



Colorado Commission on Criminal and Juvenile Justice

Minutes

January 14, 2022 / 1:00pm-4:00pm

Virtual Meeting

Commission Member Attendance

Stan Hilkey, Chair	Priscilla Gartner	Steve O'Doriso
Abigail Tucker, Vice Chair	Julie Gonzales – ABSENT	Angie Paccione - ABSENT
Taj Ashaheed	Serena Gonzales-Gutierrez - ABSENT	Tom Raynes - ABSENT
Terri Carver - ABSENT	Kristiana Huitron	Megan Ring
Minna Castillo-Cohen	Jessica Jones - ABSENT	Michael Rourke
Shawn Day	Bill Kilpatrick	Gretchen Russo
Chad Dilworth	Rick Kornfeld	Glenn Tapia
Janet Drake	Greg Mauro	Dean Williams - ABSENT
Valarie Finks	Derek McCoy	<i>Sheriff (appointment pending)</i>
Bob Gardner - ABSENT	Patrick Murphy	Joe Thome, <i>ex officio</i>

Substitutions: Brad Uyemura for Angie Paccione; Ruth Coffman for Dean William

Call to Order and Opening Remarks

Stan Hilkey, CCJJ Chair, Executive Director/Colorado Department of Public Safety

Mr. Hilkey, Commission Chair and Executive Director of the Department of Public Safety, called the meeting to order at 1:05 pm and thanked Commissioners and members of the public for attending. Mr. Hilkey reviewed the agenda and reminded Commissioners to save the date for an additional Commission meeting on Friday, January 28, 2022 to consider recommendations from the Sentencing Reform Task Force.

Mr. Hilkey announced that Ms. Kristen Hilkey resigned from her position as Chair of the CO State Board of Parole. Mr. Hilkey relayed a message from Ms. Hilkey who expressed her gratitude for the opportunity to serve on the Commission. In turn, Mr. Hilkey, joined by Commissioners, thanked Ms. Hilkey for her contributions and service and wished her farewell. Mr. Hilkey acknowledged the attendance of Mr. Chad Dilworth (Vice Chair, CO State Board of Parole) and welcomed him to his first meeting.

Mr. Hilkey solicited any additions or corrections to the December 10, 2021 minutes. A motion was offered and seconded to approve the previous minutes; Commissioners unanimously approved the December 10 minutes.

UPDATE: SENTENCING REFORM TASK FORCE (SRTF)

Rick Kornfeld & Michael Dougherty, Task Force Co-chairs

Mr. Kornfeld outlined the agenda items from the Sentencing Reform Task Force (SRTF) to include updates from the two active Working Groups, three preliminary recommendation presentations, and a final recommendation presentation.

Mr. Kornfeld informed Commissioners that he and Mr. Dougherty had drafted an editorial article for the Opinion page of the *Denver Post* that will be published over the coming weekend. Given the recent media attention regarding Colorado sentencing issues (*for example, the case of Rogel Aguilera-Medero whose 110-year sentence was commuted to 10 years by Gov. Polis*), Mr. Dougherty and Mr. Kornfeld felt it was important to share with the public that the Sentencing Reform Task Force and the Commission are engaged in ongoing sentencing reform efforts, which began last year with the passage of *Senate Bill 2021-271. Misdemeanor Reform*.

SRTF WORKING GROUPS

- ***Sentence Structure Working Group - Michael Dougherty, WG Leader***

UPDATE. Mr. Dougherty reported that members of the Working Group have completed technical revisions pertaining to *Senate Bill 2021-271. Misdemeanor Reform*, which has an implementation date of March 2022. As previously discussed, these technical revisions were necessary to correct errors and oversights in the bill, but that none of these will be forwarded through the Commission process.

A more substantive change to *Senate Bill 2021-271* relates to Possession of Weapons by Previous Offenders (POWPO). Mr. Dougherty explained that POWPO previously resulted in prosecution of anyone with a previous felony conviction who was found in possession of a firearm. Last year, statute was revised to limit the list of any previous felony offenses to felonies with a public safety impact. Upon further review, the Working Group, collaborating with CDAC, Ceasefire Colorado and other stakeholders, agreed on additional felony offenses to include in the POWPO statute. Another change in *Senate Bill 2021-271* was to add Second Degree Burglary of a Dwelling to the list of Victim Rights Act (VRA) offenses which would require prison for someone who uses or threatens the use of a firearm in that second offense. A recommendation regarding these POWPO revisions was presented to the Sentencing Reform Task Force on January 12 and, if approved by the Task Force at the January 26 meeting, Commissioners will receive a preliminary presentation at the extra meeting of the Commission on January 28, 2022.

As mentioned at previous Commission meetings, the group continues its review of all felony offenses, classifying them into two categories: "General Felony" and "Non-General Felony" (*sex-related and drug-related offenses will undergo a separate review*). The group initiated its work on "General Felonies," assigning each crime to one of five proposed felony classifications (GF1 to GF5), relative to the current six felony class levels. The corresponding sentencing ranges for each felony level is still under review.

Mr. Dougherty noted that the review of the sentencing structure will continue through 2022 along with an analysis of such topics as habitual sentences [*enhanced sentences applicable for individuals convicted of prior felony offenses*], mandatory consecutive sentences [*sentences for offenses that prohibit the application of concurrent sentences*], and discretionary parole [*allows the release of inmates to parole who meet a statutory parole eligibility date, but prior to their mandatory release date*].

PRELIMINARY PRESENTATION. Mr. Dougherty described that the Sentencing Reform Task Force was offering three preliminary recommendations developed by the Sentence Structure Working Group. He directed Commissioners to the draft recommendations forwarded electronically prior to the meeting and reviewed the elements of the recommendations provided below.

[Because these recommendations are preliminary, only the title and general description are provided.]

PRELIMINARY RECOMMENDATIONS:

Recommendation FY22-SR #06. Revise Penalties for Unauthorized Practice of Certain Professions or Occupations [Statutory]

Amend §12-20, C.R.S., to include a new statutory section with additional professions, the practice of which without a license, should be a felony due to a public safety risk.

These professions include:

- The profession of an electrician, as regulated under article 115 of this title 12;
- Professional engineering, as regulated under article 120 of this title 12;
- Architecture, as regulated under article 120 of this title 12;
- Audiology, as regulated under article 210 of this title 12;
- Dentistry, as regulated under article 220 of this title 12; [dental hygienist removed]
- Direct-entry midwifery, as regulated under article 225 of this title 12;
- Medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as regulated under article 240 of this title 12;
- Practical or professional nursing, as regulated under article 255 of this title 12; [practical removed]
- Nursing home administration, as regulated under article 265 of this title 12;
- Optometry, as regulated under article 275 of this title 12;
- Pharmacy, as regulated under article 280 of this title 12;
- Respiratory therapy, as regulated under article 300 of this title 12;

Recommendation FY22-SR #07. Revise Value Basis for Theft of Public Benefits [Statutory]

Amend § _____, C.R.S., related to theft of public benefits to clarify that the amount of theft is based on the amount of benefits paid for which the person is not legally entitled. More specifically, the level of criminal offense is based on the amount of benefits received by the person for which the person is not entitled and does not include the amount the person is entitled to receive.

Recommendation FY22-SR #08. Add Prison as an Intermediate Sanction Confinement Facility [Statutory]

Amend §17-2-103, C.R.S., to grant statutory authority to the executive director of the department of corrections to confine parolees in a prison facility, in addition to utilizing jails, for the purpose of confinement as an intermediate sanction for up to 14 days without filing a complaint seeking revocation of parole. This will give the department of corrections and parole officers additional options for sure and swift intermediate sanctions.

DISCUSSION

Dr. Tucker asked for clarification regarding *Recommendation FY22-SR#08. Add Prison as an Intermediate Sanction Confinement Facility* and expressed concern about the possible unintended consequences of placing individuals in a prison facility versus a county jail. Dr. Tucker also asked whether secure treatment facilities would be considered as options for the purpose of confinement.

Mr. Dougherty explained that County jails often operate at capacity and lack the beds to accommodate this population. This proposal will provide another option for short-term

confinement (up to 14 days) for parolees who commit technical violations when jail placement is not possible. It is understood that secure treatment facilities might also be used, providing an agreement is in place with the Department of Corrections.

• ***Sentencing Alternatives/Decisions & Probation Working Group – Glenn Tapia, WG Leader***

UPDATE. Mr. Tapia reported that the Working Group continues to address the areas listed in the “Scope of Work” approved by the Sentencing Reform Task Force. The current focus is on an evaluation of supervision practices to determine the proper “dosage” and method of supervision to avoid over- or under-supervision. The proper handling of petty offenders, discussed at previous Commission meetings, is being folded into the study of supervision practices. Additionally, members are exploring concerns regarding the intensive supervision program for sex offenders. Following the study of these topics, the Working Group plans to tackle issues surrounding probation revocation and the impact on prison population; services for and supervision of those with Traumatic Brain Injury; and supervision, treatment, and/or outcome disparities in the probation population.

FINAL PRESENTATION. Mr. Tapia reminded members that the preliminary presentation of this recommendation was provided at the December 10, 2021 meeting of the Commission. This final recommendation was forwarded electronically to Commissioners prior to the meeting. Mr. Tapia provided brief overview of the recommendation for final consideration and discussion by members.

Public Comment

Public comment was solicited, but none was offered in advance of the final consideration of and vote on *Recommendation FY22-SR #05*.

FINAL RECOMMENDATION:

Recommendation FY22-SR #05. Implement Individualized Behavioral Responses to Probation Violations [Statutory]

Amend §16-11-205, §16-11-209, §16-11-2?? (new section), §16-11.5-101, §16-11.5-102(1)(c), §16-11.5-105, §18-1.3-102, and any other required conforming revisions to statute to reflect contemporary best practice guidelines that serve people on probation and deferred sentences, especially those diagnosed and/or dealing with substance use disorders. Such practices provide corresponding systems that include a range of individualized and structured behavioral responses to substance use and other behaviors that violate typical conditions of probation. This recommendation specifically prioritizes modern methods of rehabilitative and reparative justice that align with the statutory purposes of probation (*included in CCJJ Recommendation FY22-SR #01. Define the Purposes of Probation*) rather than the finite and limited responses in current statute that reflect retributive, punitive, and deterrent-based justice methods.

DISCUSSION

Mr. Tapia reminded Commissioners that a specific pending statutory provision was still at issue within the recommendation.¹ He explained that Sentencing Reform Task Force members were evenly split on

¹ *Rec. FY22-SR #05* is available under the Jan. 14, 2022 meeting tab on the Commission website at, ccjj.colorado.gov/meetings/meetings-2022. In *Rec. FY22-SR #05*, see on page 3...§16-11-205(d) “...protect the safety of any other person...”

whether probation officers should be authorized to arrest probationers to prevent potential harm *only* to self. Of course, arrest to prevent potential harm to others or the community was not in question. Probation officers would still have the authority to revoke probationers for the commission of a crime or if there is public safety concern.

Commissioners generally agree that individuals experiencing a behavioral health crisis should not be criminalized via an arrest and that jail is not an appropriate or effective response for probationers who experience a behavioral health crisis. Nonetheless, some Commissioners were concerned that this eliminated a “last resort” response in communities with limited resources. Several alternate resources were discussed, including mental health crisis hotlines and emergency mental health holds, which allow a person to be involuntarily held for treatment and evaluation. Under current statute, law enforcement officers have the ability to initiate a mental health hold procedure.

Mr. Hilkey solicited a motion to amend FY22-SR#05. *Implement Individualized Behavioral Responses to Probation Violations [Statutory]*. Ms. Ring moved to amend the proposed statutory language of the recommendation at §16-11-205(d), specifically, “...protect the safety of any OTHER person....” Mr. Tapia seconded the motion.

The process for supermajority voting on a final recommendation was explained. To pass, a Commission recommendation requires approval by 66% of the members, combining the A and B alternatives of the following: A = I support it; B= I can live it; or C = I do not support it. With no further discussion, the vote was conducted and yielded the following result.

VOTE TO AMEND: In FY22-SR #05, insert the word “other” in the proposed statutory language at 16-11-205(d).

A: 13 B: 1 C: 5 Abstention: 1

The amendment was APPROVED

Mr. Hilkey asked whether there were clarifying questions regarding the recommendation as a whole. Seeing none, Mr. Hilkey requested a motion to approve the recommendation with amendment. A motion to approve *Rec. FY22-SR #05* was offered and seconded. The process for supermajority vote was conducted as described above. With no further discussion, the vote was conducted and yielded the following result:

FINAL VOTE: FY22-SR #05. Implement Individualized Behavioral Responses to Probation Violations [Statutory] (with amendment)

A: 19 B: 0 C: 0 Abstention: 1

Recommendation FY22-SR #05 was APPROVED

WRAP-UP AND ADJOURNMENT

Mr. Hilkey thanked Commissioners for their attention and participation. With no further business, Mr. Hilkey adjourned the meeting at 3:25 pm.

**The next meeting of the Commission is Friday, January 28, 2022 at 1:00 pm.
Information on all Commission-related meetings can be found at, ccjj.colorado.gov/ccjj-meetings.**