

# Drug Policy Task Force

**Date: October 12, 2011    Time: 1:30 – 4:30**

## **Task Force Members, present:**

Grayson Robinson/Arapahoe County Sheriff, CCJJ Member / Chair  
Bill Kilpatrick / Golden Police Chief / CCJJ Member  
Maureen Cain / Colorado Criminal Defense Bar  
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  
Kathleen McGuire / Douglas County Office of the Public Defender  
Terry Hurst for 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, 5<sup>th</sup> Judicial District  
Tammer Wilson for Tom Raynes / Colorado District Attorney's Council  
Chris Brousseau / District Attorney's Office, 1<sup>st</sup> Judicial District  
Shawn Hauser on behalf of Sean McAllister / Private Defense Attorney  
Shane Bahr/Judicial Department  
Dolores Poeppel / Victims Assistance Unit, Colorado State Patrol

## **Task Force Members, absent:**

Don Quick / District Attorney, 17<sup>th</sup> Judicial District / CCJJ Member  
Rod Walker / Colorado Springs Police Department  
Christine Flavia / Division of Behavioral Health  
Mark Waller / State Representative, House District 15  
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, 2<sup>nd</sup> Judicial District  
Dan Rubinstein / District Attorney's Office, 21<sup>st</sup> Judicial District  
Tim Hand / DOC – Division of Parole

## **Others Attendees:**

James Evans/ GTH-GA  
Shelby McKinzey/ University of Colorado Boulder  
Kathleen Chippi/ Patient Caregiver Rights Lit. Project  
Janet Perry/ Colorado Press Association  
Corey Donahue/ Crazy for Justice  
Robert Chase/ Colorado Coalition for Patients and Caregivers  
Jim Adams-Berger/ OMNI Institute  
Ed Wood/ Community member  
Laura Spicer/ Private Substance Abuse Counselor

<p><b>Issue/Topic:</b></p> <p>Welcome and Review of Agenda</p>	<p><b>Discussion:</b></p> <p>Grayson Robinson called the meeting to order at 1:45 p.m. Introductions were made and the day's agenda was reviewed.</p>
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<p><b>Issue/Topic:</b></p> <p>Public Comment <b>Action</b></p>	<p><b>Discussion:</b></p> <p>Ed Wood's son was killed by a DUID driver. He believes that a no tolerance law should cover all illegal drugs, not just marijuana. He stated that there was no scientific support for the .08 BAC level but was supported politically.</p> <p>Robert Chase stated that heroin has scientific evidence showing its negative effects whereas marijuana does not. Data cannot be collected on the effects of drugs as long as these drugs are illegal. The process of this group is to criminalize all of society. The entire endorsement of the current process is criminally unjust. Meaningful reform should exclude all representatives of the CJ system. He believes that the purpose of all of this reform and criminalization is to save money.</p> <p>Kathleen Chip stated that she finds it strange that all of the people at the table benefit by criminalizing otherwise law abiding people. There is no proof that cannabis has caused any accident worldwide. These per se limits will affect all 150,000 registered medical marijuana limits.</p>
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<p><b>Issue/Topic:</b></p> <p>Finalized Drug Fact Sheet <b>Action</b></p> <p><b>Pass out final document on Friday to CCJJ.</b></p>	<p><b>Discussion:</b></p> <p>Kim English stated that earlier this year the Task Force asked for a presentation on drug and addiction research. This is the document that was presented and it has since evolved. However, this is the final draft of this document.</p> <p>Ms. English briefly went through the information in the document. The importance of this information was stated and Mr. Robinson asked that the document be passed out to the CCJJ on Friday.</p>
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<p><b>Issue/Topic:</b></p> <p>Structure Working Group <b>Action</b></p>	<p><b>Discussion:</b></p> <p><u>Updates</u> – have had a number of meetings to discuss the, treatment funding silos, designer drugs and sentencing grid.</p> <p><u>Treatment Funding Silos</u> –</p> <ul style="list-style-type: none"> <li>• Money has to be put into treatment. We've been working with Carmelita and the prevention group to address this.</li> <li>• With 1352 a new silo was created. We're layering the silos which is complicating things.</li> <li>• We're proposing that the Drug offender surcharge, SB 318, and SB 1352 be combined and that it be treated like the drug offender surcharge money. <ul style="list-style-type: none"> <li>○ It should have only one oversight board.</li> </ul> </li> <li>• The money right now is very limited in its use.</li> <li>• There is not enough money to cover stand alone mental disorders.</li> <li>• We need better, more comprehensive, data collection and reporting methods.</li> <li>• The conversation about what populations may be eligible was extensive.</li> </ul>
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- 1352 was explicitly for adults whereas 318 is more flexible for juveniles.
- Data collection from criminal justice stakeholders would include client information so that recidivism could be examined. But it would not be reported. This would help provide more robust information.
- DBH is currently creating a dashboard to provide similar information by program.
- This would help collect real time data which would helpful for case managers.
- However, this would take more funding and may not be available as soon.
- With this proposal we would be eliminating the local 318 boards.
  - Concern that it makes sense to have these local boards. They know their area better than the state. Is there a way to use some money to still have these boards?
  - The reason for this elimination is that these boards are very random and all over the place as far as use and reporting. The oversight board must have a way for the local judicial districts to submit a plan. Probation and comcor are at the local level anyway. This would make it more consistent and hold people accountable for the state tax dollars they're receiving.
  - Wouldn't it be better to clamp down rather than eliminate? No one wants to remove local input. The intent would be to have a formula to distribute the money to make sure it doesn't disproportionately end up in one place (e.g., Denver).
  - The 318 oversight group participated in the creation of this proposal.
    - Ultimately it should be their responsibility to notify the local boards.
    - Currently plans must be submitted to the oversight board.
    - But currently there is no infrastructure to control the money.
  - Whether or not it's required by statute local boards is a great way to get people talking.
- We need to make sure there is more of a balance between the adult and juvenile system.
  - This proposal dramatically opens up the funds to juveniles. But we must have a balance with cost savings. Nothing says it must be equal between adults and juveniles. This decision would be up to the local decision makers.
  - Right now 1352 is anticipated to be the biggest pot of money. It is currently for adults only. But this would change if these funds are combined.

DCJ has the capacity to do some modeling to give us a sense of where the fiscal issues will be.

**Straw vote –**

Conceptually the treatment funding recommendations passed unanimously.

- Concerns include:
  - Rural/local issues

- How we get local input

**\*\*\*For the specific treatment funding recommendations please see the attached document.\*\*\***

Drug Sentencing Grid/Scheme – have worked with the Comprehensive Sentencing Group to create the proposed grid (see attached document for specific grid). In addition, real cases were worked through this grid to determine if the grid provided a result that was not disproportionate to the desired outcome. This is an XY axis grid that does not create or abolish any drug crime but works with the currently existing drug crime.

- The vertical (Y) axis is the crime classification. This takes the seriousness of the crime into consideration. This axis includes factors that are “inside” the crime (e.g., weight of drugs sold, distribution within a protected zone, use of a weapon, etc).
- The horizontal (X) axis is the criminal history scale. This includes factors that are “outside” the crime (e.g., 2<sup>nd</sup> or subsequent conviction, extraordinary aggravating circumstance, etc). We tried to build on changes that have already occurred in current law from the CCJJ. Created some standardization with definitions to help with consistency.

*Blakely* concerns – the United States Supreme Court held that judicial fact-finding that increases the presumptive sentencing range of a defendant was unconstitutional in violation of the 6<sup>th</sup> amendment right.

*Booker* case – the United States Supreme Court held the federal sentencing scheme to be in violation of *Blakely*, but remedied the federal system by declaring the federal sentencing guidelines to be advisory.

**\*\*\*For the specific recommendations as well as the proposed sentencing grid please see the attached document.\*\*\***

It was suggested by the Task Force that there should be guided discretion when deciding whether or not to file a habitual. In other words, statutory factors to be considered are needed when making this decision. Currently these decisions are all over the board.

What was the rationale for cutting 24 years from the max range for special offenders?

- Our max range was significantly higher than other states.
- Top ranges will go down to 24.
- Very few people are currently serving the max of 48 years in DOC.
- Consecutive sentences can always be considered if the offender is that bad.

These ranges were decided with a lot of DA input.

There are tools available for flexibility if/when needed.

Can we really say no DOC?

- It was decided that the presumptive sentence would be community supervision. But if a violation occurs, all remedies must be exhausted (exhaustion of remedies) before sending the individual to DOC.
- This includes lateral placements for treatment (maybe something more intense rather than where they currently are) given the treatment needs

and risk level of the offender. These are typically the factors that are already provided by the probation department when a revocation is filed.

- We must talk to the comcor boards to determine if they have a way to move someone laterally. Approval could be for the placement of any of the treatment programs that are under that board. But it may be more difficult to move someone to a program under a different board.

Once problem is that we do not require a hearing to remove someone from comcor (although a hearing is required to remove someone from probation).

- Would need to determine the effect that such hearings would have on the various jurisdictions.
- Probation still needs help defining "exhaustion of remedies."
- Also, what would the fiscal impact be on comcor if this occurs?

What is the reason for changing the jail days to 180 from 90 days?

- This was at the request of the DAs to provide a shock incarceration or immediate consequences, and
- To use as an intermediate sanction in lieu of DOC. Sometimes comcor feels like they have no other option.
- Sheriffs may oppose this. Without some kind of evidence-based reasoning there will be some concerns. Especially because of other concerns that there will be other unfunded mandates that may come out of the next legislative session.
- Maybe we need to go back and discuss how we could direct the use of this intermediate sanction. Don't want it to be something that is over used without reason (i.e., used as a threat). The research around shock incarceration and its effectiveness is very thin.

Concerns with this recommendation:

- Under current law mitigation can be used to reduce a sentence. Is there anything similar in this proposal? There seems to be a lot about what an aggravating circumstance.
  - This is encapsulated by the ranges.
- Does the two felony rule still apply?
  - This would put you in the C-category. Not eligible for probation.
  - If all of your felonies are drug offenses it would not apply. The new two prior felony rule requires that one prior be a violent.
- One differentiation between D1 and D2 is those making profit with their drug crimes. But deciding what equals a large profit is subjective.
  - One thing we did was look at the cut points for quantity. We lowered these points. We discussed what sharing is vs commercial motivation. We tried to be consistent with quantities.
- There are students in other places besides schools that might be at risk. Some kids are at learning centers or are going to school online and are not protected by this.
  - We've actually tried to reduce the distance from a school in the past. This idea passed the CCJJ but never went anywhere else for political reasons.
- There may be a different way to look at distribution offenses. Who is distributing for addiction reasons vs. profit reasons? Quantity may not be as important as the reason they are distributing. Is there any precedent

for drawing this line for distribution offenses?

- Wanted to talk about remuneration based on the idea of users vs sellers. Some people may have a lot of drugs but aren't really a part of the operation. Motive should be taken into consideration. Just classifying based on quantity misses on both sides.
- At the end of the day the sentencing system should be a solution system rather than punitive. But we may not be there yet. Although we have tried to address this with our drug courts (how good we are is another issue).
- Have you done any work with this regarding the fiscal impact? Or are you trying to remain neutral? Are we going to ensure that what we present saved money?
  - We decided that we needed to present a reform that follows the research and hope that it saves money.

The proposed grid would only apply if convictions in the current crime are drug offenses. If multiple grids are relevant the dominant grid would be determined by the controlling conviction.

- There may be opposition if multiple grids are relevant.
- The Comprehensive TF is already looking at creating multiple grids for various types of crimes. Potentially the non-drug crime would go under the current grid and whether the various sentences would be concurrent or consecutive would be up to the court.

**Straw vote –**

Conceptually the proposed sentencing grid passed unanimously.

- Concerns include:
  - Financial concerns
  - Concerns about special offenders
  - Blakely issues
  - Juveniles

<b>Issue/Topic:</b>	<b>Discussion:</b>
Marijuana Per Se Working Group <b>Action</b>	The three perceptions were covered in detail at the September meeting. Areas that were agreed on by the group and were also discussed in September. No further discussion is necessary until we vote in November. <b>***See the attached document for the specific recommendations. ***</b>

<b>Issue/Topic:</b>	<b>Discussion:</b>
Prevention Working Group <b>Action</b>  <b>Relevant items have been sent to the Juvenile Task Force for feedback.</b>	This group has had some conversation with members of the Structure Working Group. <ul style="list-style-type: none"><li>● If the drug sentencing grid does save money will that money go into the treatment silo or into prevention?</li><li>● Items 2.1 – 2.4 are in order of priority.<ul style="list-style-type: none"><li>○ We appreciate that these recommendations outline the priorities.</li></ul></li><li>● Were there assessment centers that you've chosen as models that</li></ul>

should be replicated? Yes.

- How would we go about replicating them?
- Determine what is currently available and provide some models for judicial districts that may not currently have an assessment center. Arapahoe and JeffCo have been named as potential models.
- How are the assessment centers currently funded?
  - Many have multiple sources while some are funded through district attorney's offices. Includes SB 94 money. One problem is having a place to put it.
- What's an annual budget?
  - Arapahoe county is approx. \$3.1M but that is for everything.
- How much would you need to fully fund the healthy kid survey?
  - OMNI has created an estimate by Jim Adams-Berger can't say off hand.
- Regarding #2 – is if there is **more money** available from the Structure Group's silo recommendation?
  - This recommendation came from earlier thinking that if there are savings from recommendations we should have a plan for where it should go. Otherwise it will be lost to appropriations.

This information has been shared with the Juvenile Task Force and we will look into any feedback they provide.

Other Concerns:

- These recommendations need to go through Judicial.
- Diversion needs to be looked at more closely.
  - Judicial districts differ in who they put into juvenile diversion programs. Need to look at relevant research.
- This has not gone through the CDAC.
- Would there be a way to set up in rural areas?
- More work needs to be done on the money (e.g., where it would come from) and outcome.
  - We should set priorities after we know how much money we have to distribute.
  - Appreciate the prioritization of prevention and juveniles.
  - We are unwilling to give a specific amount of money at this point.
- We do a lot of assessments but do we actually serve?
- Support prevention but quibble is mandating that money go somewhere specific without.
- Item 2.2 states that more data needs to be collected to determine what programs are where and how well they're working.
- Concern that rural will be over looked.

**\*\*\*See the attached document for the specific recommendations. \*\*\***

**Straw vote –**

- Conceptually these recommendations are supported (10 conceptually supported in full while 4 supported partially).

**Issue/Topic:**

**Discussion:**

<p>November Meeting <b>Action</b></p>	<p>Next month is important because after a general overview of areas we will take final votes for what will be moved forward to the CCJJ.</p>
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The meeting adjourned at 4:29 p.m.