

1 HB654
2 128984-2
3 By Representative Ford (N & P)
4 RFD: Local Legislation
5 First Read: 24-MAY-11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ENROLLED, An Act,

To provide for the establishment of a pretrial diversion program in the 16th Judicial Circuit in Etowah 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) DISTRICT ATTORNEY. The district attorney of the 16th Judicial Circuit in Etowah County, or any of his or her staff.

(2) LAW ENFORCEMENT or LAW ENFORCEMENT OFFICER. Any person who is employed by an agency or department whose purpose is to protect the citizens, including, but not limited to, police personnel, sheriff personnel, a district attorney investigator, Department of Human Resources personnel, parole and probation personnel, community corrections office personnel, and court referral office personnel, whether that agency or department is in this state or located elsewhere.

(3) OFFENDER. Any person charged with a crime as defined by the Code of Alabama 1975, or municipal ordinance, which was committed in the jurisdiction of the state.

(4) SERIOUS PHYSICAL INJURY. As that term is defined by Section 13A-1-2 of the Code of Alabama 1975.

1 Section 2. (a) The district attorney may establish a
2 pretrial diversion program within the 16th Judicial Circuit in
3 Etowah County.

4 (b) All discretionary powers endowed by the common
5 law, provided for by statute and acts of this state, or
6 otherwise provided by law for the district attorneys of this
7 state shall be retained.

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

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

15 Section 3. (a) An offender charged with any of the
16 following criminal offenses in a circuit court or district
17 court may apply to the district attorney for admittance to the
18 pretrial diversion program:

19 (1) A drug offense, excluding trafficking in
20 controlled substances or cannabis as provided in Section
21 13A-12-231 of the Code of Alabama 1975, or manufacturing of
22 controlled substances in the first degree as provided in
23 Section 13A-12-218 of the Code of Alabama 1975.

24 (2) A property offense.

25 (3) A misdemeanor.

1 (4) A traffic or conservation offense, except that a
2 holder of a commercial driver's license, an operator of a
3 commercial motor vehicle, or a commercial driver learner
4 permit holder who is charged with a violation of a traffic law
5 in this state shall not be eligible for a deferred prosecution
6 program, diversion program, or any deferred imposition of
7 judgment program pursuant to Section 32-6-49.23 of the Code of
8 Alabama 1975.

9 (b) An offender charged with any of the following
10 offenses is ineligible for consideration for the pretrial
11 diversion program:

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

13 (2) Any offense involving serious physical injury to
14 a person.

15 (3) An offense involving violence in which the
16 victim was a child under 14 years of age, a law enforcement
17 officer, a school officer, a correctional officer, active duty
18 military personnel of the United States military, or an
19 individual over the age of 65.

20 (4) Any offense involving death.

21 (5) A person deemed by the district attorney to be a
22 threat to the safety or well-being of the community.

23 (6) Bribery of a government or public official.

1 (7) Any offense wherein the offender is a public
2 official and the charge is related to his or her capacity as a
3 public official.

4 (8) Abduction or kidnapping.

5 (9) Any sex offense involving forcible compulsion or
6 incapacity.

7 Section 4. (a) In determining whether an offender
8 may be admitted into the pretrial diversion program, it shall
9 be appropriate for the district attorney to consider any of
10 the following circumstances:

11 (1) The offender is 18 years of age or older at the
12 time the offense was committed.

13 (2) There is a probability justice will be served if
14 the offender is placed in the pretrial diversion program.

15 (3) It is determined the needs of the community and
16 of the offender can be met through the pretrial diversion
17 program.

18 (4) The offender appears to pose no substantial
19 threat to the safety and well-being of the community or law
20 enforcement.

21 (5) The offender is not likely to be involved in
22 further criminal activity.

23 (6) The offender will likely respond to
24 rehabilitative treatment.

1 (7) The expressed wish of the victim not to
2 prosecute.

3 (8) Undue hardship upon the victim.

4 (9) Whether the victim or the offender has medical,
5 psychiatric, or vocational difficulties that would impede the
6 administration of justice.

7 (10) Whether there is a reason to believe that the
8 victim or offender will benefit from and cooperate with a
9 pretrial diversion program.

10 (11) The impact of criminal charges or prosecution
11 upon the victim, witnesses, or the community.

12 (b) The district attorney may waive any of the
13 standards specified in subsection (a) if justice or special
14 circumstances dictate.

15 Section 5. (a) Admittance into the pretrial
16 diversion program shall be in the sole discretion of the
17 district attorney. To assist the district attorney in the
18 decision to admit the offender into the pretrial diversion
19 program, the district attorney, prior to the offender being
20 admitted into the pretrial diversion program or as a part of
21 the district attorney's evaluation process, may require an
22 offender to furnish to the district attorney information
23 concerning past criminal history, education history, work
24 history, family history, medical or psychiatric treatment
25 history, psychological tests, or any other information

1 concerning the offender which the district attorney believes
2 is applicable to determine whether the offender should be
3 admitted into the pretrial diversion program.

4 (b) The district attorney may require the offender
5 to submit to any test or evaluation process the district
6 attorney deems appropriate in evaluating the offender for
7 admittance into the pretrial diversion program. The costs of
8 any test or evaluation shall be paid by the offender or as
9 otherwise agreed to or provided for by this act.

10 Section 6. (a) An offender who enters into the
11 pretrial diversion program shall satisfy each of the following
12 requirements:

13 (1) Voluntarily waive, in writing, his or her right
14 to a speedy trial.

15 (2) Agree, in writing, to the tolling of periods of
16 limitations established by statutes or rules of court while in
17 the program.

18 (3) Waive, in writing, his or her right to a jury
19 trial.

20 (4) Provide a statement written by the offender,
21 admitting his or her participation in, and responsibility for,
22 the offense which is the subject of the application for entry
23 into the pretrial diversion program, which statement shall be
24 admissible in any criminal trial.

1 (5) Agree, in writing, to the conditions of the
2 pretrial diversion program established by the district
3 attorney.

4 (6) If there is a victim of the crime, agree in
5 writing to a restitution agreement within a specified period
6 of time and in an amount to be determined by the district
7 attorney.

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

15 (b) Pretrial diversion program records or records
16 related to pretrial diversion program admission, with the
17 exception of the statement of the applicant concerning his or
18 her involvement in the crime charged, shall not be admissible
19 in subsequent proceedings, criminal or civil. Communications
20 between pretrial diversion program counselors and offenders
21 shall be privileged unless a court of competent jurisdiction
22 determines there is a compelling public interest to the
23 contrary.

24 (c) As part of the pretrial diversion program, the
25 district attorney may establish a Restorative Justice

1 Initiative (RJI) program within the 16th Judicial Circuit in
2 Etowah County. The guidelines and mechanisms for such an
3 initiative shall be promulgated by the Alabama Office of
4 Prosecution Services. Any additional fees for participation in
5 an RJI program by an offender shall be set by the district
6 attorney and a portion thereof may be paid to any agency or
7 entity that provides services to further the goals and purpose
8 of the RJI program.

9 Section 7. An offender shall make application to the
10 pretrial diversion program at a time to be determined by the
11 district attorney.

12 Section 8. (a) An offender may be assessed an
13 application fee when he or she is approved for the program.
14 The amount of the fee for participation in the program shall
15 be in addition to any court costs, assessments for crime
16 victim's compensation fund, Department of Forensic Science
17 assessments, drug, alcohol, or anger management treatments
18 required by law, restitution, costs of supervision, or
19 treatment. A schedule of payments for any of these fees may be
20 established by the district attorney.

21 (b) The amount of the application fee shall be
22 determined by the district attorney and may not exceed the
23 following amounts for each case for which the offender makes
24 application for acceptance into the pretrial diversion
25 program:

1 (1) Felony offenses: Up to nine hundred dollars
2 (\$900).

3 (2) Misdemeanor offenses: Up to seven hundred fifty
4 dollars (\$750).

5 (c) An applicant may not be denied access into the
6 pretrial diversion program based solely on his or her
7 inability to pay. Pretrial diversion program fees as
8 established by this act may be waived or reduced for just
9 cause, including indigency of the applicant, at the discretion
10 of the district attorney. Any determination of indigency of
11 the offender for the purposes of pretrial diversion fee
12 mitigation shall be made by the district attorney. In the
13 event the offender is determined to be indigent, a periodic
14 review of the offender's indigency status may be conducted by
15 the court to determine if the offender is no longer indigent.
16 If the offender is determined to be indigent by the district
17 attorney, nothing in this act shall prohibit the offender from
18 being placed on a payment plan wherein the entire victim
19 restitution, court costs, fines, fees, and pretrial diversion
20 fees are collected in total.

21 (d) Application fees required by this act shall be
22 collected by the district attorney's office. All pretrial
23 diversion program fees shall be deposited in a timely manner
24 by the district attorney into the District Attorney's
25 Solicitor Fund as described by this act. The district attorney

1 shall make the deposits in a timely manner pursuant to
2 commonly accepted accounting practices. The District
3 Attorney's Solicitor Fund shall be subject to regular audits
4 by the Alabama Department of Examiners of Public Accounts.

5 Section 9. The district attorney and the offender
6 may enter into an agreement, as a part of the pretrial
7 diversion program, that the offender be admitted to a drug or
8 alcohol program on an in-patient or out-patient basis or
9 receive other treatment alternatives for substance abuse. The
10 district attorney may require the offender to submit to
11 periodic or random drug testing or other terms and conditions
12 related to substance abuse. The offender shall pay the costs
13 of all services unless otherwise approved by the district
14 attorney.

15 Section 10. (a) In any case in which an offender is
16 admitted into a pretrial diversion program, there shall be a
17 written agreement between the district attorney and the
18 offender. The agreement shall include the terms of the
19 pretrial diversion program, the length of the program, and the
20 period of time after which the district attorney will dispose
21 of the charges against the offender in a noncriminal manner.
22 If, as part of the pretrial diversion program, the offender
23 agrees to plead guilty to a particular charge and receive a
24 specific sentence, an agreement concerning when the plea of
25 guilty will occur, to what charge to which the offender will

1 plead guilty, and any sentence to be imposed, shall be
2 approved by an appropriate circuit or district court judge
3 having jurisdiction over the offender within the judicial
4 circuit prior to admission of the offender in the pretrial
5 diversion program.

6 (b) As a condition of being admitted into the
7 pretrial diversion program, the district attorney may require
8 the offender to agree to any of the following terms or
9 conditions:

10 (1) Pay approved restitution to a victim.

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

14 (3) If appropriate, attempt to learn to read and
15 write.

16 (4) Financially support his or her children or pay
17 child support.

18 (5) Refrain from the use of alcohol or drugs or
19 frequenting places where alcohol or drugs are sold or used.

20 (6) Refrain from contact with certain persons or
21 premises.

22 (7) Maintain or seek employment.

23 (8) Attend individual, group, or family counseling.

24 (9) Pay court costs, fees, and fines.

1 (10) Conduct himself or herself in an honorable
2 manner as a good member of the community, and not endanger in
3 any way the person, property rights, dignity, or morals of
4 others or himself or herself.

5 (11) Comply with all municipal, county, state, and
6 federal law, ordinances, or orders.

7 (12) Be absolutely truthful in any oral or written
8 application or reports to the pretrial diversion program.

9 (13) Pay supervision fees to the agency or entity
10 responsible for monitoring and verifying the offender's
11 compliance with the terms of the pretrial diversion program
12 set forth by the district attorney. These fees shall be paid
13 by the offender to the supervising agency or entity in a
14 timely manner.

15 (14) Observe curfews, home detention, or travel
16 constraints as set out in the offender's agreement.

17 (15) Enter into an agreement with the district
18 attorney to have restitution, court costs, fines, fees, or
19 child support withheld or garnished from the wages or salary
20 of the offender.

21 (16) Complete approved community service.

22 (17) Agree to the court's jurisdiction beyond the
23 terms of the pretrial diversion program, incarceration,
24 probation, parole, or end of sentence for the purposes of the
25 collection of court ordered or agreed upon fines, fees, cost

1 of court, and restitution pursuant to Section 12-17-225, Code
2 of Alabama 1975.

3 (18) Agree to the terms and conditions of the
4 pretrial diversion program established by the district
5 attorney.

6 (19) Provide a statement written by the offender,
7 admitting his or her participation in, and responsibility for,
8 the offense which is the subject of the application for entry
9 into the pretrial diversion program.

10 (20) Refrain from the possession of or use of any
11 firearm.

12 (21) Pay the application fee pursuant to this act.

13 (22) Participate in and complete a drug court
14 program.

15 (23) Complete a certified drug or alcohol addiction
16 evaluation and treatment program.

17 (24) Agree to be subject to any other terms or
18 conditions as required by the district attorney set out in the
19 pretrial diversion program agreement. The district attorney
20 shall be given broad discretion in designing a program
21 specifically for each offender and circumstances of the
22 offender.

23 Section 11. (a) All fees paid to the district
24 attorney by offenders pursuant to this act shall be paid into
25 the District Attorney's Solicitor Fund. The district attorney

1 shall disburse 10 percent to the Sheriff of Etowah County to
2 be deposited into the Law Enforcement Fund, and 10 percent, if
3 the 16th Judicial Circuit has one, to an approved child
4 advocacy center. The remainder of the funds shall be used to
5 pay costs associated with the administration of the pretrial
6 diversion program or for any other law enforcement purpose.
7 Costs associated with program administration shall include,
8 but shall not be limited to, salaries, rent, vehicles,
9 uniforms, telephones, postage, office supplies and equipment,
10 training and travel services, service contracts, or
11 professional services. The district attorney may pay for
12 services or programs for an offender while the offender is in
13 the pretrial division program if special circumstances and
14 justice dictate.

15 Section 12. (a) If the offender violates the
16 conditions of the pretrial diversion program, the district
17 attorney may terminate the participation of the offender in
18 the program. The offender shall be given written notice of the
19 intent of the district attorney to terminate him or her from
20 the pretrial diversion program including the reason for the
21 termination.

22 (b) The district attorney may waive a violation for
23 good cause shown why the offender should stay in the pretrial
24 diversion program.

1 Section 13. The district attorney or his or her
2 staff shall have no liability, criminal, or civil, for the
3 conduct of any offender while participating in the pretrial
4 diversion program or of any service provider or their agents
5 that are contracted to or who have agreed to provide services
6 to the pretrial diversion program.

7 Section 14. The pretrial diversion program may apply
8 for grants, may accept gifts from individuals or corporations,
9 and may receive funding or appropriations from city, county,
10 or state agencies or departments to be used in the maintenance
11 or expansion of the pretrial diversion program.

12 Section 15. The district attorney may form an
13 advisory board within the county or judicial circuit named the
14 Citizens Advisory Board for Pretrial Diversion to assist the
15 district attorney in the determination of appropriate pretrial
16 diversion candidates. The district attorney shall retain the
17 final decision as to the admittance or denial of individuals
18 into the pretrial diversion program. The district attorney
19 shall appoint all members of any advisory board and shall
20 determine when or if it should meet. The advisory board shall
21 serve without personal profit, but may be paid from the
22 District Attorney's Solicitors Fund for actual expenses
23 incurred in connection with its duties.

24 Section 16. The district attorney, to the extent
25 practicable, may utilize the services of an existing community

1 corrections program established pursuant to Section 15-18-170
2 of the Code of Alabama 1975, to provide for the supervision of
3 a defendant participating in the pretrial diversion program.
4 The district attorney may utilize the services of an existing
5 drug court program established pursuant to Section 12-23A-4 of
6 the Code of Alabama 1975, so long as the district attorney
7 determines it would serve the best interest of justice and the
8 community.

9 Section 17. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

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 26-MAY-11.

Greg Pappas
Clerk

Senate

02-JUN-11

Passed