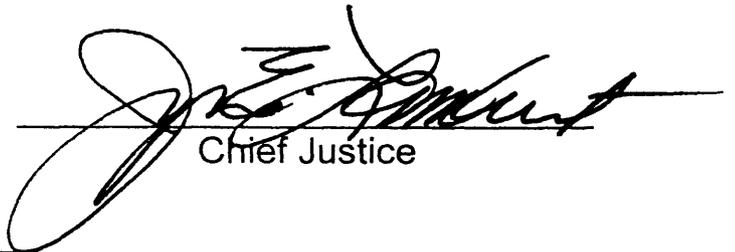


Supreme Court of Kentucky

ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the 23rd Judicial Circuit (Estill, Lee and Owsley Counties) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.



Chief Justice

Entered: May 25, 1999

**CLASS D FELONY PRE-TRIAL DIVERSION PROTOCOL
FOR THE 23RD JUDICIAL CIRCUIT COURTS OF
ESTILL, LEE AND OWSLEY COUNTIES**

Pursuant to KRS 533 the following Class D Felony Pre-Trial Diversion Protocol is adopted for the 23rd Judicial Circuit Courts of Estill, Lee and Owsley Counties:

I. DEFINITION

Pre-trial 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 offense, who has not had a felony conviction for the previous ten (10) years from the commission of the current offense or who has not been on probation or parole or released from felony incarceration within the previous ten (10) years from the commission of the current offense shall be eligible for pre-trial diversion.
- B. The person charged must enter a plea of guilty (or Alford Plea) before becoming eligible for pre-trial diversion.
- C. Persons not eligible for probation, parole or conditional discharge under KRS 532.045 shall not be eligible for this program.
- D. A person convicted of a felony offense involving driving under the influence shall not be eligible for this program.
- E. No person shall be eligible for this program more than once in any five (5) year period.

III. PROCEDURE

- A. An eligible person may petition the Circuit Court, with notice to the Commonwealth's Attorney, for the entry of a pre-trial diversion order not less than fourteen (14) days before trial.

- B. In applying for pre-trial 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's Attorney shall make a recommendation to the Court in writing in response to each petition.
- D. Before making a recommendation to the Court, the Commonwealth's Attorney 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. DO NOT send requests to the local Pretrial Services Officer.
 - 2. Interview and seek input from the victim and/or the victim's family and advise them of the time, date and place of the hearing of the petition by the Court; and
 - 3. Make recommendations to the Court in writing of conditions for pre-trial diversion.

IV. ORDER OF PRE-TRIAL DIVERSION

- A. The Court may in its discretion order pre-trial diversion for eligible petitioners upon terms and conditions which it deems appropriate.
(AOC Form 345)
- 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. Require defendant to obey all rules and regulations imposed by Probation & Parole.

5. As required by KRS 533.030(1) [conditions of probation-restitution], direct the defendant not to commit any offense during the period of the pre-trial diversion. Specifically, direct 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 have no violation of the Penal Code or the Controlled Substances Act.
 3. That the petitioner possess no firearm or any other deadly weapon.
- D. The duration of pre-trial diversion shall not exceed five (5) years without the agreement of the petitioner. The duration of the diversion shall not be less than the time required to make restitution in full.

V. VOIDING A DIVERSION ORDER

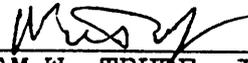
KRS 533.256

- A. After a hearing, with notice to the Commonwealth and to the defendant, the Court may void a person's participation in pre-trial 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 Pre-trial Diversion of a Class D Felony, was designed for this purpose.
- B. If an order of pre-trial 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.

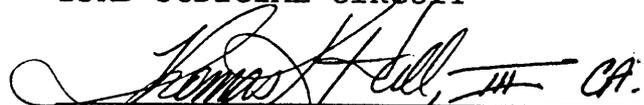
VI. COMPLETION OF DIVERSION PROGRAM

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

Approved, this the 25th day of May, 1999,
by WILLIAM W. TRUDE, JR., Circuit Judge, and THOMAS K. HALL, III,
Commonwealth's Attorney, to be effective immediately.



WILLIAM W. TRUDE, JR., CIRCUIT JUDGE
23RD JUDICIAL CIRCUIT



THOMAS K. HALL, III
COMMONWEALTH'S ATTORNEY