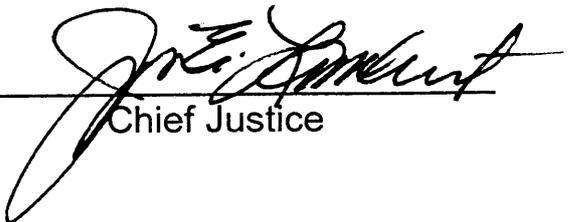


Supreme Court of Kentucky

ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the 42nd Judicial Circuit (Calloway and Marshall Counties) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.



Chief Justice

Entered: 12/21/99

**CLASS D FELONY DIVERSION PROTOCOL
FOR THE 42ND CIRCUIT**

I. Persons Eligible

- 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 a plea pursuant to North Carolina v. Alford, 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.

II. Procedure

- A. An eligible person may petition the circuit court, with notice to the Commonwealth's Attorney, for the entry of a pretrial diversion order not less than seven (7) days before sentencing.
- B. The Commonwealth's Attorney may petition the circuit court, with notice to the Commonwealth's Attorney, for the entry of a pretrial diversion order not less than seven (7) days before sentencing.
- C. Before making a recommendation to the Court, the Commonwealth's Attorney shall:
 - 1. Have criminal record check made (Pretrial Services at AOC will fax the criminal history to the Commonwealth Attorney. Due to user agreement restrictions, NCIC reports cannot be faxed);
 - 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.

III. 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 Order 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. That the petitioner remain drug and alcohol free and be subject to random testing.
 5. That the petitioner have no violation of the Penal Code or the Controlled Substances Act.
 6. That the petitioner possess no firearm or any other deadly weapon.
 7. Any other provision of KRS 533.030 or any other condition which the Court deems appropriate.
- B. The duration of pretrial diversion shall not exceed five (5) years without agreement of the petitioner. Duration of the diversion shall not be less than the time required to make restitution in full.

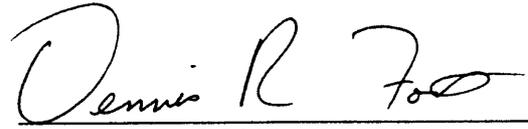
IV. Revocation

- A. After a hearing, on notice by the Commonwealth's Attorney, the Court may revoke or void a person's pretrial diversion program upon a showing of failure to comply with the conditions of diversion or failure to make satisfactory progress.
- B. If a pretrial diversion program is revoked or voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilty.

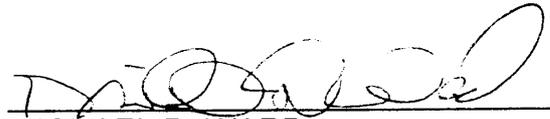
V. Completion of Diversion Program

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

Approved, this the 14th day of December, 1999, by Hon. Dennis R. Foust, Circuit Judge, 42nd Judicial Circuit, and Hon. Michael D. Ward, Commonwealth's Attorney, to be effective immediately.



DENNIS R. FOUST, JUDGE
42ND JUDICIAL CIRCUIT



MICHAEL D. WARD
COMMONWEALTH'S ATTORNEY