



DENVER DISTRICT ATTORNEY'S OFFICE POLICY

SENTENCING REVIEW POLICY & PROTOCOL

June 2024

The District Attorney's duty to fairness and justice does not end at sentencing.¹ Prosecutors have a responsibility to seek justice in the outcome of a case at any point in the process. The Conviction Review Unit ("CRU") will accomplish this by reviewing, and, when appropriate, attempting to correct sentences that are incompatible with current standards of fairness. The unit is comprised of an attorney/director, investigator, and legal interns.

In Colorado, there are currently few legal pathways to support resentencing. The Denver District Attorney does not have the ability to unilaterally revise a validly obtained conviction and sentence. However, post-conviction petitions, clemency petitions, parole petitions, and community corrections transition requests (hereinafter referred to as "potential relief") are available remedies to individuals convicted of a crime.

MECHANISMS FOR RELIEF:

- Judicial Resentencing via Rule 35
- Clemency
- Parole/Special Needs Parole
- Sealing & Expungement
- Lobbying for Retroactive Sentencing Reform

ELIGIBILITY CRITERIA:²

To determine if resentencing or other relief is appropriate, the CRU will consider cases where:

- the applicant has served over 10 years and is over the age of 50;³
- the applicant has served over 15 years and is over the age of 35;⁴
- the applicant is serving a sentence on non-crime of violence habitual counts;
- the applicant has a documented serious medical condition or is terminally ill;
- the applicant has other exceptional circumstances suggesting that a resentencing would be in the interest of justice;

¹ ABA Criminal Justice Standard 3-1.2(b)-(f)

² See Fair and Just Prosecution (2019), Revisiting Past Extreme Sentences: Sentencing Review and Second Chances, https://fairandjustprosecution.org/wp-content/uploads/2020/02/FJP_Issue-Brief_SentencingReview.pdf (last accessed February 3, 2022).

³ Exceptions to the required timeline can be made where close to qualification in compelling cases.

⁴ Exceptions to the required timeline can be made where close to qualification in compelling cases.



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and if one of the two following conditions exist:

- the applicant has demonstrated significant rehabilitation and does not pose a community safety risk; or
- the applicant was convicted of a crime that is no longer a legally cognizable crime or because changes in the law have substantially reduced penalties for that crime.

Cases involving convictions of sex offenses will not be reviewed for resentencing.

This review process is akin to “second look” sentencing and is not a mechanism to review active prosecutions or recently closed cases.⁵

I. PROCEDURE:

a. Initiation of Sentencing Review

Sentencing review can be initiated by an individual or their attorney through any of the following: (1) filing an application or request for sentence review, (2) filing a post-conviction motion, or (3) any other application for potential relief. Individuals and/or their attorneys are encouraged to file an application with the CRU prior to filing a post-conviction motion or an application for other potential relief so long as there is no impact to any filing deadlines.

Upon receipt of an application, the case will be entered into the CRU database and the application and supporting documentation will be reviewed to determine if eligibility criteria has been met.

Upon receipt of a post-conviction motion that raises issues of sentencing, the Denver District Attorney's Appellate Unit may refer the motion to the CRU for screening prior to taking any position on the merits of the motion. The Appellate Unit may undertake an initial screening; however, the CRU is the ultimate decisionmaker regarding whether an individual is eligible for sentencing review.

⁵ For a discussion of second look legislative efforts with Congress and around the country, see <https://www.abajournal.com/news/article/momentum-builds-for-second-look-legislation-that-allows-inmates-to-get-their-sentences-cut>.



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Upon receipt of a clemency petition, the petition will be routed to the CRU. The petition and case file will be reviewed to determine if eligibility criteria has been met.

Upon receipt of a special needs parole or other parole request, the request will be routed to the CRU. The letter will be reviewed to determine if eligibility criteria has been met.

In all cases, the Director of the CRU or a legal intern will undertake review of applications.

b. Declining Review – Eligibility Criteria Not Met

If the applicant filed an application and does not meet the eligibility criteria, the CRU will notify the applicant or their attorney that the eligibility criteria was not met via written correspondence.

If the applicant filed a post-conviction motion and does not meet the eligibility criteria, the Appellate Unit will document in the case file that the eligibility criteria for CRU sentencing review was not met. The note will avoid numerous reviews of the same applicant. In this context, the Appellate Unit will use their expertise to litigate the case on the merits.

If the applicant filed another type of petition for relief and does not meet eligibility criteria, the CRU will provide its position to the appropriate body or board through established processes.

An applicant is not precluded from re-applying for relief if their first application is denied for not meeting the eligibility criteria, especially if there is a significant change in circumstances. When concluding that an applicant does not meet the criteria, the CRU will document what eligibility criteria was not met and close the file.

c. Review – Eligibility Criteria is Met

If eligibility criteria is met, the CRU will engage in a thorough review of whether the Denver District Attorney should support any reduction in sentence. This review includes an analysis of the case facts, length of time in prison, age, medical conditions, aggravating and mitigating circumstances, evidence of rehabilitation, and an assessment of present community safety risk.

The CRU will investigate the applicant's conduct while incarcerated. The CRU will review and evaluate risk assessment tools, likelihood of re-offense, input from the victim or victim's family, and any other available information. If provided, the CRU will review and consider certificates of achievement, letters of support, expressions of remorse, positive personal



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development, family and community support, job skills, and re-entry plan. All information will be saved in the applicant's file.

The CRU will make a recommendation for resentencing only if it is determined that there is significant evidence of rehabilitation and that the applicant does not pose a risk to community safety. If there is a recommendation for resentencing, the CRU will work with Victim Services to contact the victim(s) for input.

The Director of the CRU will provide a memorandum regarding the screening process, the investigation and conclusions, and a recommendation for resentencing to the Denver District Attorney. The memorandum and recommendation will be reviewed by members of the leadership team and/or the District Attorney, who makes the ultimate decision. The memorandum and decision regarding resentencing will be saved in the applicant's file and noted in the CRU database.

d. Denver District Attorney Does Not Support Resentencing

If the Denver District Attorney decides not to support resentencing, the CRU will notify the applicant and their attorney consistent with the procedures outlined above. The District Attorney retains final decision-making authority on accepted and rejected claims for review, but under no circumstance shall any applicant be advised they may appeal to the District Attorney directly.

e. Denver District Attorney Supports Resentencing

If the Denver District Attorney supports resentencing, the CRU will work with defense counsel or the *pro se* applicant to discern what, if any, legal path for release is available. The legal path and outcome will be noted in the CRU database.

II. PROCEDURES REGARDING MECHANISMS FOR RELIEF

a. Post-Conviction Motions

In the case of a 35(c) or other post-conviction motion, the CRU or Appellate Unit may file a joint petition for post-conviction relief if there are no ethical barriers. The case may be remanded back to the trial court for rehearing and jurisdictional bars for resentencing may be removed. This process may result in the reversal of convictions. Every effort will be made to avoid re-litigating cases and straining judicial resources.



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In order to promote judicial economy and the finality of a case, the CRU will work with defense counsel or *pro se* applicants and the assigned deputy district attorney to determine a fair and reasonable outcome in the form of a stipulated plea agreement before filing a joint petition or not objecting to a post-conviction motion. However, the agreement to a plea is not a prerequisite to supporting a post-conviction motion based on resentencing. Regardless of the position of the CRU, the ultimate decision will be made by a judge. The judge will review any motion and can deny a hearing, deny the motion, or deny any sentencing modification request.

Similarly, in the case of a 35(a) motion, the CRU or Appellate Unit may file a joint petition for post-conviction relief, stipulate, or concede to a rehearing regardless of legal time bar. As a result, the case will be remanded back to the trial court for rehearing and jurisdictional bars for resentencing may be removed. A stipulated plea agreement with defense counsel or the *pro se* applicant should utilize the same process. Regardless of the CRU's position, the ultimate decision will be made by a judge. The judge will review any motion and can deny a hearing, deny the motion, or deny any sentencing modification request.

In determining an appropriate plea or resolution, the parties should consider a sentence that is consistent with the Denver District Attorney's current sentencing policies and practices, the proportionality of the sentence, input from the victim(s), rehabilitation of the applicant, the age of the applicant, and community safety. Resentencing may result in the immediate release of the applicant, reduce the number of years to be served, or alter the placement of the applicant from DOC to community corrections (if accepted by the Board) or probation (if accepted by the judge).

b. Clemency

In the case of clemency, the CRU may support the application for commutation or pardon via a letter to the Executive Clemency Board. If the CRU recommends a commutation of a sentence, a specific number of years will be recommended that reflect the Denver District Attorney's current sentencing policies and practices, the proportionality of the sentence, input from the victim(s), rehabilitation of the applicant, the age of the applicant, and community safety. However, in these cases, the CRU merely makes a recommendation and the ultimate decision is made by the Governor. The clemency board will notify the applicant of the ultimate decision.

c. Parole



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In the case of parole, the CRU may support the application for parole or special needs parole via a letter to the Executive Clemency Board. In these cases, the CRU merely makes a recommendation, and the final decision is made by the parole board. The parole board will notify the applicant of the final decision.

III. VICTIM INPUT AND THE VRA

The needs and well-being of victims are of the utmost concern and addressing them must be a collective effort within the Denver District Attorney's Office throughout the entire post-conviction process. The CRU will ensure that victims are treated with fairness, respect, and dignity.

When the Denver District Attorney supports resentencing, the CRU and Victim Services will confer with victims to ensure they have meaningful input regarding the applicant's request. Victim input will not be sought unless the applicant meets the eligibility criteria, the CRU has conducted a significant investigation, and a preliminary decision to support the resentencing has been made. This process reduces unnecessary contact with the victim during the early stages of the review process and avoids unnecessary traumatization of victims. These cases will be referred to the Director of Victim Services to determine who best will facilitate victim communication.

Per the Victims Rights Amendment, the victim has the right to be heard at all critical stages. As defined by CRS § 24-4.1-302(2), the relevant critical stages for resentencing include:

- (h) Any sentencing or resentencing hearing;
- (i) Any appellate review or appellate decision;
- (j) Any modification of the sentence pursuant to rule 35(a) or 35(b) of the Colorado rules of criminal procedure or any other provision of state or federal law;
- (k.7) The request for any release from probation supervision prior to the expiration of the defendant's sentence;
- (l) An attack on a judgment or conviction for which a court hearing is set;
- (m) Any parole application hearing and full parole board review hearing;
- (n) The parole, release, or discharge from imprisonment of a person convicted of a crime;
- (o) Any parole revocation hearing;
- (p) The transfer to or placement of a person convicted of a crime in a nonsecured facility;
- (r.3)(I) Except as provided in subsection (2)(r.3)(II) of this section, any hearing concerning a petition for expungement as described in section 19-1-306; and,
- (v) A hearing held pursuant to section 24-72-706 or 24-72-709 (sealing).



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IV. INVESTIGATIONS

The CRU investigator works on cases of actual innocence and resentencing.⁶ For the purposes of resentencing cases, the investigator may be called on to investigate the applicant's history, institutional conduct, or review of mitigation documents to determine authenticity, and to assess community safety risk.

V. STAKEHOLDER INPUT

In revisiting past sentences, the CRU's policy will impact numerous stakeholders. These stakeholders include victim advocates, criminal justice advocates, the Public Defender's office, Alternate Defense Counsel, law enforcement, DOC, community corrections, probation, and judicial officers. Understanding that this policy may require stakeholders to invest time and resources, every effort will be made to inform stakeholders of the new policy, gather input, engage in meaningful conversations, collaborate, and revise the policy when appropriate. Stakeholder input should be gathered on an ongoing basis. Every effort will be made by the CRU team to limit time and resource expenditure by other stakeholders.

VI. TRANSPARENCY

The CRU will track and record data regarding all cases that are reviewed. The data will be included in the Denver District Attorney's Annual Report. The report will include the number of applications reviewed, the number of applications that met the screening criteria, race and gender of each applicant, how many applications were declined or supported resentencing.

⁶ For more details on actual innocence, please see the separate policy. It can be found at <https://www.denverda.org/conviction-review-unit/>.