

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

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ENROLLED, An Act,

Relating to a municipality principally located in St. Clair County; to allow a municipality principally located in St. Clair County to establish a discretionary pretrial diversion program and set basic operating standards for the program.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

(5) OFFENDER. Any person charged with a criminal offense, including, but not limited to, any misdemeanor, 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 municipality.

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

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

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

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

18 Section 2. (a) A municipality may establish a
19 pretrial diversion program.

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

24 (c) The pretrial diversion program shall be under
25 the direct supervision and control of the municipality and the

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

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

7 Section 4. (a) Admittance into the pretrial
8 diversion program is in the sole discretion of the prosecutor.
9 An offender deemed by the prosecutor to be a threat to the
10 safety or well-being of the community shall not be eligible
11 for the program. An offender charged with any of the following
12 types of offenses shall be ineligible for admittance:

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

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

17 (3) Any offense involving violence where weapons are
18 used or where children are victims.

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

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

24 (b) The person may not hold a commercial driver
25 license (CDL) issued in any U.S. state, any U.S. possession,

1 any U.S. territory, or any U.S. insular area, or has no
2 conviction for which a commercial driver license was required.

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

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

8 (2) It is determined the needs of the state,
9 municipality , and of the offender can be met through the
10 program.

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

13 (4) It appears the offender is not a substantial
14 threat to be involved in further criminal activity if the
15 offender complies with all conditions imposed pursuant to the
16 program.

17 (5) The offender will likely respond to
18 rehabilitative treatment or counseling.

19 (6) The need for restitution for the victim from the
20 offender outweighs the interest of the state and municipality
21 for incarceration of the offender.

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

24 Section 6. (a) Upon application by an offender for
25 admission into the pretrial diversion program, and prior to

1 admission thereto and as a part of the evaluation process of
2 the prosecutor, the prosecutor may require the offender to
3 furnish information concerning past criminal history,
4 education history, work record, family history, medical or
5 psychiatric treatment or care prescribed or received,
6 psychological tests taken, and any other information
7 concerning the offender which the prosecutor believes has a
8 bearing on the decision whether or not the offender should be
9 admitted to the program or what treatments may need to be
10 required of the offender upon enrollment into the program.

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

21 Section 7. (a) Following the decision of the
22 prosecutor to admit the offender into the pretrial diversion
23 program, but prior to entry, the prosecutor and the offender
24 shall enter into a written agreement stating the conditions of
25 the participation of the offender in the program. The

1 agreement shall include, but not be limited to, all of the
2 following:

3 (1) A voluntary waiver of the right of the offender
4 to a speedy trial.

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

8 (3) An agreement to the conditions of the program
9 established by the prosecutor.

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

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

17 (6) A truthful and complete statement by the
18 offender as to the involvement of the offender in the offense
19 charged, which statement shall be admissible in any criminal
20 trial.

21 (7) Submission of a written plea of guilty to the
22 offense or offenses charged or agreed upon included offenses,
23 together with an agreement as to whether the case is to be
24 dismissed upon successful completion of the program, and an

1 agreement, if there be any, as to the recommended sentence
2 should a sentence be imposed.

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

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

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

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

13 (1) To participate in substance abuse treatment.

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

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

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

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

23 (6) To not commit any criminal offense.

24 (7) To refrain from contact with certain named
25 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

1 insurance policy, or forfeited from any other real or personal
2 property of the offender, and applied to the above.

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

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

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

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

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

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

1 shall be paid by the offender to the supervising entity in a
 2 timely manner.

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

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

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

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

20 (3) Violations: No more than one hundred dollars
 21 (\$100).

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

1 (d) The application fee shall be allocated to the
2 general fund of the municipality except that a minimum of 25
3 percent shall fund technology and training for law enforcement
4 and a minimum of 25 percent shall be paid into the Municipal
5 Corrections Fund as established by the municipality.

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

18 Section 9. Application fees required by this act
19 shall be collected by the court clerk of the municipal court.
20 The fees shall be disbursed to each entity or department as
21 allocated by Section 8.

22 Section 10. (a) Upon acceptance of an offender into
23 the pretrial diversion program by the prosecutor, the
24 prosecutor and the offender shall submit the written
25 application of the offender together with the statement of

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

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

23 (c) In the event the offender is terminated from the
24 program, the court shall impose appropriate sentence in the
25 same manner as with any plea of guilty or finding of guilty

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

3 (d) Upon successful completion of the program by the
4 offender, the prosecutor shall notify the court in writing of
5 that fact together with a request that the court enter an
6 order of disposition of the case pursuant to the agreement
7 between the offender and the 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
18 prosecutor and the offender, without a finding by the court
19 that the offender does not have the reasonable ability to pay
20 the same within the reasonably foreseeable future.

21 Section 11. (a) After any violation of any program
22 terms or conditions or upon any breach of any program
23 agreement by the offender, the prosecutor may do any of the
24 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 prosecutor may waive a violation for good
8 cause shown why the offender should stay in the program.

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

14 Section 13. 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 14. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.

