

# Supreme Court of Kentucky

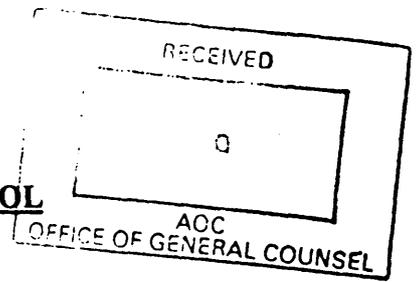
## ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the 30th Judicial Circuit (Jefferson County) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.

Entered: November 29, 1999

  
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Chief Justice

**CLASS D FELONY PRETRIAL DIVERSION PROTOCOL**  
**FOR THE 30<sup>TH</sup> 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**

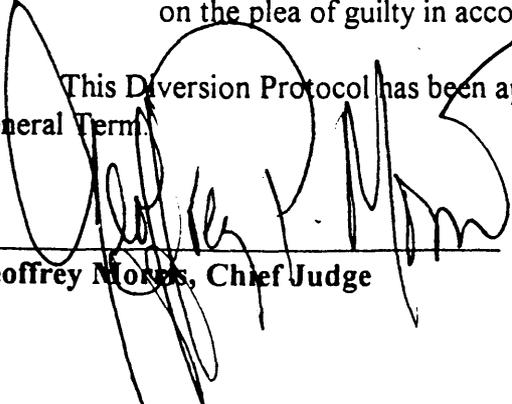
- A. Any person charged with a Class D felony or felonies, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the 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. Person 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 or information in circuit court and before the case is called for trial, any person eligible for the program 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/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. Have a criminal record check made 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.
- E. Making application for pretrial diversion agreement tolls any statute of limitations relative to the criminal offenses for which the application is made for the period until the application is granted or denied. Approval of the application for pretrial diversion by the court tolls any statute of limitations relative to criminal offenses diverted for the period of the diversion agreement.
- F. Upon being placed into the diversion program, the defendant will be supervised by probation and parole as if on regular probation and will be subject to orders of treatment as set out by the probation officer or the court.
- G. If the court voids the pretrial diversion agreement, the court shall notify the applicable prosecutor in writing that the pretrial diversion agreement has been voided and the reasons for the action. The prosecutor shall decide whether or not to proceed on the plea of guilty in accordance with the law.

This Diversion Protocol has been approved by the Jefferson Circuit Court  
General Term.

  
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Geoffrey Morris, Chief Judge

  
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David Stengel, Commonwealth Attorney