

**Report of the Florida
Impaired Driving Coalition
DUI Diversion Programs
Subcommittee**

Florida DUI Diversion Programs Subcommittee Goals

- 1. Compile Research on the General Purpose(s) and Function(s) and Effectiveness of DUI Diversion Programs**
- 2. Identify the criteria that is used by each Florida DUI Diversion Program to select participants for the programs.**
- 3. Determine if the Function of Florida DUI Diversion Programs has reduced DUI Recidivism.**
- 4. Determine how existing Florida DUI Diversion Programs can be Improved so as to Reduce DUI Recidivism.**
- 5. Verify that participants, who do not successfully complete Diversion, are prosecuted for some offense.**

What are “Florida DUI Diversion Programs” and Why Does Type Matter?

- Are they **Pretrial Diversion Programs**?
- Are they **Deferred Prosecution Programs**?
- Are they **Pretrial Intervention Programs**?
- Are they **Something else**?

Pre Trial Intervention Programs

“PTI programs are a creation of the legislature. *State v. Board*, 565 So.2d 880, 881 (Fla. 5th DCA 1990). Section 948.08, Florida Statutes, allows certain first offenders or persons convicted of not more than one non-violent misdemeanor or third-degree felony to be placed in PTI.”

Batista v. State, 951 So. 2d 1008, 1010 (Fla. 4th DCA 2007)

DUI Diversion Programs are not creations of the Legislature, at least not at this time.

Diversions Not to be Confused with PTI

- § 948.08, Fla. Stat. Ann.
- (2) Any first offender, or any person previously convicted of not more than one nonviolent misdemeanor, who is charged with any misdemeanor or felony of the third degree is eligible for release to the pretrial intervention program on the approval of the administrator of the program and the consent of the victim, the state attorney, and the judge who presided at the initial appearance hearing of the offender.

8Th Judicial Circuit DUI Intervention Program

- **First, my office does** offer deferral for some DUI cases under what is called our DUI Intervention Program. **This program was started in January of 2007 on a limited, trial basis and after about two years was expanded to allow consideration of all cases meeting criteria that were developed during the initial test period.**
- WILLIAM P. CERVONE STATE ATTORNEY EIGHTH JUDICIAL CIRCUIT OF FLORIDA SERVING ALACHUA, BAKER, BRADFORD, GILCHRIST, LEVY AND UNION COUNTIES

Orange County (PTD) is a Deferred Prosecution Program

“Pretrial Diversion (PTD) is a deferred prosecution program for selected first-time offenders, offered by the Office of the State Attorney and supervised by Orange County Community Corrections. Successful completion of the Pretrial Diversion program will result in the dismissal of the case by the Office of the State Attorney. This is an excellent opportunity to avoid criminal prosecution and conviction.”

“Palm Beach County 1st Time DUI Offender Program”

(structured for deferred prosecution)

Upon entering the Palm Beach County 1st Time DUI Offender Program, the DUI will be Nolle Prossed (dropped) and you must enter a plea of **Guilty to Reckless Driving, a second degree misdemeanor. Upon successful completion of this program, you will not receive any points against your license.**

However, if you fail to successfully complete the program, you will be adjudicated guilty and sentenced to ninety (90) days in the Palm Beach County Jail.

3rd Circuit DUI Intervention Program

OFFICE OF THE STATE ATTORNEY

THIRD JUDICIAL CIRCUIT OF FLORIDA

Jeffrey A. Siegmeister, State Attorney Live Oak FL. 32064

**Serving the Counties of Suwannee, Hamilton, Dixie,
Lafayette, Taylor,**

October 31 , 2013 To: All Staff

Jeffrey A. Siegmeister, State Attorney

Subject: DUI Intervention Program

Orange County Pretrial Diversion Frequently Asked Questions

Now that I have been arrested or charged with a crime, what do I say on a job application?

“Before you complete Pretrial Diversion your criminal record will show that you are charged with a crime and the case has not been resolved. After you successfully complete Pretrial Diversion your criminal record will show that you were charged with a crime and that you participated in a deferred prosecution program. It will show that you were not convicted of this charge. (emphasis added)”

“Pretrial Diversion (PTD) is a deferred prosecution. Successful completion of the Pretrial Diversion program will result in the dismissal of your case by the State Attorney.”

Miami Dade DUI Diversion Program

“Our office offers a formal DUI diversion program called Back On Track. The Program has structured and published criteria which determine eligibility and applicant approval.”

Regardless of whether an individual qualifies for the program, the ASA reviewing and charging the case has the final say in offering the program. “

If an individual completes the program successfully, then we amend the charge and they plea to a reckless driving having already completed all of the requirements of our program.”

Conclusion

- **All of Florida's existing DUI Diversion programs are Deferred Prosecution Programs in which the prosecution of a DUI or Reckless Driving offense is deferred for a given period of time.**
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- **If specified conditions are successfully completed during the deferral period, the DUI charge is dismissed or amended to Reckless and then the RD is either adjudicated or withheld from the defendant's record.**

Pretrial Diversions by SAOs are not subject to Judicial Review

“We hold that the pretrial diversion decision of the state attorney is prosecutorial in nature and, thus, is not subject to judicial review. We approve the decision of the district court and overrule *State v. Eash*.”

Cleveland v. State, 417 So. 2d 653, 654 (Fla. 1982)

Some Conclusions and Things We have Learned

Position of the National Highway Traffic Safety Administration (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 (Hedlund & McCartt, 2002; NCHRP, 2005; NTSB, 2000; Robertson & Simpson, 2002a). Otherwise, offenders who recidivate will receive less severe penalties than if the original charge had been retained on their record.

Florida's DUI Diversion Programs are Deferred Prosecution Programs

- ✓ Florida's DUI Diversion Programs and DUI Intervention Programs are not statutory in nature.
- ✓ **They vary greatly and do not result in uniform dispositions.**
- ✓ They are created, administered, and regulated by State Attorneys exercising their prosecutorial executive discretion.
- ✓ **They do not require judicial approval and are not subject to judicial review.**

Some State Attorneys Use Alternatives to Formal Pretrial Diversion Programs

- ✓ Rather than deferring DUI prosecutions some SAO's simply amend DUI charges to Reckless Driving Offenses and permit pleas with probation that requires completion of conditions normally attendant to DUI dispositions including completion of DUI School, victim impact panels, abstinence, and restricted driving.
- ✓ These dispositions may be falsely reflected in UTC stats as "DUI adjudications withheld by judge".

Coincidental Effect of Increased Use of Formal and Informal SAO DUI Diversion Programs on DUI Adjudications

- 2012 36,961 Guilty Adjudications**
- 2013 33,971 Guilty Adjudications**
- 2014 33,279 Guilty Adjudications**
- 2015 30,961 Guilty Adjudications**
- 2016 27,920 Guilty Adjudications**

Coincidental Effect of “Deferred Prosecution” and DUI Cases Left Pending

• 2012.....	7%
• 2013.....	7%
• 2014.....	7%
• 2015.....	8%
• 2016.....	15%

Florida's Alcohol Impaired Driving Fatalities

• 2011.....	694
• 2012.....	709
• 2013.....	672
• 2014.....	694
• 2015.....	788
• 2016.....	841

What It Means for Our FIDC...

- ✓ It would be difficult to implement legislation regulating the discretion that SAO's exercise in determining eligibility, record keeping and reporting, and how the monies generated are assessed and disbursed.
- ✓ Some success might be gained through a limited legislative approach, publishing FIDC guidelines and requesting SAO adoption, or through use new or existing administrative regulations governing record keeping, reporting, and disbursement of generated funds.

The last conclusion hopefully provides direction for the DUI Diversion Program Subcommittee in terms of exploring limited-statutory and other means of accomplishing goals such as:

- **1) Setting limits on participation in DUI Diversions utilizing Chapter 948.**
- **2) Administratively requiring that case dispositions reflect participation in DUI diversions.**
- **3) Providing for accountability for collection and disbursement of Program fees. (Clerks?)**
- **4) Ensuring that Diversion has an appropriate education and treatment component.**

Urge the Adoption of Statewide Voluntary Guidelines

- **Publish recommendations for the improvement of the disposition of DUI cases.**
- **Address SAOs at meeting or conference adopt a uniform approach to the administration of such programs from the standpoint of eligibility, record keeping, supervision of participants, disposition of collected funds, and the nature of final dispositions.**

What Other Approaches Should We Consider?

1. Shop the idea of the need for research by recognized entities such as NHTSA, GHSA, Pire, etc concerning the effect of the Florida programs on recidivism.
2. Urge Law Enforcement organizations to emphasize the need for allocation of program fees to trust funds, general revenue, and other revenue beneficial targets.
3. ?
4. ?