

1 HB783
2 138704-1
3 By Representative Oden (N & P)
4 RFD: Local Legislation
5 First Read: 03-MAY-12

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Blount County and the Forty-first
14 Judicial Circuit; to provide for the establishment of a
15 pretrial diversion program and to set basic operating
16 standards for the program.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

20 (1) DISTRICT ATTORNEY. The District Attorney of the
21 Forty-first Judicial Circuit, or any of his or her staff.

22 (2) LAW ENFORCEMENT or LAW ENFORCEMENT OFFICER. Any
23 person who is employed by an agency, or department whose
24 purpose is to protect the citizens. This may include, but is
25 not limited to, police personnel, sheriff personnel, coroner,
26 Department of Human Resources personnel, parole and probation
27 personnel, community corrections office personnel, and court

1 referral office personnel, whether that agency or department
2 is in the State of Alabama or located elsewhere.

3 (3) OFFENDER. Any person charged with a crime as
4 defined by the Code of Alabama 1975, which was allegedly
5 committed in the jurisdiction of the Forty-first Judicial
6 Circuit.

7 (4) SERIOUS PHYSICAL INJURY. As that term is defined
8 in Section 13A-1-2, Code of Alabama 1975.

9 Section 2. (a) The District Attorney for the
10 Forty-first Judicial Circuit may establish a pretrial
11 diversion program.

12 (b) The district attorney shall retain all
13 discretionary powers endowed by the common law and provided
14 for by statutes and acts of this state or powers or discretion
15 otherwise provided for by law for the district attorney.

16 (c) The pretrial diversion program shall be under
17 the direct supervision and control of the district attorney
18 and the district attorney may contract with any agency,
19 person, or corporation for services related to this act or for
20 any law enforcement purposes.

21 Section 3. (a) A person charged with a criminal
22 offense whose jurisdiction is in the Circuit or District Court
23 of the Forty-first Judicial Circuit may apply to the district
24 attorney for admittance into the pretrial diversion program.

25 (b) The offender shall be 18 years of age or older,
26 or 16 years of age or older if charged with a traffic offense,
27 at the time the offense was committed.

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

3 (1) Drug possession offenses including those
4 provided for in Section 12-23-5, Code of Alabama 1975.

5 (2) Property offenses.

6 (3) Offenses wherein the victim was not a child
7 under 14 years of age, a law enforcement officer, a school
8 official, or a correctional officer.

9 (4) Misdemeanor and traffic offenses.

10 (d) No person charged with a Class A felony or a
11 criminal offense involving serious physical injury to a
12 person, death to a person, or a forcible sex offense shall be
13 eligible for the pretrial diversion program.

14 (e) Any person deemed by the district attorney to be
15 a threat to the safety or well-being of the community shall
16 not be eligible for the pretrial diversion program.

17 (f) Diversion shall be appropriate if there is a
18 likelihood justice will be served if:

19 (1) The offender is placed in a diversion program.

20 (2) It is determined the needs of the state and of
21 the offender can be met through the pretrial diversion
22 program.

23 (3) The offender poses no substantial threat to the
24 safety and well-being of the community.

25 (4) It appears the offender is not likely to be
26 involved in further criminal activity.

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

3 (g) The opinion of law enforcement officers involved
4 in the offense may be sought and used in the decision whether
5 to approve the offender for the pretrial diversion program.

6 (h) The district attorney, in his or her sole
7 discretion, may waive any of the prohibitions or prohibited
8 offenses in this act if he or she finds that justice or
9 special circumstances dictate such a waiver.

10 Section 4. (a) Prior to being admitted into the
11 pretrial diversion program or as a part of the district
12 attorney's evaluation process, an offender may be required by
13 the district attorney to furnish information concerning past
14 criminal history, education history, work record, family
15 history, medical or psychiatric treatment or care received,
16 psychological tests taken, and any other information
17 concerning the offender which the district attorney believes
18 to have a bearing on the decision as to whether the offender
19 should be admitted into the pretrial diversion program.

20 (b) The district attorney may require the offender
21 to submit to any type of test or evaluation process or
22 interview the district attorney deems appropriate in
23 evaluating the offender for admittance into the pretrial
24 diversion program. The costs of any tests or evaluation shall
25 be paid by the offender or as otherwise agreed to or provided
26 for by this act.

1 Section 5. (a) An offender who enters the pretrial
2 diversion program shall do all of the following:

3 (1) Waive, in writing, and contingent upon the
4 successful completion of the program, his or her right to a
5 speedy trial.

6 (2) Agree, in writing, to the tolling, while in the
7 program, of periods of limitations established by a statute or
8 rules of court.

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

12 (4) Provide a statement as to the involvement in the
13 crime charged which shall be admissible in any criminal trial.

14 (5) If there is a victim to the crime, agree in
15 writing to a restitution agreement within a specified period
16 of time and in an amount to be determined by the district
17 attorney taking into account all circumstances of the offender
18 and victim.

19 (b) Pretrial diversion program records or records
20 related to pretrial diversion program admission, except for
21 the statement of the applicant or offender concerning his or
22 her involvement in the crime charged, shall not be admissible
23 in subsequent proceedings, criminal or civil, and
24 communications between pretrial diversion program counselors
25 and defendants shall be privileged unless a court of competent
26 jurisdiction determines there is a compelling public interest
27 in the communications or records being revealed or in the

1 discretion of the trial judge in accordance with the Alabama
2 Rules of Evidence.

3 Section 6. (a) An offender shall make application to
4 the pretrial diversion program no later than 45 days after the
5 service of the warrant or within 21 days following the
6 appointment of counsel for the charge for which the offender
7 applies or at his or her first court appearance or
8 arraignment.

9 (b) In the discretion of the district attorney, the
10 time provision of this section may be waived.

11 Section 7. (a) An applicant for the pretrial
12 diversion program shall pay a nonrefundable assessment fee of
13 twenty-five dollars (\$25) on each charge. This fee shall be in
14 addition to any costs and assessments required by law, the
15 court, or the district attorney, including, but not limited
16 to, court costs and fines, assessments for victims, anger
17 management program fees, and drug or alcohol treatment costs,
18 and in addition to costs of supervision, treatment,
19 restitution, and any other additional costs for which the
20 offender may be responsible.

21 (b) Fees may be reduced or waived by the district
22 attorney or a schedule of payments for any of the required
23 fees may be established by the district attorney. The fees, in
24 the discretion of the district attorney, may be reduced
25 because of circumstances relating to a specific offender and
26 the financial status of the offender. The determination of
27 indigency of the offender, for the purpose of pretrial

1 diversion admission, fee waiver, or fee reduction shall be
2 made by the district attorney.

3 (c) The following fees shall be applied to offenders
4 accepted into the pretrial diversion program:

5 (1) Felony offenses: Up to one thousand dollars
6 (\$1,000).

7 (2) Misdemeanor offenses: Up to five hundred dollars
8 (\$500).

9 (3) Traffic offenses: Up to three hundred dollars
10 (\$300).

11 (4) Violations: Up to two hundred dollars (\$200).

12 Section 8. (a) In any case in which an offender is
13 admitted into a pretrial diversion program, there shall be a
14 written agreement between the district attorney and the
15 offender. The agreement shall include all of the following:

16 (1) The terms of the pretrial diversion program.

17 (2) The length of the pretrial diversion program.

18 (3) The period of time after which the district
19 attorney will dispose of the charges against the offender in a
20 noncriminal manner or what charges the offender will plead
21 guilty to and the recommended sentence that the offender will
22 be suggested to receive.

23 (b) If as part of the pretrial diversion program,
24 the offender agrees to plead guilty to a particular offense
25 and receive a specific sentence, this agreement concerning the
26 offense and sentence shall be approved by an appropriate
27 Circuit or District Judge of the Forty-first Judicial Circuit

1 prior to admission of the offender in the pretrial diversion
2 program.

3 (c) As a condition of being admitted to the pretrial
4 diversion program, the district attorney may require the
5 offender to agree to one or more of the following terms or
6 conditions, to:

7 (1) Attend school, including, but not limited to,
8 K-12, college, job training school, trade school, GED courses,
9 or adult basic education courses.

10 (2) Learn to read and write.

11 (3) Financially support his or her children or pay
12 child support, spousal support, or both, if applicable.

13 (4) Refrain from the use of alcohol or drugs or
14 frequenting places where alcohol or drugs are sold or used.

15 (5) Refrain from contact with certain persons or
16 premises.

17 (6) Maintain or seek employment.

18 (7) Attend counseling, individual, group, or family.

19 (8) Complete community service hours.

20 (9) Pay restitution to a victim if any is due.

21 (10) Pay court costs and fines as applicable.

22 (11) Pay supervision fees and application fees
23 pursuant to this act.

24 (12) Observe curfews, home detention or travel
25 constraints as set out in the offender's agreement.

26 (13) Enter into an agreement with the district
27 attorney to have restitution, court costs, fines, fees, or

1 child support withheld from the wages or salary of the
2 offender and applied to the above.

3 (14) Submit to random drug screens and participate
4 in substance abuse programs.

5 (d) The offender shall be subject to other terms or
6 conditions as the district attorney and the offender may agree
7 to in the written agreement of the offender. The purpose of
8 this act is to allow the district attorney broad discretion in
9 designing a program specifically for each offender and
10 circumstances of the offender.

11 (e) The district attorney and the offender may enter
12 into an agreement as a part of the pretrial diversion program
13 of an offender that the offender be admitted into a drug or
14 alcohol program or any other treatment program on an
15 in-patient or out-patient basis or receive other treatment
16 alternatives for substance abuse or other conditions or
17 circumstances that, in the discretion of the district
18 attorney, are in the best interests of the offender and the
19 community and society. The district attorney may require the
20 offender to submit to periodic or random drug testing as a
21 part of the pretrial diversion program of the offender and
22 other terms and conditions related to substance abuse as the
23 district attorney may direct. The offender shall pay the costs
24 of all services unless otherwise agreed and approved by the
25 district attorney after considering the offender's ability to
26 pay.

1 Section 9. The district attorney shall establish a
2 Pretrial Diversion Fund. Except for court costs that are
3 payable by the applicant directly to the clerk of court, all
4 fees paid by offenders shall be placed into the Pretrial
5 Diversion Fund. These funds shall be deposited in an account
6 maintained by the district attorney and shall be subject to
7 audit by the Department of Examiners of Public Accounts.

8 (b) The district attorney shall use the funds to pay
9 costs associated with the administration of the pretrial
10 diversion program. Any excess of funds after payment of costs
11 associated with the administration of the pretrial diversion
12 program shall be dispersed as follows:

13 (1) Ninety percent of the funds shall be used by the
14 district attorney to make expenditures from the Pretrial
15 Diversion Fund for the payment of any and all expenses to be
16 incurred for law enforcement purposes and in the discharge of
17 his or her duties.

18 (2) Ten percent of the funds shall be used by the
19 Blount County Children's Center for the payment of any and all
20 expenses to be incurred by it for law enforcement purposes.

21 (c) The district attorney shall be allowed, without
22 further legislative action, to increase fees to meet and equal
23 those prescribed by the Legislature in the event a state
24 pretrial diversion program is enacted after the effective date
25 of this act.

26 Section 10. (a) If the offender violates the
27 conditions of the pretrial diversion program agreed to in

1 writing by the offender and the district attorney, the
2 district attorney may terminate the participation of the
3 offender in the program and pursue criminal charges against
4 the offender or move the court to sentence the offender in
5 accordance with the offender's agreement. The offender shall
6 be given written notice of the intent of the district attorney
7 to terminate him or her from the pretrial diversion program.

8 (b) The district attorney may waive a violation for
9 good cause shown why the offender should stay in the pretrial
10 diversion program.

11 Section 11. The district attorney shall have no
12 liability, criminal or civil, for the conduct of any offender
13 participating in the pretrial diversion program.

14 Section 12. (a) The pretrial diversion program may
15 apply for and accept grant funding applicable to the aims of
16 the program and may receive funding or appropriations from
17 city, county, state, or federal agencies or departments to be
18 used in the maintenance or expansion of the pretrial diversion
19 program.

20 (b) The district attorney may form an advisory board
21 to assist in the determination of appropriate pretrial
22 diversion candidates and conditions for participation in the
23 program. The district attorney shall retain the final decision
24 as to the admittance of individuals or administration of the
25 program regardless of the board's views. The district attorney
26 shall determine who and how many persons will comprise the
27 board, as well as when or if it should meet.

1 Section 13. The provisions of this act are
2 severable. If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

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