



**Colorado Commission on Criminal and Juvenile Justice**

**MINUTES**

February 10, 2023 / 1:30pm – 2:45pm

Virtual Meeting

**Commission Member Attendance**

Stan Hilkey, Chair - ABSENT	Serena Gonzales-Gutierrez - ABSENT	Angie Paccione
Abigail Tucker, Vice Chair	Justin (JR) Hall	Tom Raynes
Taj Ashaheed	Dave Hayes	Megan Ring
Minna Castillo-Cohen	Kristiana Huitron	Michael Rourke
Shawn Day	Jes Jones	Gretchen Russo
Janet Drake	Kira Jukes	Moses (Andre) Stancil – ABSENT
Valarie Finks	Rick Kornfeld	Glenn Tapia - ABSENT
Jaime FitzSimons - ABSENT	Greg Mauro - ABSENT	Joe Thome, ex officio
Bob Gardner - ABSENT	Patrick Murphy - ABSENT	<i>Victim/Survivor rep. - VACANT</i>
Julie Gonzales - ABSENT	Steve O’Dorisio - ABSENT	<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 1:34 pm and noted that Commission Chair Mr. Hilkey could not attend the meeting. Dr. Tucker thanked Commissioners and members of the public for attending. She acknowledged the recent appointment of Mr. Stancil as Executive Director of the Colorado Department of Corrections. Dr. Tucker reviewed the agenda and solicited any additions or corrections to the January 13 and 27 minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the January 13 and 27 minutes. Dr. Tucker informed Commissioners that an extra meeting of the Commission is scheduled on February 24, 2023, to hear the preliminary recommendations from the Sentencing Reform Task Force.

**Presentation: Office for Victims Programs - Our Role following Mass Tragedies**

Dr. Tucker welcomed Ms. Kelly Kissel from the Office of Victims Programs in the Division of Criminal Justice. The full content of the presentation can be found on the Commission website under the February 10, 2023, meeting tab at [ccjj.colorado.gov/ccjj-mtg2023](http://ccjj.colorado.gov/ccjj-mtg2023). The highlights of the subsequent discussion is provided below.

**DISCUSSION**

Ms. Huitron asked whether community advocates can receive funds when responding to a mass tragedy incident. Ms. Kissell responded affirmatively when the community agency provides services such as additional resources and also when part of the Anti-Terrorism Emergency Assistance Program (ATEAP) grant. Ms. Kissell shared that about seventy-five percent of the funding is distributed to non-system agencies such as community advocate agencies.

Information regarding funding sources can be found on the Division of Criminal Justice, Office of Victims Programs website at [dcj.colorado.gov/dcj-offices/victims-programs/grant-funding-for-agencies](http://dcj.colorado.gov/dcj-offices/victims-programs/grant-funding-for-agencies). Click on each funding source to view the current and past grant awards for VOCA, VAWA, and SASP.

Mr. Thome asked Ms. Kissell to provide an update on the victim's services funding. Ms. Kissell discussed that *House Bill 2023-1107 (Concerning Funding for Crime Victim Services)* was introduced during the current legislative session and explained that that bill intends to supplement victim services with state General Funds due to the substantial decrease in the Victims of Crime Act Funding (VOCA), the largest federal source of funding in Colorado for victim services. VOCA funding is at a long-time low, and more than a fifty percent funding cut is expected across all victim services.

## **UPDATES: TASK FORCES AND WORKING GROUPS**

### **SENTENCING REFORM TASK FORCE (SRTF)**

**Rick Kornfeld & Michael Dougherty, SRTF Co-chairs**

#### ***SRTF WORKING GROUPS***

##### ***Sentence Structure Working Group – Michael Dougherty, TF Co-chair & WG Leader***

Mr. Dougherty provided an overview of a proposal developed by the Sentence Structure Working Group and its Study Group to amend statutes related to extreme indifference murder, mandatory consecutive sentences of single-episode offenses, vehicular homicide, habitual offense sentences, and extraordinary risk enhancers. An overview was offered at this week's Sentencing Reform Task Force meeting on February 8 to be voted on at an extra Task Force meeting on February 22. If approved by the Task Force, a preliminary recommendation will be presented at the Commission meeting on February 24 for a vote on March 10, 2023.

Mr. Dougherty thanked the members of the Sentencing Reform Task Force, Sentence Structure Working Group, Study Group, and stakeholders who participated in the work to produce these significant sentencing initiatives. This proposal results from extensive discussions, listening sessions with stakeholders, examination of other states' practices, and data analysis related to criminal classification and sentencing. Mr. Dougherty provided an overview of the components of the recommendation.

#### **Extraordinary Risk**

This proposal would eliminate provisions of Colorado criminal statutes related to Extraordinary Risk for felony classes 5 and 6.

With the passage of *Senate Bill 2021-271*, the extraordinary risk enhancer was eliminated for most of the misdemeanor offenses. In the felony offense discussions, it was determined that the extraordinary risk ranges have value for more serious offenses but that the increase in sentences stemming from the class 5 and 6 felony offenses is minimal and unnecessary.

#### **Reconsideration Provisions for Habitual Sentences**

This recommendation element is in response to the Governor's 2022 Biennial Letter to examine the habitual sentencing statutes "*so we are enhancing sentences for those individuals who are truly public safety risks.*" The Working Group engaged in extensive discussions on how to determine whether a person represents a public safety risk. This proposal includes a request for reconsideration after ten years in the Colorado Department of Corrections (CDOC) if the sentence is longer than twenty-four

years. The ten-year mark is proposed to allow offenders who have served a significant time in DOC to demonstrate change and the will to rehabilitate. This proposal is prospective, not retroactive.

This proposal maintains the current sentencing scheme with the following changes:

- After serving ten calendar years in DOC, the defendant may request a reconsideration if the sentence imposed is longer than twenty-four years.
- The defendant may only file once.
- The defendant is entitled to court-appointed counsel, a hearing, and an evidentiary hearing.
- A victim notification and an opportunity for the victims to be heard at the hearing.

Standard for review. The court may modify a sentence when the case involves substantial mitigating factors, and the defendant has demonstrated actions toward rehabilitation, evidenced by positive programming and engagement at the DOC that justify a modification of the sentence.

### **Mandatory Consecutive Sentencing and Post-Conviction Review**

This recommendation is in response to the Governor's 2022 Biennial Letter, which requests the CCJJ to address mandatory consecutive sentencing. Significant philosophical disagreement surround discussions of mandatory sentencing. Some stakeholders support that the General Assembly determines when mandatory sentences are necessary to define appropriate punishment and improve public safety. Other stakeholders believe these mandatory sentences interfere with judicial discretion and serve as an instrument for the government to leverage plea bargains. The Sentence Structure Working Group of the Sentencing Reform Task Force recognized this disagreement and attempted to approach the issue by combining three recognized concepts, described below:

- Create a "safety valve" at sentencing and a post-conviction review when mandatory consecutive sentences are imposed for the crime of violence (COV) offenses for the same incident. This proposal will allow the court an additional option other than imposing consecutive sentences when a defendant has been convicted in a single criminal episode of multiple offenses, if the defendant has no prior Victim of Right Acts (VRA) felony conviction, defendant did not use or possess a firearm or an explosive, and the defendant's action did not result in serious bodily injury.
- Add a "waiver" option. The recommendation element allows for a waiver when agreed to by the prosecution.
- Amends Post-conviction review statutes for a sentence modification review. This expanded review is only for COV sentences imposed as mandatory consecutive. The review criteria include:
  - The defendant may file for a sentence modification after two calendar years up to five calendar years after the judgment of conviction is final.
  - The defendant may only file once.
  - The defendant is entitled to court-appointed counsel and an evidentiary hearing.
  - Victim notification and opportunity to be heard at the hearing.

### **Extreme Indifference Homicide and Vehicular Homicide**

The Sentence Structure Working Group engaged in a fifty-state review of the related statutes and case law and concluded that Colorado was the only state identified that mandates life without the possibility of parole for extreme indifference homicide. In other states, when extreme indifference is an element in a first-degree murder sentence, there is commonly a range of sentence options available to the court, including a determinate number of years, life with parole eligibility, or life without the possibility of parole. Most frequently, states classify extreme indifference murder as second-degree murder. The proposal includes the following changes:

- **Extreme Indifference Homicide**  
Change Extreme Indifference from first-degree murder to a second-degree class felony, punishable as an extraordinary risk crime in the aggravated range (sentencing range from 24 to 64 years).  
Note: The maximum sentence range for second-degree murder is eighteen to forty-eight years.
- **Attempted extreme indifference homicide**  
Insert a separate section and this crime as a Class 3 felony when bodily injury or serious bodily injury is the result and a Class 4 felony when there is no injury.
- **First-degree murder of a peace officer (PO), firefighter (FF), or emergency medical service (EMT) provider**  
Re-write this section to eliminate references to the Death Penalty. Preserve extreme indifference homicide of PO, FF, or EMT as a Class 1 felony but address the Miller vs. Graham<sup>1</sup> Supreme Court issue by making the penalty for this crime 40 to life for juveniles.
- **Illegal discharge of a firearm**  
Amend the penalties in subsection (3) with bifurcation according to intent: “knowingly” vs. “recklessly.” Illegal discharge of a weapon “knowingly” is a Class 4 felony, and “recklessly” is a Class 5 felony.
- **Vehicular Homicide**  
This crime is currently a Class 3 felony with a presumptive sentence range of up to 12 years, with an aggravated range of up to 24 years. Significant discussion, research, and input from stakeholders regarding the sentencing range and aggravating factors resulted in proposing the creation of an extraordinary risk aggravated penalty range for aggravated vehicular homicide, with a sentencing range will be ten to thirty-two years.

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

In the absence of Mr. Tapia, Dr. Tucker presented a brief update on the Sentencing Alternatives, Decisions & Probation Working Group and shared that the Working Group continues to focus on issues related to gender and race/ethnicity disparity in probation practices and how to address any identified problems.

### **COMMUNITY CORRECTIONS TASK FORCE (CCTF)**

#### **Glenn Tapia, Task Force Chair**

At the request of Mr. Tapia, who was absent from the meeting, this update was postponed to the next Commission meeting.

### **REENTRY TASK FORCE**

Abigail Tucker, CCJJ Vice-Chair

The membership for this Task Force is being established. Dr. Tucker reminded members that, according to the Commission Bylaws, members are asked to sit on at least one committee and invited Commissioners to participate.

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<sup>1</sup> A Supreme Court ruling that juveniles cannot be sentenced to life without parole without certain findings. This represents a cleanup from SB16-181.

**PUBLIC COMMENT** - No members of the public offered comment.

**ADJOURNMENT**

Dr. Tucker reminded members that an extra virtual Commission meeting is scheduled on February 24 at 1:30 pm to hear preliminary recommendations from the Sentencing Reform Task Force.

She thanked the Commissioners for their attention and participation. With no further business, Dr. Tucker adjourned the meeting at 2:45 pm.

**The next Commission meeting is Friday, February 24, 2023, at 1:30 pm.**

**Details of the next meeting will be forwarded to the group and posted on the CCJJ web and calendar ([ccjj.colorado.gov/ccjj-meetings](http://ccjj.colorado.gov/ccjj-meetings) and [ccjj.colorado.gov/ccjj-calendar](http://ccjj.colorado.gov/ccjj-calendar)).**