

1 HB663
2 129977-2
3 By Representatives England, Poole, Harper and Merrill (N & P)
4 RFD: Tuscaloosa County Legislation
5 First Read: 24-MAY-11

2
3
4
5
6
7
8
9 A BILL
10 TO BE ENTITLED
11 AN ACT
12

13 Relating to Tuscaloosa County and the Sixth Judicial
14 Circuit; to amend Sections 2, 3, 4, 7, 8, 9, and 10 of Act
15 2009-735 of the 2009 Regular Session (Acts 2009, p. 2191), to
16 allow the District Attorney of the Sixth Judicial Circuit to
17 establish a discretionary pretrial diversion program and set
18 basic operating standards for the program; and to provide
19 further for the collection and disbursement of fees, costs,
20 and restitution.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 2, 3, 4, 7, 8, 9, and 10 of Act
23 2009-735 of the 2009 Regular Session (Acts 2009, p. 2191), are
24 amended to read as follows:

25 "Section 2. For purposes of this act, the following
26 terms shall have the following meanings:

1 "(1) ADMINISTRATIVE FEE. An administrative fee
2 imposed by the District Attorney of the Sixth Judicial Circuit
3 as a condition precedent to participation in a pretrial
4 diversion program.

5 "(2) DISTRICT ATTORNEY. The elected District
6 Attorney of the Sixth Judicial Circuit or any legal staff
7 employed by the district attorney.

8 "(3) LAW ENFORCEMENT. As defined in Section
9 41-8A-1(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) OFFENDER. Any person charged with a criminal
14 offense, including, but not limited to, any felony,
15 misdemeanor, violation, or traffic offense, as defined by the
16 Code of Alabama 1975.

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

25 "(7) SERIOUS PHYSICAL INJURY. As defined in Section
26 13A-1-2(14), Code of Alabama 1975.

1 "(8) SUPERVISION FEE. Any fee other than the
2 application fee imposed by any agency providing supervision or
3 treatment of the offender.

4 "Section 3. An offender charged in any state or
5 municipal court, either within or outside the Sixth Judicial
6 Circuit, may apply to the district attorney for admittance
7 into the pretrial diversion program. The application shall be
8 made no later than 40 days after the first appearance or
9 arraignment of the offender, whichever occurs first.

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

16 "(1) Any Class A felony.

17 "(2) Any offense wherein the offender intentionally,
18 knowingly, or recklessly caused death or serious physical
19 injury to a person.

20 "(3) Any offense involving the use of a deadly
21 weapon.

22 "(4) Sexual abuse in the first degree or sexual
23 abuse of a child under 12.

24 "(5) Rape in the second degree, sodomy in the second
25 degree, or sexual abuse in the second degree, wherein the
26 offender was more than five years older than the victim, or
27 the victim was mentally defective or was otherwise incapable

1 of consent by reason of some factor other than being less than
2 16 years old but more than 12 years old.

3 "(6) Any sex offense by computer use involving a
4 child.

5 "(7) Child molestation, luring a child to a place in
6 order to perform or to propose sexual acts, or enticing a
7 child to enter a vehicle, structure, or any other place or
8 premises for immoral purposes.

9 "(8) Any sex offense involving a child under 12
10 years of age.

11 "(9) Any offense involving obscene matter containing
12 a visual depiction of children or child pornography.

13 "(10) Chemical endangerment of a child in violation
14 of Section 26-15-13.2, Code of Alabama 1975.

15 "(11) Aggravated child abuse.

16 "(12) Aggravated stalking.

17 "(13) Kidnapping in the first or second degree.

18 "(14) Compelling street gang membership.

19 "(15) Trafficking in any controlled substance or
20 marijuana or a violation of the Alabama Drug Trafficking
21 Enterprise Act, Section 13A-12-233, Code of Alabama 1975.

22 "(16) Bribery.

23 "(17) 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 "(18) The person may not hold a commercial driver
27 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 7. (a) Following the decision of the
4 district attorney to admit the offender into the pretrial
5 diversion program, but prior to entry, the district attorney
6 and the offender shall enter into a written agreement stating
7 the 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 district attorney.

17 "(4) If there is a victim of the charged crime, an
18 agreement to a restitution repayment within a specified period
19 of time and in an amount to be determined by the court.

20 "(5) A waiver in writing of the right of the
21 offender to a jury trial.

22 "(6) A truthful and complete statement by the
23 offender as to the involvement of the offender in the offense
24 charged, which statement shall be admissible in any criminal
25 trial.

26 "(7) Submission of a written plea of guilty to the
27 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 district attorney 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 district attorney or supervising agency
25 or personnel.

26 "(10) To maintain a residence approved by the
27 district attorney or supervising agency or personnel.

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

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

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

11 "(14) To pay supervision fees and administrative
12 fees pursuant to this act.

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

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

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

25 "(18) To submit to periodic or random drug testing
26 as part of the program and other terms and conditions related
27 to substance abuse as the district attorney may direct.

1 "(19) To waive in writing the right of the offender
2 to a probation hearing in the event of termination or
3 withdrawal from the program.

4 "(20) To any other terms or conditions as the
5 district attorney or his or her designee and the offender may
6 agree to in the above-stated agreement, it being the purpose
7 of this act to allow the district attorney broad discretion in
8 designing a program specifically for each offender and his or
9 her particular circumstances.

10 "(21) When applicable, to be required to pay
11 supervision fees to the agency or entity responsible for
12 monitoring and verifying the compliance of the offender with
13 the terms of the program set forth by the district attorney.
14 The fees shall be paid by the offender in a timely manner as
15 provided in Section 9.

16 "Section 8. (a) An offender may be assessed a
17 nonrefundable administrative fee when the offender is approved
18 for the pretrial diversion program. The amount of the
19 assessment for participation in the program shall be in
20 addition to any court costs, fees, and assessments for the
21 Crime Victim's Compensation Fund, Department of Forensic
22 Sciences assessments, drug, alcohol, or anger management
23 treatment required by law, and any costs of supervision,
24 treatment, and restitution for which the offender may be
25 responsible. A schedule of payments for any of these fees may
26 be established by the district attorney.

1 "(b) The following administrative fees shall be
2 applied to offenders accepted into the program:

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

5 "(2) Misdemeanor offenses: Up to seven hundred fifty
6 dollars (\$750).

7 "(3) Traffic offenses: Up to five hundred dollars
8 (\$500). Provided, however, the administrative fee for first
9 time offenders of Section 32-5A-191, Code of Alabama 1975,
10 Driving Under the Influence, and Section 32-5A-191.3, Code of
11 Alabama 1975, Boating Under the Influence, shall be up to one
12 thousand dollars (\$1,000).

13 "(4) Violations: Up to one hundred dollars (\$100).

14 "(c) The amount of the administrative fee for each
15 offender shall be established by the district attorney.

16 "(d) The administrative fee shall be allocated and
17 paid to the following offices or entities as follows:

18 "(1) Five percent shall be distributed to the
19 arresting or ticketing law enforcement agency and shall be
20 available for the use of the agency at the discretion of the
21 head of the agency for law enforcement purposes.

22 "(2) Five percent shall be distributed to the
23 Department of Forensic Sciences Tuscaloosa Lab and shall be
24 available for lawful use for that lab at the discretion of the
25 head of that lab. If the Tuscaloosa lab should be closed or no
26 longer operated by the Alabama Department of Forensic

1 Sciences, this allocation shall revert to the office of the
2 district attorney.

3 "(3) Five percent shall be distributed to the
4 appropriate court clerk for the court which adjudicated the
5 case, and shall be available for use at the discretion of the
6 clerk to support the office of the clerk in the same way and
7 manner as monies received from or through the District
8 Attorney's Restitution Recovery Unit.

9 "(4) Five percent shall be distributed to the court
10 clerk to be applied toward any and all court costs and fees
11 which are assessed by the court until such time as the costs
12 and fees are paid in full. Provided, however, upon payment in
13 full of the administrative fee, if the defendant has not paid
14 the court costs and fees in full, the defendant shall still be
15 required to pay the remaining court costs and fees balance in
16 full.

17 "(5) Five percent shall be distributed to the court
18 clerk to be applied to any outstanding restitution the
19 defendant was ordered to pay by the court until such time as
20 the restitution is paid in full. Provided, however, upon
21 payment in full of the administrative fee, if the defendant
22 has not paid the restitution in full, the defendant shall
23 still be required to pay the remaining restitution balance in
24 full.

25 "(6) The remainder of the administrative fees shall
26 be distributed to the office of the district attorney and

1 shall be available, at the discretion of the district
2 attorney, for law enforcement purposes.

3 "(e) An offender shall not be allowed to graduate
4 from the pretrial diversion program nor shall the case or
5 cases of the offender be dismissed unless all fees, costs, and
6 restitution as provided in this act are paid in full.

7 "(f) An applicant offender may not be denied access
8 into the pretrial diversion program based solely on the
9 inability of the offender to pay the administrative fee or
10 court costs and fees or restitution. Administrative fees may
11 be waived or reduced for just cause, including indigency of
12 the offender, at the discretion of the district attorney. Any
13 determination of the indigency of the offender for purposes of
14 mitigation of administrative and supervision fees shall be
15 made by the district attorney but such mitigation shall be
16 done only upon a determination by the district attorney that
17 there is no reasonable likelihood within the reasonably
18 foreseeable future that the offender will have the ability to
19 pay the application fee.

20 "Section 9. (a) In each case, all administrative
21 fees, supervision fees, court costs, fees, fines, restitution,
22 and any and all other court-ordered fees of whatever nature,
23 required by this act or otherwise shall be collected by the
24 District Attorney's Restitution Recovery Unit, or Special
25 Services Division in the same manner as collections by the
26 District Attorney's Restitution Recovery Unit. The fees shall
27 then be disbursed in the same manner as monies collected by

1 the Restitution Recovery Unit are disbursed in the following
2 amounts:

3 "(1) Fifty percent of any amounts collected shall be
4 applied to the aggregate supervision fees and shall be paid to
5 the agency or agencies providing supervision or treatment of
6 the offender, on a pro rata basis, until such time as the
7 offender has paid all of the supervision fees. After the
8 supervision fees are paid in full, that amount shall be paid
9 to the District Attorney's Pretrial Diversion Program Fund,
10 until such time as the administrative fee is paid in full.
11 After both the supervision fees and administrative fees are
12 paid in full, that amount shall be applied to any unpaid
13 restitution or court costs and fees still owing.

14 "(2) Fifty percent of any amounts collected shall be
15 applied to the administrative fee and disbursed as provided in
16 Section 8.

17 "(b) All fees paid by offenders which are disbursed
18 for use of the office of the district attorney shall be used
19 to pay costs associated with the administration of the
20 pretrial diversion program or for other law enforcement
21 purposes deemed necessary by the district attorney. The
22 district attorney shall establish a pretrial diversion program
23 fund to receive and expend the administrative fees.

24 "(c) The fees allocated to the court clerks shall be
25 disbursed to the court clerk's fund which shall be kept and
26 maintained by the clerk in a separate account to be used for
27 the operation of the office of the clerk to include, but not

1 be limited to, equipment purchases, education, and other
2 office related expenses including office personnel. Funds
3 retained by the clerks shall not reduce the amount payable to
4 the clerks under any local act or general act or reduce or
5 affect the amounts of funding allocated by the Administrative
6 Office of Courts to the budget of the clerks.

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

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

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

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

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

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

1 restitution, or assessments shall be waived or remitted,
2 absent an express agreement to that effect between the
3 district attorney and the offender, without a finding by the
4 court that the offender does not have the reasonable ability
5 to pay the same within the reasonably foreseeable future."

6 Section 2. The provisions of this act are severable.
7 If any part of this act is declared invalid or
8 unconstitutional, that declaration shall not affect the part
9 which remains.

10 Section 3. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.