



TENNESSEE SUPREME COURT RULE 17A
Order of Deferral (Judicial Diversion)
Instruction Manual

Prepared by: Tennessee Administrative Office of the Courts
(Revised December 2012)

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GENERALLY

Tennessee Code Annotated section (“T.C.A. §”) 40-35-313 sets out the circumstances in which an offender is eligible for judicial diversion. In the past, if a trial court granted judicial diversion the disposition was reflected in the uniform judgment document which was created by Tennessee Supreme Court Rule 17 (“Rule 17”). However, because the granting of judicial diversion does not constitute a final judgment of conviction, the Supreme Court created an Order of Deferral (Judicial Diversion) (“diversion order”) in Tennessee Supreme Court Rule 17A (“Rule 17A”), and this order must be used by trial judges of courts of record in all cases in which judicial diversion is granted.

DISTRIBUTION OF COMPLETED ORDER

The court clerk must forward the completed diversion order to the agencies/entities listed below.

Jail/Sheriff’s Office – Consult with your local sheriff/jail to determine what, if any, orders must be submitted.

Board of Probation and Parole – The Board of Probation and Parole no longer exists. In 2012, BOPP and the Department of Correction merged. The Board of Parole is now an independent entity. Unless the probation officers say otherwise, you should continue to provide probation officers with diversion orders utilizing the same procedures you utilized prior to the TDOC/BOPP merger. **PLEASE NOTE** that probation officers need a copy of the order **ONLY IF** the offender will be supervised by those officers.

Department of Health – DOH requires submission **ONLY IF** you check the second box under Item #3 on the form (This option provides as follows: “The defendant agrees without contest or any further notice or hearing that the defendant’s name shall be permanently placed on the registry governed by Title 68, Chapter 11, Part 10, whereupon a copy of this order shall be forwarded by the clerk to the department of health.”). See T.C.A. § 68-11-1003 for details regarding the information you must provide to DOH. DOH’s address is as follows:

Tennessee Department of Health
Elderly or Vulnerable Abuse Registry
227 French Landing, Suite 501
Heritage Place, Metro Center
Nashville, TN 37243

Tennessee Bureau of Investigation – TBI requires submission of all diversion orders. Please send them to the following address:

Tennessee Bureau of Investigation
Records Processing Unit
Attn: Mona Jamison
901 R.S. Gass Blvd.
Nashville, TN 37216

Tennessee Department of Correction – Other than as noted above with regard to the BOPP/TDOC merger, TDOC **DOES NOT** require submission of **ANY** diversion orders.

Administrative Office of the Courts – AOC **DOES NOT** require submission of **ANY** diversion orders.

DIRECTIONS FOR COMPLETING A RULE 17A ORDER

IN THE CRIMINAL/CIRCUIT COURT FOR _____ COUNTY, TENNESSEE

Case Number: _____ Count #: _____ Counsel for the State: _____
Judicial District: _____ Judicial Division: _____ Counsel for the Defendant: _____

Blank line before "County": Insert the name of the county in which the case was disposed.

Case number: Insert the docket number.

Count #: If the indictment has multiple counts, insert the count number for the charge at issue. If it is a one-count indictment, insert "1" on this line.

Counsel for the State: Insert the name of the prosecutor who represented the State of Tennessee.

Judicial District: Insert the number of the judicial district in which the case was disposed.

Judicial Division: In some judicial districts, there are multiple divisions. For example, the Shelby County Criminal Courts have ten separate divisions. If the county in which the case was disposed has separate divisions, insert the division number. If the county does not have separate divisions, insert "N/A" on this line.

Counsel for the Defendant: Insert the name of the attorney who represented the defendant. If more than one attorney represented the defendant, insert the names of all attorneys. If the defendant represented himself, insert "Pro Se" on this line.

State of Tennessee Retained Pub Def Appt Private Atty Appt
vs. Counsel Waived Pro Se

Defendant: _____ Alias: _____ Date of Birth: _____ Sex: _____
Race: _____ SSN: _____ Relationship to Victim: _____ Victim's Age: _____
State ID #: _____ County Offender ID # (if applicable): _____ State Control #: _____
Arrest Date: _____ Indictment Filing Date: _____

Representation Issue: Indicate whether the defendant hired an attorney (Retained), was indigent and had a private attorney appointed by the court (Private Atty Appt), or was indigent and was represented by the public defender or an assistant public defender (Pub Def Appt). If the defendant represented himself, check the box next to "Pro Se." If this *pro se* defendant waived his right to counsel, check the box next to "Counsel Waived" in addition to checking the box next to "Pro Se."

Defendant: Insert the defendant's name.

Alias: If the defendant has any aliases, insert them on this line. If not, leave this line blank.

Date of Birth: Insert the day, month and year the defendant was born.

Sex: Indicate whether the defendant is male or female.

Race: Insert the defendant's race.

SSN: Insert the defendant's social security number. **PLEASE DO NOT REDACT THE SOCIAL SECURITY NUMBER WHEN YOU FORWARD THE JUDGMENT DOCUMENT TO THE REQUIRED AGENCIES.**

Relationship to Victim: Insert the nature of the relationship between the defendant and the victim. This information is necessary for Sex Offender Registry purposes.

Victim's Age: Insert the age of the victim **at the time of the offense**. This information is necessary for Sex Offender Registry purposes.

State ID #: Insert the state identification number, which is assigned to the defendant by the arresting agency. This number is permanently assigned to the defendant and does not change with each arrest.

County Offender ID # (if applicable): Insert this number only if your county assigns a separate county offender number. If it does not, insert "N/A" on this line.

State Control #: Insert the state control number, which is assigned to the defendant by the arresting agency and applies only to the arrest at issue.

Arrest Date: Insert the date of the defendant's arrest.

Indictment Filing Date: Insert the date the Grand Jury returned a true bill.

ORDER OF DEFERRAL (JUDICIAL DIVERSION) Original Amended Corrected

If this is the first deferral/diversion order which has been completed for the defendant for the charge at issue, check the box next to "Original." If the original order did not accurately reflect the court's findings and the court is correcting the error(s) without notice to the defendant and a hearing, check the box next to "Corrected." If the original order is being altered to reflect a change which is a result of a hearing by the trial court or a ruling by an appellate court, check the box next to "Amended."

On the _____ day of _____, 20____, the defendant:

The relevant time period for this line is the date upon which the defendant entered the plea or was found guilty by a judge/jury. Insert the day of the month on the line which appears before "day"; enter the month on the line before "20"; and add the last two numbers of the year on the line following "20". For example, if the defendant entered a guilty plea on May 6, 2011, the line would appear as follows:

On the 6th day of May, 2011, the defendant:

<input type="checkbox"/> Pled Guilty	<input type="checkbox"/> Pled Nolo Contendere
Was Found Guilty By:	
<input type="checkbox"/> Jury Verdict	
<input type="checkbox"/> Bench Trial	

Check **ONE** of the boxes in this section. If the defendant pled guilty or pled nolo contendere, check the appropriate box. If the defendant did not enter a plea but was found guilty by either a jury or a judge, check the box next to EITHER “Jury Verdict” **OR** “Bench Trial.”

Indictment: Class (circle one) 1 st A B C D E	<input type="checkbox"/> Felony	<input type="checkbox"/> Misdemeanor
Indicted Offense Name AND TCA §: _____		
Amended Offense Name AND TCA §: _____		
Offense Date: _____		County of Offense: _____
Deferred Offense Name AND TCA §: _____		
Deferred Offense: Class (circle one)	A B C D E	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor

Indictment: Class (circle one): Indicate that the person was indicted for first degree murder by circling “1st”. For any other offense, indicate whether the offense was a misdemeanor or felony by checking the appropriate box. Also, indicate whether the felony or misdemeanor at issue was Class A, B, C, D or E by circling the appropriate letter. For example, if the defendant was charged with second degree murder, which is a Class A felony, circle “A” and check the box next to “Felony.”

Indicted Offense Name AND TCA §: Insert the name of the offense for which the defendant was indicted as well as the Tennessee Code Annotated section which creates that offense. For example, if the defendant was indicted for second degree murder, “Second degree murder, 39-13-210” would be inserted on that line. *For this line and the other lines which require an offense name and TCA section number, abbreviations are acceptable as long as the reader can easily determine the offense and TCA section at issue.* With regard to drug offenses, TOMIS (database utilized by TDOC) requires TDOC to identify cocaine and methamphetamine and to state whether the cocaine was less than or more than ½ gram. Therefore, the diversion order should include that information. With regard to other drug offenses, TOMIS merely requires the applicable TCA section/subsection and the drug’s schedule. Therefore, for offenses involving drugs other than cocaine and methamphetamine, it is not necessary to provide the name of the drug on the diversion order.

Amended Offense Name AND TCA §: If the indictment is amended pursuant to Rule 7 of the Tennessee Rules of Criminal Procedure, insert the name and Tennessee Code Annotated section for the amended offense.

Offense Date: Insert the date of the offense for which the defendant was indicted in the count at issue.

County of Offense: Insert the name of the county in which the offense at issue was committed.

Deferred Offense Name AND TCA §: Insert the name and applicable Tennessee Code Annotated section for the offense for which the court granted judicial diversion (deferral). This might be, but often is not, the same offense with which the defendant was charged. If the defendant entered a plea to, or was found guilty of, voluntary manslaughter, “Voluntary manslaughter, 39-13-211” would be inserted on that line.

Deferred Offense: Class (circle one): With two exceptions, the instructions for completing this line are identical to the instructions for completing the “Indictment: Class (circle one)” line as noted above. The first exception is that the offense at issue on this line is the offense for which the court granted judicial diversion (deferral) as opposed to the offense for which the defendant was indicted. Also, under current law, there are certain offenses for which a defendant is not eligible for diversion. For example, a court cannot impose diversion for a Class A or B felony. Therefore, unless the law changes, the A felony or B felony options will never be selected on this line.

<p>Upon review of the case, the court finds the facts stated above as well as the following (For Item 3, Check ONE Of The Two Boxes):</p> <ol style="list-style-type: none"> 1. The defendant is eligible for deferral of the prosecution pursuant to Tennessee Code Annotated section (T.C.A.) 40-35-313; 2. The Tennessee Bureau of Investigation has certified (per attached certificate) that the defendant does not have a prior felony or Class A misdemeanor conviction; 3. <input type="checkbox"/> The defendant was not charged with a violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in Title 68, Chapter 11, Part 10; OR <input type="checkbox"/> The defendant agrees without contest or any further notice or hearing that the defendant’s name shall be permanently placed on the registry governed by Title 68, Chapter 11, Part 10, whereupon a copy of this order shall be forwarded by the clerk to the department of health; 4. The defendant consents to T.C.A. 40-35-313 deferral, as evidenced by the defendant’s signature below; AND 5. The defendant should be granted a deferral of charges pursuant to T.C.A. 40-35-313. <p>It is, therefore, ORDERED that the prosecution in this case is deferred pursuant to T.C.A. 40-35-313, and the defendant is placed on probation. The terms and conditions ordered by this court apply to the defendant’s probation and are incorporated herein by reference thereto.</p> <p>Probation Term: Total Length _____ Beginning Date _____ Ending Date _____ <input type="checkbox"/> Supervised <input type="checkbox"/> Unsupervised</p> <p>Supervising Entity (unless otherwise provided to the defendant by the court): Name _____ Phone Number _____ Address _____</p> <p>Defendant’s Contact Information (unless otherwise provided to the probation officer by the court): Phone Number _____ Address _____</p>

This box includes findings which the court must make when granting diversion. In item #3, there are two options, and ONLY ONE BOX should be checked. If the defendant was not charged with a violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in Title 68, Chapter 11, Part 10, the first option would be checked. If the defendant was charged with such a violation, the second option would be checked IF the defendant agrees without contest or any further notice or hearing that the defendant’s name shall be permanently placed on the registry governed by Title 68, Chapter 11, Part 10. **If this second option applies, the clerk is required to forward a copy of the order to the Department of Health** at the address previously provided in this manual. If neither option applies, the defendant is not eligible for diversion. **See T.C.A. § 68-11-1003 for details regarding the information you must provide to DOH.**

Conditions of Probation: The conditions of probation will not be listed on this form. They will be listed in a separate court order and are incorporated by reference.

Probation Term: On the designated lines, insert the total length of the probation term, the date the term of probation begins, and the date the term of probation ends. Also, check one of the two boxes to indicate whether the court ordered supervised probation or unsupervised probation.

Supervising Entity: On the designated lines, insert the name, phone number, and address of the supervising entity unless the court has otherwise provided this information to the defendant.

Defendant's Contact Information: On the designated lines, insert the phone number and address of the defendant unless the court has otherwise provided this information to the probation officer.

Costs	
\$ _____	Sex Offender Tax (39-13-709)
\$ _____	Sex Offender Fine (40-24-108)
\$ _____	Drug Testing Fee (39-17-420)
\$ _____	Treatment Expenses (40-35-313)
\$ _____	Supervision Fees (40-35-313)
\$ _____	Other: _____
_____	_____
_____	_____

Indicate the amount of each applicable fee/fine/expense ordered by the court by writing it on the appropriate line. Additional costs can be added in the "Other" section or in a separate court order.

Concurrent with:

Consecutive to:

If there are multiple counts, indicate whether they will be run concurrently with or consecutively to the count at issue in the diversion order. Do so in any manner which makes the other offense easy to identify. If the other offense has a different docket number, for example, list the docket number and the offense name. If the other offense is contained within the same indictment as the current offense, list the count number and the offense name. If the other offense was disposed of in a different county, note the county name in addition to noting the offense name and docket number. If no other offenses are at issue, write "N/A" in these boxes.

Restitution	
Victim Name _____	
Address _____	
Total Amount \$ _____	
Per Month \$ _____	

If the court orders the defendant to pay restitution, insert the requested information on the lines provided. If multiple victims are entitled to restitution and there is inadequate space on the form to list the relevant information, additional information can be included in the separately-filed order which addresses probation conditions.

Pretrial Jail Credit Period(s):	
From _____	to _____
From _____	to _____
From _____	to _____
From _____	to _____

Insert the relevant jail credit periods. Judicial diversion is not a sentence and, therefore, pretrial jail credits cannot be credited to the defendant for the purpose of shortening the “sentence.” However, jail credits will become relevant if the defendant does not successfully complete diversion and a period of incarceration is imposed via Tennessee Supreme Court Rule 17’s uniform judgment document. Moreover, jail credits may be relevant to the calculation of jail fees, to the determination of the length of probation for a misdemeanor (combination of period of incarceration and period of probation cannot exceed 11 months, 29 days), or for other purposes.

Defendant	ENTER this the ____ day of _____, 20__
JUDGE’S NAME	JUDGE’S SIGNATURE
Counsel for the Defendant	Counsel for the State of Tennessee

This section must be signed by the defendant, the lawyer representing the defendant (unless the defendant is representing himself (proceeding *pro se*)), the lawyer representing the State of Tennessee, and the judge. The judge also must print his or her name on the “JUDGE’S NAME” line. If the defendant is representing himself, insert “Pro Se” on the line that requests the signature of “Counsel for the Defendant.” Finally, insert the date the order was entered.

FREQUENTLY ASKED QUESTIONS

Who fills out the diversion order, and when is it filed? The district attorney general completes and files the order within 30 days of the granting of diversion.

Does anything have to be attached to the order? Yes. Pursuant to T.C.A. § 40-35-313(a)(3)(A), the district attorney must attach “a certificate from the Tennessee bureau of investigation stating that the defendant does not have a prior felony or Class A misdemeanor conviction.”

How many forms must be completed for one defendant? A form (either through Rule 17 or Rule 17A) must be completed for each count in the indictment. For example, consider a defendant whose indictment charges him with burglary, reckless homicide and robbery. If the defendant enters a guilty plea to robbery and reckless homicide, the district attorney dismisses the burglary charge as part of the plea agreement, and the judge grants judicial diversion for the robbery and reckless homicide counts, the district attorney would complete a Rule 17A diversion order for robbery, a separate Rule 17A order for reckless homicide and a Rule 17 uniform judgment document for burglary.

If a court grants diversion, what happens after the period of probation ends? Pursuant to T.C.A. § 40-35-313(a)(2), if the defendant does not violate any of the conditions of the probation, the court shall discharge the defendant and dismiss the proceedings. Pursuant to T.C.A. § 40-35-313(a)(2), if the defendant violates a condition of probation, “the court may enter an adjudication of guilt and proceed as otherwise provided.” Regardless of whether the charges are dismissed or there is an adjudication of guilt, the district attorney general must, pursuant to Rule 17A, “complete and file a uniform judgment document for each charge within 30 days of such dismissal or adjudication.”

If the court dismisses the charges following successful completion probation, will that defendant’s record automatically be expunged? No. The defendant must file an application seeking expungement. The court would then follow the procedures set out in T.C.A. § 40-35-313.