



**Colorado Commission on Criminal and Juvenile Justice**

**MINUTES**

March 10, 2023 / 1:30pm – 4:00 pm

Virtual Meeting

**Commission Member Attendance**

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

Guests: Michael Dougherty, Michelle Barnes for Minna Castillo-Cohen

**Call to Order and Opening Remarks**

**Stan Hilkey, CCJJ Chair**

Mr. Hilkey, Commission Chair (Executive Director, Department of Public Safety) called the meeting to order at 1:34 pm and thanked Commissioners and members of the public for attending. Mr. Hilkey reviewed the agenda and solicited any additions or corrections to the February 10 minutes. A motion was offered and seconded to approve the minutes; Commissioners unanimously approved the February 10 minutes. Mr. Hilkey reminded Commissioners the meeting was moved to a virtual platform due to some Commissioners, including himself, having contracted COVID.

Mr. Hilkey began by recognizing the members of the Sentencing Reform Task Force and Sentence Structure Working Group for their significant efforts. Mr. Hilkey informed Commissioners that a vote will be held to allow Ms. Michelle Barnes, Executive Director of the Department of Human Services, to vote on the recommendation on behalf of her designee, Ms. Minna Castillo-Cohen.

Mr. Hilkey shared that he heard from several Commissioners, Sentencing Reform Task Force members and the Office of the Governor who believed the recommendation represents some of the most challenging work by the Commission. Mr. Hilkey acknowledged the proposal did not unanimously pass the Sentencing Reform Task Force and, considering the various levels of support and concern, he proposed separating the package into the four elements outlined in the recommendation. Mr. Hilkey believed that offering four separate recommendations would allow for a more thoughtful discussion and for the members to cast votes consistent with their support or opposition to each proposal.

This voting process would honor the hard work of all the members and stakeholders who contributed to these significant efforts and reflect the success of the Commission to the General Assembly and the

SMART Act Committee. He suggested that the recommendations that do not pass be sent back to the Task Force for continued work through the next year until the next legislative session.

Mr. Hilkey proposed the options below: *(Mr. Hilkey noted his consultations with the Attorney General's Office and the Legislative Legal Services regarding parliamentary procedures and examined the Robert's Rules of Order to offer the process described today.)*

1. Final presentation and discussion of Recommendation **FY23-SR#04. Change Felony Crime Classifications and Sentence Enhancement Provisions of the Criminal Code** as approved by the Task Force.
2. Motion to suspend the rule preventing a designated member from voting in place of their designee. (majority vote)
3. Motion to suspend the rule that requires a *"recommendation as approved by Task Force be voted on"* (majority vote).
4. Motion to amend by splitting the recommendation into four parts (supermajority vote)
5. Motion to approve the four recommendations in turn (supermajority vote)
  - a. Discussion of parts for possible amendment
6. Motion to repackage the recommendations approved by the Commission (supermajority vote). The recommendations that do not pass to be returned to the Sentencing Reform Task Force for further review.

Ms. Ring commented that the proposed process was not the usual process to conduct Commission business. Ms. Ring reiterated that the recommendation was developed thanks to the tremendous work and reflected a complex set of compromises by the Sentence Structure Working Group and Task Force members, input from stakeholders, and the different perspectives represented to present the recommendation as a package.

Mr. Kornfeld was uncertain whether, given the hard work and compromises made over the several months by the Working Group and Task Force members, any recommendations returned to the Task Force for more work would yield a different proposal.

Mr. Hilkey echoed the acknowledgment of the significant efforts. He explained to the group that he offered the proposed process in response to the various conversations and concerns regarding some elements of the recommendation. At the last Commission meeting, some members expressed hesitation in their ability to support the recommendation as a package, considering their objections to particular elements.

As an alternative, a motion could be made to vote on the recommendation as a single package. According to the CCJJ Bylaws, if a motion to approve the recommendation as a whole package fails, the disapproved recommendation could then be re-examined by a reconsideration motion brought specifically by individuals who voted against the recommendation as a package. Members could then move to split the package into four separate recommendations for individual consideration. Given the hesitation already expressed regarding support for the package as a whole, Mr. Hilkey felt the proposed process to separate the recommendation at the outset of consideration would be more efficient. He indicated that, as Chair, he would respect the will of the Commission members in whatever path they decided to initiate via motions to address the recommendation.

**SENTENCING REFORM TASK FORCE**

Mr. Kornfeld and Mr. Dougherty, Task Force Co-chairs

**FINAL RECOMMENDATION PRESENTATION****FY23-SR#04. Change Felony Crime Classifications and Sentence Enhancement Provisions of the Criminal Code**

Given the in-depth presentation and robust discussions at the Feb. 24 Commission meeting, Mr. Kornfeld and Mr. Dougherty, Task Force Co-chairs, suggested referring Commissioners to the recommendation document forwarded prior to the meeting and moving directly to the discussion.

Mr. Hilkey requested a motion to suspend the "Substitute Voting" rule to allow Ms. Barnes (Executive Director, Colorado Department of Human Services), to vote for her designee, Ms. Castillo-Cohen, specifically for this March 10 meeting. A motion was offered to allow Ms. Barnes to vote at this March 10 meeting and the motion was seconded. Mr. Hilkey asked whether there were any questions or discussion regarding the motion. Seeing none, a simple majority vote was conducted, yielding the following result.

**A. I support: 23    B. I do not support: 0**

**The motion to suspend the "Substitute Voting" rule was APPROVED.**

Mr. Hilkey requested a motion to suspend the "Recommendation Form" rule for the current meeting and allow the Commission to revise the form of the recommendation prior to its consideration. A motion was offered and seconded. Mr. Hilkey asked whether there was any questions or discussion regarding the motion. Seeing none, a simple majority vote was conducted, yielding the following result.

**A. I support: 19    B. I do not support: 3    Abstain: 1**

**The motion to suspend the "Recommendation Form" rule was APPROVED.**

Mr. Rourke offered the motion to separate FY23-SR #04, treating the four elements outlined in the original recommendation (4.1, 4.2, 4.3 and 4.4) as separate recommendations for individual consideration and vote. Sheriff FitzSimons seconded. Because this motion would affect the structure of the recommendation, a supermajority vote was required. Mr. Hilkey asked whether there was any discussion regarding the motion. Seeing none, the process for supermajority voting on a final recommendation was explained. To pass, with the 51% quorum requirement being met, an approval threshold of 66% of the members present and voting was required, 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, yielding the following result.

**A. I support: 14    B. I can live with it: 2    C. I do not support: 3    Abstain: 4**

**The motion to separate FY23 SR #04 into four recommendations was APPROVED**

**RECOMMENDATION 4.1. EXTREME INDIFFERENCE HOMICIDE AND VEHICULAR HOMICIDE**

Mr. Kornfeld moved and was seconded by Ms. Jones to approve **Recommendation 4.1 Extreme Indifference Homicide and Vehicular Homicide** as presented.

Ms. Finks offered a motion which was seconded by Shawn Day to amend **Recommendation 4.1. Extreme Indifference Homicide and Vehicular Homicide** with the following statutory changes in 18-3-106(1)(c):

- **Replace:** “(III) THE VIOLATION OCCURRED WHEN THE DEFENDANT WAS IN VIOLATION OF THE FELONY PROVISIONS OF 42-4-1301(1)(a)” **with:** (III) THE VIOLATION OCCURRED WITHIN TEN YEARS OF THE DATE OF A PRIOR DUI OR DWAI CONVICTION”.
- This is in line with the aggravating factors included in New Mexico and New York law and similar to the statutes in Indiana and North Carolina. Only one other state requires three prior convictions
- **Insert:** “(V) THE VEHICULAR HOMICIDE RESULTED IN THE DEATH OR INJURY OF MORE THAN 1 PERSON”
- **Insert:** “(VI) THE VIOLATION OCCURRED WHILE THE DEFENDANT WAS DRIVING TWENTY-FIVE OR MORE MILES PER HOUR IN EXCESS OF THE REASONABLE AND PRUDENT SPEED OR IN EXCESS OF THE MAXIMUM LAWFUL SPEED LIMIT”.

Mr. Raynes offered a friendly revision of the third bullet regarding the language in (VI) which was accepted by Ms. Finks as follows:

- “(IV) THE VIOLATION OCCURRED WHILE THE DEFENDANT WAS DRIVING TWENTY-FIVE OR MORE MILES PER HOUR IN EXCESS OF THE POSTED SPEED LIMIT.”

#### MEMBER DISCUSSION

Following her comments offered during the discussion of this recommendation element at the previous Commission meeting on February 24, Ms. Finks explained to Commissioners that she had consistently voiced similar concerns for the need to add “aggravators” for multiple victims and for speed at the related Working Group and Task Force meetings regarding this section of the recommendation. Members of those groups did not support the addition of such provisions.

Commissioners asked several clarifying questions regarding the amendment and, at length, discussed potential crime scenarios and filing options for vehicular homicide.

Mr. Kornfeld and Mr. Raynes remarked that prosecutors have the discretion to file additional charges for a single criminal event, which can lead to consecutive sentences. They echoed Ms. Ring’s comment that the Sentence Structure Working and Study Groups and the Sentencing Reform Task Force had met over the past six months to extensively discuss the same scenarios and possible sentencing options that resulted in the design of this recommendation element.

Ms. Finks responded that multiple charges are rarely filed in aggravated vehicular homicide cases. The victims of vehicular homicide feel that the punishment does not fit the crime, and the trauma of victims is not adequately considered. From the victim’s perspective, adding the proposed aggravators to the vehicular homicide statutes would be a crucial element that would provide some justice for their loved ones.

Mr. Raynes reiterated the extensive discussions that occurred previously on this issue at the Task Force, Working Group, and Study Group meetings. He called the question on the amendment.

Mr. Hilkey asked whether there were any final comments on the motion and, seeing none, a supermajority vote was conducted, yielding the following result.

**A. I support: 3   B. I can live with it: 2   C. I do not support it: 14   Abstain: 3**  
**The motion to amend Recommendation 4.1. Extreme Indifference Homicide and Vehicular Homicide with the proposed statutory changes in 18-3-106(1)(c) FAILED.**

Mr. Hilkey solicited further discussion regarding the original motion to approve **Recommendation 4.1 Extreme Indifference Homicide and Vehicular Homicide** as presented.

## MEMBER DISCUSSION

Commissioner O’Dorisio stated that, if offered, he would support an amendment to include prior DUI as an aggravator in the vehicular homicide statute. He also shared his concern about Recommendation 4.1 to reduce filing options and eliminate the filing of extreme indifference for aggravated vehicular homicide cases.

Mr. Raynes reiterated that, for those most egregious homicides, prosecutors would charge intentional homicides with certain aggravating circumstances, rather than extreme indifference. Concerning attempted extreme indifference homicide, Colorado is the ONLY jurisdiction that recognizes this crime. Extreme indifference is determined by the attempt to commit a crime, not specific intent.

Ms. Jones clarified that extreme indifference has a lower *mens rea* threshold (*intention or knowledge of wrongdoing that constitutes part of a crime, as opposed to the action or conduct of the accused*) compared to intention, premeditation, or deliberation to commit a crime.

## PUBLIC COMMENT

Mr. Fran Lanzer from Mothers Against Drunk Driving (MADD) indicated that his organization examined those cases that received more than the maximum sentence for a class 3 felony vehicular homicide DUI. From 2014 -2021, twelve people received a sentence of more than twelve years. He expressed concern that the proposed aggravators in the vehicular homicide recommendation would only capture six of the twelve cases. Ms. Finks’ amendment would have included eleven of the twelve cases. Mr. Lanzer indicated he would oppose the recommendation as presented should it be introduced as legislation. He agreed with Ms. Finks’ statement that very few cases receive a sentence that exceeds twenty-four years.

Ms. Maureen Cain, Sentencing Reform Task Force and Sentence Structure Working Group member, added that the Sentence Structure Study Group examined twenty-nine vehicular homicides in 2019. Two persons were granted probation; the remaining were sentenced to a correctional facility. Of the twenty-nine cases, some received sentences over twenty-four years because prosecutors filed second-degree felony murder. Ms. Cain explained that the proposed extreme indifference sentencing range is significantly higher than the range for second-degree felony murder. The consecutive sentences could nearly equate to a life without parole sentence.

**Recommendation 4.1 Extreme Indifference Homicide and Vehicular Homicide** With no further discussion, a supermajority vote was conducted, yielding the following result.

**FINAL VOTE:**

**A. I support it: 6   B. I can live with it: 5   C. I do not support it: 11   Abstain: 2**

**The motion to approve Recommendation 4.1. as presented FAILED.**

**RECOMMENDATION 4.2. MANDATORY CONSECUTIVE SENTENCING AND POST-CONVICTION REVIEW**

Mr. Hilkey requested a motion and a second to approve **Recommendation 4.2. Mandatory Consecutive Sentencing and Post-Conviction Review** as presented. Mr. Kornfeld moved approval of the recommendation and Ms. Jones seconded.

## MEMBER DISCUSSION

Mr. Ashaheed shared his unique lived experience perspective as a formerly incarcerated person, a victim, and a reentry advocate. He concurred with previous statements that people change and that the “second look” opportunity has significant impacts on both victims and offenders.

Ms. Huitron, Mr. O’Dorisio, and Mr. Stancil indicated they support the process of sentence reconsideration included in Recommendations 4.2 and 4.3.

## PUBLIC COMMENT

Ms. Kelly Williams shared her experience as a member of the victim community. In 2021, her family participated in victim/offender dialog through a restorative justice program in the Department of Corrections. A seventeen-year-old person shot and wounded her father, who at the time of the incident was an Aurora Police Officer. The dialog was an incredibly healing experience for her family. Ms. Williams disagreed with the statement that a “second look” would be traumatic and re-victimize people stating that it was the opposite for her family that has since developed a friendly and healing relationship with the defendant. Ms. Williams expressed that this experience demonstrated that people can change and deserve a “second look.”

Ms. Mary Dofelmire was released from prison and is currently on parole. Ms. Dofelmire suffered from a debilitating injury that led to drug addiction, which then led her to engage in criminal behavior. Ms. Dofelmire agreed that she deserved her sentence in prison. The victims of her crime have consistently voiced their desire to see a lengthy and maximum sentence for the crime she committed. After coming to a parole hearing and witnessing how she participated and utilized the programs in the Department of Corrections to change and better herself, the victims changed their minds and supported her release. While in prison, Ms. Dofelmire worked hard to demonstrate that change is possible and that she was not the same person that committed the crime. She believed that all try to get better and supported all aspects of giving offenders a second chance.

Eric Davis was sentenced to life imprisonment when he was seventeen years old for killing a person in an armed robbery. Mr. Davis spent thirty years in prison. Through a program for adults convicted as juveniles, Mr. Davis was given the opportunity to be released, if he demonstrated change and the ability to reintegrate successfully into society. Mr. Davis shared that for the men and women who spend a long time in prison, a “second look” is an important incentive to work hard, engage in rehabilitation programs, and better themselves. Mr. Davis expressed that a “second look” opportunity would also make prisons safer because people have to cooperate and engage in a meaningful way.

Mr. Jeffrey Nowacki (Associate Professor of Sociology at Colorado State University and member of the Sentencing Reform Task Force) referenced a paper in *Criminology and Public Policy* (2014) by the prominent criminologist, Michael Tonry entitled “Remodeling American Sentencing: A Ten-Step Blueprint for Moving Past Mass Incarceration.” The author offers an extensive argument that every state should enact legislation making all prisoners serving fixed terms longer than 5 years, or indeterminate terms, eligible for consideration for release at the expiration of 5 years.

**Recommendation 4.2. Mandatory Consecutive Sentencing and Post-Conviction Review.** With no further discussion a supermajority vote was conducted, yielding the following result.

**FINAL VOTE:**

**A. I support it: 17   B. I can live with it: 2   C. I do not support it: 3   Abstain: 2**

**The motion to approve Recommendation 4.2 as presented was APPROVED.**

RECOMMENDATION 4.3. HABITUAL SENTENCES

Mr. Hilkey requested a motion to approve **Recommendation 4.3. Habitual Sentences** as presented. Mr. Raynes moved to approve 4.3 and Mr. O’Dorisio seconded. Mr. Hilkey solicited questions, comments or discussion regarding the motion. Seeing none, a supermajority vote was conducted, yielding the following result.

**FINAL VOTE:**

**A. I support it: 15   B. I can live with it: 3   C. I do not support it: 3   Abstain: 3**

**The motion to approve Recommendation 4.3 as presented was APPROVED.**

ELEMENT 4.4. EXTRAORDINARY RISK

Mr. Hilkey requested a motion to approve **Recommendation 4.4. Extraordinary Risk** as presented. Chief Hayes moved approval of the recommendation and Sheriff FitzSimons seconded. Mr. Hilkey solicited questions, comments or discussion regarding the motion. Seeing none, a supermajority vote was conducted, yielding the following result.

**FINAL VOTE:**

**A. I support: 17   B. I can live with it: 4   C. I do not support it: 0   Abstain: 3**

**The motion to approve Recommendation 4.4 as presented was APPROVED.**

Mr. Hilkey requested a motion to combine Recommendations 4.2, 4.3 and 4.4 into a single **Recommendation FY23-SR #04**. Chief Hayes moved to combine Recommendations 4.2., 4.3, and 4.4 and Ms. Paccione seconded. Mr. Hilkey solicited questions, comments or discussion regarding the motion. Seeing none, the supermajority vote was conducted and yielded the following result.

**FINAL VOTE:**

**A. I support: 17   B. I can live with it: 3   C. I do not support it: 0   Abstain: 3**

**The motion to approve the final Recommendation FY23-SR #04 (to include the original elements 4.2, 4.3 and 4.4 with revised sequential numbering to elements 4.1, 4.2 and 4.3) was APPROVED.**

Mr. Hilkey proposed an acclimation vote to refer the remaining Recommendation 4.1. to the Sentencing Reform Task Force for further study and consideration. He asked whether any member was opposed and, seeing none, Recommendation 4.1 was returned to the Sentencing Reform Task.

Mr. Hilkey, joined by Commissioners, recognized and thanked the Sentencing Reform Task Force and Sentence Structure Working Group members for their significant efforts.

The final recommendation as approved can be found on the Commission website at [ccjj.colorado.gov/meetings-2023](http://ccjj.colorado.gov/meetings-2023) under the March 10, 2023 meeting tab.

**TASK FORCE UPDATES****Sentencing Reform Task Force****Rick Kornfeld, Task Force Co-chair**

Mr. Kornfeld thanked Commissioners and members of the public for the robust discussion on Recommendation FY23-SR #04. At the next Task Force meeting, the group will discuss Recommendation Element 4.1., which was referred to the Task Force for further study.

**Community Corrections Task Force****Glenn Tapia, Task Force Chair**

Mr. Tapia reported that the Community Corrections Task Force recently established a consensus on a proposal and will discuss a draft recommendation at the next meeting on April 10, 2023. Mr. Tapia reminded Commissioners that the broad mission of the Task Force is to consider whether services provided by community corrections programs might be an effective alternative for specific persons convicted of misdemeanors who are struggling in their sentence to probation.

**Reentry Task Force****Mr. Hilkey, CCJJ Chair**

The membership assignments to this Task Force are nearly complete and the first Task Force meeting will be held on April 11, 2023 at 9:30 am. An update has recently been sent to the members who volunteered to participate in these efforts to address the reentry topics outlined in the 2022 Biennial Letter from Gov. Polis.

**PRESENTATION: Crime & Corrections Update**

Given the meeting time remaining, the presentation was postponed to the April Commission meeting.

**PUBLIC COMMENT** – No members of the public offered any further comment.

**ADJOURNMENT**

Mr. Hilkey thanked Commissioners for their attention and participation. With no further business, Mr. Hilkey adjourned the meeting at 3:50 pm.

**The next Commission meeting is Friday, April 14, 2023, at 1:30 pm.**

**Details of all Commission related-meetings may be found on the CCJJ web and calendar ([ccjj.colorado.gov/ccjj-meetings](https://ccjj.colorado.gov/ccjj-meetings) & [ccjj.colorado.gov/ccjj-calendar](https://ccjj.colorado.gov/ccjj-calendar)).**