

ORDINANCE NO. 2012-20

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA AMENDING CHAPTER 13 OF THE PEORIA CITY CODE (1992) BY ENACTING SECTION 13-104 PERTAINING TO THE HOME DETENTION ALTERNATIVE PROGRAM AND BY ENACTING SECTION 13-105 PERTAINING TO THE HOME DETENTION ALTERNATIVE PROGRAM; ELIGIBILITY AND BY ENACTING SECTION 13-106 PERTAINING TO HOME DETENTION ALTERNATIVE PROGRAM; VIOLATIONS OF A.R.S. § 28-1381; NOTICE TO THE CITY ATTORNEY AND BY ENACTING SECTION 13-107 PERTAINING TO HOME DETENTION ALTERNATIVE PROGRAM; POWERS AND DUTIES AND BY ENACTING SECTION 13-108 PERTAINING TO HOME DETENTION ALTERNATIVE PROGRAM; FEES; REQUIREMENTS AND BY ENACTING SECTION 13-109 PERTAINING TO HOME DETENTION ALTERNATIVE PROGRAM; VIOLATIONS AND PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREFORE, to provide for penalties and punishments consistent with Arizona statutes, the due process clause of the U.S. Constitution, and pursuant to the authority of a municipality to enact ordinances that provide provisions at least as onerous as penalty provisions of state statutes to enforce the law, and

WHEREFORE, there is a need to provide for an alternative means of imposing home detention that allows adjudication of cases for exceptional personal, health, and medical reasons in lieu of institutionalized incarceration, while still maintaining the objectives of isolation and punishment,

THEREFORE, it is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 13 of the Peoria City Code (1992) is amended by enacting Section 13-104 pertaining to Home Detention Alternative Program and which shall read as follows:

Sec.13-104. Home Detention Alternative Program.

(a) The City establishes a Home Detention Alternative Program (HDAP) in Accordance with the provisions of Sections 13-104 through 13-109 of this Code.

(b) Upon approval by the Council, the Presiding Judge of the Municipal Court shall review the program and upon his approval issue an administrative order implementing the program.

SECTION 2. Chapter 13 of the Peoria City Code (1992) is amended by enacting Section 13-105 pertaining to Home Detention Alternative Program; eligibility and which shall read as follows:

Sec. 13-105. Home Detention Alternative Program; eligibility.

The granting of HDAP shall constitute a finding that there is a preponderance of the evidence that the person is eligible for participation in the HDAP.

(a) A person is not eligible for home detention if the Court finds by a preponderance of the evidence any of the following factors:

(1) The Office of the City Attorney has filed with the Court a Notice of Allegation of a past history of violent behavior.

(2) The person has a past history of violent behavior.

(3) The Court finds that there is a reasonable possibility that the person constitutes a risk to himself or other members of the community.

(4) "The offense for which the person is charged was initially classified as a felony and has been filed as a misdemeanor in the Municipal Court pursuant to A.R.S. §13-6049 (B)(2)."

(5) The plea agreement between the Office of the City Attorney and person

provides that the person shall not be eligible for the HDAP, unless there is a material change in circumstances and the State does not object to the granting of Home Detention. The Court shall provide the State with notice of a request to consider Home Detention.

(6) The sentencing judge at the time of the sentence states that the person is not eligible for participation in the HDAP, unless there is a material change in circumstances and the State does not object to the granting of Home Detention. The Court shall provide the State with notice of a request to consider Home Detention.

SECTION 3. Chapter 13 of the Peoria City Code (1992) is amended by enacting Section 13-106 pertaining to Home Detention Alternative Program; violations of A.R.S. §28-1381; notice to the City Attorney and which shall read as follows:

Sec. 13-106. Home Detention Alternative Program; violations of A.R.S. §28-1381; notice to City Attorney.

(a) If a person is sentenced under A.R.S. §28-1381, subsection I, the person must first serve a minimum of one day in jail before being placed in home detention under the HDAP.

(b) If a person is sentenced under A.R.S. §28-1381, Subsection K or A.R.S. §28-1382, subsection D, the person must serve a minimum of fifteen consecutive days in jail before being placed in home detention under the HDAP.

(c) In any case where the Defendant has requested participation in the HDAP or the Court on its own motion is considering permitting Defendant to participate in the HDAP, prior to issuing an order permitting participation in the HDAP, the Court shall notify the City Attorney of the request and permit the City Attorney an opportunity to respond to such request on behalf of the state and any victim.

SECTION 4. Chapter 13 of the Peoria City Code (1992) is amended by enacting Section 13-107 pertaining to Home Detention Alternative Program; powers and duties and which shall read as follows:

Sec. 13-107. Home Detention Alternative Program; powers and duties.

(a) The HDAP shall allow the sentencing judge to impose a period of home detention that will be at least two times the number of days required by statute for

institutionalized incarceration, not including those days which are suspended by the Court.

(b) The Court shall order that persons participating in the HDAP be subject to all of the following:

- (1) Electronic monitoring or any form of geographic monitoring that will advise the Court or its designee of the location of the person participating in HDAP at all times.
- (2) If the person is employed within Maricopa County or the City of Peoria or attending a licensed or accredited educational institution in Maricopa County and located within 35 miles of the City of Peoria, the Court may designate work hours during which electronic or geographic monitoring is not required and the person may be outside of their home. The person participating in HDAP must provide written proof of their work and/or school hours to the Court of its designee.
- (3) Being tested for the use of alcohol or drugs at such frequencies, not less than weekly, as determined by the Court, and participation in an alcohol or drug treatment program approved by the Court.
- (4) Restrictions on association with individuals that the Court has determined to be detrimental to the person's successful completion of the HDAP.
- (5) Compliance with all other conditions in the initial release order issued by the Court.
- (6) Compliance with any other provision that the Court may impose pursuant to A.R.S. §9-499.07.

**SECTION 5.** Chapter 13 of the Peoria City Code (1992) is amended by enacting Section 13-108 pertaining to Home Detention Alternative Program; fees; requirements and which shall read as follows:

Sec. 13-108. Home Detention Alternative Program (HDAP); fees; requirements.

(a) A person participating in the HDAP shall be required to pay the full cost of electronic monitoring, alcohol and drug testing, plus a minimum fee to be established by an administrative order of the Municipal Court payable per month regardless of the

number of days of participation in the HDAP. The fee shall be paid on a monthly basis in advance of the month of participation. If the Court finds based on a preponderance of the evidence that an individual is unable to pay these fees, the Court may then assess a lesser amount based on the person's ability to pay. The Court shall evaluate such requests using the same standards as to determine indigency for purposes of providing counsel to defendants. In consideration of a request to adjust fees, the Court shall not consider the costs to hire defense counsel or any cost arising out of the offense that the person has incurred or the payment of any restitution ordered to the victim.

(b) The Court shall obtain private provider services for electronic monitoring, drug and alcohol testing reporting, and verification of compliance. The costs of any such service provider, together with a ten percent administrative surcharge and the costs of any HDAP shall be assessed against the defendant and payment shall be a condition of participation in the HDAP.

(c) In the event that a participant in the HDAP fails to pay the required fees for participation in the program, their participation in the program shall be immediately terminated and the Court shall re-sentence the person in the manner provided by law.

(d) The Court may condition participation in the HDAP upon the participant being employed and remaining in employment while participating in the program. The Court shall serve a copy of the order authorizing participation in the program upon the participant's employer who shall notify the Court by the following business day of the participant's termination of employment or failure to come to work.

SECTION 6. Chapter 13 of the Peoria City Code (1992) is amended by enacting Section 13-109 pertaining to Home Detention Alternative Program; violations and which shall read as follows:

Sec. 13-109. Home Detention Alternative Program; Violations.

(a) The Office of the City Attorney or the Court on its own motion may file a request to terminate the person's participation in the HDAP upon reasonable belief that the individual has violated the terms and conditions of the HDAP. The Court need find a violation only by a preponderance of the evidence.

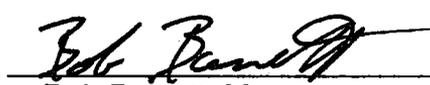
(b) In the event that a person is determined to have failed to comply with HDAP terms and conditions, the person's participation in the HDAP shall be summarily terminated by Court and the person ordered to comply with any original order of institutional incarceration with no credit or offset for any days served in home detention

applied against the portion of the sentence that is not suspended or fees paid for same, except that if the Court finds that the violation involved leaving the home during hours when the person is restricted to their residence, the person's participation in the HDAP shall be terminated and the person ordered to complete the remaining term of jail sentence, including that portion of the sentence suspended by jail confinement.

SECTION 7. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 8. This Ordinance shall become effective in the manner provided by law.

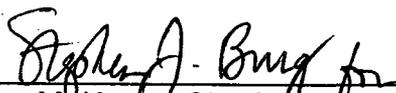
PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 4<sup>th</sup> day of September, 2012.

Dated: 9/8/12   
Bob Barrett, Mayor

ATTEST:

  
for Rhonda Geriminsky, Interim City Clerk 

APPROVED AS TO FORM:

  
Stephen M. Kemp, City Attorney

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