

[As approved]

DRUG POLICY TASK FORCE
RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
November 8, 2013

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

Recommendation FY14-DP #4:

This proposal to revise 18-13-122 is 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 underlying these revision recommendations. It is not the intent of this recommendation to increase currently existing penalties for marijuana, but, rather, to treat alcohol and marijuana similarly under Colorado law.

The following are the suggested revisions of the statute:

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

- 1) The legislative declaration should be stricken from current law and rewritten. The language should support intervention and education to prevent the illegal use of alcohol and/or marijuana by persons under 21. The intent is to educate individuals about the dangers of early use, about responsible use once they are of legal age to consume, and to encourage young persons to be successful and productive members of the community.
- 2) Continue the Adolescent Fund with surcharge dollars of \$25, which is the current amount for minor in possession (MIP), but supplement it with dollars from marijuana taxes so that all the court-ordered programs can be free to individuals under the age of 21 to the extent that funds have been appropriated.
- 3) Maintain all definitions in the current MIP statute, but add 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 an underage person calls for 911 under the same circumstances as alcohol.
- 5) Maintain all language under current law regarding the 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 regarding probable cause to enter on to private property.

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Crimes

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

Alcohol

- A. Except as provided in C.R.S. § 18-1-711 (4.5), a person under 21 years of age who possesses or consumes ethyl alcohol 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 (Article 18, Section 14, Paragraph 6 of the Colorado Constitution), a person under the age of 21 years who possesses one ounce or less of marijuana or consumes any amount of marijuana 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 knows 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.

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Penalties

Section #1	Introduction	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)	Current statute/practice, which leaves the discretion with the prosecutor.
Section #3	First offense (part 2)	Upon first conviction – <ul style="list-style-type: none">• Up to \$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	Upon second conviction- <ul style="list-style-type: none">• Up to \$100 fine 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.
Section #5	Third offense	Upon third and subsequent conviction- <ul style="list-style-type: none">• A fine of up to \$250 fine AND• Shall undergo a substance abuse assessment AND shall be required to follow any recommended therapy from such assessment AND• Up to 36 hour of useful public service• With successful completion, case is eligible for sealing after one year.
Section #6	Unsealing	Any offense sealed shall automatically be unsealed upon a subsequent offense.
Section #7	Final provision	Any prosecutor is encouraged to enter 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.