

Supreme Court of Kentucky

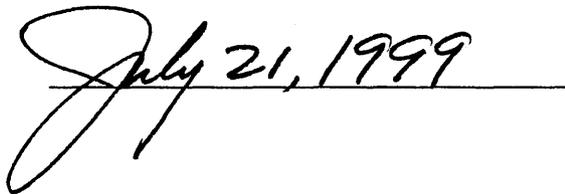
ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the 43rd Judicial Circuit (Barren and Metcalfe Counties) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.

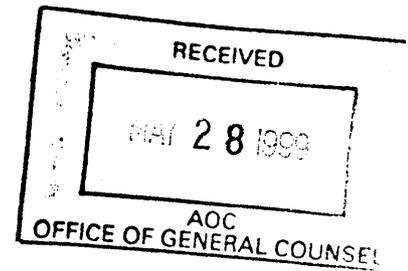


Chief Justice

Entered:



**CLASS D FELONY DIVERSION
PROTOCOL FOR THE CIRCUIT COURTS
OF BARREN AND METCALFE COUNTIES**



Pursuant to KRS 533 the following Class D Felony Diversion Protocol is adopted for Barren and Metcalfe Counties:

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, unless otherwise agreed, subject to certain conditions established by the Court.

II. Persons Eligible

- A. Any person charged with a Class D Felony offense, who has not had a felony conviction in the ten (10) years prior to the 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 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 ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible 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 seven (7) days before sentencing.
- B. In petitioning 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's Attorney shall:
 - 1. Have a criminal record check made by telephoning, Pretrial Services at AOC 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 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 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.
- 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 and Parole.
5. That the petitioner remain drug and alcohol free and be subject to random testing.
6. That the petitioner have no violation of the Penal Code or the Controlled Substances Act.
7. That the petitioner possess no firearm or any other deadly weapon.
8. Any other provision of KRS 533.030 or any other condition which the Court deems appropriate.

C. 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. Revocation

KRS 533.256

- A. After a hearing, on motion of the Commonwealth or on the Court's own motion and with notice to the defendant, the Court may revoke or void a person's participation, in pretrial diversion upon a showing of failure to comply with the conditions of diversion or failure to make satisfactory progress.
- B. If an order of pretrial diversion program is revoked or voided, the defendant shall be sentenced in accordance with his/her prior plea agreement.
- C. Under 533.256(2), the same criteria applicable to a probation revocation hearing apply 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.

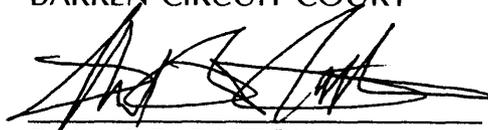
VI. Completion of Diversion Program

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

Approved, this the 24th day of May, 1999, by BENJAMIN L. DICKINSON, Circuit Judge, and PHILLIP R. PATTON, Commonwealth's Attorney, to be effective immediately.



BENJAMIN L. DICKINSON, JUDGE
BARREN CIRCUIT COURT



PHILLIP R. PATTON
COMMONWEALTH'S ATTORNEY