

# Drug Policy Task Force

**Date: October 27, 2009 Time: 1:00 – 5:00**

## **Chairs:**

Grayson Robinson/Arapahoe County Sheriff – Chair

## **Task Force Members:**

Don Quick/District Attorney, 17<sup>th</sup> Judicial District (via phone)

Greg Long/Chief Deputy District Attorney, 2<sup>nd</sup> Judicial District

Evie Hudak/Colorado State Senator, 19<sup>th</sup> District

Kathleen McGuire/Public defender

Brian Connors/Public defender

Tom Raynes/Deputy Attorney General's Office

Miles Madorin/Deputy District Attorney, 1<sup>st</sup> Judicial District

Doyle Forrestal/Colorado Behavioral Health Care Council

Christie Donner/Executive Director Colorado Criminal Justice Reform Coalition

Pat Steadman/Colorado State Senator, 31<sup>st</sup> District

Dan Rubinstein/Chief Deputy D.A., 21<sup>st</sup> Judicial District (via phone)

Mark Hurlbert/District Attorney, 5<sup>th</sup> Judicial District

Paul Hoffman for Shane Bahr/ State PSC Coordinator/ Colorado Judicial Department

## **Absent:**

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

Bill Kilpatrick/Chief of Golden Police Department

Reo Leslie/Colorado School for Family Therapy

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

Maureen Cain/Colorado Criminal Defense Bar

Carmelita Muniz/Colorado Association of Alcohol and Drug Service Providers

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

Paul Thompson/Peer 1

Mark Waller/State Representative

Sean McAllister/Defense attorney

Issue/Topic:	Discussion:
Welcome and Introductions	Grayson Robinson called the meeting to order and reviewed the agenda.

Issue/Topic:	Discussion:
<p data-bbox="99 388 527 420">Structure Group Recommendations</p> <p data-bbox="272 462 354 493"><b>Action</b></p> <p data-bbox="94 567 462 777"><b>Christine Adams will send out Recommendation #1 &amp; #2 to members of the Task Force for review (along with money laundering and HTO recommendations).</b></p> <p data-bbox="94 819 495 1018"><b>Comments are to be sent back to her by close of business on Thursday (10/29). The working group will then work through the comments and revise the recommendations.</b></p> <p data-bbox="94 1060 527 1207"><b>The revised recommendations must be sent to Christine by November 10<sup>th</sup> who will distribute them to the group.</b></p> <p data-bbox="94 1249 527 1417"><b>Final feedback must be sent to Christine by November 12 at 3pm, with the understanding that the final product will be presented to the Commission on November 13<sup>th</sup>.</b></p>	<p data-bbox="560 388 1502 598">Tom Raynes stated that the Structure Working Group met last week and reviewed the questions and discussion points on their recommendations. A fundamental premise to Recommendation 1 is to have a funding source for the treatment programs. Recommendation 2 is tied to the philosophy of Recommendation 1. If we can't achieve Recommendation 1 right away, maybe there are some things we can do in the interim.</p> <p data-bbox="560 640 1307 672">Discussion regarding fine tuning ideas on Recommendation #1:</p> <ol data-bbox="609 672 1526 1974" style="list-style-type: none"> <li>1. What do parole periods look like? Is it as simple as a 1 year, 2 year, 3 year based on the level of the offense? 1 year on a level 3 felony, etc.</li> <li>2. Preliminary hearings – which cases should be entitled to prelims. Only on level 1s and offenders in custody.</li> <li>3. Still need to flesh out probation periods. Those have to tie into (yet undefined) treatment models. The recommendation also has to factor in the jail impact. What do we need to be mindful of when we are talking about intermediate sanctions? When someone is in jail, are we also considering continuing treatment while in jail? Can this be done? More research needs to be done.</li> <li>4. Need to flesh out surcharge issues. We don't want to give up any surcharge funding.</li> <li>5. What about the potential of direct sentencing to Community Corrections on a deferred sentence? If someone needs the structure that comm. corr. provides, they should be able to get it without having a conviction. They should be able to access that with a deferred.</li> <li>6. There are mixed concerns regarding a "no strike" and "no use" provision. A level 3 offense could not be used for habitual charges or as a strike against you when trying to get probation. A level 2 offense could not be used as a habitual but can be used as a strike against probation. Level 1 offenses can be both used for habitual charges and strikes.</li> <li>7. Miles Madorin again cautioned that this topic is too complex to be rushed right through. Don Quick thought that this discussion might be better placed in the area of the two-felony rule.</li> <li>8. Grayson Robinson said that this is a complex issue and there is still a funding issue. Grayson proposes making a recommendation to the Commission in November that extensive work has been on Recommendation 1 and 2; however, additional work and research needs to be done. If we change the criminal code incorrectly, the consequences are far reaching.</li> <li>9. Miles Madorin said there are some areas in Recommendation 2 where we can reach consensus and may have some fiscal savings. For example, we could recommend that possession of cocaine can be increased from 1 gram to four grams without any significant impact and may be able to result in savings. Is this working group willing to put aside the work already done in Recommendation #1 and find those issues in Recommendation #2 where consensus can be reached and bring those to</li> </ol>

the Commission?

10. Can we push for a recommendation that pushes for a model without formally endorsing it?
11. We may have consensus on some issues that do not rely on finding treatment funding. We could recommend that these areas have consensus but need further work.
12. Can members of the task force review Recommendation #2 in the next few days and send emails with comments to Chrissy Adams. She could gather the comments and the working group could come together and work through them.
13. Grayson Robinson suggested that this task force recommend to the Commission that the issues in Recommendation #1 are so complex that they need additional research and should continue to be an on-going project. The Structure Working Group will meet and discuss the items in Recommendation #2 and prepare those items for a vote at the Commission. Tom Raynes made a motion to move forward on Mr. Robinson's suggestion. Sen. Hudak seconded the motion.
14. There is concern that recommendations in #2 will result in money savings and those savings will go directly into the general fund to help balance the budget. Can we suggest that the savings be directed to the 318 committees? This motion passed unanimously.

**Issue/Topic:**

Policy Group Recommendations  
**Action**

**Discussion:**

Doyle Forrestall and Don Quick gave an overview on the Policy Group recommendations that were presented to the Commission and the feedback received.

Commission Feedback:

1. In summarizing the feedback, a lot of it was on the need for treatment and how we are going to identify the funds.
2. Commission members liked the philosophical shift to treatment.
3. There was consensus that we needed to recognize that there are different levels of drug offenders and a need to treat each level differently.
4. There has to be a shift to more of a collaborative effort between prosecutors, judges, and defense on decision making to get the right treatment for the right individual.
5. Probation and Parole should be given some tools to be used when there are technical violations. There should be a sanction other than revocation of probation or parole.
6. Training and education of also need to take place for better sentencing.
7. The group also talked about getting better assessments and better offender treatment training with the possibility of moving toward possible licensing requirements.

Regarding D-10:

- The poverty reduction task force has a bill that prohibits an employee's criminal history being used in a civil proceeding unless the criminal history pertains to the issue at hand.

Regarding D-4:

- Should we be putting policy statements in the bill? There should be careful analysis of something this detailed going into law. Mental health issues should not go into drug statutes.

Regarding D-5:

- Doesn't this recommendation repeat the types of drug users? The same information is contained in D-4? No, D-4 is the legislative declaration and it may not go anywhere. Recommendation D-5 may go a different path.

Regarding D-3:

- Can we include family interventions as part of the treatment of an offender? We do not want to let this fall off the radar.

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p data-bbox="110 716 521 814">CCJJ Recommendation Outcomes - DUI <b>Action</b></p> <p data-bbox="94 894 521 1098">DCJ to prepare figures regarding the impact on county jails for third time DUI offenders mandatorily sent to jail rather than probation. This info will be included in the November 30<sup>th</sup> report.</p>	<p data-bbox="561 716 1451 814">Grayson Robinson stated the DUI recommendations were presented to the commission and voted on. With the exception of 9A and 9B, all DUI recommendations were voted on to move forward.</p> <p data-bbox="561 856 1425 919">Recommendations 9A and 9B contain a provision for bond hearings. The Commission felt the need for bond hearings was unclear.</p> <ol data-bbox="609 930 1528 1984" style="list-style-type: none"><li>1. The working group did not want a mandatory bond hearing in every case. What they wanted to require was mandatory bond conditions. If they want the conditions removed, they have to go before the judge to see if the conditions could be removed.</li><li>2. The ability to have access to criminal records and driving records is problematic. Especially if the decision to arrest is based on the criminal record.</li><li>3. Bond hearings would still be held on third time or more offenders.</li><li>4. If you want to post bond, it would be based on these conditions.</li><li>5. Any discussion on BAC levels? No. This was not discussed. This is something that should be included.</li><li>6. Recommendation 9A states that, as an incentive, an offender can be given a reduced bond if he/she agrees to go to treatment. What happens to the offender that does not go to treatment? What options are there for the DA? How does the DA know if they haven't gone to treatment?</li><li>7. In 9A, the \$10,000 bond is statutorily required in DUS, but can be waived. It is routinely reduced in Jefferson County.</li><li>8. A violation of misdemeanor bond conditions cannot be turned into a felony charge. This statement should be removed.</li><li>9. In 9B, if all the existing conditions of bond are in place, and if the offender does not want to comply, they can go before the judge. The bond conditions can be waived if the judge finds the conditions are not appropriate.</li><li>10. What about indigent people. If you are requiring someone to obtain a bond, indigent people cannot get out of jail. Or if they spend all their money on the bond, they don't have the means to pay for treatment.</li><li>11. One of the recommendations was that someone who served a year in jail for a DUI charge would also have a period of probation to ensure they continued treatment.</li></ol>

12. In 2008, there were 6700 second-time offenders and 3500 third-time offenders sentenced to Probation. There will be a huge impact on jails when increasing jail time for third time offenders. Can these numbers get broken down by County so entities can see what the impact would be in their area? DCJ will use these figures when preparing the recommendation for the report.

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>The group returns to more discussion regarding any other broad brush issues not yet addressed</p> <p><b>Action</b></p> <p>Tom Raynes and Don Quick will look at combining and refining Position and Policy Recommendations D11 and D9-b along with the Structure Recommendation from Page 8 #3.</p> <p>Meeting adjourned at 4:05</p>	<p>Senator Hudack raised a few question about the Structure Document-</p> <p><b>Page 8 – 2) Money Laundering</b></p> <p>After further group discussion regarding this recommendation, the task force supports a money laundering statute 'outside' the drug code. This should be its own recommendation.</p> <p><b>Page 8 – 1) Habitual Criminal Statute</b></p> <p>Since the group is not going to pursue recommendation #1 but rather support elements from recommendation #2, could this recommendation be pushed into recommendation #2 for consideration? Simple possession of a controlled substance (any possession) should not count as a 'strike' toward habitual criminal status.</p> <p><b>Page 8 – 3) Record Sealing</b></p> <p>The filing fee is hefty on record sealing. What about a fiscal note? There also might be logistics problems for CBI regarding this recommendation. Christie Donner offers to follow up with CBI.</p> <p>Regarding record sealing and D-11:</p> <ul style="list-style-type: none"> <li>• Tom Raynes is going to get together with Don Quick to work on meshing D11 and the Record Sealing recommendation as far as it affects the courts, law enforcement agencies and CBI.</li> <li>• Christie Donner raised the question of shortening the 10-year limit on record sealing regarding F6's. Sealing a conviction 10 years after is a way tougher sell because criminal histories become less reliable.</li> </ul> <p>Grayson charges the group to look at and combine all recommendations regarding 'Sealing of Records'. Tom Raynes and Don Quick to look at combining Position and Policy Recommendations D11 and D9-b along with the Structure Recommendation from Page 8 #3.</p> <p><b>Medical Marijuana</b></p> <p>Should CCJJ look at this issue? The group says 'No'. It's too late in the game to take on this issue. Other groups (including Sen. Romer) are already addressing this issue.</p>