

1 HB737
2 117885-2
3 By Representatives Baker (A), Shiver and Hammett (N & P)
4 RFD: Local Legislation
5 First Read: 23-MAR-10

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ENROLLED, An Act,

Relating to the City of Brewton in Escambia County;
to provide for the establishment of a pretrial diversion
program.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) The clerk of the municipal court of
the City of Brewton may establish a pretrial diversion
program.

(b) It shall be among the purposes of the pretrial
diversion program to provide an alternative to prosecuting
offenders within the City of Brewton's criminal justice
system.

(c) All discretionary powers endowed by the common
law and provided for by statutes and acts of this state or
powers or discretion otherwise provided by law for the
municipal court or municipal prosecutor shall be retained.

(d) The pretrial diversion program shall be under
the supervision of the clerk of the municipal court of the
City of Brewton.

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

(1) CITY. City of Brewton, Alabama.

(2) LAW ENFORCEMENT or LAW ENFORCEMENT OFFICER. Any
person who is employed by an agency or department whose

1 purpose is to protect people. This may include, but is not
2 limited to, police personnel, a correctional officer, coroner,
3 Department of Human Resources personnel, parole and probation
4 personnel, community corrections office personnel, and court
5 referral office personnel, whether that agency or department
6 is located in the State of Alabama or elsewhere.

7 (3) MUNICIPAL COURT. The municipal court of the City
8 of Brewton.

9 (4) MUNICIPAL PROSECUTOR. The municipal prosecutor
10 of the City of Brewton or any attorney authorized by the mayor
11 to act in that capacity.

12 (5) OFFENDER. Any person charged with a crime under
13 the Code of Alabama 1975, or the Municipal Code of the City of
14 Brewton, which crime was allegedly committed within the
15 jurisdiction of the municipal court of the City of Brewton.

16 (6) PROGRAM. The pretrial diversion program
17 established herein.

18 (7) SERIOUS PHYSICAL INJURY. As that term is defined
19 in Section 13A-1-2 of the Code of Alabama 1975.

20 Section 3. (a) A person charged with a criminal
21 offense or violation as specified in this section within the
22 jurisdiction of the municipal court of the City of Brewton may
23 apply with the municipal prosecutor for admittance into the
24 pretrial diversion program.

1 (b) A person charged with any of the following may
2 apply for admission into the program:

3 (1) A traffic offense, other than driving under the
4 influence.

5 (2) A property offense.

6 (3) An offense wherein the victim did not receive
7 serious physical injury.

8 (4) An offense in which the victim was not a child
9 under 14 years of age, a law enforcement officer, a school
10 official, or a correctional officer.

11 (5) A misdemeanor other than one specifically
12 excluded in this section.

13 (6) A violation classified under the Code of Alabama
14 1975.

15 (7) A violation or offense classified under the
16 Municipal Code of the City of Brewton.

17 (c) The following offenses are ineligible for
18 consideration for the pretrial diversion program:

19 (1) Any offense involving the abuse of a child or an
20 elderly person.

21 (2) Any sex offense.

22 (3) Any offense involving serious physical injury to
23 a person.

24 (4) Driving under the influence.

1 (d) A person deemed by the municipal prosecutor to
2 be a threat to the safety or well-being of the community shall
3 not be eligible for the pretrial diversion program.

4 (e) The municipal prosecutor, in his or her sole
5 discretion, may waive any of the ineligible or prohibited
6 offenses set forth in subsections (b) and (c) if the municipal
7 prosecutor finds that justice or special circumstances dictate
8 such a waiver.

9 Section 4. (a) Admittance of an offender into the
10 pretrial diversion program shall be appropriate if all of the
11 following requirements are met:

12 (1) The offender is 18 years of age or older, or 16
13 years of age or older if the offense is a traffic citation, at
14 the time the alleged offense or violation was committed.

15 (2) There is a probability that justice will be
16 served if the offender is placed in the pretrial diversion
17 program.

18 (3) It is determined that the needs of the city and
19 of the offender can be met through the pretrial diversion
20 program.

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

23 (5) It appears the offender is not likely to be
24 involved in further criminal activity.

1 (6) The offender will likely respond to
2 rehabilitative treatment.

3 (7) The offender has no previous record of
4 committing the offense or offenses or violation or violations
5 with which he or she is charged.

6 (b) The municipal prosecutor may waive any of the
7 standards specified in subsection (a) if justice or special
8 circumstances dictate.

9 Section 5. (a) Prior to being admitted into the
10 pretrial diversion program or as a part of the evaluation
11 process, an offender may be required by the municipal
12 prosecutor to furnish information concerning his or her past
13 criminal history, educational history, work record, family
14 history, medical or psychiatric treatment or care received,
15 psychological tests taken, and any other information
16 concerning the offender which the municipal prosecutor
17 believes may have a bearing on the decision as to whether or
18 not the offender should be admitted to the pretrial diversion
19 program.

20 (b) The municipal prosecutor may require the
21 offender to submit to any type of test or evaluation process
22 or interview that the municipal prosecutor deems appropriate
23 in evaluating the offender for admittance in the pretrial
24 diversion program. The costs of any test or evaluation shall

1 be paid by the offender or as otherwise agreed to or as
2 provided by this act.

3 Section 6. (a) An offender who enters into the
4 pretrial diversion program shall satisfy each of the following
5 requirements:

6 (1) Voluntarily waive, in writing, and contingent
7 upon the successful completion of the program, his or her
8 right to a speedy trial.

9 (2) Agree, in writing, to the tolling, while in the
10 program, of the periods of limitations established by relevant
11 statutes or rules of court.

12 (3) Agree, in writing, to the conditions of the
13 pretrial diversion program established by the prosecutor for
14 the offender.

15 (4) Agree, in writing, to pay restitution, if any,
16 due to the victim within a specified period of time and in an
17 amount to be determined by the municipal court taking into
18 account circumstances of the offender and victim. Any
19 restitution collected under this subsection shall be made
20 payable to and disbursed by the clerk of the municipal court.

21 (5) Provide a statement written and signed by the
22 offender to the municipal prosecutor admitting participation
23 in and responsibility for the offense or violation which is
24 the subject of the application for entry into the pretrial

1 diversion program. This statement shall be admissible in any
2 criminal trial.

3 (b) The municipal court and municipal prosecutor's
4 pretrial diversion records, along with the records relating to
5 admission into the pretrial diversion program, are
6 confidential records and shall not be admissible in subsequent
7 proceedings, criminal or civil. Communications between
8 pretrial diversion program counselors and offenders shall be
9 privileged unless a court of competent jurisdiction determines
10 there is a compelling public interest that the communications
11 be submitted to such court for an in camera review. Following
12 such in camera review, a court must then decide whether or not
13 the information should remain privileged or be released.

14 (c) The records of the offender maintained as a part
15 of the program may be destroyed after the program has been
16 successfully completed by the offender. However, the municipal
17 court may keep the contract signed by the offender in order to
18 maintain an accurate record of program participation.

19 Section 7. (a) An offender shall make application to
20 the pretrial diversion program no later than 21 days after his
21 or her first court appearance or arraignment, whichever comes
22 first.

23 (b) At the discretion of the municipal prosecutor,
24 the provision contained in subsection (a) may be waived by the
25 municipal court.

1 Section 8. (a) An applicant may be assessed a
2 nonrefundable application fee of not more than one hundred
3 dollars (\$100) when applying for admittance into the program.
4 The amount of this application fee shall be set from time to
5 time by the municipal court. The application fee shall be in
6 addition to the program fee, court costs, and other allowable
7 costs listed in subsection (b).

8 (b) An offender may be assessed a fee when the
9 offender is approved for admittance into the program. The
10 amount of the assessment for participation in the program
11 shall be in addition to all of the following:

12 (1) The application fee set forth herein.

13 (2) Any court costs and assessments for victims or
14 drug, alcohol, or anger management treatment required by law,
15 the municipal prosecutor, or the municipal court.

16 (3) Any costs of supervision, treatment, and
17 restitution for which the pretrial diversion admittee may be
18 responsible.

19 (c) Pretrial diversion program fees as established
20 by this act may be waived or reduced due to indigency or
21 reduced ability to pay or for other just cause at the
22 discretion of the municipal court.

23 (d) The following program fees shall be paid by
24 offenders accepted into the pretrial diversion program and
25 shall be based on the criminal offense or violation committed.

1 (1) Misdemeanor offenses excluding traffic: A fee up
2 to six hundred fifty dollars (\$650) as determined by the
3 municipal court.

4 (2) Traffic offenses: A fee up to four hundred fifty
5 dollars (\$450) as determined by the municipal court.

6 (3) Violations: A fee up to three hundred dollars
7 (\$300) as determined by the municipal court.

8 (e) The collection of fees required by this act
9 shall be under the supervision of the clerk of the municipal
10 court of the City of Brewton.

11 (f) The municipal prosecutor shall be allowed
12 without further legislative action to assess fees equal to
13 those prescribed by the Alabama Legislature in the event a
14 state pretrial diversion program is enacted after passage of
15 this act. Any state pretrial diversion program may supersede
16 this act, but may be construed to require further and
17 additional penalties.

18 Section 9. (a) The municipal prosecutor and offender
19 may enter into an agreement as a part of the pretrial
20 diversion program that the offender be admitted to a drug,
21 alcohol, violence, or other self-improvement or self-help
22 program on an inpatient or outpatient basis or receive other
23 treatment alternatives deemed by the municipal prosecutor to
24 be in the best interest of the offender and society.

1 (b) The municipal prosecutor may require the
2 offender to submit to periodic or random drug or other testing
3 as a part of the pretrial diversion program of the offender
4 and require other terms and conditions related to substance
5 abuse, domestic violence, or the offense charged as the
6 municipal prosecutor may direct.

7 (c) The offender shall pay the costs of all services
8 unless otherwise approved by the municipal court after
9 considering the offender's ability to pay.

10 Section 10. (a) In any case in which an offender is
11 admitted into the program, there shall be a written agreement
12 between the municipal prosecutor and the offender. The
13 agreement shall include the terms of the pretrial diversion
14 program, the length of the program, and the period of time
15 after which the municipal prosecutor will proceed to dispose
16 of the charges against the offender or what charges the
17 offender will plead guilty to and the recommended disposition
18 of the matter. If, as a part of the pretrial diversion
19 program, the offender agrees to plead guilty to a particular
20 offense and receive a recommended sentence, this agreement
21 concerning the offense and recommended sentence shall be
22 submitted to and shall be subject to the approval of the
23 municipal judge prior to admission of the offender into the
24 pretrial diversion program.

1 (b) As a condition to being admitted into the
2 pretrial diversion program, the municipal prosecutor may
3 require the offender to agree to any of the following terms or
4 conditions:

5 (1) Participate in an educational setting to
6 include, but not be limited to, K-12, job training school,
7 trade school, GED classes, or adult basic education courses.

8 (2) Learn to read and write.

9 (3) Financially support his or her spouse, children,
10 or both.

11 (4) Pay child support, spousal support, or both, as
12 ordered by an appropriate court.

13 (5) Refrain from the use of alcohol and drugs and
14 refrain from frequenting places where alcoholic beverages or
15 illegal controlled substances are sold, possessed, or used in
16 violation of law.

17 (6) Refrain from contact with certain persons and
18 premises.

19 (7) Obtain and maintain employment.

20 (8) Attend and pay for individual, group, or family
21 counseling.

22 (9) Pay victim restitution, if any is due. Any
23 restitution collected under this subsection shall be made
24 payable to and disbursed by the clerk of the municipal court.

1 (10) Pay court costs, fines, or both, incurred as a
2 result of the offense or violation charged and any other
3 amounts the offender owes as a result of the criminal
4 offenses.

5 (11) Pay supervision fees and application fees
6 pursuant to this act, and pay court referral officer fees, and
7 drug, alcohol, violence, or other self-help fees charged as a
8 result of participation in the pretrial diversion program.

9 (12) Enter into an agreement with the municipal
10 prosecutor that all fees paid for admission into the pretrial
11 diversion program shall be forfeited to the use and benefit of
12 the pretrial diversion program should the offender be removed
13 from the pretrial diversion program by the municipal
14 prosecutor for any cause.

15 (13) Observe curfews or home detention or travel
16 constraints as set out in the offender's agreement with the
17 court.

18 (14) Enter into a written agreement with the
19 municipal court to have restitution, court costs, fines, fees,
20 or child support either withheld or garnished from the wages
21 or salary of the offender.

22 (15) Participate in a substance abuse program,
23 including, but not limited to, being admitted to a drug or
24 alcohol treatment program on an inpatient or outpatient basis
25 or receive other treatment alternatives for substance abuse.

1 (16) Refrain from the possession or use of any
2 deadly weapon or dangerous instrument.

3 (c) The offender shall be subject to such other
4 terms or conditions as the municipal prosecutor and the
5 offender may agree to in their written agreement, it being the
6 purpose of this act to allow the municipal prosecutor broad
7 discretion in designing a program specifically for each
8 offender and the offender's circumstances.

9 Section 11. All fees paid by offenders pursuant to
10 Section 8 shall be placed and maintained in a separate revenue
11 account within the Court and Corrections Fund. The municipal
12 court may use the fees collected by the pretrial diversion
13 program for any of the following:

14 (1) To fund the pretrial diversion program.

15 (2) For educational programs which relate to the
16 prosecution, detection, or prevention of crime in the City of
17 Brewton.

18 (3) To benefit the City of Brewton or any other law
19 enforcement agency.

20 (4) For any other lawful purpose.

21 Section 12. (a) If the offender violates any
22 condition of the pretrial diversion program agreed to in
23 writing by the offender, the municipal prosecutor may
24 terminate the participation of the offender in the pretrial
25 diversion program and may actively pursue the prosecution of

1 the offender for the offense or offenses or violation or
2 violations charged. The offender shall be given written notice
3 of the intent of the municipal prosecutor to terminate him or
4 her from the pretrial diversion program, including the reason
5 for termination. If removed from the program by the municipal
6 prosecutor, the offender will be deemed to forfeit, for
7 pretrial diversion purposes provided for in this act, any fees
8 paid in application for and admission into the pretrial
9 diversion program.

10 (b) At his or her discretion, the municipal
11 prosecutor may waive a violation for good cause shown as to
12 why the offender should be allowed to remain in the pretrial
13 diversion program.

14 Section 13. The municipal prosecutor, the City of
15 Brewton, or the municipal court shall have no liability,
16 criminal or civil, for the conduct of any offender while the
17 offender is participating in the pretrial diversion program.

18 Section 14. The clerk of the municipal court may
19 apply for and accept grant funding applicable to the aims of
20 the program and may receive funding or appropriations from
21 city, county, state, or federal agencies or departments to be
22 used in the maintenance or expansion of the pretrial diversion
23 program.

24 Section 15. The provisions of this act are
25 severable. If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains. The establishment of this program and the
3 collection of the fee set forth herein shall not be construed
4 as a violation of any provision of the Code of Alabama 1975.

5 Section 16. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 30-MAR-10.

Greg Pappas
Clerk

Senate

06-APR-10

Passed