RULE 5. PRETRIAL DIVERSION PROGRAM

1. Eligibility Requirements
2. All persons charged in District Court with the commission of a misdemeanor or violation shall be eligible for participation in the Administrative Office of the Courts Pretrial Services Diversion Program (program) as an alternative to criminal prosecution, subject to the following conditions and exceptions:

a. The charge of violation of KRS Chapter 189A shall not be diverted;

b. A person who has previously participated in a pretrial diversion program shall not be eligible for participation in the Program, unless the trial judge and prosecutor deem a defendant eligible for the Program regardless of his/her ineligibility; and

c. A person who is charged with a violent offense shall not be diverted.

1. Nothing in this rule shall be deemed to limit the authority of the county attorney to withdraw criminal prosecution in any given case.
2. Participation
3. Upon consent of both the county attorney and the defendant, the trial judge shall approve participation in the Program for any individual who meets the eligibility requirements established in section A above unless the trial judge, in his/her discretion believes that:

a. There is a substantial risk that the defendant will abscond from the jurisdiction of the court prior to fulfillment of the terms of the diversion contract;

b. There is substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the diversion contract;

c. The defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail; or

d. Participation in the Program would unduly depreciate the seriousness of the defendant’s crime.

1. The county attorney’s consent to a defendant’s participation in the Program shall not be unreasonable withheld. If the county attorney refuses to consent to a defendant’s participation in the Program, she/she shall state on the record the reasons therefore.

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