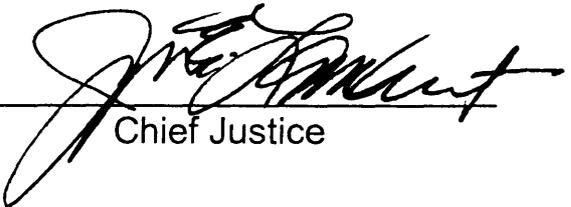


Supreme Court of Kentucky

ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the 28th Judicial Circuit (Lincoln, Pulaski, and Rockcastle Counties) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.



Chief Justice

Entered: 12/16/99

**CLASS D FELONY PRETRIAL DIVERSION PROTOCOL
FOR THE 28TH JUDICIAL CIRCUIT**

I. Definition

Pretrial diversion is the postponement of imposition of a sentence upon any defendant meeting the conditions as outlined in II of this protocol. The period of time for a pretrial diversion shall not exceed (5) years and shall be 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 ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.
- B. The person charged must enter a plea of guilty 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. Persons 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. In applying for the 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 for the charge against him/her is waived.
- B. The Commonwealth shall make a recommendation to the Court in response to each motion. KRS 533.250(2).

- C. Before making a recommendation to the Court, the Commonwealth shall:
1. Have a criminal record check made through Pretrial Services at AOC.
 2. Interview and seek input from the victim and/or victim's family and advise them of the time, date and place the motion will be heard by the Court; and
 3. When diversion is recommended, the Commonwealth must make 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). Both may be included in one recommendation.

IV **Order of Pretrial Diversion**

- A. The Court may, in its discretion, order pretrial diversion for eligible petitioners upon terms and conditions it deems appropriate. The entry of this plea shall be done the same as any other guilty plea.
- B. The Order of Diversion **shall** include:
1. Restitution, if applicable.
 2. Whether the diversion shall be supervised or unsupervised.
 3. Supervision fees, if applicable.
 4. Duration of Diversion.
 5. Require defendant to obey all rules and regulation imposed by Probation and Parole.
 6. As required by KRS 533.030(1), direct the defendant not to commit any offense during the period of pretrial diversion. Specifically, direct the defendant to comply with any other provision of KRS 533.030 or any other condition the Court deems appropriate.
 7. That the petitioner remain drug and alcohol free and be subject to random testing, if applicable.
 8. That the petitioner possess no firearm or any other deadly weapon.
 9. Duration of the pretrial diversion shall not exceed five (5) years without

agreement of the petitioner.

10. Duration of the pretrial diversion shall not be less than the time required to make restitution in full and shall be extended if restitution is not paid in full.

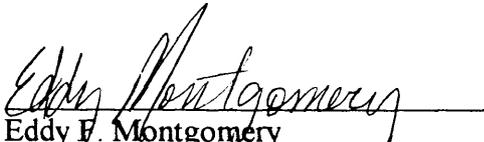
V **Completion of Diversion Program**

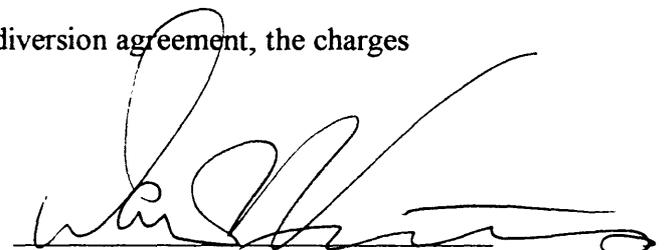
KRS 533.256

- A. After a hearing, with notice to the Commonwealth and to the defendant, the Court may void a person's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress.
- 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 guilty.
- 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 pretrial diversion agreement, the charges against the defendant shall be dismissed/diverted.


Eddy J. Montgomery
Acting Commonwealth Attorney


Daniel J. Venters
Chief Circuit Court Judge