

**Sentencing Reform Task Force
MINUTES**

January 25, 2023 / 1:30PM-4:00PM
Virtual Meeting

ATTENDEES

TASK FORCE MEMBERS

Michael Dougherty, *Task Force Co-chair*, District Attorney/ 20th Judicial District (JD)
Rick Kornfeld, *Task Force Co-chair*, Defense Attorney
Maureen Cain, Office of the State Public Defender
Valerie Finks, Victim Compensation Program/ DA Office, 1st JD
Justin "JR" Hall, Colorado State Board of Parole
Dave Hayes, Police Chief/ Estes Park Police Department
Kazi Houston, Rocky Mountain Victim Law Center
Jes Jones, Defense Attorney
Brian Mason, District Attorney/ 17th JD
Greg Mauro, Denver Division of Community Corrections
Heather McClure, Adams County Division of Community Safety & Well-Being
Jeffrey Nowacki, Colorado State University
Tom Raynes, Colorado District Attorneys' Council
Michael Rourke, District Attorney/ 19th JD
Dan Rubinstein, District Attorney/ 21st JD
Adrian Vasquez, Police Chief/ Colorado Springs 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

Taj Ashaheed, Second Chance Center
Christie Donner, Colorado Criminal Justice Reform Coalition
Bob Gardner, State Senator/ Senate District 12
Julie Gonzales, State Senator/ Senate District 34
Serena Gonzales-Gutierrez, State Representative/ House District 4
David Kaplan, Defense Attorney
Sarah Keck, Court Services/ Judicial Branch
Andrew Matson, Colorado CURE
Andre Stancil, Executive Director/ Colorado Department of Corrections
Glenn Tapia, Director, Div. of Probation Services/ Judicial Branch

<p>Welcome & Agenda Welcome, and Review of Agenda <i>Michael Dougherty & Rick Kornfeld</i> Task Force Co-chairs</p>	<p>Discussion</p> <p>Rick Kornfeld, Task Force Co-chair, welcomed attendees. Rick welcomed Chief Adrian Vasquez of the Colorado Springs Police Department to the Task Force.</p> <p>The purpose of this extra Task Force meeting is to present an overview of proposals for recommendations from the Sentence Structure Working Group. The final presentation and vote on these recommendations are scheduled to occur at the February 8, 2023 Task Force meeting and, if approved, will be submitted for initial review by the Commission at the February 10 meeting.</p>
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<p>Issue/Topic</p> <p>Overview of Felony Crime Proposals Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i></p>	<p>Discussion</p> <p>Michael Dougherty informed the members that the Motor Vehicle Theft (FY23-SR #02) and the Reclassification of Selected Felony Crimes (FY23-SR #03) recommendations, approved by the Task Force at the January 11, 2023 meeting, were presented for initial review by the Commission on January 13. These recommendations will be presented for final consideration and vote at an extra Commission meeting on January 27.</p> <p>Michael thanked all the members, stakeholders, and CCJJ staff who participated in the work of the Task Force to produce these significant sentencing initiatives.</p> <p>Michael began by sharing that the recommendations offered today are the result of substantial work from the Sentence Structure Study Group and Working Group. The Working Group met with and held listening sessions with stakeholders whose perspectives and input could be considered and included in the proposals. The group also examined other states’ practices and data related to criminal classification and sentencing, conducted an extensive crime severity analysis, had lengthy discussions, and reached compromises among the diverse perspectives represented in the Working Group. He added that the group shared a common commitment to improving the sentencing structure in the state of Colorado.</p> <p>Michael and Maureen Cain offered background information on the proposals and invited feedback from Task Force members. The draft proposals were forwarded electronically to the Task Force members and are presented below with accompanying discussion points.</p> <p><u>RECOMMENDATION A</u> <u>Extreme Indifference Homicide and Vehicular Homicide</u></p> <ol style="list-style-type: none"> 1) 18-3-101(1) - First degree murder. 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: 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 bodily injury/serious bodily injury – F3
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<p style="text-align: center;">Issue/Topic</p> <p>Overview of Felony Crime Proposals Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i> (continued)</p>	<p>3) 18-3-101(1)(d) – Attempted extreme indifference homicide - no injury - F4</p> <p><i>Note: This revision 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 peace officer (PO), Firefighter (FF) or EMT is 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 vs. Graham¹ Supreme Court 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 (VH) – Create an extraordinary risk (ER) aggravated penalty range for aggravated VH (range will be: 10 to 32 years) for the following aggravating factors: VH qualifies as felony DUI, VH is committed while eluding or attempting to elude law enforcement, or VH is committed 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>DISCUSSION</p> <p>Michael Dougherty informed the group that, based on the input from Mother Against Drunk Drivers (MADD), additional aggravators (not listed here) will be added to the new Aggravated Vehicle Homicide offense. Those would include prior convictions of vehicular homicide, hit and run resulting in death, and any vehicular assaults with a DUI. Michael added that proposals regarding extreme indifference homicide and vehicular homicide will be combined into one recommendation.</p> <p>Brian Mason asked whether Non-aggravated vehicular homicide would remain in the maximum sentencing range of 12 years. Michael responded that the Working Group did not contemplate changes to the current sentencing range for the crimes of vehicular homicide-DUI or homicide-reckless.</p> <p>Valerie Fink suggested adding multiple victims as an aggravator. Valerie believed the range for vehicular homicide should be higher (currently a maximum of 12 years), and there should be an aggravator when there are multiple victims. Families of vehicular homicide victims struggle to understand that the maximum sentence for such a crime is 12 years. Michael will present this suggestion to the Sentence Structure Working Group.</p> <p>Valarie Finks also expressed concern regarding the decrease of felony class for extreme indifference homicide, given the emotional and physical impact of those crimes on the victims.</p>
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¹ Refers to a Supreme Court ruling that juveniles cannot be sentenced to life without parole without certain findings. This represents a cleanup from *Senate Bill 2016-181 (Sentencing Juveniles Convicted of Class 1 Felonies)*.

<p style="text-align: center;">Issue/Topic</p> <p>Overview of Felony Crime Proposals Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i> (continued)</p>	<p>Brian Mason shared a concern regarding the extreme indifference murder proposal. While he is not opposed to reducing the felony class for this crime, he would like to see the intent of the offender carved out in the statute. He illustrated his request with examples of two incidents that should be addressed/charged differently: a) shooting a weapon in the air and hitting and killing a bystander, and b) shooting a weapon where one is targeting people in the crowd. The mental state or intent in these situations is different. Brian asked the Working Group to specify options that will capture the differences in intent in these scenarios.</p> <p>Maureen Cain explained that the Working Group analyzed the comparability of punishment in crimes by examining the seriousness of the crimes and the culpable mental state of the offender. The group also reviewed different statutes from different states. For those states with a Felony 1 murder classification for extreme indifference, there was a determinate discretionary sentence range for the court. For example, there would be a determinate sentence range or Life with Parole and for Life Without Parole. Maureen asked Brian if he would consider keeping Extreme Indifference Murder as a 1st-degree felony with a determinate sentencing range. Brian responded that he would be open to this option.</p> <p>Brian Mason discussed vehicular homicide. He believed that the current vehicular homicide statute does not address the most egregious cases and that, as a district attorney, he would charge these instances as extreme indifference cases. He suggested increasing the sentence range for DUI vehicular homicide to be 10 to 32 years, or, if the Working Group cannot reach consensus on that point, might the Working Group consider adding “speed” as an aggravating factor.</p> <p><u>RECOMMENDATION B</u> <u>Mandatory Consecutive for Single Criminal Episode (pursuant to 18-1.3-406)</u></p> <p>This proposal would create a “safety valve” at sentencing regarding options for post-conviction review and the standards for mitigation. The court would 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 sentencing or as stipulated by the parties:</p> <ul style="list-style-type: none"> • Defendant has no prior VRA felony convictions and • Defendant did 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 defendant’s action did not result in Seriously Bodily Injury <p>Post-conviction review – Regarding 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. The following would be the considerations:</p>
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<p style="text-align: center;">Issue/Topic</p> <p>Overview of Felony Crime Proposals Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i> (continued)</p>	<ul style="list-style-type: none"> • Defendant may file for a modification of the sentence after 3 calendar years up to 5 calendar years after the sentence is imposed • Defendant may only file once • 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. The court may modify a sentence when the case involves substantial mitigating factors and the defendant has demonstrated actions toward rehabilitation evidenced by positive programming and engagement at the DOC that justify a modification of sentence.</p> <p>DISCUSSION</p> <p>In Colorado, a motion for reconsideration is a request for sentence reduction made by a defendant who has already been convicted and sentenced for a criminal offense. Also called a 35(b) proceeding, the process provides defendants a second chance to argue for lesser penalties. How does this proposal alter the existing Rule 35 (b) Motion for Reconsideration?</p> <p>At 126 days after the sentencing hearing, Rule 35(b) of the Colorado Rules of Criminal Procedure allows a convicted and sentenced defendant to ask the sentencing judge to reconsider the imposed sentence. Rule 35(b) does not give the court authority to modify mandatory consecutive sentences but allows for a reduced sentence.</p> <p>Dan Rubinstein explained that, under the Colorado Crimes of Violence statute (18-1.3-406), the Department of Corrections transmits to the sentencing court a report on the evaluation and diagnosis of the violent offender. The court may modify the sentence, effective 119 days after placement in the Department of Corrections.</p> <p>The proposal would amend the mandatory consecutive reconsiderations in the crimes of violence statutes. The Working Group proposes to eliminate the review at 119 days and create a “safety valve” (a review after 3-5 years after placement in DOC) that would grant authority to the judge to depart from the mandatory consecutive sentences under specific conditions and to decide whether the sentences should run consecutively (see proposal above). Dan illustrated the proposal with the following examples: 1) Someone who is charged with 3 separate 1st-degree assaults (assault carrying a sentence from 10-32 years) would be sentenced to 30-96 years. If an offender meets all the requirements listed above, the judge could reconsider whether the charge should run consecutively or depart from the mandatory consecutive sentence. The 3- to 5-year review would allow defendants to build their resumés and demonstrate that they have changed.</p> <p>The elements of the proposal are similar to the federal “safety valve” and are used in unique circumstances.</p>
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<p>Issue/Topic Overview of Felony Crime Proposals Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i> (continued)</p>	<p>Not all Victim Rights Act (VRA) offenses are crimes of violence. How will this proposal impact VRA offenses? This proposal will only give the court authority to reconsider mandatory consecutive sentences. The Crimes of Violence 18-1.3-406 statute imposes mandatory consecutive sentences. The VRA crimes that are not crimes of violence do not carry mandatory consecutive requirements.</p> <p><u>RECOMMENDATION C</u> <u>Reconsideration Provisions for Habitual Sentences</u></p> <p>Maintain the current sentencing scheme with the 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. • Defendant may only file once. • Defendant is entitled to court-appointed counsel, 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. The court may modify a sentence when the case involves substantial mitigating factors and the defendant has demonstrated actions toward rehabilitation, evidenced by positive programming and engagement at the CDOC that justify a modification of sentence. <i>[Note: This language still needs work.]</i></p> <p>The re-sentencing range is the mid-point of the aggravated range to the top end of the current sentence imposed e.g. the 3 times the maximum of the presumptive range² or 4 times the maximum of the presumptive³. A sentence cannot be increased at the hearing.</p> <p>DISCUSSION Maureen Cain explained that this proposal adds a request for reconsideration after ten years in CDOC, if the sentence is greater than 24 years. The 10-year mark is proposed to allow offenders who have served a significant time in CDOC to demonstrate change and the will to rehabilitate. These recommendations are prospective, not retroactive.</p> <p>Valerie Finks reminded the group that the funding for victim services has decreased, and victims go through the criminal justice process with little help. She expressed concern about victims having to revisit their trauma at the various stages of a sentence (reconsideration, parole hearings, etc.) and adding reconsideration processes, such as the mandatory consecutive proposal (the “3 to 5 year” reconsideration proposal above in Recommendation B) or the habitual offender reconsideration (at 10 years), will add significant stress to their experience. Has the Working Group considered excluding these processes for VRA crimes vs. non-VRA crimes?</p>
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² This is the increased sentence for the “little habitual”

³ This is the increase sentence for the “big habitual”

<p style="text-align: center;">Issue/Topic</p> <p>Overview of Felony Crime Proposals Sentence Structure Working Group <i>Michael Dougherty, WG Leader</i> <i>Maureen Cain, WG Member</i> (continued)</p>	<p>Tom Raynes agreed with Valerie’s concern and described the difficult discussions at the Working Group to find balance and develop proposals that are equitable and fair for both the victims and the defendants. He added that the 10-year reconsideration for habitual offenders can only be requested once.</p> <p>Rick Kornfeld described the “second look sentencing” which refers to a process by which courts review, or take a “second look,” at a lengthy sentence of incarceration after the offender has served a significant portion of the sentence. Courts may consider several factors when determining whether to modify a sentence, including the offender’s rehabilitation, the effect of release on the victim of the offense, and whether the offender is fit to reenter society. Revisiting an offender’s sentence after a long period allows the court to evaluate the sentence to ensure that the incarceration conforms with the jurisdiction’s purposes of sentencing. Rick agreed with the timing of the second look in the proposals, as compared to the present system, allowing enough time for a meaningful reconsideration to allow people to change.</p> <p>Jeff Nowacki asked whether the Working Group considered an automatic reconsideration at ten year-mark. Tom Raynes responded that the group focused on the year mark rather than automatic reconsiderations, expressing that district attorneys would likely oppose an automatic reconsideration.</p> <p><u>RECOMMENDATION D</u> <u>Extraordinary Risk</u> This recommendation eliminates provisions of Colorado criminal statutes related to Extraordinary Risk for felony classes 5 and 6.</p> <p>DISCUSSION The extraordinary risk classification was eliminated for most misdemeanor offenses in Senate Bill 2021-271. The increase in the sentence stemming from the extraordinary risk aggravator for felony classes 5 and 6 is minimal.</p> <p>SUMMARY Michael Dougherty believed that “second-look” sentencing proposals will possibly be introduced during this legislative session that have not received similar consideration, discussion, and consensus relative to the work by the Working Group. He welcomed the support and feedback from the Task Force members.</p> <p>Michael expressed appreciation for the feedback from members and summarized the points suggested for further discussion at the next Working Group meeting: 1) Adding “speed” and “multiple victims” as possible aggravators, and 2) increasing the sentencing range for DUI vehicular homicide to a range of 10 to 32 years.</p>
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<p>Issue/Topic</p>	<p>Public Comment</p>
<p>Public Comment <i>Michael Dougherty, Rick Kornfeld</i> <i>Task Force Co-chairs</i></p>	<p>Ms. and Mr. Small shared the tragic loss of their son Ethan who was killed by a drunk driver in 2019. They described their shock at learning that the offender would only be sentenced to a maximum of 12 years, possibly serving only half of that sentence. They expressed grave concern that the current sentencing scheme and punishment do not fit the crime and believed the trauma of victims is not adequately considered.</p> <p>They encouraged Task Force members to consider the recommendations for DUI vehicular homicide offered by Mother Against Drunk Driving (MADD) at the SRTF October 2022 meeting. Mr. Small added that it was difficult to accept the leniency given to the repeat offender who had killed their loved one. He advocated for more significant punishment.</p> <p>Fran Lanzer (MADD-Colorado) thanked and recognized all the guests and active members of MADD. Fran explained that his group has reviewed all DUI vehicular homicides from 2014-2019 and determined that approximately ten cases should be in an enhanced category, such as the aggravated vehicular homicide proposal presented today. From the victim perspective, this would be an important outcome and provide justice for their loved ones. Fran mentioned that his group will discuss the proposed aggravated vehicular homicide recommendation and that his group remains committed to continuing its collaboration with the Sentencing Reform Task Force.</p> <p>On behalf of the Sentencing Reform Task Force, Michael expressed his deepest sympathy for the loss of loved ones and thanked everyone and the members of the public for their valuable contribution to these efforts.</p>

<p>Issue/Topic Next Steps/Adjourn</p>	<p>Conclusion</p>
<p><i>Michael Dougherty & Rick Kornfeld</i> <i>Task Force Co-chairs</i> <i>Richard Stroker, CCJJ Consultant</i></p>	<p>Richard Stroker recapped the meeting. The Sentence Structure Working Group will discuss the feedback received today and present updated proposals at the next SRTF meeting on February 8, 2023.</p> <p>With no further business, Rick Kornfeld adjourned the meeting. The next Sentencing Reform Task Force meeting is Wednesday, February 8 at 1:30 pm.</p>

Next Meeting

Wednesday, February 8, 2023 / 1:30-4:00 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).