

1 SB417
2 150685-2
3 By Senator Waggoner (N & P)
4 RFD: Local Legislation No. 2
5 First Read: 11-APR-13

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4 With Notice and Proof

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6 ENGROSSED

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9 A BILL

10 TO BE ENTITLED

11 AN ACT

12
13 Relating to the City of Hoover in Jefferson County;
14 to allow the City of Hoover to establish a discretionary
15 pretrial diversion program and set basic operating standards
16 for the 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 Hoover 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 Hoover
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 Hoover 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 Hoover 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 Hoover 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 Hoover 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 Hoover.

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 Hoover 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 Hoover 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 Hoover. 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 unless the
11 event was foreseeable or for acceptance of an offender into
12 the program.

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

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18 with this act are repealed.

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

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Senate

Read for the first time and referred to the Senate
committee on Local Legislation No. 2..... 11-APR-13

Read for the second time and placed on the calen-
dar 1 amendment..... 24-APR-13

Read for the third time and passed as amended 02-MAY-13

Yeas 21
Nays 1
Abstaining 7

Patrick Harris
Secretary