

COPY

STATE OF INDIANA

IN THE MARSHALL SUPERIOR COURT 1

COUNTY OF MARSHALL

STATE OF INDIANA

CAUSE NO. 50D01-1804-F6-000128

VS

LAURA ELIZABETH MANN

Defendant

FELONY PLEA AND PRETRIAL DIVERSION AGREEMENT

Under authority of I.C. 35-35-3 and I.C. 33-39-1-8 the State of Indiana, by the undersigned Deputy Prosecuting Attorney, and the Defendant hereby agree as follows:

1. Plea:
Upon acceptance by the Court of the defendant's plea of guilty to the criminal offense(s) of:

I. Theft level 6

Entry of a judgment of conviction and the imposition of sentence are postponed for a period of 12 months from the date of the guilty plea.

2. If the defendant fails to successfully complete the Felony Pretrial Diversion Program, the defendant will be convicted of all of the offense(s) listed above. In that event, the defendant may be sentenced to any penalty allowed by law, but the defendant's sentence will include not less than one felony conviction and a sentence ranging from six (6) months to two and a half (2.5) years incarceration. The sentence will be determined by the Court at a sentencing hearing held upon violating the terms of the Felony Pretrial Diversion Program.
3. The defendant acknowledges having been advised by the Court of the nature and elements of the charge(s) filed and that by pleading guilty the defendant is admitting that he/she committed the offense(s), and is giving up and waiving each of the following Constitutional rights
 - My right to a public and speedy trial by jury;
 - My right to confront face to face and cross examine the State's witnesses who would testify against me;
 - My right to require witnesses to testify for me, and have the Court issue subpoenas for those witnesses at no cost to me;
 - My right to require the State to prove me guilty beyond a reasonable doubt before I could be convicted;
 - My right against self-incrimination which means I cannot be forced to testify at trial, but at which I may testify if I wish to do so;
 - My right to appeal any conviction, which may result.

4. Defendant further acknowledges and understands that the possible penalty for a level 6 felony conviction is sentence ranging from six (6) months to two and a half (2.5) years Incarceration and a fine of up to \$10,000.
5. The State and the defendant further represent that the ends of substantial justice will be best served by permitting the defendant to remain at liberty and participate in the Felony Pretrial diversion Program during this period of time under the following conditions:
 - a. The defendant shall pay all fees and expenses associated with the Felony Pretrial Diversion Program. Pursuant to IC 33-37-4-1 the cost includes an initial user's fee of \$75.00 and a monthly user fee of \$50.00 for each month the defendant remains on the program. Additionally, court costs of \$164.00 are also imposed. The projected cost for the 12 month program is \$839.00. If the bond is not sufficient to cover the program fee, payment is to be paid within three (3) months of the date this agreement is filed with the Court. Payment is to be made by way of a money order or cashiers' check made payable to the Marshall County Clerk at 211 W. Madison St. Plymouth, IN 46563. You may pay by credit card by calling Marshall County Clerk at 1-574-935-8716 or PayGov Services at 1-866-480-8552 toll free/24 hours; **there will be additional fees for this service.** While the inability to pay the above fees and expenses will not disqualify a defendant from participating in the program, the defendant shall provide verified monthly written proof of his/her continuing inability to pay during the term of the program.
 - b. The Defendant shall not commit **any** criminal offenses against the United States of America, the State of Indiana or any other jurisdiction.
 - c. The Defendant shall participate fully in an individualized program of education, treatment and/or counseling as required by the Felony Pretrial Diversion Program. The Defendant agrees to report regularly to all scheduled activities of that program, including, but not limited to: urinalysis testing; case management appointments; treatment and education if recommended, and to fully comply with all recommendations until completion of the program. See Individualized Plan of Action for Details.
 - d. The Defendant agrees that during participation in the Felony Pretrial diversion Program to waive his/her rights under the Fourth Amendment to the U.S. constitution and Article 1, Section 11 of the Indiana constitution and agrees that his/her person, possessions, and/or property under his/her control may be searched at any time without notice, probable cause or a search warrant by any law enforcement officer or Felony Pretrial Diversion Officer who acts under reasonable suspicion that the defendant may be in violation of any of the conditions of this agreement. The Defendant further agrees that any contraband or evidence of other criminal activity discovered during such a search may be the basis for a new charge or charges and may be introduced against him/her at a hearing to enter judgment of conviction in this case. However, any evidence obtained during a search of participants per this agreement covered by 42 CFR part 2 cannot be used in subsequent criminal prosecution.
 - e. The Defendant agrees to waive any objections to the admission of records maintained by the State as evidence to be used in any termination hearing held with respect to the Defendant's termination from the Felon Pretrial Diversion Program.
 - f. The Defendant shall satisfy all terms of the Felony Pretrial diversion Program and Individualized Plan of Action, as well as any other conditions reasonably related to his/her Individualized program, during the Felony Pretrial Diversion Program. Defendant will be subject to termination for failure to comply with the Felony Pretrial Diversion

requirements or required court hearings and/or judicial involvement.

- g. The Defendant shall perform community service and pay restitution as detailed in the Individualized Plan of Action.

Additional Conditions:

Possession of any firearm or dangerous weapon is strictly prohibited during the term of the agreement. A violation of this condition may terminate your participation in the program.

Defendant agrees to cooperate with any additional investigations and agrees to be interviewed if requested.

If probable cause exists to believe that the Defendant has committed any criminal offense during the term of this agreement, including a misdemeanor or felony, the agreement will be terminated.

Should medication be needed for this defendant, defendant should pursue medication that is not a controlled substance. If this is not an option, defendant must provide to the State a verification of a valid prescription from a physician licensed in the State of Indiana and a letter from that physician explaining the need for the medication.

6. The State further agrees that if the Defendant satisfactorily complies with the above conditions, then upon the expiration of 12 months from the entry of the Defendant's guilty plea, the State will consent to allowing the defendant to withdraw the previously entered plea of guilty; and if the Court so allows the withdrawal of the guilty plea, the State will there upon move for dismissal of this criminal case.
7. The Defendant understands that by entering this agreement he/she consents to the jurisdiction of the court over his/her person for the period of 12 months from the entry of a guilty plea, unless extended by mutual consent of the State, Defendant and Court to give defendant additional time to successfully complete the program. Defendant waives any claims of delay under Criminal Rule 4.
8. In the event that the State has probable cause to believe that there has been a violation of any of the conditions upon which participation in the Felony Pretrial Diversion Program has been permitted and the entry of a judgment of conviction and the imposition of sentence have been deferred, **the State may file a written motion with the Court requesting the defendant's termination** from the Felony Pretrial Diversion Program and entry of a judgment of conviction on the defendant's plea of guilty and sentencing.

The State's motion shall set forth the date, the place, and the nature of the alleged violation(s) of any condition(s) upon which the entry of judgment and the imposition of sentence were postponed. **The Court may issue either a summons to appear or a warrant for the defendant's arrest** and shall conduct an **evidentiary hearing** to decide whether a violation occurred. At such a hearing, an **affidavit** filed by the State setting forth probable cause to believe that a violation of the terms of this agreement has occurred shall be admissible and shall be considered **prima facie evidence** that such a violation has occurred. Upon the finding of a violation, the Court may immediately enter a judgment of conviction for a felony on the defendant's plea of guilty.

9. Following the receipt of the Pre-Sentence Report, the Court may impose sentence within the statutory guidelines, however, the parties agree that the sentence will include not less than one felony conviction with a term of incarceration to be determined by the Court.
10. The parties will be free to argue any additional sentence and whether that additional sentence will be suspended or executed.
11. The Defendant further understands and agrees that he/she is waiving the right to contest the admissibility of the results of any scientific testing, including any drug screen at any stage of these proceedings.
12. The Defendant understands and agrees that failure to appear for court status review hearings; treatment or case management appointment; urinalysis testing; and positive urinalysis test results/ or a violation of any written program rule constitutes probable cause to believe that a violation of the conditions of this agreement has occurred, and may result in a warrant being issued for his/her arrest; termination from the program and a sentence being imposed on the defendant's plea to the charge(s) listed in paragraph 1 of this agreement.
13. The defendant acknowledges that he/she is entering into this program voluntarily without threat of coercion and that no promises or inducements have been given which are not part of this written agreement.
14. The defendant agrees to pay all fees and expenses associated with the Felony Pretrial Diversion Program, which include program fees, treatment fees, and all lab related expenses. Defendant further agrees that the cash bond posted in this case may be held by the Court as security for, or dispersed by the Court as payment for, the Defendant's individualized program or other fees, including treatment fees associated with the Felony Pretrial Diversion Program. **Subject to paragraph 4(a) above, the program will not be deemed successfully completed until all fees are paid.**

- | | Date | Def. Initials |
|---|---------------|---------------|
| 15. The Parties stipulate the Defendant has no criminal record. | <u>8/7/18</u> | <u>lm</u> |
| 16. Pre-sentence investigation and written report is not required. | <u>8/7/18</u> | <u>lm</u> |
| 17. The Defendant hereby further acknowledges that he/she has been represented by Attorney <u>Meri A Morrison</u> throughout the course of these proceedings; that he/she is satisfied with the representation that has been received from said attorney and has no objection concerning the effectiveness and assistance rendered by said attorney in this matter. | <u>8/7/18</u> | <u>lm</u> |
| 18. The Defendant acknowledges that he/she understands the nature of the charges against him/her. | <u>8/7/18</u> | <u>lm</u> |
| 19. The Defendant has been informed and understands that by his/her Plea Agreement, he waives his rights to: | <u>8/7/18</u> | <u>lm</u> |
| a. A public trial | | |
| b. A speedy trial | <u>8/7/18</u> | <u>lm</u> |
| c. A trial by Jury | | |

ACKNOWLEDGEMENT AND AGREEMENT TO PARTICIPATE

I, the undersigned defendant, acknowledge that I understand all of the information set out above, and have reviewed it with my attorney.

I acknowledge that compliance with the Felony Pretrial Diversion Program requires that I not use alcohol or any controlled substances, listed in Schedules I, II, III, IV, and V of the Indiana Code unless validly prescribed by a physician licensed in the State of Indiana.

I understand and acknowledge that participation in the Felony Pretrial Diversion Program may result in discussions in open court about my treatment and overall compliance with the program, which would otherwise be confidential; and I agree to the disclosure of that information in open court.

I understand and agree that I am subject to assessment under the Indiana Risk Assessment System as a condition of my participation in the Felony Pretrial Diversion Program. I hereby authorize staff to enter the results of the assessment conducted during my participation into the Indiana Risk Assessment System database. I understand that the results of the assessments conducted during my participation in the Felony Pretrial Diversion Program are accessible by any authorized Indiana Risk Assessment System database user in connection with his, or her official duties.

I understand that pursuant to Criminal Rule 26, my statements which were made for use in preparing my assessment, and evidence derived from those statements, are not admissible against me in any civil or criminal proceedings unless the statement is used:

- In a pretrial proceeding involving me;
- In any proceeding in which another statement made in preparing an authorized evidence based risk assessment tool has been introduced, if in fairness the statements ought to be considered together.

No statements made for these purposes may be used in any other court except in a pretrial proceedings.

I have already received a copy of the Felony Pretrial Diversion Agreement and the Individualized Plan of Action and have had the opportunity to discuss them with my attorney. I understand them, agree to information contained in them, and agree to abide by the conditions and rules that the State has set out in them.

I understand that I am participating in the Felony Pretrial Diversion Program as a result of a guilty plea; and that if I fail to successfully complete the program, that I will be convicted of the offense(s) to which I have plead guilty. In that event I may be sentenced to any penalty allowed by law, that sentence will include not less than one felony conviction with a term of incarceration to be determined by the Court.

I understand that I have the right to appeal my sentence if there is an open plea. An open plea is an agreement which leaves my sentence to the Judge's discretion. I hereby waive my right to appeal my sentence under Creech v State, 887N. E.2D 73 (Ind. 2008), as long as the Judge sentences me within the

terms of my plea agreement.

I understand that if I successfully complete the requirements of the Felony Pretrial Diversion Program, that I will be permitted to withdraw my guilty plea, and the State will dismiss, with prejudice, the offense(s) to which I have pled.

DATE: x 8/7/18

x Yawna Norn

Defendant

State of Indiana

BY: [Signature]

Prosecutor

[Signature]

Attorney for Defendant

DATED this 7th day of August, 2018

X Yaura Mann

Defendant's Signature

X Man a Home

Attorney for Defendant

X [Signature]

Prosecuting Attorney

Presented and approved in Open Court on the 10th day of AUG, 2018.

X [Signature]

Christopher A. Lee, Special Judge
Marshall Superior Court 1

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|---|---------------|-----------|
| d. Confront and cross examine witnesses against him/her | <u>8/7/18</u> | <u>lm</u> |
| e. Compulsory process for obtaining witnesses in his/her favor | <u>8/7/18</u> | <u>lm</u> |
| f. Require the State to prove his/her guilt beyond a reasonable doubt | <u>8/7/18</u> | <u>lm</u> |
| g. Not be compelled to testify against him/her self | <u>8/7/18</u> | <u>lm</u> |
| 21. The Defendant has been informed of and understands: | | |
| a. The maximum possible sentence for the crime charged | <u>8/7/18</u> | <u>lm</u> |
| b. The minimum possible sentence for the crime charged | <u>8/7/18</u> | <u>lm</u> |
| c. Any possible increase sentence by reason of the fact of prior Conviction(s) | <u>8/7/18</u> | <u>lm</u> |
| d. Any possibility of imposition of consecutive sentence(s) | <u>8/7/18</u> | <u>lm</u> |
| 22. The Defendant has been informed by counsel and understands the His/her plea of guilty in this cause may have adverse effects on Immigration status; Including but not limited to, deportation | <u>8/7/18</u> | <u>lm</u> |
| 23. The Defendant has been informed and understands that if he/she enters into agreement and the Court accepts the plea, the court is bound by the terms of this plea agreement. | <u>8/7/18</u> | <u>lm</u> |
| 24. The Defendant has been informed and understands that any variance from the requirements 19 through 24 does not violate a constitutional right of the Defendant and is not a basis for setting aside a plea of guilty. | <u>8/7/18</u> | <u>lm</u> |
| 25. The Defendant acknowledges that his plea agreement was voluntarily and knowingly entered into and that the Defendant was not under the influence of alcohol or drugs at the time the Agreement was entered into and signed. | <u>8/7/18</u> | <u>lm</u> |
| 26. The Defendant acknowledges that no promises, force or threats were used to obtain the plea. | <u>8/7/18</u> | <u>lm</u> |
| 27. The Defendant agrees that a factual basis exists for the plea of Guilty. | <u>8/7/18</u> | <u>lm</u> |
| 28. The Defendant understands that the plea agreement is an Agreement with the Prosecutor and the Defendant, and that the Court is not a party to the Agreement. | <u>8/7/18</u> | <u>lm</u> |
| 29. The Defendant understands that he/she is liable for payment of all fees, fines and court costs as ordered by the Court. | <u>8/7/18</u> | <u>lm</u> |