

1 HB638
2 150926-2
3 By Representatives Todd and Drake (N & P)
4 RFD: Jefferson County Legislation
5 First Read: 18-APR-13

1 Section 2. For the purposes of this act, the
2 following terms shall have the following meanings:

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

6 (2) CITY PROSECUTOR. The person or persons charged
7 with the responsibility of prosecuting cases in the City of
8 Irondale Municipal Court or any legal staff employed by the
9 city prosecutor.

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

12 (4) LAW ENFORCEMENT OFFICER. As defined in Section
13 36-25-1(15), Code of Alabama 1975, whether employed in the
14 State of Alabama or elsewhere.

15 (5) MUNICIPAL COURT JUDGE. The Judge of the
16 Municipal Court for the City of Irondale duly appointed by the
17 city council in accordance with Section 12-14-30, Code of
18 Alabama 1975, or a special judge appointed by the Mayor of the
19 City of Irondale in accordance with Section 12-14-34, Code of
20 Alabama 1975.

21 (6) OFFENDER. Any person charged with a criminal
22 offense, including, but not limited to, any misdemeanor,
23 violation, or traffic offense, as defined by the Code of
24 Alabama 1975, which was allegedly committed in the corporate
25 limits or police jurisdiction of the City of Irondale.

26 (7) PRETRIAL DIVERSION PROGRAM or PROGRAM. A program
27 that allows the imposition by the city or by a designated

1 agency of certain conditions of behavior and conduct for a
2 specified period of time upon an offender which allow the
3 offender to have his or her charges reduced, dismissed without
4 prejudice, or otherwise mitigated should all of the conditions
5 be met during the time frame set by the city's Municipal Court
6 Judge.

7 (8) SERIOUS PHYSICAL INJURY. As defined in Section
8 13A-1-2(14), Code of Alabama 1975.

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

12 Section 3. An offender may apply to the city for
13 admittance into the pretrial diversion program.

14 Section 4. (a) Admittance into the pretrial
15 diversion program is in the sole discretion of the Municipal
16 Court Judge upon application approved by the city prosecutor.
17 An offender deemed by the city prosecutor to be a threat to
18 the safety or well-being of the community shall not be
19 eligible for the program. An offender charged with any of the
20 following types of offenses without the express written
21 consent of the victim shall be ineligible for admittance:

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

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

26 (3) Any offense involving violence where a weapon
27 was 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 (b) A person may not be admitted to the program if
7 the person holds a commercial driver license (CDL) issued in
8 any U.S. state, any U.S. possession, any U.S. territory, or
9 any U.S. insular area.

10 Section 5. (a) The city prosecutor may consider an
11 offender for the pretrial diversion program based on any of
12 the following circumstances:

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

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

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

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

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

24 (6) The need for restitution for the victim from the
25 offender outweighs the interest of the state and city for
26 incarceration of the offender.

1 (b) The city prosecutor 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 thereto and as a part of the evaluation process of
7 the city prosecutor, the city prosecutor may require the
8 offender to furnish information concerning past criminal
9 history, education history, work record, family history,
10 medical or psychiatric treatment or care prescribed or
11 received, psychological tests taken, and any other information
12 concerning the offender which the city prosecutor believes has
13 a bearing on the decision whether or not the offender should
14 be admitted to the program.

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

25 Section 7. (a) Following the decision of the city
26 prosecutor to recommend the offender into the pretrial
27 diversion program, but prior to entry, the city prosecutor and

1 the offender shall enter into a written agreement stating the
2 conditions of the participation of the offender in the
3 program. The agreement shall include, but not be limited to,
4 all of the following:

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

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

10 (3) An agreement to the conditions of the program
11 established by the city prosecutor.

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

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

19 (6) Submission of a written plea of guilty to the
20 offense or offenses charged or agreed upon included offenses,
21 together with an agreement as to whether the case is to be
22 dismissed upon successful completion of the program, and an
23 agreement, if there be any, as to the recommended sentence
24 should a sentence be imposed.

25 (b) In addition to those requirements set forth in
26 subsection (a), or as a condition of continued participation

1 in the program, the city prosecutor may require the offender
2 to agree to any of the following terms or conditions:

3 (1) To participate in substance abuse treatment.

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

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

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

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

13 (6) To not commit any criminal offense.

14 (7) To refrain from contact with certain named
15 persons or premises.

16 (8) To maintain or seek employment.

17 (9) To not leave the State of Alabama without prior
18 written consent of the city attorney or supervising agency or
19 personnel.

20 (10) To maintain a residence approved by the city
21 prosecutor or supervising agency or personnel.

22 (11) To attend individual, group, financial,
23 chemical addiction, family, mental health, sex offender, or
24 anger management counseling.

25 (12) To pay all court costs, fees, fines, and
26 worthless checks, and obey any other lawful court order

1 associated with the offense or offenses for which the offender
2 has entered the program, or any other case.

3 (13) To refrain from the possession or use of any
4 deadly weapon or dangerous instrument as defined in Section
5 13A-1-2, Code of Alabama 1975.

6 (14) To pay supervision fees and application fees
7 pursuant to this act.

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

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

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

20 (18) To submit to periodic or random drug testing as
21 part of the program and other terms and conditions related to
22 substance abuse as the city prosecutor may direct.

23 (19) To waive in writing the right of the offender
24 to a probation hearing in the event of termination or
25 withdrawal from the program.

26 (20) To any other terms or conditions as the city
27 prosecutor or his or her designee and the offender may agree

1 to in the above-stated agreement, it being the purpose of this
2 act to allow the city prosecutor broad discretion in designing
3 a program specifically for each offender and his or her
4 particular circumstances.

5 (21) When applicable, to be required to pay
6 supervision fees to the agency or entity responsible for
7 monitoring and verifying the compliance of the offender with
8 the terms of the program set forth by the city prosecutor. The
9 fees shall be paid by the offender to the supervising entity
10 in a timely manner.

11 Section 8. (a) An offender may be assessed a
12 nonrefundable application fee when the offender is approved
13 for the pretrial diversion program. The amount of the
14 assessment for participation in the program shall be in
15 addition to any court costs, fees, and assessments for the
16 Crime Victim's Compensation Fund, Department of Forensic
17 Sciences assessments, drug, alcohol, or anger management
18 treatment required by law, and any costs of supervision,
19 treatment, and restitution for which the offender may be
20 responsible. A schedule of payments for any of these fees may
21 be established by the city prosecutor.

22 (b) The following application fees shall be applied
23 to offenders accepted into the program:

24 (1) Misdemeanor offenses and Driving Under the
25 Influence: One thousand dollars (\$1,000).

26 (2) Traffic offenses not including DUI: Five hundred
27 dollars (\$500).

1 (3) Violations: Three hundred dollars (\$300).

2 (c) The application fees required by this act shall
3 be collected by the Irondale Municipal Court director. The
4 fees shall be disbursed as follows: Eighty percent (80%) to
5 the Correction Fund and twenty percent (20%) to the Municipal
6 Court Judicial Administrative Fund as established by the City
7 of Irondale and used for the purpose of the fund.

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

19 Section 9. Application fees required by this act
20 shall be collected by the Director of the Municipal Court for
21 the City of Irondale. The fees shall be disbursed to each
22 entity or department as allocated by Section 8.

23 Section 10. (a) Upon acceptance of an offender into
24 the pretrial diversion program by the city prosecutor, the
25 city prosecutor and the offender shall submit the written
26 application of the offender, the acceptance of the offender by
27 the city prosecutor, and the agreement between the city

1 prosecutor and the offender to the Municipal Court Judge
2 presiding over the affected case of the offender for approval.
3 The offender shall also enter a plea of guilty to the charge
4 or charges involved. If the Municipal Court Judge rejects the
5 agreement and guilty plea, any money paid by the offender in
6 satisfaction of the application fee shall be refunded to the
7 offender. The offender shall still be liable for any actual
8 expenses already incurred by the city prosecutor or any agency
9 or service provider in furtherance of the application and
10 evaluation process and the same will be deducted from any
11 money so refunded to the offender.

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

22 (c) In the event the offender is terminated from the
23 program, the Municipal Court Judge shall impose appropriate
24 punishment in the same manner as with any plea of guilty or
25 finding of guilty and shall not be bound by the terms of
26 agreement as to what punishment to impose.

1 (d) Upon successful completion of the program by the
2 offender, the city prosecutor shall notify the Municipal Court
3 Judge in writing of that fact together with a request that the
4 court enter an order of disposition of the case pursuant to
5 the agreement between the offender and the city prosecutor.

6 (e) Regardless of whether the offender successfully
7 completes the program or withdraws from or is terminated from
8 the program, the offender will still be liable for and
9 required to pay any and all court costs and fees, restitution,
10 victim's compensation fund assessment, and any and all other
11 fees and assessments, in the same manner as if the offender
12 had not applied for entry into the program and had been found
13 guilty of the offense or offenses involved. No costs, fees,
14 restitution, or assessments shall be waived or remitted,
15 absent an express agreement to that effect between the city
16 prosecutor and the offender, without a finding by the
17 Municipal Court Judge that the offender does not have the
18 reasonable ability to pay the same within the reasonably
19 foreseeable future.

20 Section 11. (a) After any violation of any program
21 terms or conditions or upon any breach of any program
22 agreement by the offender, the city prosecutor may do any of
23 the following:

24 (1) Continue the agreement with or without
25 modification.

26 (2) Terminate the offender from the pretrial
27 diversion program.

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

3 (b) The city prosecutor may waive a violation for
4 good cause shown why the offender should stay in the program.

5 Section 12. In no event shall the city prosecutor or
6 any other agency or service provider have any liability,
7 criminal or civil, for the conduct of any offender while
8 participating in the pretrial diversion program or for
9 acceptance of an offender into the program unless the event
10 was foreseeable.

11 Section 13. The provisions of this act are
12 severable. If any part of this act is declared invalid or
13 unconstitutional, that declaration shall not affect the part
14 which remains.

15 Section 14. All laws or parts of laws which conflict
16 with this act are repealed.

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Jefferson County
Legislation..... 18-APR-13

Read for the second time and placed
on the calendar 1 amendment 30-APR-13

Read for the third time and passed
as amended..... 02-MAY-13

Yeas 31, Nays 0, Abstains 65

Jeff Woodard
Clerk