


AOC-345 Doc. Code: OGMPD Rev. 4-01 Page 1 of 3 Commonwealth of Kentucky Court of Justice KRS 533.250 - 533.262	 ORDER GRANTING PRETRIAL DIVERSION OF A CLASS D FELONY (ALSO FILE AOC 491 OR AOC 491.2)	Case No. _____ Court <u> Circuit </u> County _____
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COMMONWEALTH OF KENTUCKY PLAINTIFF

VS. DEFENDANT

SECTIONS 1.A. and 1.B. TO BE COMPLETED BY PROSECUTOR:

- 1. A. With voluntary agreement of Defendant, the Commonwealth urges the Court to impose 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. Restitution shall be paid to _____ in the amount of \$ _____ at the rate of _____.
 - 4. Probation & Parole shall conduct home visits. Defendant shall not have access to a handgun firearm during the pendency of the diversion agreement.
 - 5. Defendant shall obey all rules and regulations imposed by Probation & Parole.
 - 6. As required by KRS 533.030(1), Defendant shall not commit another offense during the period of the Pretrial Diversion. Specifically, Defendant shall not violate the Penal Code or the Controlled Substances Act.
 - 7. Defendant shall remain drug and alcohol free and be subject to random testing.
 - 8. 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 2 AND 3 TO BE COMPLETED BY JUDGE:

2. 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, as well as early release under KRS 189A.010(8) and KRS 189A.120(2).
- 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.

3. 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. Restitution shall be paid to _____
in the amount of \$_____ at the rate of _____.
 - 4. Probation & Parole shall conduct home visits. Defendant shall not have access to a handgun firearm during the pendency of the Pretrial Diversion.
 - 5. Defendant shall obey all rules and regulations imposed by Probation & Parole.
 - 6. As required by KRS 533.030(1), Defendant shall not commit another offense during the period of the Pretrial Diversion. Specifically, Defendant shall have no violation of the Penal Code or the Controlled Substance Act.
 - 7. Defendant shall remain drug and alcohol free and be subject to random testing.
 - 8. Other _____

- C. If Defendant successfully completes Pretrial Diversion, the charge will be designated as Dismissed-Diverted. Defendant has been advised that upon successful completion of the diversion he/she may petition the Court for expungement of the record.
- 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 agreement, the Court may impose a sentence equal to or less than the penalty recommended by the prosecutor in Item 1(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_____

Approved: _____
Commonwealth Attorney

Date: _____, 2_____

Distribution: Defendant
Commonwealth Attorney
Probation and Parole [if supervision is ordered by Court in paragraph 3 (B)]