

# Drug Policy Task Force

**Date: December 1, 2009 Time: 1:00 – 4:00**

## **Attendees:**

### **Chairs**

Grayson Robinson/Arapahoe County Sheriff – Chair

### **Task Force Members**

Bill Kilpatrick/Chief of Golden Police Department

Don Quick/District Attorney, 17<sup>th</sup> Judicial District

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

Maureen Cain/Colorado Criminal Defense Bar

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

Brian Connors/Public defender

Tom Raynes/Deputy Attorney General's Office

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

Paul Thompson/Peer 1

Sean McAllister/Defense attorney

Shane Bahr/ State PSC Coordinator/ Colorado Judicial Department

### **Absent:**

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

Reo Leslie/Colorado School for Family Therapy

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

Carmelita Muniz/Colorado Association of Alcohol and Drug Service Providers

Kathleen McGuire/Public defender

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

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

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

Jim Welton/Inspector General, Dept. of Corrections

Mark Waller/State Representative

<p style="text-align: center;"><b>Issue/Topic:</b></p> <p>Welcome and Review of Agenda <b>Action</b></p>	<p style="text-align: center;"><b>Discussion:</b></p> <p>Grayson Robinson called to meeting to order and reviewed the day's agenda.</p>
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<p style="text-align: center;"><b>Issue/Topic:</b></p> <p>Funding Working Group <b>Action</b></p> <p><b>The five recommendations that were referred to the Funding Working Group for clarification will be discussed when they meet next week.</b></p>	<p style="text-align: center;"><b>Discussion:</b></p> <p>Regi Huerter outlined the five items that were discussed at the general Commission meeting and then referred to the Funding Working Group.</p> <p><b>FR5 – Senate Bill 318 Board membership: The statutory membership of these local bards should be amended to include a treatment provider and chief judge.</b></p> <ol style="list-style-type: none"> <li>1. What was the rationale to ask for a treatment provider and chief judge to be added? <ol style="list-style-type: none"> <li>a. When the structure group was looking at what services were available, they noticed that a treatment provider was not part of the 318 Board. Having individuals with different expertise is beneficial.</li> </ol> </li> </ol> <p><b>FR6: The working group supports any effort to make more high level Residential Treatment options and aftercare services available to drug offenders.</b></p> <ol style="list-style-type: none"> <li>1. Where are the residential treatment centers and aftercare services located? <ol style="list-style-type: none"> <li>a. This should be added to the preamble.</li> </ol> </li> </ol> <p><b>FR4 – Senate Bill 318 funds: investigation into current treatment funding streams revealed that the money generated by Senate Bill 318 for treatment services is not specifically directed toward adult offender services as clearly intended at the time of the legislation. This statute is broad and requires clarification regarding funding.</b></p> <ol style="list-style-type: none"> <li>1. To be clarified by the Funding Working Group.</li> </ol> <p><b>FR7- the CCJJ should seek an intensive review and audit of all potential treatment dollar resources currently being dispensed throughout the state and seek a mechanism to centralize these monies into a single funding source that can better serve the needs of the justice system in relation to providing offender treatment services and gain better control and accountability over the numerous programs and services currently being provided.</b></p> <ol style="list-style-type: none"> <li>1. To be clarified by the Funding Working Group</li> </ol> <p><b>FR10: The Division of Behavioral Health (DBH) ... is responsible for licensing alcohol and drug treatment programs. State law requires that treatment programs must be licensed by DBH in order to receive funding through DBH.....the drug policy task force recommends that any treatment program that provides treatment to offenders (non-DUI) also be required by statute to obtain a license to provide offender treatment. Similarly, if the program serves offenders who are also either juveniles or women, state law should require treatment programs to be specially licensed in those areas, too.</b></p> <ol style="list-style-type: none"> <li>1. DBH offers other specialized licenses. What are they? <ol style="list-style-type: none"> <li>a. Licensure for programs that treat juveniles and women as these</li> </ol> </li> </ol>
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populations have specific needs. For treatment providers working with these special groups, it would be beneficial for them to be licensed.

**Issue/Topic:**

Structure Working Group

**Action**

**Bring voted on recommendations back to the Commission.**

**Structure group to review what is included in the 100 foot zone (SP-1).**

**Discussion:**

**CS-6 – Simple possession of psilocybin and psilocin in an amount of four grams or less is a class 1 misdemeanor. Any other violation concerning these substances, whether possession of a greater amount or distribution, etc..., shall be same as for any other schedule I controlled substance.**

1. This recommendation discusses making the use of Psilocybin a class 1 misdemeanor. The Structure Working Group came up with two classifications: possession of four grams or less as a class 1 misdemeanor; and possession of more than four grams of Psilocybin would be treated like the rest of schedule III, IV and V controlled substances.
2. Law enforcement has concerns on what amount is used for personal usage and what is not. Four ounces seems unreasonable to them. Can we clarify why we are using this designated? The amounts we are using are not the result of any evidentiary study.
3. All drugs have different weights for their use. Four ounces might be the basis for discussion.
4. Where did the initial one ounce number come from? It was arbitrarily chosen.
5. The suggestion is just a reclassification of the penalty.
6. What about singling out methamphetamine and reducing the amount to two ounces. This is the drug of the day. What will be the drug of the day be tomorrow?

Vote: Yes: 8 No: 3

**CS-7 – Use of a controlled substance shall be a class 2 misdemeanor.**

1. The Commission was confused if this recommendation deferred sentences. Yes
2. This recommendation does not need to be voted on. Will be referred back to the Commission as is.

**DP-1 - The distribution of a schedule III – V controlled substance is a class 6 felony:**

Vote: Yes: 8 No: 4

**DP-2 - The distribution of four grams or less of a schedule I or II controlled substance without remuneration shall be a class five felony.**

1. How do you draw lines of distinction between amounts distributed?
2. Reducing the distribution of prescription drugs to juveniles. What happens if you deal them to a juvenile? Other than marijuana, selling to juveniles is a class 3 felony. If there is less than two years difference between juveniles, it is a class 4 felony.

Vote: Yes: 13 No: 1

**DP-3 – The distribution of any schedule I or II controlled substance for profit or other thing of value shall be a class 3 felony. There shall NOT be an increase in the level of this crime for a second or subsequent offense.**

1. Add the word “not” to the second sentence.

Vote: Yes: 9 No: 3

**DP-4 – The amounts of any of the schedule I or II offenses noted above in DP1, DP2 or DP3 can be aggregated over a six month period to result in the higher charge.**

1. Aggravates the crime.

Vote: Yes: 13 No: 0

**SP-1 – Limit subsection (2)(a) to sales/distribution etc... within 100 feet for certain zones.**

1. Don Quick has experienced push back on reducing the distance from a school when distributing drugs. The recommendation reduces the distance from 1000 feet to 100 feet. If you sell drugs within 100 feet of a school, the offense is moved to the special offender status. Should we leave the recommendation at 100 feet and have the legislature work through the distance? Yes.
2. In reading the current statute, does it mean that distribution cannot take place within 1000 feet of a school or public housing unit, including streets and alleys and public places? Does the statute mean that it is a special offender if someone sells drugs within 1000 feet of a school and the place is an alley? Or does it mean that it is a special offender status if you sell drugs in a public place.
3. Maureen Cain is compiling data about all special offender cases for 2008. By next week, she will be able to speak to the circumstances of each case.
4. The removal of public places causes an issue. For example, bus stops would be considered a public place and are popular areas for distribution. Do we need to make a special distinction for how you treat dealers in a rural area where there may not be bus stops, versus an urban area where there are?
5. If we designate a public housing unit as an area to be included in the zone, does that not increase the issue of minority overrepresentation? Are the minorities and economically disadvantaged the ones living in the public housing unit?
6. Do we keep everything listed in the zone in the current statute, and just change the distance from 1000 feet to 100 feet?
7. The Structure Working Group will clarify what is to be included in the zone. The clarification will be sent out via e-mail from Christine Adams and the vote of the working group will take place by email.

**SP-4 – Eliminate subsection (1)(a) that provides for immediate and mandatory increase in the level of the offense if the defendant has two or more prior drug offenses.**

1. Vote is to remove the recommendation to the Commission.

Vote: Yes: 9 No: 5

**FR-1 – No conviction for simple possession of a schedule I or II controlled substance for an amount of four grams or less shall be subject to sentence enhancement as a habitual criminal.**

1. States that a conviction for simple possession of four grams or less of a schedule I or II controlled substance, or two grams of methamphetamine cannot be a trigger for a Habitual Criminal filing. Having a conviction for simple possession can be used as one of the felonies

Vote: Yes: 14 No: 0

**Issue/Topic:**

DUI Recommendations

**Action**

**Bring voted on recommendations back to the Commission.**

**Discussion:**

Bill Lovingier of the Denver Sheriff's Office, made a presentation on the Probation Remediation program in Denver. A DUI offender who violates probation is sent back to the Courts for a new sentence. The Court sentences the offender to a year in jail. The Denver Sheriff takes over. After the offender serves a specified amount of time in jail, the offender is then released to in-home detention. The Sheriff's Office continues pushing the offender to continue treatment and to obtain a job. They had 35 people who went through the program had a 100% success rate.

1. Who pays for the electronic monitoring? Denver pays for it until the individual becomes employed.

Glen Davis of the Department of Transportation, presented feedback from the Interagency Task Force on Drunk Driving (ITFDD) on the recommendations as put forth by the DUI Task Force. The ITFDD supports all the recommendations except for numbers 6 and 7 (they did not oppose these items, but felt that they had insufficient information to support).

1. Which recommendations did the ITFDD vote on? The original recommendations as presented to the Commission in November? Or the revised recommendations that will be presented to the Commission in December? They looked at both sets of recommendations.
2. Recommendations 6 and 7 did not have enough information. Sheriff Robinson will attend their next meeting and provide further explanation of these recommendations.

Steven Hooper of the Department of Motor Vehicles, spoke about differentiating treatment for DURs. Can there be a difference between someone who was suspended or revoked for a traffic reason versus being suspended for social issues such as non-payment of child support or for non-payment of a ticket? One half of the restraints that the DMV receives are for non-driving related charges. We can effectuate a change in statutes as long as those who are being sanctioned are those who are under restraint for traffic related issues or who have never passed the skills test.

1. This will take a great deal of training of police officers so they know what kind of suspension the officer is dealing with on the street.

**DUI-2a – Eliminate non-alcohol related Driving Under Revocation, Driving Under Suspension and Driving Under Denial as a major offense for consideration by the Division of Motor Vehicle for a misdemeanor habitual traffic offense.**

1. The current recommendation (what is being voted on) is the reversal of

the original recommendation. The original recommendation was to eliminate the non-alcohol DUR, DUS and DUD.

2. The current sentence is five days in jail.
3. The vote is to remove this recommendation.

Vote: Yes: 7 No: 4

**DUI-2b – Eliminate non-alcohol related Driving Under Revocation, Driving Under Suspension and Driving Under Denial as a major offense for consideration by the DMV as a predicate offense to classification as a Habitual Traffic Offender. Eliminate mandatory jail sentences for non-alcohol related DUI, DUS and DUD while still retaining them as discretionary.**

1. Vote is to withdraw this recommendation.

Vote: Yes: 6 No: 5

**DUI-6 - To increase consistence in sentencing DUI offenders, initiate mandatory and expanded jail sentences for 2<sup>nd</sup> and subsequent offenders.**

1. These recommendations will have an impact on local jails.
2. Will this interfere with what recovery courts are doing?
  - a. How many recovery courts are in place?
  - b. There are four now with two to three more coming on line in the next few months.
  - c. Yes.
3. Does not eliminate home detention. All it says is that there is a minimum of 45 days in jail with at least 30 days served. If there is a program in place that can take the individual sooner, the program would be affected.
4. What if the judge orders 9 months? The first 60 days are to be in jail, the remaining time could be served by in-home detention or residential treatment.
5. About 5% of offenders fit the requirement for residential treatment. Can this be taken out of the possible sentencing?

**DUI-7 – C.R.S. 42-4-1301(7)(IV)(e) allows for two years of probation plus two additional years of treatment and monitoring. Modify this statute to clarify that the time periods do not begin to run until after any jail sentence is served.**

1. In addition to the mandatory time, the court can also impose two years probation plus two years treatment. This is current law. The court does not have to do this.

Vote to combine DUI-6 and DUI-7: Yes: 7 No: 6

**DUI-9a – Modify existing bond statutes to enhance the consequences for defendants accused of third and subsequent alcohol and drug related driving offenses including impaired driving.**

1. There was some confusion from the Commission on if this would apply to second offenses.
2. Are you looking at three offenses over a lifetime or within a period of five years, ten years?
3. For those who are going into treatment, we should make sure the treatment is appropriate.
4. Don Quick made a motion that this apply to a third offense. Christie

Donner seconded the motion.

5. A friendly amendment was made that any treatment be as defined in the DUI statute.
6. Don Quick revised his motion to have this apply to a third offense with the third offense meaning a third conviction or pending charges for DUI and DWAI. The revised motion includes the friendly amendment. The second to the motion stands.

Vote on motion to amend: Yes: 11 No: 0

**DUI-9b – Bond hearing only required when a defendant seeks a bond without the above conditions. The court must make findings that the conditions are not necessary.**

1. There are some specific requirements to make bond include treatment. Not everyone will be able to meet all three of the requirements.

Vote to combine 9a and 9b: Yes: 9 No: 3

**Issue/Topic:**

Discussion of Future Meetings

Grayson Robinson suggested that future meetings of the Drug Policy Task Force be set to begin in the early part of February 2010. This would allow time for the Commission to make comments to the above recommendations as well as the legislative session to get underway. A February meeting could then also include comments and direction from the Legislature.

Task Force members will be notified of future meetings via email from Christine Adams.