

1 HB617  
2 136267-4  
3 By Representatives Lee, Grimsley, Clouse and Chesteen (N & P)  
4 RFD: Local Legislation  
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ENROLLED, An Act,

Relating to the City of Dothan; to allow the City of Dothan 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 City of Dothan as a condition precedent to participating in a pretrial diversion program.

(2) CITY ATTORNEY. The city attorney of the City of Dothan or any legal staff employed by the city attorney.

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

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

(5) OFFENDER. Any person charged with a criminal offense, including, but not limited to, any misdemeanor, violation, or traffic offense, as defined by existing law, which was allegedly committed in the corporate limits or police jurisdiction of the City of Dothan.

(6) PRETRIAL DIVERSION PROGRAM OR PROGRAM. A program 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 attorney.

6 (7) SERIOUS PHYSICAL INJURY. As defined in Section  
7 13A-1-2(14), Code of Alabama 1975.

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

11 Section 2. (a) The City of Dothan, Alabama, may  
12 establish a pretrial diversion program.

13 (b) All discretionary powers endowed by a common law  
14 and provided by statutes and acts of this state or powers or  
15 discretion otherwise provided by law for the City of Dothan  
16 shall be retained.

17 (c) The pretrial diversion program shall be under  
18 the direct supervision and control of the city and the city  
19 may contract with any agency, person, or corporation for  
20 services related to this act. The city may employ necessary  
21 persons to accomplish this act and those persons shall serve  
22 at the pleasure of the city.

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

1           Section 4. Admittance into the pretrial diversion  
2 program is in the sole discretion of the city attorney. An  
3 offender deemed by the city attorney to be a threat to the  
4 safety or well being of the community shall not be eligible  
5 for the program. An offender charged with any of the following  
6 types of offenses shall be ineligible for admittance:

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

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

11           (3) Any offense involving violence where weapons are  
12 used or where children are victims.

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

15           (5) Any offense wherein the offender is a public  
16 official and the charge is related to the capacity of the  
17 offender as a public official.

18           (6) The person may not hold a commercial driver  
19 license (CDL) issued in any state, any United States  
20 possession or territory, or any United States insular area, or  
21 has no conviction for which a commercial driver license was  
22 required.

23           Section 5. (a) The city attorney may consider an  
24 offender for the pretrial diversion program based on any of  
25 the following circumstances:

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

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

5           (3) The offender appears to pose no substantial  
6 threat to the safety and well being of the community.

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

10          (5) The offender will likely respond to  
11 rehabilitative treatment or counseling.

12          (6) The need for restitution for the victim from the  
13 offender outweighs the interest of the state and city for  
14 incarceration of the offender.

15          (b) The city attorney may waive any of the standards  
16 specified in subsection (a) if justice or special  
17 circumstances dictate.

18          Section 6. (a) Upon application by an offender for  
19 admission into the pretrial diversion program, and prior to  
20 admission thereto and as a part of the evaluation process of  
21 the city attorney, the city attorney may require the offender  
22 to furnish information concerning past criminal history,  
23 education history, work record, family history, medical or  
24 psychiatric treatment or care prescribed or received,  
25 psychological tests taken, and any other information

1 concerning the offender which the city attorney believes has a  
2 bearing on the decision whether or not the offender should be  
3 admitted to the program.

4 (b) The city attorney may require the offender to  
5 submit to any type of test or evaluation process or interview  
6 the city attorney deems appropriate in evaluating the offender  
7 for admittance into the program. The costs of any test or  
8 evaluation shall be paid by the offender or as otherwise  
9 agreed to or provided for by this act. The offender shall  
10 provide the city attorney written consent to allow the city  
11 attorney to receive any educational, work, medical,  
12 psychiatric, psychological, or other records deemed necessary  
13 by the city attorney for the evaluation process.

14 Section 7. (a) Following the decision of the city  
15 attorney to admit the offender into the pretrial diversion  
16 program, but prior to entry, the city attorney and the  
17 offender shall enter into a written agreement stating the  
18 conditions of the participation of the offender in the  
19 program. The agreement shall include, but not be limited to,  
20 all of the following:

21 (1) A voluntary waiver of the right of the offender  
22 to a speedy trial.

23 (2) An agreement to the tolling, while in the  
24 program, of periods of limitations established by statutes or  
25 rules of court.

1           (3) An agreement to the conditions of the program  
2 established by the city attorney.

3           (4) If there is a victim of the charged crime, an  
4 agreement to the restitution repayment within a specified  
5 period of time and in an amount to be determined by the city  
6 attorney taking into account circumstances of the offender and  
7 the victim.

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

10          (6) A truthful and complete statement by the  
11 offender as to the involvement of the offender in the offense  
12 charged, which statement shall be admissible in any criminal  
13 trial.

14          (7) Submission of a written plea of guilty to the  
15 offense or offenses charged or agreed upon included offenses,  
16 together with an agreement as to whether the case is to be  
17 dismissed upon successful completion of the program, and an  
18 agreement, if there be any, as to the recommended sentence  
19 should a sentence be imposed.

20          (b) In addition to those requirements set forth in  
21 subsection (a), or as a condition of continued participation  
22 in the program, the city attorney may require the offender to  
23 agree to any of the following terms or conditions:

24           (1) To participate in substance abuse treatment.

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

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

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

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

10          (6) To not commit any criminal offense.

11          (7) To refrain from contact with certain named  
12 persons or premises.

13          (8) To maintain or seek employment.

14          (9) To not leave this state without prior written  
15 consent of the city attorney or supervising agency or  
16 personnel.

17          (10) To maintain a residence approved by the city  
18 attorney or supervising agency or personnel.

19          (11) To attend individual, group, financial,  
20 chemical addiction, family, mental health, sex offender, or  
21 anger management counseling.

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

1           (13) To refrain from the possession or use of any  
2 deadly weapon or dangerous instrument as defined in Section  
3 13A-1-2, Code of Alabama 1975.

4           (14) To pay supervision fees and application fees  
5 pursuant to this act.

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

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

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

17           (18) To submit to periodic or random drug testing as  
18 part of the program and other terms and conditions related to  
19 substance abuse as the city attorney may direct.

20           (19) To waive in writing the right of the offender  
21 to a probation hearing in the event of termination or  
22 withdrawal from the program.

23           (20) To any other terms or conditions as the city  
24 attorney or his or her designee and the offender may agree to  
25 in the above-stated agreement, it being the purpose of this

1 act to allow the city attorney broad discretion in designing a  
 2 program specifically for each offender and his or her  
 3 particular circumstances.

4 (21) When applicable, to be required to pay  
 5 supervision fees to the agency or entity responsible for  
 6 monitoring and verifying the compliance of the offender with  
 7 the terms of the program set forth by the city attorney.

8 The fees shall be paid by the offender to the  
 9 supervising entity in a timely manner.

10 (22) Community service with an approved community  
 11 service, charitable, or nonprofit organization. The prosecutor  
 12 shall compile a list of approved organizations for each  
 13 participant. Participants who wish to complete this  
 14 requirement with an organization not on the prosecutor's list  
 15 shall have any such organization pre-approved by the  
 16 prosecutor.

17 (c) If the city attorney denies an applicant  
 18 admission into the program, the denied applicant shall have  
 19 the right to appeal the denial to the municipal court judge.  
 20 The municipal court judge shall be vested with the authority  
 21 to approve an applicant in cases wherein the municipal court  
 22 judge determines that denial was not appropriate and that  
 23 approval would be in the best interest of justice.

24 Section 8. (a) An offender may be assessed a  
 25 nonrefundable application fee when the offender is approved

1 for the pretrial diversion program. The amount of the  
2 assessment for participating in the program shall be in  
3 addition to any court costs, fees, and assessments for the  
4 Crime Victim's Compensation Fund, Department of Forensic  
5 Sciences assessments, drug, alcohol, or anger management  
6 treatment required by law, and any costs of supervision,  
7 treatment, and restitution for which the offender may be  
8 responsible. A schedule of payments for any of these fees may  
9 be established by the city attorney.

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

12 (1) Driving under the influence (DUI): Five thousand  
13 dollars (\$5,000).

14 (2) Domestic violence offenses: One thousand five  
15 hundred dollars (\$1,500).

16 (3) Other misdemeanor offenses: Seven hundred fifty  
17 dollars (\$750).

18 (4) Traffic offenses not including DUI: Five hundred  
19 dollars (\$500).

20 (5) Violations: Two hundred fifty dollars (\$250).

21 (c) The amount of the application fee for each  
22 offender shall be established by the city attorney.

23 (d) The application fee shall be allocated to the  
24 general fund of the City of Dothan.

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

12           Section 9. Application fees required by this act  
13 shall be collected by the court clerk of the Dothan Municipal  
14 Court. The fees shall be disbursed to each entity or  
15 department as allocated by Section 8.

16           Section 10. (a) Upon acceptance of an offender into  
17 the pretrial diversion program by the city attorney, the city  
18 attorney and the offender shall submit the written application  
19 of the offender together with the statement of facts of the  
20 offender, the acceptance of the offender by the city attorney,  
21 and the agreement between the city attorney and the offender  
22 to the court presiding over the affected case of the offender  
23 for the approval of the court. The offender shall also enter a  
24 plea of guilty to the charge or charges involved. If the court  
25 rejects the agreement and guilty plea, any money paid by the

1 offender in satisfaction of the application fee shall be  
2 refunded to the offender. The offender shall remain liable for  
3 any actual expenses already incurred by the city attorney or  
4 any agency or service provider in furtherance of the  
5 application and evaluation process and the same will be  
6 deducted from any money so refunded to the offender.

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

17 (c) In the event the offender is terminated from the  
18 program, the court shall impose appropriate punishment in the  
19 same manner as with any plea of guilty or finding of guilt and  
20 shall not be bound by the terms of agreement as to what  
21 punishment to impose.

22 (d) Upon successful completion of the program by the  
23 offender, the city attorney shall notify the court in writing  
24 of that fact together with a request that the court enter an

1 order of disposition of the case pursuant to the agreement  
 2 between the offender and the city attorney.

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

16 Section 11. (a) After any violation of any program  
 17 terms or conditions or upon any breach of any program  
 18 agreement by the offender, the city attorney may do any of the  
 19 following:

20 (1) Continue the agreement with or without  
 21 modification.

22 (2) Terminate the offender from the pretrial  
 23 diversion program.

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

1           (b) The city attorney may waive a violation for good  
2 cause shown why the offender should stay in the program.

3           Section 12. In no event shall the city attorney or  
4 any other agency or service provider have any liability,  
5 criminal or civil, for the conduct of any offender while  
6 participating in the pretrial diversion program or for  
7 acceptance of an offender into the program.

8           Section 13. The provisions of this act are  
9 severable. If any part of this act is declared invalid or  
10 unconstitutional, that declaration shall not affect the part  
11 which remains.

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

