

**MOTION TO ALLOW DEFENDANT TO PARTICIPATE IN THE PRETRIAL DIVERSION
PROGRAM**

The Defendant, by counsel, respectfully requests an order requiring the prosecutor to allow the Defendant to participate in the pretrial diversion program and to waive the participation fee. In support of the Motion, the Defendant states the following:

1. On [insert date]. Defendant was charged with [insert charge].
2. During the course of negotiations, the State has offered the Defendant an opportunity to participate in its pretrial diversion program.
3. Defendant has been found by this Court to be indigent. Defendant cannot afford the costs and fees associated with the prosecutor's pretrial diversion program. *See Affidavit of Defendant, herein attached and incorporated as Exhibit A.*
4. The State has refused entry into the pretrial diversion program unless and until all costs and fees associated with the program have been paid in full.
5. The State may not exclude the Defendant from the pretrial diversion program based solely on an inability to pay the fee or fine, as such would violate the Fourteenth Amendment of the United State Constitution and Article I, Section 12 of the Indiana Constitution. Muller v. State, 837 N.E.2d 198, 205-06 (Ind.Ct.App. 2005) ("A practice of requiring payment of a fee as an absolute condition of participation in a pretrial diversion program discriminates against indigent persons in violation o f the Fourteenth Amendment").

WHEREFORE, the Defendant respectfully requests this Court to order the prosecutor to accept the Defendant into the pretrial diversion program and to waive the participation fee, and for any other relief just and proper in the premise.

(Signature)