

1 HB627
2 137905-1
3 By Representatives Collins, Henry, Hammon and Oden (N & P)
4 RFD: Local Legislation
5 First Read: 03-APR-12

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Morgan County and the Eighth Judicial
14 Circuit; to allow the District Attorney of the Eighth Judicial
15 Circuit to establish a discretionary pretrial diversion
16 program and set basic operating standards for the program.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. The District Attorney of the Eighth
19 Judicial Circuit of Alabama may establish a pretrial diversion
20 program within that circuit. All discretionary powers endowed
21 by the common law and provided by statutes and acts of this
22 state or powers or discretion otherwise provided by law for
23 the District Attorney of the Eighth Judicial Circuit shall be
24 retained. The pretrial diversion program shall be under the
25 direct supervision and sole control of the district attorney.
26 The district attorney may employ persons necessary to
27 accomplish this act, who shall serve at the pleasure of the

1 district attorney. The district attorney may contract with any
2 agency, person, or corporation, including, but not limited to,
3 the Morgan County Community Corrections Program and the Drug
4 Court for Morgan County, for services related to this act.

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

7 (a) APPLICATION FEE. A one-time administrative fee
8 imposed by the District Attorney of the Eighth Judicial
9 Circuit as a condition precedent to participation in a
10 pretrial diversion program.

11 (b) DISTRICT ATTORNEY. The elected District Attorney
12 of the Eighth Judicial Circuit or any staff employed by the
13 district attorney.

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

16 (d) LAW ENFORCEMENT OFFICER. As defined in Section
17 36-25-1(15), Code of Alabama, 1975, this may include, but is
18 not limited to, police personnel, sheriff personnel, District
19 Attorney Investigator, Department of Human Resources
20 personnel, parole and probation personnel, community
21 corrections office personnel, and court referral office
22 personnel, whether employed in the State of Alabama or
23 elsewhere.

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

1 Alabama, which was committed or allegedly committed in the
2 jurisdiction of the Eighth Judicial Circuit.

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

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

13 (h) SUPERVISION FEE. Any fee imposed by any agency
14 providing supervision or treatment of the offender.

15 Section 3. (a) ELIGIBLE OFFENSES. A person charged
16 with a criminal offense specified in this subsection which is
17 subject to the jurisdiction of the circuit court, district
18 court, or any municipal court of the Eighth Judicial Circuit
19 may apply to the District Attorney of the Eighth Judicial
20 Circuit for admittance to the pretrial diversion program. A
21 person charged with any of the following offenses may apply
22 for the Pretrial Diversion Program:

23 (1) A drug offense, excluding trafficking in a
24 controlled substance or cannabis, as provided in the Code of
25 Alabama, 1975, or Manufacturing of controlled substances,
26 First Degree, as provided in the Code of Alabama, 1975.

27 (2) A property offense.

1 (3) A misdemeanor.

2 (4) Traffic or conservation offense, except that a
3 holder of a commercial driver's license, an operator of a
4 commercial motor vehicle, or a commercial driver learner
5 permit holder who is charged with a violation of a traffic law
6 in this state shall not be eligible for a deferred prosecution
7 program, diversion program, or any deferred imposition of
8 judgment program pursuant to Section 32-6-49.23, Code of
9 Alabama, 1975.

10 (b) INELIGIBLE OFFENSES. The following offenses are
11 ineligible for consideration for the pretrial diversion
12 program:

13 (1) Any Class A felony or capital offense.

14 (2) Any offense which intentionally, knowingly or
15 recklessly resulted in death or serious physical injury to a
16 person.

17 (3) Any offense involving the use of a deadly
18 weapon.

19 (4) An offense involving violence in which the
20 victim was a child under 14 years of age, a law enforcement
21 officer, a school officer, a correctional officer, active duty
22 military personnel of the United States Military, or an
23 elderly person over the age of 65.

24 (5) An offense involving violence in which the
25 victim was an employee of any school system which lies within
26 the geographic boundaries of the Eighth Judicial Circuit.

1 (6) Trafficking in controlled substances or
2 marijuana.

3 (7) Driving under the influence of alcohol with a
4 blood alcohol content of .15 or greater, or driving under the
5 influence of a controlled substance, driving under the
6 combined influence of alcohol and a controlled substance, or
7 driving under the influence of any substance which impairs the
8 mental or physical faculties wherein the offender has been
9 previously convicted of driving under the influence of
10 alcohol, driving under the influence of a controlled
11 substance, driving under the combined influence of alcohol and
12 a controlled substance, or driving under the influence of any
13 substance which impairs the mental or physical faculties.

14 (8) Bribery of a government or public official.

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

18 (10) Any offense involving abduction or kidnapping.

19 (11) Any sex offense involving forcible compulsion
20 or incapacity.

21 Section 4. GENERAL GUIDELINES FOR ADMITTANCE. (a) In
22 determining whether an offender may be admitted into the
23 pretrial diversion program, it shall be appropriate for the
24 district attorney to consider any of the following instances:

25 (1) If the offender is 18 years of age or older at
26 the time the offense was committed.

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

3 (3) It is determined the needs of the community and
4 of the offender can be met through the pretrial diversion
5 program.

6 (4) The offender appears to pose no substantial
7 threat to the safety and well-being of the community or law
8 enforcement.

9 (5) The offender is not likely to be involved in
10 further criminal activity.

11 (6) The offender will likely respond to
12 rehabilitation treatment.

13 (7) The expressed wish of the victim not to
14 prosecute.

15 (8) Undue hardship upon the victim.

16 (9) Whether the victim or the offender has medical,
17 psychiatric or vocational difficulties that would impede the
18 administration of justice.

19 (10) Whether there is a reason to believe that the
20 victim or offender will benefit from and cooperate with a
21 diversionary program.

22 (11) The likely or probable impact of criminal
23 charges or prosecution upon the victim, witnesses, or the
24 community.

25 (b) The district attorney may waive any of the
26 standards specified in subsection (a) if justice or special
27 circumstances dictate.

1 Section 5. INFORMATION REQUIREMENTS. (a) Admittance
2 into the pretrial diversion program shall be in the sole
3 discretion of the district attorney. To assist the district
4 attorney in his or her decision to admit the offender into the
5 pretrial diversion program, the district attorney may, prior
6 to the offender being admitted to the pretrial diversion
7 program or as a part of the district attorney's evaluation
8 process, require an offender to furnish to the district
9 attorney information concerning past criminal history,
10 educational history, work history, family history, medical or
11 psychiatric treatment history, psychological tests, or any
12 other information concerning the offender which the district
13 attorney believes is applicable to determine whether or not
14 the offender should be admitted into the pretrial diversion
15 program.

16 (b) The district attorney may require the offender
17 to submit to any test or evaluation process the district
18 attorney deems appropriate in evaluating the offender for
19 admittance into the pretrial diversion program. The costs of
20 any test or evaluation shall be paid by the offender or as
21 otherwise agreed to or provided for by this act.

22 Section 6. PROGRAM REQUIREMENTS. (a) An offender who
23 enters into the pretrial diversion program shall satisfy each
24 of the following requirements:

25 (1) Voluntarily waive, in writing, the offender's
26 right to a speedy trial.

1 (2) Agree, in writing, to the tolling of periods of
2 limitations established by statutes or rules of court while in
3 the program.

4 (3) Waive, in writing, his or her right to a jury
5 trial.

6 (4) Provide a statement by the offender admitting
7 the offender's involvement in the offense charged, which
8 statement shall be admissible in any criminal trial.

9 (5) Agree, in writing, to the conditions of the
10 pretrial diversion program established by the district
11 attorney.

12 (6) Agree, in writing, to waive preparation of a
13 presentence report.

14 (7) Provide written consent granting law enforcement
15 officers the right to enter any premises under the offender's
16 control, detain the person of the offender or any vehicle
17 under his or her control for the purpose of searching and
18 seizing, at any time of the day or night, evidence or
19 contraband related to any criminal offense or to the
20 violations of any program rules, for so long as the offender
21 remains under the program's supervision.

22 (8) If there is a victim of the crime, agree in
23 writing to pay restitution within a specified period of time
24 and in an amount and manner to be determined by the district
25 attorney.

26 (9) Agree in writing to the jurisdiction of the
27 court beyond completion of any disposition of the case, end of

1 sentence, termination of parole or probation or conclusion of
2 the pretrial diversion program to enforce collection of
3 restitution, cost of court, fines, fees or other agreed upon
4 or court ordered monies, pursuant to Section 12-17-225 of the
5 Code of Alabama, 1975.

6 (b) Pretrial diversion program records or records
7 related to pretrial diversion program admission, with the
8 exception of the statement of the applicant concerning his or
9 her involvement in the crime charged, shall not be admissible
10 in subsequent proceedings, criminal or civil. Communications
11 between pretrial diversion program counselors shall be
12 privileged unless a court of competent jurisdiction determines
13 there is a compelling public interest.

14 (c) As part of the pretrial diversion program, the
15 district attorney may establish a Restorative Justice
16 Initiative (RJI) within the Eighth Judicial Circuit. The
17 guidelines and mechanisms for such an initiative shall be
18 promulgated by the Alabama Office of Prosecution Services. Any
19 additional fees for participation in the RJI program by an
20 offender shall be set by the district attorney and a portion
21 thereof may be paid to any agency or entity that provides
22 services to further the goals and purposes of the RJI.

23 Section 7. An offender shall make application to the
24 pretrial diversion program at a time to be determined by the
25 district attorney.

26 Section 8. (a) An offender may be assessed an
27 application fee when he or she is approved for the program.

1 The amount of the fee for participation in the program shall
2 be in addition to any court costs, fees, assessments for the
3 crime victim's compensation fund, Department of Forensic
4 Sciences assessments, drug, alcohol, or anger management
5 treatment required by law, and any costs of supervision,
6 treatment, and restitution for which the offender may be
7 responsible. A schedule of payments for any of these fees may
8 be established by the district attorney.

9 (b) The amount of the application fee shall be
10 determined by the district attorney. In any event, the
11 application fees shall not exceed the following amounts for
12 each case for which the offender makes application for
13 acceptance into the pretrial diversion program:

14 (1) Felony offenses and DUI: not more than nine
15 hundred (\$900.00) dollars.

16 (2) Misdemeanor offenses: not more than seven
17 hundred fifty (\$750.00) dollars.

18 (3) Non-DUI Traffic offenses: not more than five
19 hundred (\$500.00) dollars.

20 (4) Violations: not more than one hundred (\$100.00)
21 dollars.

22 (c) An applicant may not be denied access into the
23 pretrial diversion program based solely on his or her
24 inability to pay. Pretrial diversion program fees as
25 established by this act may be waived or reduced for just
26 cause, including indigency of the applicant, at the discretion
27 of the district attorney. Any determination of indigency of

1 the offender for the purposes of pretrial diversion fee
2 mitigation shall be made by the district attorney. In the
3 event the offender is determined to be indigent, a periodic
4 review of the offender's indigency status may be conducted by
5 the court to determine if the offender is no longer indigent.
6 Further, if the offender is determined to be indigent by the
7 district attorney, nothing in this act shall prohibit the
8 offender from being placed on a payment plan wherein the
9 entire amounts for victim restitution, court costs, fines,
10 fees and pretrial diversion fees are collected in total.

11 (d) Application fees required by this act shall be
12 collected by the District Attorney's Office of the Eighth
13 Judicial Circuit. All pretrial diversion fees shall be
14 deposited in a timely manner by the district attorney into the
15 District Attorney's Solicitor Fund as described by Section 11
16 of this act. The district attorney shall make the deposits in
17 a timely manner; pursuant to commonly accepted accounting
18 practices. The District Attorney Solicitor Fund shall be
19 subject to regular audits by the Alabama Department of
20 Examiners of Public Accounts.

21 Section 9. The district attorney and the offender
22 may enter into an agreement, as a part of the pretrial
23 diversion program, that the offender submit to periodic or
24 random drug testing or other terms and conditions related to
25 substance abuse. The offender shall pay the costs associated
26 with all such services unless otherwise approved by the
27 district attorney.

1 Section 10. AGREEMENT BETWEEN THE DISTRICT ATTORNEY
2 AND OFFENDER. (a) In any case in which an offender is admitted
3 into a pretrial diversion program, there shall be a written
4 agreement between the district attorney and the offender. The
5 agreement shall include the terms of the pretrial diversion
6 program, the length of the program, and the period of time
7 after which the district attorney will dispose of the charges
8 against the offender in a noncriminal manner. If, as part of
9 the pretrial diversion program, the offender agrees to plead
10 guilty to a particular charge and receive a specific sentence,
11 an agreement concerning when the plea of guilt will occur, the
12 charge to which the offender will plead guilty and any
13 sentence to be imposed, shall be approved by the appropriate
14 circuit, district or municipal court judge having jurisdiction
15 over the offender within the Eighth Judicial Circuit prior to
16 admission of the offender into the pretrial diversion program.

17 (b) As a condition of being admitted to the pretrial
18 diversion program, the district attorney may require the
19 offender to agree to any of the following terms or conditions:

20 (1) Pay approved restitution for a victim.

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

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

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

1 (5) Refrain from the use of drugs or alcohol or
2 frequenting places where drugs or alcohol are sold or used.

3 (6) To refrain from committing any criminal offense.

4 (7) To refrain from contacting certain persons or
5 entering upon certain premises.

6 (8) To maintain or seek employment.

7 (9) Be required to conduct himself or herself in an
8 honorable manner as a good member of the community, and not
9 endanger in any way the person, property rights, dignity or
10 morals of others or himself or herself.

11 (10) Be required to comply with all municipal,
12 county, state and federal laws, ordinances, and orders.

13 (11) Be required to be absolutely truthful in any
14 oral or written application or reports offered or submitted in
15 relation to the pretrial diversion program.

16 (12) Be required to pay supervision fees to the
17 agency or entity responsible for monitoring and verifying the
18 offender's compliance with the terms of the pretrial diversion
19 program set forth by the district attorney. These fees shall
20 be paid by the offender to the supervising agency or entity in
21 a timely manner.

22 (13) To attend individual, group, financial,
23 chemical addiction, or family, mental health or anger
24 management counseling.

25 (14) To pay all court costs and fees, fines, as well
26 as any fees and costs pending on any worthless check.

1 (15) To refrain from the possession or use of any
2 deadly weapon or dangerous instrument.

3 (16) To observe curfews or home detention or travel
4 constraints as set out in the agreement signed by the
5 offender.

6 (17) Enter into an agreement with the district
7 attorney to have restitution, court costs, fines, fees, or
8 child support, withheld or garnished from the wages or salary
9 of the offender or withheld from any funds due the offender
10 from the Alabama Department of Revenue as a result of the
11 offender filing his or her income tax return with the State of
12 Alabama.

13 (18) Complete approved community service.

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

18 (20) Agree to the terms and conditions of the
19 pretrial diversion program established by the district
20 attorney.

21 (21) Pay the application fee pursuant to this act.

22 (22) Participate in and complete a drug court
23 program.

24 (23) To submit to periodic or random drug testing as
25 a part of the program and other terms and conditions related
26 to substance abuse as the district attorney may direct.

1 (24) To any other terms or conditions as the
2 district attorney or his or her designee and the offender may
3 agree, it being the purpose of this act to allow the district
4 attorney broad discretion in designing a program specifically
5 for each offender and his or her particular circumstances.

6 Section 11. DISBURSEMENT OF FUNDS. All fees paid by
7 offenders to the district attorney pursuant to this act shall
8 be paid into the District Attorney's Solicitor Fund. The
9 district attorney shall disburse ten percent (10%) to the
10 appropriate circuit, district or municipal clerk in which the
11 case originates, and five percent (5%) to the Morgan County
12 Child Advocacy Center. The remainder of the funds shall be
13 used to pay costs associated with the administration of the
14 pretrial diversion program or for any other law enforcement
15 purpose. Costs associated with program administration shall
16 include, but shall not be limited to, salaries, rent,
17 vehicles, uniforms, telephones, postage, office supplies and
18 equipment, training and travel services, service or
19 professional contracts. The district attorney may pay for
20 services or programs for an offender while the offender is in
21 the pretrial diversion program as special circumstances and
22 justice dictates.

23 Section 12. (a) If the offender violates the
24 conditions of the pretrial diversion program, the district
25 attorney may terminate the participation of the offender. The
26 offender shall be given written notice of the intent of the

1 district attorney to terminate him or her from the pretrial
2 diversion program including the reason for the termination.

3 (b) The district attorney may waive a violation for
4 good cause shown as to why the offender should stay in the
5 pretrial diversion program.

6 Section 13. The district attorney or his or her
7 staff shall have no liability, criminal or civil, for the
8 conduct of any offender while participating in the pretrial
9 diversion program or of any service provider or their agents
10 that are contracted to or who have agreed to provide services
11 to the pretrial diversion program.

12 Section 14. The pretrial diversion program may apply
13 for grants, may accept gifts from individuals or corporations,
14 and may receive funding or appropriations from city, county,
15 or state agencies or departments to be used in the maintenance
16 or expansion of the pretrial diversion program.

17 Section 15. The district attorney may form an
18 advisory board within the county or judicial circuit, which
19 may be known as the Citizens Advisory Board for Pretrial
20 Diversion, who, may assist the district attorney in the
21 determination of appropriate pretrial diversion candidates.
22 The district attorney shall retain the final decision as to
23 the admittance or denial of individuals into the pretrial
24 diversion program.

25 The district attorney's decision shall appoint all
26 members of any advisory board and shall determine when or if
27 it should meet. Such advisory board shall serve without

1 personal profit, but may be paid from the District Attorney's
2 Solicitors Fund for actual expenses incurred in connection
3 with its duties.

4 Section 16. COMMUNITY CORRECTION AND DRUG COURT.

5 District attorneys, may, to the extent practicable, utilize
6 the services of existing community corrections programs
7 established pursuant to Section 15-18-170, Code of Alabama,
8 1975, to provide for the supervision of defendants
9 participating in pretrial diversion programs. Likewise, the
10 district attorney may utilize the services of existing drug
11 court programs established pursuant to Section 12-23A-4 of the
12 Code of Alabama, 1975, so long as the district attorney
13 determines it would serve the best interest of justice and the
14 community.

15 Section 17. The provisions of this act are
16 severable. If any part of this act is declared invalid or
17 unconstitutional, that declaration shall not affect the part
18 which remains.

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