

# Supreme Court of Kentucky

## ORDER

**IN RE: ORDER APPROVING THE COURT RULES FOR MISDEMEANOR  
NON FELONY DIVERSION FOR THE 5TH JUDICIAL DISTRICT,  
CRITTENDEN, UNION, AND WEBSTER COUNTIES**

Upon recommendation of the Judge of the 5th Judicial District, and  
being otherwise sufficiently advised,

The Court Rules for Misdemeanor Non Felony Diversion for the 5th  
Judicial District, Crittenden, Union, and Webster counties, 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 the 5th day of March 2014.

  
CHIEF JUSTICE JOHN D. MINTON, JR.

**ULCr Rule 60.00 Crittenden/Union/Webster District Courts Non Felony Diversion:**

**1. ELIGIBILITY REQUIREMENTS**

- A. All person charged in district court with the commission of a misdemeanor or violation shall be eligible for participation in the Diversion Program as an alternative to criminal prosecution, subject to the following conditions and exceptions:
1. Except as provided in subsection B and C, a prior conviction for a felony offense, misdemeanor offense, or violation shall preclude eligibility.
  2. Prior convictions for traffic violations under KRS Chapters 186 and 189 shall not preclude eligibility.
  3. Except as provided in subsection C, a person charged with violation of the public trust, under KRS Chapter 522, shall not be eligible for participation in the Diversion Program.
  4. Except as provided in subsection C, a person charged with violating any traffic regulation under KRS Chapters 186, or 189A shall not be eligible for participation in the Diversion Program.
- B. Where a person is charged with an offense of public intoxication under KRS 525.100 or alcohol intoxication under KRS 222.202, and that person has one or more prior convictions for alcohol related offenses other than DUI; and; where it appears from the person's record and history that his or her criminal activity is related to the disease of alcoholism or drug addiction, that person will be considered eligible for participation in the Diversion Program notwithstanding his or her previous conviction. A prior conviction for DUI shall preclude eligibility.
- C. Where reasons of an extraordinary nature are presented that warrant consideration of a person for participation in the Diversion Program, ineligibility by virtue of one or more to the exclusions set forth above, that person may be considered eligible for participation in the Diversion Program by the trial judge.
- D. A diversion report shall be prepared by the pretrial services office of the court and such report shall contain basic pretrial information, record of any past offenses and convictions, record of any prior participation in the diversion program or other 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 Diversion Program.  
Prior to approval for participation in the Diversion Program the diversion report shall be made available to the county attorney, the trial judge, and the defendant.

- E. Nothing in this rule shall be deemed to limit the authority of the county attorney to withdraw the criminal prosecution in any given case.

## II. APPROVAL FOR PARTICIPATION

- A. Upon consent of both the county attorney and the accused, the trial judge shall approve participation in the Diversion Program for any individual who meets the eligibility requirements established in Section I above unless the trial judge is of the opinion that diversion is inappropriate because of one or more of the following:
- 1) There is a substantial risk that the accused will abscond from the jurisdiction of the court prior to the fulfillment of the terms of the Diversion contract.
  - 2) There is a substantial risk that the accused will commit another crime prior to the fulfillment of the terms of the Diversion Contract.
  - 3) The accused is in need of correctional treatment that can be provided most effectively by commitment to the county jail.
  - 4) Participation in the Diversion Program would unduly depreciate the seriousness of the accused crime.
- B. Consent of the county attorney to the person's participation in the Diversion Program shall not be unreasonably withheld. If the county attorney refuses to consent to the person's participation in the Diversion Program, the county attorney shall state on the record the reasons therefore.
- C. Upon approval for participation in the Diversion Program, the accused must sign a statement waiving his/her right to a speedy trial. Prior to signing this statement the accused shall be given the opportunity to consult with an attorney if he/she so desires.
- D. Prior to approval for participation in the Diversion Program, the pretrial services office shall present to the trial judge the comments and opinions, if any, of the arresting officer and the victim of the alleged crime regarding the nature of the offense, the appropriateness of diversion, and the suggested terms of the Diversion Contract. While not binding on the trial judge, such comments and opinions, if any, shall be considered by the trial judge in determining approval or re-referral for participation in the Diversion Program.
- E. Participation by the accused in the Diversion 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 participant in the Diversion program be required to give a confession or an admission of guilt. Nothing, however, contained in this paragraph shall alter or affect the accused's obligation to perform all the terms of the Diversion Contract, including restitution, where agreed.
- F. All records of the Diversion Program, and all statements made by the accused to the diversion officer regarding the offense for which the accused was referred to diversion shall be privileged; shall not be admissible or discoverable for any purpose; shall be exempt from subpoena; and shall be deemed confidential except for the program staff, the

trial judge, and the chief district judge, for the purposes of program review, monitoring and supervision and shall not be released to any other person or entity without the prior written consent of the chief district judge and the accused. However, nothing in this paragraph shall be deemed to prohibit release of information to the victim of the alleged crime regarding the accused's participation in the Diversion Program.

- G. Upon approval for participation in the Diversion Program the county attorney shall present to the trial judge any special terms, if any, which he/she believes should be included in the Diversion Contract, or which the arresting officer or the victim have requested to be included in the Diversion Contract. Although such requests are not binding on the trial judge, they shall be considered by him/her when approving the Diversion Contract.
- H. Upon approval for participation in the Diversion Program the trial judge shall note on the court docket any special terms(s) that he/she is requiring to be included in the Diversion Contract.

### **III. THE DIVERSION CONTRACT**

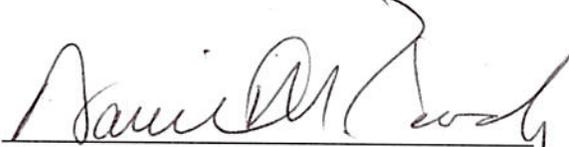
- A. Upon approval of participation in the Diversion Program, the accused shall meet with the pretrial officer to establish and agree to a formal contract which will specify the conditions required, the referral services to be used, the length of the contract, and the need, if any, for the accused to make required restitution or perform community service. The contract shall be presented for final approval to the court, and upon its final approval, the terms of diversion shall commence. The Diversion Contract shall contain any special terms required by the court.
- B. The normal Diversion Contract on each accused shall be for a period of no less than six months but not more than 12 months, unless lengthened by the court.
- C. The accused must comply with all provisions of the Diversion Contract. Violation of contract provisions will subject the accused to termination of diversion participation, and reinstatement of criminal prosecution.
- D. At any time the accused may voluntarily choose to be terminated from the Diversion Program by submitting a written statement indicating the same. Where the termination is prior to the expiration of the contract period and without consent of the pretrial officer, the pretrial officer shall refer the case to the county attorney for prosecution. If the accused does not comply with conditions of his/her Diversion Contract, the court may enter an order terminating the accused's participation in the program or direct the resumption of the accused's participation in the Diversion process and reinstatement of the Diversion Contract, with any modifications by the trial judge. As with the original Diversion Contract, the accused must agree to the contract modifications, if any, prior to reinstatement.
- E. Upon termination for non-compliance, the county attorney may initiate prosecution of the accused upon the original criminal charge(s).

- F. Upon successful completion of the Diversion Contract the underlying criminal charge shall be formally and fully dismissed, and all official records of said charge shall bear the notation that said charge was dismissed with prejudice.

#### IV. ADMINISTRATIVE FEES

The fee for participation in the Diversion Program shall be in the amount set by the Director of the Administrative Office of the Courts. The court may assess the fee on a sliding scale based upon ability to pay, or may waive the fee entirely in the case of indigence.

Approved, this the 3rd day of February, 2014, by Daniel M. Heady, District Judge, to be effective immediately.

  
JUDGE, Crittenden, Union and Webster  
DISTRICT COURT