

1 HB198
2 134705-3
3 By Representatives McCutcheon, Williams (D) and Hammon (N & P)
4 RFD: Local Legislation
5 First Read: 07-FEB-12

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ENROLLED, An Act,

Relating to Limestone County and the Thirty-ninth Judicial Circuit, to allow the District Attorney of the Thirty-ninth Judicial Circuit, to establish a discretionary pretrial diversion program and set basic operating standards for the program.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

(1) APPLICATION FEE. A one-time administrative fee imposed by the District Attorney of the Thirty-ninth Judicial Circuit as a condition precedent to participation in a pretrial diversion program.

(2) DISTRICT ATTORNEY. The elected District Attorney of the Thirty-ninth Judicial Circuit or any staff employed by the district attorney.

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

(4) LAW ENFORCEMENT OFFICER. As defined in Section 36-25-1(15), Code of Alabama 1975, including, but not limited to, police personnel, sheriff personnel, district attorney investigator, Department of Human Resources personnel, parole and probation personnel, community corrections office

1 personnel, and court referral office personnel, whether
2 employed in the State of Alabama or elsewhere.

3 (5) OFFENDER. Any person charged with a criminal
4 offense, including, but not limited to, any felony,
5 misdemeanor, violation, or traffic offense, as defined by the
6 Code of Alabama 1975, which was allegedly committed in the
7 jurisdiction of the Thirty-ninth Judicial Circuit.

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

16 (7) SERIOUS PHYSICAL INJURY. As defined in Section
17 13A-1-2(14), Code of Alabama 1975.

18 (8) SUPERVISION FEE. Any fee imposed by any agency
19 providing supervision or treatment of an offender.

20 Section 2. (a) The District Attorney of the
21 Thirty-ninth Judicial Circuit of Alabama may establish a
22 pretrial diversion program.

23 (b) All discretionary powers endowed by the common
24 law and provided by statutes and acts of this state or powers
25 or discretion otherwise provided by law for the District

1 Attorney of the Thirty-ninth Judicial Circuit shall be
2 retained.

3 (c) The pretrial diversion program shall be under
4 the direct supervision and control of the district attorney,
5 and the district attorney may contract with any agency,
6 person, or corporation, including, but not limited to, the
7 Limestone County Community Correction Program and the Drug
8 Court for Limestone County, for services related to this act.
9 The district attorney may employ necessary persons to
10 accomplish this act and such persons shall serve at the
11 pleasure of the district attorney.

12 Section 3. An offender may apply to the district
13 attorney for admittance into the Pretrial Diversion Program.
14 The application shall be made in the time and manner
15 designated by the district attorney.

16 Section 4. Admittance into the pretrial diversion
17 program is in the absolute discretion of the district
18 attorney. However, an offender deemed by the district attorney
19 to be a threat to the safety or well-being of the community
20 shall not be eligible for the program. Further, an offender
21 charged with the following offenses shall be ineligible for
22 admittance:

- 23 (1) A Class A felony or capital offense.

1 (2) An offense which intentionally, knowingly or
2 recklessly resulted in death or serious physical injury to a
3 person.

4 (3) An offense involving the use of a deadly weapon.

5 (4) Chemical endangerment of a child.

6 (5) An offense involving violence in which the
7 victim was a child under 14 years of age, a law enforcement
8 officer, a school officer, a correctional officer, active duty
9 military personnel of the United States Armed Forces, or an
10 elderly person over the age of 65.

11 (6) An offense involving violence in which the
12 victim was an employee of any school system which lies within
13 the geographic boundaries of the Thirty-ninth Judicial
14 Circuit.

15 (7) Trafficking in controlled substances or
16 marijuana.

17 (8) Driving under the influence of alcohol, driving
18 under the influence of a controlled substance, driving under
19 the combined influence of alcohol and a controlled substance,
20 or driving under the influence of any substance which impairs
21 the mental or physical faculties wherein the offender has been
22 previously charged with or convicted of driving under the
23 influence of alcohol, driving under the influence of a
24 controlled substance, driving under the combined influence of
25 alcohol and a controlled substance, or driving under the

1 influence of any substance which impairs the mental or
2 physical faculties, or where a chemical test was given to the
3 offender and the results of the chemical test revealed a
4 greater than .15 percentage by weight of alcohol in the blood.

5 (9) Bribery.

6 (10) Any offense wherein the offender is a public
7 official and the charge is related to the offender's capacity
8 as a public official.

9 (11) Any offense wherein a holder of a commercial
10 driver's license, an operator of a commercial motor vehicle,
11 or a commercial driver learner permit holder has been charged
12 with a violation of a traffic law in this state pursuant to
13 Section 32-6-49.23, Code of Alabama 1975.

14 Section 5. (a) The district attorney may consider an
15 offender for the pretrial diversion program based on any of
16 the following circumstances:

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

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

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

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

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

3 (b) The district attorney may waive any of the
4 standards specified in subsection (a) if justice or special
5 circumstances dictate.

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

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

1 other records deemed necessary by the district attorney for
2 the evaluation process.

3 Section 7. (a) Following the decision of the
4 district attorney to admit the offender into the pretrial
5 diversion program, but prior to entry, the district attorney
6 and the offender shall enter into a written agreement stating
7 the conditions of the participation of the offender in the
8 program. The agreement shall include, but not be limited to,
9 the following:

10 (1) A voluntary waiver of the offender's right to a
11 speedy trial.

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

15 (3) An agreement to the conditions of the program
16 established by the district attorney.

17 (4) If there is a victim of the charged crime, an
18 agreement to a restitution repayment within a specified period
19 of time and in an amount to be determined by the district
20 attorney taking into account circumstances of the offender and
21 the victim.

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

1 (6) A statement as to the offender's involvement in
2 the offense charged, which statement shall be admissible in
3 any criminal trial.

4 (7) If requested by the district attorney, a written
5 plea of guilty to the offense charged or agreed upon included
6 offense.

7 (8) An agreement in writing to the jurisdiction of
8 the court beyond completion of any disposition of the case,
9 end of sentence, termination of parole or probation, or
10 conclusion of the pretrial diversion program to enforce
11 collection of restitution, cost of court, fines, fees, or
12 other agreed upon or court ordered monies, pursuant to Section
13 12-17-225, Code of Alabama 1975.

14 (b) In addition to the requirements set forth in
15 subsection (a), or as a condition of continued participation
16 in the program, the district attorney may require the offender
17 to agree to any of the following terms or conditions:

18 (1) Participating in substance abuse treatment.

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

22 (3) If appropriate, learning to read and write the
23 English language.

24 (4) Providing financial support of his or her
25 children or payment of any court ordered child support.

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

3 (6) Not committing any criminal offense.

4 (7) Refraining from contact with certain named
5 persons or premises.

6 (8) Maintaining or seeking employment.

7 (9) Not leaving the State of Alabama without prior
8 written consent of the district attorney or supervising agency
9 or personnel.

10 (10) Maintaining a residence approved by the
11 district attorney or supervising agency or personnel.

12 (11) Attending individual, group, financial,
13 chemical addiction, or family, mental health, or anger
14 management counseling.

15 (12) Paying all court costs and fees, fines, and
16 worthless checks and obeying any other lawful court order
17 associated with the offense for which the offender has entered
18 the program, or any other case.

19 (13) Refraining from the possession or use of any
20 deadly weapon or dangerous instrument.

21 (14) Paying supervision fees and application fees
22 pursuant to the provisions of this act.

23 (15) Observing curfews or home detention or travel
24 constraints as set out in the agreement signed by the
25 offender.

1 (16) Having restitution, court costs, fees, child
 2 support, and any other moneys withheld or garnished from the
 3 wages or salary of the offender or withheld from any Alabama
 4 income tax due the offender or from any available insurance
 5 policy applied to the above.

6 (17) Being admitted to a drug or alcohol treatment
 7 program on an inpatient or outpatient basis or receive other
 8 treatment alternatives for substance abuse.

9 (18) Submitting to periodic or random drug testing
 10 as a part of the program and other terms and conditions
 11 related to substance abuse as the district attorney may
 12 direct.

13 (19) Any other term or condition as the district
 14 attorney or his or her designee and the offender may agree to
 15 in the above-stated agreement, it being the purpose of this
 16 act to allow the district attorney broad discretion in
 17 designing a program specifically for each offender and his or
 18 her particular circumstances.

19 (20) When applicable, paying supervision fees to the
 20 agency or entity responsible for monitoring and verifying the
 21 offender's compliance with the terms of the program set forth
 22 by the district attorney. Such fees shall be paid by the
 23 offender to the supervising entity in a timely manner.

24 Section 8. (a) An offender may be assessed a
 25 nonrefundable application fee when the offender is approved

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

10 (b) The amount of the application fee shall be
11 established by the district attorney.

12 (c) The application fee shall be allocated and paid
13 to the following offices or entities as follows:

14 (1) Ten percent shall be allocated to the
15 appropriate circuit or district court clerk in which the case
16 originates to the clerk's fund as provided by law and shall be
17 available for use, at the discretion of the clerk, to support
18 the office of the clerk.

19 (2) Five percent shall be allocated to Limestone
20 County Children's Advocacy Center for the use of the center,
21 at the discretion of the head of the center, for law
22 enforcement purposes. If the Limestone County Children's
23 Advocacy Center should be closed, this allocation shall revert
24 to the Limestone County District Attorney's Solicitor's Fund.

1 (3) Five percent shall be allocated to the Limestone
2 County Family Resource Center for the use of the center, at
3 the discretion of the head of the center, for law enforcement
4 purposes. If the Limestone County Family Resource Center
5 should be closed, this allocation shall revert to the
6 Limestone County District Attorney's Solicitor's Fund.

7 (4) The remainder of the application fees shall be
8 allocated to the Limestone County District Attorney's
9 Solicitor's Fund and shall be available, at the discretion of
10 the district attorney, for any law enforcement purpose.

11 (d) An applicant offender may not be denied access
12 into the pretrial diversion program based solely on the
13 offender's inability to pay the application fee. Application
14 fees may be waived or reduced, for just cause, including
15 indigency of the offender, at the discretion of the district
16 attorney. Any determination of the indigency of the offender
17 for purposes of program fee mitigation shall be made by the
18 district attorney but such mitigation shall be done only upon
19 a determination by the district attorney that there is no
20 reasonable likelihood within the reasonably foreseeable future
21 that the offender will have the ability to pay the application
22 fee.

23 Section 9. (a) Application fees required by this act
24 shall be collected by the appropriate circuit or district
25 court clerk of the Thirty-ninth Judicial Circuit. The fees

1 shall be disbursed to the appropriate court clerk, the
2 Limestone County Children's Advocacy Center, the Limestone
3 County Family Resource Center, and the Limestone County
4 District Attorney's Solicitor's Fund, as allocated by Section
5 8, and as other costs and fees are disbursed to the Limestone
6 County District Attorney's Solicitor's Fund.

7 (b) All fees paid by offenders which are disbursed
8 by the court clerk to the office of the district attorney
9 shall be used to pay costs associated with the administration
10 of the pretrial diversion program or for other law enforcement
11 purposes deemed necessary by the district attorney.

12 Section 10. (a) Upon acceptance of an offender into
13 the pretrial diversion program, the district attorney and the
14 offender shall submit the offender's written application
15 together with the offender's statement of facts, the district
16 attorney's acceptance of the offender, and the agreement
17 between the district attorney and the offender to the court
18 presiding over the offender's affected case. The offender
19 shall also enter a plea of guilty to the charge(s) involved.

20 (b) Upon acceptance of the agreement, the court
21 shall withdraw and file the case or otherwise place it on an
22 administrative docket until such time as the court has been
23 notified that the offender has either fulfilled the terms of
24 the agreement or has been terminated from the program.
25 However, acceptance of the plea of guilty and imposition of

1 punishment by the court shall be deferred until and unless the
2 offender is terminated from the program. In the event the
3 offender is terminated from the program, the court shall
4 accept the plea of guilty and impose appropriate punishment in
5 the same manner as with any plea of guilty or finding of
6 guilt.

7 (c) Upon successful completion of the program by the
8 offender, the district attorney shall notify the court in
9 writing of that fact together with a request that the case be
10 dismissed whereupon the court shall enter an order to that
11 effect and the offender shall be discharged.

12 (d) Regardless of whether the offender successfully
13 completes the program or is terminated from the program, the
14 offender is liable for and shall pay any and all court costs
15 and fees, restitution, victim's compensation fund assessment,
16 and any and all other fees and assessments in the same manner
17 as if the offender had not applied for entry into the program
18 and had been found guilty of the offense involved.
19 Notwithstanding the foregoing, no such costs, fees,
20 restitution, or assessments shall be waived or remitted,
21 absent an express agreement to that effect between the
22 district attorney and the offender, without a finding that the
23 offender does not have the reasonable ability to pay within
24 the reasonably foreseeable future.

1 Section 11. (a) After any violation of any program
2 terms or conditions or upon any breach of any program
3 agreement by the offender, the district attorney may do any of
4 the following:

5 (1) Continue the agreement with or without
6 modification.

7 (2) Terminate the agreement.

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

10 (b) The district attorney may waive a violation for
11 good cause showing why the offender should stay in the
12 program.

13 Section 12. In no event shall the district attorney,
14 the Limestone County Community Corrections program, the
15 Limestone County Drug Court, or any other agency or service
16 provider have any liability, criminal or civil, for the
17 conduct of any offender while participating in the pretrial
18 diversion program or for acceptance of an offender into the
19 program.

20 Section 13. The district attorney, to the extent
21 practicable, shall utilize the services of community
22 corrections programs established pursuant to Section
23 15-18-170, Code of Alabama 1975, to provide for the
24 supervision of offenders in the pretrial diversion program.

1 Section 14. 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 15. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 21-FEB-12.

Greg Pappas
Clerk

Senate

08-MAY-12

Passed