

# Drug Policy Task Force

**Date: Sept. 13, 2012   Time: 9:00- 12:00**

## **Task Force Members:**

Grayson Robinson / Arapahoe County Sheriff's Department – *Chair*

Don Quick / District Attorney's Office, 17<sup>th</sup> Judicial District

Eric Philp / Probation Services, Judicial Department

Brian Connors / State Public Defender's Office

Christie Donner / Colorado Criminal Justice Reform Coalition

Reo Leslie / Colorado School for Family Therapy

Marc Condojani / Division of Behavioral Health

Dan Rubinstein / District Attorney's Office, 21<sup>st</sup> Judicial District

Terri Hurst / Behavioral Health Care Council

Helen Morgan / District Attorney's Office, 2<sup>nd</sup> Judicial District

John O'Dell / State Board of Parole

Kathleen McGuire / State Public Defender's Office (via phone)

Maureen Cain / Criminal Defense Bar

Pat Steadman / State Senator, 31<sup>st</sup> District

Vince Niski / Colorado Springs Police Department

Tom Raynes / Colorado District Attorneys Council

Bridget Klauber / Criminal Defense Bar

Chris Brousseau / District Attorney's Office, 1<sup>st</sup> Judicial District

## **Absent:**

Regina Huerter/ Denver Crime Prevention and Control Commission

Bill Kilpatrick / Golden Police Department

Evie Hudak / State Senator, District 19

Mark Hulbert / District Attorney's Office, 5<sup>th</sup> Judicial District

Mark Waller/ State Representative, District 15

Tim Hand / Division of Adult Parole, Community Corrections and Youthful Offender System

## **Other Attendees:**

Mike Elliott/ Medical Marijuana Industry Group

Evelyn Leslie / Colorado School for Family Therapy

Ed Wood / Private Citizen

## **Staff:**

Paul Herman, Christine Adams, Kim English, Jana Locke, Laurence Lucero

Issue/Topic:	Discussion:
<p>Welcome and Introductions</p> <p><b>Action</b></p>	<p>Grayson Robinson called the meeting to order at 9:10 and reviewed the day's agenda.</p> <p>Sheriff Robinson spoke about issues coming before the Commission and the expected timelines the CCJJ will face. Tomorrow is the next meeting of the CCJJ and the Commission will listen to several draft recommendations. The October meeting is so robust that it will require a full day to work through and vote on all of the items on the agenda. The November meeting will include voting on additional recommendations.</p>

Issue/Topic:	Discussion:
<p>Public Comments</p> <p><b>Action</b></p>	<p>Michael Elliott stated the Center for Disease Control released a report in 2011 which stated that between 2009 and 2011 the Marijuana usage rate among teens decreased in Colorado while it increased nationwide. He feels that regulations the state has put in place are helping to reduce teen usage of marijuana. Mr. Quick stated that Dr. Del Elliott from the University of Colorado at Boulder examined the study and disagrees with the CDC.</p> <p>Ed Wood stated that the Governor's Highway Safety Board has released its findings and encourages passing a zero tolerance drug impairment law. He feels that this issue should be elevated to a national level.</p>

Issue/Topic:	Discussion:
<p>DUID Working Group</p> <p><b>Action</b></p>	<p>Sheriff Robinson gave an update on the work of the DUID Working Group. They met yesterday and, as a result, another meeting will be held on September 24<sup>th</sup>. The working group may bring as many as three to five recommendations to the Drug Policy Task Force at its October meeting (Note: these recommendations will not necessarily work together but will instead be presented as options).</p> <p>The DUID Working Group anticipates preparing position papers, both in support of and in opposition to, the various recommendations. The position papers will be sent to members of the Task Force prior to the October meeting.</p> <p>Separate from the Commission, Senator King is sponsoring a DUID bill with a 5ng limit of THC. Sen. King believes Transportation is where this bill needs to be heard. And this bill will be presented to the Legislative Transportation Committee tomorrow for their consideration.</p> <p>Regardless of Sen. King's bill, the DUID Working Group will continue to work on a separate, but possibly similar recommendation. There will be several versions, one with a 5ng limit for THC, a version with zero tolerance for all drugs, a version with zero tolerance for all drugs except marijuana which would have a per se level, and version with per se levels.</p> <p>Mike Elliot presented the views of the medical marijuana community By stating that this community opposes any bills with a 5ng level because they feel such legislation will criminalize the innocent – those individuals who are not impaired</p>

at 5ng. They feel they will not be able to drive because there is no way for them to know what their nanogram level is at any given time.

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Structure Working Group <b>Action</b></p>	<p>Dan Rubenstein and Maureen presented an update on the work of the Structure Working Group.</p> <p>Areas of agreement:</p> <ol style="list-style-type: none"><li>1. Provide community based treatment;</li><li>2. Relapse is part of the treatment;</li><li>3. We want a blended public health / public safety approach;</li><li>4. Development of a sentencing structure that better differentiates drug offenders who are primarily users and addicts from those more serious offenders who are involved in drug distribution, manufacturing, or trafficking;</li><li>5. Development of resources through changes in the criminal code that will enhance intervention, supervision, and treatment in the community, will enhance public safety by addressing drug abuse and addiction and will decrease crime through drug abuse recovery;</li><li>6. Develop methods by which offenders can gain access to assessment-based treatment services that are based on treatment need regardless of the level or classification of crime;</li><li>7. Create equivalent penalties for crimes that pose similar risks to public safety;</li><li>8. Enhance penalties when behaviors clearly present a public safety risk; and</li><li>9. Develop resources for additional pre-filing diversion programs round the state from drug offenders. Use drug courts and legislative changes could support more effective use of those resources.</li></ol> <p>Areas of disagreement:</p> <ol style="list-style-type: none"><li>1. The previous version of the drug grid included four levels of drug offenses and three categories of criminal history. The Working Group has eliminated the criminal history factor and is returning to the presumptive / aggravated range structure that everyone is familiar with.</li><li>2. A DF4 (Drug – Class 4 Felony) was 0 – 12 months on the bottom end. Under the current structure the offender can receive 6 to 12 months for such crimes. The DA's are not comfortable with six months because it does not provide enough time to treat them between when an individual is sent to diagnostics and when they can be released.</li><li>3. Ranges on misdemeanors are the same as last year's drug grid.</li><li>4. The working group is reviewing the list of 18-18- crimes. Some of the cut points on marijuana offenses need to be reviewed which may increase the sentence for a couple of crimes. [The list that was passed out] is not a final 18-18 list.</li><li>5. The Working Group is trying to work through some school issues. We may further discuss what falls into each category.</li><li>6. All possession offenses, no matter the quantity, will remain a felony upon filing. They would all go into district court and be a felony arrest or felony summons. SB12-163 was originally worded such that the first three contacts would be considered a misdemeanor. Starting a case in county court and then finding that it should be raised to a felony level</li></ol>

means that the initial case would have to be dismissed in county court and then refilled as a felony in the district court. This delays the process several months. Some successful drug treatment programs are only available to an offender convicted of a felony. It also avoids conflicting with the requirement that you have to be charged with a felony to be eligible for the Denver Drug Court. If an offender successfully completes a deferred sentence, their conviction would be converted to a misdemeanor for the first two offenses. You would not be eligible for this if you had a prior felony conviction.

- a. Do we want to put a time frame on the felony conviction? This is being worked out.
  - b. The DAs signed off on this.
7. Another possible version is to have the matter converted to a misdemeanor at the time of sentencing so an offender would not face a prison sanction along the way – the MC wobbler. You are only eligible for this if you plead. There are questions about the constitutionality about this.
  - a. The DAs are against this.
8. Diversion allows a person the ability to avoid going into the criminal justice system at all. Drug Courts are run differently in different areas. Would like to be able to tie some of the savings from other CCJJ legislation into diversion programs.
  - a. The DAs expressed concerns about tracking.
  - b. Plea dispositions cause some concern. Are we going to have a flood of misdemeanor trials?
  - c. There are concerns about a drug grid and it being separate from other crimes since many drug crimes happen in conjunction with non-drug crimes.
9. During the CDAC conference, the DAs voted to do the Diversion wobbler twice with a quantity of 4 grams and 2 grams. There would be no more F4. For the first two offenses there would be the wobbler. There is potential for movement on this option.

The Working Group is asking for a special session in two weeks to review the grid. They feel they are close to finalizing their recommendations and may be able to work through the issues by then.

Grayson will tell the CCJJ they will pull together a special meeting on Sept 27 solely to discuss the recommendations coming from the Structure Working Group. Will come back to the Commission prior to the October 12<sup>th</sup> meeting to provide recommendations for discussion and a vote in October.

Issue/Topic:	Discussion:
Treatment and Prevention Working Group <b>Action</b>	Terri Hurst presented information from the Treatment and Prevention Working Group. This group was asked to examine the impact of CCJJ bills on substance use disorder and co-occurring treatment. How are the treatment dollars being spent? Specifically, this working group is examining treatment dollars that are a result of HB10-1352 and HB12-1310.

As a result of HB10-1352, four state agencies receive treatment funding dollars. These agencies are the Judicial Branch (Probation Services); DOC (Parole); CDPS (Community Corrections); and CDHS (Jail-Based Behavioral Services). Judicial was the only state entity given spending authority during the first year of 1352 funding, so full implementation did not begin until fiscal year 2011-12. In FY 2011, a total of \$1,468,000 was spent on mental health treatment. As a result of HB10-1352, the total amount increased to \$6,100,000 in FY 2012.

1352 funds are easier to track with parole and Jail-Based Behavioral Services as they are targeted to specific programs. Parole contracts with Peer Assistance Services that implements the Colorado Treatment Accountability for Safer Communities (TASC) programs. During FY 2011-2012, TASC programs provided 5,482 vouchers for substance abuse and co-occurring treatment. UA testing was paid from 1352 funds while they were in treatment (\$1.4 million).

HB12-1310 created the Correctional Treatment Fund (CTF) which combined the drug offender surcharge, SB03-318 funds and 1352 funding. This expanded what the funds could be used for in an effort to improve substance use disorder services, continuity of care, and accountability. The statute states the General Assembly will appropriated at least \$7.6 million into the CTF for FY 2012-2013 and at least \$9.5 million for FY 2013-2014 and each year thereafter.

The Correctional Treatment Board will use CTF for alcohol and drug screening, substance abuse education and training, an annual statewide conference regarding substance abuse disorders, treatment for substance and co-occurring disorders, recovery support services, and administrative support to the treatment board.

Individuals who are eligible for these funds have been expanded to include adults and juveniles serving a diversion or probation sentence, including Denver County. Offenders transitioned into or sentenced to community corrections programs may also have access to these funds.

There are still some gaps that need to be addressed, including: Wrap-around and re-entry services such as transportation, housing and employment, stand alone mental health treatment, detox services, overdose prevention and a decreased approved treatment provider funding.

The Treatment Working Group has also identified future discussion items. One such item is to clarify what are the expectations are for treatment.

- Is success measured by a client remaining clean?
- Is success measured through a reduction in recidivism rates?
- What are the outcomes we are looking for?
- There is also a need to improve the continuity of care as a client moves through the system.
- What will the impacts be of healthcare reform?

Discussion:

1. On the healthcare issue, we should focus on funding for the offender population.
  - a. With healthcare, will there be a way to track the offender population's use of new available funds? If people who are released from prison are automatically enrolled in Medicare or

Medicaid, it will be difficult to track how much they receive.  
There are HIPPA concerns. Can HCPF enter a field in their CBMS system?

2. Will there be access to funding for private providers? Yes. This is for any treatment provider across the state.
  - a. Probation and Community Corrections contract with providers.
  - b. How do you get on an approved treatment provider list? For Probation clients, if they are using their own funds, they are given a list of providers that they can use. The exception to this is the drug treatment provider who is actively engaged in drug court.
3. The priority question is how does the Treatment Board know the provider is using best practices?
4. When the drug offender surcharge became available, probation clients who may not have been able to pay for their treatment, were given a means to comply with the court orders. If we put someone in treatment and do nothing else to assist the offender, the offender will fail. This is only one piece to the puzzle. We need to nail down the goals we are shooting for. 63% of the Probation population and 70% of the DOC population needs weekly or intensive treatment.
5. The Correctional Treatment Board has met three times. The first meeting provided a historical view of how we got there. The next two meetings were to develop the Board's priorities. The first priority is to get a staff member hired. The report on the spending plan is due November 1<sup>st</sup>. There are 15 local boards who have not yet met or been appointed and those local boards will not be able to add their report. The local boards are appointed by the Chief Judge. There are significant numbers of people who want to fill a spot.
6. It was requested that one or more recommendations be drafted by the October task force meeting.

The next meeting will be September 27<sup>th</sup> at 10:00 at 690 Kipling, 1<sup>st</sup> floor conference room.

Meeting adjourned at 11:56 a.m.