

ORDINANCE NO. 1803

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

WHEREAS, the City Council of the City of Talladega, as the governing body of said municipality, pursuant to the authority granted by Ala. Code 1975, Section 12-14-90, desires to establish a Pretrial Diversion Program for the Talladega Municipal Court;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TALLADEGA AS FOLLOWS:

SECTION 1: Definitions

- (a) For the purposes of this ordinance, the following terms shall have the following meanings:
1. **APPLICATION FEE.** A one-time administrative fee imposed by the City of Talladega as a condition precedent to participation in the PTD Program.
 2. **CITY.** The City of Talladega, Alabama.
 3. **COURT.** The Talladega Municipal Court.
 4. **LAW ENFORCEMENT OR LAW ENFORCEMENT OFFICER.** Any person who is employed by an agency or department whose purpose is to protect people, whether employed in the State of Alabama or elsewhere.
 5. **MUNICIPAL COURT JUDGE.** The Judge of the Municipal Court for the City of Talladega duly appointed by the city council in accordance with Section 12-1430, Code of Alabama 1975.
 6. **MUNICIPAL PROSECUTOR.** The person or persons contracted by the City to prosecute cases in the Talladega Municipal Court.
 7. **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/or the Code for the City of Talladega, which was allegedly committed within the jurisdiction of the Municipal Court of the City of Talladega.
 8. **PRETRIAL DIVERSION PROGRAM or PTD PROGRAM.** A Program that allows the imposition by the City or by a designated agency of certain conditions of behavior and conduct for a specified period of time upon an Offender which allow the Offender 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 and approved by the Municipal Prosecutor.
 9. **SUPERVISION FEE.** Any fee other than the application fee imposed by any agency providing supervision of treatment of the Offender.

SECTION 2: General Provisions

- (a) Upon the recommendation of the Municipal Judge and the Municipal Prosecutor, the City of Talladega does hereby establish a Pretrial Diversion ("PTD") Program.
- (b) All discretionary powers endowed by common law and provided by statutes and acts of this State or powers or discretion otherwise provided by law for the City of Talladega shall be retained.
- (c) The PTD Program established under this ordinance shall be under the supervision of the Municipal Judge for the City of Talladega, pursuant to any rules and regulations hereby established by the City Council.
- (d) The Municipal Judge with approval of the City Council and the Municipal Prosecutor, may contract with any agency, person, or business entity for any service necessary to accomplish the purpose of the PTD Program.
- (e) The City Council does hereby authorize the Municipal Court to assess and collect fees for the administration of the PTD Program. Any fees collection in connection with the PTD Program shall be deposited to The Municipal Court Fund_

SECTION 3: Rules and Regulations

The following rules and regulations shall apply to the PTD Program in the Talladega Municipal Court:

- (a) A holder of a commercial driver's license, an operator of a commercial motor vehicle, or a commercial driver learner permit holder who is charged with a violation of a traffic law in this State and/or City shall not be eligible for a Pretrial Diversion Program pursuant to this ordinance.
- (b) An Offender charged with any of the following types of offenses without the express written consent of the victim shall be ineligible for admittance to the PTD Program:
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 under 19 are victims.
- (c) The Municipal Prosecutor may consider an Offender for admittance to the PTD Program based on any of the following circumstances:
1. Arresting Police Officer approval.
 2. Prior record of offenses/driving offenses.

3. Assistance provided to law enforcement.
4. Admission of guilt or remorse.
5. Negative result on a current drug test for the use of controlled substances.
6. Offender's demeanor from time of arrest and up to consideration of his/her application for the deferred prosecution program.
7. A determination that the welfare and safety of the citizens of the City and the State of Alabama and the rehabilitation of the Offender will probably be accomplished through the Program.
8. The Offender appears to pose no substantial threat to the safety and well-being of the community.
9. 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.
10. The Offender will likely respond to rehabilitative treatment or counseling.
11. The need for restitution for the victim from the Offender outweighs the interests of the State and City for incarceration of the Offender.

(d) The Municipal Prosecutor may waive any of the standards specified in subsection (c) if special circumstances dictate.

(e) Such additional rules and terms necessary for the implementation of the PTD Program as established by the Municipal Judge acting in consultation with the Municipal Prosecutor.

SECTION 4: Application Process

(a) Any Offender may apply to the Talladega Municipal Court for admission into the PTD Program.

(b) Upon written application by an Offender for admission into the PTD Program, and prior to admission thereto and as a part of the evaluation process of the Municipal Prosecutor, the Municipal 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 Municipal Prosecutor believes has a bearing on the decision whether or not the Offender should be admitted to the Program.

(c) The Municipal Prosecutor may require the Offender to submit to any type of test or evaluation process or interview the Municipal 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 Ordinance. The Offender shall provide the Municipal Prosecutor written consent to allow the Municipal Prosecutor to receive any educational, work, medical, psychiatric, psychological, or other records deemed necessary by the Municipal Prosecutor for the evaluation process.

(d) Following the decision of the Municipal Prosecutor to recommend the Offender into the PTD Program, but prior to entry, the Municipal 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 limitation established by statutes or rules of court.
3. An agreement to the conditions of the Program established by the Municipal 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 Municipal Prosecutor taking into account financial circumstances of the Offender and the victim.
5. Submission of a written plea of guilty to the offense charged or agreed upon lesser 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.

(e) In addition to those requirements set forth in subsection (d), or as a condition of continued participation in the Program, the Municipal Prosecutor may require the Offender to agree to any of the following terms or conditions:

1. To participate in substance abuse treatment.
2. To refrain from the use of drugs or alcohol or frequenting places where drugs or alcohol are sold or used.
3. Not commit any criminal offense.
4. To refrain from contact with certain named persons or premises.
5. To maintain or seek employment.
6. Not violate any laws of any city, county, state, or the United States.
7. To attend individual, group, financial, chemical addiction, family, mental health, sex Offender, traffic safety, substance abuse, truancy, shoplifting, alcohol, financial management, employment, or anger management counseling.

8. To pay all court costs, fees, fines, and obey any other lawful court order associated with the offense or offenses for which the Offender has entered the Program.
9. 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.
10. To pay supervision fees and application fees pursuant to this ordinance. Supervision shall be monitored through the Municipal Court Office.
11. To observe curfews or home detention or travel constraints as set out in the agreement signed by the Offender.
12. To be admitted to a drug or alcohol treatment Program on an inpatient or outpatient basis or receive other treatment alternatives for substance abuse.
13. To submit to periodic or random drug testing as part of the Program and other terms and conditions related to substance abuse as the Municipal Prosecutor may direct.
14. To waive in writing the right of the Offender to a probation hearing in the event of termination or withdrawal from the Program.
15. To perform community service.
16. To perform and/or satisfy any other terms or conditions as the Municipal Prosecutor and the Offender may agree to in the above-stated agreement; it being the purpose of this ordinance to allow the Municipal Prosecutor broad discretion in designing a Program specifically for each Offender and his or her particular circumstances.
17. When applicable, Offender 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 Municipal Prosecutor. The fees shall be paid by the Offender to the supervising entity in a timely manner.

(f) An Offender may be assessed a nonrefundable application fee when the Offender is approved for the PTD Program. The amount of the assessment for participation in the Program shall be in addition to any court costs, fines, 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 Municipal Prosecutor and approved by the Municipal Judge.

(g) The following application fee 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: Three Hundred Dollars (\$300.00)

(h) The application fee which is a one-time administrative fee required by this act shall be paid in full in advance and shall be collected by the City of Talladega Municipal Court Clerk. All PTD Program application fees shall be deposited in a timely manner by the Municipal Court Clerk into the Municipal Court Fund. The Municipal Court Clerk shall make the deposits in a timely manner, pursuant to requirements established by law. The Municipal Court Fund shall be subject to regular audits by the State.

(i) 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, fines, 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 court costs, fines, fees or restitution shall be waived or remitted, absent an express agreement to that effect between the Municipal Prosecutor and the Offender, without a finding by the Municipal Judge that the Offender does not have the reasonable ability to pay the same within the reasonably foreseeable future.

SECTION 5: Approval by Municipal Court Judge

(a) Upon full compliance with the application procedure by Offender, the application, written recommendation of the Municipal Prosecutor, and the written agreement between the Municipal Prosecutor and the Offender shall be submitted to the Municipal Court Judge, presiding over the affected case of the Offender, for approval by the Municipal Court Judge.

(b) Upon admittance to the PTD Program by the Municipal Court Judge, the Offender shall enter a plea of guilty to the charge or charges involved and the Offender's case(s) shall be placed on an administrative docket until such time as the Offender has completed all of the requirements of the PTD Program agreement. Imposition of any sentence shall be deferred until such time as the Offender completes the PTD Program or is terminated from the Program.

(c) If the Offender's application for participation in the PTD Program is not approved by the Municipal Court, any money paid by the Offender in satisfaction of the application fee shall be

refunded to the Offender after deducting therefrom any actual expenses incurred by the Municipal Prosecutor or any agency or service provider in furtherance of the application and evaluation process.

(d) Upon approval of the agreement, admittance of the Offender in to the PTD Program and acceptance of the Offender's guilty plea, the imposition of any sentence shall be deferred until such time as the Offender completes the terms of the PTD agreement, withdraws from the PTD Program, or is terminated from the PTD Program.

(e) 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. The application fee is nonrefundable.

(f) Upon successful completion of the Program and all terms thereof by the Offender, the Municipal Prosecutor shall by written notification to the Municipal Court Judge inform the Municipal Court that the Offender has completed the PTD Program. Upon receipt of said notice, the Municipal Court Judge shall dismiss the case pursuant to the rules and regulations established by this Ordinance.

SECTION 6: Breach of PTD Program Agreement

(a) After any violation of any PTD Program terms or conditions or upon any breach of any PTD Program agreement by the Offender, the Municipal Prosecutor, upon order of the Municipal Court Judge, may do any of the following:

1. Continue the agreement with or without modification;
2. Terminate the Offender from the PTD Program; or,
3. Require the Offender to adopt a new agreement as a condition of continued participation.

(b) The Municipal Prosecutor, with the written consent of the Municipal Judge, may waive a violation for good cause shown as to why the Offender should stay in the Program.

SECTION 7

The provisions of this Ordinance are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

SECTION 8

All laws or parts of laws which conflict with this Ordinance are repealed.

SECTION 9

This Ordinance shall take effect from and after the date of its adoption and publication as provided by law.

ADOPTED, on this the 5th day of October, 2015.

Council President Ricky Simpson

Councilman Donnie Miller

Councilman Horace Patterson

Councilman Jarvis Elston

City Manager Patrick Bryant

Attested: Elizabeth Cheeks, City Clerk

