



Commission on Criminal and Juvenile Justice

Minutes

November 13, 2009
 National Enforcement Training Institute
 12345 W. Alameda Parkway

Commission Members Attending:

Peter Weir, Chairman	Ari Zavaras	Dean Conder
Reo Leslie, Jr.	Jeanne Smith	J. Grayson Robinson
Peter Hautzinger	Mark Waller	Regina Huerter
Bill Kilpatrick	Don Quick	Claire Levy
Inta Morris	Steven Siegel	Doug Wilson
John Suthers	Karen Beye	David Michaud
Tom Quinn	Gilbert Martinez	Alaurice Tafoya-Modi

Absent: John Morse, David Kaplan (vice chairman), Rhonda Fields, Regis Groff, Debra Zwirn, Mark Scheffel

CALL TO ORDER AND OPENING REMARKS:

The Chairman, Peter Weir, called the meeting to order at 9:20 a.m. Mr. Weir announced the Division of Criminal Justice was given an award by the Justice Research and Statistics Association for the 2008 CCJJ Annual Report.

The 2009 CCJJ Annual Report will be sent to the printer on Friday, November 20th. The Annual Report will include any recommendations approved today, as well as the recommendations approved at the October 16th meeting. DCJ staff will send out a rough draft of the Annual Report to Commission members on Tuesday, November 17th for their review. Any comments are to be sent by Thursday, November 19th to Kim English (DCJ).

Mr. Weir introduced a special guest, Peggy McGarry of the VERA Institute. Peggy has significant experience in the area of sentencing reform. The VERA Institute and the PEW Foundation will be assisting the Commission during its study of sentencing reform.

TREATMENT FUNDING TASK FORCE:

Regi Huerter gave an update on the work of the Funding Task Force. The task force is currently working to identify different funding sources, the requirements for the use of the funds, and the agencies that monitor the use of the funds. Treatment resources are needed for the highest risk individuals. The

Department of Human Services monitors several grants that fund DUI treatment. However, grants have a limited time frame. We should be looking for sustainable funding sources.

The task force also spoke about the expectations of the criminal justice system with regard to treatment and its role in the sentence of the offender. Some individuals will only participate in treatment until the terms of their sentence have been completed. We need to reinforce the need to complete treatment, including continuing (after) care.

BEHAVIORAL HEALTH INITIATIVE UPDATES:

Regi Huerter and Karen Beye gave an update on the work of the Behavioral Health Cabinet. The Cabinet is made up of representatives of several state agencies as well as individuals from the private sector. The overarching issue is data sharing and screening issues. They are working on developing standardized risk assessment and needs assessment tools. They are also focusing on consolidating the funding streams as well as other groups working on these issues.

The Behavioral Health Cabinet is in the process of looking at uniform screening. Diane Pasini-Hill (Division of Criminal Justice) will be looking for volunteers to help with this task.

- How do you introduce uniformity because agencies already have their internal systems and forms in place?

RECOMMENDATIONS RELATED TO DUI:

During the October Commission meeting, several DUI recommendations were approved to move forward. Subsequent to that meeting, news articles on repeat DUI/DUR offenders appeared. Those articles indicated that the sentiment of the general public is to strengthen sentences for DUI charges. It is believed that our recommendations are out of sync with this sentiment. Should we re-evaluate these recommendations?

Sheriff Robinson spoke about the impact DUI/DUR offenders have on local jail populations. Currently, local jails are at maximum capacity which results in overcrowding and can create dangerous situations. The state Sheriffs believe incarceration and treatment need to be dealt with simultaneously. Private vendors should come into jails to begin treatment. The Sheriffs also realize public sentiment may be against reducing penalties found in October's DUS and DUI recommendations. If we have to re-evaluate the recommendations, a discussion needs to take place about providing funding to the local jails to house these offenders.

Doug Wilson expressed his concern about reopening recommendations that were voted on and approved at a previous meeting. He stated that we need to stay true to the system that the Commission has been using and not react to a news article.

It was asked if the proposed changes to these recommendations were developed by staff, by a subcommittee or task force. These new recommendations were developed by staff.

Grayson Robinson made a motion that the Commission table the DUI recommendations brought back for reconsideration today until the DUI Task Force can meet and re-examine these issues. The DUI Task Force will meet before the December CCJJ meeting and will be brought back in a report. Ari Zavaras seconded the motion. The motion passed by a unanimous vote.

The sentencing report due November 30th will reflect that there will be some legislation forthcoming on the issue of repeat DUI/DUR, but that it will not be finalized by the time of the report. It may be included as an addendum in a subsequent December report.

REVIEW OF DUI RECOMMENDATIONS AND PROPOSED RECOMMENDATIONS:

Approved Recommendation

DUI-2a ELIMINATE SOME NON-ALCOHOL DRIVING OFFENSES AS PREREQUISITES FOR HTO'S

Eliminate non-alcohol related Driving Under Revocation (DUR), Driving Under Suspension (DUS) and Driving Under Denial (DUD) as a major offense for consideration by the Division of Motor Vehicle (DMV) for a habitual traffic offense.

Approved Recommendation

DUI -2b ELIMINATE SOME NON-ALCOHOL DRIVING OFFENSES AS PREREQUISITES FOR HTO'S AND ELIMINATE MANDATORY JAIL SENTENCES FOR SAME NON-ALCOHOL OFFENSES.

Eliminate non-alcohol related Driving Under Revocation (DUR), Driving Under Suspension (DUS) and Driving Under Denial (DUD) as a major offense for consideration by the DMV as a predicate offense to classification as a Habitual Traffic Offender. Eliminate mandatory jail sentences for non-alcohol related DUR, DUS and DUD while still retaining them as discretionary.

Proposed Revision

UPON FURTHER REVIEW STRIKE BOTH DUI-2a and DUI- 2b

Discussion:

1. Thirty years ago there were minimal sanctions for DUI offenses. The sanctions we have imposed through the efforts of many groups for the most part have been successful. But there is a small group that is not deterred by these sanctions because they are alcoholics
2. The hard core offenders were sent to prison for 18 months. These would be the Habitual Traffic Offenders (F5). Now Habitual Traffic Offenders are sent to prison. We need to move in the direction of more sanctions on the hard core offenders.

Unanimous consent to refer back to the DUI Task Force.

Approved Recommendation

DUI 6 – INCREASE CONSISTENCY IN SENTENCING OF DUI OFFENDERS

To increase consistency in sentencing DUI offenders, initiate mandatory and expanded jail sentences for 2nd and subsequent offenders.

- Second offense should receive a minimum of 45 days in jail. Thirty (30) days must be served. Jail work release is allowed.
 - The remaining jail time may be suspended upon completion of a drug assessment and completion of treatment as currently set forth in C.R.S. § 42-4-1301(7)(e) and C.R.S. § 42-4-1301.3(2)(a).
 - Home detention, suspended sentence, and other non-jail alternative are not allowable. In-patient treatment facility time may be credited against time in jail.
- Third and subsequent offenses receive a minimum of 90 days in jail. Sixty (60) days must be served.

- Home detention, suspended sentence, and other non-jail alternative are not allowable. In-patient treatment facility time may be credited against time in jail.
- Current law, in four separate subsections of C.R.S. 42-4-1301, distinguishes among DUI and DWAI as current conviction and DUI and DWAI as prior. Consolidate these statutes and provide for an aggravated sentence for second and another for third and subsequent alcohol- and drug-related driving offenses regardless of level of current or prior convictions.

Approved Recommendation

DUI-7 – MODIFY C.R.S. § 42-4-1301(7)(IV)(e) TO ENSURE A FIVE YEAR PROBATION PERIOD

C.R.S. § 42-4-1301(7)(IV)(e), allows for two years of probation plus two additional years of treatment and monitoring. Modify this statute to clarify that the time periods do not begin to run until after any jail sentence is served.

Proposed Revision

COMBINE DUI-6 AND DUI-7

INCREASE BOTH THE TERMS OF SENTENCE AND PROBATION FOR DUI OFFENDERS

Restructure the DUI statute to mandate serving a jail sentence for all repeat offenders, followed by a period of probation, a violation of which carries its own penalty, including additional jail time, irrespective of any prior term of incarceration.

- Eliminate the distinction on all second and subsequent offenses between Driving While Ability Impaired and Driving Under the Influence, whether for the most recent offense or for the consequences of having a prior conviction. In other words, only on the first offense will there be a distinction in sentence based upon the level of impairment.
- Restructure the sentencing provisions of the DUI statutes to allow for both an initial sentence to incarceration, followed by an extended period of probation, to assure offenders complete the requirements of law pertaining to treatment, community service and payment of fines and costs.
 - Second offenses will require an initial term of incarceration of at least 30 days in jail without the availability of any alternative, except that work release may be authorized in appropriate circumstances.
 - The sentence can be as long as one year.
 - Third and subsequent offenses will require an initial term of incarceration of at least 60 days in jail without the availability of any alternative (work release may NOT be authorized).
 - This sentence can be as long as one year.
 - Following the initial period of incarceration (or perhaps none if a first offense), offenders must be placed on probation for two years.
 - For a second or subsequent offense, the offender must be placed on probation for a minimum of two years and the court may impose an additional two years of probation for purposes of supervision, treatment and monitoring. During this period, offenders will be required to abide by the conditions of probation, complete substance abuse classes, cooperate with monitoring and supervision, perform community service, and avoid any further violations of law. Violation of probation will allow the court to impose additional jail time for up to one year, regardless of the length of the defendant's initial incarceration. (Repeated violations of probation can result in repeated jail sentences.)

- Offenders can petition the court to allow for early termination of probation by demonstrating compliance with all terms and conditions of probation. For the petition to be granted, the court must make findings that the defendant no longer constitutes a threat to public safety.
- For vehicular assault and vehicular homicide convictions based upon driving under the influence, where there have been prior alcohol-related convictions, impose sentencing terms consistent with the DUI statutes allowing for mandatory sentences in jail followed by a four-year period of supervision. This may require amendment to 18-1.3-202(1) to allow for longer jail sentences as a condition of probation, or perhaps amendment to 18-1.3-401 to require a longer period of parole for these offenders.

Discussion:

1. What is meant in the last paragraph on vehicular assault and vehicular homicide? For offenders who commit those felonies and who are sentenced to probation, they can also be sentenced to jail and a probationary sentence. The dual system is not limited to misdemeanor offenses.

Unanimous consent to refer back to the DUI Task Force.

Approved Recommendation

DUI-9a ENHANCE BOND STATUTES FOR DEFENDANTS ACCUSED OF MULTIPLE ALCOHOL AND DRUG RELATED DRIVING OFFENSES

Modify existing bond statutes to enhance the consequences for defendants accused of 3rd and subsequent alcohol and drug related driving offenses, including impaired driving, as follows.

CLARIFICATION

- ~~Require a bond hearing in every case, consistent with domestic violence bonding practices,~~ (see note below)
- Increase bond amounts,
- Include specific bond conditions requiring sobriety monitoring (e.g., pre-trial supervision, alcohol testing, and SCRAM devices),
- Include stipulations restricting alcohol and drug consumption, particularly when operating a motor vehicle, and
- As an incentive for engaging in treatment, provide for consideration of a reduced bond upon an offender's immediate participation in meaningful substance abuse treatment.

Approved Recommendation

DUI-9b – MODIFY BOND HEARING REQUIREMENTS

Bond hearing only required when a defendant seeks a bond without the above conditions. The court must make findings that the conditions are not necessary

Proposed Revision

COMBINE DUI-9a AND DUI-9b

MODIFY BOND STATUTES FOR DEFENDANTS ACCUSED OF 3rd (2nd ?) AND SUBSEQUENT ALCOHOL AND DRUG RELATED DRIVING OFFENSES

On a 3rd (2nd ?) and subsequent alcohol-related driving arrest, if the defendant is granted bond, the conditions of the bond must include supervision and participation in a treatment

program and regular monitoring such as electronic monitoring, alcohol testing and/or vehicle disabling devices. Relief from these conditions can only occur upon motion of the defendant, hearing, and a written finding by the court that these conditions are not in the interests of justice and that public safety is not endangered by the removal of the conditions.

Discussion:

1. Have the Sheriffs looked at the proposed revisions of 9A and 9B and their impact on local jails? The bond recommendations will have an impact on the local jail populations. If you are going to require all of the above conditions of bond, the indigent will not be able to bond out of jail. During the last meeting, there was some discussion about increasing the DUI surcharge and possibly direct that revenue to the local jails.
2. These bond requirements will also have an impact on the “innocent victims” such as the offender’s spouse and family and the offender’s ability to maintain employment. When someone is sentenced to something other than work release, there are others that are affected in addition to the offender.
3. If someone is incarcerated, we need to have to get the treatment going while they are in jail.
4. These provisions will send a message that if you are a repeat offender, you will see the inside of a jail.
5. Maybe we can identify three, four or five jails where treatment can be given to offenders. Judges could then sentence a DUI offender to one of these jails. This would also help reduce the local jail population because these offenders are not housed locally. What discussion has been held on increasing the surcharge? The amount of money that can be raised is unclear.
6. There is concern about DUI recommendation #6 which states, “Inpatient treatment facility time may be credited against time in jail.” Will offenders be requesting inpatient treatment while not necessarily meeting the clinical criteria for inpatient treatment? Also shouldn’t the recommendations clarify the treatment should be at a Division of Behavioral Health licensed treatment facility?
7. Are you talking about designated treatment facilities that are post-sentence, not pre-trial? Pre-trial is problematic for offenders that have to travel to a site.
8. Will this increase the amount of technical violations? For every dollar increase on fines, increases the possibility of an individual to have a technical violation.
9. Can we be creative enough so that people do not lose their jobs? Continuity of treatment is also important.
10. In 2008, there were 213 DUI fatalities. In over 100 of those fatalities, the driver was drunk. We have to keep these people away from the cars. Putting them in jail does not keep them out of cars once they have been released. What are other states doing in this regard?

Unanimous consent to refer back to the DUI Task Force.

VOTING PROTOCOL

After presenting the following recommendations, Commission members will log their votes via an electronic voting system by selecting from three alternatives:

- (A) I support it
- (B) I can live with it, and
- (C) I do not support it

The threshold for recommendation approval required that 75% of Commission members chose the (A) or (B) alternative. A recommendation failed to receive approval when 30% of members chose the (C) alternative.

RECOMMENDATIONS RELATED TO PROBATION ELIGIBILITY:

There was some confusion on the wording of the probation recommendation. Options A and B are attempts to clear up the confusion. The Task Force did review the two options and came to a consensus to support Option B.

Approved Recommendation

P-1a EXPAND PROBATION ELIGIBILITY FOR OFFENDERS WITH MULTIPLE PRIOR FELONIES

Modify C.R.S. 18-1.3-201, Application for Probation, clearly addressing the crimes eligible for a sentence to probation (see bulleted list below); require one of the two prior felonies to be violent as defined by C.R.S. 18-1.3-406(2); exclude in the prior felony restriction those crimes which were not felonies at the time of the commission of the crime; disallow as a prior felony any crime that is a felony in another state but not a felony in Colorado.

The following crimes specified in C.R.S. 18-1.3-201(4)(a)(II) are recommended to be omitted from the list of disqualifying offenses for probation eligibility (Allowed with District Attorney Waiver):

- Manslaughter,
- Second degree burglary,
- Robbery
- ~~Theft of property worth \$500 or more,~~
- Theft from the person of another by means other than the use of force, threat or intimidation, and
- Felony offense committed against a child (This does not include charges concerning lack of payment for child support).

Proposed Revision

P-1a OPTION A

Modify 18-1.3-201(2)(a) to allow for probation eligibility for those who have multiple prior felony convictions. Offenders who have prior convictions for a crime of violence as defined in 18-1.3-406 or offenders who were previously convicted of manslaughter, 2nd degree burglary, robbery, theft from a person, or a felony offense committed against a child would be ineligible for probation without a recommendation of waiver by the district attorney. Repeal 18-1.3-201(2)(b) and 18-1.3-201(4)(a)(II).

P-1a OPTION B

Modify 18-1.3-201(2)(a) to allow for probation eligibility for those who have multiple prior felony convictions. Offenders **with two or more prior felony convictions, one or more of which is for a crime of violence** as defined in 18-1.3-406 or **where one of the two or more prior felonies was a conviction for** manslaughter, 2nd degree burglary, robbery, theft from a person, or a felony offense committed against a child would be ineligible for probation without a

recommendation of waiver by the district attorney. Repeal 18-1.3-201(2)(b) and 18-1.3-201(4)(a)(II).

Discussion:

1. The way Option A states that if an offender who has only one prior conviction, if that conviction is a crime of violence or is a crime listed above, the offender is ineligible for probation unless the district attorney agreed to a waiver.
2. Option B states that if an offender has two prior felony convictions, one of which is a crime of violence or a crime listed above, the offender cannot be eligible for probation unless the district attorney agrees to a waiver. This is the intent of the Task Force.
3. Tom Quinn made a motion to vote on Option B. The motion was seconded by Doug Wilson.

Vote: (a) 15 (b) 4 (c) 0 [Approved]

DRUG SENTENCING STRUCTURE MODIFICATIONS:

The Drug Policy Task Force came before the Commission in October with two recommendations originating from its Structure Working Group. Recommendation #1 was predicated on the premise that treatment is necessary. First and second time offenders were to be given probation and treatment as their sentence. Prison became an option on the third offense. In October, it was decided that further work needed to be done on Recommendation #1, including finding funding sources for treatment.

Recommendation #2 keeps intact some prison sentences. The sentences are for lesser amounts of time. Most of the offenders that are sentenced to probation will pay for their own treatment. The special offender sentences remain high.

It was asked if these proposed modifications create the perception of being soft on crime? These ideas need to be vetted to make the public understand what they are doing. Public support will be a challenge.

Is there an intersection between causal use of marijuana and medical marijuana? In 2000, the voters passed a Constitutional amendment to accept medical marijuana. The voters want us to come up with a means of dealing with medical marijuana. How are individuals who are using a controlled substance and have a medical marijuana card to be treated?

Can fees and taxes be imposed on medical marijuana that can be used to fund drug treatment? It would take a vote of the people in order to direct the use of funds. The Attorney General's Office will announce that medical marijuana is a product that is subject to state and local sales tax.

RECOMMENDATIONS RELATED TO CONTROLLED SUBSTANCE STATUTES

CS-1 – Simple possession shall be a new and separate statute.

Discussion:

1. How do you differentiate "use" from "possession?" Use means the drug is in your system. It is rarely charged, except for crack babies. If you get stopped before you ingest the drug, is it then a felony? If you ingest the drugs, it is a misdemeanor.
2. The "use" is rarely filed on. The offender can get probation and treatment.

3. Strike the word "simple" from the recommendation.

Vote: (a) 14 (b) 3 (c) 2 [Approved]

CS-2 - Vote for one of the two following options:

(a)– Possession less than 4 grams of any schedule I or II substance shall be a class 6 felony.

OR

(b) – Possession of less than 4 grams of any schedule I or II substance shall be a class 6 felony, except for possession of methamphetamine. Possession of less than 2 grams of methamphetamine shall be a class 6 felony.

Discussion:

1. Why four grams for schedule I or II and two grams for methamphetamine? According to unofficial research done by one of the Drug Policy Task Force subgroups, the drug experts and users independently came up with four grams as an amount that is routinely used for personal use. There are other concerns for methamphetamine that lead the task force to come up with the two grams.
2. Methamphetamine has a significant physical and societal impact.

Vote on CS-2a: (a) 8 (b) 2 (c) 9 [Not Approved]

Vote on CS-2b: (a) 10 (b) 6 (c) 3 [Approved]

CS-3 – Possession of an amount of any schedule I or II substance in excess of the amounts chosen in CS-2 (*depends on vote between options a or b*) above shall be a class 4 felony.

Discussion:

1. If a person is in possession of 28 pounds of cocaine, it would still be a class 4 felony? Yes.

Vote: (a) 14 (b) 2 (c) 3 [Approved]

CS-4 – Possession of any schedule III – V controlled substance (except Flunitrazepam and Ketamine) shall be a class 1 misdemeanor. (*Currently, possession of a schedule V controlled substance is a class 1 misdemeanor and possession of either schedule III or IV controlled substances are felonies.*)

Discussion:

1. Schedule III through schedule V controlled substances are prescription drugs. Flunitrazepam and Ketamine are date rape drugs and will remain felonies.
2. A fake prescription is another charge and will remain a felony.
3. This is just the possession of those drugs. It will include Oxicontin.
4. There will be information coming out in the next few months about prescription drug abuse and its consequences.

Vote: (a) 12 (b) 4 (c) 3 [Approved]

CS-5– Possession of any amount of Flunitrazepam or Ketamine (*date rape drugs*) shall be treated like a Schedule I or II controlled substance – less than 4 grams is a Class 6 felony, more than 4 grams is a class 4 felony.

Discussion:

1. Why are you are making a distinction between amounts? Because a person would personally use less than the amount than you would use to drug someone and then rape them.

Vote: (a) 10 (b) 5 (c) 4 [Approved]

CS-6 – Possession of Psilocybin and psilocin (*mushrooms are currently a schedule I controlled substance*) shall be reduced to a class 1 misdemeanor.

Discussion:

1. A lot of research has been done on mushrooms. It does not have addictive qualities. The task force recommended downgrading the level.
2. We should watch what the results of this recommendation are for the next few years to determine its impact. The concern is that individuals will switch from LSD use to mushrooms.
3. There is no distinction on amount. Some would have preferred to have a measure of weight included so a felony could have been a possibility. What is the personal use amount of mushrooms? The Sentencing Structure Task Force will research this issue.

Vote: (a) 7 (b) 3 (c) 9 [Not Approved]

CS-7 – Use of a controlled substance shall be a class 2 misdemeanor.

Discussion:

1. Would the passing of CS-7 eliminate the need for treatment provision? Yes.
2. Do we want to move the deferred language to this level? The current statute allows the judge to grant a deferred sentence on the use statutes. The DA can still use deferred sentences. Clarification needs to be done by the Sentencing Structure Task Force.

Vote: (a) 11 (b) 4 (c) 4 [Approved]

RECOMMENDATIONS RELATED TO DISTRIBUTION/POSSESSION WITH INTENT TO SELL/ETC...

DP-1 – The distribution of up to 4 grams of a schedule I or II substance shall be a class 5 felony.

Discussion:

1. The level of felony goes up based on the amount possessed. There is a limit of how much can be distributed within a six-month period of time, so a dealer cannot get by with lesser sentences by just dealing small amount at a time. It was recommended that money laundering be moved out of this statute and will become its own statute.
2. How does this impact the dealer who deals \$20 rocks all day? How many times do you have to catch the individual to get up to the aggregate amount 4 grams for a class 4 felony or 25 grams

to be a class 3 felony? Any distribution, with or without remuneration, will be a felony. You will always be eligible for habitual filings.

3. What impact will Denver feel by going from a class 3 felony to a class 5 felony on these charges? This will create a large increase in the number of people who will be given probation.
4. Can there be two levels? If there is remuneration, the higher felony levels remain. If there is no remuneration, then the lower level would take effect. Can the task force go back and look at that?
5. A negative vote on DP-1 would mean that the Sentencing Structure Task Force should go back and look at remuneration for recommendations DP-1, DP-2, DP-3, DP-4 and DP-5.

Vote: (a) 5 (b) 3 (c) 11 [Not Approved]

This item referred back to the Sentencing Structure Task Force.

DP-2 – The distribution of more than 4 grams but less than 25 grams of a schedule I or II substance shall be a class 4 felony.

This item referred back to the Sentencing Structure Task Force.

DP-3 – The distribution of more than 25 grams of any schedule I or II controlled substance shall be a class 3 felony.

This item referred back to the Sentencing Structure Task Force.

DP-4 - The amounts for any of the schedule I or II offenses noted above in DP1, DP2 or DP3 can be aggregated over a six month period to result in the higher charge.

This item referred back to the Sentencing Structure Task Force.

DP-5 – The distribution of a schedule III-V controlled substance shall be a class 6 felony.

This item referred back to the Sentencing Structure Task Force.

DP-6 – Re-classify CRS 18-18-415 (Fraud and Deceit). The recommendation is to make this a class 6 felony with no increase in the offense level for any subsequent offense. (*This offense is currently a class 5 felony for a first offense and a class 4 felony on a second or subsequent offense.*)

Discussion:

1. This is basically done by someone who is passing bad prescriptions to feed their addiction.
2. The act of procuring the drug has more of a societal impact.

Vote: (a) 17 (b) 1 (c) 1 [Approved]

DP-7 – Money Laundering: CRS 18-18-408 limits any type of money laundering activity to drug related crimes only. This provision should be removed from the drug code and a new statute covering any and all criminal money laundering activity should be added to title 18 (a draft of this new statute is currently being prepared by the Attorney General’s office).

Discussion:

1. Does the amount of drugs being sold impact the level of money being laundered? No.

Vote: (a) 16 (b) 1 (c) 2 [Approved]

PROPOSED REVISIONS TO THE SPECIAL OFFENDER STATUTE (CRS 18-18-407)

SP-1 – Limit subsection (2)(a) to sales/distribution etc... within 100 feet for certain zones. ~~of a school or school bus ONLY.~~ (The current provision applies to activity within 1,000 feet and also applies to parks, playgrounds, public housing units, sidewalks, alleys, and other public areas. We intend to address the other issues with a new statute related to dealing to minors.)

Discussion:

1. This limits the area to within 100 feet of a school or school bus. The issue of public housing units will come up. One interpretation is to deter people from coming into special housing units. Another interpretation can be viewed as being biased against minorities and those with low income.
2. Did the working group talk about the need to bring parks and playgrounds into this recommendation? The working group thought this was covered by SP-2. Can there be two votes? One with the 100 foot level? The other one would include a specific distance within a public housing unit, parks and playgrounds.
3. Pete Hautzinger is recommending that the language of the existing zones stay the same with the exception of decreasing the distance from 1000 feet to 100 feet and removing the language “including streets and alleys.”
4. Can we vote on the 100 feet as one vote? The Sentencing Structure Task Force would research and identify the specific zones.

Vote: (a) 14 (b) 2 (c) 3 [Approved]

Pete Hautzinger made a motion that the 100 foot limit would apply to public and private schools, vocational schools, public parks, public playgrounds, public housing and on school buses. John Suthers seconded the motion.

This motion will be taken back to the Sentencing Structure Task Force for further discussion of the specific zones to include and will be brought back in December.

SP-2 – Create a new crime of sale of any controlled substance (other than marijuana) by a person over the age of 18 to a minor. If the sale is made by a person over the age of 18 who is less than two years older than the minor, the offense will be a class 4 felony. If the sale is made by a person over the age of 18 who is more than two years older than the minor, the offense will be a class 3 felony.

Vote: (a) 12 (b) 2 (c) 4 [Approved]

SP-3 – Amend and clarify subsection (1)(f) related to deadly weapons to provide that the special offender provision applies as follows:

(I) The defendant used, displayed, or possessed on his or her person or within the defendant’s immediate reach, a deadly weapon as defined by section 18-1-901(3)(e) at the time of the commission of a violation of this part 4 of article 18 of title 18, or (II) The defendant, or a confederate, possessed a **FUNCTIONAL firearm as defined in section 18-1-901(3)(h), in a vehicle the defendant was occupying, or to which the defendant or the confederate had access in a manner which posed an immediate threat to others, during the commission of a violation of this part 4 or article 18 or title 18.**

Discussion:

1. “Functional” was added at the request of the defense bar. For example, a gun may not be functional if it is empty or has no firing pin. During a confrontation, how will the police officer know if the weapon is functional? Is this recommendation meant to get at someone who is a direct threat? Or someone who is a potential threat?
2. The weapon has to be available for immediate use. This is an attempt to differentiate between having a firearm on your person or next to you as opposed to having the gun in the trunk of the car.

Vote: (a) 11 (b) 4 (c) 3 [Approved]

SP-4 – Eliminate subsection (1)(a) that provides for immediate and mandatory increase in the level of the offense if the defendant has two or more prior drug convictions.

Discussion:

1. This eliminates the ‘bump up’ on a second offense.
2. This recommendation needs to be sent back to the Sentencing Structure Task Force as it looks at the distribution issues.

Vote: (a) 19 (b) 0 (c) 0 [Unanimous to refer back to task force]

SP-5 – Amend subsection (1)(d) (*the importation of schedule I and II drugs provision*) to apply only when the amount being brought into the state exceeds 4 grams.

Discussion:

1. Is there a problem if you have 4 grams for the importation of methamphetamine but only 2 grams for possession?

Vote: (a) 14 (b) 3 (c) 1 [Approved]

RECOMMENDATIONS RELATING TO CRIMES INVOLVING MARIJUANA

How do we separate marijuana from medical marijuana? The public will combine the issues of marijuana and medical marijuana. It is up to the legislature to keep these recommendations separate from medical marijuana issue.

Pete Hautzinger made the motion to vote on all thirteen recommendations in this section as a whole. Grayson Robinson seconded the motion.

Vote on Pete Hautzinger's motion: (a) 14 (b) 3 (c) 1 [Approved]

Vote on all thirteen MJ recommendations: (a) 13 (b) 4 (c) 1 [Approved]

MJ-1 – The petty offense for possession shall be increased from the current 1 oz level to 4 oz.

MJ-2 – The class 1 misdemeanor for possession of amounts more than 1 oz but less than 8oz shall be changed to a range of more than 4 oz to less than 16oz (*1 pound*).

MJ-3 – The possession of any amount of marijuana concentrate shall be decreased from a class 5 felony to a class 1 misdemeanor.

MJ-4 – Distribution of 4 oz or less WITHOUT remuneration shall be a petty offense. (*Currently this amount is set at 1oz*)

MJ-5 – Possession of more than 16 oz (*1 pound*) of marijuana shall be a class 6 felony and there shall be no increase in the felony level on a second offense. (*Currently this is a class 5 felony and a second offense is a class 4 felony.*)

MJ-6 – Distribution or sale of marijuana of more than 4 ounces but less than 5 pounds shall be a class 5 felony.

MJ-7 - Distribution or sale of marijuana of more than 5 pounds shall be a class 4 felony.

MJ-8 – Distribution of any amount of marijuana concentrate will be a class 5 felony.

MJ-9 – The distribution or sale of any amount of marijuana to a child by a person over the age of 18 to a minor where the seller is two years older or more than the child shall be a class 3 felony.

MJ-10 – Cultivation of six plants or less shall be a class 1 misdemeanor.

MJ-11 – Cultivation of more than 6 plants but less than 30 plants shall be a class 5 felony.

MJ-12 – Cultivation of more than 30 plants shall be a class 4 felony.

MJ-13 – The spelling of the marijuana shall be corrected throughout the statutes.

FURTHER RECOMMENDATIONS:

FR-1 -Habitual Criminal Statute: For purposes of the habitual criminal statute, simple possession of a controlled substance (*class 6 felony*) shall not be an offense that can be utilized as either a predicate or qualifying offense.

Discussion:

1. Had the Sentencing Structure Task Force talked about what kind of offenses should be the predicate offenses for habitual filings? Yes
2. This would not be retroactive.
3. An F-6 felony is rarely used for the habitual filing. However, it has been used to leverage an individual into taking a plea.
4. How often does this get used throughout the state? Unknown.

Vote: (a) 5 (b) 6 (c) 7 [Not Approved]

FR-2 - Two prior felony rule: This working group supports the proposal of the sentencing working group to amend 18-1.3-201(2) with the express understanding that their recommendation would essentially remove the mandatory applicability of the two prior felony rule to drug cases.

Discussion:

1. This is a moot recommendation. Why does the Commission need to vote on it again? It is a statement that endorses the work of the other working group.

Vote: (a) 12 (b) 1 (c) 5 [Approved as support for October vote to approve P-1]

FR-3 - Drug surcharges: Drug surcharges under the current statutory scheme provided approximately \$4.8 million dollars to the state in 2008. If the CCJJ accepts the proposals set forth in this recommendation #2, it is absolutely necessary for the Commission to request a fiscal analysis of how these changes might impact this revenue stream and to then modify these surcharges accordingly to ensure that no revenue is lost. This working group anticipates that the current surcharge levels relate to class 1 misdemeanors, class 6 felonies and class 5 felonies will have to be increased if recommendation #2 is supported by the CCJJ.

Discussion:

1. FR-3 discusses drug surcharges. Drug surcharges are assessed based on the level of the offense. When lowering the level of offense, this will affect the amount brought in.

Vote: (a) 11 (b) 4 (c) 3 [Approved]

FR-4 - Senate Bill 318 funds: Investigation into current treatment funding streams revealed that the money generated by Senate Bill 318 for treatment services is not specifically directed toward adult offender services as clearly intended at the time of the legislation. This statute is broad and requires clarification regarding funding.

Discussion:

1. What is this asking for? The Funding Task Force has identified this as a funding source and needs to look at this further.
2. Referred to the Funding Task Force.

Vote: (a) 18 (b) 0 (c) 0 [Unanimous to refer FR-4, 5, 6, & 7 back to task force]

FR-5 - Senate Bill 318 Board Membership: The statutory membership of these local boards should be amended to include a treatment provider and chief judge.

Discussion:

1. Referred to the Funding Task Force.

FR-6 - The working group supports any effort to make more high level Residential Treatment options and aftercare services available to drug offenders.

Discussion:

1. Referred to the Funding Task Force.

FR-7 – The CCJJ should seek an intensive review and audit of all potential treatment dollar resources currently being dispensed throughout the state and seek a mechanism to centralize these monies into a single funding source that can better serve the needs of the justice system in relation to providing offender treatment services and gain better control and accountability over the numerous programs and services currently being provided.

Discussion:

1. Referred to the Funding Task Force.

FR-8 – The CCJJ should consider mechanisms related to the regulation of medical marijuana that might generate revenue to fund drug treatment throughout the state.

Discussion;

1. Is this a criminal justice issue? The legislature will be getting into the regulation of medical marijuana.
2. Can we make the statement to look for treatment dollars?
3. Can we recommend to the legislature that they take those dollars and direct them into treatment?

The wording of the recommendation has been changed to read, **“If the General Assembly generates revenue from the regulation of medical marijuana, it should consider allocating a portion of these funds for drug treatment across the state.”**

Vote: (a) 13 (b) 3 (c) 2 [Approved]

FR-9 – Expand the statutory maximum jail sentence for misdemeanor and felony drug offense probation cases from 60 days to 90 days (misdemeanors, no more than 60 days straight time) and 90 days to 120 days (felonies, no more than 90 days straight time) to ensure that the use of intermittent incarceration more appropriately corresponds to the length of treatment as recommended in the treatment plan and/or drug court participation.

Discussion:

1. This will have a large impact on local jails and overcrowding. The local DAs will have to work with their local jails to decide when to use additional jail sanctions.
2. How can you have support for this recommendation without having the treatment facilities ready to be used?

Vote: (a) 9 (b) 1 (c) 7 [Not Approved]

FR-10 - The Division of Behavioral Health (DBH) with the Department of Human Services is responsible for licensing alcohol and drug treatment programs. State law requires that treatment programs must be licensed by DBH in order to receive funding through DBH. However, DBH also offers other specialized licenses for those providing treatment services specifically to offenders, women, and juveniles. The drug policy task force recommends that any treatment program that provides treatment to offenders (non-DUI) also be required by statute to obtain a license to provide offender treatment. Similarly, if the program serves offenders who are also either juveniles or women, state law should require treatment programs to be specially licensed in those areas, too.

Discussion:

1. Referred to the Funding Task Force.

Vote: (a) 17 (b) 0 (c) 0 [Unanimous to refer back to task force]

Wrap-up and Next Meeting:

Next meeting will be on December 11th.

The meeting adjourned at 3:46 p.m.