



Sentencing Reform Task Force

Preliminary Recommendation Presentation (Part 2) 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 26, 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 – Part 1 (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]



Colorado Commission on Criminal & Juvenile Justice

Sentencing Reform Task Force

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.159
- 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*

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

Element 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*

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

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. 11 and p.31



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Sentencing Reform Task Force

Sentence Structure Working Group

FY21 SR #01 - Preliminary Presentation

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.35



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

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.41



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

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. 43. Other titles follow.
- Titles 2 – 44 are not often charged in criminal court. These were voted on at the Feb. 24 meeting of the Task Force.



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Sentence Structure Working Group

FY21 SR #01 - Preliminary Presentation

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. 160
- **1.3.b. Felony offenses to be reclassified** – The task Force reviewed offenses and is recommending the changes summarized. Appendix p. 162
- **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. 167



Colorado Commission on Criminal & Juvenile Justice Sentencing Reform Task Force

Sentence Structure Working Group FY21 SR #01 - Preliminary Presentation

RECENT & 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



Colorado Commission on Criminal & Juvenile Justice Sentencing Reform Task Force

Sentence Structure Working Group FY21 SR #01 - Preliminary Presentation

Overview of Recommendations – Part 2 (2/26/2021)

- Near-final draft of entire package for March 12th vote
 - Obstruction, DUI as M1, and edits
- Misdemeanor offenses contained in other titles (Title 2 to 44).
- Fine ranges
- Alternative sentencing options for misdemeanors
- Time credits in County Jails - note



Colorado Commission on Criminal & Juvenile Justice Sentencing Reform Task Force

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

Element 1.1.e. EFFECTIVE DATE

- As a reminder, these recommendations include an extensive array of associated statutory revisions and supporting documents.
- **Effective date: *On or after March 1, 2022*** is necessary to allow the modifications necessary to charge codes, case management systems, and court documents.
- Additionally, the 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 corrections.



Colorado Commission on Criminal & Juvenile Justice Sentencing Reform Task Force

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

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

- Using the misdemeanor sentencing grid, it is recommended that the included offenses be classified based on the level of harm caused.
- Generally, crimes against persons go into the M1 category and crimes against property into the M2 category. For offenses involving financial loss to a victim, those mirror the value thresholds outlined in the Theft statute.
- Also, offenses in Titles 1 through 44 were eliminated if they were redundant with offenses that are also included in Title 18.
- Unclassified misdemeanors *with fine only* are recommended to *remain* as unclassified misdemeanors.



Colorado Commission on Criminal & Juvenile Justice Sentencing Reform Task Force

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

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

- Thorough analysis of all offenses listed in Titles 2 - 44. Many are rarely prosecuted in criminal court.
- Effort to develop a comprehensive and consistent sentencing structure.
- Full and strong consensus of the members of the Structure Working Group and overwhelming support of the SRTF.



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

- Many of these are regulatory-type offenses. Although rarely charged in criminal court, we did not delete nearly any of these.
- Used same format and approach for Title 18 and other recommendations.
- A lot of Unclassified misdemeanors.
- NOTE: M1 for Address Confidentiality, Witness Protection, Crime Stoppers, Safe2Tell.
- We will highlight issues of concern or the subject of robust discussion.



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

- Title 2: Legislative
- Title 4: Uniform Commercial Code
- Title 5: Consumer Credit Code
- Title 6: Consumer and Commercial Affairs
- Title 11: Financial Institutions
- Title 12: Professions and Occupations – firearms and background checks (p. 64, 66, 68, 69)
 - Non-transplant tissue banks and Mortuary Science Code (p. 67)
- Title 13: Courts and Court Procedure – Extreme Risk Protection Order (p. 69)



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

- Title 17: Corrections
- Title 22: Education – discrimination in employment (p.74)
- Title 28: Military and Veterans – interference with duty (p. 100)
- Title 29: Government – Local – Escort Services (p. 101)
- Title 30: Government – County – Campfires (p. 102)
- Title 31: Government – Municipal – Local elections (p. 106)
- Title 32: Special Districts
- Title 42: Vehicles and Traffic



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

- Title 7: Corporations and Associations
- Title 8: Labor and Industry
- Title 9: Safety – Industrial and Commercial
- Title 10: Insurance
- Title 14: Domestic Matters
- Title 15: Probate, Trusts, and Fiduciaries
- Title 16: Criminal Proceedings
- Title 19: Children’s Code
- Title 23: Postsecondary Education
- Title 24: Government – State



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Sentence Structure Working Group FY21 SR #01 - Preliminary Presentation

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

- Title 25: Public Health and Environment
 - Misrepresentation of material information in the preparation of a birth certificate. A birth parent who knowingly and intentionally misrepresents material information that is used to create a child's birth certificate commits the misdemeanor of misrepresentation of material information in the preparation of a birth certificate. ***(Petty)***
- Title 26: Human Services Code
- Title 27: Behavioral Health
- Title 33: Parks and Wildlife - Fires remain misdemeanors. Unclassified.
 - Operating water skis, aquaplanes, surfboards, inner tubes, or similar devices while under the influence. Any person who operates, manipulates, or rides water skis, an aquaplane, a surfboard, an inner tube, a stand-up paddleboard, or any similar device, while under the influence of alcohol, a controlled substance, or any other drug which renders him or her incapable of safely operating the device, commits a misdemeanor. ***M1 if it is motorized or it flies for others like paddleboard, surfboard, inner tube, water skis it is a civil infraction***



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

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

- Title 34: Mineral Resources
- Title 35: Agriculture
- Title 36: Natural Resources – General
- Title 37: Water and Irrigation
- Title 38: Property – Real and Personal
- Title 40: Utilities
- Title 43: Transportation
- Title 44: Revenue – Regulation of Activities



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Element 1.1.c. Fines for Misdemeanors

Fines for Misdemeanors	
Note: Fines are NOT fees or restitution	
M1	Up to \$1,000 (currently \$5,000)
M2	Up to \$750 (currently \$1,000; M3 is \$750)
M3	\$750
TM1	Up to \$1,000
TM2	Up to \$750
DM1	up to \$1,000 (currently \$5,000)
DM 2	up to \$750 (currently \$750)
DUI is a carve out so that statute remains the same.	



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Element 1.1.d. Clarification of alternative sentencing language for misdemeanors

- Update alternative sentencing options allowed under law and, where necessary, recommend additional options to counties that afford defendants more opportunities for alternative sentences, specifically with regards to treatment options.
- Additionally, some cleanup language is included in this component.



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

Element 1.1.d. Clarification of alternative sentencing language for misdemeanors

- Whereby any person sentenced to the county jail ... may be granted by the court the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:
 - ADD (VIII) BEHAVIORAL HEALTH TREATMENT; OR
 - ADD (IX) REENTRY PROGRAM.
- (b) A court may order a person who would otherwise be sentenced to the county jail to be sentenced directly to an available day reporting program, RESIDENTIAL BEHAVIORAL HEALTH TREATMENT PROGRAM, RESIDENTIAL REENTRY PROGRAM, if appropriate.



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Element 1.1.b. Jail time credits

- 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, a jail sentence in "County X" would be generally consistent with a sentence in "County Z."
- Maximum of ten days deduction for each thirty days on his or her sentence all or part of which is subject to forfeiture if the inmate is found to have violated any of the rules and regulations of the jail or has not faithfully accepted or completed the duties assigned. (7/3)



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Sentence Structure Working Group

NEXT STEPS

- 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 ENTIRE package**
- Structure Working Group members are available for questions.
- This package is the foundation for the great, high-level work ahead as the Working Group begins to analyze felonies.

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