

ORDINANCE NO. 2021 – 28

ORDINANCE TO ESTABLISH A PRETRIAL DIVERSION PROGRAM FOR THE MUNICIPAL COURT OF THE CITY OF CULLMAN, ALABAMA

WHEREAS, the Code of Alabama, 12-14-90, Act 2013-353, and HB648, authorizes the governing body of any municipality to establish or abolish a pretrial diversion program for that municipality, including the assessment and collection of fees for the administration of the program; and

WHEREAS, the City of Cullman through its Municipal Court system wishes to establish a pretrial diversion program to prevent future criminal activity among certain offenders by diverting them from traditional processing into community supervision and services, to save prosecutive and judicial resources for concentration on major cases, and to provide, where appropriate, a vehicle for restitution to communities and victims of crime; and

WHEREAS, the program would be under the supervision of the presiding judge for the City of Cullman pursuant to any and all rules adopted by the governing body of the City of Cullman; and

WHEREAS, this shall also provide limited immunity to the City and its officers and employees for any conduct of any offender while participating in the pretrial diversion program and for any injury or harm to the offender while participating in the program; and

WHEREAS, this program is a voluntary rehabilitation program which is an alternative to prosecution in which payment is remitted to the Municipal Court by the defendant to attend the program, and upon successful completion, the charge(s) against the defendant will be dismissed with prejudice. If the defendant is unsuccessful in completing the program, the defendant will be returned to the normal prosecution procedures of the Court.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Cullman, Alabama, as follows:

Section 1. Established.

- (a) Notwithstanding any other law to the contrary, the City of Cullman hereby establishes a pretrial diversion program for any defendant within the jurisdiction of the Municipal Court.
- (b) All discretionary powers endowed by a common law and provided by statutes and acts of this state or powers or discretion otherwise provided by law for the City of Cullman shall be retained.
- (c) The pretrial diversion program shall be under the direct supervision and control of the City of Cullman and the City of Cullman may contract with any agency, person, or corporation for services related to this act. The City of Cullman may employ necessary persons to accomplish this act and those persons shall serve at the pleasure of the town.

Section 2. Definitions. For the purposes of this act, the following terms shall have the following meanings:

- (1) *Application fee.* A one-time administrative fee imposed by the City of Cullman as a condition precedent to participation in a pretrial diversion program.
- (2) *City prosecutor.* The person or persons charged with the responsibility of prosecuting cases in the municipal court or any legal staff employed by the City prosecutor.
- (3) *Law enforcement.* As defined in Section 41-8A-1(1) Code of Alabama 1975.
- (4) *Law enforcement officer.* As defined in Section 36-25-1(15) Code of Alabama 1975, whether employed in the State of Alabama or elsewhere.
- (5) *Municipal court judge.* The Judge of the Municipal court for the City of Cullman duly appointed by the city council in accordance with Section 12-14-30, Code of Alabama 1975, or a special judge appointed by the mayor of the City of Cullman in accordance with Section 12-14-34, Code of Alabama 1975.
- (6) *Offender.* Any person charged with a criminal offense, including, but not limited to, any misdemeanor, violation, or traffic offense, as defined by the Code of Alabama 1975, and the Code for the City of Cullman, which was allegedly committed in the city limits or police jurisdiction of the City of Cullman.

(7) *Pretrial diversion program or program.* A program that allows the imposition by the City of Cullman or by a designated agency of certain conditions of behavior and conduct for a specified period of time upon an offender which allow the defender to have his or her charges reduced, dismissed without prejudice, or otherwise mitigated should all of the conditions be met during the time frame set by the city's Municipal Court Judge.

(8) *Serious physical injury.* As defined in Section 13A-1-2(14) Code of Alabama 1975.

(9) *Supervision fee.* Any fee other than the application fee imposed by any agency providing supervision of treatment of the offender.

Section 3. Application for admittance. An offender may apply to the City of Cullman for admittance into the pretrial diversion program.

Section 4. Offenses ineligible for admittance. Admittance into the pretrial diversion program is in the sole discretion of the municipal court judge upon application approved by the city prosecutor. An offender deemed by the city prosecutor to be a threat to the safety or well-being of the community shall not be eligible for the program. An offender charged with any of the following types of offenses without the express written consent of the victim shall be ineligible for admittance.

(1) Any offense involving violence or aggression resulting in injury to a law enforcement officer.

(2) Any offense involving eluding or attempting to elude a law enforcement officer.

(3) Any offense involving violence where a weapon was used or where children are victims.

(4) Any driving under the influence charge where serious physical injuries are involved.

(5) Any driving under the influence charge where the defendant has a prior DUI conviction during his lifetime or the defendant has a criminal history of alcohol related offenses or refused to test (SFST, PBT, Draeger, Alcohol breath tests. Drug or alcohol blood tests, etc.).

(6) Any offense wherein the offender is a public official and the charge is related to the capacity of the offender as a public official.

(7) A person may not be admitted to the program if the person holds a commercial driver license (CDL) issued in any U.S. state, any U.S. possession, any U.S. territory, or any U.S. insular area.

Section 5. Standards for eligibility for admittance.

(a) The city prosecutor may consider an offender for the pretrial diversion program based on any of the following circumstances:

(1) Police officer recommendation.

(2) Prior record of offenses/driving offenses.

(3) Assistance provided to law enforcement.

(4) Submitted to standard field sobriety testing, portable breath testing and AlcolSensor testing (did not refuse).

(5) Admission of guilt and remorse.

(6) Current clean drug test.

(7) Defendant's attitude from time of arrest and up to consideration of his/her application for the deferred prosecution program.

(8) There is a probability justice will be served if the offender is placed in the program.

(9) It is determined the needs of the state, city and of the offender can be met through the program.

(10) The offender appears to pose no substantial threat to the safety and well-being of the community.

(11) It appears the offender is not likely to be involved in further criminal activity if the offender complies with all conditions imposed pursuant to the program.

(12) The offender will likely respond to rehabilitative treatment or counseling.

(13) The need for restitution for the victim from the offender outweighs the interest of the state and city for incarceration of the offender.

(b) The city prosecutor may waive any of the standards specified in subsection (a) if justice or special circumstances dictate.

Section 6. Additional requirements for admittance.

(a) Upon application by an offender for admission into the pretrial diversion program, and prior to admission thereto and as a part of the evaluation process of the city prosecutor, the city prosecutor may require the offender to furnish information concerning past criminal history, education history, work record, family history, medical or psychiatric treatment or care prescribed or received,

psychological tests taken, and any other information concerning the offender which the city prosecutor believes has a bearing on the decision whether or not the offender should be admitted to the program.

(b) The city prosecutor may require the offender to submit to any type of test or evaluation process or interview the city prosecutor deems appropriate in evaluating the offender for admittance into the program. The costs of any test or evaluation shall be paid by the offender or as otherwise agreed to or provided for by this act. The offender shall provide the city prosecutor written consent to allow the city prosecutor to receive any educational, work, medical, psychiatric, psychological, or other records deemed necessary by the city prosecutor for the evaluation process.

Section 7. Conditions for participation.

(a) Following the decision of the city prosecutor to recommend the offender into the pretrial diversion program, but prior to entry, the city prosecutor and the offender shall enter into a written agreement stating the conditions of the participation of the offender in the program. The agreement shall include, but not be limited to, all of the following;

- (1) A voluntary waiver of the right of the offender to a speedy trial.
- (2) An agreement to the tolling, while in the program, of periods of limitations established by statutes or rules of court.
- (3) An agreement to the conditions of the program established by the city prosecutor.
- (4) If there is a victim of the charged crime, an agreement to the restitution repayment within a specified period of time and in an amount to be determined by the city prosecutor taking into account circumstances of the offender and the victim.
- (5) A waiver in writing of the right of the offender to a jury trial.
- (6) Submission of a written plea of guilty to the offense or offenses charged or agreed upon included offenses, together with an agreement as to whether the case is to be dismissed upon successful completion of the program, and an agreement, if there be any, as to the recommended sentence should a sentence be imposed.

(b) In addition to those requirements set forth in subsection (a), or as a condition of continued participation in the program, the city prosecutor may require the offender to agree to any of the following terms or conditions:

- (1) To participate in substance abuse treatment.
- (2) To participate in an education setting to include, but not be limited to K—12, college, job training, trade school, GED classes, or basic education courses.
- (3) If appropriate, to attempt to learn to read and write the English language.
- (4) To financially support his or her children or pay any court ordered child support.
- (5) To refrain from the use of drugs or alcohol or frequenting places where drugs or alcohol are sold or used.
- (6) To not commit any criminal offense.
- (7) To refrain from contact with certain named persons or premises.
- (8) To maintain or seek employment.
- (9) To not leave the State of Alabama without prior written consent of the city prosecutor or supervising agency or personnel.
- (10) To maintain a residence approved by the city prosecutor or supervising agency or personnel.
- (11) To attend individual, group, financial, chemical addition, family, mental health, sex offender, traffic safety, bad check, substance abuse, truancy, shoplifting, alcohol, financial management, employment or anger management counseling.
- (12) To pay all court costs, fees, fines, and worthless checks, and obey any other lawful court order associated with the offence or offenses for which the offender has entered the program, or any other case.
- (13) To refrain from the possession or use of any deadly weapon or dangerous instrument as defined in Section 13A-1-2 Code of Alabama 1975.
- (14) To pay supervision fees and application fees pursuant to this act. Supervision shall be monitored through the municipal court office.
- (15) To observe curfews or home detention or travel constraints as set out in the agreement signed by the offender.
- (16) To have restitution, court costs, fees, child support, and any other monies withheld or garnished from the wages or salary of the offender or withheld from any Alabama income tax due the offender, or from any available insurance policy, or forfeited from any real or personal property of the offender, and applied to the above.
- (17) To be admitted to a drug or alcohol treatment program on an inpatient or outpatient basis or receive other treatment alternatives for substance abuse.
- (18) To submit to periodic or random drug testing as part of the program and other terms and conditions relate to substance abuse as the town prosecutor may direct.
- (19) To waive in writing the right of the offender to a probation hearing in the event of termination or withdrawal from the program.

- (20) To perform community service.
- (21) To any other terms or conditions as the town prosecutor or his or her designee and the offender may agree to in the above-stated agreement, it being the purpose of this act to allow the town prosecutor broad discretion in designing a program specifically for each offender and his or her particular circumstances.
- (22) When applicable, to be required to pay supervision fees to the agency or entity responsible for monitoring and verifying the compliance of the offender with the terms of the program set forth by the town prosecutor. The fees shall be paid by the offender to the supervising entity in a timely manner.

Section 8. Application fees.

- (a) An offender may be assessed a nonrefundable application fee when the offender is approved for the pretrial diversion program. The amount of the assessment for participation in the program shall be in addition to court costs, fees, and assessments for the crime victim's compensation fund, department of forensic sciences assessments, drug, alcohol or anger management treatment required by law, and any costs of supervision, treatment and restitution for which the offender may be responsible. A schedule of payments for any of these fees may be established by the city prosecutor.
- (b) The following application fees shall be applied to offenders accepted into the program:
 - (1) *Class A misdemeanor offenses and driving under the influence*: One thousand dollars (\$1,000.00).
 - (2) *Class B and Class C misdemeanors*: Five hundred dollars (\$500.00).
 - (3) *Traffic offenses excluding DUI's and violations*: Three hundred dollars (\$300.00).
- (c) The application fees required by this act shall be paid in full in advance and shall be collected by the Cullman Municipal Court.
- (d) An applicant offender may not be denied access into the pretrial diversion program based solely on the inability of the offender to pay the application fee. Application fees may be waived or reduced or delayed for just cause, including indigency of the offender, at the discretion of the city. Any determination of the indigency of the offender for purposes of program fee mitigation shall be made by the city, but shall be granted only upon the determination by the municipal court judge that there is no reasonable likelihood within the reasonably foreseeable future that the offender will have the ability to pay the application fee.

Section 9. Collection of fees. Application fees required by this act shall be collected by the Clerk of the Municipal court for the City of Cullman.

Section 10. Liability for payment.

- (a) Upon acceptance of an offender into the pretrial diversion program by the city prosecutor, the city prosecutor and the offender shall submit the written application of the offender, the acceptance of the offender by the city prosecutor, and the agreement between the city prosecutor and the offender to the municipal court judge presiding over the affected case of the offender for approval. The offender shall also enter a plea of guilty to the charge or charges involved. If the municipal court judge rejects the agreement and guilty plea, any money paid by the offender in satisfaction of the application fee shall be refunded to the offender. The offender shall be liable for any actual expenses already incurred by the city prosecutor or any agency or service provider in furtherance of the application and evaluation process and the same will be deducted from any money so refunded to the offender.
- (b) Upon approval of the agreement and acceptance of the guilty plea, the court shall expressly retain jurisdiction of the case, any other provision of law notwithstanding, and may withdraw and file the case or otherwise place it on an administrative docket until such time as the court has been notified that the offender has fulfilled the terms of the agreement, has been terminated from the program, or otherwise withdrawn from the program. Imposition of punishment by the court shall be deferred until the offender has successfully completed the program or is terminated from the program.
- (c) In the event the offender withdraws or is terminated from the program, the municipal court judge shall impose appropriate punishment in the same manner as with any plea of guilty or finding of guilty and shall not be bound by the terms of agreement as to what punishment to impose.
- (d) Upon successful completion of the program by the offender, the city prosecutor shall notify the municipal court judge in writing of the fact together with a request that the court enter an order of disposition of the case pursuant to the agreement between the offender and the city prosecutor.
- (e) Regardless of whether the offender successfully completes the program or withdraws from or is terminated from the program, the offender will still be liable for and required to pay any and all court costs and fees, restitution, victim's compensation fund assessment, and any and all other fees and assessments, in the same manner as if the offender had not applied for entry into the program and had been found guilty of the offense or offenses involved. No costs, fees, restitution, or assessments shall be waived or

remitted, absent an express agreement to that effect between the city prosecutor and the offender, without a finding by the municipal court judge that the offender does not have the ability to pay the same within the reasonably foreseeable future.

Section 11. Violation of any program terms or conditions.

- (a) After any violation of any program terms or conditions or upon any breach of any program agreement by the offender, the city prosecutor may do any of the following:
- (1) Continue the agreement with or without modification.
 - (2) Terminate the offender from the pretrial diversion program.
 - (3) Require the offender to adopt a new agreement as a condition of continued participation.
- (b) The city prosecutor may waive a violation for good cause shown why the offender should stay in the program.

Section 12. Liability, criminal or civil, for the conduct of any offender. In no event shall the city prosecutor or any other agency or service provider have any liability, criminal or civil, for the conduct of any offender while participating in the pretrial diversion program unless the event was foreseeable or for acceptance of an offender into the program.

Section 13. Severability. Each and every provision of this ordinance is hereby declared to be an independent provision and the holding of any provision hereof to be void and invalid shall not affect any other provision hereof. It is hereby declared that the other provisions of this ordinance would have been enacted regardless of any provision which might be held invalid.

Section 14. Effective Date. This Ordinance shall become effective after its adoption and publication as provided by law.

ADOPTED BY THE CITY COUNCIL this the 22nd day of March, 2021.

President of the City Council

ATTEST:

City Clerk

APPROVED BY THE MAYOR this the 22nd day of March, 2021.

Mayor