

218A.14151 Deferred prosecution program for first and second offenders of KRS 218A.1415.

- (1) A defendant charged with his or her first or second offense under KRS 218A.1415 may enter a deferred prosecution program subject to the following provisions:
 - (a) The defendant requests deferred prosecution in writing on an application created under KRS 27A.099, and the prosecutor agrees;
 - (b) The defendant shall not be required to plead guilty or enter an Alford plea as a condition of applying for participation in the deferred prosecution program;
 - (c) The defendant agrees to the terms and conditions set forth by the Commonwealth's attorney and approved by the court, which may include any provision authorized for pretrial diversion pursuant to KRS 533.250(1)(h) and (2); and
 - (d) The maximum length of participation in the program shall be two (2) years.
- (2) If a prosecutor denies a defendant's request to enter a deferred prosecution program, the prosecutor shall state on the record the substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety.
- (3) If the defendant successfully completes the deferred prosecution program, the charges against the defendant shall be dismissed, and all records relating to the case, including but not limited to arrest records and records relating to the charges, shall be sealed, except as provided in KRS 27A.099. The offense shall be deemed never to have occurred, except for the purposes of determining the defendant's eligibility for deferred prosecution, and the defendant shall not be required to disclose the arrest or other information relating to the charges or participation in the program unless required to do so by state or federal law.
- (4) If the defendant is charged with violating the conditions of the program, the court, upon motion of the Commonwealth's attorney, shall hold a hearing to determine whether the defendant violated the conditions of the program.
- (5) If the court finds that the defendant violated the conditions of the program, the court may, with the approval of the prosecutor:
 - (a) Continue the defendant's participation in the program;
 - (b) Change the terms and conditions of the defendant's participation in the program; or
 - (c) Order the defendant removed from the program and proceed with ordinary prosecution for the offense charged.

Effective: June 8, 2011

History: Created 2011 Ky. Acts ch. 2, sec. 20, effective June 8, 2011.