

1 HB644
2 150927-3
3 By Representative Treadaway (N & P)
4 RFD: Jefferson County Legislation
5 First Read: 18-APR-13

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ENROLLED, An Act,

Relating to the City of Fultondale in Jefferson County; to allow the City of Fultondale 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. (a) Notwithstanding any other law to the contrary, the City of Fultondale may establish a pretrial diversion program for any defendant within the jurisdiction of the municipal court.

(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 Fultondale 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 2. For the purposes of this act, the following terms shall have the following meanings:

1 (1) APPLICATION FEE. A one-time administrative fee
2 imposed by the City of Fultondale as a condition precedent to
3 participation in a pretrial diversion program.

4 (2) CITY PROSECUTOR. The person or persons charged
5 with the responsibility of prosecuting cases in the City of
6 Fultondale Municipal Court or any legal staff employed by the
7 city prosecutor.

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

10 (4) LAW ENFORCEMENT OFFICER. As defined in Section
11 36-25-1(15), Code of Alabama 1975, whether employed in the
12 State of Alabama or elsewhere.

13 (5) MUNICIPAL COURT JUDGE. The Judge of the
14 Municipal Court for the City of Fultondale duly appointed by
15 the city council in accordance with Section 12-14-30, Code of
16 Alabama 1975, or a special judge appointed by the Mayor of the
17 City of Fultondale in accordance with Section 12-14-34, Code
18 of Alabama 1975.

19 (6) OFFENDER. Any person charged with a criminal
20 offense, including, but not limited to, any misdemeanor,
21 violation, or traffic offense, as defined by the Code of
22 Alabama 1975, which was allegedly committed in the corporate
23 limits or police jurisdiction of the City of Fultondale.

24 (7) PRETRIAL DIVERSION PROGRAM or PROGRAM. A program
25 that allows the imposition by the city or by a designated

1 agency of certain conditions of behavior and conduct for a
2 specified period of time upon an offender which allow the
3 offender to have his or her charges reduced, dismissed without
4 prejudice, or otherwise mitigated should all of the conditions
5 be met during the time frame set by the city's Municipal Court
6 Judge.

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

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

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

14 Section 4. (a) Admittance into the pretrial
15 diversion program is in the sole discretion of the Municipal
16 Court Judge upon application approved by the city prosecutor.
17 An offender deemed by the city prosecutor to be a threat to
18 the safety or well-being of the community shall not be
19 eligible for the program. An offender charged with any of the
20 following types of offenses without the express written
21 consent of the victim shall be ineligible for admittance:

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

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

1 (3) Any offense involving violence where a weapon
2 was used or where children are victims.

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

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

8 (b) A person may not be admitted to the program if
9 the person holds a commercial driver license (CDL) issued in
10 any U.S. state, any U.S. possession, any U.S. territory, or
11 any U.S. insular area.

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

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

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

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

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

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

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

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

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

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

1 psychiatric, psychological, or other records deemed necessary
2 by the city prosecutor for the evaluation process.

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

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

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

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

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

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

24 (6) Submission of a written plea of guilty to the
25 offense or offenses charged or agreed upon included offenses,

1 together with an agreement as to whether the case is to be
2 dismissed upon successful completion of the program, and an
3 agreement, if there be any, as to the recommended sentence
4 should a sentence be imposed.

5 (b) In addition to those requirements set forth in
6 subsection (a), or as a condition of continued participation
7 in the program, the city prosecutor may require the offender
8 to agree to any of the following terms or conditions:

9 (1) To participate in substance abuse treatment.

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

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

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

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

19 (6) To not commit any criminal offense.

20 (7) To refrain from contact with certain named
21 persons or premises.

22 (8) To maintain or seek employment.

23 (9) To not leave the State of Alabama without prior
24 written consent of the city attorney or supervising agency or
25 personnel.

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

3 (11) To attend individual, group, financial,
4 chemical addiction, family, mental health, sex offender, or
5 anger management counseling.

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

10 (13) To refrain from the possession or use of any
11 deadly weapon or dangerous instrument as defined in Section
12 13A-1-2, Code of Alabama 1975.

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

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

18 (16) To have restitution, court costs, fees, child
19 support, and any other moneys withheld or garnished from the
20 wages or salary of the offender or withheld from any Alabama
21 income tax due the offender, or from any available insurance
22 policy, or forfeited from any other real or personal property
23 of the offender, and applied to the above.

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

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

7 (19) To waive in writing the right of the offender
8 to a probation hearing in the event of termination or
9 withdrawal from the program.

10 (20) To any other terms or conditions as the city
11 prosecutor or his or her designee and the offender may agree
12 to in the above-stated agreement, it being the purpose of this
13 act to allow the city prosecutor broad discretion in designing
14 a program specifically for each offender and his or her
15 particular circumstances.

16 (21) When applicable, to be required to pay
17 supervision fees to the agency or entity responsible for
18 monitoring and verifying the compliance of the offender with
19 the terms of the program set forth by the city prosecutor. The
20 fees shall be paid by the offender to the supervising entity
21 in a timely manner.

22 Section 8. (a) An offender may be assessed a
23 nonrefundable application fee when the offender is approved
24 for the pretrial diversion program. The amount of the
25 assessment for participation in the program shall be in

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

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

10 (1) Misdemeanor offenses and Driving Under the
 11 Influence: One thousand dollars (\$1,000).

12 (2) Traffic offenses not including DUI: Five hundred
 13 dollars (\$500).

14 (3) Violations: Three hundred dollars (\$300).

15 (c) The application fees required by this act shall
 16 be collected by the Fultondale Municipal Court director. The
 17 fees shall be disbursed as follows: Eighty percent (80%) to
 18 the Correction Fund and twenty percent (20%) to the Municipal
 19 Court Judicial Administrative Fund as established by the City
 20 of Fultondale and used for the purpose of the fund.

21 (d) An applicant offender may not be denied access
 22 into the pretrial diversion program based solely on the
 23 inability of the offender to pay the application fee.
 24 Application fees may be waived or reduced for just cause,
 25 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 shall be granted only upon the determination by the
4 Municipal Court Judge that there is no reasonable likelihood
5 within the reasonably foreseeable future that the offender
6 will have the ability to pay the application fee.

7 Section 9. Application fees required by this act
8 shall be collected by the Director of the Municipal Court for
9 the City of Fultondale. The fees shall be disbursed to each
10 entity or 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, the acceptance of the offender by
15 the city prosecutor, and the agreement between the city
16 prosecutor and the offender to the Municipal Court Judge
17 presiding over the affected case of the offender for approval.
18 The offender shall also enter a plea of guilty to the charge
19 or charges involved. If the Municipal Court Judge rejects the
20 agreement and guilty plea, any money paid by the offender in
21 satisfaction of the application fee shall be refunded to the
22 offender. The offender shall still be liable for any actual
23 expenses already incurred by the city prosecutor or any agency
24 or service provider in furtherance of the application and

1 evaluation process and the same will be deducted from any
2 money so refunded to the offender.

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

13 (c) In the event the offender is terminated from the
14 program, the Municipal Court Judge shall impose appropriate
15 punishment in the same manner as with any plea of guilty or
16 finding of guilty and shall not be bound by the terms of
17 agreement as to what punishment to impose.

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

23 (e) Regardless of whether the offender successfully
24 completes the program or withdraws from or is terminated from
25 the program, the offender will still be liable for and

1 required to pay any and all court costs and fees, restitution,
2 victim's compensation fund assessment, and any and all other
3 fees and assessments, in the same manner as if the offender
4 had not applied for entry into the program and had been found
5 guilty of the offense or offenses involved. No costs, fees,
6 restitution, or assessments shall be waived or remitted,
7 absent an express agreement to that effect between the city
8 prosecutor and the offender, without a finding by the
9 Municipal Court Judge that the offender does not have the
10 reasonable ability to pay the same within the reasonably
11 foreseeable future.

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

16 (1) Continue the agreement with or without
17 modification.

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

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

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

24 Section 12. In no event shall the city prosecutor or
25 any other agency or service provider have any liability,

1 criminal or civil, for the conduct of any offender while
2 participating in the pretrial diversion program or for
3 acceptance of an offender into the program unless the event
4 was foreseeable.

5 Section 13. The provisions of this act are
6 severable. If any part of this act is declared invalid or
7 unconstitutional, that declaration shall not affect the part
8 which remains.

9 Section 14. All laws or parts of laws which conflict
10 with this act are repealed.

11 Section 15. This act shall become effective
12 immediately following its passage and approval by the
13 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 02-MAY-13, as amended.

Jeff Woodard
Clerk

Senate

20-MAY-13

Passed