[Handout]

# Drug Policy Task Force Recommendations
## Voted on by CCJJ on November 12, 2010

**Unintended consequences of DUI Bill (Technical corrections for HB 10-1347):**

Shall the CCJJ recommend that technical corrections be made to any of last year's multiple offense DUI provisions as set forth in HB101347 that inadvertently created unintended consequences on first DUI violations?

**DUID - Marijuana Per Se:**

**DUID – 1:** Establish a "Per Se" violation for Driving Under the Influence of Marijuana by establishing that it shall be an unclassified misdemeanor traffic offense for any person to drive a motor vehicle or vehicle when the person has a level of 5 nanograms of THC/mL whole blood or more at the time of driving or within two hours after driving.

**DUID – 2:** Amend or clarify the express consent statute as necessary to clearly establish that in the event an officer establishes probable cause to believe that a person is Driving Under the Influence of Marijuana, the person shall submit to a blood test, if necessary.

**DUID – 3:** Amend current administrative laws relating to driver's license revocations and hearings on revocation as applicable to establish a mandatory license revocation of three months for a first offense (DUI/DUID), one year for a second offense (DUI/DUIC) and two years for a third or subsequent offense (DUI/DUID) resulting from Driving Under the Influence of Marijuana "per se."

**DUID – 4:** Amend the administrative laws where necessary to establish that a violation and/or conviction for Driving Under the Influence of Marijuana Per Se shall mirror the impacts of conviction or a per se DUID violation related to the administrative penalties and procedures for reinstatement of a license, insurance via SR-22 and court ordered treatment programs as reasonably necessary to effect the purpose of treating a DUID marijuana as seriously as a DUI alcohol offense.

**DUID – 5:** Clarify wherever necessary in the DUI and administrative statutes the inclusion of DUID/Marijuana Per Se as a qualifying offense for application any multiple offense DUI/DWAI/habitual/UDD/vehicular homicide and assault convictions and penalties.

[Handout]

**Parole Pilot Program:**

**Creation of a parole pilot program to further encourage and facilitate parole approval and services for inmates currently incarcerated with a "controlling sentence" for drug possession or use.**

Develop legislation to establish a pilot program creating a presumption, subject to the final discretion of the Parole Board, that the Parole Board grant parole to those inmates currently convicted and incarcerated with a "controlling sentence" for drug possession or use occurring prior to the enactment of HB 10-1352 provided they meet core criteria. The criteria shall include but not be limited to that an inmate: be at or past his or her parole eligibility date (PED); have no current or prior felony convictions for violent crimes, crimes against children, weapons offenses or a sex offense; have a record of acceptable institutional conduct to include no Class I COPD convictions within 12 months, no Class II COPD convictions within 3 months; and hasn't refused to participate in any DOC recommended programs; no active felony or immigration detainer; and have an approved parole plan including information relating to treatment need level and amenability to treatment. While such a presumption of release shall exist if the conditions are met, the Parole Board shall always retain the discretion to deny parole when appropriate. All or some of any cost savings from DOC resulting from this program shall be reinvested into pre-release services inside of DOC and toward expanding current funding for community based behavioral health treatment and wrap-around services for parolees. DOC and the Parole Board shall provide an annual status report to the General Assembly as to the impact of this program.

FURTHER DISCUSSION:

In 2010, HB 1352 was signed into law which, in part, lowered sentences for convictions for drug use or possession offenses and redirected cost savings from corrections to behavioral health treatment. HB 1352 was based on recommendations approved by the CCJJ that determined that supervision and treatment in the community would be a more effective use of resources than the current system of escalating punishments that often results in a prison sentence for these types of offenders.

The sentencing reforms in HB 1352 cannot be applied retroactively to those inmates who committed a drug use or possession offense prior to its enactment. According to information received from the Department of Corrections, as of August 2010 there were approximately 1,600 inmates in prison whose governing sentence was for drug use/possession who were sentenced prior to the enactment of HB 1352. Of this group, 92% are or will be past their parole eligibility date by the end of the year.

This parole pilot program is a strategy which aims to apply the new philosophy endorsed by the CCJJ to those sentenced under the old law. It creates an incentive for inmates. Providing for more comprehensive pre-release planning, community-based treatment and support services to parolees increases the likelihood of success on parole and recidivism reduction.

**Habitual Offenders:**

Simple possession offense – (**Class 6** felony or attempt or conspiracy to commit simple possession) - shall not be used as a qualifying offense (i.e. the new offense) for the filing of habitual criminal offense charges under CRS 18-1.3-801.

This change of law would be effective only for new offenses committed after the 2011 effective date of the bill.

[Handout]

**Sealing of Records:**
**For new crimes committed after 2011 effective date of bill:**

**#1)** Drug offense PO – can be sealed three years from final disposition of the case or release from supervision whichever is later. Sealing is automatic upon filing if pay the fee and prove there is no arrest, charge or summons resulting in conviction or pending charges within the required waiting period. No notice to DA required.

**#2)** Drug offense M2 and M3 - can be sealed three years from final disposition of the case or release from supervision whichever is later. Sealing is automatic if notice is sent to the DA and no objection is filed and petitioner demonstrates that there is no arrest, charge or summons resulting in a conviction or pending charges during the waiting period.

**#3)** Drug offense M1 – can be sealed five years from final disposition of the case or release from supervision whichever is later. Sealing is automatic if notice is sent to the District Attorney, no objection is filed by the District Attorney, and petitioner demonstrates there is no arrest, charge or summons resulting in conviction or pending charges during the waiting period.

**#4)** Drug possession – F6 and F5 - can be sealed seven years from final disposition of the case or release from supervision whichever is later. Sealing requires filing of a petition and notice to the DA. If no objection by DA, it is discretionary with the court whether there needs to be a hearing after review of the submission and determination if statutory criteria met. (Same as current practice but is codified.) The petitioner must demonstrate there is no arrest, charge or summons resulting in conviction or pending charges during the waiting period.

**#5)** Any other drug felony offenses – 10 years from final disposition or release from supervision. This will be allowable only with DA approval (veto power). Court review required re: the statutory factors. The petitioner must demonstrate there is no arrest, charge or summons resulting in conviction or pending charges during the waiting period.

**#6)** DA approval shall be guided by the current statutory criteria in CRS 24 -72-308.5. Add this concept into the statutory language to provide for some consistency and transparency.

**For convictions before the 2011 effective date of the bill:**

**#7)** The time lines as stated above shall be applicable but DA approval shall always be required if DA approval is required under current law.(DA approval is required for all drug offenses committed before July 1, 2008. For possession offenses between July 1, 2008 and July 1, 2011 – assuming that to be the effective date of this new bill - there will be a ten year waiting period and DA notice. Court approval shall always be required.)

**One possible exception:**

**#8)** Allow sealing for all old drug petty offenses without DA approval (veto power) but with court approval.

**#9)** Under current law, there is no limitation on number of cases/criminal episodes that are eligible for sealing after the statutory waiting period. Statute should be amended to include an additional criterion

that the court and the DA shall consider in consenting to/granting a petition to seal the number of convictions and the dates of the offenses.

**#10)** Amend 24-72-308.5(2)(d) to state that defendant and law enforcement agencies may properly reply upon inquiry that no "public" conviction records exist with respect to the defendant.