



Commission on Criminal and Juvenile Justice

Minutes November 9, 2012

Jefferson County District Attorney's Office
500 Jefferson County Parkway
Golden, CO 80401

Commission Members Attending:

Doug Wilson, Vice-Chairman	Charles Garcia	Steve King
Jeanne Smith	Alaurice Tafoya-Modi	J. Grayson Robinson
Peter Hautzinger	Claire Levy	Regina Huerter
Bill Kilpatrick	Don Quick	Norm Mueller
Henry Jackson, Jr.	Evelyn Leslie	Kelly Friesen
Tom Clements (via phone)	John Gomez for Julie Krow	Anthony Young
Michael Dougherty	Theresa Cisneros	Eric Philp
Kate Horn-Murphy	Mark Waller	

Absent: James Davis, Debbie Rose, John Morse, Sallie Clark

Call to Order and Opening Remarks:

In the absence of Commission Chair James Davis, the meeting was conducted by Vice-Chair Doug Wilson. Mr. Wilson called the meeting to order at 12:36 p.m. Grayson Robinson moved to approve the October 12, 2012 minutes. Pete Hautzinger seconded the motion. The motion passed by unanimous vote.

Jack Finlaw (Chief Legal Counsel for Governor Hickenlooper) and Stephanie Donner (Deputy Legal Counsel) were introduced. Mr. Finlaw expressed the Governor's appreciation for the work done last year by the Commission and looks forward to working with the Commission in the future.

Mr. Wilson announced today's meeting will be the last for Pete Hautzinger, Don Quick and Michael Dougherty. On behalf of the Commission he thanked them for their dedication and commitment to the Commission.

Mr. Wilson also announced that Sallie Clark, an El Paso County Commissioner, has been appointed by the Governor as the County Commissioner representative and that she will be present for January meeting.

LEGISLATIVE PREVIEW/ PROCESS OVERVIEW

Jana Locke (Legislative Liaison, Colorado Department of Public Safety) outlined the fourteen legislative items scheduled to be introduced during the 2013 legislative session. The designated team leaders will meet next week to determine bill sponsorship and assistance with drafting. If any CCJJ legislative member is interested in sponsoring a bill or knows someone who is, please contact Ms. Locke (Jana.Locke@state.co.us).

BAIL SUBCOMMITTEE**Update**

Mr. Wilson gave an update on the Bail Subcommittee. The group met to discuss whether it should look at sentencing for the F6 and M3 bail bond violations. The Subcommittee voted to forward these issues on to the Comprehensive Sentencing Task Force if they wish to pursue them.

DRUG POLICY TASK FORCE**Recommendation Overview, Discussion and Vote**

Maureen Cain gave a brief history and overview of the drug sentencing grid. The grid provides a new sentencing scheme for drug offenses for instances where the only charges are drug related. The grid introduces the concept of the “wobbler” to Colorado law [*Ed., “Wobbler” is defined below on p. 3*]. The quantity of methamphetamine and heroine are now similar. This changed from last month when methamphetamine amounts were similar to those for cocaine. [*Ed., This update regarding heroin was not in the meeting handouts, but is provided in these Minutes in red/bold text in the FY13-DP #1.1e and in the “List of 18-18 Crimes” starting on p. 5*]. Presentations of the recommendations were by the Structure Working Group and the DUID Working Group of the Drug Policy Task Force.

Structure Working Group**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; includes 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 (but not all):

- 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.*
- 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.*

- If. *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.*
- Ig. *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.)*
- Ih. *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*
- Ii. *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.*
- Ij. *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.*
- Ik. *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.*
- Il. 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.*
 - Im. 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.*
 - In. 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.*
 - Io. 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.*
 - Ip. Sync the quantities and classifications of bath salts, salvia and cannabinoids to the structure as necessary and appropriate. Also address flunitrazepam 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 grounds 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 1/2 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)
- 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/flunitrazepam.
- 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 2 ounces 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 2yrs older than minor					Sch III, IV, V	Sch I, II
Importation I/II						>14g; >7g meth/ heroin

Scheduled Drugs - definitions

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	2oz or less	>2 - 6oz	>6 -12oz	> 12oz			
Possession of concentrate- hash			3oz or less	>3oz			
Transfer/share MJ	2oz or less						
Cultivation of MJ			up to 6	>6 - 30 plants	> 30 plants		
Sale/distribution MJ			4oz or less	>4 - 12oz	>12oz - 5 lbs	>5 lbs -50 lbs	> 50 lbs
Sale concentrate-hash			2oz or less	>2 - 6 oz	>6oz - 2.5lbs	>2.5lb - 25lbs	> 25 lbs
Sale to minor MJ & adult +2yrs older				1oz or less	> 1oz - 6 oz	>6oz - 2.5 lbs	>2.5 lbs
Sale to minor Hash & adult +2yrs older				½oz or less	>1/2oz – 3oz	>3oz-1 lb	> 1lb

Norm Mueller moved to consider this recommendation. Anthony Young seconded the motion.

Discussion:

- Eric Philp raised a question about 1n, which refers to intensive supervision. The intent was to change current statute so it includes the use of a risk assessment tool when determining the placement of offenders in Intensive Supervision.
[Ed., this change can be seen above in red/bold.]
- Pete Hautzinger raised a question about 1d which refers to deferred judgment. When Mr. Hautzinger and Don Quick brought this to the district attorneys for their input, there was some dissatisfaction due to changing the word from “shall” to “may” in 18-1.3-102(2). There may be some district attorneys that come out in opposition to this language.

VOTE: I support it - 18 I can live with it - 3 I do not support it - 0

Recommendation FY13-DP #1: PASSES.

[Ed., With the 51% quorum requirement met, the threshold to pass is reached when the total of members voting “support” or “can live with” is 75%. The threshold to reject a recommendation occurs when 30% of members vote “do not support.”]

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).

This is a structural system change that requests the state invest and work with local partners to bridge a gap in the construction of residential treatment facilities. The first phase would consist of a planning stage to identify needs and the second phase would be the submission of proposals to the legislature. The Summit View facility is accessible to all entities, not just criminal justice agencies. [Ed., for information see <http://methfree.mesacounty.us/summitview.aspx>]

Pete Hautzinger moved to consider the recommendation. Grayson Robinson seconded the motion.

Discussion:

1. Tom Clements asked what different funding streams were used to fund Summit View. It was primarily funded by the Mesa County Commissioners. After it was built, Community Corrections funds and H.B. 1352 dollars also went into the program.
2. Charlie Garcia asked if there was a plan to convert existing facilities before building a new plant. Yes, this would be something discussed during the planning phase.
3. Are we asking for new General Fund dollars? Or can some existing funds be found? There may be opportunities for funds that come from prison closures and the declining prison population. The way it is worded does not indicate a feasibility study has been done.
4. What is the role of the CCJJ? Should it be making recommendations without thoroughly researching all costs? Our goal is to move forward items we believe are worthy based on the research and data. There is no way to determine the exact cost or where the funds are coming from.
5. If this passes, the recommendation allows the work to begin in determining funding streams and costs. This does not commit the state to fund something when there is no money.
6. This isn't just a policy consideration. It is a policy consideration with a fiscal impact. We don't have the dollars to support this.

VOTE: I support it - 17 I can live with it - 4 I do not support it - 0

Recommendation FY13-DP #2: PASSES.

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

Request that the Department of Corrections 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.

This recommendation was modified following last month's initial presentation to the Commission by the Drug Policy Task Force. Initially the goal of this recommendation was to determine if there was a way to reduce the steps between the offender and treatment. As a result of the presentation last month, it was noted that there may be some operational challenges not previously considered. The recommendation has been modified to request that the Department of Corrections evaluate the feasibility of this concept.

Eric Philp moved to consider this recommendation. Pete Hautzinger seconded the motion.

Discussion:

1. The jail per diem rates are arbitrary and do not reflect actual costs. The cost per day per inmate in county jails ranges from \$68.00 to \$74.00. There's an additional \$9.00 per day for treatment. This recommendation does not include the cost of individuals with serious mental health issues.
2. The savings will take years to realize from this strategy to place short term offenders in settings other than DOC. This recommendation shifts the immediate costs from the state to the local jails without dollars following the inmates. This recommendation is not mandated. The jails can always decline.
3. Can this recommendation be considered a change in the business practices of DOC and not require legislation? It needs to be legislative because of the use of DRDC.
4. This would require a feasibility study. Could this be looked at as a regional program, not a local jail program? The feasibility study would further define what is needed.
5. The offender cannot continue to receive H.B. 1352 treatment dollars once he/she is not in the criminal justice system. Once the individual is out, 1352 dollars cannot be used for treatment.

VOTE: I support it - 18 I can live with it - 3 I do not support it - 0

Recommendation FY13-DP #3: PASSES.

FY13-DP #4. Expand intensive residential treatment (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.

Michael Dougherty moved to consider this recommendation. Henry Jackson seconded the motion.

Discussion:

1. Why can't DOC do this with existing dollars? They may be able to.

VOTE: I support it - 17 I can live with it - 3 I do not support it - 1

Recommendation FY13-DP #4: PASSES.

FY13-DP #5. Expand civil remedies for substance abuse treatment.**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.

The Drug Task Force will continue to work on this matter, specifically with regard to prescription drugs. Customers of head shops can purchase bath salts. The store clerk at the register can be arrested, but the shop owner may not be punished. Civil remedies are an option to hold the shop owner accountable.

Michael Dougherty moved to consider this recommendation. Eric Philp seconded the motion.

Discussion:

1. This is the third item thus far in this presentation from the Drug Policy Task Force that is general in nature with inadequate substance to suggest a specific plan of action. What are we actually voting on? There will be a meeting in December with the Task Force Chairs where the issue of the depth of research done on a recommendation prior to submittal to the Commission will be discussed.
2. The recommendation encourages the collaboration of medical and behavioral health treatment providers and their respective regulatory agencies/boards and with health departments.

VOTE: I support it - 18 I can live with it - 2 I do not support it - 1

Recommendation FY13-DP #5: PASSES.

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.

Grayson Robinson moved to consider this recommendation. Anthony Young seconded the motion.

Discussion: (none)

VOTE: I support it - 15 I can live with it - 4 I do not support it - 2

Recommendation FY13-DP #6: PASSES.

DUID Working Group:**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.

Grayson Robinson made a motion to consider this recommendation. Mark Waller seconded the motion.

Discussion:

1. Senator King stated that statistics indicate driving under the influence of THC has increased over the past four years. He continued by saying that the medical marijuana industry has spent no money to educate drivers of the dangers of driving under the influence of THC. He feels the national medical marijuana groups are also not focusing on public safety and driving under the influence of marijuana.
2. Representative Waller pointed out that the recommendation does not properly identify the type of THC that should be measured. Delta-9 THC is the specific component of THC that causes impairment. THC can be present in the blood over an extended period of time. We should be measuring the amount of Delta-9 THC.
3. Grayson Robinson amended his motion to clarify the THC referenced in the recommendation is identified as Delta 9 THC. Mark Waller seconded the amended motion.

4. Judge Theresa Cisneros notified the Commission that she will abstain from this vote. There is a strong possibility that she will have to rule in a criminal case involving driving under the influence of marijuana.
5. Eric Philp will also abstain from this vote because probation officers are sworn to uphold and probationers are required to adhere to federal and state laws. He felt he should abstain because he feels that this recommendation violates federal law.
6. Bill Kilpatrick asked if there is an identifiable level where everyone could agree when impairment begins. It was reported that across a variety of research, advocacy, and other entities, there is no consensus on a specific impairment level.
7. What was the discussion in the Task Force about making this a “permissible inference” as opposed to a “Per Se” law? The permissible inference is in relation to vehicular homicide and vehicular assault. The permissible inference does not relate to the misdemeanor DUI. (A permissible inference allows the defendant to argue, while even having a 5 nanogram level, that they were not impaired. A Per Se finding does not allow the defendant to prove that he/she was not impaired.)
8. The goal of the Task Force was to mirror the DUI alcohol law. The current form of the recommendation mirrors that law.
9. There is good and thorough research that supports 5 nanogram level and there is good research that casts doubt on the 5 nanogram figure. Given the changing landscape of marijuana accessibility in the state, there is a need to work on this for public safety reasons. Before passing a level into law, wouldn't it be preferable to wait until there is consensus among members of the scientific community on the level of impairment.
10. In light of the passage of Amendment 64, it would be irresponsible not to pass this recommendation.
11. It is an embarrassment to the state that we cannot get something passed. People are hiding behind science to avoid passing a law.
12. It is still illegal to drive while impaired. This is just establishing a Per Se limit for marijuana.
13. Other states or countries that have passed such a THC law have set the limit somewhere between 0 and 3 nanograms. Compared to these, we are setting the threshold relatively high.
14. CDPHE figures show in 2009 that tests of 229 individuals found a 5 nanogram level. In 2010, 672 individuals were found with this level and in the following year (2011) 1,266 people were found with this blood level. In 2011, there were 35 fatalities resulting from THC in the blood.
15. This has nothing to do with Amendment 64 but has everything to do with protecting public safety on the roads.
16. There are two issues, the permissible inference and the 5 nanogram level.
17. A motion and a second were offered to amend the proposal to read as follows, *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 DUI**, a ~~rebuttable inference presumption for allegation of~~ vehicular assault and vehicular homicide.*

Don Quick moved to change the title of the recommendation to read, “Establish a violation for driving under the influence of marijuana.” Pete Hautzinger seconded the motion.

Discussion:

1. What are the penalties if one does not agree to the blood test? There are no administrative DMV ramifications as exists for refusals of DUI tests.

VOTE on amendments:

I support it - 14 I can live with it - 5 I do not support it - 0

Amendments to FY13-DP #7: PASS

VOTE on amended Recommendation:

I support it - 13 I can live with it - 5 I do not support it - 1

Recommendation FY13-DP #7 (with amendments): PASSES

COMPREHENSIVE SENTENCING TASK FORCE

Recommendation Overview, Discussion and Vote

The presentation of the recommendation was by the Diversion Working Group of the Comprehensive Sentencing Task Force. *[Ed., Recommendations #1-3 were addressed in previous Commission meetings.]*

Diversion Working Group

FY13-CS #4 Expand the availability of adult pretrial diversion options within Colorado’s criminal justice system.

Recommendation FY13-CS#4:

The Comprehensive Sentencing Task Force recommends enhancing the availability of pretrial diversion options throughout the state, as well as developing appropriate funding alternatives, by:

1. *Replacing the existing deferred prosecution statute (C.R.S. 18-1.3-101) with the three statutory sections proposed below.*
2. *Amending the Victim’s Rights Act to ensure victims are able to provide input to the pretrial diversion decision.*

Proposed Statutory Change #1: 18-1.3-101. Pretrial Diversion Authorized.

(1) The intent of this section is to facilitate and encourage pretrial diversion when diversion is consistent with preventing defendants from committing additional criminal acts, restoring victims of crime, and reducing the number of cases in the criminal justice system. Diversion strives to ensure defendant accountability while allowing defendants to avoid the stigma and collateral consequences associated with criminal charges and convictions.

(2) Except as otherwise provided in section 18-6-801(4), in any case, either before or after charges are filed, with the consent of the defendant and the prosecution, prosecution of the

offense may be diverted for a period not to exceed two years. The period of diversion may be extended for an additional time up to one year if the failure to pay restitution is the sole condition of supervision which has not been fulfilled, because of inability to pay, and the defendant has shown a future ability to pay. During that time the defendant may be placed under the supervision of the probation department or a diversion program approved by the district attorney.

(3) Each district attorney shall adopt policies and guidelines delineating eligibility criteria for pretrial diversion, and may agree to diversion in any case in which there exists sufficient admissible evidence to support a conviction. In determining whether an individual is appropriate for diversion, the district attorney shall consider:

- (a) the nature of the crime charged and the circumstances surrounding it;*
- (b) any special characteristics or circumstances of the defendant;*
- (c) whether diversion is consistent with the defendant's rehabilitation and reintegration;*
and
- (d) whether the public interest will be best served by diverting the individual from prosecution.*

(4) Before consenting to diversion, the district attorney may require any defendant requesting diversion to provide information regarding prior criminal charges, education and work experience, family, residence in the community, and other information relating to the diversion program. The defendant shall not be denied the opportunity to consult with counsel before consenting to diversion. Counsel may be appointed as provided under article 1 of title 21.

(5) A diversion program's receipt of diversion related funding provided under section 18-19-103(5)(d)(I) shall be contingent upon the referring district attorney's office having adopted pretrial diversion policies and guidelines pursuant to section 18-1.3-101(2).

(6) Diversion programs may include, but are not limited to, programs operated by law enforcement upon agreement with a district attorney, district attorney internally operated programs, programs operated by other approved agencies, restorative justice programs, or supervision under the probation department. References to "deferred prosecution" in Colorado statutes and court rules shall apply to pretrial diversion as authorized by this section.

Proposed Statutory Change #2: 18-1.3-101.1. Diversion Agreements.

(1) All pretrial diversions shall be governed by the terms of a diversion agreement signed by the defendant, the defendant's attorney if the defendant is represented by an attorney, and the district attorney.

(2) The diversion agreement shall include a written waiver of the right to a speedy trial for the period of the diversion. All diversion agreements shall include as a condition that the defendant not commit any criminal offense during the period for which the agreement is to remain in effect. Diversion agreements may also include provisions, agreed to by the defendant, concerning payment of restitution and court costs, payment of a supervision fee not to exceed that provided

for in section 18-1.3-204(2)(a)(V), or participation in restorative justice practices as defined in section 18-1-901(3)(o.5). The conditions of diversion shall be limited to those specific to the individual defendant or necessary for proper supervision of the individual defendant.

(3) The diversion agreement may require an assessment of the defendant's criminogenic needs, to be performed after the period of diversion has begun by either the probation department or a diversion program approved by the district attorney. Based on the results of that assessment, the probation department or approved diversion program may direct the defendant to participate in programs offering medical, educational, vocational, corrective, preventive, or other rehabilitative services. Defendants with the ability to pay may be required to pay for such programs or services.

(4) The diversion agreement may include a statement, authored by the defendant and agreed to by the defendant's attorney if the defendant is represented by an attorney, and the district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the diversion agreement and criminal proceedings are resumed, the statement will be admissible as impeachment evidence against the defendant in those proceedings.

(5) No defendant shall be required to enter any plea to a criminal charge as a condition of pretrial diversion. No statements made by the defendant or counsel in any diversion conference or in any other discussion of a proposed diversion agreement, other than a statement provided for in section 18-1.3-101.1(4), shall be admissible as evidence in criminal proceedings on the crimes charged or facts alleged in the complaint.

(6) If the district attorney agrees to offer diversion in lieu of further criminal proceedings and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement may be either filed with the court or held by the parties. A court filing shall be required only if the probation department is involved in the diversion agreement. If the agreement is filed, the court shall stay further proceedings.

(7) A diversion agreement shall provide that if the defendant fulfills the obligations described therein, the court shall order any criminal charges filed against the defendant dismissed with prejudice.

Proposed Statutory Change #3: 18-1.3-101.2. Diversion Outcomes.

(1) During the period of diversion, the supervising program or agency designated in the diversion agreement shall provide the level of supervision necessary to facilitate rehabilitation and ensure the defendant is completing the terms of the diversion agreement.

(2) Upon the defendant's satisfactory completion of and discharge from supervision, any charge against the defendant shall be dismissed with prejudice. The effect of the dismissal is to restore the defendant, in the contemplation of the law, to the status he or she occupied before the arrest, citation, or summons. A successfully completed diversion shall not be considered a conviction for any purpose. No person as to whom an order of dismissal pursuant to this article has been

entered may be held to be guilty under Colorado law of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge the arrest, citation, or summons in response to any inquiry made for any purpose.

(3) At any point after a diversion agreement is entered a defendant may petition the court to seal all arrest and other criminal records pertaining to the offense, using the procedure described in section 24-72-308. Unless otherwise prohibited under section 24-72-308(3)(a), the court shall issue a sealing order if requested by the defendant following successful completion of a diversion agreement.

(4) If the conditions of the diversion agreement are violated, the defendant and the court shall be provided written notice of the violation. Revocation of a diversion agreement shall be initiated by the filing of a criminal complaint, information, or indictment, or if charges have already been filed by giving the court notice of intent to proceed with the prosecution. The defendant may, within fourteen days of the first court appearance following such a filing, request a hearing at which to contest whether a violation occurred. The burden in such a hearing shall be upon the district attorney by a preponderance of the evidence to show that a violation has in fact occurred, and the procedural safeguards required in a revocation of probation hearing shall apply. The court may, when it appears that the alleged violation of the diversion agreement consists of an offense with which the defendant is charged in a criminal proceeding then pending, continue the diversion revocation hearing until the termination of the criminal proceeding. If the court finds a violation has occurred, or no hearing is requested, the prosecution may continue. If the court finds the district attorney has not proven a violation, the court shall dismiss the criminal case without prejudice and return the defendant to the supervision of the diversion program to complete the terms of the agreement.

(5) If a defendant is prosecuted following violation of a diversion agreement, a factual statement entered pursuant to 18-1.3-101.1(4) shall be admissible as impeachment evidence. No other information concerning diversion, including participation in a diversion program, the terms of a diversion agreement, or statements made to treatment providers during a diversion program, shall be admitted into evidence at trial for any purpose.

Proposed Statutory Change #4: *Amendments to the existing Guidelines for Assuring the Rights of Victims of and Witnesses to Crimes.*

Include the italicized in section 24-4.1-302, Definitions:

- (2) “Critical stages” means the following stages of the criminal justice process:*
- (a) The filing of charges against a person accused of a crime;*
 - (a.5) The decision not to file charges against a person accused of a crime;*
 - (a.6) The decision to enter a diversion agreement pursuant to section 18-1.3-101;*

Include the italicized in section 24-4.1-302.5, Rights Afforded to Victims:

(1) In order to preserve and protect a victim’s rights to justice and due process, each victim of a crime shall have the following rights:

- (a) *The right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;*
- (b) *The right to be informed of and present for all critical stages of the criminal justice process as specified in section 24-4.1-302(2); except that the victim shall have the right to be informed of, without being present for, the critical stages described in section 24-4.1-302(2)(a), (2)(a.5), (2)(a.6), (2)(e.5), (2)(k.3), (2)(n), (2)(p), and (2)(q);*

The only changes from last month's version concern the Victim's Rights Act. Offering an offender Diversion is considered a disposition of the case. Under the Victim's Right's Act, the disposition of a case requires a consultation with the victim.

Charlie Garcia moved to consider this recommendation. Michael Dougherty seconded the motion.

Discussion: (none)

VOTE: I support it - 20 I can live with it - 0 I do not support it - 0

Recommendation FY13-CS #4: PASSES.

JUVENILE JUSTICE TASK FORCE

Recommendation Preview and Discussion

The task force presented the preview of a single recommendation. Any vote would occur in a subsequent Commission meeting. *[Ed., Recommendations #1-5 were addressed in previous Commission meetings.]*

FY13-JJ #5 Give exclusive jurisdiction to the juvenile courts for DUI/DWAI offenses committed by persons less than 18 years of age

Recommendation:

Give the juvenile courts exclusive jurisdiction over juveniles charged with driving under the influence, driving while impaired and driving under the influence of drugs by amending the juvenile jurisdiction statute to remove jurisdiction of such offenses from the county courts. Allow for expungement of a juvenile DUI/DWAI record after ten years. Bar the use of a prior conviction for sentencing purposes if ten years have expired between the juvenile adjudication and the first adult DUI/DWAI offense and no other offenses have occurred during the ten year period.

The following statutes would be affected: 19-2-104(1)(a), 19-2-910, 19-2-911, 19-1-103(48)(6), 19-2-917, 42-4-1307 and 42-4-1301.1 C.R.S.

[Ed., The amended statutes are included below with suggested changes that would be refined by legislative drafters.]

- **Amend 19-2-104(1)(a) Jurisdiction to read:**

(1) Except as otherwise provided by law, the juvenile court shall have exclusive original jurisdiction in proceedings: (a) concerning any juvenile ten years of age or older who has violated:

(I) Any federal or state law, except **THAT THE JUVENILE COURT DOES NOT HAVE EXCLUSIVE JURISDICTION IN PROCEEDINGS FOR VIOLATIONS OF** non-felony state traffic **UNLESS THE VIOLATION IS FOR DUI, DUI PER SE, OR DWAI PURSUANT TO 42-4-1301(1)(a), (1)(b), OR (2)(a) OR IS A NON FELONY VIOLATION UNDER TITLE 42, C.R.S., THAT ARISES OUT OF THE SAME CRIMINAL EPISODE AS AN OFFENSE FOR WHICH THE JUVENILE COURT HAS EXCLUSIVE JURISDICTION,** game and fish, and parks and recreation laws or rules,

(II) Any county or municipal ordinances except traffic ordinances **UNLESS THE TRAFFIC VIOLATION ARISES OUT THE SAME CRIMINAL EPISODE AS A VIOLATON THAT IS CHARGED AND OVER WHICH THE JUVENILE COURT HAS EXCLUSIVE JURISDICTION,** the penalty for which may be a jail sentence of more than ten days; or

(III) Any lawful order of the court made under this title;

- **REPEAL 19-2-104(3):**

~~the fact that a juvenile has been prosecuted or convicted in the county court for a nonfelony violation under title 42, C.R.S., shall not be a bar to a subsequent or parallel proceeding under this title for delinquent acts arising out of the same eriminal episode; nor shall proceedings under this title be a bar to subsequent or parallel prosecution in the county court for a nonfelony violation under title 42, C.R.S., for the same delinquent acts arising from the same criminal episode.~~

- **Amend 19-2-104(5) to:**

Notwithstanding any other provision of this section to the contrary, the juvenile court and the county court shall have concurrent jurisdiction over a juvenile who is under eighteen years of age and who is charged with a violation of section 18-13-122 **CONCERNING THE ILLEGAL POSSESSION OR CONSUMPTION OF ETHYL ACLOHOL BY AN UNDERAGE PERSON, 18-18-406(1) or (3) CONCERNING MARIJUANA AND MARIJUANA CONCENTRATE, 18-18-428 OR 18-18-429 CONCERNING DRUG PARAPHERNALIA, or 42-4-1301(2)(a.5)(I) CONCERNING UNDERAGE DRINKING AND DRIVING (UDD) UNLESS THE UDD VIOLATION ARISES OUT OF THE SAME CRIMINAL EPISODE AS A VIOLATION THAT IS CHARGED AND OVER WHICH THE JUVENILE COURT HAS EXCLUSIVE JURISDICTION;** except that, if the juvenile court accepts jurisdiction over such juvenile, the county court jurisdiction shall terminate.

- **Amend 19-2-910 Sentencing—persons 18 or older to:**

(2) Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender, **AND AS PROVIDED IN SECTION 19-2-___ FOR AN ADJUDICATION OF DELINQUENCY FOR THE COMMISSION OF AN OFFENSE DESCRIBED IN SECTION 42-4-1301(1)(a),**

(1)(b), OR (2)(a), the court may sentence a person who is eighteen years of age or older on the date of a sentencing hearing to the county jail for a period not to exceed six months or to a community correctional facility or program for a period not to exceed one year, which may be served consecutively or in intervals, if he or she is adjudicated a juvenile delinquent for an act committed prior to his or her eighteenth birthday.

- ***Amend 19-2-911 Sentencing—alternative services—detention***

(1) Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender, AND SECTION 19-2-910(3) FOR AN ADJUDICATION OF DELINQUENCY FOR THE COMMISSION OF AN OFFENSE DESCRIBED IN SECTION 42-4-1301(1)(a),(1)(b), OR (2)(a), and except as provided in subsection (2) of this section, the court may sentence the juvenile to alternative services funded through section 19-2-212 or other alternative services programs.

- ***Amend 19-2-917 Sentencing—Fines***

Except as otherwise provided in section 19-2-601 for an aggravated juvenile offender, AND EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-2-910(3) FOR AN ADJUDICATION OF DELINQUENCY FOR THE COMMISSION OF AN OFFENSE DESCRIBED IN SECTION 42-4-1301(1)(a), (1)(b), OR (2)(a), the court may, as the sole punishment or in addition to any other sentence or commitment specified in section 19-2-907, impose on the juvenile a fine of not more than three hundred dollars.

- ***Create new subsection 19-2-910(3)***

(a) IN NO INSTANCE SHALL THE COURT WAIVE THE TREATMENT REQUIREMENTS UNDER SECTION 42-4-1307 EVEN IF THE PERSON IS COMMITTED PURSUANT TO SUBSECTION(1). IF THE COURT ORDERS THAT THE PERSON COMPLETE A LEVEL II PROGRAM, THE COURT SHALL ORDER THAT THE PERSON COMPLETE A LEVEL II ALCOHOL AND DRUG DRIVING SAFETY EDUCATION OR TREATMENT PROGRAM FOR MINORS THAT HAS BEEN APPROVED BY THE UNIT IN THE DEPARTMENT OF HUMAN SERVICES THAT ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES TO PROVIDE BOTH DRIVING UNDER THE INFLUENCE SERVICES AS WELL AS TREATMENT OF MINORS.

(b) NOTHING IN THIS SUBSECTION (3) PROHIBITS THE COURT FROM ENTERING A DECREE OF COMMITMENT PURSUANT TO SUBSECTION (1) IN ADDITION TO PENALTIES IMPOSED PURSUANT OT SECTION 42-4-1307.

(c) IF THE COURT SENTENCES THE PERSON TO PROBATION, THE COURT SHALL ORDER THE CONDITIONS PURSUANT TO SECTION 19-2-925 IN

ADDITION TO ANY OTHER CONDITIONS IMPOSED PURSUANT TO SECTION 42-4-1307.

(d) A PERSON COMMITTED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL NOT ALSO BE SENTENCED TO A PERIOD OF PROBATION PURSUANT TO SECTION 42-4-1307. THE COURT SHALL ORDER THAT A PERSON COMMITTED COMPLETE AN EDUCATION OR TREATMENT PROGRAM AS REQUIRED UNDER SECTION 42-4-1307 AND PARAGRAPH (a) OF THIS SUBSECTION AND ANY OTHER CONDITIONS THAT THE COURT DEEMS APPROPRIATE PURSUANT TO TITLE 19.

- ***Create new Section 19-2-_____***

(1) NOTWITHSTANDING ANY OTHER PROVISIONS UNDER THIS TITLE 19, THE COURT SHALL SENTENCE A JUVENILE ADJUDICATED DELINQUENT FOR THE COMMISSION OF AN OFFENSE DESCRIBED IN 42-4-1301(1)(a), (1)(b), OR (2)(a) IN ACCORDANCE WITH THE PROVISIONS OF SECTION 42-4-1307(3) THROUGH (6), (7)(b), (8), (10), (11), (13) AND (14), EXCEPT THAT THE PROVISIONS OF SECTION 42-4-1307(7)(a) SHALL NOT APPLY, THE PROVISIONS OF 42-4-1307(7)(b)(VI) SHALL BE MANDATORY IF THE JUVENILE HAS A PRIOR ADJUDICATION OR CONVICTION FOR DUI, DUI PER SE, DWAI OR UDD, AND THERE SHALL NOT BE A MANDATORY PERIOD OF IMPRISONMENT.

(a) IN NO INSTANCE SHALL THE COURT WAIVE THE TREATMENT REQUIREMENTS UNDER SECTION 42-4-1307. IF THE COURT ORDERS THAT THE JUVENILE COMPLETE A LEVEL II PROGRAM, THE COURT SHALL, UNLESS CONTRARY TO THE BEST INTERESTS OF THE CHILD, ORDER THAT THE JUVENILE COMPLETE A LEVEL II ALCOHOL AND DRUG DRIVING SAFETY EDUCATION OR TREATMENT PROGRAM FOR MINORS THAT HAS BEEN APPROVED BY THE UNIT IN THE DEPARTMENT OF HUMAN SERVICES THAT ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES TO PROVIDE BOTH DRIVING UNDER THE INFLUENCE SERVICES AS WELL AS TREATMENT OF MINORS.

(b) NOTHING IN THIS SECTION PROHIBITS THE COURT FROM ENTERING A DECREE OF SENTENCE OR COMMITMENT PURSUANT TO SECTIONS 19-2-909, 19-2-912, 19-2-913, 19-2-914, 19-2-915, OR 19-2-916 IN ADDITION TO PENALTIES IMPOSED PURSUANT TO 42-4-1307.

(c) IF THE COURT SENTENCES THE JUVENILE TO PROBATION, THE COURT SHALL ORDER THE CONDITIONS PURSUANT TO SECTION 19-2-925 IN ADDITION TO ANY OTHER CONDITIONS IMPOSED PURSUANT TO SECTION 42-4-1307.

- ***A JUVENILE COMMITTED PURSUANT TO SECTION 19-2-909 SHALL NOT ALSO BE SENTENCED TO A PERIOD OF PROBATION PURSUANT TO SECTION 42-4-1307. THE COURT SHALL ORDER THAT A JUVENILE COMMITTED COMPLETE AN EDUCATION OR TREATMENT PROGRAM AS REQUIRED UNDER SECTION 42-4-1307 AND PARAGRAPH (a) OF THIS***

SUBSECTION ANY OTHER CONDITIONS THAT THE COURT DEEMS APPROPRIATE PURSUANT TO TITLE 19.

- ***Amend 19-1-103(48)(6) Expungement by adding section (e)***

(6) A person is eligible to petition for an expungement order:

(e) TEN YEARS FROM THE DATE OF ADJUDICATION FOR AN OFFENSE UNDER TITLE 42, PART 13, SO LONG AS THE JUVENILE HAS NOT VIOLATED ANY PROVISION OF PART 13 OR SECTION 126 OF PART 2, TITLE 42 C.R.S.

- ***Amend 42-4-1307(9)(a)***

*(9) Previous convictions. (a) For the purposes of subsections (5) and (6) of this section, a person shall be deemed to have a previous conviction for DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to [section 18-3-106 \(1\) \(b\)](#), C.R.S., vehicular assault pursuant to [section 18-3-205 \(1\) \(b\)](#), C.R.S., aggravated driving with a revoked license pursuant to [section 42-2-206 \(1\) \(b\) \(I\) \(A\)](#) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to [section 42-2-138 \(1\) \(d\)](#), if the person has been convicted **as an adult** under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of an act that, if committed within this state, would constitute the offense of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to [section 18-3-106 \(1\) \(b\)](#), C.R.S., vehicular assault pursuant to [section 18-3-205 \(1\) \(b\)](#), C.R.S., aggravated driving with a revoked license pursuant to [section 42-2-206 \(1\) \(b\) \(I\) \(A\)](#) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to [section 42-2-138 \(1\) \(d\)](#). **Except that no person who has been adjudicated as a juvenile offender for DUI or DWAI shall be deemed to have a previous conviction if more than ten (10) years have expired between the date of the adjudication and the current offense and if that person has not been subsequently convicted or adjudicated of any of the above offenses as a juvenile or an adult.***

Discussion:

1. The goal of this recommendation is to move juvenile DUI offenses out of Trial Court or County Court and place them in Juvenile Court under Title 19.
2. This recommendation allows for the expungement of juvenile DUI and DWAI convictions after 10 years. This causes concern from the prosecutors and CDAC. However, the Children's Code allows for expungement of some convictions after 4 years. The 10-year time frame is more stringent than the 4-year time frame.
3. The way this is written appears to make the expungement automatic.
4. Why is the expungement such a deal-breaker for prosecutors? Because having a second DUI hanging over the head of someone can act as a deterrent. If the conviction is expunged, it loses its impact.
5. By putting this in juvenile court, the juvenile offender loses his/her rights to a jury trial. This is a concern for defense attorneys. When doing research, the Juvenile Task Force found there were zero juvenile DUI jury trials.
6. This would allow juveniles to be sentenced to detention as opposed to jail.

7. How does this fit within the three strikes and then sentencing the juvenile to DYC? The juvenile could still be sentenced to DYC.
8. What about habitual traffic offender? There was no discussion on this by the task force except if the record was expunged after 10 years.
9. Does this include DUID? Yes. The title should be changed to reflect this.

Next Steps and Adjourn:

1. The Chairs of all the Task Forces and Subcommittees and the leadership of the Commission will have a meeting in December to strategize about the next steps of the Commission.
2. There will be no December 2012 CCJJ meeting. The next meeting will be in January 2013.
 - a. If the Commission waits to vote on the Juvenile DUI recommendation until January, there is a concern that there will be no bill presented during the upcoming session.

Next meeting will be January 11, 2013 in the Jefferson County District Attorney's Office, 500 Jefferson County Parkway, Golden, CO.

The meeting adjourned at 3:55 p.m.