Commission on Criminal and Juvenile Justice

Minutes

December 11, 2009
National Enforcement Training Institute
12345 W. Alameda Parkway

Commission Members Attending:

Peter Weir, Chairman	Ari Zavaras	Dean Conder
David Kaplan, Vice-Chairman	Jeanne Smith	J. Grayson Robinson
Peter Hautzinger	Mark Wallner	Regina Huerter
Bill Kilpatrick	Don Quick	Debra Zwirn
Inta Morris	Steven Siegel	Doug Wilson
John Suthers	Karen Beye	Deborah Allen for David Michaud
Rhonda Fields	Mark Scheffel	Tom Quinn
Regis Groff	John Morse	Alaurice Tafoya-Modi
Reo Leslie, Jr.		

Absent: Gil Martinez, Claire Levy

Call to Order and Opening Remarks:

The Vice-Chairman, David Kaplan, called the meeting to order at 9:53p.m.
One of the goals of today's meeting is to determine if the Commission can re-examine previously approved recommendations. If so, a discussion on the basic policies and procedures will ensue.

JAG Training Grant Update by Kathy Sasak:

The Department of Public Safety (on behalf of the Commission) has been awarded a significant federal grant to develop a Multi-Agency Training Center on Evidence-Based Practices. This is a two year grant using American Recovery and Reinvestment Act (ARRA) funds. The multi-agency task force is comprised of representatives from DOC Case Management, DOC Parole, DCJ Community Corrections, State Probation and the Division of Behavioral Health. The task force is currently in the process of hiring staff. The first training will occur in March of 2010.

Inta Morris announced that they received a federal grant to expand the Gateway Program at Red Rock Community College into other counties.

Discussion of Process and Recommendations for Reconsideration:

Mr. Weir began the discussion by outlining concerns raised in November about the Commission's ability to reconsider recommendations that have previously been approved.

When the Commission examined the re-entry process, it had the opportunity to perform extensive research and vetting of the issues. During that time, staff took general concepts that were approved by the Commission and "word-smithed" them for specificity and clarity. After staff clarified wording, the recommendation would be taken back to the respective task force to ensure it reflected the intent of the task force.

The process to examine the sentencing laws is different because of the shortened time frame. During the last session, the Commission was directed to develop a list of recommendations on sentencing that could be presented during the next session. The Commission has not been afforded the time to do an in depth analysis of the issues.

Doug Wilson stated he feels it is inappropriate for the Commission to reopen discussions unless there is a change in evidence-based practices. He feels that the Commission's decision to reconsider the DUI recommendations approved in October is solely the result of an article published in the Denver Post.

David Kaplan stated that when the Commission votes on a recommendation, it should do so with the expectation that it has enough information for an informed vote. If the Commission does not have enough information, the topic should be referred back to the respective task force. If the Commission is to reconsider a topic, there should be a process developed so that the re-examination is meaningful.

Mr. Robinson said that jail management is a balancing act between public safety and bed space. The sheriffs across the state support the mandatory sentence for multiple DUI offenders. The sheriffs' perspective is to get those people off the street and get them treatment.

Sheriff Robinson said that his decision to ask for the DUI recommendations to be reconsidered was the result of the information presented in the Denver Post. The Post article outlined information found in a legislative audit previously unknown to the task force. Information contained in that audit was not available to the Commission when its vote on the DUI recommendations was previously held.

Don Quick stated that in the criminal world a conviction can be overturned when new material evidence is found. If there is new material information that wasn't brought before the Commission before its vote, it would be irresponsible to not reopen the issue.

Mr. Weir suggested a process to be used for reconsideration. If an approved recommendation is to be re-examined, a motion and the second would have to be brought by an individual who had voted in favor of the initial recommendation.

- 51% of the Commission would have to vote in favor of reconsidering the recommendation for it to be brought back.

- After hearing the reasons for reconsideration and further discussion, 75% of the Commission would have to vote in favor of rescinding the recommendation.

David Kaplan requested that when an item is brought forth for reconsideration, there should be a reason for the request.

Pete Hautzinger made a motion to give the Commission the ability to reconsider a previously approved recommendation under the following parameters:

- The individual making the motion has to have voted in favor of the recommendation during the initial vote.
- The individual who seconds the motion has to have voted in favor of the recommendation during the initial vote.
- To bring a recommendation back for further discussion will take a vote of 51% of the Commission.
- It would take a 75% vote of the Commission to withdraw a previously approved recommendation.

Ari Zavaras seconded the motion.

Commission members who do not appear at Commission meetings may send a delegate who can participate in the discussion. However, only Commission members are able to vote.

Vote on Commission's ability to reconsider a recommendation:

(a) I support it: 16
(b) I do not support it. 5

Sentencing Policy Task Force – Probation Eligibility:

Tom Quinn briefed the Commission on why recommendation P-1 is up for reconsideration. It was brought to the attention of the Probation Eligibility Task Force that the wording found in recommendation P-1 had unintended consequences. The wording allowed an individual with a less serious criminal history to have more restrictions on his/her ability to be sentenced to probation than an individual with a more serious criminal history. An offender whose criminal activity is deescalating has more restrictions on his/her ability to be sentenced to probation than an offender whose criminal activity is escalating.

Pete Hautzinger made a motion to reconsider recommendation P-1. Tom Quinn seconded the motion.

Vote to reconsider recommendation P-1:

I support it: 16
I do not support it: 5

This DOES meet the 51% requirement to reconsider.

P-1 Expand Probation Eligibility for Offenders with multiple Prior Felonies

Previously approved recommendation

Modify C.R.S. 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)(ll).

Proposed Revision

Modify C.R.S. 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 or the present felony 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)(ll).

Vote on revised recommendation:

(a) I support it: 16
(b) I can live with it. 2
(c) I do not support it: 3

This DOES meet the 75% requirement to change the recommendation.

Drug Policy Task Force - DUI:

Recommendations DUI-2a and DUI-2b:

Sheriff Robinson again outlined his reasons why he asked for the DUI recommendations to be reconsidered. The request was the result of the information reported in the Denver Post. The Post article outlined some information found in a legislative audit that was not available to the Commission.

In October, the Commission voted to support recommendation DUI-2a and DUI-2b which was to eliminate the mandatory minimums on non-alcohol DUR and DUS convictions. The legislative audit was released after that meeting. The audit contained some information that the commission should have had prior to voting to eliminate the mandatory minimums. Specifically, the audit report states that 24% of all fatal traffic crashes in 2009 were the result of individuals with a DUS/DUR conviction. Additionally, Sheriff Robinson received some feedback from the state sheriffs who also expressed concern.

The drug policy task force discussed the new information via email and formally met on December 1st. As a result of the December meeting, the task force recommended the withdrawal of recommendations DUI-2a and DUI-2b.

Steve Hooper with the Motor Vehicle Division was asked to speak to the Commission about the audit. Mr. Hooper stated one issue that is being looked at and examined by the Suspended and Revoked work group is the reason why someone's license has been suspended. Licenses used to be restrained for driving safety related issues. Recently restraining licenses because of social issues such as non-payment of child support or failure to pay a ticket have been instituted in Colorado and other states. The threat of revoking a driving license has been successful in dealing with such social issues. Statistics show that 70% to 80% of restrained drivers continue to drive while under restraint.

The work group and other states are looking at having differential treatment given to individuals who have driving safety related issues (those who you want to keep off the road) versus those individuals who have had their licenses restrained because of social issues.

Grayson Robinson made a motion to reconsider DUI-2a and DUI-2b. Regina Huerter seconded the motion.

Vote to reconsider DUI-2a and DUI-2b:

(a) I support it: 11
(b) I do not support it: 10

This DOES meet the 51% requirement to reconsider.

Proposal to WITHDRAW the following recommendations:

DUI-2a 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 misdemeanor habitual traffic offense.

DUI-2b 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.

Vote on withdrawing recommendation DUI-2a and DUI-2b:

(a) I support : 3
(b) I can live with it: 0
(c) I do not support it: (leave the recommendation as it is): 18

This DOES NOT meet the 75% requirement to change the recommendation.

DUI-6 and DUI-7:

These two recommendations were discussed and received approval separately at the October CCJJ meeting. At the November CCJJ meeting, it was suggested that these two recommendations be combined and, by acclimation, were sent back to the DUI task force for combination and clarification.

The question before the CCJJ was should DUI-6 and DUI-7 be addressed first with a reconsideration vote? Or, because there was significant confusion on the wording and the extent to which the combined recommendation had been rewritten, should they be considered a new recommendation? It was decided that the combined DUI 6-7 be considered a new recommendation (therefore a vote to reconsider was not taken).

Proposed DUI-6 / 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.

Grayson Robinson made a motion to reconsider DUI-6 and DUI-7. Ari Zavaras seconded the motion.

Discussion:

1. Are there any substantive changes to DUI-6 and DUI-7? The changes involve the length of mandatory sentence in jail based on the number of offenses. In October the recommendation was for third and subsequent convictions to be given a mandatory 90 day sentence, 60 days of which must be served. The revision before the Commission today changes this to a 60 day mandatory sentence.
2. The recommendation has a year-long sentence hanging over the head of the offender as an incentive for the offender to comply with probation.
3. Because there is a provision for no work-release for third time offenders the offenders will end up losing their jobs. Having no employment increases an offender's likelihood to recidivate. An offender can be given work release on the second offense.
4. If an offender has a second conviction and is given 60 days jail up front, he/she is eligible for work release. If the offender violates probation, and is given the remainder of the one-year sentence, is he/she eligible for work release afterwards? Yes, this was not changed.
5. If you get a third conviction, you will get jail time followed by probation. This recommendation sets up a graduated sentence. This is different because an offender can be sentenced to jail, or probation.
6. Another change is to combine DUI-6 and DUI-7 into one recommendation.
7. This recommendation will have an impact on county jail bed space. The county jails need to talk to legislators about use of out-of-county beds when a jail is at capacity.
8. Is the Commission trying to address an individual's alcohol problem? Or is it trying to ensure that if someone has an alcohol problem, that they don't drive? There is a reality in terms of resources in the ability to provide treatment for everyone. If you end up with a person on an extended period of probation, there are numerous ways to violate probation. Someone who is unable to get their alcohol problem under control may not be able to maintain their job, which is a condition of probation.
9. Originally the discussion was to do a 90 day jail sentence. The decision was to reduce it to 60 days, but make sure that the individual has supervision longer than just the jail sentence.
10. Director Lovingier of the Denver Sheriff's department made a presentation to the drug policy task force. The Denver Sheriff's department is using a program in which the

offender is put on work release but is also subject to treatment. The Sheriff's department monitors their compliance to attending treatment sessions. The offenders are not getting treatment while they are sitting in jail. Denver has a concern about using the jail as the sole place to put offenders. By making a mandatory jail sentence, it is tying the hands of treatment providers.

Tom Quinn made a motion to amend the combined DUI-6 and DUI 7 recommendation by adding the availability of the work release sentencing option to the third and subsequent alcohol offenders. Rhonda Fields seconded the motion.

Vote on Tom Quinn's amendment:

(a) I support it: 6
(b) I can live with it: 2
(c) I do not support it: 12

This DOES NOT meet the 75% requirement to change the recommendation.

Vote on DUI-6 / DUI-7 as currently drafted:

(a) I support it: 8
(b) I can live with it: 4
(c) I do not support it: 8

This DOES NOT meet the 75% requirement to change the recommendation.

This vote on the combined DUI-6/7 replaced the previously approved recommendations (DUI6 and DUI-7) that were discussed and approved in October. DUI-2a and DUI-2b were set up to free money and bed space to make room for the repeat DUI offenders being discussed in DUI-6 and DUI-7.

DUI-9a / DUI-9b:

These recommendations were voted on and approved in October. In November, they were brought back to the Commission for discussion and sent back to the task force for clarification. These are to be voted on as a new, combined, recommendation.

> On a 3rd and subsequent alcohol-related driving convictions or pending DUI/DWAI charges, if the defendant is granted bond, the conditions of the bond must include supervision and participation in a treatment program (as defined in C.R.S. 42-4-1301.3) 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 the these conditions are not in the interests of justice and that public safety is not endangered by the removal of the conditions.

Discussion:

1. DUI-9a and DUI-9b were clarified and combined. There was some confusion about third and subsequent convictions or pending DUI/DWAI charges. If someone was arrested and acquitted, then the acquittal would not count.
2. Should it apply to the second or third alcohol-related conviction? The task force said that it should apply to the third and subsequent convictions.

Vote on combined recommendation DUI-9a and 9b:

(a) I support it: 16
(b) I can live with it: 1
(c) I do not support it: 3

This DOES meet the 75% requirement to pass a new recommendation.

Drug Policy Task Force - Structure:

In November, the Drug Policy Task Force: Structure Work Group had several recommendations sent back to it for further clarification. For example, the recommendation that possession of psilocybin should now be considered a misdemeanor. If it is a simple misdemeanor, should there be a specified quantity? Other recommendations that were sent back for clarification dealt with habitual criminal changes, the special offender section in school zones, and distribution offenses. The school zones were sent back to the working group because there was discussion of the types of areas that should be included within the 100 foot limit that were previously agreed on.

Crimes Involving Special Offenders

ORIGINAL SP-1 Recommendation (Revision to current law), previously approved but referred back for further work: Limit to 100 feet the current 1,000 foot zone that pertains to the sale, distribution, and manufacture of controlled substances.

Discussion:

1. The overall aspect of SP-1 identifying the zone size was previously voted on and approved. The question that was sent back to the task force was what should be included in the special offender zones.
2. The Commission voted overwhelmingly to reduce the special offender zone from 1000 feet to 100 feet. It was not sent back to deal with the sentencing range of the special offender.
3. The Commission then discussed what, if anything, should be removed from the list of special offender zones. The working group met and decided not to remove any of the special offender zones from the statute.
4. Representative LaBuda is concerned about use of drugs in libraries and is considering legislation. Maureen Cain and Tom Raynes will meet with Representative LaBouda to discuss her possible legislation.

Steve Siegel made a motion to reconsider SP-1; however, his ability to make the motion was challenged because, having voted against the zone size change in November, he did not meet the qualification requiring previous support (the qualification agreed upon at the beginning of this meeting). Pete Hautzinger made a motion to reconsider SP-1. Bill Kilpatrick seconded the motion.

Discussion:

1. Stella Madrid, from the Denver Housing Authority, spoke about the need to keep the 1000 foot special offender zone around public housing. She is currently gathering empirical and quantitative data to support her position. Preliminary and past data can show the impact of the 1000 foot limit on the safety of their residents.
2. From the available nationwide data obtained by the task force, 75% of the arrests for drug sales in a protected zone have no relation to the zone itself. The arrests take place in houses that may simply fall within 1000 feet school or public housing zone. It was a disproportionate penalty to those who live in urban areas.
3. Roger Goodman, a state representative from Washington State spoke. The Brownsburger study done in Massachusetts showed that only 2% of the drug sales near school zones involved the sale of drugs to children. This also has a disproportional affect on people who are poor or people of color.
4. If you reduce the areas around schools, not only are you allowing drugs to be close to schools, you are allowing a criminal element to be closer to schools.
5. How does a mandatory prison sentence affect public housing? It gives due penalties to those individuals who sell drugs near public housing.
6. If 80% of the people who live in public housing are people of color, would it be fair to say that those who are arrested are also people of color? The majority of individuals who are arrested are not residents of the public housing.
7. By reducing the special offender zone, we are not taking away a felony, we are just taking away a mandatory sentence.

Vote on the motion to reconsider SP-1. A vote to reconsider would re-open the topic. A vote not to reconsider would mean keeping the recommendation according to the November approval (adjusting the zones from 1000 ft to 100 ft., feet excluding streets and alleys).

(a) I support it: 8
(b) I do not support it: 12

This DOES NOT meet the 51% requirement to reopen the recommendation.

John Suthers made a motion to reopen discussion on the zones covered by recommendation SP-1. Pete Hautzinger seconded the motion.

Vote on John Suthers' motion:

(a) I support it: 19
(b) I do not support it: 1

This DOES meet the 51% requirement to reopen the recommendation for further discussion specifically addressing zones.

Peter Hautzinger moved to amend recommendation SP-1 to keep the same zones that are currently in statute. John Suthers seconded the motion.

Vote on Peter Hautzginer's amendment to recommendation SP-1:
(a) I support it: 19
(b) I do not support it: 1
This DOES meet the 51% requirement to reopen and discuss the proposed amendment.

REVISED SP-1a: Remove zones from F2 Special Offender and make an aggravated class 3 mandatory sentence for the sale and distribution within zones.
Or
SP-1b: Classify as a special offender – class 2.

Discussion:
1. The change in the classification was not due to a request by the Commission when the recommendation was sent back to the task force for additional work. The task force initiated this proposed modification.
2. The Commission voted to make the sale to a child a class 3 felony. This is a new charge. In reviewing the sanctions being given for distribution, this classification was not consistent with the proposed sanctions.
3. Option "a" makes a distribution to a child in a protected zone (which is 100 feet based on this recommendation) a class 3 felony with a mandatory four year sentence (the bottom of the presumptive range) up to the maximum of the mandatory range.
4. With Option "b" you keep the protected zone but make it a class 2 felony with a minimum mandatory of 8 years (the bottom of the presumptive range) up to the maximum of the mandatory range.
5. The task force made no recommendation on either choice.
6. Question: Doesn't option "a" make a new classification of special offender by having a class 3 felony for two groups – sale to a child and the protected zone? Yes, in current law, all special offender charges are a class 2 felony.

Vote on revised SP-1a:
(a) I support it: 6
(b) I can live with it: 3
(c) I do not support it: 11
This DOES NOT meet the 75% requirement to change the recommendation.

ORIGINAL SP-2 Recommendation, previously approved:

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.

REVISED SP-2:

SP-2 (a) Sale or distribution to a minor any amount with over two years age difference is an aggravated class 3 SUBJECT TO SPECIAL OFFENDER mandatory sentence

Vote on revised SP-2:

(a) I support it: 14
(b) I can live with it: 1
(c) I do not support it: 4

This DOES meet the 75% requirement to change the recommendation.

Crimes Involving Distribution/Possession

When DP-1 was not approved by the Commission, recommendations DP-1 through DP-5 were referred back to the task force for further work.

ORIGINAL DP-1 through DP-5 recommendations, referred back for further work:

- DP-1 – The distribution of up to 4 grams of a schedule I or II substance shall be a class 5 felony.
- 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.
- DP-3 – The distribution of more than 25 grams of any schedule I or II controlled substance shall be a class 3 felony.
- 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.
- DP-5 – The distribution of a schedule III-V controlled substance shall be a class 6 felony.

REVISED to the following:

DP-1 – The distribution of a schedule III-V controlled substance is a class 6 Felony.

Discussion on the revised motion:

1. Puts all the distribution charges into one class felony.

Pete Hautzinger made a motion to not make any changes on drug distribution laws at this time. Don Quick seconded the motion.

Discussion on Pete Hautzinger's motion:

1. The Commission has proposed enough changes to the drug laws for this session.
2. Are the recommendations inconsistent with the drug policy statements? They are.
3. There is a good chance that the changes on the possession laws and the emphasis on treatment will move forward. If we suggest changes with the distribution laws and bring them forward, there is a chance the legislature will vote down everything.
4. The sharing of drugs is usually less than four grams.

Vote on Pete Hautzinger's motion:

(a) I support it (I do not want to address changing distribution laws): 12
(b) I do not support it (I want to discuss distribution laws): 7

Note that because the motion was to *not* address distribution laws the motion also served as a vote whether to reopen the distribution recommendations. A vote of 51% in support would mean the Commission would not address distribution and, consequently, not address the re-worked distribution recommendations. The vote was in favor of *not* addressing the items. Thus, all of the distribution recommendations were removed.

> **DP-2 -** The distribution or possession with intent to distribute of any schedule I or II drug including ketamine/flunitrazipam and psilocybin, any amount:
>
> a) without remuneration shall be a class 4 felony; with remuneration a class 3 felony
>
> *Or*
>
> b) shall be a class 3 felony regardless of remuneration

No vote. See DP-1 above.

ORIGINAL CS-3 Recommendation, previously approved:
Possession of any amount of schedule I and II substance in excess of 4 grams (2 grams of meth) shall be a class **4** felony.

REVISED to the following:
Possession of any amount of schedule I and II substance in excess of 4 grams (2 grams of meth) shall be a class **5** felony.

Discussion of task force work:

1. The Commission had voted to make this offense a class 4 felony but review of the distribution offenses led the Structure group to believe that this offense, a simple possession without any intent to distribute, should be a class 5.
2. There is no need to reconsider this. The structure group suggested that this shall be a class 5 felony based on the reduction of the distribution charges. The Commission voted not to vote on distribution charges.
3. Class 5 and 6 possessors and users are the individuals who would benefit from more treatment.

Doug Wilson made a motion to reconsider CS-3. Alaurice Tafoya-Modi seconded the motion.

Vote to reconsider CS-3:

(a) I support: 8
(b) I do not support: 10

This DOES NOT meet the 51% requirement to reopen the recommendation.

ORIGINAL CS-6 Recommendation, previously disapproved:
Possession of Psilocybin and psilocin (*mushrooms are currently a schedule I controlled substance*) shall be reduced to a class 1 misdemeanor.

REVISED to the following:
Simple possession of psilocybin and psilocin in an amount of four grams or less is a class 1 misdemeanor. Any other violation concerning these substances, whether possession of a greater amount or distribution, manufacture, dispense, sell or distribute shall be the same as for any other schedule I controlled substance.

Discussion:

1. Should we carve out a place for psilocybin mushrooms and make them a misdemeanor? In discussion with law enforcement and users, it seemed that up to four grams would be a class 1 misdemeanor. Any other amount greater than four grams would be treated as a schedule I controlled substance.
2. CS-6 was voted on in October and it failed. Do we want to reconsider CS-6?
3. No motion was made, therefore, the original disapproval of CS-6 stands.

MJ 14 (new): **Distribution of less than 4 oz of marijuana shall be a class 1 misdemeanor.**

Discussion:

1. Current law (18-18-406(8)(b)) makes it a class 4 felony to distribute marijuana. There is a statutory presumption under current law that the transfer of less than one oz. without remuneration is possession.
2. This is a new recommendation. This recommendation had not been presented to the Task Force prior to this commission meeting.
3. Distribution of less than 4 ounces without remuneration was a petty offense. The issue of distribution with remuneration was never discussed.

Doug Wilson made a motion to discuss MJ-14. Seconded by Alaurice Tafoya-Modi.

Vote on MJ-14:

(a) I can support it: 8
(b) I can live with it: 2
(c) I cannot support it: 7

This DOES NOT meet the 75% requirement to accept this new recommendation.

ORIGINAL FR-1 Recommendation, previously disapproved:
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.

REVISED FR-1: No conviction for simple possession of a schedule I or II controlled substance for an amount of four grams or less shall be subject to sentence enhancement as an habitual criminal.

Discussion:

1. A class six simple possession felony cannot be used as a triggering mechanism for a habitual criminal filing.
2. This was disapproved previously. Do we have a motion to reconsider?
3. Tom Quinn made a motion to reconsider FR-1. His ability to make the motion was questioned. Having previously approved the recommendation, Tom Quinn was qualified to move for reconsideration.
4. No second to reconsider was made. Previous disapproval stands.

Drug Policy Task Force – Policy:

D-1 Identify working group to develop funding strategy.

Discussion:

1. It was the intention of the Commission to identify a working group for the purpose of developing a funding strategy to expand treatment resources. This is necessary to ensure the successful implementation of the recommendations presented here.
2. This group has already been formed and has met twice.
3. This group will also research where resources are and where they are not.
4. Can we get a treatment plan for the whole state?

D-2 Ensure statutory reforms are consistent with sentencing policy, evidence-based practices and recidivism reduction.

D-3 Establish a transparent mechanism to ensure that fiscal savings resulting from CCJJ recommendations are reallocated toward treatment programs.

D-4 Policy statement regarding the reform of Colorado drug sentencing statutes: Developed in part as a proposed replacement of C.R.S. 18-18-401.

Providing community-based treatment for offenders who suffer from alcoholism and drug abuse--and mental health problems associated with these addictions--will improve public safety by reducing the likelihood that such individuals will have further contact with the criminal justice system. This strategy will provide substantial savings to the taxpayer. The research unequivocally finds that substance abuse treatment reduces drug use and criminal behavior. Research demonstrates that successful treatment:

a) occurs at the earliest possible opportunity;
b) is based on an individual treatment plan that incorporates natural communities and pro-social supports;
c) includes family members when they offer a positive impact on the recovery process; and
d) provides a continuum of community-based services.

To reduce recidivism, alcoholism, illicit drug use disorders, and mental illnesses related to these addictions requires therapeutic intervention rather than incarceration alone. Prison should be reserved for violent, frequent or serious offenders. Savings that are achieved from reduced confinement of drug offenders shall be directed toward the counties to implement evidence-based sentencing and treatment interventions.

Recommendations related to the above policy statement:

- The Commission on Criminal and Juvenile Justice recommends that the public policy of Colorado recognize alcoholism and substance use disorders as illnesses and public health problems affecting the health, safety, economy, and general welfare of the state.

- The Commission recommends that the Colorado General Assembly seek to improve public safety, reduce recidivism, and promote substance abuse treatment by implementing a system of evidence-based sentencing practices and community-based interventions that focus on the individual defendant.

  This approach will combine accountability, risk and needs assessments, criminal penalties, and appropriate treatment for individuals who are addicted to substances and convicted of criminal offenses.

  This system will differentiate among the following types of individuals:
  (a) a defendant who is an illegal drug user but is not addicted or involved in other criminal activity;
  (b) a defendant who is addicted but is not otherwise engaged in other criminal activity;
  (c) a defendant who is addicted and engaged in nonviolent crime to support their addiction;
  (d) a defendant who is addicted and engaged in violent crime; and
  (e) a defendant who is engaged in drug trafficking or manufacture for profit who is not addicted to illegal drugs

- Persons addicted to or dependent on controlled substances, and whose criminal behavior is associated with the addiction should, upon conviction, be sentenced in a manner most likely to promote rehabilitation, and which is consistent with public safety.

- For those sentenced to the community for a drug crime and are found to be addicted to or dependant on controlled substances, meaningful interventions should be available and applied to non-violent as well as violent offenders based upon individual needs and demonstrated risk to the community.

- The manufacture, distribution and delivery of illicit controlled substances have a substantial and detrimental effect on the health and general welfare of the people of this state, especially children. As such, persons who habitually or commercially engaged in the trafficking of illicit substances and prescription drugs present a menace to public health and safety.

- The purpose of sentencing occasional users and experimenters is to induce them to shun further contact with controlled substances and to learn acceptable alternatives to drug abuse.

This approach requires differentiating recreational or one-time users with few or no addiction treatment needs from those who are chemically dependent and require treatment.

- Because addiction is a chronic disease, drug relapse and return to treatment are common features in the path to recovery for individuals with substance use disorders. Therefore, judges, district attorneys, public defenders, private attorneys, probation officers, parole officers, and other professionals involved in the criminal justice system must anticipate, recognize, plan for, and appropriately respond to the potential for relapse that may occur for individuals involved in treatment.
- The purpose of sentencing defendants with treatment needs can be achieved by promoting evidence-based sentencing of individuals convicted of drug-related offenses. Strategies include the following:

  a) Allowing judges and other judicial officers to use available information and resources to develop informed and flexible evidence-based sentencing plans that meet the needs of the individual offender, that

  i) ensure appropriate safeguards to protect the defendant's rights while assigning the individual to appropriate treatment programs, and

  ii) are based on, when practical, the risk level and treatment needs of the offender as determined by objective assessment tools.

  b) Allowing for the appropriate combination of supervision and treatment since research indicates that this combined approach has the greatest likelihood of recidivism reduction and protecting the public.

  c) Allowing for consideration of the significant collateral consequences that a criminal record has on employment and lifetime earnings of drug-related convictions, and how such convictions can undermine successful community reintegration.

  d) Using treatment programs with demonstrated rates of success.

  e) Targeting interventions to offenders with moderate- to high-level treatment needs rather than those identified with low-risk and low-needs.

  f) Targeting individuals that could benefit from appropriate treatment programs.

D-5 Design differential approaches for defendants.

D-6 Community-based treatment should be expedited for alcohol and drug-involved defendants.

D-7 Intermediate sanctions and rewards should be authorized when working with drug-involved offenders.

D-8 Judicial districts should develop a collaborative decision-making process for cases involving drug-addicted offenders.

D-9 Those prosecuting drug-involved defendants must proactively address minority over-representation.

D-10 Modify court sanctions for first-time offenders to help individuals maintain or obtain employment.

D-11 Allow felony arrest records to be sealed when the conviction is for a misdemeanor drug crime.

D-12 Assess all drug-involved defendants for risk and treatment needs as early as possible in the criminal court process.

D-13 Remove barriers to conducting risk and treatment needs assessments while protecting a defendant's Constitutional rights.

D-14 Treatment programs that receive state funding should be evaluated and evaluation data should be coordinated through the Division of Behavioral Health at the Colorado Department of Human Services.

D-15 The Division of Criminal Justice, State Judicial Branch, and the Division of Behavioral Health should collaborate in the evaluation of alcohol and drug treatment programs.

D-16 Develop empirically-based core competencies and standards of practice in offender management along with standardized training and regulation for providers working with offenders.

D-17 Amend state law to include a treatment provider and chief judge on the SB 318 treatment review boards.

Tom Quinn made a motion for the acceptance of the policy recommendations as a package. Reo Leslie seconded the motion. We can revisit non-substanative changes.

Vote on D-1 through D-17 as a package:

(a) I can support it: 13
(b) I can live with it: 3
(c) I do not support it: 1

This DOES meet the 75% requirement to pass these recommendations.

Wrap-up:

1. Please look at the Post-Incarceration Task Force's Administrative Release Guideline Instrument prior to the January meeting.
2. The January meeting is likely to be a full day meeting.

The meeting adjourned at 4:27 p.m.