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**OFFICE OF THE STATE ATTORNEY, 17th JUDICIAL
CIRCUIT, DOMESTIC VIOLENCE MISDEMEANOR
DIVERSION PROGRAM**

- I. The following sets forth policy, procedure and minimum eligibility requirements for the Office of the State Attorney's approval for entry in to the Domestic Violence Misdemeanor Diversion Program (DVMDP) administered and supervised by the Broward Sheriff's Office Probation Department.
- A. Time and Method of Participation – Defendants that qualify will be notified at arraignment that they meet the criteria for admission into the diversion program. The Defendant will have 30 days from arraignment to elect participation in the program. Defendants filing a written plea will be notified through counsel of the qualification for admission into diversion, and must elect participation within 30 days from the filing of the written plea. Defendants electing to participate in diversion, within the 30 day period, are required to enter a plea of GUILTY. Sentencing will be set eight months from the date of the plea. If the Defendant successfully completes the program the plea will be vacated and the case will be nolle prossed. Absent extraordinary circumstances, this time period will be strictly enforced.
- B. Compliance – Upon entry of his/her plea, the defendant shall immediately report to probation, and must abide the rules and regulations of the program. This includes, but is not limited to, attending and successful completion of a twenty six (26) week Batterer's Intervention Program (BIP) ordered by the Court. The defendant must complete the BIP intake assessment within 10 days from the entry of his/her plea. In cases where substance abuse on the part of the defendant is reasonably suspected, the defendant shall be ordered to submit to a substance abuse

evaluation and any recommended aftercare, at his/her own expense. The defendant shall submit to random urinalysis/breathalyzer.

- C. Termination for Non-Compliance – The determination of non-compliance is in the sole discretion of the State Attorney's Office. The Defendant, by electing to participate in the program, waives any right to contest the SAO determination of non-compliance and termination. The State will be notified by the Broward Sheriff's Office Probation Department of non-compliance. The Probation Department will set the sentencing hearing and send notice to the defendant and defense counsel. The defendant shall be sentenced on his/her earlier plea. A defendant who fails to appear for sentencing will have a capias issued for his/her arrest.
- D. New Arrest - While in the program, any arrest or charge for any criminal offense will result in automatic termination of the defendant's participation and the defendant will return to Court to be sentenced.
- E. Eligible and Ineligible Offenses – Eligibility will be determined on a case by case basis. **The criminal offense with which the defendant was charged must have been committed on or after February 1, 2008**, and be one of the enumerated misdemeanor offenses.

1. Eligible Offenses:

a. Battery

1. Eligible batteries involve minor intentional touchings that do not result in serious physical injury. An intentional touching resulting in minor red marks, minor scratches, and/or minor bruising is an ELIGIBLE offense.

2. Batteries in which there is probable cause to believe the defendant with substantial force slapped, punched,

kicked, or pushed the victim to the ground are INELIGIBLE.

3. Any battery involving degrading acts perpetrated on the victim, such as urination or spitting, is INELIGIBLE.

4. Any battery in which the victim is strangled or choked is INELIGIBLE.

- b. Assault
- c. Stalking
- d. Criminal Mischief
- e. Disorderly Conduct

2. Ineligible Offenses:

- a. Violation of Pre-Trial Release - No Contact Order
- b. Violation of Injunction against Domestic Violence

F. Past Adult Criminal History – The defendant must have no prior adult felony arrests and/or convictions and no more than (1) prior conviction for a non-violent misdemeanor crime. Any prior domestic violence arrests, convictions, and/or pending filed not in custody charges will AUTOMATICALLY PRECLUDE consideration for the program.

G. Past Juvenile Criminal History – A defendant under twenty-five (25) years of age who has a significant juvenile record, may be disqualified and denied entry into the program.

H. Prior Diversion – A defendant will only be permitted to participate once in a lifetime in the domestic diversion program. A defendant who has previously participated in a domestic violence diversion program shall be ineligible.

I. Consent of the Victim – The victim(s) of the offense must consent to the defendant's participation in the diversion program.

- J. Contact with the Victim – The decision to allow or prohibit the defendant to have contact with the victim, during his/her participation in the program, will be determined on a case by case basis, and placed in the agreed order at the time of the plea.
- K. Restitution – The defendant shall make full restitution to any person or entity, including insurance carrier or investigative agency, who suffered monetary loss as a direct or indirect result of the commission of this offense upon entry into the diversion program. If the defendant cannot afford to make restitution upon entry, the defendant shall provide a full financial affidavit, including supporting documentation. If it reasonably appears that the defendant will be unable to fulfill the obligation of restitution during the course of participation in diversion the defendant may be denied admission. Restitution will be a special condition of the satisfactory completion of diversion. This restitution is non-refundable in the event the defendant is unable to successfully complete diversion. However, the defendant will be given credit at sentencing for any amount of restitution already paid.
- L. Waiver of Rights Required – By participating in the DVMDP program the defendant shall be required to waive his/her right to a speedy trial, right to discovery, and right to withdraw his/her previously entered plea. Additionally, the defendant waives any right to contest the SAO determination of noncompliance and termination from the program.
- M. Special considerations to Entry – If, in the opinion of the Probation Department Program Staff Supervisors, the defendant is in need of special counseling, the defendant must agree to participate in such programs as a specific condition of his/her successful completion of the program.
- N. All inquiries with respect to the approval of diversion for misdemeanor cases, should be directed to the Assistant State Attorney in Charge of the Domestic Violence Unit.