

1 HB634
2 131732-2
3 By Representative England (N & P)
4 RFD: Tuscaloosa County Legislation
5 First Read: 24-MAY-11

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ENROLLED, An Act,

Relating to the City of Tuscaloosa; to allow the City of Tuscaloosa to establish a discretionary pretrial diversion program and set basic operating standards for the program.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) The City of Tuscaloosa of Alabama may establish a pretrial diversion program.

(b) All discretionary powers endowed by a common law and provided by statutes and acts of this state or powers or discretion otherwise provided by law for the City of Tuscaloosa shall be retained.

(c) The pretrial diversion program shall be under the direct supervision and control of the city and the city may contract with any agency, person, or corporation for services related to this act. The city may employ necessary persons to accomplish this act and those persons shall serve at the pleasure of the city.

Section 2. For the purposes of this act, the following terms shall have the following meanings:

(1) APPLICATION FEE. A one-time administrative fee imposed by the City of Tuscaloosa as a condition precedent to participation in a pretrial diversion program.

1 (2) CITY ATTORNEY. The City Attorney of the City of
2 Tuscaloosa or any legal staff employed by the city attorney.

3 (3) LAW ENFORCEMENT. As defined in Section 41-8A-1
4 (1), Code of Alabama 1975.

5 (4) LAW ENFORCEMENT OFFICER. As defined in Section
6 36-25-1(15), Code of Alabama 1975, whether employed in the
7 State of Alabama or elsewhere.

8 (5) OFFENDER. Any person charged with a criminal
9 offense, including, but not limited to, any misdemeanor,
10 violation, or traffic offense, as defined by the Code of
11 Alabama 1975, which was allegedly committed in the corporate
12 limits or police jurisdiction of the City of Tuscaloosa.

13 (6) PRETRIAL DIVERSION PROGRAM OR PROGRAM. A program
14 that allows the imposition by the city or by a designated
15 agency of certain conditions of behavior and conduct for a
16 specified period of time upon an offender which allow the
17 offender to have his or her charges reduced, dismissed without
18 prejudice, or otherwise mitigated should all of the conditions
19 be met during the time frame set by the city attorney.

20 (7) SERIOUS PHYSICAL INJURY. As defined in Section
21 13A-1-2(14), Code of Alabama 1975.

22 (8) SUPERVISION FEE. Any fee other than the
23 application fee imposed by any agency providing supervision of
24 treatment of the offender.

1 Section 3. An offender may apply to the city for
2 admittance into the pretrial diversion program.

3 Section 4. Admittance into the pretrial diversion
4 program is in the sole discretion of the city attorney. An
5 offender deemed by the city attorney to be a threat to the
6 safety or well-being of the community shall not be eligible
7 for the program. An offender charged with any of the following
8 types of offenses shall be ineligible for admittance:

9 (1) Any offense involving violence or aggression
10 resulting in injury to a law enforcement officer.

11 (2) Any offense involving eluding or attempting to
12 elude a law enforcement officer.

13 (3) Any offense involving violence where weapons are
14 used or where children are victims.

15 (4) Any driving under the influence charge where
16 serious physical injuries are involved.

17 (5) Any offense wherein the offender is a public
18 official and the charge is related to the capacity of the
19 offender as a public official.

20 (6) The person may not hold a commercial driver
21 license (CDL) issued in any U.S. state, any U.S. possession,
22 any U.S. territory, or any U.S. insular area, or has no
23 conviction for which a commercial driver license was required.

1 Section 5. (a) The city attorney may consider an
2 offender for the pretrial diversion program based on any of
3 the following circumstances:

4 (1) There is a probability justice will be served if
5 the offender is placed in the program.

6 (2) It is determined the needs of the state, city,
7 and of the offender can be met through the program.

8 (3) The offender appears to pose no substantial
9 threat to the safety and well-being of the community.

10 (4) It appears the offender is not likely to be
11 involved in further criminal activity if the offender complies
12 with all conditions imposed pursuant to the program.

13 (5) The offender will likely respond to
14 rehabilitative treatment or counseling.

15 (6) The need for restitution for the victim from the
16 offender outweighs the interest of the state and city for
17 incarceration of the offender.

18 (b) The city attorney may waive any of the standards
19 specified in subsection (a) if justice or special
20 circumstances dictate.

21 Section 6. (a) Upon application by an offender for
22 admission into the pretrial diversion program, and prior to
23 admission thereto and as a part of the evaluation process of
24 the city attorney, the city attorney may require the offender
25 to furnish information concerning past criminal history,

1 education history, work record, family history, medical or
2 psychiatric treatment or care prescribed or received,
3 psychological tests taken, and any other information
4 concerning the offender which the city attorney believes has a
5 bearing on the decision whether or not the offender should be
6 admitted to the program.

7 (b) The city attorney may require the offender to
8 submit to any type of test or evaluation process or interview
9 the city attorney deems appropriate in evaluating the offender
10 for admittance into the program. The costs of any test or
11 evaluation shall be paid by the offender or as otherwise
12 agreed to or provided for by this act. The offender shall
13 provide the city attorney written consent to allow the city
14 attorney to receive any educational, work, medical,
15 psychiatric, psychological, or other records deemed necessary
16 by the city attorney for the evaluation process.

17 Section 7. (a) Following the decision of the city
18 attorney to admit the offender into the pretrial diversion
19 program, but prior to entry, the city attorney and the
20 offender shall enter into a written agreement stating the
21 conditions of the participation of the offender in the
22 program. The agreement shall include, but not be limited to,
23 all of the following:

24 (1) A voluntary waiver of the right of the offender
25 to a speedy trial.

1 (2) An agreement to the tolling, while in the
2 program, of periods of limitations established by statutes or
3 rules of court.

4 (3) An agreement to the conditions of the program
5 established by the city attorney.

6 (4) If there is a victim of the charged crime, an
7 agreement to the restitution repayment within a specified
8 period of time and in an amount to be determined by the city
9 attorney taking into account circumstances of the offender and
10 the victim.

11 (5) A waiver in writing of the right of the offender
12 to a jury trial.

13 (6) A truthful and complete statement by the
14 offender as to the involvement of the offender in the offense
15 charged, which statement shall be admissible in any criminal
16 trial.

17 (7) Submission of a written plea of guilty to the
18 offense or offenses charged or agreed upon included offenses,
19 together with an agreement as to whether the case is to be
20 dismissed upon successful completion of the program, and an
21 agreement, if there be any, as to the recommended sentence
22 should a sentence be imposed.

23 (b) In addition to those requirements set forth in
24 subsection (a), or as a condition of continued participation

1 in the program, the city attorney may require the offender to
2 agree to any of the following terms or conditions:

3 (1) To participate in substance abuse treatment.

4 (2) To participate in an education setting to
5 include, but not limited to, K-12, college, job training,
6 trade school, GED classes, or basic education courses.

7 (3) If appropriate, to attempt to learn to read and
8 write the English language.

9 (4) To financially support his or her children or
10 pay any court ordered child support.

11 (5) To refrain from the use of drugs or alcohol or
12 frequenting places where drugs or alcohol are sold or used.

13 (6) To not commit any criminal offense.

14 (7) To refrain from contact with certain named
15 persons or premises.

16 (8) To maintain or seek employment.

17 (9) To not leave the State of Alabama without prior
18 written consent of the city attorney or supervising agency or
19 personnel.

20 (10) To maintain a residence approved by the city
21 attorney or supervising agency or personnel.

22 (11) To attend individual, group, financial,
23 chemical addiction, family, mental health, sex offender, or
24 anger management counseling.

1 (12) To pay all court costs, fees, fines, and
2 worthless checks, and obey any other lawful court order
3 associated with the offense or offenses for which the offender
4 has entered the program, or any other case.

5 (13) To refrain from the possession or use of any
6 deadly weapon or dangerous instrument as defined in Section
7 13A-1-2, Code of Alabama 1975.

8 (14) To pay supervision fees and application fees
9 pursuant to this act.

10 (15) To observe curfews or home detention or travel
11 constraints as set out in agreement signed by the offender.

12 (16) To have restitution, court costs, fees, child
13 support, and any other moneys withheld or garnished from the
14 wages or salary of the offender or withheld from any Alabama
15 income tax due the offender, or from any available insurance
16 policy, or forfeited from any other real or personal property
17 of the offender, and applied to the above.

18 (17) To be admitted to a drug or alcohol treatment
19 program on an inpatient or outpatient basis or receive other
20 treatment alternatives for substance abuse.

21 (18) To submit to periodic or random drug testing as
22 part of the program and other terms and conditions related to
23 substance abuse as the city attorney may direct.

1 (19) To waive in writing the right of the offender
2 to a probation hearing in the event of termination or
3 withdrawal from the program.

4 (20) To any other terms or conditions as the city
5 attorney or his or her designee and the offender may agree to
6 in the above-stated agreement, it being the purpose of this
7 act to allow the city attorney broad discretion in designing a
8 program specifically for each offender and his or her
9 particular circumstances.

10 (21) When applicable, to be required to pay
11 supervision fees to the agency or entity responsible for
12 monitoring and verifying the compliance of the offender with
13 the terms of the program set forth by the city attorney. The
14 fees shall be paid by the offender to the supervising entity
15 in a timely manner.

16 Section 8. (a) An offender may be assessed a
17 nonrefundable application fee when the offender is approved
18 for the pretrial diversion program. The amount of the
19 assessment for participation in the program shall be in
20 addition to any court costs, fees, and assessments for the
21 Crime Victim's Compensation Fund, Department of Forensic
22 Sciences assessments, drug, alcohol, or anger management
23 treatment required by law, and any costs of supervision,
24 treatment, and restitution for which the offender may be

1 responsible. A schedule of payments for any of these fees may
2 be established by the city attorney.

3 (b) The following application fees shall be applied
4 to offenders accepted into the program:

5 (1) Misdemeanor offenses and Driving Under the
6 Influence: One thousand dollars (\$1,000).

7 (2) Traffic offenses not including DUI: Five hundred
8 dollars (\$500).

9 (3) Violations: One hundred dollars (\$100).

10 (c) The amount of the application fee for each
11 offender shall be established by the city attorney.

12 (d) The application fee shall be allocated to the
13 general fund of the City of Tuscaloosa except that a minimum
14 of 25 percent shall fund technology and training for law
15 enforcement and a minimum of 25 percent shall fund the
16 Indigent Treatment Fund as established by the City of
17 Tuscaloosa.

18 (e) An applicant offender may not be denied access
19 into the pretrial diversion program based solely on the
20 inability of the offender to pay the application fee.
21 Application fees may be waived or reduced for just cause,
22 including indigency of the offender, at the discretion of the
23 city. Any determination of the indigency of the offender for
24 purposes of program fee mitigation shall be made by the city
25 but such mitigation shall be done only upon the determination

1 by the city that there is no reasonable likelihood within the
2 reasonably foreseeable future that the offender will have the
3 ability to pay the application fee.

4 Section 9. Application fees required by this act
5 shall be collected by the court clerk of the Tuscaloosa
6 Municipal Court. The fees shall be disbursed to each entity or
7 department as allocated by Section 8.

8 Section 10. (a) Upon acceptance of an offender into
9 the pretrial diversion program by the city attorney, the city
10 attorney and the offender shall submit the written application
11 of the offender together with the statement of facts of the
12 offender, the acceptance of the offender by the city attorney,
13 and the agreement between the city attorney and the offender
14 to the court presiding over the affected case of the offender
15 for the approval of the court. The offender shall also enter a
16 plea of guilty to the charge or charges involved. If the court
17 rejects the agreement and guilty plea, any money paid by the
18 offender in satisfaction of the application fee shall be
19 refunded to the offender. The offender shall still be liable
20 for any actual expenses already incurred by the city attorney
21 or any agency or service provider in furtherance of the
22 application and evaluation process and the same will be
23 deducted from any money so refunded to the offender.

24 (b) Upon approval of the agreement and acceptance of
25 the guilty plea, the court shall expressly retain jurisdiction

1 of the case, any other provision of law notwithstanding, and
2 may withdraw and file the case or otherwise place it on an
3 administrative docket until such time as the court has been
4 notified that the offender has fulfilled the terms of the
5 agreement, has been terminated from the program, or otherwise
6 withdrawn from the program. Imposition of punishment by the
7 court shall be deferred until the offender has successfully
8 completed the program or is terminated from the program.

9 (c) In the event the offender is terminated from the
10 program, the court shall impose appropriate punishment in the
11 same manner as with any plea of guilty or finding of guilty
12 and shall not be bound by the terms of agreement as to what
13 punishment to impose.

14 (d) Upon successful completion of the program by the
15 offender, the city attorney shall notify the court in writing
16 of that fact together with a request that the court enter an
17 order of disposition of the case pursuant to the agreement
18 between the offender and the city attorney.

19 (e) Regardless of whether the offender successfully
20 completes the program or withdraws from or is terminated from
21 the program, the offender will still be liable for and
22 required to pay any and all court costs and fees, restitution,
23 victim's compensation fund assessment, and any and all other
24 fees and assessments, in the same manner as if the offender
25 had not applied for entry into the program and had been found

1 guilty of the offense or offenses involved. No costs, fees,
2 restitution, or assessments shall be waived or remitted,
3 absent an express agreement to that effect between the city
4 attorney and the offender, without a finding by the court that
5 the offender does not have the reasonable ability to pay the
6 same within the reasonably foreseeable future.

7 Section 11. (a) After any violation of any program
8 terms or conditions or upon any breach of any program
9 agreement by the offender, the city attorney may do any of the
10 following:

11 (1) Continue the agreement with or without
12 modification.

13 (2) Terminate the offender from the pretrial
14 diversion program.

15 (3) Require the offender to adopt a new agreement as
16 a condition of continued participation.

17 (b) The city attorney may waive a violation for good
18 cause shown why the offender should stay in the program.

19 Section 12. In no event shall the city attorney or
20 any other agency or service provider have any liability,
21 criminal or civil, for the conduct of any offender while
22 participating in the pretrial diversion program or for
23 acceptance of an offender into the program.

24 Section 13. The provisions of this act are
25 severable. If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

3 Section 14. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

