

# Drug Policy Task Force

**Date: October 6, 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, 17<sup>th</sup> Judicial District / CCJJ Member  
Regina Huerter/Denver Crime Prevention and Control Commission/ CCJJ Member  
Maureen Cain/Colorado Criminal Defense Bar  
Evie Hudak/Colorado State Senator, Senate District 19  
Brian Connors/ State Public Defender's Office  
Kathleen McGuire/ Douglas County Office of the Public Defender  
Tom Raynes/ Attorney General's Office  
Miles Madorin/ District Attorney's Office, 1<sup>st</sup> Judicial District  
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  
Dan Rubinstein/ District Attorney's Office, 21<sup>st</sup> Judicial District  
Sean McAllister/Private Defense Attorney  
John O'Dell / Colorado Parole Board  
Shane Bahr/ Problem Solving Courts, Judicial Department  
Rod Walker / Colorado Springs Police Department

### **Absent:**

Reo Leslie/ Colorado School for Family Therapy / CCJJ Member  
Greg Long/District Attorney's Office, 2<sup>nd</sup> Judicial District  
Carmelita Muniz/Colorado Association of Alcohol and Drug Service Providers  
Paul Thompson/Peer 1 Therapeutic Community  
Mark Hurlbert/District Attorney, 5<sup>th</sup> Judicial District  
Mark Waller/State Representative, House District 15  
Dolores Poeppel / Victims Assistance Unit, Colorado State Patrol  
Jim Welton/Department of Corrections

### **Other Attendees:**

Kathy Sasak/Department of Public Safety  
Steve Hooper/Department of Revenue, Division of Motor Vehicle  
Matt Durkin/ District Attorney's Office, 1st Judicial District  
Glenn Davis/Department of Transportation, Impaired Driving Programs

Christine Flavia/ Department of Human Services, Division of Behavioral Health

Charlie Smith/Department of Human Services, Division of Behavioral Health

Cindy Burbach/Department of Public Health, Laboratory Division

Laura Spicer/Substance abuse counselor

Bob Lantz/Toxicologist

**Staff:**

Paul Herman/Consultant

Christine Adams/Division of Criminal Justice

Kim English/Division of Criminal Justice

Adrienne Loye/Department of Public Safety

Issue/Topic:	Discussion:
<p>Call to Order and Introductions</p>	<ul style="list-style-type: none"> <li>• Grayson Robinson called the meeting to order at 1:12 p.m. and called for introductions.</li> <li>• Paul Herman outlined the day's agenda and discussed the timeline for the rest of 2010. <ul style="list-style-type: none"> <li>○ Items discussed today will be presented by Tom Raynes and discussed by the Commission at the October 8<sup>th</sup> meeting. <ul style="list-style-type: none"> <li>▪ The pros and cons, and an idea of where the task force is headed with these issues should be discussed.</li> </ul> </li> <li>○ These items must be written in final recommendation format for the November task force meeting. Final votes will be taken at the November meeting.</li> <li>○ Everything that is approved by the Task Force in November will then be presented and voted on by the Commission.</li> </ul> </li> </ul>

Issue/Topic:	Discussion:
<p>Report from Structure Working Group on DUI legislation</p> <p style="text-align: center;"><b>Action</b></p> <p>By the November Task Force meeting, the structure working group will come up with a draft recommendation to clarify these issues.</p> <p>See the meeting handouts for more information and examples regarding these issues.</p>	<p>Review of issues related to the DUI legislation from last year.</p> <ul style="list-style-type: none"> <li>• There were some unintended consequences that resulted from this bill (HB 10-1347). <ul style="list-style-type: none"> <li>○ There was no intention to change the law for a first offense. However, <ul style="list-style-type: none"> <li>▪ probation is now mandatory, as is</li> <li>▪ monitoring of sobriety is also now required for first time offenders.</li> </ul> </li> <li>○ Juveniles charged with their second DUI are now required to go to jail. However, this cannot happen with a juvenile.</li> </ul> </li> </ul> <p>DUI-9 (modifying bond statutes for defendants accused of 3<sup>rd</sup> and subsequent alcohol and drug related driving offenses):</p> <ul style="list-style-type: none"> <li>• This Commission approved recommendation was not included in last year's DUI bill (HB 10-1347) because it did not fit under the title.</li> <li>• It is requested that this recommendation be presented again as its own legislation. <ul style="list-style-type: none"> <li>○ Don Quick made a motion to move this recommendation forward to the Commission. The motion was seconded by Dan Rubinstein. Passed by unanimous vote.</li> </ul> </li> </ul> <p>Marijuana Per Se levels: Setting a per se level of driving under the influence of drugs.</p> <ul style="list-style-type: none"> <li>• Per se can only be established by a blood test, not a urine level. A blood test indicates the level of psychoactive THC that is in the system. Urine tests indicate that marijuana has been metabolized.</li> <li>• Steve Hooper from Dept. of Motor Vehicles asked what was under consideration when discussing Per Se levels. <ul style="list-style-type: none"> <li>○ An alcohol per se level violation also includes an administrative revocation process for a driver's license in addition to criminal processes.</li> <li>○ The intent is to treat marijuana per se conviction is just like an alcohol conviction, so it would involve administrative action on the driver's license.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ What happens if an individual has an alcohol conviction and a THC conviction? For alcohol convictions, an interlock system is encouraged. There is nothing similar for a THC conviction. This would involve a new set of hearings and would have a fiscal impact.</li> <li>● Evie Hudak asked if police officers are drawing blood now? No. If a blood draw is needed the police take the person to a hospital.</li> <li>● What about cost? Would this have a state fiscal impact? Yes. <ul style="list-style-type: none"> <li>○ Should we delay any legislation that would include a fiscal note until better economic times? No, because this impacts public safety.</li> <li>○ Hopefully costs will be countered by savings elsewhere.</li> </ul> </li> </ul>
--	---

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p style="text-align: center;">Structure Working Group report on Habitual Offenders</p> <p style="text-align: center;"><b>Action</b></p> <p>By the November Task Force meeting, the structure working group will come up with a draft recommendation to clarify this issue.</p> <p>See the meeting handouts for more information and examples regarding this issue.</p>	<p>A recommendation was made last year regarding habitual offenders, however, the Commission asked the Drug Task Force to look at the issue further.</p> <ul style="list-style-type: none"> <li>● During previous task force meeting, there was discussion about the use of class 6 possession cases as a mechanism to initiate a habitual criminal charge. <ul style="list-style-type: none"> <li>○ The Structure group reached the consensus that class 6 possession cases should not be used as the triggering offense for a habitual criminal charge.</li> <li>○ Are there any disagreements / concerns on this issue? None.</li> </ul> </li> </ul> <p>Maureen Cain has asked for information from State Judicial to find out how many habitual charges were filed in the state, how many were plead, and what the sentences were.</p> <ul style="list-style-type: none"> <li>● Want to find out how many cases would be affected by these recommendations.</li> <li>● Should the working group continue looking at other possible changes to find out what this looks like statewide?</li> </ul>

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p style="text-align: center;">Structure Working Group Report on Sealing of Records</p> <p style="text-align: center;"><b>Action</b></p> <p>By the November Task Force meeting, the structure working group will come up with a draft recommendation to clarify this issue.</p> <p>See the meeting handouts for more information and examples regarding this issue.</p>	<p>Maureen Cain stated that the Structure Working Group is examining the issue of sealing of records. The group is trying to be consistent with ABA standards on sealing of records. Research shows that if an individual has not reoffended within seven years after the date of arrest, the individual's chance of committing a new crime is the same as an average citizen that has never been in trouble. The sealing of records would be beneficial when an individual applies for employment or fills out a lease. The working group is discussing a tiered structure.</p> <p>Court should consider the risk to community and law enforcement, safety to the community, and the nature of the crime. The working group is still discussing what kind of cases can be sealed. Should those cases have only one conviction? What happens if there are two charges in the same conviction? Or if two offenses took place within weeks of each other, can those records be sealed?</p> <p>What about the costs? Will the costs to file a petition be so large that an individual will decide not to seal the record? The current filing fee is over \$400. There are forms on the State Judicial website. It's pretty straight forward, but money may be an issue.</p> <ul style="list-style-type: none"> <li>● Is there not a way in civil proceedings for the indigent to have waivers for</li> </ul>

costs? Yes.

- The whole process may be intimidating for individuals.
- Maybe there should be a way to seal a file and, unless there is a DA objection within a specific period of time, the case is automatically sealed.

Can there be a way provide an incentive for those who are in treatment? If the individual successfully completes treatment, then maybe the time line to seal the record would be shorter than seven years.

Can we make this a simpler process? Outline the conditions that an individual has to meet to have the records sealed. If the individual meets those criteria, the individual should be able to have the records sealed without a DA review or a court hearing.

What will the opposition be to having the records sealed? Who will be able to see the sealed records? Prosecutors can do this now. What about police departments who are attempting to hire a recruit? What about schools? Paramedics?

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Structure Working Group Report on School Zones</p> <p><b>Action</b></p> <p>By the November Task Force meeting, the structure working group will come up with a draft recommendation to clarify this issue.</p> <p>See the meeting handouts for more information and examples regarding this issue.</p>	<p>Last year the task force and Commission supported a recommendation to reduce school and public housing zones to 100 feet however this was rejected by the Governor.</p> <p>The Structure Working Group was asked to reexamine this issues. Are there other factors that you would look at in lieu of the distance or in addition to distance?</p> <ul style="list-style-type: none"><li>• Is the school in session? Should it be limited to the time that school is open and children are traveling to and from school?</li><li>• There were other groups that were not included in the initial discussion that should be included this time. Such as low income housing sites.</li></ul> <p>Could we create a new crime for selling drugs to children? This new charge would more accurately target the behavior that the school zone was intended to stop. The school zone also includes guns.</p> <p>Guidelines would be helpful for distance because cities are facing the placement of medical marijuana dispensaries. City zoning ordinances may be closer than the 1000 foot statutory distance.</p> <p>Should the working group continue to work on this issue?</p>

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Structure Working Group Report on Parole eligibility option – extend HB 1352</p> <p><b>Action</b></p> <p>By the November Task Force meeting, the structure working</p>	<p>Christie Donner stated that the drug sentencing reform bill of last year (HB 10-1352) lowered sentences for individuals who are possessing drugs. The rationale behind the bill was that prison is not the best place for these individuals. They need treatment.</p> <ul style="list-style-type: none"><li>• What about the people who are currently in prison who are serving a sentence on a charge that now has a lower sentence? Can we look at a parole option for this subset of people? There are 1600 people in DOC whose most serious charge was possession of a controlled substance.</li></ul>

group will come up with a draft recommendation to clarify this issue.

See the meeting handouts for more information and examples regarding this issue.

- 92% of these individuals have already met their parole eligibility date.

This proposal creates a pilot program for individuals that meet certain criteria in order to be released to parole. But if these criteria are met it is suggested that release be presumed, although the parole board would retain the final discretion.

- In addition, some or all of the cost savings in corrections would be redirected toward treatment, wrap around services, and parole supervision for participants.
- A reporting requirement would be needed to track parole board decision-making and to evaluate the effectiveness of the pilot program.

The Colorado Parole Board feels that there are eligibility criteria that need to be met before the Parole Board would consider releasing the individual. The question is, why are parolees passed over for parole at their parole eligibility date? Is it the Parole Board just saying no? Or is the offender's pre-release plan insufficient and, ultimately, sets the individual up for failure?

We have to do something to make them successful on parole.

**Issue/Topic:**

Treatment Funding Group Report  
**Action**

By the November Task Force meeting, the Treatment working group will come up with a final draft of all recommendations.

**Discussion:**

Regina Huerter presented information on the Treatment Funding Working Group. Seven recommendations that will be brought to the Commission for discussion were reviewed:

1. Convene a group to streamline and coordinate existing funding mechanisms and expand data collection and reporting.
  - Currently there is no consistency among groups in the method of data collection.
  - The goal of this recommendation is to pull together the head of all the funding streams to develop unified data codes. These codes would then be taken back to the respective agencies and integrated into their data system.
  - A second goal is to determine the cost of the integration.
2. Implement a standardized mental illness screening instrument as part of the presentence investigation and post-sentence intake.
  - The goal is to have probation work internally so they do mental health screening (i.e., have you ever been hospitalized?) as part of their intake process. This is an additional process and separate from the LSI.
  - Since this is the drug policy task force, should we go outside the drug field?
  - This would be more helpful if the use of the instrument was mandatory instead of optional.
  - DOC has been collecting this information already.
3. The Commission and decision makers in the criminal justice system should support HCPF's efforts to intervene early with health care problems and align resources to increase efficiency and patient access to services.
  - According to the new health care bill, inmates are not eligible for SSA and Medicaid dollars. By definition, transition offenders in Community Corrections are "inmates" and therefore, are not eligible

for SSA and Medicaid. This issue needs further work.

4. The State Court Administrator's Office should work with the Department of Human Services' staff administrating TANF, along with other financial support systems, to develop a systematic method for leveraging social support funding to encourage sobriety and recovery for persons under supervision of the criminal justice system.
  - Intended to start a conversation around individuals who obtain various types of support that may also be involved in the criminal justice system. Are we missing an opportunity to provide leverage to those individuals to obtain treatment? This is a concept that needs further discussion and investigation.
  - If there are individuals who are involved in multiple agencies, it is an opportunity to have a coordinated approach to assisting the individual.
  - This may be an issue better discussed by the Juvenile Task Force.
5. Consolidate, streamline resources, and develop a unified strategy for Colorado's Behavioral Health system. Can this be combined with # 1 above?
6. Use the Commission's Evidence-Based Practices Training Initiative as a vehicle to maximize behavioral health treatment resources.
7. Mandate that justice agencies refer offenders only to treatment programs that are licensed by the Department of Human Services to provide treatment for the population the program serves. This is specific to substance abuse treatment providers and does not include mental health treatment providers.

Next meeting is on November 10<sup>th</sup> from 1:00 – 5:00 at 710 Kipling St. Voting will take place at this time on final recommendations.

Meeting adjourned at 3:45 p.m.