Drug Policy Task Force

Date: November 10, 2010 Time: 1:30 – 5:00

Attendees:

Members

Grayson Robinson / Arapahoe County Sheriff, CCJJ Member / Chair
Don Quick / District Attorney, 17th Judicial District / CCJJ Member
Maureen Cain /Colorado Criminal Defense Bar
Carmelita Muniz /Colorado Association of Alcohol and Drug Service Providers
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, 1st Judicial District
Christie Donner / Colorado Criminal Justice Reform Coalition
Dan Rubinstein/ District Attorney's Office, 21st Judicial District (by phone)
Mark Hurlbert / District Attorney, 5th Judicial District
Tim Hand / Department of Corrections
Shane Bahr / Problem Solving Courts, Judicial Department
John O'Dell / Parole Board

Absent:

Bill Kilpatrick/ Golden Police Chief / CCJJ Member
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
Evie Hudak/Colorado State Senator, Senate District 19
Nancy Feldman/ Office for Victims Programs, Division of Criminal Justice
George DelGrosso/ Colorado Behavioral Healthcare Council
Pat Steadman/Colorado State Senator, Senate District 31
Paul Thompson/Peer 1 Therapeutic Community
Sean McAllister/Private Defense Attorney
Mark Waller/State Representative, House District 15
Dolores Poeppel / Victims Assistance Unit, Colorado State Patrol
Rod Walker / Colorado Springs Police Department

Issue/Topic:	Discussion:
Welcome and Review of Agenda **Action**	Grayson Robinson called the meeting to order at 1:12 p.m. The Drug Policy Task Force will vote on several recommendations that, if approved, will be forwarded to the Commission to vote on this Friday (November 12). Christine Adams (Division of Criminal Justice) reviewed the voting procedure that will be used. A vote for **1/A** means "I support it" - **2/B** means, "I can live with it" – and **3/C** means "I do not support it." It will take a vote of 75% of both 1 and 2 combined to move the recommendation to the Commission.

Issue/Topic:	Discussion:
Structure Group Recommendations **Action**	Tom Raynes and Maureen Cain presented the recommendations put forth by the Structure Group. <u>Unintended consequences of HB 1347 - DUI Bill</u>: 1. **Shall the CCJJ recommend that technical corrections be made to any of last year's multiple offense DUI provisions as set forth in HB101347 that inadvertently created unintended consequences on first DUI violations?** Passed <u>Marijuana Per Se</u>: 1. **Establish a "Per Se" violation for Driving Under the Influence of Marijuana by establishing that it shall be a Class 1 misdemeanor for any person to drive a motor vehicle or vehicle when the person has a level of 5 nanograms of THC/mL whole blood or more at the time of driving or within two hours after driving.** a. This should be treated identically to alcohol. This should be changed to read be an unclassified misdemeanor as opposed to a Class 1 misdemeanor. The vote was taken with the change in language. b. "or within 2 hours after driving" language is to mirror the alcohol. It is the taking of the sample that needs to happen within two hours. c. If the idea is that there will be no fiscal note to this, that is incorrect. There will be testing, re-testing and an administrative piece that there will be costs. Passed 2. **Amend or clarify the express consent statute as necessary to clearly establish that in the event an officer establishes probable cause to believe that a person is Driving Under the Influence of Marijuana, the person shall submit to a blood test**. a. Do we need this? It appears that law enforcement already has this authority. What are the unintended consequences of asking the

testing be done via blood test?

b. We don't want to have a police officer ask for a urine test which would not be able to measure the THC level in the blood.
c. Add the phrase "as necessary." This might be a training matter.

Passed

3. **Amend current administrative laws relating to driver's license revocations and hearings on revocation as applicable to establish a mandatory license revocation of three months for a first offense, one year for a second offense and two years for a third or subsequent offense resulting from Driving Under the Influence of Marijuana "per se." Also establish a one year revocation for any refusal to submit to a blood test.**
   a. Can we make the refusal penalty the same as it would be if an individual is proven under the influence? Individuals can be hesitant to allow a test because they don't understand the process, and that hesitancy can be seen as a refusal.
   b. Will the revocation of their license be a deterrent to an individual's ability to keep/maintain a job or get to treatment?
   c. What if you have a first violation as a DUI and another violation as a DUID violation? Would the DUI violation count as the first violation and the individual would be penalized with the second violation penalty?
   d. Do we want to have the language and penalty be inconsistent with the language and penalties for DUI?

   Passed

4. **Amend the administrative laws where necessary to establish that a violation and/or conviction for Driving Under the Influence of Marijuana Per Se shall mirror the impacts of conviction or a per se DUID violation related to the administrative penalties and procedures for reinstatement of a license, insurance via SR-22 and court ordered treatment programs as reasonably necessary to effect the purpose of treating a DUID marijuana as seriously as a DUI alcohol offense.**
   a. This is to mirror the DUI statutes.

   Passed

5. **Clarify wherever necessary in the DUI and administrative statutes the inclusion of DUID/Marijuana Per Se as a qualifying offense for application any multiple offense DUI/DWAI/habitual/UDD/vehicular homicide and assault convictions and penalties.**
   a. No discussion or concerns.

   Passed

Parole Pilot Program:

1. **Creation of a parole pilot program to further encourage and facilitate parole approval and services for inmates currently incarcerated for low level drug felonies.**
   a. This involves people who are incarcerated on drug possession charges and have no current or prior convictions for crimes of violence. They also must have good institutional conduct and have an approved parole program. If someone meets these criteria, the Parole Board would then have the option to release them. It is not mandatory that they are released.
   b. The Parole Board is okay with this.
   c. This will motivate DOC to prepare the release plan and wrap-around services earlier so that the Parole Board would feel more confident in the release of these individuals.
   d. This population is the one that is more likely to be in on a technical violation.
   e. It is frustrating for an inmate to be turned down for early release because he/she does not have a parole plan. And a parole plan won't be created because they won't be granted parole. This pilot program will be a good test for having parole plans created early.

   Passed

Habitual Offenders:

Maureen Cain handed out documents outlining a state-wide look of who files habitual cases and who carries these through to adjudication. There are two questions to be discussed: Should felony drug possession convictions be the triggering offense for habitual filings? The second question is should past felony convictions for possession or use of a controlled substance be used as a predicate offense for the filing of habitual charges?

   a. If the following recommendations are passed, they will not have much impact on sentencing. The recommendations will have an impact on the filing of these charges.
   b. The data indicates one district files more of these charges that other districts. We shouldn't be changing the law because one district is perceived to be using these filings too much.
   c. Do we want to take away the prosecutor's discretion? Mesa County had only one filing of this nature, and it was specifically used because the offender had an extensive criminal history and this was the best way to ensure he had a lengthy stay in jail
   d. Why are we spending so much time on this? There are relatively few cases that this would apply to.

Recommendations:

#1a) No simple possession offense – (Class 4 felony or attempt or conspiracy to commit simple possession) - shall be used as a qualifying offense (i.e. the new offense) for the filing of habitual criminal offense charges under CRS 18-1.3-801.

Failed

#1b) No simple possession offense – (Class 6 felony or attempt or

conspiracy to commit simple possession) - shall be used as a qualifying offense (i.e. the new offense) for the filing of habitual criminal offense charges under CRS 18-1.3-801.

Passed

#2a) No simple possession conviction - (<u>Class 4</u> or any attempt or conspiracy to commit simple possession), when the conviction is AFTER the effective date of the bill probably July 1, 2011 – shall be used as a predicate conviction (i.e. prior conviction) for the filing of habitual criminal offense charges under CRS 18-1.3-801.

Failed

#2b) No simple possession conviction - (<u>Class 6</u> or any attempt or conspiracy to commit simple possession), when the conviction is AFTER the effective date of the bill probably July 1, 2011 – shall be used as a predicate conviction (i.e. prior conviction) for the filing of habitual criminal offense charges under CRS 18-1.3-801.

Failed

<u>Sealing of records</u>

This is for new crimes committed AFTER the 2011 effective date of bill. DUID violations are excluded from sealing of records. Recommendations 1 through 4 are already eligible for sealing under current law. The only thing being changed is the length of time that an individual must wait before the records can be sealed.

a. Sealing of a record cannot be done if there is a pending case. A person would not be eligible until the pending case is resolved.
b. Are we satisfied with the current fee structure? Since there is a waiver eligible, the topic of fee will not be addressed. Can we lower the fees for petty offenses?

1. **Drug offense PO – can be sealed three years from final disposition of the case or release from supervision whichever is later. Sealing is automatic upon filing if pay the fee and prove there is no arrest, charge or summons resulting in conviction within the required waiting period. No notice to DA required.**
   a. Not sure that a lot of petty offense cases involve supervision. If so, the sealing would be automatic and no notice to the DA is required.

   Passed

2. **Drug offense M2 and M3 - can be sealed three years from final disposition of the case or release from supervision whichever is later. Sealing is automatic if notice is sent to the DA and no objection is filed and petitioner demonstrates that there is no arrest, charge or summons resulting in a conviction during the waiting period.**

Passed

3. **Drug offense M1 – can be sealed five years from final disposition of the case or release from supervision whichever is later. Sealing is automatic is no objection is filed by the District Attorney and petitioner demonstrates there is no arrest, charge or summons resulting in conviction during the waiting period.**
   a. There has to be notice to the DA here.
   b. Cultivation is included.

   Passed

4. **Drug possession – F6 and F5 - can be sealed seven years from final disposition of the case or release from supervision whichever is later. Sealing requires filing of a petition and notice to the DA. If no objection by DA, it is discretionary with the court whether there needs to be a hearing after review of the submission and determination if statutory criteria met. (Same as current practice but is codified.) The petitioner must demonstrate there is no arrest, charge or summons resulting in conviction during the waiting period.**

   Passed

5. **Any other drug felony offenses – 10 years from final disposition or release from supervision. This will be allowable only with DA approval (veto power). Court review required re: the statutory factors. The petitioner must demonstrate there is no arrest, charge or summons resulting in conviction during the waiting period.**
   a. This is new. This is for any other distribution felony offense. An offender can apply for sealing after 10 years and only with DA approval.

   Passed

6. **DA approval shall be guided by the current statutory criteria in CRS 24 - 72-308.5. Add this concept into the statutory language to provide for some consistency and transparency.**

   Passed

FOR CONVICTIONS BEFORE THE 2011 EFFECTIVE DATE OF THE BILL

7. **The time lines as stated above shall be applicable but DA approval shall always be required if DA approval is required under current law. (DA approval is required for all drug offenses committed before July 1, 2008. For possession offenses between July 1, 2008 and July 1, 2011 – assuming that to be the effective date of this new bill - there will be a ten year waiting period and DA notice. Court approval shall always be required.)**

   Passed

	8. **Allow sealing for all old drug petty offenses without DA approval (veto power) but with court approval.** Passed 9. **Under current law, there is no limitation on number of cases/criminal episodes that are eligible for sealing after the statutory waiting period. Statute should be amended to include an additional criterion that the court and the DA shall consider in consenting to/granting a petition to seal the number of convictions and the dates of the offenses.** a. The DA and Court should consider the number and date of the convictions. Passed 10. **Amend 24-72-308.5(2)(d) to state that defendant and law enforcement agencies may properly reply upon inquiry that no "public" conviction records exist with respect to the defendant.** Passed <u>Special Offender</u>: Maureen Cain stated the Structure Group would like to report back on this issue during the December meeting.

Issue/Topic:	**Discussion:**
Treatment Group Recommendations	Paul Herman outlined concerns brought forth by three treatment funding groups. These groups are the IAC, ITFT and 1352 who were created through statute. They are concerned about the direction and purpose of the Treatment Funding Group. There is overlap in membership between these groups and they are now meeting together. One tenant of the CCJJ is consolidation of efforts when tackling the many issues before it. The CCJJ has advocated to not "recreate the wheel" in areas that are being addressed by other groups. One purpose of each of these groups is looking at is streamlining the funding mechanism. This is also an issue that the Treatment Funding Group is examining. The duplication of efforts is a concern of the IAC, ITFT and 1352. Another concern is the Treatment Funding Group's recommendation of a mental health screening document. This is something that the IAC has already done. It has developed a shared screening tool and an assessment tool which has been tested in a pilot project. The pilot has shown a few areas that need improvement in both tools. Also at issue is the Treatment Funding Group's recommendation that a singular group be developed through the merging of the stakeholders. According to the original recommendation this singular group would report to the Drug Task Force

	about their efforts. Some of the stakeholders felt that this was not a collaborative approach. The IAC felt that they were directed to do something as opposed to working with the treatment group. Discussion: 1. We need to get this collaboration up and running. On the other hand these other groups have been around a while and the new kid on the block is telling them what to do. 2. What is not clear is if this group is just dealing with their three silos and the Behavioral Health Group is working on its issues, are the CCJJ issues on their agenda? 3. Can there be a standing treatment committee in place? Instead of making a formal report, maybe we can ask what the other groups are doing. 4. The other groups also need to find out what the CCJJ group is all about. The first step is to educate those three groups what are going on. 5. The IAC meeting is comprised of many of the same individuals. The Behavioral Health Council looks to the Commission as its source on criminal justice issues. 6. The 1352 group cannot decide on where the money should be spent. They need to know the philosophy behind the creation of 1352. 7. The term "treatment" is unclear and needs to be defined. 8. Maybe our role is that we go out and participate in those groups and report back to the Drug Task Force. The sense of urgency is the cost savings from 1352 is funneled into these three silos. The sooner we can clean this up the better. 9. Can individuals from these three different silos become participants of the Drug Task Force? They are worried about us going off on our own. Maybe the Commission can be used as a mechanism to get legislation passed. 10. The whole issue of collaboration is central to any commission. Collaboration is being able to sit down with others and get something done. 11. Should we take a step back and ask what we can do together? 12. Many of the people on the IAC are also on the Commission but are not part of the Drug Policy Task Force. Can we set aside some time at the meeting to talk? 13. We were to vote on six items from the treatment funding group. Grayson suggested tabling these recommendations until December. We can bring the stakeholders to the December meeting to see if we can come to a better understanding. 14. Is Grayson comfortable with asking the CCJJ if they want to continue the treatment funding group? Yes. Carmelita Muniz moved that the Drug Task Force make a recommendation to the Commission that the Treatment Funding Group should continue with the understanding that conversations will be held with the other stakeholders. Miles Madorin and Don Quick seconded the motion. The motion passed by unanimous vote.

Issue/Topic:	**Discussion:**
December meeting	The December meeting was to be set up for educational on prevention. Don

Action	Quick was trying to arrange for Del Elliot was to come in and speak. This has not been finalized. Dan Rubenstein asked if the Task Force had given any thought about discussing substance abuse in newborns. What happens if the mother tests positive for drugs, should the mother be brought forward on criminal charges? Under current dependency and neglect rules, the Dept. of Human Services cannot deal with the health of the unborn child. If testing is allowed, who should the information be forwarded to? If you decide DHS should deal with it, the law should be changed. How would you deal with that? Testing a newborn for addiction to Schedule I or II controlled substances can result in a criminal filing. But what about Schedule III or IV drugs. Will doctors resist testing because it interferes with the doctor/patient relationship? Will the mothers not come in for regular medical checkups because they fear retaliation? The New York Legal Women's Center has done a lot of work on this issue. There is evidence out there that the threat of drug treatment makes women not come in for prenatal care. If it is under the criminal realm, will this be seen as too punitive? If you force the issue to the DHS realm, they have no way to deal with it. If DHS gets involved in child abuse cases, their directive is to take the child away from the mother. Should this group talk about this? Should we have Dr. Kathy Wells come in and talk about this during the December meeting? Yes. Dr. Kay Teel will also be asked to come in and speak. Dan Rubenstein and Christie Donner will email both ladies to get them to come in and talk.

Meeting adjourned at 4:01 p.m.