



Colorado Commission on Criminal and Juvenile Justice

Minutes

January 28, 2022 / 1:00pm-3:00pm

Virtual Meeting

Commission Member Attendance

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

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.

FY 2021 CCJJ ANNUAL REPORT

Jack Reed, Division of Criminal Justice

Mr. Reed presented highlights of the *CCJJ Fiscal Year 2021 Annual Report*. This Commission report can be found on the CCJJ website at, <https://ccjj.colorado.gov/ccjj-reports>.

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 Working Groups (WG), the presentation of three recommendations for final consideration and vote, and one preliminary recommendation presentation. Mr. Kornfeld and Mr. Dougherty shared that, at the previous SRTF meeting, the group discussed the possible re-activation of the Sentence Progression Working Group that was placed on hiatus in July 2021. Task Force members will discuss the scope of work and membership at the next Task Force meeting on February 9, 2022.

Mr. Hilkey offered that because problems arose due to the interconnected nature of the previous efforts by the Sentence Structure and Sentence Progression Working Groups, the scope of work and goals for each group should first be clearly defined, particularly regarding the role of discretionary parole.

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

UPDATE. In the absence of Mr. Tapia, WG Leader, no update was offered.

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

UPDATE. As mentioned at the previous Commission meeting, the review of the sentencing structure will continue through 2022 along with an analysis of 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*].

Public Comment

Public comment was solicited, but none was offered in advance of the final consideration of and vote on Recommendations FY22-SR #06, FY22-SR #07, and FY22-SR #08.

FINAL RECOMMENDATIONS

Mr. Dougherty introduced FY22-SR #06 and asked if there were any general questions.

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;

DISCUSSION

Ms. Huitron asked whether feedback was solicited from the different professionals listed in this proposal.

Mr. Dougherty responded that the Working Group reached out to some stakeholders representing the professions but clarified that, under Colorado state law, practicing without a license is a misdemeanor offense. After carefully evaluating the public safety risk of each profession requiring licensure, the Working Group determined that for the list of professions presented in the proposal, practicing without a license justified the change from a misdemeanor to a more serious felony offense.

Mr. Williams asked whether the Working Group estimated the potential impact on the prison population due to the number of offenses that would increase from a misdemeanor to a felony offense.

Mr. Dougherty indicated that the number of times these offenses have been charged in the past was extremely small and believed this proposal would have minimal impact on the prison population.

Mr. Hilkey asked whether there was any further general discussion or questions on *Recommendation FY22-SR #06*. Seeing none, he requested a motion to approve the recommendation. A motion to approve *Rec. FY22-SR #06* was offered and seconded. There was no further discussion of the recommendation. 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. The vote was conducted and yielded the following result:

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

A: 14 B: 2 C: 0 Abstentions: 0

***Recommendation FY22-SR #06* was APPROVED**

Mr. Dougherty introduced *FY22-SR #07* and asked if there were any general questions.

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

Amend Colorado Revised Statutes 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.

With no general discussion or questions offered, Mr. Hilkey requested a motion to approve the recommendation. A motion to approve *Rec. FY22-SR #07* was offered and seconded. With no further discussion, the vote was conducted and yielded the following result:

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

A: 16 B: 0 C: 0 Abstentions: 0

***Recommendation FY22-SR #07* was APPROVED**

Mr. Dougherty introduced *FY22-SR #08* and asked if there were any general questions.

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

Commissioners asked questions about the potential impact on county jail populations and also asked for clarification on the type of offenses eligible for “swift and sure” sanctions.

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 “swift and sure” confinement (up to 14 days) for parolees who commit technical violations when jail placement is not possible. He expected that jail populations would decrease, given that some individuals under this intermediate sanction option would be held in prison rather than jail.

The “swift and sure” option was created in an effort to reduce prison populations and cut recidivism rates. Typically, parolees are confined in jail for a number of reasons, including committing minor misdemeanor crimes or technical violations, which could include failed drug or alcohol tests, missed therapy sessions, arrests, or curfew violations. The “swift and sure” option was created in 2015 to allow parole officers to jail clients for just a few days. The proposal above doesn’t change the nature of offenses eligible for this sanction, but offers another detainment option for local communities when jail beds are not available.

Mr. Hilkey asked for any further discussion on *Recommendation FY22-SR #08*. Seeing none, he requested a motion to approve the recommendation. A motion to approve *Rec. FY22-SR #08* was offered and seconded. With no further discussion, the vote was conducted and yielded the following result:

FINAL VOTE: FY22-SR #08. Add Prison as an Intermediate Sanction Confinement Facility (Statutory)

A: 13 B: 2 C: 1 Abstention: 0

***Recommendation FY22-SR #08* was APPROVED**

PRELIMINARY PRESENTATION

Continuing the presentations from the Sentencing Reform Task Force (SRTF), Mr. Dougherty described one preliminary recommendation developed by the Sentence Structure Working Group that had been unanimously approved by the SRTF. He directed Commissioners to the draft recommendation forwarded electronically prior to the meeting and reviewed the elements of the recommendation.

Mr. Dougherty reminded the group that a review of provisions in *Senate Bill 2021-271 (Misdemeanor Reform)* was conducted in advance of the March 2022 implementation. The Working Group identified a substantive revision necessary in *S.B. 21-271* related to Possession of Weapons by Previous Offenders

(POWPO; §18-12-108, C.R.S.). POWPO previously resulted in prosecution of anyone with a previous felony conviction who was found in possession of a firearm. *S.B. 21-271* limited the previous list of eligible offenses from *any previous felony* to felonies with a public safety impact. Upon further review, the Working Group, collaborating with the Colorado District Attorneys' Council, Ceasefire Colorado, and other stakeholders, compiled additional felony offenses for inclusion 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.

Mr. Dougherty reported that, at the last SRTF meeting, an amendment to the recommendation was offered to add specific offenses: "*Distribution of Hard Drugs*" (for example see, Part 4 of §18-18, C.R.S.) and "*Aggravated Motor Vehicle Theft*" (§18-4-409, C.R.S.), but the amendment failed. He reiterated that the unamended recommendation was unanimously approved by the SRTF.

Recommendation FY22-SR#09. Revise Felony Offenses Eligible for the Crime of POWPO [Statutory]

Amend §18-12-108, C.R.S., Possession of Weapons by Previous Offenders to include additional non-VRA felony offenses based on public safety considerations.

[Because this recommendation is preliminary, only the title and general description are provided.]

DISCUSSION

Mr. Kornfeld offered that federal law prohibits the possession of a firearm by any convicted felon regardless of underlying state statutes. Furthermore, the "Brady Handgun Violence Prevention Act" (often referred to as the "Brady Bill") that passed in 1993 prohibits the possession of a firearm by certain offenders, such as domestic violence offenders.

Mr. Dougherty clarified that this proposal applies to both adults and juveniles. Mr. Dougherty added that *Recommendation FY21-SR #01 (Revise Misdemeanor Sentencing and Offenses)* that was approved by the Commission on March 12, 2021, included a provision that allowed juveniles to apply for the restoration of their rights to possess a firearm under certain conditions. This provision, mistakenly omitted when *Senate Bill 2021-271 (Misdemeanor Reform)* was drafted, will be added to a bill during the current legislative session.

WRAP-UP AND ADJOURNMENT

Mr. Hilkey reminded members that a CCJJ Question & Answer Session on the POWPO recommendation scheduled for Friday, February 4 at 1:30 pm will be offered by members of the Sentencing Reform Task Force/Sentence Structure Working Group. The Q & A is offered to Commissioners and members of the public. The final consideration and vote on the POWPO recommendation will occur at the next Commission meeting on February 11, 2022 at 1:00pm.

Mr. Hilkey thanked Commissioners for their attention and participation. With no further business, Mr. Hilkey adjourned the meeting at 2:06 pm.

The next meeting of the Commission is Friday, February 11, 2022 at 1:00 pm.

Information on all Commission-related meetings can be found at, ccjj.colorado.gov/ccjj-meetings.