

DRUG POLICY TASK FORCE

RECOMMENDATION OPTIONS

PRESENTED TO THE COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

November 8, 2013

FY14-DP #4 Revisions to the Minor in Possession statute

This is a proposal designed to support education and treatment, as necessary and appropriate, for illegal use of alcohol and marijuana for those persons under the age of 21. Criminal sanctions are NOT the primary consideration. Intervention and education are as well as the avoidance of negative collateral consequences. Also, it was not the intent to increase currently existing penalties for marijuana. It is the intent to treat alcohol and marijuana the same under Colorado law.

18-13-122 – Illegal Possession or consumption of ethyl alcohol, marijuana or marijuana paraphernalia by an underage person – legislative declaration – definitions – Adolescent Substance Abuse prevention and Treatment Fund

General Discussion

- 1) Leg declaration should be stricken from current law and rewritten. Language should support intervention and education to prevent the illegal use of alcohol and/or marijuana by persons under 21. Educate persons about the dangers of early use, about responsible use once they are able to legally consume, and encourage young persons to be successful and productive members of the community.
- 2) Continue the Adolescent Fund with surcharge dollars of \$25 (current amount for MIP) but supplement with dollars for marijuana taxes so that all the court-ordered programs can be free to persons under the age of 21 to the extent funds have been appropriated.
- 3) Continue with all the definitions in current MIP statute but add in the definitions of marijuana and marijuana paraphernalia
- 4) Continue all current affirmative defenses for alcohol consumption. Add marijuana MIP to the immune from prosecution language if underage persons calls for 911 under the same circumstances as alcohol
- 5) Continue all language under current law regarding admissibility of alcohol testing. Add to that language any necessary and appropriate language that is enacted in the 2013 DUID bill regarding the admissibility of testing of marijuana.
- 6) Continue current law that law enforcement needs probable cause to enter on private property.

DRUG POLICY TASK FORCE

RECOMMENDATION OPTIONS

PRESENTED TO THE COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
November 8, 2013

Crimes

NOTE: The ethyl alcohol violation is in one subsection, marijuana in another and marijuana paraphernalia in another in order for offenses to be properly tracked. However, the penalties will be the same for all.

Alcohol

- A. Except as provided in 18-1-711 and subsection (4.5) of this section, a person under 21 years of age who possesses or consumes ethyl alcohol anywhere in the state of Colorado commits illegal possession or consumption of ethyl alcohol by an underage person. Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.

Marijuana

- B. Except as provided in Medical Marijuana (cite), a person under the age of a person under 21 years of age who possesses one oz or less of marijuana or consumes any amount of marijuana anywhere in the state of Colorado commits illegal possession or consumption of marijuana by an underage person. Illegal possession or consumption of marijuana by an underage person is a strict liability offense.

Marijuana paraphernalia

- C. A person under 21 years of age who possesses marijuana paraphernalia and know or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of this state commits illegal possession of marijuana paraphernalia by an underage person.

Penalties

		Maureen Cain Version	Tom Raynes Version
Section #1	Introductions (same for both)	Illegal possession or consumption of ethyl alcohol (A), Marijuana (B) or Marijuana Drug Paraphernalia (C) is an unclassified petty offense under the laws of the state of Colorado and is punishable as described below.	
Section #2	First offense (part 1)	Mandatory diversion for first offense. For a first offense violation of A, B, or C (above) upon the underage person's first appearance in court <ul style="list-style-type: none">The court shall order the underage person to complete a substance abuse education program as approved by DBH,	Current statute/practice which leaves the discretion with the prosecutor.

DRUG POLICY TASK FORCE RECOMMENDATION OPTIONS

PRESENTED TO THE COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
November 8, 2013

		Maureen Cain Version	Tom Raynes Version
		<p>before the entry of plea if the underage person consents.</p> <ul style="list-style-type: none"> If the underage person successfully completes the education program, the court shall dismiss the case and the court shall order that the records of the case shall be automatically sealed. 	
Section #3	First offense (part 2)	<p>Upon first conviction-</p> <ul style="list-style-type: none"> Up to \$100 fine AND Substance abuse education program as determined by the Court and approved by DBH AND Up to 8 hours of community service If the defendant successfully complies with fine or other sanctions, the case is automatically sealed. 	<p>Upon first conviction –</p> <ul style="list-style-type: none"> \$100 fine AND Substance abuse education program as determined by the Court and approved by DBH. If the defendant successfully complies with court orders the case shall be automatically sealed.
Section #4	Second offense	<p>Upon second conviction-</p> <ul style="list-style-type: none"> Up to \$100 OR Substance abuse education AND If determined appropriate by the court, a substance abuse assessment and any recommended therapy resulting from such assessment, AND Up to 24 hours of community service With successful completion, case is eligible for sealing after one year. 	<p>On a second conviction-</p> <ul style="list-style-type: none"> fine of \$100 - \$250 AND Substance abuse education AND If determined appropriate by the court, a substance abuse assessment and any recommended therapy resulting from such assessment, AND Up to 24 hours of community service With successful completion, case is eligible for sealing after one year.
	Third offense	<p>Upon third and subsequent conviction-</p> <ul style="list-style-type: none"> Up to \$100 AND Shall undergo a substance 	<p>Upon third and subsequent conviction-</p> <ul style="list-style-type: none"> A fine of \$250 - \$500 AND Shall undergo a substance abuse

DRUG POLICY TASK FORCE

RECOMMENDATION OPTIONS

PRESENTED TO THE COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

November 8, 2013

		Maureen Cain Version	Tom Raynes Version
Section #5		abuse assessment AND shall be required to follow any recommended therapy from such assessment <ul style="list-style-type: none">• Up to 36 hours of community service• With successful completion, case is eligible for sealing after one year.	assessment AND shall be required to follow any recommended therapy from such assessment AND <ul style="list-style-type: none">• Up to 36 hour of useful public service• With successful completion, case is eligible for sealing after one year.
Section #6	Unsealing (same for both)	Any offense sealed shall automatically be unsealed upon a subsequent offense.	
Section #7	Final provision (same for both)	Nothing in this section shall prohibit any prosecutor from entering into a diversion or deferred judgment agreement with any underage person for any offense under this section if such an agreement would be consistent with the legislative declaration of this section.	