

Florida Impaired Driving Coalition Goals for DUI Diversion Programs Subcommittee

Goal 1

Compile Research on the general purposes, functions, and effectiveness of DUI Diversion Programs.

The general purposes, functions, and the effectiveness of diversion programs has been summarized by a number of government entities that deal with impaired driving as well as by private organizations. Among these are the following:

Governors Highway Safety Association (GHSA) Policies and Priorities: Impaired Driving GHSA's Highway Safety Policies & Priorities.

E.14 Plea Bargaining and Diversion Programs

“Diversion programs allow a drunk driving offense to be dropped if the offender agrees to enter an education, treatment or other rehabilitation program. Plea bargaining allows a DUI offender to avoid being convicted by accepting the penalty for a lesser or non-alcohol offense. Both of these approaches allow offenders to escape impaired driving penalties and undermine many comprehensive elements of a comprehensive DUI system. States should restrict plea bargaining and limit diversion programs to first-time offenders with low BAC’s, or where possible eliminate such programs all together.”

U.S. Centers for Disease Control and Prevention Intervention Fact Sheets

Table B.7 - Limits on Diversion and Plea-Bargaining, as of March, 2010

Limits on Diversion and Plea Agreements

“Diversion programs defer sentencing while a DWI offender participates in some form of alcohol education or treatment. In many States, charges are dropped or the offender’s DWI record is erased if the education or treatment is completed satisfactorily. (UNC Highway Safety Research Center, 2011, p. 1-26)”

“Both diversion programs and plea agreements reduce the time to punishment. In addition, they typically also result in less-severe punishment for DWI offenses and negatively affect deterrence.

Dismissal of charges and lack of permanent record means that a repeat offender may be tried or dealt with as a first-time offender because the record does not show the previous arrests.” 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 ([Hedlund and McCartt, 2002]; [Goodwin, Foss, et al., 2005]; [NTSB, 2000]; [Robertson and Simpson, 2002]). (UNC Highway Safety Research Center, 2011, p. 1-26)”

National Highway Traffic Safety Administration (NHTSA) Countermeasures That Work - National Transportation Library Countermeasures That Work 2007DOTHS 810710

“Diversion programs defer sentencing while a DWI offender participates in some form of alcohol education or treatment. In many States, charges are dropped or the offender’s DWI record is erased if the education or treatment is completed satisfactorily. Negotiated plea

agreements are a necessary part of efficient and effective DWI prosecution and adjudication. However, plea agreements in some States allow offenders to eliminate any record of a DWI offense and to have their penalties reduced or eliminated. 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 (Hedlund and McCartt, 2002; NCHRP, 2005; NTSB, 2000; Robertson and Simpson, 2002a)."

"Effectiveness: There are no studies that demonstrate that diversion programs reduce recidivism (NTSB, 2000, p. 28) and there is substantial anecdotal evidence that diversion programs, by eliminating the offense from the offender's record, allow repeat offenders to avoid being identified (Hedlund and McCartt, 2002, p. 38). Eliminating diversion programs should remove a major loophole in the DWI control system. Wagenaar et al. (2000) reviewed 52 studies of plea agreement restrictions applied in combination with other DWI control policies and found that they reduced various outcome measures by an average of 11 percent. "

Goal 2

Identify the Functions and Purposes of DUI Diversion Programs in Florida

The functions of four DUI Florida diversion programs have been discussed to a limited extent in the law review article "Does Florida Need a Statutory Driving Under the Influence (DUI/DWI) Pretrial Intervention Diversion Program?" The purposes of the Florida State Attorney created, non-statutory defacto diversion programs can be summarized by reference to the aforementioned article. The functions and purposes are identified as follows:

Work Needed:

(If there are other Florida DUI diversion programs in operation, the information concerning their functions and purposes should be compiled and added to this section.)

Functions and Purposes

Florida's defacto, State Attorney created diversion programs function without legislative oversight, statutory foundation or compliance with existing pretrial diversion statutes. De facto programs serve the purpose of reducing the time between case intake and case disposition. Typically when cases are suitable for diversion, application is made early, and less time is expended in pursuing and responding to pretrial discovery and in "in-court" legal maneuvering.

De facto programs function to enable complaint defendants to avoid adjudication of guilt and conviction of the DUI/DWI offense for which they were initially arrested or cited.

De facto programs enable more prosecution personnel and resources to be devoted to serious DUI/DWI offenses that involve aggravating factors such as repeat offenses, crashes, and injury cases;

(7) De facto programs improve the working relationship of State Attorney offices and the defense bar by establishing clear criteria for evaluating a defendant's candidacy for defacto diversion;

De facto programs assist judges in clearing dockets and reducing pending caseloads.

At least one defacto program deprives the State of Florida of fine and trust fund revenue that would have otherwise been received if a DUI/DWI defendant were adjudicated as a result of entry of a plea of guilty or no contest in open court.

At least one defacto program functions to enrich private and non-state regulated entities by requiring “donation” of specified sums to such entities specified by the defacto program.

Goals 2a and 2b

Determine if program participation will require ignition interlock device (IID) usage.

Work Needed:

(If there are other Florida DUI diversion programs in operation, the information concerning required IID usage and donations should be compiled and added to this section.)

The 9th Circuit defacto diversion program operating in the Orange and Ocoola Counties requires installation and use of an IID for a period of 6 months.

The 15th Circuit Palm Beach County requires installation and use of an “alcohol monitoring device, which may in and IID.

11th Circuit Miami Dade County requires installation and use of an Ignition Interlock Device for 90 or 180 days depending on the severity of the underlying offense.

8th Circuit, Alachua, Bradford, Baker, Union, Levy, and Gilchrest, Counties do not specify installation or use of an IID. It is conceivable that such a requirement could be inserted in a diversion program contract.

List organizations that receive monetary contributions from defacto diversion programs as a condition of compliance with program requirements.

8th Circuit Alachua County requires \$500 to CDS Family and Behavioral Health Services, F/U/B Project Pay Back payable through the Office of the State Attorney. Also payment of \$100 to the Office of the State Attorney.

9th Circuit, Orange County requires \$1000 donation to the “Victim Services Center” or “MADD”.

11th Circuit, Miami Dade requires a \$300 to \$500 donation to the Denise Moon Memorial Fund depending on the severity of the offense. There are also supervision fees ranging from \$500 to \$650 to be paid to either one of two non-profit organizations. Prosecution costs are payable to the office of the State Attorney in the amount of \$50.

15th Circuit, Palm Beach County, does not require donations as a condition for completion of the diversion program which does involve payment of fines of \$250 to \$500 in light of the reduction of the DUI charge to Reckless Driving.

Goal 3

Determine if the Function of Florida DUI Diversion Programs has reduced DUI Recidivism.

Compare diverted participants’ recidivism rates to those of court-adjudicated offenders who did not receive diversion.

Identify the successful completion rates for each program.

Work Needed:

(“There are no studies that demonstrate that diversion programs reduce recidivism (NTSB, 2000, p. 28. Accordingly, it is doubtful that statistics will be available to complete this Goal. It is suggested

that we contact DHSMV and Diversion Program providers to see if names of program participants can be correlated to driving histories to determine whether such data could be used to extrapolate recidivism rates.)

Goal 4

Determine how existing Florida DUI Diversion Programs can be Improved so as to Reduce DUI Recidivism.

(Based on the authorities cited under Goal 1, the most important improvement that comes to mind is that a system of record keeping be developed to disclose when a DUI/DWI defendant has previously been granted a diversion as a result of successful completion of a diversion program.)

Goal 5

Identify the criteria that is used by each Florida DUI Diversion Program to select participants for the program.

Work Needed:

(This information should be available by obtaining and categorizing the requirements that are published by each of Florida's defacto DUI/DWI diversion programs)

Goal 6

Verify that those participants, who do not successfully complete the program, are noted and their driver records reflect the DUI conviction.

Work Needed:

(This information will require communication with the diversion program providers and the DHSMV to determine what dispositions occurred in the cases of those who do not successfully complete diversion.)