

# Supreme Court of Kentucky

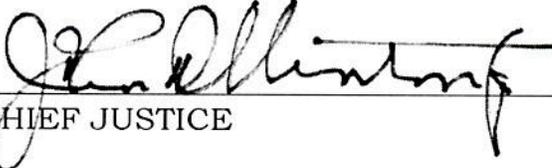
## ORDER

**IN RE: ORDER APPROVING THE NON-FELONY PRETRIAL DIVERSION RULES FOR THE 47TH JUDICIAL DISTRICT, LETCHER COUNTY**

Upon recommendation of the District Judge of the 47th Judicial District, and being otherwise sufficiently advised,

The Non-Felony Pretrial Diversion Rules for the 27th Judicial District, Letcher county, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further order of this court.

Entered this 27th day of October 2015.

  
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CHIEF JUSTICE

**47th JUDICIAL DISTRICT, Letcher COUNTY(IES),  
NON-FELONY PRETRIAL DIVERSION RULES**

**I. ELIGIBILITY REQUIREMENTS**

- A. All persons charged in District Court with the commission of a misdemeanor or violation shall be eligible for participation in the Administrative Office of the Courts Pretrial Services Diversion Program (Program), as an alternative to criminal prosecution, subject to the following conditions and exceptions:
1. A brought under Kentucky Revised Statutes Chapter 189A shall not be diverted.
  2. A felony charge shall not be diverted.
  3. The county attorney and the defendant must consent to participation in the Program. If the county attorney refuses to consent to a defendant's participation in the program, he or she shall state on the record the reasons therefore.
  4. A person who within the last five (5) years has previously participated in a pretrial diversion program shall not be eligible for participation in the Program.
  5. Where reasons of an extraordinary nature are presented, a trial judge may consider a defendant eligible for participation, even if the defendant would otherwise be ineligible by virtue of one or more of the above set out exclusions.
- B. Nothing in these rules shall be deemed to limit the authority of the county attorney to withdraw criminal prosecution in any given case.

**II. PARTICIPATION**

- A. Upon the consent of both the county attorney and the defendant, the trial judge shall approve participation in the Program for any individual who meets the eligibility requirements established in Section I above unless the trial judge, in his or her discretion believes that:
1. There is a substantial risk that the defendant will abscond from the jurisdiction of the Court prior to fulfillment of the terms of the diversion contract.
  2. There is a substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the diversion contract.
  3. The defendant is in need of correction treatment that can be provided most effectively by commitment to the county jail or a suspended jail sentence.
  4. Participation in the program would unduly depreciate the seriousness of the defendant's alleged crime.

- B. Upon approval for participation in the Program, the defendant shall sign a statement waiving his or her right to a speedy trial. Prior to signing such statement the defendant shall be given the opportunity to consult with an attorney if he or she so desires.
- C. Unless otherwise agreed in writing, participation in the Program shall not constitute an admission or presumption of guilt of the crime charged; shall not be proof of guilt in any subsequent legal action; nor shall a Program participant be required to give a confession or admission of guilt.
- D. All Program records and all statements made by a defendant to a pretrial officer regarding the contract shall be privileged; shall not be admissible or discoverable for any purpose; shall be exempt from subpoena; and, shall be deemed confidential. However, Program staff, the trial judge, and the chief district judge may access the information for purposes of Program review, monitoring, and supervision. The information shall not be released to any other person or entity without prior written consent of the trial judge or the defendant. Nothing in this paragraph shall be deemed to prohibit release of information to the victim regarding a defendant's participation in the Program.
- E. The fee for participation in the Program shall be in the amount as established by the Administrative Office of the Courts. The pretrial officer may assess the fee on a sliding scale based upon ability to pay or waive the fee entirely in the case of indigence.

### III. THE DIVERSION CONTRACT

- A. Referral to Pretrial Services
  - 1. Upon referral to the Program, the defendant shall meet with a pretrial officer to establish a formal contract which species the court ordered conditions, the referral services to be used, the length of the contract, and if required, the need for the defendant to make restitution, enter/complete a treatment program, or perform community services. The contract shall commence upon approval by the trial judge.
  - 2. Following completion of the diversions contract, the pretrial officer shall submit a pretrial report and the contract for approval to trial judge. The report shall contain basic pretrial information, record of any past offenses and conviction, record of any prior participation in the diversion program or similar program, employment status, length of residence in the area, and any other information necessary to determine eligibility and appropriateness of approval to participate in the program.
- B. Individual contract lengths shall be determined by the trial judge not to exceed twenty-four (24) months.
- C. The Program participant shall be required to comply with all provisions of the diversion contract. If the program participant fails to comply with the condition of the contract,

the pretrial officer shall refer the participant to the trial judge for a determination of either termination or modification. The trial judge shall enter an order reflecting said determination. As with the original diversion contract, the participation must agree to the contract modifications, if any, prior to reinstatement. Upon termination for non-compliance, the county attorney may initiate prosecution of the defendant upon the original charge(s).

- D. A program Participant may terminate the contract at any time by submitting a written statement to the pretrial officer or the trial judge. Where termination is prior to expiration of the contract period, the pretrial officer shall refer the case to the county attorney for resumption of prosecution.
- E. Upon successful completion of the diversion contract, the charge subject to the contract shall be dismissed, and all official records shall bear the notation "dismissed with prejudice". The administrative record shall retained for conformity with the Kentucky Court of Justice Records Retention Schedule.

#### IV. COUNTY

The Administrative Office of the Courts Pretrial Services Diversion Program shall begin in 47th Judicial Circuit , Letcher County(ies), immediately following approval of Chief Justice Minton

SO ORDERED THIS THE 19<sup>th</sup> DAY OF Sept, 2015

  
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HON. KEVIN R. MULLINS  
CHIEF DISTRICT JUDGE  
LETCHER DISTRICT COURT