

1 HB649
2 149916-2
3 By Representatives McClendon, Drake, Butler and Wood (N & P)
4 RFD: Local Legislation
5 First Read: 23-APR-13

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to a municipality principally located in
14 St. Clair County; to allow a municipality principally located
15 in St. Clair County to establish a discretionary pretrial
16 diversion program and set basic operating standards for the
17 program.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 (1) APPLICATION FEE. A one-time administrative fee
22 imposed by the municipality as a condition precedent to
23 participation in a pretrial diversion program.

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

1 (3) LAW ENFORCEMENT OFFICER. As defined in Section
2 36-25-1(15), Code of Alabama 1975, whether employed in the
3 State of Alabama or elsewhere.

4 (4) MUNICIPALITY. A municipality principally located
5 in St. Clair County. Any area that is in a municipality that
6 is not principally located in St. Clair County shall not be
7 covered by this act.

8 (5) OFFENDER. Any person charged with a criminal
9 offense, including, but not limited to, any misdemeanor,
10 violation, or traffic offense, as defined by the Code of
11 Alabama 1975, which was allegedly committed in the corporate
12 limits or police jurisdiction of the municipality.

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

21 (7) PROSECUTOR. The prosecutor of any municipality
22 or any legal staff employed by the prosecutor.

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

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

1 Section 2. (a) A municipality may establish a
2 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 municipality
6 shall be retained.

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

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

15 Section 4. (a) Admittance into the pretrial
16 diversion program is in the sole discretion of the prosecutor.
17 An offender deemed by the prosecutor to be a threat to the
18 safety or well-being of the community shall not be eligible
19 for the program. An offender charged with any of the following
20 types of offenses shall be ineligible for admittance:

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

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

25 (3) Any offense involving violence where weapons are
26 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) The person may not hold a commercial driver
7 license (CDL) issued in any U.S. state, any U.S. possession,
8 any U.S. territory, or any U.S. insular area, or has no
9 conviction for which a commercial driver license was required.

10 Section 5. (a) The 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,
16 municipality , and of the offender can be met through the
17 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 a substantial
21 threat to be involved in further criminal activity if the
22 offender complies with all conditions imposed pursuant to the
23 program.

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

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

4 (b) The prosecutor may waive any of the standards
5 specified in subsection (a) if justice dictates.

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

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

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

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

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

13 (3) An agreement to the conditions of the program
14 established by the prosecutor.

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

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

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

26 (7) Submission of a written plea of guilty to the
27 offense or offenses charged or agreed upon included offenses,

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

5 (8) A waiver of any and all discovery which
6 otherwise could have obtained by the offender.

7 (9) A waiver of any and all appeals which otherwise
8 would be available to the offender.

9 (10) A waiver of any pre-sentence investigation or
10 the like which otherwise would be available to the offender.

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

15 (1) To participate in substance abuse treatment.

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

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

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

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

25 (6) To not commit any criminal offense.

26 (7) To refrain from contact with certain named
27 persons or premises.

1 (8) To maintain or seek employment.

2 (9) To not leave the State of Alabama without prior
3 written consent of the prosecutor or supervising agency or
4 personnel.

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

7 (11) To maintain or obtain a valid state driver's
8 license.

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

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

16 (14) To refrain from the possession or use of any
17 deadly weapon or dangerous instrument as defined in Section
18 13A-1-2, Code of Alabama 1975.

19 (15) To pay supervision fees and application fees
20 pursuant to this act.

21 (16) To observe curfews or home detention or travel
22 constraints as set out in agreement signed by the offender.

23 (17) To have restitution, court costs, fees, child
24 support, and any other moneys withheld or garnished from the
25 wages or salary of the offender or from any available
26 insurance policy, or forfeited from any other real or personal
27 property of the offender, and applied to the above.

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

4 (19) To submit to periodic or random drug testing as
5 part of the program and other terms and conditions related to
6 substance abuse as the prosecutor may direct.

7 (20) To waive in writing the right of the offender
8 to a probation hearing in the event of termination or
9 withdrawal from the program.

10 (21) To submit to anger management, domestic
11 violence intervention, or any other violence or abuse
12 educational classes.

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

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

25 Section 8. (a) An offender may be assessed a
26 nonrefundable application fee when the offender is approved
27 for the pretrial diversion program. The amount of the

1 assessment for participation in the program shall be in
2 addition to any court costs, fees, and assessments for the
3 Crime Victim's Compensation Fund, Department of Forensic
4 Sciences assessments, drug, alcohol, or anger management
5 treatment required by law, and any costs of supervision,
6 treatment, and restitution for which the offender may be
7 responsible. A schedule of payments for any of these fees may
8 be established by the prosecutor.

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

11 (1) Misdemeanor offenses and Driving Under the
12 Influence: No more than one thousand dollars (\$1,000).

13 (2) Traffic offenses not including DUI: No more than
14 five hundred dollars (\$500).

15 (3) Violations: No more than one hundred dollars
16 (\$100).

17 (c) The amount of the application fee shall be for
18 each offense for which an offender is placed into the program
19 at the discretion of the prosecutor.

20 (d) The application fee shall be allocated to the
21 general fund of the municipality except that a minimum of 25
22 percent shall fund technology and training for law enforcement
23 and a minimum of 25 percent shall be paid into the Municipal
24 Corrections Fund as established by the municipality.

25 (e) An applicant offender may not be denied access
26 into the pretrial diversion program based solely on the
27 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 municipality . Any determination of the indigency of the
4 offender for purposes of program fee mitigation shall be made
5 by the prosecutor but the mitigation shall be done only upon
6 the determination by the prosecutor that there is no
7 reasonable likelihood within the reasonably foreseeable future
8 that the offender will have the ability to pay the application
9 fee.

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

14 Section 10. (a) Upon acceptance of an offender into
15 the pretrial diversion program by the prosecutor, the
16 prosecutor and the offender shall submit the written
17 application of the offender together with the statement of
18 facts of the offender, the acceptance of the offender by the
19 prosecutor, and the agreement between the prosecutor and the
20 offender to the court presiding over the affected case of the
21 offender for the approval of the court. The offender shall
22 also enter a plea of guilty to the charge or charges involved.
23 If the court rejects the agreement and guilty plea, any money
24 paid by the offender in satisfaction of the application fee
25 shall be refunded to the offender. The offender shall still be
26 liable for any actual expenses already incurred by the
27 prosecutor or any agency or service provider in furtherance of

1 the application and evaluation process and the same will be
2 deducted from any money so refunded to the offender.

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

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

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

23 (e) Regardless of whether the offender successfully
24 completes the program or withdraws from or is terminated from
25 the program, the offender will still be liable for and
26 required to pay any and all court costs and fees, restitution,
27 victim's compensation fund assessment, and any and all other

1 fees and assessments, in the same manner as if the offender
2 had not applied for entry into the program and had been found
3 guilty of the offense or offenses involved. No costs, fees,
4 restitution, or assessments shall be waived or remitted,
5 absent an express agreement to that effect between the
6 prosecutor and the offender, without a finding by the court
7 that the offender does not have the reasonable ability to pay
8 the same within the reasonably foreseeable future.

9 Section 11. (a) After any violation of any program
10 terms or conditions or upon any breach of any program
11 agreement by the offender, the prosecutor may do any of the
12 following:

13 (1) Continue the agreement with or without
14 modification.

15 (2) Terminate the offender from the pretrial
16 diversion program.

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

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

21 Section 12. In no event shall the municipality or
22 any other agency or service provider have any liability,
23 criminal or civil, for the conduct of any offender while
24 participating in the pretrial diversion program or for
25 acceptance of an offender into the program.

26 Section 13. The provisions of this act are
27 severable. If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

3 Section 14. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.