

**Sentencing Reform Task Force
MINUTES**

January 11, 2023 / 1:30PM-4:00PM
Virtual Meeting

ATTENDEES

TASK FORCE MEMBERS

Rick Kornfeld, *Task Force Co-chair*, Defense Attorney
Michael Dougherty, *Task Force Co-chair*, District Attorney/ 20th Judicial District (JD)
Taj Ashaheed, Second Chance Center
Maureen Cain, Office of the State Public Defender
Valerie Finks, Victim Compensation Program, DA Office/ 1st JD
Julie Gonzales, State Senator/Senate District 34
Justin "JR" Hall, Colorado State Board of Parole
Kazi Houston, Rocky Mountain Victim Law Center
Jes Jones, Defense Attorney
David Kaplan, Defense Attorney
Heather McClure, Adams County Division of Community Safety & Well-Being
Brian Mason, District Attorney/ 17th JD
Andrew Matson, Colorado CURE
Greg Mauro, Denver Division of Community Corrections
Jeffrey Nowacki, Colorado State University
Michael Rourke, District Attorney/ 19th JD
Glenn Tapia, Director, Div. of Probation Services/ Judicial Branch
Jeff Jensen for Chief Adrian Vasquez, Colorado Spring Police Department

STAFF

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

ABSENT

Christie Donner, Colorado Criminal Justice Reform Coalition
Bob Gardner, State Senator/Senate District 12
Serena Gonzales-Gutierrez, State Representative/House District 4
David "Dave" Hayes, Police Chief/ Louisville, CO
Sarah Keck, Court Services/Judicial Branch
Tom Raynes, Colorado District Attorneys' Council
Dan Rubinstein, District Attorney/21st JD
Andre Stancil, Executive Director/ Colorado Department of Corrections
Adrian Vasquez, Police Chief/Colorado Spring Police

<p>Welcome & Agenda Welcome, Approval of Minutes, and Agenda <i>Michael Dougherty & Rick Kornfeld</i> <i>Task Force Co-chairs</i></p>	<p>Discussion</p> <p>Rick Kornfeld, Task Force Co-chair welcomed attendees. Rick reviewed the agenda and solicited any additions or corrections to the December 7 minutes. A motion was offered and seconded to approve the minutes. Task Force members unanimously approved the December 7 minutes.</p> <p>Rick Kornfeld asked members to save the date for an extra Task Force meeting scheduled on January 25, at 1:30 pm to present additional proposals from the Sentence Structure Working Group.</p>
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<p>Issue/Topic Final Presentations: Recommendation FY23-SR #02 and Recommendation FY23-SR #03 Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i></p>	<p>Discussion</p> <p>Mr. Dougherty and Maureen Cain offered two presentations (FY23-SR#02. Motor Vehicle Theft and FY22-SR #03. Reclassify Selected Felony Crimes) from the Sentence Structure Working Group. The title of each recommendation and a brief description is provided below, followed by a brief background, discussion highlights, and vote outcomes. He reminded the group that a related PowerPoint presentation was offered at the December 7, 2022 SRTF meeting and at the December 9, 2022 Commission meeting. These meetings were followed by a Question and Answer Session on the related topics on December 16, 2022</p> <p>Recommendation FY23-SR #02. Amend and Append Motor Vehicle Theft Provisions [Statutory] Amends, appends, deletes and replaces several provisions of statute related to motor vehicle theft. The elements for motor vehicle theft in the first degree and second degree are changed and motor vehicle theft in the third degree is created. The penalties for motor vehicle theft are no longer based on the value of the vehicle or vehicles stolen. Motor vehicle theft in the first degree is a class 3 felony, motor vehicle theft in the second degree is a class 4 felony, and motor vehicle theft in the third degree is a class 5 felony. The recommendation creates the offense "unauthorized use of a motor vehicle" and makes it a class 1 misdemeanor, or a class 5 felony for a second or subsequent offense. These revisions comprise changes to the following elements of statute:</p> <ul style="list-style-type: none"> • §18-4-409. Aggravated motor vehicle theft. Amend (1)(a), (2), (3), and (4); and add (6). • §18-4-409.5. Unauthorized use of a motor vehicle - definition. Add the entirety of 18-4-409.5. • §18-17-103. Definitions. Amend (5)(b)(II). • §19-1-304. Juvenile delinquency records - division of youth services critical incident information - definitions. Amend (5.5). • §42-2-202. Habitual offenders - frequency and type of violations. Amend (2)(a)(V). <p><u>Background</u> This recommendation is a part of the work by the Sentencing Reform Task Force and Sentence Structure Working Group to review felony crimes. The Sentence Structure Working Group is recommending changes to the Aggravated Motor Vehicle Theft statutes.</p>
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<p style="text-align: center;">Issue/Topic</p> <p>Final Presentations: Recommendation FY23-SR #02 and Recommendation FY23-SR #03 Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i> (continued)</p>	<p>Auto thefts are a significant problem. Colorado leads the nation in auto thefts with an 86% statewide increase from 2019 to 2021. From 2019 to 2021, increases include a 170% increase in Broomfield, 250% in Grand County, and 60% in Boulder County. In the first quarter of 2022, Denver (#2), Aurora (#3), Westminster (#8), and Pueblo (#9) ranked in the top 10 nationwide for auto theft rates. These four cities combined accounted for 53.3% of the vehicles stolen statewide in the first quarter of 2022.</p> <p>Many factors drive auto thefts, including but not limited to, financial stress, substance abuse, mental health disorders, lack of behavioral health treatment, homelessness, a desire to commit other crimes with and/or profit from stolen cars, crimes of opportunity with unlocked car doors and open garages, low arrest clearance rates, and minimal consequences.</p> <p>In his 2022 Biennial Letter to the Commission, Governor Polis directed the Commission to examine changes to auto theft sentencing, especially revisit the criminal classification of auto theft as it relates to the monetary value of a stolen vehicle, and also examine updating the language to elevate the severity of the crime based on the number of prior offenses, specifically targeting prolific auto thieves.</p> <p>With this mandate, the Sentencing Reform Task Force reviewed data related to auto thefts from 2018 – 2022. The Task Force had previously voiced strong support for removing the value thresholds for auto thefts. This recommendation builds off that foundation. The Sentence Structure Working Group worked with multiple stakeholders to gather feedback on the Motor Vehicle Theft proposal. Through the work of the Sentence Structure Working Group, there is strong consensus for sentencing reform that would remove the value thresholds, change the elements to allow for more effective prosecutions (without raising the level of penalty), narrowing the aggravators, and create a new misdemeanor offense.</p> <p><u>Member Discussion</u></p> <p>Brian Mason asked about the rationale of proposing a new statutory misdemeanor offense provision for the instance when the motor vehicle is returned within 24 hours without damage. Michael Dougherty and David Kaplan responded that the group agreed there should be an option for a lower-level offense when the impact on the victim is minimal.</p> <p>Andrew Matson asked about the background discussions related to adding aggravators around the damage done to a car. He also expressed concern that increasing punishment for property crimes could impact the prison population and have lifelong consequences for those offenders who have committed a property crime.</p> <p>Michael and Maureen Cain explained that the Working Group engaged in a lengthy discussion about the level of punishment. With input from stakeholders and conducting a crime analysis severity, the Working Group agreed the level of damage done to a car should remain a crime severity factor.</p> <p>Glenn Tapia mentioned the recommendation was forwarded today shortly before the meeting and expressed concern regarding the readiness to conduct a vote, given Task Force members had no time to “socialize” the proposals with stakeholders.</p>
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<p>Issue/Topic Final Presentations: Recommendation FY23-SR #02 and Recommendation FY23-SR #03 Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i> (continued)</p> <p>ACTION Preliminary Recommendation FY23-SR #02 will be presented at the January 13, 2023 Commission meeting</p>	<p>Michael Dougherty reminded the group that a full presentation of these proposals was offered at the December 7 meeting. He also stated that there is a very full schedule upcoming to include other proposals from the Sentence Structure Working Group slated for presentation at the extra Task Force meeting on January 25. Therefore, he encouraged the group to vote today on FY23-SR #02 and FY23-SR #02 to allow timely progress through the Commission that would allow a bill to be drafted for the current legislative session.</p> <p>Michael asked for additional feedback or suggestions and, hearing none, requested a motion and a second to approve the submission of Recommendation FY23-SR #02 to the Commission. Michael Rourke moved approval of the recommendation, as presented, which was seconded by Brian Mason. With no further discussion, the majority vote was conducted with the following outcome:</p> <p>FY23-SR #02. Amend and Append Motor Vehicle Theft [Statutory] Support: 15 Do not support: 0 Abstain: 2 Rec. FY23-SR #02 was approved for submission to the Commission.</p> <p>As mentioned above, Michael Dougherty and Maureen Cain offered the following Recommendation FY23-SR #03 for consideration.</p> <p>Recommendation FY23-SR #03. Reclassify Selected Felony Crimes [Statutory] This recommendation amends, appends, deletes and replaces multiple provisions of Colorado criminal statutes related to felony crime classifications. This recommendation includes three basic concepts and the associated statutory revisions:</p> <ol style="list-style-type: none"> 1) Amend and “right-size” felony offenses so that the classification of the offense is balanced and properly aligned with the level of seriousness of the prohibited behavior. 2) Eliminate “second and subsequent” increased felony classifications as unnecessary given the expanded ranges in the current sentencing scheme, excluding certain criminal offenses where the classification of the crime should be increased when criminal behavior is repeated. 3) Amend the language defining felony offenses when the current statutory language does not properly capture the proper mental state or actions that should be required for commission of that criminal offense <p><u>Background</u> This recommendation is in response to the request by the Governor to the Commission in both the 2020 Biennial Letter and the 2022 Biennial Letter.¹ The Sentence Structure Working Group completed its misdemeanor sentencing and offense recommendations in 2021. The legislation was passed in 2021 (Senate Bill</p>
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¹ The “Biennial Letter” is pursuant to House Bill 2018 - 1287; see also, §16-11.3-103(7), C.R.S. Statute requires that in even-numbered years the Commission request a letter from the Governor regarding topics of study. The Governor is encouraged to consult with the Chief Justice of the Colorado Supreme Court and the Majority and Minority Leaders of the Colorado House of Representatives and the Senate. The first of these letters was received June 24, 2020 and encouraged the Commission to study, discuss, and return recommendations to the Governor on a variety of sentencing-related topics. The second Biennial Letter was received September 15, 2022, which included additional sentencing issues along with other criminal justice concerns for study.

<p>Issue/Topic Final Presentations: Recommendation FY23-SR #02 and Recommendation FY23-SR #03 Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i> (continued)</p>	<p>2021-271), followed by a clean-up bill in 2022 (House Bill 2022-1229). In 2021, the Working Group then commenced its felony work by engaging in a crime severity analysis to ensure that current felony offenses are adequately classified based on the seriousness of the crime. The work required an examination of each felony offense and its elements – including the act to commit the offense and the requisite culpable mental state.</p> <p>The proper alignment of felony offenses is the foundational work of sentencing reform. The re-calibration of certain crimes was necessary to secure this foundation. The recommendation to reclassify the felonies is in the list appended to this recommendation and reflects this foundation. Some offenses are reclassified, others are re-structured, and some language is eliminated as unnecessary given the current implementation of Colorado’s sentencing laws.</p> <p>While additional work is necessary to address “consistency” and “clarity” in sentencing, this recommendation, along with others from the Working Group, represents a thoughtful and required first step in re-shaping the felony sentencing scheme, as directed by the Governor.</p> <p><u>Member Discussion</u></p> <p>Kazi Houston asked for clarification and the rationale for reclassifying some Victim Rights Act crimes (VRA). She believed some reclassifications would make it harder to prosecute, but she would defer to prosecutors if they did not have such concerns. Kazi also highlighted two crimes that are now considered VRA crimes [18-4-102(2). <i>First degree arson and 18-4-203(2). Second degree burglary</i>] and suggested these crimes be moved to the “Enhanced Felony List.” Maureen agreed, and the change will be made.</p> <p>Glenn Tapia expressed concern about the overall format of Recommendation FY23-SR #03. He reiterated his hesitancy to share the recommendation with others as presented. He felt the recommendation did not include important elements, like the intent and description of the statutory changes. He referenced a previous recommendation developed by the group, Recommendation FY21-SR #01. Revise Misdemeanor Sentencing and Offenses (see the Commission website at ccjj.colorado.gov/ccjj-rectop-sent), as an example to follow that would enhance the comprehension of the changes being suggested.</p> <p>Maureen Cain responded that the substance and content of the recommendation was discussed at previous Task Force meetings and encouraged Task Force members to vote today so the recommendation can be presented at the Commission meeting on Friday, Jan. 13.</p> <p>Michael Rourke raised an issue regarding the proposed language in second-degree kidnapping (18-3-302(1), C.R.S.) as follows in the proposal: <i>C.R.S. 18-3-302 Second Degree Kidnapping. Add the following language to (1) “when the movement is intentional and substantially increases the risk of harm to the person.”</i></p> <p>Mr. Rourke explained that in criminal cases, the prosecution must prove every element of a crime beyond a reasonable doubt and believed that the language as drafted significantly raises the burden of proof for the prosecution.</p>
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<p>Issue/Topic Final Presentations: Recommendation FY23-SR #02 and Recommendation FY23-SR #03 Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i> (continued)</p> <p>ACTION Preliminary Recommendation FY23-SR #03 will be presented at the January 13, 2023 Commission meeting</p>	<p>He moved the removal of the second degree kidnapping language from the Recommendation FY23-SR #03. The motion was seconded by Rick Kornfeld. With no further discussion, the majority vote was conducted with the following outcome:</p> <p>AMENDMENT: Remove language related to 18-3-302 Second Degree Kidnapping from Recommendation FY23-SR#03. Support: 7 Do not Support: 8 Abstain: 1 The amendment was not approved.</p> <p>Michael solicited public comment regarding the full recommendation and, hearing none, requested a motion to approve the submission of Recommendation FY23-SR #03 to the Commission. A motion to approve Rec. FY23-SR #03 was offered and seconded. With no further discussion, the vote was conducted and yielded the following result:</p> <p>FY23-SR #03. Reclassify Selected Felony Crimes Support: 15 Do not Support: 0 Abstain: 1 Recommendation FY-SR #03. was approved for submission to the Commission.</p> <p>Michael Rourke asked whether the Chairs or Mr. Rourke himself might describe his concerns regarding the second degree kidnapping provision and the close amendment vote during the presentation of the recommendation at the Commission. The Chairs agreed to include these points in the presentation of Recommendation FY23-SR #03.</p>
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<p>Issue/Topic Update: Sentencing Alternatives/Decisions & Probation Working Group <i>Glenn Tapia, WG Leader</i></p>	<p>Discussion <u>Sentencing Alternatives/Decisions & Probation WG – Glenn Tapia, Leader</u></p> <p>Glenn reported that the WG continues to focus on its next topic regarding gender and race/ethnic disparities in probation. The WG meeting in January was canceled to allow the DCJ and Probation staff to compile data to address potential disparities in the Pre-sentence Investigation Report (PSIR) process.</p> <p>He reminded members that the preliminary recommendation on early termination in probation (FY23-SR #01) was presented to the Commission on December 9, 2022, and will be voted on at the CCJJ meeting on Friday, January 13. Glenn estimated that, beyond the disparity topic, the WG will likely tackle one last topic before concluding its work.</p>
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<p>Issue/Topic Public Comment <i>Michael Dougherty, Rick Kornfeld</i> <i>Task Force Co-chairs</i></p>	<p>Public Comment Rick solicited public comment, and hearing none, moved to the conclusion of the meeting.</p>
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<p>Issue/Topic Next Steps/Adjourn</p>	<p>Conclusion</p>
<p><i>Michael Dougherty & Rick Kornfeld Task Force Co-chairs Richard Stroker, CCJJ Consultant</i></p>	<p>Richard Stroker recapped the meeting. The Commission will vote on the recommendation on early termination from probation (FY23-SR #01) prepared by the Sentencing Alternatives/Decisions & Probation Working Group this Friday, January 13, 2023.</p> <p>The two recommendations from the Sentence Structure Working Group presented and approved today by the Task Force will be the subject of a preliminary presentation at the Friday meeting of the Commission (1/13/2023).</p> <p>An extra Sentencing Reform Task Force meeting is scheduled on Wednesday, January 25, at 1:30 pm to present an overview of other proposals from the Sentence Structure Working Group.</p> <p>With no further business, Rick Kornfeld thanked participants and adjourned the meeting.</p>

Next Meeting – Extra Meeting!
Wednesday, January 25, 2022 / 1:30-4:00 pm

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