

1 SB467
2 146500-3
3 By Senator Ward (N & P)
4 RFD: Local Legislation No. 1
5 First Read: 25-APR-13

1 SB467

2
3
4 With Notice and Proof

5
6 ENROLLED, An Act,

7 Relating to the City of Alabaster in Shelby County;
8 to allow the City of Alabaster to establish a discretionary
9 pretrial diversion program and set basic operating standards
10 for the program.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 (1) APPLICATION FEE. A one-time administrative fee
15 imposed by the City of Alabaster as a condition precedent to
16 participating in a pretrial diversion program.

17 (2) CITY PROSECUTOR. The city prosecutor of the City
18 of Alabaster or any legal staff employed by the city
19 prosecutor.

20 (3) LAW ENFORCEMENT. As defined in Section
21 41-8A-1(1), Code of Alabama 1975.

22 (4) LAW ENFORCEMENT OFFICER. As defined in Section
23 36-25-1(15), Code of Alabama 1975, whether employed in the
24 this state or elsewhere.

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

6 (6) PRETRIAL DIVERSION PROGRAM OR PROGRAM. A program
7 that allows the imposition by the city or by a designated
8 agency of certain conditions of behavior and conduct for a
9 specified period of time upon an offender which allow the
10 offender to have his or her charges reduced, dismissed without
11 prejudice, or otherwise mitigated should all of the conditions
12 be met during the time frame set by the city prosecutor.

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

15 (8) SUPERVISION FEE. Any fee other than the
16 application fee imposed by any agency providing supervision of
17 treatment of the offender.

18 Section 2. (a) The City of Alabaster, Alabama, may
19 establish a 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 Alabaster
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

1 may contract with any agency, person, or corporation for
2 services related to this act. The city may employ necessary
3 persons to accomplish this act and those persons shall serve
4 at the pleasure of the city.

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

7 Section 4. Admittance into the pretrial diversion
8 program is in the sole discretion of the city prosecutor
9 subject to approval of the municipal judge. An offender deemed
10 by the city prosecutor to be a threat to the safety or well
11 being of the community shall not be eligible for the program.
12 An offender charged with any of the following types of
13 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.

1 (6) The person may not hold a commercial driver
2 license (CDL) issued in any state, any United States
3 possession or territory, or any United States insular area, or
4 has no conviction for which a commercial driver license was
5 required.

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

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

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

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

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

18 (5) The offender will likely respond to
19 rehabilitative treatment or counseling.

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

23 (b) The city prosecutor may waive any of the
24 standards specified in subsection (a) if justice or special
25 circumstances dictate.

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

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

22 Section 7. (a) Following the decision of the city
23 prosecutor to admit the offender into the pretrial diversion
24 program, but prior to entry, the city prosecutor and the
25 offender shall enter into a written agreement stating the

1 conditions of the participation of the offender in the
2 program. The agreement shall include, but not be limited to,
3 all of the following:

4 (1) A voluntary waiver of the right of the offender
5 to a speedy trial.

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

9 (3) An agreement to the conditions of the program
10 established by the city prosecutor.

11 (4) If there is a victim of the charged crime, an
12 agreement to the restitution repayment within a specified
13 period of time and in an amount to be determined by the city
14 prosecutor taking into account circumstances of the offender
15 and the victim.

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

18 (6) A truthful and complete statement by the
19 offender as to the involvement of the offender in the offense
20 charged, which statement shall be admissible in any criminal
21 trial.

22 (7) Submission of a written plea of guilty to the
23 offense or offenses charged or agreed upon included offenses,
24 together with an agreement as to whether the case is to be
25 dismissed upon successful completion of the program, and an

1 agreement, if there be any, as to the recommended sentence
2 should a sentence be imposed.

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

7 (1) To participate in substance abuse treatment.

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

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

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

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

17 (6) To not commit any criminal offense.

18 (7) To refrain from contact with certain named
19 persons or premises.

20 (8) To maintain or seek employment.

21 (9) To not leave this state without prior written
22 consent of the city prosecutor or supervising agency or
23 personnel.

24 (10) To maintain a residence approved by the city
25 prosecutor 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 application fees
12 pursuant to this act.

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

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

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

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

4 (19) To waive in writing the right of the offender
5 to a probation hearing in the event of termination or
6 withdrawal from the program.

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

13 (21) When applicable, to be required to pay
14 supervision fees to the agency or entity responsible for
15 monitoring and verifying the compliance of the offender with
16 the terms of the program set forth by the city prosecutor.

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

19 (22) Community service with an approved community
20 service, charitable, or nonprofit organization. The prosecutor
21 shall compile a list of approved organizations for each
22 participant. Participants who wish to complete this
23 requirement with an organization not on the prosecutor's list
24 shall have any such organization pre-approved by the
25 prosecutor.

1 (c) If the city prosecutor denies an applicant
2 admission into the program, the denied applicant shall have
3 the right to appeal the denial to the municipal court judge.
4 The municipal court judge shall be vested with the authority
5 to approve an applicant in cases wherein the municipal court
6 judge determines that denial was not appropriate and that
7 approval would be in the best interest of justice.

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

19 (b) The following maximum application fees may be
20 applied to offenders accepted into the program:

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

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

1 (3) Other misdemeanor offenses: Seven hundred fifty
2 dollars (\$750).

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

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

6 (c) The amount of the application fee for each
7 offender shall be established by the city prosecutor.

8 (d) The application fee shall be allocated to the
9 general fund of the City of Alabaster.

10 (e) An applicant offender may not be denied access
11 into the pretrial diversion program based solely on the
12 inability of the offender to pay the application fee.
13 Application fees may be waived or reduced for just cause,
14 including indigency of the offender, at the discretion of the
15 city. Any determination of the indigency of the offender for
16 purposes of program fee mitigation shall be made by the city,
17 but any mitigation shall be done only upon the determination
18 by the city that there is no reasonable likelihood within the
19 reasonably foreseeable future that the offender will have the
20 ability to pay the application fee.

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

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

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

1 court shall be deferred until the offender has successfully
2 completed the program or is terminated from the program.

3 (c) In the event the offender is terminated from the
4 program, the court shall impose appropriate punishment in the
5 same manner as with any plea of guilty or finding of guilt and
6 shall not be bound by the terms of agreement as to what
7 punishment to impose.

8 (d) Upon successful completion of the program by the
9 offender, the city prosecutor shall notify the court in
10 writing of that fact together with a request that the court
11 enter an order of disposition of the case pursuant to the
12 agreement between the offender and the city prosecutor.

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

1 Section 11. (a) After any violation of any program
2 terms or conditions or upon any breach of any program
3 agreement by the offender, the city prosecutor may do any of
4 the following:

5 (1) Continue the agreement with or without
6 modification.

7 (2) Terminate the offender from the pretrial
8 diversion program.

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

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

13 Section 12. In no event shall the city or its
14 employees and agents or any city prosecutor, magistrate,
15 municipal court judge, or any other agency or service provider
16 have any liability, criminal or civil, for the conduct of any
17 offender while participating in the pretrial diversion program
18 or for acceptance of an offender into the program.

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

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

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

President and Presiding Officer of
the Senate

Speaker of the House of Representa-
tives

SB467

Senate 07-MAY-13

I hereby certify that the within Act originated in
and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 20-MAY-13

By: Senator Ward