing, Habitual Sentences, & Extraordinary Risk <i>Maureen Cain, WG member</i> (continued)</p>	<ul style="list-style-type: none"> • Defendant may once file once. • Defendant is entitled to court-appointed counsel and a hearing and an evidentiary hearing. • Mandatory victim notification and opportunity to be heard at the evidentiary hearing. This would include all victim of any offenses that served as convictions for purposed of imposing a habitual sentence. <p>Standard for review is – court may modify sentence when the case involves substantial mitigating factors and defendant has demonstrated actions toward rehabilitation evidenced by positive programming and engagement at the DOC that justify a modification of sentence.</p> <p>The re-sentencing range is mid-point of the aggravated range to the top end of the current sentence imposed e.g. the 3xs and the 4xs. Sentence cannot be increased at hearing.</p> <p>Extraordinary Risk Eliminate for Class 4, 5 and 6s. Those were eliminated for misdemeanors. The elevated range for these offenses is small.</p>
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<p>Issue/Topic Next Steps & Adjourn <i>Michael Dougherty, WG Leader</i> <i>Richard Stoker, CCJJ Consultant</i></p>	<p style="text-align: center;">Discussion</p> <p>Michael reiterated that recommendations will be presented to the Sentence Reform Task Force tomorrow (January 11, 2023).</p> <p>Michael stated that the creation of the new aggravated vehicular homicide offense has a sentencing range from 10-32 years, as suggested by several conversations and a presentation from MADD. He thanked Fran Lanzer for his contributions to these efforts.</p> <p>Richard reiterated the tremendous amount of work and effort of the Study Group. He believed the group would need to finalize/organize the recommendation into the CCJJ format. He suggested the following three components:</p> <ul style="list-style-type: none"> • A statement in a paragraph(s) outlining what the recommendation accomplishes, • The specific content that would require statutory change, and • A discussion section on the problems the changes address.
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<p>Issue/Topic Adjourn <i>Michael Dougherty, WG Leader</i></p>	<p style="text-align: center;">Discussion</p> <p>Michael thanked all members and the CCJJ staff for their efforts on the recommendations and asked if there were any additional comments or questions from the Working Group. Hearing none, he adjourned the meeting.</p>
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Next Meeting

Tuesday, February 7, 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).