



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT


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POLICY DIRECTIVE 21-265

**TO: ALL JUSTICES OF THE PEACE
ALL NON-JUDICIAL COURT EMPLOYEES**

FROM: ALAN G. DAVIS 
CHIEF MAGISTRATE

DATE: MARCH 25, 2021

**RE: FAILURE TO APPEAR FOR DUI FIRST OFFENDER PROGRAM
NON-COMPLIANCE HEARING**

Scope:

This Policy Directive sets forth the policy to be followed for the duration of the COVID pandemic regarding sentencing of defendants who fail to appear for a DUI First Offender Program (FOP) non-compliance hearing.

Justice of the Peace Court Policy:

It is the policy of the Justice of the Peace Court that prior knowing and intelligent DUI guilty pleas set aside for the First Offender Program (FOP) may be entered by the Court where the defendant fails to appear at a DUI FOP non-compliance hearing.

Policy Directives/Legal Memoranda Affected:

PD 066 also addresses the FOP. This policy supplements but does not contradict PD 066. PD 85-097 also addresses the FOP. This policy does not contradict PD 85-097.

Effective Date:

This policy shall take effect immediately upon issuance and shall continue until further notice.

Discussion:

If a defendant fails to complete their requirements pursuant to the DUI FOP, and then also fails to appear for the non-compliance hearing, a judge may impose a guilty plea without further hearing. The imposition of the guilty plea should be done by the judge only after a review of the file in which the judge is assured that the plea was taken appropriately. For instance, the judge should confirm that the jurisdictional form and guilty plea was signed by the defendant or contains the appropriate COVID affirmations, and further confirm that all paperwork is in order. If the plea does not appear to be in order, then the case should be re-scheduled for another non-compliance hearing. If the plea was properly taken, it was as the result of a knowing and voluntary process, and the defendant was made aware that a potential consequence of failing to abide by the terms of the FOP is the imposition of the DUI sentence. There is no issue imposing the sentence in the absence of the defendant under these circumstances. The judge, in his or her discretion, may either reschedule the case for a new non-compliance hearing or take the guilty plea and impose it pursuant to the terms of 21 *Del. C. Sec.* 4177B. If the judge enters the guilty plea on the record, then the defendant shall be mailed a copy of the DUI Sentence Order, and the initial payment plan for the fine, costs, and assessments. Since the charge will be on a first offense, there should be no Level 5 time involved.

cc: Honorable Collins J. Seitz, Jr.
Honorable Andre G. Bouchard
Honorable Jan R. Jurden
Honorable Alex J. Smalls
Honorable Michael K. Newell
Gayle P. Lafferty, State Court Administrator
All Justice of the Peace Courts
Marianne Kennedy, Justice of the Peace Court Administrator
Rebecca Trifillis, Justice of the Peace Court Staff Attorney
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Stephanie Parker, Operations Manager
Michael Iglio, Chief of Uniformed Services
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