

Supreme Court of Kentucky

ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the 19th Judicial Circuit (Bracken, Fleming and Mason Counties) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.



Chief Justice

Entered: 12/16/99

COMMONWEALTH OF KENTUCKY
19TH JUDICIAL CIRCUIT

CLASS D FELONY PRETRIAL DIVERSION PROTOCOL

I. Definition

Pretrial diversion is the postponement of imposition of sentence upon any person who qualifies for this program, for a period of time not to exceed five (5) years, subject to certain conditions established by the Court.

II. Persons Eligible

KRS 533.250

- A. Any person charged with a Class D Felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the (10) years prior to commission of the current offense, shall be eligible to be considered for pretrial diversion.
- B. The person charged must enter a plea of guilty, or a plea pursuant to North Carolina v. Alford, before becoming eligible for pretrial diversion.
- C. Persons ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible for this program.
- D. A person convicted of a Class D felony for which early release is disallowed by statute, including KRS 189A.010(8) and KRS 189A.120(2), shall be ineligible for this program.

- E. No person shall be eligible for this program more than once in any five (5) year period.

III. Procedure

- A. After indictment in Circuit Court, and no later than thirty (30) days before trial, any person eligible for the program may apply to the Circuit Court and the Commonwealth's Attorney for entry of a pretrial diversion order.
- B. In applying for pretrial diversion, counsel for the defendant must state, and the defendant must agree on the record, that in the event diversion is granted, any right to a speedy trial or disposition of the charge against him/her is waived.
- C. The Commonwealth shall make a written recommendation to the Court in response to each application.
KRS 533.250(2).
- D. Before making a recommendation to the Court, the Commonwealth shall:
 - 1. Have a criminal record check made by telephoning Pretrial Services at AOC at 1-800-928-6381, or faxing the request to (502) 573-1669, or otherwise obtain a criminal history of the defendant. (DO NOT send requests to the local Pretrial Services Officer.) KRS 533.252.
 - 2. Attempt to interview and seek input from the victim and/or victim's family and to advise them of the

time, date and place the motion will be heard by the Court; and

- E. When diversion is recommended, the Commonwealth must make written recommendations to the Court of conditions for the pretrial diversion as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful. KRS 533.252(3).

IV. Order of Pretrial Diversion

- A. The Court may, in its discretion, and only if the Attorney for the Commonwealth so recommends, order pretrial diversion for eligible petitioners upon terms and conditions it deems appropriate. (AOC Form 345, styled Order Granting Pretrial Diversion of a Class D Felony, was designed for this purpose.)
- B. The Order of Diversion **shall** include:
 - 1. Restitution, if applicable.
 - 2. Whether the diversion shall be supervised or unsupervised (and include supervision fees, if applicable).
 - 3. Duration of the diversion.
 - 4. Requiring defendant to obey all rules and regulations imposed by Probation and Parole.
 - 5. As required by KRS 533.030(1) [conditions of probation-restitution], directing the defendant not to commit any offense during the period of the pretrial diversion.

6. Directing the defendant to comply with any other provision of KRS 533.030 or any other condition the Court deems appropriate.

C. The Order of Diversion **may** include:

1. That the petitioner remain drug and alcohol free and be subject to random testing.

2. That the petitioner possess no firearm or any other deadly weapon.

3. Other reasonable conditions that the Court imposes.

D. Duration of the pretrial diversion shall not exceed five (5) years without agreement of the petitioner. Duration of the diversion agreement shall not be less than the time required to make restitution in full.

V. Voiding a Diversion Order

KRS 533.256

A. After a hearing, with notice of the Commonwealth and to the defendant, the Court may void a person's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress. (AOC Form 346, styled Order Voiding Pretrial Diversion of a Class D Felony, was designed for this purpose.)

B. If an order of pretrial diversion is voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilt/plea pursuant to North Carolina v. Alford.

C. Under KRS 533.256(2), the same criteria applicable to a probation revocation hearing applies to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting diversion should be voided also constitutes a miscellaneous proceeding and therefore the Rules of Evidence are inapplicable to such hearings.

VI. Completion of Diversion Program

If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be dismissed.

VII. This pretrial diversion protocol shall not be construed to give any defendant a right or entitlement to pretrial diversion in any case, nor shall it allow any action for failure to recommend or approve pretrial diversion.

Approved, this the 2nd day of December, 1999, by
Robert I. Gallenstein, Chief Circuit Judge, and Stockton B. Wood,
Commonwealth's Attorney, to be effective immediately.

/s/ ROBERT I. GALLENSTEIN
ROBERT I. GALLENSTEIN, CHIEF JUDGE
19TH JUDICIAL CIRCUIT

/S/ STOCKTON B. WOOD
STOCKTON B. WOOD, COMMONWEALTH'S ATTORNEY
19TH JUDICIAL CIRCUIT