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SERVING
ALACHUA, BAKER, BRADFORD, GILCHRIST, LEVY
AND UNION COUNTIES

PLEASE REPLY TO:

Diversion Policy

1) Statement of Policy

- a) The policy of the Office of the State Attorney is to resolve appropriate cases through diversion from the criminal justice system by way of a deferred prosecution agreement, pretrial intervention, deflection, therapeutic court, or diversionary court when the circumstances of the offense and the background of the defendant do not indicate a need for criminal prosecution.
- b) A deferred prosecution is an appropriate resolution in such cases when the substantial interests of justice and any necessary remediation can be met without an unnecessary expenditure of public resources.
- c) Deferred prosecution is not to be used as a vehicle to avoid or delay resolution of otherwise meritorious cases.
- d) Deferred prosecution may not be used as an alternative to dismissal when a case cannot be filed or pursued through the courts for evidentiary, ethical, or other reasons.
- e) Deferred Prosecution serves an appropriate role as a case load management tool allowing limited prosecutorial resources to be directed to the most serious cases.
- f) No person shall be denied entry, removed from a diversionary program, or otherwise prevented from participation in a diversionary prosecution program due to an inability to pay fees or costs associated with any program.

- g) The Office of the State Attorney shall uphold and enforce victims' rights pursuant to Florida Statute §960 and §16, Article I of the State Constitution. The victim in every criminal matter shall be advised and given an opportunity to be heard regarding any offer of diversion. The victim(s) must approve an offer of diversion prior to the offer being made to the defendant. The State Attorney or the Chief Assistant State Attorney may approve diversion over the victim's objection.
- h) Diversion is a discretionary disposition of a criminal complaint by the State Attorney. This policy shall not create a right or entitlement of the defendant to entry into any diversionary program.

2) General Guidelines for Use of Deferred Prosecution Agreements

a) General Terms of Deferred Prosecution Agreements

i) General Misdemeanors

- (1) A deferred prosecution agreement may be entered with any person charged with a non-traffic, non-domestic misdemeanor offense.
- (2) Multiple counts in a single case do not disqualify a person from this diversionary option unless those counts are from unrelated times or criminal episodes.
- (3) A prosecutor within their discretion may offer subsequent opportunities at diversion. Offenders with prior adjudications or withheld adjudications should not be given an opportunity at diversion unless approved by the County Court Division Chief, Chief Assistant State Attorney or State Attorney. In any such case the minimum required charitable contribution and community service amounts will be twice those required for a first-time offender.

ii) General Felony

- (1) A deferred prosecution agreement may not be entered on felony cases without the permission of the Felony Division Chief, Chief Assistant State Attorney or State Attorney.
- (2) The Felony Intake Division Chief can enter into a deferred prosecution agreement in a felony case subject to the conditions set out herein.

iii) Victim's Consent: The victim's consent is required for the entry of a deferred prosecution agreement unless authorized by the Chief Assistant State Attorney or State Attorney.

iv) Time for the Entry of the Agreement: Consistent with the underlying purposes served using deferred prosecution agreements, such should be entered into as early in the progress of a case as is possible.

v) Out of Jurisdiction Defendants: Out of state or county defendants should not be refused diversion solely on basis that the defendant resides outside of the 8th circuit or the State of Florida.

vi) Mandatory Terms

- (1) New Law Violations Prohibited: The general conditions of all deferred prosecution agreements shall include a prohibition against any future law violations, a waiver of speedy trial, and the return of any posted bond amount to the defendant.

(2) Mandatory Special Conditions. All deferred prosecution agreements must include the following as special conditions:

(a) Timing:

(i) Second Degree Misdemeanors: 4 months

(ii) First Degree Misdemeanors: 6 months

(iii) Felonies & Juvenile: 6 – 24 months

(iv) Extensions: The Assistant State Attorney handling the prosecution of the case has the authority to extend the timing of the deferred prosecution at the request of the defendant to permit the completion of any unfinished sanctions.

(b) Restitution: Complete restitution to the victim if applicable.

(c) Cost of Prosecution: Payment of costs of prosecution including as required by Section 938.27, Florida Statutes, as follows [These are to be required per case, not per count]:

(i) Misdemeanor & Juvenile: \$150

(ii) Felonies: \$250

(iii) Any extraordinary costs of prosecution as contemplated by statute that can be documented and that have been incurred prior to the entry of a deferred prosecution agreement shall be added to these minimum sums.

(d) Public Defender Application Fee: Payment of any applicable Public Defender application fee assessed under Section 27.52, Florida Statutes.

(e) Charitable Contribution: Payment of a charitable contribution in lieu of court costs and fines as follows, which are to be required per case, not per count, and based upon the highest offense involved:

(i) Second Degree Misdemeanors: \$100

(ii) First Degree Misdemeanors: \$150

(iii) Felonies (when allowed): \$250

(iv) The intent of this requirement is to benefit local organizations as opposed to statewide or national charities which have greater resources as well as to require of the defendant some repayment to society for his or her law violation. Charities and organizations receiving deferred prosecution money should have a connection to criminal justice issues and should agree to provide documentation sufficient for confirmation of receipt and auditing purposes.

(f) Community Service Work Alternative:

(i) As an alternative to the payment of costs and fines, the defendant must be given the opportunity to perform community service hours as follows:

(ii) Second Degree Misdemeanors: 10 hours

(iii) First Degree Misdemeanors: 12.5 hours

(iv) Felonies (if allowed): 25 hours

(v) Juvenile: As Appropriate

(vi) Community services hours may be arranged through Court Services in Alachua County or directly through any charitable or public service agency outside of Alachua County.

- (vii) Written letterhead verification of compliance is required if community service hours are not done through Court Services.

(3) Additional Special Conditions

- (a) Additional special conditions may be included when appropriate such conditions may include but are not limited to:
 - (i) Payment of Clerk's fees
 - (ii) Contact or visitation restrictions involving victims or witnesses
 - (iii) Alcohol/drug abuse evaluation and counseling
 - (iv) Mental health evaluation and treatment
 - (v) Participation in specific programs or classes that have some nexus to the offense.

(4) Termination of Agreements.

- (a) Cases placed on deferred prosecution are not to have a final disposition entered by way of nolle prosequi or no information until such time as the agreement has been satisfactorily completed.
- (b) Under no circumstances will a deferred prosecution agreement be terminated early without the approval of the appropriate Division Chief, Chief Assistant State Attorney or State Attorney.

(5) Compliance Review.

- (a) All deferred prosecution agreements must be calendared for review at least two weeks prior to expiration, and verification of compliance must be clearly documented prior to dismissal of the case.

(b) Although providing verification is the responsibility of the defendant, it is the responsibility of the assigned Assistant State Attorney to ensure that verification of completion of all conditions has been received before a dismissal is filed or to take appropriate action to initiate a timely revocation.

(6) Violation / Failure to Comply.

(a) The failure of the defendant to comply with all requirements of a deferred prosecution agreement shall result in formal prosecution being instituted or reinstated.

(b) The Assistant State Attorney handling the prosecution of the case has the authority to reinstate the diversion consistent with practices of this office.

3) Specific Programs

a) Domestic Violence Diversion

i) Qualifications:

(1) No prior criminal history of conviction or deferral; a prior dismissal of a charge will be evaluated on a case-by-case basis.

(2) No allegation that the offender was armed, or armed himself or herself, during the incident.

(3) Approval of the victim is required.

(4) No allegation of strangulation or allegation of the offender's hands being placed around the victim's neck regardless of whether the victim's airway was obstructed.

(5) No allegations of violations of pre-trial release or tampering with the victim at any time during or after the incident.

- (6) No children present during the incident.
- (7) Approval of the assigned Assistant State Attorney.
- (8) Approval of the County Court Division Chief.
- (9) Request for entry into the program must be within 30 days of arrest absent extenuating circumstances and must be without any substantive motion practice or discovery proceedings having taken place.

ii) Conditions:

- (1) 12-month period of deferral.
- (2) Batter's Intervention on all intimate partner violence cases. Offender must enroll within 30 days and show proof of 9 classes per quarter.
- (3) Anger Management on all non-intimate partner violence cases. Offender must enroll within 30 days.
- (4) Mental Health Assessment and Treatment may be added if the Assistant State Attorney has reason to believe the offender needs mental health services.
- (5) Substances Abuse Assessment and Treatment may be added if the Assistant State Attorney has reason to believe the offender is need of substance abuse services.
- (6) No contact with the victim on a case-by-case basis.

b) County Court Pre-Arrest Intake Diversion Program/Deflection Program

i) Qualifying Offenses:

- (1) All misdemeanor offenses shall be screened for some form of diversion.
- (2) All persons alleged to have committed a non-traffic, non-domestic violence related misdemeanor shall be screened for admission to the Pre-Arrest Intake Diversion Program.

(3) Persons alleged to have committed a traffic offense or an act of misdemeanor domestic violence may be screen for diversion through the programs applicable to those offenses.

ii) Screening:

(1) All cases where law enforcement did not arrest the defendant shall be screened for Pre-Arrest Intake Diversion.

(2) Factual and Legal Sufficiency

(a) All cases shall be screened for legal and factual sufficiency.

(b) Any case that is legally or factually insufficient, shall be dismissed and Pre-Arrest Intake Diversion shall not be offered.

(3) In cases where there is a victim(s), the victim shall be contacted. The screening Assistant State Attorney shall explain the program to the victim. The screening Assistant State Attorney shall confer with the victim to determine if the victim agrees to the Defendant entering the program, and if so, shall notate the victim's consent in the case file. Victim's consent is required for entry into the Pre-Arrest Intake Diversion unless waived by the Chief Assistant State Attorney or State Attorney.

(4) Offenders with prior records may be admitted to the program if approved by the screening Assistant State Attorney, the County Court Division Chief, the Chief Assistant State Attorney, or the State Attorney.

c) DUI Diversion Program

i) Tier 1 (12 Month DP – Blows of .15 or under) Qualifiers:

(1) Eligibility. Program participation is predicated upon the defendant meeting each of the following criteria, and approval of the Chief Assistant State Attorney if that requirement is met:

- (a) No multi-vehicle/pedestrian accident or significant damage to the property of others.
- (b) No prior adult criminal history of conviction; a prior dismissal or deferral will be evaluated on a case-by-case basis.
- (c) No more than 5 prior moving traffic citations within prior 10 years.
- (d) Blow .15 and under or impaired by a controlled substance.
- (e) No child in vehicle.
- (f) Request for entry into program must be within 30 days of arrest, appointment of an attorney or hiring of an attorney. Request must be without any substantive motion practice or discovery other than an initial demand for discovery.
- (g) No felony crimes charged or committed in the DUI case.
- (h) Misdemeanor crimes charged or committed in the DUI case to be considered on a case-by-case basis.
- (i) No CDL license holders are eligible - FS 322.51.
- (j) Agreement of Assistant State Attorney and County Court Division Chief.

(2) Conditions:

- (a) Minimum \$500 charitable contribution in lieu of fine
- (b) 45 hours community service, plus 5 hours for attendance at a Victim Impact Panel.

- (c) Alcohol evaluation and treatment if recommended or required by DHSMV evaluation.
 - (d) Complete DUI School.
 - (e) \$150 costs of prosecution, costs of agency investigation if applicable.
 - (f) Resolve any related civil citations independent of deferral agreement.
 - (g) Restitution if applicable.
 - (h) All affirmative obligations must be completed within initial 11 months of agreement.
 - (i) 12-month total period of deferral - no early termination.
- (3) Disposition. Upon successful completion of all terms,
- (a) If the blow is 0.09 and under, the State will dismiss the case.
 - (b) If the blow is 0.091 to 0.150, the State will allow a plea to Reckless Driving with Alcohol.
 - (c) If the defendant is impaired by a controlled substance, the State will allow a plea to Reckless Driving.

ii) Tier 2 (18 Month – Blow over .15 or Refusal) Qualifiers:

- (1) Eligibility. Program participation is predicated upon the defendant meeting each of the following criteria, and approval of the Chief Assistant State Attorney if that requirement is met:
- (a) No multi-vehicle/pedestrian accident or significant damage to the property of others.
 - (b) No prior adult criminal history of conviction; a prior dismissal or deferral will be evaluated on a case-by-case basis.

- (c) No more than 5 prior moving traffic citations within prior 10 years.
 - (d) Blow of or above .15 or a refusal.
 - (e) If blow is over .15, must provide a full, satisfactory alcohol and substance abuse evaluation. Request for entry into the program may come prior to the completion of the evaluation, but acceptance shall not.
 - (f) If a refusal, acceptance into the program for a refusal must come with an admission, under oath, to facts and circumstances of a DUI.
 - (g) No inappropriate behavior such as belligerence to LEO.
 - (h) No child in the defendant's vehicle.
 - (i) Request for entry into program must be within 30 days of arrest, appointment of an attorney or hiring of an attorney. Request must be without any substantive motion practice or discovery other than an initial demand for discovery.
 - (j) No felony crimes charged or committed in the DUI case.
 - (k) Misdemeanor crimes charged or committed in the DUI case to be considered on a case by case basis.
 - (l) No CDL license holders are eligible - FS 322.51
 - (m) Agreement of Assistant State Attorney and County Court Division Chief.
- (2) Conditions
- (a) Minimum \$500 charitable contribution in lieu of fine.
 - (b) 45 hours community service, plus 5 hours for attendance at a Victim Impact Panel.

- (c) Alcohol evaluation and treatment if recommended or required by DHSMV evaluation.
 - (d) If blow is over .15, participant must complete all recommendations of the alcohol and substance abuse evaluation completed for admission, with 60-day updates from the treatment provider.
 - (e) Complete DUI School
 - (f) \$150 costs of prosecution, costs of agency investigation if applicable.
 - (g) Resolve any related civil citations independent of deferral agreement.
 - (h) Restitution if applicable.
 - (i) All affirmative obligations must be completed within initial 12 months of agreement.
 - (j) 18-month total period of deferral - no early termination.
- (3) Disposition. Plea to Reckless Driving with alcohol upon successful completion of all terms.

d) DWLSR Diversion Program. To be determined

e) Felony Pre-Arrest Diversion Program

i) Eligibility:

- (1) All Non-arrest felony cases shall be screened for deflection except:
 - (a) Criminal offenses that would qualify for 10-20-LIFE designation shall not be screened for deflection.
 - (b) Offense that is assigned to the Crimes Against Women and Children unit shall not be screened for deflection.

- (2) Defendants with a record of prior felony, regardless of disposition, shall not be screened for deflection.
- (3) Victim approval for any offense with a victim shall be required for entry into the felony deflection program.
- (4) Only cases where the defendant's guilt is evident (including post-incident acceptance of responsibility from defendant or counsel) shall be offered the felony deflection program.
- (5) Approval of the Felony Intake Division Chief shall be required for entry into the felony deflection program.

ii) Conditions: Required and discretionary conditions as stated in General Guidelines for Use of Deferred Prosecution Agreements in Section 2 above.

f) Pre-Trial Intervention (PTI) in Felony Intake and General Felony Divisions

i) Eligibility:

- (1) All Felonies, arrest or sworn complaint, shall be screened for PTI except:
 - (a) No 10-20-LIFE charges shall be offered PTI.
 - (b) No Crimes Against Women and Children shall be offered PTI as a part of Felony Intake or General Felony. However, with the approval of the Assistant State Attorney and Crimes Against Women and Children Division Chief, certain felonies may be considered from within that division.
 - (c) No Violent 2nd Degree Felony or Higher shall be offered PTI.
- (2) No defendant with a prior felony withhold or conviction shall be offered PTI, dismissals to be considered on a case-by-case basis
- (3) Misdemeanor Withholds or Convictions to be considered on a case-by-case basis

- (4) Victim approval for victim crimes
- (5) Approval of the Assigned Assistant State Attorney and Felony Intake Division Chief or General Felony Division Chief, as appropriate.

ii) Conditions: Required and discretionary conditions as stated in General Guidelines for Use of Deferred Prosecution Agreements in Section 2 above.

g) Drug Court Diversion

i) Eligibility:

- (1) Current charge is a non-violent felony offense and formal charges must be filed.
- (2) Defendant has minimal felony criminal history, to be considered on a case-by-case basis and must be approved by the Specialty Treatment Courts Assistant State Attorney.
- (3) Defendant is not currently charged with, nor has a history of Sale/Manufacture of controlled substance.
- (4) No crimes against women and children, unless approved by Chief Assistant State Attorney.
- (5) No DUI's. Any pending misdemeanor or traffic cases must be disposed of in their original division, with no probation imposed, prior to the Defendant's admission to Drug Court.
- (6) Defendant must not currently be on probation or in VOP status.
- (7) Additional Requirements
 - (a) Victim approval in victim cases

(b) Restitution, if applicable, will be determined and agreed upon prior to the Defendant's admission to Drug Court. The payment of restitution will be a special condition of the Defendant's successful completion of Drug Court.

(c) Defendant will be screened by the Drug Court Services Treatment team to confirm that a legitimate substance abuse problem exists.

ii) Conditions: Required and discretionary conditions as required by the Court and Drug Court Services Team.

h) Mental Health Diversion

i) Eligibility

(1) Defendant must be diagnosed with a mental illness to include, but not limited to:

Schizophrenia; Bi-polar Disorder; Major Depressive Disorder; PTSD; or other psychotic disorder OR an Intellectual Disability.

(2) Defendant has limited criminal history, to be considered on a case-by case basis and must be approved by the ASA to which the case is assigned. Formal charges must be filed.

(3) Current charge may be a Misdemeanor or 3rd degree Felony.

(4) Defendant may not have a history involving sale/manufacture of controlled substances.

(5) Charges of Domestic Violence between intimate partners, DUI's and Sex Offenses shall not be accepted into MHC.

(6) Defendant must not be on probation or in VOP status.

(7) Additional Requirements

(a) Victim approval in victim cases

(b) Restitution, if applicable, will be determined and agreed upon prior to acceptance into MHC. The payment of restitution will be a special condition of the Defendant's successful completion of MHC.

(c) Defendant will be screened by Court Services Treatment team to confirm diagnosis of mental illness or intellectual disability.

ii) Conditions: Required and discretionary conditions as required by the Court and the Alachua County Court Services Team.

i) Alachua County Diversionary Veteran's Treatment Court

i) Eligibility

(1) Defendant must be a veteran or service member who is active or has been discharged in a manner other than dishonorable.

(2) Defendant must suffer from a military-related mental illness, traumatic brain injury, substance-abuse disorder, or psychological problem.

(3) Defendant has limited criminal history, to be considered on a case-by-case basis and must be approved by the ASA to which the case is assigned. Formal charges must be filed.

(4) Current charge may be a misdemeanor or 3rd Degree Felony

(5) Defendant must not have a history involving sale/manufacture of controlled substances

(6) Charges of Domestic Violence between intimate partners, DUI's and Sexual Offenses are not appropriate for Diversionary VTC.

(7) Defendant must not be on probation, or in VOP status.

(8) Additional Requirements

- (a) Victim approval in victim cases
- (b) Restitution, if applicable, will be determined and agreed upon prior to the Defendant's admission to VTC. The payment of restitution will be a special condition of the Defendant's successful completion of VTC.
- (c) Def will be screened by a Veterans Justice Outreach Specialist to ensure a military related diagnosis exists, and that the service member, if non-active, has an appropriate discharge.

ii) Conditions: Required and discretionary conditions as required by the Court and Veteran's Treatment Court Services Team.

j) Juvenile Diversion

i) Diversionary Programs:

(1) Teen Court (run by the Alachua County Sheriff's Office)

(a) Cases are referred to teen court either by:

(i) Civil Citation issued by a law enforcement officer

(ii) Referred by the State Attorney's Office

1. Requirements for Referrals from the State Attorney's Office:

a. First time offenders charged with misdemeanor offenses may be referred to teen court. Third-degree felony offenses may also be referred at the discretion of the State Attorney's Office.

Upon approval of the Juvenile Division Chief, Chief Assistant State Attorney, or State Attorney, a defendant charged with a second offense may be referred to Teen Court.

b. Any exception to these requirements by way of either inclusion or exclusion requires the approval of the Juvenile Division Chief, Chief Assistant State Attorney, or State Attorney.

(b) The Teen Court program shall outline the parameters of successful completion with each individual defendant. Conditions of the program may include, but are not limited to:

(i) Community service hours

(ii) Contact or visitation restrictions involving victims, co-defendants, or witnesses,

(iii) Substance abuse and/or mental health evaluation and counseling

(iv) Curfew

(v) Letter of apology to victim(s)

(vi) Jury service for the teen court program

(c) The Assistant State Attorney may also include additional requirements for successful completion. Those conditions will be outlined in the referral and monitored by Teen Court staff.

(d) Upon successful completion of the program, Teen Court will forward documentation to the State Attorney's Office indicating the conditions completed by the defendant. The Assistant State Attorney will review the completion paperwork and file a No Petition or Nolle if all required conditions have been successfully completed.

(e) If a defendant does not successfully complete the conditions of the Teen Court program or incurs a new law violation while in the program, the Assistant

State Attorney may revoke the privilege to participate in Teen Court and consider filing a Petition of Delinquency in the case.

(2) Juvenile Delinquency Alternatives Program (JDAP)

(a) Requirements for Referrals from the State Attorney's Office:

(i) First time offenders charged with misdemeanor offenses may be referred to JDAP. Third-degree felony offenses may also be referred at the discretion of the State Attorney's Office.

(ii) Upon approval of the Juvenile Division Chief, Chief Assistant State Attorney, or State Attorney, a defendant charged with a second offense may be referred to JDAP.

(iii) Any exception to these requirements by way of either inclusion or exclusion requires the approval of the Juvenile Division Chief, Chief Assistant State Attorney, or State Attorney.

(iv) The JDAP program will outline the parameters of successful completion with each individual defendant. Conditions of the program may include, but are not limited to:

- 1.** Community service hours
- 2.** Contact or visitation restrictions involving victims, witnesses, or co-defendants
- 3.** Substance abuse and/or mental health evaluation
- 4.** Substance abuse and/or mental health counseling
- 5.** Letter of apology to victim(s)
- 6.** Curfew

7. The Assistant State Attorney may also include additional requirements for successful completion. Those conditions will be outlined in the referral and monitored by JDAP staff.

- (b) Upon successful completion of the program, JDAP will forward documentation to the State Attorney's Office indicating the conditions completed by the defendant. The Assistant State Attorney will review the completion paperwork and file a No Petition or Nolle if all required conditions have been completed.
- (c) If a defendant does not successfully complete the conditions of the JDAP program or incurs a new law violation while in the program, the Assistant State Attorney may revoke the privilege to participate in JDAP and consider filing a Petition of Delinquency in the case.