

1 AN ACT relating to pretrial diversion.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 533.250 is amended to read as follows:

4 (1) A pretrial diversion program shall be operated in each judicial circuit. The chief  
5 judge of each judicial circuit, in cooperation with the Commonwealth's attorney,  
6 shall submit a plan for the pretrial diversion program to the Supreme Court for  
7 approval on or before December 1, 1999. The pretrial diversion program shall  
8 contain the following elements:

9 (a) The program may be utilized for a person charged with a Class D felony  
10 offense who has not, within ten (10) years immediately preceding the  
11 commission of this offense, been convicted of a felony under the laws of this  
12 state, another state, or of the United States, or has not been on probation or  
13 parole or who has not been released from the service of any felony sentence  
14 within ten (10) years immediately preceding the commission of the offense;

15 (b) The program shall not be utilized for persons charged with offenses for which  
16 probation, parole, or conditional discharge is prohibited under KRS 532.045;

17 (c) No person shall be eligible for pretrial diversion more than once in a five (5)  
18 year period;

19 (d) No person shall be eligible for pretrial diversion who has committed a sex  
20 crime as defined in KRS 17.500. A person who is on pretrial diversion on July  
21 12, 2006, may remain on pretrial diversion if the person continues to meet the  
22 requirements of the pretrial diversion and the registration requirements of  
23 KRS 17.510;

24 (e) Any person charged with an offense not specified as precluding a person from  
25 pretrial diversion under paragraph (b) of this subsection may apply in writing  
26 to the trial court and the Commonwealth's attorney for entry into a pretrial  
27 diversion program;

- 1 (f) Any person shall be required to enter an Alford plea or a plea of guilty as a  
2 condition of pretrial diversion; however, acceptance of an Alford plea or a  
3 plea of guilty shall be suspended until a condition of pretrial diversion has  
4 been violated or the person has successfully completed a pretrial diversion  
5 program;
- 6 (g) The provisions of KRS 533.251 shall be observed; and
- 7 (h) The program may include as a component referral to the intensive secured  
8 substance abuse treatment program developed under KRS 196.285 for persons  
9 charged with a felony offense under KRS Chapter 218A and persons charged  
10 with a felony offense whose record indicates a history of recent and relevant  
11 substance abuse who have not previously been referred to the program under  
12 KRS 533.251.
- 13 (2) Upon the request of the Commonwealth's attorney, a court ordering pretrial  
14 diversion may order the person to:
- 15 (a) Participate in a global positioning monitoring system program through the use  
16 of a county-operated program pursuant to KRS 67.372 and 67.374 for all or  
17 part of the time during which a pretrial diversion agreement is in effect; or
- 18 (b) Use and pay all costs, including administrative and operating costs, associated  
19 with the alcohol monitoring device as defined in KRS 431.068. If the court  
20 determines that the defendant is indigent, and a person, county, or other  
21 organization has not agreed to pay the costs for the defendant in an attempt to  
22 reduce incarceration expenses and increase public safety, the court shall  
23 consider other conditions of pretrial diversion.
- 24 (3) A court ordering global positioning monitoring system for a person pursuant to this  
25 section shall:
- 26 (a) Require the person to pay all or a part of the monitoring costs based upon the  
27 sliding scale determined by the Supreme Court of Kentucky pursuant to KRS

1 403.761 or 456.100 and administrative costs for participating in the system;

2 (b) Provide the monitoring system with a written or electronic copy of the  
3 conditions of release; and

4 (c) Provide the monitoring system with a contact at the office of the  
5 Commonwealth's attorney for reporting violations of the monitoring order.

6 (4) A person, county, or other organization may voluntarily agree to pay all or a portion  
7 of a person's monitoring costs specified in subsection (3) of this section.

8 (5) The court shall not order a person to participate in a global positioning monitoring  
9 system program unless the person agrees to the monitoring in open court or the  
10 court determines that public safety and the nature of the person's crime require the  
11 use of a global positioning monitoring system program.

12 (6) The Commonwealth's attorney shall make a recommendation upon each application  
13 for pretrial diversion to the Circuit Judge in the court in which the case would be  
14 tried. The court may approve or disapprove the diversion.

15 (7) The court shall assess a diversion supervision fee of a sufficient amount to defray  
16 all or part of the cost of participating in the diversion program. Unless the fee is  
17 waived by the court in the case of indigency, the fee shall be assessed against each  
18 person placed in the diversion program. The fee may be based upon ability to pay.

19 ➔SECTION 2. A NEW SECTION OF KRS 533.250 TO 533.262 IS CREATED  
20 TO READ AS FOLLOWS:

21 **Any person who has accepted a pretrial diversion agreement shall retain his or her**  
22 **right to possess and have access to a firearm unless the court makes:**

23 **(1) A finding of fact that the crime for which the person was charged involved the**  
24 **use of a firearm; and**

25 **(2) A specific finding of fact that it is in the interest of the defendant and public to**  
26 **restrict access to firearms.**