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FEB 06 1996

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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| In Re:<br><br>PRETRIAL DIVERSION (NON-FELONY) | GENERAL ORDER |

The Court endorses and approves the pretrial diversion option, as provided for in the attached PRETRIAL DIVERSION AGREEMENT and PRETRIAL DIVERSION STATEMENT, on a six month trial basis for the Western District of Washington at Seattle and Tacoma.

DATED this 6 day of February, 1996.

Carolyn R. Dimmick
Chief United States District Judge

Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
(AT SEATTLE OR TACOMA)

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>(DEFENDANT'S NAME)<br><br>Defendant. | ) | NO.<br><br>PRETRIAL DIVERSION AGREEMENT |

I, (Defendant's name), understand that I have been charged with an offense against the United States on or about (Date of Offense), in violation of (insert cite to U.S.C. or C.F.R.), in that I did commit the offense of (nature of offense). The maximum penalty for this offense is (insert max jail time) in custody and a fine of (insert max fine), or both, and a penalty assessment of (insert amount).

I understand that I may have the right to have an attorney appointed to represent me and if I am entitled to an appointed attorney, I have been given the opportunity to confer with an attorney prior to entering into this Agreement. If I have chosen not to be represented by an attorney, I understand by initialing this line that I have waived my right to be represented by an attorney. _____

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I understand that under the Sixth Amendment to the United States Constitution and under the Speedy Trial Act, 18 U.S.C. Section 3161 et seq., I have the right to a prompt arraignment and to a speedy trial. I also understand that under the Federal Rule of Criminal Procedure 48(b), the Court may dismiss the charges against me if there is unnecessary delay in bringing the case to trial. I consent to waiving these rights and to continuing the trial in this matter for a period not to exceed 15 months from the date of this Agreement. I agree and consent that any delay resulting from this Agreement shall be deemed a necessary delay at my specific request. I waive any defense to such prosecution on the grounds that a delay resulting from this Agreement denied my rights under Federal Rule of Criminal Procedure 48(b), the Speedy Trial Act, 18 U.S.C. Section 3161 et seq., and the Sixth Amendment to the United States Constitution to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the length of the diversion supervision. I understand that the period of delay caused by this Agreement is excludable time for speedy trial purposes.

I understand that I may have a constitutional right to a trial by jury. I understand that I have the right to trial, judgment, and sentencing before a United States District Judge or a United States Magistrate Judge. By initialing this line that I knowingly and voluntarily waive my right to a jury trial on the charges pending and consent to trial, judgment and sentencing by a United States Magistrate Judge. _____

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## AGREEMENT

I understand that upon accepting responsibility for my behavior and by my signature on this Agreement, it appears that the interest of the United States and my own interest and the interest of justice will be served by the pretrial diversion of this case. Therefore, provided that the Pretrial Services investigation reveals that I am eligible for the program, the United States Attorney for the Western District of Washington, through Special Assistant United States Attorney, Barbara J. Sievers, for said district, agrees that the prosecution of (Defendant's Name), shall be deferred for a period of 12 months.

I understand that If I successfully complete the Pretrial Diversion Program, no prosecution of the offense set out on page 1 of this Agreement will be instituted and the charges against me will be dismissed.

## CONDITIONS

By signing this Pretrial Diversion Agreement I accept responsibility for my behavior and agree to comply with the conditions of pretrial diversion contained below:

1. I will not violate any Federal, State, or Local law while on diversion.

2. I will contact my Pretrial Services Office within 48 hours of any arrest and/or questioning by any law enforcement officer.

3. I will not leave the judicial district without the permission of the Pretrial Services Office.

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4. I will report to the Pretrial Services Office as directed.

5. I will notify the Pretrial Services Office within 48 hours of any change in residence or employment.

6. I will participate in an initial interview with the Pretrial Services Office to determine my eligibility for the Pretrial Diversion Program. I understand that any information I provide to Pretrial Services Office must be truthful.

MODIFICATION OF CONDITIONS OF PRETRIAL DIVERSION

I understand that within 30 days of my signing this agreement, and after my initial interview with Pretrial Services, Pretrial Services will notify the United States Attorney's Office that I do or not do meet the basic criteria for eligibility. If I am deemed ineligible within the 30 days, my case will be placed back on the court docket and this agreement and the stipulation of facts will not be used against me at trial.

If Pretrial Services makes a recommendation for modification to the United States Attorney's Office, and the United States accepts the modification, then I understand that a modification can be made to the this agreement. I understand that if I refuse to comply with a modification, I will be deemed ineligible for participation in the pretrial diversion program.

VIOLATION OF PRETRIAL DIVERSION

I understand and agree that if the United States Attorney concludes that I have violated this Pretrial Diversion Agreement, the United States may seek to resume the criminal prosecution against me. In that event, the United States Attorney would

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furnish me with notice of request for termination of the agreement, outlining the allegation, and I would be given an opportunity to respond. Any dispute will be resolved by a United States Magistrate Judge.

I understand that if it is determined that I have violated the terms of this Pretrial Trial Diversion Agreement, I will be brought back before the court for a bench trial on the stipulation of facts previously executed containing the citation or police reports. No additional evidence or witnesses will be presented at the trial other than the stipulation of facts.

I understand and agree that a copy of the Agreement will be provided to me, the United States Attorney, defense counsel (if any), and the Pretrial Services Office. I understand that the original agreement will be filed with the Court.

I understand that upon successful completion of the Pretrial Diversion Program, the United States Attorney will move the Court for an order dismissing the charges pending against me in this case.

I, (name of the Defendant), and the United States of America, acknowledge that the above-stated terms and conditions, together with the waiver of speedy trial, waiver of counsel (if applicable), waiver of jury trial (if applicable), and consent to proceed before a Magistrate Judge contained herein, constitute the entire Pretrial Diversion Agreement between the parties.

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|---|---|
| Date | (Defendant's Name)<br>Defendant |
| Date | (Counsel Name)<br>Attorney for Defendant |
| Date | BARBARA J. SIEVERS<br>Special Assistant U.S. Attorney |

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Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
(AT SEATTLE OR TACOMA)

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|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>(DEFENDANT'S NAME)<br>Defendant. | NO.<br>PRETRIAL DIVERSION STIPULATION OF FACTS |

The parties stipulate that the facts contained in the attached citation, police reports, and/or investigative reports, are a substantially correct version of the facts on which the charge(s) in this case are based.

DATED this ____ day of _____, 1996.

| | |
|---|---|
| Defense Counsel waived | (name of defendant) |
| (name of defense counsel) | BARBARA J. SIEVERS<br>Special Assistant U.S. Attorney |

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## PRETRIAL DIVERSION

Pretrial Diversion should be reserved for certain non-felony violations that are isolated, uncomplicated indiscretions, in contrast to the normal law-abiding lifestyle of the defendant.

### BASIC CRITERIA

1. The case must have prosecutorial merit.

2. The defendant must be willing to admit the violation and agree that said admission can be used against him/her if the pretrial diversion is terminated.

3. The defendant must be willing to cooperate with Pretrial Services.

4. The loss or intended loss must be under $2,000.

5. The case must be referred to Pretrial Services for investigation, by agreement between the prosecution and defense. No case will be referred without agreement between the parties.

6. The United States Attorney reserves the right to withdraw from this agreement in the event that the Pretrial investigation reveals a person fails to meet the basic criteria for the program.

### GUIDELINES CASE REFERRAL

1. Pretrial Diversion should be considered in the following kinds of cases:

   Employee theft - under $500
   Shoplifting - under $1000
   Theft - under $1000
   Theft of Services - under $1000
   Malicious Mischief - under $1000
   Property Damage - under $1,000

2. Cases between $1000 - $2000, may be considered, if a presumption of unsuitability can be rebutted by an abundance of other positive indicators.

3. Cases over $2000 - pretrial diversion is not available.

4. Pretrial Diversion is not available for the following kinds of cases:

   Domestic violence assault/sexual assault
   Protestor cases/civil disobedience
   Drug possession/paraphernalia
   Firearms/explosives/fireworks offenses
   Resource offenses
   National Park and Forest regulatory offenses
   Traffic offenses
   Trespassing
   Other offenses not specifically included in paragraph one of this section

## DEFENDANT REFERRAL GUIDELINES

1. A defendant seeking pretrial diversion must not have:

   a. A prior felony conviction, or

   b. A prior adult conviction for the same/similar offense under consideration for diversion, or

   c. A prior pretrial diversion of any kind

## INITIAL PRETRIAL DIVERSION PROCEDURE

1. The case and the defendant must meet the above guidelines in order to be considered for Pretrial Services investigation.

2. The case must be jointly referred by the prosecution and defense.

3. The referral must be made before the filing of any pretrial motions.

4. The defendant must waive the right to a speedy trial while the case is under consideration for diversion.

5. The defendant must cooperate fully with the Pretrial Services investigation, to be completed after the signing of the Diversion Agreement. Failure to cooperate will result in the termination of the agreement.

6. The defendant must agree to the stipulation of the facts contained in the citation, police reports, or other investigation reports. The defendant must admit the offense and take responsibility for the crime. The original stipulation of facts, with attachments, will be filed with the Court.

7. In the event that the defendant is not suitable for Pretrial Diversion, nothing obtained by the Pretrial Services Officer may be used in the subsequent prosecution. (This applies only to a defendant found not suitable for the program, not subsequent prosecution after violation of Pretrial Diversion.)

## PRETRIAL DIVERSION PROGRAM

1. Once all parties have signed the Pretrial Diversion Agreement, the case will then be referred to Pretrial Services for an investigation. Pretrial Services will notify the U.S. Attorney's Office within 30 days of the signing of the Agreement whether the case is found to be ineligible for Pretrial Diversion. If Pretrial Services and the United States Attorney's Office agree that a modification is needed within 30 days of signing the agreement, a modification of the terms of the agreement may take place. If the defendant does not agree to the modification, then he or she will be deemed ineligible for the program and the case will be placed back on the court docket for prosecution.

2. If the defendant is suitable for the program, Pretrial Services will commence diversion supervision for a period not to exceed 12 months, starting from the date of signing of the agreement. Pretrial Services will provide monthly status reports to the Court advising of the disposition of all pending Pretrial Diversion cases.

3. If the defendant successfully completes Pretrial Diversion, Pretrial Services will notify the United States Attorney's Office. Upon receipt of the notice of successful completion the United States Attorney's Office will file a motion to dismiss the pending case. Successful termination of Pretrial Diversion will not require a court appearance.

4. If at any time during the period of supervision the defendant does not abide by the Pretrial Diversion Agreement, the United States must give the defendant written notice of the intent to terminate, outlining the violation of Pretrial Diversion. Once notice is given, the defendant will be given an opportunity to respond. If the dispute cannot be worked out by the parties, the case will be resolved by the United States Magistrate Judge.

5. If a defendant is found to have violated the Diversion Agreement, the defendant will be brought back before the Court for a bench trial on the stipulation of facts previously executed by the parties and filed with the Court. No additional evidence will be presented at the trial other than the stipulation of facts and the Pretrial Diversion Report.