



***Colorado Commission on Criminal and Juvenile Justice  
and its Drug Policy Task Force***

**Concerning the Implementation of Amendment 64 (Personal Use and  
Regulation of Marijuana): Recommendations to the General Assembly  
per Senate Bill 13-283**

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# Concerning the Implementation of Amendment 64 (Personal Use and Regulation of Marijuana): Recommendations to the General Assembly per Senate Bill 13-283

*Prepared on behalf of the Colorado Commission on Criminal and Juvenile Justice and its Drug Policy Task Force by*

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## BACKGROUND

The Colorado General Assembly passed Senate Bill 2013-283, requiring the Drug Policy Task Force of the Colorado Commission on Criminal and Juvenile Justice, and the Commission, to make recommendations on or before December 15, 2013 as follows:

- Make recommendations to the General Assembly regarding criminal laws that need to be revised to ensure that Title 18, C.R.S., and other relevant criminal statutes are compatible with the intent and plain meaning of Section 16 of Article XVIII of the State Constitution;
- Consider when developing recommendations that the intent of Section 16 of Article XVIII of the State Constitution was to
  - decriminalize consumption of small amounts of marijuana,
  - to create a lawful marketplace for adults to obtain safe and legal marijuana,
  - to protect against youth access and consumption of marijuana, and
  - to eliminate the illicit drug marketplace for marijuana;
- Consider the recommendations of the Governor’s Amendment 64 Implementation Task Force in developing its recommendations;
- Consider ways to harmonize conflicts raised by the introduced version of House Bill 13-1317 parts 5 through 10<sup>1</sup> and sections 12-43.3-901 (unlawful acts regarding medical marijuana), 12-43.4-901 (unlawful acts concerning retail marijuana) and 18-18-414 (unlawful acts regarding controlled substances, amended by Senate Bill 13-250);
- Consider penalties for unlawful activities by persons 18 years of age or older but under 21 years of age involving marijuana pursuant to Section 16 of Article XVIII of the State Constitution; and
- Make recommendations that assist in eliminating participation in the illicit drug market for marijuana by buyers, sellers, and producers, including appropriate fines and criminal sanctions on all activity that occurs outside the legal marketplace.

The Drug Policy Task Force met six times between July and October 2013 to address the mandates listed above.<sup>2</sup> Additional meetings were held by smaller working groups. A list of the Task Force membership may be found in Appendix A. This document reports the Task Force’s findings and, based on that work, the Commission’s final recommendations to the General Assembly.

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<sup>1</sup> Note that the final version of H.B. 1317 did not contain Sections 5 to 10; the Task Force considered Part 9—Unlawful Acts.

<sup>2</sup> The minutes of these meetings may be found at <http://www.colorado.gov/cs/Satellite/CDPS-CCJJ/CBON/1251623050451> under the tab “Previous Meetings.”

## FINDINGS

The Drug Policy Task Force of the Colorado Commission on Criminal and Juvenile Justice reviewed the recommendations of the Governor's Amendment 64 Implementation Task Force and, in fact, two members of the Amendment 64 Task Force were members of the Drug Policy Task Force. The Drug Policy Task Force also reviewed Senate Bill 13-250 (concerning changes to sentencing of persons convicted of drug crimes), House Bill 13-1317 (concerning the implementation of Amendment 64), House Bill 13-1325 (concerning penalties for persons who drive while under the influence of alcohol or drugs), 42-4-1305.5, C.R.S. (open marijuana container, motor vehicle, prohibited), Title 18, C.R.S (Uniform Controlled Substances Act), and Section 16 of Article XVIII of the State Constitution (personal use and regulation of marijuana), among other documents.

The Task Force concluded that Senate Bill 13-250, which became effective October 1, 2013, and provides for a revised sentencing scheme for drug related offenses, is consistent with Section 16 of Article XVIII of the State Constitution (see, in particular, Section 31 or 18-18-433, C.R.S., which makes possession of one ounce or less of marijuana legal for those 21 years of age or older). Furthermore, the Task Force found that House Bill 13-1317 is consistent with Section 16 of Article XVIII of the State Constitution, however, makes a recommendation regarding the definition of "open container" and the personal transport of marijuana (42-4-1305.5, C.R.S.).

Regarding penalties for unlawful activities by persons 18-20 years of age related to marijuana, the Task Force concluded that Senate Bill 13-250 addresses the issues of sale and transfer. If an individual possesses more than one ounce of marijuana, the penalties in S.B. 13-250 apply. Additionally, S.B. 13-250 has a specific provision that exempts from criminal prosecution activities that are permissible under Section 16 of Article XVIII of the State Constitution. However the issue of minor in possession for those under the age of 21 is the focus of Recommendation #4, presented in the next section. Please see Appendix B for a summary of Senate Bill 250 under Title 18-18-406, C.R.S.

Task Force members agreed that the regulations promulgated by the Colorado Department of Revenue are intended to protect against youth access and consumption of marijuana, and that these regulations incorporate appropriate sanctions for retail operations that occur outside the legal marketplace.

The Task Force submitted the following recommendations to the Commission on Criminal and Juvenile Justice, and these recommendations were approved by the Commission in November 2013.



## RECOMMENDATIONS

**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.**

### **Recommendation FY14-DP #1**

The Commission recommends amending 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.

### **Discussion**

The Governor's Task Force Report on the Implementation of Amendment 64 recommended ARIDE training as a mandatory training element in Colorado Peace Officer Standards and Training (POST) certification, and encouraged local law enforcement agencies to have their peace officers trained in ARIDE to increase and enhance the ability of law enforcement officers to detect impaired driving.<sup>3</sup>

The CCJJ Drug Policy Task Force and the Commission recognize the importance of advanced training for law enforcement officers to be able to quickly and skillfully recognize the signs of impairment by drugs other than alcohol. However, the Drug Policy Task Force and the Commission agree that this training is advanced and very specific, and is therefore more appropriate for officers to undertake after they have received basic training.

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<sup>3</sup> Implementation of the Amendment 64 Task Force. (March 13, 2013). Task Force Report on the Implementation of Amendment 64, Regulation of Marijuana in Colorado.

As the ARIDE (Advanced Roadside Impaired Driving Enforcement) course is currently designed, it was not intended for inclusion in a Basic Police Training Academy. This is an *intermediate* level course designed to offer more than a basic understanding of the impairing effects of drugs (illicit and licit), alcohol, and/or the combination of both.

Basic level police recruits would be best served by completing the mandated 24 hours of Standardized Field Sobriety Testing training currently mandated by POST. As an elective, the ARIDE would satisfy the POST requirement for recertification for the Basic Field Sobriety Test (BSFT). Currently a POST certified officer is required to complete BSFT training in the Basic Academy. This training assists an officer in identifying driver's suspected of being under the influence of alcohol or drugs. Following the initial training, POST requires an officer recertify every two years. By delaying the ARIDE training from the Basic to recertification phase, it allows an officer to obtain the necessary practical experience utilized in the ARIDE program. The ARIDE would be offered at the appropriate intermediate level versus basic level. This approach is consistent with the original intent to provide enhanced training to law enforcement in order to better identify impaired drivers.

**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.**

**Recommendation FY14-DP #2**

The Commission 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**

While the Drug Policy Task Force and the Commission sought parity for penalties related to the illegal use of alcohol and marijuana, this recommendation sets a different standard for marijuana because, presently, marijuana is not sealed in a container in the same fashion as alcohol. In addition, marijuana can be consumed in many forms, from ointment to edibles. It can also be home-grown. Law enforcement representatives of both the Task Force and the Commission stated that this addition to the open container law is consistent with their ability to enforce the law.

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

**Recommendation FY14-DP #3**

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**

According to the National Institute on Drug Abuse, research from different areas is converging on the fact that regular marijuana use by young people can have long-lasting negative impact on the structure and function of the brain. A recent study of marijuana users who began using in adolescence revealed a profound deficit in connections between brain areas responsible for learning and memory. Importantly, the lost cognitive abilities were not restored in those who quit smoking marijuana as adults. (Individuals who started smoking marijuana in adulthood did not show significant IQ declines.) Further, NIDA estimates that about nine percent of users become addicted to marijuana, and this number increases to 17 percent among those who start young. Finally, the annual NIDA-supported *Monitoring the Future* survey of adolescent drug use and attitudes has detected, over the past several years, increasing use of marijuana by teens associated with a decreasing perception of marijuana's harmfulness.<sup>4</sup>

While regulations promulgated by the Colorado Department of Revenue are intended to protect against youth access and consumption of marijuana, there is a critical need for public education and prevention efforts targeting adolescent marijuana use. The state's Office of Behavioral Health manages the Adolescent Substance Abuse Prevention and Treatment Fund and has the capacity to develop evidence-based prevention programs provided that resources are available.

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<sup>4</sup> See <http://www.drugabuse.gov/publications/drugfacts/marijuana>.

**FY14-DP #4 Revise the Minor in Possession (MIP) statute, C.R.S. 18-13-122.**

**Recommendation FY14-DP #4**

The Commission recommends that C.R.S. 18-13-122 be revised as follows:

***Introduction***

- 1) Rewrite the legislative declaration to support intervention and education to prevent the illegal use of alcohol and/or marijuana by persons under 21. The declaration should 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) Expand the Adolescent Substance Abuse Prevention and Treatment Fund with the current \$25 surcharge (current amount for alcohol MIP) but supplement the Fund with dollars from 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 (see below).
- 4) Continue all current affirmative defenses for alcohol consumption. In addition, add marijuana to the current “immune from prosecution” alcohol provision which can apply when an underage person calls for 911 for assistance.
- 5) Continue all language under current law regarding admissibility of alcohol testing. Add to that provision any necessary and appropriate language regarding the DUID and the testing of marijuana.
- 6) Continue current law that law enforcement needs probable cause to enter on private property.

***Crimes***

*NOTE: Ethyl alcohol violations, marijuana, and marijuana paraphernalia are presented here as separate subsections so that these offenses can be tracked over time. However, the penalties are the same.*

**Alcohol**

- A. Except as provided in C.R.S. 18-1-711 and subsection (4.5), a person under 21 years of age who possesses or consumes ethyl alcohol anywhere in 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 for by medical marijuana (C.R.S. 12-43.3-103), a person under 21 years of age who possesses one ounce or less of marijuana or consumes any amount of marijuana in 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 knowingly or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the law commits illegal possession of marijuana paraphernalia by an underage person.

**Penalties**

Introduction	Illegal possession or consumption of ethyl alcohol (A), marijuana (B) or marijuana drug paraphernalia (C) is an <u>unclassified petty offense</u> and is punishable as described below.
First offense (part 1)	Current statute/practice in which prosecutor discretion is preserved.
First offense (part 2)	Upon first conviction: <ul style="list-style-type: none"> <li>• Up to \$100 fine AND</li> <li>• Substance abuse education program as determined by the court and approved by the Office of Behavioral Health in the Department of Human Services.</li> <li>• If the defendant successfully complies with court orders the case shall be automatically sealed.</li> </ul>
Second offense	Upon second conviction: <ul style="list-style-type: none"> <li>• Up to \$100 AND</li> <li>• Substance abuse education AND</li> <li>• If determined appropriate by the court, a substance abuse assessment and any recommended therapy resulting from such assessment, AND</li> <li>• Up to 24 hours of community service.</li> <li>• With successful completion, case is eligible for sealing after one year.</li> </ul>
Third offense	Upon third and subsequent convictions: <ul style="list-style-type: none"> <li>• Up to \$250 AND</li> <li>• Shall undergo a substance abuse assessment AND shall be required to follow any recommended therapy from such assessment AND</li> <li>• Up to 36 hour of useful public service.</li> <li>• With successful completion, case is eligible for sealing after one year.</li> </ul>
Unsealing	Any offense sealed shall automatically be unsealed upon a subsequent offense.
Final provision	Prosecutors are 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**

This recommendation is designed to support education and treatment, as necessary and appropriate, for illegal possession of marijuana for persons under the age of 21. Education and service interventions are the primary considerations for underage persons who violate this statute for this avoids the negative consequences associated with a conviction. Finally, it is the intent of this recommendation to treat alcohol and marijuana the same under Colorado law.



## APPENDIX A

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**Colorado Commission on Criminal and Juvenile Justice  
Drug Policy Task Force Membership / 2013**

<b>Affiliation</b>	<b>Representative</b>
Co-Chair / Judicial Branch / CCJJ	Eric Philp, Probation Services
Co-Chair / At Large / CCJJ	Charles Garcia, Special Council to the Governor
Attorney General's Office / CCJJ	Matt Durkin, Attorney General's Office
Law Enforcement / CCJJ	Kevin Paletta, Lakewood Police Department
Legislative, CO House	Mike Foote, House District 12
Legislative, CO Senate	Evie Hudak, Senate District 19
Legislative, CO Senate	Pat Steadman, Senate District 31
Behavioral Health	Marc Condojani, Division of Behavioral Health
Department of Revenue	Ron Kammerzell, Enforcement Group
Colorado Criminal Defense Bar	Maureen Cain, Defense Attorney
Public Defender	Brian Connors, State Public Defender's Office
Prosecution	Tom Raynes, Colorado District Attorney's Council
Community at Large	Christie Donner, Colorado Criminal Justice Reform Coalition
Law Enforcement	Vince Niski, Colorado Springs Police Department

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## APPENDIX B

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**Concerning the Implementation of Amendment 64 (S.B. 13-283)**

**SB 250 summary on marijuana laws under Title 18-18-406 (see SB 250 at pages 20-24)<sup>5</sup>**

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 \$100 fine	>2oz - 6oz	>6 -12oz	> 12 oz			
Poss-MJ concentrate			3 oz or less	>3 oz			
Public use, display, consumption -MJ	2oz or less (\$100 fine/24 hr comm. service)	Same as possession	Same as possession	Same as possession			
Public use, display, consumption-MJ concentrate			Same as possession	Same as possession			
Transfer/dispense from one person to another for no consideration - MJ	2 oz or less						
Cultivation MJ			up to 6	>6 - 30plants	> 30 plants		
Sale MJ*			4 oz or less	> 4oz - 12oz	>12oz - 5 lbs	>5 lbs -50 lbs	> 50 lbs
SaleMJ concentrate*			2 oz or less	>2oz - 6 oz	>6oz - 2.5lbs	>2.5lb - 25lbs	> 25 lbs
Sale, transfer, dispensing of MJ to minor if adult +2yrs older				1 oz or less	> 1 oz - 6 oz	>6oz - 2.5 lbs	>2.5 lbs
Sale, transfer, dispensing of MJ concentrate to minor if adult +2yrs older				½ oz or less	>1/2oz – 3oz	>3oz-1 lb	> 1lb

\* sale includes: dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute; or attempt, induce, attempt to induce, or conspire with one or more other persons, to dispense, sell, distribute, or possess with intent to manufacture, dispense, sell or distribute MJ or MJ concentrate (dispense does not include labeling)

Other criminal provisions related to MJ in 18-18

18-18-406.5- DM1 unlawful use of MJ in detention center

18-18-428-Petty Offense (\$100 fine)-possession of drug paraphernalia

18-18-429 DM2-manufacture, sale, delivery of drug paraphernalia

18-18-430 DM2-advertisement of drug paraphernalia

18-18-433. Constitutional provisions (Section 31, p. 36 of SB 250): The provisions of this part 4 do not apply to a person twenty-one years of age or older acting in conformance with sections 14 and 16 of article XVIII of the state Constitution

18-1-711-Immunity from prosecution (Good Samaritan)-includes several MJ offenses

18-18-406(2)(a): DF3 to knowingly process or manufacture MJ or MJ concentrate or knowingly allow to be processed or manufactured on land owned, occupied, or controlled by him or him except as authorized by CRS 12-42.5, Part 1 or CRS 27-80, Part 2

<sup>5</sup> Prepared for the Drug Policy Task Force by the Colorado Criminal Justice Reform Coalition, July 2013.