

Florida Deferred Prosecution Diversion Programs: A Whitepaper

A Review of Contents for the
Florida Impaired Driving Coalition
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Section 6

- Lookback using Tables compiled through use of Florida Uniform Traffic Citation Statistics and NHTSA Fatality Statistics for Drivers with BACs of .08 or Higher

Table 1

➤ Alcohol-Related Driving

➤ Fatalities Where One or More Drivers had a Blood Alcohol Concentration of .08 or Higher as a Percentage of Total Fatalities

➤ **Source: NHTSA Traffic Safety Facts Data 2011-2016**

➤

➤ 2011.....	716	30%
➤ 2012.....	697	29%
➤ 2013.....	676	28%
➤ 2014.....	685	27%
➤ 2015.....	797	27%
➤ 2016.....	841	26%

Table 2

➤ Total DUI/DWI Cases Filed by Year and

➤ Percentage and Number that Remain Pending

➤ Source: Florida Uniform Traffic Citation Statistics as of 5/1/2018



➤ CASES FILED	% PENDING CASES	NUMBER OF
	CASES	
➤ 53,664	2012..... 6%	3,485
	Cases	
➤ 50,377	2013..... 7%	3,294
	Cases	
➤ 49,776	2014..... 7%	3,515
	Cases	
➤ 46,992	2015..... 7%	3,585
	Cases	
➤ 46,643	2016..... 11%	5,286
	Cases	
➤ 43,899	2017..... 29%	12,578

**Total DUI/DWI Cases and Number of DUI/DWI Cases
Resulting in DUI/DWI Adjudications of Guilt by Year**

**Source: Florida Uniform Traffic Citation Statistics as of
5/1/2018**

YEAR	TOTAL DUI/DWI CASES	ACTUAL GUILT ADJUDICATIONS
2012	53,664	36,961
2013	50,377	33,971
2014	49,776	33,279
2015	46,992	30,961
2016	44,443	27,920
2017	43,899	23,319

Section 8 (Adjudications)

- In the past 6 years (from 2012 to 2017) the total number of DUI charges brought by law enforcement has steadily declined 18% from 53,664 to 43,899. In 2017, 9,765 fewer DUI citations were charged by law enforcement than in 2012. In the same time period, the adjudications of guilt (convictions), in those DUI cases, declined 36% from 36,961 adjudications to 23,319 in 2017

Section 9 (Insurance)

- Through deferred prosecution diversion programs, DUI/DWI defendants avoid DUI/DWI adjudications (conviction). Florida's DUI/DWI deferred prosecution diversion programs therefore enable defendants, originally cited for DWI/DUI, to be excused from having to provide enhanced injury and death coverage for a period of 3 years in order to maintain driving privileges

Section 10 (Loss of Revenue)

They do not pay the minimum fines of \$500 or \$1,000 and are not subject to the maximum fines of \$1,000 or \$2,000. Instead, they are required to make a “voluntary contribution” of either \$500 or \$1,000 depending on their blood/breath alcohol level. The “voluntary contribution” is to be made to an unspecified entity, which may include the “Mothers Against Drunk Driving” or other organizations. Diverted DUI defendants may actually be able to gain an income tax deduction by making a charitable contribution instead of having to pay a fine.

Section 11 (Statutory Conflict)

Notwithstanding this prohibition (316.656), defendants charged in Monroe County with DUIs and blood/breath alcohol contents of up to 0.24 percent are permitted to plead to the lesser offense of reckless driving. The same applies in the Third Judicial Circuit, the Eighth Judicial Circuit, and in Palm Beach County where offenders with blood/breath alcohol contents of up to 0.20 percent are permitted to enter guilty pleas to reckless driving and in some cases even have the reckless driving adjudication₁₂ (conviction) withheld.

Section 12 (No Enhancement)

DUI/DWI offenders who successfully complete any of the formal or informal DUI/DWI diversion programs, and go on to commit a second DUI, are not subject to mandatory enhanced penalty provisions, that would otherwise apply, had their DUI/DWI charge not been diverted. The completion of a diversion program, in effect, legally compels State Attorneys to treat repeat diverted DUI offenders as first-time DUI offenders.

Section 13 (A Solution)

An example of a State statute that counts a prior DUI diversion as a prior conviction can be found in Kansas' Driving Under the Influence statute 8-1567. This provision has also been upheld by the Kansas Supreme Court in State v. Booze, 238 Kan. 551, 712 P.2d 1253 (1986) wherein the Court held that entry into diversion agreement in lieu of further criminal proceedings on a drunk driving complaint is a "conviction" for purpose of second offender sentence enhancement.

Section 13

.....the disposition of any offense for which a uniform traffic citation was issued for driving while under the influence as specified in s. 316.193, which offense was dismissed, amended, and/or for which adjudication was withheld by, though, or as a result of the completion of a pretrial diversion program, deferred prosecution program, or a pretrial intervention program is also considered a previous conviction for violation of this section.”

Section 14 (No Evil Intent)

Conclusion

It is neither the design nor the intent of the Florida Impaired Driving Coalition (FIDC) to dispute or criticize the executive authority or discretion of State Attorneys to implement deferred prosecution DUI/DWI diversion programs. It is submitted that the purpose of this whitepaper has been accomplished by: