

1 HB573
2 135619-1
3 By Representative Vance (N & P)
4 RFD: Local Legislation
5 First Read: 20-MAR-12

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 To provide for the establishment of a pretrial
14 diversion program in the 26th Judicial Circuit in Russell
15 County; to set basic operating standards for the program; and
16 to provide for program fees and their distribution.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

20 (1) APPLICATION FEE. A one-time administrative fee
21 imposed by the District Attorney of the 26th Judicial Circuit
22 as a condition precedent to participation in a pretrial
23 diversion program.

24 (2) DISTRICT ATTORNEY. The District Attorney for the
25 26th Judicial Circuit of Alabama in Russell County, or any of
26 his or her staff.

1 (3) LAW ENFORCEMENT. Any activity pertaining to
2 crime prevention, control, or reduction or enforcement of the
3 criminal law, including, but not limited to, police efforts to
4 prevent, control, or reduce crime or apprehend criminals,
5 activities of courts having criminal jurisdiction and related
6 agencies, including prosecutorial and defender services,
7 activities of corrections, probation, or parole or community
8 correction authorities and programs relating to the
9 prevention, control, or reduction of juvenile delinquency or
10 alcoholism, narcotic and drug addiction, and domestic
11 violence.

12 (4) LAW ENFORCEMENT OFFICER. As defined in Section
13 36-25-1(15), Code of Alabama 1975.

14 (5) OFFENDER. Any person charged with a criminal
15 offense, including, but not limited to, any felony,
16 misdemeanor, violation, traffic offense, or violation of a
17 municipal ordinance which offense was allegedly committed in
18 the jurisdiction of the 26th Judicial Circuit.

19 (6) PRETRIAL DIVERSION PROGRAM or PROGRAM. A program
20 that allows the imposition of certain conditions of behavior
21 and conduct by the district attorney or by a designated agency
22 for a specified period of time upon an offender which would
23 allow the offender to have his or her charges reduced,
24 dismissed without prejudice, or otherwise mitigated should all
25 of the conditions be met during the time frame set by the
26 district attorney.

1 (7) PUBLIC OFFICIAL. Includes all elected and
2 appointed government officials as well as all employees of any
3 federal, state, county, or municipal agency including, but not
4 limited to, schools, colleges, and universities.

5 (8) SERIOUS PHYSICAL INJURY. As defined in Section
6 13A-1-2(14), Code of Alabama 1975.

7 (9) SUPERVISION FEE. Any fee imposed by any agency
8 providing supervision or treatment of the offender.

9 Section 2. (a) The district attorney may establish a
10 pretrial diversion program within the 26th Judicial Circuit in
11 Russell County.

12 (b) All discretionary powers endowed by the common
13 law, provided for by statute or acts of this state, or
14 otherwise provided by law for the district attorneys of this
15 state shall be retained by the District Attorney of the 26th
16 Judicial Circuit.

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

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

24 Section 3. (a) An offender may apply to the district
25 attorney for admittance to the pretrial diversion program.

26 (b) Admittance into the pretrial diversion program
27 is in the absolute discretion of the district attorney and

1 decisions to admit or to deny admittance to the program shall
2 not be subject to review by any court or other agency.

3 Moreover, an offender deemed by the district attorney to be a
4 threat to the safety or well-being of the community shall not
5 be eligible for the program.

6 (c) An offender charged with the following offenses
7 shall be ineligible for admittance:

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

9 (2) Any offense involving death or serious physical
10 injury to any person, other than the offender.

11 (3) Any offense involving the use of a deadly
12 weapon.

13 (4) Trafficking in controlled substances or
14 marijuana or manufacturing controlled substances in the first
15 degree.

16 (5) Bribery of a government or public official or
17 the acceptance of bribes by such officials.

18 (6) Any offense wherein the offender is a public
19 official and the charge is related to the offender's capacity
20 as a public official.

21 (7) Any sex offense involving forcible compulsion or
22 incapacity, or any sex offense wherein the victim is under 12
23 years of age.

24 (8) Any traffic offense wherein the offender is a
25 holder of a commercial driver's license or a commercial driver
26 learner permit or is an operator of a commercial motor
27 vehicle.

1 Section 4. (a) In determining whether an offender
2 may be admitted into the pretrial diversion program, it shall
3 be appropriate for the district attorney to consider any or
4 all of the following circumstances:

5 (1) There is a probability that justice will be
6 served if the offender is placed into the pretrial diversion
7 program.

8 (2) It is determined that the needs of the community
9 and the offender can be met through the program.

10 (3) The offender appears to pose no substantial
11 threat to the safety and well-being of the community or law
12 enforcement.

13 (4) The offender appears unlikely to be involved in
14 further criminal activity.

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

17 (b) The district attorney may waive any of the
18 standards specified in subsection (a) if justice or
19 circumstances dictate.

20 Section 5. (a) Upon application by an offender for
21 admission into the pretrial diversion program and prior to
22 admission thereto and as a part of the district attorney's
23 evaluation process, the district attorney may require the
24 offender to furnish information concerning past criminal
25 history, education history, work history, family history,
26 medical or psychiatric treatment or care prescribed or
27 received, psychological tests taken, and any other information

1 concerning the offender which the district attorney, in his or
2 her sole discretion, believes has a bearing on the decision to
3 admit or deny the offender to the program.

4 (b) The district attorney may require the offender
5 to submit to any type of test or evaluation process or
6 interview which the district attorney deems appropriate in
7 evaluating the offender. The costs of any test or evaluation
8 shall be paid by the offender. The offender shall provide the
9 district attorney, upon request, with written consent to
10 receive any additional educational, work, medical,
11 psychiatric, and psychological records or any other records
12 deemed necessary by the district attorney.

13 Section 6. (a) Following the decision of the
14 district attorney to admit the offender into the pretrial
15 diversion program, but prior to entry, the district attorney
16 and the offender shall enter into a written agreement stating
17 the conditions of the participation of the offender in the
18 program. The agreement shall include, but not be limited to,
19 all of the following:

20 (1) A voluntary waiver of the offenders right to a
21 speedy trial.

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

25 (3) An agreement to the conditions of the program
26 established by the district attorney.

1 (4) If there is a victim of the charged crime, an
2 agreement to pay restitution within a specified period of time
3 and according to a specified payment schedule setting forth
4 the amounts of each payment. The offender shall further agree
5 to extend the jurisdiction of the court beyond completion of
6 any disposition of the case, end of sentence, termination of
7 parole or probation, or conclusion of the pretrial diversion
8 program to enforce collection of restitution, court costs,
9 fines, fees, or other agreed upon or court ordered monies.

10 (5) A waiver in writing of the offender's right to a
11 trial by jury.

12 (6) A written statement as to the offender's
13 involvement in the offense charged, which statement shall be
14 admissible in any criminal trial.

15 (7) The entering of a plea of guilty to the offense
16 charged.

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

21 (1) Participation in a substance abuse treatment
22 program.

23 (2) Participation in an education setting to
24 include, but not be limited to, K-12, college, job or
25 vocational training, GED classes, trade school, or basic
26 education courses.

1 (3) Financially supporting his or her children or
2 paying any court ordered child support.

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

6 (5) Not committing any new criminal offense.

7 (6) Refraining from contact with certain named
8 persons or premises.

9 (7) Seeking and maintaining employment.

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

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

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

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

21 (12) Paying supervision, application, and any other
22 fees incurred pursuant to this program.

23 (13) Observing curfews or home detention or travel
24 constraints as set out by the district attorney.

25 (14) Admission to an out-patient or in-patient drug
26 or alcohol treatment program.

27 (15) Submission to periodic or random drug testing.

1 (16) When applicable, paying supervision fees to any
2 agency or entity responsible for monitoring and verifying the
3 offender's compliance with the terms of the program as set
4 forth by the district attorney.

5 (17) Any other terms or conditions as the district
6 attorney or his or her designee and the offender may agree to,
7 it being the purpose of this act to allow the district
8 attorney broad discretion in designing a program specifically
9 for each offender and his or her particular circumstances.

10 Section 7. (a) An offender may be assessed a
11 non-refundable application fee when the offender is approved
12 for the pretrial diversion program. The amount of the
13 application fee shall be in addition to any other costs
14 assessed pursuant to this program. A schedule of payments for
15 the application fee or any other fees may be established by
16 the district attorney.

17 (b) The following application fees as set by the
18 district Attorney shall apply to offenders accepted into the
19 program:

20 (1) Felony offenses: Up to one thousand dollars
21 (\$1,000).

22 (2) Misdemeanors and DUI offenses: Up to seven
23 hundred fifty dollars (\$750).

24 (3) Traffic offenses and violations: Up to five
25 hundred dollars (\$500).

26 (c) The exact amount of the application fee in each
27 case shall be established by the district attorney.

1 (d) An applicant may not be denied access into the
2 pretrial diversion program based solely on the offender's
3 inability to pay the application fee. Application fees may be
4 reduced or waived, for just cause, at the discretion of the
5 district attorney.

6 Section 8. All fees paid to the district attorney by
7 offenders pursuant to this act shall be paid into the District
8 Attorney's Solicitor Fund. The funds shall be used to pay any
9 costs associated with the administration of this program or
10 for any other lawful purpose of the district attorney's office
11 including, but not limited to, salaries, rent, vehicles,
12 uniforms, telephones, postage, office supplies and equipment,
13 training and travel costs, service contracts, or professional
14 services.

15 Section 9. (a) Upon acceptance of an offender into
16 the pretrial diversion program, the district attorney shall
17 submit the offender's written application, together with the
18 offender's statement of facts, the district attorney's
19 acceptance of the offender, and the agreement between the
20 district attorney and the offender, to the court presiding
21 over the offender's case. The offender shall then enter a plea
22 of guilty to the charge.

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

1 However, imposition of punishment by the court shall be
2 deferred until and unless the offender is terminated from the
3 program. In the event the offender is terminated from the
4 program, the court shall impose punishment in the same manner
5 as any other plea of guilty.

6 (c) Upon successful completion of the program by the
7 offender, the district attorney shall notify the court in
8 writing of that fact together with a request that the plea of
9 guilty be set aside and the case be dismissed.

10 (d) Regardless of whether the offender successfully
11 completes the program or is terminated from the program, the
12 offender shall be liable for any and all court costs, fees,
13 restitution, and any other assessment levied by the court.

14 Section 10. After any violation of any program terms
15 or conditions or upon any breach of any program agreement by
16 the offender, the district attorney may do either of the
17 following:

18 (1) Modify the terms, conditions, and requirements
19 of the program for the offender.

20 (2) Terminate the offender from the program.

21 Section 11. An offender who is accepted into the
22 program shall pay all costs thereof including, but not limited
23 to, treatment costs, testing costs, and monitoring costs.

24 Section 12. The district attorney, his or her staff,
25 any treatment provider, monitoring provider, or any other
26 agency or service provider shall not have any liability,
27 criminal or civil, for the conduct of any offender while

1 participating in the pretrial diversion program or for
2 acceptance of an offender into the program.

3 Section 13. The pretrial diversion program may apply
4 for grants, may accept gifts from individuals or corporations,
5 and may receive funding appropriations from federal, state,
6 county, or local governments or agencies.

7 Section 14. The district attorney may utilize the
8 services of the Russell County Drug Court and Russell County
9 Community Corrections and may contract with any other agency,
10 person, or corporation for services related to this act and
11 may employ such persons as necessary to accomplish this act.

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