

Supreme Court of Kentucky


ORDER

**IN RE: ORDER APPROVING THE COURT RULES FOR NON-FELONY
PRETRIAL DIVERSION FOR THE 2ND JUDICIAL DISTRICT,
MCCRACKEN COUNTY**

Upon recommendation of the District Judges of the 2nd Judicial District,
and being otherwise sufficiently advised,

The Court Rules for Non-Felony Pretrial Diversion for the 2nd Judicial
District, McCracken 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 the 7th day of May 2015.


CHIEF JUSTICE JOHN D. MINTON, JR.

2nd JUDICIAL DISTRICT, MCCRACKEN COUNTY
NON-FELONY PRETRIAL DIVERSION RULES

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 twelve (12) months. 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 McCracken County District Court with the commission of a misdemeanor or violation shall be eligible for participation in the McCracken County District Court Non-felony Pretrial Diversion Program (hereinafter "Program"), as an alternative to criminal prosecution, 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 II.B, a person who has previously participated in a diversion program in this or any other jurisdiction within the Commonwealth of Kentucky shall not be eligible for participation in the Program.
 4. Except as provided in subsection II.B, a person charged with a violent/assaultive crime shall not be eligible for participation in the Program.
 5. Except as provided in subsection II.B, a prior conviction for a felony offense shall preclude eligibility.
 6. Diversion 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 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 Program by the trial judge.
- C. 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

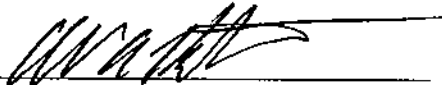
- A. Upon the consent of both the County Attorney and the defendant, the trial judge may approve participation in the Program for any individual who meets the eligibility requirements established in Section II above unless the trial judge, in his/her discretion finds that diversion is inappropriate because:
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. The defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail.
 4. Participation in the Program would unduly depreciate the seriousness of the defendant's crime.
- B. Upon approval for participation in the Program, the defendant must sign a statement waiving his/her right to a speedy trial. The accused 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 the plea, the accused shall be given the opportunity to consult with an attorney if he/she so desires.
- C. All Program records and all statements made by a defendant to the pretrial officer regarding the diversion contract shall be privileged and confidential, and shall not be admissible or discoverable for any purpose. Such information shall be exempt from subpoena. However, program staff, the County Attorney's Office, the trial judge and the chief district judge may access the information for the purpose 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.
- D. 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.

IV. THE DIVERSION CONTRACT

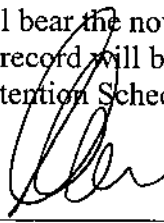
- A. Upon approval of participation in the Program, the defendant shall meet with a pretrial officer to establish a formal contract which specifies the court-ordered conditions, the referral services to be used, the length of the contract, and, if required,

the need for the defendant to make restitution, enter and complete a treatment program or perform community service.

- B. Individual contract lengths shall be determined by the County Attorney's Office and approved by the trial judge, not to exceed twelve (12) months.
- C. The Program participant shall be required to comply with any and all provisions of the diversion contract. If the Program participant fails to comply with the conditions of the contract, the pretrial officer shall refer the participant to the county attorney who shall prepare the necessary paperwork to docket the participant's case for review by the trial judge for a determination of either termination or modification. The trial judge shall enter an order reflecting said determination. Upon termination from the Program, the participant shall be sentenced forthwith in accordance with the previously entered plea of guilty.
- D. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings. A review proceeding to determine whether a participant's diversion should be terminated or modified constitutes a miscellaneous proceeding and thus the Rules of Evidence are inapplicable.
- E. A Program participant may terminate his/her contract at any time by submitting to the pretrial officer a written statement indicating the same. When termination is prior to the expiration of the diversion contract period, the pretrial officer shall notify the trial judge and refer the case to the county attorney who shall prepare the necessary paperwork to docket the participant for sentencing.
- F. Upon successful completion of the diversion contract, the charge(s) shall be formally and fully dismissed and all official records shall bear the notation that said charge(s) was dismissed as diverted. The administrative record will be retained in conformity with the Kentucky Court of Justice Records Retention Schedule.



Hon. W.A. Kitchen
McCracken County District Judge, Div. I
Date: 5/4/15



Hon. Christopher B. Hollowell
McCracken County District Judge, Div. II
Date: 5/4/15