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IN THE KITSAP COUNTY DISTRICT COURT

STATE OF WASHINGTON,

Plaintiff,

v.

Enter Defendant.

Defendant.

)  
) No. Enter Case #

)  
) PRE-TRIAL DIVERSION AGREEMENT,  
) WAIVERS, AND STIPULATED ORDER OF  
) CONTINUANCE

**PRE-TRIAL DIVERSION AGREEMENT**

COMES NOW the Prosecution, by and through its attorney of record below-named, and the Defendant, by and through his or her attorney of record below-named, and hereby enter the following Pre-Trial Diversion Agreement (hereafter "Agreement")-

**DEFENDANT'S WAIVER OF RIGHTS AND AGREEMENT**

1. **Waiver of Speedy Trial (CrRLJ 3.3(c)(2)(i)).** The Defendant understands that he or she has the right to be tried within 90 days following the "commencement date" as defined in CrRLJ 3.3(c), and that if the Defendant does not receive a trial within this time period the case may be dismissed with prejudice unless the Defendant waives this right.

The Defendant understands that he or she has a right to trial by \_\_\_\_ (date).

The Defendant gives up that right and agrees to a new commencement date of **December 31, 2021.**

As a result of this waiver, the last allowable date for trial will be **March 31, 2022.**

2. **Waiver of Jury Trial (CrRLJ 6.1.1(a)).** The Defendant understands that he or she has the right to trial by jury unless he or she waives the right to a jury trial. The Defendant hereby waives his or her jury trial right and requests that his or her guilt or innocence be decided by a judge.

3. **Waiver of Rights.** The Defendant understands that he or she has the right to contest and object to evidence presented against the Defendant. The Defendant gives up the right to contest and object to any evidence presented against the Defendant as to the Defendant's guilt or innocence regarding the underlying charge(s) at any future hearings if the Defendant fails to comply with the conditions in this Agreement. The Defendant also understands that he or she has the right to present evidence on the Defendant's own behalf. The Defendant gives up the right to present evidence on the Defendant's own behalf as to the Defendant's guilt or innocence regarding the underlying charge(s). The Defendant understands that evidence will be presented against the Defendant at a future hearing and the Defendant understands that the Judge will read and review that evidence in determining the Defendant's guilt or innocence.

The Defendant understands that, by this process, he or she is giving up the constitutional right to a jury trial, the right to hear and question witnesses, the right to call witnesses in his or her own behalf, the right



1 to testify or not to testify, the right to remain silent, the right to challenge the admissibility of statements the  
2 Defendant has made (CrRLJ 3.5), the right to challenge physical, oral or identification evidence (CrRLJ  
3 3.6), the right to assert husband-wife privileges (RCW 5.60.060), the right to assert a physician-patient  
4 privilege (RCW 5.60.060), psychologist-client privilege (RCW 18.83.110), registered nurse privilege  
(RCW 5.62.020), and counselor privilege (RCW 18.19.180).

5 The Defendant understands that the maximum sentence for the crime(s) charged herein of—  
6 \_\_\_\_\_ is 364 days in jail and/or a \$5,000 fine plus costs and assessments, \_\_\_\_\_ is 90 days in jail and/or a  
7 \$1,000 fine, plus costs and assessments, and that the judge can impose any sentence up to the maximum, no  
8 matter what the prosecuting authority or the defense recommends.

9 4. **Defendant's Promise to be Present in Court.** The Defendant understands and agrees that he or she  
10 shall be present in court at all future court hearings herein unless previously waived in writing by the judge.

11 5. **Additional Conditions.** The Defendant agrees to fully and completely satisfy all of the following  
12 selected conditions—

13 **Criminal Law Violations.** The Defendant shall have no criminal law violations. The Defendant agrees  
14 that this Court may take action on the Prosecution's motion alleging the Defendant's violation of this  
15 condition prior to any resolution of the alleged new criminal law violation. The Defendant specifically  
16 agrees that a "conviction" for a criminal law violation occurring after the signing of this Agreement  
17 is not a prerequisite to this Court taking action on the Prosecution's motion to revoke this Agreement  
18 due to the Defendant's alleged violation of this condition. The Defendant further agrees that the  
19 Defendant's petition or otherwise request of any Washington court to grant the Defendant a deferred  
20 prosecution pursuant to RCW 10.05 et seq. for any new criminal law violation occurring after the  
21 signing of this Agreement shall be a violation of this condition. Traffic and/or civil infractions are not  
22 considered criminal law violations. Accordingly, the Defendant's commission of a traffic and/or civil  
23 infraction does not constitute a violation of this Agreement unless otherwise stated in this Agreement.

24 **Address and Telephone Information.** The Defendant agrees to immediately notify the Court in  
25 person or in writing of any change of residence or mailing address and telephone number.

26 **Failure to File Proof of Compliance With the Court.** The Defendant agrees that failure to file  
27 written proof with the Court Clerk when required herein shall be a violation of this Agreement.

28 **DV Order(s) Prohibiting Contact.** The Defendant agrees to strictly comply with all provisions of any  
29 court order entered in this case or any other case prohibiting contact with the named victim(s) herein.

30 **Seized Property.** The Defendant agrees as of today's date to forfeit all property seized herein by law  
31 enforcement.

**Misdemeanant Probation Department Assessment.** The Defendant shall pay a misdemeanor  
probation department assessment of \$\_\_\_\_\_ at \$75 per month by the 5th of each month beginning  
. Payments shall be made to—

**Kitsap County District Court, 614 Division Street, MS-25, Port Orchard, WA 98366**

Any amounts paid by check should include the Defendant's full name and case number. Part or all of  
the assessment may be converted to community service in accordance with court policy.

**Administrative Fee.** Within 90 days, the Defendant agrees to pay a \$100.00 Administrative Fee as  
authorized by Kitsap County Code 2.08.010. Payments shall be made to Kitsap County District Court,



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614 Division Street, MS-25, Port Orchard, WA 98366. Any amounts paid by check should include the Defendant's full name and case number. This fee may not be converted to community service.

**Monitoring of Conditions by District Court.** The Defendant agrees that compliance with this Agreement shall be monitored by the Kitsap County District Court. The Defendant agrees to contact District Court Probation within one judicial day of the signing of this Agreement and keep all appointments with probation.

**Valid License and Insurance.** The Defendant shall not drive a motor vehicle without a valid driver's license and/or proof of insurance.

**DUI Victim's Panel.** The Defendant shall attend a DUI victim's panel and within 90 days from today's date file written proof thereof with the Court Clerk.

**Chemical Dependency Treatment.** The Defendant shall obtain a chemical dependency evaluation from a state-certified agency, and thereafter successfully comply with all treatment recommendations, and within 90 days from today's date file written proof thereof with the Court Clerk.

**Drinking and Driving.** The Defendant shall not drive or be in actual physical control of a motor vehicle while having an alcohol concentration of 0.03 or more within two hours after driving or being in physical control. The Defendant shall not refuse to submit to a test of his/her breath or blood to determine alcohol and/or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe that the Defendant was driving or in actual physical control of a motor vehicle while under the influence of an intoxicating liquor and/or drugs.

**Six Hour Defensive Driving Class.** The Defendant shall attend and successfully complete either the six (6) hour in-class defensive driving course or the eight (8) hour online defensive driving course, and within 90 days from today's date file written proof thereof with the Court Clerk.

**Alcohol Prohibited.** The Defendant shall not possess or consume alcohol [ until the Defendant files written proof with the Court Clerk of a no significant alcohol/drug problem (screening of substance abuse reveals insufficient symptoms to indicate abuse or addiction) and files written proof with the Court Clerk of successful completion of alcohol/drug information school] [ until the Defendant becomes twenty-one years of age].

**Non-Prescribed Drugs Prohibited.** The Defendant shall not possess or consume any controlled substances (for example—methamphetamine, marijuana, cocaine, heroin, ecstasy, narcotic pain medication, etc.) unless prescribed by a physician.

**Ignition Interlock Device.** The Defendant shall not operate any vehicle that is not equipped with a functioning ignition interlock alcohol device. This condition may be rescinded by this Court after one (1) year from today's date if the Defendant is in full compliance with this Agreement at that time.

**DV Perpetrator's Program.** The Defendant shall successfully complete a state-certified one year Domestic Violence Perpetrator's Treatment program (which includes the Men's Ending Violence program). The defendant shall file proof of enrollment in the program with the Court Clerk within 90 days of today's date and shall also file proof of completion with the Court Clerk within one year from the date of enrollment.

**Firearm.** The Defendant shall not possess or own any firearm.



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- DV Parenting Class.** The Defendant shall attend and successfully complete a parenting class for a minimum 24 hours that includes discussion concerning the effects of domestic violence on children, and within 90 days from today's date file written proof thereof with the Court Clerk.
- Anger Management Course.** The Defendant shall attend and successfully complete an anger management course, and within 90 days from today's date file written proof thereof with the Court Clerk.
- Psycho-Sexual Evaluation.** The Defendant shall obtain a psycho-sexual evaluation from a state-certified agency, and thereafter successfully comply with all treatment recommendations, and within 90 days from today's date file proof thereof with the Court Clerk.
- Mental Health Evaluation.** The Defendant shall obtain a mental health evaluation from a state-certified agency, and thereafter successfully comply with all treatment recommendations, and within 90 days from today's date file proof thereof with the Court Clerk.
- No Contact [Non-DV Cases Only].** The Defendant shall not make any attempts (including but not limited to directly or indirectly, in person, in writing, by telephone, or through other persons) to contact the following- \_\_\_\_\_.
- Consumer Awareness Course.** The Defendant shall attend and successfully complete a consumer awareness course, and within 90 days from today's date file written proof thereof with the Court Clerk.
- Restitution.** The Defendant agrees to pay the following restitution directly to the name(s) and address(es) in the amount(s) shown below. The Defendant further agrees that he or she shall file written proof with the Court Clerk within 90 days from today's date showing that all restitution has been made in full.

| Amount | Name | Address |
|--------|------|---------|
|        |      |         |

\$ \_\_\_\_\_ Total

Other. \_\_\_\_\_

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

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

**PROSECUTION'S AGREEMENT**

**DISMISSAL OF CHARGE(S)**



1 If the Defendant successfully complies with the promises he or she has made herein, the Prosecution  
2 agrees to move to dismiss with prejudice the charge(s) of \_\_\_\_\_ at a hearing to be scheduled **not before**   
3 **two years**  \_\_\_\_\_ following entry of this Agreement.

4  **AMENDMENT OF DUI TO FIRST DEGREE NEGLIGENT DRIVING**

5 If the Defendant successfully complies with the promises he or she has made herein, the Prosecution  
6 agrees to move to amend the charge of SELECT ONE to Negligent Driving in the First Degree, RCW  
7 46.61.5249, and the Defendant agrees to the Court's entry of a guilty finding to Negligent Driving in the  
8 First Degree at a hearing to be scheduled **not before**  **two years**  \_\_\_\_\_ following entry of this  
9 Agreement. Negligent Driving in the First Degree has a maximum penalty of 90 days in jail and/or a  
\$1,000 fine, plus costs and assessments. The Prosecution will make the following sentencing recommenda-

10 90 days in jail with 90 days suspended for two years

11 \$1,000 fine with \$1000 suspended

12  The defendant agrees to entry of a guilty finding to Negligent Driving in the First Degree pursuant  
13 to *In re Personal Restraint of Barr*, 102 Wn.2d 265-71, 684 P.2d 712 (1984).

14 The Defendant shall have no violation of any criminal laws, and Probation shall be unsupervised.

15 The Judge does not have to follow anyone's recommendation as to sentence. The Judge can give the  
16 Defendant any sentence up to the maximum authorized by law no matter what the prosecuting authority or  
17 anyone else recommends.

18 **PROCEDURE ON ALLEGED VIOLATION OF AGREEMENT**

19 The Defendant and Prosecution agree that the prompt resolution of a party's allegation of violation of  
20 this Agreement by the other party is desirable. Accordingly, the parties request this Court to set a hearing  
21 date within approximately 30 days of any party's violation allegation so that this Court can promptly  
22 determine whether a violation of this Agreement has occurred.

23 The parties further agree that a Prosecution motion alleging a violation of this Agreement by the  
24 Defendant will be handled in accordance with the procedures set forth in *State v. Marino*, 100 Wn.2d 719,  
25 674 P.2d 171 (1984), and *State v. Kessler*, 75 Wn.App. 634, 879 P.2d 333 (1994).

26 DATED AND FILED 5/23/2012

27 Note to Defendant—This Agreement is a contract  
28 between you and the Kitsap County Prosecutor's  
29 Office. In order to receive the benefit of the contract  
(dismissal or amending your current charge to a  
30 lesser charge), you must comply with all terms of  
31 this Agreement. If you fail to satisfy any of these  
requirements, you can be found guilty without a  
trial by jury.

PRESENTED BY—

DEFENDANT

APPROVED FOR ENTRY—



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\_\_\_\_\_, WSBA No. \_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_, WSBA No. \_\_\_\_\_  
Attorney for Defendant

