

Town of Notasulga Pretrial Diversion Program Guidelines and Procedures

Section 1. Admittance into the pretrial diversion program is in the sole discretion of the Town Attorney. An offender deemed by the Town Attorney 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 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 weapons are used or where children are victims;
4. Any driving under the influence (DUI) charge where serious physical injuries, as defined by Section 12A-1-2(14) of the Code of Alabama (1975), are involved;
5. Any offense wherein the offender is a public official and the charge is related to the capacity of the offender as a public official;
6. Any offense involving an offender who holds a commercial driver license (CDL) issued in any state, any United States possession or territory, or any United States insular area, or an offender who has no conviction for which a commercial driver license was required;
7. Any offender charged with driving under the influence when the evidence shows that the offender had a blood alcohol level of .12% or greater;
8. Any offender charged with driving under the influence who refused to submit to the Draeger Alcotest or any other Town approved test pursuant to the state implied consent law;
9. Any offender charged with driving under the influence while driving a school bus or day care vehicle;
10. Any offender, who is 21 years of age or older, charged with driving under the influence when a child age 14 years or younger, was present in the vehicle at the time of the offense charged;
11. Any offender wherein the offender has any previous criminal conviction other than a minor traffic conviction; and
12. Any offense wherein the offender had previously completed a pre-trial diversion program in any jurisdiction.

Section 2. Admittance into the pretrial diversion program will be considered on a case by case basis based on the following considerations:

1. There is a probability justice will be served if the offender is placed in the program;
2. It is determined the needs of the state, town and the offender can be met through the program;
3. The offender appears to pose no substantial threat to the safety and well-being of the community;
4. 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;
5. The offender will likely respond to rehabilitative treatment or counseling;

6. The need for restitution for the victim from the offender outweighs the interest of the state and town for incarceration of the offender, and
7. The town attorney may waive any of the aforementioned standards if justice or special circumstances dictate.

The offender shall pay all costs of services unless otherwise approved by the prosecutor.

In any case in which an offender is admitted into the PTD probation there shall be a written agreement between the municipal prosecutor and the offender. The agreement shall include the terms of the PTD program, length of the PTD program and period of time after which the municipal court clerk shall proceed to dispose of the charges against the offender or what charges the offender will plead guilty to and the recommended disposition of the matter. If, as a part of the PTD Program, the offender agrees to plead guilty to a particular offense and receive a recommended sentence, this agreement concerning the offense and recommended sentence shall be submitted to and shall be subject to the approval of the municipal court judge prior to admission of the offender into the PTD Program.

Section 3. Fees

(a)The offender shall be assessed a non-refundable application fee in the amount of fifty dollars (\$50.00) when the offender makes application for admittance to the PTD program. (\$43.00 application fee, \$7.00 maintenance fee) Act 2013-361 Section 12-17-226.17(d).
<http://www.alabamaprosecutor.com/Pretrial/>

(b)An offender shall be assessed a non-refundable administration fee when the offender is admitted to the PTD program. The amount of the assessment for participation in the PTD program shall be in addition to the application fee, any court costs, assessments for the crime victims' compensation fund, department of forensic science assessment, drug, alcohol or anger management treatment and counseling required by law or ordered by the court and any costs of supervision, treatment and restitution for which the offender may be responsible. An applicant may not be denied admission to the PTD program based solely on his or her inability to pay. Pre-trial diversion fees as established in this section may be waived or reduced for just cause including indigency of the applicant, at the discretion of the court. The following administration fees shall be assessed to offenders accepted into the PTD program:

- (1) DUI: \$750;
- (2) Theft of Property in the third degree: \$300;
- (3) Domestic Violence offenses (excluded offense involving a minor child as victim): \$500;
- (4) Other misdemeanor offenses: \$300;
- (5) Other violations: \$100; and
- (6) Traffic Offense except DUI: \$300.

(c)The offender shall pay to the probation services officer a monthly fee of thirty-five dollars (\$35.00) for supervision of the case. Supervision fees may be waived or reduced for just cause, including indigency of the offender, at the discretion of the court.

Section 4. Following the decision to admit an offender into the PTD Program, but prior to entry, 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 town attorney;
4. If there is a victim of the charged crime, an agreement to the restitution repayment within a specified period of the time and in an amount to be determined by the town attorney taking into account circumstances of the offender and the victim;
5. A truthful and complete statement by the offender as to the involvement of the offender in the offense charges, which statement shall be admissible in any criminal trial; and
6. Submission of a written plea of guilty to the offense of offenses charged or agreed upon included offenses, together with an 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.

The written agreement, determined on a case by case basis, may also require the offender to agree to any of the following terms or conditions:

1. Participate in an educational setting to include but not be limited to: K-12; job training; trade school; GED classes; or adult basic education courses.
2. Learn (Attempt to learn) to read and write
3. Refrain from the use of alcohol and drugs and submit to scheduled and random testing for alcohol and drug use at the offender expense
4. Refrain from frequenting places where alcoholic beverages or illegal controlled substances are sold, possessed, or used in violation of the law.
5. Refrain from contact with certain persons, places, or premises
6. Maintain/Attempt to maintain or obtain employment
7. Attend, participate in, and pay for individual, group, or family counseling
8. Pay victim restitution if any is due. Any restitution paid as a part of the pre-trial diversion program shall be made payable to and disbursed by the court clerk or agency the court contracts with
9. Perform community service at a non-profit organization or with Town of Notasulga or other pre-approved location for the duration set forth by the agreement
10. Pay fines, court costs, costs of incarceration (to include medical/housing/maintenance), cost of court appointed attorney fees, etc. incurred as a result of the offense or violation charged and any other amounts the offender owes as a result of the criminal offense(s)
11. Pay supervision fees pursuant to the program and pay court referral fees, drug/alcohol treatment, anti-violence programs, or other self-help fees charged as a result of participation in the pre-trial diversion program

12. Enter into an agreement with the municipal court prosecutor that all fees paid for admission into the pre-trial diversion program shall be forfeited to the use and benefit of the pre-trial diversion program should the offender be removed from the pre-trial diversion program by the municipal prosecutor for any cause
13. Complete all requirement with an appropriate attitude
14. Observe curfew/home confinement and travel constraints set forth in the agreement with the court
15. Participate in a substance abuse program, including but not limited to being admitted to a drug/alcohol treatment program on an in-patient or out-patient basis or receive other treatment alternatives for substance abuse
16. Complete a mental health evaluation and any follow-up programs suggested after the evaluation
17. Refrain from the possession or use of any deadly weapon or dangerous instrument
18. Obtain a driver's license
19. Show proof of compliance with vehicle laws such as registration, insurance, and equipment regulations
20. Agree to GPS/electronic monitoring and to pay all costs associated with the monitoring for a time period set forth in the written agreement
21. Do not change the current place of abode, or leave the State without notifying the court clerk/municipal prosecutor, or pre-trial diversion program supervisor to obtain pre-approval
22. Do not violate the laws of any governmental unit.