

**Drug Policy Task Force / Amendment 64**  
**Colorado Commission on Criminal and Juvenile Justice**

**Minutes**

July 10, 2013, 9:00AM-Noon  
Ralph Carr Judicial Building

**ATTENDEES:**

**CHAIR**

Eric Philp, Division of Probation Service  
Charlie Garcia, CCJJ At-Large Representative

**TASK FORCE MEMBERS**

Marc Condojani, Division of Behavioral Health  
Brian Connors, Public Defender's Office  
Christie Donner, Colorado Criminal Justice Reform Coalition  
Matt Durkin, Attorney General's Office  
Mike Foote, House District 12  
Ron Kammerzell, Department of Revenue  
Arnold Hanuman for Tom Raynes, Colorado District Attorney's Council

**STAFF**

Paul Herman, CCJJ consultant  
Kim English, Division of Criminal Justice  
Germaine Miera, Division of Criminal Justice

**ADDITIONAL ATTENDEES**

MIKE ELLIOTT, MEDICAL MARIJUANA GROUP  
ART WAY, DRUG POLICY ALLIANCE  
LAURA PEGRAM/DRUG POLICY ALLIANCE  
Anne Barkis/Mendez consulting

**ABSENT**

Maureen Cain, Colorado Criminal Defense Bar  
Pat Steadman, Senate District 31  
Mark Waller, House District 15 (unconfirmed)

<p><b>Issue/Topic:</b> Welcome and Introductions</p>	<p><b>Discussion:</b> Charlie Garcia and Eric Philp welcome the group and preview the agenda.</p>
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<p><b>Issue/Topic:</b> Charter Review</p> <p><b>Action</b></p>	<p><b>Discussion:</b> Paul Herman takes the group through the Charter and the charge for this task force.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• The various task forces of the Commission generally have a broad scope of work and a long range timeline. This particular group (The reconstituted Drug Policy Task Force) has a very targeted charge and will be working on an extremely tight timeline.</li> <li>• The structure for this task force is straightforward.</li> <li>• Page 3 of the Charter details the Benchmarks for this group over the next three months and the frequency of meetings needed to reach those benchmarks.</li> <li>• Charlie reviews the Mission in the Charter and goes over the bullet points that detail the expected outcomes.</li> <li>• Charlie informs the group that a smaller planning group met earlier in the week to finalize this Charter and the scope of work.</li> </ul>
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<p><b>Issue/Topic:</b> Define Areas of Work</p> <p><b>Action</b></p> <p>Create scenarios so the group can see how different situations would play out</p>	<p><b>Discussion:</b> Charlie requested that the group skip to the 10:05 portion of the agenda (Define Areas of Work) as he had another meeting to go to and wanted to discuss this part of the agenda before delving into the 'Department of Revenue's Work in Progress' section of the agenda.</p> <p><i>DISCUSSION POINTS-Define Areas of Work</i></p> <p><b>Separating DOR work from CCJJ focus-</b></p> <ul style="list-style-type: none"> <li>• The group to return to this discussion after the DOR presentation.</li> </ul> <p><b>Amendment 64 Task Force and Criminal Law recommendations-</b></p> <ul style="list-style-type: none"> <li>• <i>12.1/Support for HB 13-114 Regarding Penalties for DUID</i> -Charlie believes work in this area is completed.</li> <li>• <i>12.2/ARIDE Training for Colorado Law Enforcement Officers</i> - Charlie believes work in this area has been handled by the legislature and is completed.</li> <li>• <i>12.3/Revisions to the Criminal Code</i> - Charlie believes this task force will need to spend time on this.</li> </ul>
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<p><b>Issue/Topic: (continued)</b></p> <p>Define Areas of Work</p> <p><b>Action</b></p>	<ul style="list-style-type: none"> <li>• <i>12.4/Consequences for Transfer of Marijuana to 10-to20 year olds</i> <ul style="list-style-type: none"> <li>– Charlie has produced a handout regarding these transfer issues and reviews it with the group. The new law has created 3 different age categories for different offenses. There is an age group for 17 and under (minors), 18-20 year olds, and 21+.</li> </ul> </li> <li>• <i>12.5/Consequences for Juvenile Possession</i> <ul style="list-style-type: none"> <li>– Charlie reports that the Juvenile Task Force is looking at this but likely won't get the work done for this session. The JV Task Force is looking at a broad process of juvenile criminal justice – not just marijuana. This group (the Drug Policy TF) will look at the current targeted issue of consequences for possession of less than one ounce for persons under 18.</li> </ul> </li> <li>• <i>12.6/Personal Transport of Marijuana</i> <ul style="list-style-type: none"> <li>– Charlie isn't sure we'll have time to get to this issue.</li> </ul> </li> </ul> <p><b>Transfer Issues-</b></p> <ul style="list-style-type: none"> <li>• One of the big concerns in this area is about the three different age groups – Those under 18, the 18-20 year olds, and those 21 and over.</li> <li>• What is typically known as 'transfer from an adult to a minor' would now be referred to as transfer from an adult to a person 'underage'.</li> <li>• We need to look at reconciliation for penalties under SB-250. Is the framework that exists there adequate?</li> </ul> <p><b>Harmonizing conflicts/SB 250-</b></p> <ul style="list-style-type: none"> <li>• SB-250 has some fairly stringent penalties.</li> <li>• Christie Donner has compiled a summary chart of SB 250 on marijuana laws under Title 18-18-406.</li> <li>• The left hand side of the chart details the different offenses in 18-18-406. The top of the chart shows the different offense levels and penalties.</li> <li>• The changes in SB 250 go into effect October 1<sup>st</sup>.</li> <li>• Part of the charge for this group is to identify conflicts.</li> <li>• There may be wisdom in creating scenarios so the group can see how different situations would play out. Let's compile scenarios and put them in front of the group next time to help look at harmonizing.</li> <li>• In looking at this chart, there are 'gaps' more than there are conflicts</li> </ul> <p><b>Implications/recommendations for 18-20 year old-</b></p> <ul style="list-style-type: none"> <li>• Discussion below.</li> </ul> <p><b>Civil filing-</b></p> <ul style="list-style-type: none"> <li>• Discussion below.</li> </ul>
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Issue/Topic:	Discussion:
<p>Department of Revenue Work in Progress</p> <p><b>Action</b></p>	<p>Eric introduces Ron Kammerzell from the Department of Revenue and explains that there is a clear line in the legislation between the regulatory functions of Amendment 64 and this task force’s concentration regarding the effect of the amendment on individuals.</p> <p>DOR is working on regulation on a macro level. Ron is here to share the details of DOR’s work.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• Under Amendment 64 – mandated rules were to be promulgated by July 1. DOR’s approach was to draft the rules as best they could as Emergency Rules – and these became effective July 1st.</li> <li>• DOR is filing a notice of permanent rule making this week.</li> <li>• There are four main groups of work for DOR - Licensing, Enforcement, Labeling Packaging and Testing Standards.</li> <li>• DOR is working with the marijuana industry, law enforcement, the Governor’s office and the pharmacology department at the University of Colorado, among others. Work with these various stakeholders will occur now through the beginning of August.</li> <li>• DOR has done a thorough job re-codifying what needs to be in the rules.</li> <li>• There are currently gaps with inventory tracking but that will be taken care of along with testing standards for labs, frequency of testing, etc.</li> <li>• DOR has individual working groups focused on all those different areas.</li> <li>• The permanent rule-making taking place in August will become effective in October.</li> <li>• In October, DOR will start receiving applications from medical marijuana businesses who want to transfer their license to a recreational license or who want to add recreational licensing to their medical license.</li> <li>• Those changes will become effective January 2014.</li> <li>• DOR wants to add an option for people to be able to file a ‘Notice of Intent’ in January for July 2014 applications for new licenses. That will enable DOR to go to the legislature for additional resources if needed.</li> <li>• DOR is also currently working on an inventory tracking system which never got off the ground with medical marijuana. DOR couldn’t complete this with medical marijuana due to budget shortfalls.</li> <li>• DOR to launch the inventory tracking system in October.</li> <li>• DOR to train industry folks in September.</li> <li>• Starting January 1, 2014 there will be a tracking system in place for cultivation, manufacture, retails stores. Without effective tracking the regulatory model will not work.</li> <li>• DOR is hiring dozens of people for the licensing unit and background investigations unit. A second phase of hiring will begin in October focusing on criminal investigators and compliance investigators.</li> </ul>

<p><b>Issue/Topic: (continued)</b></p> <p>Department of Revenue Work in Progress</p> <p><b>Action</b></p>	<ul style="list-style-type: none"> <li>• Another component involves launching operatives (as is done with liquor) by sending people in to buy to see if recreational marijuana retailers sell to underage buyers, and to also see if medical marijuana businesses sell to those without a MM card.</li> <li>• Violations will result in suspensions and fines.</li> <li>• There are 3 different kinds of violations - Public safety, administrative, lesser violations.</li> <li>• DOR is also working on an RFP for a market study.</li> <li>• DOR is considering production caps and that would need to happen before next July.</li> <li>• Third phase of implementation includes fine tuning the model between March and June of 2014.</li> <li>• DOR is also contemplating a liaison with law enforcement. DOR hasn't done that before but wants to be a resource for LE.</li> <li>• There is a patrol officer handbook for liquor and DOR will do a similar handbook for marijuana.</li> <li>• Question – if an underage kid goes into a MJ store and buys MJ, does the store face a criminal charge? Yes, it's a petty offense. Also, a retail licensee has to be 21, so if they sell to someone under 18 (under SB250) it's an automatic felony.</li> <li>• Sanctions will be deterrent for stores.</li> <li>• In liquor stores and marijuana stores the employees will have to be 21. Haven't touched on occupational licenses yet.</li> <li>• It will all be similar to the liquor code. If someone produces a fraudulent ID to a store owner, that's mitigation for the store owner – it's not their fault if someone uses a fake ID.</li> <li>• What's the fate of the Medical Marijuana industry? What's the sense of the future of medical marijuana? If I'm a consumer, why would I continue to go to a MM facility? The landscape will likely change with the Medical Marijuana industry shrinking.</li> <li>• Counties can say 'no' to retail dispensaries – a significant number have opted out. Probably less than 20.</li> <li>• DOR intends to start meeting monthly forming a law enforcement group to flesh out certain issues on a regular basis.</li> <li>• DOR is also working on hiring a resource officers.</li> <li>• Part of DOR's plan in developing guidelines is to partner with CDAC and CACP to make sure everyone is on the same page with law enforcement. We need to look at statutes that cover issues outside of 18-18. Transfer between someone two years older, transfer between less than two years, transferring from licensed agency, etc. Let's look at all scenarios.</li> <li>• Another violation example is with the Gaming Industry – a theft by a licensed employee of a casino no matter the amount of the theft is a felony. Need to look at sentence enhancers and aggravators if a <u>licensee</u> does something illegal.</li> </ul>
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Issue/Topic:	Discussion:
<p>Identify Next Steps</p>	<p>The group discusses what needs to happen before and for the upcoming meeting.</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• There is a need to put scenarios together, look at statutes, get these out before the next meeting and see if there are gaps.</li> <li>• Also for the next meeting, we need to know criminal penalties for regulatory violations.</li> <li>• Let’s pull regulatory violation information for medical marijuana and retail marijuana. Let’s also pull violation information for pharmaceutical criminal acts (under 18-18) for operating outside your license – Christie will get this for the next meeting.</li> <li>• This will help cover A64 Task Force recommendations 12.3 and 12.4. We’ll also need to look at 12.5 and make a few recommendations, but nothing as thorough as what the JV group is doing.</li> <li>• If we have time and if this group finds it to be important, we’ll tackle 12.6.</li> <li>• In looking at 12.5 – what do we need in order to have that conversation at the next meeting? How can we target that conversation, what data is needed to pursue 12.5?             <ul style="list-style-type: none"> <li>-Let’s have a summary of Minor in Possession statute.</li> <li>-What does a civil summons to JV court look like, how does it differ from the current process? How does it differ from Diversion? It’s a huge problem.</li> <li>-Kids come into JV court on civil summons with no right to counsel.</li> <li>-What does a civil summons look like in JV court? Can someone create a one pager that outlines what the issues are? Could Brian and/or Christie do this?</li> <li>-Brian will compile each of the recommendations that came out of the criminal law working group for the A64 task force, the rationale for it, who would be in charge of implementation and then get that to Germaine.</li> </ul> </li> <li>• If we regulate just like liquor, the MIP works fairly well – the process currently is fairly solid, why the civil discussion?</li> <li>• What are consequences? Christie to pull collateral consequences list for petty offenses regarding MIP. Come back with collateral consequences and any between marijuana and alcohol.</li> <li>• Could we discuss this in terms of the subtleties of 2<sup>nd</sup>, 3<sup>rd</sup> and fourth offense? It’s a proof problem and a records problem.</li> <li>• Christie and Brian to come back to the group with information about sealing.</li> </ul>

Issue/Topic:	Discussion:
<p>Other various topics of conversation</p>	<p><i>VARIOUS DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• A transfer from an 18 to a 16 year old where there is less than 2 years difference is a petty offense.</li> <li>• The main focus from a federal point of view is to keep marijuana out of the hands of kids.</li> <li>• It would be out of sync if the penalties for youth and marijuana were to increase after the passage of Amendment 64 – we need to be careful about this.</li> <li>• This conversation may need to move out of 18-18-406 and into the realm of MIP.</li> <li>• The 18-20 year old conversation should happen in a different part of the statute.</li> <li>• Let’s define the issues as much as possible – flesh those issues out so that we all have the same understanding of the charge, and hear people’s views on those issues through that lens. We’re not solving issues today.</li> <li>• As far as recommendation 12.3 –             <ul style="list-style-type: none"> <li>#1 is obvious</li> <li>#2 - today a juvenile who gets picked up with a joint ends up in municipal court</li> <li>#3 – we’ll deal with this as part of 406</li> <li>#4 - this is covered in 18-18-4.203</li> <li>#5 - we need to deal with 18-20 year old issue and civil filing</li> </ul> </li> <li>• What can we do to make it less likely that kids will get their hands on marijuana? There’s still an illicit market, there’s other ways to address youth access and youth risk.</li> <li>• What about effective strategies for treatment/prevention? Things that work, don’t work as far as understanding risk, etc.? This is not part of regulatory and criminal discussions. However, Marc can bring examples of different levels of prevention.</li> <li>• The A64 statute is also lacking in structure regarding any monies for treatment/prevention.</li> <li>• Marc will put together some materials to share with this group. We may want to consider addressing the increased availability our state will have.</li> <li>• Even though treatment/prevention is not in our scope of work, the Charter does not bar the group from making recommendations in this area.</li> </ul>

Issue/Topic:	Discussion:
<p>Public Comment</p>	<p><u>Michael Elliot, Executive Director with the Medical Marijuana Industry Group</u></p> <ul style="list-style-type: none"> <li>-Michael was on the DUID working group in 2011/2012 and wants to find out if he's allowed to have a role in this process.</li> <li>-Michael states he is frustrated as he was invited to be on a working group of the Governor's task force, he was on the DUID working group of the CCJJ, and he was on the Inter-agency Drunk Driving Task Force on alcohol and other drug misuse.</li> <li>-Michael states he's an attorney and had better attendance than anybody on the Governor's task force.</li> <li>-Michael feels if this group is looking for expertise and experience that he fits that need perfectly. He also states that Jack Finlaw recommended his attendance on this Task Force.</li> <li>-Michael asks why there no marijuana industry rep on this Task Force.</li> <li>-Michael states he has a good track record of being reasonable and non-disruptive. He believes that he and the Medical Marijuana community is locked out of this process.</li> <li>-He was told that if he got a seat at the table it would open it up to anybody.</li> <li>-He states he doesn't need to vote, but would like to be included in the group's regular discussion, not just the public comment area.</li> <li>-Michael states he's a leader in this movement.</li> <li>-Michael would like to be allowed to add comment if he's not disruptive. He would like to participate in a reasonable manner.</li> <li>-Michael states he's looking to have a role, his group is a trade association and will be lobbying at the capitol and his participation here can add value to a fair process.</li> </ul> <p><u>Laura Pegram, Drug Policy Alliance-</u></p> <ul style="list-style-type: none"> <li>-Laura states this is her first Commission related meeting and that she notices the marijuana community and drug community are both noticeably absent from this task force.</li> <li>-Laura asks how Intent to Distribute overlaps with A64 when it comes to someone having under an ounce in their personal position.</li> <li>-A64 is pretty "flat" about the fact that if someone has under an ounce it's legal. How does that play out with corroborating evidence on intent to distribute?</li> <li>-Laura says she also agrees with others in this group that one area of focus needs to be put on the potential outcomes for treatment.</li> <li>-Substance recovery allows for relapse, how do we stipulate a relapse element when it comes to people successfully completing treatment?</li> <li>-Laura wants to make sure all issues with treatment are well informed and would like the group to mindfully keep the criminal justice system out of the treatment discussion in the end.</li> </ul>

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Next Steps</p>	<p>Before the next meeting, group members to provide the following to Germaine-  <b><u>Brian</u></b>                      -Provide Amendment 64 Criminal Law discussion synopsis</p> <p><b><u>Christie and Brian</u></b>                      -Provide information on collateral consequences for juveniles</p> <p><b><u>Christie</u></b>                      -Provide summary on record sealing for juveniles</p> <p><b><u>Kim</u></b>                      -Pull Minor in Possession statute                      -Identify penalties for prescription drug violations</p> <p><b><u>Ron</u></b>                      -Send information to Kim on regulatory penalties for                      1. Medical Marijuana - F43.3                      2. Retail Marijuana - F43.4                      -Provide map of counties opting out of marijuana licensing</p> <p><b><u>Eric and Charlie</u></b>                      Compile a list of various transfer scenarios and provide the following info for each:                      1. Is there current law that addresses this scenario                      2. What's the penalty</p> <p><b><u>Ken Plotz</u></b>                      -Present at the July 24<sup>th</sup> meeting on the work of the Juvenile Task Force and its relationship to Amendment 64</p>

**Future Meeting Dates:**

**Meeting Schedule 2013**

July 24<sup>th</sup>      1:30pm – 4:30pm      1300 Broadway, Conference Room 1-F