

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

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9 A BILL  
10 TO BE ENTITLED  
11 AN ACT  
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13 Relating to the City of Tuscaloosa; to allow the  
14 City of Tuscaloosa to establish a discretionary pretrial  
15 diversion program and set basic operating standards for the  
16 program.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

24 (c) The pretrial diversion program shall be under  
25 the direct supervision and control of the city and the city  
26 may contract with any agency, person, or corporation for  
27 services related to this act. The city may employ necessary

1 persons to accomplish this act and those persons shall serve  
2 at the pleasure of the city.

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

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

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

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

12 (4) LAW ENFORCEMENT OFFICER. As defined in Section  
13 36-25-1(15), Code of Alabama 1975, whether employed in the  
14 State of Alabama or elsewhere.

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

20 (6) PRETRIAL DIVERSION PROGRAM OR PROGRAM. A program  
21 that allows the imposition by the city or by a designated  
22 agency of certain conditions of behavior and conduct for a  
23 specified period of time upon an offender which allow the  
24 offender to have his or her charges reduced, dismissed without  
25 prejudice, or otherwise mitigated should all of the conditions  
26 be met during the time frame set by the city attorney.

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

3           (8) SUPERVISION FEE. Any fee other than the  
4 application fee imposed by any agency providing supervision of  
5 treatment of the offender.

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

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

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

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

18           (3) Any offense involving violence where weapons are  
19 used or where children are victims.

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

22           (5) Any offense wherein the offender is a public  
23 official and the charge is related to the capacity of the  
24 offender as a public official.

25           (6) The person may not hold a commercial driver  
26 license (CDL) issued in any U.S. state, any U.S. possession,

1 any U.S. territory, or any U.S. insular area, or has no  
2 conviction for which a commercial driver license was required.

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

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

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

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

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

15 (5) The offender will likely respond to  
16 rehabilitative treatment or counseling.

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

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

23 Section 6. (a) Upon application by an offender for  
24 admission into the pretrial diversion program, and prior to  
25 admission thereto and as a part of the evaluation process of  
26 the city attorney, the city attorney may require the offender  
27 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  
25 in the program, the city attorney may require the offender to  
26 agree to any of the following terms or conditions:

27                   (1) To participate in substance abuse treatment.

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

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

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

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

10                  (6) To not commit any criminal offense.

11                  (7) To refrain from contact with certain named  
12 persons or premises.

13                  (8) To maintain or seek employment.

14                  (9) To not leave the State of Alabama without prior  
15 written consent of the city attorney or supervising agency or  
16 personnel.

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

19                  (11) To attend individual, group, financial,  
20 chemical addiction, family, mental health, sex offender, or  
21 anger management counseling.

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



1           (13) To refrain from the possession or use of any  
2 deadly weapon or dangerous instrument as defined in Section  
3 13A-1-2, Code of Alabama 1975.

4           (14) To pay supervision fees and application fees  
5 pursuant to this act.

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

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

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

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

20           (19) To waive in writing the right of the offender  
21 to a probation hearing in the event of termination or  
22 withdrawal from the program.

23           (20) To any other terms or conditions as the city  
24 attorney or his or her designee and the offender may agree to  
25 in the above-stated agreement, it being the purpose of this  
26 act to allow the city attorney broad discretion in designing a

1 program specifically for each offender and his or her  
2 particular circumstances.

3 (21) When applicable, to be required to pay  
4 supervision fees to the agency or entity responsible for  
5 monitoring and verifying the compliance of the offender with  
6 the terms of the program set forth by the city attorney. The  
7 fees shall be paid by the offender to the supervising entity  
8 in a timely manner.

9 Section 8. (a) An offender may be assessed a  
10 nonrefundable application fee when the offender is approved  
11 for the pretrial diversion program. The amount of the  
12 assessment for participation in the program shall be in  
13 addition to any court costs, fees, and assessments for the  
14 Crime Victim's Compensation Fund, Department of Forensic  
15 Sciences assessments, drug, alcohol, or anger management  
16 treatment required by law, and any costs of supervision,  
17 treatment, and restitution for which the offender may be  
18 responsible. A schedule of payments for any of these fees may  
19 be established by the city attorney.

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

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

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

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

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

3 (d) The application fee shall be allocated to the  
4 general fund of the City of Tuscaloosa except that a minimum  
5 of 25 percent shall fund technology and training for law  
6 enforcement and a minimum of 25 percent shall fund the  
7 Indigent Treatment Fund as established by the City of  
8 Tuscaloosa.

9 (e) An applicant offender may not be denied access  
10 into the pretrial diversion program based solely on the  
11 inability of the offender to pay the application fee.  
12 Application fees may be waived or reduced for just cause,  
13 including indigency of the offender, at the discretion of the  
14 city. Any determination of the indigency of the offender for  
15 purposes of program fee mitigation shall be made by the city  
16 but such mitigation shall be done only upon the determination  
17 by the city that there is no reasonable likelihood within the  
18 reasonably foreseeable future that the offender will have the  
19 ability to pay the application fee.

20 Section 9. Application fees required by this act  
21 shall be collected by the court clerk of the Tuscaloosa  
22 Municipal Court. The fees shall be disbursed to each entity or  
23 department as allocated by Section 8.

24 Section 10. (a) Upon acceptance of an offender into  
25 the pretrial diversion program by the city attorney, the city  
26 attorney and the offender shall submit the written application  
27 of the offender together with the statement of facts of the

1 offender, the acceptance of the offender by the city attorney,  
2 and the agreement between the city attorney and the offender  
3 to the court presiding over the affected case of the offender  
4 for the approval of the court. The offender shall also enter a  
5 plea of guilty to the charge or charges involved. If the court  
6 rejects the agreement and guilty plea, any money paid by the  
7 offender in satisfaction of the application fee shall be  
8 refunded to the offender. The offender shall still be liable  
9 for any actual expenses already incurred by the city attorney  
10 or any agency or service provider in furtherance of the  
11 application and evaluation process and the same will be  
12 deducted from any money so refunded to the offender.

13 (b) Upon approval of the agreement and acceptance of  
14 the guilty plea, the court shall expressly retain jurisdiction  
15 of the case, any other provision of law notwithstanding, and  
16 may withdraw and file the case or otherwise place it on an  
17 administrative docket until such time as the court has been  
18 notified that the offender has fulfilled the terms of the  
19 agreement, has been terminated from the program, or otherwise  
20 withdrawn from the program. Imposition of punishment by the  
21 court shall be deferred until the offender has successfully  
22 completed the program or is terminated from the program.

23 (c) In the event the offender is terminated from the  
24 program, the court shall impose appropriate punishment in the  
25 same manner as with any plea of guilty or finding of guilty  
26 and shall not be bound by the terms of agreement as to what  
27 punishment to impose.

1 (d) Upon successful completion of the program by the  
2 offender, the city attorney shall notify the court in writing  
3 of that fact together with a request that the court enter an  
4 order of disposition of the case pursuant to the agreement  
5 between the offender and the city attorney.

6 (e) Regardless of whether the offender successfully  
7 completes the program or withdraws from or is terminated from  
8 the program, the offender will still be liable for and  
9 required to pay any and all court costs and fees, restitution,  
10 victim's compensation fund assessment, and any and all other  
11 fees and assessments, in the same manner as if the offender  
12 had not applied for entry into the program and had been found  
13 guilty of the offense or offenses involved. No costs, fees,  
14 restitution, or assessments shall be waived or remitted,  
15 absent an express agreement to that effect between the city  
16 attorney and the offender, without a finding by the court that  
17 the offender does not have the reasonable ability to pay the  
18 same within the reasonably foreseeable future.

19 Section 11. (a) After any violation of any program  
20 terms or conditions or upon any breach of any program  
21 agreement by the offender, the city attorney may do any of the  
22 following:

23 (1) Continue the agreement with or without  
24 modification.

25 (2) Terminate the offender from the pretrial  
26 diversion program.

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

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

5           Section 12. In no event shall the city attorney or  
6 any other agency or service provider have any liability,  
7 criminal or civil, for the conduct of any offender while  
8 participating in the pretrial diversion program or for  
9 acceptance of an offender into the program.

10          Section 13. The provisions of this act are  
11 severable. If any part of this act is declared invalid or  
12 unconstitutional, that declaration shall not affect the part  
13 which remains.

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