

June 26, 2018

Dear Sixteenth 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. We would like to commend you on successfully implementing pre-arrest diversion in your circuit. We hope that you will be a resource for other circuits as they craft new agreements.

### **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.

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.

**Support Other Circuits**

Thank you for your participation in this year’s [Stepping Up Study](#). We hope your experience will continue to help inform policy in other regions of the state. The study identified common trends across diverse communities and within select agencies in counties with lower pre-arrest

diversion rates. Such commonalities included 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, and frequent, in-person training.

*We are here to help*

This new legislation presents a great opportunity to reduce juvenile delinquency in the Sixteenth Circuit, use resources more efficiently, and further refine your practices. Thank you for being a leader in juvenile pre-arrest diversion. As you continue this work, 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
<b>Eligible Offenses</b>	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
<b>Prior Record</b>	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
<b>Victim Objections</b>	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
<b>Admissions</b>	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		
<b>Training</b>	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
<b>Default Tool</b>	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
<b>Review Arrests</b>	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
<b>Performance Review</b>	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		
<b>Assessment</b>	Youth and their families are assessed by a qualified social worker to identify unmet needs and refer to appropriate services.	
<b>Costs</b>	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.	
<b>Restorative</b>	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