



Florida Impaired Driving Coalition Meeting Report

May 8-9, 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 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 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 type="checkbox"/>
Frank Franco	Department of Business and Professional Regulation	<input checked="" 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 checked="" type="checkbox"/>
Kyle Clark	Institute of Police Technology and Management	<input checked="" type="checkbox"/>
Larry Coggins	Mothers Against Drunk Driving (MADD)	<input checked="" 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 type="checkbox"/>
Ray Graves	Florida Department of Highway Safety and Motor Vehicles	<input 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 type="checkbox"/>
Vernon Howell	Florida Department of Highway Safety and Motor Vehicles	<input type="checkbox"/>

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

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

- Murray Brooks, SCRAM
- Tanesha Williams, Florida Sheriffs Association

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 – Melissa Branca could not attend. Chris Craig noted an invitation was sent out to Nichole Wilder, Assistant Director of the Office of Healthy Schools, requesting her participation on the FIDC. She has not sent in a response. *Chris will provide an update at the August FIDC Meeting.*

Toxicological Lab Representation – An invitation was sent to Chip Walls last week requesting his participation. He has not responded. In an email response to Garrett Berman last week Chip said he was still interested in participating. *Garrett will provide an update at the August FIDC Meeting.*

Law Enforcement Representation – Chris reviewed the budget for travel expenses and determined enough budget was available to send invitations to each law enforcement representative recommended at the February FIDC meeting. Invitations were sent out last week and no responses have been returned. *Chris will provide an update at the August FIDC Meeting.*

Judicial Membership – Chris sent an invitation to Judge Andrew Cameron last week. He has not sent a response. Chris also sent invitations to Steve Frisco and Heather Jones from the 8th Circuit. *Chris will provide an update at the August FIDC Meeting.*

- Could we get a representative from the Attorney General's Office?
 - Consider sending a letter to the Attorney General's Office requesting representation requesting one of the attorneys that does appellate work, since that is the type of representative we are interested in. We'll likely get a better response this way.

Other Activities to Report from the Past Quarter – Brett Kirkland provided an update on using the FDLE ATMS tracking system to track ARIDE, DRE, and SFST trainings. He checked with his IT department and they determined it was technically feasible to track these different training options and the agencies already have access to the ATMS system to upload training information. He noted there would be a nominal cost for updating the programming. Only training that is regulated statewide would be able to be incorporated into this system. The trainings would be reported and updated at the agency level. The next step is to identify who is responsible for entering trainings at the agency level.

- Would other agencies or users be able to run reports on the number of officers that have been certified or participated in these trainings?
 - Yes, that is an option. Users would be able to see the number of officers but not any of their personal or agency information. That is part of why only statewide trainings are able to be including in this program.
- Can this format support the need to identify renewal dates and which officers are active and which need to recertify or be retrained?

- Yes, this program uses this functionally for other certifications already tracked so it would be possible to include this option for ARIDE, SFST, and DRE.
- For the next steps, we will need to work with Darrell Edmonds to write the requirements of the trainings and then work with FDLE/CJST to get the training tracking incorporated.
 - Darrell can work with Brett Kirkland on this task.
 - FDOT will compile a list of classes the FIDC would like to track and work with Brett and Darrell to get them included in the ATMS System.

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. Chris provided FIDC members an example of model language to be posted on the FIDC website and asked members to comment on the format and level of detail provided in the example. He then asked members to provide an update on model language they were tasked with drafting, reviewing, and updating. FIDC members had the following comments about the model language template:

- This covers exactly what we need to show and illustrates a simple solution.
- The FIDC should have at least one meeting per year to discuss model language that is on the website to ensure we have the correct information online. Consider scheduling this meeting as the first meeting after the legislative session has ended.

Over-service Legislation Model Language – TBD

- Consider contacting a legislative person with Hillsborough Sherriff's Office and incorporate them into this process. Vin Petty is unsure he has the right background to lead this and Larry will work on identifying a contact that may be able to help with this process going forward.

Blood Draw Search Warrants Legislation Model Language – Garrett Berman

- Change subsection 6 to “proving” instead of providing.
- We can post this on the website.

Model Language to repeal Florida's Alcohol Exclusion Law – Ann Marie Johnson

- Will present at the next meeting.

Model Language for Chemical Test Refusals – Judge Karl Grube

- This language is close enough to be laid out in the new template. FDOT will work with Judge Grube to finalize the summary and get it ready for the next coalition meeting.

New Ruling from 1st DCA on DWLS Cases

The 1st DCA answered two questions of public importance – “Does a person who has never had a driver license issued and is not exempt, actually have the right to drive?” and “Does a person who has never had a license and not exempt, have a driving privilege as such they can be convicted?” They responded, if they have never been issued a license, their license cannot be suspended. They can only be charged under §322.03.

There is no distinction between having a driver license and having a driver privilege. This could be an issue with implied consent. If an offender has never been issued a driver license, the way we read implied consent could be negatively affected.

There is a loophole in §322.34 that creates this problem. We don't define in the statute the difference between having a driver license and having driving privilege. Should we consider a revision of the definition of driver license and driver privilege?

Coalition members had the following questions and comments for Garrett:

- Implied consent references driving privilege. There are concerns about giving offenders incorrect information in their implied consent if they have never had a license.
 - DHSMV is reviewing this statute.
- We should keep our eye on this and start thinking about some potential language that defines the difference between having a driver license and having driver privilege.
 - Driving privilege should be applied notwithstanding whether they have actually received a driver license.
- § 322.01 includes a definition of driver license. This reference was not included in the Williams case.
- Garrett, Kathy Jimenez-Morales, and Vin will keep track of this issue and report back at the next meeting on the status.

Impaired Driving Fact Sheet

Danny Shopf provided an overview of the revised Impaired Driving Fact Sheet and noted it was available on the FIDC website. He reminded FIDC members that there was a request to add breath test statistics to the Fact Sheet at the last FIDC meeting. 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.

- Do we have data on the number of officers/operators that are allowed/certified to give a breath test? Has this number declined at a similar rate as the number of breath tests?
 - There is a constant turnover with these personnel. Currently around 8,000 breath test operators are certified throughout the state. The number of certified operators has increased slightly but due to the reduction in number of breath tests, there are likely fewer operators actually testing.

Offenders Participating in Multiple DUI Level One Courses

Ray Graves could not attend the meeting and did not provide an update on identifying potential offenders participating in multiple DUI Diversion Programs. At the August FDIC meeting, Ray will provide an update on the number of offenders that have participated in multiple DUI Level One Courses, which should be reserved to first-time offenders only.

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:

- There is also a loophole with out of state residents. Without a conviction in Florida, DUIs do not transfer over and they can potentially be treated as a first-time offender.
- The emphasis of this paper is on ensuring we are treating offenders that have been through a diversion program as a second offender on their next diversion program.
 - We would also like to improve the tracking system for participants in diversion programs.
- Chris Earl will ask the Orange County State Attorney to come to an upcoming FIDC meeting and discuss DUI diversion programs. If the white paper has been approved, he would like to share it with the Orange County State Attorney’s Office.
- The current format is a little long. Consider pairing the white paper with a summary similar to the model legislation summary discussed earlier in the meeting that provides a high level overview of the diversion recommendations.
 - FDOT will draft the model language summary and work with Judge Grube to finalize. This will be presented at the next FIDC meeting.

Judge Grube provided an overview of the law enforcement survey related to reduction in the number of DUI cases in Florida. This survey is intended to identify potential reasons for not writing DUI citations. There is some concern with the perception of the responses, especially if these responses will be available as public record.

- Consider distributing the poll out through a different avenue.
- Rather than having respondents select from a series of options, could we have them fill in their own responses. This may make some agencies more comfortable with the public records element of this survey.
 - If we can have this ready by August, we can share this at the DUI Conference.
- Rather than wording as “we are trying to fix a problem” we can word as “how do we improve the process” to ensure it is framed in a positive way, rather than negative.
- Include the statistics of decreasing citations but increasing fatalities related to DUI.

- Larry Coggins will lead this effort.

Adjourn

Meeting adjourned at 4:30 p.m.

3.0 Meeting Notes – February 23

Review of Day 1

Kyle provided an overview of the discussion from Day 1.

24/7 Pilot Program

Chris gave a brief update on Florida's options for a 24/7 Program. Ray Graves went to the 24/7 National Conference in Sacramento and came back with information related to 24/7 nationally. He is not available today so he will be included on the agenda in the August meeting. Florida has funding specifically for a 24/7 Program but does not have any programs to fund. Chris said the grant is for about \$150,000 per year and there is currently \$220,000 available (because it was not completely spent last year). Chris asked FIDC members to think about counties or cities that would be interested in piloting another 24/7 Program.

FIDC members had the following questions and comments:

- Could we have someone give a more formal presentation on the 24/7 Program? Consider including the Seminole County Sheriff as they have interest in a program like this.
- Does the grant include full-time employees to administer the program?
 - Yes, that would be included. The program in Jacksonville supported an administrative coordinator through the grant.
- Finding a county with only one county judge might be a good location for a pilot program. If we can get buy in from the one sheriff and one judge, the program may be more effective and provide a good model for other, larger counties.

SCRAM Presentation

Murray Brooks gave a presentation on SCRAM. He said the SCRAM device is for continuous 24/7 alcohol monitoring. The device tests transdermally for the presence of alcohol and has had over 1 billion tests performed. The device can identify the difference between consumption and environmental factors, such as pumping gas at a gas station. A major benefit of the program is that the nature of continuous testing means there is no option to drink around or between the test schedules.

FIDC Members had the following questions and comments:

- For someone who drinks a lot and is heavy, would a single beer show up on the SCRAM device?
 - This likely would not show up. When we are looking at the populations we are dealing with, they rarely stop at one drink. Technicians may notice regular small indications on the reports and will likely ask questions if they see a common trend, however, this information would not be able to be confirmed or used in court based on the data alone.
 - This is similar to the ignition interlock device which has a standard threshold of 0.025 before a vehicle will not start.
- How would this be translated to a violation of probation or bond condition? Can we see this real-time and make an arrest immediately?
 - No, we need to see the full drinking event before we can make a conclusion that the offender was actually drinking.
- Would the breath test device work well for the 24/7 program?

- Yes, this is an option. One of the benefits of the 24/7 program is there is an immediate penalty for blowing a positive test. Commonly, offenders will be tested at a holding facility.
- SCRAM is a good option for areas where users are too far away to come in to a police department twice a day.
- How soon can the violations be detected?
 - Within 24 hours, unless the drinking event is occurring when the report is submitted. If that is the case, the report will be finalized the following day. There is an option to download the data manually if the information is needed immediately.
- Is there a way for the offender to remove the device, either correctly or incorrectly?
 - Removal of the device is prohibited by the program. Alerts are sent when the device is removed.
- What is the cost per day?
 - Usually around \$10 per day depending on the provider. Agencies can have a slight discount.

Traffic Safety Resource Prosecutor (TSRP Presentation)

Vin Petty gave a presentation on the TSRP Program. TSRP is a national, grant funded program through NHTSA and FDOT. TSRP Program has several training programs related to DUI. He noted there is also law enforcement specific training related to DUI to ensure officers are aware of the needs of prosecutors. TSRPs are responsible for technical assistance for various DUI and traffic safety issues. Florida's TSRP program maintains a comprehensive website including an expert witness database, case law updates, DUI manuals and trial aids, a DUI motions and orders database, and other DUI topics and articles. FIDC members had the following questions and comments:

- Are these trainings available for law enforcement and what is the cost to the agency?
 - These trainings are free. Some of the trainings are designed for both prosecutors and officers while others are designed for officers only.
- Is there someone available to do a program like this for judges?
 - There is a national option that the TSRP program uses. We will consider local options that would be appropriate for this training.
 - Could we use NHTSA grant funding if Vin participated in the training? Or if the training was hosted as a webinar?
 - Some webinars are available already and could be a helpful resource for judges.
- We will work on exploring our options for educating judges on HGN.

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. Coalition members had the following questions and comments:

- Add a reference to DREs being statutory experts as an action item. Use the existing model language we have drafted.

Next Steps

Chris asked the Coalition to identify other opportunities for educational presentations at future meetings. He asked for volunteers to give a presentation at the August FIDC meeting in Orlando.

- Helen offered to give a presentation on DUI System.
- The Coalition requested a presentation from a Prosecutor that has a Diversion Program. Options to research include State Attorneys from Hillsborough County or the city of Orlando.
- Ray will give his 24/7 and DUI Level 1 Courses presentation(s).

Chris provided an overview of next steps and travel reimbursement information. The next meeting is August 2-3, 2018 in Orlando at the FHP/FDOT Building. The FIDC agreed to have the following meeting on November 15-16, 2018. Chris will work on identifying an Orlando location for the November meeting.

Adjourn

Meeting adjourned at 11:30 p.m.

Contact information for Florida Impaired Driving Coalition questions:

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