

1 HB686  
2 151056-2  
3 By Representative Hill (N & P)  
4 RFD: Shelby County Legislation  
5 First Read: 30-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 Pelham 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 Pelham Municipal Court or any legal staff employed by the city  
9 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 Pelham 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 Pelham 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 Pelham.

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 Pelham Municipal Court director. The fees  
4 shall be disbursed as follows: Eighty percent (80%) to the  
5 Correction Fund and twenty percent (20%) to the Municipal  
6 Court Judicial Administrative Fund as established by the City  
7 of Pelham 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 Pelham. The fees shall be disbursed to each entity  
22 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 Shelby County  
Legislation..... . . . . . 30-APR-13

Read for the second time and placed  
on the calendar 1 amendment ..... . . . . . 02-MAY-13

Read for the third time and passed  
as amended..... . . . . . 07-MAY-13

Yeas 41, Nays 0, Abstains 34

Jeff Woodard  
Clerk