

1 SB467  
2 146500-2  
3 By Senator Ward (N & P)  
4 RFD: Local Legislation No. 1  
5 First Read: 25-APR-13

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A BILL

10 TO BE ENTITLED

11 AN ACT

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13 Relating to the City of Alabaster in Shelby County;  
14 to allow the City of Alabaster to establish a discretionary  
15 pretrial diversion program and set basic operating standards  
16 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) APPLICATION FEE. A one-time administrative fee  
21 imposed by the City of Alabaster as a condition precedent to  
22 participating in a pretrial diversion program.

23 (2) CITY PROSECUTOR. The city prosecutor of the City  
24 of Alabaster or any legal staff employed by the city  
25 prosecutor.

26 (3) LAW ENFORCEMENT. As defined in Section  
27 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 Alabaster.

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

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

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

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

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

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

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

Section 4. Admittance into the pretrial diversion program is in the sole discretion of the city prosecutor subject to approval of the municipal judge. An offender deemed by the city prosecutor to be a threat to the safety or well being of the community shall not be eligible for the program. An offender charged with any of the following types of offenses shall be ineligible for admittance:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. (a) Upon application by an offender for admission into the pretrial diversion program, and prior to

1 admission thereto and as a part of the evaluation process of  
2 the city prosecutor, the city prosecutor may require the  
3 offender to furnish information concerning past criminal  
4 history, education history, work record, family history,  
5 medical or psychiatric treatment or care prescribed or  
6 received, psychological tests taken, and any other information  
7 concerning the offender which the city prosecutor believes has  
8 a bearing on the decision whether or not the offender should  
9 be admitted to the program.

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

20 Section 7. (a) Following the decision of the city  
21 prosecutor to admit the offender into the pretrial diversion  
22 program, but prior to entry, the city prosecutor and the  
23 offender shall enter into a written agreement stating the  
24 conditions of the participation of the offender in the  
25 program. The agreement shall include, but not be limited to,  
26 all of the following:

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

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

(3) An agreement to the conditions of the program established by the city prosecutor.

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

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

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

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

(b) In addition to those requirements set forth in subsection (a), or as a condition of continued participation

1 in the program, the city prosecutor may require the offender  
2 to agree to any of the following terms or conditions:

3 (1) To participate in substance abuse treatment.

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

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

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

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

13 (6) To not commit any criminal offense.

14 (7) To refrain from contact with certain named  
15 persons or premises.

16 (8) To maintain or seek employment.

17 (9) To not leave this state without prior written  
18 consent of the city prosecutor or supervising agency or  
19 personnel.

20 (10) To maintain a residence approved by the city  
21 prosecutor or supervising agency or personnel.

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

25 (12) To pay all court costs, fees, fines, and  
26 worthless checks, and obey any other lawful court order

1 associated with the offense or offenses for which the offender  
2 has entered the program, or any other case.

3 (13) To refrain from the possession or use of any  
4 deadly weapon or dangerous instrument as defined in Section  
5 13A-1-2, Code of Alabama 1975.

6 (14) To pay supervision fees and application fees  
7 pursuant to this act.

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

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

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

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

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

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

1 act to allow the city prosecutor broad discretion in designing  
2 a 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 prosecutor.

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 prosecutor 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 by  
26 the municipal judge for the pretrial diversion program. The  
27 amount of the assessment for participating in the program

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

8 (b) The following maximum application fees may be  
9 applied to offenders accepted into the program:

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

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

14 (3) Other misdemeanor offenses: Seven hundred fifty  
15 dollars (\$750).

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

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

19 (c) The amount of the application fee for each  
20 offender shall be established by the city prosecutor.

21 (d) The application fee shall be allocated to the  
22 general fund of the City of Alabaster.

23 (e) An applicant offender may not be denied access  
24 into the pretrial diversion program based solely on the  
25 inability of the offender to pay the application fee.

26 Application fees may be waived or reduced for just cause,  
27 including indigency of the offender, at the discretion of the

1                   city. Any determination of the indigency of the offender for  
2                   purposes of program fee mitigation shall be made by the city,  
3                   but any mitigation shall be done only upon the determination  
4                   by the city that there is no reasonable likelihood within the  
5                   reasonably foreseeable future that the offender will have the  
6                   ability to pay the application fee.

7                   Section 9. Application fees required by this act  
8                   shall be collected by the court clerk of the Alabaster  
9                   Municipal Court. The fees shall be disbursed to each entity or  
10                  department as allocated by Section 8.

11                  Section 10. (a) Upon acceptance of an offender into  
12                  the pretrial diversion program by the city prosecutor, the  
13                  city prosecutor and the offender shall submit the written  
14                  application of the offender together with the statement of  
15                  facts of the offender, the acceptance of the offender by the  
16                  city prosecutor, and the agreement between the city prosecutor  
17                  and the offender to the court presiding over the affected case  
18                  of the offender for the approval of the court. The offender  
19                  shall also enter a plea of guilty to the charge or charges  
20                  involved. If the court rejects the agreement and guilty plea,  
21                  any money paid by the offender in satisfaction of the  
22                  application fee shall be refunded to the offender. The  
23                  offender shall remain liable for any actual expenses already  
24                  incurred by the city or any agency or service provider in  
25                  furtherance of the application and evaluation process and the  
26                  same will be deducted from any money so refunded to the  
27                  offender.

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

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

(d) Upon successful completion of the program by the offender, the city prosecutor shall notify the court in writing of that fact together with a request that the court enter an order of disposition of the case pursuant to the agreement between the offender and the city prosecutor.

(e) Regardless of whether the offender successfully completes the program or withdraws from or is terminated from the program, the offender shall be liable for and required to pay and all court costs and fees, restitution, victim's compensation fund assessment, and any and all other fees and assessments, in the same manner as if the offender had not applied for entry into the program and had been found guilty

of the offense or offenses involved. No costs, fees, restitution, or assessments shall be waived or remitted, absent an express agreement to that effect between the city prosecutor and the offender, without a finding by the court that the offender does not have the reasonable ability to pay the same within the reasonably foreseeable future.

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

(1) Continue the agreement with or without modification.

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

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

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

Section 12. In no event shall the city or its employees and agents or any city prosecutor, magistrate, municipal court judge, or any other agency or service provider have any liability, criminal or civil, for the conduct of any offender while participating in the pretrial diversion program or for acceptance of an offender into the program.

Section 13. The provisions of this act are severable. If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part  
2 which remains.

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