

1 SB381
2 136519-2
3 By Senators Holtzclaw, Ward, Whatley, Bedford, Ross, Fielding,
4 Irons, Beasley, Marsh, Waggoner, Taylor, Allen, Sanford,
5 Pittman and Williams
6 RFD: Judiciary
7 First Read: 01-MAR-12

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8 SYNOPSIS: Under existing law, various counties have
9 implemented pretrial diversion programs through
10 local acts.

11 This bill would allow any district attorney
12 throughout the state without a local act to
13 establish a discretionary pretrial diversion
14 program and would set basic operating standards for
15 the program. This bill would provide for program
16 fees and their distribution.

17 This bill would provide that counties with
18 existing discretionary pretrial diversion programs
19 established prior to the effective date of this act
20 may adopt this act in its entirety or portions of
21 the act.

22 This bill also would require the Office of
23 Prosecution Services to develop and maintain a
24 pretrial diversion offender database.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To provide for the establishment of a pretrial
4 diversion program; to allow any district attorney throughout
5 the state without a local act to establish a discretionary
6 pretrial diversion program; to set basic operating standards
7 for the program; to provide for program fees and their
8 distribution; to provide that counties with existing
9 discretionary pretrial diversion programs established prior to
10 the effective date of this act may adopt the act in its
11 entirety or portions of the act; and to require the Office of
12 Prosecution Services to develop a pretrial diversion offender
13 database.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

17 (1) DISTRICT ATTORNEY. The district attorney of the
18 judicial circuit or his or her designee, so designated to
19 fulfill the goals, purposes, and objectives of this act.

20 (2) LAW ENFORCEMENT or LAW ENFORCEMENT OFFICER. Any
21 person who is employed by an agency or department whose
22 purpose is to protect people. This may include, but is not
23 limited to, police personnel, sheriff personnel, district
24 attorney investigators, Department of Human Resources
25 personnel, parole and probation personnel, community
26 corrections office personnel, and court referral office

1 personnel, whether that agency or department is in this state
2 or located elsewhere.

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

7 (4) PRETRIAL. The term includes, but is not limited
8 to, any moment prior to, within, or during the disposition of
9 a criminal or quasi-criminal action.

10 (5) SERIOUS PHYSICAL INJURY. As defined by Section
11 13A-1-2, Code of Alabama 1975.

12 Section 2. (a) The district attorney of any judicial
13 circuit of this state may establish a pretrial diversion
14 program within that judicial circuit or any county within that
15 judicial circuit.

16 (b) All discretionary powers endowed by the common
17 law, provided for by statute and acts of this state, or
18 otherwise provided by law for the district attorneys of this
19 state shall be retained.

20 (c) A pretrial diversion program established under
21 subsection (a) shall be under the direct supervision and sole
22 control of the district attorney. The district attorney may
23 contract with any agency, person, or corporation for services
24 related to this act. The district attorney may employ persons
25 necessary to accomplish the purposes of this act, who shall
26 serve at the pleasure of the district attorney.

1 Section 3. (a) A person charged with a criminal
2 offense specified in subsection (b) whose jurisdiction is in
3 the circuit court, district court, or municipal court in a
4 circuit in which a pretrial diversion program has been created
5 pursuant to this act may apply to the district attorney of the
6 circuit for admittance to the program.

7 (b) A person charged with any of the following
8 offenses may apply for the pretrial diversion program:

9 (1) A drug offense, excluding trafficking in
10 controlled substances or cannabis as provided in Section
11 13A-12-231 of the Code of Alabama 1975, or manufacturing of
12 controlled substances in the first degree as provided in
13 Section 13A-12-218 of the Code of Alabama 1975.

14 (2) A property offense.

15 (3) A misdemeanor.

16 (4) A traffic or conservation offense, except that a
17 holder of a commercial driver's license, an operator of a
18 commercial motor vehicle, or a commercial driver learner
19 permit holder who is charged with a violation of a traffic law
20 in this state shall not be eligible for a deferred prosecution
21 program, diversion program, or any deferred imposition of
22 judgment program pursuant to Section 32-6-49.23 of the Code of
23 Alabama 1975.

24 (5) Notwithstanding subdivision (3), the district
25 attorney may determine that a person charged with a
26 misdemeanor offense is ineligible to apply for the program if

1 it is in the best interest of the victim, the offender, the
2 community, or justice.

3 (b) The following offenses are ineligible for
4 consideration for the pretrial diversion program:

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

6 (2) Any offense involving serious physical injury to
7 a person.

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

13 (4) Any offense involving death.

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

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

17 (7) Any offense wherein the offender is a public
18 official and the charge is related to his or her capacity as a
19 public official.

20 (8) Abduction or kidnapping.

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

23 Section 4. (a) In determining whether an offender
24 may be admitted into a pretrial diversion program established
25 under this act, it shall be appropriate for the district
26 attorney to consider any of the following circumstances:

1 (1) If the offender is 18 years of age or older at
2 the time the offense was committed.

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

5 (3) It is determined the needs of the community and
6 of the offender can be met through the pretrial diversion
7 program.

8 (4) The offender appears to pose no substantial
9 threat to the safety and well-being of the community or law
10 enforcement.

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

13 (6) The offender will likely respond to
14 rehabilitative treatment.

15 (7) The expressed wish of the victim not to
16 prosecute.

17 (8) Undue hardship upon the victim.

18 (9) Whether the victim or the offender has medical,
19 psychiatric, or vocational difficulties that would impede the
20 administration of justice.

21 (10) Whether there is a reason to believe that the
22 victim or offender will benefit from and cooperate with a
23 diversionary program.

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

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 5. (a) Notwithstanding current law,
5 admittance into the pretrial diversion program shall be in the
6 sole discretion of the district attorney and shall be
7 paramount to any other diversion type program available to a
8 defendant. To assist the district attorney in his or her
9 decision to admit the offender into the pretrial diversion
10 program, the district attorney, prior to the offender being
11 admitted to the pretrial diversion program or as a part of the
12 district attorney's evaluation process, may require an
13 offender to furnish to the district attorney, information
14 concerning past criminal history, educational history, work
15 history, family history, medical or psychiatric treatment
16 history, psychological tests, or any other information
17 concerning the offender which the district attorney believes
18 is applicable to determine whether the offender should be
19 admitted into the pretrial diversion program.

20 (b) The district attorney may require the offender
21 to submit to any examinations, test, or evaluation process the
22 district attorney deems appropriate in evaluating the offender
23 for admittance into the pretrial diversion program. The costs
24 of any test or evaluation shall be paid by the offender or as
25 otherwise agreed to or provided for by this act.

1 Section 6. (a) An offender who enters into a
2 pretrial diversion program established under this act shall
3 satisfy each of the following requirements:

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

6 (2) Agree, in writing, to the tolling of periods of
7 limitations established by statutes or rules of court while in
8 the program.

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

11 (4) Provide a statement by the offender admitting
12 his or her participation in, and responsibility for, the
13 offense which is the subject of the application for entry into
14 the pretrial diversion program, which statement shall be
15 admissible in any criminal trial.

16 (5) Agree, in writing, to the conditions of the
17 pretrial diversion program established by the district
18 attorney.

19 (6) If there is a victim of the crime, agree in
20 writing to a restitution agreement to be paid within a
21 specified period of time and in an amount to be determined by
22 the district attorney.

23 (7) If the investigating law enforcement agency
24 incurred extraordinary investigative expenses, agree in
25 writing to a specific restitution agreement to be paid within
26 a specified period of time and in an amount to be determined
27 by the district attorney.

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

8 (9) Agree to execute any agreement, covenant, note,
9 or contract to pay any agreed upon sums of restitution, cost
10 of courts, fines, fees, or other agreed upon or court-ordered
11 monies, pursuant to Section 12-17-225, Code 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 crimes 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 in disclosing
20 the communication.

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

1 may be paid to any agency or entity that provides services to
2 further the goals and purpose of the RJI.

3 Section 7. (a) An offender shall make application to
4 a pretrial diversion program established under this act at a
5 time to be determined by the district attorney.

6 (b) An offender may be eligible for a pretrial
7 diversion program established under this act, pre-arrest, if
8 the district attorney determines that it is in the best
9 interest of justice and community safety, and the
10 investigating law enforcement entity and the victim, consent
11 to the offender's pre-arrest participation in the program. The
12 offender shall be subject to all requirements of the act or
13 additional requirements set out in the program, regardless of
14 pretrial or arrest status.

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

25 (b) The amount of the application fee shall be
26 determined by the district attorney. In any event the
27 application fees shall not exceed the following amounts for

1 each case for which the offender makes application for
2 acceptance into the pretrial diversion program:

3 (1) Felony offenses: Up to nine hundred dollars
4 (\$900).

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

7 (c) (1) An applicant may not be denied access into
8 the pretrial diversion program based solely on his or her
9 inability to pay Pretrial diversion program fees established
10 by this act may be waived or reduced for just cause, including
11 indigency of the applicant, at the discretion of the district
12 attorney. Any determination of indigency of the offender for
13 the purposes of pretrial diversion fee mitigation shall be
14 made by the district attorney. In the event the offender is
15 determined to be indigent, a periodic review of the offenders'
16 indigency status may be conducted by the district attorney to
17 determine if the offender is no longer indigent.

18 (2) If the offender is determined to be indigent by
19 the district attorney, nothing in this act shall prohibit the
20 offender from being placed on a payment plan wherein the
21 entire victim restitution, court cost, fines, fees, and
22 pretrial diversion fees are collected in total.

23 (d) Application fees required by this act shall be
24 collected by the district attorney's office in the county or
25 the judicial circuit in which the offense was filed. All
26 pretrial diversion program fees under the act shall be
27 deposited in a timely manner by the district attorney into the

1 district attorney's Solicitor Fund pursuant to Section 11. The
2 district attorney shall make the deposits in a timely manner;
3 pursuant to commonly accepted accounting practices. The
4 District Attorney's Solicitor Fund shall be subject to regular
5 audits by the Department of Examiners of Public Accounts.

6 Section 9. The district attorney and the offender
7 may enter into an agreement, as a part of a pretrial diversion
8 program established under this act, that the offender be
9 admitted to a drug or alcohol program on an inpatient or
10 outpatient basis or receive other treatment alternatives for
11 substance abuse. The district attorney may require the
12 offender to submit to periodic or random drug testing or other
13 terms and conditions related to substance abuse. The offender
14 shall pay the costs of all services unless otherwise approved
15 by the district attorney.

16 Section 10. (a) In any case in which an offender is
17 admitted into a pretrial diversion program established under
18 this act, there shall be a written agreement between the
19 district attorney and the offender. The agreement shall
20 include the terms of the pretrial diversion program, the
21 length of the program, and the period of time after which the
22 district attorney must dispose of the charges against the
23 offender in a noncriminal manner. If, as part of the pretrial
24 diversion program, the offender agrees to plead guilty to a
25 particular charge or charges and receive a specific sentence,
26 an agreement concerning when the plea of guilt will occur, to
27 what charges to which the offender will plead guilty and any

1 sentence to be imposed, shall be approved by and submitted to
2 an appropriate circuit, district, or municipal court judge
3 having jurisdiction over the offender within the judicial
4 circuit prior to admission of the offender in the pretrial
5 diversion program.

6 (b) As a condition of being admitted to the pretrial
7 diversion program, the district attorney may require the
8 offender to agree to any of the following terms or conditions:

9 (1) Pay approved restitution to a victim

10 (2) Participate in an education setting to include,
11 but not limited to, K-12, college, job training school, trade
12 school, GED classes, adult basic education courses, or any
13 other workforce development program approved by the district
14 attorney.

15 (3) If appropriate, attempt to learn to read and
16 write.

17 (4) Financially support his or her children or pay
18 child support.

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

21 (6) Refrain from contact with certain persons or
22 premises.

23 (7) Maintain or seek employment.

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

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

26 (10) Be required to conduct himself or herself in an
27 honorable manner as a good member of the community, and not

1 endanger in any way the person, property rights, dignity, or
2 morals of others or himself or herself.

3 (11) Be required to comply with all municipal,
4 county, state, and federal law, ordinances, or orders.

5 (12) Be required to be absolutely truthful in any
6 oral or written application or reports to the pretrial
7 diversion program.

8 (13) Be required to pay supervision fees to the
9 agency or entity responsible for monitoring and verifying the
10 offenders' compliance with the terms of the pretrial diversion
11 program set forth by the district attorney. These fees shall
12 be paid by the offender to the supervising agency or entity in
13 a timely manner.

14 (14) Observe curfews, home detention, electronic
15 monitoring, or travel constraints as set out in the offender's
16 agreement.

17 (15) Enter into an agreement with the district
18 attorney to have restitution, court costs, fines, fees, or
19 child support withheld, forfeiture of accounts, assets, or
20 garnished from the wages or salary of the offender.

21 (15) Complete approved community service.

22 (16) Agree to the court's jurisdiction beyond the
23 term of pretrial diversion, incarceration, probation, parole,
24 or end of sentence for the purposes of the collection of
25 court-ordered or agreed upon fines, fees, cost of court, and
26 restitution pursuant to Section 12-17-225, Code of Alabama
27 1975.

1 (17) Agree to the terms and conditions of the
2 pretrial diversion program established by the district
3 attorney.

4 (18) Provide a statement admitting his or her
5 participation in, and responsibility for, the offense which is
6 the subject of the application for entry into the pretrial
7 diversion program.

8 (19) Refrain from the possession of or use of any
9 firearm.

10 (20) Pay the application fee pursuant to this act.

11 (21) Participate in and complete a drug court
12 program.

13 (22) Complete a certified drug or alcohol addiction
14 evaluation and treatment program.

15 (23) Complete a certified mental health evaluation
16 and treatment program.

17 (24) Agree to be subject to any other terms or
18 conditions as required by the district attorney set out in the
19 pretrial diversion agreement. The district attorney shall be
20 given broad discretion in designing a program specifically for
21 each offender and circumstances of the offender.

22 Section 11. (a) All fees paid by offenders pursuant
23 to this act shall be paid into the District Attorney's
24 Solicitor Fund and shall be used to pay costs associated with
25 the administration of the pretrial diversion program or for
26 any other law enforcement purpose. An additional twenty
27 dollars (\$20) collected by the district attorney per applicant

1 shall be paid to the Office of Prosecution Services for
2 creation and maintenance of the offender database described in
3 Section 17.

4 (b) Costs associated with program administration
5 include, but are not limited to, salaries, rent, vehicles,
6 uniforms, telephones, postage, office supplies, public
7 education, reports, and equipment, training and travel
8 services, service contracts, or professional services. The
9 district attorney may pay for services or programs for an
10 offender while the offender is in the pretrial diversion
11 program if special circumstances and justice dictate.

12 Section 12. (a) If the offender violates the
13 conditions of a pretrial diversion program established under
14 this act, the district attorney may terminate the
15 participation of the offender. The offender shall be given
16 written notice of the intent of the district attorney to
17 terminate him or her from the pretrial diversion program
18 including the reason for the termination. If the offender is
19 unavailable for notice or has absconded, the district attorney
20 may provide notice of termination from the pretrial diversion
21 program or any portion thereof, by giving notice to the
22 offender's attorney of record or by regular mail to the most
23 recent known address provided by the offender.

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

1 Section 13. (a) Absent wantonness, gross negligence,
2 or intentional misconduct, the district attorney or his or her
3 staff shall have no liability, criminal or civil, for the
4 conduct of any offender while participating in a pretrial
5 diversion program established under this act or of any service
6 provider or their agents that are contracted to or who have
7 agreed to provide services to the pretrial diversion program.

8 (b) The district attorney or his or her staff shall
9 have no liability, criminal or civil, for any injury or harm
10 to the offender while the offender is a participant in any
11 pretrial diversion program administered pursuant to this act.
12 The district attorney may require written agreed upon waivers
13 of liability as a prerequisite for admittance into the
14 pretrial diversion program.

15 Section 14. A pretrial diversion program established
16 under this act may apply for grants, may accept gifts from
17 individuals or corporations, and may receive funding or
18 appropriations from city, county, or state agencies or
19 departments to be used in the maintenance or expansion of the
20 pretrial diversion program.

21 Section 15. If a district attorney establishes a
22 pretrial diversion program under this act, the district
23 attorney may form an advisory board within the county or
24 judicial circuit, which may be known as the Citizens Justice
25 Advisory Board for Pretrial Diversion, for the purpose of
26 assisting the district attorney in the determination of
27 appropriate pretrial diversion candidates. The district

1 attorney shall retain the final decision as to the admittance
2 or denial of individuals into the pretrial diversion program,
3 the fees, the guidelines of the program, and any resources the
4 pretrial diversion program utilizes. The district attorney
5 shall appoint all members of any advisory board and shall
6 determine when or if it should meet. The board shall be
7 inclusive and reflect the racial, gender, geographic, urban
8 and rural, and economic diversity of the circuit. The advisory
9 board shall serve without personal profit, but may be paid
10 from the District Attorney's Solicitor Fund for actual
11 expenses incurred in connection with its duties.

12 Section 16. (a) A district attorney, to the extent
13 practicable, may utilize the services of existing community
14 corrections programs established pursuant to Section
15 15-18-170, Code of Alabama 1975, or licensed faith based
16 community programs to provide for the supervision of
17 defendants participating in a pretrial diversion program
18 established under this act. The district attorney may utilize
19 the services of existing drug court programs established
20 pursuant to Section 12-23A-4, Code of Alabama 1975, provided
21 that the district attorney determines it would serve the best
22 interest of justice and the community.

23 (b) If, upon enactment of this legislation, a
24 pretrial diversion program or an equivalent, has been
25 established in the circuit by local law, the district attorney
26 may choose to adopt this act in its entirety or any portion or

1 portions that the district attorney believes would best serve
2 the interest of justice and the community.

3 (c) If, pursuant to subsection (b), a district
4 attorney elects to opt into any provision or provisions of
5 this act, he or she must file such an election with the Office
6 of Prosecution Services.

7 Section 17. (a) The Office of Prosecution Services
8 shall develop and maintain a pretrial diversion offender
9 database. Each district attorney shall submit the name and
10 identifying personal vital information, including the name and
11 description of any underlying qualifying offense, of an
12 offender participating in a pretrial diversion program,
13 whether established by this act or created by local law, upon
14 successful completion of the program for entry into the
15 database.

16 (b) The information entered into the database must
17 contain identifiers sufficient to provide any future court of
18 competent jurisdiction the ability to determine the original
19 underlying offense or charge which was diverted, nolle
20 prossed, or otherwise disposed of without conviction or
21 adjudication.

22 (c) Information in the database concerning any
23 applicant may be used by any district attorney in determining
24 admittance into a pretrial diversion program or its
25 equivalent. A district attorney may submit prior pretrial
26 diversion dispositions from any jurisdiction contained within
27 the database to the court for the purpose of assisting the

1 court in its ruling with regard to a ruling on youthful
2 offender, or any first offender or first offender-type
3 judicial determination. Nothing in this act shall prohibit any
4 district attorney from entering pretrial diversion
5 dispositions of offenders, pursuant to this section, that were
6 previously disposed of in a pretrial diversion program or its
7 equivalent.

8 Section 18. The provisions of this act are
9 severable. If any part of this act is declared invalid or
10 unconstitutional, that declaration shall not affect the part
11 which remains.

12 Section 19. This act shall become effective
13 immediately following its passage and approval by the
14 Governor, or its otherwise becoming law.