

1 HB654  
2 128984-1  
3 By Representative Ford (N & P)  
4 RFD: Local Legislation  
5 First Read: 24-MAY-11

A BILL  
TO BE ENTITLED  
AN ACT

To provide for the establishment of a pretrial diversion program in the 16th Judicial Circuit in Etowah County; to set basic operating standards for the program; and to provide for program fees and their distribution.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

(1) DISTRICT ATTORNEY. The district attorney of the 16th Judicial Circuit in Etowah County, or any of his or her staff.

(2) LAW ENFORCEMENT or LAW ENFORCEMENT OFFICER. Any person who is employed by an agency or department whose purpose is to protect the citizens, including, but not limited to, police personnel, sheriff personnel, a district attorney investigator, Department of Human Resources personnel, parole

1 and probation personnel, community corrections office  
2 personnel, and court referral office personnel, whether that  
3 agency or department is in this state or located elsewhere.

4 (3) OFFENDER. Any person charged with a crime as  
5 defined by the Code of Alabama 1975, or municipal ordinance,  
6 which was committed in the jurisdiction of the state.

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

9 Section 2. (a) The district attorney may establish a  
10 pretrial diversion program within the 16th Judicial Circuit in  
11 Etowah County.

12 (b) All discretionary powers endowed by the common  
13 law, provided for by statute and acts of this state, or  
14 otherwise provided by law for the district attorneys of this  
15 state shall be retained.

16 (c) The pretrial diversion program shall be under  
17 the direct supervision and sole control of the district  
18 attorney.

19 (d) The district attorney may contract with any  
20 agency, person, or corporation for services related to this  
21 act and may employ persons necessary to accomplish this act,  
22 who shall serve at the pleasure of the district attorney.

23 Section 3. (a) An offender charged with any of the  
24 following criminal offenses in a circuit court or district  
25 court may apply to the district attorney for admittance to the  
26 pretrial diversion program:

1           (1) A drug offense, excluding trafficking in  
2           controlled substances or cannabis as provided in Section  
3           13A-12-231 of the Code of Alabama 1975, or manufacturing of  
4           controlled substances in the first degree as provided in  
5           Section 13A-12-218 of the Code of Alabama 1975.

6           (2) A property offense.

7           (3) A misdemeanor.

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

16          (b) An offender charged with any of the following  
17          offenses is ineligible for consideration for the pretrial  
18          diversion program:

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

20               (2) Any offense involving serious physical injury to  
21          a person.

22               (3) An offense involving violence in which the  
23          victim was a child under 14 years of age, a law enforcement  
24          officer, a school officer, a correctional officer, active duty  
25          military personnel of the United States military, or an  
26          individual over the age of 65.

27               (4) Any offense involving death.

1           (5) A person deemed by the district attorney to be a  
2 threat to the safety or well-being of the community.

3           (6) Bribery of a government or public official.

4           (7) Any offense wherein the offender is a public  
5 official and the charge is related to his or her capacity as a  
6 public official.

7           (8) Abduction or kidnapping.

8           (9) Any sex offense involving forcible compulsion or  
9 incapacity.

10           Section 4. (a) In determining whether an offender  
11 may be admitted into the pretrial diversion program, it shall  
12 be appropriate for the district attorney to consider any of  
13 the following circumstances:

14           (1) The offender is 18 years of age or older at the  
15 time the offense was committed.

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

18           (3) It is determined the needs of the community 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 or law  
23 enforcement.

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

26           (6) The offender will likely respond to  
27 rehabilitative treatment.

1           (7) The expressed wish of the victim not to  
2 prosecute.

3           (8) Undue hardship upon the victim.

4           (9) Whether the victim or the offender has medical,  
5 psychiatric, or vocational difficulties that would impede the  
6 administration of justice.

7           (10) Whether there is a reason to believe that the  
8 victim or offender will benefit from and cooperate with a  
9 pretrial diversion program.

10           (11) The impact of criminal charges or prosecution  
11 upon the victim, witnesses, or the community.

12           (b) The district attorney may waive any of the  
13 standards specified in subsection (a) if justice or special  
14 circumstances dictate.

15           Section 5. (a) Admittance into the pretrial  
16 diversion program shall be in the sole discretion of the  
17 district attorney. To assist the district attorney in the  
18 decision to admit the offender into the pretrial diversion  
19 program, the district attorney, prior to the offender being  
20 admitted into the pretrial diversion program or as a part of  
21 the district attorney's evaluation process, may require an  
22 offender to furnish to the district attorney information  
23 concerning past criminal history, education history, work  
24 history, family history, medical or psychiatric treatment  
25 history, psychological tests, or any other information  
26 concerning the offender which the district attorney believes

1 is applicable to determine whether the offender should be  
2 admitted into the pretrial diversion program.

3 (b) The district attorney may require the offender  
4 to submit to any test or evaluation process the district  
5 attorney deems appropriate in evaluating the offender for  
6 admittance into the pretrial diversion program. The costs of  
7 any test or evaluation shall be paid by the offender or as  
8 otherwise agreed to or provided for by this act.

9 Section 6. (a) An offender who enters into the  
10 pretrial diversion program shall satisfy each of the following  
11 requirements:

12 (1) Voluntarily waive, in writing, his or her right  
13 to a speedy trial.

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

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

19 (4) Provide a statement written by the offender,  
20 admitting his or her participation in, and responsibility for,  
21 the offense which is the subject of the application for entry  
22 into the pretrial diversion program, which statement shall be  
23 admissible in any criminal trial.

24 (5) Agree, in writing, to the conditions of the  
25 pretrial diversion program established by the district  
26 attorney.

1           (6) If there is a victim of the crime, agree in  
2 writing to a restitution agreement within a specified period  
3 of time and in an amount to be determined by the district  
4 attorney.

5           (7) Agree in writing to the jurisdiction of the  
6 court beyond completion of any disposition of the case, end of  
7 sentence, termination of parole or probation, or conclusion of  
8 the pretrial diversion program to enforce collection of  
9 restitution, cost of court, fines, fees, or other agreed upon  
10 or court ordered monies, pursuant to Section 12-17-225, Code  
11 of Alabama 1975.

12           (b) Pretrial diversion program records or records  
13 related to pretrial diversion program admission, with the  
14 exception of the statement of the applicant concerning his or  
15 her involvement in the crime charged, shall not be admissible  
16 in subsequent proceedings, criminal or civil. Communications  
17 between pretrial diversion program counselors and offenders  
18 shall be privileged unless a court of competent jurisdiction  
19 determines there is a compelling public interest to the  
20 contrary.

21           (c) As part of the pretrial diversion program, the  
22 district attorney may establish a Restorative Justice  
23 Initiative (RJI) program within the 16th Judicial Circuit in  
24 Etowah County. The guidelines and mechanisms for such an  
25 initiative shall be promulgated by the Alabama Office of  
26 Prosecution Services. Any additional fees for participation in  
27 an RJI program by an offender shall be set by the district



1 attorney and a portion thereof may be paid to any agency or  
2 entity that provides services to further the goals and purpose  
3 of the RJJ program.

4 Section 7. An offender shall make application to the  
5 pretrial diversion program at a time to be determined by the  
6 district attorney.

7 Section 8. (a) An offender may be assessed an  
8 application fee when he or she is approved for the program.  
9 The amount of the fee for participation in the program shall  
10 be in addition to any court costs, assessments for crime  
11 victim's compensation fund, Department of Forensic Science  
12 assessments, drug, alcohol, or anger management treatments  
13 required by law, restitution, costs of supervision, or  
14 treatment. A schedule of payments for any of these fees may be  
15 established by the district attorney.

16 (b) The amount of the application fee shall be  
17 determined by the district attorney and may not exceed the  
18 following amounts for each case for which the offender makes  
19 application for acceptance into the pretrial diversion  
20 program:

21 (1) Felony offenses: Up to nine hundred dollars  
22 (\$900).

23 (2) Misdemeanor offenses: Up to seven hundred fifty  
24 dollars (\$750).

25 (c) An applicant may not be denied access into the  
26 pretrial diversion program based solely on his or her  
27 inability to pay. Pretrial diversion program fees as

1 established by this act may be waived or reduced for just  
2 cause, including indigency of the applicant, at the discretion  
3 of the district attorney. Any determination of indigency of  
4 the offender for the purposes of pretrial diversion fee  
5 mitigation shall be made by the district attorney. In the  
6 event the offender is determined to be indigent, a periodic  
7 review of the offender's indigency status may be conducted by  
8 the court to determine if the offender is no longer indigent.  
9 If the offender is determined to be indigent by the district  
10 attorney, nothing in this act shall prohibit the offender from  
11 being placed on a payment plan wherein the entire victim  
12 restitution, court costs, fines, fees, and pretrial diversion  
13 fees are collected in total.

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

23 Section 9. The district attorney and the offender  
24 may enter into an agreement, as a part of the pretrial  
25 diversion program, that the offender be admitted to a drug or  
26 alcohol program on an in-patient or out-patient basis or  
27 receive other treatment alternatives for substance abuse. The

1 district attorney may require the offender to submit to  
2 periodic or random drug testing or other terms and conditions  
3 related to substance abuse. The offender shall pay the costs  
4 of all services unless otherwise approved by the district  
5 attorney.

6 Section 10. (a) In any case in which an offender is  
7 admitted into a pretrial diversion program, there shall be a  
8 written agreement between the district attorney and the  
9 offender. The agreement shall include the terms of the  
10 pretrial diversion program, the length of the program, and the  
11 period of time after which the district attorney will dispose  
12 of the charges against the offender in a noncriminal manner.  
13 If, as part of the pretrial diversion program, the offender  
14 agrees to plead guilty to a particular charge and receive a  
15 specific sentence, an agreement concerning when the plea of  
16 guilty will occur, to what charge to which the offender will  
17 plead guilty, and any sentence to be imposed, shall be  
18 approved by an appropriate circuit or district court judge  
19 having jurisdiction over the offender within the judicial  
20 circuit prior to admission of the offender in the pretrial  
21 diversion program.

22 (b) As a condition of being admitted into the  
23 pretrial diversion program, the district attorney may require  
24 the offender to agree to any of the following terms or  
25 conditions:

26 (1) Pay approved restitution to a victim.

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

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

6           (4) Financially support his or her children or pay  
7 child support.

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

10          (6) Refrain from contact with certain persons or  
11 premises.

12          (7) Maintain or seek employment.

13          (8) Attend individual, group, or family counseling.

14          (9) Pay court costs, fees, and fines.

15          (10) Conduct himself or herself in an honorable  
16 manner as a good member of the community, and not endanger in  
17 any way the person, property rights, dignity, or morals of  
18 others or himself or herself.

19          (11) Comply with all municipal, county, state, and  
20 federal law, ordinances, or orders.

21          (12) Be absolutely truthful in any oral or written  
22 application or reports to the pretrial diversion program.

23          (13) Pay supervision fees to the agency or entity  
24 responsible for monitoring and verifying the offender's  
25 compliance with the terms of the pretrial diversion program  
26 set forth by the district attorney. These fees shall be paid

1 by the offender to the supervising agency or entity in a  
2 timely manner.

3 (14) Observe curfews, home detention, or travel  
4 constraints as set out in the offender's agreement.

5 (15) Enter into an agreement with the district  
6 attorney to have restitution, court costs, fines, fees, or  
7 child support withheld or garnished from the wages or salary  
8 of the offender.

9 (16) Complete approved community service.

10 (17) Agree to the court's jurisdiction beyond the  
11 terms of the pretrial diversion program, incarceration,  
12 probation, parole, or end of sentence for the purposes of the  
13 collection of court ordered or agreed upon fines, fees, cost  
14 of court, and restitution pursuant to Section 12-17-225, Code  
15 of Alabama 1975.

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

19 (19) Provide a statement written by the offender,  
20 admitting his or her participation in, and responsibility for,  
21 the offense which is the subject of the application for entry  
22 into the pretrial diversion program.

23 (20) Refrain from the possession of or use of any  
24 firearm.

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

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

1           (23) Complete a certified drug or alcohol addiction  
2 evaluation and treatment program.

3           (24) Agree to be subject to any other terms or  
4 conditions as required by the district attorney set out in the  
5 pretrial diversion program agreement. The district attorney  
6 shall be given broad discretion in designing a program  
7 specifically for each offender and circumstances of the  
8 offender.

9           Section 11. (a) All fees paid to the district  
10 attorney by offenders pursuant to this act shall be paid into  
11 the District Attorney's Solicitor Fund. The district attorney  
12 shall disburse 10 percent to the Sheriff of Etowah County to  
13 be deposited into the Law Enforcement Fund, and 10 percent, if  
14 the 16th Judicial Circuit has one, to an approved child  
15 advocacy center. The remainder of the funds shall be used to  
16 pay costs associated with the administration of the pretrial  
17 diversion program or for any other law enforcement purpose.  
18 Costs associated with program administration shall include,  
19 but shall not be limited to, salaries, rent, vehicles,  
20 uniforms, telephones, postage, office supplies and equipment,  
21 training and travel services, service contracts, or  
22 professional services. The district attorney may pay for  
23 services or programs for an offender while the offender is in  
24 the pretrial division program if special circumstances and  
25 justice dictate.

26           Section 12. (a) If the offender violates the  
27 conditions of the pretrial diversion program, the district

1 attorney may terminate the participation of the offender in  
2 the program. The offender shall be given written notice of the  
3 intent of the district attorney to terminate him or her from  
4 the pretrial diversion program including the reason for the  
5 termination.

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

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

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

20 Section 15. The district attorney may form an  
21 advisory board within the county or judicial circuit named the  
22 Citizens Advisory Board for Pretrial Diversion to assist the  
23 district attorney in the determination of appropriate pretrial  
24 diversion candidates. The district attorney shall retain the  
25 final decision as to the admittance or denial of individuals  
26 into the pretrial diversion program. The district attorney  
27 shall appoint all members of any advisory board and shall

1       determine when or if it should meet. The advisory board shall  
2       serve without personal profit, but may be paid from the  
3       District Attorney's Solicitors Fund for actual expenses  
4       incurred in connection with its duties.

5               Section 16. The district attorney, to the extent  
6       practicable, may utilize the services of an existing community  
7       corrections program established pursuant to Section 15-18-170  
8       of the Code of Alabama 1975, to provide for the supervision of  
9       a defendant participating in the pretrial diversion program.  
10      The district attorney may utilize the services of an existing  
11      drug court program established pursuant to Section 12-23A-4 of  
12      the 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. This act shall become effective  
16      immediately following its passage and approval by the  
17      Governor, or its otherwise becoming law.