

1 HB452
2 147547-2
3 By Representatives McCutcheon, Ball, Sanderford, Hall, Johnson
4 (W) and Patterson (N & P)
5 RFD: Madison County Legislation
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ENROLLED, An Act,

Relating to the City of Huntsville; to allow the City of Huntsville to establish a discretionary pretrial diversion program and set basic operating standards for the program; to authorize the city to contract for services related to the pretrial diversion program; to establish eligibility requirements for participation in the program; to require a participant to enter into a written agreement stating the conditions of participation; to authorize the city council to establish fees assessed to a participant in the program; to provide for disbursement of fees; to provide for the indigency of an applicant; and to provide immunity to certain persons.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

(2) CITY. The City of Huntsville.

(3) CITY ATTORNEY. The city attorney of the City of Huntsville or any legal staff employed by the city attorney.

(4) CITY COUNCIL. The City Council of the City of Huntsville.

1 (5) CITY JUDGE. Any municipal judge appointed to the
2 position by the City Council of the City of Huntsville.

3 (6) LAW ENFORCEMENT. As defined in Section
4 41-8A-1(1), Code of Alabama 1975.

5 (7) LAW ENFORCEMENT OFFICER. As defined in Section
6 36-25-1(15), Code of Alabama 1975, whether employed in this
7 state or elsewhere.

8 (8) OFFENDER. Any person charged with a criminal
9 offense, including, but not limited to, any misdemeanor,
10 violation, or traffic offense, as defined by existing law,
11 which was allegedly committed in the corporate limits or
12 police jurisdiction of the City of Huntsville.

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

20 (10) SERIOUS PHYSICAL INJURY. As defined in Section
21 13A-1-2(14), Code of Alabama 1975.

22 (11) SUPERVISION FEE. Any fee other than the
23 application fee imposed by any agency providing supervision of
24 treatment of the offender.

1 Section 2. (a) The City of Huntsville may establish
2 a pretrial diversion program.

3 (b) All discretionary powers endowed by a common law
4 and provided by statutes and acts of this state or powers or
5 discretion otherwise provided by law for the City of
6 Huntsville shall be retained.

7 (c) The pretrial diversion program shall be under
8 the direct supervision and control of the city and the city
9 may contract with any agency, person, or corporation for
10 services related to this act. The city may employ necessary
11 persons to accomplish this act and those persons shall serve
12 at the pleasure of the city.

13 Section 3. Admittance into the pretrial diversion
14 program is in the sole discretion of the city judge. An
15 offender deemed by the city judge to be a threat to the safety
16 or well-being of the community shall not be eligible for the
17 program. An offender charged with any of the following types
18 of offenses shall be ineligible for admittance:

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

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

23 (3) Any offense involving violence where weapons are
24 used or where children are victims.

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

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

6 (6) The person may not hold a commercial driver
7 license (CDL) issued in any state, any United States
8 possession or territory, or any United States insular area, or
9 has no conviction for which a commercial driver license was
10 required.

11 Section 4. (a) The city judge may consider an
12 offender for the pretrial diversion program based on any of
13 the following circumstances:

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

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

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

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

23 (5) The offender will likely respond to
24 rehabilitative treatment or counseling.

1 (6) The need for restitution for the victim from the
2 offender outweighs the interest of the state and city for
3 incarceration of the offender.

4 (b) The city judge may waive any of the standards
5 specified in subsection (a) if justice or special
6 circumstances dictate.

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

18 (b) The probation officer may require the offender
19 to submit to any type of test or evaluation process or
20 interview the probation officer deems appropriate in
21 evaluating the offender for admittance into the program. The
22 costs of any test or evaluation shall be paid by the offender
23 or as otherwise agreed to or provided for by this act. The
24 offender shall provide the city attorney written consent to
25 allow the city attorney to receive any educational, work,

1 medical, psychiatric, psychological, or other records deemed
2 necessary by the probation officer for the evaluation process.

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

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

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

14 (3) An agreement to the conditions of the program
15 established by the city attorney.

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

21 (5) A waiver in writing of the right of the offender
22 to a jury trial.

23 (6) A truthful and complete statement by the
24 offender as to the involvement of the offender in the offense

1 charged, which statement shall be admissible in any criminal
2 trial.

3 (7) Submission of a written plea of guilty to the
4 offense or offenses charged or agreed upon included offenses,
5 together with an agreement as to whether the case is to be
6 dismissed upon successful completion of the program, and an
7 agreement, if there be any, as to the recommended sentence
8 should a sentence be imposed.

9 (b) In addition to those requirements set forth in
10 subsection (a), or as a condition of continued participation
11 in the program, the city judge may require the offender to
12 agree to any of the following terms or conditions:

13 (1) To participate in substance abuse treatment.

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

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

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

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

23 (6) To not commit any criminal offense.

24 (7) To refrain from contact with certain named
25 persons or premises.

1 (8) To maintain or seek employment.

2 (9) To not leave this state without prior written
3 consent of the probation officer or supervising agency or
4 personnel.

5 (10) To maintain a residence approved by the
6 probation officer or supervising agency or personnel.

7 (11) To attend individual, group, financial,
8 chemical addiction, family, mental health, sex offender, or
9 anger management counseling.

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

14 (13) To refrain from the possession or use of any
15 deadly weapon or dangerous instrument as defined in Section
16 13A-1-2, Code of Alabama 1975.

17 (14) To pay supervision fees and application fees
18 pursuant to this act.

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

21 (16) To have restitution, court costs, fees, child
22 support, and any other moneys withheld or garnished from the
23 wages or salary of the offender or withheld from any Alabama
24 income tax due the offender, or from any available insurance

1 policy, or forfeited from any other real or personal property
 2 of the offender, and applied to the above.

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

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

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

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

18 (21) When applicable, to be required to pay
 19 supervision fees to the agency or entity responsible for
 20 monitoring and verifying the compliance of the offender with
 21 the terms of the program set forth by the city judge. The fees
 22 shall be paid by the offender to the supervising entity in a
 23 timely manner.

24 Section 7. (a) An offender may be assessed a
 25 nonrefundable application fee when the offender is approved

1 for the pretrial diversion program. The amount of the
2 assessment for participating in the program shall be in
3 addition to any court costs, fees, and assessments for the
4 Crime Victim's Compensation Fund, Department of Forensic
5 Sciences assessments, drug, alcohol, or anger management
6 treatment required by law, and any costs of supervision,
7 treatment, and restitution for which the offender may be
8 responsible. A schedule of payments for any of these fees may
9 be established by the city council in amounts to be determined
10 by the city council in its sole discretion.

11 (b) The application fees, as determined by the city
12 council, shall be applied to the following offenses:

13 (1) Driving under the influence (DUI).

14 (2) Theft of property in the third degree.

15 (3) Other misdemeanor offenses as determined by the
16 city council.

17 (c) The application fee shall be allocated to the
18 general fund of the city except that a minimum of 25 percent
19 shall be directed to the City of Huntsville's Advanced
20 Technical Data Fund and a minimum of 25 percent shall be
21 directed to the City of Huntsville Indigent Treatment Fund, as
22 established by the city council.

23 (d) An applicant offender may not be denied access
24 into the pretrial diversion program based solely on the
25 inability of the offender to pay the application fee.

1 Application fees may be waived or reduced for just cause,
2 including indigency of the offender, at the discretion of the
3 city judge. Any determination of the indigency of the offender
4 for purposes of program fee mitigation shall be made by the
5 city judge, but any mitigation shall be done only upon the
6 determination by the city judge that there is no reasonable
7 likelihood within the reasonably foreseeable future that the
8 offender will have the ability to pay the application fee.

9 Section 8. Application fees required by this act
10 shall be collected by the court clerk of the Huntsville
11 Municipal Court. The fees shall be disbursed to each entity or
12 department as allocated by Section 7.

13 Section 9. (a) Upon acceptance of an offender into
14 the pretrial diversion program by the city judge, the city
15 attorney and the offender shall submit the written application
16 of the offender together with the statement of facts of the
17 offender, the acceptance of the offender by the city judge,
18 and the agreement between the city attorney and the offender
19 to the court presiding over the affected case of the offender
20 for the approval of the court. The offender shall also enter a
21 plea of guilty to the charge or charges involved. If the court
22 rejects the agreement and guilty plea, any money paid by the
23 offender in satisfaction of the application fee shall be
24 refunded to the offender. The offender shall remain liable for
25 any actual expenses already incurred by the probation officer

1 or any agency or service provider in furtherance of the
2 application and evaluation process and the same will be
3 deducted from any money so refunded to the offender.

4 (b) Upon approval of the agreement and acceptance of
5 the guilty plea, the court shall expressly retain jurisdiction
6 of the case, any other provision of law notwithstanding, and
7 may withdraw and file the case or otherwise place it on an
8 administrative docket until such time as the court has been
9 notified that the offender has fulfilled the terms of the
10 agreement, has been terminated from the program, or otherwise
11 withdrawn from the program. Imposition of punishment by the
12 court shall be deferred until the offender has successfully
13 completed the program or is terminated from the program.

14 (c) In the event the offender is terminated from the
15 program, the court shall impose appropriate punishment in the
16 same manner as with any plea of guilty or finding of guilt and
17 shall not be bound by the terms of agreement as to what
18 punishment to impose.

19 (d) Upon successful completion of the program by the
20 offender, the probation department shall notify the court in
21 writing of that fact together with a request that the court
22 enter an order of disposition of the case pursuant to the
23 agreement between the offender and the city attorney.

24 (e) Regardless of whether the offender successfully
25 completes the program or withdraws from or is terminated from

1 the program, the offender shall be liable for and required to
2 pay all court costs and fees, restitution, victim's
3 compensation fund assessment, and any and all other fees and
4 assessments, in the same manner as if the offender had not
5 applied for entry into the program and had been found guilty
6 of the offense or offenses involved. No costs, fees,
7 restitution, or assessments shall be waived or remitted,
8 absent an express agreement to that effect between the city
9 judge and the offender, without a finding by the city judge
10 that the offender does not have the reasonable ability to pay
11 the same within the reasonably foreseeable future.

12 Section 10. (a) After any violation of any program
13 terms or conditions or upon any breach of any program
14 agreement by the offender, the city judge may do any of the
15 following:

16 (1) Continue the agreement with or without
17 modification.

18 (2) Terminate the offender from the pretrial
19 diversion program.

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

22 (b) The city judge may waive a violation for good
23 cause shown why the offender should stay in the program.

24 Section 11. In no event shall the city judge, the
25 city attorney, or any other agency or service provider have

1 any liability, criminal or civil, for the conduct of any
2 offender while participating in the pretrial diversion program
3 or for acceptance of an offender into the program.

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

