

Drug Policy Task Force

Date: December 7, 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
Regina Huerter / Denver Crime Prevention and Control Commission/ CCJJ Member
Eric Philp / Probation Services / Judicial Department / 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
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 (via phone)
Tom Raynes / Colorado District Attorney's Council
Chris Brousseau / District Attorney's Office, 1st Judicial District
Rod Walker / Colorado Springs Police Department (via phone)
Christine Flavia / Division of Behavioral Health
John O'Dell / Parole Board

Absent:

Greg Long / District Attorney's Office, 2nd Judicial District
Reo Leslie / Colorado School for Family Therapy / CCJJ Member
Evie Hudak / Colorado State Senator, Senate District 19
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
Katherine Spicer / Private Defense Counsel

<p>Issue/Topic: Welcome and Review of Day's Agenda</p>	<p>Discussion: Grayson Robinson called the meeting to order at 1:44 and reviewed the day's agenda. Christine Adams received emails from both Rep. Evie Hudak and Sen. Pat Steadman with their votes on the recommendations as sent out to the Task Force. Reo Leslie is also absent but will be available for a phone call during the vote. Mark Hurlbert and Rod Walker are participating by phone and will vote via email to Christine when the time comes.</p>
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<p>Issue/Topic: Structure Working Group</p> <p>Action</p> <p>The Structure Working Group will continue to work on this issue and bring back its recommendations to the Drug Policy Task Force in January.</p>	<p>Discussion:</p> <p>The Structure Working group submitted a draft of its proposed sentencing grid. The drug sentencing grid uses an XY axis to account for severity of the offense and the criminal history of the offender. The grid provides guided discretion to the courts in its determination of the appropriate sentence for specific crimes. Felony drug offenses are divided into four categories. Each felony category has a sentencing range which allows for individual circumstances.</p> <p>There is disagreement within the Structure Working Group on some elements of the proposal and timing issues. One concern is the maximum sentence for D1 and D2 offenses. Within the Structure Working Group Christie Donner and Maureen Cain are the proponents of the grid. Tom Raynes and Dan Rubenstein are the opponents to the grid.</p> <p>Maureen Cain began the discussion by giving a background to the sentencing grid.</p> <ul style="list-style-type: none"> • The work done in 2009 looked at drug sentencing as an area where consensus could be reached. Everyone would agree to operate with some sense of urgency. • Research was done on the effects of incarceration on drug offenses. <ul style="list-style-type: none"> ○ One question was, "Does the threat of incarceration have a significant deterrent effect on drug use?" Evidence said, "No." ○ Another question was, "Does the incarceration of drug offenders have any effect on distribution?" No. One reason for this is the replacement effect. When someone goes to prison, there is usually someone else to take their place. ○ Research has also found incarceration of drug dealers to be counterproductive. • There is no research that says "x" number of years is the correct amount of time for a specific crime. • In 2009, the work group looked at the structure of drug sentencing laws in other states. They concentrated on states that used research when developing their grid. • The maximum sentences for the most serious offenders was 17 years in, 10 years in Minnesota, 10 years in Washington, 15 years in North Carolina, 132 months in Pennsylvania, and 20 years in New York. This information was used to reach our decision of having a 32 year maximum sentence on our proposal. <ol style="list-style-type: none"> 1. Do any of those states have truth-in-sentencing? The initial truth-in-sentencing states are Minnesota and Washington. Kansas came later. All the truth-in-sentencing states have a mechanism for reducing sentencing (e.g., earned time). 2. The sentencing grid also uses the risk level of the offender as
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outlined through his/her criminal history.

- Peg Flick, from DCJ, prepared a handout with data from Judicial. She researched how many people were sent to prison for each level of the sentencing grid. Ms. Flick researched 2936 cases, 22 of which were charged with D1 level crimes.
 1. Does Ms. Flick's research include cases with collateral charges? No. Cases that had other crimes charged were filtered out. The information also does not include information for people who were sent back to prison because of probation revocation.
 2. What is the impact of pleading to a possession charge when the initial offense is distribution? The DAs plea bargain a lot of cases and possession is the easiest charge to prove and the usual area of agreement for a plea agreement.
 3. There is no assumption that the person in prison for possession is there for the first time.

Tom Raynes outlined the concerns of the district attorneys with the sentencing grid.

- The initial discussion in developing the grid was how to differentiate between users/possessors and distributors? 3.6% of offenses fall within the D1 and D2 offenses. Why are we making it easier for this group?
- The DAs agree with the sentencing grid impact on the lower offenses. The top part of the grid is where there is concern
- We looked at what other states have done with their sentencing grids. There is no research to say that these other states' sentencing grids are the right way to go and that our current sentencing structure is the wrong way.
- The vote should be "thumbs up, thumbs down" vote on the grid as it is presented today. If it is a positive vote, it goes to the CCJ. If it is a negative vote then the next question is what can be worked on.
- Are we ready to say today that this done? The grid is close but not completed.
- The sense of urgency was met when drug felony convictions were removed from predicating factors for habitual charges. Last session we recommended changing cut points. We changed the sentencing guidelines. We were able to reduce several felonies to misdemeanors. If the legislative session were not about to start, we would not be voting on this grid until some of the fine details were worked out.
- The goal is to create the most cost effective method that will make the community safe.
- Incarceration has a huge effect on drug treatment. Forced treatment has benefits. This grid discusses how long an offender is put away but has nothing to do with treatment.
- For D4 offenses where probation or community supervision is recommended is there an amount of probation time recommended? No. This is DOC sentencing. You are going to make decisions for those cases on the criminal history alone. The majority of those cases will not have a presentence investigation report prepared in time for sentencing.
- Regi said there was concern from her [Denver] group that the grid would make more litigation to take place. However, their biggest concern was the paragraph after the grid. The statement that "we should develop an exhaustion of remedies model before DOC can be imposed. Prior to revocation of community supervision or sentence, the court must

determine that all reasonable and appropriate response options to the violations have been exhausted by the supervising agencies...”

Regi Huerter moved to table this grid for further work by the Structure Group. Dan Rubenstein seconded the motion.

Discussion:

1. What would the time frame be for its return? None was given.
2. Can the Structure Group identify some areas that can be brought to the CCJJ for the 2012 legislative session?
3. Christie Donner asked if the motion be amended to state the sentencing grid shall be returned to the Structure Group for further work on the grid or to develop other recommendations regarding possible modifications to the existing drug structure that can be brought to the CCJJ in January for recommendations to go to the 2012 legislature. Regi Huerter and Dan Rubenstein agreed to the amendment.

Vote: (A) I support it: 17 (b) I do not support it: 1

Issue/Topic:

Prevention Working Group

Action

The Prevention Working Group will do further research on funding issues and bring back its findings in the form of recommendations to the Drug Policy Task Force at the February meeting.

Discussion:

Carmelita Muniz presented the recommendations from the Prevention Work Group. The work group received input from the Juvenile Taskforce of the CCJJ, staff of the Division of Criminal Justice, members of the Juvenile Justice and Delinquency Prevention (JJDP) Council.

Legislative Recommendations

1. Prioritize funding of prevention strategies to reduce adolescent involvement with the juvenile justice system, reduce juvenile incarceration and future penetration into the juvenile and adult criminal justice systems.

- Legislation put forth in 2012 by the Drug Policy Taskforce to the Commission that identifies new savings (revenues and cost avoidance) shall be earmarked for recommendations 2, 3 and 4 (support universal risk data collection efforts through the Healthy Kids Survey; locally coordinated community and school-based evidence based prevention; and juvenile assessment and diversion programming) in that priority order.
- Beginning with legislation proposed this session allocate at least one million dollars with a percentage or monetary increases based on fund increases in year two and moving forward.

Discussion:

1. The CCJJ has already voted on using 1347 dollars for treatment. The above recommendation is for using 1347 dollars for prevention.

2. Invest in both state and local level data collection, analysis and reporting for better trend and gap analysis, resource allocation and community level programming.

- Support ongoing data collection and monitoring of local and state level substance use and abuse, co-occurring (SA/MH) and mental health

trends among youth in the biannual Health Kids Survey across all 178 school districts.

- Currently, the Departments of Education, Public Health and Environment and Human Services (Division of Behavioral Health) coordinate the implementation of the Healthy Kids Colorado Survey (HKCS), which includes the Center for Disease Control's Youth Risk Behavior Survey and additional risk and protective factor items. The Division of Behavioral Health also provides funding to help subsidize collection of these data at the local level with the use of Federal Substance Abuse and Mental Health Services Block Grant funding. However, resources are not sufficient to support all interested Middle and High Schools who wish to conduct the survey. Moreover, federal resources designed to support state-level collection are inadequate for this purpose. It is critical that state and local prevention efforts are data driven and that policy makers have the ability to monitor substance use trends at both the state and local levels. This can be achieved by increasing support for the collection of youth substance abuse, co occurring and mental health survey data.
- The cost for the survey effort is based on an expected participation rate of 70% of students in the 7th, 9th, and 11th grades with a per student cost of \$3.09. This cost covers survey printing, shipping, scanning and data cleaning, analysis and district level reporting. With a base student population in these grades of 181,370 at 70% participation, the cost is \$392,747. The survey would be conducted every two years.

Discussion:

1. Does this include federal dollars? Where is the money coming from? Is the \$392,000 additional dollars or the total cost? Ms. Muniz believes it is additional monies, but she will check. We get some funding but it does not go into all schools. This recommendation is to fund the survey in all schools.
2. Who will use the result of the survey and what will they do with that information? Currently the data is used by the counties that administer the survey. Do they have the money to implement any changes?
3. The data is owned by the school districts, but the school districts are reluctant to share it. Parents get upset with the schools asking their child about sex or drugs, etc. It is also difficult to determine if programs are beneficial because the schools will not share the data. Having programs linked to the data will aid in the sharing of the data.
4. Anything the Drug Task Force takes back to the CCJJ that involve dollars will probably be rejected. Any recommendation coming forth would need to have the exact cost and where the money will be found to pay for the recommendation laid out.
5. This recommendation is not specific enough to say where the money comes from.
6. Can the recommendation be amended to say this is contingent on a public / private partnership? If the partnership does not go forward, then nothing happens.
7. Can you tell the CCJJ that if there is money that will be directed toward prevention, these are the areas that would benefit from those dollars?
8. It would only take 12 – 15 juveniles to be diverted from DYC to increase the money. The Juvenile Task Force is looking at who is in DYC and why. This question should stay there.
9. There may be an opportunity to put together a primer about the data

that can be obtained from Healthy Kid's surveys. Then the primer can be taken around to school districts to show them why the data is important and ask that it be supported by the more difficult districts.

3. Support and invest in the expansion and use of evidence-based substance abuse community and school-based prevention programs, policies and practices.

- Support and invest in the expansion of Collaborative Management Programs, as defined by HB 1451 to utilize multi-system, outcome based collaborations to improve the coordination and provision of local prevention programming.
- Currently, there are 31 Collaborative Management Program (CMP) sites in Colorado. These projects help to coordinate multi-agency service efforts that improve outcomes for families facing issues within the child welfare, juvenile justice, education and health/mental health systems. Projects are led by Inter-agency Oversight Groups (IOG) which play a critical role in shaping service delivery across these systems. IOGs serve as a natural coordinating body for prevention programming, particularly if this is informed by data collected by the Healthy Kids Survey in recommendation 2, above. The limited dollars available to support the initiative makes it difficult for existing CMP's to include more prevention and limits expansion to other communities. It is proposed that dollars be used to support prevention in existing CMP's and to expand the use of the CMP effort across the state in order to support data driven, evidence-based prevention programming.
- The cost for this recommendation is based on providing funding that supports prevention services in existing CMP's and expanding CMP efforts to the remaining counties in the state without a current CMP project.

4. Invest in the standardization and expansion of efforts to divert youth from the juvenile justice system.

- Research has shown that juveniles who commit delinquent acts but who have been assessed as low risk for future offending can be treated safely without formal filing and entrance into the juvenile justice system. Dollars in this area would be provided to the Colorado Division of Criminal Justice (DCJ) which will utilize the expertise available through its Juvenile Justice and Delinquency Prevention (JJDP) Council to support the creation or expansion of programming that will divert youth from the juvenile justice system based on best practices, dissemination of model programs and evaluation efforts to examine costs and benefits. This may include but not be limited to broadening the use of Juvenile Diversion programming and expansion of Juvenile Assessment Centers across the state. The DCJ and JJDP Council will provide a more detailed recommendation by working with existing Juvenile Assessment Centers and diversion programs in the state.
- Juvenile Assessment Centers, and Juvenile Diversion programs, when operated according to best practice standards can reduce overrepresentation of youth of color, ensure youth and family risk and needs are appropriately assessed and services are appropriately administered. The cost for this recommendation will be provided by the Colorado Juvenile Justice and Delinquency Prevention Council.

- The cost for this recommendation is based on expanding the use of efforts to divert youth from the juvenile justice system.

Discussion:

1. Most district attorney's offices have a diversion program. Some are pre-filing, some are post-filing and some are pre-plea. When asked a question about ever being arrested, a person who goes through post-filing and pre-plea diversion programs say, "Yes." If they are given the opportunity to go into a diversion program that is pre-filing the juvenile can say, "No." This would be a benefit for the juvenile in future employment.
2. Can the prevention group partner with the Department of Education, Department of Human Services and the School Resource Center and send a letter to every student in the state outlining the status of drugs and alcohol in the state?

Don Quick made the motion to table the work of the Prevention Working Group for 30 days for further research and bring back the issues to the Task Force in January. Eric Phil seconded the motion.

Discussion: Maureen Cain made a friendly amendment to have the work brought back to the Task Force in February. This will allow for more time to research the funding issues as they relate to the recommendations from the Structure group. Don Quick and Eric Phil agreed to the friendly amendment.

Vote: passed by unanimous hand vote.

Meeting adjourned at 4:25.