

## APPENDIX C

### CLASS D FELONY PRETRIAL DIVERSION PROTOCOL FOR THE SEVENTH JUDICIAL CIRCUIT KRS 533.250

#### **I. Definition**

Pretrial diversion is the postponement of imposition of a judgment of conviction and sentence upon any person qualified as being eligible for this program, subject to certain conditions, for a time period not to exceed five (5) years subject to those conditions as established by the 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 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 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), shall be ineligible for this program.

E. No person shall be eligible for this program more than once in any five (5) year period.

F. A person convicted of a sex crime as defined in KRS 17.500 is ineligible for pretrial diversion under KRS 533.250(1)(d).

#### **III. Procedure**

A. After indictment and no later than 5 days before trial, any eligible person for the program may petition the circuit court, with notice to the Commonwealth's Attorney, for entry of a pretrial diversion order.

B. In applying for pretrial diversion, counsel for the defendant must state, and the defendant agree, to waive any right to a speedy trial or disposition of the charge(s) against him/her.

C. The Commonwealth's Attorney shall make a recommendation to the Court 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 [Pretrial Services at AOC will fax the criminal history to the Commonwealth Attorney. Due to user agreement restrictions, NCIC reports cannot be faxed] and shall supply a copy to the Court and Defendant. The Commonwealth attorney shall also conduct any other investigation deemed necessary as required by KRS 533.252(3).

2. Interview and seek input from the victim and/or victim's family as provided in KRS 533.252(2) and advise them of the time, date and place the petition will be heard by the Court; and

3. When diversion is recommended, the prosecutor 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. Acceptance and Supervision**

The Court may, in its discretion and with the consent of the Commonwealth, order pretrial diversion for eligible defendants upon terms and conditions it deems appropriate. Supervision of the participants in the program shall be performed by the Division of Probation and Parole and the provisions of KRS 533.030 relating to conditions of probation and restitution shall, so far as possible, be applicable to pretrial diversion. No Judgment of Conviction shall be entered on the plea of guilty at the time of the entry of the pretrial diversion order. Judgment of conviction shall be entered on if the Defendant fails to comply with the terms of the Diversion as set forth below.

The duration of the pretrial diversion shall not exceed five (5) years and shall not be less than the time required to make restitution in full.

#### **V. Revocation**

A. After a hearing, with notice to the Commonwealth's Attorney and defendant, the Court may revoke or void defendant's participation in the 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, a judgment of conviction shall be entered and the defendant shall be sentenced according to law, based on his or her prior plea of guilty.

**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 and the matter shall be treated as required by KRS 533.258.

Approved, this the 7<sup>th</sup> day of May, by J.P. Sullivan, Chief Circuit Judge, and Carl Gailing, Commonwealth's Attorney, to be effective immediately.

J.P. Sullivan  
Chief Judge, 7th Circuit

Carl Gailing  
Commonwealth's Attorney