

1 HB656
2 135909-2
3 By Representative Poole (N & P)
4 RFD: Tuscaloosa County Legislation
5 First Read: 05-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 Northport in Tuscaloosa
14 County; to allow the City of Northport to establish a
15 discretionary pretrial diversion program and set basic
16 operating standards for the program.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. (a) The City of Northport may establish a
19 pretrial diversion program.

20 (b) All discretionary powers endowed by a common law
21 and provided by statutes and acts of this state or powers or
22 discretion otherwise provided by law for the City of Northport
23 shall be retained.

24 (c) The pretrial diversion program shall be under
25 the direct supervision and control of the city and the city
26 may contract with any agency, person, or corporation for
27 services related to this act. The city may employ necessary

1 persons to accomplish this act and those persons shall serve
2 at the pleasure of the city.

3 Section 2. For the purposes of this act, the
4 following terms shall have the following meanings:

5 (1) APPLICATION FEE. A one-time administrative fee
6 imposed by the City of Northport as a condition precedent to
7 participation in a pretrial diversion program.

8 (2) CITY ATTORNEY. The City Attorney or City
9 Prosecutor of the City of Northport or any legal staff
10 employed by the city attorney or city prosecutor.

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

13 (4) LAW ENFORCEMENT OFFICER. As defined in Section
14 36-25-1(15), Code of Alabama 1975, whether employed in the
15 State of Alabama or elsewhere.

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

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

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

3 (8) SUPERVISION FEE. Any fee other than the
4 application fee imposed by any agency providing supervision of
5 treatment of the offender.

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

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

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

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

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

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

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

25 (6) The person may not hold a commercial driver
26 license (CDL) issued in any U.S. state, any U.S. possession,

1 any U.S. territory, or any U.S. insular area, or has no
2 conviction for which a commercial driver license was required.

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

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

8 (2) It is determined the needs of the state, city,
9 and of 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.

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

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

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

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

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

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

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

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

24 (1) A voluntary waiver of the right of the offender
25 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 be 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 the State of Alabama without prior
15 written 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 the agreement signed by the
8 offender.

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

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

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

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

24 (20) To any other terms or conditions as the city
25 attorney or his or her designee and the offender may agree to
26 in the above-stated agreement, it being the purpose of this
27 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. The
7 fees shall be paid by the offender to the supervising entity
8 in a timely manner.

9 Section 8. (a) An offender may be assessed a
10 nonrefundable application fee when the offender is approved
11 for the pretrial diversion program. The amount of the
12 assessment for participation in the program shall be in
13 addition to any court costs, fees, and assessments for the
14 Crime Victim's Compensation Fund, Department of Forensic
15 Sciences assessments, drug, alcohol, or anger management
16 treatment required by law, and any costs of supervision,
17 treatment, and restitution for which the offender may be
18 responsible. A schedule of payments for any of these fees may
19 be established by the city attorney.

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

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

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

26 (3) Violations: One hundred dollars (\$100).

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

3 (d) The application fee shall be allocated to the
4 general fund of the City of Northport except that a minimum of
5 25 percent shall be used for technology and training for law
6 enforcement and a minimum of 25 percent shall be deposited in
7 the Indigent Treatment Fund as established by the City of
8 Northport and used for the purpose of the fund.

9 (e) An applicant offender may not be denied access
10 into the pretrial diversion program based solely on the
11 inability of the offender to pay the application fee.

12 Application fees may be waived or reduced for just cause,
13 including indigency of the offender, at the discretion of the
14 city. Any determination of the indigency of the offender for
15 purposes of program fee mitigation shall be made by the city
16 but such mitigation shall be done only upon the determination
17 by the city that there is no reasonable likelihood within the
18 reasonably foreseeable future that the offender will have the
19 ability to pay the application fee.

20 Section 9. Application fees required by this act
21 shall be collected by the court clerk of the Northport
22 Municipal Court. The fees shall be disbursed to each entity or
23 department as allocated by Section 8.

24 Section 10. (a) Upon acceptance of an offender into
25 the pretrial diversion program by the city attorney, the city
26 attorney and the offender shall submit the written application
27 of the offender together with the statement of facts of the

1 offender, the acceptance of the offender by the city attorney,
2 and the agreement between the city attorney and the offender
3 to the court presiding over the affected case of the offender
4 for the approval of the court. The offender shall also enter a
5 plea of guilty to the charge or charges involved. If the court
6 rejects the agreement and guilty plea, any money paid by the
7 offender in satisfaction of the application fee shall be
8 refunded to the offender. The offender shall still be liable
9 for any actual expenses already incurred by the city attorney
10 or any agency or service provider in furtherance of the
11 application and evaluation process and the same will be
12 deducted from any money so refunded to the offender.

13 (b) Upon approval of the agreement and acceptance of
14 the guilty plea, the court shall expressly retain jurisdiction
15 of the case, any other provision of law notwithstanding, and
16 may withdraw and file the case or otherwise place it on an
17 administrative docket until such time as the court has been
18 notified that the offender has fulfilled the terms of the
19 agreement, has been terminated from the program, or otherwise
20 withdrawn from the program. Imposition of punishment by the
21 court shall be deferred until the offender has successfully
22 completed the program or is terminated from the program.

23 (c) In the event the offender is terminated from the
24 program, the court shall impose appropriate punishment in the
25 same manner as with any plea of guilty or finding of guilty
26 and shall not be bound by the terms of agreement as to what
27 punishment to impose.

1 (d) Upon successful completion of the program by the
2 offender, the city attorney shall notify the court in writing
3 of that fact together with a request that the court enter an
4 order of disposition of the case pursuant to the agreement
5 between the offender and the city attorney.

6 (e) Regardless of whether the offender successfully
7 completes the program or withdraws from or is terminated from
8 the program, the offender will still be liable for and
9 required to pay any and all court costs and fees, restitution,
10 victim's compensation fund assessment, and any and all other
11 fees and assessments, in the same manner as if the offender
12 had not applied for entry into the program and had been found
13 guilty of the offense or offenses involved. No costs, fees,
14 restitution, or assessments shall be waived or remitted,
15 absent an express agreement to that effect between the city
16 attorney and the offender, without a finding by the court that
17 the offender does not have the reasonable ability to pay the
18 same within the reasonably foreseeable future.

19 Section 11. (a) After any violation of any program
20 terms or conditions or upon any breach of any program
21 agreement by the offender, the city attorney may do any of the
22 following:

23 (1) Continue the agreement with or without
24 modification.

25 (2) Terminate the offender from the pretrial
26 diversion program.

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

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

5 Section 12. In no event shall the city attorney or
6 any other agency or service provider have any liability,
7 criminal or civil, for the conduct of any offender while
8 participating in the pretrial diversion program or for
9 acceptance of an offender into the program.

10 Section 13. The provisions of this act are
11 severable. If any part of this act is declared invalid or
12 unconstitutional, that declaration shall not affect the part
13 which remains.

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