

Drug Policy Task Force

Date: September 8, 2010 Time: 1:00 – 5:00

Attendees:

Members:

Grayson Robinson/Arapahoe County Sheriff, CCJJ Member / Chair
Bill Kilpatrick/ Golden Police Chief / CCJJ Member
Don Quick/District Attorney, 17th Judicial District / CCJJ Member
Maureen Cain/Colorado Criminal Defense Bar
Kathleen McGuire/ Douglas County Office of the Public Defender
Tom Raynes/ Attorney General's Office
Nancy Feldman/ Office for Victims Programs, Division of Criminal Justice
George DelGrosso/ Colorado Behavioral Healthcare Council
Christie Donner/ Colorado Criminal Justice Reform Coalition
Pat Steadman/Colorado State Senator, Senate District 31
Mark Hurlbert/District Attorney, 5th Judicial District
Jim Welton/ Department of Corrections
Rod Walker / Colorado Springs Police Department
Heather Garwood/ Judicial Department, on behalf of Shane Bahr

Absent:

Reo Leslie/ Colorado School for Family Therapy / CCJJ Member
Regina Huerter/Denver Crime Prevention and Control Commission/ CCJJ Member
Greg Long/District Attorney's Office, 2nd Judicial District
Carmelita Muniz/Colorado Association of Alcohol and Drug Service Providers
Evie Hudak/Colorado State Senator, Senate District 19
Brian Connors/ State Public Defender's Office
Miles Madorin/ District Attorney's Office, 1st Judicial District
Paul Thompson/Peer 1 Therapeutic Community
Dan Rubinstein/ District Attorney's Office, 21st Judicial District
Sean McAllister/Private Defense Attorney
Mark Waller/State Representative, House District 15
Shane Bahr/ Problem Solving Courts, Judicial Department
Dolores Poeppel / Victims Assistance Unit, Colorado State Patrol
Janet Wood / Division of Behavioral Health

Guests:

Laura Spicer, Cindy Burbach, Rep. Claire Levy, Craig Simpson and

Issue/Topic:	Discussion:
Introductions	Grayson Robinson called the meeting to order at 1:13 and reviewed the day's agenda.

Issue/Topic:	Discussion:
<p data-bbox="159 390 472 485">DUID and Per Se Levels for Marijuana Action</p>	<p data-bbox="561 390 1526 485">Rep. Levy began the discussion on expanding the DUI bill to include driving under the influence of marijuana. DUID means driving under impairment, whether the impairment is due to alcohol or drugs.</p> <p data-bbox="561 531 1526 632">Cindy Burbach, the state toxicologist for the Department of Public Health and Environment, and Laura Spicer provided answers to questions that were raised during their presentation at the August meeting.</p> <ol data-bbox="610 638 1526 1967" style="list-style-type: none"> <li data-bbox="610 638 1526 739">1. What does "Per Se" mean? Per Se is the blood level concentration of either alcohol or THC. By setting a standard Per Se level, the level of impairment could be determined. <li data-bbox="610 745 1526 989">2. Can you use urine tests? A urine test provides a more historic picture. For example, it indicates that an individual smoked marijuana within a period of time. Blood tests provide a more accurate level of THC at that specific time (e.g., when someone is pulled over). <ol data-bbox="704 888 1526 989" style="list-style-type: none"> <li data-bbox="704 888 1526 989">a. The number of blood tests requested of the Department of Health has risen from 200 a month to 600 a month in the last 6 months. <li data-bbox="704 995 1526 1024">b. Law enforcement can use private labs. <li data-bbox="610 1031 1526 1094">3. Research has shown that 2 ng of THC/mL of plasma or 1 ng of THC/mL of whole blood is where impairment begins. <li data-bbox="610 1100 1526 1163">4. Three statutes would have to be modified to allow for blood testing to go beyond the current 2-hour limit. <li data-bbox="610 1169 1526 1232">5. Can treatment providers handle this influx? Are they trained in DUID resulting from marijuana? The answer is "yes." <li data-bbox="610 1239 1526 1344">6. Can the state provide funding for indigent and juvenile DUID offenders? There was a statement made at the last meeting that funding in these areas is already increasing. Where? We need to find out where. <li data-bbox="610 1350 1526 1625">7. How quickly can THC be metabolized? It takes about three to four hours to go through the system. The speed at which the TCH hits the blood stream depends on the method of ingestion, the amount ingested and strength of the marijuana. A chronic user may have a consistent background level of THC. If you are a chronic user, do you develop a tolerance? A chronic user may be able to physically compensate for use. However, the cognitive effects of THC will still occur. Chronic users still have diminishment in cognitive functions. <li data-bbox="610 1631 1526 1946">8. For the states that established Per Se levels, have their laws gone through the appellate process? Wisconsin has successfully passed this test. Twelve of the seventeen states that have Per Se levels advocate a zero tolerance. Only five states have a defined limit. The best data has been obtained from European testing and utilizes the 2 ng/ mL as the level at which impairment is found. There was a study done at Stanford University involving the effects of marijuana on pilots. They gave pilots low grade marijuana and 24-hours later none of the pilots were able to land their plane using a simulator. <li data-bbox="610 1953 1526 1967">9. Are there any national groups that have made any recommendations

	<p>regarding levels of THC? No. The Drug Policy Task Force needs to ensure the number it advocates has good scientific support behind it. Science has shown that it takes between three and four hours for THC to exit the blood. This three to four hour period is valid if the marijuana is inhaled using a bong (which is the most efficient way to consume marijuana). If the marijuana is ingested, it takes up to eight hours to leave the blood stream.</p> <p>10. What happens if a driver has both alcohol and marijuana in their blood? At the traffic stop, the officer looks for impairment. Some of the roadside tests can indicate alcohol (e.g., breathalyzer). If the tests indicate a low level of alcohol, and the signs of impairment do not match the test, the officer would then look for drugs as the other part of the equation. If the tests indicate a high level of alcohol, the officer would not be looking for drug involvement.</p> <p>11. Cindy Burbach can put together a book of 25 studies on the effects of marijuana. Christine Adams will make this book available to the Task Force.</p> <p>a. Following the meeting it was decided that these articles would be made available on a CD that can be copied for anyone that is interested.</p>
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Issue/Topic:	Discussion:
<p>Unintended Consequences of DUI bill</p> <p>Action</p>	<p>Maureen Cain spoke about the unintended consequences that resulted from the DUI bill passed during the last legislative session.</p> <ol style="list-style-type: none"> 1. For first time DUI or DWAU offenses, the court “shall” or “may” impose probation. Under the old law, a defendant could opt for jail time. Now some courts think they have to give probation. This was not the intent of the Task Force. The language is being reviewed to see if it needs clarifying. 2. A drafting problem resulted in requiring that there be substance abuse monitoring for a year on the first offense. This was not the intent of the Commission and will be changed. 3. We were asked to re-visit the restrictions on repeat offenders with regard to work release and work search release. The DUI bill allowed for a repeat offender to be sentenced to work release if he/she already has a job. The offender would not be allowed work release to look for a job. The Structure Work group does not want to re-open the discussion. 4. On a third or subsequent DUI arrest, a condition of bond would require ongoing monitoring. The Task Force should re-adopt this prior recommendation. 5. Should the Structure Group address changes regarding DUID-marijuana? The group was in favor of making some sort of legislative change but needs more scientific information before a decision can be made. 6. The Structure Group wants more education on DUI Courts.

Issue/Topic:	Discussion:
<p>Habitual Offender Filings</p> <p>Action</p>	<p>Tom Raynes lead the discussion on the use of habitual offender charges based on felony drug convictions. There is a broad use of the habitual offender charges throughout the state. There should be a more consistent use of this charge. The</p>

	<p>four possibilities the Structure Work group is examining are:</p> <ol style="list-style-type: none"> 1. Eliminate the ability to use an F-6 drug offense as the felony that would trigger the filing of a habitual count. A prior conviction of an F-6 drug offense can be used as a predicate act, but not as the trigger. 2. The conviction of an F-6 Simple Possession case does not count for a habitual charge. 3. Eliminate any drug possession (F-4 through F-6) as the triggering event for habitual charges. 4. Eliminate any possession charge (F-4 through F-6) as a predicate act. <p>Must discuss what to do when there is a mixture of violent and drug crimes.</p> <p>How does the average citizen make the distinction between an individual who possesses drugs for personal use versus an individual whose criminal history involves drugs?</p> <p>At what degree is it appropriate for the make-up of a judicial district to weigh in on the sentence? There was an earlier discussion that the philosophical make-up of a judicial district can affect a prosecutor's stance on crime.</p>
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Issue/Topic:	Discussion:
<p>Sealing of Drug Records</p> <p>Action</p>	<p>The Structure Group discussed statistics that found the longer someone goes without committing another criminal act the less likely they are to commit another offense. A study in Philadelphia showed that if an individual went seven years (from the date of offense) without offending again, his likelihood to recidivate was just as low as someone who has never been arrested.</p> <p>In taking this concept further, the group discussed the possibility of sealing drug conviction records seven years after the offender had successfully completed his sentence and treatment. The sealing of records can be beneficial to offenders when looking for employment and housing (both of which help an offender to not recidivate). This concept can be an incentive for an offender to "stay clean." The more stable individuals are, the more the public remains safe. The stability also extends to their housing and employment history.</p> <p>For misdemeanor drug offenses that have been successfully completed, maybe a three year time period would be appropriate.</p> <p>We need to include the business community in this discussion.</p>

Issue/Topic:	Discussion:
<p>Paroling Drug Offenders</p> <p>Action</p>	<p>Christie Donner discussed the concept of paroling offenders who were sentenced on possession charges and incarcerated.</p> <ol style="list-style-type: none"> 1. Ms. Donner filed an Open Records request from the Department of Corrections to find out how many offenders are in prison whose major offense was a possession charge. There are currently 1600 offenders that meet this description. How many of those individuals pled down a distribution charge to a possession charge? 2. Is there a parole option for offenders that were sentenced for a crime

	that has now been reduced? This would be for offenders that are at or beyond their parole eligibility date. There would be other criteria that would have to be met to further ensure the offender is low risk. Many of these individuals are in DOC because of technical violations.
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Issue/Topic:	Discussion:
Next Meeting, Next Steps Action	<p>The October meeting of the Drug Policy Task Force will be devoted to recommendations prepared by the work groups. The recommendations will be discussed and fine tuned so they can be presented to the Commission during its November meeting.</p> <p>The Commission will vote on these recommendations in either November or December.</p>

The meeting adjourned at 3:27pm.