

STATE ATTORNEY, NINTH JUDICIAL CIRCUIT
PRE-TRIAL DIVERSION POLICY

INTRODUCTION

The State Attorney's Office is committed to creating safer and healthier communities by using prosecutorial resources wisely and being intentional about the pursuit of justice. In order to create a safer community, we believe it is important to help people who have used poor judgment or made bad decisions become productive members of society. Sometimes justice means bringing formal criminal charges against an offender to protect our community. In other cases, justice is better served through effective alternatives to traditional prosecution and incarceration, commonly known as pretrial diversion.

Pretrial diversion provides an avenue for eligible offenders to avoid needlessly entering the criminal justice system and having unnecessary criminal records. As part of our unwavering pursuit of justice and commitment to prudent resource management, the Ninth Circuit State Attorney's Office's Pre-trial Diversion Policy seeks to help reduce the collateral consequences many offenders face, while also lowering recidivism rates and saving prosecutorial and judicial resources so they can be utilized for more serious and violent crime in Orange and Osceola Counties.

This policy supersedes all other written and unwritten policies related to pretrial diversion.¹ This Pre-trial Diversion Policy is distinct from Pre-Trial Intervention under F.S. §948.08(2)-(5) which is another State Attorney approved method of alternative prosecution.

The integrity of SAO9 Pre-Trial Diversion Policy depends on its proper use. In addition to the factors outlined below only cases that are prosecutable are permitted to diverted. Pretrial Diversion is never to be used as a vehicle for disposing of cases that we would otherwise decline to prosecute.

OVERVIEW

Diversion is by no means a new phenomenon. Diversions programs in the United States began in 1947,² and by 2010, 45 states had 80 diversion laws and 298 diversion programs.³ Even today, there is a growing consensus among prosecutors on the need to reduce prison populations and develop innovative ways to rehabilitate nonviolent criminal offenders that do not subject them to years in the criminal justice system and a lifetime with a criminal record. As State Attorneys we play a critical role in accomplishing this goal.

In response to COVID-19 and the corresponding tightening state budget, combined with persistently large caseloads, and a robust probation community and jail population we are accomplishing this and other goals by not only creating new specialized diversion programs but also

¹ The effective date of this policy is September 28, 2020

² A National Survey of Criminal Justice Diversion Programs and Initiatives, Center for Health and Justice at Treatment Alternatives for Safe Communities (TASC), December 2013, page 16.

³ Practices of Pretrial Diversion Programs: Review and Analysis of the Data, D. E. Pryor, 1982, National Association of Pretrial Services Agencies.

amending and widening the net for our already existing generalized program. In addition to benefiting from highly effective rehabilitation⁴ and reducing jail and probation populations⁵⁶, our expanded diversion efforts also seek to:

- Maintain offender accountability
- Reduce Recidivism and thereby Public Safety
- Community Engagement
- Administrative efficiency
- Cost savings

Research shows that diversion programs are beneficial not only to defendants, but to prosecutors as well, because we are able to save time, money and resources that could be allocated towards more serious and complex crimes. Diversion programs are cost-effective and save courts time by keeping court dockets from ballooning and reducing prison overcrowding.⁷ The foregoing provides a strong foundation for a presumption in favor of diversion for many low and mid-level cases when they have no aggravating circumstances.

ELIGIBILITY REQUIREMENTS

The most significant factor in determining a person's eligibility for SAO9 Pre-Trial Diversion Program is whether or not there is a likelihood that he or she will cooperate with and benefit from diversion. In this analysis things that should be considered are

1. The nature of the crime committed and all mitigating and aggravating circumstances
2. Whether or not the person is a first-time offender. While this may be considered unless it results in diversion, it rarely should be determinative.
3. Whether or not the person has ever participated in any diversionary program or has been on probation. While these things may be considered they rarely should be determinative. Prior participation in a diversion program will not bar a person who otherwise is appropriate.
4. Prior success or failure with a diversion program or probation.
5. The person's residence. Generally, a person who enters PTD is not required to live in the State of Florida. However, a person is required to work, live or study in the United States.
6. A commitment to pay restitution which includes cost of prosecution and if appropriate cost of investigation. Costs of prosecution are \$50 for misdemeanors and \$100 for felonies respectively.

⁴ <https://centerforprisonreform.org/wp-content/uploads/2015/09/Jail-Diversion-Programs-in-America.pdf>

⁵ <https://www.ncjrs.gov/pdffiles1/nij/grants/251665.pdf>

⁶ Pretrial Diversion: The Overlooked Pretrial Services Evidence-Based Practice, Zlatic, Wilkerson, and McAllister, Federal Probation, v74:1, June 2010.

⁷ The Cost-Effectiveness of Criminal Justice Diversion Programs for People with Serious Mental Illness Co-Occurring with Substance Abuse: Four Case Studies, Cowell, Broner, and Dupont, Journal of Contemporary Criminal Justice, v20:3, August 2004.

7. The person's voluntary entrance into the program. Those who are not coerced into a diversion tend to have a higher success rate.⁸

ELIGIBLE OFFENSES

Most misdemeanors and third-degree felonies will be eligible for pre-trial diversion. Some second-degree felonies will be eligible as well.

Cases that may not be appropriate for diversion are felonies involving weapons and extreme violence. This is not to suggest that CCW or other similar crimes will not be considered, however. A review of mitigators and aggravators will be relevant in the analysis.

Absolutely no domestic violence cases involving a firearm or weapon will be eligible for diversion. Notwithstanding referrals for prostitution, no cases related to sexual allegations, including exposure of sexual organs will be eligible for pretrial diversion.

PROCEDURE FOR PRE-TRIAL DIVERSION

The Intake Division or the filing Assistant State Attorney will evaluate cases for PTD eligibility. If during the intake stage it is determined that a case is eligible and appropriate for diversion, a referral will be initiated. While we continue to explore pre-filing pretrial diversion options Informations should still be filed in order to minimize any potential issues related to speedy trial. When pre-filing PTD options are established this policy will be amended accordingly.

Cases may proceed to trial divisions without a referral for many reasons. In that instance the trial division attorney may still make a referral to pretrial diversion. In both instances a genuine effort to contact the crime victim, if applicable for notice and an opportunity to be heard must be made. Marsey's Law will be strictly adhered to by this office whether a case is diverted or not. But under no circumstances will an individual victim's input override a well-informed, tempered, and unbiased decision that is in the best interest of justice. Equal justice depends on consistency from State Attorney who must consider the broader view of case processing in which a victim's voice is certainly heard but is not determinative. The state has an obligation to use its discretion wisely and not surrender its position as a party to the criminal action inconsistently.

The procedures outline above are the general guidelines for SAO9 Pretrial Diversion. Please adhere to the specific procedures for referrals for Felony, Misdemeanor and DUI diversion, in addition to full written policies for other SAO9 Specialty Diversion Programs.

⁸ Outcomes of Mandated and Nonmandated New York City Jail Diversion for Offenders with Alcohol, Drug, and Mental Disorders, Broner, Mayrl, and Landsberg, The Prison Journal v85(1):18-49. March 2005

UPON COMPLETION OR FAILURE TO COMPLETE PRE-TRIAL DIVERSION

Upon the defendant entering into the diversion agreement, the criminal proceedings shall be suspended. When the defendant successfully fulfills the terms and conditions of the agreement, the Assistant State Attorney shall dismiss the charges against the defendant. If the Assistant State Attorney finds at the termination of the diversion period or any time prior to the termination of the diversion period that the defendant has failed to fulfill the terms of the specific diversion agreement, the ASA shall inform the court of such and shall resume prosecution.