



Colorado Commission on Criminal and Juvenile Justice

Minutes

April 9, 2021 / 1:00pm-4:00pm

Virtual Meeting

Commission Member Attendance

Stan Hilkey, Chair	Serena Gonzales-Gutierrez - ABSENT	Angie Paccione
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
Janet Drake	Rick Kornfeld	Jennifer Stith
Valarie Finks	Matt Lewis	Glenn Tapia
Bob Gardner – ABSENT	Andrew Matson	Anne Tapp
Priscilla Gartner – ABSENT	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)

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 1:02 pm and thanked Commissioners for attending. Mr. Hilkey reviewed the agenda and asked whether there were additions or corrections to the March 12 minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the minutes.

UPDATE: Legislative-related Recommendations

Joel Malecka, Colorado Department of Public Safety

Mr. Hilkey introduced the Department of Public Safety Legislative Liaison, Joel Malecka, and asked him to provide an update on the status of bills related to Commission recommendations and other criminal justice-related bills.

Mr. Malecka directed Commissioners to a handout that can be found at ccjj.colorado.gov under the April 9, 2021 meeting.

UPDATE: Sentencing Reform Task Force
Rick Kornfeld and Michael Dougherty, Task Force Co-chairs

The activities of the Task Force were presented via updates from three of its four Working Groups that are summarized immediately below. Two Working Groups (Parole & Sentence Structure) offered recommendation-related presentations that are detailed subsequently in these minutes.

Working Group Updates

- *Sentence Progression Working Group – Greg Mauro & Kristen Hilkey, Co-leaders*

At the meeting on April 6, the Working Group welcomed new members including CCJJ Vice-Chair Dr. Tucker who represents mental health providers, a representative from the Department of Corrections and a representative from a non-profit reentry program. The Working Group has continued to hear presentations about the existing reentry transition paths: Community Corrections, Parole and the CDOC Intensive Supervision Program-Inmate (ISP-I). The initial focus has been on incarcerated individuals who are approaching their mandatory release date and are not participating in these programs. The focus of these presentations was to examine eligibility criteria, referral processes and program acceptance criteria. A data study group was convened to review existing data and identify additional data elements to address the issues under consideration. The next steps for the group will be to review data and to identify and prioritize areas of work to improve the options and processes that will enhance the success of individuals transitioning through these systems.

- *Sentencing Alternatives/Decisions and Probation Working Group – Abigail Tucker, WG Member*

The Working Group has continued 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 *Recommendation FY21-SR #01. Revise Misdemeanor Sentencing and Offenses*, that was approved by the Commission at the March 12 meeting. The Working Group agreed that petty offenses should not be eligible for probation and will discuss alternative solutions for these defendants to comply with court requirements without probation supervision.

- *Sentence Structure Working Group—Rick Kornfeld, Task Force Co-Chair*

Mr. Kornfeld mentioned the shooting tragedy that occurred at the Boulder supermarket last month and acknowledged Mr. Dougherty’s commitment to the victims. Mr. Kornfeld expressed how grateful he is to work with Mr. Dougherty (who serves as Task Force Co-chair and Leader of the Sentence Structure Working Group).

Mr. Hilkey also commended the immediate response by public safety officials and partners to the tragedy and, in its wake, how impressive the crime scene management and investigation has been and how the community has offered a comprehensive response to the needs of victims and their families. Commission members supported and echoed Mr. Kornfeld and Mr. Hilkey’s comments.

The Sentence Structure Working Group will request a motion to revise *Recommendation FY21-SR #01. Revise Misdemeanor Sentencing and Offenses* to include additional misdemeanor offenses from *Title 39: Taxation* and from *Miscellaneous Misdemeanor Offenses* identified during the preliminary drafting process. This will complete the initial efforts by the Working Group on the revision of misdemeanor sentencing and offenses. The next area of focus will be the review of the felony sentencing grids and felony offenses.

Public Comment

No members of the public offered comment.

SENTENCING REFORM TASK FORCE:

Reconsideration & Amendment of Recommendation FY21-SR #01

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

The Sentencing Reform Task Force requested the reconsideration of the previously approved recommendation, *FY21-SR #01. Revise Misdemeanor Sentencing and Offenses [Statutory]* (approved at the March, 12 2021 Commission meeting). The Task Force proposed an amendment comprising two sets of misdemeanor offenses not previously included in the recommendation.

Mr. Dougherty directed Commissioners to two handouts (distributed electronically): misdemeanor offenses identified in *Title 39: Taxation* and offenses labeled, "*Misdemeanor and Petty Offenses - Miscellaneous*" (M1, M2, M3 and Petty Offenses) The latter set of misdemeanor offenses were identified by Legislative Council staff from various statutory titles during the preliminary drafting process. The handouts are represented under those respective labels in the amended recommendation that can be found on the Commission website (in "Meetings: 2021," under the April 9, 2021 meeting tab at, ccjj.colorado.gov/ccjj-mtgs2021 OR in "Recommendations" at, ccjj.colorado.gov/ccjj-recs).

DISCUSSION

The Commission discussed a specific misdemeanor offense included in the "miscellaneous offenses" table that was noted as still "under deliberation" by the Sentence Structure Working Group. Specifically, §18-3-402(3), C.R.S., *Sex Assault*.¹ Mr. Dougherty explained that the offense was previously classified as a Class 1 Misdemeanor and that, based on the nature and seriousness of the offense and considering the changes proposed by *Recommendation FY21-SR#01* to eliminate the extraordinary risk enhancement, the Working Group had reached consensus to modify the offense to a Class 6 Felony (The text had simply not been updated). Mr. Dougherty was granted permission to make that simple correction of the amendment document.

There was no further discussion of either of the two misdemeanor offense documents.

¹ Specifically, "(e) At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim;" [§18-3-402(1)(e), C.R.S].

Mr. Hilkey requested a motion to reconsider *Recommendation FY21-SR #01. Revise Misdemeanor Sentencing and Offenses [Statutory]*. The motion and second to reconsider were offered and, with no further discussion, and pursuant to Commission protocol, Mr. Hilkey called for a majority vote to reconsider [*The majority vote threshold is 51% of members present and voting, A= I support it or B= I do not support it*]

RECONSIDERATION VOTE: FY 21-SR #01

A: 21 B: 0 Abstentions: 2 Absent: 6

The motion to reconsider was APPROVED

Mr. Hilkey requested a motion and second to approve *Recommendation FY21-SR #01. Revise Misdemeanor Sentencing and Offenses [Statutory]* with amendments comprising *Title 39: Taxation and Misdemeanor and Petty Offenses - Miscellaneous*. Ms. Hilkey moved and Ms. Paccione seconded the motion. With no further discussion, and pursuant to Commission protocol, 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, which combines 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]

With amendments

A: 20 B:1 C: 0 Abstentions: 2 Absent: 6

Recommendation FY21-SR #01 was APPROVED

SENTENCING REFORM TASK FORCE:

Preliminary Recommendation Presentation - FY21 SR #02

Kristen Hilkey, Parole Working Group Leader

On behalf of the Sentencing Reform Task Force, Ms. Hilkey offered a preliminary presentation of *Recommendation FY21-SR #02. Update the Standard Conditions of Parole and Revise the Additional Conditions of Parole [Statutory; Policy]* developed by the Parole Working Group. Ms. Hilkey started her presentation by acknowledging the work and dedication of the members of the Parole Working Group.

Ms. Hilkey directed Commissioners to the preliminary recommendation document and offered a presentation that can be found on the Commission website (in "Meetings: 2021," under the April 9, 2021 meeting tab at ccjj.colorado.gov/ccjj-mtgs2021). The recommendation had the unanimous support of the Task Force members. The highlights of the presentation follow:

The Parole Working Group goals:

- Examine the standard and individual conditions of parole (the standard conditions apply to everyone; individual conditions are in addition to the standard conditions, and are selected by the parole board)
- Examine parole practices related to supervision length
- Explore risk information and protective factors as they relate to parole supervision options
- Examine parole eligibility options

- Abate disparate treatment/impact

Working Group members' perceptions:

- Every standard condition was viewed as warranted by the multi-disciplinary working group that included criminal justice professionals, victim representatives, and those with lived experience.
- Despite every condition being warranted, the current standard conditions of parole, as written, appear overwhelming and many conditions are ill-defined and/or non-specific.
- The standard conditions naturally fell into four categories.

Final Modifications to the Standard Conditions of Parole

- Condense conditions into the four categories;
- Reorder existing sections of statute (§17-2-201, C.R.S.);
- Eliminate the following prohibitions as a standard condition:
 - Parolee association with individuals with a criminal history
 - Use of alcohol (address in individual conditions, if necessary)
 - Use of medical marijuana (address in individual conditions, if necessary)
 - Use of recreational marijuana (address in individual conditions, if necessary);
- Add the following as a standard condition:
 - Requirement to follow all protection orders.

Additional conditions related to substance use

- Substance Abuse Program: Parolee shall participate in a substance abuse needs assessment and follow recommended treatment at assessed level.
- No Alcohol: Parolee shall not possess or use alcohol in any form.
- No Recreational Marijuana: Parolee shall not possess or consume recreational marijuana in any form.

Ms. Hilkey clarified that, while provisions that prohibit the use of alcohol and marijuana are removed from the standard conditions of parole, these can still be applied using the individual conditions.

Individual conditions related to mental health

- Mental Health Program: Parolee shall participate in a mental health needs assessment and follow recommended treatment, which may include taking prescribed medication(s).
- Anger Management Program: Parolee shall participate in and successfully complete an anger management program.
- Cognitive Behavioral Therapy (CBT) Program: Parolee shall participate in and successfully complete a cognitive behavioral therapy (CBT) program.

Additional conditions related to special circumstances

- Domestic Violence Program: Parolee shall participate in an assessment by a service provider who has been approved by the Domestic Violence Offender Management Board (DVOMB) and, if recommended, successfully complete domestic violence treatment.
- Sex Offender Program: Parolee shall participate in an assessment by a service provider who has been approved Sex Offender Management Board (SOMB) and, if recommended, successfully complete sex offender treatment.

Additional conditions related to transition

- Community Corrections as a Condition of Parole (COP) Bed: Parolee, if approved, shall enter and successfully comply with all conditions to complete a community corrections program as a condition of parole (COP).

Additional conditions related to driving

- No Driving, No Discretion: Parolee shall not drive until such time that their behavior (i.e. substance use) would not place the public at risk if operating a motor vehicle.
- Interlock Device: Parolee shall utilize an interlock system, if permitted to drive, throughout duration of parole.

Additional conditions related to electronic monitoring

- Electronic Monitoring: Parolee shall participate in electronic monitoring.
- Electronic Monitoring: Parolee shall participate in electronic monitoring at the discretion of the Community Parole Officer, based on risk/needs assessment, for a period of up to 180 days.
- Electronic Monitoring: Parolee shall participate in electronic monitoring throughout the duration of parole, per §18-1.3-1004, C.R.S.

Additional conditions related to contact and ICE

- No Contact Order: Parolee shall have no contact with victim(s), minors, gangs/gang members, co-defendants, and subjects of restraining/protection order.
- No Return to the United States if deported.

Recommendation FY21-SR#02. Update the Standard Conditions of Parole and Revise the Additional Conditions of Parole [Statutory; Policy]

[Given that the recommendation is preliminary, only the title and the general description of the recommendation are provided here.]

Amend §17-2-201, C.R.S., to update and clarify the Standard Conditions of supervision for individuals on parole. The Standard Conditions of Parole apply to all individuals released under parole supervision. The existing Additional Conditions of Parole also have been revised for the Colorado State Board of Parole [“the Board”]. Both sets of conditions have been updated to clarify expectations, simplify language, increase comprehension, and remove duplication. Because Additional Conditions are not specified in statute, no statutory language regarding Additional Conditions is required in the recommendation.

In this recommendation, the following substantive changes are made to the Standard Conditions:

- The mandatory urinalysis-testing requirement is moved to the Individual Conditions.
- The expectation that an individual on parole not associate with people with a criminal record is eliminated.
- A requirement is added that mandates that the individual comply with all terms of any civil protection orders.

DISCUSSION

Commissioners reviewed and discussed the two sets of revised conditions and asked about parole revocation when conditions are violated. The following points were addressed:

- In response to a question regarding revocation for the violation of conditions, Ms. Hilkey shared that the Parole Board does not have the authority to revoke parole due to most violations of conditions but that intermediate sanctions can be applied, including the application of different, enhanced and/or additional conditions.
- The preliminary recommendation proposes that the notification for the consequences of violation of conditions be removed from the parole agreement provided to parolees. While the sample agreement reflected this change, the proposed statutory language failed to reflect this change. That revision was made to the associated statutory language.
- A few clarifying edits were made to the text of the preliminary recommendation regarding ability to pay by parolees (regarding supervision fees and restitution payments) and regarding the use and possession of legal versus illegal substances.

An optional Question & Answer Session on this recommendation will be scheduled on April 23, 2021 at 3pm during which members of the Sentencing Reform Task Force/Parole Working Group will be available to answer questions regarding the proposed revisions. The meeting details will be forwarded to Commissioners and posted on the Commission website calendar.

WRAP-UP AND ADJOURNMENT

Mr. Tapia and Mr. Thome shared that the Governor's Office directed consultants from Health Management Associates (HMA) to the Commission to present on the new Behavioral Health Administration (BHA; see, cdhs.colorado.gov/behavioral-health-reform). This is an effort currently housed in the Department of Human Services to streamline and consolidate behavioral health funding and initiatives. Staff from HMA and CDHS will present before the end of April and the meeting details will be disseminated to Commissioners and posted on the CCJJ Meetings page.

Details of the next regular Commission meeting (Friday, May 14, 2021; 1:00-4:00pm), will be forwarded to Commissioners by email and posted on the Commission website. Information on all Commission-related meetings are available on the Commission website at, ccjj.colorado.gov/ccjj-meetings.

Mr. Hilkey thanked members for their time and attention and, with no further business, adjourned the meeting at 2:40 pm.