

GUIDELINES FOR EDUCATION, MONITORING & TREATMENT (DIVERSION) PROGRAM

Section 1. DEFINITIONS. For purposes of this Education Monitoring and Treatment Program (hereinafter EMT Program), the following terms shall have the following meanings:

- (1) Application Fee. A one-time, non-refundable administrative fee imposed by the City of Auburn as a condition precedent to enrollment in the EMT Program. The Application Fee for all misdemeanors and/or serious traffic offenses (as set forth in Section 32, Chapter 5A, Article 9 of the Code of Alabama) is Six Hundred and Seventy-Five (\$675.00) Dollars per charge. The Application Fee for all violations and/or non-serious traffic offenses is Three Hundred and Seventy-Five (\$375.00) Dollars per charge.
- (2) City Prosecutor. The city attorney for the City of Auburn, or any duly licensed attorney practicing with the city attorney or specially appointed by the presiding judge of the City of Auburn.
- (3) Defendant. Any individual who is charged with a criminal offense, including, but not limited to a misdemeanor, violation, traffic offense or Non-Arrest Traffic Citation, which offense was allegedly committed within the corporate limits or police jurisdiction of the City of Auburn.
- (4) Education Monitoring and Treatment Program. A program that allows the imposition by the City of Auburn's Municipal Court and/or its appointed agencies, of certain conditions and/or restrictions of behavior upon Defendants for a specific period of time, the successful completion of which will result in the Defendant's charge(s) being reduced, dismissed with or without prejudice, or otherwise being resolved without a conviction.
- (5) Pretrial Diversion Database Fee. A one-time fee of Seven (\$7) Dollars required under state law to register each entrant in the EMT Program into a state-wide database. This fee will be paid from the Defendant's Application Fee.
- (6) Serious Physical Injury. Any injury falling within the definition set out at Section 13A-1-2 (14), Code of Alabama 1975 (as amended).
- (7) Supervision Fee. Any fee other than the Administrative Fee imposed on a Defendant by any agency providing supervision or treatment to the Defendant under the terms of the EMT Program.

Section 2. SUPERVISION OF THE EMT PROGRAM. The EMT Program will be under the direct supervision of the presiding judge of the Auburn Municipal Court pursuant to the rules and regulations contained herein below. The presiding judge may, with the approval of the City Council and the City Prosecutor, contract with any agency, person,

corporation or other business entity for any services necessary to accomplish the rehabilitation, counseling and/or other purposes of the EMT Program.

Section 3. APPLICATION TO THE EMT PROGRAM. Any Defendant without a prior drug or alcohol related conviction may make application to the EMT Program. Any Defendant seeking admittance to the EMT Program must complete the Application attached hereto as Exhibit "A," and must agree to a complete background check as a condition of the application being considered.

Section 4. REVIEW BY CITY PROSECUTOR. Each Defendant's application and any information obtained during any background check shall be reviewed by the City Prosecutor. The City Prosecutor will then forward their recommendation regarding the Defendant's acceptance or denial into the EMT Program to the presiding judge.

Section 5. ADMITTANCE INTO THE EMT PROGRAM. Admittance into the EMT Program will be at the sole discretion of the judge assigned to the individual Defendant's case, subject to the following terms, conditions and guidelines:

- (1) Individuals charged with the following types of offenses will not be eligible for the EMT Program:
 - (i) Any offense involving Serious Physical Injury; or
 - (ii) Any offense involving a traffic offense wherein the Defendant possesses a Commercial Driver's License (CDL).
- (2) Defendants who have previously been enrolled in the EMT Program, or a similar program designed to result in pre-trial diversion of a Defendant's charge(s) will not be eligible for acceptance, regardless of whether they successfully completed the prior EMT Program or diversion program.
- (3) In making a decision, the assigned judge will review the application and background information and determine, in light of the specific facts of the Defendant's charge(s), whether:
 - (i) It is likely that admission to the EMT Program will promote the service of justice;
 - (ii) The Defendant poses a substantial risk to the safety and/or well-being of the community;
 - (iii) It is likely that admission and completion of the EMT Program will result in the Defendant refraining from further criminal activity;
 - (iv) The Defendant would benefit from and respond to rehabilitative treatment and/or counseling; and
 - (v) There is any restitution due to any victim and the effect of incarceration on the ability of the victim to receive restitution.

- (4) If admitted, the Defendant will be required to enter a plea of guilty to the charge(s) being placed in the EMT Program. Each charge will then be placed on an Administrative Docket, until such time as the Defendant has adequately completed all of the requirements placed upon them under the EMT Program. Adjudication of the charge(s) will be withheld until such time as the Defendant successfully completes, or is terminated from, the EMT Program.
- (5) If admitted, the Defendant will have to complete an Agreement, a copy of which is attached hereto as Exhibit "B". Defendant will agree to waive certain rights, and agree to such terms and conditions as are determined to best promote the interest of justice and the rehabilitation of the Defendant, including, but not limited to:
- (i) Defendant will waive their right to a speedy trial;
 - (ii) Defendant will waive any rights to raise, and will specifically agree to a tolling of, any statutes of limitations established by statute or rule of court;
 - (iii) Defendant will agree to complete such alcohol, drug, or other substance counseling as is ordered by the assigned judge or any designee;
 - (iv) Defendant will seek any educational requirements set forth by the assigned judge or any designee, including, but not limited to, obtaining a GED, attending trade school, or any other requirements likely to benefit the Defendant;
 - (v) Defendant will refrain from the use of drugs, alcohol, or other illegal substances, and will refrain from frequenting places and associating with individuals where such substances might be found;
 - (vi) Defendant will not commit any additional criminal offenses;
 - (vii) Defendant will refrain from associating with any proscribed individuals;
 - (viii) Defendant will maintain employment or status as a full-time student, or will seek employment if ordered by the assigned judge;
 - (ix) Defendant will attend any other psychological, addiction, anger management, domestic violence or other counseling as determined necessary by the assigned judge or any designee;
 - (x) Defendant will pay any restitution ordered by the assigned judge;

- (xi) Defendant will submit to periodic and/or random drug testing if so ordered by the assigned judge or any designee;
- (xii) Defendant will waive in writing their right to a probation hearing in the event of termination or withdrawal from the EMT Program;
- (xiii) Defendant will pay any other Supervision Fee(s) as may be required by any designee under the EMT Program;
- (xiv) Defendant will complete approved community service hours, as directed by the assigned judge or any designee;
- (xv) Defendant will agree to admittance into an inpatient or outpatient drug, alcohol, or other substance abuse center if determined to be necessary by the assigned judge or any designee;
- (xvi) Defendant will agree to any and all other conditions contained in the written agreement not specifically contained herein; and
- (xvii) Defendant will agree to any specific terms agreed upon by Defendant, Defendant's attorney and the City Prosecutor, as accepted by the assigned judge.

(6) Defendant shall also pay the appropriate Application Fee per charge, including the Pretrial Diversion Database Fee, upon acceptance into the EMT Program. Such fee shall be paid into the City's General Fund, and such fee may be changed from time to time by the presiding judge, upon approval by the City Council.

Section 6. DISMISSAL FROM THE EMT PROGRAM. In the event that a Defendant does not successfully complete the terms of the EMT Program agreed to by him or her, the assigned judge shall have the option of either (a) allowing the Defendant an opportunity to complete the EMT Program as originally ordered; (b) ordering the Defendant to complete the EMT Program with additional conditions; or (c) entering an Order terminating the Defendant from the EMT Program and imposing an appropriate sentence as is warranted under the individual facts of the Defendant's case. Any sentence imposed may include such fines, court costs, restitution, counseling and/or jail time as is allowed under applicable state and/or municipal law. In the event of Defendant's termination, any Administrative Fee and/or Supervision Fees will be forfeited to the City and/or any designee who rendered services to the Defendant under the terms of the EMT Program.

Section 7. COMPLETION OF THE EMT PROGRAM. Upon successful completion of the EMT Program, the assigned judge will enter an Order stating that the charge has been nolle prossed or otherwise dismissed without adjudication.

Section 8. INDIGENCY. No one shall be denied admittance to the EMT Program on the basis of indigency. The assigned judge will have discretion to waive, reduce or allow for the payment over time of any Application Fee in the event the Defendant meets the State's indigency requirements.