



Commission on Criminal and Juvenile Justice

Minutes

November 8, 2013
 Jefferson County District Attorney's Office
 500 Jefferson County Parkway
 Golden, CO 80401

Commission Members Attending

James H. Davis, Chairman	Evelyn Leslie	Brandon Shaffer
Doug Wilson, Vice-Chairman	Jeff McDonald	Pat Steadman
Theresa Cisneros	John Morse	Alaurice Tafoya-Modi
Sallie Clark (via phone)	Norm Mueller	Mark Waller
Matthew Durkin	Kevin Paletta	Peter Weir
Kelly Friesen	Joe Pelle	Dave Young
Charles Garcia	Eric Philp	Jeanne Smith, <i>Ex Officio</i>
Kate Horn-Murphy	Rick Raemisch	
Julie Krow	Debbie Rose	

Absent: Henry Jackson, Jr., Brandon Shaffer

Call to Order and Opening Remarks

James Davis, Chair of the Commission called the meeting to order at 12:44 p.m. and reviewed the day's agenda.

Pat Steadman moved to approve the minutes from the October 11, 2013 meeting. Norm Mueller seconded the motion. The minutes were approved by unanimous vote.

Mr. Davis announced that the SMART Office within the U.S. Department of Justice had sent a letter to the Governor stating that Colorado is in substantial compliance with the Adam Walsh Act and, as a result, federal funds that had been withheld due to noncompliance will be reinstated.

Jessica's Law Letter

Jeanne Smith announced that one change has been made to the letter regarding Jessica's Law which was presented at the October meeting (*note: This letter is in response to an April 29, 2013 request by the Governor, Speaker of the House, and President of the Senate to review the*

provisions of Jessica's Law relative to the current sex offender laws in Colorado. For additional information see, colorado.gov/ccjdir/L/Mandates.html). Under the section "Mandatory Minimum Sentences" on page 3, the figures for the extraordinary risk range were mistakenly cited rather than the normal ranges. This error was corrected and no other changes were made.

Sen. Steadman moved to approve the revised letter. Sheriff Pelle seconded the motion. The letter in its current form was approved to be submitted to the Governor's Office and the General Assembly.

VOTE: I support it: 20 I can live with it: 2 I do not support it: 0
The revised letter was approved.

Drug Policy Task Force

Charlie Garcia outlined the recommendations presented today by the Drug Policy Task Force. The legislature directed the Commission to reconvene the Drug Policy Task Force to examine the impact of Amendment 64 on the criminal justice system. Specifically, there were five directives for review. The Drug Policy Task Force decided four of the five directives needed modification.

FY14-DP #1 Revise C.R.S. 24-31-314 to clarify that Advanced Roadside Impaired Driving Enforcement (ARIDE) training should take place during POST (Peace Officer Standard and Training) continuing education and advanced training, rather than during basic academy peace officer training.

The Drug Policy Task Force recommends amending section C.R.S. 24-31-314 as follows:
24-31-314. Advanced roadside impaired driving enforcement training.

(1) ON AND AFTER OCTOBER 1, 2013, THE P.O.S.T. BOARD IS ENCOURAGED TO INCLUDE ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT TRAINING ~~IN THE CURRICULUM FOR PERSONS WHO ENROLL IN A TRAINING ACADEMY FOR BASIC PEACE OFFICER TRAINING~~ AS AN ELECTIVE TO BASIC FIELD SOBRIETY TEST (BFST) TRAINING RECERTIFICATION.

(2) SUBJECT TO THE AVAILABILITY OF SUFFICIENT MONEYS, THE P.O.S.T. BOARD SHALL ARRANGE TO PROVIDE TRAINING IN ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT TO DRUG RECOGNITION EXPERTS WHO WILL ACT AS TRAINERS IN ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT FOR ALL PEACE OFFICERS DESCRIBED IN SECTION 16-2.5-101, C.R.S.

Charlie Garcia moved to vote on recommendation FY14-DP #1. Alaurice Tafoya-Modi seconded the motion. The motion was approved.

VOTE: I support it: 19 I can live with it: 2 I do not support it: 0
The recommendation was approved.

FY14-DP #2 **Revise C.R.S. 42-4-1305.5 as it pertains to open marijuana container and motor vehicles to ensure that the marijuana container is open, has a broken seal, contents are partially removed AND there is evidence of consumption.**

The Drug Policy Task Force recommends amending C.R.S. 42-4-1305.5 as follows:

42-4-1305.5. Open marijuana container - motor vehicle -prohibited. (1) Definitions. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "MARIJUANA" SHALL HAVE THE SAME MEANING AS IN SECTION 16 (2) (f) OF ARTICLE XVIII OF THE STATE CONSTITUTION.

(b) "MOTOR VEHICLE" MEANS A VEHICLE DRIVEN OR DRAWN BY MECHANICAL POWER AND MANUFACTURED PRIMARILY FOR USE ON PUBLIC HIGHWAYS BUT DOES NOT INCLUDE A VEHICLE OPERATED EXCLUSIVELY ON A RAIL OR RAILS.

(c) "OPEN MARIJUANA CONTAINER" MEANS A RECEPTACLE OR MARIJUANA ACCESSORY THAT CONTAINS ANY AMOUNT OF MARIJUANA AND:

(I) THAT IS OPEN OR HAS A BROKEN SEAL;

(II) THE CONTENTS OF WHICH ARE PARTIALLY REMOVED; ~~OR~~ **AND**

(III) THERE IS EVIDENCE THAT MARIJUANA HAS BEEN CONSUMED WITHIN THE MOTOR VEHICLE.

(d) "PASSENGER AREA" MEANS THE AREA DESIGNED TO SEAT THE DRIVER AND PASSENGERS, INCLUDING SEATING BEHIND THE DRIVER, WHILE A MOTOR VEHICLE IS IN OPERATION AND ANY AREA THAT IS READILY ACCESSIBLE TO THE DRIVER OR A PASSENGER WHILE IN HIS OR HER SEATING POSITION, INCLUDING BUT NOT LIMITED TO THE GLOVE COMPARTMENT.

(2) (a) EXCEPT AS OTHERWISE PERMITTED IN PARAGRAPH (b) OF THIS SUBSECTION (2), A PERSON WHILE IN THE PASSENGER AREA OF A MOTOR VEHICLE THAT IS ON A PUBLIC HIGHWAY OF THIS STATE OR THE RIGHT-OF-WAY OF A PUBLIC HIGHWAY OF THIS STATE MAY NOT KNOWINGLY:

(I) USE OR CONSUME MARIJUANA; OR

(II) HAVE IN HIS OR HER POSSESSION AN OPEN MARIJUANA CONTAINER.

(b) THE PROVISIONS OF THIS SUBSECTION (2) SHALL NOT APPLY TO:

(I) PASSENGERS, OTHER THAN THE DRIVER OR A FRONT SEAT PASSENGER, LOCATED IN THE PASSENGER AREA OF A MOTOR VEHICLE DESIGNED, MAINTAINED, OR USED PRIMARILY FOR THE TRANSPORTATION OF PERSONS FOR COMPENSATION;

(II) THE POSSESSION BY A PASSENGER, OTHER THAN THE DRIVER OR A FRONT SEAT PASSENGER, OF AN OPEN MARIJUANA CONTAINER IN THE LIVING QUARTERS OF A HOUSE COACH, HOUSE TRAILER, MOTOR HOME, AS DEFINED IN SECTION 42-1-102 (57), OR TRAILER COACH, AS DEFINED IN SECTION 42-1-102 (106) (a);

(III) THE POSSESSION OF AN OPEN MARIJUANA CONTAINER IN THE AREA BEHIND THE LAST UPRIGHT SEAT OF A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK; OR

(IV) THE POSSESSION OF AN OPEN MARIJUANA CONTAINER IN AN AREA NOT NORMALLY OCCUPIED BY THE DRIVER OR A PASSENGER IN A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH A TRUNK.

(c) A PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBSECTION (2) COMMITS A CLASS A TRAFFIC INFRACTION AND SHALL BE PUNISHED BY A FINE OF FIFTY DOLLARS AND A SURCHARGE OF SEVEN DOLLARS AND EIGHTY CENTS AS PROVIDED IN THIS SECTION AND SECTION 42-4-1701 (4) (a) (I) (N).

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREEMPT OR LIMIT THE AUTHORITY OF ANY STATUTORY OR HOME RULE TOWN, CITY, OR CITY AND COUNTY TO ADOPT ORDINANCES THAT ARE NO LESS RESTRICTIVE THAN THE PROVISIONS OF THIS SECTION.

Discussion:

1. How does this recommendation compare to the state law concerning an open container of alcohol? The Task Force tried to mirror the alcohol statutes as much as possible. But alcohol comes sealed differently than marijuana. Having a broken seal by itself would not indicate an open container of marijuana in the vehicle.

Dave Young moved to vote on recommendation FY14-DP #2. Pat Steadman seconded the motion. The motion was approved.

VOTE: I support it: 15 I can live with it: 6 I do not support it: 0
The recommendation was approved.

FY14-DP #3 Funding for public education, prevention and treatment as these pertain to marijuana use.

The General Assembly should allocate resources from the marijuana cash fund (created in C.R.S. 12-43.3-501) toward the Adolescent Substance Abuse Prevention and Treatment Fund (C.R.S. 25-1.5-111) for the purposes of public education and prevention efforts focused on discouraging youth access.

Discussion:

1. The Department of Public Health and Environment already has an excellent substance abuse treatment program. What will this add? This recommendation will allow the same program to be used on marijuana substance abuse.

Alaurice Tafoya-Modi made a motion to vote on recommendation FY14-DP #3. Evelyn Leslie seconded the motion. The motion was approved.

VOTE: I support it: 21 I can live with it: 0 I do not support it: 0

The recommendation was approved.

FY14-DP #4 - PRELIMINARY VERSION (see "FINAL VERSION" below)

This recommendation included a table that displayed two alternative sets of provisions regarding penalties for Minor in Possession. The Drug Policy Task Force forwarded the recommendation with both sets of provisions for consideration and final approval by the Commission. Therefore, the FY14-DP #4 recommendation was reviewed section-by-section and each was the subject of a majority vote (51% to approve) to finalize the provisions individually. Subsequently (see FINAL VERSION below), a final supermajority vote (75% to approve) was held to approve the collection of all the individually-approved provisions of this recommendation.

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

This proposal 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. Also, it was not the intent to increase currently existing penalties for marijuana. The intent is to treat alcohol and marijuana similarly 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) 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.

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.

Note: The table containing the alternative penalty provisions considered by the Commission is displayed on the following pages along with any accompanying discussion and the result of the majority vote for each section considered. One set of provisions was authored by task force member Maureen Cain and the other by task force member Tom Raynes.

Penalties (includes Discussion notes and Votes, by Section)

		Maureen Cain Version	Tom Raynes Version
Section #1	Introduction (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.	
Discussion:	<p>There is no disagreement on this section. Consensus was to have a separate section for alcohol, marijuana and paraphernalia and each is classified as a petty offense. The current sentence for a marijuana petty offense is a \$100 fine.</p> <p>- Rep. Waller moved to vote on section one. Evelyn Leslie seconded the vote. Motion was approved.</p>		
VOTE	<p><i>Given there is no difference between versions, the vote was to support or not support.</i></p> <p>I support it: 21 I do not support it: 0</p> <p>The Section 1 Introduction was approved.</p>		
		Maureen Cain Version	Tom Raynes Version
Section #2	First offense (part 1)	<p>Mandatory diversion for first offense.</p> <p>For a first offense violation of A, B, or C (above) upon the underage person’s first appearance in court</p> <ul style="list-style-type: none"> • The court shall order the underage person to complete a substance abuse education program as approved by DBH, before the entry of plea if the underage person consents. • 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. 	Current statute/practice which leaves the discretion with the prosecutor.
Discussion:	<p>Cain’s version recommends for a first, stand-alone offense of possession or consumption or alcohol or marijuana, that it be automatically diverted from the court system to an education program. Tom Raynes’ version recommends the case be filed in court and the decision to divert the case resides with the District attorney (this is current law).</p> <ol style="list-style-type: none"> 1. Which version is supported by evidence? Mr. Raynes stated that it has been his observation that this type of case usually is sent to diversion. This is a separation of powers issue. Ms. Cain stated there is a lot of research that indicates that the lesser the amount of penetration into the criminal justice system by a first-time offender, the better the outcome. 2. This may have a positive effect on minority over-representation. This would ensure uniformity no matter the offender’s race. 3. This would ensure the offender receives substance abuse education. 		

	<p>4. The possession of marijuana is not legal for someone under 21. There would be in a small number of cases where the prosecutor pursues the case criminally as opposed to asking for the offender to be given diversion. The court does not have the information it needs to make the decision to automatically send the offender to diversion. There may be instances where diversion is not appropriate and the court would be sending the wrong information to the offender.</p> <p>5. Amendment 64 makes this difficult. The possession of marijuana is legal for adults but illegal for juveniles. And there are places where diversion programs are not available.</p> <p>6. There is a difference on the economic scale. If parents have the resources to hire a defense attorney, the attorney would ask for diversion, whereas an offender who is less able to afford representation will not have that ability.</p> <p>7. There will be offenders who are just a few months away from legally possessing marijuana and would rather pay the fine as opposed to go through substance abuse education.</p> <p>8. As a prosecutor it is important to do the right thing. When juveniles come in, the offender is told to take the education class and come back so the matter will be dismissed. If the courts issue the sentence, who monitors the offender to make sure education is done? Judges do not have access to information about municipal court contact. Prosecutors may have access to better information.</p> <p>Charlie Garcia moved to vote on Section 2. A vote for version A would be a vote for Maureen Cain’s version. A vote for version B would be a vote for Tom Raynes’ version. Pat Steadman seconded the motion. The motion was approved.</p>		
VOTE	<p>(A) (Maureen Cain’s version) 10 (B) (Tom Rayne’s version) 11 Version B (Tom Rayne’s version) of Section 2 was approved.</p>		
		Maureen Cain Version	Tom Raynes Version
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.
Discussion:	<p>Because Ms. Cain’s version of Section #2 was not approved, she requested that Commissioners support Tom Rayne’s version of Section 3 (see strikethroughs of her version). Her version of Section 3 was written to accompany her Section 2 that did not pass.</p> <p>Joe Pelle moved to vote on Section 3. Alaurice Tafoya-Modi seconded the motion. The motion passed.</p>		
VOTE:	<p>(A) (Maureen Cain’s version) 0 (B) (Tom Rayne’s version) 21 Version B (Tom Rayne’s version) of Section 3 was approved.</p>		

		Maureen Cain Version	Tom Raynes Version
Section #4	Second offense	Upon second conviction- <ul style="list-style-type: none"> • Up to \$100 OR 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. 	On a second conviction- <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.
Discussion:	The difference between the two versions is that Maureen Cain’s version asks for a fine up to \$100 and substance abuse education whereas Tom Raynes’ version asks for a fine between \$100 - \$250, so as to mirror the Minor in Possession statute. The word “OR” on line two should read “AND.” This was changed and is displayed here.		
	Section 4 was moved to a vote. Alaurice Tafoya-Modi seconded the motion. The motion passed.		
VOTE:	(A) (Maureen Cain’s version) 12 (B) (Tom Raynes’ version) 9 Version A (Maureen Cain’s version) of Section 4 as amended was approved.		
		Maureen Cain Version	Tom Raynes Version
Section #5	Third offense	Upon third and subsequent conviction- <ul style="list-style-type: none"> • Up to \$100 OR AND • Shall undergo a substance abuse assessment AND shall be required to follow any recommended therapy from such assessment • Up to 36 hours of community service • With successful completion, case is eligible for sealing after one year. 	Upon third and subsequent conviction- <ul style="list-style-type: none"> • A fine of \$250 – \$500 AND • A fine of up to \$250 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.
Discussion:	The difference between the two versions is the amount of the fine. <ol style="list-style-type: none"> 1. Dave Young moved to amend Tom Raynes’ version to read “a fine of up to \$250.” Pete Weir seconded the motion. <ol style="list-style-type: none"> a. Discussion: To represent Tom’s version, shouldn’t the change be up to \$500 as 		

	<p>opposed to up to \$250? b. Vote on the amendment: Amendment passes</p> <ol style="list-style-type: none"> We are being asked to make the penalties for alcohol and marijuana the same. Will we be changing alcohol statutes? Both alcohol and marijuana statutes are being changed by these recommendations. In Maureen’s version, it should include “AND” in the first bucket. This was a typo and was fixed here. <p>Mark Waller moved Section 5, as amended, to a vote and the motion was seconded. The motion passed.</p>			
VOTE:	<p>(A) (Maureen Cain’s version) 9 (B) (Tom Raynes’ version) 12 Version B (Tom Raynes’ version) of Section 5 as amended was approved.</p>			
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%; text-align: center;">Maureen Cain Version</th> <th style="width: 50%; text-align: center;">Tom Raynes Version</th> </tr> </table>	Maureen Cain Version	Tom Raynes Version
Maureen Cain Version	Tom Raynes Version			
Section #6	Unsealing (same for both)	Any offense sealed shall automatically be unsealed upon a subsequent offense.		
Discussion:	<p>There is no disagreement on this issue.</p> <p>Joe Pelle moved Section 6 to a vote. Sen. Steadman seconded the motion. The motion passed.</p>			
VOTE:	<p><i>Given there is no difference between versions, the vote was to support or not support.</i> I support it: 21 I do not support it: 0 Section 6 on Unsealing was approved.</p>			
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Section #7	Final provision (same for both)	<p>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.</p> <p>See amended revision below...</p>		
Discussion:	<ol style="list-style-type: none"> Since this language was drafted to encourage prosecutors to offer diversion, can this section be amended to have a prosecutor be encouraged to offer diversion no matter what level of offense. The amendment will strike, “Nothing in this section shall prohibit...” and replace it with “Any prosecutor will be encouraged...” This is an attempt to guide people to a more philosophically oriented legislative declaration. Pat Steadman moved to amend Section 7 to read, “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 agreement would be consistent with the legislative declaration of this section.” <p>Julie Krow seconded the motion. The vote on the amendment passed 18 – 3.</p>			
VOTE:	<p><i>Given there is no difference between versions, the vote was to support or not support.</i> I support it: 18 I do not support it: 3 The Section 7 Final provision, as amended, was approved.</p>			

FY14-DP #4 - FINAL VERSION

This is the final version of Recommendation FY14-DP #4 which was modified by Commission members as reflected in the Minutes above (see FY14-DP #4 PRELIMINARY VERSION).

Following the section-by-section review, some amendments and preliminary approval votes, the entire, finalized recommendation was moved for a final discussion and vote.

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

This proposal 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. Also, it was not the intent to increase currently existing penalties for marijuana. The intent is to treat alcohol and marijuana similarly 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) 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.

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.

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"> • \$100 fine AND • 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

		<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	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.

Discussion:

1. Charlie Garcia moved to amend Section 3 concerning the first conviction language for the fine to read, “up to \$100.” The motion was seconded and subsequently passed unanimously. (The change is reflected above.)
2. Julie Krow moved Recommendation FY14 DP#4 to a vote. Kevin Paletta seconded the motion.
What happens after the third offense? Can you still get a \$100 fine? For the third and any subsequent offense, the fine can be up to \$250.

VOTE: I support it: 11 I can live with it: 9 I do not support it: 1
The recommendation was approved.

Comprehensive Sentencing Task Force

Jeanne Smith and Mark Evans presented two recommendations from the Comprehensive Sentencing Task Force for consideration by the Commission.

FY14-CS #1 Harmonize other value-based offense levels with the 2013 amendment to Colorado’s theft statute.

The Comprehensive Sentencing Task Force recommends amending the statutes that define the following value-based crimes, thereby harmonizing their offense levels with the General Assembly’s recent revisions to the theft statute:

- Criminal Mischief, § 18-4-501
- Fraud by Check, § 18-5-205
- Defrauding a Secured Creditor, § 18-5-206
- Unauthorized Use of a Financial Transaction Device, § 18-5-702
- Computer Crime, § 18-5.5-102

Discussion:

1. Nothing has changed with this proposal since last month. This recommendation was discussed with the Colorado Retail Council, Colorado Commerce and Industry and the Colorado Banker’s Association. The Comprehensive Sentencing Task Force also received input from the Colorado Domestic Violence Coalition. Their concern regarding the Criminal Mischief statute was that the sentence would not properly reflect the seriousness of a criminal mischief charge in the domestic violence arena. On the other

hand, if someone has been convicted of three prior misdemeanor domestic violence convictions, the fourth misdemeanor conviction can be elevated to a Class 5 felony. The protections that accompany domestic violence convictions would not change.

2. COVA wanted to express their concerns on unintended collateral consequences to victims. When a crime is filed in municipal court as a petty offense, the VRA services are not activated. There would not be services provided for petty offense cases. DV cases cannot be filed in municipal court.
3. With the revisions on a Class 3 felony Theft, why is the amount raised from \$1,000 to \$100,000? A Class 2 felony Theft would be over \$100,000. That recommendation was passed as part of last year's Commission work. Last year the Comprehensive Sentencing Task Force pulled information from NIBRS to find out where the values fell.
4. For any of these offenses, if you engage in the act more than once, the COCA statutes can be utilized. The act of writing a bad check is punished as outlined above. If the offender is able to cash the bad check for \$1 million, then the offender could be additionally charged with the felony level theft.
5. The more exceptions we make to each crime, the less we are able to create a simpler sentencing scheme. The concept was to look at non-violent property crimes.
6. Pete Weir moved to amend this recommendation by adding a Class 3 felony for the offenses of Criminal Mischief, § 18-4-501, Defrauding a Secured Creditor, § 18-5-206, Unauthorized Use of a Financial Transaction Device, § 18-5-702, and Computer Crime, § 18-5.5-102, if the value is between \$100,000 and \$1 million, and to add a Class 2 felony for the offenses of Criminal Mischief, § 18-4-501, Defrauding a Secured Creditor, § 18-5-206, Unauthorized Use of a Financial Transaction Device, § 18-5-702, and Computer Crime, § 18-5.5-102, if the value is over \$1 million. Julie Krow seconded the motion. Motion to approve the amendment passed.

Sheriff Pelle moved to vote on recommendation FY14 CS#1 as amended. Evelyn Leslie seconded the motion.

VOTE: I support it: 12 I can live with it: 7 I do not support it: 2
The recommendation was approved.

FY14-CS #2 Retroactively expand the availability of earned time credit to individuals sentenced under the "big" provision of the habitual criminal statute for crimes occurring between July 1, 1985, and June 30, 1993.

The Comprehensive Sentencing Task Force recommends amending section C.R.S. § 17-22.5-104 as follows:

(1) Any inmate in the custody of the department may be allowed to go on parole in accordance with section 17-22.5-403, subject to the provisions and conditions contained in this article and article 2 of this title.

(2)(a) No inmate imprisoned under a life sentence for a crime committed before July 1, 1977, shall be paroled until such inmate has served at least ten calendar years, and no application for parole shall be made or considered during such period of ten years.

(b) No inmate imprisoned under a life sentence for a crime committed on or after July 1, 1977, but before July 1, 1985, shall be paroled until such inmate has served at least twenty calendar years, and no application for parole shall be made or considered during such period of twenty years.

(c) (I) No inmate imprisoned under a life sentence for a crime committed on or after July 1, 1985, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

(II) This paragraph (c) shall not apply to any inmate sentenced pursuant to section 16-13-101(2), C.R.S., as it existed prior to July 1, 1993, for any crime committed on or after July 1, 1985, and any such inmate shall be eligible for parole after the inmate has served forty calendar years less any time authorized pursuant to section 17-22.5-403.

(d)(I) No inmate imprisoned under a life sentence for a class 1 felony committed on or after July 1, 1990, shall be eligible for parole. ~~No inmate imprisoned under a life sentence pursuant to section 16-13-101(2), C.R.S., as it existed prior to July 1, 1993, for a crime committed on or after July 1, 1990, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.~~

(II) This paragraph (d) shall not apply to any inmate sentenced pursuant to section 18-1.3-801(2), C.R.S., for any crime committed on or after July 1, 1993, and any such inmate shall be eligible for parole in accordance with section 17-22.5-403.

(III) No inmate imprisoned under a life sentence pursuant to section 18-1.3-801(2.5), C.R.S., and no inmate imprisoned under a life sentence pursuant to section 18-1.3-801(1), C.R.S., on and after July 1, 1994, for a crime committed on and after that date, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years.

(IV) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), an inmate imprisoned under a life sentence for a class 1 felony committed on or after July 1, 2006, who was convicted as an adult following direct filing of an information or indictment in the district court pursuant to section 19-2-517, C.R.S., or transfer of proceedings to the district court pursuant to section 19-2-518, C.R.S., may be eligible for parole after the inmate has served at least forty calendar years. An application for parole shall not be made or considered during the period of forty calendar years.

Discussion:

1. Did we identify the number of people that would be immediately eligible in the next year? There is only one individual.

2. This recommendation closes the gap between individuals sentenced before and after 1993 regarding earned time.

FY14 CS#2 was moved to a vote. Norm Mueller seconded the motion.

VOTE: I support it: 14 I can live with it: 5 I do not support it: 2
The recommendation was approved.

Adjournment

Next meeting will be January 10, 2014 from 12:30 – 4:30.

The meeting adjourned at 3:16 p.m.