

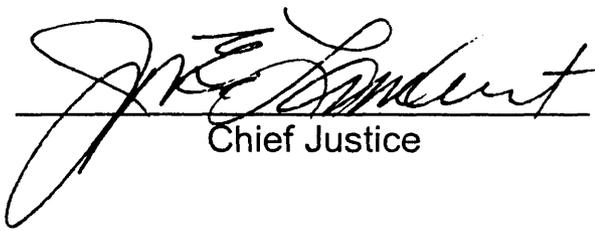
Supreme Court of Kentucky

ORDER

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Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the 38th Judicial Circuit (Butler, Edmonson, Ohio and Hancock Counties) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.

Entered: 1/10/2000



Chief Justice

CLASS D FELONY PRETRIAL DIVERSION PROTOCOL
FOR THE 38TH JUDICIAL CIRCUIT

I. Definition

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

II. Persons Eligible

- 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 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, 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 three (3) days before trial, any person eligible for the program may apply to the circuit court and the Commonwealth 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.

- 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. These requests shall not be made to the local Pretrial Services Officer.
 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 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.

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. AOC Form 345, styled Order Granting Pretrial Diversion of a Class D Felony, is 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. Require defendant to obey all rules and regulations imposed by Probation & Parole.
 5. Direct that the defendant shall not commit any offense during the period of the pretrial diversion and 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. 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.

1. The Court shall then advise the parties as to whether it will accept the diversion agreement. If it is accepted, a specific finding shall be made on the record that the defendant entered the plea **AND** entered into the diversion agreement voluntarily, freely, intelligently and understandingly.
2. If the plea agreement **AND** the diversion agreement are rejected, the Court shall notify the parties and advise the defendant of the option of withdrawing the plea and proceeding to trial, **OR** maintaining the plea with the knowledge the Court will not order diversion but instead will impose a sentence within the penalty range permitted by law.
3. If the Court is uncertain as to whether it will accept the agreement without benefit of a Pre-Sentence Report, a partial presentence investigation shall be conducted by the Division of Probation and Parole, and a partial presentence report shall be prepared and presented to this court on a date certain for when this case is set down on the court docket for review. At that time, the Court shall review the partial presentence report and shall conduct a hearing as to the contents of the report, if those contents are contravened by the defendant, and following this hearing, shall announce a decision either accepting or rejecting the guilty plea and the diversion agreement.

V. Voiding a Diversion Order

- 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. AOC Form 346, styled Order Voiding Pretrial Diversion of a Class D Felony, is 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. 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.

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.

Approved, this the 23rd day of December, 1999, by
Ronnie C. Dortch, Circuit Judge of the 38th Judicial Circuit, and
George G. Seelig, Commonwealth's Attorney for the 38th Judicial
Circuit, to be effective immediately.



Ronnie C. Dortch, Circuit Judge
38th Judicial Circuit



George G. Seelig
Commonwealth's Attorney for the
38th Judicial Circuit

12/15/99