

IN THE CITY OF GARDENDALE MUNICIPAL COURT

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STANDING ORDER ADOPTING POLICIES AND PROCEDURES

In accordance with the

so as to make them conformable to law and justice," the Court hereby adopts and enters the attached "Policies and Procedures" as a standing order of this Court. Ala. Code § 12-1-7(6); see also Ala. Code §§ 12-1-2; 12-14-50.

DONE and ORDERED on this the 25th day of February, 2018.


MUNICIPAL COURT JUDGE

MUNICIPAL COURT

Of the City of Gardendale, Alabama

I. Policies and Procedures Regarding Defendants' Right to Counsel

When a criminal defendant's case is called before the Gardendale Municipal Court (the "Court"), the Court must inform a defendant who is charged with an offense punishable by a term of imprisonment of his right to counsel. The Court may elect to inform all defendants of such right collectively prior to proceeding against any particular defendant.¹

A defendant may knowingly, intelligently, and voluntarily waive his or her right to counsel by executing a waiver form provided by the Court after determining, in open court, that the defendant has read, or has had read to him or her, the waiver form and understood the contents of the form.² This form shall be entered as part of the record.

A defendant may not be sentenced to a term of imprisonment, and the Court shall not suspend execution of a sentence of imprisonment and place a defendant on probation, without the defendant either being afforded a right to counsel or executing a knowing, intelligent, and voluntary waiver of his or her right to counsel.³

Upon request, the Court may, in its discretion, continue a proceeding to permit an unrepresented defendant to retain counsel.⁴ If the Court determines that a defendant cannot afford to retain counsel, the Court may appoint a Public Defender or other legal counsel to represent the defendant,⁵ or the Court may, in its discretion, refuse to appoint counsel for an indigent defendant charged with a misdemeanor if the Court determines that, regardless of the evidence presented, the maximum punishment for a charged offense will not include incarceration.⁶

II. Policies and Procedures for Imposition of Sentences, Fines, Court Costs and Restitution

If the Court determines that, regardless of the evidence presented, the maximum punishment for a charged offense will not include incarceration,⁷ the Court may: (1) pursuant to Alabama Rules

¹ See *Brown v. State*, 695 So. 2d 153 (Ala. Crim. App. 1996).

² See *Chandler v. State*, 214 So. 2d 306 (Ala. 1968); *Boglin v. State*, 840 So. 2d 926 (Ala. Crim. App. 2002).

³ See *Alabama v. Shelton*, 535 U.S. 654, 674 (2002) ("A defendant who receives a suspended or probated sentence to imprisonment has a constitutional right to counsel.") (alteration and quotation omitted); *Robinson v. State*, 649 So. 2d 1331 (Ala. Crim. App. 1994).

⁴ Ala. R. Crim. P. 6.1(b).

⁵ Ala. R. Crim. P. 6.1(a).

⁶ Ala. R. Crim. P. 6.1, Committee Cmt.

⁷ *Id.*

of Criminal Procedure 9.1, determine that a defendant's willful failure to appear constitutes a valid waiver of his right to be present and his right to counsel, if otherwise applicable; (2) accept a defendant's plea of guilty; and/or (3) impose an appropriate sentence upon a finding of conviction, the maximum punishment for which shall not include incarceration.

Before accepting a defendant's plea of guilty, the Court shall inform the defendant of the possible minimum and maximum sentence that may be imposed for the charged offense.⁸

Before imposing a sentence of imprisonment as a consequence of a defendant's conviction or plea of guilty to a charged offense, the Court shall inform the defendant that he is entitled to receive credit for any time served in jail prior to sentencing in relation to the offense of conviction.⁹

Before imposing any fine and/or court costs as a consequence of a defendant's conviction or plea of guilty to a charged offense, the Court will consider the defendant's ability to pay the fine court costs, or restitution, including the defendant's ability to pay the fine and/or court costs at a later date, on an installment basis, or on other conditions to be fixed by the court.¹⁰

If a defendant expresses an inability to pay fines, court costs, or restitution as ordered by the Court, and the Court does not otherwise make allowance for such indigency, the defendant may

the defendant's payment of court costs.¹² Costs should be based solely on the most serious offense.¹³ Costs need not be imposed in any case wherein the defendant serves an active jail sentence.¹⁴

If a defendant who is not placed on probation is ordered to pay any fines, court costs, or restitution, then payment shall be made to the clerk of court (or municipal court magistrate) or to the person designated by the Court.¹⁵

In no case shall an indigent defendant be incarcerated or receive a suspended sentence of imprisonment based solely on his or her inability to pay fines, court costs, or restitution.¹⁶

III. Policies and Procedures for Nonpayment of Fines, Court Costs, and Restitution

If a defendant fails to pay fines, court costs, or restitution within the prescribed time or as otherwise ordered by the Court, the Court may:

- (1) sentence the defendant to a term of imprisonment until the amount owed, or any portion thereof, is paid,¹⁷ provided that:
 - a. in no case shall an indigent defendant be incarcerated or receive a suspended sentence of imprisonment based solely on his or her inability to pay;¹⁸
 - b. no term of incarceration shall be imposed except upon a finding by the Court of the non-indigent defendant's willful failure to pay the amount owed, and provided that the term of incarceration shall not exceed: (i) ten (10) days if the amount owed does not exceed two hundred fifty dollars (\$250); (ii) twenty (20) days if the amount is greater than two hundred fifty dollars (\$250), but does not exceed five hundred dollars (\$500); (iii) thirty (30) days if the amount is greater than five hundred dollars (\$500), but does not exceed one thousand dollars (\$1,000); or (iv) four (4) days for every additional one hundred dollars (\$100) or fractional part thereof;¹⁹

¹² Ala. Code § 12-19-150(a)-(b); Ala. Atty. Gen. Op. 1992-257; Ala. Atty. Gen. Op. 2002-236.

¹³ Ala. Code § 12-19-150(c).

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- c. the non-indigent defendant shall receive a credit toward the amount owed in the amount of \$20 for each day of incarceration for willful non-payment;²⁰
 - d. a term of incarceration for a non-indigent defendant's willful non-payment shall not exceed one-third of the maximum term of imprisonment for the offense of conviction;²¹ and
 - e. the total term of incarceration, including a jail sentence imposed for the non-indigent defendant's willful non-payment, as well as any sentence of imprisonment upon conviction for the charged offense, may not exceed the maximum term of incarceration authorized for the charged offense;²²
- (2) reduce the amount owed to an amount the defendant is able to pay;²³
 - (3) continue or modify the defendant's schedule of payments at no additional cost to the defendant;²⁴
 - (4) accept a defendant's bond (with or without surety) in exchange for an extension of the prescribed time for payment for up to ninety (90) days, upon nonpayment of which execution may issue as upon judgments in state courts, provided that no defendant may be ordered to post a secured bond in excess of an amount a defendant is able to pay;²⁵
 - (5) upon a finding that the defendant's nonpayment was willful, suspend the defendant's privilege to operate a motor vehicle in this state until the total amount of the imposed fines is paid, if the fines were imposed as a result of the defendant's conviction for violation of a traffic infraction, provided that the Court may enter an order authorizing the defendant to drive under certain conditions set forth in the order;²⁶
 - (6) following a hearing and consistent with the notice and procedural requirements of Rules 33 and 33.1 of the Alabama Rules of Criminal Procedure, find the defendant in contempt of court for willful nonpayment of the amount owed and impose an additional fine not to exceed \$50.00 and/or a term of imprisonment not to exceed five

²⁰ See Ala. R. Crim. P. 26.11(i)(1)(i) (requiring a minimum of \$15 credit for each day of incarceration).

²¹ Ala. R. Crim. P. 26.11(i)(1)(iii)

²² Ala. R. Crim. P. 26.11(i)(1)(iv).

²³ Ala. R. Crim. P. 26.11(h)(1).

²⁴ Ala. R. Crim. P. 26.11(h)(2).

²⁵ Ala. Code § 12-14-11; Ala. R. Crim. P. 7.6(d).

²⁶ Ala. R. Crim. P. 26.11(i)(3); Ala. Code § 12-14-10.

- (5) days, with credit toward the amount owed in the amount of \$20 for each day of incarceration;²⁷
- (7) order the clerk to issue execution for the amount owed, or any portion thereof, and order the City Prosecutor to institute appropriate proceedings or to take necessary action to collect unpaid fines, restitution, and costs, including execution of a writ of *fieri facias* commanding the sheriff to levy the judgment of the Court against the non-exempt personal and/or real property of the defendant for satisfaction of the amount owed;²⁸
 - (8) order that any cash bond personally posted by the defendant be applied to the balance owed with or without the defendant's consent, or, so long as the person who posted the bond consents in writing, that any cash bond posted by a third party be applied to the balance owed by the defendant; or
 - (9) order the defendant to be released from his or her obligation to pay the amount owed.²⁹

If the Court determines that a defendant is indigent and therefore lacks the ability to pay the amount owed for fines, court costs, or restitution, the Court may, in its discretion, enter an order pursuant to subsections (2), (3), (4), (7), (8), or (9), above. If the Court determines that a defendant is indigent and therefore lacks the ability to pay the amount owed for fines, court costs, or restitution, the Court may not enter an order pursuant to subsections (1), (5), or (6), above.

In the event that a defendant fails to pay fines, court costs, or restitution as ordered by the Court, the Court shall issue a Notice to Show Cause for Failure to Pay Fines, Costs, or Restitution,³⁰ requiring the defendant either to pay as directed or to appear in court and show cause why he or she should not be jailed or incarcerated for contempt of court or otherwise punished pursuant to and in accordance with Ala. R. Crim. P. 26.11 for failure to pay.

In the event the defendant fails to comply with this Notice, either by making payment as directed or by appearing in court on date specified date, the Court shall issue a Citation for Contempt.³¹

²⁷ Ala. Code § 12-14-31(a); Ala. R. Crim. P. 33.

²⁸ Ala. R. Crim. P. 26.11(k); *see also* 36A C.J.S. Fines § 16, By ex

In the event the defendant fails to appear for the contempt hearing on the date specified in the Citation for Contempt, the Court shall issue an Arrest Warrant³² in order to secure the defendant's presence at the contempt hearing.

If a defendant who previously was placed on probation fails to pay fines, costs, or restitution as ordered by the Court as a condition of probation, then the Court shall issue a Summons to Appear for Revocation Hearing.³³

If the defendant fails to appear pursuant to the Summons, then the Court may issue a second (and any further subsequent) Summons to Appear for Revocation Hearing, or the Court may issue a Warrant for the Probationer's Arrest.³⁴

IV. Policies and Procedures for Establishing a Payment Schedule for Indigent Defendants

If the Court determines that a defendant lacks the ability to pay the amount owed for fines, court costs, or restitution immediately after pronouncement of the sentence, the Court may permit the defendant to make payments in specified installments in accordance with a payment schedule, which shall take into account the defendant's ability to pay.

The Court's determination of a defendant's ability to pay may be based on the defendant's self-reported ability to pay. A defendant, however, will be ordered to make minimum payments of at least twenty-five dollars (\$25) per month. If the person demonstrates he or she cannot pay the minimum \$25 monthly payment, the Court may waive this minimum monthly amount, either at this hearing or a subsequent review hearing, and order the person to pay a lower amount.

While the Court shall refrain from arbitrarily imposing a payment schedule without regard to a defendant's ability to pay, the Court is free to inquire as to the defendant's ability to make payments in accordance with a proposed payment schedule.

If a defendant is ordered to make minimum monthly payments, then the Court shall set a date for

A defendant shall be excused from attending any review hearing if he or she has made minimum monthly payments for the three (3) consecutive months preceding the scheduled review hearing (or otherwise has paid the equivalent amount prior to the scheduled review hearing). Any defendant excused from the review hearing will receive notice of the date and time for any subsequent review hearing at the time he or she makes the payment that results in excusal from the current review hearing.

If a defendant has not made three (3) consecutive minimum monthly payments (or paid the equivalent amount) prior to the scheduled review hearing, or if a defendant does not appear for the scheduled review hearing, then the Court, in its discretion, may do any of the following (or any combination thereof):

- (1) schedule additional periodic review hearings every 30, 60, or 90 days thereafter, for a period not to exceed two (2) years from the date of the defendant's adjudication;
- (2) modify the defendant's payment plan to conform with the defendant's ability to pay;
- (3) upon a finding of indigence, remit the balance of fines and costs (but not restitution) owed by the defendant; or
- (4) issue a Citation for Contempt, pursuant to the provisions of Section VIII.C. herein, and order the defendant to appear for a hearing and to show cause why he or she should not be found in contempt of court for failure to pay fines, costs, or restitution as ordered by the Court or to appear in Court as ordered.

The Court shall take appropriate steps to inform a defendant that if he or she is unable to make payments in accordance with a proposed payment schedule, the defendant should voluntarily appear in Court at the scheduled review hearing and request that the payment schedule be modified to accommodate his or her ability to pay.

The Court, in its discretion, may modify a defendant's payment schedule at any time upon evidence and a determination that the defendant's circumstances have materially changed. Absent the acquiescence of the defendant, the Court shall not increase the installment payments of the defendant without notice, an opportunity for hearing, and reasonable access to counsel.

V. Policies and Procedures Regarding Probation

The Court may suspend execution of a defendant's sentence and place the defendant on probation for varying periods of time, not to exceed two years.³⁵

The Court will not require defendants to pay any probation supervision fees.

³⁵ Ala. Code § 12-14-13(a).

The Court shall determine and may, at any time, modify the terms or conditions of a defendant's probation, and may require the probationer to comply with the following or any other conditions:³⁶

- (1) To make reparation or restitution to any aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court;
- (2) To attend defensive driving schools, alcohol countermeasure programs, or courses where available;
- (3) To support his or her dependents to the best of his or her ability;
- (4) To avoid injurious or vicious habits;
- (5) To avoid persons or places of disreputable or harmful character;
- (6) To report to the probation officer or other person designated by the judge;
- (7) To permit the probation officer (or other person designated by the judge) to visit him at his home or elsewhere; and/or
- (8) To work faithfully at suitable employment as far as possible.

The Court may extend the defendant's period of probation at any time, for good cause, provided that in no case shall a defendant remain on probation for a period in excess of two years.³⁷

VI. Policies and Procedures Regarding Termination of Probation

If the defendant's term of probation is not extended by order of the Court prior to its expiration, the period of probation shall expire in accordance with the terms imposed by the Court's sentencing order, provided that the probationer remains in compliance with the terms or conditions of his or her probation throughout the prescribed term.³⁸

Regardless of whether a defendant remains in compliance with the conditions of his or her probation throughout the prescribed term, any period of probation imposed in connection with a sentence entered by the Court shall terminate as a matter of law two years from the date of sentencing.

Any person whose period of probation is terminated as a matter of law two years from the date of sentencing shall, upon such termination, be excused from further compliance with the terms or

³⁶ Ala. Code § 12-14-13(d).

³⁷ Ala. R. Crim. P. 27.3(a); Ala. Code § 12-14-13(g).

³⁸ Ala. R. Crim. P. 27.3(c).

conditions of his or her probation, including the payment of any fines, fees,³⁹ or costs payable to his or her probation officer (or other person designated by the judge) in connection with his or her probation.

Upon successful completion of the prescribed period of probation, whether or not extended by order of the Court, the Court shall order the probationer to be discharged, and the clerk of court (or municipal court magistrate) shall, upon request, furnish the probationer with a certified copy of the order of discharge.

The defendant's liability for any fine, costs, restitution, or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation.⁴⁰

VII. Policies and Procedures Regarding Revocation of Probation

In the event a defendant fails to comply with the terms of his or her probation, including (but not limited to) his or her failure to pay fines, court costs, or restitution within the prescribed time and as directed by the Court, the defendant's probation officer (or other person designated by the judge, or, in the event of nonpayment, the person to whom payment is to be made) shall notify the defendant, the City Prosecutor, and the Court within 30 days of the defendant's noncompliance or nonpayment.

Upon receipt of such notice, or if the City Prosecutor or a defendant's probation officer (or other person designated by the judge) has reasonable cause to believe that the probationer has violated a condition of his or her probation, he or she may petition the Court to initiate proceedings to revoke a defendant's probation, or the Court may, on its own motion, initiate revocation proceedings.⁴¹

If the Court, in its discretion, determines that there is reasonable cause to believe that the probationer has violated a condition of his or her probation, the Court (and only the Court) may order the defendant to appear and to show cause why the defendant's probation should not be revoked and why the original suspended sentence should not be imposed as a result of the specified violation(s).⁴²

³⁹ Consistent with the procedures above, defendants shall not be required to pay any fees to the City for probation supervision, but may be charged reasonable fees by the DVIP or CRP/CRO, or for services, such as classes, provided that no defendant who is unable to pay will be charged such fees, upon a finding by the Court that the defendant is indigent following his or her submission of an Affidavit of Substantial Hardship.

⁴⁰ Ala. Code § 15-18-8(e).

⁴¹ Ala. R. Crim. P. 27.4(a)(1).

⁴² Ala. R. Crim. P. 27.4(a)(2).

A defendant's probation cannot be revoked without notice of the requested probation revocation in accordance with Alabama Rule of Criminal Procedure 3.4 and a hearing in accordance with Alabama Rule of Criminal Procedure 27.6, where the defendant must have the opportunity to present evidence in his or her own defense.⁴³

In order to secure the presence of the probationer at a hearing regarding revocation of probation, the Court may issue a summons to the defendant or, in its discretion, the Court may issue a warrant for the defendant's arrest.⁴⁴

If the probationer appears before the Court pursuant to a warrant, the probationer shall be entitled to bail in accordance with the Court's Standing Order Regarding Bail Procedures, entered December 13, 2017.⁴⁵

Upon appearance before the Court pursuant to a warrant, the probationer shall be informed of the charged probation violation(s), the date of the revocation hearing, his or her right to counsel, if applicable, and his or her right to testify and present witnesses and other evidence on his or her behalf and to cross-examine any adverse witnesses.⁴⁶

If the summons issued by the Court provides the probationer with sufficient notice of the charged violations and the evidence to be relied upon for purposes of revocation; and if the Court ensures that the probationer understands the rights to which he is entitled at a probation revocation hearing, such as the right to counsel, where applicable, and to present evidence in his or her defense, then, upon his or her initial appearance before the Court, the probationer may waive the right to a formal hearing on revocation and the right to counsel, if applicable, provided that the probationer admits that he or she has violated a term or condition of probation after being informed by the Court of the nature of the alleged probation violation, the right to testify and to present witnesses and other evidence, and that, if the alleged violation involves a criminal offense for which the probationer has not yet been tried, the probationer may still be tried for that offense and that any statement made by the probationer at the present proceeding may be used against the probationer at a subsequent proceeding or trial.⁴⁷

⁴³ Ala. R. Crim. P. 27.6, Committee Cmt. (citing Ala. Code § 15-22-54); *see also Armstrong v. State*, 312 So. 2d 620, 622–23 (Ala. 1975) (setting forth “the requirements and guidelines which must be met for minimal due process to be accorded the probationer . . . before his probation can be revoked”).

⁴⁴ Ala. R. Crim. P. 27.4(b); Ala. Code § 12-14-13(i).

⁴⁵ Ala. Code § 15-13-109.

⁴⁶ Ala. R. Crim. P. 27.6(c)(1)–(3).

⁴⁷ *See* Ala. R. Crim. P. 27.5(b); 27.6(c).

contempt without a hearing held after a citation of the charge is given.⁵² The citation of the charge shall:

- (1) Be in writing and state that the person to whom it is directed is cited for contempt of court;
- (2) Order that the person cited appear before the court to show cause why he or she should not be found in contempt of court as charged or should not be punished or incarcerated as provided by law;
- (3) State the essential facts constituting the contempt cited; and
- (4) Specify the time and place of the hearing.⁵³

The hearing shall be set so as to allow a reasonable time for the preparation of the defense. The contemnor shall be afforded the opportunity to present exculpatory evidence and evidence of mitigating and extenuating circumstances, shall be entitled to subpoena witnesses on his or her behalf, and shall be entitled to be represented by counsel as provided in Alabama Rules of Criminal Procedure Rule 6.⁵⁴

A person cited with a contempt charge for failure to appear shall not be arrested unless the contempt citation is accompanied by an arrest warrant.⁵⁵

⁵² Ala. R. Crim. P. 33.3(a).

⁵³ Ala. R. Crim. P. 33.3(b)

⁵⁴ Ala. R. Crim. P. 33.3(d).

⁵⁵ Ala. R. Crim. P. 33.3(c); *see also* Ala. R. Crim. P. 3.1, 3.2,