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**STATE OF VERMONT  
OFFICE OF THE CHITTENDEN COUNTY STATE'S ATTORNEY**

**INTEROFFICE MEMO**

**TO:** All Staff of the Chittenden County State's Attorney's Office

**FROM:** Sarah George, State's Attorney  
Sally Adams, Chief Deputy State's Attorney

**CC:** Lauryn Crutchfield, Chittenden County Court Diversion Program

**DATE:** December 20, 2021

**RE:** Pilot Program for First Offense DUI Adult Diversion Program

Our office is excited to announce a pilot program for 1<sup>st</sup> offense DUI cases. We are implementing this pilot program with the support of and collaboration from the Burlington Community Justice Center staff, specifically Lauryn Crutchfield and Rachel Jolly.

This pilot program will begin on January 1, 2022. It will be a one-year program and prior to December 31, 2022, we will review the data and determine if the pilot should be extended. Our hope is to compile enough data to assess whether the pilot program should be terminated or whether we wish to make this a permanent part of our case resolutions and whether eligibility criteria should be modified.

The effective date of the program is January 1, 2022. Any individual who meets the eligibility criteria below who is arraigned after January 1, 2022 will get the benefit of receiving an offer to participate in this pilot program.<sup>1</sup>

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<sup>1</sup> There are likely cases scheduled for arraignment in January 2022 that have already been witted and offers already made. DSAs covering arraignments during the first few weeks of January should be cognizant of this and be prepared to notify defense counsel of amended offers. DSAs assigned to those cases should also follow up with defense counsel and make new offers, if necessary, based on this memo. Going forward, any case that is scheduled for arraignment after January 1, 2022, is subject to this memo.

**Eligibility Criteria for the Program:**

This pilot program is for individuals who are charged with an alcohol-related DUI#1. Drug-related DUI#1 cases are not eligible for this pilot program. We will continue to explore ways to expand this pilot program to DUI-Drug #1 offenses. Other than alcohol-only related first offense DUIs, no other offenses are eligible.

In addition, the following eligibility criteria must be met before referring a case to the pilot DUI Diversion program. Please see the descriptions below for more information as to each eligibility criteria.

1. No prior criminal convictions or one (1) prior misdemeanor conviction
2. Defendant must admit to the Civil Suspension before referral
3. There is not an individual personal victim
4. No previous referral to the DUI Diversion program

**Criminal history:** THIS PROGRAM IS FOR FIRST OFFENSE DUI CASES ONLY. Diversion's statutory eligibility criteria allows for a 1<sup>st</sup> or 2<sup>nd</sup> misdemeanor to be referred to Diversion. The same eligibility criteria should apply in this pilot program. If the person has two prior misdemeanor convictions on their record and this is their first DUI, they are not eligible for the program. If they have one prior misdemeanor conviction on their record, they are eligible for the program so long as the prior misdemeanor conviction is not DUI that was amended to a Negligent Operation or some other non-DUI offense. If they have no prior misdemeanor convictions on their record, they are eligible for the program so long as their DMV record doesn't indicate a prior alcohol related driving offense, i.e., a previous admit civil/dismiss criminal scenario. Therefore, regardless of criminal convictions, if the person has any notation on their DMV record that they had a prior alcohol-related driving offense, they are ineligible for the program. These DMV conviction codes include but are not limited to 21A, 21B, 21C, 21D, AWD, BR2, BR3, BRF, CO4, COH, C41, C42, C43, CA1, CA2, CA3, CA4, CB1, CB2, CD1, CDW, CIV, CJ1, CJ2, CJ3, CR2, CRH, CRI, CRT, CT1, CT2, CT3, CT4, CT5, CX1, CX2, CX3, CX4, CX5, DA1, DA2, DA3, DA4, DD1, DD2, DD3, DD4, DD5, DR1, DR2, DR3, DWD, DWI, DX1, DX2, DX3, DX4, DX5, JR1, JR2, WDA, WDC, and WDD.

**Admission to the Civil Suspension:** Before making a referral to the pilot DUI Diversion program, the individual must have either defaulted on the accompanying civil suspension or must admit to the civil suspension. If an individual meets all other eligibility criteria, the Offer Letter should read:

*After default/admission of civil suspension, the State will refer to the Diversion Program.*

No Diversion referral forms should be signed or conveyed until the individual has either defaulted or admitted the civil suspension. The reasoning behind the requirement that an individual have a civil suspension is to ensure there is a record of this offense in the event there is a future DUI arrest.

**No individual person victim:** If the individual was involved in an accident with another motor vehicle or person, they are not eligible for the pilot program. If the individual was involved in a one-vehicle accident that resulted in damage to property, they are only eligible if the property belonged to a business. For example, they would be ineligible if they crashed their car into the lawn of a person's home causing damage to the identifiable property owner. However, they would be eligible if they crashed their car into the lawn of a business causing damage to the business.

**One time referral, no re-referrals:** A person may be referred once and only once. There are no re-referrals for any reason. If an individual is referred to the program and their case is returned as a failure for any reason, before or after acceptance into the program, the case will not be re-referred. There are no exceptions to this policy.

**Completion Criteria for the Program:**

In order to successfully complete the program, individuals will be required to (1) pay the \$175 program fee to Diversion; (2) complete a restorative panel through the Diversion program<sup>2</sup> and; (3) complete the Impaired Driver Rehabilitation Program (IDRP).

To meet the requirements of Diversion, individuals must pay the program fee and will be expected to participate in a restorative panel where they learn about how their offending behavior impacted the community.

Further, requiring each participant to complete the IDRP addresses public safety concerns: we are requiring individuals to complete the one and only program that the Legislature has statutorily mandated for the sole purpose of addressing public safety. Requiring the IDRP also gets everyone one step closer to reinstatement of their privilege to operate a motor vehicle. Upon starting the IDRP, each individual is given a risk assessment. If that risk assessment shows they are at higher risk (either based on their history with substances or based on their DMT result or both), they are required to complete a certain number of hours of substance abuse counseling before completing the program. These requirements adequately address the need for rehabilitation and public safety.

Participants will be expected to complete the program in six (6) months or less. In cases involving payment of restitution or other extenuating circumstances, an extension of this six month time-frame will be approved by Diversion staff.

**Additional Considerations:**

Some individuals charged with a first offense alcohol-only related DUI may be eligible for consideration as a Youthful Offender in the Family Division. It is our office's preference that, regardless of eligibility for YO status, if an individual meets criterion for referral to this pilot program that we make the referral. It is up to the individual whether they wish to avail themselves of the adult pilot Diversion program or move to be considered a Youthful Offender.

Based on our office's history of resolving first offense cases where the DMT is .10% or lower, the arraignment offer should remain an admit/dismiss or fine on a Negligent Operation and judgement in favor of the Operator on the civil suspension as it is more favorable to defendants. For any other case that is not an "Admit/Dismiss" or "NegOp/Civil for Operator" offer, the case should be referred to this program in compliance with the above eligibility criteria and process.

Other than .10% or lower cases, there is no consideration of DMT results in assessing eligibility for this program. All cases that meet the eligibility criteria should be referred to this program. In cases with aggravating circumstances where the charging DSA believes that a referral is inappropriate, permission to not refer an otherwise eligible case must be obtained from the State's Attorney. A high DMT result alone will not be a basis to seek an exception from the State's Attorney.

We intend to track data for the pilot program by using an Excel spreadsheet housed in the Shared Drive. The logistics of how this data will be entered is still being discussed. From this data we hope to understand trends of who is and isn't availing themselves of the program, who is and isn't successfully completing the program and using that data to make any necessary changes to our eligibility criteria or completion criteria. We'll keep everyone posted on this front.

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<sup>2</sup> For individuals who owe restitution to a business entity due to property damage caused as a result of the DUI charge, restitution for uninsured losses must be paid in full to complete the restorative panel.