

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

Minutes

July 24, 2013, 1:30PM-4:30PM
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
Maureen Cain, Colorado Criminal Defense Bar
Pat Steadman, Senate District 31

STAFF

Kim English, Division of Criminal Justice
Germaine Miera, Division of Criminal Justice
Paul Herman, CCJJ consultant (on phone)

ADDITIONAL ATTENDEES

MIKE ELLIOTT, MEDICAL MARIJUANA GROUP
LAURA PEGRAM, DRUG POLICY ALLIANCE
Anne Barkis, Mendez consulting
John Ingold, Denver Post
Jennifer Hayden/Charlie Garcia's mentee

ABSENT

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Charlie Garcia and Eric Philp welcomed the group and preview the agenda.</p>
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<p>Issue/Topic: Juvenile Issues</p> <p>Action Maureen Cain and Tom Raynes to come back to the group with a Minor in Possession proposal</p>	<p>Discussion: <u>CCJJ JV Task Force work</u></p> <p>Ken Plotz spoke to the group about the ongoing work of the Juvenile Justice Task Force around possession issues and how that group’s work might overlap with the work of this group when it comes to minor in possession issues.</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> • The Juvenile Justice Task Force (JJTF) is looking at the juvenile justice system through a holistic lens. • The task force is currently focused on a civil adjustment process and how that might work. • The main goal of a civil adjustment process would be to keep minors under 18 out of the court system. Data shows that pushing JV’s further into the system sets up a bad pattern and leads to system involvement that’s hard to get out of. • The task force feels Diversion programs are uneven. • Civil adjustment would require a screening tool to ensure race neutral admissions. • The anticipation is that most juveniles in a civil adjustment system would likely be first time offenders with minor offenses. • In this system, low risk, minors would enter into a contract that would require admission to the offense. The juvenile and the parent would then contractually agree to restitution, restorative justice, and treatment if needed, etc. • The idea is in a concept phase at the moment and is not yet a recommendation from the task force • A civil adjustment system works more like a filter, where minor offenses would be filtered into say a JAC, an officer would look at the case and make a call, with the DA making the ultimate decision. • Civil adjustment is a concept and does not reorganize the JV system; it also doesn’t take pretrial or post-trial diversion options away from DA’s. • This system would result in no case number – and the advantage of that would be fewer collateral consequences.
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	<ul style="list-style-type: none"> • Another goal is to keep the juvenile out of the DA’s office. • One of the proposed details of the civil adjustment system is that any admission could not be used against a child. Question - If we go forward with this, how does it impact juveniles and marijuana first time offenders? The state Public Defender doesn’t deal with a lot of underage drinking or marijuana cases, as a practical matter. • What is the typical case? -If someone is under the age of 18 and gets an MIP ticket, they go to county court, then generally go to class, perform public service, and there are no driver’s license consequence (until after the first one). A minor usually receives a deferred prosecution and then within the MIP statute there’s a separate sealing process. -Most county courts don’t put these cases out there and therefore they don’t come up on a background check. - Most counties don’t disclose for those under 18, however, 18, 19 and 20 would be available. • Do most officers typically write a ticket for under age alcohol use? These days yes, they will take a kid into custody and often call the parents. • College police are typically softer with warnings. • One question that came up at the last Drug Task Force meeting was about how the civil adjustment process works with second offenses. If there is no first offense that is documented because it’s ‘civil’, how do we keep track of that first offense to know that the second offense is a second? That’s one of the issues currently on the table. The tracking system is a big issue. • Has the Juvenile Justice Task Force addressed ‘juveniles’ vs. ‘minors’? This is the A64 issue of 18-20 year olds? • What about other states? The JV group is looking at Montana, which is doing something similar. • As for MIP – Is there a way now to distinguish which of the MIP’s are alcohol and which are marijuana? Especially for data tracking? Tracking up until now is at a municipal court level so this will need to be addressed. • Currently, the MIP statute just deals with alcohol. • The MIP model is undesirable because it bleeds into issues around federal student loans and collateral consequences. • Should this task force try to write a separate MIP statute so marijuana can be tracked separately? What is the real impact, what is the increased exposure? A separate statute would help track this. • In some ways, the in-the-door and out-the-door diversion option is better for these kids because it’s less tracked.
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- How many agencies are we going to have track?
- Currently possession of marijuana has fewer consequences than alcohol for minors. There’s a harder hammer for alcohol violations than for MJ violations – maybe we ought to be looking at reducing penalties for all MIP?
- Are we limited as a drug policy task force to only make recommendations about marijuana? Yes, the group is dealing with what the legislature has assigned.

Collateral Consequences and Record Sealing

Brian Connors addressed the issue of collateral consequences.

DISCUSSION

- Brian distributed documents detailing federal law stating that basically, the Feds consider marijuana a schedule 1 controlled substance.
- Therefore, any conviction for an offense involving a controlled substance implicates (federal) student loan eligibility.
- As for record sealing, the law in Colorado requires someone to file a petition for the sealing of a petty offense. That’s different from the alcohol sealing statute, which requires a request to seal one year from the date of conviction.
- Another question arose around the possibility of civil offenses for underage marijuana - who would prosecute and how would it get filed? This is the ‘if it’s civil, how do you determine first offense’ issue. How would someone determine burden of proof, is there presumed guilt in the civil model?
- In the JV model, the parent and child would have to voluntarily consent, otherwise it would go to the DA.
- This could go through the SB94 representative.
- Are employers now looking into juvenile records? Rather than just the ‘convicted/charged with a felony’ question? Yes - If someone is applying for a teaching position employers will say “Tell us everything, even if it was dismissed” they are asking for full disclosure.
- As for collateral consequences, the underage group (under 18) is the most vulnerable; 18-20 is slightly less.

WHAT'S NEXT

- Do we want to pursue the civil summons component?
 - Does it make sense to mesh these ideas of MJ and alcohol?
 - Do we want to have a system of mandated pretrial diversion? With verbiage that states something along the lines of 'Pretrial Diversion shall be offered'. Currently, the verbiage is 'may' and not 'shall'.
 - Can 'shall' be mandated?
 - This currently differs jurisdiction to jurisdiction. In Boulder a kid won't get a JD case to get services, however in Washington county the same kid will get a JD case.
 - What we don't want to do is create another layer for the JV system.
 - Can we just change current verbiage to 'shall'
 - We can't change the whole JV system to accommodate marijuana.
- If anything, this group should focus on the Diversion law.
- How did A64 envision how a civil summons would work? Was it that an officer would write a summons and the kid shows up in court?
- What court? JV district court, as a civil case, is for those under 18 only.
- What happens to 18-20 year olds? That was never nailed down. No one ever addressed the 18-20 year olds.
- When a civil case going to JV court with all the possible penalties, fines, conditions, classes, whatever – the only hammer the judge has is contempt. Is this how we want to use our judicial resources?
- DOR says eventually there will be Diversion money available.
- There's too much potential intervention for too small of a case.
- What we currently have is \$100 fine and record sealing, with no collateral consequences.
- Why not increase the Diversion program?
- What about mandating either Diversion or mandating a deferred adjudication for 90 days with automatic expungement for first offense?
- We could figure out how to implement something pre-file so they don't even have to come to court.
- We also need an education component and need to protect our kids.
- The problem is there are five jurisdictions that currently don't have a program to funnel kids into.
- It would be best to do an informal adjustment for the first offense.
- There are reservations about how deep this goes, it's not our job here to create better parents.
- Maureen and Tom will meet about this and discuss further, and then come back to the group with a proposal.

Issue/Topic:	Discussion:
<p>Harmonizing</p> <p>Action</p> <p>Nothing further</p>	<p>Charlie and Eric discuss the issue of harmonizing between HB13-1317's Regulatory Structure and Criminal Penalties</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> • There are criminal statutes already in place to deal with all of this. • Do we want to consider some kind of aggravator with theft by a licensed employee of a marijuana outlet? To possibly create a deterrent effort? • If the employee of the marijuana store sells to someone underage they face a felony. • How does it work currently with liquor store employees? • When is it criminal, and when is it not? It's sometimes charged, sometimes not – police look at the totality of the circumstances. Was it a dumb employee or was it overt? • Gaming and alcohol are different. Charges shouldn't be as severe as gaming. • If a retailer goes on the street with marijuana then it's drug distribution. • An aggravator probably won't address the issue. As long as we have amendment 20 we have adequate criminal sanctions in place at this time to address this. • We actually increased some of the MJ penalties in SB250 • We can take care of this under the current structure. <p><i>WHAT'S NEXT</i></p> <ul style="list-style-type: none"> • Nothing further needed

Issue/Topic:	Discussion:
<p>Scenarios</p> <p>Action</p>	<p>Charlie and Eric report back on their discussions surrounding scenarios with criminal code issues and transfer issues.</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> • Charlie worked on the following four scenarios and reported back to the group with findings and rationale as follows – • Scenario 1 – -An adult over the age of 21 transfers, with no consideration, more than 2 ounces of marijuana/or one ounce of concentrate to a minor

- who is less than 2 years older than the adult.
 - a. Section 18-18-406 (5)(c) : Drug Petty offense – not deemed to be dispensing or sale, fine not to exceed \$100
- Scenario 2-
 - An adult over the age of 21 transfers, with no consideration, more than one ounce of marijuana /or ½ ounce of concentrate to a minor where the adult is more than 2 years older than the minor.
 - a. Section 18-18-406(1)(d): Level 4 Drug Felony
- Scenario 3-
 - An adult between the ages of 18 and 19 with a medical marijuana card transfers, without consideration, more than two ounces of marijuana/or 1 ounce of concentrate to a minor (juvenile) who is less than two years older than the adult.
 - a. Section 18-18-406(5)(c) : Drug Petty offense – not deemed to be dispensing or sale, fine not to exceed \$100
- Scenario 4-
 - An adult between the ages of 20 and 21 with medical marijuana card transfers, without consideration, more than 2 ounces of marijuana/or 1 ounce of concentrate to a minor who is less than two years older than the adult.
 - a. Section 18-18-406 (5)(c): Drug petty offense – not deemed to be dispensing or sale, fine not to exceed \$100.
- At the beginning we made an assumption that an individual in possession has purchased it from a medical marijuana supplier. Should A64 cause a knee jerk reaction of jumping back in time to enhanced penalties?
- What if a medical marijuana store sells to a juvenile? If they're selling to a JV it's already a class 4 felony (because the person working at the dispensary mandatorily has to be 21).
- On scenario #2 – Does the same apply to an adult 18 transferring to a 15 year old? Yes, with more than a 2 year age difference it is an adult to a minor. Legal definition is that 18 is an adult.
- If it's 18 to 15 its adult transfer, otherwise its petty.
- These scenarios are for first time offenses.
- Medical marijuana doesn't have tax implications. People might still be using their medical marijuana card rather than retail to avoid all the taxes.
- Prescription drug penalties-
 - Businesses are subject
- Packaging regulations will be extensive, label requirements, licensees name, batch number, potency levels, etc.
- Working on verbiage for 'this product may be addictive' warning

	<p>labels, etc. Pregnancy warnings, etc. It's going to boil down to what you can fit on a label.</p> <ul style="list-style-type: none"> • Ron will put something together for the next meeting for the group regarding criminal and civil penalties. • The labeling on the product is one piece, what about advertising? Is there any effort to look at marketing strategies at point of sale? • Can we start out with some good principals in place for restrictions on advertising targeted to younger audiences? • It's going to be a balance between protecting youth and first amendment issues. • DOR is working on where are the boundaries with the AG's office right now. • TV, print media, internet, outdoor signs – there are a lot of areas to cover. • Let's be thoughtful about how we deal with this – especially when it comes to youth. • Now is the time to impose sane policy from the get go. • We can build upon issues from the tobacco settlement, but it's a delicate balance. • Should there be notice on MJ as far as not driving or using heavy machinery, etc.? • The next step is to move to the point of sale message on receipt, plus a sign on the door. • A sign would state that it's a felony to a minor. • The other big issue is about warning people not to transfer marijuana out of state. The minute you cross the border it's a completely different issue. • May need billboards on the state borders.
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Issue/Topic:	Discussion:
Public Comment	<p><u>Michael Elliott, Executive Director, Medical Marijuana Industry Group (MMIG)</u> Michael reports that as far as partnerships, MMIG is working with DOR and other entities on outreach issues and he would still like opportunity to chime in with industry perspective. When businesses are selling product to someone under the age of 21 but with a fraudulent ID, there's some ambiguity - when is the business liable, when is he individual liable, what about an employee who accidentally doesn't ID, is that the end of a business? A Responsible Vendor program is currently being established that will mimic alcohol and mitigate penalties. It would be great to work out any ambiguity so that businesses and individual's know exactly what they're looking at. As far as comparing marijuana to other</p>

	<p>prescription meds, nobody ever died from overdosing on marijuana, it shouldn't be the same as painkillers.</p> <p>As for advertising, state law says no mass marketing that is likely to reach minors. However, the industry wants the ability to advertise medical marijuana. MMIG will be reasonable in what they're asking for with advertising. Michael will send more information out to the group.</p> <p><u>Laura Pegram, Drug Policy Alliance</u></p> <p>Laurie conveys congratulations to the group for focusing on the 18-20 year olds and the possibility of real potential for collateral consequences regarding civil and other penalties.</p> <p>There is a Drug Policy Alliance document prepared by a legal group that may be of interest to this group. It shows that states that seem to have better outcomes are Rhode Island and Massachusetts – these are states that don't treat and/or criminalize on someone's first offense. She has distributed the info to the group.</p>
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Issue/Topic:	Discussion:
<p>Next Steps</p>	<ul style="list-style-type: none"> • Charlie will go through the General Assembly's recommendations. • Nothing under HB13-1317 requires any additional criminal sanctions. • We don't need to recreate SB250 as a result of Amendment 64 – because SB250 was already under consideration at the time. • In HB 13-1317 there were some things about the regulatory penalties, for example somebody selling out the back of the store would result in a felony, which it still is. There was a worry that people who work in a marijuana store would get advantages, and what we don't want is people who work in marijuana stores vs. liquor stores, to have looser regulations. • At the next meeting, Ron will provide the group with a document detailing penalties for a licensee selling outside the regulated model.

Future Meeting Dates:

Meeting Schedule 2013

August 7th 1:30pm – 4:30pm 1300 Broadway, Conference Room 1-F