

1 HB452
2 147547-1
3 By Representatives McCutcheon, Ball, Sanderford, Hall,
4 Johnson (W) and Patterson (N & P)
5 RFD: Madison County Legislation
6 First Read: 20-MAR-13

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to the City of Huntsville; to allow the
14 City of Huntsville to establish a discretionary pretrial
15 diversion program and set basic operating standards for the
16 program; to authorize the city to contract for services
17 related to the pretrial diversion program; to establish
18 eligibility requirements for participation in the program; to
19 require a participant to enter into a written agreement
20 stating the conditions of participation; to authorize the city
21 council to establish fees assessed to a participant in the
22 program; to provide for disbursement of fees; to provide for
23 the indigency of an applicant; and to provide immunity to
24 certain persons.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

4 (2) CITY. The City of Huntsville.

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

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

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

11 (6) LAW ENFORCEMENT. As defined in Section
12 41-8A-1(1), Code of Alabama 1975.

13 (7) LAW ENFORCEMENT OFFICER. As defined in Section
14 36-25-1(15), Code of Alabama 1975, whether employed in this
15 state or elsewhere.

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

21 (9) PRETRIAL DIVERSION PROGRAM or PROGRAM. A program
22 that allows the imposition by the city or by a designated
23 agency of certain conditions of behavior and conduct for a
24 specified period of time upon an offender which allow the
25 offender to have his or her charges reduced, dismissed without
26 prejudice, or otherwise mitigated should all of the conditions
27 be met during the time frame set by the city judge.

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

3 (11) SUPERVISION FEE. Any fee other than the
4 application fee imposed by any agency providing supervision of
5 treatment of the offender.

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

8 (b) All discretionary powers endowed by a common law
9 and provided by statutes and acts of this state or powers or
10 discretion otherwise provided by law for the City of
11 Huntsville shall be retained.

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

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

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

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

1 (3) Any offense involving violence where weapons are
2 used or where children are victims.

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

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

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

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

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

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

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

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

25 (5) The offender will likely respond to
26 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,
26 medical, psychiatric, psychological, or other records deemed
27 necessary by the probation officer for the evaluation process.

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

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

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

12 (3) An agreement to the conditions of the program
13 established by the city attorney.

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

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

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

25 (7) Submission of a written plea of guilty to the
26 offense or offenses charged or agreed upon included offenses,
27 together with an agreement as to whether the case is to be

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

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

8 (1) To participate in substance abuse treatment.

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

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

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

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

18 (6) To not commit any criminal offense.

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

21 (8) To maintain or seek employment.

22 (9) To not leave this state without prior written
23 consent of the probation officer or supervising agency or
24 personnel.

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

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

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

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

11 (14) To pay supervision fees and application fees
12 pursuant to this act.

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

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

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

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

1 (19) To waive in writing the right of the offender
2 to a probation hearing in the event of termination or
3 withdrawal from the program.

4 (20) To any other terms or conditions as the city
5 judge or his or her designee and the offender may agree to in
6 the above-stated agreement, it being the purpose of this act
7 to allow the city judge broad discretion in designing a
8 program specifically for each offender and his or her
9 particular circumstances.

10 (21) When applicable, to be required to pay
11 supervision fees to the agency or entity responsible for
12 monitoring and verifying the compliance of the offender with
13 the terms of the program set forth by the city judge. The fees
14 shall be paid by the offender to the supervising entity in a
15 timely manner.

16 Section 7. (a) An offender may be assessed a
17 nonrefundable application fee when the offender is approved
18 for the pretrial diversion program. The amount of the
19 assessment for participating in the program shall be in
20 addition to any court costs, fees, and assessments for the
21 Crime Victim's Compensation Fund, Department of Forensic
22 Sciences assessments, drug, alcohol, or anger management
23 treatment required by law, and any costs of supervision,
24 treatment, and restitution for which the offender may be
25 responsible. A schedule of payments for any of these fees may
26 be established by the city council in amounts to be determined
27 by the city council in its sole discretion.

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

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

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

5 (3) Other misdemeanor offenses as determined by the
6 city council.

7 (c) The application fee shall be allocated to the
8 general fund of the city except that a minimum of 25 percent
9 shall be directed to the City of Huntsville's Advanced
10 Technical Data Fund and a minimum of 25 percent shall be
11 directed to the City of Huntsville Indigent Treatment Fund, as
12 established by the city council.

13 (d) An applicant offender may not be denied access
14 into the pretrial diversion program based solely on the
15 inability of the offender to pay the application fee.
16 Application fees may be waived or reduced for just cause,
17 including indigency of the offender, at the discretion of the
18 city judge. Any determination of the indigency of the offender
19 for purposes of program fee mitigation shall be made by the
20 city judge, but any mitigation shall be done only upon the
21 determination by the city judge that there is no reasonable
22 likelihood within the reasonably foreseeable future that the
23 offender will have the ability to pay the application fee.

24 Section 8. Application fees required by this act
25 shall be collected by the court clerk of the Huntsville
26 Municipal Court. The fees shall be disbursed to each entity or
27 department as allocated by Section 7.

1 Section 9. (a) Upon acceptance of an offender into
2 the pretrial diversion program by the city judge, the city
3 attorney and the offender shall submit the written application
4 of the offender together with the statement of facts of the
5 offender, the acceptance of the offender by the city judge,
6 and the agreement between the city attorney and the offender
7 to the court presiding over the affected case of the offender
8 for the approval of the court. The offender shall also enter a
9 plea of guilty to the charge or charges involved. If the court
10 rejects the agreement and guilty plea, any money paid by the
11 offender in satisfaction of the application fee shall be
12 refunded to the offender. The offender shall remain liable for
13 any actual expenses already incurred by the probation officer
14 or any agency or service provider in furtherance of the
15 application and evaluation process and the same will be
16 deducted from any money so refunded to the offender.

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

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

6 (d) Upon successful completion of the program by the
7 offender, the probation department 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 city 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 be liable for and required to
14 pay all court costs and fees, restitution, victim's
15 compensation fund assessment, and any and all other fees and
16 assessments, in the same manner as if the offender had not
17 applied for entry into the program and had been found guilty
18 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 city
21 judge and the offender, without a finding by the city judge
22 that the offender does not have the reasonable ability to pay
23 the same within the reasonably foreseeable future.

24 Section 10. (a) After any violation of any program
25 terms or conditions or upon any breach of any program
26 agreement by the offender, the city judge may do any of the
27 following:

1 (1) Continue the agreement with or without
2 modification.

3 (2) Terminate the offender from the pretrial
4 diversion program.

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

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

9 Section 11. In no event shall the city judge, the
10 city attorney, or any other agency or service provider have
11 any liability, criminal or civil, for the conduct of any
12 offender while participating in the pretrial diversion program
13 or for acceptance of an offender into the program.

14 Section 12. The provisions of this act are
15 severable. If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

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