



Colorado Commission on Criminal and Juvenile Justice

Minutes

February 26, 2021 / 1:00pm-4:00pm

Virtual Meeting

Commission Member Attendance

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

Guests: Ruth Coffman (for Dean Williams), Brad Uyemura (for Angie Paccione), Michael Dougherty & Maureen Cain (Sentencing Reform Task Force) & Phil Weiser.

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 February 12 minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the minutes.

Mr. Hilkey reminded the group that this additional meeting was scheduled to hear Part Two of the preliminary recommendation from the Sentencing Reform Task Force following the Feb. 12 (Part One) presentation. He added that an optional Q&A Session occurred on February 19 with another scheduled on March 5 during which members of the Sentencing Reform Task Force and Sentence Structure Working Group are available to answer questions regarding the preliminary recommendation, which proposes sentencing revisions.

Sentencing Reform Task Force Update

Rick Kornfeld/Michael Dougherty, Task Force Co-chairs

Working Group Updates

- *Sentence Progression Working Group – Richard Stroker, CCJJ Consultant*
 The Progression Working Group received feedback from the Sentencing Reform Task Force on February 10 during which the Sentencing Reform Task Force members concurred that the

Progression Working Group should continue its work regarding prison-to-community transition options and the related transition systems. At the Progression Working Group meeting on February 16, members revisited the areas of focus and decided to gather more information about those individuals who are approaching their mandatory release date, and eligibility and acceptance criteria for community corrections programs and the CDOC Intensive Supervision Program-Inmate. The next steps for the group will be to identify and address the gaps to help these individuals to be more successful as they move through these systems.

Mr. Williams informed the Working Group members that he asked the Task Force Co-chairs to select a new Working Group Leader who might be able to dedicate more time to these ongoing efforts. The Working Group will now meet on a monthly basis and the next meeting is scheduled on March 9.

- *Sentencing Alternatives/Decisions and Probation Working Group – Glenn Tapia Leader*

Mr. Tapia discussed that C.R.S. 18-1.3-201(1)(a) provides the following: 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. The recommendation under consideration by the Sentencing Reform Task Force proposes an offense recategorization of petty offenses and the elimination of the “Class 2 Petty Offense” category. Mr. Tapia discussed the issue of probation eligibility for petty offenses with the Sentencing Alternatives/Decision and Probation Working Group and also the Chief Probation Officers.

A strong majority of those stakeholders believe that those convicted of petty offenses, under the new proposal, should NOT be eligible for probation, agreeing that it does not represent an appropriate use of probation resources given the low severity of the offenses. Also, probation for petty offenders could result in over-supervision. The dissenting opinions argue that probation should be available as an option to help higher risk petty offenders, and that a blanket policy of broad ineligibility for petty offenders may miss opportunities for needed supervision for some individuals and limit sentencing options.

The Working Group examined data regarding the prevalence of petty offense cases on probation, the comparison of average sentence length, and average length of supervision. These data suggest that individuals spend an average of a year on probation for petty offenses. This time in probation requires significant resources, including financial costs, and potentially collateral consequences for individuals who may otherwise benefit from alternative sentencing options where formal supervision may not be necessary.

Mr. Tapia recalled that in the previous Commission meeting he initially suggested the necessity for an amendment to the recommendation. However, following recent discussions with Mr. Dougherty, Task Force Co-chair and Ms. Donner, Task Force member, a better approach would be for the Sentencing Alternatives/Decisions and Probation Working Group to examine the issue in greater depth in an attempt to find alternative solutions to probation for petty offenses.

- *Parole Working Group – Kristen Hilkey Leader*

The Parole Working Group presented their recommendation at the Sentencing Reform Task Force meeting on February 24. There was considerable discussion and feedback from Task Force members about the conditions of parole and about parole in general. The Task Force asked the Parole Working Group to discuss the concerns raised and to develop potential revisions to the recommendation at their next meeting on March 17. Consequently, the recommendation was not moved to a vote by the Task Force and will not be presented at today's Commission meeting.

SENTENCING REFORM TASK FORCE PRELIMINARY RECOMMENDATION PRESENTATION

Michael Dougherty, Task Force Co-chair & Sentence Structure Working Group Leader

The Sentencing Reform Task Force offered the second portion of the preliminary Recommendation FY21-SR#01. *Revise Misdemeanor Sentencing and Offenses [Statutory]* developed by the Sentence Structure Working Group.

Mr. Dougherty directed Commissioners to the preliminary recommendation document (distributed electronically) and offered a presentation that can be found on the Commission website under the February 26, 2021 meeting tab, at ccjj.colorado.gov/ccjj-mtgs2021. The highlights of the presentation follow:

Overview of the Part 2 Recommendation

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

Recommendation FY21-SR#01. Implement Misdemeanor Revisions

[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.¹ 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. Jail time credits** – In an effort to address disparities in jail sentences across the state, these statutory changes would require every jail 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 required to allow for necessary modifications to charge codes, case management systems, and court documents. Additionally, the time allows for training of law enforcement, prosecutors, and defense attorneys. This time period will also provide an opportunity for additional analysis and possible corrections to the statutory changes.

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 reflect better crime definition, practices and proper classification. More than 600 criminal offenses were reviewed using the criteria listed above.

- **1.2.a. Title 18 and Additional Title 18** – A careful and thorough analysis of all the misdemeanor offenses listed in Title 18 was conducted. Generally, the proposal groups crimes against persons into the M1 category and crimes against property into the M2 category. For 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 **Title 18** table of offenses includes the statutory citation, offense title, current crime classification and recommended crime classification.

¹ Seven (7) states have less (Arizona, California, Idaho, North Carolina, Ohio, Wisconsin and Wyoming) and five (5) states have higher than a maximum of 364 days for jail sentences (Iowa, New Jersey, Pennsylvania, South Carolina and Vermont.)

Additionally, certain crimes were re-written to better clarify, define, and classify the seriousness of offense and these may be found in the **Additional Title 18** table.

- **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 Infractions. 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 for Driving Under the Influence, 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 offenses

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 reclassified as misdemeanors based on value, harm, the practical response to 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 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, mailing stamps and guns. In an effort construct a more sensible structure, “dangerous instruments” (for example, weapons or “weaponizable” items) are in the category of Class 4 felony, items that might facilitate escape or controlled substances are now in the Class 6 felony category, and all other items are now Class 1 Misdemeanors.

Mr. Dougherty reminded Commissioners that members of the Structure Working Group will be available to answer any questions during the Q&A Session on March 5 from 1:30pm - 3pm. Commissioners will be asked to move the entire recommendation package to a vote at the Commission meeting on Friday,

March 12. This package is the foundation for the work ahead as the Working Group shifts its efforts to a comprehensive review of felony sentencing and felony offenses.

DISCUSSION

Public Comment

Mr. Ed Wood, representing DUID Victim Voices (representing interests of victims of drug-impaired drivers), discussed the classification of vehicular homicide and vehicular assault with serious bodily injury due to driving while impaired. Mr. Wood understood from recent discussion with members of the Sentence Structure Working Group that there is a provision to re-classify these offenses from the Misdemeanor Class to a Class 5 Felony. While Mr. Wood acknowledged these efforts, he recently provided a memo to the members of the Sentence Structure Working Group and the Sentencing Reform Task Force requesting that those offenses be classified at a higher level of felony. Mr. Dougherty welcomed Mr. Wood's input and encouraged him to continue to contribute his comments and analysis to the Sentence Structure Working Group and the Sentencing Reform Task Force members who benefit greatly from his perspective, especially during the next phase of work that will address the felony sentencing grid and felony offenses.

Mr. Ed Hill shared the loss experienced by his family due to an impaired driver and offered his strong support for Mr. Wood's comments and the request for an adjusted felony level for such offenses.

Wrap-Up and Adjournment

Details of the next Commission meeting on Friday, March 12, 2021 (1:00-4:00pm) will be forwarded to Commissioners by email and posted on the CCJJ website. To attend the upcoming virtual Q&A session on Friday, March 5, 2021 (1:30pm) and all Commission-related meetings, please find the information 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.