

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

## **Minutes**

August 7, 2013, 1:30PM-4:30PM  
Ralph Carr Judicial Building

### **ATTENDEES:**

#### **CHAIR**

Eric Philp, Division of Probation Service

#### **TASK FORCE MEMBERS**

Christie Donner, Colorado Criminal Justice Reform Coalition

Matt Durkin, Attorney General's Office

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

#### **ABSENT**

Charlie Garcia, CCJJ At-Large Representative

Marc Condojani, Division of Behavioral Health

Brian Connors, Public Defender's Office

Mike Foote, House District 12

Ron Kammerzell, Department of Revenue

Mark Waller, House District 15 (unconfirmed)

Tom Raynes, Colorado District Attorney's Council

#### **ADDITIONAL ATTENDEES**

MIKE ELLIOTT, MEDICAL MARIJUANA GROUP

ART WAY, DRUG POLICY ALLIANCE

LAURA PEGRAM, DRUG POLICY ALLIANCE

Anne Barkis, Mendez consulting

Evie Hudack, Senate District 19

Sara Struble, Lifeloc Technologies

Jesse Jensen, Jensen Public Affairs

<b>Issue/Topic:</b> Welcome and Introductions	<b>Discussion:</b> Eric Philp welcomed the group and previewed the agenda.
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<b>Issue/Topic:</b>  Report: Marijuana Possession by a Juvenile  <b>Action</b>	<b>Discussion:</b>
	<p>Maureen Cain updated the group on her discussions with Tom Raynes regarding a proposal for marijuana possession by a juvenile.</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• Tom and Maureen both believe the best course of action for juvenile possession of marijuana is to put it under the current Minor in Possession statute.</li> <li>• The end result would be the expansion of MIP to include both marijuana and alcohol.</li> <li>• The reason for this is that the legalization of marijuana shouldn't result in disparate penalties.</li> <li>• The goal is to ensure minors don't consume either legally or illegally – and to put an emphasis on treatment and prevention.</li> <li>• The marijuana MIP would be filed in county court with mandatory diversion and no plea entered. It would basically be handled as pre-plea diversion.</li> <li>• There would be a ticket involved but no plea entered.</li> <li>• Maureen says she and Tom have not yet discussed what happens when/if a juvenile were to fail diversion.</li> <li>• The first offense would be diverted out of the system completely</li> <li>• The second offense could be either Diversion or Deferred Judgment - and there would be an education and community service component.</li> <li>• If a minor acquired a third offense all options would be open and would likely result in a petty offense.</li> <li>• There would then be increased penalties on petty offense of marijuana - which would include an evaluation.</li> <li>• The goal would be to concentrate on education but not focus on premature treatment.</li> <li>• Since the age range is 10-20, someone could be in trouble at 12 and again at 19 – that would be two offenses but it doesn't necessarily call for treatment.</li> <li>• There's still the question of how to reconcile a first offense if it is pre-plea. How would that then be tracked as a first offense?</li> <li>• The first offense would include providing a free class so there would be no failures because someone couldn't pay. Ideally the class would be available for free for both marijuana and alcohol.</li> <li>• There is currently a 4 hour class in place for MIP of alcohol and the marijuana class would be similar to the alcohol class.</li> <li>• This group should also have a discussion about driver's license suspension on the third offense.</li> </ul>

<p><b>Issue/Topic: (continued)</b></p> <p>Report: Marijuana Possession by a Juvenile</p> <p><b>Action</b></p>	<ul style="list-style-type: none"> <li>• What about the option of prosecutorial discretion on back to back marijuana contacts? Everyone seems to be on board with the first and third offense, but the second one could be tricky.</li> <li>• Matt suggests 'shall' language for the first contact. 'Shall go through Diversion' – however for the 2<sup>nd</sup> contact there should be 'may' verbiage in regards to Diversion and/or Deferred Judgment – or even a petty offense option.</li> <li>• Maureen reiterates that the priority should be education for the first offense, then education and community service for the second, then a focus on treatment for the third.</li> <li>• Maureen suggests no treatment verbiage until a conviction on the third offense.</li> <li>• Does the possibility of loss of a driver's license and collateral consequence drive juveniles to go to the class?</li> <li>• There is currently an option for MIP of alcohol to take the petty offense, pay \$100 bucks and walk away. The less easy thing is NOT about the fine and walking away.</li> <li>• One of the incentives of going through the class would be automatic record sealing.</li> <li>• The question remains if the automatic sealing would delete the record of the first offense. Maureen says no, this wouldn't happen.</li> <li>• A 2<sup>nd</sup> offense would be a deferred judgment, and there would be a plea.</li> <li>• Are we supportive of continuing to explore this as a group? Yes.</li> </ul>
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<p><b>Issue/Topic:</b></p> <p>Report: Criminal Penalty Regulations</p> <p><b>Action</b></p>	<p><b>Discussion:</b></p> <p>Feedback from Ron Kammerzell on proposed regulations regarding criminal penalties-</p> <ul style="list-style-type: none"> <li>• Ron was unable to make the meeting and sent a written update instead.</li> <li>• The issue that is disconcerting for Ron is when/if an individuals over the age of 21, working in a dispensary, transfers marijuana to those in the community. Ron compared this to the current gaming regulation which states that theft by a gaming licensee in a casino, regardless of the amount, is in an automatic felony.</li> <li>• From the DOR perspective, there should be regulatory penalties for both owners and employees of marijuana dispensaries.</li> <li>• DOR licenses can be revoked for doing something inappropriate.</li> <li>• What drives the license revocation is not necessarily criminal, just not licensed behavior.</li> <li>• What about illegal distribution practices by a dispensary fall into the 250 sentencing grid the way it is now? Because acting outside of the regulatory model carries consequences through DOR that are separate from regular criminal distribution consequences.</li> <li>• Should we start creating penalties in anticipation of what's coming down the pike? Or do DA's have enough tools now to deal with whatever may come up? Should we let prosecutors deal with the tools in their toolbox and if it's not adequate then we can start to try to add at that point?</li> <li>• The consensus of those in attendance was to not move forward with any additional offense in this area.</li> </ul>
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Issue/Topic:	Discussion:
<p>Produce Position Statements</p> <p><b>Action</b></p>	<p>Charlie and Eric met prior to the meeting and they agree, for most part, that there is currently consensus on many of the policy statements in response to the request by the legislature. relating to the</p> <p><u>Statement #1 regarding the intent of Section 16 and whether it's being upheld</u></p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• Yes, all of the specifics around the intent have either already occurred (e.g. - decriminalizing consumption of small amounts of marijuana) or are being addressed currently by this group.</li> </ul> <p><u>Statement #2 / Consider the A64 Task Force recommendations</u></p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• 12.1 - Completed</li> <li>• 12.2 - Completed</li> <li>• 12.3 – With HB1317 and SB 250 the criminal code has been revised sufficiently – this also translates to 12.5</li> <li>• 12.4 – There is agreement that the current statute adequately addresses the issue of consequences for transfer of MJ to 18 to 20 year olds. <ul style="list-style-type: none"> <li>-Transfer is petty offense and \$100 fine, unless there's an age differential of greater than 2 years.</li> <li>-Someone would have to be 22 and transfer to a 17 year old to receive a felony. One of the main issues dealt with selling to children and that is currently covered.</li> <li>-The MIP statute needs to be moved out of 18-18-406 to avoid redefining a minor.</li> </ul> </li> <li>• 12.5 - See conversation above regarding consequences for juvenile possession. <ul style="list-style-type: none"> <li>-However, with JV MIP are we going to try to integrate a piece on possession of paraphernalia?</li> </ul> </li> <li>• 12.6 – The difficulty here is in defining an open container of MJ. SB283 says its similar to the open container law for alcoholic beverages, but because packaging is different, do we have to figure out what that is? Yes. <ul style="list-style-type: none"> <li>-This is the problem. What is a 'sealed' package? What is the verbiage? We can't compare this as an apples-to-apples scenario with alcohol because liquid open container is different than MJ.</li> </ul> </li> <li>• This needs to absolutely mirror the situation of alcohol in a car.</li> <li>• If MJ is in a baggie you don't have the danger of the driver just reaching over and using it, in a pipe or a joint you have the danger.</li> <li>• It's not the sealed or 'unsealed-ness' of the package here that is the question.</li> <li>• The package sealing isn't the question – it's the availability of smoking it or eating it or drinking it while driving.</li> <li>• What about a caregiver who is transporting to a patient?</li> <li>• Let's make a recommendation to deal with what the actual problem is.</li> <li>• The detail of recommendation 12.6 should read something like 'In a motor vehicle, MJ should not be available for the driver's use in any manner'.</li> </ul>

<p><b>Issue/Topic: (continued)</b></p> <p>Produce Position Statements</p> <p><b>Action</b></p>	<ul style="list-style-type: none"> <li>• The problem comes when a cop who pulls over a car that is full of smoke.</li> <li>• Does the verbiage need to be about access or about availability?</li> <li>• What happens if MJ is sitting on the front seat but not in a consumable form?</li> <li>• When does the open container provision then impact the search of private property?</li> <li>• With alcohol it's easy, either it's open or it's not?</li> <li>• Can we just make it a crime to consume MJ in a MV by the driver or passengers, by anyone basically? Just like the no consumption of alcohol in a vehicle law?</li> <li>• Yes, let's focus on this - illegal consumption in a car and get rid of open container.</li> <li>• The whole purpose of this is to prevent people from driving impaired.</li> <li>• Maybe the container isn't the issue – maybe it has to do with the access to the MJ in any form.</li> <li>• The least favorable thing to do here is to align this with transport of alcohol model because the two substances are so different.</li> <li>• We need a separate statute/regulation that deals with the use of MJ while in a vehicle.</li> <li>• If we're trying to make 'use' a deterrent – why aren't we just going with you can't use MJ in a car.</li> <li>• As long as you're not consuming, but simply just transporting in your car, then we're good.</li> </ul> <p><i>WHAT'S NEXT</i></p> <ul style="list-style-type: none"> <li>• Move this item of transport to agenda for next meeting</li> </ul> <p><u>Statement #3 / Harmonize conflicts between HB13-1317 parts 5-10 and sections 12-43.3-901, 12-43.4-902 and 18-18-414</u></p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• There does not appear to be conflicts between 1317 either in section 12 or in 18.</li> </ul> <p><u>Statement #4 / Consider penalties for 18-20 year olds pursuant to Section 16</u></p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• This issue was dealt with this under consequences of transfer discussed earlier.</li> </ul> <p><u>Statement #5/ Recommendations to assist in eliminating participation in the illicit drug market</u></p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• The task force needs to wait on the finalized DOR rules on this before addressing the issue.</li> </ul> <p><i>WHAT'S NEXT</i></p> <ul style="list-style-type: none"> <li>• This group will revisit this after DOR wraps up their work</li> </ul>
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Issue/Topic:	Discussion:
Next Steps	As for forwarding the work on the policy statements and recommendations above - who wants to address what?
Action	<p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• For all of the issues, keep in mind the end goal is to describe the analysis done by the group - and then state the outcomes or next steps for changing (or not) current practice or statutes.</li> </ul> <p>Break-down of work as follows-</p> <ul style="list-style-type: none"> <li>• 12.1 – done Eric/Charlie to write up</li> <li>• 12.2 – done 1317 provided funding Eric/Charlie to write up</li> <li>• 12.3 – Eric/Charlie to write up</li> <li>• 12.5 – Maureen suggests combining 12.5 with youth access and consumption / Maureen and Tom to write up.</li> <li>• 12.6 – this item moves to the next meeting agenda</li> <li>• Harmonize conflicts – Wait and see on DOR outcomes</li> <li>• Transport issues - Christie and Matt will work on this write up</li> <li>• Penalties for 18-20 year olds – Combine this with the transfer issue, current law is adequate.</li> </ul>

Issue/Topic:	Discussion:
Public Comment	<p><u>Michael Elliot, Executive Director with the Medical Marijuana Industry Group</u>  - There is still some ambiguity around businesses and responsibility for sales. There needs to be clarity around the issue of someone selling out the back door vs. an employee forgetting to check an ID? The group needs clarity around this. There should be consistency between marijuana and alcohol around this issue. It's disparate to consider it a felony for someone to sell MJ while forgetting to check an I.D., but for alcohol it's not a felony.</p> <p>Michael states that he is still frustrated to not participate on this group. He said he feels all of these issues are going to come up in the legislature eventually so it would be better to debate them together as a group now rather than later.</p> <p><u>Art Way, Drug Policy Alliance</u>  - If marijuana is combined with alcohol as far as Minor in Possession - on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> offense it's going to be more onerous than the petty. Now, the court at any point can order an evaluation to see if further intervention or treatment is appropriate.</p> <p>-For those under 18 now caught and charged with a petty offense there is no automatic sealing. And if they're filed on as a JV they have all the possible sanctions in JV court including DYC.</p>

<p><b>Issue/Topic: (continued)</b></p> <p>Public Comment</p>	<p>-If a 20 year old has 2 ounces, four different strains, four different bags, is that intent to distribute? There has to be indicia of distribution. That would be worked out in a court.</p> <p>-Lastly, with open container, there should be indicia of ingestion. If the recommendation is to try to remove marijuana transport from the inside of a car it's going to cause a wide variety of other issues.</p>
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<p><b>Issue/Topic:</b></p> <p>Next Steps</p>	<p><b>Discussion:</b></p> <p><i>WHAT'S NEXT</i></p> <ul style="list-style-type: none"> <li>• The August 21<sup>st</sup> meeting will be cancelled to give the smaller groups time to work on their write-ups and recommendations</li> <li>• The Drug Task Force will reconvene September 4<sup>th</sup>, 1:30-4:30pm to wordsmith the recommendations/policy statements</li> </ul>
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**Future Meeting Dates:**

September 4<sup>th</sup>      **Meeting Schedule 2013**  
 1:30pm – 4:30pm      1300 Broadway, Conference Room 1-F