

1 HB198
2 134705-2
3 By Representatives McCutcheon, Williams (D) and Hammon (N & P)
4 RFD: Local Legislation
5 First Read: 07-FEB-12

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Limestone County and the Thirty-ninth
14 Judicial Circuit, to allow the District Attorney of the
15 Thirty-ninth Judicial Circuit, to establish a discretionary
16 pretrial diversion program and set basic operating standards
17 for the program.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 (1) APPLICATION FEE. A one-time administrative fee
22 imposed by the District Attorney of the Thirty-ninth Judicial
23 Circuit as a condition precedent to participation in a
24 pretrial diversion program.

25 (2) DISTRICT ATTORNEY. The elected District Attorney
26 of the Thirty-ninth Judicial Circuit or any staff employed by
27 the district attorney.

1 (3) LAW ENFORCEMENT. As defined in Section
2 41-8A-1(1), Code of Alabama 1975.

3 (4) LAW ENFORCEMENT OFFICER. As defined in Section
4 36-25-1(15), Code of Alabama 1975, including, but not limited
5 to, police personnel, sheriff personnel, district attorney
6 investigator, Department of Human Resources personnel, parole
7 and probation personnel, community corrections office
8 personnel, and court referral office personnel, whether
9 employed in the State of Alabama or elsewhere.

10 (5) OFFENDER. Any person charged with a criminal
11 offense, including, but not limited to, any felony,
12 misdemeanor, violation, or traffic offense, as defined by the
13 Code of Alabama 1975, which was allegedly committed in the
14 jurisdiction of the Thirty-ninth Judicial Circuit.

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

23 (7) SERIOUS PHYSICAL INJURY. As defined in Section
24 13A-1-2(14), Code of Alabama 1975.

25 (8) SUPERVISION FEE. Any fee imposed by any agency
26 providing supervision or treatment of an offender.

1 Section 2. (a) The District Attorney of the
2 Thirty-ninth Judicial Circuit of Alabama may establish a
3 pretrial diversion program.

4 (b) All discretionary powers endowed by the common
5 law and provided by statutes and acts of this state or powers
6 or discretion otherwise provided by law for the District
7 Attorney of the Thirty-ninth Judicial Circuit shall be
8 retained.

9 (c) The pretrial diversion program shall be under
10 the direct supervision and control of the district attorney,
11 and the district attorney may contract with any agency,
12 person, or corporation, including, but not limited to, the
13 Limestone County Community Correction Program and the Drug
14 Court for Limestone County, for services related to this act.
15 The district attorney may employ necessary persons to
16 accomplish this act and such persons shall serve at the
17 pleasure of the district attorney.

18 Section 3. An offender may apply to the district
19 attorney for admittance into the Pretrial Diversion Program.
20 The application shall be made in the time and manner
21 designated by the district attorney.

22 Section 4. Admittance into the pretrial diversion
23 program is in the absolute discretion of the district
24 attorney. However, an offender deemed by the district attorney
25 to be a threat to the safety or well-being of the community
26 shall not be eligible for the program. Further, an offender

1 charged with the following offenses shall be ineligible for
2 admittance:

3 (1) A Class A felony or capital offense.

4 (2) An offense which intentionally, knowingly or
5 recklessly resulted in death or serious physical injury to a
6 person.

7 (3) An offense involving the use of a deadly weapon.

8 (4) Chemical endangerment of a child.

9 (5) An offense involving violence in which the
10 victim was a child under 14 years of age, a law enforcement
11 officer, a school officer, a correctional officer, active duty
12 military personnel of the United States Armed Forces, or an
13 elderly person over the age of 65.

14 (6) An offense involving violence in which the
15 victim was an employee of any school system which lies within
16 the geographic boundaries of the Thirty-ninth Judicial
17 Circuit.

18 (7) Trafficking in controlled substances or
19 marijuana.

20 (8) Driving under the influence of alcohol, driving
21 under the influence of a controlled substance, driving under
22 the combined influence of alcohol and a controlled substance,
23 or driving under the influence of any substance which impairs
24 the mental or physical faculties wherein the offender has been
25 previously charged with or convicted of driving under the
26 influence of alcohol, driving under the influence of a
27 controlled substance, driving under the combined influence of

1 alcohol and a controlled substance, or driving under the
2 influence of any substance which impairs the mental or
3 physical faculties, or where a chemical test was given to the
4 offender and the results of the chemical test revealed a
5 greater than .15 percentage by weight of alcohol in the blood.

6 (9) Bribery.

7 (10) Any offense wherein the offender is a public
8 official and the charge is related to the offender's capacity
9 as a public official.

10 (11) Any offense wherein a holder of a commercial
11 driver's license, an operator of a commercial motor vehicle,
12 or a commercial driver learner permit holder has been charged
13 with a violation of a traffic law in this state pursuant to
14 Section 32-6-49.23, Code of Alabama 1975.

15 Section 5. (a) The district attorney may consider an
16 offender for the pretrial diversion program based on any of
17 the following circumstances:

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

20 (2) It is determined the needs of the state and of
21 the offender can be met through the program.

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

24 (4) It appears the offender is not likely to be
25 involved in further criminal activity.

26 (5) The offender will likely respond to
27 rehabilitative treatment or counseling.

1 (b) The district attorney may waive any of the
2 standards specified in subsection (a) if justice or special
3 circumstances dictate.

4 Section 6. (a) Upon application by an offender for
5 admission into the pretrial diversion program, and prior to
6 admission and as a part of the district attorney's evaluation
7 process, the district attorney may require the offender to
8 furnish information concerning past criminal history,
9 education history, work record, family history, medical or
10 psychiatric treatment or care prescribed or received,
11 psychological tests taken, and any other information
12 concerning the offender which the district attorney believes
13 has a bearing on the decision of whether or not the offender
14 should be admitted to the program.

15 (b) The district attorney may require the offender
16 to submit to any type of test or evaluation process or
17 interview the district attorney deems appropriate in
18 evaluating the offender for admittance into the program. The
19 costs of any test or evaluation shall be paid by the offender
20 or as otherwise agreed to or provided for by this act.
21 Further, the offender shall provide to the district attorney
22 written consent to allow the district attorney to receive any
23 educational, work, medical, psychiatric, psychological, or
24 other records deemed necessary by the district attorney for
25 the evaluation process.

26 Section 7. (a) Following the decision of the
27 district attorney to admit the offender into the pretrial

1 diversion program, but prior to entry, the district attorney
2 and the offender shall enter into a written agreement stating
3 the conditions of the participation of the offender in the
4 program. The agreement shall include, but not be limited to,
5 the following:

6 (1) A voluntary waiver of the offender's right to a
7 speedy trial.

8 (2) An agreement to the tolling, while in the
9 program, of periods of limitations established by statute or
10 rules of court.

11 (3) An agreement to the conditions of the program
12 established by the district attorney.

13 (4) If there is a victim of the charged crime, an
14 agreement to a restitution repayment within a specified period
15 of time and in an amount to be determined by the district
16 attorney taking into account circumstances of the offender and
17 the victim.

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

20 (6) A statement as to the offender's involvement in
21 the offense charged, which statement shall be admissible in
22 any criminal trial.

23 (7) If requested by the district attorney, a written
24 plea of guilty to the offense charged or agreed upon included
25 offense.

26 (8) An agreement in writing to the jurisdiction of
27 the court beyond completion of any disposition of the case,

1 end of sentence, termination of parole or probation, or
2 conclusion of the pretrial diversion program to enforce
3 collection of restitution, cost of court, fines, fees, or
4 other agreed upon or court ordered monies, pursuant to Section
5 12-17-225, Code of Alabama 1975.

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

10 (1) Participating in substance abuse treatment.

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

14 (3) If appropriate, learning to read and write the
15 English language.

16 (4) Providing financial support of his or her
17 children or payment of any court ordered child support.

18 (5) Refraining from the use of drugs or alcohol or
19 frequenting places where drugs or alcohol are sold or used.

20 (6) Not committing any criminal offense.

21 (7) Refraining from contact with certain named
22 persons or premises.

23 (8) Maintaining or seeking employment.

24 (9) Not leaving the State of Alabama without prior
25 written consent of the district attorney or supervising agency
26 or personnel.

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

3 (11) Attending individual, group, financial,
4 chemical addiction, or family, mental health, or anger
5 management counseling.

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

10 (13) Refraining from the possession or use of any
11 deadly weapon or dangerous instrument.

12 (14) Paying supervision fees and application fees
13 pursuant to the provisions of this act.

14 (15) Observing curfews or home detention or travel
15 constraints as set out in the agreement signed by the
16 offender.

17 (16) Having restitution, court costs, fees, child
18 support, and any other moneys withheld or garnished from the
19 wages or salary of the offender or withheld from any Alabama
20 income tax due the offender or from any available insurance
21 policy applied to the above.

22 (17) Being admitted to a drug or alcohol treatment
23 program on an inpatient or outpatient basis or receive other
24 treatment alternatives for substance abuse.

25 (18) Submitting to periodic or random drug testing
26 as a part of the program and other terms and conditions

1 related to substance abuse as the district attorney may
2 direct.

3 (19) Any other term or condition as the district
4 attorney or his or her designee and the offender may agree to
5 in the above-stated agreement, it being the purpose of this
6 act to allow the district attorney broad discretion in
7 designing a program specifically for each offender and his or
8 her particular circumstances.

9 (20) When applicable, paying supervision fees to the
10 agency or entity responsible for monitoring and verifying the
11 offender's compliance with the terms of the program set forth
12 by the district attorney. Such fees shall be paid by the
13 offender to the supervising entity in a timely manner.

14 Section 8. (a) An offender may be assessed a
15 nonrefundable application fee when the offender is approved
16 for the pretrial diversion program. The amount of the
17 assessment for participation in the program shall be in
18 addition to any court costs or fees and assessments for the
19 crime victim's compensation fund, Department of Forensic
20 Sciences assessments, drug, alcohol, or anger management
21 treatment required by law, and any costs of supervision,
22 treatment, and restitution for which the offender may be
23 responsible. A schedule of payments for any of these fees may
24 be established by the district attorney.

25 (b) The amount of the application fee shall be
26 established by the district attorney.

1 (c) The application fee shall be allocated and paid
2 to the following offices or entities as follows:

3 (1) Ten percent shall be allocated to the
4 appropriate circuit or district court clerk in which the case
5 originates to the clerk's fund as provided by law and shall be
6 available for use, at the discretion of the clerk, to support
7 the office of the clerk.

8 (2) Five percent shall be allocated to Limestone
9 County Children's Advocacy Center for the use of the center,
10 at the discretion of the head of the center, for law
11 enforcement purposes. If the Limestone County Children's
12 Advocacy Center should be closed, this allocation shall revert
13 to the Limestone County District Attorney's Solicitor's Fund.

14 (3) Five percent shall be allocated to the Limestone
15 County Family Resource Center for the use of the center, at
16 the discretion of the head of the center, for law enforcement
17 purposes. If the Limestone County Family Resource Center
18 should be closed, this allocation shall revert to the
19 Limestone County District Attorney's Solicitor's Fund.

20 (4) The remainder of the application fees shall be
21 allocated to the Limestone County District Attorney's
22 Solicitor's Fund and shall be available, at the discretion of
23 the district attorney, for any law enforcement purpose.

24 (d) An applicant offender may not be denied access
25 into the pretrial diversion program based solely on the
26 offender's inability to pay the application fee. Application
27 fees may be waived or reduced, for just cause, including

1 indigency of the offender, at the discretion of the district
2 attorney. Any determination of the indigency of the offender
3 for purposes of program fee mitigation shall be made by the
4 district attorney but such mitigation shall be done only upon
5 a determination by the district attorney that there is no
6 reasonable likelihood within the reasonably foreseeable future
7 that the offender will have the ability to pay the application
8 fee.

9 Section 9. (a) Application fees required by this act
10 shall be collected by the appropriate circuit or district
11 court clerk of the Thirty-ninth Judicial Circuit. The fees
12 shall be disbursed to the appropriate court clerk, the
13 Limestone County Children's Advocacy Center, the Limestone
14 County Family Resource Center, and the Limestone County
15 District Attorney's Solicitor's Fund, as allocated by Section
16 8, and as other costs and fees are disbursed to the Limestone
17 County District Attorney's Solicitor's Fund.

18 (b) All fees paid by offenders which are disbursed
19 by the court clerk to the office of the district attorney
20 shall be used to pay costs associated with the administration
21 of the pretrial diversion program or for other law enforcement
22 purposes deemed necessary by the district attorney.

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

1 between the district attorney and the offender to the court
2 presiding over the offender's affected case. The offender
3 shall also enter a plea of guilty to the charge(s) involved.

4 (b) Upon acceptance of the agreement, the court
5 shall withdraw and file the case or otherwise place it on an
6 administrative docket until such time as the court has been
7 notified that the offender has either fulfilled the terms of
8 the agreement or has been terminated from the program.

9 However, acceptance of the plea of guilty and imposition of
10 punishment by the court shall be deferred until and unless the
11 offender is terminated from the program. In the event the
12 offender is terminated from the program, the court shall
13 accept the plea of guilty and impose appropriate punishment in
14 the same manner as with any plea of guilty or finding of
15 guilt.

16 (c) Upon successful completion of the program by the
17 offender, the district attorney shall notify the court in
18 writing of that fact together with a request that the case be
19 dismissed whereupon the court shall enter an order to that
20 effect and the offender shall be discharged.

21 (d) Regardless of whether the offender successfully
22 completes the program or is terminated from the program, the
23 offender is liable for and shall pay any and all court costs
24 and fees, restitution, victim's compensation fund assessment,
25 and any and all other fees and assessments in the same manner
26 as if the offender had not applied for entry into the program
27 and had been found guilty of the offense involved.

1 Notwithstanding the foregoing, no such costs, fees,
2 restitution, or assessments shall be waived or remitted,
3 absent an express agreement to that effect between the
4 district attorney and the offender, without a finding that the
5 offender does not have the reasonable ability to pay within
6 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 district attorney may do any of
10 the following:

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

13 (2) Terminate the agreement.

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

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

19 Section 12. In no event shall the district attorney,
20 the Limestone County Community Corrections program, the
21 Limestone County Drug Court, or any other agency or service
22 provider have any liability, criminal or civil, for the
23 conduct of any offender while participating in the pretrial
24 diversion program or for acceptance of an offender into the
25 program.

26 Section 13. The district attorney, to the extent
27 practicable, shall utilize the services of community

1 corrections programs established pursuant to Section
2 15-18-170, Code of Alabama 1975, to provide for the
3 supervision of offenders in the pretrial diversion program.

4 Section 14. The provisions of this act are
5 severable. If any part of this act is declared invalid or
6 unconstitutional, that declaration shall not affect the part
7 which remains.

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