



Colorado Commission on Criminal and Juvenile Justice

Minutes

March 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	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 and Maureen Cain (Sentencing Reform Task Force), Phil Weiser (Attorney General)

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 reviewed the agenda and asked whether there were additions or corrections to the February 26 minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the minutes.

Mr. Hilkey reminded Commissioners that sentencing reform was the main focus of the Governor's letter to the Commission following consultation with Legislative Leadership and the Supreme Court Chief Justice. This work is important and desired by the three branches of state government. The recommendation presented today has been approved nearly unanimously by the Sentencing Reform Task Force (unanimously by the Structure Working Group) and significant stakeholder engagement has taken place, including two Q & A sessions in the past few weeks. Mr. Hilkey recently discussed the recommendation with the Governor's Office with the hope that it will be approved by the Commission. As Commissioners consider their support for this recommendation, Mr. Hilkey asked that they keep in mind the overall sentencing reform purpose of this work and vote for this recommendation as a package. Mr. Hilkey thanked all the Task Force and Working Group members, along with stakeholders, who contributed to these efforts.

Mr. Weiser thanked Commissioners for serving and commended the remarkable work of the

Commission, particularly the efforts in the area of sentencing. Mr. Weiser expressed his support and echoed that the recommendation should be approved as a package.

Sentencing Reform Task Force Update

Rick Kornfeld and Michael Dougherty, Task Force Co-chairs

In turn, Rick Kornfeld introduced Working Group Leaders to offer updates from their respective groups.

Working Group Updates

- *Sentence Progression Working Group – Greg Mauro & Kristen Hilkey, Co-leaders*
Ms. Hilkey and Mr. Mauro have been appointed co-leaders of the Sentence Progression Working Group. Mr. Mauro informed Commissioners that Mr. Williams has stepped back from his leadership role but will remain engaged in the Working Group efforts. Mr. Mauro thanked Mr. Williams for his contributions and leadership.

At the meeting on March 9, the Working Group reiterated that too many people return to prison after release, and that the end of a sentence should look different from the beginning of a sentence. The Working Group heard presentations about the existing paths/systems of reentry: Community Corrections, Parole and the CDOC Intensive Supervision Program-Inmate. The focus of these presentations was to examine system eligibility, entry processes and acceptance criteria.

The following questions were asked:

- *Why are there approximately 1400 incarcerated individuals approaching their mandatory release date who have not already moved into one of these reentry systems?*
- *Were these individuals referred to community corrections and denied, or did they refuse to apply to the program, or were they placed in the program and subsequently failed?*
- *What is the relationship between these reentry paths? Where are the reentry system gaps?*
- *What is (or should be) the profile of those individuals in each reentry path?*

The next steps for the group will be to review data and identify the gaps to help these individuals be more successful as they move through these systems.

- *Sentencing Alternatives/Decisions and Probation Working Group – Glenn Tapia, Leader*
Mr. Tapia informed Commissioners that the Working Group completed the first area of study related to the purpose of probation.

The next priority will be to discuss the issue of probation eligibility for petty offenses due to the recategorization of petty offenses and the elimination of the "Class 2 Petty Offense" category proposed by the recommendation presented today (see below). The Working Group will 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 a draft recommendation to members of the Sentencing Reform Task Force at the February 24 meeting. 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 some of the concerns raised and potentially revise 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.

- *Structure WG--Michael Dougherty, Leader*
The Structure Working Group is completing the review of misdemeanor offenses in *Title 39, Taxation*, that will be presented for a vote at the April 9 Commission meeting. The next area of focus for the Working Group will be the review of sentencing grids for felony offenses.

Public Comment

Mr. Ed Wood, representing DUID Victim Voices (representing interests of victims of drug-impaired drivers), discussed that Sentencing Reform Task Force Recommendation FY21-SR#01 includes a provision to re-classify *vehicular homicide and vehicular assault with serious bodily injury due to driving while impaired* from a misdemeanor classification to a Class 5 felony. While Mr. Wood acknowledged this effort, he recognized and appreciated that the Sentence Structure Working Group agreed to consider higher levels of felony for these offenses during the next phase of work that will address the felony sentencing grid(s) and felony offenses. Mr. Wood will remain engaged and will continue to offer his comments and perspective to the Sentence Structure Working Group and the Sentencing Reform Task Force.

SENTENCING REFORM TASK FORCE: FINAL RECOMMENDATION PRESENTATION

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

Mr. Dougherty directed Commissioners to the final Recommendation FY21-SR#01, *Revise Misdemeanor Sentencing and Offenses [Statutory]* developed by the Sentence Structure Working Group and approved by the Sentencing Reform Task Force (distributed electronically). The recommendation, if approved, by the Commission can be found on the Commission website under the March 12 meeting tab, at ccjj.colorado.gov/ccjj-mtgs2021.

Mr. Dougherty noted that the revision of *Title 33, Parks and Wildlife*, has been completed and is included in this final recommendation. Mr. Dougherty publicly thanked the representatives from Colorado Parks and Wildlife who provided valuable input and supported the *Title 33* revisions.

Mr. Dougherty applauded the commitment and dedication of the Sentencing Reform Task Force and the Sentence Structure Working Group members and reiterated that this package comes with a strong consensus of support from members with different perspectives who represent different interests in the criminal justice system. Mr. Dougherty encouraged Commissioners to view this recommendation as a package. This package is the foundation for the work ahead as the Working Group shifts its efforts to a comprehensive review of felony offenses.

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

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 sentencing ranges are disproportionately large compared with other states. Also, the sentencing structure requires both updating and simplification 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 an extensive analysis and discussion of misdemeanor charges filed by Colorado prosecution and defense attorneys.
- **1.1.b. Jail time credits.** In an effort to address disparities in time served across the state, these statutory changes require every jail to follow a similar protocol in determining an individual's release date. 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 direction from the Governor. 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 in counties that afford defendants more opportunities for alternative sentences, specifically with regard to treatment. Additionally, some cleanup language is included in this component.
- **1.1.e. Effective date: March 1, 2022.** This effective date allows time to implement the necessary modifications to charge codes, case management systems, and court documents. Additionally, the time will allow for training of law enforcement, prosecutors, and defense attorneys. This delay will also provide an opportunity for additional analysis and possible corrections.

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 clarify crime definitions, practices and proper classification. More than 1000 criminal offenses were reviewed.

- **1.2.a. Title 18 and Additional Title 18.** A careful and thorough crime severity analysis was conducted of all the misdemeanor offenses listed in Title 18. Generally, the recommendation puts crimes against persons into the M1 category and crimes against property into the M2 category. For offenses involving financial loss to a victim, those offenses mirror the value thresholds outlined in the theft statutes. The associated Appendix **Title 18** table of offenses includes the statutory citation, offense title, current crime classification and recommended crime classification.

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

- **1.2.b. Title 42 and Additional Title 42.** Title 42 is often referred to as traffic offenses, but a significant number of the offenses 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. Subsequent to the initial review of Title 42 offenses, a subsequent review yielded additional offenses in this title that were compiled into another table, **Additional Title 42** offenses.
- **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 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 different ways, so this has been addressed here, and the offenses have been reclassified based on severity.
- **1.3.b. Felony offenses to be reclassified.** Felony offenses identified across several statutory Titles were identified for reclassification as 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, postage stamps and guns. In an effort to construct a more sensible structure, "dangerous instruments" (for example, weapons or "weaponizable" items) are a class 4 felony, items that might facilitate escape, and controlled substances are a class 6 felony, and all other items are class 1 misdemeanors.

DISCUSSION

Commissioners discussed the Commission policy regarding members' roles and responsibilities for legislative recommendations and highlighted that, while Commission member legislators are encouraged to refrain from actively working to defeat or substantively change a bill derived from a CCJJ

approved recommendation, the policy does not infringe on a legislator's responsibility to cast votes in the legislature or its committees according to his/her beliefs.

Mr. Hilkey requested a motion and second to approve the amended recommendation including Title 33. Motions were provided and, with no further discussion, Mr. Hilkey called for a supermajority vote [Required for the approval of all Commission recommendations, the supermajority threshold is 66% of members present and voting, combining votes for the A and B alternatives from the following: A = I support it B = I can live with it, or C = I do not support it]

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

A: 24 B:0 C: 0 Abstentions: 2 Absent: 3

Recommendation FY21-SR #01 was APPROVED

Mr. Hilkey observed that the passage of this recommendation is the result of significant work and thanked Task Force and Working Group members for their time and contributions.

Wrap-Up and Adjournment

Commissioners may be asked to vote on revisions of misdemeanor offenses in the pending *Title 39: Taxation* section of Recommendation FY21-SR #01 at the next Commission meeting.

Details of the next Commission meeting on Friday, April 9, 2021 (1:00-4:00pm) will be forwarded to Commissioners by email and posted on the CCJJ website. To attend 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.