

**KITSAP COUNTY DISTRICT COURT
STATE OF WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

v.

_____,
Defendant.

No. _____

PRETRIAL DIVERSION AGREEMENT

1. PRETRIAL DIVERSION AGREEMENT

COMES NOW the Prosecution (“the State”), by and through its attorney of record below-named, and the Defendant (“Defendant”), by and through Defendant’s attorney of record below-named, and hereby enter the following Pre-Trial Diversion Agreement (hereafter “Agreement”) –

2. DEFENDANT’S WAIVER OF RIGHTS

- 2.1 **Waiver Of Time For Trial.** Defendant understands that Defendant has the right to be tried within ninety (90) days following the “commencement date” as defined in (CrRLJ 3.3(c)(2)(i)), and that if Defendant does not receive a trial within this time period the case may be dismissed with prejudice. Defendant understands that Defendant has a right to trial by *(date)* _____.

Defendant gives up that right and agrees to 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.

- 2.2 **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 (CrRLJ 6.1.1(a)). Defendant hereby waives Defendant’s jury trial right, and requests that Defendant’s guilt or innocence be decided by a judge.

- 2.3 **Waiver Of Rights And Waiver Of Objection To Any Evidence Presented.** 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 waives (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 waiving (giving up) the constitutional right to a jury trial, the right to hear and question witnesses, the right to call witnesses on Defendant's own behalf, the right to testify or not to testify, the right to remain silent, the right to challenge the admissibility of statements Defendant has made, the right to challenge physical, oral or identification evidence, or any other evidence, and the right to assert any claim of privilege, including but not limited to the following privileges – spousal and/or 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 counselor (RCW 18.19.180), and the right to challenge on appeal the sufficiency of facts contained in the written reports admitted as evidence and used to convict Defendant.

Defendant understands that this Agreement by itself is not an admission of guilt but agrees not to contest the sufficiency of the evidence necessary to convict Defendant and understands and agrees that if Defendant is found in breach of this Agreement and a guilt determination is later held, the judge will determine whether Defendant is guilty beyond a reasonable doubt based only on the State's evidence.

3. CHARGE(S) IN THIS CASE

- 3.1 **Maximum Penalty.** Defendant understands that the crime(s) charged in this case carry a maximum sentence and fine of –

___ **364 Days in Jail and \$5,000 Fine.** Count(s) _____

___ **180 Days in Jail and \$1,000 Fine.** Count(s) _____

___ **90 Days in Jail and \$1,000 File.** Count(s) _____

___ **Other** – _____

* Fine does not include additional costs and assessments required by law.

- 3.2 **Judge Can Give Up To The Maximum Sentence.** The Defendant understands that the judge – (a) does not have to follow anyone's recommendation about a sentence; and (b) may impose any sentence, up to the maximum authorized by law, no matter what the State or the Defendant recommends.

4. LENGTH OF AGREEMENT

- 4.1 The Defendant and the State agree this Agreement shall be in effect for at least the following length of time –

___ 6 months; ___ 1 year; ___ 18 months; ___ 2 years; ___ 3 years; ___ 5 years.

5. DEFENDANT’S AGREEMENT

- 5.1 **Monitoring By Probation Services.** Defendant shall contact Probation Services in room 106 of the Kitsap County Courthouse immediately upon this Agreement being entered in court if defendant is not in custody or within 3 days upon defendant being released from custody. Defendant agrees that Defendant’s compliance with this Agreement shall be monitored by Probation Services for the following agreed conditions. The Defendant agrees to –
- Probation Monitoring Assessment.** Pay a misdemeanor probation department assessment of –
____ \$ 150 (6 months); ____ \$ 300 (1 year); ____ \$450 (18 months);
____ \$600 (2 years); ____ \$900 (3 years); ____ \$1,500 (5 years).
- Defendant agrees to pay the assessment shown above within 180 days of entering this Agreement. The State is not required to satisfy the State’s Agreement in **section 6** of this Agreement until this assessment is paid.
- 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.
- Obey The Law.** Have no new criminal law violations. Defendant agrees that the Court may take action on the State’s motion alleging Defendant’s violation of this condition prior to any resolution of the alleged new criminal law violation.
- Defendant specifically agrees that a “conviction” for a criminal law violation occurring after entering into this Agreement is not a prerequisite to the Court taking action on the State’s motion to revoke this Agreement due to Defendant’s alleged violation of this condition.
- Defendant further agrees that Defendant’s petition or otherwise request of any Washington court to grant Defendant a deferred prosecution pursuant to chapter 10.05 RCW for any criminal law violation occurring after the signing of this Agreement is a violation of this condition.
- Defendant’s commission of a civil infraction does not constitute a violation of this Agreement unless otherwise stated in this Agreement.
- ____ **Substance Use Disorder Treatment.** 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 of entering into this Agreement.
- Defendant shall also successfully comply with all treatment recommendations and file written proof of such compliance through completion with Probation Services at least quarterly (every 3 months).
- ____ **DUI Victim Impact Panel.** 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 of entering into this Agreement.

____ **Defensive Driving Course.** Complete a Level 2, 8-hour minimum, defensive driving course (which may be completed online or in-person) and file written proof of completion with Probation Services within 90 days of entering into this Agreement.

____ **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 into this Agreement.

Defendant shall also successfully comply with all treatment recommendations and file written proof of such compliance through completion with Probation Services at least quarterly (every 3 months).

____ **Domestic Violence Parenting Class.** 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 of entering into this Agreement.

____ **Domestic Violence Victim Impact Panel.** Complete a domestic violence victim impact panel and file written proof of completion with Probation Services within 90 days of entering into this Agreement.

____ **Anger Management Course.** Complete an anger management course and file written proof of completion with Probation Services within 90 days of entering into this Agreement. Completion of an online course shall not satisfy this condition.

____ **Mental Health Treatment.** Obtain a mental health evaluation from a state-certified agency and file written proof of the evaluation with Probation Services within 90 days of entering into this Agreement.

Defendant shall also successfully comply with all treatment recommendations and file written proof of such compliance with Probation Services at least quarterly (every 3 months).

____ **Psychosexual Treatment.** 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 of entering into this Agreement.

Defendant shall also successfully comply with all treatment recommendations and file written proof of such compliance through completion with Probation Services at least quarterly (every 3 months).

____ **Liquor And Cannabis Control Board Course.** Complete a Washington State Liquor and Cannabis Control board course and file written proof of completion with Probation Services within 90 days of entering into this Agreement.

____ **Sex Buyer Course.** Complete a sex buyer course and file written proof of completion with Probation Services within 90 days of entering into this Agreement.

5.2 _____ **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.

_____ **Emergency Responder Restitution.** RCW 38.52.430. Defendant agrees to pay to the Court the following emergency responder restitution (maximum of \$2,500) as determined by a separate order entered contemporaneous to this Agreement –

_____ WSP – \$ _____; _____ KCSO – \$ _____; _____ BIPD – \$ _____;
_____ BPD – \$ _____; _____ POPD – \$ _____; _____ PPD – \$ _____;
_____ Fire District No. _____ – \$ _____

Note. The above amount(s) must be paid in full for each agency at one time. Partial payments will not be accepted by the Court.

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

The State is not required to satisfy the State's Agreement in **section 6** until all restitution is paid in full.

5.3 _____ **Other Agreed Conditions.** The Defendant agrees to comply with the following conditions. The Defendant agrees –

Failure To File Proof Of Compliance With The Court. 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 herein, is a material violation of this Agreement.

Be Present In Court. To appear at all future court hearings in person unless Defendant's presence in Court is not required in writing by the judge. Defendant further agrees that Defendant's presence in Court is not satisfied by appearance through counsel alone.

Contact Information. To notify the Court in person or in writing of any change of Defendant's – (1) residence or mailing address; (2) telephone number; and (3) email address. Defendant agrees that such notification to the Court must be made within ten (10) days of the change.

Pre-Trial Conditions Of Release. To abide by all pre-trial conditions of release imposed by any court. This includes, but is not limited to, any requirement imposed relating to the use of an ignition interlock device or any requirement imposed to personally appear in any court.

Seized Property. To forfeit today all property seized by law enforcement or any other agency pursuant to an investigation into the crime(s) charged in this case.

____ **Court Order(s) Prohibiting Contact Generally.** To strictly comply with all provisions of any No Contact Order entered in this case or any No Contact Order or Protection Order entered in any other case if such order restrains Defendant and was issued pursuant to any of Title 7, Title 10, Title 26 or Title 74 of the Revised Code of Washington or any temporary order for protection granted under any of those same Titles, or any valid foreign protection order as defined in RCW 26.52.020.

____ **No Contact Order In This Case.** To join the State's recommendation to the Court that any No Contact Order issued in this case shall remain in full force and effect until the Order expires or is rescinded (terminated) by the Court.

____ **No Contact With Person(s) [Non-DV Cases Only].** Not to make any attempt to contact the following person(s) –

____ .
This no contact provision specifically includes, as a non-exhaustive list, contact in person, in writing, by telephone, by electronic communication, or through third parties.

____ **No Contact With Location(s).** Not to enter upon the premises of the following location(s) –

____ **Alcohol And Cannabis Prohibited.** Not to possess or consume any beverage containing alcohol nor possess or consume any cannabis –

____ **Duration.** For the duration of this agreement.

____ **Written Proof.** Until Defendant files written proof with the Court Clerk of an evaluation indicating no significant alcohol or drug problem (screening of substance use reveals insufficient symptoms to indicate abuse or addiction to any substance, including but not limited to alcohol or cannabis) and files written proof with the Court Clerk of successful completion of alcohol/drug information school.

____ **Age 21.** Until Defendant becomes twenty-one years of age.

____ **Controlled Substances Prohibited.** Not to possess or consume controlled substances unless prescribed by a physician.

____ **Drinking And Driving.** Not to drive or be in actual physical control of a motor vehicle while having a blood or breath alcohol concentration of 0.03 or higher within two hours of driving or being in actual physical control of a motor vehicle.

Defendant shall not refuse to submit to a test of Defendant's breath or blood to determine alcohol and/or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe that Defendant was driving or in actual physical control of a motor vehicle while under the influence of an intoxicating liquor and/or drugs.

This condition of the Agreement does not give Defendant the right to drive or be in actual physical control of a motor vehicle while Defendant's ability to drive is at the time lessened to any appreciable degree. If Defendant is driving under the influence or in actual physical control of a motor vehicle while under the influence of an intoxicating liquor and/or drugs, then Defendant is in material breach of this Agreement.

____ **Ignition Interlock Device.** Not to operate any motor vehicle that is not equipped with a functioning ignition interlock alcohol device. Unless otherwise noted in this Agreement, there is no exception for vehicles used by Defendant in the course of Defendant's occupation or employment.

Upon the Defendant's motion to the Court, this condition may be rescinded (cancelled) by the Court one (1) year from the date of entry of this Agreement if Defendant is in strict compliance with this Agreement and if Defendant possesses a valid driver license and vehicle liability insurance at the time Defendant seeks cancellation of this condition.

____ **Driver's License And Insurance.** Not to drive a motor vehicle without possessing both a valid driver license and current proof of vehicle personal liability insurance.

____ **Firearm Prohibition.** Not to possess or own any firearm for the duration of this Agreement.

____ **Other.**

5.4 **Defendant's Promise to Fully Satisfy All Conditions.** Defendant understands and agrees that Defendant shall fully and completely satisfy all of the conditions of this Agreement, and that failure or neglect to carry out and fulfill any term or condition of this Agreement shall constitute a material violation of this Agreement.

Defendant specifically agrees that only substantial compliance with this Agreement constitutes insufficient performance on the part of Defendant, and that part, partial or substantial performance does not entitle Defendant to the benefit of Defendant's bargain under this Agreement.

Defendant also understands and agrees that any allegation by the State that Defendant has violated this Agreement will result in a hearing by the Court to determine whether a violation has been proven, and that the State will not be required to comply with its obligations in **section 6** titled "State's Agreement" until the Court has determined that Defendant did not violate this Agreement and that Defendant is in full compliance with this Agreement.

6. STATE'S AGREEMENT

- 6.1 _____ **Dismissal Of Charge(s)**. If Defendant successfully complies with all the promises Defendant has made herein, the State agrees at a hearing to be scheduled not before the Length Of Agreement in **section 4** to move to dismiss with prejudice the charge(s) filed in count(s) _____.
- 6.2 _____ **Amendment Of Charge(s) – DUI Or Physical Control**. If Defendant successfully complies with all the promises Defendant has made herein, the State agrees at a hearing to be scheduled not before the Length Of Agreement in **section 4** to move to amend the charge of ____ Driving Under The Influence or ____ Physical Control of Vehicle While Under the Influence charged in this case in count(s) _____ to the lesser charge of –
- _____ **Negligent Driving In The First Degree**. RCW 46.61.5249.
- _____ **Reckless Driving**. RCW 46.61.500.
- Defendant agrees to entry of a guilty finding by the judge on the amended lesser charge pursuant to *In re Personal Restraint of Barr*, 102 Wn.2d 265, 271 (1984).
- Negligent Driving in the First Degree has a maximum penalty of 90 days in jail and a \$1,000 fine, plus costs and assessments. Reckless Driving has a maximum penalty of 364 days in jail and a \$5,000 fine, plus costs and assessments.
- The judge may impose up to the maximum penalty on any crime regardless of anything in this Agreement and no matter what the State and Defendant recommends.
- Upon entry of a conviction for the amended charge, the State will make the following sentencing recommendation to the judge that –
- The Court impose zero (0) days of confinement;
 - The Court impose only mandatory legal financial obligations;
 - The Court impose no probation nor impose a suspended sentence; and
 - Any pre-trial conditions of release requiring the use of an ignition interlock device be rescinded (cancelled).

7. PROCEDURE ON ALLEGED VIOLATION OF AGREEMENT

- 7.1 **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 Revoke 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.
- Defendant expressly waives any right to appear through counsel and Defendant agrees that Defendant may not request to appear through counsel, whether under CrRLJ 3.4 or CrRLJ 7.6 or otherwise, and further specifically agrees to appear in the above-captioned cause in only one of two ways: by either physical appearance, as defined in CrRLJ 3.4(b)(1), or by remote

appearance, as defined in CrRLJ 3.4(b)(2). Appearance through counsel, as defined in CrRLJ 3.4(b)(3), at any hearing during the pendency of the case after the entry of this Agreement constitutes a material breach of the Agreement, including and regardless of whether the Court otherwise previously authorized or would in the future authorize appearance through counsel.

- 7.2 **Procedure**. The parties further 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 the Defendant's court file and may consider evidence found in the 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.

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 or reduction 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.

DATED – _____

/s/ Signed Electronically

_____ (defendant)

____ Signed by counsel for the defendant after
receiving permission from the defendant.

I have read and discussed this statement with the
defendant, and believe the defendant is competent
and fully understands this Agreement.

/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.]