

**THIS PRESENTATION WILL**

**BLOW YOUR MIND...**

[makeameme.org](http://makeameme.org)

“Pre-Trial Release”

# PROSECUTORIAL OPTIONS

Rebecca Lange

“...the duty to prosecute...requir[es] the prosecuting attorney only to exercise a sound discretion, which permits refraining from prosecuting whenever the prosecutor in good faith thinks that a prosecution would not serve the best interests of the state...”

Tex. Att’y Gen. OP. NO. JC-0042(1999)

# MISDEMEANOR DELIMMAS

## ▶ DWI

- ▶ Low BAC
- ▶ Licensed professional
- ▶ No video....no blood/breath

*DWI*



**"THE ANSWER TO THIS LAST QUESTION WILL  
DETERMINE WHETHER YOU ARE DRUNK OR NOT.**

**WAS MICKEY MOUSE A CAT  
OR A DOG?"**

memegenerator.net

**USES FRIENDS URINE FOR  
HIS DRUG TEST BECAUSE HE  
SMOKES WEED**



**COMES UP POSITIVE FOR  
COCAINE AND HEROIN**

# *EXTRAJUDICIAL PROSECUTION*

\*DEFERRED PROSECUTION

\*PRETRIAL INTERVENTION

- ▶ Extrajudicial process
- ▶ First time offenders
- ▶ 'Non-Violent' Crime

# MENTAL HEALTH/VETERAN CONSIDERATIONS

- ▶ Coordination with law enforcement (Mental Health Deputy):
  - ▶ divert to emergency detention vs arrest
  - ▶ Implement pre-trial program
  - ▶ Dismiss the case
- ▶ Oversight of defendant through MHDD that can be enforced through criminal justice system if needed.
- ▶ Tele-psych in jail for rural communities
- ▶ PR Bonds to allow transfer to state mental health facility after arrest.



# CONSIDERATIONS FOR COUNTIES

- ▶ Defendant can enter agreement Pro Se
- ▶ Docket management
- ▶ Public Interest to work with indigent defendants
- ▶ Misdemeanor offenders occupying jail beds

# **COUNTY JAIL**

## **BED & BREAKFAST**

- ★ **Open 24-hours**
- ★ **Non-Smoking Rooms Available**
- ★ **24-hour Security & Video Surveillance**
- ★ **3 Meals a Day Provided**
- ★ **Dayroom with Color Television**
- ★ **Free Laundry Service**

**For reservations: Call 1-555- CONVICT**  
**Or contact your local law enforcement agency**



## ▶ GOALS

- ▶ Educate

- ▶ Rehabilitate

- ▶ Divert Prosecution

- ▶ Protect Community

# “DEFERRED PROSECUTION”

- ▶ Case filed or not filed
- ▶ No plea
- ▶ “Special Expense Fee” not a “Fine”
- ▶ Prosecutor confirms terms for deferral are met

# PRETRIAL INTERVENTION "PTI"

- ▶ Article 102.0121 Texas Code of Criminal Procedure  
(Prosecutor)
- ▶ Article 102.012 Texas Code of Criminal Procedure  
(Community Supervision Department)

# PTI Program Overview

## ▶ BUDGET

A district attorney, criminal district attorney, or county attorney

\* may collect a fee in an amount **not to exceed \$500**

\* the fee is deposited into a special fund in the county treasury

“to be used solely to administer the pretrial intervention program.”

“[a]n expenditure from the fund may be made only in accordance with a **budget** approved by the commissioners court”

# Proper Expenditure of PTI Funds

- ▶ Reimburse county for expenses (DA, CDA, CA expenses related to a defendant's participation in a pre-trial intervention program)
- ▶ Refurbish courthouse facilities, train staff and purchase office supplies only to the extent that such expenditures reimburse a county for expenses related to a defendant's participation in a pretrial program and are used for the administration of the program.
  - ▶ Tex. Att'y Gen. Op. No. GA-1039(2014)

## CAUTION:

- ▶ A prosecutor **may not** require an offender to make a contribution to a nonprofit organization in exchange for the prosecutor's decision to refrain from prosecution in any case.

\* Tex. Att'y Gen. OP. NO. JC-0042(1999)

\* Tex. Att'y Gen. Op. No. JC-0119(1999)

- ▶ **No** donations to food bank, animal shelter, etc.....may be part of conditions (exception-community service alternative)



# CAUTION:

- ▶ §36.02 Texas Penal Code: Bribery
  - ▶ Payment of money by an accused in exchange for a prosecuting attorney's favorable treatment in a criminal matter involving the accused can in some circumstances constitute a violation. *Bush v. State*, 772 S.W.2d 41, 44 (Tex. App.—Eastland 1986, pet. granted)
- ▶ §36.08 Texas Penal Code: Gift to Public Servant by Person Subject to His Jurisdiction
- ▶ Over-collecting or spending the funds on too many “general purpose” items.

## Pretrial Intervention Process:

- ▶ Case may or may not be filed
- ▶ Application
- ▶ Agreement
  - \* Written confession of guilt
- ▶ Maximum duration 2 years

## Pretrial Intervention Process:

- ▶ Eligible for expunction of the charge following successful completion and dismissal of charge

## Pretrial Intervention Process:

- ▶ Prosecutor or Probation (Tex Gov Code 76.011) can supervise
  - ▶ Probation fee=\$60.00/month (prefer 1 year only)

**How many probation  
officers does it take to  
change a lightbulb?**



**One, but the lightbulb  
has to *want* to change.**

# Pretrial Intervention Process

- ▶ Oversight of drug and/or alcohol use:
  - ▶ Interlock (Smart Start); SCRAM (Secure Continuous Remote Alcohol Monitoring)
  - ▶ Random drug/alcohol(EtG) testing
    - ▶ **EtG** is a metabolite of **Ethyl Alcohol**, and can be detected for longer periods of time after ingestion than simply **testing for Ethyl Alcohol**.

- ▶ Nail (EtG \$180)
- ▶ Hair (EtG \$160)
  - ▶ detects the past 7 to 90 days of consumption
- ▶ UA (EtG \$35)
  - ▶ detects up to 72 hours after consumption

## Pretrial Intervention Process

- ▶ *Oversight of compliance with agreement:*
  - ▶ Restitution and program administration fee collected
  - ▶ Monitor community service
  - ▶ Research and essays



## Pretrial Intervention Process

- ▶ Require appearance at dockets to monitor compliance

\*Court is asked to retain on the docket until dismissal or prosecution

## Pretrial Intervention Process

- ▶ *Monitor compliance with interventions: (example)*

- ▶ Victim Impact Panel (2-4 hrs) or Alcohol Offender Program (12 hrs)
- ▶ Drug Offender Education Program (DOEP) (15 hrs)

# Pretrial Intervention Process

- ▶ Underlying Mental Health concerns interventions
- ▶ Drug and Alcohol Assessment and Intervention
- ▶ Driver Safety Course
- ▶ Track personnel time spent to implement program

# NON-COMPLIANT PTI PROGRAM

- ▶ §45.125 Government Code: Provisions Applicable to Specific Counties
  - ▶ Specified that the County Attorney or Commissioners Court of the specified county may *receive gifts and grants* from any individual, partnership, corporation, trust, foundation, association, or governmental entity for the purpose of financing or assisting the operation of the office of county attorney in that county.
- ▶ The County Commissioners Court was given ultimate authority over the disposition of funds received under §45.125

# NON-COMPLIANT PTI PROGRAM

- ▶ §45.125 does not authorize the County Attorney to require an accused to pay an amount to that office as a condition of a pretrial intervention agreement in addition to or in excess of the fee allowed under §102.0121 CCP
- ▶ PTI funds cannot be comingled with Hot Check funds

\* Tex. Att'y Gen. Op. No. KP-0121(2016)

# Llano County Attorney PTI

- ▶ 146 cases since 2015
- ▶ Average 1 year duration
- ▶ 2 “unsuccessful” converted to prosecution

# Success!!!

- ▶ 19 yo female
- ▶ 1 year PTI for POM
- ▶ 1<sup>st</sup> year.....poor compliance
- ▶ “Compliance Hearing”
  - ▶ Pregnant
  - ▶ + drug test
- ▶ Extended PTI for 6 months
  - ▶ Required to attend CPS court
  - ▶ Required to write an essay about experience in CPS court
  - ▶ Required to research effects of MJ on fetus and the mother
  - ▶ Complete all other terms of PTI
- ▶ 21 now....working...college....mommy!





The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue, creating a modern, layered effect.

▶ DEFERRED ADJUDICATION  
*is a different animal*



# DEFERRED ADJUDICATION-HB 3582 (September 1, 2019)

- ▶ “Eligibility for Deferred Adjudication Community Supervision” *amended* CCP 42A.102(b):
  - ▶ 1<sup>st</sup> offense DWI and BWI
    - ▶ Not a CDL holder or commercial learner’s permit
    - ▶ BAC <0.15 at the time of the offense (vs at the time the analysis was performed)
    - ▶ Not in a “Drug-Free Zone”
- ▶ “Use of Ignition Interlock Device” *amended* CCP 42A.408:
  - ▶ Judge SHALL require IID
  - ▶ If indigent (Section 708.158 Transp. Code)
    - ▶ Waive installation charge
    - ▶ 50% reduction of the monthly device monitoring fee

# DEFERRED ADJUDICATION-HB 3582 (September 1, 2019)

- ▶ “Use of Ignition Interlock Device” *amended* CCP 42A.408:
  - ▶ EXCEPTION:
    - ▶ Judge may waive the IID, if based on a controlled substance and alcohol evaluation of the defendant, the judge determines and enters in the record that restricting the defendant to the use of an ignition interlock is not necessary for the safety of the community.

# DEFERRED ADJUDICATION

- ▶ Not eligible for Deferred Adjudication if previously convicted of or placed on Deferred Adjudication Community Supervision for another offense other than a traffic offense that is punishable by fine only. (*amended* Gov Code §411.072(a))
- ▶ A person is considered to have been convicted of the offense (DWI/BWI) if placed on deferred adjudication and that conviction may be used for enhancement purposes. (*amended* PC §§49.09(b) and (g))

# NON-DISCLOSURE

- ▶ May petition the court for an order of nondisclosure if:
  - ▶ 2 years have passed since receiving a discharge and dismissal from deferred adjudication. (*amended* Gov Code §§411.0725(a) and 411.0726)
  - ▶ the requirements of §411.074 (Required Conditions for Receiving an Order of Nondisclosure) are satisfied
  - ▶ the person has no prior conviction or deferred adjudication for any offense other than a traffic violation; and
  - ▶ the person was not placed on deferred adjudication for a DWI collision involving another person.

# DEFERRED ADJUDICATION

- ▶ CCP 42A.101-41A.108
- ▶ Case filed
- ▶ Plea of guilt before the Court (NOT extrajudicial)
- ▶ Defer up to 2yrs
  - ▶ 3 yrs with an extension
- ▶ Not eligible for expunction
- ▶ Probation typically supervises
- ▶ If fail to comply with terms then defendant is subject to maximum sentence



# Driver Responsibility Program

- ▶ HB 2048 repealed the Driver Responsibility Program
  - ▶ DPS required to reinstate any driver's license that was suspended for non-payment of surcharges (estimated 600,000 to 1.3 million licenses)
  - ▶ Created 3 new funding mechanisms for lost revenue to trauma care and the general revenue fund:
    - 1) State traffic fine increased from \$30 to \$50
    - 2) State auto insurance policy fee increased from \$2 to \$4



# Driver Responsibility Program (cont)

3) Former DWI surcharges re-designated as “DWI Traffic Fines”, in the same amount as surcharges, *to be collected upon conviction by the criminal courts* (see §709.001 Traffic Fine for Conviction of Certain Intoxication Driver Offenses)

\$3000-1<sup>st</sup> conviction

\$4,500- 2<sup>nd</sup> conviction or subsequent conviction within a 36-month period

\$6,000- for any conviction in which a defendant’s BAC was 0.15 or greater at the time of the analysis.

# Driver Responsibility Program (cont)

- Traffic Fines can be waived for indigency.
- Traffic Fines are ONLY assessed if convicted and sentenced to jail.  
*Does not apply to community supervision (probation and deferred adjudication)*
- Traffic Fines are in addition to the fines prescribed for the offense under the Penal Code.

<p style="text-align: center;"><b>PRE-TRIAL INTERVENTION (extrajudicial)</b></p>	<p style="text-align: center;"><b>DEFERRED PROSECUTION (extrajudicial)</b></p>	<p style="text-align: center;"><b>DEFERRED ADJUDICATION (PROBATION)</b></p>
<ul style="list-style-type: none"> <li>• Case unfiled or filed</li> <li>• Signed confession can be used in prosecution</li> <li>• Up to 2 years</li> <li>• Prosecutor OR Probation Supervise -outside agency</li> <li>• Expunction available</li> <li>• Prosecutor: Max \$500 participation fee</li> <li>• Probation: avg \$720</li> <li>• Case dismissed after successful completion</li> <li>• Subject to prosecution and punishment to the full extent of the law if unsuccessful</li> </ul>	<ul style="list-style-type: none"> <li>• Case unfiled or filed</li> <li>• Signed confession</li> <li>• Up to 2 years</li> <li>• Prosecutor validates compliance</li> <li>• Expunction available</li> <li>• Special Expense Fee</li> <li>• Case dismissed after successful completion</li> <li>• Subject to prosecution and punishment to the full extent of the law if unsuccessful</li> </ul>	<ul style="list-style-type: none"> <li>• Case filed</li> <li>• Plea before the Court (prosecution is complete)</li> <li>• Up to 2 years</li> <li>• Probation supervision</li> <li>• Not eligible for expunction</li> <li>• +/- Eligible for non-disclosure               <ul style="list-style-type: none"> <li>*deny arrest on most job applications</li> </ul> </li> <li>• Fine, court costs, probation fees</li> <li>• Case dismissed after successful completion</li> <li>• Subject to punishment to the full extent of the law if unsuccessful</li> </ul>

**\$000000...**

**ANY QUESTIONS?**

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