

Dear First Circuit Policymakers,

We write to offer our support and recommendations as your circuit implements the new statutory requirement for a circuit-wide agreement on the use of pre-arrest diversion, or civil citations.

Youth in the First Circuit continue to be arrested for eligible offenses more often than they are diverted — **72%** of eligible cases in calendar year 2017. In that year, 851 eligible youth were arrested, **the most of any circuit in the state**. Of these, **7%** saw their cases dropped with no consequence or intervention. The Florida Department of Juvenile Justice (DJJ) does not track the percentage of these kids who reoffend, but we know arrests decrease the likelihood of graduating high school and increase the risk of further arrests.¹ **An additional 82% were sentenced to the same diversion programs** they would have gone to had they received a civil citation. This is inefficient and a waste of public resources and needlessly burdens youth with an arrest record that can be a lifelong burden.

It is also ineffective. DJJ has found that youth who participate in post-arrest diversion programs reoffend at nearly three times the rate as those who participate in pre-arrest diversion for the same offenses. **That is an additional 55 youth you can expect to return to the system based on your circuit's policies and practices.** Along with the attached recommendations, we ask that you review eligibility restrictions to ensure pre-arrest diversion is available to officers in every case possible and implement a second review to ensure eligible kids are directed into pre-arrest diversion.

New Requirements and New Opportunities

Statutory Requirements

Recognizing the benefits of pre-arrest diversion, the Legislature directed each circuit to adopt a circuit-wide agreement on pre-arrest diversion as part of [SB 1392](#), which made substantial revisions to [section 985.12, Florida Statutes](#).

- Each judicial circuit is required to adopt a circuit-wide juvenile pre-arrest diversion.
- Programs are created by agreement among the circuit's state attorney, public defender, clerks of court, and law enforcement agencies.
 - New circuit-level programs may be modelled on "existing sheriff, police department, county, municipality, or public or private educational institution's independent pre-arrest diversion or similar pre-arrest diversion program in developing the pre-arrest diversion or similar pre-arrest diversion program for the circuit."
- **Statutory restrictions on eligibility have been removed.**
 - Youth admission of offenses is no longer a prerequisite to eligibility.
 - There is no cap on the number of times a youth may be diverted before arrest.
- [Data reporting requirements](#) for both program operators and law enforcement agencies have been added.
 - Required data includes demographics, offense details, and justification for the arrest of eligible youth.

While the law goes into effect July 1, 2018, the reporting requirements begin October 1, 2018.

¹ See, e.g., Kirk, D.S., & Sampson, R.J., *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, *Sociology of Education*, 88(1): 36–62 (2012), available online at www.ncbi.nlm.nih.gov/pmc/articles/PMC4192649

Along with the new statutory requirement for a circuit-wide agreement on pre-arrest diversion, the Legislature lifted some barriers to high usage. We encourage you similarly lift these barriers locally.

Opportunity: Do not require an admission as a prerequisite to participation

The statute no longer requires youth to admit their offense as a prerequisite for pre-arrest diversion. Families, public defenders and law enforcement have shared the frustrating experience of seeing youth arrested simply because they did not understand the program, did not trust law enforcement or were not able to make a well-reasoned decision. We know that adults do not make great decisions in high-stress, combative situations – we cannot expect teens to do so with their [still-developing brains](#) heightening their impulsivity and interfering with their budding decision-making skills. They need time and security to make good decisions. Would we ask adults to admit guilt to law enforcement without the ability to consult an attorney? We should not ask this of youth – and we should not put our law enforcement officers in this conflicted role of acquiring admissions of guilt. We encourage you to build true accountability into the program the youth report to – not have it serve as a barrier to entry.

Opportunity: Do not impose lifetime limits on participation

The Legislature also lifted the statute’s previous limit of three civil citations. We encourage you to adopt a more nuanced approach keeping in mind that youth are exposed to potential juvenile arrests for many years and the potential offenses may be separated by time and reflect different unmet needs or circumstances. We also understand the need to escalate intervention for repeat offenders. By building some flexibility into the program – for example, limiting the number of referrals available within a set time frame – both ends may be met.

Opportunity: Diversify Program Choices

Similarly, consider implementing, or using, multiple diversion programs as part of your pre-arrest diversion agreement. Some offenses may be best served through teen court; while others, like fighting or theft, may benefit from restorative justice programs; and still others, like drug and alcohol offenses, may signal the need for rehabilitative programs. We encourage you to use evidence-based, validated assessment tools to determine the intervention and programming most appropriate to each youth and ensure youth complete the right kind and amount of programming based on their conduct.

Benefits of Pre-Arrest Diversion

Pre-arrest diversion programs have proven to be more effective at reducing juvenile misbehavior and delinquency – and more cost-effective.

More effective

Without pre-arrest diversion, youth are arrested. Consequences, and services to address unmet needs, are contingent on, and delayed by, the court process. This process also means more missed days of school; less connection to the community; and more of a likelihood of developing a reputation, and identity, of a bad kid – or criminal. We can measure this – statewide, 4% of youth who complete a pre-arrest diversion program reoffend, while 12% of the youth who complete diversion programs after an arrest reoffend within a year.

More cost-effective

It costs a lot to arrest a youth and process them through the court system. DJJ estimates it costs \$4,614 less to serve a youth through pre-arrest diversion than through the court system. We encourage you to assess your costs locally. **Based on these estimates, your circuit stands to save \$3,404,209 by increasing the percentage of the eligible youth you divert from 28% to 90%.** If this seems daunting, look to the Fourth Circuit, where renegotiating a memorandum of understanding and implementing many of the recommendations we are suggesting, resulted in a swift increase in utilization.

Crafting a New Agreement

Learn from the data

The First Circuit arrests **72%** of cases eligible for pre-arrest diversion. The top 5 eligible offenses that result in arrests in your circuit are:

- Misdemeanor Alcohol Offenses
- Simple Assault and/or Battery
- Petit Larceny
- Misdemeanor Drug Offenses
- Disorderly Conduct

Use the [Stepping Up Study](#) and the DJJ's [Civil Citation Dashboard](#) to learn more about how your circuit – and specific counties and individual arresting agencies – is using pre-arrest diversion to identify areas where improvement is needed.

Analyzing this data should present questions for further inquiry – what is driving these arrests?

Reconsider Household Violence

One area you must reexamine is the policy of excluding any offense involving a household member as a victim. Although these cases are labeled “domestic violence,” they usually lack the power disparity or controlling behavior present in many intimate-partner cases. Instead, when a youth gets into a physical fight with an adult member of their household, there are often deeper, bigger issues at play that an arrest will not address. Keeping in mind that **22% of the eligible domestic violence cases in the First Circuit are dropped**, these families are not getting the help they need. We know pre-arrest diversion works – even for household violence cases. DJJ data shows that of those youth given a civil citation for household violence, only 4% reoffend within a year. Of the youth who go to diversion programs after an arrest, 11% reoffend.

We understand that a key concern for household violence cases is ensuring safety and diffusing a potentially dangerous situation. The [Stepping Up Study](#) outlines how some jurisdictions are effectively addressing these concerns. A cooling-off period is necessary, which necessitates a safe place for the child to go. DJJ has experience addressing this through their Domestic Violence Alternative Placement/Respite Care programs. Keep in mind that just because an arrest happens, it does not mean a youth may not return to that home soon after. It is in everyone's best interest to ensure these youth are fully served.

Learn from other circuits

This year's [Stepping Up Study](#) surveys counties that have fully, successfully, implemented pre-arrest diversion programs to identify common trends. These trends appear across diverse communities and within select agencies in counties with lower pre-arrest diversion rates. Such commonalities include:

- Broad eligibility policies
- Policy that pre-arrest diversion is the presumptive tool whenever eligible
- Practice providing a second review of arrests to divert initially missed eligible cases
- Frequent, in-person training

Compare the programs in your circuit to see where policies and practices can improve.

We are here to help

This new legislation presents a great opportunity to reduce juvenile delinquency in the First Circuit, use resources more efficiently, and refine your practices to ensure kids growing up throughout the circuit, no matter which side of a county line they may live on, receive quick, predictable, and fair consequences that do not pull them deeper into delinquency and crime.

Thank you for closely examining your circuit's practices and learning from the experiences of others. As you engage in this effort, please do not hesitate to call on us. Whether it is through connecting you with potential experts who have tackled your issues before or helping with public education, we are ready to help.

Sincerely,



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Our Recommendations

After studying programs throughout the state and listening to community members’ and stakeholders’ experiences, we’d like to offer the following recommendations. We’ve included potential jurisdictions where such policies or practices have proven successful.

ELIGIBILITY POLICIES		
	Recommendation	Possible Models
Eligible Offenses	Any misdemeanor or non-violent third-degree felony, excluding any offense that involves the use or possession of a firearm or deadly weapon. Do not exclude all cases involving domestic violence.	Duval County Monroe County Pinellas County Polk County
Prior Record	Up to two Eligible Offense charges within the last two years that were handled successfully through diversion or non-file.	Duval County Pinellas County Polk County
Victim Objections	Victims, and their parents or guardians, may submit an objection to the Program Operator within 3 business days. The objection is considered but is not definitive to eligibility.	Duval County
Admissions	The law enforcement officer is not required to acquire an admission from the youth before referring to pre-arrest diversion. Any admission requirements are designed solely to promote accountability and happen through participation in the diversion program. Any requirements for admissions that may be used against the youth in later proceedings include the opportunity for the youth to consult with the public defender’s office.	New Opportunity
LAW ENFORCEMENT POLICIES AND PRACTICES		
Training	In-person training on the philosophy, purpose and procedures of pre-arrest diversion is conducted for all law enforcement officers at least once annually, with more frequent education offered for officers in frequent contact with juveniles, such as school resource officers.	Dade County
Default Tool	Pre-arrest diversion is the default tool officers use to address eligible offenses. If, in the LEO discretion, immediate public safety concerns necessitate an arrest, the LEO provides a narrative detailing these concerns.	Pinellas County
Review Arrests	An agency, such as the Juvenile Assessment Center or the State Attorney’s Office, acts as a failsafe, reviewing affidavits, before filing, for eligible offenses to ensure the youth eligible for pre-arrest diversion receive it.	Pinellas County Dade County
Performance Review	The law enforcement agency tracks officer use of pre-arrest diversion referrals to identify officers who may need additional training.	Pinellas County
PROGRAM POLICIES AND PRACTICES		
Assessment	Youth and their families are assessed by a qualified social worker to identify unmet needs and refer to appropriate services.	
Costs	Youth are not charged fees for participation in the Program. Any fees that are charged are affordable and waivers are available. Income is not a bar to diversion.	
Restorative	Programs incorporate restorative strategies to offer youth an opportunity to understand, take responsibility for, and mitigate the harms their actions caused; the tools to navigate future conflicts; and a deeper connection to their community.	Duval County