

Drug Policy Task Force

Date: September 24, 2009 2:00 – 4:00 PM

Attendees:

Chairs

Grayson Robinson/Arapahoe County Sheriff – Chair

Dean Conder/Chairman, Juvenile Parole Board – Vice-Chair

Task Force Members

Bill Kilpatrick/Chief of Golden Police Department

Don Quick/District Attorney, 17th Judicial District

Regina Huerter/Executive Director, Denver Crime Prevention and Control Commission

Greg Long/Chief Deputy District Attorney, 2nd Judicial District

Maureen Cain/Colorado Criminal Defense Bar

Carmelita Muniz/Colorado Association of Alcohol and Drug Service Providers

Evie Hudak/Colorado State Senator, 19th District

Brian Connors/Public defender

Kathleen McGuire/Public defender

Tom Raynes/Deputy Attorney General's Office

Miles Madorin/Deputy District Attorney, 1st Judicial District

Nancy Feldman/Manager Victims of Crime Unit, Division of Criminal Justice

Doyle Forrestal/Colorado Behavioral Health Care Council

Christie Donner/Executive Director Colorado Criminal Justice Reform Coalition

Pat Steadman/Colorado State Senator, 31st District

Paul Thompson/Peer 1

Dan Rubinstein/Chief Deputy D.A., 21st Judicial District

Mark Hurlbert/District Attorney, 5th Judicial District

Sean McAllister/Defense attorney

Mark Waller/State Representative

Shane Bahr/ State PSC Coordinator, Colorado Judicial Department

Absent:

Reo Leslie/Colorado School for Family Therapy

Jim Welton/Inspector General, Dept. of Corrections

Issue/Topic:	Discussion:
Welcome and Agenda Review	The Chairman, Grayson Robinson, welcomed the members of the task force and gave an overview of the day's agenda.

Issue/Topic:	Discussion:
<p data-bbox="134 352 496 453">Update on the Structure Work Group Action</p> <p data-bbox="102 495 529 596">By Wednesday morning will send a draft out to Christine who will distribute to Task Force.</p>	<p data-bbox="561 352 1219 386">Tom Raynes gave a report on the structure work group.</p> <ol data-bbox="610 422 1511 1980" style="list-style-type: none"> 1. They have developed four levels of offenses: <ol style="list-style-type: none"> a. Level 4 includes petty offenses (PO) and misdemeanors: <ol style="list-style-type: none"> 1) Possession of marijuana- 4 oz or less (PO) 2) Distribution of marijuana – 4 oz or less with no remuneration (PO) 3) Cultivation of marijuana - 6 plants or less 4) Possession of marijuana – 16 oz (1 lb) or less 5) Use of any controlled substance (Schedule I – V) 6) Simple possession of controlled substance (Schedule III – V) 7) Distribution of controlled substance – 4 grams or less (Schedule III –V) 8) Simple possession of psilocybin (mushrooms) 9) Possession of hash – 1 oz or less 10) Sale/Distribution marijuana – 4 oz or less b. Level 3 felonies are: <ol style="list-style-type: none"> 1) Simple possession – Schedule I and II 2) Sale/Distribution of marijuana – less than 16 oz (1 lb) 3) Possession of marijuana – greater than 16 oz (1 lb) 4) Possession of marijuana concentrate/has – greater than 1 oz 5) Possession w. intent to distribute Schedule III – V less than 4 oz with no remuneration 6) Possession w intent to distribute Schedule I – II greater than 4 grams 7) Fraud & deceit 8) Cultivation of marijuana greater than 6 plants, but less than 30 plants 9) Distribution of marijuana 4 oz to 16 oz (1 lb) c. Level 2 felonies are: <ol style="list-style-type: none"> 1) Cultivation of marijuana greater than 30 plants 2) Possession w. intent to distribute schedule I – II 4 grams – 28 grams 3) Sale/Distribution of marijuana greater than 1 lb – 5 lbs. 4) Possession or precursors 5) Sale/Distribution of materials to produce 6) Distribution to a minor (18 years or younger) by a person less than 4 years older than the recipient. d. Level 1 felonies are: <ol style="list-style-type: none"> 1) Distribution of Schedule I & II greater than 28 grams 2) Sale/Distribution with deadly weapon 3) Selling to a minor (18 years or younger) by a person 4 or more years older than the recipient. 4) All special offender violations 5) Distribution on school grounds 2. The money laundering portions of drug statutes should come out of this

	<p>statute and be its own statute to cover all money laundering.</p> <p>3. Haven't decided on the sentencing structure for each level yet.</p> <p>Discussion:</p> <ol style="list-style-type: none"> 1. What about date rape drugs as a misdemeanor drug. Lower doses can be used for personal use. But individuals who have been victims usually don't report the rape because there is no memory of the act. 2. Concern was expressed about having use of mushrooms as a misdemeanor because this is popular among youth. Will this increase the use of mushrooms? 3. What about selling in areas of public housing? When an individual comes in and sells drugs in areas of public housing the offense has "special offender" status. Is it more of a crime to sell to someone who is poor than it is to someone who has money? The individuals who live in public housing cannot move, while someone who has money has the ability to move. They are trying to make living in public housing safer. 4. Distribution on school grounds is also a "special offence." If you sell off school grounds, the special offender status is dropped. Dealing drugs next to the school is a safety issue itself. 5. What about gypsum weed? This is addictive and not controlled. 6. If the amount is 4 grams or less, it is assumed to be per se and not for distribution? 99% of what is sold on the streets is 1/10 of a gram of crack. If someone has 4 grams, is presumed to be a distributor? No. There is no presumptive level.
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Issue/Topic:	Discussion:
<p>Update on the Policy Work Group</p> <p>Action</p>	<p>Don Quick gave a report on the policy work group.</p> <p>The group has developed areas of consensus:</p> <ol style="list-style-type: none"> 1. Public policy – When looking at drug offenders, public safety and intervention is more important than punishment. 2. Should some drugs be treated differently than others? The focus would be on criminal behavior as a result of the drug. Someone using marijuana in the home is different from someone going out and committing a crime to obtain the drug. 3. We need to get a handle on resources. How are we spending our money? What treatment programs are used? What populations use those programs? Do the treatment programs work? If not, we shouldn't be recommending those programs any more. In making these recommendations, we are relying on treatment being effective. 4. We need assessment tools that are used by treatment providers as well as probation. 5. There needs to be training in offender management. The treatment provider needs to be trained in offender management. Is that through probation or somewhere else? There is an offender certification that has both offender side training and treatment side training. 6. Probation, Judicial, ADAD, DCJ and even Human Services need to gather information and collaborate. There is a need to identify what drugs are being used in which areas and make sure the community has treatment

	<p>centers that can handle that particular problem.</p> <ol style="list-style-type: none"> 7. Employment. How do you have employment figure more into bond and sentencing issues. Having a felony conviction impacts your ability to get a job. How can you balance the public safety aspect of reporting the felony conviction with the ability of the offender to get a job? Being employed is a large indicator that an individual will not recidivate 8. Felony convictions can be sealed only ten years after the completion of the sentence. Can make this retroactive. 9. Have to have joint training between defense, prosecutors and judges. 10. Ensure that due process does not become a hurdle to proceeding to treatment. Need to balance expediting the plea so someone can get treatment with putting pressure on someone to plea to something just to get treatment. 11. Minority overrepresentation in the system. What are the causes of this? We should figure out of the programs culturally effective? The actions of the police and prosecutors do effect overrepresentation because they do saturation patrols on areas with a higher crime rate. While working in areas with higher crime rates, the officers are not in a more affluent area where individuals are also using drugs. 12. Would like there to be better treatment while an offender is in the holding facility. The money saved by DOC for not having a drug offender in a bed, should be given to local facilities for treatment. The sooner the treatment is given, the better. Treatment in a facility should count toward the total treatment plan of the offender. The offender shouldn't have to start over again once they are out of the facility. The treatment needs to be certified. Can we encourage a private vendor to come into a holding facility to begin treatment? 13. What about individuals who have dual diagnoses? Mental health issues as well as substance abuse.
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Issue/Topic:	Discussion:
<p>Update on the Evidence-Based Practices Work Group</p> <p>Action</p> <p>Will send these documents with revisions to Christine who will distribute to Task Force. Get feedback and finalize it at the October 1st meeting.</p>	<p>Doyle Forrestal reported the work of the evidence based practices work group. They developed a proposed legislative declaration and purpose of the code with respect to sentencing. They came to a unanimous consensus.</p> <ol style="list-style-type: none"> 1. "To improve public safety and reduce recidivism, Colorado will implement a system of informed and evidence-based sentencing for individuals with substance use disorders and mental health treatment needs." 2. "Savings that are achieved from reduced confinement will be directed toward programs that include education and treatment and are proven to create additional opportunities." Need to get some of these savings to the local communities for their use. Need to say that we are going to reduce recidivism because of better treatment. 3. "Providing community-based and alternative treatment for individuals that suffer from alcoholism, drug abuse and mental health conditions will improve public safety and reduce the likelihood that such individuals will have further contact with the criminal justice system." 4. "The state recognizes alcoholism, substance use disorders and mental illness are health disorders that respond better to treatment than incarceration." We need to recognize that there are certain offenders that don't fall into the treatment category. With limited resources, users and possessors should have the treatment resources directed toward

	<p>them, and the criminal aspect should be incarcerated.</p> <p>5. Speaks specifically to the criminal code.</p> <p>Discussion:</p> <ol style="list-style-type: none"> 1. We should not forget that there is a criminal component and the individual should be punished. 2. Can we outline the purpose of the level 1 classification and then list the drugs in that level and the sentence given? 3. Can we say that the General Assembly acknowledges that there are various levels of criminal behavior? 4. We need to have a good assessment of the individual in the courtroom. Is the individual one who is appropriate for treatment? Where appropriate use a combined tactic of treatment and supervision. 5. Is a single bill going to come out of this group? No, we will come up with some recommendations and give them to potential sponsors who can then have a bill written.
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Issue/Topic:	Discussion:
<p>Report on the DUI work Group, Wobblers and existing DUI courts</p> <p>Action</p>	<p>Grayson Robinson gave an update on the DUI working group.</p> <ol style="list-style-type: none"> 1. The DUI working group came together and talked about DUI courts and sentencing. Tomorrow the Interagency Task Force on Drunk Driving meets at CDOT at 9:00 a.m. Members of the DUI working group will be attending this meeting to discuss this group's focus and direction. 2. Glenn Davis spoke about the history of the Interagency Task Force on Drunk Driving. It was created 3 years ago and has 10 members with representatives from seven state agencies. They meet every quarter. The chair is head of CDOT. Right now, they are looking at creating felony DUI's. They are looking at creating more stringent penalties for second and third offense DUIs. They are still studying the situation with an ultimate goal of presenting recommendations to the General Assembly. 3. Grayson Robinson's DUI working group talked about a felony DUI. Anything that increases the likelihood of an individual being sentenced to DOC will have a fiscal note and would be difficult to get through the legislature. <p><u>Wobblers presented by Miles Madorin:</u></p> <ol style="list-style-type: none"> 1. The best example of "wobblers" can be found in California law. The statute states the sentence for the crime can be "X" years in prison or up to "X" years in the county jail. 2. There are several ways for the offenses to be made. <ol style="list-style-type: none"> a. A prosecutor can say that he/she is filing the matter as a misdemeanor and then bump it to a felony. b. The Court can determine if the matter is a felony or misdemeanor. c. The Court can determine at sentencing that the matter may have been filed as a felony, but should have been a misdemeanor. d. Also after successful completion of the sentence as a felony, the Courts can ask for the sentence to be reduced as a misdemeanor. 3. It appears that once the case is sent from felony to misdemeanor and is a misdemeanor from then on. 4. Colorado does not appear to have a Constitutional prohibition against this. 5. This process has consequences:

- a. How do you treat the case for jury trials? Bonds? Who has the discretion and how is it exercised? When is it appealable? How do you use it for habitual criminal purposes?
- b. For DUIs this would increase the penalties. For drug offenses it would decrease the penalties.
- c. Pros: flexibility to treat some drug offenses in a manner that would reward individuals who successfully complete their drug treatment.
- d. Cons: It is a risk to do something that is so wildly different from what we have so we don't screw it up. In California they have had 60 years.

Discussion:

1. Would this violate the equal protection law? Instead of this, can we talk about diversion and split sentences.
2. Is there any evidence to show that this kind of system reduces recidivism or is more effective in getting people through probation?
3. This will have a fiscal note.
4. The most difficult people for Denver treating the misdemeanor level offender because they don't have the felony sitting over their head. If there is a way to engage someone in treatment and tell them that if they complete then a felony will be dropped.

DUI Courts in Colorado presented by Shane Bahr:

1. What is a DUI Court? It is a way to focus evidence based practices to a certain population.
2. It is not meant for every DUI offender. It is structured on the drug court model. It is a post-conviction court and individuals are assessed for placement. The higher risk individuals are those that do the best in this type of program.
3. There are four operational DUI courts in CO: Pagosa Springs, Cortez, Colorado Springs; and Boulder/Longmont. Pagosa Springs and Cortez are small enough to keep fidelity to the model.
4. Those courts have been established with CDOT funds which were only provided for three years. Just now getting data back from both Pagosa Springs and Cortez.
5. Have four additional courts that have gone through training and are pursuing funding to get them up and running right now.

They would like to do more evaluation on these programs to report back on their effectiveness.

Issue/Topic:

Where we go from here.

Action

Any information that should be distributed to the Task Force should be sent to Christine Adams who will send it to the Task Force.

Discussion:

Paul Herman spoke about the upcoming deadlines and where we go from here.

1. October 16th - date where the Drug Policy Task Force will be presenting its final recommendations to the Commission.
2. October 1 will be the final meeting of the drug policy group. Recommendations will be presented for final review and discussion.
3. The work groups will meet between now and October 1st.
4. All the working groups know what their next steps are.
5. The DUI work group has its roadmap and will be prepared at the October 1 meeting to provide direction and recommendations to this group. They are meeting prior to the main Task Force on Oct. 1.
6. Does this group meet after the October 16th meeting so that we can begin discussing how to find the funds to get into treatment programs?

	Yes there will be additional work because of the feedback from the Commission.
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| | 7. The Task Force would like to come back together and begin developing areas for funding the treatment plans. |
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The meeting adjourned at 4:35 p.m.

Next Meeting: Thursday, October 1 at NETI

DUI Work Group will meet from 11am - 1pm

Main Drug Policy Task Force will meet from 1pm – 5pm