

PART A

**PRE-TRIAL
INTERVENTION
PROGRAM**

(INSTRUCTIONS/ELIGIBILITY/REQUIREMENTS)

EFFECTIVE JANUARY 1, 2018

Brian A. McVeigh
Calhoun/Cleburne County District Attorney
25 West 11th Street, Suite 400
Anniston, Alabama 36201
256-231-1770

INSTRUCTIONS FOR APPLICATION TO PRE-TRIAL INTERVENTION PROGRAM

1. Carefully read each page of the District Attorney's Pre-Trial Intervention Program Application regarding eligibility and criteria for acceptance into this program. Make sure to affix your signature in all appropriate blocks.
2. **Fully** complete **all** blanks and information on the application, and include at least 3 working telephone numbers for contact. If we are unable to reach you by telephone, your application could be denied. Your attorney will review your completed application and sign the designated pages.
3. After completing your PTIP paperwork, the complete application (including Exhibit A, Exhibit B, and Attorney Certification) must be turned over to the District Attorney's Office for Review.
4. After the review is completed, the approved or denied defendant (or his/her attorney) will be notified and the case(s) will proceed.

If you have any further questions regarding the above information, please call the name and number listed below.

Laura Phillips
Pre-Trial Intervention Program Director
lauraphillipsda@cableone.net
256-231-1770

CALHOUN/CLEBURNE COUNTY DISTRICT ATTORNEY
BRIAN A. MCVEIGH
Seventh Judicial Circuit of Alabama

PRE-TRIAL INTERVENTION PROGRAM
(Criteria for Eligibility, Enrollment & Successful Completion)

(1) Explanation The Calhoun/Cleburne District Attorney, in conjunction with Presiding Judge Brian Howell, has created a Pre-trial Intervention Program (“PTIP”) pursuant to Alabama HB 494 which was passed into law during the 2013 legislative session as Act 2013-361. This legislation allows the Calhoun/Cleburne County District Attorney to delegate authority and discretion for recommendation and enrollment in PTIP to the Presiding Judge through an existing Drug Court Program. All discretionary powers reside with the District Attorney and Presiding Judge, or other Judges within the jurisdiction authorized by the Presiding Judge, of the Seventh Judicial Circuit for acceptance, denial, dismissal, and completion of any respective PTIP candidate or enrollee.

(2) Operation The PTIP will be operated with the existing infrastructure of the Calhoun/Cleburne Drug Court and the Community Corrections Program, at the discretion of Presiding Judge Brian Howell, or his designee. PTIP is to be considered after other existing specialty Courts have first been considered.

(2) Eligibility & Requirements. An offender may be diverted from prosecution from any offense under the Alabama Code if the offense and offender meet the eligibility requirements herein. Any person charged with a criminal offense within the jurisdiction of the Seventh Judicial Circuit (“Calhoun/Cleburne County”) may apply to the designated section of the Calhoun/Cleburne County District Attorney’s Office for admittance into the Pre-trial Intervention Program. The following offenses are ineligible: a Class A felony or a capital offense, a crime that involved serious physical injury or death, a crime of violence with a victim under the age of fourteen (14) or over the age of sixty-five (65), any sex offense, any offense involving a commercial driver’s license (CDL), a crime of violence involving a victim who is a law enforcement officer, school officer, corrections officer, or active duty military, any bribery offense, any offense involving public officials who committed the offense in their capacity as a public official, any abduction or kidnapping offense, any perjury offense, any pornography or obscenity offense, any hate crime, and any drug sale or trafficking offenses. Furthermore, those persons who are deemed by the District Attorney to be a threat to the safety or well-being of the community are ineligible for PTIP.

Admittance may be denied if a victim, law enforcement officer, or Judge objects to the applicant's admission. No person shall be admitted to PTIP without the approval of the District Attorney.

(4) Equal Availability PTIP will be available to all applicants who meet the criteria, and no one may be excluded due to race, ethnic background, religion, gender, disability, marital status, economic status, or any other factor not listed herein below. NO person who is protected by applicable federal or state laws against discrimination should be otherwise subjected to discrimination for eligibility purposes. Individuals without the means to pay the required fees may be eligible for prorated payments or community service at the Court's discretion.

(a) **Standards of Eligibility.** The following standards are set to determine the eligibility of an applicant for PTIP.

- i. Offender must be 18 or older at time of offense(s);
- ii. Offender must admit guilt;
- iii. Justice is served by enrollment in PTIP;
- iv. The needs of the State of Alabama are met through PTIP;
- v. Offender poses no substantial threat to the safety or well-being of the community;
- vi. Offender is unlikely to be involved in further criminal activity;
- vii. Offender will likely respond to rehabilitative treatment;
- viii. Offender does not have an extensive criminal history;
- ix. Offender does not have any outstanding charges, violations or traffic citations in the jurisdiction of the Seventh Judicial Circuit;
- x. Offender must comply with all terms of the PTIP application.
- xi. The victim approves of the Offender's participation in the program.
- xii. Offender will pay restitution and Court costs and fees.

(b) **Requirements for Application.** The following may be required of all applicants, and at their expense, for enrollment in PTIP:

- i. *Timeframe for Application:*
 - a. Misdemeanor cases- The application for PTIP must be submitted within 21 days of the appointment/retention of counsel. This timeframe provision may be waived at the discretion of the District Attorney.
 - b. Felony cases- State law requires that the PTIP application must be submitted no more than 90 days after arraignment. This timeframe provision may be waived at the discretion of the District Attorney.

- ii. *Administration Fee:* Application for PTIP shall be one flat fee per application, regardless of the number of charges subject to the application. The fee is set by statute at \$1,000.00, \$25 shall be paid to the Clerk of Courts in the County (Calhoun or Cleburne) where the charge originated, \$7 shall be paid to the Office of prosecution Services for the upkeep and maintenance of a Pretrial Diversion Database, \$5 will be paid to VOCAL, and the remainder will be paid to the District Attorney’s Office. There will be a monthly super vision fee of \$40 assessed by Community Corrections for supervision during the term of your enrollment.
- iii. *Historical Information.* Applicants may be required to furnish to the District Attorney past criminal, educational, employment, family, medical or psychiatric history;
- iv. *Additional Information.* Applicants may be required to furnish to the District Attorney any other or additional information the Court considers pertinent to the decision regarding enrollment;
- v. *Tests & Evaluations:* Applicants may be required to submit to any type of test or evaluation process or interview in evaluating an offender for admittance into PTIP;
- vi. *Self-Incrimination Waiver:* Offender must sign a written waiver of offender’s right against self-incrimination and submit a handwritten admission to the charge(s) which are being considered for PTIP. As further inducement to make application, if a Defendant is denied entry into the PTIP for any reason then the applicant’s/defendant’s handwritten admission will not be used against the applicant/defendant on the State of Alabama’s case-in-chief.

(c) Requirements of Successful Enrollment: The following requirements are administered to all applicants who are enrolled in PTIP:

- a) *“Terms of Understanding”:* An Offender must agree in writing to the conditions of the PTIP established by the Court, which may vary among enrollees in the discretion of the Court. An Offender must sign a written understanding of the terms of the PTIP in which offender will be enrolled;

The information contained in the PTIP “Terms of Understanding” will include the following information for the applicant:

- 1. Fee of \$1000.00 and/or payment plans.

2. Length of program and the period of time after which the Court will dispose of offender's charge(s); Track One, twelve to twenty-four months; Track Two, six to twenty-four months.
 3. Any counseling program, treatment or process that may be required of offender while enrolled in PTIP;
 4. Any requirement of an in-patient or out-patient program;
 5. Notice of mandatory submission to periodic and random drug tests;
 6. Notice of responsibility that all costs for all counseling or treatment programs is the lone responsibility of the enrollee;
 7. Notice of responsibility for payment of all court costs, fees, compensation assessments, child support, or other monies owed;
 8. Full payment of restitution;
 9. Full payment of court costs;
 10. Full payment of other monies due and owing, Full payment of application and supervision fees;
 11. Full payment of child support to the appropriate agency;
 12. Enrollee must maintain any employment requirements;
 13. Notice of any additional requirements may be imposed in the broad discretion of the District Attorney;
 14. Notice that failure to comply with each and every term outlined in the Terms of Understanding may result in termination from the Pre-trial Intervention Program and that such termination may result in further criminal prosecution.
 15. Refrain from alcohol and drug use, and avoid certain persons.
 16. Refrain from further criminal offenses.
 17. Comply with any curfews or monitoring required by the Court.
 18. Refrain from possession of any firearm.
 19. Do not leave the State without permission of the Court.
- iii. *Speedy Trial Waiver*: Offender must sign a written waiver of an offender's right to a speedy trial;

- iv. *Tolling*: Offender must agree in writing to toll any applicable statutes of limitation or limitations established by the rules of court while the offender is enrolled in the program;

(d) Fee Schedule for PTIP: All fees paid by Offenders shall be paid through this District Attorney's Office. Enrollment into PTIP shall be in the complete discretion of the Court and/or District Attorney. All charge(s) made under the application will be diverted upon enrollment in PTIP. The Court and/or District Attorney may take into consideration an Offender's ability to pay, financial hardship of PTIP, offenses charged, duplicity of offenses and any other factor that may be bearing on the final fee arrangement.

(e) PTIP Programs, Generally: It is the discretion of the Court and/or District Attorney which respective program is appropriate for a respective enrollee. The information provided in the application, along with other considerations, will assist the District Attorney in assigning the appropriate PTIP track for each prospective enrollee. All candidates who are qualified and accepted to the Pre-trial Intervention Program will be informed of the PTIP track that the District Attorney is assigning.

MAXIMUM PROGRAM DURATION IS TWO YEARS FROM THE DATE OF ACCEPTANCE. FAILURE TO MEET ANY OF THE ABOVE REQUIREMENTS WILL RESULT IN REJECTION FROM THE PROGRAM AND PROSECUTION FOR THE ORIGINAL OFFENSE.

Track One: At least one felony offense included in the charges against the Offender. Minimum Twelve (12) Month program, Maximum Twenty-four (24) Months.

Track Two: No felony offense included in the charges against the Offender. Minimum Six (6) Month program, Maximum Twenty-four (24) Months.

SUCCESSFUL COMPLETION OF THIS PROGRAM DOES NOT EXPUNGE THE CHARGE(S), OR THE ARREST RECORD OF THE PARTICIPANT, BUT UPON COMPLETION OF PROGRAM CASES WILL BE DISMISSED AGAINST DEFENDANT.

PART B

**PRE-TRIAL
INTERVENTION
PROGRAM**

(APPLICATION/FORMS/CERTIFICATION)

Brian A. McVeigh
Calhoun/Cleburne County District Attorney
25 West 11th Street, Suite 400
Anniston, Alabama 36201
256-231-1770

STATE OF ALABAMA) vs. _____
CALHOUN/CLEBURNE COUNTY) Case Number: _____

CALHOUN/CLEBURNE COUNTY DISTRICT ATTORNEY'S OFFICE
PRE-TRIAL INTERVENTION PROGRAM

PRE-APPLICATION

Comes now _____, who after being first
duly sworn, deposes and states on oath as follows:

1. My complete name is _____.
2. I am _____ years of age and was born on, _____, 19____.
3. I am of the _____ race and of the _____ sex.
4. I was born in or near the City of _____ County of _____, State of _____.
5. I am presently charged with the offense(s) of: _____

6. I have attached hereto as "Exhibit A", an executed statement of my legal rights which have been thoroughly explained to me by my attorney, and which I fully understand. The same is hereby incorporated and adopted as a part of this application as if the same were fully set out herein.
7. No other charges are pending against me in any court or law enforcement agency.
8. I have previously been convicted of: _____
9. I am not prohibited by Alabama Act 2013-361 from filing this application for this offense.
10. I have never been indicted for nor convicted of any offense which would be prohibited by Alabama Act 2013-361, nor any other felony or crime involving

moral turpitude. I have made a full disclosure of my entire criminal court history in "Exhibit B" which is attached hereto.

11. I fully understand that to apply for Pre-Trial Intervention status, I must be fully investigated and evaluated by the District Attorney's Office, and I do hereby voluntarily request and consent that such an investigation and evaluation be conducted.
12. I will fully cooperate with the District Attorney's Office and, when necessary, will execute all written authority in order for the District Attorney's Office to obtain personal and privileged information about me from other persons or agencies.
13. I hereby authorize the District Attorney's Office to obtain any and all employment, scholastic, medical, military, and other records deemed necessary for such an investigation, and I hereby authorize all persons in possession of such information to release the same to the District Attorney's Office.
14. Having been fully and completely advised of all my rights under the Constitution and Laws of the United States of America and of the State of Alabama, I do hereby specifically waive my right to a speedy trial.
15. I know that my request for diversionary status must be and is entirely voluntary on my part. My attorney has fully advised me, and I fully understand that any statement made by me in support of my application for Pre-Trial Intervention status or during the investigation and evaluation thereof, including admissions of guilt and all statements of incriminating nature, may be used against me in any criminal proceeding concerning this offense.
16. I fully understand each representation of fact contained herein and state that each is true and correct.
17. I am not under the influence of any drug, medicine, or alcoholic beverage and have not been threatened, intimidated, coerced, or abused by any person in any manner whatsoever in order to force me to file this application. I have not been promised nor have I received any gratuity, reward or hope of reward in order to induce me to make this application.
18. I have also attached hereto as "Exhibit B", a biographical data form which I have completed and executed. The same is incorporated herein and adopted as a part of this application.
19. I have read and understand the criteria for acceptance in the Pre-Trial Intervention Program, and I do meet said criteria.

Done this _____ day of _____ 20_____.

Applicant's Signature

EXHIBIT A
STATE OF LEGAL RIGHTS

1. My full and complete name is: _____
2. I am represented by: _____,
who is the attorney of record in my criminal case.
3. I have been fully advised by my attorney to all of my rights, immunities, and privileges under the Laws and Constitution of the United States and the State of Alabama regarding the criminal charge(s) against me, and I fully understand the same.
4. I further understand that under the Constitution of the United States of the State of Alabama, I have the right to not be compelled to give evidence against myself. I may have the right to a jury trial. I have the right to take the witness stand and to testify on my own behalf, if I do so desire, but no one can require me to so testify or comment if I do not wish to do so. If I testify, I can be cross-examined by the prosecutor. I have the right to remain absolutely silent, but anything that I voluntarily say, with knowledge of my rights, may be used against me. My conversations with my attorney are confidential and cannot, and will not be disclosed by my attorney unless I voluntarily consent to the disclosure of them.
5. I have the right to stand on a plea of not guilty, and I may have the right to a public trial before a duly selected jury of twelve (12) persons. In a jury trial, the jury would determine whether I am guilty or innocent, based upon the evidence in the case, and the jury verdict must be unanimous.
6. At the trial of my case, I have the right to see, hear and confront witnesses against me and witnesses on my behalf and have compulsory process for their attendance, to make legal objections to matters that are objectionable, to confront and cross-examine the prosecution witnesses, to examine my own witnesses and to argue the matter before a judge or jury. My attorney would be bound to do everything that he/she could honorably and reasonably do to see that I obtain a fair and impartial trial.
7. I come into court clothed with a presumption that I am not guilty, and this presumption of innocence will follow me throughout the course of the trial until the evidence produced by the prosecution convinces each and every juror beyond a reasonable doubt of my guilt. The burden of proof is upon the State of Alabama to convince each and every juror, from the evidence in the case, that I am guilty beyond a reasonable doubt before the jury would be authorized to find me guilty. If the State of Alabama does not meet such burden of proof, the jury could not convict me.
8. To the charges set forth in the warrant or indictment, I have the right to enter a plea of guilty, not guilty, not guilty by reason of mental disease defect, or any other special plea.
9. I realize and understand that I have the right to insist on criminal prosecution of charge(s) against me at any time hereafter. I have the right to be represented by counsel of my own choosing, or by court-appointed counsel if indigent, and such counsel shall represent me during all phases of the Pre-Trial Intervention proceeding unless I knowingly and voluntarily waive the right to counsel.

10. I know and realize that I have the right to have a court determine whether any pressure or inducement was given to encourage me to make application involuntarily
11. I am guilty of the offense(s) of _____, and as part of Pre-trial Intervention Program requirements, I will make a written statement of any and all circumstances surrounding the same.
12. I know and realize that my request for Pre-Trial Intervention status must be entirely voluntary on my part. My attorney has fully advised me, and I fully understand that any statement made by me in my application for Pre-Trial Intervention status or during the investigation and evaluation thereof may be used -against me in any criminal proceeding concerning this offense.

Done this _____ day of _____ 20_____.

Applicant's Signature

CERTIFICATION

Sworn to and subscribed before me on this _____ day of _____, 20_____.

NOTARY PUBLIC

**EXHIBIT B
BIOGRAPHICAL DATA**

NAME: _____
 FIRST MIDDLE LAST

DATE OF BIRTH: ____/____/____ PLACE OF BIRTH: _____

RACE: _____ SEX: _____ SOCIAL SECURITY NO: _____

DRIVER LICENSE NO: _____ STATE ISSUED _____

ATTORNEY: _____ COURT APPOINTED? YES ___ NO ___

I AM PRESENTLY CHARGED WITH:

CHARGE #1 _____ CASE # _____

CHARGE #2 _____ CASE # _____

CHARGE #3 _____ CASE # _____

PRIOR CRIMINAL RECORD

CHARGE _____ CASE # _____

CHARGE _____ CASE # _____

CHARGE _____ CASE # _____

CURRENT ADDRESS:

STREET # CITY STATE ZIP

TELEPHONE NO'S: _____/_____/_____
 CELL HOME WORK

OTHER RESIDENTS IN HOME:

	NAME	AGE	RELATIONSHIP
1.	_____ /	_____ /	_____
2.	_____ /	_____ /	_____
3.	_____ /	_____ /	_____
4.	_____ /	_____ /	_____
5.	_____ /	_____ /	_____

ARE YOU PAYING CHILD SUPPORT? _____ HOW MUCH:\$ _____/MONTHLY

EMPLOYMENT INFORMATION

_____ / _____
JOB TITLE EMPLOYER

ADDRESS OF EMPLOYMENT _____

HOW LONG HAVE YOU BEEN EMPLOYED IN YOUR PRESENT POSITION? _____

SALARY _____

IF UNEMPLOYED, WHO SUPPORTS YOU? _____

MEDICAL INFORMATION

DESCRIBE ANY MEDICAL PROBLEMS: _____

LIST PRESCRIPTION DRUGS BEING TAKEN:

WHY DO YOU WANT TO BE IN THE PRE-TRIAL INTERVENTION PROGRAM?

APPLICANT ACKNOWLEDGMENT

I ACKNOWLEDGE THAT ALL OF THE ABOVE INFORMATION IS TRUE AND THAT I UNDERSTAND ALL OF THE TERMS AND RESPONSIBILITIES OF MY APPLICATION. I FULLY ACKNOWLEDGE THAT ALL DISCRETION REMAINS WITH THE DISTRICT ATTORNEY REGARDING MY PARTICIPATION IN A PTIP PROGRAM.

SIGNATURE OF APPLICANT

DATE

THIS APPLICATION HAS BEEN REVIEWED BY THE DISTRICT ATTORNEY'S OFFICE.

THE APPLICATION IS APPROVED:

SIGNATURE OF ASSISTANT DISTRICT ATTORNEY

DATE

ASSISTANT DISTRICT ATTORNEY (PRINTED)

THE APPLICATION IS DENIED:

SIGNATURE OF ASSISTANT DISTRICT ATTORNEY

DATE

ASSISTANT DISTRICT ATTORNEY (PRINTED)

ATTORNEY CERTIFICATION

Comes now _____, attorney for the Applicant, and certifies that the application was read by the applicant in my presence and was explained to the applicant by me. I fully discussed and explained to the applicant each and every paragraph hereinabove enumerated, together with “Exhibits A and B”, and the representations and allegations of fact contained therein and the legal consequences thereof; and a written copy of the application was given to the applicant. I am completely satisfied that the applicant knows what he/she is doing and is applying for Pre-Trial Intervention status voluntarily and of his/her own free will and accord after having been completely advised of all of his/her rights; and that he/she is making said application knowingly, voluntarily and intelligently.

Done this _____ day of _____ 20_____.

Attorney’s Signature

Attorney for Applicant (Print or Type)

Address

Phone Number

NOTARY CERTIFICATION

Sworn to and subscribed before me on this _____ day of _____, 20_____.

Notary Public

If you are a court-appointed attorney on this case, please file your fee declaration with the court within 4 months of the date of this agreement. Participants in PTIP cannot be released until all fees are paid.

Questions and Answers on Expungement of Criminal Records in Alabama

Please note that this is merely provided for general information reproduced from a public forum and is not legal advice. Please contact a lawyer for legal advice.

The measure requires payment of a \$300 administrative fee and the expunging of a person's criminal record would require a **petition to an Alabama circuit court** in the jurisdiction where the charge was filed.

Here's the way it's supposed to work, according to the language in the bill:

Who's eligible?

A person who has been charged with a misdemeanor criminal offense, a traffic violation, or a municipal ordinance violation – if the charge was dismissed with prejudice, no-billed by a grand jury, the person was found not guilty of the charge, or the charge was dismissed without prejudice more than two years ago and has not been refiled.

What about felony charges?

The act allows for expunging non-violent felony charges, in the event of a no-bill by a grand jury, a dismissal of the charge with prejudice, a finding of not guilty, and one year after completion of a diversion program like drug treatment, mental health treatment or veterans court.

A person is also eligible, if the charge was dismissed without prejudice more than five years ago, has not been refiled, and the person has not been convicted of any other felony or misdemeanor crime, any violation, or any traffic violation, excluding minor traffic violations, during the previous five years.

What felony charges are not eligible to be expunged?

Violent felonies listed in the Alabama code are not eligible, including: capital murder, murder, manslaughter, assault, kidnapping, rape, sodomy, robbery, burglary, arson, stalking, sexual abuse, and domestic violence 1 and 2 and other offenses.

How will it work?

A petition has to be filed with the circuit court in the location the charge was filed.

The petition has to include:

- a sworn statement that the person meets the expungement requirements;
- a case action summary or certified copy of arrest and disposition;

- a certified copy of the arrest record from the Alabama Criminal Justice Information Center;
- description of the charges to be considered for removal and description of the agencies involved in the arrest and any incarceration;
- the filing fee is \$300 plus any court costs;
- all court fees, restitutions, fines and fees have been paid.

Who has to be notified?

A copy of the petition submitted to the circuit court also has to be provided to the district attorney's office, the law enforcement agency and the clerk of court.

The DA's office is expected to review the petition and make an effort to notify any victims in the case.

Can the request be opposed?

The DA's office and the victims have 45 days to file a petition opposing the expungement. If the objection is filed, the court is to set a hearing date at least 14 days after the filing.

What if nobody objects?

The court can review the petition and rule without a hearing.

If the court approves the request, what happens to the records?

The court is to order the expungement of all records in the custody of the court and any records held by any other agency or official, including law enforcement records, except privileged investigation reports by the Alabama Board of Pardons and Paroles and files of the district attorney. The related agencies are then to certify to the court within six months that the expungement has been completed.

What if somebody asks about the case after it's been expunged?

"the proceedings regarding the charge shall be deemed never to have occurred," the act says. The court and other agencies are supposed to reply to any inquiry that "no record exists on the matter," and the person shall not have to disclose the related facts on job or credit applications and other applications.

Will the record exist anywhere?

The related agencies have to send the records to the Alabama Criminal Justice Information Center which will archive them in a protected file. The records cannot be used for a non-justice

purpose and can only be made available when a criminal justice agency provides notice of an investigation of the individual.