



# Florida Impaired Driving Coalition Meeting Report

February 22-23, 2018

*Prepared For:*

**Florida Department of Transportation**

*Prepared By:*

**Cambridge Systematics, Inc.**



## 1.0 Attendees

### Members:

Name	Agency Represented	Attendance
Ann Marie Johnson	Florida Highway Patrol, Legal Council	<input checked="" type="checkbox"/>
Chief Art Bodenheimer	Lake Alfred Police Department	<input type="checkbox"/>
Dr. Brett Kirkland	Florida Department of Law Enforcement, Alcohol Testing Program	<input checked="" type="checkbox"/>
Chief Brett Railey	Florida Police Chiefs Association	<input checked="" type="checkbox"/>
Lt. Channing Taylor	Florida Highway Patrol	<input checked="" type="checkbox"/>
Chris Craig	Florida Department of Transportation	<input checked="" type="checkbox"/>
Chris Earl	Florida Safety Council	<input checked="" type="checkbox"/>
Darrell Edmonds	Institute of Police Technology and Management	<input checked="" type="checkbox"/>
Frank Franco	Department of Business and Professional Regulation	<input type="checkbox"/>
Garett Berman	State Attorney's Office 17th Judicial Circuit	<input checked="" type="checkbox"/>
Helen Justice	DUI Counterattack, Hillsborough, Inc.	<input checked="" type="checkbox"/>
Juan Cardona	Law Enforcement Liaison	<input checked="" type="checkbox"/>
Senior Judge Karl Grube	Trial Court Judge	<input checked="" type="checkbox"/>
Kathy Jimenez-Morales	Florida Department of Highway Safety and Motor Vehicles	<input type="checkbox"/>
Kyle Clark	Institute of Police Technology and Management	<input checked="" type="checkbox"/>
Larry Coggins	Mothers Against Drunk Driving (MADD)	<input type="checkbox"/>
Dr. Lisa Reidy	University of Miami, Toxicology Division	<input type="checkbox"/>
Lora Hollingsworth	Florida Department of Transportation	<input type="checkbox"/>
Melissa Branca	Florida Students Against Destructive Decisions (SADD)	<input type="checkbox"/>
Nicholas Trovato	Florida Association of State Prosecutors; Circuit Court - 16th	<input checked="" type="checkbox"/>
Ray Graves	Florida Department of Highway Safety and Motor Vehicles	<input checked="" type="checkbox"/>
Richard Smith	Seminole Tribal Police Department	<input checked="" type="checkbox"/>
Richie Frederick	Department of Highway Safety and Motor Vehicles	<input checked="" type="checkbox"/>
Steve Harriett	Florida Sheriff's Association	<input checked="" type="checkbox"/>
T.J. Graham	Florida Department of Law Enforcement, Alcohol Testing Program	<input checked="" type="checkbox"/>
Vernon Howell	Florida Department of Highway Safety and Motor Vehicles	<input type="checkbox"/>

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Vin Petty	State Attorney's Office Sixth Judicial Circuit	<input checked="" type="checkbox"/>
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**Coalition Support**

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Danny Shopf	Cambridge Systematics, Inc.	<input checked="" type="checkbox"/>
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**Others in Attendance**

- Murray Brooks, Alcohol Monitoring Systems
- Steve Frisco, State Attorney's Office, 8<sup>th</sup> Judicial Circuit

## 2.0 Meeting Notes – February 22

### Welcome & Introductions

Kyle Clark, Chair, introduced himself and welcomed members to the meeting. He asked members to introduce themselves and note which agency/organization they represent.

### Review of Action Items and Activity Report

FIDC members reviewed the action items from the previous meeting and provided a brief summary of progress made on each item. (**Action items are listed below in bold.** *Action items to be addressed at the next meeting are in italics and underlined*).

### Outreach Efforts about Membership

**Department of Education** – Ray Graves noted that Nichole Wilder would be a good representative but has limited availability. He provided her contact information and will contact her prior to the next meeting to gauge her interest in participating.

**Law Enforcement** – Luis Lopez has been reassigned and cannot participate in the coalition any longer. FIDC members agreed that additional law enforcement representation should be included and provided several recommendations for candidates to consider. Members agreed to email their recommendations and contact information for potential law enforcement representation to Chris and Melissa for review. An update will be provided at the next FIDC Meeting.

**Judicial Membership** – Chris Earl recommended Judge Andrew Cameron be included on the FIDC. Judge Cameron was unavailable to participate at this meeting but is interested in attending meetings in the future.

**Goodman v. FDLE (SC16-1752)** – Ann Marie Johnson provided an update on the Goodman v. FDLE Case that is at the FL Supreme Court. Mr. Goodman was being charged with DUI manslaughter. Mr. Goodman has challenged the legitimacy and sufficiency of FDLE regulations related to the collection and storage of blood samples.

Goodman appealed the administrative law judge's order. The appellant challenged the legitimacy and sufficiency of two FDLE regulations: Rules 11D-8.012 and 11D-8.013. These regulations govern the collection and storage of blood samples for the FDLE's blood alcohol testing program, as well as regulate those persons qualified to test the samples. Rule 8.012 specifies a number of steps that must be taken during the blood collection and testing process, including, inter alia, that the skin must be cleansed with a non-alcohol antiseptic before collection, that the samples "must be collected in a glass evacuation tube that contains a preservative," that "the tube must be inverted several times" and labelled properly, and that the samples must be refrigerated if they are stored for more than seven days. However, the rule does not set standards either for the type and size of needle to be used or the tourniquet application protocol to be followed in the collection of a blood sample for testing. Rule 8.013 lays out the requirements for a Florida blood analyst permit, and further sets forth the blood alcohol testing analytical procedures. This rule fails to explicitly require the analysts to screen for and reject compromised blood samples, or to document irregularities in the tested samples. These deficiencies, Appellant argues, render the regulatory scheme insufficient to ensure the reliability of the blood alcohol test results.

The appellant failed to show that Rules 8.012 and 8.013 do not ensure the accuracy of the blood testing program. The administrative law judge's and trial court's determinations that these rules adequately protect the reliability and consistency of blood testing were supported by competent evidence in the record on appeal. For these reasons, the administrative law judge's order was affirmed and Mr. Goodman

was unsuccessful in challenging the legitimacy and sufficiency of FDLE regulations related to the collection and storage of blood samples.

### **Model Language Review**

Chris Craig noted that several actions identified in the FIDC Action Plan include drafting model language related to Impaired Driving Issues. Chris reminded everyone that the FIDC cannot lobby or promote legislative action but they can review existing legislation and provide language that aligns with best practices identified by the Coalition. All model language drafted and/or updated by the FIDC will be made available on [www.flimpaireddriving.com/legislative.html](http://www.flimpaireddriving.com/legislative.html). He asked members to provide an update on the Model Language they were tasked with drafting, reviewing, and updating.

### **Over-service Legislation Model Language – Frank Franco**

- Frank was unable to participate and will provide an update at the next meeting.

### **Blood Draw Search Warrants Legislation Model Language – Garrett Berman**

- Garrett reviewed existing legislation and recommended an adjustment that improves the process for getting warrants for blood draws. He said this adjustment to the language provides exceptions DUI.

### **Model Language to repeal Florida’s Alcohol Exclusion Law – Vin Petty**

- Vin provided an overview on Alcohol Exclusion Laws and noted that insurance companies can refuse coverage if it is determined that a driver was impaired at the time of a crash in certain situations. Rather than draft alcohol exclusion laws for Florida, Vin proposed drafting a white paper that could be used as an educational tool for hospitals on the issue.

### **Model Language for Chemical Test Refusals – Judge Karl Grube**

- Judge Grube noted that refusal rates are higher in states where the penalty for refusing a test is less severe than the penalty for failing a test and that criminalizing refusals could lead to reducing the number of refusals in Florida. He noted that no studies have been done to examine whether stronger refusal penalties are associated with a reduction in impaired driving crashes. Judge Grube provided model language that would revise 316.1939 F.S. to include stricter punishments for chemical test refusals.

### **TRCC Meeting Update**

Chris gave an update on the TRCC Subcommittee Meeting related to a Uniform Case Numbering System and DUI Diversion Participation Tracking. Chris said the TRCC Subcommittee will make a recommendation that will allow users to search CCIS by both case number and driver information to make finding citations easier to find. He said the TRCC needs examples of offenders that have participated in multiple diversion programs so they can understand the record keeping of the diversion programs and how offenders are participating in more than one.

- Ray Graves said he could identify all instances where someone has taken a Level 1 DUI Course more than once. This would provide the TRCC Subcommittee with a starting point to review users that have participated in more than one first time DUI Diversion program.
- When a case is pled down to reckless, there currently is not a way to know if it was due to participation in a diversion program or to something else.
- Helen provided background on how Hillsborough County’s DUI Diversion Program works.

- Chris Earl mentioned that the University of Central Florida approached him about doing research on the effectiveness and impacts of DUI Diversion Programs. Coalition Members agreed this information would be very beneficial but noted that the FIDC cannot provide funding to support such research.

### **Impaired Driving Fact Sheet**

Danny provided an overview of the recently finalized Impaired Driving Fact Sheet and noted it was available on the FIDC Website. He said the purpose of the Fact Sheet is to provide a brief overview of Florida's Impaired Driving information in a simple and concise manner. FIDC members had the following questions and comments.

- Florida's DUI citations have decreased substantially while impaired driving fatalities and serious injuries have remained high. Consider including the number of impaired driving citations in the Fact Sheet.
  - Generally, the number of overall citations written in Florida has decreased as well.
- Consider incorporating breath test data in the next revision of the Impaired Driving Fact Sheet.

### **DUI Diversion Subcommittee**

Judge Grube gave a presentation on the status of the DUI Diversion Subcommittee's activities. He noted that, according to the NHTSA, "Effective DWI control systems can use a variety of adjudication and sanction methods and requirements. The key feature is that an alcohol-related offense must be retained on the offender's record. Otherwise, offenders who recidivate will receive less severe penalties than if the original charge had been retained on their record." Currently, none of Florida's DUI Diversion Programs retain the alcohol-related offense, or any indication that a DUI Diversion Program was completed on the offender's record. Florida's DUI Diversion Programs:

- are not statutory in nature;
- do not operate under a state recognized standard;
- vary greatly and do not result in uniform dispositions;
- are created, administered, and regulated by State Attorneys exercising their prosecutorial executive discretion; and
- do not require judicial approval and are not subject to judicial review.

Judge Grube noted it would be difficult to implement legislation regulating the discretion that State Attorney's Offices exercise but some success might be gained through publishing guidelines for State Attorney's Offices to apply to their record keeping and reporting processes.

FIDC members had the following questions and comments:

- We should find out if offenders are required to be placed under oath and verify they have not been through a diversion program previously.
- Would there be a way to revise statutes to make participation in a diversion program count as a conviction if an offender recidivates?
- The Coalition should summarize this information and present to FPAA for review and comment.
  - FDOT will work on developing a summary format that can be used.

**Adjourn**

Meeting adjourned at 4:30 p.m.

## 3.0 Meeting Notes – February 23

### Review of Day 1

Kyle Clark provided an overview of the discussion from Day 1.

### 24/7 Pilot Program

Chris said Jacksonville was doing a 24/7 Pilot Program and is sunsetting this program. There was an issue with judges believing in the program. Many determined that the program was too burdensome and were not recommending it. Chris said 24/7 Programs are considered a proven countermeasure by NHTSA and he has funding specifically for these programs. He would like to evaluate the Jacksonville Pilot program and identify why it was sunsetted and use this information to better prepare for starting another 24/7 Pilot program somewhere else in the state. FIDC members had the following questions and comments:

- There were only three failed tests during the pilot program from almost 200 participants. This program was only focused on breath tests and alcohol related impairment. Drugs tests were not included.
- The only way for this program be effective is to get buy-in from the judges.
  - Judge Grube mentioned that his judicial colleagues with prosecutorial backgrounds were most hesitant to recommend this program. They seem to be concerned about being held accountable if an offender completes the program and recidivates.
- There has to be an oversight to make this program effective. Those in charge of oversight are responsible for making sure the funding gets used adequately and the program is enforced properly.
- It would be helpful if Florida could match the model in other states where offenders would be tested at the jails. It reminds offenders they will immediately be sent to jail if they blow a positive sample.
- Florida used the federal funding to pay for the position that oversees the program and support materials/equipment for them. Private vendors were responsible for collecting the tests from participants in the program.
  - Is there a way Florida can cover overtime for an existing breath test operator? Perhaps by supporting these testers for an hour in the morning and an hour in the evenings? This may be more effective than an automated system.
- When the IID was first introduced, many judges were reluctant to recommend this. An update to statute later specified that if the court didn't order it, an agency would. Could something similar be recommended for the 24/7 program?
- Some may be uncomfortable with the vendor involvement in this program. There was a similar challenge with vendor involvement with the IID when these programs first began. Could the state provide the testing for this program as well?
  - Maybe the state could purchase the testing equipment.

- This is a pretrial program. If an offender can pay the bond, they won't necessarily be inclined to participate in this program. The bond would need to set high enough to encourage participation in the 24/7 program.
- The 24/7 program could be used to support the Special Supervision Services program.
- The 24/7 program is favored by the DUI schools but they are not comfortable administering it. This is something that is better suited for law enforcement.
- County probation will also need to have buy in to this program for it to be effective. Will need to provide incentives to anyone piloting one of these programs (equipment that can also be used for other DUI activities, etc.).
- State attorneys, judges, law enforcement, and probation representatives need to be included in any discussions about beginning another 24/7 pilot program.
  - As a coalition, we are responsible for recommending best practices and marketing the benefits of 24/7 programs.
- Ray would like to draft recommendations of best practices for 24/7 programs in Florida.
  - Chris will support him in this effort. Chris has federal funding for this program and would like to identify someone who would like to take on a pilot program. This is designed to be seed money for a program.
  - Brett Railey and Steve Whidden will also help.
- Ray has the results of the program and will share those with the coalition. He noted that:
  - The average time an offender spends in a 24/7 program is 90 days.
  - It costs about \$2 for each test (\$4 per day) to the offender in this program.

### **Impaired Driving Enforcement Subgrants**

Chris noted that FDOT is awarding a little more than \$1.1 million in enforcement subgrants. Some of the largest hot spots for fatalities and serious injuries are Tampa and Miami. Some of Florida's major priority areas, such as Pasco County and Duval County, are not supported by enforcement subgrants. Chris encouraged recommendations for overtime funding or other potential subgrants to support increased enforcement activity in these high priority areas. He will draft an executive summary of the grant application process for Florida Police Chiefs Association and Florida Sheriffs Association and will include what the grant can be used to support and the counties on which counties the state would like to focus.

### **SFST Scoring Sheet**

Chris reviewed and asked coalition members to provide comments on the SFST Scoring Sheet. Once the coalition has approved the sheet, FDOT will print and share Scoring Sheets with law enforcement. Coalition members had the following questions and comments.

- This is an ideal form to have as a reference in court. Would it be more appropriate to have this as a document rather than a clipboard that gets erased?

- This is intended to be transferred to the officer's report so they should have this information available in a hard copy format as well.
  - Are the diagrams available in the paperwork officers transfer the information on the clipboard to so they can have an accurate written reference?
    - Diagrams are available depending on department. Many include it in their documentation, but some do not.
- Is there a standardized DUI form or a way to encourage agencies to use a standardized form?
  - There is not. Statutes allow all agencies to choose their own format for their forms.
  - The State Attorney in Palm Beach County has a video on DUI field testing that would be helpful for educational purposes.

### **Impaired Driving Training Course Tracking**

Chris brought Coalition members' attention to Objective 6.4 of the FIDC Action Plan - Explore methods to track law enforcement training related to impaired driving (ARIDE, SFST, etc.), for both instructor and the officers they have trained. He noted many states are very focused on training for law enforcement have tracking systems for tracking SFST and ARIDE trainings. Florida has no such tracking system. There is funding available to get officers trained but Florida cannot spend it without proof that officers need the training. A tracking system would allow FDOT to provide additional funding for ARIDE and SFST training. He asked if Coalition members had recommendations on how to begin tracking ARIDE and SFST trainings. Coalition members had the following questions and comments.

- ATMS – Automated Training Management System would be a good resource. The problem is that ARIDE and SFST isn't included in this system.
- Is there a mechanism available in ATMS to include information on those trainings?
  - ATMS is being updated now and we could request to have both ARIDE and SFST included with the update.
- SFST is a perishable skill. Officers need to use this regularly and it is recommended to be retrained at least every three years. SFST Instructors are recommended to be retrained at least every two years. We would also like to encourage retraining when the recommended time is met.
- Darrell Edmonds, Chris Craig, and Brett Kirkland will work with CJSC to identify the ability to track ARIDE and SFST trainings. They will provide an update at the next FDIC Meeting.
  - It would be good to have this discussion at an upcoming FSA and FPCA meetings to promote awareness of the issue.

### **FIDC Action Plan Update**

Danny reviewed the FIDC Action Plan and made edits to the status of each action item on-screen based on input from Coalition members.

**Next Steps**

Chris provided an overview of next steps and travel reimbursement information. He noted that the next meeting will be on May 8-9, 2018 in Tallahassee.

**Adjourn**

Meeting adjourned at 11:45 p.m.

Contact information for Florida Impaired Driving Coalition questions:

Danny Shopf, Cambridge Systematics  
Transportation Analyst  
Phone: 850.671.0205  
[dshopf@camsys.com](mailto:dshopf@camsys.com)

Chris Craig, FDOT  
Traffic Safety Administrator  
Phone: 850.414.4009  
[chris.craig@dot.state.fl.us](mailto:chris.craig@dot.state.fl.us)