

**OFFICE OF THE STATE ATTORNEY  
NINTH JUDICIAL CIRCUIT OF FLORIDA  
PRE-TRIAL DIVERSION**

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**Approved by State Attorney June 4, 2009**

In the Ninth Judicial Circuit, Pre-Trial Diversion (PTD) is the structured alternative prosecution program administered by the Florida State Department of Corrections for **felony** offenses, and Orange County Division of Corrections, Diversion Services Program for **misdemeanor** offenses. It is the **only approved** method of alternative prosecution used by our office. We will not under any circumstances agree to any other type of deferred or alternative prosecution agreement with the defendant. (Including Pre-Trial Intervention under FS 948.08 (2)-(5)).

The benefits of PTD to the citizens of the 9<sup>th</sup> Circuit include:

1. Recidivism rates of those who successfully complete PTD appear to be lower than those who go through the court system. One reason for this is that counseling classes targeting the defendant's offense and behavior are required to successfully complete the program. Further, the sanctions imposed under the PTD program are often more stringent than those imposed by the court for a first offender.
  - a. Felony PTD is for a minimum of 12 months and includes 100 hours of community service and \$240 in costs of supervision, in addition to any classes or treatment the defendant must participate in.
  - b. Misdemeanor PTD is for a minimum of 6 months and includes 40 hours of community service and \$300 in costs of supervision, in addition to any classes or treatment the defendant must participate in.
  - c. DUI PTD is for a minimum of 9 months.
2. Overall the program saves tax dollars:
  - a. Dockets in the criminal courts are reduced, thereby allowing valuable court time and resources to be spent on other cases.
  - b. The defendant actually defrays the cost of the prosecution by assisting in the payment of the costs of the program.
  - c. Restitution to victims must be paid in order to successfully complete the program, thereby reducing the societal costs of criminal conduct.

In order for PTD to be a success, the charges and facts of the case must be appropriate for PTD. PTD is not to be used as a vehicle for disposing of a "bad" case. PTD is only to be considered after a decision has been made that the case is properly prosecutable and an affirmative charging decision has been made.

## **What criteria are used to determine whether a case will go to PTD?**

1. The defendant must have no prior felony offenses and may have no more than two prior unrelated misdemeanor offenses if the prior misdemeanor offenses were eligible for diversion. A felony defendant cannot have previously participated in any diversion program, including juvenile diversion. A misdemeanor defendant cannot have previously participated in more than one diversion program, including juvenile diversion.
2. Generally, defendants must live within the State of Florida. Some exceptions may be made for out-of-state defendants, but the **defense** attorney will be responsible for setting up the details with PTD.
3. The victim **must** approve the defendant's participation in the program.
4. If appropriate, restitution must be made a condition of successful completion of the program. Costs of investigation are considered restitution and should be addressed where appropriate. Costs of prosecution will always be a condition of successful completion. Those costs are \$50 for misdemeanor defendants and \$100 for felony defendants.

## **5. TYPES OF CHARGES TYPICALLY ACCEPTABLE FOR PTD:**

- a. Third degree felonies – except those involving the use of a weapon or violence upon a person - Carrying a concealed firearm may be considered in situations involving securely-encased weapons discovered in luggage at the airport, or briefcases or handbags at a Courthouse and the facts do not indicate anything other than the defendant forgot the weapon was in the luggage.
- b. Misdemeanor offenses not involving the use of a weapon or exposure of sexual organs. Wildlife/hunting offenses may be considered -- Weapons used in these (a. & b.) offenses are to be forfeited.
- c. Offenses involving driver license fraud **only** if it is apparent from the facts of the case that the defendant was using the D/L to “increase” age to the legal drinking age.
- d. Second degree felony drug charges if the offense is not related to the defendant selling drugs.
- e. Any theft case regardless of degree (on-going schemes excluded).

## 6. TYPES OF CHARGES TYPICALLY NOT ACCEPTABLE FOR PTD

- a. Cases in which the defendant is engaging in a business that is a violation of the law (i.e. drug dealers, prostitutes, etc.)
  - b. Offenses suggesting an on-going scheme or course of criminal conduct.
  - c. Residence related burglary cases (note – Burglary of a conveyance or structure may be considered).
  - d. Crimes of violence, however:
    1. Assault and battery on a LEO, firefighter, etc. may be considered.
    2. Resisting Officer with Violence may be considered.
    3. Misdemeanor battery offenses may be considered - requires indication of no prior abuse, prior arrest or conviction; a weapon may not have been displayed or used.
    4. Misdemeanor domestic violence related offenses may be considered – requires indication of no prior abuse, prior arrest or conviction; a weapon may not have been displayed or used.
  - e. Criminal Traffic Offenses (with the exception of DUI Diversion approved by the County Court Bureau Chief and discussed in detail below).
7. In those cases where the ASA has expended time and effort, i.e. litigation of pre-trial motions, depositions, etc., PTD should not be considered. If you have a case that you feel should be referred to PTD, but are not sure if it is appropriate, fill out a referral sheet and the Bureau Chief, or designee, will review the case. However, please do not advise the defendant, the defense attorney, or the court that the case is going to PTD. If there is a case where you feel PTD is appropriate, but does not fall within the above guidelines, discuss the case with your Supervisor.

## Procedures for Felony Pre-trial Diversion referrals

1. Intake Bureau will initially evaluate cases for PTD eligibility. If Intake determines that a case is eligible and appropriate, a referral will be initiated. The information will still be filed in order to minimize any possible speedy trial problems.
2. If a case gets through Intake without a referral, the trial division attorneys may still refer a case to PTD. If you desire to refer a case to PTD, you should:
  - a. Make victim contact to obtain victim approval and determine whether restitution, and the amount thereof, is due. (Please indicate victim approval and restitution amount on the referral form and memorialize your conversation with the victim on the case progress sheet in the case file.) In a resisting with or without violence case, you **must** call the officer who the defendant resisted.
  - b. Complete a PTD referral form and attach a copy of the charging affidavit in the case.
  - c. Send the case file and referral form with the charging affidavit and Criminal Punishment Code Scoresheet attached, to the Felony Bureau Chief, or designee, for approval.
  - d. If the Felony Bureau Chief, or designee, approves the case for PTD, the referral form with the charging affidavit and the Criminal Punishment Code Scoresheet attached should be forwarded to the Intake Bureau Chief, or designee, for final approval. If the Intake Bureau Chief, or designee, does not approve the case for PTD, Intake Bureau will so notify the trial division by notation on the referral form with the reason for non-approval, make an entry of non-approval in the Notes section of case management and return the package to the trial division for placement in the case file.
  - e. Upon final approval of the defendant for PTD, Intake Bureau will place an entry in the Notes section of case management indicating the **Contract Due Date**. That notation means the case has been sent to the Department of Corrections to begin the process of getting the defendant in to sign the contract and start participation in the program. **If there is a question as to the defendant's status in the program, the trial ASA or the defense attorney should contact the Orlando office of the Department of Corrections at 407/578-3500 and ask to speak to one of the PTD Officers.**
  - f. The case file will remain with the trial division until the contract has been signed by both the State and the Defendant.
  - g. Upon receipt of the signed contract, Intake Bureau will place an entry in the Notes section of case management indicating the **Contract Expiration Date**. The signed copy of the contract will then be delivered to the trial division along with the joint

stipulation for continuance to obtain the signature of the court on the joint stipulation. The contract and joint stipulation should then be filed with the court.

- h. The case file should then be sent to the Intake Bureau with the court minutes/disposition attached.
- i. When the defendant successfully completes diversion, the Intake Bureau will file a nolle prosequi with the Clerk of the Court and send disposition letters out to the appropriate people. If the defendant is terminated from diversion unsuccessfully or if the defendant is not approved to participate in the PTD program, the Intake Bureau will so notify the Court, Clerk and defense and request the case be set back on the trial docket. The case file, with the notification, will be sent back to the trial division.

## Procedures for Misdemeanor Pre-trial Diversion referrals

1. Intake Bureau will initially evaluate cases for PTD eligibility. If Intake determines that a case is eligible and appropriate, a referral will be initiated. The information will still be filed in order to minimize any possible speedy trial problems.
2. If Intake refers a case to PTD the “Gold Tag Sheet” will be placed on top of the case progress sheet in the case file. The trial division need not take further action to refer the case to PTD **other than obtaining a waiver of speedy trial from the defendant**. If the waiver is obtained, please notate such on the case progress sheet. If the defendant refuses to waive speedy trial or does not desire to participate in PTD, please so notate on the case progress sheet and have the case set for trial. The notes section of case management should then be updated by the trial division indicating that the defendant is not participating in PTD.
  - a. If a case gets through Intake without a referral, the trial division attorneys may still refer a case to PTD. If you desire to refer a case to PTD, you should:
    - b. Make victim contact to obtain victim approval and determine whether restitution, and the amount thereof, is due. (Please indicate victim approval and restitution amount on the referral form and memorialize your conversation with the victim on the case progress sheet in the case file.) In a resisting without violence case, you **must** call the officer who the defendant resisted.
    - c. Complete a PTD cover sheet and PTD referral form and attach a copy of the charging affidavit in the case.
    - d. Send the case file and referral form with the charging affidavit to the County Court Bureau Chief, or designee, for approval.
    - e. If the County Court Bureau Chief, or designee, does not approve the case for PTD, they will so notify the trial division by notation on the referral form with the reason for non-approval, make an entry of non-approval in the Notes section of case management and return the file to the trial division.
    - f. Upon final approval of the defendant for PTD, Diversion Services will place an entry in the Notes section of case management indicating the **Contract Due Date**. That notation means the case has been sent to the Orange County Corrections Department to begin the process of getting the defendant in to sign the contract and start participation in the program. **If there is a question as to the defendant’s status in the program, the trial ASA or the defense attorney should contact the Orange County Diversion Services.**
    - g. Upon receipt of the signed contract, Orange County Diversion Services will place an entry in the Notes section of case management indicating the **Contract Expiration Date** and file the signed copy of the contract with the Clerk of Court.

- h. When the defendant successfully completes diversion, the Intake Bureau will file a nolle prosequi with the Clerk of the Court and send disposition letters out to the appropriate people.
- i. If the defendant is terminated from diversion unsuccessfully or if the defendant is not approved to participate in the PTD program, the Intake Bureau will so notify the Court, Clerk and defense and request the case be set back on the trial docket. The case file, with the notification, will be sent back to the trial division.

## **Criteria For PTD – DUI**

The Ninth Judicial Circuit offers a DUI diversion program for first time DUI offenders. The program is broken down into two tiers depending on the facts of the case. Tier Two Diversion has enhanced supervision and additional program requirements, than Tier One Diversion. In order to be eligible for either tier the defendant must meet the following general criteria:

1. The defendant must have no prior alcohol related driving history regardless of disposition of the charge.
2. The defendant may have no more than two prior misdemeanor convictions, if the prior misdemeanor offenses were eligible for diversion.
3. The defendant may have completed no more than one diversion program including juvenile programs.
4. The defendant must not have been involved in a crash in the instant case.
5. The facts of the case must suggest that the defendant is a good candidate for DUI Diversion.
6. The specific admission requirement for each tier are:
  - a. Tier One – Submit to breath/blood test and average result must be less than .15.
  - b. Tier Two – Refusals or average breath/blood test results are .15 or greater.

Requirements for out-of-state DUI PTD participants:

1. Must personally attend the contract signing and PTD orientation. This will be one meeting and whenever possible, efforts will be made to accommodate the Defendant's schedule. This meeting will be set during the normal work week.
2. The defendant will have to attend one other meeting with his/her DUI Pretrial Diversion Officer. This meeting will be set during the normal work week and whenever possible, efforts will be made to accommodate the Defendant's schedule.
3. The defendant will not be required to personally attend any other meetings unless there is a positive urine test or the defendant is noticed for a Review Board hearing.
4. The defendant will have to locate and provide information on the DUI Level 1 School that they are planning to attend in their state of residence prior to signing the contract. The DUI Level 1 School they are planning to attend will have to be the general equivalent of the school here in Florida as far as program length and subject matter.
5. If the DUI Level 1 School the Defendant is planning to attend in their state of residence does not require a substance abuse evaluation, then the Defendant will have to obtain a

substance abuse evaluation and provide a copy of the evaluation. The Defendant will have to comply with any recommended follow-up counseling recommended by the evaluation.

6. The defendant will have to locate and provide information on the Victim Awareness/Impact Class that they are planning to attend in their state of residence prior to signing the contract. The Victim Awareness/Impact Class they are planning to attend will have to be the general equivalent of the school here in Florida as far as program length and subject matter.
7. The Defendant will have to comply with all the special conditions of the DUI Pretrial Diversion Contract.
8. The Defendant will have to comply with all reporting conditions as directed by their DUI Pretrial Diversion Officer, whether electronically, mail or other means of communication.

## Procedures for DUI Pre-trial Diversion referrals

All DUI Diversion cases must be referred by the trial ASA assigned to the case. If you desire to refer a case to PTD, you should:

1. Obtain a rap sheet and review, for defendant's eligibility.
2. Complete a PTD cover sheet and PTD referral form and attach a copy of the charging affidavit in the case.
3. Send the case file and referral form with the charging affidavit to the County Court Bureau Chief, or designee, for approval.
4. If the County Court Bureau Chief, or designee, does not approve the case for PTD, they will so notify the trial division by notation on the referral form with the reason for non-approval, make an entry of non-approval in the Notes section of case management and return the file to the trial division.
5. Upon final approval of the defendant for PTD, Diversion Services will place an entry in the Notes section of case management indicating the **Contract Due Date**. That notation means the case has been sent to the Orange County Corrections Department to begin the process of getting the defendant in to sign the contract and start participation in the program. **If there is a question as to the defendant's status in the program, the trial ASA or the defense attorney should contact the Orange County Diversion Services.**
6. Upon receipt of the signed contract, Orange County Diversion Services will place an entry in the Notes section of case management indicating the **Contract Expiration Date** and file the signed copy of the contract with the Clerk of Court.
7. When the defendant successfully completes diversion, the County Court Bureau Chief, or designee, will file a nolle prosequi with the Clerk of the Court and send disposition letters out to the appropriate people.
8. If the defendant is terminated from diversion unsuccessfully or if the defendant is not approved to participate in the PTD program, the County Court Bureau Chief, or designee, will so notify the Court, Clerk and defense and request the case be set back on the trial docket. The case file, with the notification, will be sent back to the trial division.