



Colorado Commission on Criminal and Juvenile Justice

MINUTES

January 13, 2023 / 1:30pm – 3:35pm

Virtual Meeting

Commission Member Attendance

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| Stan Hilkey, Chair | Serena Gonzales-Gutierrez | Angie Paccione - ABSENT |
| Abigail Tucker, Vice Chair | Justin (JR) Hall | Tom Raynes - ABSENT |
| Taj Ashaheed | Dave Hayes | Megan Ring |
| Minna Castillo-Cohen | Kristiana Huitron - ABSENT | Michael Rourke |
| Shawn Day | Jes Jones | Gretchen Russo |
| Janet Drake | Kira Jukes - ABSENT | Moses (Andre) Stancil |
| Valarie Finks - ABSENT | Rick Kornfeld | Glenn Tapia |
| Jaime FitzSimons | Greg Mauro | Joe Thome, ex officio |
| Bob Gardner - ABSENT | Patrick Murphy | <i>Victim/Survivor rep. - VACANT</i> |
| Julie Gonzales | Steve O’Dorisio | <i>Leg. House Rep. (R) - VACANT</i> |

Guests: Michael Dougherty, Maureen Cain

Call to Order and Opening Remarks

Dr. Tucker, CCJJ Vice Chair

Dr. Tucker, Commission Vice-Chair, called the meeting to order at 1:30pm and thanked Commissioners and members of the public for attending. She explained that Mr. Hilkey would join later due to a meeting with Governor Polis. Dr. Tucker reviewed the agenda and solicited any additions or corrections to the December 7 minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the December 9 minutes. Dr. Tucker informed Commissioners that an extra meeting of the Commission is scheduled on January 27, 2023 to vote on the preliminary recommendations presented today.

UPDATES: TASK FORCES AND WORKING GROUPS

SENTENCING REFORM TASK FORCE (SRTF)

Rick Kornfeld, SRTF Co-chair

Mr. Rick Kornfeld reported that a Question and Answer Session was offered on December 16, 2022 with members of the Sentence Structure Working Group to address questions from members of the Commission and Sentencing Reform Task Force, stakeholders, and the public on matters related to motor vehicle theft.

At the January 11 meeting, the Sentencing Reform Task Force members heard two recommendations from the Sentence Structure Working Group and approved them unanimously for submission today to the Commission.

SRTF WORKING GROUPS***Sentence Structure Working Group – Rick Kornfeld, TF Co-chair***

In the absence of Mr. Dougherty (TF Co-chair), who will join the meeting later today, Mr. Kornfeld presented an update on the Sentencing Structure Working Group. The Sentence Structure Study Group developed recommendations to amend auto theft statutes and to reclassify selected felony crimes. The two recommendations, approved unanimously by the Sentencing Reform Task Force at the January 11 meeting, will be presented today.

The Sentence Structure Working Group and its Study Group continue to develop proposals to amend statutes related to extreme indifference murder and assault, mandatory consecutive sentences of single episode offenses, vehicular homicide, habitual offense sentences, and extraordinary risk enhancers. An additional Sentencing Reform Task Force is scheduled on January 25, 2023 to provide an overview the upcoming proposals.

Mr. Kornfeld reported the Sentence Structure Working Group plans to work on felony sentence ranges in the future. Mr. Kornfeld estimated this work will be complete for the next fiscal year 2024 legislative session.

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

Mr. Tapia indicated that the Working Group continues to focus on issues related to gender and/or race/ethnicity disparity in probation practices and how to address any identified problems. He estimated that this work will continue through the summer of 2023.

COMMUNITY CORRECTIONS TASK FORCE (CCTF)**Glenn Tapia, Task Force Chair**

The broad mission of the Task Force is to consider whether services provided by community corrections programs might be effective for specific persons convicted of misdemeanors. The Task Force recently established broad consensus points, particularly regarding the implementation of pilot programs. At the last meeting in January, some members of the Task Force raised potential legal and constitutional issues, and the group tasked the lawyers in the Task Force to identify those issues for further discussion at the February meeting, along with the points defining the framework of pilot sites. These points include the scale and duration of the pilot programs, the type of programming, funding, and research questions.

GOVERNOR POLIS: ADDRESS TO THE COMMISSION

Mr. Hilkey welcomed Governor Jared Polis, who joined the Commission meeting virtually.

Governor Polis began his comments by thanking all stakeholders serving on the Commission and its committees and by acknowledging the importance of the Commission's work.

Governor Polis expressed the goal for Colorado to be among the top-ten safest states over the next five years. He indicated that, building on last year's public safety package, he proposes an additional package to provide tools and resources for local law enforcement and community organizations to help make Colorado communities safer.

Auto theft is a devastating property crime for those affected and is frequently a precursor crime used in the furtherance of violence and other criminal activities. In his 2022 Biennial Letter to the Commission,

Governor Polis called on the CCJJ to examine auto theft classification and sentencing, so that repeat offenders are prevented from further inflicting harm on the people of Colorado. Enhancing the penalties for auto theft, regardless of the value of the vehicle stolen, has the potential to make Coloradans safer and improve public safety. The Commission's Sentencing Reform Task Force will present a motor vehicle theft recommendation later in the current meeting, and Governor Polis encouraged Commissioners to approve this recommendation.

Governor Polis will mention public safety during his State of the State Address on January 17. He thanked Commissioners for their continued work on the overarching goals of enhancing public safety and keeping people safer.

Mr. Hilkey thanked Governor Polis for his time, attention, and thoughts.

SENTENCING REFORM TASK FORCE: FINAL RECOMMENDATION PRESENTATION

Glenn Tapia, Sentencing Alternatives / Decisions & Probation Working Group Leader

Mr. Tapia reminded members that the preliminary presentation of this recommendation was provided at the December 9, 2022 meeting of the Commission. This final recommendation was forwarded electronically to the Commissioners before the meeting. Mr. Tapia provided a brief overview of the recommendation for final consideration and discussion by members.

FINAL RECOMMENDATION

FY23-SR #01. Standardize Early Termination Review in Probation [Policy]

In order to reduce potential for over-supervision in probation, there should be a standardized process within Colorado Probation among all judicial districts to ensure a transparent, consistent and timely review of each adult case for early termination. Following these recommendations (Appendix A) is a list of technical considerations and areas that will need to be addressed by a working group for this process to be successful.

- **Process development:** The State Court Administrators Office (SCAO) and the Division of Probation Services (DPS), in collaboration with probation staff, stakeholders (e.g.: treatment providers, prosecuting and defense attorneys), and victim representatives, should develop a protocol for the standardization of reviewing adult cases for early termination by June 30, 2024. The protocol should include inclusionary and exclusionary criteria used to inform probation officer decisions to petition the court for early termination based on the individual circumstances of each person under review as well as victim considerations for Victim's Right Act (VRA) cases. (See APPENDIX A –Technical Process Areas to be Addressed)
- **Policy and Standards:** The protocol should result in a statewide policy that provides direction on the process. The *Standards for Probation in Colorado*, issued by the Supreme Court, should also incorporate mandatory review of adult cases once a probationer completes 50% of their sentence in order to advance a certain and transparent timeframe at which an initial review will occur. The *Standards* should be revised by June 30, 2024.
- **Structured Tools:** The protocol should rely on standardized forms and structured tools to ensure consistency statewide. There should be a form provided to the probationer at the beginning of probation that describes the behavioral response system and the incentive for early termination, as well as a checklist for the probation staff to determine eligibility for early termination.
- **Specialized Intensive Programs:** Standards should be developed to ensure that probationers placed on intensive supervision serve at least 6 months on regular supervision before being submitted for early termination or that judicial officers at least consider the amount of time served on regular supervision before granting early termination at 50% of the sentence period for those who were assessed as higher risk and higher need at intake on probation.
- **Stakeholder Education:** Stakeholders should be informed of the early termination protocol. The workgroup that develops the protocol should decide if stakeholder education should happen at the state

level (e.g.: presentations to victims' groups, the chief judges' council, the public defenders' office, district attorneys' council) or at the local level.

- **Victim Notification:** There should be procedures developed such that victims of eligible crimes are given appropriate education and time to opt in for notification in Victims Right Act (VRA) cases where a petition for early termination is indicated.
- **Training:** The Division of Probation Services should develop and administer a stand-alone training on the protocol for all current employees. After statewide implementation, this training portion should be incorporated into the Probation Academy, which is mandatory for all new probation officers.
- **Quality Assurance:** The protocol should result in additional data entry to track the frequency and timeliness of early termination reviews. Staff at DPS/SCAO should annually review district compliance with the protocol and provide feedback to districts on the metrics.
- **Implementation:** The SCAO/DPS should develop a strategy to consider district-level workload impact, docket impact, victim transparency, and victim impact in implementing the new policies and standards for current cases for those who are newly eligible and those who are pending eligibility for early termination under the new model as of June 30, 2024.

Public Comment

Public comment regarding this recommendation was solicited, but none was offered in advance of the final consideration of and vote on **Recommendation FY23-SR #01**.

Mr. Hilkey asked whether there were any questions regarding the recommendation. Seeing none, Mr. Hilkey requested a motion to approve the recommendation. A motion to approve **Rec. FY23-SR #01** was offered and seconded.

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.

FINAL VOTE: **FY23-SR #01. Standardize Early Termination Review in Probation [Policy]**

A: 17 B: 0 C: 0 Recommendation FY23-SR #01 was APPROVED.

[A link to Recommendation FY23-SR #01 is provided on the Commission website under the January 13, 2023 tab at, ccjj.colorado.gov/meetings-2023.]

SENTENCING REFORM TASK FORCE: PRELIMINARY RECOMMENDATION PRESENTATION

Mr. Hilkey invited Task Force Co-chair, Michael Dougherty (DA, Boulder County) and Task Force member Maureen Cain (Office of the State Public Defender) to present the two preliminary recommendations to the Commission. The recommendations presented today passed unanimously in votes by the Task Force. A summary of and excerpt of each draft recommendation follow here along with the discussion points. *[Given that this recommendation is preliminary, only the title and general description are included.]*

Preliminary Recommendation FY23-SR #02. Amend and Append Motor Vehicle Theft Provisions

BACKGROUND

There has not been a comprehensive review of sentencing laws in Colorado since 1985. Over the ensuing decades, Colorado's sentencing statutes became inconsistent and misaligned. In his June 2020 Biennial Letter, Governor Polis requested a comprehensive review of our sentencing laws to ensure that our sentencing scheme is rational, just, equitable, and consistent with a data-driven analysis.

In 2021, the Sentencing Reform Task Force helped produce Senate Bill 2021-271, a comprehensive overhaul of Colorado's misdemeanor sentencing laws that went into effect on March 1, 2022. The Sentencing Reform Task Force is now reviewing felonies. The Sentence Structure Working Group is recommending changes to the Aggravated Motor Vehicle Theft statutes.

Auto thefts are a significant problem. Colorado leads the nation in auto thefts with an 86% statewide increase from 2019 to 2021. From 2019 to 2021, increases include a 170% increase in Broomfield, 250% in Grand County, and 60% in Boulder County. In the first quarter of 2022, Denver (#2), Aurora (#3), Westminster (#8), and Pueblo (#9) ranked in the top 10 nationwide for auto theft rates. These four cities combined accounted for 53.3% of the vehicles stolen statewide in the first quarter of 2022.

Many factors drive auto thefts, including but not limited to, financial stress, substance abuse, mental health disorders, lack of behavioral health treatment, homelessness, a desire to commit other crimes with and/or profit from stolen cars, crimes of opportunity with unlocked car doors and open garages, low arrest clearance rates, and minimal consequences.

In his 2022 Biennial Letter to the Commission, Governor Polis directed, in part, *"...the Commission examine changes to auto theft sentencing, so that the repeat offenders and the most egregious perpetrators cannot easily return to communities to further inflict harm on the people of Colorado. Auto theft is a devastating property crime for those affected, who often lose their only way to get to work or get to the store. In addition, it is frequently a precursor crime that is often used in the furtherance of violence and other crimes. Enhancing the penalties associated with auto theft, regardless of the value of the vehicle stolen, has the potential to make us safer and improve the quality of life in Colorado. The Commission should especially revisit the criminal classification of auto theft as it relates to the monetary value of a stolen vehicle. The Commission should also examine updating the language to elevate the severity of the crime based on the number of prior offenses, specifically targeting prolific auto thieves. This is a top priority of mine, and even if the Commission does not come forward with recommendations this year, I will look to work with the legislature to enact reforms in this area in the upcoming session."*

With this mandate, the Sentencing Reform Task Force reviewed data related to auto thefts from 2018 – 2022. The Task Force had previously voiced strong support for removing the value thresholds for auto thefts. This recommendation builds off that foundation. The Sentence Structure Working Group worked with multiple stakeholders to gather feedback on the Motor Vehicle Theft proposal. Through the work of the Sentence Structure Working Group, there is strong consensus for sentencing reform that would remove the value thresholds, change the elements to allow for more effective prosecutions (without raising the level of penalty), narrowing the aggravators, and creating a new misdemeanor offense.

This recommendation was unanimously approved by the Sentencing Reform Task Force at the January 11 meeting.

SUMMARY

FY23-SR #02. Amend and Append Motor Vehicle Theft Provisions [Statutory]

Amends, appends, deletes and replaces several provisions of statute related to motor vehicle theft. The elements for motor vehicle theft in the first degree and second degree are changed and motor vehicle theft in the third degree is created. The penalties for motor vehicle theft are no longer based on the value of the vehicle or vehicles stolen. Motor vehicle theft in the first degree is a class 3 felony, motor vehicle theft in the second degree is a class 4 felony, and motor vehicle theft in the third degree is a class 5 felony. The recommendation creates the offense "unauthorized use of a motor vehicle" and makes it a class 1 misdemeanor, or a class 5 felony for a second or subsequent offense. These revisions comprise changes to the following elements of statute:

- **§18-4-409. Aggravated motor vehicle theft.** Amend (1)(a), (2), (3), and (4); and add (6).
- **§18-4-409.5. Unauthorized use of a motor vehicle - definition.** Add the entirety of 18-4-409.5.
- **§18-17-103. Definitions.** Amend (5)(b)(II).
- **§19-1-304. Juvenile delinquency records - division of youth services critical incident information - definitions.** Amend (5.5).
- **§42-2-202. Habitual offenders - frequency and type of violations.** Amend (2)(a)(V).

Preliminary Recommendation FY23-SR #03. Reclassify Selected Felony Crimes [Statutory]

BACKGROUND

This recommendation is in response to the request by the Governor to the Commission in both the 2020 Biennial Letter and the 2022 Biennial Letter. The Sentence Structure Working Group completed its misdemeanor sentencing and offense recommendations in 2021. The legislation was passed in 2021 (*Senate Bill 2021-271*), followed by a clean-up bill in 2022 (*House Bill 2022-1229*). In 2021, the Working Group then commenced its felony work by engaging in a crime severity analysis to ensure that current felony offenses are adequately classified based on the seriousness of the crime. The work required an examination of each felony offense and its elements – including the act to commit the offense and the requisite culpable mental state.

The proper alignment of felony offenses is the foundational work of sentencing reform. The re-calibration of certain crimes was necessary to secure this foundation. The recommendation to reclassify the felonies in the list appended to this recommendation reflects this foundation. Some offenses are reclassified, others are re-structured, and some language is eliminated as unnecessary given the current implementation of Colorado’s sentencing laws.

While additional work is necessary to address “consistency” and “clarity” in sentencing, this recommendation, along with others from the Working Group, represents a thoughtful and required first step in re-shaping the felony sentencing scheme, as directed by the Governor.

SUMMARY

FY23-SR #03. Reclassify Selected Felony Crimes [Statutory]

This recommendation amends, appends, deletes and replaces multiple provisions of Colorado criminal statutes related to felony crime classifications. This recommendation includes three basic concepts and the associated statutory revisions:

- 1) Amend and “right-size” felony offenses so that the classification of the offense is balanced and properly aligned with the level of seriousness of the prohibited behavior.
- 2) Eliminate “second and subsequent” increased felony classifications as unnecessary given the expanded ranges in the current sentencing scheme, excluding certain criminal offenses where the classification of the crime should be increased when criminal behavior is repeated.
- 3) Amend the language defining felony offenses when the current statutory language does not properly capture the proper mental state or actions that should be required for commission of that criminal offense

Member Discussion

Mr. Rourke raised a substantive issue regarding ***Preliminary Recommendation FY23-SR #03*** with the language in second-degree kidnaping (18-3-302(1), C.R.S.) He explained that in criminal cases, the prosecution has the burden of proving every element of a crime beyond a reasonable doubt and believed that the language as drafted significantly raises the burden of proof for the prosecution. He reported that at Sentencing Reform Task Force meeting on January 11, he moved to remove the

language; however, the motion failed on a very close vote. Members of the Sentence Structure Working Group will collaborate with Mr. Rourke to discuss potential changes to the second-degree kidnapping language.

Commissioners discussed the overall format of **FY23-SR #03**. Some expressed hesitancy to “socialize” the recommendation as presented with constituencies, given elements were missing from the recommendation (namely, the intent and representation of statutory changes). **Recommendation FY21-SR #01. Revise Misdemeanor Sentencing and Offenses** (see the Commission website at ccjj.colorado.gov/ccjj-rectop-sent) was referenced as an example of how **FY23-SR #03** might be revised to enhance comprehension of the changes suggested to these felony crimes. Commissioners asked the Task Force (and members of the Sentence Structure Working Group) to re-format the more complex statutory changes in the recommendation for the next Commission meeting on January 27.

Mr. Mauro asked a clarifying question on the use of aggravators and whether they are adjusted based on the severity of the crime. In the example of second-degree motor vehicle theft, are aggravators different if the perpetrator crosses the state lines compared to someone changing the VIN of a vehicle? Mr. Dougherty responded in the affirmative that the severity of the crime is considered when adding aggravators to a charge.

OTHER UPDATES

Reentry Task Force

Mr. Hilkey shared that the newly created Reentry Task Force is estimated to hold its first meeting in March 2023. The areas of focus described in the Governor’s Biennial letter and recommendations from the Sentencing Reform Task Force: Sentence Progression Working Group includes the following:

- Review of reentry services provided by CDOC prior to release.
- Review services provided to individuals after release that would enhance long-term public safety by addressing the needs of particular populations.
- Examine issues related to jail reentry.
- Develop a better coordinated and consistent system of release options.
- Identify methods to better match individuals with existing release options.

A proposed membership list was displayed. Mr. Hilkey reminded members that pursuant to Commission Bylaws, members are asked to sit on at least one committee, and invited Commissioners to participate.

CDHS Pre-Adolescent Task Force

Ms. Russo provided an update on the Pre-Adolescent Task Force. She reminded Commissioners that the Task Force was established by *House Bill 2022-1131*, which required the Colorado Department of Human Services to create a 32-member task force to examine potential gaps in services for juveniles who are 10-12 years of age, should the minimum age of prosecution of juveniles increase from 10 to 13. Ms. Russo reported that the task force didn’t reach a quorum at its December meeting and was unable to continue finalizing its recommendations. She shared the link to the Task Force website which includes all meeting information and updates (see, cdhs.colorado.gov/pre-adolescent-services-task-force).

PUBLIC COMMENT - No members of the public offered comment.

ADJOURNMENT

Mr. Hilkey reminded members that an extra virtual Commission meeting is scheduled on January 27 at 1:30 pm. The preliminary recommendations presented today (**FY23-SR #02** and **FY23-SR #03**) will be offered for final consideration at that meeting.

He thanked Commissioners for their attention and participation. With no further business, Mr. Hilkey adjourned the meeting at 3:34 pm.

The next meeting of the Commission is Friday, January 27, 2023, at 1:30 pm.

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