

**KITSAP COUNTY DISTRICT COURT
STATE OF WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

v.

_____,
Defendant.

No. _____

**FELONY DIVERSION STIPULATION,
DECLARATION OF DEFENDANT,
AGREEMENTS, AND WAIVERS**

1. FELONY DIVERSION PROGRAM

COMES NOW the Defendant, having been fully advised by counsel, and in consideration for entry into the Kitsap County District Court Felony Diversion Program (Felony Diversion), and makes the following stipulation, declaration, agreement, and waivers –

2. DECLARATION

- 2.1 **No Adult Felonies.** I have no prior felony convictions as an adult for a felony offense in the State of Washington or any other state or country, nor have I been convicted of a crime in another state or country which would be considered a felony in the State of Washington as an adult, and I do not have pending charges for any felony offenses pending in Washington, or any other jurisdiction.
- 2.2 **No Prior Adult Felony Diversions.** I have never participated in any adult felony diversion program, or any similar program or arrangement for a felony offense in this state or any other jurisdiction.
- 2.3 **Agreement To Comply With Agreement.** I agree to abide by the conditions of this Agreement in order to participate in the Felony Diversion Program.
- 2.4 **Application.** If required, I have previously provided the Prosecution with my Felony Diversion Program application request, wherein I set forth why I believe that the crime(s) charged in this case should qualify for diversion and why I am a good candidate for the Felony Diversion Program.

3. DEFENDANT’S WAIVER OF RIGHTS AND AGREEMENT

- 3.1 **Waiver Of Speedy Arraignment And Time For Trial.** Defendant understands that Defendant has the right to be arraigned not later than 14 days after that appearance which next follows the filing of the information or indictment in Superior Court. Superior Court Criminal Rule (CrR) 4.1.

Defendant also understands that Defendant has the right to be tried in Superior Court within ninety (90) days following the “commencement date” as defined in Superior Court Criminal Rule (CrR) 3.3 and that if Defendant does not receive a trial within this time period the case may be dismissed with prejudice.

Defendant voluntarily waives (gives up) Defendant’s right to a speedy arraignment under CrR 4.1 and voluntarily waives Defendant’s right to time for trial under CrR 3.3.

Defendant agrees to an arraignment date and a new commencement date of 10 years from the date this Agreement is entered. The last allowable date for trial will be 90 days after the new commencement date.

The waivers in this paragraph may be revoked in writing by Defendant. If the waivers in this paragraph are revoked, Defendant’s trial will be set within 90 days of Defendant’s first appearance in Kitsap County Superior Court.

3.2 **Waiver Of Jury Trial.** Defendant understands that Defendant has the right to trial by jury unless Defendant waives (gives up) the right to a jury trial (CrR 6.1(a)). Defendant hereby waives Defendant’s jury trial right and requests that Defendant’s guilt or innocence be decided by a Judge.

3.3 **Waiver Of Rights, Waiver Of Objection To Any Evidence Presented And Stipulation.**

Defendant understands that Defendant has the right to contest and object to evidence presented against Defendant. Should Defendant be found to be in violation of this Agreement, Defendant gives up the right to contest or object to any evidence presented against Defendant at any future hearings, whether or not such evidence is a part of the Court’s record at the time of entry of this Agreement.

Defendant also understands that Defendant has the right to present evidence on Defendant’s own behalf. Defendant gives up the right to present evidence on Defendant’s own behalf as to Defendant’s guilt or innocence regarding the underlying charge(s). Defendant understands that evidence will be presented against Defendant at a future hearing and Defendant understands that the Judge will review that evidence in determining Defendant’s guilt or innocence.

Defendant understands that, by this process, Defendant is giving up the following constitutional and non-constitutional rights – (1) the right to a jury trial; (2) the right to hear and question witnesses; (3) the right to call witnesses in Defendant’s own behalf; (4) the right to testify or not to testify; (5) the right to remain silent; (6) the right to challenge the admissibility of statements Defendant has made (CrR 3.5); (7) the right to challenge physical, oral or identification evidence (CrR 3.6); (8) the right to assert any of the following privileges – both spousal and marital (RCW 5.60.060), physician-patient (RCW 5.60.060), clergy-penitent (RCW 5.60.060), psychologist-client (RCW 18.83.110), registered nurse (RCW 5.62.020), and/or counselor (RCW 18.19.180); (9) the presumption of innocence until the charges have been proven beyond a reasonable doubt; and (10) the right to appeal a determination of guilty after a trial.

3.4 **Mandatory Appearances.** Defendant agrees that Defendant’s appearance at all scheduled Felony Diversion hearings is mandatory unless excused in advance by the Court.

4. CHARGE(S) IN THIS CASE

4.1 **Maximum Penalty.** Defendant understands that each crime with which Defendant is charged carries a maximum sentence and if a felony crime, a Standard Sentence Range (which is based on my offender score), as follows –

Count No.	Charge	Offender Score	Standard Range	Maximum Term And Fine
I	_____	_____	_____	_____
II	_____	_____	_____	_____
III	_____	_____	_____	_____

4.2 **Sentence.** For felony charges, the Judge must impose a sentence within the standard range unless the Judge finds substantial and compelling reasons not to do so. Defendant understands the presumption of concurrency does not apply to crimes that do not fall within the Sentencing Reform Act; therefore, the Judge may sentence any gross misdemeanor/misdemeanor consecutive to felony crimes. If the Judge goes outside the standard range, either Defendant or the State of Washington can appeal that sentence.

Defendant understands that upon termination or withdrawal, Defendant will receive credit for time served in custody. The Judge may also place Defendant on community custody, impose restrictions on Defendant’s activities, and order Defendant to perform community service.

Defendant understands that the Judge does not have to follow anyone’s recommendation as to sentence. Defendant also agrees to pay the cost of restitution for any charged and uncharged crimes known at the time of this stipulation as determined by the Judge. Defendant agrees to waive Defendant’s presence at any restitution hearings in this action.

5. DEFENDANT’S AGREEMENT

I agree to all of the following Felony Diversion Program terms and conditions –

5.1 **Minimum Length Of Program.** I understand the Felony Diversion Program shall be in effect for at least the following length of time, and that this period may be extended based on my individual performance and compliance with this Agreement –

___ 1 year ___ 2 years ___ 3 years

5.2 **Probation Monitoring Assessment.** I agree to pay a misdemeanor probation department assessment of –

___ \$300 (1 year) ___ \$600 (2 years) ___ \$900 (3 years)

Payments shall be made during each phase of the Program and the entire amount is due in full before graduation panel is scheduled.

Payments shall be made to **Kitsap County District Court, 614 Division Street, MS-25, Port Orchard, WA 98366.**

Any amounts paid by check should include my full name and case number. If payment is made by check, 30 days will be required for the payment to process and post.

- 5.3 **Probation Monitoring Of Conditions.** I agree that compliance with this Agreement will be monitored by the Kitsap County District Court. I agree to contact District Court Probation Services within one judicial day of the signing of this Agreement and keep all appointments with District Court Probation Services or the court staff.
- 5.4 **Treatment.** I agree to attend all scheduled appointments with treatment providers and work diligently with them to complete an appropriate treatment program. This includes taking all medications as prescribed.
- 5.5 **Release Of Information Authorization.** I agree to authorize my treatment providers to release any medical information regarding my treatment to my treatment providers, the Court, Probation Services, my defense counsel, and the prosecutor. I understand that the information used or disclosed pursuant to this authorization may be subject to re-disclosure and may no longer be protected by law.
- 5.6 **Non-Prescribed Controlled Substances Prohibited.** I agree to not possess or consume controlled substances unless prescribed by a physician.
- 5.7 **Payment Of Legal Financial Obligations.** I agree to pay all legal financial obligations assessed by the Court in this case while this Agreement is in effect, including a misdemeanor probation department assessment and restitution, if applicable.
- 5.8 **Appearance And Court Directives.** I agree to appear at all hearings and follow through with all directives as ordered by the Court.
- 5.9 **Missed Court Appearances.** I understand that if I fail to appear for any court appearance, a warrant may be issued for my arrest. I also understand that if I fail to appear and I am not in full compliance with the terms of this Agreement, this Agreement can be terminated in my absence.
- 5.10 **Regular Contact.** I agree to maintain regular contact with Probation Services on a schedule we develop. I will immediately contact Probation Services when directed to do so, including responding timely to voice messages, electronic messages and letters.
- 5.11 **My Contact Information.** I agree to notify the Court in person or in writing of any change of residence or mailing address or telephone number or email address. I agree that such notification must be made within 10 days of the change.
- 5.12 **Failure To File Proof Of Compliance.** I agree that failure to file with the Court Clerk written proof of compliance with any condition in this Agreement, when such proof of compliance is required, shall be a material violation of this Agreement.

- 5.13 **Court Obligations.** I agree to comply with all court obligations, including those in other courts.
- 5.14 **Firearms Prohibited.** I agree to not own or possess or have access to any firearms for the duration of this Program.
- 5.15 **Court Orders Prohibiting Contact.** I agree to strictly comply with all provisions of any court order entered in this case or any other case if such order restrains me and was issued pursuant to any of the following chapters of the Revised Code of Washington – chapter 7.105 RCW, RCW 9A.40.102, 9A.44.210, 9A.46.080, 9A.88.160, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.26B.020, or 26.26A.470.
- 5.16 **Seized Property.** I agree today to forfeit all property seized by law enforcement pursuant to an investigation into the crime(s) charged in this case.
- 5.17 **Obey The Law.** I agree to obey all criminal laws.

I agree that the Court may take action on the State’s motion alleging a violation of this condition prior to any resolution of the alleged new criminal law violation. I specifically agree that a “conviction” for a criminal law violation occurring after the signing of this Agreement is not a prerequisite to this Court taking action on the State’s motion to terminate this Agreement due to my alleged violation of this condition.

I agree that my petition or otherwise request of any Washington court to grant me a deferred prosecution pursuant to RCW 10.05 *et seq.* for any criminal law violation occurring after the signing of this Agreement shall be a violation of this condition.

I agree to cooperate with law enforcement during the investigation and prosecution of the criminal conduct which has resulted in this Agreement. I understand that this cooperation may include my future testimony in other criminal proceedings involving other persons.

I agree to abide by any subpoenas or other legal process I may be subject to. I understand that failure to honor a subpoena issued to me while this Agreement is in effect will be considered a violation of this Agreement.

Violation of this condition is grounds for termination of the Program.

Traffic and civil infractions (for example, but not limited to, speeding tickets) are not considered criminal law violations. Accordingly, my commission of a traffic and/or civil infraction does not constitute a violation unless otherwise stated in this Agreement or ordered by the Court.

6. DEFENDANT’S AGREEMENT – ADDITIONAL CONDITIONS

I agree to all the following additional Felony Diversion Program terms and conditions –

6.1 _____ **Restitution.** Payment shall be made to **Kitsap County District Court**, 614 Division Street, MS-25, Port Orchard, WA 98366.

Any amounts paid by check should include the Defendant’s full name and case number. If payment is made by check, then 30 days will be required for the payment to process and post before this condition is satisfied.

Defendant agrees to pay to the Court restitution to the following as determined by a separate order entered contemporaneous to this Agreement –

6.2 _____ **Community Service.** I agree to complete _____ hours of community service at a non-profit organization and file written proof of completion with Probation Services within 90 days unless an extension of time is granted by Probation Services for partial compliance.

6.3 _____ **Substance Use Disorder Treatment.** I agree to obtain a substance use disorder evaluation from a Washington state certified agency and file written proof of the evaluation with Probation Services within 90 days. I also agree to successfully comply with all treatment recommendations and file written proof of such compliance through completion with Probation Services at least quarterly (every 3 months).

6.4 _____ **Alcohol And Cannabis Prohibited.** I agree to not possess or consume any beverage containing alcohol. I agree to not possess or consume any cannabis.

6.5 _____ **DUI Victim’s Panel.** I agree to complete a Washington state DUI victim impact panel that meets the standards stated in RCW 10.01.230 and file written proof of completion with Probation Services within 90 days.

6.6 _____ **Defensive Driving Course.** I agree to complete a defensive driving course and file written proof of completion with Probation Services within 90 days.

6.7 _____ **Ignition Interlock.** I agree to comply with mandatory ignition interlock device requirements imposed by the Washington Department of Licensing.

6.8 _____ **Domestic Violence Intimate Partner Treatment.** Obtain a domestic violence intimate partner evaluation from a state certified agency and file written proof of the evaluation with Probation Services within 90 days of entering. I also agree to successfully comply with all treatment recommendations and file written proof of such compliance through completion with Probation Services at least quarterly (every 3 months).

6.9 _____ **Domestic Violence Parenting Class.** I agree to complete a domestic violence parenting class that is a minimum 24 hours in length which includes education on the effects of domestic violence on children and file written proof of completion with Probation Services within 90 days.

- 6.10 _____ **Domestic Violence Victim Impact Panel**. I agree to complete a domestic violence victim impact panel and file written proof of completion with Probation Services within 90 days.
- 6.11 _____ **Anger Management Course**. I agree to complete an anger management course and file written proof of completion with Probation Services within 90 days. Completion of an online course shall not satisfy this condition.
- 6.12 _____ **Mental Health Treatment**. I agree to obtain a mental health evaluation from a state certified agency and file written proof of the evaluation with Probation Services within 90 days. I also agree to successfully comply with all treatment recommendations and file written proof of such compliance with Probation Services at least quarterly (every 3 months).
- 6.13 _____ **Psychosexual Treatment**. I agree to obtain a psychosexual evaluation from a state certified agency and fully comply with all treatment recommendations and file written proof of the evaluation with Probation Services within 90 days. I also agree to successfully comply with all treatment recommendations and file written proof of such compliance through completion with Probation Services at least quarterly (every 3 months).
- 6.14 _____ **Sex Buyer Course**. I agree to complete a sex buyer course and file written proof of completion with Probation Services within 90 days.
- 6.15 _____ **Gambling Treatment**. I agree to obtain a gambling assessment and fully comply with all treatment recommendations and file written proof of completion with Probation Services within 90 days.
- 6.16 _____ **No Contact Orders**. I agree to join the Prosecutor’s recommendation to the Court that any No Contact Order issued in this case shall remain in full force and effect until such later time as the No Contact Order expires or is rescinded by the Court.
- 6.17 _____ **Contact Prohibited – Persons**. I agree to not initiate contact, approach, or communicate by any means whatsoever with –
-
- 6.18 _____ **Contact Prohibited – Businesses/Locations**. I agree to not enter, remain, or come within _____ of –
-

7. SUCCESSFUL COMPLETION OF FELONY DIVERSION

7.1 _____ **Dismissal Of Charge(s)**. If Defendant successfully complies with the promises Defendant made in this Agreement, the Prosecution agrees to move to dismiss with prejudice the charge(s) filed in this case at a hearing to be scheduled not before the time frame selected in paragraph 5.3 following entry of this Agreement. This period may be extended based on Defendant's individual performance and compliance with this Agreement.

7.2 _____ **Amendment Of Charge(s)**. If Defendant successfully complies with the promises Defendant made in this Agreement, the Prosecution agrees to move to amend the charges filed in this case to one count of _____ at a hearing to be scheduled not before the time frame selected in paragraph 5.3 following entry of this Agreement. This period may be extended based on Defendant's individual performance and compliance with this Agreement.

The Defendant agrees to plead guilty to the amended charge and stipulates that the facts contained within the investigative reports are sufficient for a Judge to find Defendant guilty of the amended charge beyond a reasonable doubt. The Prosecution agrees to recommend a sentence of zero days in jail and minimum legal financial obligations.

8. PROCEDURE ON ALLEGED VIOLATION OF AGREEMENT

8.1 **Prompt Hearing**. Defendant and the State agree that time is of the essence of this Agreement and of each and every provision herein. Upon the filing by the State of a Motion to Terminate this Agreement, the parties shall request the Court to set a hearing date within approximately thirty (30) days of the filing of the motion, unless the State otherwise allows, so that the Court may promptly determine whether a violation has occurred.

8.2 **Procedure**. The parties agree that a State motion alleging a violation of this Agreement by Defendant will be handled in accordance with the procedures set forth in *State v. Marino*, 100 Wn.2d 719, 674 P.2d 171 (1984), and *State v. Kessler*, 75 Wn.App. 634, 879 P.2d 333 (1994), and that when determining guilt or innocence the Judge may look beyond the confines of Defendant's court file and may consider evidence found in Defendant's Washington State Department of Licensing driving abstract, in the Washington State Judicial Information System (including access through the Judicial Access Browser System), and in the Statewide Electronic Collision and Ticket Online Records.

9. TERMINATION FROM FELONY DIVERSION

- 9.1 **Felony Charges Upon Termination.** I understand that if I am terminated from the Felony Diversion Program, felony charge(s) and any gross misdemeanor/misdemeanor charges will be re-filed in the Kitsap County Superior Court for guilt determination and sentencing. I understand and stipulate that the Kitsap County Prosecuting Attorney's Office may submit investigative reports to the Kitsap County Superior Court.

I stipulate that the Kitsap County Superior Court may determine my guilt of the charges filed against me by examining the investigative reports. I further stipulate that the facts contained within the investigative reports are sufficient for a Judge to find me guilty of the charges presently filed against me. In addition, I stipulate that any statements I have provided to investigative agencies and/or the Kitsap County Prosecuting Attorney's Office are admissible for the Court to consider at the time it determines my guilt, and I hereby waive any objections I may have to the admissibility of my statements.

- 9.2 **Felony Offender Score Upon Termination.** I understand that the State calculated my offender score based upon its current understanding of my criminal history and that the State's recommendation upon termination is based upon that calculation. My attorney and I have reviewed the offender score calculation, including the criminal history upon which it is based, and I agree that the offender score calculation in this Agreement is accurate.

I stipulate that none of the listed offenses "wash" for scoring purposes and waive any future argument regarding "washing" of the convictions listed in this Agreement. I understand that my offender score and standard range may increase if additional criminal history is discovered, an error in scoring error is found, and/or I am convicted of another crime after entering this Agreement. I understand that any resulting increases to my offender score and/or sentencing range will not be grounds to withdraw from this Agreement and that I will still be bound by its terms.

In addition, if I am convicted of a felony offense, I understand I will be prohibited from possessing, owning, or having in my control any firearm unless my right to do so is restored by a court of record.

NOTE TO DEFENDANT

This Agreement is a contract between you and the Kitsap County Prosecutor’s Office. In order to receive the benefit of the contract (dismissal of your charges), you must comply with all terms of this Agreement. If you fail to satisfy any of these requirements, you can be found guilty of the crime(s) charged in this case by a Judge without a trial by jury.

I declare (or affirm) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED in Port Orchard, WA on – _____.

/s/ Signed Electronically

____ Defendant

____ Signed by counsel for Defendant after receiving permission from Defendant.

I have read and discussed this document with Defendant, and believe Defendant is competent and fully understands this document.

/s/ Signed Electronically

PROSECUTING AUTHORITY

_____ (name)

_____ (WSBA No.)

/s/ Signed Electronically

DEFENDANT’S LAWYER

_____ (name)

_____ (WSBA No.)

[Note – By typing your name, you intend to sign electronically and agree your electronic signature is the same as a handwritten signature for the purpose of validity, enforceability, and admissibility.]

KITSAP COUNTY DISTRICT COURT
STATE OF WASHINGTON

<p>STATE OF WASHINGTON,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>_____ ,</p> <p style="text-align: center;">Defendant.</p>	<p>No. _____</p> <p>NOTICE OF APPEARANCE</p>
--	---

To – CLERK OF THE ABOVE-ENTITLED COURT
AND TO – KITSAP COUNTY PROSECUTING ATTORNEY’S OFFICE

1. _____ **NOTICE OF APPEARANCE.** PLEASE TAKE NOTICE that the Kitsap County Superior Court appointed the Kitsap County Office of Public Defense to represent the above-named Defendant in a pending matter which has now been filed with this Court.

The Kitsap County Office of Public Defense assigned _____ of the _____ Law Office to represent Defendant in the Superior Court matter. According to either the terms of my employment or the public defense contract my firm has with the Kitsap County Office of Public Defense, my firm is responsible for representing a defendant when a Kitsap County Superior Court matter is resolved in this Court. Accordingly –

_____ PLEASE TAKE NOTICE that that my firm _____ hereby enters a notice of appearance as attorney for Defendant in this case.
2. **WAIVE ARRAIGNMENT.** Defendant waives arraignment on the charge(s) filed in this case pursuant to CrRLJ 4.1(g).
3. **NOT GUILTY PLEA.** Defendant enters a plea of not guilty.
4. **OBJECTION.** Defendant objects to the charging document as failing to charge a crime and requests a bill of particulars pursuant to CrRLJ 2.4(e) and CrRLJ 4.1(g)(3).
5. **TIME FOR TRIAL.** Defendant requests the Court set a trial date within the requirements of CrRLJ 3.3 with the commencement date as the date of receipt by this Court of this notice of appearance, unless the time periods have previously been commenced by appearance in open court. CrRLJ 4.1(g)(4).
6. **DISCOVERY.** Discovery shall be issued by the Kitsap County Prosecuting Attorney’s Office in accordance with the requirements of LCrRLJ 4.7.1.

DATED – _____

/s/ Signed Electronically
_____ DEFENDANT’S LAWYER
_____ (name)
_____ (WSBA No.)