



**ORDER GRANTING PRETRIAL DIVERSION
OF A CLASS D FELONY
(ALSO FILE AOC-491 OR AOC-491.2)**

Case No. _____
Court _____ Circuit _____
County _____
Division _____

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

DEFENDANT

SECTIONS I.A. and I.B. TO BE COMPLETED BY PROSECUTOR:

I. A. With voluntary agreement of Defendant, the Commonwealth recommends to the Court the following terms and conditions of diversion:

1. The recommended period of diversion shall be _____ days _____ months _____ years. (Not to exceed five (5) years without Defendant's agreement; duration of the diversion agreement shall not be less than the time required to make full restitution)

2. The diversion is to be unsupervised supervised. A monthly supervision fee of \$ _____ shall be paid to Probation & Parole. (\$25.00 recommended; no less than \$10.00)

3. Defendant shall not possess a handgun or firearm during the period of the Pretrial Diversion.

4. Defendant shall not commit another offense during the period of the Pretrial Diversion, including, but not limited to, any violation of the Penal Code or the Controlled Substances Act.

5. Restitution shall be paid to _____ in the amount of \$ _____ at the rate of _____.

6. Probation & Parole shall conduct home visits. Defendant shall not have access to a handgun firearm during the pendency of the diversion agreement.

7. Defendant shall obey all rules and regulations imposed by Probation & Parole.

8. Defendant shall not possess or consume any alcohol or illegal drugs and shall be subject to random testing.

9. Other _____

B. The Commonwealth recommends _____

as the appropriate sentence to be imposed in the event Defendant fails to successfully complete the terms and conditions of the diversion and the Court voids the agreement.

C. Counsel has explained to the Defendant the terms and conditions of the Pretrial Diversion recommended by the Commonwealth. The Defendant has agreed to the terms and conditions and has freely, voluntarily, intelligently and knowingly entered into the agreement with the Commonwealth.

SECTIONS II AND III TO BE COMPLETED BY JUDGE:

II. THE COURT MAKES THE FOLLOWING FINDINGS OF FACT:

- A. Defendant, appearing in Court with counsel, Hon. _____, is charged with _____ a class D felony. He/She has applied to the Commonwealth and to the Court for Pretrial Diversion. He/She has not participated in a diversion program in the last five (5) years.
- B. Defendant has not had a felony conviction in the ten (10) years prior to commission of the current offense, nor has he/she been on probation or parole or been released from felony incarceration within the ten (10) years prior to commission of the current offense.
- C. Defendant has freely, knowingly, voluntarily and intelligently entered a plea of guilty or a plea pursuant to North Carolina v. Alford.
- D. Defendant is eligible for probation, parole or conditional discharge under KRS 532.045.
- E. Defendant has waived the right to a speedy trial or disposition of the charge against him/her.
- F. The Commonwealth has secured Defendant's criminal history; interviewed the victim and/or the victim's family; and made a written recommendation to the Court in response to the application for Pretrial Diversion.
- G. The Commonwealth has recommended Pretrial Diversion.

III. NOW THEREFORE BE IT ORDERED:

- A. The Court **GRANTS** the Motion for Pretrial Diversion of a Class D Felony.
 The Court **DENIES** the Motion for Pretrial Diversion of a Class D Felony.
- B. The Court imposes the following terms and conditions of Pretrial Diversion:
1. The period of Pretrial Diversion shall be _____.
 2. The diversion is to be unsupervised OR supervised. A monthly supervision fee of \$ _____ shall be paid to Probation & Parole. (\$25.00 recommended; no less than \$10.00)
 3. Defendant shall not possess a handgun or firearm during the period of the Pretrial Diversion.
 4. Defendant shall not commit another offense during the period of the Pretrial Diversion, including, but not limited to, any violation of the Penal Code or the Controlled Substances Act.
 5. Restitution shall be paid to _____ in the amount of \$ _____ at the rate of _____.
 6. Probation & Parole shall conduct home visits. Defendant shall not have access to a handgun firearm during the pendency of the diversion agreement.
 7. Defendant shall obey all rules and regulations imposed by Probation & Parole.
 8. Defendant shall not possess or consume any alcohol or illegal drugs and shall be subject to random testing.
 9. Other _____
- _____
- _____

- C. If Defendant successfully completes Pretrial Diversion, the charge will be designated as Dismissed-Diverted.
- D. During the Pretrial Diversion, the Court may (a) revoke or modify any condition; (b) change the period of supervision; OR (c) discharge Defendant from supervision.
- E. If the Court finds Defendant fails to successfully complete Pretrial Diversion and voids the diversion agreement, the Court may impose a sentence equal to or less than the penalty recommended by the prosecutor in Item I.B. of this form and the Commonwealth's Offer on a Plea of Guilty.

Entered: _____, 2_____
Judge _____

I understand the above conditions and agree to enter Pretrial Diversion in lieu of defending myself in further proceedings.

Defendant's Signature

Witness (Defense Attorney)

Date: _____, 2_____
Date: _____, 2_____

Date: _____, 2_____

Approved: _____
Commonwealth Attorney

Date: _____, 2_____

Distribution: Defendant
Commonwealth Attorney
Probation & Parole [if supervision is ordered by Court in paragraph III.B.]