

1 HB573
2 135619-2
3 By Representative Vance (N & P)
4 RFD: Local Legislation
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ENROLLED, An Act,

To provide for the establishment of a pretrial diversion program in the 26th Judicial Circuit in Russell 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) APPLICATION FEE. A one-time administrative fee imposed by the District Attorney of the 26th Judicial Circuit as a condition precedent to participation in a pretrial diversion program.

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

(3) LAW ENFORCEMENT. Any activity pertaining to crime prevention, control, or reduction or enforcement of the criminal law, including, but not limited to, police efforts to prevent, control, or reduce crime or apprehend criminals, activities of courts having criminal jurisdiction and related agencies, including prosecutorial and defender services, activities of corrections, probation, or parole or community correction authorities and programs relating to the prevention, control, or reduction of juvenile delinquency or

1 alcoholism, narcotic and drug addiction, and domestic
2 violence.

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

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

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

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

22 (8) SERIOUS PHYSICAL INJURY. As defined in Section
23 13A-1-2(14), Code of Alabama 1975.

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

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

4 (b) All discretionary powers endowed by the common
5 law, provided for by statute or acts of this state, or
6 otherwise provided by law for the district attorneys of this
7 state shall be retained by the District Attorney of the 26th
8 Judicial Circuit.

9 (c) The pretrial diversion program shall be under
10 the direct supervision and sole control of the district
11 attorney.

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

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

18 (b) Admittance into the pretrial diversion program
19 is in the absolute discretion of the district attorney and
20 decisions to admit or to deny admittance to the program shall
21 not be subject to review by any court or other agency.

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

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

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

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

6 (3) Any offense involving the use of a deadly
7 weapon.

8 (4) Trafficking in controlled substances or
9 marijuana or manufacturing controlled substances in the first
10 degree.

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

13 (6) Any offense wherein the offender is a public
14 official and the charge is related to the offender's capacity
15 as a public official.

16 (7) Any sex offense involving forcible compulsion or
17 incapacity, or any sex offense wherein the victim is under 12
18 years of age.

19 (8) Any traffic offense wherein the offender is a
20 holder of a commercial driver's license or a commercial driver
21 learner permit or is an operator of a commercial motor
22 vehicle.

23 Section 4. (a) In determining whether an offender
24 may be admitted into the pretrial diversion program, it shall

1 be appropriate for the district attorney to consider any or
2 all of the following circumstances:

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

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

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

11 (4) The offender appears unlikely to be involved in
12 further criminal activity.

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

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

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

1 (3) An agreement to the conditions of the program
2 established by the district attorney.

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

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

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

17 (7) The entering of a plea of guilty to the offense
18 charged.

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

23 (1) Participation in a substance abuse treatment
24 program.

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

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

7 (4) Refraining from the use of drugs or alcohol or
8 from frequenting places where drugs or alcohol are sold or
9 used.

10 (5) Not committing any new criminal offense.

11 (6) Refraining from contact with certain named
12 persons or premises.

13 (7) Seeking and maintaining employment.

14 (8) Maintaining a residence approved by the district
15 attorney or supervising agency.

16 (9) Attending individual, group, financial, chemical
17 addiction, family, mental health, anger management, or
18 parenting counseling.

19 (10) Paying all court costs and fees, fines,
20 worthless checks, and obeying any other lawful court order
21 associated with the offense for which the offender has entered
22 the program.

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

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

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

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

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

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

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

17 Section 7. (a) An offender may be assessed a
18 non-refundable application fee when the offender is approved
19 for the pretrial diversion program. The amount of the
20 application fee shall be in addition to any other costs
21 assessed pursuant to this program. A schedule of payments for
22 the application fee or any other fees may be established by
23 the district attorney.

1 (b) The following application fees as set by the
2 district Attorney shall apply to offenders accepted into the
3 program:

4 (1) Felony offenses: Up to one thousand dollars
5 (\$1,000).

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

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

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

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

17 Section 8. All fees paid to the district attorney by
18 offenders pursuant to this act shall be paid into the District
19 Attorney's Solicitor Fund. The funds shall be used to pay any
20 costs associated with the administration of this program or
21 for any other lawful purpose of the district attorney's office
22 including, but not limited to, salaries, rent, vehicles,
23 uniforms, telephones, postage, office supplies and equipment,
24 training and travel costs, service contracts, or professional
25 services.

1 Section 9. (a) Upon acceptance of an offender into
2 the pretrial diversion program, the district attorney shall
3 submit the offender's written application, together with the
4 offender's statement of facts, the district attorney's
5 acceptance of the offender, and the agreement between the
6 district attorney and the offender, to the court presiding
7 over the offender's case. The offender shall then enter a plea
8 of guilty to the charge.

9 (b) Upon acceptance of the plea, the court shall
10 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 either fulfilled the terms of
13 the agreement or has been terminated from the program.
14 However, imposition of punishment by the court shall be
15 deferred until and unless the offender is terminated from the
16 program. In the event the offender is terminated from the
17 program, the court shall impose punishment in the same manner
18 as any other plea of guilty.

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

23 (d) Regardless of whether the offender successfully
24 completes the program or is terminated from the program, the

1 offender shall be liable for any and all court costs, fees,
2 restitution, and any other assessment levied by the court.

3 Section 10. After any violation of any program terms
4 or conditions or upon any breach of any program agreement by
5 the offender, the district attorney may do either of the
6 following:

7 (1) Modify the terms, conditions, and requirements
8 of the program for the offender.

9 (2) Terminate the offender from the program.

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

13 Section 12. The district attorney, his or her staff,
14 any treatment provider, monitoring provider, or any other
15 agency or service provider shall not have any liability,
16 criminal or civil, for the conduct of any offender while
17 participating in the pretrial diversion program or for
18 acceptance of an offender into the program.

19 Section 13. The pretrial diversion program may apply
20 for grants, may accept gifts from individuals or corporations,
21 and may receive funding appropriations from federal, state,
22 county, or local governments or agencies.

23 Section 14. The district attorney may utilize the
24 services of the Russell County Drug Court and Russell County
25 Community Corrections and may contract with any other agency,

1 person, or corporation for services related to this act and
2 may employ such persons as necessary to accomplish this act.

3 Section 15. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

