

Drug Policy Task Force

Date: September 27, 2012 Time: 10:00 – 1:00

Task Force Members:

Grayson Robinson / Arapahoe County Sheriff's Department – *Chair*
Don Quick / District Attorney's Office, 17th 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 (via phone)
Dan Rubinstein / District Attorney's Office, 21st Judicial District
John O'Dell / State Board of Parole
Maureen Cain / Criminal Defense Bar
Pat Steadman / State Senator, 31st District
Vince Niski / Colorado Springs Police Department
Tom Raynes / Colorado District Attorneys Council
Bridget Klauber / Criminal Defense Bar
Chris Brousseau / District Attorney's Office, 1st Judicial District
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, 5th Judicial District

Absent:

Terri Hurst / Behavioral Health Care Council
Helen Morgan / District Attorney's Office, 2nd Judicial District
Kathleen McGuire / State Public Defender's Office
Mark Waller / State Representative, District 15
Tim Hand / Division of Adult Parole, Community Corrections and Youthful Offender System

Other Attendees:

Evelyn Leslie, Mark Elliott, Robin Hackett, Sherri Hackett, Julie Pezze

Staff:

Kim English, Jana Locke, Paul Herman (via phone), Ken Plotz, Laurence Lucero, Peg Flick, Adrienne Loye

<p>Issue/Topic:</p> <p>Welcome and review of Agenda</p> <p>Action</p>	<p>Discussion:</p> <p>Grayson Robinson called the meeting to order at 10:05 am and reviewed the day's agenda. Today's purpose is to discuss the work done by the Structure Working Group.</p>
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<p>Issue/Topic:</p> <p>Public Comment</p> <p>Action</p>	<p>Discussion:</p> <p>Mike Elliott and several others in the medical marijuana community have partnered with CDOT to participate in the Heat is On campaign. Cheri Hackett and Robin Hackett are both representing medical marijuana organizations who joined in supporting the campaign. The Heat is On campaign sends a public message to address drugged driving and encourages individuals to keep off the road if drugged or impaired. The medical marijuana community is also trying to get message out at point of sales.</p> <p>Robin Hackett educates patients on how to medicate without impairment.</p> <p>Cheri Hackett is the President of ACT for Colorado. She works with directly with patients. As part of her practice, she reinforces the message that she doesn't want folks to be impaired while driving.</p>
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<p>Issue/Topic:</p> <p>Structure Working Group</p> <p>Action</p>	<p>Discussion:</p> <p>Dan Rubenstein and Maureen Cain presented a joint, unanimous proposal concerning the drug grid.</p> <p>Provisions:</p> <ol style="list-style-type: none"> 1. Mandatory sentencing. All DF1 offenses carry a mandatory minimum sentence of 8 years. Additionally, any DF1 drug crime that involves distribution of over 1 kilo of schedule I/II controlled substances or involves a weapon/firearm as currently defined in the special offender provisions carry a minimum mandatory of 16 years up to 32 years. More than a kilo and weapons offenses are the big public safety concerns. 2. Aggravated Sentencing. Eligibility for sentencing in the aggravated range will follow current law for sentencing in the aggravated range. This shall include the availability of an aggravated sentence when considering relevant prior criminal history. Does that affect school zones? School zones are still DF1, but not include the aggravated factor unless there is more than 1 kilo or a weapon. Schools are not required to be an aggravator. It is a decrease in the maximum of the sentence, but does not affect the minimum sentence. A
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couple of years ago, Maureen Cain and Kathy McGuire searched how many drug in school zones cases were filed in a 3-year period. 20 cases were filed. Not one of those was given the 32 year sentence. Most received the 16 year sentence. Still preserved COCOA and

3. Continue and encourage all current plea bargain options. The “wobbler” as described below will not be a replacement for current options such as misdemeanor plea or deferred judgment. No changes to current probation statutes except as described below. What they are trying to do is expand the pathways to success. Certain jurisdictions have determined pathways they think are best. We are not trying to supplant those, just find additional ways for convictions to not impact the offender once they have successfully overcome their addiction.
4. Support and include the expansion of diversion programs that is being developed and recommended by the Comprehensive Sentencing Task Force. Make clear that pre-filing / trial diversion is authorized in statute and divert the appropriate amount of cost savings from the CCJJ approved theft statute reform to expand District Attorney Diversion programs. Try to get someone help without getting into the system as opposed to fixing the system when they are done.
5. Use of deferred judgment. Give the court discretion to accept an admission to violation of the deferred judgment or make a finding of a violation of the deferred judgment without revocation the deferred and entering the judgment of conviction. This requires a change to 18-1.3-103(2) changing the “shall” to “may” for drug offenses. This is consistent with the need for exhaustion of sanctions. What about new law violations? DAs decide if someone should go on diversion. If they have a subsequent arrest, the DA decides if the person is complying with the terms of the deferred sentence. If the DA feels that the deferred sentence should be revoked, it goes to the Court. Probation has many offenders that transfer from one jurisdiction to another and are responsible for monitoring them. This created difficulty in trying to remember what the prior DAs philosophy was. Probation would not want to do the supervision in these cases.
6. All drug possession offenses for schedule I/II controlled substances will continue to be a felony (DF4). However, there are two additional provisions:
 - a. All possession offenses for Schedule I/II shall be a DF4 and will not be weight-based like current law. Removed weight aggravators. Possessors are being treated like possessors, not distributors. What about the differences between heroin and meth? Are you looking at treating different drugs differently?

- b. Creation of a “wobbler” in state law. If a defendant is convicted of an eligible DF4 offense, the felony conviction would “wobble” to a misdemeanor upon successful completion of a probation or community corrections sentence. Wobbler is available for the first two convictions (which can include a successful completion of a deferred sentence). Denver Drug Court is used for felony offenders and they can get treatment there. It doesn’t make sense to tag a felony drug user once their addiction has been addressed. This is an option to drop the felony conviction to a misdemeanor upon successful completion. Exclusions for eligibility for a wobbler are: a prior conviction for a crime of violence; or if the offender is ineligible for probation.
7. There will be a statutory language regarding exhaustion of remedies prior to sentencing a defendant to prison for a D4 felony offense.
8. COCCA remains the same. It will not be touched.
9. Aggregation: Preserve 18-18-405(5) which allows drug quantities to be aggregated for purposes of establishing crime level and sentencing requirement. This will not change.
10. Clarification that drug sentencing scheme applies only when the defendant is sentenced for an offense under 18-18 offenses.
11. Allow for a PR bond (with treatment conditions when appropriate) more readily on DF cases involving possession if defendant is not assessed as high risk on bond. But allow for a defined waiting period on this to allow fast track drug courts to process cases as appropriate.
12. No sealing waiver required on plea or included in the Rule 11.
13. Develop a data collection system for this legislation that will allow for assessment of what is happening statewide in the implementation of these changes, transparency regarding the policies and practices of District attorneys and other criminal justice agencies, and allow for assessment of outcomes. Use cost savings from bill to fund this effort, as needed.
14. In any legislation developed pursuant to drug sentencing reform recommendations, include a requirement of a post-enactment review in 3 years to use the data collected and assess implementation and make any appropriate recommendations for change.
15. Change state law to allow probation to create and determine who is appropriate for an intensive supervision program for misdemeanor offenders. Statute should include a requirement that any placement of a misdemeanor defendant onto intensive supervised probation be based on a risk/need assessment that indicates that intensive supervision is appropriate. Can we get data collection on this? This is

expensive and will have a fiscal note.

16. Change state law to allow misdemeanor drug defendants to be required to participate in an IRT (intensive residential treatment) program as a condition of probation. Need to make sure Community Correction facilities are set up properly to allow misdemeanants in their program. This will also have a fiscal impact. Items 15 and 16 are an attempt to address the addiction early, before an offender escalates to other crimes to pay for their addiction.
17. Sync the quantities and classifications of bath salts, salvia and cannabinoids to the structure as necessary and appropriate. Also address flunitrazepam and ketamine as appropriate.
 - What are flunitrazepam and ketamine? They are date rape drugs.
18. Expand residential treatment capacity by allowing a state funding mechanism to local governments for the capitol construction or acquisition of real property for the purposes of providing residential treatment in community. Regional collaboration is permitted to expand residential treatment options in rural or otherwise underserved areas. Clients could include criminal justice referrals, child welfare referrals, referrals from other agencies / institutions / schools or voluntary walk-ins. Has there been any thought to couple residential treatment with detox? Yes.
19. Amend statute to allow that defendants sentenced to prison with less than 12 months left to serve may be incarcerated at the county jail for purposes of participating in treatment offered through the jail. The Sheriff and the DOC would need to both agree to a defendant serving his/her sentence in jail and DOC would be responsible to pay for the cost of incarceration at the jail per diem set by the legislature. If the County Sheriff does not have bed space or an appropriate treatment program, the Sheriff can opt out. One detail needs to be discussed - there will need to be modifications to current statute that will allow someone who is sentenced in Logan County to serve his sentence in Arapahoe County. If there are funds available for construction that would have gone to jail construction, those funds may be better used at a local county jail to build bed space for this type of offender.
20. Encourage the General Assembly to provide funding to the DOC to create and IRT program for inmates assessed to be in need of that level of treatment who have relatively short periods of time prior to possible release. What about repeat DUI offenders? This would be a narrow band of individuals who have been incarcerated for a number of years, and presumably, not have access to controlled substances. Their treatment needs are different from short time residents.
21. Allow for expansion of civil remedies as part of building more

comprehensive drug policy. Areas related to this proposal include strategies to prevent and effectively intervene in prescription drug abuse and misuse and adopting medical models for detox programs.

22. Prioritize cost savings to trauma informed care if available and appropriate.

The proposed drug grid included in the handout, compresses the middle offenses. The higher felonies remain high, and the lower level felonies remain low.

Discussion:

1. Who defines what is a schedule I? The federal government sets a classification in federal law and Colorado adopts the placement.
2. Dealing in a school zone should be in an aggravated range. Selling to a minor is still a sentence in the aggravated range.
3. There is still a concern that the recommendations are reducing sentences for the worst of the worst.
 - a. Can there be two proposals? One as presented today. The other is the same with one exception, that for a DF1, the range would be 8 – 48 years. No aggravated or presumptive ranges.
 - b. It was explained that anyone can make a motion but that no voting will occur today but will happen at our regular October meeting (10/10/12).
4. How does this affect juveniles? Has the juvenile population been considered? Not really as this proposal is in response to SB12-163 which applies only to C.R.S. §18-18, not the juvenile code.

The purpose of this special meeting was to look at the work of the Structure Group. The October 10th meeting of the Drug Task Force will be the appropriate place for the vote and or modifications to proposals.

The October 10th meeting will have presentations from the Structure Group, the DUID Group and the Prevention Group. Those presentations will be voted on and be brought to the CCJJ at the October 12th meeting. A vote by the CCJJ will be November 9th.

Meeting adjourned at 12:15 p.m.