

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

**Minutes**

September 4, 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**

Christie Donner, Colorado Criminal Justice Reform Coalition  
Matt Durkin, Attorney General's Office  
Maureen Cain, Colorado Criminal Defense Bar  
Pat Steadman, Senate District 31  
Marc Condojani, Division of Behavioral Health  
Brian Connors, Public Defender's Office  
Mike Foote, House District 12  
Ron Kammerzell, Department of Revenue  
Evie Hudack, Senate District 19  
Thor Eells for Vince Niski  
Kevin Paletta, Lakewood Police Department

**STAFF**

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

**ABSENT**

Mark Waller, House District 15 (unconfirmed)  
Tom Raynes, Colorado District Attorney's Council

**ADDITIONAL ATTENDEES**

MIKE ELLIOTT, MEDICAL MARIJUANA GROUP  
LAURA PEGRAM, DRUG POLICY ALLIANCE  
Anne Barkis, Mendez consulting  
Patrick B(?),

<p><b>Issue/Topic:</b> Welcome and Introductions</p>	<p><b>Discussion:</b> Eric Philp and Charlie Garcia welcomed the group and previewed the agenda.</p>
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<p><b>Issue/Topic:</b> Open Container / Transport Discussion (A64 recommendation 12.6)</p> <p><b>Action</b></p>	<p><b>Discussion:</b> Task force members continue their discussion on the issues of marijuana transport and open container laws.</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• Does SB13-283 address this issue?</li> <li>• Do we have consensus on how open container should be defined? No.</li> <li>• Would this topic fit better under Open Consumption rather than Open Container?</li> <li>• Amendment 64 dealt with issues around open consumption instead of open container.</li> <li>• There are many gaps in SB 283.</li> <li>• Article 18 of the constitution does not cover <u>all</u> forms of marijuana (edibles, infused products, etc.) and we need to be able to address all forms.</li> <li>• It's difficult to define open container for marijuana.</li> <li>• Should marijuana consumption in a motor vehicle be a petty offense?</li> <li>• The main question here is about public consumption in a car: Open Container laws parallel alcohol laws; however use of any marijuana infused product in a motor vehicle is more about public consumption.</li> <li>• What are we trying to accomplish with this?</li> <li>• What makes this enforceable? Having it connected to USE in a motor vehicle or connected to open container?</li> <li>• 18-18-406 SB1 → if openly consumes, displays, uses then it's a petty offense with a fine up to \$100 .</li> <li>• 42-4-1305.5 → this <u>doesn't</u> meet all the different needs.</li> <li>• Are we talking about public policy or public safety? Courts are going to come back and deal with this. Will this be public consumption or probable cause DUID?</li> <li>• There are often times where there is not a DUID, but rather open container issues.</li> <li>• With alcohol the language is fairly broad, do we just insert marijuana instead of alcohol and continue to use the 'receptacle' verbiage?</li> </ul>
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<p><b>Issue/Topic: (continued)</b></p> <p>Open Container / Transport Discussion (A64 recommendation 12.6)</p> <p><b>Action</b></p>	<ul style="list-style-type: none"> <li>• Any marijuana in any receptacle should count as open container.</li> <li>• If the mandate is for similarity to alcohol let's just substitute the language.</li> <li>• What about a tube of MJ ointment? What about topicals?</li> <li>• Are we over-thinking this?</li> <li>• What about and/or verbiage when it comes to sealed container?</li> <li>• Can't we just replace the word alcohol with marijuana?</li> <li>• The purpose of the alcohol law is not about drinking and driving – it's about not driving intoxicated.</li> <li>• What is the purpose of the law? Is it about driving and impairment? Or is it about evidence that MJ was smoked/used in the vehicle?</li> <li>• Whatever the group decides the statute should be put either with public consumption or open container → that statutory home would avoid criminalizing transport.</li> <li>• Going with public consumption rather than open container makes more sense – as it's incredibly complicated to define open container.</li> <li>• With alcohol the verbiage comes down to "broken seal OR evidence of contents removed". With MJ why don't we go with "broken seal AND evidence of contents removed"?</li> <li>• This is currently a discretionary statute as it stands – we're not trying to make the punishment more severe.</li> <li>• EDUCATIONAL COMPONENT -We should suggest a public service campaign about leaving marijuana in an issued receptacle until a person arrives at their destination.</li> </ul>
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<p><b>Issue/Topic:</b></p> <p>Consequences for Transfer of Marijuana to 18 to 20 year olds (A64 recommendation 12.4)</p>	<p><b>Discussion:</b></p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• The group agrees there still needs to be more drafting around this recommendation.</li> </ul>
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Issue/Topic:	Discussion:
<p>Consequences for Juvenile Possession (A64 recommendation 12.5) <b>Action</b></p>	<p>Maureen and Tom Raynes met to discuss the marijuana and minor in possession issue. She presents a document she prepared to address these issues.</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• The first task would be to strike and re write 18-13-122.</li> <li>• In the definition the group would have to insert a definition of marijuana and make it clear the amounts discussed by the group.</li> <li>• Define marijuana as used in this section and the quantity. Also talk about concentrate quantities.</li> <li>• Crimes would be in the affirmative defense.</li> <li>• Maureen leads the group through the various bullet points on her proposal.</li> <li>• One point is that an underage person taken into custody and given a ticket would take place just like MIP (minor in possession) which is usually policy not statute.</li> <li>• The preference would be for these actions to take place in county court rather than municipal due to staggering the penalties.</li> <li>• If municipal codes come into play it will dictate different punishments.</li> <li>• We can only dictate penalties for state courts not municipal courts. If this is done in state courts the first ‘ping’ will trigger Diversion. If a municipal court does its own thing with just a fine, that doesn’t allow us to ensure the educational piece.</li> <li>• We want the consequences to be about education and then assessment and treatment.</li> <li>• Some municipal courts are cash cows for the municipality. So if they say possession of MJ is a municipal offense with fine collection there’s nothing we can do about it statewide. Municipal courts can set their own penalties.</li> <li>• MIP under current law takes into account first, second, third and third or more offenses.</li> <li>• What about the issue of record sealing and not knowing what a juvenile has previously been contacted for? Record sealing in Colorado does not include law enforcement so LE could still access prior info.</li> <li>• What about an offender at the municipal level who gets to state court and it looks like the first offense? If there’s a booking and arrest it will always show up on a rap sheet.</li> <li>• There is no tracking mechanism on summons into municipal court – which is another reason to have all of this take place in county court. That way we could track every county except Denver.</li> <li>• Southern Colorado is pushing hard for a home rule ordinance to handle these issues.</li> <li>• Why does this proposal make it so much more complicated than the</li> </ul>

<p><b>Issue/TopicⓈcontinued)</b></p> <p>Consequences for Juvenile Possession (A64 recommendation 12.5)</p> <p><b>Action</b></p>	<p>current MIP statute where decisions are made in 18-18-122? This mandates all DA’s do the same thing across the state. It goes into a great amount of detail and curtails discretion of DA’s around the state.</p> <p>-Current MIP statue has first, second and third offense consequences</p> <ul style="list-style-type: none"> <li>• This proposal was written as if someone were wearing their ‘Parent hat’ – the first offense doesn’t always mean anything.</li> <li>- The second offense comes with an increase in consequences with education and community service, but still gives the kid an ‘out’.</li> <li>-By the third time, if there’s smoke there’s fire. That’s why by the third time there are accommodations for treatment and sending to JV court.</li> <li>• We thought by putting structures in it would address the policy. There are more sever collateral consequences for MJ drug usage than for regular MIP as far as college scholarships, etc.</li> <li>• MIP – the penalty section has 3 subsections for contact – 1, 2, 3 and tiered. It’s simpler than the proposed MJ that uses a lot of ‘shall’ language.</li> <li>• This model is actually the Boulder model that follows the track of diversion, deferred judgment and then conviction on the 3<sup>rd</sup>.</li> <li>• Will there be clear distinctions between MIP alcohol and MJ? There may need to be two subsections here, an A and a B to distinguish between alcohol and MJ.</li> <li>• The group agrees there needs to be a discussion about moving MIP out of 18-18-406.</li> </ul> <p>NEXT STEPS</p> <ul style="list-style-type: none"> <li>• A few of us will meet between now and the next meeting to come up with policy statements for everything except MIP and the regulatory phase.</li> </ul>
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<p><b>Issue/Topic:</b></p> <p>Department of Revenue activities</p>	<p><b>Discussion:</b></p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• Ron Kammerzell reports that DOR has taken public comment on the DOR rules and that those rules will be available late Friday afternoon.</li> <li>• Ron reports that DOR has covered a lot of issues and concerns for operating outside the regulatory model.</li> <li>• The retail rules will be lengthy and the medical marijuana rules are being revised to work in tandem with the retail rules.</li> </ul>
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<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Public Comment</p>	<p><u>Michael Elliot, Executive Director with the Medical Marijuana Industry Group</u>                      - Mike tells the group that MMIG is partnering with CDOT on DUI issues and the two agencies are working together around the central message of don't use marijuana and drive. This will be part of The Heat Is On campaign. He says the shift is moving away from alcohol to drunk and drugged driving and expanding the message to medical marijuana and the retail marijuana industry. Michael says they also plan to work more on point of sale labeling and packaging. He notes that it's an interesting partnership</p> <p>-Michael says MMIG is also supporting the keep the tax initiative and that it's a responsible way forward to make sure there is funding for enforcement and criminal issues that all sides are worried about. He adds that out of state diversion issues are huge and that the Dept. of Justice memo from last week nailed the issue with their 8 core federal policies. Tax revenue is a great way to make sure issues are addressed.</p> <p>-Michael adds that he's still frustrated that there are no industry or community representatives at this table. He reminds people that this is the only group in the state working on these issues who hasn't welcomed the MJ community as a participant. He is still feeling frustrated.</p>

<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Next Steps</p>	<p><i>WHAT'S NEXT</i></p> <ul style="list-style-type: none"> <li>• Eric, Charlie, Paul, Kim and Germaine will convene next week to start to flesh out the policy statements and recommendations and have something ready for the group to react to at the next meeting.</li> <li>• The Drug Task Force will reconvene September 18<sup>th</sup>, 1:30-4:30pm to wordsmith the recommendations/policy statements</li> </ul>

**Future Meeting Dates:**

**Meeting Schedule 2013**

September 18<sup>th</sup>      1:30pm – 4:30pm      1300 Broadway, Conference Room 1-F