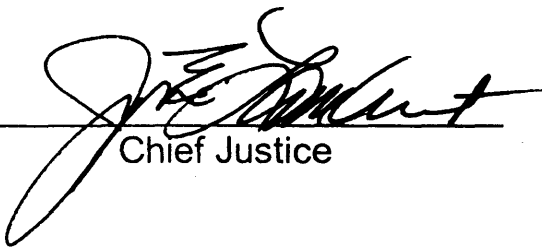


Supreme Court of Kentucky

ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the First Judicial Circuit (Ballard, Carlisle, Fulton and Hickman Counties) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.

Entered: March 9, 2000



Chief Justice

CLASS D FELONY PRETRIAL DIVERSION PROTOCOL
FOR THE FIRST JUDICIAL CIRCUIT

I. Definition

Pretrial diversion is the postponement of imposition of sentence upon any person who qualifies for this program for a period of time not to exceed five (5) years, subject to certain conditions established by the Court.

II. Persons Eligible

KRS 533.250

- 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 felony 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, or a plea pursuant to North Carolina v. Alford, 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) and KRS 189A.120(2), shall be ineligible for this program.
- E. No person shall be eligible for this program more than once in any five (5) year period.

III. Procedure

- A. After indictment in Circuit Court, and no later than 15 days before trial, any person eligible for the program may apply to the Circuit Court, if the Commonwealth agrees, for entry of a pretrial diversion order.
- B. In applying for pretrial diversion, counsel for the defendant must state, and the defendant must agree on the record, that in the event diversion is granted, any right to a speedy trial or disposition of the charge against him/her is waived.

- C. The Commonwealth shall make a written recommendation to the Court in response to each application. KRS 533.250(2).
- D. Before making a recommendation to the Court, the Commonwealth shall:
 - 1. Have a criminal record check made.
 - 2. Interview and seek input from the victim and/or victim's family and advise them of the time, date and place the motion will be heard by the Court; and
 - 3. When diversion is recommended, the Commonwealth 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. KRS 533.252(3).

IV. Order of Pretrial Diversion

- A. The Court may, in its discretion, order pretrial diversion for eligible petitioners upon terms and conditions it deems appropriate.
- B. The Order of Diversion shall include:
 - 1. Restitution, if applicable.
 - 2. Whether the diversion shall be supervised or unsupervised and include supervision fees, if applicable.
 - 3. Duration of diversion.
 - 4. Defendant must obey all rules, regulations and conditions imposed by this Court and Probation and Parole.
 - 5. Require the defendant to remain drug and alcohol free and is subject to random testing at his expense by any Probation or Parole Officer.
 - 6. That the defendant will commit no violations of the Kentucky Penal Code or Controlled Substance Act.
 - 7. That the defendant possess no firearm of any type during the pendency of this Order.
 - 8. Any other provisions normally used in Probation

Orders by this Court.

- D. Duration of the pretrial diversion shall not exceed five (5) years without agreement of the petitioner and shall not be less than the time required to make restitution in full.


V. Voiding a Diversion Order

- A. After a hearing with notice to the Commonwealth and the defendant, the Court may void a person's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress in complying with the Order of Diversion.
- B. If an Order of Pretrial Diversion is voided, the defendant shall be sentenced according to law, based upon his or her prior plea of guilty.
- C. The same criteria applicable to a probation revocation hearing shall apply to a proceeding to void an order granting diversion.

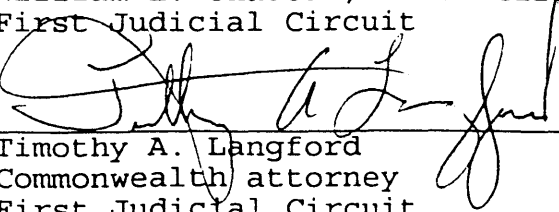
VI. Completion of Diversion Program

If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be dismissed.

Approved, this the 1 day of March, 2000, by William L. Shadoan, Chief Circuit Judge, and Timothy A. Langford, Commonwealth Attorney of the First Judicial Circuit, to become effective immediately.



William L. Shadoan, Chief Circuit Judge
First Judicial Circuit



Timothy A. Langford
Commonwealth attorney
First Judicial Circuit