



Sentencing Reform Task Force

Preliminary Recommendation Presentation (Part 1) FY21-SR #01. Revise Misdemeanor Sentencing and Offenses [Statutory]

Michael Dougherty, SRTF Co-Chair (DA Boulder County)

Presentation to the Colorado Commission on Criminal and Juvenile Justice
February 12, 2021



Colorado Commission on Criminal & Juvenile Justice

Sentencing Reform Task Force

Background

- Formed per the Governor's letter of June 24, 2020, directing the CCJJ:
 - Recognize finite bed space in jails and prisons
 - Eliminate private prisons
 - 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
- The Governor emphasized some recommendations should be completed in time for the 2021 legislative session.



Colorado Commission on Criminal & Juvenile Justice

Sentencing Reform Task Force

Members (CCJJ Members)

Rick Kornfeld, Co-chair	Defense/ Private defense
Michael Dougherty, Co-chair	Prosecution/ District Attorney's Office, 20th Judicial District (J.D.)
Chris Bachmeyer	District Court Judge/ 1st J.D.
Terri Carver	Legislature/ State Representative, District 20
Valarie Finks	Victim Representative/ District Attorney's Office, 1st J.D.
Bob Gardner	Legislature/ State Senator, District 12
Julie Gonzales	Legislature/ State Senator, District 34
Serena Gonzales-Gutierrez	Legislature/ State Representative, District 4
Kristen Hilkey	Parole Board/ Chair
Jessica Jones	Defense/ Private defense
Matt Lewis	Law Enforcement/ Mesa County Sheriff
Andrew Matson	Lived Experience/ Colorado CURE
Tom Raynes	Prosecution/ CO District Attorneys' Council
Michael Rourke	Prosecution/ 19 th Judicial District
Glenn Tapia	Judicial Branch/ Probation Division
Dean Williams	Department of Corrections/ Executive Director
Taj Ashaheed	Lived Experience/ Second Chance Center
Maureen Cain	Defense/ State Public Defender's Office
Jeff Chostner	Prosecution/ District Attorney's Office, 10th J.D.
Christie Donner	Advocate/ CO Criminal Justice Reform Coalition
Kazi Houston	Victim Representative/ Rocky Mountain Victim Law Center
Henry Jackson	Sentencing Disparity Expert/ Metro State University
Sarah Keck	Judicial Branch/ Office of the State Court Administrator
Heather McClure	Lived Experience/ Adams County Criminal Justice Council
Dan Rubinstein	Prosecution/ District Attorney's Office, 21st J.D.
Lisa Wayne	Defense/ Private defense



Working Groups

- ***Structure WG***
Michael Dougherty, Leader
- ***Sentence Progression WG***
Dean Williams, Leader
- ***Sentencing Alternatives/Decisions/Probation WG***
Glenn Tapia, Leader
- ***Parole WG***
Kristen Hilkey, Leader



Colorado Commission on Criminal & Juvenile Justice

Sentencing Reform Task Force

Sentence Structure Working Group

Membership

Michael Dougherty, District Attorney's Office, 20th JD

Maureen Cain, Office of the State Public Defender

Christie Donner, CO Criminal Justice Reform Coalition

Valarie Finks, Victim Compensation, 1st JD DA's Office

Jes Jones, Defense/Private Defense

Tom Raynes, Colorado District Attorney's Council

Dan Rubinstein, District Attorney's Office, 21st JD.

Lisa Wayne, Defense/Private Defense



Colorado Commission on Criminal & Juvenile Justice Sentencing Reform Task Force

Sentence Structure Working Group

- Established Study Group to meet weekly.
- All recommendations to the Task Force had the unanimous support of the Study Group and full consensus of the Structure Working Group.
- All recommendations to the CCJJ come with nearly unanimous support of the Task Force members.



Sentence Structure Working Group

Areas of focus (to date)

- Promote consistency and certainty in sentences
- Simplify crimes and sentencing
- Eliminate redundant offenses
- Develop misdemeanor sentencing grid
- Thorough review of ALL offenses and sentences
- Start with misdemeanors in order to develop the baseline and foundation all the work ahead
- Reclassify misdemeanors and felonies, as appropriate



Colorado Commission on Criminal & Juvenile Justice Sentencing Reform Task Force

Sentence Structure Working Group FY21 SR #01 - Preliminary Presentation

Overview of Recommendations – 2/12/2021

- Effective date of March 1, 2022: offenses on or after....
- New sentencing grid for misdemeanors – Element 1
- Alignment of Misdemeanor offenses to the new grid
 - Approximately 600 criminal offenses
 - Title 18: the vast majority of offenses
 - Title 42: traffic/vehicle-related crimes
 - Title 1: election-related offenses
- Reclassification of misdemeanor and felony offenses



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Sentence Structure Working Group FY21 SR #01 - Preliminary Presentation

In the FY21-SR #01 draft recommendation:

- Change the misdemeanor sentencing scheme [ELEMENT 1.1, p. 1]
- Align current misdemeanor crimes [ELEMENT 1.2, p. 2]
- Reclassify felony offenses [ELEMENT 1.3, p. 3]



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Sentence Structure Working Group FY21 SR #01 - Preliminary Presentation

General criteria/approach

- Practical review and data analysis of what actually happens in criminal cases where a specific offense is charged.
- M1 Misdemeanors: direct, physical harm to a victim
- M2 Misdemeanors: crimes against property
- Unclassified misdemeanors, which are fine only – Appendix p.39
- Misdemeanor offenses with financial loss to a victim will mirror the value thresholds in the theft statute and be consistent
- Petty offenses allow for jail
- Reclassify some felony and misdemeanor offenses based on value, harm, the practical use of these offenses, and adjust sentence ranges to more consistent and reasonable ranges



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Sentence Structure Working Group *FY21 SR #01 - Preliminary Presentation*

1.1.a. Misdemeanor Sentencing Grid

Misdemeanor 1	Up to 364 days	Fine amount UPS Treatment Options Use of JBBS
Misdemeanor 2	Up to 120 days	Fine amount UPS Treatment Options Use of JBBS
Petty Offense	Up to 10 days	Fine amount UPS Use of JBBS
Infraction (fine only)	Insert fine amount	Fine amount UPS



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1.1.a. Misdemeanor Sentencing Grid

- The recommended sentencing range of up to 364 days is the most common range in all 50 states.
- Seven (7) states have less (Arizona, California, Idaho, North Carolina, Ohio, Wisconsin and Wyoming).
- Five (5) states have higher than 364 days. (Iowa, New Jersey, Pennsylvania, South Carolina and Vermont).
- **“Do we need jail for this offense? Does it ever happen? If so, how much jail do we need?”**



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Sentence Structure Working Group *FY21 SR #01 - Preliminary Presentation*

1.1.e. EFFECTIVE DATE

- **These changes will apply to offenses on or after March 1, 2022.**
- This effective date is necessary in order to allow the changes to the charge codes, case management systems, and court documents.
- Will allow for training for law enforcement, prosecutors, defense attorneys, and courts.
- This time period will, also, provide an opportunity for additional analysis and possible corrections.



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Element 1.2: Align current misdemeanor offenses

- Careful and thorough analysis completed of over 600+ offenses.
- Recommendations include the statutory citation, offense title, current crime classification and recommended crime classification.
- Classifications: M1, M2, Petty, Infraction, or no longer a crime.
- Elimination of the M3 required decisions on each one of those offenses. Should it be an M2 or a Petty?



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Sentence Structure Working Group *FY21 SR #01 - Preliminary Presentation*

Element 1.2.a: Title 18 Grid

- Title 18 is where the vast majority of felony and misdemeanor offenses can be found. So, we used a grid for this first section of 450 offenses.
- Recommendations include the statutory citation, offense title, current crime classification and recommended crime classification.
- Then, we reviewed other sources to see if we missed any offenses. Those that we missed are included in a document that follows the grid.
- See Appendix p.6 and p.25



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Element 1.2.b: Title 42

- Title 42 spreadsheet.
- Includes the statutory citation, offense title, current crime classification and recommended crime classification.
- Title 42 is often referred to as “traffic” offenses, but a significant number of the offenses listed in Title 42 do not involve the operation of a motor vehicle. For driving offenses, it is recommended that the offenses be categorized as Traffic Misdemeanor 1, 2, or infractions. For non-driving offenses, the goal is to mirror any similar offenses from Title 18.
- See Appendix p.30



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Element 1.2.b(i): Driving Under the Influence

- Considered, and rejected, a comprehensive review and overhaul of the DUI statutes.
- Recommended that the sentencing structure remain largely the same except for a revision of certain provisions related to work release/alternative sentences when extraordinary circumstances are determined by the Court.
- See Appendix p.36



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Element 1.2.c: Misdemeanor offenses contained in other titles - Title 1 through 44

- Using the grid contained in 1.1.a, it is recommended that these offenses be classified based on the level of harm caused.
- Also, for those offenses already covered in Title 18, there is a recommendation to eliminate redundant offenses from other Titles.
- Title 1 involves Elections. See Appendix p. 38. Other titles to follow.
- Titles 2 – 44 are not often charged in criminal court. These will be voted on at the next meeting of the Task Force.



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Element 1.3 Reclassification of felony offenses

- **1.3.a. False Information offenses** - Reconciling the 4 main statutes under this subject type. Analyzed what offense(s) should be charged when an individual provides false information to a member of law enforcement. Currently, it is charged in a few different ways. As part of these recommendations, the Task Force addressed that issue and sought to properly classify the related offenses based on their severity. Appendix p. 40
- **1.3.b. Felony offenses to be reclassified** – The task Force reviewed offenses and is recommending the changes summarized. Appendix p. 42
- **1.3.c. Introduction of Contraband** – Under current law, the highest charge for the Introduction of Contraband in a Class 4 felony. This applies equally to alcohol, explosives, marijuana, and guns. In an effort build a more sensible structure, the Sentencing Reform Task Force recommends:
 - Dangerous instruments: F4; items used for possible escape (and controlled substances): F6; everything else: M1. Appendix p. 47



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Sentence Structure Working Group FY21 SR #01 - Preliminary Presentation

UPCOMING MEETINGS

- Fri., Feb. 19, 2021 1:30 – 3:00 pm Q&A Session for Commissioners
- Fri., Feb. 26, 2021 1:00 – 4:00 pm Prelim Presentation Part 2
- Fri., Mar. 5, 2021 1:30 – 3:00 pm Q&A Session for Commissioners
- Fri., Mar. 12, 2021 1:00 – 4:00 pm CCJJ Vote on package

All meetings are open to the public. See the CCJJ website for
Zoom details: ccjj.colorado.gov/ccjj-meetings