

Drug Policy Task Force

Date: November 9, 2011 Time: 1:30 – 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
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
Terri Hurst / Colorado Behavioral Healthcare Council
Christie Donner / Colorado Criminal Justice Reform Coalition
Dan Rubinstein / District Attorney's Office, 21st Judicial District
Mark Hurlbert / District Attorney, 5th Judicial District
Tom Raynes / Colorado District Attorney's Council
Chris Brousseau / District Attorney's Office, 1st Judicial District
Rod Walker / Colorado Springs Police Department
Christine Flavia / Division of Behavioral Health
John O'Dell / Parole Board
Jeff Clayton for Shane Bahr/Judicial Department
Regina Huerter / Denver Crime Prevention and Control Commission/ CCJJ Member

Absent:

Reo Leslie / Colorado School for Family Therapy / CCJJ Member
Greg Long / District Attorney's Office, 2nd Judicial District
Pat Steadman / Colorado State Senator, Senate District 31
Tim Hand / DOC – Division of Parole
Mark Waller / State Representative, House District 15
Dolores Poeppel / Victims Assistance Unit, Colorado State Patrol

Guests: Michael Elliott, Jeff Clayton for Shane Bahr, Glenn Tapia, Anna Lopez, Craig Lucava, Julie Pezze

<p>Issue/Topic:</p> <p>Welcome</p>	<p>Discussion:</p> <p>Grayson Robinson called the meeting to order at 1:43 p.m and reviewed the day's agenda.</p> <p>Mr. Robinson announced that Sean McAllister has resigned from the Task Force. Brian Connors will look for someone from the defense bar who would be interested in joining the group.</p> <p>Christine Adams went over the voting mechanism. In order for a recommendation to pass "A – I support it" and "B – I can live with it" must equal 75% combined.</p>
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<p>Issue/Topic:</p> <p>Public Comment</p>	<p>Discussion:</p> <p>None.</p>
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<p>Issue/Topic:</p> <p>Marijuana Per Se Working Group Action</p> <p>Approved statements will be forwarded for vote during the November CCJJ meeting.</p>	<p>Discussion:</p> <p>There is no marijuana-per se recommendation because the working group could not come to a consensus. However there are several areas of agreement that should be voted on today (NOTE: the actual recommendation is in bold):</p> <ol style="list-style-type: none"> 1. Public safety requires that drivers not be impaired from alcohol, cannabis, or any other medication or drug, while operating a motor vehicle. <p>Tom Raynes made a motion to vote on the above statement. Carmelita Muniz seconded the motion.</p> <p>Discussion:</p> <ul style="list-style-type: none"> • This is a statement. Why are we voting on it? This would establish areas of consensus that policy can be built upon. • Is the working group saying that there is no level at which impairment occurs? The researchers do not agree on the level. Should we draft legislation geared toward public safety for the majority? Or should the legislation be established for the individual? • We need to establish a level where impairment is likely. There was a range of opinions regarding what could be a per se level of impairment. There is a growing body of research that will indicate a level that should be set in terms of public safety. • We still have laws saying people cannot drive while impaired. • There are some alcoholics that can drive without being impaired even though their BAC is over .08. However, the law has established the .08 level for public safety reasons. • What was the science that drove the BAC level? The feds told states that if their BAC level wasn't .08, then they would not get federal funds. • Where do we go from here? Do we need a mandate to do something? The working group will not be going forward with a recommendation to the task force on a per se level this year. • We shouldn't be making our decisions based on whether or not the legislature will pass a recommendation. We should be making recommendations based on public safety.
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Vote: A) 94% B) 0% C) 6%

Item passes and is sent forward to the Commission.

Bill Kilpatrick moved to send a recommendation to the Commission that proposes a DUID impairment bill have a per se level of a 5 nanograms. The recommendation would be identical to what was put forth last year including the administrative sanctions that were removed from last year's bill. John O'Dell seconded the motion:

Discussion:

- We should discuss the difference between alcohol and marijuana. The research does not establish the 5 nanogram level as the point of impairment.
- Medical marijuana users are responsible and safety is their top concern. The public safety would be better served through education.
- How much is 5 nanograms? Is it one hit? One cookie? It depends on the amount of THC in the marijuana.
- Of the 17 states that have dealt with THC levels and marijuana, Colorado's 5 nanogram level is the highest.
- One study showed that even 9 hours after ingestion, a person could have a 20 nanogram level. It was stated that this research was not a controlled study.
- The brain impairing ingredient in the blood is what is tested. Draws need to be done within 3 – 4 hours, after that amount of time, the level of the ingredient drops.

Vote: A) 47% B) 18% C) 35%

Item failed

- does not meet the 75% requirement.

2. **Government entities should expand and improve efforts to collect and share data related to drugged driving and traffic fatalities with the purpose of producing a single annual report on the characteristics of all drivers (living and dead) involved in fatality accidents CRASHES.**

Kathleen McGuire made a motion to vote on the above statement. Rod Walker seconded the motion.

Discussion:

- Can we change the word "accident" to "crashes"? Yes (showed above in all caps).
- Was there any discussion by the working group about including injuries, not just fatalities? Yes.
- Although we are interested in traffic fatality data, we are also interested data regarding drugged driving.
- It also important to know what was consumed. Drugged driving often includes alcohol also.

Vote: A) 94% B) 6% C) 0%

Item passes and is moved forward to the Commission.

3. Increase the number of Drug Recognition Experts (DREs) ensuring sufficient coverage in rural and frontier areas of the state.

Tom Raynes made a motion to move this statement forward to the Commission. Bill Kilpatrick seconded the motion.

Discussion:

- Was there any discussion on using funding for this? No. The group saw the need but did not get into the funding.
- Is this something that would affect the State Patrol and CBI? This impacts state and local agencies. Why would CCJJ be concerned if the Delta Police had a DRE? There is a limited number of DRE that are available. Cases that are presented with a DRE are more successful in court than those cases without DREs.
- If the CCJJ voted on this as a priority, and if the CCJJ was able to find cost savings elsewhere, would this be an area for those funds? This is a policy statement that could be used to drive the JAG board and other funding sources.

Vote: A) 76% B) 12% C) 12%

4. A strong public education campaign that focuses on disseminating information to dispensary owners, customers and the public is a priority to enhance public safety on the roadways.

- a. The campaign should mention the severe impairment that results from the combined use of marijuana and alcohol.**
 - b. A sub-campaign should target young people because they are prone to engage in risky behavior.**
 - c. The Department of Revenue Medical Marijuana Enforcement Division should impose labeling requirements on receipts from dispensaries stating that patients should not consume cannabis and drive.**
- Christine Flavia asked if in bullet "c", "on receipts from dispensaries" can be stricken. This was accepted to the group.

Vote: A) 100% B) 0% C) 0%

5. Any recommendation put forth by the Colorado Commission on Criminal and Juvenile Justice (CCJJ), the CCJJ's Drug Policy Task Force, or any other state agency should include a component requiring ongoing study because the scientific evidence regarding cannabis use and behavioral impairment continues to evolve.

This item died for lack of a motion.

6. Should efforts to pursue a per se blood THC level proceed, legislators should not consider a tiered penalty system regarding to marijuana blood levels (as in the current DUI/DWAI system for alcohol).

This item died for lack of a motion.

<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Prevention Working Group Action</p> <p style="text-align: center;">Tabled until December</p>	<p style="text-align: center;">Discussion:</p> <p>These items were tabled until December. The prevention working group will be working with the Juvenile Task Force and will present their recommendations at the next task force meeting.</p>
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<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Structure Working Group: Treatment Funding Consolidation Recommendation Action</p>	<p style="text-align: center;">Discussion:</p> <p>To see the recommendation in its entirety please look to the end of this document.</p> <p>Discussion:</p> <ul style="list-style-type: none"> • The statute will indicate that the populations that can be served are both adult and juvenile offenders. They can be on diversion, probation, parole or in community corrections. • Will there be a formula that will be used to distribute the funds? The formula could be developed based on the case load for each judicial district. Currently, only SB03-318 dollars are distributed by a formula. The other funds are distributed after local agencies submit their request to the respective board. • The legislation will not establish the formula. It could provide guidelines that are data driven and provided by local agencies. • Can the statute be written to include a formula for distribution of the funds? Having the consolidated board decide who gets funds takes away the ability of local agencies to control how funds are spent in their area. The discussion indicated that a formula for distribution is the consensus of the group. • Judicial is in support of this recommendation. All the funds will be case-load driven. • What is the status on the DBH dashboard system? What will be in place by the end of December? This is an 18-month process. A prototype will be developed by December which will include information on each treatment program that receives DBH funding. The information will be presented by county and judicial district and will be called, "Lincolncare." • We will need to inform the providers that the money will be consolidated into one pot and the providers will still get their money this year, but that as a result of the information put into the dashboard, their funding may change in subsequent years. • In the second to last paragraph about local boards - The state entities should distribute the money in consultation with the local entities. This would encourage local agencies to identify local issues and ask for funds to address that issue. The key nexus is the local probation officer. <p>Don Quick made a motion to move the recommendation forward to the CCJJ. Dan Rubenstein seconded the motion.</p> <p>Further discussion:</p> <ul style="list-style-type: none"> • If the state board is going to disagree with the local board, there needs
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	<p>to be some sort of report as to why the state board disagreed?</p> <ul style="list-style-type: none"> • Is this a community-wide board? The 318 Board does not currently include representatives from Parole and Community Corrections. If you use the 318 Board concept as a template, it has holes. Can you add a representative from the Sheriffs? Yes. These additions will be made in an amendment. <p>Following this discussion the recommendation was amended before the final vote was taken (see red text in complete recommendation below).</p> <p>Vote: A) 100% B) 0% C) 0%</p>
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Issue/Topic:	Discussion:
<p>Structure Working Group: Sentencing grid, Habitual Offender Recommendations Action</p>	<p>Tom Raynes is asking for more input from local prosecutors on the sentencing grid and Ms. Cain is gathering input from Judges. The sentencing grid needs further work before the Structure Working Group is ready to present it for final vote to the Task Force and potentially the Commission.</p> <p>The most controversial areas are sentences given to D-1 and D-2 crimes. The current sentencing range for D-1 crimes is 18-32 years. The grid changes this to 18 – 24 years. For D-2 crimes, the current sentencing range is 8-16 years. The sentencing grid would change this to 8-12 years.</p> <ul style="list-style-type: none"> • What are the fiscal savings? Can DCJ assist with this? Ms. Donner is meeting with Peg Flick, from DCJ, to discuss the effect of these proposed sentencing changes on the outcome from the courtroom. However, Ms. Flick is not preparing a fiscal note. • What are the benefits for these changes? • There are some very aggravating people who will receive lesser sentences than currently available and several judicial districts are expressing their concern. • How will the changes in these areas affect other crimes that reference these offenses? • How do the habitual sentencing recommendations work with the Comprehensive Sentencing Task Force? The two habitual recommendations coming from this (the Drug Policy Task Force) match that of the other task force. • Sen. Hudak agreed to be the legislative sponsor for this recommendation. Can she go forward to have this sent to legislative drafting? Language will need to be finalized by January 9th. • The Drug Task Force will vote on the final language on December 7th and then go before the Commission at the December 9th meeting. It cannot be presented as an official CCJJ recommendation until after that meeting.

Issue/Topic:	Discussion:
<p>Preview of December meeting Action</p>	<p>The next meeting is scheduled for December 7th, 1:30pm – 5:00pm</p>

Meeting adjourned at 4:02 p.m.

Treatment Funding Consolidation Recommendation

The following is being recommended to the Drug Policy Task Force within the Colorado Criminal and Juvenile Justice Commission (CCJJ) by the Interagency Advisory Committee on Adult and Juvenile Correctional Treatment (IACAJCT), Interagency Task Force on Treatment (ITFT), HB-1352 Advisory and the CCJJ Structure Work Group.

- Consolidation of the Drug Offender Surcharge Cash Fund (to include the HB-1352 GF appropriation) and the Drug Treatment Fund (created in SB03-318) into a single fund (Correctional Treatment Cash Fund). The fund would retain interest earned and at year end all unexpended monies would remain in the fund as re-appropriated funds.
- The consolidation will maintain the SB 03-318 Boards that will function as advisory boards who will submit plans and information to the main board. The SB03-318 priority for drug courts will be maintained.
- Three funding streams molded into one that will be distributed for adult and juvenile treatment.
- Consolidation of the three oversight bodies into a single decision making body with one voting representative from each statutorily named department, division, office or professional association; Department of Corrections, Judicial Department (Division of Probation Services), Department of Public Safety, Department of Human Services, Office of the State Public Defender, Colorado District Attorneys Council, Colorado Sheriff's Association and Colorado Counties Association. The new body will have 8 voting members.
 - The statutorily identified purposes for the funds will be consolidated and expanded to include data collection, analysis and administrative support. The following would be approved purposes: Screening; Testing; Assessment/Evaluation; Education; Statewide conference; Treatment- assessed substance use and co-occurring disorders
 - Recovery support services- to be defined by oversight body
 - Data collection, data analysis, and administrative support
- The populations to be served with funds shall be:
 - Diversion: adult and juvenile
 - Probation: adult and juvenile
 - Parole: adult and juvenile
 - Community corrections
 - Jail
- Enhance the data collection and reporting on treatment outcomes for people in the criminal justice system. Although treatment-related detail is already collected by treatment providers through the DACOD system maintained by Division of Behavioral Health there has not been a history of reporting this information to criminal justice system stakeholders. DBH would be required to report the following details by treatment program (organized by Judicial District):
 - Referring criminal justice agency
 - Treatment program name and location (county and judicial district)
 - Client name and demographic information including gender and ethnicity
 - Level of treatment delivered
 - Actual length of time in treatment
 - Discharge status (with reasons for negative discharge)
 - Special licenses held by the treatment program (offender, youth, gender specific, bi-lingual, etc.)

DBH has been working on an electronic dashboard report on each treatment program that receives funding. The dashboard would include performance indicators like: length of stay in treatment, any reduction of drug use during course of treatment, any change in employment status, any change in housing, and any change in criminal involvement. A prototype of the dashboard will be in the field by the end of the year. DBH is also in the process of developing its Offender Management System (OMS) which would ultimately envision linking databases with probation, parole and drug courts to collect and report progress information on all offender clients receiving treatment services. The concept is similar to the DRS (DUI/DWAI Reporting System) which shares information that has been implemented with DUI clients in treatment who are also under criminal justice supervision.

- ~~Local SB 318 Boards will be designed to be advisory boards providing local input to the single decision making body. This restructured decision making body will be charged with developing a process for collecting information from stakeholders regarding the local treatment needs. The membership will remain the same. Drug courts will remain a priority for funding.~~
- local 318 boards will be re-constituted to include additional members: one from community corrections boards, one local parole representative (sheriff of designee) and one representative from local government to representative to represent county jails.
- the role of the local 318 boards will be expanded to allow local 318 boards to coordinate with the single decision making body regarding the allocation of treatment dollars from all funding sources in order to meet the local treatment needs.

- the single decision making body shall prepare an annual treatment funding plan pursuant to a formula that will allow for a fair and reasonable allocation of resources throughout all regions of the state. The single decision making body shall develop this plan based on the available data and in consultation with the local 318 boards. The re-constituted SB 318 boards should tender recommendations to the single decision making body based on Assessed local needs and the information available to the re-constituted boards as to what the most effective treatment programs would be to meet those needs.
- Additional stakeholders may be invited to participate in meetings but would not be a voting member. The oversight body would be responsible for developing the funding allocation formula between agencies, how to gather input on local needs, the annual conference budget and a mechanism to retain drug courts as a high priority, a plan for data collection and analysis, and any written guidelines or policies governing the operations of the oversight body.