FELONY DIVERSION PROTOCOL FOR THE FIFTEENTH JUDICIAL CIRCUIT (CARROLL, GRANT, AND OWEN COUNTIES)

I. PRELIMINARY MATTERS; PRETRIAL DIVERSION DEFINED

A. This Protocol is adopted pursuant to the authority and provisions of KRS 533.250–.262. Any amendment thereto which is mandatory relating to matters covered by this Protocol shall automatically amend this Protocol.

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

II. PERSONS ELIGIBLE

A. Any person charged with a Class D felony offense who has not, within ten years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole, or has not been released from the service of any felony sentence within ten years immediately preceding the commission of the 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*, 400 U.S. 25 (1970), before becoming eligible for pretrial diversion.

C. Pretrial diversion shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045.

D. A person charged with a Class D felony for which early release is disallowed by statute shall be ineligible for pretrial diversion.

E. No person shall be eligible for pretrial diversion more than once in a five-year period.

F. No person shall be eligible for pretrial diversion who has committed a sex crime as defined in KRS 17.500.

III. PROCEDURE

A. After indictment or information in Circuit Court, and no later than thirty days before trial, any person eligible for pretrial diversion may apply to the Circuit Court and the Commonwealth 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 or her is waived.

C. The Commonwealth shall make a written recommendation to the Court in response to each application.

D. Before making a recommendation to the Court, the Commonwealth shall:

1. Conduct a statewide and national criminal record check; and

2. If applicable, interview and seek input from the victim and/or victim's family and advise them of the time, date, and place that the Court will hear the motion.

E. 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.

F. The Commonwealth will be bound by its recommendation. If diversion is unsuccessful, the Commonwealth will not be permitted to argue for a sentence greater than the original recommendation. Moreover, the Court cannot impose a sentence greater than the recommendation without allowing the defendant an opportunity to withdraw his or her plea.

G. The Court cannot act on a request for diversion absent a recommendation from the Commonwealth; diversion is unavailable absent a favorable recommendation from the Commonwealth.

IV. ORDER OF PRETRIAL DIVERSION

A. The Court may, in its discretion, order pretrial diversion for eligible defendants upon terms and conditions it deems appropriate.

B. The Order of Diversion shall include:

1. Restitution, if applicable. Restitution is mandatory where the victim has suffered monetary damage.

2. Whether the diversion shall be supervised or unsupervised, and any supervision fees, which shall be no less than $25.00 per month.

3. The duration of the diversion.

4. An order that the defendant shall obey all rules and regulations imposed by Probation and Parole.

5. An order that the defendant shall not commit any offense during the period of pretrial diversion, including violations of the Penal Code or the Controlled Substances Act.

6. An order that the defendant comply with any other provision of KRS 533.030 or any other condition the Court deems appropriate.

C. The Order of Diversion may include:

1. An order that the defendant remains drug and alcohol free and is subject to random testing.

2. An order that the defendant possess no firearm or any other deadly weapon.

D. The pretrial diversion period shall not exceed five years without the defendant's agreement. The pretrial diversion period shall not be less than the time required to make restitution in full.

E. The Court shall advise the parties whether it will accept the diversion agreement. If accepted, the Court shall make a specific finding on the record that the defendant entered the plea and entered into the diversion agreement, freely, voluntarily, intelligently, and knowingly.

F. If the plea agreement and the diversion agreement are rejected, the Court shall notify the parties and advise the defendant that he or she has the option of:

1. withdrawing the plea and proceeding to trial; or

2. maintaining the plea with the knowledge that the Court will not order diversion but instead will impose a sentence within the penalty range permitted by law.

V. VOIDING A DIVERSION ORDER

A. A probation officer or peace officer acting at the direction of a probation officer who sees the defendant violate the conditions of diversion may arrest the defendant without a warrant.

B. After a hearing, with notice to the Commonwealth and to the defendant, the Court may void a defendant's participation in pretrial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress.

C. If a pretrial diversion order is voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilty or plea pursuant to *North Carolina v. Alford*. Unless the defendant waives the right to view prior to sentencing, a full Pre-Sentence Investigation shall be ordered and a sentencing hearing shall be scheduled.

D. The same criteria applicable to a probation revocation hearing 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 and the case shall be closed as DISMISSED-DIVERTED.

This Pretrial Diversion Protocol has been approved by the Chief Circuit Judge and Commonwealth's Attorney for the Fifteenth Judicial Circuit

/s/R. Leslie Knight	/s/Leigh Ann Roberts
R. Leslie Knight	Leigh Ann Roberts
Chief Circuit Judge, Fifteenth Judicial Circuit	Commonwealth's Attorney