

**533.250 Pretrial diversion program in each judicial circuit -- Elements -- Fee.**

- (1) A pretrial diversion program shall be operated in each judicial circuit. The chief judge of each judicial circuit, in cooperation with the Commonwealth's attorney, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:
  - (a) The program may be utilized for a person charged with a Class D felony offense who has not, within ten (10) years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole or who has not been released from the service of any felony sentence within ten (10) years immediately preceding the commission of the offense;
  - (b) The program shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045;
  - (c) No person shall be eligible for pretrial diversion more than once in a five (5) year period;
  - (d) No person shall be eligible for pretrial diversion who has committed a sex crime as defined in KRS 17.500. A person who is on pretrial diversion on July 12, 2006, may remain on pretrial diversion if the person continues to meet the requirements of the pretrial diversion and the registration requirements of KRS 17.510;
  - (e) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the trial court and the Commonwealth's attorney for entry into a pretrial diversion program;
  - (f) Any person shall be required to enter an Alford plea or a plea of guilty as a condition of pretrial diversion;
  - (g) The provisions of KRS 533.251 shall be observed; and
  - (h) The program may include as a component referral to the intensive secured substance abuse treatment program developed under KRS 196.285 for persons charged with a felony offense under KRS Chapter 218A and persons charged with a felony offense whose record indicates a history of recent and relevant substance abuse who have not previously been referred to the program under KRS 533.251.
- (2) Upon the request of the Commonwealth's attorney, a court ordering pretrial diversion may order the person to:
  - (a) Participate in a global positioning monitoring system program through the use of a county-operated program pursuant to KRS 67.372 and 67.374 for all or part of the time during which a pretrial diversion agreement is in effect; or
  - (b) Use and pay all costs, including administrative and operating costs, associated with the alcohol monitoring device as defined in KRS 431.068. If the court determines that the defendant is indigent, and a person, county, or other organization has not agreed to pay the costs for the

defendant in an attempt to reduce incarceration expenses and increase public safety, the court shall consider other conditions of pretrial diversion.

- (3) A court ordering global positioning monitoring system for a person pursuant to this section shall:
  - (a) Require the person to pay all or a part of the monitoring costs based upon the sliding scale determined by the Supreme Court of Kentucky pursuant to KRS 403.761 and administrative costs for participating in the system;
  - (b) Provide the monitoring system with a written or electronic copy of the conditions of release; and
  - (c) Provide the monitoring system with a contact at the office of the Commonwealth's attorney for reporting violations of the monitoring order.
- (4) A person, county, or other organization may voluntarily agree to pay all or a portion of a person's monitoring costs specified in subsection (3) of this section.
- (5) The court shall not order a person to participate in a global positioning monitoring system program unless the person agrees to the monitoring in open court or the court determines that public safety and the nature of the person's crime require the use of a global positioning monitoring system program.
- (6) The Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the Circuit Judge in the court in which the case would be tried. The court may approve or disapprove the diversion.
- (7) The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay.

**Effective:** July 15, 2014

**History:** Amended 2014 Ky. Acts ch. 141, sec. 4, effective July 15, 2014. -- Amended 2010 Ky. Acts ch. 170, sec. 14, effective July 15, 2010. -- Amended 2009 Ky. Acts ch. 96, sec. 5, effective March 24, 2009. -- Amended 2006 Ky. Acts ch. 182, sec. 49, effective July 12, 2006. -- Created 1998 Ky. Acts ch. 606, sec. 86, effective July 15, 1998.