

Commission on Criminal and Juvenile Justice

Legislative Fact Sheet

Support SB21-271

Concerning the adoption of the 2021 recommendations of the CCJJ regarding classification and sentencing of offenses

Sponsors: Senators Gardner and Gonzales & Representative Roberts

May 2021

Background

There has not been a comprehensive review of sentencing laws in Colorado since 1985. Over the ensuing decades, many new crimes have been created and other changes have been made to various sentencing laws which have resulted in Colorado's sentencing statutes becoming

outdated, misaligned, and inconsistent in their application. Also, there have been strong concerns from many different stakeholders about the lack of certainty that exists regarding the amount of

time a person will serve when sentenced to incarceration.

In June 2020, Governor Polis requested that the Colorado Commission on Criminal & Juvenile Justice (CCJJ) undertake a comprehensive review of sentencing laws to ensure that our sentencing scheme is rational, just, equitable, consistent, and reflects our shared values, including:

- maximizing public safety
- providing restoration and healing for victims
- ensuring fair and consistent treatment
- promoting acceptance of responsibility and accountability
- eliminating disparities based on race, ethnicity, gender, geography, socio-economic status, disability, or any other intersecting identities
- seeking rehabilitation as the goal in every case regardless of sentence and reducing recidivism, and
- reserving incarceration and detention for the most serious cases

The Governor emphasized that some of the work be completed to allow consideration by the General Assembly during the 2021 legislative session. The CCJJ created the Sentencing Reform Task Force (SRTF) which started its analysis with a comprehensive review of the misdemeanor and petty level of offenses. The recommendations developed by the SRTF were unanimously approved by the CCJJ and have been introduced as a package in SB21-271.

Framework for misdemeanor sentencing grid

In undertaking this analysis, the SRTF was guided by the following framework:

- Conduct a practical review and data analysis of what actually happens in criminal cases where a specific offense is charged

- Promote consistency and certainty in sentences
- Simplify crimes and sentencing
- Eliminate redundant offenses
- Develop a unified misdemeanor sentencing grid
- Reevaluate sentencing ranges
- Have a rational basis for classifying misdemeanors in the different offense levels based on harm,

seriousness of offense, and nuances in different fact patterns

- M1 Misdemeanors: direct, physical harm to a victim
- M2 Misdemeanors: crimes against property
- Misdemeanor offenses with financial loss to a victim will mirror the value thresholds in the theft statute and be consistent
- Petty offenses allow for short jail sentence
- Unclassified misdemeanors would be fine only

Specific crimes were also identified that should be reclassified from misdemeanor to felony or vice versa based on harm, seriousness of offense, or nuances in different fact patterns. For example:

Vehicular Homicide and Assault – Currently, DWAI Vehicular Homicide and DWAI Vehicular Assault with Serious Bodily Injury are misdemeanor traffic offenses. SB21-271 would reclassify DWAI/homicide to a Class 4 felony and DWAI/assault to a Class 5 felony.

Introduction of contraband – Under current law, Introduction of Contraband is a class 4 felony that applies equally to alcohol, explosives, marijuana, and wigs. This recommendation differentiates between “dangerous instruments” (like weapons) that would remain a class 4 felony, items that might facilitate escape or controlled substances would be a class 6 felony, and all other items would be a class 2 misdemeanor.

SB21-271 Summary

New Misdemeanor Sentencing Grid

The SRTF reviewed almost 1,000 offenses covering Title 1 through Title 44 and did a state-by-state review of misdemeanor sentencing ranges. Colorado’s current misdemeanor sentencing range is high compared with other states. The recommended sentencing range of up to 364 days is the most common range in all 50 states. Seven states have a lower range and five states have a higher range.

Misdemeanor 1	Up to 364 days jail	Fine Treatment options Useful public service
Misdemeanor 2	Up to 120 days	Fine Treatment options Useful public service
Petty Offense	Up to 10 days	Fine Useful public service
Infraction or unclassified misdo	n/a	Fine Useful public service

Fines for Misdemeanors

In current law, there is wide variance in the fine amount, even for crimes that are within the same level. This appears to often be a function of the long time period over which different fines were established. SB271 would standardize the fine amount across the misdemeanor crime categories.

M1	Up to
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	\$1,000
M2	Up to \$750
Traffic M1	Up to \$1,000
Traffic M2	Up to \$750
Drug M1	Up to 1,000
Drug M2	Up to \$750

DUI and Traffic Misdemeanors

Since DUI sentencing has recently be revised, there are no changes to DUI sentencing, except for minor clarifications related to work release and alternative sentences when extraordinary circumstances are determined by the Court. Sentencing and sentence ranges for DUI/DWAI is stand alone and encompassed within the DUI statute. Driving offenses are classified as Class 1 and Class 2 traffic misdemeanors or traffic infractions. Title 42 (Vehicles and Traffic) crimes that are not offenses committed while operating a motor vehicle are classified as criminal misdemeanors, petty offenses or civil infractions. SB271 aligns the sentencing ranges for traffic misdemeanors with the same range as for criminal misdemeanors. It also increases penalties for DWAI/homicide and DWAI/assault.

Jail earned time credits

There is wide variance among different jails on the amount and criteria for awarding earned time credits to people serving a jail sentence. In order to promote statewide consistency and greater certainty, SB271 sets the maximum of seven days for each thirty days served in jail that may be deducted for earned time with a possible additional three days if an inmate is designated as a trustee. All or part of any earned time awarded is subject to forfeiture if the inmate is found to have violated any rules or has not faithfully accepted or completed the duties assigned.

Clarification of alternative sentencing language for misdemeanors

In current law, there are several sentencing alternatives available to the court and several options available to the jails regarding day-release. However, current law is not inclusive of the options that are actually available in the community. SB271 adds behavioral health treatment and reentry programs to the list of those alternatives and day-release options.

Delayed effective date

The statutory changes would apply to crimes committed on or after **March 1, 2022** in order to allow for modifications to case management systems, court documents, and to allow adequate time to train law enforcement, prosecutors, defense counsel, judges, probation, and jail personnel. This time period will also provide an opportunity to allow for additional analysis and identify needed statutory "clean-up" prior to the effective date.

Colorado Commission on Criminal & Juvenile Justice

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Misdemeanor Sentencing Ranges by State

STATE MISDEMEANOR LEVEL MAX JAIL

Alabama Class A 0-1 year

Class B 0-6 months

Class C 0-3 months

Alaska Class A 0-1 year

Class B 0-90 days

Arizona Class 1 0-6 months

Class 2 Class 3

0-4 months 0-30 days

Arkansas Class A 0-1 year Class B 0-90 days

Class C 0-30 days

California Gross Misdemeanor 0-364 days Standard Misdemeanor 0-6 months

Colorado Class 1 0-18 months Class 2 0-12 months

Class 3 0-6 months

Connecticut Class A 0-1 year Class B 0-6 months

Class C 0-3 months

Class D 0-30 days

Delaware Class A 0-1 year Class B 0-6 months

Unclass 0-30 days

Florida 1st Degree 0-1 year 2nd Degree 0-60 days

Georgia Misdemeanor 0-12 months Hawaii Misdemeanor 0-1 year Petty Misdemeanor 0-30 days

Idaho Misdemeanor 0-6 months Illinois Class A 0-364 days Class B 0-6 months

Class C 0-15 days

Indiana Class A 0-11 months Class B 0-6 months

Class C 0-30 days

Iowa Aggravated Misdemeanor 0-2 years prison Serious Misdemeanor 0-1 year jail

Simple Misdemeanor 0-30 days jail

Kansas Class A 0-1 year Class B 0-6 months

Class C 0-30 days

Kentucky Class A 0-12 months Class B 0-90 days

Mini B 0-45 days

Louisiana Misdemeanor 0-6 months Maine Class D 0-1 year Class E 0-6 months

Blend 0-12 months jail or up to 18 months

Maryland Misdemeanor prison

Massachusetts Misdemeanor Blend 0-2.5 years prison or 0-1 year jail Michigan High Ct

Misdemeanor 0-2 years prison Misdemeanor 0-1 year jail

Misdemeanor 0-93 days jail

Minnesota Misdemeanor 0-90 days Mississippi Misdemeanor 0-1 year

Missouri Class A 0-1 year Class B 0-6 months

Class C 0-15 days

Montana Misdemeanor 0-1 year Nebraska Class I 0-1 year Class II 0-6 months

Class III 0-3 months

Nevada Gross Misdemeanor 0-364 days Misdemeanor 0-6 months

New

Hampshire Level A 0-1 year Level B Fine only up to \$1,200

New Jersey Disorderly Person 0-6 months Petty Disorderly 0-30 days

New Mexico Misdemeanor 6 months-1 year Petty Misdemeanor 0-6 months

New York Class A 0-1 year Class B 0-3 months

Unclassified

Misdemeanor 0-15 days

North

Carolina Class 1 1-150 days Class 2 1-60 days

Class 3 1-30 days

North Dakota Class A 0-360 days Class B 0-30 days

Ohio Class 1 0-180 days Class 2 0-90 days

Class 3 0-60 days

Class 4 0-30 days

Oklahoma Misdemeanor 0-1 year Oregon Class A 0-364 days Class B 0-6 months

Class C 0-30 days

Pennsylvania 1st 2.5-5 years prison 2nd 1-2 years prison

3rd 6-12 months prison

Summary Offense 90 days jail

Rhode Island Misdemeanor 0-1 year Petty Misdemeanor 0-6 months

South Carolina Class A 0-3 years Class B 0-2 years

Class C 0-1 year

South Dakota Class 1 0-1 year Class 2 0-30 days

Tennessee Class A 0-11 months Class B 0-6 months

Class C 0-30 days

Texas Class A 0-1 year Class B 0-180 days

Class C Fine only up to \$500

Utah Class A 0-364 days Class B 0-6 months

Class C 0-90 days

Vermont Misdemeanor by Crime Max 2 years Virginia Class 1 0-12 months Class 2 0-6 months

Class 3 Fine only up to \$500

Class 4 Fine only up to \$250

Washington Gross Misdemeanor 90 days - 1 year Misdemeanor 0-90 days

West Virginia Class A 0-12 months Class B 0-6 months

Class C Fine only up to \$500

Wisconsin Class A 0-9 months Class B 0-90 days

Class C 0-30 days

Wyoming High Misdemeanor 0-1 year Low/Petty Misdemeanor 0-6 months