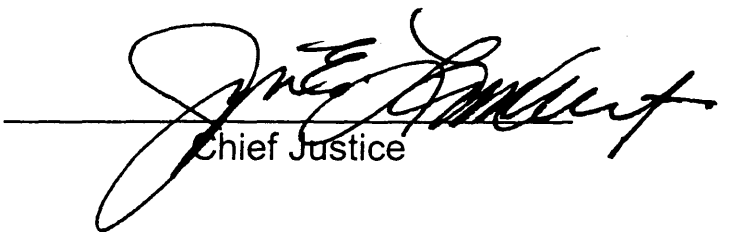
Supreme Court of Kentucky

ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the 52nd Judicial Circuit (Graves County) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.



Chief Justice

Entered: 12/16/99

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AOC
OFFICE OF GENERAL COUNSEL

CLASS D FELONY PRETRIAL DIVERSION PROTOCOL FOR THE GRAVES CIRCUIT COURT 52ND JUDICIAL DISTRICT

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

A. Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to the 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. Motions and/or applications for pretrial diversion shall be made jointly by the Commonwealth and the defendant.

B. Motions shall be submitted no later than the date set for pretrial conference of the defendant's case.

C. 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.

D. The Commonwealth shall make a written recommendation to the Court in response to each application, and the Commonwealth's signature on the joint motion shall be considered a sufficient response.

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

1. Obtain a criminal record check by telephoning Pretrial Services at AOC at 1-800-928-6381 or faxing the request to (502) 573-1669.

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 and may use the form provided by AOC styled Order Granting Pretrial Diversion of a Class D Felony designed for this purpose.

B. Prior to entering an order granting pretrial diversion, the Court shall question the defendant on the record regarding the following matters related to the Defendant's plea:

1. **Is your guilty plea/plea pursuant to Alford in this case part of an agreement you and your attorney have made with the Commonwealth?**

2. **In return for your guilty plea/plea pursuant to Alford, the Commonwealth has agreed to recommend a sentence of _____. Is this correct?**

3. **The Commonwealth has also recommended your case be diverted on the following conditions: _____ Is this correct?**

4. **The Commonwealth has tendered to the Court a diversion agreement. Have you read the diversion agreement? Have you discussed it with counsel? Has your attorney answered any questions you have about the diversion agreement?**

5. **Have you signed the diversion agreement?**

6. **Did you voluntarily sign the agreement?**

7. **Do you understand that if you successfully complete the diversion agreement, the charge(s) against you will be dismissed as diverted?**

8. **Do you understand that if the Commonwealth alleges you have failed to comply with the terms of the diversion agreement, the Court will schedule a hearing and, upon completion of the hearing, make a finding as to whether you failed to comply with the diversion agreement?**

9. **Do you understand that if the Court finds you have violated the diversion agreement, the Court will schedule a sentencing hearing and at the hearing, the Court may sentence you to the penalty recommended by the Commonwealth?**

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 the diversion.

4. Require defendant to obey all rules and regulations imposed by Probation and Parole.

5. As required by KRS 533.030(1) (conditions of probation-restitution), direct the defendant not to commit any offense during the period of the pretrial diversion. Specifically, direct the defendant to comply with any other provision of KRS 533.030 or any other condition the court deems appropriate.

D. The Order of Diversion **may** include:

1. That the petitioner shall remain drug and alcohol free and be subject to random testing at petitioner's cost.

2. That the petitioner have no violation of the Penal Code or the Controlled Substances Act.

3. That the petitioner possess no firearm or any other deadly weapon.

E. Duration of the pretrial diversion shall not exceed five (5) years without agreement of the petitioner. Duration of the diversion agreement 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 to the defendant, the Court may void a person's participation in the pretrial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress.

B. If an order of pretrial diversion is voided, the defendant shall be sentenced according to law, based on his or her prior plea of guilty and/or plea pursuant to Alford. (**When revocation is ordered, a full PSI must be ordered and a sentencing hearing must be scheduled**).

C. Under KRS 533.256(2), the same criteria applicable to a probation revocation hearing applies to a proceeding to void an order granting diversion. Pursuant 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 diversion should be voided also constitutes a miscellaneous proceeding and therefore the Rules of Evidence are inapplicable to such hearings.

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 as diverted.

APPROVED THIS 30th day of November, 1999, by Hon. John T. Daughaday, Chief Circuit Judge, and by Hon. David Hargrove, Commonwealth's Attorney, to be effective immediately.

John T. Daughaday, Chief Judge
Graves Circuit Court

David Hargrove, Commonwealth's Attorney