

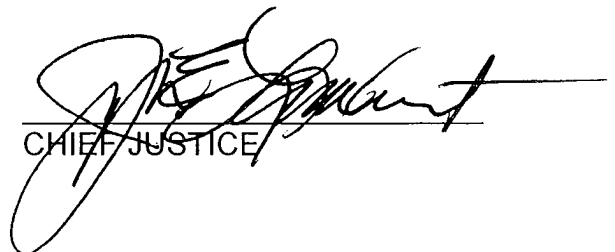
Supreme Court of Kentucky

ORDER

**IN RE: COURT RULES FOR MISDEMEANOR DIVERSION PROGRAM
FOR THE 2nd JUDICIAL DISTRICT OF McCracken County**

Pursuant to KRS 533.262 and SCR 1.040(3)(a), and upon recommendation of the Judges of District Court, and being otherwise sufficiently advised: the Court Rules for the Misdemeanor Diversion Program for the 2nd Judicial District, McCracken County, attached hereto, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this 29 day of February, 2008.


CHIEF JUSTICE

Uniform Local Rules
Misdemeanor Diversion Program
McCracken District Court

I. DEFINITION

Pretrial diversion is the postponement of imposition of sentence upon any person who qualifies for this program, subject to certain conditions established by the Court, for a period not to exceed two (2) years. Upon successful completion of the pretrial diversion program, the charges against the defendant shall be dismissed with prejudice provided the defendant has no other charges pending.

II. ELIGIBILITY REQUIREMENTS

A. All persons charged in District Court with the commission of a first-time misdemeanor or violation under KRS 217 or 218A, shall be eligible for participation in the McCracken District Court Misdemeanor Diversion Program (Diversion Program), as an alternative to imposition of sentence, subject to the following conditions and exceptions:

1. A violation of KRS Chapter 189A shall not be diverted.
2. The person charged must enter a plea of guilty, or a plea pursuant to North Carolina v. Alford, before becoming eligible for pretrial diversion.
3. Except as provided in subsection B, a person who has previously participated in the Diversion Program in this county or any other jurisdiction within the Commonwealth of Kentucky shall not be eligible for participation in the Diversion Program.
4. Except as provided in subsection B, a person charged with or previously convicted of a violent or assaultive crime, including the commission of any offense that is sexual in nature, shall not be eligible for participation in the Diversion Program. Whether a crime is deemed violent or assaultive shall be determined by the Court.
5. Except as provided in subsection B, a prior conviction for a felony offense shall preclude eligibility.
6. No offender charged with trafficking in any controlled substance shall be eligible for the Diversion Program.
7. The Diversion Program shall be unavailable absent a favorable recommendation from the County Attorney.

B. Where reasons of extraordinary nature are presented which warrant consideration of a person for participation in the Diversion Program, notwithstanding

his/her lack of eligibility by virtue of one or more of the above set out exclusions, that person may be considered eligible for participation in the Diversion Program by the trial judge.

C. A diversion report shall be prepared by the Pretrial Service 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.

D. Nothing in this rule shall be deemed to limit the authority of the County Attorney to withdraw criminal prosecution in any given case.

III. APPROVAL FOR PARTICIPATION

A. Upon the 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:

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 the fulfillment of the terms of the Diversion Contract.
3. That the defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail.
4. That participation in the Diversion Program would unduly depreciate the seriousness of the defendant's crime.

B. If the County Attorney refuses to consent to the defendant's participation in the Diversion Program, he/she shall state on the record the reasons therefor.

C. Upon approval for participation in the Diversion Program, the accused must sign a statement waiving his/her right to a speedy trial. The defendant shall appear before the District Court and enter a plea of guilty or a plea of guilty pursuant to North

Carolina v. Alford. Prior to signing such statement and the entry of a plea, the accused shall be given the opportunity to consult with an attorney if he/she so desires.

D. 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 placed on 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 purposes of program review, monitoring and supervision, and shall not be released to any other person or entity without 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 a crime regarding an accused's participation in the Diversion Program.

E. The fee for participation in the Diversion Program shall be in an 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 waive the fee entirely in the case of indigence.

IV. THE DIVERSION CONTRACT

A) Upon application by a defendant for participation in the Diversion Program, the County Attorney shall consult with the victim, if any, and the arresting officer regarding the proposed diversion. The County Attorney shall present the Pretrial Officer with special terms, if any, which he/she believes should be included in the Diversion Contract, or which the arresting officer and/or victim have requested to be included in the Diversion Contract. While such requests are not binding on the trial judge, they shall be considered by him/her when approving the Diversion Contract.

B) Upon agreement of the County Attorney and the defendant regarding participation in the Diversion Program, the accused shall meet with a Pretrial Officer to establish and agree to a formal contract, which shall 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.

C) Upon signing of the Diversion Contract, the defendant shall appear in Court for approval of participation in the Diversion Program and entry of a plea.

D) The contract shall be presented for final approval to the trial judge at the time of the entry of a plea, and upon its final approval the terms of participation in the Diversion Program shall commence. The Diversion Contract shall further contain any special terms required by the trial judge.

E) Individual contract lengths shall be determined by the trial judge not to exceed twenty-four (24) months.

F) The defendant shall comply with all provisions of the Diversion Contract. Violations of the Diversion Contract provisions shall subject the defendant to termination of participation in the Diversion Program and imposition of sentence.

G) At any time the accused may voluntarily choose to terminate participation in the Diversion Program by submitting a written statement indicating same. Where the termination is prior to the expiration of the contract period and without the consent of the Pretrial Officer, the Pretrial Officer shall refer the case to the County Attorney, who shall file a written motion requesting that the case be placed on the criminal docket for sentencing. If the accused does not comply with the conditions of the Diversion contract, the trial judge may enter an order terminating the accused's participation in the Diversion Program or direct the resumption of the accused's participation in the diversion process and reinstatement of the Diversion Contract, with any modifications offered by the judge.

H) Upon successful completion of the Diversion Contract, the charge(s) subject to the contract shall be dismissed, and all official records shall bear the notation "dismissed with prejudice."

V. RESCINDING A DIVERSION PROGRAM ORDER

A. After a hearing, with notice to the Commonwealth and to the defendant, the Court may rescind a person's participation in the Diversion Program upon a showing of failure to comply with the conditions of the Diversion Program or failure to make satisfactory progress.

B. If an order of Diversion Program participation is rescinded, the defendant shall be sentenced.

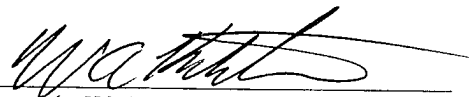
C. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A proceeding to determine whether an order granting Program participation should be voided constitutes a miscellaneous proceeding and thus the Rules of Evidence are inapplicable.

DATED this 4 day of Feb, 2008.

APPROVED:



Honorable Chris Hollowell
McCracken District Court
Division II



Honorable W.A. "Tony" Kitchen
McCracken District Court
Division I