

1 HB663
2 129977-3
3 By Representatives England, Poole, Harper and Merrill (N & P)
4 RFD: Tuscaloosa County Legislation
5 First Read: 24-MAY-11

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ENROLLED, An Act,

Relating to Tuscaloosa County and the Sixth Judicial Circuit; to amend Sections 2, 3, 4, 7, 8, 9, and 10 of Act 2009-735 of the 2009 Regular Session (Acts 2009, p. 2191), to allow the District Attorney of the Sixth Judicial Circuit to establish a discretionary pretrial diversion program and set basic operating standards for the program; and to provide further for the collection and disbursement of fees, costs, and restitution.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 2, 3, 4, 7, 8, 9, and 10 of Act 2009-735 of the 2009 Regular Session (Acts 2009, p. 2191), are amended to read as follows:

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

"(1) ADMINISTRATIVE FEE. An administrative fee imposed by the District Attorney of the Sixth Judicial Circuit as a condition precedent to participation in a pretrial diversion program.

"(2) DISTRICT ATTORNEY. The elected District Attorney of the Sixth Judicial Circuit or any legal staff employed by the district attorney.

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

1 "(4) LAW ENFORCEMENT OFFICER. As defined in Section
2 36-25-1(15), Code of Alabama 1975, whether employed in the
3 State of Alabama or elsewhere.

4 "(5) OFFENDER. Any person charged with a criminal
5 offense, including, but not limited to, any felony,
6 misdemeanor, violation, or traffic offense, as defined by the
7 Code of Alabama 1975.

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

16 "(7) SERIOUS PHYSICAL INJURY. As defined in Section
17 13A-1-2(14), Code of Alabama 1975.

18 "(8) SUPERVISION FEE. Any fee other than the
19 application fee imposed by any agency providing supervision or
20 treatment of the offender.

21 "Section 3. An offender charged in any state or
22 municipal court, either within or outside the Sixth Judicial
23 Circuit, may apply to the district attorney for admittance
24 into the pretrial diversion program. The application shall be

1 made no later than 40 days after the first appearance or
2 arraignment of the offender, whichever occurs first.

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

9 "(1) Any Class A felony.

10 "(2) Any offense wherein the offender intentionally,
11 knowingly, or recklessly caused death or serious physical
12 injury to a person.

13 "(3) Any offense involving the use of a deadly
14 weapon.

15 "(4) Sexual abuse in the first degree or sexual
16 abuse of a child under 12.

17 "(5) Rape in the second degree, sodomy in the second
18 degree, or sexual abuse in the second degree, wherein the
19 offender was more than five years older than the victim, or
20 the victim was mentally defective or was otherwise incapable
21 of consent by reason of some factor other than being less than
22 16 years old but more than 12 years old.

23 "(6) Any sex offense by computer use involving a
24 child.

1 "(7) Child molestation, luring a child to a place in
2 order to perform or to propose sexual acts, or enticing a
3 child to enter a vehicle, structure, or any other place or
4 premises for immoral purposes.

5 "(8) Any sex offense involving a child under 12
6 years of age.

7 "(9) Any offense involving obscene matter containing
8 a visual depiction of children or child pornography.

9 "(10) Chemical endangerment of a child in violation
10 of Section 26-15-13.2, Code of Alabama 1975.

11 "(11) Aggravated child abuse.

12 "(12) Aggravated stalking.

13 "(13) Kidnapping in the first or second degree.

14 "(14) Compelling street gang membership.

15 "(15) Trafficking in any controlled substance or
16 marijuana or a violation of the Alabama Drug Trafficking
17 Enterprise Act, Section 13A-12-233, Code of Alabama 1975.

18 "(16) Bribery.

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

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

1 "Section 7. (a) Following the decision of the
2 district attorney to admit the offender into the pretrial
3 diversion program, but prior to entry, the district attorney
4 and the offender shall enter into a written agreement stating
5 the conditions of the participation of the offender in the
6 program. The agreement shall include, but not be limited to,
7 all of the following:

8 "(1) A voluntary waiver of the right of the offender
9 to a speedy trial.

10 "(2) An agreement to the tolling, while in the
11 program, of periods of limitations established by statutes or
12 rules of court.

13 "(3) An agreement to the conditions of the program
14 established by the district attorney.

15 "(4) If there is a victim of the charged crime, an
16 agreement to a restitution repayment within a specified period
17 of time and in an amount to be determined by the court.

18 "(5) A waiver in writing of the right of the
19 offender to a jury trial.

20 "(6) A truthful and complete statement by the
21 offender as to the involvement of the offender in the offense
22 charged, which statement shall be admissible in any criminal
23 trial.

24 "(7) Submission of a written plea of guilty to the
25 offense or offenses charged or agreed upon included offenses,

1 together with an agreement as to whether the case is to be
 2 dismissed upon successful completion of the program, and an
 3 agreement, if there be any, as to the recommended sentence
 4 should a sentence be imposed.

5 "(b) In addition to those requirements set forth in
 6 subsection (a), or as a condition of continued participation
 7 in the program, the district attorney may require the offender
 8 to agree to any of the following terms or conditions:

9 "(1) To participate in substance abuse treatment.

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

13 "(3) If appropriate, to attempt to learn to read and
 14 write the English language.

15 "(4) To financially support his or her children or
 16 pay any court ordered child support.

17 "(5) To refrain from the use of drugs or alcohol or
 18 frequenting places where drugs or alcohol are sold or used.

19 "(6) To not commit any criminal offense.

20 "(7) To refrain from contact with certain named
 21 persons or premises.

22 "(8) To maintain or seek employment.

23 "(9) To not leave the State of Alabama without prior
 24 written consent of the district attorney or supervising agency
 25 or personnel.

1 "(10) To maintain a residence approved by the
2 district attorney or supervising agency or personnel.

3 "(11) To attend individual, group, financial,
4 chemical addiction, family, mental health, sex offender, or
5 anger management counseling.

6 "(12) To pay all court costs, fees, fines, and
7 worthless checks, and obey any other lawful court order
8 associated with the offense or offenses for which the offender
9 has entered the program, or any other case.

10 "(13) To refrain from the possession or use of any
11 deadly weapon or dangerous instrument as defined in Section
12 13A-1-2, Code of Alabama 1975.

13 "(14) To pay supervision fees and administrative
14 fees pursuant to this act.

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

18 "(16) To have restitution, court costs, fees, child
19 support, and any other moneys withheld or garnished from the
20 wages or salary of the offender or withheld from any Alabama
21 income tax due the offender, or from any available insurance
22 policy, or forfeited from any other real or personal property
23 of the offender, and applied to the above.

1 "(17) To be admitted to a drug or alcohol treatment
2 program on an inpatient or outpatient basis or receive other
3 treatment alternatives for substance abuse.

4 "(18) To submit to periodic or random drug testing
5 as part of the program and other terms and conditions related
6 to substance abuse as the district attorney may direct.

7 "(19) To waive in writing the right of the offender
8 to a probation hearing in the event of termination or
9 withdrawal from the program.

10 "(20) To any other terms or conditions as the
11 district attorney or his or her designee and the offender may
12 agree to in the above-stated agreement, it being the purpose
13 of this act to allow the district attorney broad discretion in
14 designing a program specifically for each offender and his or
15 her particular circumstances.

16 "(21) When applicable, to be required to pay
17 supervision fees to the agency or entity responsible for
18 monitoring and verifying the compliance of the offender with
19 the terms of the program set forth by the district attorney.
20 The fees shall be paid by the offender in a timely manner as
21 provided in Section 9.

22 "Section 8. (a) An offender may be assessed a
23 nonrefundable administrative fee when the offender is approved
24 for the pretrial diversion program. The amount of the
25 assessment for participation in the program shall be in

1 addition to any court costs, fees, and assessments for the
 2 Crime Victim's Compensation Fund, Department of Forensic
 3 Sciences assessments, drug, alcohol, or anger management
 4 treatment required by law, and any costs of supervision,
 5 treatment, and restitution for which the offender may be
 6 responsible. A schedule of payments for any of these fees may
 7 be established by the district attorney.

8 "(b) The following administrative fees shall be
 9 applied to offenders accepted into the program:

10 "(1) Felony offenses: Up to one thousand dollars
 11 (\$1,000).

12 "(2) Misdemeanor offenses: Up to seven hundred fifty
 13 dollars (\$750).

14 "(3) Traffic offenses: Up to five hundred dollars
 15 (\$500). Provided, however, the administrative fee for first
 16 time offenders of Section 32-5A-191, Code of Alabama 1975,
 17 Driving Under the Influence, and Section 32-5A-191.3, Code of
 18 Alabama 1975, Boating Under the Influence, shall be up to one
 19 thousand dollars (\$1,000).

20 "(4) Violations: Up to one hundred dollars (\$100).

21 "(c) The amount of the administrative fee for each
 22 offender shall be established by the district attorney.

23 "(d) The administrative fee shall be allocated and
 24 paid to the following offices or entities as follows:

1 "(1) Five percent shall be distributed to the
2 arresting or ticketing law enforcement agency and shall be
3 available for the use of the agency at the discretion of the
4 head of the agency for law enforcement purposes.

5 "(2) Five percent shall be distributed to the
6 Department of Forensic Sciences Tuscaloosa Lab and shall be
7 available for lawful use for that lab at the discretion of the
8 head of that lab. If the Tuscaloosa lab should be closed or no
9 longer operated by the Alabama Department of Forensic
10 Sciences, this allocation shall revert to the office of the
11 district attorney.

12 "(3) Five percent shall be distributed to the
13 appropriate court clerk for the court which adjudicated the
14 case, and shall be available for use at the discretion of the
15 clerk to support the office of the clerk in the same way and
16 manner as monies received from or through the District
17 Attorney's Restitution Recovery Unit.

18 "(4) Five percent shall be distributed to the court
19 clerk to be applied toward any and all court costs and fees
20 which are assessed by the court until such time as the costs
21 and fees are paid in full. Provided, however, upon payment in
22 full of the administrative fee, if the defendant has not paid
23 the court costs and fees in full, the defendant shall still be
24 required to pay the remaining court costs and fees balance in
25 full.

1 "(5) Five percent shall be distributed to the court
2 clerk to be applied to any outstanding restitution the
3 defendant was ordered to pay by the court until such time as
4 the restitution is paid in full. Provided, however, upon
5 payment in full of the administrative fee, if the defendant
6 has not paid the restitution in full, the defendant shall
7 still be required to pay the remaining restitution balance in
8 full.

9 "(6) The remainder of the administrative fees shall
10 be distributed to the office of the district attorney and
11 shall be available, at the discretion of the district
12 attorney, for law enforcement purposes.

13 "(e) An offender shall not be allowed to graduate
14 from the pretrial diversion program nor shall the case or
15 cases of the offender be dismissed unless all fees, costs, and
16 restitution as provided in this act are paid in full.

17 "(f) An applicant offender may not be denied access
18 into the pretrial diversion program based solely on the
19 inability of the offender to pay the administrative fee or
20 court costs and fees or restitution. Administrative fees may
21 be waived or reduced for just cause, including indigency of
22 the offender, at the discretion of the district attorney. Any
23 determination of the indigency of the offender for purposes of
24 mitigation of administrative and supervision fees shall be
25 made by the district attorney but such mitigation shall be

1 done only upon a determination by the district attorney that
2 there is no reasonable likelihood within the reasonably
3 foreseeable future that the offender will have the ability to
4 pay the application fee.

5 "Section 9. (a) In each case, all administrative
6 fees, supervision fees, court costs, fees, fines, restitution,
7 and any and all other court-ordered fees of whatever nature,
8 required by this act or otherwise shall be collected by the
9 District Attorney's Restitution Recovery Unit, or Special
10 Services Division in the same manner as collections by the
11 District Attorney's Restitution Recovery Unit. The fees shall
12 then be disbursed in the same manner as monies collected by
13 the Restitution Recovery Unit are disbursed in the following
14 amounts:

15 "(1) Fifty percent of any amounts collected shall be
16 applied to the aggregate supervision fees and shall be paid to
17 the agency or agencies providing supervision or treatment of
18 the offender, on a pro rata basis, until such time as the
19 offender has paid all of the supervision fees. After the
20 supervision fees are paid in full, that amount shall be paid
21 to the District Attorney's Pretrial Diversion Program Fund,
22 until such time as the administrative fee is paid in full.
23 After both the supervision fees and administrative fees are
24 paid in full, that amount shall be applied to any unpaid
25 restitution or court costs and fees still owing.

1 "(2) Fifty percent of any amounts collected shall be
2 applied to the administrative fee and disbursed as provided in
3 Section 8.

4 "(b) All fees paid by offenders which are disbursed
5 for use of the office of the district attorney shall be used
6 to pay costs associated with the administration of the
7 pretrial diversion program or for other law enforcement
8 purposes deemed necessary by the district attorney. The
9 district attorney shall establish a pretrial diversion program
10 fund to receive and expend the administrative fees.

11 "(c) The fees allocated to the court clerks shall be
12 disbursed to the court clerk's fund which shall be kept and
13 maintained by the clerk in a separate account to be used for
14 the operation of the office of the clerk to include, but not
15 be limited to, equipment purchases, education, and other
16 office related expenses including office personnel. Funds
17 retained by the clerks shall not reduce the amount payable to
18 the clerks under any local act or general act or reduce or
19 affect the amounts of funding allocated by the Administrative
20 Office of Courts to the budget of the clerks.

21 "Section 10. (a) Upon acceptance of an offender into
22 the pretrial diversion program by the district attorney, the
23 district attorney and the offender shall submit the written
24 application of the offender together with the statement of
25 facts of the offender, the acceptance of the offender by the

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

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

1 "(c) In the event the offender is terminated from
2 the program, the court shall impose appropriate punishment in
3 the same manner as with any plea of guilty or finding of guilt
4 and shall not be bound by the terms of the agreement as to
5 what punishment to impose.

6 "(d) Upon successful completion of the program by
7 the offender, the district attorney shall notify the court in
8 writing of that fact together with a request that the court
9 enter an order of disposition of the case pursuant to the
10 agreement between the offender and the district attorney.

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

24 Section 2. The provisions of this act are severable.
25 If any part of this act is declared invalid or

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

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

