

**IN THE COURT OF COMMON PLEAS.
KNOX COUNTY, OHIO**

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KNOX COUNTY
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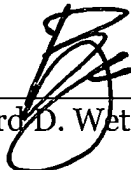
IN RE:

**KNOX COUNTY PROSECUTING ATTORNEY'S
PRETRIAL DIVERSION PROGRAM**

CASE NO. 24ZZ04-0011

JOURNAL ENTRY

This matter comes before the Court pursuant to Revised Code Section 2935.36, authorizing pre-trial diversion programs by the prosecuting attorney. The Court has reviewed the Diversion Program Eligibility Standards, Rules, and Forms and they are hereby approved.

 4-17-24

Richard D. Wetzel, Judge

**KNOX COUNTY PROSECUTING ATTORNEY'S PRETRIAL
DIVERSION PROGRAM
ELIGIBILITY STANDARDS, RULES AND FORMS**

REVISED APRIL 2024

**CHIP McCONVILLE,
KNOX COUNTY PROSECUTING ATTORNEY**

**KNOX COUNTY PROSECUTING ATTORNEY'S
PRETRIAL DIVERSION PROGRAM**

I. PURPOSE

Pursuant to Revised Code Section 2935.36, the Knox County Prosecuting Attorney has established a Diversion Program to provide an alternative to traditional criminal prosecution of offenders who are not likely to commit further criminal offenses. Admission into the Diversion Program will result in the defendant being placed on a quasi-probationary status, usually for a period of one year. After successful completion of the program requirements, the Prosecuting Attorney will dismiss the case against the defendant, allowing the defendant to avoid all of the collateral consequences of a felony conviction. Failure to complete the requirements will result in prosecution of the offense as charged.

The Diversion Program has the following policy objectives: 1) to reduce the felony caseload of the Knox County Common Pleas Court; 2) to provide restitution to victims of criminal offenses; and 3) to obtain a 90% successful completion rate.

II. ELIGIBILITY

A. STATUTORY ELIGIBILITY REQUIREMENTS

Not all offenders are eligible for diversion status. Minimum eligibility is governed by Revised Code Section 2935.36(A)(1)-(5). The following are ineligible for the Diversion Program:

1. Repeat Offenders and Dangerous Offenders as defined in R.C. 2935.36(E).
2. Persons accused of drug crimes in violation of R.C. Chapter 2925 or 3917. (See R.C. 2935.36(A)(3)).
3. Persons accused of violations of R.C. 4511.19 (OMVI). (See R.C. 2935.36(A)(4)).
4. Persons who hold a commercial drivers' license who commit the offense while operating a commercial motor vehicle, or whose conviction of the offense would disqualify them from operating a commercial motor vehicle under Revised Code Chapter 4506.

B. DISCRETIONARY ELIGIBILITY REQUIREMENTS

1. Persons accused of offenses of violence as defined in Revised Code Section 2901.01(A)(9), or any of the following offenses are generally ineligible for diversion:
2903.06 Aggravated Vehicular Homicide

2907.04	Unlawful Sexual Conduct with a Minor
2907.05	Gross Sexual Imposition
2907.21	Compelling Prostitution
2907.22	Promoting Prostitution
2907.31	Disseminating Matter Harmful to Juveniles
2907.32	Pandering Obscenity
2907.34	Compelling Acceptance of Objectionable Materials
2911.31	Safecracking
2919.12	Unlawful Abortion
2919.13	Abortion Manslaughter
2919.22	Endangering Children
2921.02	Bribery
2921.11	Perjury
2921.12	Tampering with Evidence
2921.32	Obstructing Justice
2923.20	Unlawful Transactions in Weapons

UNLESS the Prosecuting Attorney finds, and enters into the case file, any of the following:

- A. That the accused did not cause, threaten, or intend serious physical harm to any person;
 - B. The offense was the result of circumstances not likely to recur;
 - C. The accused has no history of prior delinquency or criminal activity;
 - D. The accused has led a law-abiding life for a substantial time before the commission of the alleged offense;
 - E. Substantial grounds tending to excuse or justify the alleged offense.
2. Persons accused of crimes where the economic loss involved is \$7,500 or more are ineligible for the Diversion Program.
 3. The Defendant must be represented by legal counsel, and must sign all required program documents.
 4. The Knox County Prosecuting Attorney's Office will not amend an indictment to make an offender eligible for diversion.
 5. The Knox County Prosecuting Attorney's Office has the final discretion to disapprove any applicant for participation in the Diversion Program, even if they meet the minimum eligibility requirements stated above.

III. ADMISSION TO DIVERSION PROGRAM

A. INITIAL SCREENING PROCESS

After indictment, potential applicants for the Diversion Program shall have their legal counsel make contact with the Knox County Prosecuting Attorney's Office. The Knox County Prosecuting Attorney's Office will not consider pre-indictment diversion.

The Prosecuting Attorney or Assistant Prosecuting Attorney will discuss the case with defense counsel and do an initial screening as to whether the offense is statutorily eligible for the Diversion Program. If so, defense counsel will be directed to contact Michele Scott, who serves as the Diversion Director.

B. DETAILED SCREENING PROCESS

The Diversion Director will meet with the defendant and defense counsel to discuss the case. Defense counsel shall then submit an application for the program. As part of the application, the defendant shall authorize the Diversion Director to complete a background check of the defendant, including the defendant's criminal history. In addition to meeting with the defendant, the Diversion Director shall consult with the arresting/investigating officer on the case as well as any victim to determine whether the case is suitable for diversion. The Diversion Director may request proof of means to make restitution as part of the screening process. The Diversion Director will make a recommendation to the Prosecuting Attorney concerning acceptance into the program, and whether that acceptance requires any of the findings in Section II(B)(1) above.

C. ACCEPTANCE INTO PROGRAM

If the Prosecuting Attorney approves the defendant's participation in the Diversion Program, the Defendant and his defense counsel must sign the following documents:

1. A waiver of speedy trial contingent upon the successful completion of the program;
2. An agreement tolling any periods of limitation applicable to the offense while the defendant is in the Diversion Program;
3. An acknowledgement of the Rules of the Diversion Program;
4. A written Plea of Guilty and Allocution Statement. The Plea and Allocution Statement will be held by the Diversion Officer pending successful completion of the program. The defendant shall acknowledge that the Plea and Allocution Statement may be used in evidence against the defendant if the defendant does not successfully complete the Diversion Program.
5. A written agreement to pay any reasonable fee for supervision services established by the prosecuting attorney. (Currently \$150.00)

IV. REQUIREMENTS OF DIVERSION PROGRAM

- A. Report monthly to the Diversion Director.
- B. Make restitution payments to the Clerk of Courts, as scheduled by the Diversion Director.
- C. Comply with the Rules of the Diversion Program.
- D. Non-compliance with any of the requirements may subject the defendant to

revocation of diversion status and having the case set for trial.

- E. The defendant must comply with all requirements of diversion within 12 months of entering the program. The defendant may apply to extend the time for diversion by one additional 12-month term, subject to the approval of the Prosecuting Attorney. The primary purpose for an extension would be to allow for the payment of restitution and court costs. An extension will not be granted unless the defendant has consistently abided by the Rules of Diversion.

V. TERMINATION FROM DIVERSION PROGRAM

- A. Failure to abide by the Rules of Diversion or fulfill the Requirements of Diversion Program (Section IV, above) may result in termination of diversion status. Upon recommendation by the Diversion Director, the Prosecuting Attorney may file a Termination of Diversion Status with the Court, and the Court will set a trial date for the case.
- B. In addition to the grounds above, the defendant may have Diversion Status terminated if the defendant is charged with any criminal offense during the defendant's participation in the Diversion program.
- C. Diversion is a quasi-probation status with no formal adjudication of guilt or innocence. Consequently, the defendant has no right to a formal revocation hearing.
- D. If a defendant is terminated from the Diversion Program, all waivers previously executed by the defendant become void on the date Diversion Status is terminated. The Prosecuting Attorney may still use the defendant's written Guilty Plea and Allocution Statement in any trial of the matter.

VI. SUCCESSFUL COMPLETION

Upon successful completion of all Diversion Program requirements, as verified by the Diversion Director, the Prosecuting Attorney shall file a motion to dismiss the case, and the Court shall dismiss the case pursuant to Revised Code Section 2935.36(D).

RELEASE OF INFORMATION

I, _____, hereby voluntarily grant permission to and expressly authorize the Knox County Prosecutor's Office to secure from any source, information needed for the supervision of my Diversion/Probation period. Such information may be obtained from, employers, schools, banks, stores, employment center, service centers, military, postal authorities, Law Enforcement Agencies, Any Court, Social Security Administration, Any Juvenile Court/Probation Department, County jails, Correctional Facilities, Half-Way Houses, Child Support Agencies, Child and Family Services, and Job and Family Services. This form also authorizes the inspection of any expunged or sealed juvenile records pursuant to Revised Code Section 2151.358(E) and any and all documentation or behavior reports, incident reports, notes, notes and evaluations conducted by counselors and or jail staff while incarcerated as an inmate in any penal institution, half-way house, community correctional facility or county jail. This release of information is valid from the date of signing until my Diversion/Probation status is terminated.

Defendant

Date

Social Security Number

Date of Birth

Diversion Director

Date

IN THE COURT OF COMMON PLEAS, KNOX COUNTY, OHIO

STATE OF OHIO

Plaintiff

-VS-

Case No.

XXX

Defendant

WAIVER OF SPEEDY TRIAL

Now comes Defendant, by and through counsel and upon the advice of counsel, waives his/her statutory and constitutional rights to a speedy trial in the above-styled matter for purposes of assessment for the Prosecuting Attorney's Diversion Program. If the Defendant is accepted into the program, Defendant understands that this waiver will continue until the Defendant's successful completion or unsuccessful termination from the program.

Defendant

Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned attorney-at-law hereby certifies that a true copy of the foregoing document was served upon Charles T. McConville, Knox County Prosecutor, 117 East High Street Mount Vernon, Ohio 43050, by personal service to a representative of his office, on this ____ day of _____, 2024.

Attorney for Defendant

IN THE COURT OF COMMON PLEAS, KNOX COUNTY, OHIO

STATE OF OHIO

Plaintiff

-VS-

Case No.

XXX

Defendant

**MOTION TO PLACE CASE ON INACTIVE DOCKET PENDING
SUCCESSFUL COMPLETION OF DIVERSION**

Now comes the State of Ohio, by and through the Prosecuting Attorney, and moves the Court to place this case on its inactive docket. Defendant has been screened and accepted for placement in the Prosecuting Attorney's Pre-Trial Diversion Program pursuant to Ohio Revised Code §2935.36. A Memorandum in Support is attached.

Respectfully submitted,

Charles T. McConville
Prosecuting Attorney

(0082378)

MEMORANDUM IN SUPPORT OF MOTION

The Defendant has been charged with a criminal offense. The Pre-Trial Diversion Program has been explained to the Defendant, the Defendant's attorney, the victim of the offense, and the investigating officer. All concur that the Defendant is an appropriate candidate for Pre-Trial Diversion. Further, a representative of the Prosecuting Attorney's Office has screened the Defendant and the Defendant is not disqualified from participating in the program according to the guidelines set forth in Ohio Revised Code §2935.36 and the Diversion Program Rules approved by this Court.

Case No.
Diversion Motion
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The Defendant has agreed in writing to the conditions of the Diversion Program established by the Prosecuting Attorney (copy attached). The Defendant has been advised that the State's agreement not to proceed in this matter is contingent upon the Defendant's successful completion of the program, a waiver of the accused's right to a speedy trial, the execution of a written Plea of Guilty and Allocution Statement, and the tolling of all periods of limitation established by statutes or rules of the Court, which are applicable to the offense with which the accused is charged.

The State of Ohio respectfully requests the Court to transfer this case to the inactive docket while the Defendant is enrolled in the Pre-Trial Diversion Program.

Respectfully submitted,

Charles T. McConville (0082378)
Prosecuting Attorney

CERTIFICATE OF SERVICE

The undersigned attorney-at-law hereby certifies that a true copy of the foregoing document was served upon John A. Dankovich, Knox County Public Defender, 110 East High Street, Mount Vernon, OH 43050, by personal service to a representative of the office, on _____, _____, 2024.

Charles T. McConville (0082378)
Prosecuting Attorney

IN THE COURT OF COMMON PLEAS, KNOX COUNTY, OHIO

STATE OF OHIO

Plaintiff

-VS-

Case No.

XXX

Defendant

DIVERSION JUDGMENT ENTRY

This matter is before the Court on joint motion of the Defendant and the Prosecuting Attorney to place this case on inactive status pending Defendant's completion of the Prosecuting Attorney's Diversion Program. The application includes the Defendant's waiver of time for the period the Defendant is in the program.

The Court finds that the application is properly made and the interests of justice will be served by granting the parties' joint motion, and that the Defendant has knowingly, intelligently and voluntarily waived **his/her** right to a speedy trial from the date of this Entry until such date as the Defendant is removed from the program, or successfully completes the program, whichever comes first.

Therefore, it is ORDERED:

1. This case shall be placed on inactive status, terminated from the docket and listed on line 11 of the Supreme Court report.
2. The Prosecuting Attorney shall notify the Court promptly if the Defendant is removed from the program, or successfully completes the program.
3. Bail is continued.

Richard D. Wetzel, Judge

cc: Prosecuting Attorney
Michele Scott, Diversion Director
, Counsel for the Defendant

IN THE COURT OF COMMON PLEAS, KNOX COUNTY, OHIO

STATE OF OHIO

Plaintiff

-VS-

Case No.

XXX

Defendant

DIVERSION CONTRACT

The Knox County Prosecutor's Office, pursuant to Revised Code Section 2935.36, has established a Diversion Program for adults who, for the first time, have committed non-violent felony offenses. The Program Rules have been approved by JUDGE RICHARD D. WETZEL, presiding judge of the Knox County Court of Common Pleas.

I UNDERSTAND THAT MY PARTICIPATION IN THE DIVERSION PROGRAM WILL BE FOR A PERIOD OF TWELVE MONTHS FROM THE DATE OF THIS AGREEMENT, UNLESS I SUCCESSFULLY COMPLETE THE PROGRAM REQUIREMENTS EARLY, OR MY DIVERSION STATUS IS REVOKED FOR NONCOMPLIANCE.

IN CONSIDERATION OF MY PARTICIPATION IN THE DIVERSION PARTICIPATION, I AGREE TO ABIDE BY THE RULES OF DIVERSION WHICH ARE ATTACHED AND INCORPORATED INTO THIS AGREEMENT.

Defendant

Date

Attorney for Defendant

Date

Charles T. McConville
Knox County Prosecutor

Date

DIVERSION PROGRAM GENERAL RULES

- _____1. Diversion applicants and participants must be represented by legal counsel.
- _____2. Under the U.S. and Ohio Constitutions, a criminal defendant has a right to a speedy trial. I understand that to participate in the Diversion Program, I must waive my speedy trial rights for the period I am in the program and during the application and screening process.
- _____3. Diversion participants are subject to Termination of Diversion Status if arrested, charged or indicted for a new criminal offense any time after the application is filed. Termination of Diversion Status will result in prosecution on the original charge.
- _____4. Diversion participants must report all arrests and/or new charges to the Diversion Director immediately. Failure to report a new charge may result in Termination of Diversion Status even if the applicant or participant is ultimately found not guilty of the new charge.
- _____5. Repeat offenders are not eligible for the Diversion Program. I represent that I have never applied for expungement or sealing of any criminal record.
- _____6. I understand that as a condition of my admission into the Diversion Program that I will be required to sign a written Guilty Plea and make an Allocution Statement about the facts of the offense. I do so with the advice of legal counsel, and with the understanding that the Guilty Plea and Allocution Statement may be used against me at trial if my Diversion Status is terminated.
- _____7. I will meet monthly with the Diversion Director, or more or less frequently as ordered. Missed appointments may result in Termination of Diversion Status.
- _____8. Restitution must be made for money received or economic loss caused to persons or property. Restitution payments must be made within one year of acceptance into the Diversion Program, unless an extension is approved by the Diversion Director and the Prosecuting Attorney. Payment of restitution will be monitored and failure to make restitution may result in Termination of Diversion Status.
- _____9. Court costs must be paid in full within one year of acceptance into the Diversion Program. Failure to pay court costs or diversion fees within one year may result in Termination of Diversion Status.
- _____10. Diversion participants may not carry, possess, or purchase any firearm while in the Diversion Program. This includes handguns, rifles and/or shotguns.

- _____11. Diversion participants have an affirmative duty to keep the Diversion Director informed of the participant's most accurate contact information and residence address. If any of contact information changes, the participant must notify the Diversion Director within 14 days.

- _____12. If called to testify against a co-defendant, Diversion participants may not invoke their right to remain silent.

- _____13. Diversion Status may be terminated if the participant falsifies any information provided in the application process or provides false information to the Diversion Director while participating in the program.

- _____14. You are to pay restitution in the amount of \$_____.

- _____15. You are to find and maintain stable employment or be actively in pursuit of employment or participating in an employment training program. You are to provide monthly verification of employment to the Diversion Director.

- _____16. You are to pay court costs and supervision fees in the amount of \$_____ made payable to The Knox County Clerk of Courts.

I, _____, understand that Diversion is a voluntary program, and I have a legal responsibility to abide by these terms. I understand that if I violate any of these terms, to the satisfaction of the Prosecuting Attorney, my Diversion will be terminated. Terms may be changed, modified, or added at the discretion of the Diversion Director. I understand and take the responsibility to comply with this Diversion Program Agreement and hereby acknowledge that I have received a copy of this agreement.

Defendant

Date

Attorney for Defendant

Date

Diversion Director

Date

VOLUNTARY ALLOCUTION STATEMENT

EXPLAIN IN YOUR OWN WORDS WHY/HOW YOU COMMITTED THE OFFENSE FOR WHICH YOU ARE CHARGED:

Signed

Date

Witness: Defense Counsel