

1 HB495
2 149023-1
3 By Representative Chesteen (N & P)
4 RFD: Local Legislation
5 First Read: 02-APR-13

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Geneva County; to allow municipalities
14 in Geneva County that have a municipal court, city attorney,
15 and police department to establish a discretionary pretrial
16 diversion program and set basic operating standards for the
17 program.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This act shall apply only in Geneva
20 County.

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

23 (1) APPLICATION FEE. A one-time administrative fee
24 imposed by the municipality as a condition precedent to
25 participating in a pretrial diversion program.

26 (2) CITY ATTORNEY. The city attorney of the
27 municipality or any legal staff employed by the city attorney.

1 (3) LAW ENFORCEMENT. As defined in Section
2 41-8A-1(1), Code of Alabama 1975.

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

6 (5) MUNICIPALITY. A municipality in Geneva County
7 that has a municipal court, city attorney, and police
8 department.

9 (6) OFFENDER. Any person charged with a criminal
10 offense, including, but not limited to, any misdemeanor,
11 violation, or traffic offense, as defined by existing law,
12 which was allegedly committed in the corporate limits or
13 police jurisdiction of the municipality.

14 (7) PRETRIAL DIVERSION PROGRAM OR PROGRAM. A program
15 that allows the imposition by the city or by a designated
16 agency of certain conditions of behavior and conduct for a
17 specified period of time upon an offender which allow the
18 offender to have his or her charges reduced, dismissed without
19 prejudice, or otherwise mitigated should all of the conditions
20 be met during the time frame set by the city attorney.

21 (8) SERIOUS PHYSICAL INJURY. As defined in Section
22 13A-1-2(14), Code of Alabama 1975.

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

26 Section 3. (a) A municipality may establish a
27 pretrial diversion program.

1 (b) All discretionary powers endowed by a common law
2 and provided by statutes and acts of this state or powers or
3 discretion otherwise provided by law for the municipality
4 shall be retained.

5 (c) The pretrial diversion program shall be under
6 the direct supervision and control of the municipality and the
7 municipality may contract with any agency, person, or
8 corporation for services related to this act. The municipality
9 may employ necessary persons to accomplish this act and those
10 persons shall serve at the pleasure of the municipality.

11 Section 4. An offender may apply to the municipality
12 for admittance into the pretrial diversion program.

13 Section 5. Admittance into the pretrial diversion
14 program is in the sole discretion of the city attorney. An
15 offender deemed by the city attorney to be a threat to the
16 safety or well being of the community shall not be eligible
17 for the program. An offender charged with any of the following
18 types of offenses shall be ineligible for admittance:

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

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

23 (3) Any offense involving violence where weapons are
24 used or where children are victims.

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

1 (5) Any offense wherein the offender is a public
2 official and the charge is related to the capacity of the
3 offender as a public official.

4 (6) The person may not hold a commercial driver
5 license (CDL) issued in any state, any United States
6 possession or territory, or any United States insular area, or
7 has no conviction for which a commercial driver license was
8 required.

9 Section 6. (a) The city attorney may consider an
10 offender for the pretrial diversion program based on any of
11 the following circumstances:

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

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

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

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

21 (5) The offender will likely respond to
22 rehabilitative treatment or counseling.

23 (6) The need for restitution for the victim from the
24 offender outweighs the interest of the state and city for
25 incarceration of the offender.

1 (b) The city attorney may waive any of the standards
2 specified in subsection (a) if justice or special
3 circumstances dictate.

4 Section 7. (a) Upon application by an offender for
5 admission into the pretrial diversion program, and prior to
6 admission thereto and as a part of the evaluation process of
7 the city attorney, the city attorney may require the offender
8 to furnish information concerning past criminal history,
9 education history, work record, family history, medical or
10 psychiatric treatment or care prescribed or received,
11 psychological tests taken, and any other information
12 concerning the offender which the city attorney believes has a
13 bearing on the decision whether or not the offender should be
14 admitted to the program.

15 (b) The city attorney may require the offender to
16 submit to any type of test or evaluation process or interview
17 the city attorney deems appropriate in evaluating the offender
18 for admittance into the program. The costs of any test or
19 evaluation shall be paid by the offender or as otherwise
20 agreed to or provided for by this act. The offender shall
21 provide the city attorney written consent to allow the city
22 attorney to receive any educational, work, medical,
23 psychiatric, psychological, or other records deemed necessary
24 by the city attorney for the evaluation process.

25 Section 8. (a) Following the decision of the city
26 attorney to admit the offender into the pretrial diversion
27 program, but prior to entry, the city attorney and the

1 offender shall enter into a written agreement stating the
2 conditions of the participation of the offender in the
3 program. The agreement shall include, but not be limited to,
4 all of the following:

5 (1) A voluntary waiver of the right of the offender
6 to a speedy trial.

7 (2) An agreement to the tolling, while in the
8 program, of periods of limitations established by statutes or
9 rules of court.

10 (3) An agreement to the conditions of the program
11 established by the city attorney.

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

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

19 (6) A truthful and complete statement by the
20 offender as to the involvement of the offender in the offense
21 charged, which statement shall be admissible in any criminal
22 trial.

23 (7) Submission of a written plea of guilty to the
24 offense or offenses charged or agreed upon included offenses,
25 together with an agreement as to whether the case is to be
26 dismissed upon successful completion of the program, and an

1 agreement, if there be any, as to the recommended sentence
2 should a sentence be imposed.

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

7 (1) To participate in substance abuse treatment.

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

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

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

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

17 (6) To not commit any criminal offense.

18 (7) To refrain from contact with certain named
19 persons or premises.

20 (8) To maintain or seek employment.

21 (9) To not leave this state without prior written
22 consent of the city attorney or supervising agency or
23 personnel.

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

1 (11) To attend individual, group, financial,
2 chemical addiction, family, mental health, sex offender, or
3 anger management counseling.

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

8 (13) To refrain from the possession or use of any
9 deadly weapon or dangerous instrument as defined in Section
10 13A-1-2, Code of Alabama 1975.

11 (14) To pay supervision fees and application fees
12 pursuant to this act.

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

15 (16) To have restitution, court costs, fees, child
16 support, and any other moneys withheld or garnished from the
17 wages or salary of the offender or withheld from any Alabama
18 income tax due the offender, or from any available insurance
19 policy, or forfeited from any other real or personal property
20 of the offender, and applied to the above.

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

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

1 (19) To waive in writing the right of the offender
2 to a probation hearing in the event of termination or
3 withdrawal from the program.

4 (20) To any other terms or conditions as the city
5 attorney or his or her designee and the offender may agree to
6 in the above-stated agreement, it being the purpose of this
7 act to allow the city attorney broad discretion in designing a
8 program specifically for each offender and his or her
9 particular circumstances.

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

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

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

23 (c) If the city attorney denies an applicant
24 admission into the program, the denied applicant shall have
25 the right to appeal the denial to the municipal court judge.
26 The municipal court judge shall be vested with the authority
27 to approve an applicant in cases wherein the municipal court

1 judge determines that denial was not appropriate and that
2 approval would be in the best interest of justice.

3 Section 9. (a) An offender may be assessed a
4 nonrefundable application fee when the offender is approved
5 for the pretrial diversion program. The amount of the
6 assessment for participating in the program shall be in
7 addition to any court costs, fees, and assessments for the
8 Crime Victim's Compensation Fund, Department of Forensic
9 Sciences assessments, drug, alcohol, or anger management
10 treatment required by law, and any costs of supervision,
11 treatment, and restitution for which the offender may be
12 responsible. A schedule of payments for any of these fees may
13 be established by the city attorney.

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

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

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

20 (3) Other misdemeanor offenses: Seven hundred fifty
21 dollars (\$750).

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

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

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

1 (d) The application fee shall be allocated to the
2 general fund of the municipality.

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

14 Section 10. Application fees required by this act
15 shall be collected by the court clerk of the municipal court.
16 The fees shall be disbursed to each entity or department as
17 allocated by Section 9.

18 Section 11. (a) Upon acceptance of an offender into
19 the pretrial diversion program by the city attorney, the city
20 attorney and the offender shall submit the written application
21 of the offender together with the statement of facts of the
22 offender, the acceptance of the offender by the city attorney,
23 and the agreement between the city attorney and the offender
24 to the court presiding over the affected case of the offender
25 for the approval of the court. The offender shall also enter a
26 plea of guilty to the charge or charges involved. If the court
27 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
25 order of disposition of the case pursuant to the agreement
26 between the offender and the city attorney.

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

14 Section 12. (a) After any violation of any program
15 terms or conditions or upon any breach of any program
16 agreement by the offender, the city attorney may do any of the
17 following:

18 (1) Continue the agreement with or without
19 modification.

20 (2) Terminate the offender from the pretrial
21 diversion program.

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

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

26 Section 13. In no event shall the city attorney or
27 any other agency or service provider have any liability,

1 criminal or civil, for the conduct of any offender while
2 participating in the pretrial diversion program or for
3 acceptance of an offender into the program.

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