

# **RECITATION OF RIGHTS IN CRIMINAL CASES**

## ***A Kentucky Best Practices Guide***

*A joint project of Kentucky District Court Judges, County Attorneys,  
Public Defenders, and Criminal Defense Lawyers*

**July 2012**

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Kentucky Best Practices Guidelines

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# 1. Introduction

In the Fall 2011, then President of the District Court Judges Association, Judge Karen A. Thomas, asked Kentucky District Court Judges, County Attorneys, Public Defenders, and KACDL to meet to discuss issues of appointment and waiver of counsel and related issues including video arraignments, eligibility determinations for representation, collateral consequences, presence of county attorney and public defender, pros and cons of video vs. in-person communications, and create Best Practices Guidelines for the improvement of the administration of justice.

The members of the Best Practices Workgroup are:

- Judges: Karen Thomas, Brandy Brown, Charles Moore, Steve Hurt, Ann Bailey Smith, Ken Easterling and Rupert Wilhoit;
- County Attorneys: John Estill, Robert Neace, Dan Albers, and Mike O'Connell;
- Public Defenders: Damon Preston, Glenda Edwards, Amanda Mullins, Jay Lambert, Don Meier, Dan Goyette, and Ed Monahan; and
- Ernie Lewis on behalf of the Kentucky Association of Criminal Defense Lawyers.

The Best Practices Workgroup met six times over the course of seven months to discuss current practices, challenges and guidelines to encourage best practices. This manual has been created as a resource for judges to use in conducting the daily business of district court.

## **A. Length of Advisements and Colloquies and Level of Comprehension**

Recommended and sample documents have an indication of the length of time it takes to read and an indication of the U.S. school grade level according to the Flesch-Kincaid Grade Level Test. For example, a score of 8.0 means that an eighth grader can understand the document.

## **2. Group Advisement of Rights**

Every criminal court docket should begin within an advisement of rights to all in attendance. This advisement does not substitute for an individual colloquy with each defendant who seeks to waive any constitutional rights or whom the court has a reason to believe fails to understand the proceedings.

The Group advisement of rights should include each of the following topics:

1. Announcement of the docket (criminal, traffic, misdemeanor, arraignment, etc.)
2. Right to remain silent
3. Right to representation by an attorney and appointment of counsel if eligible
4. Right to reasonable bail.
5. Presumption of innocence and burden of proof
6. Right to a trial
7. Right to preliminary hearing
8. Right to appeal
9. Waiver of rights, including guilty plea, must be voluntary, knowing and intelligent.

The following maybe given during a group colloquy but shall be given during an individual plea of guilty.

1. Possibility of enhancement of offenses
2. Possibility of expungement of some offenses

## A. Announcement of the Docket

### Examples of Announcement of the Docket:

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 6.6 grade level.  
This takes 35 seconds to read

- A. Good morning/afternoon! We are preparing to begin the (time) docket of the \_\_\_\_\_ District Court. When I call your name, please step up to the podium (or before the bench) so we can address your case. I will ask you some questions and you should feel free to let me know if there is anything you do not understand. Your case is important and I want you to understand everything that happens today and what will happen after today's court appearance.

Any time you are charged with a crime it is a serious matter. Because it is so serious I want to take a few minutes to make sure that you understand that the law gives you certain rights. These rights are guaranteed to you unless you choose to give them up.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 3.7 grade level.  
This takes 10 seconds to read

- B. Good morning! This is (Felony/Misdemeanor Court #\_\_\_\_); (Traffic Court #\_\_\_\_); or (Non-Support Court). If you are a Defendant in a case here today, you have been charged with a violation of the law. I want to make sure you understand your rights.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 10.3 grade level.  
This takes 45 seconds to read

- C. Ladies and Gentlemen this is a criminal arraignment docket. This arraignment docket is an opportunity for you to hear the charges against you and enter a plea of either guilty or not guilty to those charges. If you choose to plead guilty this morning you need to understand what you are doing by entering a plea of guilty to the charges. When you plead guilty you are telling me you are guilty and that your guilty plea is free, voluntary and knowing. You are also telling me that you understand that pleading guilty can have unforeseen consequences such as a loss of scholarship opportunities, housing and possibly result in enhanced penalties should you be convicted of this same type of charge again. You also are telling me that you understand that you are waiving constitutional rights. Those rights include...

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 4.5 grade level.

This takes 35 seconds to read

- D. Good Morning! This is the \_\_\_\_\_ District Court. My name is Judge \_\_\_\_\_. For most of you, this is your first appearance before the court on the charges you presently face. This is known as the arraignment call of your case. At the arraignment call, you are called upon by the court to enter a plea to the charges against you. The pleas we recognize here in Kentucky are those of Guilty and Not Guilty.

In all these cases, there are certain statutory and constitutional rights which you have. I am required to review these with you prior to the call of your case.

## B. Right to Remain Silent

### Authority:

U.S. Constitution, Fifth Amendment - No person ... **shall be compelled in any criminal case to be a witness against himself...**

Kentucky Constitution, Section 11 - In all criminal prosecutions the accused has the right to be heard by himself and counsel... **He cannot be compelled to give evidence against himself...**

Kentucky Rules of Criminal Procedure 3.05 - (1) At the time of the defendant's appearance the judge shall inform the defendant of the charge against him or her and of his or her right to a preliminary hearing or a trial, and shall advise the defendant of his or her right to have counsel. **The defendant shall be informed also that he or she is not required to make a statement and that any statement made by him or her may be used against him or her ...**

### Examples of Advisement of Right to Remain Silent:

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 6.2 grade level.

This takes 25 seconds to read

- A. You have a right to remain silent about the facts of your case. You do not have to answer any questions from me or the prosecutor about the case. It is the prosecutor's job to prove that you committed the crime and you do not have to say anything in your defense unless you choose to. If you choose to speak, whatever you say could be used against you. Your choice to remain silent cannot be used against you.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.6 grade level.

This takes 25 seconds to read

- B. If you choose to plead guilty today and you want to explain how the situation occurred or explain any extenuating circumstances, all you have to do is tell me that there is something that you wish to say. I am happy to listen. However, if you have entered a plea of not guilty or I entered the not guilty plea for you, I urge you to exercise your right to remain silent and say nothing further. Your silence does not imply any wrong doing on your part and cannot be used against you. Any statement that you do make can be used against you.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 7.6 grade level.

This takes 15 seconds to read

- C. You have the right to remain silent concerning the charges and the right to refuse to testify at any stage of the proceedings. Your silence does not imply any wrongdoing on your part and cannot be used against you. Any statement that you do make can be used against you.

## C. Right to Counsel and Appointment of Counsel

### Authority:

U.S. Constitution, Sixth Amendment - In all criminal prosecutions, the accused shall enjoy **the right to ... have the Assistance of Counsel for his defense.**

Kentucky Constitution, Section 11 - In all criminal prosecutions the accused has **the right to be heard by himself and counsel.**

Kentucky Rules of Criminal Procedure 3.05 – (2) If the crime of which the defendant is charged is punishable by confinement and the defendant is financially unable to employ counsel, **the judge shall appoint counsel** to represent the defendant unless he or she elects to proceed without counsel.

### Examples of Advisement of Right to Representation by and Appointment of Counsel:

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 13.6 grade level.

This takes 45 seconds to read

- A. If you are here today charged with an offense which carries the possibility of a jail sentence, you are entitled to be represented by an attorney. If you are not represented by an attorney today, you will see attorneys walking in and out of the courtroom representing other individuals, so you might want to speak with one of them out in the hallway about your case.



If you are unable to afford an attorney, let me know that when you approach the podium. I will inquire further into your financial circumstances to see whether you qualify for the appointment of the Public Defender's office. If you do so qualify, I will continue your case to another date so you will have an opportunity to meet with your attorney prior to trying to resolve your case or having a hearing or a trial on your case.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 10.5 grade level.

This takes 45 seconds to read

- B. You have the right to be represented by an attorney at all stages of the proceedings. If you do not know an attorney, there are always attorneys who appear in this courtroom and, further, you can reach the (local) Bar Association from its listing in the telephone directory. That Association could give you a list of attorneys that might assist you.

If you cannot afford to hire an attorney, the State of Kentucky is charged with the responsibility, in some cases, of furnishing you with court appointed counsel. You must have proof to my satisfaction that you are truly indigent and unable to hire your own attorney. You may request the appointment of a public defender when you are called up here before the bench.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.8 grade level.

This takes 55 seconds to read

- C. You also have the right to have an attorney represent you. If you want a Public Advocate – that is an attorney that I would appoint to represent you – let me know that when you come up. I do not know if you already have an attorney or if you do not want an attorney and you wish to represent yourself. If you want me to appoint you an attorney, you must tell to me.

After I know you want court appointed counsel, I need to see if you qualify. In order to qualify for a Public Advocate you must be looking at some kind of jail time – active, probated, or discharged – and your income/property must be such that you can be found by the court to be indigent. If the Court finds that you do not qualify for a Public Advocate then you must hire your own attorney, should you wish to retain one. You have the right to be represented by an attorney at all stages of the proceedings. If you do not know an attorney, you can reach the (local) Bar Association from its listing in the telephone directory. This organization can provide you with a list of attorneys.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 9.5 grade level.

This takes 1½ minutes to read

- D. The first right you have when you are charged with a crime is the right to a lawyer. You do not have to handle this case by yourself and you should not feel pressured to handle the case yourself if you want a lawyer to help you. A lawyer can go over the evidence against you, listen to your side of the story, and then help you decide which options may be best for you. A lawyer may be able to tell you whether you have a defense to the crime or whether you should have been charged with a less serious offense to begin with. If you want to try to settle your case, a lawyer may be better skilled at negotiating with the prosecutor than you on your own. Also, a lawyer may help you understand other consequences of a conviction, such as problems in areas of immigration or eligibility for public benefits like housing or student loans. If you do not have a lawyer, no one else in the court system has the job of helping you with these matters or acting only in your interest. I cannot give you advice.

If you can afford a lawyer but do not have one with you today, I will give you time to hire one. If you cannot afford a lawyer, I will appoint one from the Public Defender's office to assist you at either no cost or at a reduced cost based on how much you are able to pay. If you do not have a lawyer with you when your case is called, my first question to you will be whether you want to have one. Let me know at that time if you plan to hire one or want me to consider appointing a lawyer for you. If you want to go ahead with your case without a lawyer, you may do so, but only after I make sure that you understand your rights.

## D. Right to Reasonable Bail

### Authority:

U.S. Constitution, Eighth Amendment - **Excessive bail shall not be required.**

Kentucky Constitution, Section 16 - **All prisoners shall be bailable** by sufficient securities, unless for capital offenses when the proof is evident or the presumption great...

Kentucky Constitution, Section 17 - **Excessive bail shall not be required.**

Kentucky Rules of Criminal Procedure 3.05 – (1) At the time of the defendant's appearance the judge shall ... **release the defendant on personal recognizance or admit the defendant to bail** if the offense is bailable.

### Example of Advisement of Right to Reasonable Bail:

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 6.9 grade level.

This takes 20 seconds to read

You have a right to a reasonable bail or bond. If you are in custody, when your case is called, I will review your bond and consider whether it should be changed. There are a number of factors that I have to consider, including information that you have given the pretrial officer. If you believe there is something else I should consider, let me know. I will then make a decision about your bond.

## E. Presumption of Innocence and Burden of Proof

### Authority:

**“The presumption of innocence**, although not articulated in the Constitution, **is a basic component of a fair trial** under our system of criminal justice.” *Estelle v. Williams*, 425 U.S. 501, 503 (1976).

KRS 500.070(1) – **The Commonwealth has the burden** of proving every element of the case **beyond a reasonable doubt**.

Kentucky Rules of Criminal Procedure 9.56 – (1) In every case the jury shall be instructed substantially as follows: **“The law presumes the defendant to be innocent** of a crime, and the indictment shall not be considered as evidence or as having any weight against him or her. You shall find the defendant not guilty unless you are satisfied from the evidence alone, and **beyond a reasonable doubt**, that he or she is guilty.

### Examples of Advisement of Presumption of Innocence and Burden of Proof:

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.0 grade level.

This takes 15 seconds to read

- A. You have a right to a trial at which the prosecutor must prove your guilt beyond a reasonable doubt. You are at all times presumed innocent until you have been proven guilty at trial. In other words, I do not assume and a jury would not assume you are guilty just because you have been charged with a crime.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 12.8 grade level.

This takes 10 seconds to read

- B. You are presumed to be innocent of any charges against you, and if you plead not guilty, the prosecution must prove your guilt beyond a reasonable doubt.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 13.2 grade level.

This takes 10 seconds to read

- C. You have the right to have the Commonwealth/County Attorney prove their case beyond a reasonable doubt, keeping in mind that you are innocent until proven guilty.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 5.9 grade level.

This takes 10 seconds to read

- D. Your rights include the presumption of innocence. You are presumed to be innocent of the charge. It is the burden of the Commonwealth to prove your guilt beyond a reasonable doubt.

## F. Right to a Trial and the Rights Realized at Trial

### Authority:

U.S. Constitution, Sixth Amendment - In all criminal prosecutions, **the accused shall enjoy the right to a speedy and public trial**, by an impartial jury... and to be **informed of the nature and cause of the accusation**; to be **confronted with the witnesses** against him; to have **compulsory process** for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Kentucky Constitution, Section 7 - The ancient mode of **trial by jury** shall be held sacred, **and the right thereof remain inviolate...**

Kentucky Constitution, Section 11 - In all criminal prosecutions the accused has the right to be heard by himself and counsel; to **demand the nature and cause of the accusation against him**; to **meet the witnesses face to face**, and to have **compulsory process** for obtaining witnesses in his favor. He cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land; and in prosecutions by indictment or information, he shall have **a speedy public trial by an impartial jury ...**

Kentucky Rules of Criminal Procedure 3.05 - (1) At the time of the defendant's appearance the judge shall inform the defendant of the charge against him or her and of his or her **right to a preliminary hearing or a trial**.

### Examples of Advisement of Right to a Trial and the Rights Realized at Trial:

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 17.0 grade level.

This takes 15 seconds to read

- A. Your rights include the right to have a jury or a bench trial, the right to call witnesses in your own behalf using the subpoena powers of the Court, if necessary, and the right to cross exam witnesses called against you.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 14.8 grade level.

This takes 25 seconds to read

- B. You have a right to a trial at which the prosecutor must prove your guilt beyond a reasonable doubt. At the trial, you would have a right to question the prosecutor's witnesses, call witnesses of your own, testify yourself if you choose, and present evidence, but you do not have to do any of these things. Your trial could be before the court, where I would decide, based on the evidence presented, whether your guilt has been proven, or you could have your case decided by a jury of 6 neutral citizens from our community who would decide whether your guilt has been proven.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 7.8 grade level.

This takes 15 seconds to read

- C. You have a right to a trial before a judge or a jury at your request. At any trial, you have the right to confront witnesses against you and to present evidence in your own behalf.

## **G. Right to a Preliminary Hearing**

### **Authority:**

Kentucky Rules of Criminal Procedure 3.05 - (1) At the time of the defendant's appearance the judge shall inform the defendant of the charge against him or her and of his or her **right to a preliminary hearing** or a trial...

Kentucky Rules of Criminal Procedure 3.07 - **A defendant who has not been indicted is entitled to a preliminary hearing**, unless waived, when charged with an offense requiring an indictment pursuant to Section 12 of the Kentucky Constitution.

Kentucky Rules of Criminal Procedure 3.10 - (2) If the defendant does not waive the preliminary hearing, such hearing shall be held within a reasonable time but no later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if the defendant is not in custody...

### **Examples of Advisement of Right to a Preliminary Hearing:**

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 11.5 grade level.

This takes 20 seconds to read

- A. For those of you charged with a felony: You are entitled to a preliminary hearing before a judge to determine whether probable cause exists to believe the offense charged was committed and committed by you. You may waive a preliminary hearing. If you do not, the hearing shall be held within ten (10) days if you are in custody and within twenty (20) days if you are not in custody.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 13.1 grade level.

This takes 25 seconds to read

- B. If you've been charged with a felony, you are entitled to a preliminary hearing to determine whether probable cause exists to believe you committed the offense charged against you. The hearing shall be held within 10 days of your arraignment if you are in jail or within 20 days of your arraignment if you are not in jail unless you agree to a longer period of time before the preliminary hearing. You may waive the preliminary hearing.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 16.8 grade level.

This takes 20 seconds to read

- C. If you are charged with a felony, I will enter a plea of not guilty on your behalf and set the matter for a preliminary hearing where the Court determines whether probable cause exists to believe that a felony was committed and that you committed the offense charged. The hearing shall be held within 10 days of your arraignment if you are in jail or within 20 days of your arraignment if you are not in jail, unless waived.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 7.9 grade level.

This takes 5 seconds to read

- D. If you are charged with a felony offense, this is your initial appearance. We will set your case for a preliminary hearing and review the terms and conditions of your bond.

## **H. Right to Appeal**

### **Authority:**

Kentucky Constitution, Section 115 - In all cases, civil and criminal, there shall be allowed as a matter of right at least one appeal to another court, except that the Commonwealth may not appeal from a judgment of acquittal in a criminal case...

### **Examples of Advisement of Right to Appeal:**

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 7.2 grade level.

This takes 5 seconds to read

- A. You have the right to appeal any judgment within 30 days after the judgment is entered; however, if a guilty plea is entered, you do waive your right to an appeal.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 6.1 grade level.

This takes 5 seconds to read

- B. You have the right to appeal a judgment or order from this Court within 30 days.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 6.7 grade level.

This takes 10 seconds to read

- C. If you have a trial and are found guilty, you would have the right to appeal that conviction. That means the \_\_\_\_\_ Circuit Court would review the case to make sure you received a fair trial under the law.

## I. Waiver of Rights, Including Guilty Plea, Must be Voluntary, Knowing and Intelligent

### 1. Waiver of Rights

#### Authority:

“A plea of guilty constitutes a waiver of several fundamental constitutional rights. In view of the importance of the rights being abandoned, to be valid **the plea must be knowing, intelligent and voluntary.**” *Haight v. Commonwealth*, 760 S.W.2d 84, 87-88 (Ky. 1988), citing *Boykin v. Alabama*, 395 U.S. 238 (1969) and *Brady v. United States*, 397 U.S. 742 (1970).

Kentucky Rules of Criminal Procedure 8.08 – The court ... shall not accept [a guilty] plea without first determining that **the plea is made voluntarily** with understanding of the nature of the charge.

#### Examples of Advisement That Waivers and Guilty Pleas Must be Voluntary, Knowing, Intelligent:

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 9.7 grade level.

This takes 5 seconds to read

- A. If you want to go ahead with your case without a lawyer, you may do so, but only after I make sure that you understand your rights.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.5 grade level.

This takes 15 seconds to read

- B. If you wish, you can give up your right to a trial and to an appeal by pleading guilty. You should plead guilty only if you understand your rights and options and decide it is in your best interest to enter a guilty plea. You should not plead guilty because of pressure from anyone else or because you believe that is your only option.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 11.9 grade level.

This takes 5 seconds to read

- C.** Any plea entered to the charges must be voluntary on your part and not the result of undue influence or coercion on the part of someone else.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.9 grade level.

This takes 15 seconds to read

- D.** If you choose to plead guilty this morning you need to understand what you are doing by entering a plea of guilty to the charges. When you plead guilty you are telling me you are guilty and that your guilty plea is free, voluntary and knowing. You also are telling me that you understand that you are waiving you constitutional rights.

## **2. Free and Voluntary: Possibility of Enhancement of Offenses or Collateral Consequences**

### **Authority:**

ABA Standards for Criminal Justice: Pleas of Guilty, Standard 14, 1.4 - (c) Before accepting a plea of guilty or nolo contendere, the court should also advise the defendant that by entering the plea, the defendant may face additional consequences including but not limited to the forfeiture of property, the loss of certain civil rights, disqualification from certain governmental benefits, enhanced punishment if the defendant is convicted of another crime in the future, and, if the defendant is not a United States citizen, a change in the defendant's immigration status. The court should advise the defendant to consult with defense counsel if the defendant needs additional information concerning the potential consequences of the plea.

### **Examples of Advisement of Possibility of Enhancement of Offenses or Collateral Consequences:**

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.6 grade level.

This takes 20 seconds to read

- A.** In District Court there are certain matters that are enhanceable offenses. By that I mean that if you are charged with the same offense again within a period of time, and normally the period of time is five (5) years, the penalties will go up. If you are charged with any other enhanceable offense, I will inform you of that while you are at the podium.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 23.9 grade level.

This takes 15 seconds to read



- B. By pleading guilty, you are also telling me that you understand that pleading guilty can have unforeseen consequences such as a loss of scholarship opportunities or housing, or an impact on your immigration status and possibly result in enhanced penalties should you be convicted of this same type of charge again.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 7.0 grade level.

This takes 15 seconds to read

- C. A guilty plea will result in a conviction and you would be sentenced today. You would then have a criminal record. Also, if you are charged with a crime in the future, it may be possible for this conviction to be used to make the punishment for that crime more severe.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 16.8 grade level.

This takes 10 seconds to read

- D. A lawyer may help you understand other consequences of a conviction, such as problems in areas of immigration or eligibility for public benefits like housing or student loans.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 10.8 grade level.

This takes 15 seconds to read

- E. Kentucky is an enhanceable offense state. This means if you are convicted of or plead guilty to the same offense more than one time within a 5 year time period, your penalties can be increased up to and including a felony. Examples of enhanceable offenses are driving under the influence and assault fourth domestic violence.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 16.8 grade level.

This takes 15 seconds to read

- F. First, the legislature has chosen to enhance penalties for many offenses if you have a prior conviction on that same charge. In other words, the penalties could be a lot more severe. I want you to assume that the charge or charges against you will be enhanceable. If it happens that a charge is not enhanceable you are not harmed but if it is you cannot say you didn't know.

Enhancement and collateral consequences maybe included in a larger group colloquy but the Court must inform the defendant of known enhancement issues and known collateral consequences.

### 3. Collateral Consequences of Conviction

Beyond the punishment of being convicted and receiving a sentence there can be other significant penalties as a result of a conviction, such as problems in areas of immigration or eligibility for public benefits like housing or student loans, loss of a driver's license, and employment.

#### Responsibility of judge

Judges do not have the responsibility to know collateral consequences of convictions. ABA standards state that trial judges have an obligation to ensure that defendants have been advised of collateral consequences when accepting a guilty plea. ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons 19-2.3(a), 19-2.4(b) (3d ed. 2003). Standards 19-2.3(b) and 19-2.4(c), however, state that failing to do so should not be a basis for withdrawing a plea or challenging a sentence. See *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).

### J. Possibility of Expungement in Some Circumstances

#### Authority:

KRS 431.078 - (1) Any person who has been convicted of a misdemeanor or a violation, or a series of misdemeanors or violations arising from a single incident, may petition the court in which he was convicted for expungement of his misdemeanor or violation record, including a record of any charges for misdemeanors or violations that were dismissed or amended in the criminal action. **The person shall be informed of the right at the time of adjudication.**

#### Example of Advisement of Possibility of Expungement in Some Circumstances:

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 11.2 grade level.

This takes 35 seconds to read

- A. If you plead guilty or are found guilty, you may eventually wish to have your record expunged, or erased. In order to do that, you must wait five (5) years from the date of conviction, or five (5) years from the end of any probated jail time that you receive. There are other conditions that must be met in order to receive an expungement of your record from a conviction, so you may wish to hire an attorney to help you with that motion. If the case is dismissed with prejudice, you must wait sixty (60) days from the date of the dismissal in order to make a motion to expunge the case that was dismissed.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 10.2 grade level.

This takes 15 seconds to read.

- B. If you plead guilty or are convicted at trial of a misdemeanor or violation offense, you may petition this Court for expungement of that record. This includes charges that were dismissed or amended. This petition for expungement cannot be filed sooner than five (5) years from completion of your sentence.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 11.1 grade level.

This takes 15 seconds to read.

- C. You can request that a conviction be expunged after 5 years, but the statute is very narrow for getting a conviction expunged. If you have been in trouble before or get in any more trouble, this may not be an option for you so be aware of that before you plead.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 12.4 grade level.

This takes 25 seconds to read.

- D. Depending upon what misdemeanor you are convicted of, if any, you may be able to have the conviction expunged from your record, DEPENDING UPON YOUR BEHAVIOR THEREAFTER. Expungements are complicated and cannot be considered until five years after the expiration of the sentence and conditions, so you may wish to consult with counsel. This is just something to keep in the back of your mind. If all of your charges are dismissed and you want the charges expunged, you must wait sixty days to apply because there is a lot of paper work that has to be completed

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 10.9 grade level.

This takes 25 seconds to read.

- E. Some of you might walk out of here with a criminal conviction and, for whatever reason you just can't live with that fact. Under certain circumstances, you can have your conviction erased, or expunged. You must wait the longer of five years from the expiration of any [probated/conditionally discharged] jail time that you have, or jail time that you serve, whichever is longer. It can be a complicated procedure, so you are therefore strongly advised to seek the advice and counsel of an attorney before you attempt to have this done.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 13.9 grade level.

This takes 5 seconds to read.

- F. Also, there are provisions in the law for seeking expungement or the voiding of misdemeanor and traffic offenses if certain conditions are met.

## **K. Other Appropriate Advisements**

### **1. Court-Appointed Interpreter:**

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 13.3 grade level.

This takes 45 seconds to read

- A. The Court of Justice will provide you with a court interpreter if you are deaf or hard of hearing, cannot communicate in English, or if you have, in the opinion of the Court, another type of disability that would prevent you from properly understanding the nature of the proceedings or procedural rights. When speaking during court proceedings, you should direct your questions and responses to the person with whom you are speaking rather than the interpreter. The interpreter is bound by a code of professional responsibility. He or she will only interpret or translate what is said during court proceedings.

The interpreter shall not give legal advice, counsel, or express personal opinions to you. He or she will keep information from court proceedings confidential. If the interpreter provided is unable to communicate with you, if you have a justifiable reason to have a different interpreter, or if you do not wish to have the services of an interpreter, he or she will be removed upon your request.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 14.3 grade level.

This takes 5 seconds to read

- B. If you need the assistance of an interpreter for any reason, indicate to the Court your need and we will do whatever we can to accommodate it as soon as possible.

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 10.6 grade level.

This takes 10 seconds to read

- C. If you have trouble hearing me or understanding English or have any condition or disability that keeps you from fully understanding what is going on, let me know. We will get an interpreter for you if you need one or find some other way to help you.

### **2. Description of Possible Sentences:**

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.3 grade level.

This takes 50 seconds to read

If you are convicted after a guilty plea or trial, you will be sentenced to either a fine, jail time, or both. If you are sentenced to a fine, you will be given a date by which you must pay the fine or return to court to ask for more time. If you do not pay the fine or return to court, you could be arrested for your failure to pay the fine.

If you are sentenced to jail time, that time could be probated. Probated jail time means that you are being sentenced to a certain number of days in jail for the crime you have been convicted of, but that I have agreed to probate those days, meaning you do not have to serve the time as long as you obey the orders I give you. Those orders include not committing future crimes, but may also include other conditions. If you do not obey the orders, you could have to serve part or all of your sentence in jail. In other words, probation is not a freebie, but is your chance to prove that you have learned your lesson and can continue to obey the law. If you are given probation, it is very important that you understand what you must do to obey the orders of the court. Ask questions if you do not understand.

### **3. Individual Colloquy with *Pro Se* Defendants**

A person charged with a crime that could result in incarceration is entitled to be represented by counsel or to proceed *pro se*. The Federal and State Constitutions and Kentucky statutes require that the choice must be made knowingly, intelligently and voluntarily by the defendant and that the trial court affirmatively determine whether a waiver of counsel meets this standard.

#### **A. Proceeding *Pro Se* in District Court**

##### **Appointment of counsel for indigents is constitutionally required absent affirmative waiver**

The appointment of counsel for persons who cannot afford to hire their own attorney is required by the Sixth Amendment absent a knowing, intelligent, voluntary waiver. *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Alabama v. Shelton*, 535 U.S. 654 (2002).

“[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him... This noble ideal [of a fair trial] cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.” *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

As to misdemeanants who plead guilty, the United States Supreme Court clarified that the same principles apply, holding in *Alabama v. Shelton* 535 U.S. 654 (2002) that a suspended sentence that may end up in the actual deprivation of person's liberty may not be imposed unless the defendant was accorded the guiding hand of counsel in the prosecution for the crime charged.

KRS 31.140 requires the court to make an affirmative determination of an unrepresented defendant's waiver of counsel:

A person who has been appropriately informed under KRS 31.120 may waive in writing, or by other record, any right provided by this chapter, if the court concerned, at the time of or after waiver, finds of record that he has acted with full awareness of his rights and of the consequences of a waiver and if the waiver is otherwise according to law.

Thus, no plea that could result in incarceration, now or in the future, can be accepted from an unrepresented defendant without appointment of counsel or a valid waiver of counsel.

## **B. Valid Waiver of Counsel**

Under longstanding Kentucky law, a valid waiver of counsel must be affirmatively made and cannot be assumed by a defendant's silence in the face of a general description of one's right to counsel. In *Gholson v. Commonwealth*, 212 S.W.2d 537, 540 (Ky. 1948), after 22-year-old Ward Gholson entered a plea of guilty without counsel and was sentenced to two years in prison, Kentucky's highest court held, "It is incumbent upon the trial judge to determine whether the waiver of a right to be represented by counsel is made 'intelligently, competently, understandingly and voluntarily.' In the absence of such a showing, as is revealed by the record in the case at bar, we think the accused should be granted a new trial." See also *Johnson v. Zerbst*, 304 U.S. 458, 464–65 (1938); *Von Moltke v. Gillies*, 332 U.S. 708, 723–24 (1947);

In determining whether a waiver is made knowingly and voluntarily, court must consider such factors as the person's age, education, and familiarity with English, and the complexity of the crime involved. KRS 31.140.

## **C. Examples of Individual Colloquies with *Pro Se* Defendant.**

### **Example One**

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 7.4 grade level.  
This takes 20 seconds to read.

You have indicated that you wish to plead guilty to the charges against you.

Did you hear all the rights I gave at the beginning of court?

Do you have any questions about those rights?

You understand that when you plead guilty you are waiving constitutional rights that includes the right to have attorney represent you, the right to a trial, call witness, or appeal?

## Example Two

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.7 grade level.

This takes 3 minutes to read

1. You are charged with these crimes: \_\_\_\_\_. Would you like to speak to a lawyer before you decide whether to plead guilty or not guilty?  
(If yes) Do you plan to speak to a private lawyer or would you like me to consider appointing an attorney from the Public Defender's office?  
(If no) Since you have stated that you wish to proceed without an attorney, I have some questions I have to ask to make sure you understand what that means.
2. What education do you have? Do you have any problems understanding English or anything I have said today?
3. Do you understand that if you represent yourself, you are on your own? The prosecutor does not represent you, and I cannot give you any advice about what you should do.
4. Do you understand that there may, or may not, be defenses to the charges against you that you are not aware of that an attorney would recognize and be able to raise?
5. Being found guilty of a criminal charge sometimes leads to harms outside the courtroom, in areas such as public housing, student loans, immigration status, and many other areas. Are you aware that a guilty plea may, or may not, have effects beyond the sentence you receive from this court and that an attorney would be able to assist you in understanding those possible effects?
6. Finally, with some charges, being found guilty one time means that punishment for a future charge may be more severe. Do you understand that an attorney would be able to explain whether and how this affects your case?
7. Do you have any questions about anything I have asked?
8. Do you still wish to continue without an attorney?

## Example Three

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.0 grade level.

This takes 3 minutes to read

- You are before this Court charged with \_\_\_\_\_.
- That crime carries a maximum jail sentence of \_\_\_\_\_.

- Because it does carry a jail sentence, you have the right to be represented by an attorney and, if you cannot afford an attorney, then I will appoint one to represent you.
- Do you want to be represented by counsel on this case?

[IF NOT]

- How much education do you have?
- Do you understand that if you represent yourself, you are on your own?
- The prosecutor does not represent you, and I cannot give you any advice about what you should do.
- Do you understand that there may be defenses available to the charge(s) against you which you may not be aware of but that an attorney may be able to raise for you?
- Do you understand that your attorney would investigate your case which could result in weaknesses being exposed in the prosecutor's case against you?
- Do you understand that, after investigating your case, your attorney may advise you to take your case to trial or may be able to negotiate a more favorable result for you based on his or her training and experience?
- Understanding all of this, do you still wish to give up your right to be represented by an attorney?
- You further understand that by pleading guilty you are giving up your right to have a trial?
- You are giving up your right to question the witnesses who would be called to testify against you?
- You are giving up your right to remain silent as to the charge/these charges?
- And there is no appeal to a higher court from a plea of guilty?
- Do you understand all of this and are you giving up these rights?
- With that understanding, how do you plead to the charge(s) of \_\_\_\_\_?



## Example four

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 3.7 grade level.  
This takes 3 minutes to read

Mr./Ms. \_\_\_\_\_, were you here for the opening today and heard what I said?

Do you understand your charges of \_\_\_\_\_?

Do you understand your rights?

How do you want to proceed today?

Answer questions, etc., if any.

*If GUILTY (except for DUI) :*

Do you wish to speak to an attorney before you plead guilty?

Do you understand that by pleading guilty you are waiving and giving up ALL your rights, including the right to an attorney?

You need to understand that if you plead guilty to \_\_\_\_\_ it is what is called "enhance able." That means that if you commit this offense within the next \_\_\_\_\_ years the fine will \_\_\_\_\_ and the jail time can be \_\_\_\_\_/it can be charged as a felony. Do you understand that? (if applicable)

Understanding all that, do you still want to plead guilty?

You are sentenced to \_\_\_\_\_. Do you understand that?

Any questions? You are Free to go.

## 4. Eligibility for Appointment of Counsel: Role of Public Defender in Advance of Court Proceedings.

A needy person who is being detained by a law enforcement officer, on suspicion of having committed, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, or who is accused of having committed a public or status offense or who has been committed to the Department of Juvenile Justice or Cabinet for Health and Family Services for having committed a public or status offense as those are defined by KRS 610.010(1), 610.010(2)(a), (b), (c), or 630.020(2) is entitled to have

counsel appointed and be represented to the same extent as a person having his or her own counsel is so entitled.

The Kentucky Supreme Court has held that a public defender can act on behalf of an indigent while being interrogated by police on suspicion of having committed a crime. *West v. Commonwealth*, 887 S.W.2d 338 (KY 1994).

The Kentucky Association of Criminal Defense Lawyers believe that the advice and assistance of counsel is essential to the fair administration of justice and should be available and provided to the accused at the earliest stage of the judicial process. Toward that end, KACDL supports the practice of public defenders meeting with inmates prior to first appearance and/or before the arraignment docket is called and communicating to the defendant that they are entitled to have an attorney if they want one, they can hire an attorney or seek a public advocate and should inform the court if they have an attorney, will retain one or seek a public advocate.

## **A. Standards for Eligibility**

### **KRS 31.120**

- (1) The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his first appearance in court or in a suit for payment or reimbursement under KRS 31.211, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each step in the proceedings, whether he is a needy person. However, nothing herein shall prevent appointment of counsel at the earliest necessary proceeding at which the person is entitled to counsel, upon declaration by the person that he is needy under the terms of this chapter. In that event, the person involved shall be required to make reimbursement for the representation involved if he later is determined not a needy person under the terms of this chapter.
- (2) In determining whether a person is a needy person and in determining the extent of his, and, in the case of an unemancipated minor under KRS 31.100(3)(c), his custodial parents or guardian's inability to pay, the court concerned shall consider such factors as:
  - (a) Income;
  - (b) Source of income;
  - (c) Property owned;
  - (d) Number of motor vehicles owned and in working condition;
  - (e) Other assets;
  - (f) Outstanding obligations;
  - (g) The number and ages of his or her dependents;
  - (h) The poverty level income guidelines compiled and published by the United States Department of Labor;
  - (i) Complexity of the case;

- (j) Amount a private attorney charges for similar services;
- (k) Amount of time an attorney would reasonably spend on the case; and
- (l) Payment of money bail, other than a property bond of another, whether deposited by the person or another, to secure the person's release from confinement on the present charge of which he or she stands accused or convicted; and
- (m) Any other circumstances presented to the court relevant to financial status.

Release on bail, or any other method of release provided in KRS Chapter 431, shall not necessarily prevent him from being a needy person. In each case, the person, and, if an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, subject to the penalties for perjury, shall certify by affidavit of indigency which shall be compiled by the pretrial release officer, as provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated pursuant thereto, the material factors relating to his ability to pay in the form the Supreme Court prescribes.

## **B. Partial Eligibility**

### **KRS 31.211**

At arraignment, the court shall conduct a nonadversarial hearing to determine whether a person who has requested a public defender is able to pay a partial fee for legal representation, the other necessary services and facilities of representation, and court costs.

If a person's net financial resources and income anticipated prior to trial are in excess of the amount needed to provide the person and that person's dependents with the necessities of life and to provide the defendant's release on bond, but are insufficient to pay fully for retained counsel, the judge should find the person eligible for the appointment of counsel and should order payment in an amount determined by the court and may order that the payment be made in a lump sum or by installment payments to recover money for representation provided under this chapter.

This partial fee determination shall be made at each stage of the proceedings.

## **5. Presence of County Attorney and Public Defender**

The presence at all criminal dockets of the county attorney and public defender advances the administration of justice. However, the best practice would be for the County Attorney and the Public Advocate to attend all such dockets.

## **6. Pros and Cons of Video vs. In-Person Communications**

The Kentucky Supreme court ruled in *Commonwealth v. Ingram*, 46 S.W.3d 569 (KY 2001) that video arraignment is permissible under RCr 8.02 and 8.28 if it is the functional equivalent of an in-court arraignment.

Factors the Court noted that made this functionally equivalent were:

- conditions of the holding area
- both the defendant and the judge can see and hear each other
- all participants were able to see and hear each other simultaneously
- communication between the defendant and his counsel could be achieved through the use of conference room telephones
- proceedings occurred live
- ability of the general public present in the courtroom to observe the proceedings

Many Fiscal Courts like video communications because it decreases the county's transportation costs.

If a video is used, it is best if the camera at the jail has all persons being addressed in view.

Problems with video communications include a failure to connect with defendants, an inability to accurately determine if people are paying attention, obtain a sense of whether people are listening and comprehending

Some counties have accommodated both these competing interests by conducting in-custody arraignments in a courtroom within the secure part of the jail facility. The judge, clerks, prosecutor, defense counsel, sheriff deputies, corrections officers, and inmate-arraignees are all physically present in the courtroom.

As to defense counsel, a Best Practice would be to have a defender both at the jail and in the courtroom

## 7. AUTHORITIES

### Cases

<i>Alabama v. Shelton</i> 535 U.S. 654 (2002) .....	18
<i>Argersinger v. Hamlin</i> , 407 U.S. 25 (1972) .....	18
<i>Boykin v. Alabama</i> , 395 U.S. 238 (1969) .....	12
<i>Brady v. United States</i> , 397 U.S. 742 (1970).....	12
<i>Commonwealth v. Ingram</i> , 46 S.W.3d 569 (KY 2001) .....	24
<i>Estelle v. Williams</i> , 425 U.S. 501, 503 (1976). ....	8
<i>Gholson v. Commonwealth</i> , 212 S.W.2d 537, 540 (Ky. 1948) .....	19

<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963) .....	18
<i>Haight v. Commonwealth</i> , 760 S.W.2d 84, 87-88 (Ky. 1988) .....	12
<i>Johnson v. Zerbst</i> , 304 U.S. 458, 464–65 (1938) .....	19
<i>Padilla v. Kentucky</i> , 130 S. Ct. 1473 (2010).....	15
<i>Von Moltke v. Gillies</i> , 332 U.S. 708, 723–24 (1947).....	19
<i>West v. Commonwealth</i> , 887 S.W.2d 338 (KY 1994) .....	23

## **Statutes**

KRS 610.010.....	22,60
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## **Other Authorities**

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## **Rules**

ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons 19-2.3(a), 19-2.4(b) (3d ed. 2003). Standards 19-2.3(b) and 19-2.4(c) .....	15
ABA Standards for Criminal Justice: Pleas of Guilty, Standard 14, 1.4.....	13
Kentucky Rules of Criminal Procedure 8.08 .....	12
Kentucky Rules of Criminal Procedure 3.07 .....	10
Kentucky Rules of Criminal Procedure 3.10 .....	10
Kentucky Rules of Criminal Procedure 9.56 .....	8
Kentucky Rules of Criminal Procedure 3.05 .....	4, 5, 7, 9, 10, 60
Kentucky Rules of Criminal Procedure 8.02 .....	24, 61
Kentucky Rules of Criminal Procedure 8.28 .....	24, 61



# **ATTACHMENTS**

## ***Examples of Complete Rights Advisements***

## A. Examples of Complete Rights Advisements

### 1. Example One

#### AOC sample advisements of rights

AOC has developed a 9 minute video of advisement of rights in English, Spanish and sign language entitled *Your Rights to Due Process and an Interpreter*. A transcript is below. More information about AOC assistance with interpreter services is available at <http://courts.ky.gov/stateprograms/courtinterpreters/>

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 10.2 grade level.

This takes 3 minutes to read

#### YOUR RIGHT TO DUE PROCESS & AN INTERPRETER

(Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8<sup>th</sup> grade level)

1. You have the right to remain silent concerning the charges against you and the right to refuse to testify at any stage of the proceedings. Your silence does not imply any wrongdoing on your part and cannot be used against you.
2. Any statement that you do make can be used against you.
3. You are presumed to be innocent of any charges against you and if you plead not guilty, the prosecution must prove your guilt beyond a reasonable doubt.
4. You have the right to a trial by a judge or jury. You may waive that right.
5. At any trial you have the right to confront and cross examine witnesses and present evidence on your own behalf.
6. You have the right to be represented by an attorney at all stages of the proceedings. If you do not know an attorney, you can reach the Kentucky Bar Association from its listing in the telephone directory. This organization can provide you with a list of attorneys. If you cannot afford an attorney, the Commonwealth of Kentucky is charged with furnishing you with court appointed counsel. You must prove to the judge's satisfaction you cannot hire an attorney.
7. You have the right to appeal any judgment of a judge or jury within 30 days after the final judgment is entered. If you plead guilty, you waive your right to appeal.
8. Any plea entered to the charges must be made intelligently and voluntarily and not the result of undue influence or coercion by someone else.
9. If you have been charged with a felony prior to trial, you are entitled to a preliminary hearing to determine whether probable cause exists to believe you committed the offense charged against you. The hearing should be held within 10 days of your arraignment if you are in jail or within 20 days of your arraignment if you are not in jail, unless you agree to a longer period of time before the preliminary hearing. You may waive the preliminary hearing.



## YOUR RIGHT TO AN INTERPRETER

10. The Court of Justice will provide you with a court interpreter if you are deaf or hard of hearing, cannot communicate in English or if you have, in the opinion of the court, another type of disability that will prevent you from properly understanding the nature of the proceedings or prejudicial rights.
11. When speaking during court proceedings, you should direct your questions and responses to the person with whom you are speaking rather than the interpreter. The interpreter is limited to only giving translations of anything spoken during the court proceedings.
12. The interpreter is bound by a court of professional responsibility. He or she will only interpret or translate what is said in court proceedings. The interpreter shall not give legal advice, counsel or express personal opinions to you. He or she will keep information from court proceedings confidential.
13. If the interpreter provided is unable to communicate with you; if you have a justifiable reason to have a different interpreter; or if you do not wish to have the services of an interpreter, he or she will be removed upon your request.

### 2. Example Two

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.3 grade level.  
This takes 7 minutes to read

Good morning/afternoon! We are preparing to begin the    (time)    docket of the            District Court. When I call your name, please step up to the podium (or before the bench) so we can address your case. I will ask you some questions and you should feel free to let me know if there is anything you do not understand. Your case is important, and I want you to understand everything that happens today and what will happen after today's court appearance.

If you have trouble hearing me, or understanding English, or have any condition or disability that keeps you from fully understanding what is going on, let me know. We will get an interpreter for you if you need one or find some other way to help you.

Any time you are charged with a crime it is a serious matter. Because it is so serious, I want to take a few minutes to make sure that you understand that the law gives you certain rights. These rights are guaranteed to you unless you choose to give them up.

The first right you have when you are charged with a crime is the right to a lawyer. You do not have to handle this case by yourself and you should not feel pressured to handle the case yourself if you want a lawyer to help you. A lawyer can go over the evidence against you, listen to your side of the story, and then help you decide which options may be best for you. A lawyer may be able to tell you whether you have a defense to the crime or

whether you should have been charged with a less serious offense to begin with. If you want to try to settle your case, a lawyer may be better skilled at negotiating with the prosecutor than you on your own. Also, a lawyer may help you understand other consequences of a conviction, such as problems in areas of immigration or eligibility for public benefits like housing or student loans. With no lawyer, no one else in the court system has the job of helping you with these matters or acting only in your interest. I cannot give you advice.

If you can afford a lawyer but do not have one with you today, I will give you time to hire one. If you cannot afford a lawyer, I will appoint one from the Public Defender's office to assist you at either no cost or at a reduced cost based on how much you are able to pay. If you do not have a lawyer with you when your case is called, my first question to you will be whether you want to have one. Let me know at that time if you plan to hire one or want me to consider appointing a lawyer for you. If you want to go ahead with your case without a lawyer, you may do so, but only after I am sure that you understand your rights.

You have a right to remain silent about the facts of your case. You do not have to answer any questions from me or the prosecutor about the case. It is the prosecutor's job to prove that you committed the crime, and you do not have to say anything in your defense unless you choose. Your choice to remain silent cannot be used against you.

You have a right to a trial at which the prosecutor must prove your guilt beyond a reasonable doubt. At the trial, you would have a right to question the prosecutor's witnesses, call witnesses of your own, testify yourself if you choose, and present evidence, but you do not have to do any of these things. Your trial could be before the court, where I would decide, based on the evidence presented, whether your guilt has been proven. You could also have your case decided by a jury of 6 neutral citizens from our community who would decide whether your guilt has been proven. You are at all times presumed innocent until you have been proven guilty at trial. In other words, I do not assume and a jury would not assume you are guilty just because you have been charged with a crime.

If you have a trial and are found guilty, you would have the right to appeal that conviction. That means the \_\_\_\_\_ Circuit Court would review the case to make sure you received a fair trial under the law.

If you wish, you can give up your right to a trial and to an appeal by pleading guilty. You should plead guilty only if you understand your rights and options and decide it is in your best interest to enter a guilty plea. You should not plead guilty because of pressure from anyone else or because you believe that is your only option. Depending on your case, a guilty plea may be your best option, but you always have the right to go ahead with a not guilty plea and have a trial if you choose. Again, a lawyer can assist you with weighing your options.

If you plead guilty, you give up your rights to a trial and to appeal a conviction. A guilty plea will result in a conviction, and you will be sentenced today. You would then have a

criminal record. Also, if you are charged with a crime in the future, this conviction may be used to make the punishment for that crime more severe.

If you are convicted after a guilty plea or trial, you will be sentenced to either a fine, jail time, or both. If you are sentenced to a fine, you will be given a date by which you must pay the fine or return to court to ask for more time. If you do not pay the fine or return to court, you could be arrested for your failure to pay the fine.

If you are sentenced to jail time, that time could be probated. Probated jail time means that you are being sentenced to a certain number of days in jail for the crime you have been convicted of, but that I have agreed to probate those days, meaning you do not have to serve the time as long as you obey the orders I give you. Those orders include not committing future crimes, but may also include other conditions. If you do not obey the orders, you could have to serve part or all of your sentence in jail. In other words, probation is not a freebie, but is your chance to prove that you have learned your lesson and can obey the law. If you are given probation, it is very important that you understand what you must do to obey the orders of the court. Ask questions if you do not understand.

These are the rights that you have today. When I call your case, come forward. Be prepared to tell me if you want to have hired an attorney or would like to request a lawyer from the Public Defender's office. If you choose to give up your right to have a lawyer assist you, the County Attorney will make a recommendation of sentence if you pled guilty or I will advise you of the standard recommendation of the prosecutor for the charges. I will then ask you how you plead. You may plead guilty and receive the recommended sentence or plead not guilty, and I will set the case for a (next appearance, trial, pretrial conference, whatever the local custom).

### **3. Example Three**

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.4 grade level.

This takes 4 minutes to read

Good morning. This is (Felony/Misdemeanor Court #\_\_\_\_\_); (Traffic Court #\_\_\_\_\_); or (Non-Support Court). If you are a Defendant in a case here today, you have been charged with a violation of the law. I want to make sure you understand your rights.

1. You have the right to remain silent concerning the charges and the right to refuse to testify at any stage of the proceedings. Your silence does not imply any wrongdoing on your part and cannot be used against you. Any statement that you do make can be used against you.

2. You are presumed to be innocent of any charges against you, and if you plead not guilty, the prosecution must prove your guilt beyond a reasonable doubt.

3. You have a right to a trial before a judge or a jury at your request.
4. At any trial, you have the right to confront witnesses against you and to present evidence in your own behalf.
5. You have the right to be represented by an attorney at all stages of the proceedings. If you do not know an attorney, there are always attorneys who appear in this courtroom and, further, you can reach the \_\_\_\_\_ Bar Association from its listing in the telephone directory. That Association could give you a list of attorneys that might assist you.

If you cannot afford to hire an attorney, the State of Kentucky is charged with the responsibility, in some cases, of furnishing you with court appointed counsel. You must have proof to my satisfaction that you are truly indigent and unable to hire your own attorney. You may request the appointment of a Public Defender when you are called up here before the bench.

6. Any plea entered to the charges must be voluntary on your part and not the result of undue influence or coercion on the part of someone else.
7. You have the right to appeal any judgment within 30 days after the judgment is entered; however, if a guilty plea is entered, you do waive your right to an appeal.

For those of you charged with a felony: You are entitled to a preliminary hearing before a judge to determine whether probable cause exists to believe the offense charged was committed and committed by you. You may waive a preliminary hearing. If you do not, the hearing shall be held within ten (10) days if you are in custody and within twenty (20) days if you are not in custody.

In District Court there are certain matters that are enhanceable offenses. By that I mean that if you are charged with the same offense again within a period of time, and normally the period of time is five (5) years, the penalties will go up. All drug charges can be used to enhance future drug charges. If you are charged with any other enhanceable offense, I will inform you of that while you are at the podium.

If you plead guilty or are found guilty today which you may eventually wish to have your record expunged, or erased. In order to do that you must wait five (5) years from the date of conviction, or five (5) years from the end of any probated jail time that you receive. There are other conditions that must be met in order to receive an expungement of your record from a conviction, so you may wish to hire an attorney to help you with that motion. If the case is dismissed, you must wait sixty (60) days from the date of the dismissal in order to make a motion to expunge the case that was dismissed.

Please remain quiet until your name is called. Witnesses should come forward when the defendant's name is called. Thank you.

#### 4. Example Four

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 10.3 grade level.  
This takes 5 minutes to read

Good Morning.

Ladies and Gentlemen, this is a criminal arraignment docket. This arraignment docket is an opportunity for you to hear the charges against you and enter a plea of either guilty or not guilty to those charges. If you chose to plead guilty this morning you need to understand what you are doing by entering a plea of guilty to the charges.

When you plead guilty you are telling me you are guilty and that your guilty plea is free, voluntary and knowing. You are also telling me that you understand that pleading guilty can have unforeseen consequences such as a loss of scholarship opportunities, housing and possibly result in enhanced penalties should you be convicted of this same type of charge again.

You also are telling me that you understand that you are waiving your constitutional rights. Those rights include the right to have a jury or a bench trial, the right to call witnesses in your own behalf using the subpoena powers of the Court if necessary, and the right to cross exam witnesses called against you. You have the right to have the Commonwealth/County Attorney prove their case beyond a reasonable doubt, keeping in mind that you are innocent until proven guilty. Today the County Attorney is represented by Mr./Ms. \_\_\_\_\_, seated at the table closest to me (or in the lower left hand portion of the television screen).

You also have the right to have an attorney represent you. If you want a Public Advocate – that is an attorney that I would appoint to represent you – Court Appointed counsel – You must inform the court of your desire to request a public advocate. I do not know if you already have an attorney or if you do not want an attorney and you wish to represent yourself. If you want me to consider appointment of an attorney, you must say something to me.

After I know you want court appointed counsel, I need to see if you qualify. In order to qualify for a Public Advocate you must be looking at some kind of jail time – active, probated or discharged and your income/property must be such that you can be found by the court to be indigent.

If the Court finds that you do not qualify for a Public Advocate then you must retain your own attorney, should you wish to hire one. You have the right to be represented by an attorney at all stages of the proceedings. If you do not know an attorney, you can reach the \_\_\_\_\_ Bar Association from its listing in the telephone directory. This organization can provide you with a list of attorneys.

If you are charged with a felony, I will enter a plea of not guilty on your behalf and set the matter for a preliminary hearing where the Court will determine whether probable cause exists to believe that a felony was committed and that you committed the offense charged. The hearing shall be held within 10 days of your arraignment if you are in jail or within 20 days of your arraignment if you were not in jail, unless waived by you.

If you chose to plead guilty today and you want to explain how the situation occurred or explain any extenuating circumstances, all you have to do is tell me that there is something that you wish to say. I am happy to listen. However, if you have entered a plea of not guilty or I entered the not guilty plea for you, I urge you to exercise your right to remain silent and say nothing further. Your silence does not imply any wrong doing on your part and cannot be used against you. Any statement that you do make can be used against you.

You have the right to appeal a judgment or order from this Court within 30 days.

If for any reason you have not understood any of these rights, please let me know, and I will do my best to clear up any confusion.

If you need the assistance of an interpreter for any reason, indicate to the Court your need, and we will do whatever we can to accommodate it as soon as possible.

Remember when you hear your name called please come up to the microphone and state your name, address, and date of birth

## **5. Example Five**

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 7.4 grade level.  
This takes 8 minutes to read

### **GROUP READING OF RIGHTS/EXPLANATIONS OF COURT PROCEEDINGS**

#### *OPENING:*

Welcome to District Court. I am Judge \_\_\_\_\_. I am going to go over some things with you as a group and it is important that you listen very carefully. I will be describing your rights as well as what to expect during your court appearance today. Not all of this will apply to each of you but most of it will – it is important for you to pay attention to all of it, though, because if you don't, I will have to go through it again with each of you and we will be here much later. If you listen as a group, then I can get through the cases faster and get you all out of here much quicker!

#### *CONSTITUTIONAL RIGHTS:*

First, regarding your rights:

You each have the following rights, regardless of whether you are charged with traffic or criminal offenses.

*You have the right to remain silent*, which means you don't want to start talking about what happened in your case because it could come back and be used against you later.

*You each have the right to an attorney*. If you wish to hire an attorney, just let me know that and I will give you time to hire an attorney. If you want an attorney but you are afraid you cannot afford to hire one, then just let me know that and I will look into whether you qualify for an attorney. If you don't qualify then I can still give you plenty of time to hire an attorney.

*You each have the right to a fair and speedy trial*. That trial can be in front of a judge or a jury. You will need to let me know if you want a jury trial so I can set you on the correct set of dates. If you just plead not guilty without saying you want a jury trial, I will put you down on the trial before the court docket, which is where a judge hears the case instead of a jury.

No matter who is hearing the facts of the case, the Commonwealth has the burden of proof. That means that the *Commonwealth has to prove your guilt beyond a reasonable doubt*. If they can't do that the case will be dismissed.

The Commonwealth would attempt to prove your guilt beyond a reasonable doubt by calling witnesses and presenting evidence against you. *You have the right to cross-examine – meaning question – these witnesses*, as well as call witnesses on your own behalf. If you have witnesses you want to testify for you, then you need to have these witnesses subpoenaed. If you don't issue a subpoena for your witnesses and they don't show up at your trial, you won't be able to continue your trial to get them here. They don't do you any good unless they are here to testify. If you have questions about how to have a witness subpoenaed, let me know and I will walk you through that process.

Finally, *you each have the right to appeal*. That means that if you feel like we did something wrong under the law, you can ask the Circuit court to review the case.

#### *COURT PROCEEDINGS:*

In just a moment I will call your cases one at a time. I also call a list of people as "on deck" so you will know that your case is coming up and so you can go ahead and get up from your seat and wait on the wall – this helps us get out of here faster today.

When your case is called, stand in front of me and speak loudly enough that you can be heard on the recording – in case you ever need to appeal your case or need a copy of the tape for some reason.

When you get in front of me, I will ask you, “Do you understand your charges and your rights?” This will be your chance to ask me any questions you have about your charges, your rights, or really any questions you may have of any kind about your court proceeding today. If you don’t understand something, just speak up and ask. I know most of you are not here every day and it can be confusing and intimidating. Don’t get nervous and forget to ask your question because if you don’t understand, you may not do what’s expected of you and you could then end up getting your license suspended or you could get arrested.

#### *RIGHT TO AN ATTORNEY, REPRISE:*

Once we’ve been through that and you are comfortable you understand everything, I am going to ask you how you want to proceed. I need to know two things.

First, I need to know if you want to hire a lawyer, have me look into appointing a lawyer for you, or if you want to waive your right to a lawyer. Any of these is fine – but you need to think very carefully before you give up your right to a lawyer, because it is one of the more substantial rights that you have. Think about this issue right now while you aren’t nervous so you will already know the answer to that part of it.

#### *CONSEQUENCES OF PLEAS:*

The second thing I need to know is if you want to plead guilty or not guilty. If you plead not guilty, that is fine and we will set you down for a trial in front of the court or a jury like I discussed before.

If you are charged with a misdemeanor or a traffic offense you do have the option of pleading guilty today. In which case we will try to get your case finished today where you would not have to come back as long as you do everything you are ordered to do – but don’t plead guilty unless you are sure you want to plead guilty. Before you plead, you need to know that by pleading guilty you would be waiving and giving up ALL the rights I talked to you about. You wouldn’t have the right to have an attorney today if you don’t already have one, you wouldn’t have the right to have trial and make the Commonwealth prove your guilt, and you would be waiving your right to appeal. It is VERY hard to “undo” a plea of guilty, so don’t plead guilty unless you are sure you want to do that.

#### *ENHANCEABLE OFFENSES:*

If you do plead guilty, a conviction will be on your record for the offense. Some offenses may be what are called “enhanceable.” That means that if you have ever been convicted for this before or if you get convicted of it in the future, the penalty gets worse each time.



Some cases get much worse and can become a felony if committed another time. I will speak to you individually about these types of cases. Make sure if you have questions about this part of it, you ask - You do not want to get a minimum fine today and think it is no big deal then find out the next time you are looking at prison time.

#### EXPUNGEMENTS:

You can request that a conviction be expunged after 5 years, but the statute is very narrow for getting a conviction expunged. If you have been in trouble before or get in any more trouble, this may not be an option for you so be aware of that before you plead.

#### FELONY CHARGES:

If you are charged with a felony offense, I cannot take a plea of guilty from you. All I can do today is talk to you about getting an attorney and set you down for a preliminary hearing. You have the right to have this hearing within 10 days if you will not be able to make bond, or within 20 days if you are out on bond.

A preliminary hearing is similar to a trial except that it is always in front of a judge and it is a lighter burden of proof for the commonwealth – they must merely show probable cause that a felony was committed and you are the person committing it. If they meet that standard, your case would go to the Grand Jury. If you are indicted on an offense, you would have all of the rights I previously discussed with you, including the right to a trial in front of a jury and a beyond a reasonable doubt standard. You always have the right to an attorney no matter what stage your case is at in the process.

#### INDIVIDUAL COLLIQUY

John Doe, were you here for the opening today and heard what I said?

Do you understand your charges of \_\_\_\_\_?

Do you understand your rights?

How do you want to proceed today?

Answer questions, etc., if any.

#### *If NOT GUILTY:*

I will set you down for a Trial in front of the Court on \_\_\_\_\_ at \_\_\_\_\_.

Do you want to have a lawyer represent you at that trial?

Make sure you are back on \_\_\_\_\_ at \_\_\_\_\_ and don't get in any trouble or violate your bond conditions between now and then, OK?

Any questions?

You are free to go.

*If GUILTY (except for DUI) :*

Do you wish to speak to an attorney before you plead guilty?

Do you understand that by pleading guilty you are waiving and giving up ALL your rights, including the right to an attorney?

You need to understand that if you plead guilty to \_\_\_\_\_ it is what is called "enhanceable." That means that if you commit this offense within the next \_\_\_\_\_ years the fine will \_\_\_\_\_ and the jail time can be \_\_\_\_\_/it can be charged as a felony. Do you understand that? (if applicable)

Understanding all that, do you still want to plead guilty?

You are sentenced to \_\_\_\_\_. Do you understand that?

Any questions?

You are free to go.

## **6. Example Six**

Analyzed on the Flesch-Kincaid Grade Level Scale to be on the 8.5 grade level.  
This takes 8 minutes to read

Good morning Ladies and Gentleman.

For the record it has been determined that all the prisoners and out of custody defendants for this docket are within earshot.

This is the arraignment docket.

We will be arraigning the prisoners first, as you can see on the video screen in the front of the Courtroom.

When your case is called I want you to step up to the microphone and state your full name, your full address including city, your date of birth and whether you heard and

understood this tape loudly and clearly. You may not answer me by shaking your head. This is a Court of record, a recorded proceeding. While I would understand the shake of your head, the recorder will not. So you must answer out loud.

If you have trouble hearing me or understanding English or have any condition or disability that keeps you from fully understanding what is going on, let me know. We will get an interpreter for you if you need one or find some other way to help you.

There are a few important matters I need to discuss with you before we begin.

It is very important for you to pay close attention. I will be explaining our procedures but more importantly your statutory and Constitutional rights.

You will first be apprised of the charge or charges against you.

If you are charged with a felony, I will enter a Not Guilty Plea for you and set the matter for a preliminary hearing. You will be given the date, time and location of the Preliminary hearing when your case is called.

If you are charged with any other offense you have the right to enter one of two different pleas; either Guilty or Not Guilty. We will also address bond if you are in custody or have violated any court order since you were charged.

If you enter a Guilty Plea I will sentence you here today; however, if you enter a Guilty Plea you would be giving up your rights. I am going to explain those rights to you in a moment. If you have any questions about those rights, please feel free to ask me when your case is called and I will explain further until I am satisfied that you do understand. Again, you **MUST** pay close attention.

First, you would be giving up your right not to testify against yourself. This is a part of your right to remain silent regarding the charge or charges. Your silence may not be used against you. Anything you do say **MAY** be used against you.

You would be giving up your right to a speedy and public trial. There are two types of trials.

The first type of trial is a bench trial where I as the judge make all the decisions in the case. The second is a jury trial where the jury decides guilty or not guilty, the judge makes all the evidentiary and procedural decisions and if the jury finds you guilty they give a recommended sentence to the Court. However, the chance that I would alter a jury's sentencing recommendation is very slim.

When a trial date is scheduled it will be a bench trial unless you request a trial by jury which is your right. If you do not request a jury trial, I will assume you are waiving your right to a jury trial and you must sign a waiver at the clerk's desk. If you chose to change your mind between today and the scheduled trial date you may do so by filing a written request in the clerk's office located on the first floor.

You would be giving up your right to the assistance of counsel. You have a right to a Public Defender if you can cross two hurdles.

Number One: You are charged with a felony or you could receive a fine of \$500 or active or probated jail time; and

Number Two: You are a poor person as defined by our statutes.

However, even if you are appointed a public defender you will very likely be assessed a public defender fee at some stage of the proceedings.

Remember, if you elect to proceed to trial without counsel, which is your right, all procedural and evidentiary rules will still apply.

If you enter a Guilty Plea you would be giving up your right to confront and cross examine any and all witnesses or other evidence presented against you by the Commonwealth at any trial or hearing.

Remember, the Commonwealth has the burden of proving your guilt beyond a reasonable doubt as to each and every element of any offense for which you are charged.

You would also be giving up your right to produce evidence and/or witnesses on your own behalf. You also have the right of compulsory attendance. Let me explain:

If, for example, you wish “Joe” to testify or present evidence on your behalf at any trial or hearing, you may use the subpoena power of this Court to compel “Joe” to attend and give evidence on your behalf. You need to contact the clerk’s office on the first floor and ask them to issue that subpoena. A subpoena is an Order of the Court requiring the presence of a person and/or the production of documents etc.

As a word of caution, do not trust “Joe” to show up just because he says he will. He probably will not appear. If “Joe” does not appear and you have not had a subpoena appropriately issued I will not grant you a continuance but will proceed to trial without “Joe”.

So, if you wish the benefit of “Joe’s” testimony, or other evidence have the subpoena issued.

Another issue as an aside. If you intend to employ counsel on your own, please do so sufficient time in advance of the hearing or trial to enable that attorney to reasonably prepare for said hearing and/or trial. If you are appointed a public defender their telephone number will be written on your reminder slip. Contact them as soon as possible.

I will not permit anyone to utilize delay tactics in my Courtroom. If you wait until the last moment to employ or contact counsel and he or she comes into Court asking for a continuance because of your delay in employing counsel, I will deny the continuance and proceed to trial or hearing.

Lastly, if you plead guilty you will be giving up your right to appeal your case to a higher Court and your right to reasonable bail if you are sentenced to serve active jail time.

**Again, if you have any questions about what I have said please ask me when your case is called.**

A few more matters I would like to explain before we begin.

When you leave the Courtroom almost all of you will receive paperwork from the ladies who will be to my left or your right, the deputy clerks.

If you are a prisoner said paperwork will be delivered to you.

The paperwork will be a rendition of what I do in your case. I will have told you and the paperwork will repeat what I have said and give you whatever addresses and/or telephone numbers you will need. If for some reason you are unsure of your obligations, please contact the county attorney or the clerk's office and they will be glad to assist you.

Everyone's paperwork will be different and will include the orders of the Court.

Remember, these are not suggestions but orders. If you do not comply with Court orders I promise I will have you arrested and placed in jail. So, please keep your paperwork and please follow all Court orders. If you lose or misplace the paperwork go to the clerk's office.

If a true emergency arises rendering you unable to comply with any Court order, you or someone at your direction must notify either the county attorney or the clerk's office before the deadline given for performance of that act. You must supply proof of said emergency to the county attorney or the clerk's office. In this event the Court will make appropriate arrangements.

If the allegation you face today is non-compliance with a previous Court order, the Commonwealth only needs to prove that you were given such order by the Court and you have violated that order.

In these types of matter you do not have the right to a jury trial **but** you retain the other rights discussed earlier.

If you are charged with an offense like no insurance or no registration and you have proof of same with you today, please show the prosecutor on your way up when your case is called. For example, if you are charged with no insurance and can prove you actually had insurance at the time you were stopped, I will dismiss the charge.

Three other matters:

First, the legislature has chosen to enhance penalties for many offenses if you have a prior conviction on that same charge. In other words, the penalties could be a lot more severe. I want you to assume that the charge or charges against you will be enhanceable. If it happens that a charge is not enhanceable you are not harmed but if it is you cannot say you didn't know.

Also, there are provisions in the law for seeking expungement or the voiding of misdemeanor and traffic offenses if certain conditions are met.

Lastly, if you are thinking about the possibility of entering a guilty plea but before you do, you would like to know what the sentence or punishment will be, please ask. I don't play games. I will tell you in advance. However, please understand that if you reject any offer from the Court and you subsequently plead or are found guilty of said charge, neither the jury nor I will be restricted to the penalty offered today.

We will begin calling cases in a few minutes. Remember, if you have any questions about anything I have discussed, please ask when your case is called.

## **B. Examples of Guilty Plea Forms and Additional Documents**

# 1. Nelson District Court

Case No(s) \_\_\_\_\_

NELSON DISTRICT COURT

Commonwealth of Kentucky

Plaintiff

vs.

## DEFENDANT'S WAIVER OF RIGHTS, PLEA OF GUILTY AND RECOMMENDATION OF COUNTY ATTORNEY

Defendant

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

I have been advised of and hereby waive my right to have these proceedings recorded and I understand that there will be no verbatim account of the proceedings and that this may hinder a review thereof. I understand the charges against me and wish to enter this plea set forth below. I realize that I have a right to a JURY TRIAL, to CONFRONT and CROSS-EXAMINE any WITNESSES against me, and I may subpoena witnesses to testify for me and may compel their attendance at court. I understand that I have the right to REMAIN SILENT if I choose, to have the ASSISTANCE OF AN ATTORNEY at every stage of the proceedings, including this stage, and that IF I CANNOT AFFORD AN ATTORNEY, ONE WILL BE APPOINTED TO REPRESENT ME, and I do hereby freely and voluntarily waive all of these rights of my own free will. No one has threatened or coerced me to enter this plea and I am not presently under the influence of any alcohol, drugs or narcotics. By signing this plea agreement, I also affirm that I am the person charged with this crime and that my name, address and phone number listed above are true and accurate.

### CHARGES, INCLUDING KRS

KRS 514.040 – Theft by Deception  
( ) Check(s)

### RECOMMENDATION OF COUNTY ATTORNEY

\$ \_\_\_\_\_ fine per check plus court costs; 30 days in jail per count.

( ) \_\_\_\_\_ days of jail time conditionally discharged on the following conditions:

- ( ) No criminal offenses for two years, payment is made for restitution, fines and court costs;
- ( ) \_\_\_\_\_ hours of community service through NC community service program;

#### Restitution:

- ( ) See attached receipt from merchant
- ( ) Restitution to be made through Nelson Circuit Court Clerk before \_\_\_\_\_ **FAILURE TO PAY THIS RESTITUTION AMOUNT BEFORE THIS DATE WILL LEAD TO A WARRANT FOR YOUR ARREST**
- ( ) County Attorney fee of \$35 per check to be paid through NCCC

County Attorney

Date: \_\_\_\_\_

Defendant's Attorney

Date: \_\_\_\_\_

Defendant

Date: \_\_\_\_\_

The total amount of your fines and costs must be paid before \_\_\_\_\_ or a bench warrant will be issued for your arrest.

HON. ROBERT W. HEATON  
JUDGE, NELSON DISTRICT COURT

DATE: \_\_\_\_\_



Case No. \_\_\_\_\_ T \_\_\_\_\_

NELSON DISTRICT COURT

COMMONWEALTH OF KENTUCKY )

V. )

**SENTENCING ORDER**  
**(D.U.I.)**

S.S. # \_\_\_\_\_ )

Defendant )

Defendant having been found guilty of violating KRS 189A.010 (1) \_\_\_\_\_ (A),  
\_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_ (D); \_\_\_\_\_ offense, which occurred  
on \_\_\_\_\_;

And, the Court having found in open court that the Defendant's plea is freely, knowingly,  
intelligently and voluntarily made, it is hereby Ordered as follows:

\_\_\_\_\_ Defendant is ordered to pay a fine of \$ \_\_\_\_\_;

\_\_\_\_\_ Defendant is ordered to pay court costs of \$ \_\_\_\_\_;

\_\_\_\_\_ Defendant is ordered to pay a service fee in the amount of \$375.00;

\_\_\_\_\_ Defendant is sentenced to confinement in the County Jail for \_\_\_\_\_;

\_\_\_\_\_ Defendant's jail time is suspended on the condition that he complete \_\_\_\_\_  
hours of community labor supervised by Nelson County

\_\_\_\_\_ Defendant is sentenced to alcohol treatment by \_\_\_\_\_  
\_\_\_\_\_ for a period of \_\_\_\_\_;

\_\_\_\_\_ Defendant's license to operate a motor vehicle or motorcycle shall be  
revoked for a period of \_\_\_\_\_;

\_\_\_\_\_ Defendant shall surrender his/her license forthwith to the clerk;

\_\_\_\_\_ The following amount of the Defendant's fine or following portion of the  
Defendant's jail sentence is/are suspended and probated under the following  
conditions: \_\_\_\_\_.

The probation terms are understood and agreed to:

\_\_\_\_\_  
Signature of Defendant

The total amount of your fines and costs must be paid  
before \_\_\_\_\_ or a bench warrant will be  
issued for your arrest.

\_\_\_\_\_  
JUDGE, NELSON DISTRICT COURT

DATE: \_\_\_\_\_

Case No: \_\_\_\_\_

**NELSON DISTRICT COURT**

COMMONWEALTH OF KENTUCKY )

Plaintiff )

v. )

**AGREED ORDER FOR DIVERSION**

\_\_\_\_\_  
Defendant )

Upon agreement of the parties, and the court being sufficiently otherwise advised, it is hereby ordered that charges against the Defendant herein shall be diverted on the condition that the Defendant have no new criminal violations for \_\_\_\_\_ months/years, pay court costs by \_\_\_\_\_ and \_\_\_\_\_.

This case shall be reviewed on \_\_\_\_\_ at 1:00 p.m. If the Defendant fails to comply with the terms of this agreement then the attached plea of guilty will be entered by the Court. The Defendant agrees notice of said motion to enter the plea may be served upon him/her by ordinary mail at the following address: \_\_\_\_\_.

\_\_\_\_\_  
JUDGE, NELSON DISTRICT COURT

DATED: \_\_\_\_\_

HAVE SEEN & AGREED TO:

\_\_\_\_\_  
Nelson County Attorney

\_\_\_\_\_  
Attorney for Defendant

\_\_\_\_\_  
Defendant

Distribution:

Nelson County Attorney (\_\_\_\_)

Defendant/Attorney for Defendant (\_\_\_\_)

\_\_\_\_\_  
Clerk's Initials & Date

Case No(s)

NELSON DISTRICT COURT

Commonwealth of Kentucky

Plaintiff

vs.

**DEFENDANT'S WAIVER OF RIGHTS, PLEA OF GUILTY  
AND RECOMMENDATION OF COUNTY ATTORNEY**

Defendant

Address:

I have been advised of and hereby waive my right to have these proceedings recorded and I understand that there will be no verbatim account of the proceedings and that this may hinder a review thereof. I understand the charges against me and wish to enter this plea set forth below. I realize that I have a right to a JURY TRIAL, to CONFRONT and CROSS-EXAMINE any WITNESSES against me, and I may subpoena witnesses to testify for me and may compel their attendance at court. I understand that I have the right to REMAIN SILENT if I choose, to have the ASSISTANCE OF AN ATTORNEY at every stage of the proceedings, including this stage, and that IF I CANNOT AFFORD AN ATTORNEY, ONE WILL BE APPOINTED TO REPRESENT ME, and I do hereby freely and voluntarily waive all of these rights of my own free will. No one has threatened or coerced me to enter this plea and I am not presently under the influence of any alcohol, drugs or narcotics.

**CHARGES, INCLUDING KRS**

**RECOMMENDATION OF COUNTY ATTORNEY**

( ) The Commonwealth may dispose of any evidence retained in this case. If Defendant fails to pay any order of this Court in the action herein, a Motion to Revoke Conditional Discharge shall be brought before this Court and the Defendant agrees notice of said motion may be served upon him by ordinary mail at the address listed in the Court's file. The Defendant waives service by Rule.

\_\_\_\_\_  
COUNTY ATTORNEY  
DATE: \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT'S ATTY  
DATE: \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT  
DATE: \_\_\_\_\_

The total amount of your fines and costs must be paid before \_\_\_\_\_ or a bench warrant will be issued for your arrest.

\_\_\_\_\_  
HON. ROBERT W. HEATON  
JUDGE, NELSON DISTRICT COURT

DATE: \_\_\_\_\_

AOC- Rev. 8-08 Page 1 of 1 Commonwealth of Kentucky Court of Justice <a href="http://www.courts.ky.gov">www.courts.ky.gov</a> KRS 610.080; KRS 635.060; RCR	JUVENILE COURT ENTRY OF ADMISSION	Court _____ County _____ Date _____
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IN THE INTEREST OF \_\_\_\_\_, A CHILD;

DOB	RACE	SEX	SSN

Charged with the offense(s) of: \_\_\_\_\_

\_\_\_\_\_ The above-named child appeared with counsel.

\_\_\_\_\_ Following a hearing, the child knowingly, intelligently and voluntarily waived the right to counsel as noted in specific findings of fact by the court.

\_\_\_\_\_ The child indicated that he/she is not now impaired by drugs, alcohol, or medication.

\_\_\_\_\_ The court fully explained the allegations against the child, including the possible **dispositional options** provided by law if he/she admits to the truth of the allegations. These include:

1. Ordering the child or his parents, guardian or person exercising custodial control to make **restitution or reparation** to any injured person to the extent, in the sum and upon the conditions as the court determines;
2. **Place the child under parental supervision** in the child's own home or in a suitable home;
3. **Place the child under probation** under conditions that the court shall determine, with the child subject to visitation and supervision of a probation officer or employee of the Department of Juvenile Justice;
4. **Commit the child to the custody of the Department of Juvenile Justice** or grant guardianship to a child-caring facility, or place the child under the custody and supervision of a suitable person;
5. If the child is fourteen (14) years of age but less than sixteen (16) years of age, **order that the child be confined in an approved secure facility or detention program** authorized by DJJ for a period of time not to exceed forty-five (45) days;
6. If the child is sixteen (16) years of age or older, **order that the child be confined in a secure detention facility or approved detention program** authorized by DJJ for a period of time not to exceed ninety (90) days;
7. **Any combination of the dispositions listed above.**

\_\_\_\_\_ The court fully explained and the child acknowledged that he/she has the following **rights**, and if he/she admits to the truth of the allegations, he/she waives these rights:

1. The right **not to testify against or self-incriminate himself/herself**;
2. The right **to deny the allegations in the complaint**;
3. The right **to a full adjudication hearing** at which he/she would be represented by counsel, and the Commonwealth would have to prove the truth of the allegations in the petition beyond a reasonable doubt;
4. The right **to confront and cross-examine all witnesses** called against him/her;
5. The right **to produce any evidence, including attendance of witnesses, in his/her favor**;

7. That these rights belong to him/her, and can only be waived by him/her and not by his/her parents, guardians or person exercising custodial control.

\_\_\_\_\_ The child admitted to the court the truth of the allegations against him/her.

1. Name of the person	
2. Address	
3. Phone number	
4. Email address	

**DEFENDANT'S WAIVER OF RIGHTS, PLEA OF GUILTY AND  
RECOMMENDATION OF COUNTY ATTORNEY**

Commonwealth of Kentucky vs. \_\_\_\_\_

Case No. \_\_\_\_\_

I have been advised of and hereby waive my right to have these proceedings recorded and I understand that there will be no verbatim account of these proceedings and that this may hinder a review thereof. I understand the charges against me and wish to enter this plea set forth below, realize that I have the right to a trial, to confront and cross examine any witness against me, and I may subpoena witnesses to testify for me and may compel their attendance at court. I understand that I have the right to remain silent if I choose, to have the assistance of an Attorney at every stage of the proceedings, including this stage, and that if I can not afford an Attorney, one will be appointed to represent me, and I do hereby freely and voluntarily waive all of these rights of my own free will. No one has threatened or coerced me to enter this plea and I am not presently under the influence of any alcohol, drugs or narcotics.

Original Charge:

Amended To:

_____;	_____
_____;	_____
_____;	_____
_____;	_____

- ☐ Community Service of \_\_\_\_\_ hours
- ☐ House Arrest for \_\_\_\_\_ days
- ☐ Essay of \_\_\_\_\_ words in length titled "\_\_\_\_\_"
- ☐ Restitution in the amount of \$ \_\_\_\_\_, \_\_\_\_\_ paid to the Nelson Circuit Clerk or to be paid upon finding of the court after a hearing.
- ☐ Detention for \_\_\_\_\_ days; to serve \_\_\_\_\_ with \_\_\_\_\_ Suspended
- ☐ Enroll in, attend and complete the following Treatment Program(s):
  - ☐ Individual counseling
  - ☐ Family Counseling
  - ☐ Substance Abuse Assessment and follow all recommendations of that Assessment. (Counseling)
  - ☐ Anger Management Counseling
- ☐ Donation in the amount of \$ \_\_\_\_\_, \_\_\_\_\_ to the \_\_\_\_\_ program
- ☐ Amount of Fine \$ \_\_\_\_\_, \_\_\_\_\_
- ☐ Provide proof of negative drug screens conducted monthly to the court.
- ☐ Attend school daily with no unexcused absences
- ☐ Letter of Apology to the Victim.
- ☐ No Contact with Victim and or Victim's Family and or Co Defendants

I understand that as the Parent/Guardian of the above named youth, that it is my responsibility to provide proof of the above conditions to the court before 9:00a.m. on \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ or I shall appear to provide a valid explanation of why proof could not be provided. I understand that failure to do so could result in a bench warrant being issued for my arrest and/or a pick-up order being issued for my child.

I further understand that each of these conditions constitute court orders. Failure to complete each applicable condition, including the payment of court costs, could result in a finding of contempt of court and up to 180 days incarceration.

If Defendant fails to pay any restitution amounts ordered or violates the terms ordered by this Court in the action herein, a Motion for Contempt shall be brought before this Court and the Defendant agrees notice of said motion may be served upon him by ordinary mail at the address listed in the Court's file. The Defendant waives service by Rule.

\_\_\_\_\_  
Parent/Guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
County Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendants Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
HON. ROBERT W.HEATON

\_\_\_\_\_  
Date

Court cost in the amount of \$ \_\_\_\_\_ or Community Service in lieu of the cost

## 2. Jefferson District Court

JEF-056-07  
Rev. 8-08  
Page 1 of 1  
www.courts.ky.gov



GUILTY PLEA

Jefferson District Court

Division \_\_\_\_\_

Case No. \_\_\_\_\_

COMMONWEALTH OF KENTUCKY  
VS.

PLAINTIFF

DEFENDANT

1. Do you understand the charges against you and do you wish to plead guilty? \_\_\_\_\_ Yes \_\_\_\_\_ No
2. Do you know that you have the right to
  - remain silent and not plead guilty \_\_\_\_\_ Yes \_\_\_\_\_ No
  - a trial by jury \_\_\_\_\_ Yes \_\_\_\_\_ No
  - question witnesses against you and call witnesses on your behalf \_\_\_\_\_ Yes \_\_\_\_\_ No
  - appeal \_\_\_\_\_ Yes \_\_\_\_\_ No
 and that by pleading guilty you waive these rights? \_\_\_\_\_ Yes \_\_\_\_\_ No
3. Are you under the influence of any alcohol, drugs, or narcotics? \_\_\_\_\_ Yes \_\_\_\_\_ No
4. Have you been or are you now being treated for a mental illness? \_\_\_\_\_ Yes \_\_\_\_\_ No
5. Has anyone threatened or coerced you to plead guilty or promised you anything to make you plead guilty? \_\_\_\_\_ Yes \_\_\_\_\_ No
6. Are you pleading guilty voluntarily and of your own free will? \_\_\_\_\_ Yes \_\_\_\_\_ No
7. Are you admitting to this Court that you are guilty of the offense of \_\_\_\_\_? \_\_\_\_\_ Yes \_\_\_\_\_ No
8. If you admit guilt to Driving Under the Influence of Alcohol, do you understand that you must attend and complete an Alcohol Education Program? \_\_\_\_\_ N/A \_\_\_\_\_ Yes \_\_\_\_\_ No
9. Do you know you have the right to an attorney and are freely waiving that right? \_\_\_\_\_ N/A \_\_\_\_\_ Yes \_\_\_\_\_ No
10. If you have an attorney, are you satisfied with the advice of your attorney? \_\_\_\_\_ N/A \_\_\_\_\_ Yes \_\_\_\_\_ No
11. Are you aware that this is a potentially enhancement offense? \_\_\_\_\_ N/A \_\_\_\_\_ Yes \_\_\_\_\_ No
12. Are you aware that there may be additional consequences to pleading guilty to this charge, including but not limited to: deportation, federal prohibitions against possessing firearms by those adjudicated of most domestic violence offenses, state prohibitions against obtaining certain professional licenses, and prohibitions against obtaining housing subsidies? \_\_\_\_\_ Yes \_\_\_\_\_ No
13. Are you aware that you may file a request to remove this charge from your record two years after completion of your sentence or probation as long as you meet the requirements set forth in the Kentucky Revised Statutes? \_\_\_\_\_ Yes \_\_\_\_\_ No

Defendant \_\_\_\_\_

Attorney for Defendant \_\_\_\_\_

Judge \_\_\_\_\_

Date: \_\_\_\_\_

Does this section below apply to the above defendant? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, read and comply as follows:

### Order Of Treatment And / Or Community Service

IT IS HEREBY ORDERED that:

1. The Defendant report to the Louisville Metro Court Monitoring Center, located in the basement of the Hall of Justice upon leaving this courtroom;
2. The Defendant shall comply with the conditions of the Court Monitoring Center. (There is a fee for the Court Monitoring Center which may be waived due to indigency.)

The defendant has been ordered to complete treatment for \_\_\_\_\_

Perform community service work in the amount of \_\_\_\_\_ hours as ordered by the Court.

OTHER: \_\_\_\_\_

Defendant \_\_\_\_\_

Judge \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Is the defendant in custody? \_\_\_\_\_ Yes \_\_\_\_\_ No

## 3. Henderson District Court



**HENDERSON DISTRICT COURT**  
**CASE NO. \_\_\_\_\_**

**COMMONWEALTH  
OF KENTUCKY**

**PLAINTIFF**

**V.**

**DEFENDANT**

**ENHANCEMENT ACKNOWLEDGEMENT**

I understand that should I be convicted of any offense listed below, the penalties will be increased with each conviction. Additionally, I recognize that a prior conviction can be used to enhance the penalties for a subsequent offense. Enhanceable offenses include but are not limited to the following charges:

<b>Assault IV—Child Abuse</b>	<b>Assault IV—Domestic Violence</b>	<b>Alcoholic Beverage Offenses</b>
<b>Alcohol Intoxication</b>	<b>Contr. Subst. Not in Proper Container</b>	<b>Driving Motor Vehicle Under the Influence of Alcohol/Drugs</b>
<b>No Insurance</b>	<b>Operating on a DUI Suspended License</b>	<b>Operating Motorboat Under Influence of Alcohol/Drugs</b>
<b>Passing a School Bus</b>	<b>Possession of Contr. Subst. 2<sup>nd</sup> Degree</b>	<b>Possession of Contr. Subst. 3<sup>rd</sup> Degree</b>
<b>Possession of a Simulated Contr. Subst.</b>	<b>Possession of a Legend Drug</b>	<b>Possession of Drug Paraphernalia</b>
<b>Trafficking in Marijuana</b>	<b>Unauthorized Use of a Motor Vehicle</b>	<b>Other:</b> _____

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Defendant**  
**D/O/B:** \_\_\_\_\_

Revised 10/24/2007  
ACKNOWLEDGEMENT OF ENHANCEMENT.doc

**4. Hardin District Court**

Commonwealth of Kentucky  
Hardin District Court  
Division II  
Case No. \_\_\_\_\_

COMMONWEALTH OF KENTUCKY

PLAINTIFF

V.

GUILTY PLEA  
WITH ENHANCEMENT ACKNOWLEDGEMENT

DEFENDANT

1. I have reviewed and I understand the charge(s) against me and the Commonwealth's recommendation, and I wish to plead guilty

(check one) \_\_\_\_\_ without counsel or

\_\_\_\_\_ with aid of counsel. By checking "with aid of counsel," I acknowledge that I have told my attorney all the facts that I know concerning the charges against me. I believe that he/she is fully informed about my case and has provided me with competent representation. We have fully discussed and I understand the charge(s) against me, any possible defenses, and the sentence range(s).

2. No one has threatened or coerced me to plead guilty, or promised or given me anything to make me plead guilty. No one has promised me special leniency or treatment to make me plead guilty.

3. My judgment is not at this time impaired by drugs, alcohol or medication and I have not been, nor am I now being treated for any mental illness.

4. I understand that I may plead "NOT GUILTY" to any charge against me, and that the Constitution would guarantee me the following rights:

- (a) the right to not testify against myself;
- (b) the right to a speedy and public trial by jury at which I could be represented by counsel and at which the Commonwealth would have to prove my guilt beyond a reasonable doubt;
- (c) the right to have counsel appointed if I cannot afford counsel;
- (d) the right to confront and cross-examine all witnesses called to testify against me;
- (e) the right to appeal my case to a higher court; and
- (f) the right to reasonable bail.

I understand that if I plead "GUILTY" that I waive all of these rights.

5. I understand that if I plead "GUILTY" that the Court may impose punishment within the range provided by law, and, although it may consider the Commonwealth's recommendation, the Court may reject that recommendation, in which case I would be allowed to withdraw my plea of "GUILTY."

6. I understand that this conviction can be used to enhance the penalty of a later charge, subsequent conviction, and resultant penalty, for the following offenses:

- |  |   |
|--|---|
| _____ Alcohol Beverage Offenses  | _____ Alcohol Intoxication                          |
| _____ Assault 4 <sup>th</sup> Degree   | _____ Controlled Substance Not in Proper Container  |
| _____ Driving on a License Suspended for DUI                                       | _____ Driving Under the Influence of Alcohol/ Drugs |
| _____ No Insurance   | _____ Passing a School Bus                          |
| _____ Possession of Controlled Substance 2 <sup>nd</sup> or 3 <sup>rd</sup> Degree | _____ Possession of Legend Drug                     |
| _____ Possession of Simulated Controlled Substance                                 | _____ Trafficking in Marijuana                      |
| _____ Theft by Unlawful Taking Gasoline Drive Off                                  | _____ Unauthorized Use of a Motor Vehicle           |
| _____ Other: _____   |   |

7. I hereby plead "GUILTY," and I do so freely, knowingly, intelligently, and voluntarily. I understand the nature of this proceeding and all matters contained in this document.

Signed in open Court this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Counsel for Defendant (if any)

## 5. Scott District Court

COMMONWEALTH OF KENTUCKY  
SCOTT DISTRICT COURT  
CRIMINAL/TRAFFIC DIVISION  
CASE NO. \_\_\_\_\_

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

DEFENDANT

### GUILTY PLEA

1. I have reviewed and I understand the charge(s) against me, and the Commonwealth's recommendation, and I wish to plead guilty, (check one) \_\_\_\_\_ without counsel \_\_\_\_\_ with aid of counsel. By checking "with aid of counsel," I acknowledge that I have told my attorney all the facts I know concerning the charges against me. I believe he/she is fully informed about my case, and has provided me with competent representation. We have fully discussed and I understand the charge(s) against me, any possible defenses, and the sentence range(s).

2. No one has threatened or coerced me to plead guilty, or promised me special treatment or leniency to make me plead guilty.

3. My judgment is not now impaired by drugs, alcohol or medication, and I have not been, nor am I now being, treated for a mental illness.

4. I understand I may plead "NOT GUILTY" to any charge against me, and the Constitution would guarantee me the following rights: (a) the right not to testify against myself; (b) the right to a speedy and public trial by jury at which I would be represented by counsel and the Commonwealth would have to prove my guilty beyond a reasonable doubt; (c) the right to have counsel appointed if I cannot afford counsel; (d) the right to confront and cross-examine all witnesses called to testify against me; (e) the right to appeal my case to a higher court; (g) the right to reasonable bail.

I understand if I plead "GUILTY," I waive all of these rights.

5. I understand if I plead "GUILTY," the Court may impose any punishment within the range provided by law, and, although it may consider the Commonwealth's recommendation, the Court may reject it, in which case I would be allowed to withdraw my plea of guilty.

6. I understand that this conviction can be used to enhance a later charge, subsequent conviction, and resultant penalty, as follows: (check appropriate box(es)).

- \_\_\_\_\_ Assault IV (Family Member / Unmarried Couple)
- \_\_\_\_\_ Second offense possession of drug paraphernalia, a Class D felony
- \_\_\_\_\_ Driving on a license suspended due to DUI, 2<sup>nd</sup> offense, a Class A misdemeanor (if DUI at the time of the second offense, a Class D felony); third or subsequent offense, a Class D felony
- \_\_\_\_\_ Second offense trafficking in marijuana less than 8 ounces, a Class D felony
- \_\_\_\_\_ Second offense Theft by Unlawful Taking (Gasoline), 60 days operator's license suspension


7. I hereby plead "GUILTY," and I do so freely, knowingly, intelligently, and voluntarily. I understand the nature of this proceeding, and all matters contained in this document.

Signed in open court this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

DEFENDANT

ATTORNEY FOR DEFENDANT (if any)

## 6. Campbell District Court

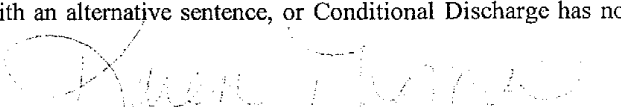
AOC-019-02-455 REV 6-9-08  Commonwealth of Kentucky Court of Justice  KRS 533.030, 533.070	  <b>ORDER OF PROBATION/  CONDITIONAL DISCHARGE</b>	Case #: _____  <b>DISTRICT COURT  CAMPBELL COUNTY</b>
--	--	---

COMMONWEALTH OF KENTUCKY VS. \_\_\_\_\_, Defendant

Pursuant to the Judgment and Sentence of the above named defendant, THE COURT HEREBY ORDERS that the defendant be sentenced to ☐ Probation; ☐ Probation with an alternate sentence; ☐ Conditional Discharge for a period of **1 year 2years** from the date of Judgment, subject to the following conditions:

- ☒ Not commit another offense;
- ☒ Avoid persons or places of disreputable or harmful character;
- ☒ Pay the cost of the proceeding herein as set by the court
- ☐ Report for \_\_\_\_\_ to: **Kentucky Alternative Programs**, 10<sup>th</sup> & Washington, Newport KY (859) 261-0722;
- ☐ Make reparation or restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, for damages or loss caused by the defendant;
- ☐ Stay Out of: **K-Mart Kohls Krogers Meijer One Stop Liquor Remke Walgreens Wal-Mart**;
- ☐ Have H.I.V. Testing completed by the Northern KY Health Dept, 12 E. Fifth St, Newport, KY ;
- ☐ Serve \_\_\_\_\_ days Home Incarceration w/ KAP to start \_\_\_\_\_ (Report to KAP 24 hrs prior);
- ☐ Complete \_\_\_\_\_ hours of Community Service as follows: Contact Lisa Haines, Campbell County Fiscal Court, 24 W 4<sup>th</sup> St, Newport, KY (859) 292-3838;
- ☐ Have **no contact** with Victim or Victim's family;
- ☐ Attend Anger Management Program;
- ☐ Complete Alcohol Evaluation and treatment;
- ☐ Complete Drug Evaluation and treatment;
- ☐ Attend Drug Education Prog. with Com Sub Abuse, 525 Alex. Pk, Southgate, KY (859) 442-7700;
- ☐ 90 day Driver's License Suspension;
- ☐ 120 day Driver's License Suspension;
- ☐ 18 month Driver's License & License Plate Suspension;
- ☐ Other: \_\_\_\_\_

IT IS FURTHER ORDERED that upon the completion of the period for which the sentence of Probation, Probation with an alternative sentence, or Conditional Discharge remains subject to revocation, the defendant shall be deemed fully discharged, provided no warrant issued by the court is pending against him/ her and his/ her Probation, Probation with an alternative sentence, or Conditional Discharge has not been revoked.

  
Hón. Karen A. Thomas, Judge

Copy received and terms understood:

☒ \_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
Date

AOC-19-02-455 REV 2-24-11  Commonwealth of Kentucky Court of Justice  KRS 533.030, 533.070	<b>Order of Probation/ Conditional Discharge</b>	Case #: _____  <b>DISTRICT COURT</b>  <b>CAMPBELL COUNTY</b>
--	--	--

COMMONWEALTH OF KENTUCKY VS. \_\_\_\_\_, Defendant

Pursuant to the Judgment and Sentence of the above named defendant, THE COURT HEREBY ORDERS that the defendant be sentenced to Probation; Probation with an alternate sentence; Conditional Discharge for a period of **1 year 2 years** from the date of Judgment, subject to the following conditions:

- ☐ Not commit another offense;
- ☐ Avoid persons or places of disreputable or harmful character;
- ☐ Pay the cost of the proceeding herein as set by the court;
- ☐ Report for \_\_\_\_\_ to: Kentucky Alternative Programs, 10<sup>th</sup> & Washington, Newport, KY 41071 (859) 261-0722;
- ☐ Make reparation or restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_;
- ☐ Stay Out of: **K-Mart Kohls Krogers Meijer One Stop Liquor Remke Walgreens Wal-Mart Newport Levee;**
- ☐ Have H.I.V. Testing completed by the Northern KY Health Dept, 12 E. Fifth St., Newport, KY;
- ☐ Serve \_\_\_\_\_ days Home Incarceration w/ KAP to start \_\_\_\_\_ @ \_\_\_\_\_ (Report to KAP 24 hrs prior);
- ☐ Complete \_\_\_\_\_ hours of Community Service as follows: Contact Lisa Haines, Campbell County Fiscal Court, 1098 Monmouth St., Newport, KY (859) 292-3838;
- ☐ Have **no contact** with Victim or Victim's family;
- ☐ Attend Anger Management Program;
- ☐ Complete **Alcohol Drug** Evaluation and treatment;
- ☐ Attend Drug Education Prog. w/ Com Sub Abuse, 525 Alex. Pk., Southgate, KY (859) 442-7700;
- ☐ \_\_\_\_\_ **day month** Driver's License Suspension
- ☐ Other: \_\_\_\_\_.

IT IS FURTHER ORDERED that upon the completion of the period for which the sentence of Probation, Probation with an alternative sentence, or Conditional discharge remains subject to revocation, the defendant shall be deemed fully discharged provided no warrant is sued by the court is pending against him/her and his/her probation, Probation with an alternative sentence, or Conditional Discharge has not been revoked.

\_\_\_\_\_  
Hon. Karen A. Thomas, Judge

Copy received and terms understood:

\_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
Date

COMMONWEALTH OF KENTUCKY  
CAMPBELL COUNTY DISTRICT COURT  
DIVISION II

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT

ORDER OF EXTENSION

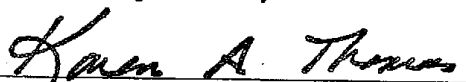
The defendant, having appeared in Court and having been found guilty as charged, **IS HEREBY ORDERED TO PAY AS FOLLOWS:**

\$ _____	FINE
\$ <u>134.00</u>	COURT COSTS
\$ _____	COURT FACILITY FEE
\$ _____	CRIME STOPPERS
\$ _____	DUI SERVICE FEE
\$ _____	A.I. FEE
\$ _____	BOND FILING FEE
\$ _____	RESTITUTION
\$ _____	5% RESTITUTION FEE
\$ _____	OTHER FEE ( _____ )
\$ _____	TOTAL

The defendant, having represented to the Court that he/she is unable to pay said fine/Court costs/fees on the day of appearance, and the Court being sufficiently advised;

**IT IS HEREBY ORDERED AND ADJUDGED** that the defendant shall be granted an extension of time until \_\_\_\_\_, at 10:00 a.m. to pay said fines/Court costs/fees **OR** appear in Court on the above date and time. The Campbell County District Court is located at 600 Columbia Street, Courtroom #1, Newport, KY 41071.

Payments are to be made to the Campbell District Court Clerk's Office. Failure to make payment in full or to appear on the above date shall result in a **bench warrant** being issued for your arrest.

  
Judge Karen A. Thomas

I hereby acknowledge receipt of a copy of this Order

X \_\_\_\_\_ Date \_\_\_\_\_

Commonwealth of Kentucky

Vs.

\_\_\_\_\_  
Defendant

Case # \_\_\_\_\_

**WAIVER OF JURY TRIAL**

I have been charged with a criminal or traffic offense(s).

I understand that I have a right to a jury trial.

I hereby waive my right to a jury trial in this case.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

## References

**RCr 3.05** sets out the procedure for appointment of counsel for indigents requiring appointment for indigents unless the indigent waives counsel :

### INITIAL APPEARANCE AND PRELIMINARY HEARING BEFORE DISTRICT COURT

#### RCr 3.05 Cautioning of accused; appointment of counsel

(1) At the time of the defendant's appearance the judge shall inform the defendant of the charge against him or her and of his or her right to a preliminary hearing or a trial, and shall advise the defendant of his or her right to have counsel. The defendant shall be informed also that he or she is not required to make a statement and that any statement made by him or her may be used against him or her. The judge shall notify the attorney for the Commonwealth, allow the defendant reasonable time and opportunity to consult counsel, and release the defendant on personal recognizance or admit the defendant to bail if the offense is bailable.

(2) If the crime of which the defendant is charged is punishable by confinement and the defendant is financially unable to employ counsel, the judge shall appoint counsel to represent the defendant unless he or she elects to proceed without counsel. The defendant has the burden of first establishing his or her indigency before counsel may be appointed. If the defendant demonstrates that he or she is a needy person as defined in KRS 31.120 and the court so concludes, then the appointment shall continue for all future stages of the criminal proceeding, including appeal. Such appointment may be terminated by the court in which the proceeding is pending at any time upon a showing that defendant is able to employ counsel.

HISTORY: Amended by Order 98-3, eff. 3-1-99; adopted by Order 81-5, eff. 9-1-81

**KRS 31.110** provides that a needy person is entitled to appointment of counsel.

(1): A needy person who is being detained by a law enforcement officer, on suspicion of having committed, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, or who is accused of having committed a public or status offense or who has been committed to the Department of Juvenile Justice or Cabinet for Health and Family Services for having committed a public or status offense as those are defined by KRS 610.010(1), 610.010(2)(a), (b), (c), or 630.020(2) is entitled: (a) To be represented by an attorney to the same extent as a person having his or her own counsel is so entitled....

2) A needy person who is entitled to be represented by an attorney under subsection (1) of this section is entitled: (a) To be counseled and defended at all stages of the matter beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney and including revocation of probation or parole;



**KRS 31.120** sets out how the determination of indigence is to be made.

**KRS 31.140** allows a person to waive counsel but only if certain conditions are met and there is a finding of record or a waiver in writing:

A person who has been appropriately informed under KRS 31.120 may waive in writing, or by other record, any right provided by this chapter, if the court concerned, at the time of or after waiver, finds of record that he has acted with full awareness of his rights and of the consequences of a waiver and if the waiver is otherwise according to law. The court shall consider such factors as the person's age, education, and familiarity with English, and the complexity of the crime involved.

## **RCr 8.02 Arraignment**

Arraignment shall be conducted in open court and shall consist of reading or stating to the defendant the substance of the charge and calling upon the defendant to plead in response to it. Defendants who are jointly charged may be arraigned separately or together, in the discretion of the court.

## **RCr 8.28 Presence of defendant**

- (1) The defendant shall be present at the arraignment, at every critical stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of the sentence. The defendant's voluntary absence after the trial has been commenced in his or her presence shall not prevent proceeding with the trial up to and including the verdict. The defendant may be permitted to remain on bail during the trial. Upon a hearing and finding by the trial court, that a defendant in custody on any charge, including a felony, intentionally refuses to appear for any proceeding, including trial, short of physical force, such refusal shall be deemed a waiver of the defendant's right to appear at that proceeding.

A defendant who persists in engaging in disruptive conduct after being warned by the court that such conduct will cause him or her to be removed may be excluded from the courtroom.

- (2) A corporation may appear by counsel for all purposes.
- (3) In prosecutions for misdemeanors or violations the court may permit arraignment, plea, trial and imposition of sentence in the defendant's absence. However, no plea of guilty to a violation of KRS 189A or KRS 218A may be entered in the defendant's absence, unless the defendant first executes a written waiver of his or her right to be present.
- (4) During his or her appearance in court before a jury the defendant shall not be required to wear the distinctive clothing of a prisoner. Except for good cause shown

the judge shall not permit the defendant to be seen by the jury in shackles or other devices for physical restraint.