



Colorado Commission on Criminal and Juvenile Justice

Minutes

February 12, 2021 / 1:00pm-4:00pm

Virtual Meeting

Commission Member Attendance

Stan Hilkey, Chair	Serena Gonzales-Gutierrez	Angie Paccione
Abigail Tucker, Vice Chair	Kristen Hilkey	Tom Raynes
Terri Carver - ABSENT	Nancy Jackson	Megan Ring
Minna Castillo-Cohen - ABSENT	Jessica Jones	Michael Rourke
Shawn Day	Bill Kilpatrick	Gretchen Russo - ABSENT
Janet Drake	Rick Kornfeld	Jennifer Stith
Valarie Finks	Matt Lewis	Glenn Tapia
Bob Gardner	Andrew Matson	Anne Tapp
Priscilla Gartner	Greg Mauro	Dean Williams
Julie Gonzales - ABSENT	Patrick Murphy	Joe Thome, <i>ex officio</i>

Guests: Michael Dougherty, Maureen Cain

Call to Order and Opening Remarks

Stan Hilkey, CCJJ Chair, Executive Director/Colorado Department of Public Safety
Abigail Tucker, CCJJ Vice Chair, representing Mental Health Treatment Providers

Mr. Hilkey called the meeting to order at 1:00 pm and thanked Commissioners for attending. Mr. Hilkey asked whether there were additions or corrections to the January minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the minutes.

Mr. Hilkey reminded the group that an additional Commission meeting is scheduled on February 26 to hear preliminary recommendations from the Sentencing Reform Task Force. Additionally, optional Q&A Sessions have been scheduled on February 19 and March 5 during which members of the Sentencing Reform Task Force and Sentence Structure Working Group will be available to answer questions regarding the proposed sentencing revisions presented at the Feb. 12 and 26 Commission meetings.

Sentencing Reform Task Force Update

Rick Kornfeld/Michael Dougherty, Task Force Co-chairs

Working Group Updates

- *Parole Working Group—Kristen Hilkey, Leader*
 The Working Group completed the review and reorganization of the Standard parole conditions within five general categories. The review of the Additional (individual) parole conditions is

underway and will be completed in the upcoming weeks. A recommendation from the Parole Working Group will be presented at the February 24 Task Force meeting.

- *Sentencing Alternatives/Decision and Probation Working Group – Glenn Tapia Leader*
Judge Clay McKisson from the 3rd Judicial District Court recently joined the Working Group. The Working Group is about to complete the first area of study related to the purpose of probation. Stakeholders have been contacted for input regarding over-supervision and probation practices.

The next areas of work include the following:

1. Evaluate probation levels of supervision in the interest of identifying proper dosage and approaches (e.g. avoiding over-supervision).
2. Examine probation practices regarding the use of conditions, length of supervision, responses to violations, and revocations.

The categories of study topics under both areas will include:

1. Sex Offender Intensive Supervision Program (SOISP)
2. Early Termination
3. Terms and Conditions
4. Outlier Offense Types on Probation
5. Costs of Supervision and Treatment
6. Stability Factors and Other Barriers
7. Revocation Petitions
8. Sentence Length
9. Specialized/Intensive Programs
10. Individualized Supervision (vs One Size Fits All)
11. Electronic Monitoring
12. Useful Public Service
13. Low Risk/Private Probation Supervision
14. (Others TBD as needed)

- *Sentence Progression Working Group—Dean Williams, Leader*
The Working Group has worked diligently over the past months to develop a recommendation that would expand release opportunities for people under CDOC supervision who are in the last phase of their sentence. There is a need to provide these returning citizens an opportunity to apply the tools they have learned inside the CDOC in a community-based, supportive and controlled environment while holding them accountable for their behavior. Many incarcerated individuals find it difficult to apply for Intensive Supervision Program-Inmate (ISP-I), many have not been accepted into local community corrections programs, and many have failed in these placements.

A draft recommendation proposes the implementation of a “Transitional Confinement Pilot Program” that would fill a transition (reentry) gap by creating another opportunity for

supported transition into the community. Similar approaches have been successfully implemented in other states.

Mr. Williams indicated that, while there was consensus on the problem, the Working Group has engaged in lengthy and robust discussions about whether more work is warranted to identify current gaps in reentry programming in the community by undertaking a more comprehensive study of the existing release options. Subsequently, Mr. Williams informed the Task Force of the Working Group's interest to continue its work. Therefore, the recommendation was not presented at the Sentencing Reform Task Force meeting on February 10 is not yet available for presentation to the Commission.

- *Sentence Structure Working Group—Michael Dougherty, WG Leader (also, TF Co-Chair)*
The Working Group established a Study Group to meet weekly. All recommendations to the Task Force had the unanimous support of the Study Group and the consensus of the Sentence Structure Working Group. The efforts involve the following approach:
 - Promote consistency and certainty in sentences
 - Simplify crimes and sentencing
 - Eliminate redundant offenses
 - Develop misdemeanor sentencing grid
 - Undertake a 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

SENTENCING REFORM TASK FORCE PRELIMINARY RECOMMENDATION PRESENTATION

Michael Dougherty, Task Force Co-chair

The Sentencing Reform Task Force offered a preliminary presentation of *Recommendation FY21-SR #01. Revise Misdemeanor Sentencing and Offenses [Statutory]* developed by the Sentence Structure Working Group. The preliminary presentation of the recommendation will require two meetings with the second part of the presentation occurring at the February 26 meeting of the Commission.

Mr. Dougherty directed Commissioners to the preliminary recommendation document and offered a presentation that can be found on the Commission website under the February 12, 2021 meeting tab, at ccjj.colorado.gov/ccjj-mtgs2021. The recommendation has the full consensus of the Sentence Structure Working Group and nearly unanimous support of the Task Force members. The highlights of the presentation follow:

Overview of the Recommendation

- Effective date of March 1, 2022 (for offenses committed on or after)
- New sentencing grid for misdemeanors

- Alignment of misdemeanor offenses to the new grid
 - Approximately 600 criminal offenses
 - Title 18: the vast majority of criminal offenses
 - Title 42: traffic/vehicle-related crimes
 - Title 1: election-related offenses
- Reclassification of misdemeanor and felony offenses

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, fine only
- Misdemeanor offenses with financial loss to a victim will mirror the value thresholds in the theft statute
- Petty offenses allow for jail time
- Reclassify some felony and misdemeanor offenses based on value, harm, the practical use of these offenses, and adjust sentence ranges to increase consistency

Recommendation FY21-SR#01. Revise Misdemeanor Sentencing and Offenses [Statutory]

[Given that the recommendation is preliminary, only the title and general descriptions of each element are provided.]

Amends, appends, deletes and replaces several provisions of statute related to misdemeanor sentencing and offenses. This recommendation comprises three elements with an extensive array of associated statutory revisions and supporting documents:

- Change the misdemeanor sentencing scheme [ELEMENT 1.1]
- Align current misdemeanor crimes [ELEMENT 1.2]
- Reclassify felony offenses [ELEMENT 1.3]

ELEMENT 1.1: Change the misdemeanor sentencing scheme

The current structure ranges are disproportionately large compared with other states and the sentencing structure requires updates and simplification in order to create more truth, certainty and consistency in sentencing.

1.1.a. New sentencing grid – In the new misdemeanor grid, the drug, traffic and criminal misdemeanors are consistent. The recommended sentencing range of up to 364 days is the most common range in all 50 states. The grid is based on extensive analysis and discussion of misdemeanor charges filed across the spectrum of misdemeanor crime-types by Colorado criminal law prosecution and defense attorneys.

1.1.b. Time credits – In an effort to address disparities in jail sentences across the state, these statutory changes would require every jail in the state to follow a similar protocol in determining

an individual's release. Specifically, based on the direction from the Governor, a jail sentence in "County X" would be generally consistent with a sentence in "County Z."

- 1.1.c. Fine ranges** – Fines are infrequently used in criminal cases, as opposed to victim restitution and other fees and surcharges. Revised fine ranges are proposed for each level of offense, consistent with the above direction from the Governor's Office. The proposed fine ranges address misdemeanor, traffic, and civil infractions.
- 1.1.d. Clarification of alternative sentencing language for misdemeanors** – The goal is to update the alternative sentencing options allowed under law and, where necessary, to recommend additional options to counties that afford defendants more opportunities for alternative sentences, specifically with regard to treatment options. Additionally, some cleanup language is included in this component.
- 1.1.e. Effective date: March 1, 2022** – This effective date is necessary to allow for necessary modifications to charge codes, case management systems, and court documents. Additionally, time is required to allow for training of law enforcement, prosecutors, and defense attorneys. This time period will also provide an opportunity for additional analysis and possible revision.

ELEMENT 1.2: Align current misdemeanor crimes

Misdemeanor crimes (criminal and traffic) require alignment with the new sentencing structure (introduced above) and elimination/revision of certain statutory language to better reflect crime definitions, practices and proper classification. More than 600 criminal offenses were reviewed using the criteria listed above.

- 1.2.a. Title 18** – A careful and thorough analysis of all the misdemeanor offenses listed in Title 18 was conducted. Generally, this proposal places crimes against persons into the M1 category and crimes against property into the M2 category. For those offenses involving financial loss to a victim, it is recommended that those offenses mirror the value thresholds outlined in the theft statute. The associated Appendix table* containing the Title 18 offenses includes the statutory citation, offense title, current crime classification and recommended crime classification.
- 1.2.b. Title 42** – 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 Infraction. For non-driving offenses, the goal is to mirror the revisions made to any similar offenses from Title 18.
- 1.2.b(i). DUI** – Based on input from local jurisdictions, it is recommended that the sentencing structure remain unchanged, except for a revision of certain provisions related to work release and alternative sentences when extraordinary circumstances are determined by the Court. This specific change is limited in scope because the DUI statutes were not amended.
- 1.2.c. Misdemeanor offenses contained in other titles - Title 1 through Title 44.** Using the grid contained in **1.1.a.**, it is recommended that the included offenses be classified based on the level of harm caused. Also, offenses in Titles 1 through 44 were eliminated if they were redundant with offenses that are also included in Title 18.

- 1.2.d. Unclassified misdemeanors with fine only** – Fine-only offenses are recommended to remain as unclassified misdemeanors. Unclassified misdemeanors with jail time as a possible sentence have been adjusted based on the analysis outlined above.

ELEMENT 1.3: Reclassify felony offense.

A limited group of offenses were identified that were obviously over or under classified based upon the experience of the practitioners and review by the Task Force. After robust discussion and analysis, it is recommended that certain felony offenses be declassified to misdemeanors based on value, harm, the practical use of these offenses, and duplication. The associated sentence ranges were adjusted for greater consistency and reasonableness.

- 1.3.a. False Information offenses** – A focused review and analysis was conducted on the offense(s) that should be charged when an individual provides false information to a member of law enforcement. Currently, this behavior is charged in a few different ways, which has been addressed, and these revised offenses have been classified based on their severity.
- 1.3.b. Felony offenses to be reclassified** – Felony offenses identified across several statutory titles were identified for reclassification to misdemeanor offenses.
- 1.3.c. Introduction of contraband** – Under current law, the highest charge for “Introduction of contraband” is a Class 4 felony. This applies equally to such contraband as alcohol, explosives, marijuana, and guns. In an effort construct a more sensible structure, “dangerous instruments” (for example, weapons or “weaponizable” items) are in Class 4 felony, items that might facilitate escape or controlled substances in Class 6 felony, and all other items are in Class 1 Misdemeanor.

DISCUSSION

Has the Sentence Structure Working Group discussed either eliminating some of the misdemeanor contraband offenses from the statutes or moving those offenses into petty offense categories?

The Working Group members discussed the low-level contraband offenses but felt they did not have the expertise to fully understand the extent of the harm caused by contraband offenses, and therefore the Working Group decided not to remove or declassify those offenses.

What other recommendation elements are expected at the February 26 Commission meeting?

The fine ranges, time credits, alternative sentencing options for misdemeanors, and misdemeanor offenses contained in other titles (Title 1 through Title 44) will be appended for preliminary presented at the February 26 Commission meeting. The Commission vote will on the entire recommendation on March 12. Commissioners were invited to attend the Q&A Sessions on February 19 and March 5 or to reach out directly to Mr. Dougherty with any questions or concerns.

Why did the Structure Working Group start with misdemeanor offenses?

Starting with misdemeanor offenses allowed the Working Group to establish the foundation to examine all the criminal offenses. The maximum sentence for misdemeanor offenses should be established prior to considering whether an offense is appropriately categorized as a misdemeanor or a felony.

Mr. Tapia discussed that C.R.S. 18-1.3-201(1)(a) provides, *A person who has been convicted of an offense, other than a class 1 felony or a class 2 petty offense, is eligible to apply to the court for probation.* This recommendation proposes an offense recategorization of petty offenses and the elimination of the category, "Class 2 Petty Offense." Mr. Tapia proposed that the Sentencing Alternatives/Decision and Probation Working Group discuss the issue of probation eligibility for petty offenses before the next Sentencing Reform Task Force meeting on February 24 for a possible amendment to the recommendation.

Mr. Hilkey thanked Mr. Dougherty for the comprehensive presentation and invited Commissioners and members of the public to attend the Q&A Sessions on February 19 and March 5. Meeting details may be found on the CCJJ website, ccjj.colorado.gov/ccjj-meetings.

Public Comment

Ms. Karen Yacuzzo, an attorney with the Judicial Department, followed up on the point regarding probation eligibility for petty offenses, emphasizing the importance of addressing this issue. As the recommendation proposes to combine Class 1 and Class 2 petty offense into a broad petty offense category, the Commission should decide whether petty offenses should or should not be eligible for probation. *[Note: As indicated above, currently, Class 1 Petty Offenses are probation eligible and Class 2 Petty Offenses are not.]* If not addressed by the Commission, the legislature will have to review every statute that references a recategorized Class 2 Petty Offense to determine whether the offense should not be probation eligible because that offense category will no longer exist.

Wrap-Up and Adjournment

Details of the next Commission meeting on February 26 will be forwarded to Commissioners by email and posted on the CCJJ website. Details to attend the virtual Q&A Sessions will be posted on the CCJJ website, ccjj.colorado.gov/ccjj-meetings.

Mr. Hilkey thanked members for their time and attention and with no further business, adjourned the meeting at 2:15 pm.