

DRUG POLICY TASK FORCE Structure Working Group

RECOMMENDATION PRESENTED TO THE CCJJ
November 9, 2012

FY13-DP #1 Revise drug sentencing classifications and ranges.

Recommendation

The Drug Policy Task Force presents this proposal for a rewrite of the Controlled Substances Act that includes a separate sentencing framework based on a drug crime classification that has four felony offense levels, two misdemeanor offense levels and petty offenses. (Note: the current petty offense level will continue as in current law and is not addressed here.) Each felony offense level includes both a presumptive and aggravated sentencing range, except for the DF1. Each felony level also has a corresponding period of parole that would be a mandatory provision of any prison sentence.

Separate drug sentencing scheme

Drug Crime Level	Presumptive Range	Aggravated Range	Parole Period
DF 1	8 – 32 years Mandatory Minimum 8 yrs	none	3 years
DF 2	4-8 years	8-16 years	2 years
DF 3	2-4 years	4-6 years	1 year
DF 4	6-12 months	1-2 years	1 year
DM 1	3-18 months		
DM 2	0-12 months		

OTHER PROVISIONS:

- 1a. Mandatory sentencing. All DF1 offenses carry a mandatory minimum sentence of 8 years to the Department of Corrections. There is only one sentencing range for DF1 crimes which is 8 to 32 years.
- 1b. Continue and encourage all current plea bargaining options. The “wobbler” as described below will not be a replacement for current options such as misdemeanor plea or a deferred judgment. No changes to current probation statutes except as described below.
- 1c. Support the expansion of diversion programs that is being developed and recommended by the comprehensive sentencing task force. Divert the appropriate amount of cost savings from the CCJJ approved theft statute reform, if possible and approved by CCJJ, to expand District Attorney diversion programs. Attempt to develop a dedicated fund for DA diversion with the highest priority given to those districts that currently have no program at all.

FY13-DP #1 Revise drug sentencing classifications and ranges. (continued)

- 1d. Use of deferred judgment. Give the court discretion to accept an admission to violation of the deferred judgment or make a finding of a violation of the deferred judgment without revocation the deferred and entering the judgment of conviction. This requires a change to 18-1.3-102(2) changing the “shall” to “may” for drug offenses. This is consistent with the need for exhaustion of sanctions described below.
- 1e. In order to accommodate the filing structure of drug courts and other concerns of stakeholders, all drug possession offenses for schedule I/II controlled substances will continue to be a felony (DF4). However, there are two additional provisions:
- All possession offenses for schedule I/II shall be a DF4 and will not be weight-based like current law.
 - Creation of a “Wobbler” in state law. If a defendant is convicted of an eligible DF4 offense, the felony conviction would “wobble” to a misdemeanor upon successful completion of a probation or community corrections sentence. The wobbler is available for the first two convictions (which includes a diversion or a prior dismissed deferred or a prior “wobbled” case”) of the following DF 4 drug offenses: 1) simple possession when the possession quantity is 4 grams or less of Schedule I/II or 2 grams of meth **OR HEROIN**, 2) the DF4 MJ/hash possession offense, 3) the transfer without remuneration of the small quantities sch I/II (TBD language) and 4) 18-18- 415 fraud and deceit crimes. Defendants are eligible for the wobble even if the defendant goes to trial. Exclusions from eligibility are: 1) prior conviction for a COV and 2) ineligibility for probation pursuant to 18-1.3-201.
- 1f. There will be statutory language regarding exhaustion of remedies prior to sentencing a defendant to prison for a D4 felony offense. (This is important in trying to preserve defendant’s “wobbler” opportunities.) While prison is available as a sentence in these cases, we recommend an exhaustion of remedies model for courts to follow and for all parties to consider in sentencing. Prior to revocation of community supervision or sentence, the court must determine that reasonable and appropriate response options to the violation(s) have been exhausted by the supervising agencies given: 1) the nature of the violation(s), 2) the treatment needs of the offender and 3) the risk level of the offender. The court must determine that a sentence to prison is the most suitable option given the facts and circumstances of the individual case and available resources. In making this determination, the court should, to the extent available, review the information provided by the supervising agency which shall include, but shall not be limited, to a complete statement as to what interventions have been tried and failed, what other community options are available (including lateral sanctions or placement for the community corrections clients) and the reasons why any other available options appear to be unlikely to succeed if tried or would present an unacceptable risk to public safety. Under current law, the defendant is entitled to a hearing on probation revocation. We recommend that for community corrections clients, if defendant makes a written request, there will be a court review (details still need to be worked out with community corrections if paper review or appearance review and the logistics) of the termination from Community Corrections when there is a recommendation to DOC. We have previously discussed this idea with representatives from Community corrections and need to do more work on this.
- 1g. COCCA (Colorado Organized Crime Act) remains the same. The COCCA statute would need to be amended to include the newly reframed drug crimes eligible for use as predicates. Address the habitual offender sentencing provisions on drug offenses. (still working on those details but anticipate a unanimous recommendation.)

FY13-DP #1 Revise drug sentencing classifications and ranges. (continued)

- 1h. Aggregation: Preserve 18-18-405(5) which allows drug quantities to be aggregated for purposes of establishing crime level and sentencing requirements if sale/dist./possess w/intent dist I/II occurs twice or more within a period of six months so long as defendant has not been placed in jeopardy for the prior offense or offenses

- 1i. Clarification that this drug sentencing scheme applies only when the defendant is sentenced for an offense under 18-18. If the defendant is convicted of another criminal offense, sentence shall be imposed as provided by current law. Court shall retain all current ability to imposed concurrent or consecutive sentences as provided by law.

- 1j. Allow for a PR bond (with treatment conditions when appropriate) more readily on DF cases involving possession if defendant is not assessed as high risk on bond (as determined by a researched based risk assessment instrument). But allow for a defined waiting period on this to allow fast track drug courts to process cases as appropriate. NOTE: this is an issue that will also be included in the Bail sub-committee's recommendations to CCJJ. It is important that we preserve the Denver Drug Court and the court's fast track processes so we will need to craft language that will not affect that.

- 1k. No sealing waiver required on plea or included in the Rule 11. Make statute clear that a district attorney may not require a defendant to waive his/her right to petition the court to seal an eligible criminal conviction as part of plea negotiations or in the Rule 11. District Attorneys with the power to veto or object to a petition to seal should make best efforts to conduct an individualized assessment of the merits (or lack thereof) of a petitioner's request to seal prior to exercising that power.

- 1l. Develop a data collection system for this legislation that will allow for assessment of what is happening statewide in the implementation of these changes, transparency regarding the policies and practices of District Attorneys and other criminal justice agencies, collating and tracking sentences given by the court in these cases, and allowing for assessment of outcomes. Use cost savings from bill to fund this effort, as needed.

- 1m. In any legislation developed pursuant to drug sentencing reform recommendations, include a requirement of a post-enactment review in 3 years to use the data collected and assess implementation and make any appropriate recommendations for change.

- 1n. Change state law to allow probation ~~to create and~~ **TO** determine who is appropriate for an intensive supervision program ~~for~~ **TO INCLUDE** misdemeanor offenders. Statute should include a requirement that any placement of a ~~misdemeanor~~ defendant onto intensive supervised probation be based on a research-based risk/need assessment that indicates that intensive supervision is appropriate.

FY13-DP #1 Revise drug sentencing classifications and ranges. (continued)

- 1o. Change state law to allow misdemeanor drug defendants to be required to participate in a residential treatment program as a condition of probation. Statute should include a requirement that placement in a residential treatment program as a condition of probation must be based on an assessed treatment need level that indicates IRT is appropriate and the Correctional Treatment Fund appropriation should be available to pay for the treatment. If the residential treatment program is offered through a community corrections program, the community corrections probation and community corrections board must both accept/approve probation client prior to placement.

- 1p. Sync the quantities and classifications of bath salts, salvia and cannabinoids to the structure as necessary and appropriate. Also address flunitrazipam and ketamine as appropriate and any other pharmaceuticals, as needed.

List of 18 – 18 Crimes

DF-1 Felony:

Presumptive range: 8- 32

Mandatory minimum of 8 years (DOC)

18-18-405: distribution/manufacture/possession with intent to distribute more than 225 grams of Sched I/II (more than 8 ounces) or more than 112g of meth **OR HEROIN** (more than 4 oz)

18-18-407(1)(b): offense was part of a pattern of manufacturing, sale, dispensing, or distributing which constituted a substantial source of that person's income and in which the person manifested special skill or expertise.

18-18-407(1)(c): offense was part of a conspiracy to distribute, manufacture, sell drugs and the defendant initiated, organized, plan, finance, direct, etc part of conspiracy.

18-18-407(1)(d): introduction, distributed, or imported into the state more than 14 grams of any schedule I or II or more than 7g of methamphetamine **OR HEROIN**.

18-18-407(1) (e): sale, distribution, possession or importation in excess of 50 pounds of marijuana or 25 pounds of concentrate. (Also, 18-18-406: distribution over 50 pounds of marijuana or over 25 pounds of concentrate.)

18-18-407(1) (f): use or possession of deadly weapon or firearm during commission of drug crime (NOTE: requires sentencing in the aggravated range)

18-18-407(1)(g): use of a child for the purposes of drug dealing

18-18-407(1)(h): offense was part of a continuing criminal enterprise- 5 or more people involved in 2 or more drug crimes on separate occasions.

18-18-407(2)(a): drug distribution/manufacture within or upon the groups of school, vocational school or public housing development or within 1,000 feet of the perimeter of any school, public housing, etc.

18-18-405: sale of a schedule I or II controlled substance (any quantity) other than marijuana to a minor by adult and the adult is at least 2 years older than the minor

18-18-406: sale to minor of 2.5 lbs or more of marijuana or more than 1 lb of concentrate (hash) if adult is at least 2 years older than the minor

DF-2 Felony

Presumptive range: 4-8 years

Aggravated range: 8-16 years

18-18-405: distribution/manufacture/possession with intent to distribute more than 14 grams up to 225 grams of Sched I/II (1/2 oz – 8 ounce) or more than 7g – 112g of meth **OR HEROIN** (1/4 oz–4 oz)

18-18-405: sale of a schedule III, IV, or V controlled substance other than marijuana to a minor by adult and the adult is at least 2 years older than the minor

18-18-406: distribution of more than 5 pounds of marijuana but not more than 50 pounds of marijuana or more than 2 1/2 pounds but not more than 25 pounds of concentrate

18-18-406(7): sale/transfer to a minor by adult of more than 6 oz of marijuana but not more than 2.5 pounds or more than 3 oz but not more than 1 pound of concentrate if adult is at least 2 years older

18-18-406.2 –sale of synthetic cannabinoids or salvia by adult to minor and adult is more than 2 years older.

18-18-412.5: unlawful possession of ephedrine, pseudoephedrine, or phenylpropanolamine with intent to manufacture methamphetamine and amphetamine.

DF-3 Felony

Presumptive range: 2-4 years

Aggravated range: 4-6 years

18-18-405: distribution/manufacture/possession with intent to distribute up to 14 grams of Sched I/II (up to 1/2 oz) or up to 7 grams of meth **OR HEROIN** (1/4 ounce)

18-18-405: distribution of more than 4 grams of schedule III and IV

18-18-406: distribution of more than 12 ounces but not more than 5 pounds of marijuana or more than 6 ounces but not more than 2 ½ pounds of concentrate; cultivation of more than 30 marijuana plants

18-18-406: knowingly process or manufacture marijuana or concentrate or knowingly allow land owned, occupied or controlled for same except as authorized pursuant to part 3 of article 22 of title 12 CRS.

18-18-406(7): sale/transfer to a minor by adult of more than 1 oz but not more than 6 oz of marijuana or more than 1/2 oz but not more than 3 oz of concentrate if adult is more than 2 years older

18-18-406.2: distribution, sale of synthetic cannabinoids or salvia divinorum

18-18-412.7: sale or distribution of materials to manufacture controlled substances

18-18-416: inducing consumption by fraudulent means

18-18-422: distribution of imitation controlled substance (adult to minor and adult at least 2 years older)

FY13-DP #1 Revise drug sentencing classifications and ranges. (continued)

18-18-423: manufacture, deliver or possess with intent a counterfeit substance

DF-4 Felony

Presumptive range: 6-12 months

Aggravated range: 1-2 years

18-18-403.5: simple possession of Schedule I/II drugs or ketamine/flunitrazipam.

18-18-405: transfer without remuneration of up to up to 4 grams of Schedule I/II or up to 2 grams of meth
OR HEROIN.

18-18-405: manufacture, dispense, sell, distribute, possession with intent 4g or less of schedule III or IV

18-18-406: cultivation of more than 6 but less than 30 marijuana plants

18-18-406: possession of over 12 ounces of marijuana or over 3 ounces of hash

18-18-406: distribution of more than 4 ounces but not more than 12 ounces of marijuana or more than 2 ounces but not more than 6 ounces of concentrate

18-18-415: obtaining controlled substance by fraud and deceit

18-18-406(7): sale/transfer to a minor by adult of 1 oz or less of marijuana or 1/2 oz or less of concentrate if adult is more than 2 years older

18-18-422: distribution of imitation controlled substance (adult to adult)

DM-1 Misdemeanor (sentence range 6-18 mos)

18-18-403.5 (2)(b)(II)(c): possession schedule III, IV, V (except flunitrazepam and ketamine)

18-18-405: transfer with no remuneration of 4 grams or less of schedule III, IV

18-18-405(2)(a)(IV)(A): sale/distribution of schedule V (with or without remuneration)

18-18-406(4)(b): marijuana possession more than 6 ounces but not more than 12 ounces or 3 oz or less of concentrate

18-18-406: sale/distribution of 4 oz or less of marijuana or 2 ounces or less of concentrate

18-18-406.5: unlawful use of marijuana in a detention facility

18-18-406(7.5)(a): cultivation of up to 6 marijuana plants, **EXCEPT AS OTHERWISE PROVIDED BY AMENDMENT 64.**

18-18-411: maintaining, renting or making available property used for dist/manufacture of controlled substances

18-18-422(3): promotion of distribution of imitation controlled substances via advertising

DM-2 Misdemeanor (sentence range 0-12 mos)

- 18-18-404(1)(a): use of scheduled drugs
- 18-18-406(2): failure to appear in court on marijuana summons
- 18-18-406(4)(a) possession of more than two ounces but not more than 6 ounces of marijuana
- 18-18-406.1: unlawful use or possession of synthetic cannabinoids or salvia divinorum
- 18-18-412: abusing toxic vapors
- 18-18-412.8: retail sale or purchase of meth precursor >3.6g in 24 hours; sale to minor
- 18-18-414(e-n): pharmacy and hospital violations related to refills on sched III, IV, V, failure to maintain required records, failure to obtain required license.... etc. (currently just listed as “misdemeanor” without class level)
- 18-18-429: sale/delivery or manufacture with intent to deliver drug paraphernalia
- 18-18-430: advertising to promote sale of drug paraphernalia

Petty Offense

- 18-18-406(1): marijuana possession 2ounces or less, **EXCEPT AS OTHERWISE PROVIDED BY AMENDMENT 64.**
- 18-18-406(3)(a)(I): public display or consumption of 2 ounces or less of marijuana
- 18-18-406(5): transfer without remuneration of 2 ounces or less of marijuana
- 18-18-413: authorized possession of controlled substance in wrong container
- 18-18-428: possession of drug paraphernalia

Proposed Crime Classification Overview
Scheduled controlled substances

Crime	Misd 2 (0-12 mos)	Misd 1 (6-18 mos)	Felony D4 PR: 6-12 mos AR: 1-2 years	Felony D3 PR: 2-4 yrs AR: 4-6 yrs	Felony D2 PR: 4-8 yrs AR: 8-16 yrs	Felony D1 PR: 8-32 yrs Man Min 8 yrs
Drug Use	Any drug					
Possession III, IV, V		Any amount				
Possession I/II & fluni/ketamine			Any amount			
Transfer/sharing		Sch III/ IV	4g or less-Sch I/II 2g or less- meth/ heroin			
Sale-sched V		Any amount				
Sale-imitation substance			to adult	to minor		
Sale-Sch III/IV			4g or less	>4g		
Sale-schedule I/II				14g or less (1/2 oz or less)	>14g -225g (>1/2 oz-8oz)	>225g (>8 oz)
Sale-meth/ heroin				7g or less (1/4 oz or less)	>7g – 112g (>1/4 oz –4oz)	>112g meth/ her. (>4 oz)
Sale to minor & adult is +2yrs older than minor					Sch III, IV, V	Sch I, II
Importation I/II						>14g; >7g meth/ heroin

Scheduled Drugs - definition

Schedule I drug - has a high potential for abuse; has no currently accepted medical use in the US; and lack accepted safety for use under medical supervision. Examples include: heroin, psilocybin (mushrooms), LSD, GHB, peyote

Schedule II drug - has a high potential for abuse; currently accepted for medical use in the US; and abuse may lead to dependence. Examples include: cocaine, methamphetamine, oxycodone, morphine, fentanyl

Schedule III drug - has a potential for abuse that is less than drugs included in schedules I/II; has currently accepted medical use in US; and abuse may lead to moderate or low dependence. Examples include: Vicodin

Schedule IV drug - has a low potential for abuse relative to drugs in schedule III, has currently accepted medical use in US, and abuse may lead to limited dependence relative to drugs in schedule III

Schedule V drug - has a low potential for abuse relative to substances included in Schedule IV, has currently accepted medical use in treatment, and abuse may lead to limited dependence relative to drugs in schedule IV

Marijuana and Concentrate Offenses (where quantity dictates crime level)

Crime	Petty offense	Misd 2 (0-12mos)	Misd 1 (6-18 mos)	Felony D4 PR: 6-12 mos AR: 1-2 years	Felony D3 PR: 2-4 yrs AR: 4-6 yrs	Felony D2 PR: 4-8 yrs AR: 8-16 yrs	Felony D1 PR: 8-32 yrs Man Min 8 yrs
Possession MJ	2 oz or less	>2oz - 6oz	>6 -12oz	> 12 oz			
Poss of concentrate-hash			3 oz or less	>3 oz			
Transfer/share MJ	2 oz or less						
Cultivation MJ			up to 6	>6 - 30plants	> 30 plants		
Sale/distribution MJ			4 oz or less	> 4oz - 12oz	>12oz - 5 lbs	>5 lbs -50 lbs	> 50 lbs
Sale concentrate-hash			2 oz or less	>2oz - 6 oz	>6oz - 2.5lbs	>2.5lb - 25lbs	> 25 lbs
Sale to minor MJ & adult +2yrs older				1 oz or less	> 1 oz - 6 oz	>6oz - 2.5 lbs	>2.5 lbs
Sale to minor Hash & adult +2yrs older				½ oz or less	>1/2oz – 3oz	>3oz-1 lb	> 1lb

Discussion

This proposal is consistent with the policy goals of CCJJ, addresses most of the issues as identified in SB 12-1310 aka SB 12-163 and is a compromise of thoughts and ideas that make a thoughtful and well-reasoned sentencing scheme.

Successful drug treatment programs and drug courts commit to recovery. Colorado has moved a substantial amount of dollars into treatment, has expanded the eligible offenders and the permissible uses of those dollars and, with this proposal, members of the Drug Policy Task Force have addressed most of the concerns raised during last year’s legislative session.

However, it is extremely important that many options other than incarceration are needed to address the drug problem we have in this state and country. The Commission should continue to explore civil and medical/health focused strategies, particularly as they may be effective in addressing the growing problem of prescription drug abuse/misuse. The idea is to expand our approaches and the “buckets” that can deal with this health/criminal justice problem. While we need a bit more time to detail those proposals, they are a very important part of this strategy.

The Commission considers the following important evidence-based information from its 2010 White Paper:

- Providing community-based treatment for offenders who suffer from alcoholism and drug abuse – and mental health problems associate with these addictions – will improve public safety by reducing the likelihood that such individuals will have further contact with the criminal justice system. Research unequivocally finds that substance abuse treatment reduces drug abuse and criminal behavior.
- Prison should be reserved for violent, frequent or serious offenders.
- High rates of recidivism, high rates of substance use disorders in the offender population, and new research on the effect of addiction on the brain and behavior suggest it is time for a new approach.
- Client progress in early recovery is often marked by episodes of perceived stress, resumed drug use or full-blown relapse, and multiple treatment admissions. Too often treatment episodes are brief, sometimes lasting only a few weeks. This approach to care has been based on the notion that a client who enters and completes a single episode of care should then be able to maintain abstinence and continue the recovery process independently. Although some individuals can successfully recover within this framework, more than half of the clients entering substance abuse treatment today require multiples episode of care over several years to achieve and sustain recovery.
- Scientific evidence supports a blended public/health/public safety approach to dealing with the addicted offender.

DRUG POLICY TASK FORCE Structure Working Group

RECOMMENDATION PRESENTED TO THE CCJJ
November 9, 2012

FY13-DP #2 Replicate the summit view model of state/local partnerships for residential treatment in communities.

Recommendation

Expand residential treatment capacity by allowing a state funding mechanism to local governments for the capital construction or acquisition of real property for the purposes of providing residential treatment in the community. Regional collaboration is permitted to expand residential treatment options in rural or otherwise underserved areas. Clients could include referral from criminal justice, child welfare, other agencies or voluntary admissions. (Summit View, Grand Junction replication).

Discussion

There is a critical shortage of residential treatment beds in Colorado. Substance abuse disorder and other mental health problems are significant cost drivers in criminal justice, child welfare and medical care systems. The overwhelming majority of residential treatment beds are available only for criminal justice involved persons who are accepted into a community corrections programs.

Mesa County made the decision to develop a community-based residential treatment program instead of expanding the local jail. In 2007, Summit View opened and accepts people from many referral systems, including criminal justice and child welfare, and also voluntary admissions. The results from Mesa County's experience could be a model for other communities throughout Colorado. Given the budget crisis faced by many county governments, the state could be a valuable partner in expanding capacity for residential treatment services. The Division of Behavioral Health may also be able to leverage and target its funding to help support operations for the delivery of residential treatment.

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DRUG POLICY TASK FORCE Structure Working Group

RECOMMENDATION PRESENTED TO THE CCJJ

November 9, 2012

FY13-DP #3 Develop a jail option for the completion of specific drug-related, short prison sentences.

Recommendation

Request that the Department evaluate the feasibility of allowing defendants sentenced to prison with a relatively short sentence who need substance abuse treatment to serve their prison sentence in the county jail if the jail can provide the appropriate level of substance abuse treatment. The Sheriff and the DOC would need to both agree to a defendant serving his/her prison sentence in jail. DOC would be responsible to pay for the cost of incarceration at the jail per diem set by the legislature.

Discussion

People sentenced to prison for relatively short sentences who have substance abuse treatment needs are not likely to receive treatment while in prison. There is a lack of treatment available in prison, particularly for people with shorter sentences. Processing inmates through the DOC Denver Reception & Diagnostic Center (DRDC) is very costly and involves numerous tests and assessments.

The treatment funds appropriated to the Division of Behavioral Health from HB 10-1352 have been used to expand or develop the capacity to provide substance abuse treatment in jail through the Jail Based Behavioral Health Services (JBBS) program. In FY11-12, \$1,450,000 was appropriated to the Division of Behavioral Health and JBBS grants were awarded to the Sheriff's Departments in Alamosa , Arapahoe, Boulder, Delta, Denver, El Paso, Jefferson, La Plata, Larimer, and Logan counties. ¹

Allowing inmates to serve a relatively short prison sentence in jail may increase their likelihood of receiving substance abuse treatment services while incarcerated. If allowed to serve the prison sentence in jail, inmates may have better access to family visitation and re-entry support services offered by the jail or local community-based programs. This may help promote successful re-entry following release.

This recommendation may present some operational and logistical challenges for the jail, DOC administration, and the Parole Board. For example, DOC inmates in jail would need to be eligible to be awarded any earned time as other DOC inmates. A DOC inmate serving his/her sentence in jail would still be eligible under state law to be referred to community corrections (unless waived) or, in the alternative, whether a DOC inmate could be eligible for a jail work-release program, if offered. DOC inmates in jail would still be eligible under state law for consideration by the Parole Board when eligible. Further discussion would be needed on these issues to determine whether this recommendation is viable and further discussion may also be needed regarding whether the current jail reimbursement rate paid by DOC would be adequate in this circumstance.

¹ Treatment Funding Work Group. (September, 2012). *Impact of CCJJ bills on substance use disorder treatment.*

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DRUG POLICY TASK FORCE
Structure Working Group

RECOMMENDATION PRESENTED TO THE CCJ
November 9, 2012

FY13-DP #4 Expand IRT availability in DOC.

Recommendation

Encourage the General Assembly to provide funding to the DOC to develop or expand an intensive residential treatment program for inmates who have relatively short sentences who are assessed to need that level of treatment.

Discussion

Approximately 51% of new commitments to prison in FY11 were assessed to be in moderately/severe (level 4) or severe (level 5) need of substance abuse treatment.² Another 39% were assessed to be in moderate (level 3) need of substance abuse treatment.³

Inmates with relatively short sentences, regardless of the nature of the conviction, are unlikely to receive treatment services while incarcerated. Public safety and inmate recovery could be promoted by providing more inmates with an intensive residential treatment modality for those in high need within DOC and prioritize those with relatively short sentences.

² Barr, B., Gilbert, C.R., & O’Keefe, M.L. (2012). *Statistical Report Fiscal Year 2011*. Colorado Springs, CO: Colorado Department of Corrections.

³ Ibid.

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DRUG POLICY TASK FORCE Structure Working Group

RECOMMENDATION PRESENTED TO THE CCJJ

November 9, 2012

FY13-DP #5 Expand civil remedies to prevent intervene in and treat substance abuse.

Recommendation

Allow for expansion of civil remedies (e.g. consumer protection and/or use of public health regulatory authority) as part of building more comprehensive drug policy. Areas related to this proposal include strategies to prevent and effectively intervene in prescription drug abuse/misuse and adopting medical models for detoxification programs.

Discussion

Comprehensive drug policy should integrate law enforcement, treatment, public health and civil law strategies designed to prevent drug abuse, promote recovery from addiction, and reduce the supply of illegal drugs in Colorado.

In 2012, the Colorado Legislature revised the Colorado Consumer Protection Act to promote its use in stopping retailers from selling designer drugs like "bath salts" and "spice". There may be other applications of the Colorado Consumer Protection Act. Currently, the Colorado Department of Health, Welfare and Environment does not have any regulations regarding the possession or sale of illegal drugs.

One emerging drug problem involves the misuse or abuse of prescription pharmaceuticals, particularly opiates ("pain pills"). Opiates can result in death by overdose and can be highly addictive for patients with legitimate medical needs for the treatment of pain. There is also an increasing problem of prescription medications being diverted for non-medical use. Developing an addiction to prescription opiates or stimulants may also lead to more people switching to illegal drugs like heroin, methamphetamine, and cocaine.

In Colorado, the dominant model for detoxification programs is a "social" model that is largely ineffective as a strategy for engaging people in treatment. Also, people with long-term histories of alcohol or opiate use may face significant or potentially life-threatening medical emergencies during detoxification.

The Drug Policy Task Force of the CCJJ is encourage to explore the expansion of civil law strategies and to collaborate with medical and behavioral health treatment providers, their respective regulatory agencies/boards, and health departments to develop recommendations related to preventing and intervening in the misuse of prescription medications and development of medical-based models for detoxification services in Colorado.

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RECOMMENDATION PRESENTED TO THE CCJJ
November 9, 2012

FY13-DP #6 Expand access to trauma-informed substance abuse treatment.

Recommendation

If there are projected cost-savings from legislation reforming the Colorado Controlled Substances Act, the Drug Policy Task Force recommends that the General Assembly prioritize expanding access to trauma-informed treatment services for people with a substance abuse disorder to the extent that is appropriate and available.

Discussion

The General Assembly has appropriated approximately \$8m to expand treatment services since the passage of HB 1352 in 2010.⁴ However, there are still gaps in access to treatment services for indigent offenders. Additionally, the federal Substance Abuse and Mental Health Services Administration (SAMSA) recommends that treatment for substance abuse disorder be provided in a manner that is informed by best practices in trauma care due to the high prevalence of traumatic histories among substance abuse treatment clients. Currently, in Colorado, few substance abuse treatment providers are trained in providing trauma-informed care, specifically.

⁴ Treatment Funding Work Group. (September, 2012). *Impact of CCJJ bills on substance use disorder treatment.*

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DRUG POLICY TASK FORCE DUID Working Group

RECOMMENDATION PRESENTED TO THE CCJJ
November 9, 2012

[This recommendation was amended before approval. The revision is below.]

FY13-DP #7. Establish a “per se” violation for driving under the influence of marijuana.

Recommendation

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 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 and to create a rebuttable inference presumption for allegation of vehicular assault and vehicular homicide.

Discussion

The Colorado Department of Transportation reports an increase in the number of drivers involved in fatal vehicle accidents that tested positive for marijuana. The science is clear that use of cannabis leads to immediate behavioral impairment which can negatively affect driving abilities. Having a per se law sends a message that driving while impaired will not be tolerated. Experts agree that chronic use, such as that by medical marijuana patients, can lead to drug tolerance but impairment may still be present when chronic users consume THC and drive.

The controversy about establishing a defined intoxication level, similar to that used for alcohol, in large part involves the fact that, whereas Blood Alcohol Content (BAC) can be accurately measured and correlated with driving impairment, this is more difficult with cannabis. Alcohol is water soluble; cannabis is stored in the fat and is metabolized differently, making a direct correlation with behavior difficult to measure. High levels of active THC may remain in the blood long after use, perhaps up to 24 hours, whereas driving impairment that would negatively affect driving occurs closer to the time the THC was consumed. There is a lack of consensus among experts about the duration of impairment and the appropriate *per se* limit. A low threshold may include individuals whose driving ability was not impaired because consumption occurred many hours prior to the blood test and it may not necessarily imply driving impairment, especially for chronic users.

APPROVED REVISION

FY13-DP #7. Establish a “~~per se~~” violation for driving under the influence of marijuana.

Recommendation FY13-DP #7.

Establish **REBUTTABLE PRESUMPTION OR PERMISSIBLE INFERENCE OF INTOXICATION** 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 when the person has a level of 5 nanograms of **DELTA-9** THC/mL whole blood or more at **THE TIME OF DRIVING OR** within two hours after driving and to create this **PERMISSIBLE INFERENCE FOR ALL ALLEGATIONS OF DUID**, a ~~rebuttable inference presumption for allegation of~~ vehicular assault and vehicular homicide.