

Supreme Court of Kentucky

ORDER

**IN RE: COURT RULES FOR NON-FELONY DISTRICT COURT
DIVERSION
FULTON/HICKMAN DISTRICT COURTS**

Pursuant to KRS 533.262 and SCR 1.040(3)(a), the attached Court Rules for District Court Non-Felony Diversion for the Fulton/Hickman District Courts are hereby approved.

Entered this 29 day of March, 2006.


CHIEF JUSTICE

NON-FELONY DIVERSION PROGRAM

1 ELIGIBILITY REQUIREMENTS

- A. All persons charged in District Court with the commission of a misdemeanor or violation shall be eligible for participation in the Diversion Program, as an alternative to criminal prosecution, subject to the following conditions and exceptions:
1. Except as provided in subsection B and C, a prior conviction for a felony offense, misdemeanor offense or violation, shall preclude eligibility.
 2. Prior convictions for violations of traffic regulations under KRS Chapters 186 and 189 shall not preclude eligibility. A prior conviction for DUI will preclude eligibility.
 3. Except as provided in subsection C, a person charged with a violent/assaultive crime shall not be eligible for participation in the Diversion Program.
 4. Except as provided in subsection C, a person charged with violation of the public trust, under KRS Ch. 522 shall not be eligible for participation in the Diversion Program.
 5. Except as provided in subsection C, a person charged with violating any traffic regulation under KRS Ch. 186, 189, 189A, shall not be eligible for participation in the Diversion Program.
 6. Except as provided in subsection C, a person who has previously participated in the Diversion Program in this County or any other jurisdiction within or without the Commonwealth of Kentucky shall not be eligible for participation in the Diversion Program.
- B. Where a person is charged with an offense of public intoxication under KRS 525.100 or alcohol intoxication under KRS 222.202, and that person has one or more prior convictions for alcohol-related offenses other than DUI, and where it appears from the person's record and history that his or her criminal activity is related to the disease of alcoholism or drug addiction, that person will be considered eligible for participation in the program notwithstanding his or her prior conviction. A prior conviction for DUI will preclude eligibility.
- C. Where reasons of an extraordinary nature are presented which warrant consideration of a person for participation in the Program, notwithstanding his/her lack of eligibility by virtue of one or more of the above set out exclusions, that person may be considered eligible for participation in the Program by the trial judge.

- D. A diversion report shall be prepared by the Pretrial Service Office of the court and such report shall contain basic pretrial information, record of any past offenses and convictions, record of any prior participation in the diversion program or other similar program, employment status, length of residence in the area, and any other information necessary to determine eligibility and appropriateness of approval to participate in the Diversion Program.

Prior to approval for participation in the Diversion Program the diversion report shall be made available to the County Attorney, the Trial Judge, and the Defendant.

- E. Nothing in this rule shall be deemed to limit the authority of the County Attorney to withdraw criminal prosecution in any given case.

II. APPROVAL FOR PARTICIPATION

- A. Upon the consent of both the County Attorney and the accused, the trial judge shall approve participation in the Diversion Program for any individual who meets the eligibility requirements established in Section 1 above unless the trial judge is of the opinion that diversion is inappropriate because:
1. There is a substantial risk that the defendant will abscond from the jurisdiction of the court prior to fulfillment of their terms of the Diversion Contract.
 2. There is a substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the Diversion Contract.
 3. That the defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail.
 4. That participation in the Diversion Program would unduly depreciate the seriousness of the defendant's crime.
- B. Consent of the County Attorney to the person's participation in the Diversion Program shall not be unreasonably withheld. If the County Attorney refuses to consent to the person's participation in the Diversion Program, he/she shall state on the record the reasons therefore.
- C. Upon approval for participation in the Diversion Program, the accused must sign a statement waiving his/her right to a speedy trial. Prior to signing such statement the accused shall be given the opportunity to consult with an attorney if he/she so desires.

- D. Prior to approval for participation in the Diversion Program, the Pretrial Services Office shall present to the trial judge the comments and opinions, if any, of the arresting officer and/or victim of the alleged crime regarding the nature of the offense, the appropriateness of diversion, and the suggested terms of the Diversion Contract. While not binding on the trial judge, such comments and opinions, if any, shall be considered by the trial judge in determining approval for participation in the Diversion Program.
- E. Participation by an accused in the Diversion Program shall not constitute an admission or presumption of guilt of the crime charged, and shall not be proof of guilt in any subsequent legal action; nor shall a Divertee be required to give a confession or admission of guilt. However, nothing contained in this paragraph shall alter or affect the Divertee's obligation to perform all the terms of the Diversion Contract, including restitution, where agreed to.
- F. All records of the Diversion Program, and all statements made by the accused to the diversion officer regarding the offense for which the accused was placed on diversion shall be privileged, shall not be admissible or discoverable for any purpose, shall be exempt from subpoena, and shall be deemed confidential except for the program staff, the trial judge, and the chief district judge, for purposes of program review, monitoring and supervision, and shall not be released to any other person or entity without prior written consent of the chief district judge and the accused. However, nothing in this paragraph shall be deemed to prohibit release of information to the victim of a crime regarding an accused's participation in the Diversion Program.
- G. Upon approval for participation in the Diversion Program, the County Attorney shall present to the trial judge any special terms, if any, which he/she believes should be included in the Diversion Contract, or which the arresting officer and/or victim have requested to be included in the Diversion Contract. While such requests are not binding on the trial judge, they shall be considered by him/her when approving the Diversion Contract.
- H. Upon approval for participation in the Diversion Program, the trial judge shall note on the Court docket any special terms which he/she is requiring to be included in the Diversion Contract.

III. THE DIVERSION CONTRACT

- A. Upon approval of participation in the Diversion Program, the accused shall meet with a Diversion Officer to establish and agree to a formal contract, which will specify the conditions required, the referral services to be used, the length of the contract, and the need, if any, for the accused to make required restitution or perform community service. The contract shall be presented for final approval to the trial judge, and upon its final approval, the terms of diversion shall commence. The Diversion Contract shall contain any special terms required by the trial judge.

- B. The normal contract on each accused shall be for a period of not more than six (6) months, unless lengthened by the trial judge.
- C. The Divertee must comply with all provisions of the Diversion Contract, Violation of contract, provisions will subject the individual to termination of diversion participation, and re-institution of criminal provisions will subject the individual to termination of diversion participation, and re-institution of criminal prosecution.
- D. At any time the Divertee may voluntarily choose to be terminated from the Diversion Program by submitting a written statement indicting same. Where the termination is prior to the expiration of the contract period and without the consent of the Diversion officer, the Diversion Officer shall refer the case to the County Attorney for prosecution. If the accused does not comply with conditions of his/her Diversion Contract, the trial judge may enter an order terminating the accused's participation in the program or direct the resumption of the Divertee's participation in the Diversion process and reinstatement of the Diversion Contract, with any modifications offered by the judge.

As with the original Diversion Contract, the accused must agree to the contract modifications, if any, prior to reinstatement.

- E. Upon termination for non-compliance, the County Attorney may initiate prosecution of the accused upon the original criminal charge(s).
- F. Upon successful completion of the Diversion Contract the formal criminal charge, out of which the Diversion Contract arose, shall be formally and fully dismissed, and all official records of said charge shall bear the notation that said charge was dismissed with prejudice.

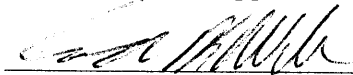
IV. FEES

The fee for participation in the Program shall be in an amount set by the Director of the Administrative Office of the Courts. The court may assess the fee on a sliding scale based upon ability to pay or waive the fee entirely in the case of indigence.



Hunter B. Whitesell II, District Judge
Hickman and Fulton County

Having Seen & Approved:



Cindra K. Walker