

1 SB481
2 128974-1
3 By Senator Irons (N & P)
4 RFD: Local Legislation No. 1
5 First Read: 24-MAY-11

2
3
4
5
6
7
8
9 A BILL
10 TO BE ENTITLED
11 AN ACT
12

13 To provide for the establishment of a pretrial
14 diversion program in the 11th Judicial Circuit in Lauderdale
15 County; to set basic operating standards for the program; and
16 to provide for program fees and their distribution.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. For purposes of this act, the following
19 terms shall have the following meanings:

20 (1) DISTRICT ATTORNEY. The district attorney of the
21 11th Judicial Circuit in Lauderdale County or any of his or
22 her staff.

23 (2) LAW ENFORCEMENT or LAW ENFORCEMENT OFFICER. Any
24 person who is employed by an agency or department whose
25 purpose is to protect the citizens, including, but not limited
26 to, police personnel, sheriff personnel, a district attorney
27 investigator, Department of Human Resources personnel, parole

1 and probation personnel, community corrections office
2 personnel, and court referral office personnel, whether that
3 agency or department is in this state or located elsewhere.

4 (3) OFFENDER. Any person charged with a crime as
5 defined by the Code of Alabama 1975, or municipal ordinance,
6 which was committed in the jurisdiction of the state.

7 (4) SERIOUS PHYSICAL INJURY. As that term is defined
8 by Section 13A-1-2 of the Code of Alabama 1975.

9 Section 2. (a) The district attorney may establish a
10 pretrial diversion program within the 11th Judicial Circuit in
11 Lauderdale County.

12 (b) All discretionary powers endowed by the common
13 law, provided for by statute and acts of this state, or
14 otherwise provided by law for the district attorneys of this
15 state shall be retained.

16 (c) The pretrial diversion program shall be under
17 the direct supervision and sole control of the district
18 attorney.

19 (d) The district attorney may contract with any
20 agency, person, or corporation for services related to this
21 act and may employ persons necessary to accomplish this act,
22 who shall serve at the pleasure of the district attorney.

23 Section 3. (a) An offender charged with any of the
24 following criminal offenses in a circuit court or district
25 court may apply to the district attorney for admittance to the
26 pretrial diversion program:

1 (1) A drug offense, excluding trafficking in
2 controlled substances or cannabis as provided in Section
3 13A-12-231 of the Code of Alabama 1975, or manufacturing of
4 controlled substances in the first degree as provided in
5 Section 13A-12-218 of the Code of Alabama 1975.

6 (2) A property offense.

7 (3) A misdemeanor.

8 (4) A traffic or conservation offense, except that a
9 holder of a commercial driver's license, an operator of a
10 commercial motor vehicle, or a commercial driver learner
11 permit holder who is charged with a violation of a traffic law
12 in this state shall not be eligible for a deferred prosecution
13 program, diversion program, or any deferred imposition of
14 judgment program pursuant to Section 32-6-49.23 of the Code of
15 Alabama 1975.

16 (b) An offender charged with any of the following
17 offenses is ineligible for consideration for the pretrial
18 diversion program:

19 (1) Any Class A felony or capital offense.

20 (2) Any offense involving serious physical injury to
21 a person.

22 (3) An offense involving violence in which the
23 victim was a child under 14 years of age, a law enforcement
24 officer, a school officer, a correctional officer, active duty
25 military personnel of the United States military, or an
26 individual over the age of 65.

27 (4) Any offense involving death.

1 (5) A person deemed by the district attorney to be a
2 threat to the safety or well-being of the community.

3 (6) Bribery of a government or public official.

4 (7) Any offense wherein the offender is a public
5 official and the charge is related to his or her capacity as a
6 public official.

7 (8) Abduction or kidnapping.

8 (9) Any sex offense involving forcible compulsion or
9 incapacity.

10 Section 4. (a) In determining whether an offender
11 may be admitted into the pretrial diversion program, it shall
12 be appropriate for the district attorney to consider any of
13 the following circumstances:

14 (1) The offender is 18 years of age or older at the
15 time the offense was committed.

16 (2) There is a probability justice will be served if
17 the offender is placed in the pretrial diversion program.

18 (3) It is determined the needs of the community and
19 of the offender can be met through the pretrial diversion
20 program.

21 (4) The offender appears to pose no substantial
22 threat to the safety and well-being of the community or law
23 enforcement.

24 (5) The offender is not likely to be involved in
25 further criminal activity.

26 (6) The offender will likely respond to
27 rehabilitative treatment.

1 (7) The expressed wish of the victim not to
2 prosecute.

3 (8) Undue hardship upon the victim.

4 (9) Whether the victim or the offender has medical,
5 psychiatric, or vocational difficulties that would impede the
6 administration of justice.

7 (10) Whether there is a reason to believe that the
8 victim or offender will benefit from and cooperate with a
9 pretrial diversion program.

10 (11) The impact of criminal charges or prosecution
11 upon the victim, witnesses, or the community.

12 (b) The district attorney may waive any of the
13 standards specified in subsection (a) if justice or special
14 circumstances dictate.

15 Section 5. (a) Admittance into the pretrial
16 diversion program shall be in the sole discretion of the
17 district attorney. To assist the district attorney in the
18 decision to admit the offender into the pretrial diversion
19 program, the district attorney, prior to the offender being
20 admitted into the pretrial diversion program or as a part of
21 the district attorney's evaluation process, may require an
22 offender to furnish to the district attorney information
23 concerning past criminal history, education history, work
24 history, family history, medical or psychiatric treatment
25 history, psychological tests, or any other information
26 concerning the offender which the district attorney believes

1 is applicable to determine whether the offender should be
2 admitted into the pretrial diversion program.

3 (b) The district attorney may require the offender
4 to submit to any test or evaluation process the district
5 attorney deems appropriate in evaluating the offender for
6 admittance into the pretrial diversion program. The costs of
7 any test or evaluation shall be paid by the offender or as
8 otherwise agreed to or provided for by this act.

9 Section 6. (a) An offender who enters into the
10 pretrial diversion program shall satisfy each of the following
11 requirements:

12 (1) Voluntarily waive, in writing, his or her right
13 to a speedy trial.

14 (2) Agree, in writing, to the tolling of periods of
15 limitations established by statutes or rules of court while in
16 the program.

17 (3) Waive, in writing, his or her right to a jury
18 trial.

19 (4) Provide a statement written by the offender,
20 admitting his or her participation in, and responsibility for,
21 the offense which is the subject of the application for entry
22 into the pretrial diversion program, which statement shall be
23 admissible in any criminal trial.

24 (5) Agree, in writing, to the conditions of the
25 pretrial diversion program established by the district
26 attorney.

1 (6) If there is a victim of the crime, agree in
2 writing to a restitution agreement within a specified period
3 of time and in an amount to be determined by the district
4 attorney.

5 (7) Agree in writing to the jurisdiction of the
6 court beyond completion of any disposition of the case, end of
7 sentence, termination of parole or probation, or conclusion of
8 the pretrial diversion program to enforce collection of
9 restitution, cost of court, fines, fees, or other agreed upon
10 or court ordered monies, pursuant to Section 12-17-225, Code
11 of Alabama 1975.

12 (b) Pretrial diversion program records or records
13 related to pretrial diversion program admission, with the
14 exception of the statement of the applicant concerning his or
15 her involvement in the crime charged, shall not be admissible
16 in subsequent proceedings, criminal or civil. Communications
17 between pretrial diversion program counselors and offenders
18 shall be privileged unless a court of competent jurisdiction
19 determines there is a compelling public interest to the
20 contrary.

21 (c) As part of the pretrial diversion program, the
22 district attorney may establish a Restorative Justice
23 Initiative (RJI) program within the 11th Judicial Circuit in
24 Lauderdale County. The guidelines and mechanisms for such an
25 initiative shall be promulgated by the Alabama Office of
26 Prosecution Services. Any additional fees for participation in
27 an RJI program by an offender shall be set by the district

1 attorney and a portion thereof may be paid to any agency or
2 entity that provides services to further the goals and purpose
3 of the RJI program.

4 Section 7. An offender shall make application to the
5 pretrial diversion program at a time to be determined by the
6 district attorney.

7 Section 8. (a) An offender may be assessed an
8 application fee when he or she is approved for the program.
9 The amount of the fee for participation in the program shall
10 be in addition to any court costs, assessments for crime
11 victim's compensation fund, Department of Forensic Science
12 assessments, drug, alcohol, or anger management treatments
13 required by law, restitution, costs of supervision, or
14 treatment. A schedule of payments for any of these fees may be
15 established by the district attorney.

16 (b) The amount of the application fee shall be
17 determined by the district attorney and may not exceed the
18 following amounts for each case for which the offender makes
19 application for acceptance into the pretrial diversion
20 program:

21 (1) Felony offenses: Up to nine hundred dollars
22 (\$900).

23 (2) Misdemeanor offenses: Up to seven hundred fifty
24 dollars (\$750).

25 (c) An applicant may not be denied access into the
26 pretrial diversion program based solely on his or her
27 inability to pay. Pretrial diversion program fees as

1 established by this act may be waived or reduced for just
2 cause, including indigency of the applicant, at the discretion
3 of the district attorney. Any determination of indigency of
4 the offender for the purposes of pretrial diversion fee
5 mitigation shall be made by the district attorney. In the
6 event the offender is determined to be indigent, a periodic
7 review of the offender's indigency status may be conducted by
8 the court to determine if the offender is no longer indigent.
9 If the offender is determined to be indigent by the district
10 attorney, nothing in this act shall prohibit the offender from
11 being placed on a payment plan wherein the entire victim
12 restitution, court costs, fines, fees, and pretrial diversion
13 fees are collected in total.

14 (d) Application fees required by this act shall be
15 collected by the district attorney's office. All pretrial
16 diversion program fees shall be deposited in a timely manner
17 by the district attorney into the District Attorney's
18 Solicitor Fund as described by this act. The district attorney
19 shall make the deposits in a timely manner pursuant to
20 commonly accepted accounting practices. The District
21 Attorney's Solicitor Fund shall be subject to regular audits
22 by the Alabama Department of Examiners of Public Accounts.

23 Section 9. The district attorney and the offender
24 may enter into an agreement, as a part of the pretrial
25 diversion program, that the offender be admitted to a drug or
26 alcohol program on an in-patient or out-patient basis or
27 receive other treatment alternatives for substance abuse. The

1 district attorney may require the offender to submit to
2 periodic or random drug testing or other terms and conditions
3 related to substance abuse. The offender shall pay the costs
4 of all services unless otherwise approved by the district
5 attorney.

6 Section 10. (a) In any case in which an offender is
7 admitted into a pretrial diversion program, there shall be a
8 written agreement between the district attorney and the
9 offender. The agreement shall include the terms of the
10 pretrial diversion program, the length of the program, and the
11 period of time after which the district attorney will dispose
12 of the charges against the offender in a noncriminal manner.
13 If, as part of the pretrial diversion program, the offender
14 agrees to plead guilty to a particular charge and receive a
15 specific sentence, an agreement concerning when the plea of
16 guilty will occur, to what charge to which the offender will
17 plead guilty, and any sentence to be imposed, shall be
18 approved by an appropriate circuit or district court judge
19 having jurisdiction over the offender within the judicial
20 circuit prior to admission of the offender in the pretrial
21 diversion program.

22 (b) As a condition of being admitted into the
23 pretrial diversion program, the district attorney may require
24 the offender to agree to any of the following terms or
25 conditions:

26 (1) Pay approved restitution to a victim.

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

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

6 (4) Financially support his or her children or pay
7 child support.

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

10 (6) Refrain from contact with certain persons or
11 premises.

12 (7) Maintain or seek employment.

13 (8) Attend individual, group, or family counseling.

14 (9) Pay court costs, fees, and fines.

15 (10) Conduct himself or herself in an honorable
16 manner as a good member of the community, and not endanger in
17 any way the person, property rights, dignity, or morals of
18 others or himself or herself.

19 (11) Comply with all municipal, county, state, and
20 federal law, ordinances, or orders.

21 (12) Be absolutely truthful in any oral or written
22 application or reports to the pretrial diversion program.

23 (13) Pay supervision fees to the agency or entity
24 responsible for monitoring and verifying the offender's
25 compliance with the terms of the pretrial diversion program
26 set forth by the district attorney. These fees shall be paid

1 by the offender to the supervising agency or entity in a
2 timely manner.

3 (14) Observe curfews, home detention, or travel
4 constraints as set out in the offender's agreement.

5 (15) Enter into an agreement with the district
6 attorney to have restitution, court costs, fines, fees, or
7 child support withheld or garnished from the wages or salary
8 of the offender.

9 (16) Complete approved community service.

10 (17) Agree to the court's jurisdiction beyond the
11 terms of the pretrial diversion program, incarceration,
12 probation, parole, or end of sentence for the purposes of the
13 collection of court ordered or agreed upon fines, fees, cost
14 of court, and restitution pursuant to Section 12-17-225, Code
15 of Alabama 1975.

16 (18) Agree to the terms and conditions of the
17 pretrial diversion program established by the district
18 attorney.

19 (19) Provide a statement written by the offender,
20 admitting his or her participation in, and responsibility for,
21 the offense which is the subject of the application for entry
22 into the pretrial diversion program.

23 (20) Refrain from the possession of or use of any
24 firearm.

25 (21) Pay the application fee pursuant to this act.

26 (22) Participate in and complete a drug court
27 program.

1 (23) Complete a certified drug or alcohol addiction
2 evaluation and treatment program.

3 (24) Agree to be subject to any other terms or
4 conditions as required by the district attorney set out in the
5 pretrial diversion program agreement. The district attorney
6 shall be given broad discretion in designing a program
7 specifically for each offender and circumstances of the
8 offender.

9 Section 11. (a) All fees paid to the district
10 attorney by offenders pursuant to this act shall be paid into
11 the District Attorney's Solicitor Fund. The funds shall be
12 used to pay costs associated with the administration of the
13 pretrial diversion program or for any other law enforcement
14 purpose. Costs associated with program administration shall
15 include, but shall not be limited to, salaries, rent,
16 vehicles, uniforms, telephones, postage, office supplies and
17 equipment, training and travel services, service contracts, or
18 professional services. The district attorney may pay for
19 services or programs for an offender while the offender is in
20 the pretrial division program if special circumstances and
21 justice dictate.

22 Section 12. (a) If the offender violates the
23 conditions of the pretrial diversion program, the district
24 attorney may terminate the participation of the offender in
25 the program. The offender shall be given written notice of the
26 intent of the district attorney to terminate him or her from

1 the pretrial diversion program including the reason for the
2 termination.

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

6 Section 13. The district attorney or his or her
7 staff shall have no liability, criminal, or civil, for the
8 conduct of any offender while participating in the pretrial
9 diversion program or of any service provider or their agents
10 that are contracted to or who have agreed to provide services
11 to the pretrial diversion program.

12 Section 14. The pretrial diversion program may apply
13 for grants, may accept gifts from individuals or corporations,
14 and may receive funding or appropriations from city, county,
15 or state agencies or departments to be used in the maintenance
16 or expansion of the pretrial diversion program.

17 Section 15. The district attorney may form an
18 advisory board within the county or judicial circuit named the
19 Citizens Advisory Board for Pretrial Diversion to assist the
20 district attorney in the determination of appropriate pretrial
21 diversion candidates. The district attorney shall retain the
22 final decision as to the admittance or denial of individuals
23 into the pretrial diversion program. The district attorney
24 shall appoint all members of any advisory board and shall
25 determine when or if it should meet. The advisory board shall
26 serve without personal profit, but may be paid from the

1 District Attorney's Solicitors Fund for actual expenses
2 incurred in connection with its duties.

3 Section 16. The district attorney, to the extent
4 practicable, may utilize the services of an existing community
5 corrections program established pursuant to Section 15-18-170
6 of the Code of Alabama 1975, to provide for the supervision of
7 a defendant participating in the pretrial diversion program.
8 The district attorney may utilize the services of an existing
9 drug court program established pursuant to Section 12-23A-4 of
10 the Code of Alabama 1975, so long as the district attorney
11 determines it would serve the best interest of justice and the
12 community.

13 Section 17. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.