

1 HB686  
2 151056-1  
3 By Representative Hill (N & P)  
4 RFD: Shelby County Legislation  
5 First Read: 30-APR-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 Pelham in Shelby County; to  
14 allow the City of Pelham to establish a discretionary pretrial  
15 diversion program and set basic operating standards for the  
16 program.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. (a) Notwithstanding any other law to the  
19 contrary, the City of Pelham may establish a pretrial  
20 diversion program for any defendant within the jurisdiction of  
21 the municipal court.

22 (b) All discretionary powers endowed by a common law  
23 and provided by statutes and acts of this state or powers or  
24 discretion otherwise provided by law for the City of Pelham  
25 shall be retained.

26 (c) The pretrial diversion program shall be under  
27 the direct supervision and control of the city and the city

1 may contract with any agency, person, or corporation for  
2 services related to this act. The city may employ necessary  
3 persons to accomplish this act and those persons shall serve  
4 at the pleasure of the city.

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

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

10 (2) CITY PROSECUTOR. The person or persons charged  
11 with the responsibility of prosecuting cases in the City of  
12 Pelham Municipal Court or any legal staff employed by the city  
13 prosecutor.

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

16 (4) LAW ENFORCEMENT OFFICER. As defined in Section  
17 36-25-1(15), Code of Alabama 1975, whether employed in the  
18 State of Alabama or elsewhere.

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

25 (6) OFFENDER. Any person charged with a criminal  
26 offense, including, but not limited to, any misdemeanor,  
27 violation, or traffic offense, as defined by the Code of

1 Alabama 1975, which was allegedly committed in the corporate  
2 limits or police jurisdiction of the City of Pelham.

3 (7) PRETRIAL DIVERSION PROGRAM or PROGRAM. A program  
4 that allows the imposition by the city or by a designated  
5 agency of certain conditions of behavior and conduct for a  
6 specified period of time upon an offender which allow the  
7 offender to have his or her charges reduced, dismissed without  
8 prejudice, or otherwise mitigated should all of the conditions  
9 be met during the time frame set by the city's Municipal Court  
10 Judge.

11 (8) SERIOUS PHYSICAL INJURY. As defined in Section  
12 13A-1-2(14), Code of Alabama 1975.

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

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

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

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

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

3           (3) Any offense involving violence where a weapon  
4 was used or where children are victims.

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

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

10           (b) A person may not be admitted to the program if  
11 the person holds a commercial driver license (CDL) issued in  
12 any U.S. state, any U.S. possession, any U.S. territory, or  
13 any U.S. insular area.

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

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

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

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

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

26           (5) The offender will likely respond to  
27 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 prosecutor may waive any of the  
5 standards specified in subsection (a) if justice or special  
6 circumstances dictate.

7           Section 6. (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 city prosecutor, the city prosecutor may require the  
11 offender to furnish information concerning past criminal  
12 history, education history, work record, family history,  
13 medical or psychiatric treatment or care prescribed or  
14 received, psychological tests taken, and any other information  
15 concerning the offender which the city prosecutor believes has  
16 a bearing on the decision whether or not the offender should  
17 be admitted to the program.

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

1           Section 7. (a) Following the decision of the city  
2 prosecutor to recommend the offender into the pretrial  
3 diversion program, but prior to entry, the city prosecutor and  
4 the offender shall enter into a written agreement stating the  
5 conditions of the participation of the offender in the  
6 program. The agreement shall include, but not be limited to,  
7 all of the 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 city 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 city  
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) Submission of a written plea of guilty to the  
23 offense or offenses charged or agreed upon included offenses,  
24 together with an agreement as to whether the case is to be  
25 dismissed upon successful completion of the program, and an  
26 agreement, if there be any, as to the recommended sentence  
27 should a sentence be imposed.

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

5 (1) To participate in substance abuse treatment.

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

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

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

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

15 (6) To not commit any criminal offense.

16 (7) To refrain from contact with certain named  
17 persons or premises.

18 (8) To maintain or seek employment.

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

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

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



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

5           (13) To refrain from the possession or use of any  
6 deadly weapon or dangerous instrument as defined in Section  
7 13A-1-2, Code of Alabama 1975.

8           (14) To pay supervision fees and application fees  
9 pursuant to this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (c) In the event the offender is terminated from the  
25 program, the Municipal Court Judge shall impose appropriate  
26 punishment in the same manner as with any plea of guilty or

1 finding of guilty and shall not be bound by the terms of  
2 agreement as to what punishment to impose.

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

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

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

26 (1) Continue the agreement with or without  
27 modification.

1                   (2) Terminate the offender from the pretrial  
2 diversion program.

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

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

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

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

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

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