

1 HB617  
2 136267-3  
3 By Representatives Lee, Grimsley, Clouse and Chesteen (N & P)  
4 RFD: Local Legislation  
5 First Read: 03-APR-12

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9 A BILL  
10 TO BE ENTITLED  
11 AN ACT  
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13 Relating to the City of Dothan; to allow the City of  
14 Dothan to establish a discretionary pretrial diversion program  
15 and set basic operating standards for the program.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 (1) APPLICATION FEE. A one-time administrative fee  
20 imposed by the City of Dothan as a condition precedent to  
21 participating in a pretrial diversion program.

22 (2) CITY ATTORNEY. The city attorney of the City of  
23 Dothan or any legal staff employed by the city attorney.

24 (3) LAW ENFORCEMENT. As defined in Section  
25 41-8A-1(1), Code of Alabama 1975.

1 (4) LAW ENFORCEMENT OFFICER. As defined in Section  
2 36-25-1(15), Code of Alabama 1975, whether employed in the  
3 this state or elsewhere.

4 (5) OFFENDER. Any person charged with a criminal  
5 offense, including, but not limited to, any misdemeanor,  
6 violation, or traffic offense, as defined by existing law,  
7 which was allegedly committed in the corporate limits or  
8 police jurisdiction of the City of Dothan.

9 (6) PRETRIAL DIVERSION PROGRAM OR PROGRAM. A program  
10 that allows the imposition by the city or by a designated  
11 agency of certain conditions of behavior and conduct for a  
12 specified period of time upon an offender which allow the  
13 offender to have his or her charges reduced, dismissed without  
14 prejudice, or otherwise mitigated should all of the conditions  
15 be met during the time frame set by the city 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 other than the  
19 application fee imposed by any agency providing supervision of  
20 treatment of the offender.

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

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

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

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

9 Section 4. Admittance into the pretrial diversion  
10 program is in the sole discretion of the city attorney. An  
11 offender deemed by the city attorney to be a threat to the  
12 safety or well being of the community shall not be eligible  
13 for the program. An offender charged with any of the following  
14 types of offenses shall be ineligible for admittance:

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

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

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

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

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

26 (6) The person may not hold a commercial driver  
27 license (CDL) issued in any state, any United States

1 possession or territory, or any United States insular area, or  
2 has no conviction for which a commercial driver license was  
3 required.

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

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

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

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

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

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

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

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

24 Section 6. (a) Upon application by an offender for  
25 admission into the pretrial diversion program, and prior to  
26 admission thereto and as a part of the evaluation process of  
27 the city attorney, the city attorney may require the offender

1 to furnish information concerning past criminal history,  
2 education history, work record, family history, medical or  
3 psychiatric treatment or care prescribed or received,  
4 psychological tests taken, and any other information  
5 concerning the offender which the city attorney believes has a  
6 bearing on the decision whether or not the offender should be  
7 admitted to the program.

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

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

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

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

4                   (3) An agreement to the conditions of the program  
5 established by the city attorney.

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

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

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

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

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

27                   (1) To participate in substance abuse treatment.

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

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

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

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

10                  (6) To not commit any criminal offense.

11                  (7) To refrain from contact with certain named  
12 persons or premises.

13                  (8) To maintain or seek employment.

14                  (9) To not leave this state without prior written  
15 consent of the city attorney or supervising agency or  
16 personnel.

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

19                  (11) To attend individual, group, financial,  
20 chemical addiction, family, mental health, sex offender, or  
21 anger management counseling.

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

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

4           (14) To pay supervision fees and application fees  
5 pursuant to this act.

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

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

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

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

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

23           (20) To any other terms or conditions as the city  
24 attorney or his or her designee and the offender may agree to  
25 in the above-stated agreement, it being the purpose of this  
26 act to allow the city attorney broad discretion in designing a

1 program specifically for each offender and his or her  
2 particular circumstances.

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

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

9 (22) Community service with an approved community  
10 service, charitable, or nonprofit organization. The prosecutor  
11 shall compile a list of approved organizations for each  
12 participant. Participants who wish to complete this  
13 requirement with an organization not on the prosecutor's list  
14 shall have any such organization pre-approved by the  
15 prosecutor.

16 (c) If the city attorney denies an applicant  
17 admission into the program, the denied applicant shall have  
18 the right to appeal the denial to the municipal court judge.  
19 The municipal court judge shall be vested with the authority  
20 to approve an applicant in cases wherein the municipal court  
21 judge determines that denial was not appropriate and that  
22 approval would be in the best interest of justice.

23 Section 8. (a) An offender may be assessed a  
24 nonrefundable application fee when the offender is approved  
25 for the pretrial diversion program. The amount of the  
26 assessment for participating in the program shall be in  
27 addition to any court costs, fees, and assessments for the

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

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

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

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

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

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

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

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

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

22 (e) An applicant offender may not be denied access  
23 into the pretrial diversion program based solely on the  
24 inability of the offender to pay the application fee.  
25 Application fees may be waived or reduced for just cause,  
26 including indigency of the offender, at the discretion of the  
27 city. Any determination of the indigency of the offender for

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

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

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

26 (b) Upon approval of the agreement and acceptance of  
27 the guilty plea, the court shall expressly retain jurisdiction

1 of the case, any other provision of law notwithstanding, and  
2 may withdraw and file the case or otherwise place it on an  
3 administrative docket until such time as the court has been  
4 notified that the offender has fulfilled the terms of the  
5 agreement, has been terminated from the program, or otherwise  
6 withdrawn from the program. Imposition of punishment by the  
7 court shall be deferred until the offender has successfully  
8 completed the program or is terminated from the program.

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

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

19 (e) Regardless of whether the offender successfully  
20 completes the program or withdraws from or is terminated from  
21 the program, the offender shall be liable for and required to  
22 pay and all court costs and fees, restitution, victim's  
23 compensation fund assessment, and any and all other fees and  
24 assessments, in the same manner as if the offender had not  
25 applied for entry into the program and had been found guilty  
26 of the offense or offenses involved. No costs, fees,  
27 restitution, or assessments shall be waived or remitted,

1 absent an express agreement to that effect between the city  
2 attorney and the offender, without a finding by the court that  
3 the offender does not have the reasonable ability to pay the  
4 same within the reasonably foreseeable future.

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

9 (1) Continue the agreement with or without  
10 modification.

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

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

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

17 Section 12. In no event shall the city attorney or  
18 any other agency or service provider have any liability,  
19 criminal or civil, for the conduct of any offender while  
20 participating in the pretrial diversion program or for  
21 acceptance of an offender into the program.

22 Section 13. The provisions of this act are  
23 severable. If any part of this act is declared invalid or  
24 unconstitutional, that declaration shall not affect the part  
25 which remains.

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