



Colorado Commission on Criminal and Juvenile Justice

MINUTES

January 27, 2023 / 1:30pm – 2:10pm

Virtual Meeting

Commission Member Attendance

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

Guests: Maureen Cain

Call to Order and Opening Remarks

Stan Hilkey, CCJJ Chair

Mr. Hilkey, Commission Chair and Executive Director of the Department of Public Safety, called the meeting to order at 1:30pm and thanked Commissioners and members of the public for attending. Mr. Hilkey reviewed the agenda and reminded Commissioners this extra meeting was scheduled to vote on the recommendations submitted by the Sentencing Reform Task Force.

SENTENCING REFORM TASK FORCE: FINAL RECOMMENDATION PRESENTATIONS

Rick Kornfeld, SRTF Co-chair & Maureen Cain, SRTF Member

Mr. Kornfeld reminded members that the preliminary presentations of the recommendations were provided at the Commission meeting on January 13, 2023. The final recommendation documents were forwarded electronically to the Commissioners before the meeting.

Mr. Kornfeld provided a brief overview of a recommendation from the Sentencing Reform Task Force for final consideration and discussion by members (see below, **FY23-SR #02**). Ms. Cain was present to assist with answers to questions as a representative of the Task Force and the Sentence Structure Working Group.

FINAL RECOMMENDATION

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).

Member Discussion

Senator Gonzales asked whether the recommendation title would be required for use as the title on any bill. Staff confirmed that recommendation titles are merely for internal Commission use and are not expected to be reflected on any derived bill. It was confirmed that any such bill would be titled as has been proposed: *"Concerning the adoption of the recommendation of the Colorado Commission on Criminal and Juvenile Justice."* Mr. Hilkey reminded Commissioners that the Commission Legislative Subcommittee, comprised of six Commission members, reviews the language and amendments of bills derived from Commission recommendations to determine whether Commission intent remains intact.

Public Comment

Public comment regarding this recommendation was solicited, but none was offered in advance of the final consideration of and vote on **Final Recommendation FY23-SR #02**.

Mr. Hilkey asked whether there were any further questions regarding the recommendation. Seeing none, he requested a motion to approve the recommendation. A motion to approve **Rec. FY23-SR #02** was offered by Rick Kornfeld and seconded by Dave Hayes.

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 #02. Amend and Append Motor Vehicle Theft Provisions [Statutory]**

A: 16 (*) B: 0 C: 0 Recommendation FY23-SR #02 was APPROVED.

[For the record, Mr. Tapia stated that his vote represents his position as Probation Director from the Judicial Branch, but does not represent an official position of the Judicial Branch.]*

[A link to Recommendation FY23-SR #02 is provided on the Commission website under the January 27, 2023 tab at, ccjj.colorado.gov/meetings-2023.]

Mr. Kornfeld provided a brief overview of a recommendation from the Sentencing Reform Task Force for final consideration and discussion by members (see below, **FY23-SR #03**). Ms. Cain was present to assist with answers to questions as a representative of the Task Force and the Sentence Structure Working Group.

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

This recommendation amends, appends, deletes, and replaces multiple provisions of Colorado criminal statutes related to selected General Felonies, Enhanced Felonies, the re-classification or removal of felonies, and the elimination of specific aggravators for “second and subsequent offense or repeat offender.” 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 necessary given the wide ranges available 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 offense.

Revisions are presented within the following felony categories:

General Felonies [with Proposed Statutory Language]

- 1G) §18-12-109. Possession, use, or removal of explosives or incendiary devices....** Amend 18-12-109(2), (2.5), (6), & (6.5)
- 2G) §18-5-102. Forgery.** Amend 18-5-102(1) (c).
- 3G) §18-5-211. Insurance fraud - definitions.** Amend 18-5-211(4).
- 4G) §18-5-903. Criminal possession of a financial device.** Delete 18-5-903(2)(b) & amend 18-5-903(2)(a).
- 5G) §18-5-902. Identity theft.** Amend 18-5-902(2)(b).
- 6G) §18-8-208.2. Unauthorized absence.** Amend 18-8-208.2(1) & (2).
- 7G) §44-30-821. Cheating - definition.** Amend 44-30-821(3).

Enhanced Felonies [with Proposed Statutory Language]

- 1E) §18-3-203. Assault in the second degree.** Amend 18-3-203(1) (f.5) (I) & amend 18-3-203(2) (c) (II).
- 2E) §18-3-302. Second degree kidnapping.** Amend 18-3-302(1).
- 3E) §18-4-102. First degree arson.** Amend 18-4-102(2).
- 4E) §18-4-203. Second degree burglary.** Amend 18-4-203(2)(a)
- 5E) §18-8-706. Retaliation against a witness or victim.** Amend 18-8-706(2) & add 18-8-706.5. Aggravated Retaliation of a Witness or Victim

Classification Level Modifications [Table]

This table in the recommendation lists felonies that are suggested for an increase or decrease of the current felony level with no additional statutory wording modifications.

Eliminate “Second and Subsequent Offense or Repeat Offender” Aggravator [Table]

This table in the recommendation lists “second and subsequent” aggravators for felonies that are suggested for simple deletion with no additional statutory wording modifications.

Delete from Colorado Revised Statutes [Table]

This table in the recommendation suggested that certain felonies be deleted with no additional statutory wording modifications.

Member Discussion

Mr. Rourke reminded Commissioners of the issue he raised at the January 13 Commission meeting regarding the language in second-degree kidnapping and the potential increase in the burden of proof for prosecution. Mr. Rourke shared that he and Ms. Cain recently convened and addressed the concern by adding the language “*and causes movement which increases the risk of harm to the person*” to the recommendation. Mr. Rourke indicated that, with this revision, he no longer had an issue with the language in second degree kidnapping or the recommendation in total.

Ms. Drake asked about the rationale to delete “*Pharmacy*” in “18-4-202(3) *Aggravated Robbery of Pharmacy*.” Ms. Cain responded that the Sentence Structure Working Group agreed that the “*Aggravated Robbery of Pharmacy*” crime, currently classified as a Felony Class 2, doesn’t equate in severity, for example, with the similarly-classified second-degree murder. Such crimes would be subsumed in the “*Aggravated Robbery*” statute and classified as a more appropriate Felony Class 3.

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 #03**.

Mr. Hilkey asked whether there were any further questions regarding the recommendation. Seeing none, Mr. Hilkey requested a motion to approve the recommendation. A motion to approve **Rec. FY23-SR #03** was offered by Dave Hayes and seconded by Michael Rourke.

The process for a supermajority vote was conducted with the following outcomes:

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

A: 13 (*) B: 3 C: 0 Abstain: 4 Recommendation FY23-SR #03 was APPROVED.

[For the record, Mr. Tapia stated that his vote represents his position as Probation Director from the Judicial Branch, but does not represent an official position of the Judicial Branch.]*

[A link to Recommendation FY23-SR #03 is provided on the Commission website under the January 13, 2023 tab at, ccjj.colorado.gov/meetings-2023.]

Mr. Hilkey, joined by the Commissioners, publicly thanked the leadership and members of the Sentencing Reform Task Force and the Sentence Structure Working Group for these significant efforts.

PUBLIC COMMENT - No members of the public offered comment on any other Commission matters.

ADJOURNMENT

Mr. Hilkey thanked the Commissioners for their attention and participation. With no further business, Mr. Hilkey adjourned the meeting at 2:10 pm.

The next meeting of the Commission is Friday, February 10, 2023, at 1:30 pm.

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