

1 HB494
2 152394-5
3 By Representative Hill
4 RFD: Judiciary
5 First Read: 20-MAR-13

1 the victim. Community service should further serve to
2 rehabilitate an offender.

3 (3) DISTRICT ATTORNEY. The district attorney of the
4 judicial circuit or his or her designee, so designated to
5 fulfill the goals, purposes, and objectives of this act.

6 (4) LAW ENFORCEMENT or LAW ENFORCEMENT OFFICER. As
7 defined in Section 41-8A-1 or 36-25-1, Code of Alabama 1975,
8 whether employed in this state or elsewhere.

9 (5) OFFENDER. Any person who has been charged with a
10 criminal offense, including, but not limited to, any felony,
11 misdemeanor, violation, or traffic offense, as defined in the
12 Code of Alabama 1975, which was alleged to have been committed
13 in the jurisdiction of the State of Alabama.

14 (6) PRETRIAL. The term includes, but is not limited
15 to, any moment within or during the disposition of a criminal
16 or quasi-criminal action.

17 (7) PRETRIAL DIVERSION PROGRAM or PROGRAM. A
18 voluntary option that allows an offender, upon advice of
19 counsel or where counsel is waived in a judicial process, to
20 knowingly agree to the imposition by the district attorney of
21 certain conditions of behavior and conduct for a specified
22 period of time upon the offender which would allow the
23 offender to have his or her charges reduced, dismissed without
24 prejudice, or otherwise mitigated, should all conditions be
25 satisfied during the time frame set by the district attorney
26 as provided in the agreement.

1 (8) RESTITUTION. As defined by Section 15-18-142,
2 Code of Alabama 1975, and may also include, but not be limited
3 to, any extraordinary cost incurred during the investigation
4 or prosecution by a law enforcement agency or the district
5 attorney.

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

8 (10) SUPERVISION FEE. Any fee other than the
9 administration fee imposed by any agency providing supervision
10 or treatment of an offender.

11 Section 2. (a) The district attorney of any judicial
12 circuit of this state may establish a pretrial diversion
13 program within that judicial circuit or any county within that
14 judicial circuit.

15 (b) All discretionary powers endowed by the common
16 law, provided for by statute and acts of this state, or
17 otherwise provided by law for the district attorneys of this
18 state shall be retained.

19 (c) A county pretrial diversion program established
20 under subsection (a) shall be under the direct supervision and
21 control of the district attorney. The district attorney may
22 contract with any agency, person, or corporation, including,
23 but not limited to, certified and judicially sanctioned
24 community corrections programs, certified mental health and
25 drug treatment programs, family service programs, or any
26 certified not-for-profit programs for services related to this
27 act. The district attorney may employ persons necessary to

1 accomplish the purposes of this act, who shall serve at the
2 pleasure of the district attorney.

3 (d) The pretrial diversion program should utilize
4 individual and realistic intervention plans which feature
5 achievable goals. Any plan formulated shall occur as soon as
6 possible after enrollment by the offender and shall be reduced
7 to writing.

8 (e) This act shall not apply to juvenile delinquency
9 proceedings in juvenile court.

10 Section 3. (a) A person charged with a criminal
11 offense specified in subsection (b) whose jurisdiction is in
12 the circuit court or district court in a circuit in which a
13 pretrial diversion program has been created pursuant to this
14 act may apply to the district attorney of the circuit for
15 admittance to the program.

16 (b) A person charged with any of the following
17 offenses may apply for the pretrial diversion program:

18 (1) A drug offense, excluding sale of a controlled
19 substance as provided in Section 13A-12-211, Code of Alabama
20 1975, trafficking in controlled substances or cannabis as
21 provided in Section 13A-12-231 of the Code of Alabama 1975,
22 manufacturing controlled substances in the first degree as
23 provided in Section 13A-12-218 of the Code of Alabama 1975, or
24 trafficking in an analog controlled substance.

25 (2) A property offense.

26 (3) An offense that does not involve serious
27 physical injury, death, a victim under the age of 14, or a sex

1 offense involving forcible compulsion or incapacity of a
2 victim.

3 (4) A misdemeanor or violation.

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

12 (6) Notwithstanding subdivision (4), the district
13 attorney may determine that a person charged with a
14 misdemeanor offense or violation is ineligible to apply for
15 the program if it is in the best interest of the victim, the
16 offender, the community, or justice.

17 (c) The following offenses are ineligible for
18 consideration for the pretrial diversion program:

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

20 (2) Any offense involving serious physical injury to
21 a person.

22 (3) An offense involving violence in which the
23 victim was a child under 14 years of age, a law enforcement
24 officer, a school officer, a correctional officer, active duty
25 military personnel of the United States military, or a person
26 over the age of 65.

27 (4) Any offense involving death.

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

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

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

7 (8) Abduction or kidnapping.

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

10 (10) A violation of Section 13A-12-191, et seq., of
11 the Code of Alabama 1975, or Section 13A-6-111, et seq., of
12 the Code of Alabama 1975.

13 (11) Any violation of Section 13A-10-120, et seq.,
14 of the Code of Alabama 1975.

15 (12) Perjury in any degree, as defined in Section
16 13A-10-100, et seq., of the Code of Alabama 1975.

17 (13) Any crime motivated by a victim's race, color,
18 religion, national origin, ethnicity, or physical or mental
19 disability, as defined in Section 13A-5-13, et seq., of the
20 Code of Alabama 1975.

21 (d) As new offenses are created by the Legislature
22 or new criminal acts trend, the Office of Prosecution Services
23 may promulgate rules to include additional disqualifying
24 offenses or eligibility to participate in any pretrial
25 diversion program operating under this act.

26 Section 4. (a) In determining whether an offender
27 may be admitted into a pretrial diversion program established

1 under this act, it shall be appropriate for the district
2 attorney to consider any of the following circumstances:

3 (1) If the offender is 18 years of age or older at
4 the time the offense was committed.

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

7 (3) It is determined the needs of the community and
8 of the offender can be met through the pretrial diversion
9 program.

10 (4) The offender appears to pose no substantial
11 threat to the safety and well-being of the community or law
12 enforcement.

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

15 (6) The offender will likely respond to
16 rehabilitative treatment.

17 (7) The expressed wish of the victim for the
18 offender to participate in the pretrial diversion program.

19 (8) Undue hardship upon the victim.

20 (9) Whether the victim or the offender has medical,
21 psychiatric, or vocational difficulties that would impede the
22 administration of justice.

23 (10) Whether there is a reason to believe that the
24 victim or offender will benefit from and cooperate with a
25 diversionary program.

1 (11) If the offender honorably served and is
2 eligible as a former member of the U.S. military to be treated
3 by the United States Department of Veterans' Affairs.

4 (12) The impact of criminal charges or prosecution
5 upon the victim, witnesses, or the community.

6 (13) The availability of other programs which may
7 serve the needs of the community or the rehabilitation of the
8 offender.

9 (b) The district attorney may waive any of the
10 standards specified in subsection (a) if justice or special
11 circumstances dictate.

12 (c) Any participation in a pretrial diversion
13 program should not preclude an offender from considering and
14 pursuing other strategies which may be more beneficial to him
15 or her than the program.

16 (d) (1) In jurisdictions where the district attorney
17 elects to establish a pretrial diversion program pursuant to
18 this act, an offender's qualifications, application, or entry
19 into any other existing statutorily created drug court or
20 other successful specialty court shall be paramount to the
21 pretrial diversion program created pursuant to this act. If an
22 offender qualifies for a drug or specialty court program, that
23 program shall have priority over the pretrial diversion
24 program created pursuant to this act.

25 (2)a. Nothing in this act shall prohibit a district
26 attorney and the presiding circuit judge or the presiding
27 judge in charge of the specialty court or drug court to enter

1 into an agreement or memorandum of understanding, whereby the
2 pretrial diversion program and the other specialty or drug
3 court will work to complement each other in a cohesive and
4 unified effort to serve the needs of the community, victims,
5 and to rehabilitate the offender.

6 b. Nothing in this act shall prevent the pretrial
7 diversion program from accepting applicants who have been
8 referred from or denied acceptance into a drug or specialty
9 court program.

10 (e) No potential pretrial diversion program
11 applicant shall be denied access to a program based on race,
12 ethnic background, religion, gender, disability, marital
13 status, or economic status. No person who is protected by
14 applicable federal or state laws against discrimination should
15 be otherwise subjected to discrimination for eligibility
16 purposes.

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

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

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

11 (c) If requested by the district attorney or the
12 court, a program certified by the Alabama Department of Mental
13 Health may provide a mental health evaluation, including a
14 drug addiction assessment for any offender who has applied for
15 the program pursuant to this act, any local pretrial diversion
16 program, or any drug court program created by statute.

17 Section 6. An offender who enters into a pretrial
18 diversion program established under this act shall be brought
19 before a court of competent jurisdiction and shall satisfy
20 each of the following requirements:

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

23 (2) Agree, in writing, to the tolling of periods of
24 limitations established by statutes or rules of court while in
25 the program.

26 (3) If applicable, waive, in writing, his or her
27 right to a jury trial.

1 (b) Prior to entering into any agreement or seeking
2 entry into a pretrial diversion program created pursuant to
3 this act, an offender must be represented by counsel or waive
4 his or her right to have counsel before a judge of a court of
5 competent jurisdiction. If the offender is indigent, nothing
6 in this act shall prevent the court from appointing counsel to
7 represent an offender.

8 (c) An offender who enters a pretrial diversion
9 program pursuant to this act shall reasonably be informed of
10 the cost of the ~~administrative~~ administration fee and, as
11 practicable as possible, any other costs that will be required
12 for the offender to pay for participation in the program.
13 Restitution, or portions thereof, may be left open where
14 amounts are difficult to determine or, due to the nature of
15 the harm, may increase or decrease over the period.

16 Section 7. (a) An offender who enters into a
17 pretrial diversion program established under this act may
18 satisfy any of the following requirements:

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

24 (2) Agree, in writing, to the conditions of the
25 pretrial diversion program established by the district
26 attorney.

1 (3) If there is restitution, agree in writing to a
2 restitution amount to be paid within a specified period of
3 time, or for restitution to remain open for future changes due
4 to the nature of the injury or loss pursuant to the agreement.

5 (4) If the investigating law enforcement agency
6 incurred extraordinary investigative expenses, agree in
7 writing to a specific restitution agreement to be paid within
8 a specified period of time and in an amount to be determined
9 by the district attorney.

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

16 (6) Agree to execute any agreement, covenant, note,
17 or contract to pay any agreed upon sums of restitution, cost
18 of courts, fines, fees, or other agreed upon or court-ordered
19 monies, pursuant to Section 12-17-225, Code of Alabama 1975.

20 (7) Submission, to a court of competent
21 jurisdiction, of a written plea of guilty to the offense or
22 offenses charged, agreed upon included offenses, or mitigated
23 disposition, together with an agreement as to whether the case
24 is to be dismissed or nolle prossed upon successful completion
25 of the program, and an agreement as to the recommended
26 sentence should one be imposed by the court. The agreement
27 shall, as practicable as possible, set forth all fees, fines,

1 cost, restitution, or any other conditions or expectations
2 upon the offender or the state.

3 (b) (1) Upon acceptance of an offender into the
4 program by the district attorney, the district attorney shall
5 submit the written application of the offender, together with
6 a statement of fact of the offense, and the agreement of the
7 offender and the district attorney, to a court of competent
8 jurisdiction presiding over the affected case for approval.

9 (2) The determination as to which judge within a
10 judicial circuit or county will preside over the case shall be
11 made according to the local approved method of criminal case
12 assignment that is practiced in all other criminal case
13 assignments within that jurisdiction. However, the district
14 attorney and the presiding circuit judge may enter into an
15 agreement as to an alternative method of case assignment for
16 pretrial diversion cases to a judge pursuant to this act in
17 order to serve judicial economy.

18 (c) If the offender is terminated from the program
19 for a violation of agreed upon conditions, the administration
20 fees shall not be refundable. However, if at the time the
21 agreement is initially presented to the court, the court
22 rejects the agreement and disposition of the charges involved,
23 any monies paid by the offender in satisfaction of the
24 administration fee shall be refunded to the offender. The
25 offender shall remain liable for any agency or service
26 provider in furtherance of the application and evaluation
27 process, and the same shall be deducted from any money

1 refunded to the offender. Any deducted money shall be paid
2 solely to the office of the district attorney for payment of
3 the expenses.

4 (d) Upon approval of the agreement and acceptance of
5 the guilty plea, the court shall expressly place the case or
6 cases in an administrative docket until such time that the
7 court is notified that the offender has fulfilled the terms of
8 the pretrial diversion agreement, upon motion of the district
9 attorney that the offender has been terminated from the
10 program by the court, or otherwise withdraws from the program.
11 Imposition of punishment or sentence by the court shall be
12 deferred until the offender has successfully completed the
13 program or is terminated from the program, by the court or
14 upon motion of the district attorney.

15 (e) In the event the offender is terminated from the
16 program, the court shall impose appropriate punishment or
17 sentence in the same manner as with any guilty plea, finding
18 of guilt, or admission and shall not be bound by the terms of
19 the agreement as to what punishment or sentence to impose.

20 (f) Upon successful completion of the program by the
21 offender, the district attorney shall notify the court in
22 writing of that fact, together with a request that the court
23 enter an order of dismissal of the case pursuant to the
24 agreement or any other disposition that was agreed upon by the
25 district attorney and the offender and approved by the court.

26 (g) Pretrial diversion program records or records
27 related to pretrial diversion program admission, with the

1 exception of the statement of the applicant concerning his or
2 her involvement in the crimes charged or other crimes, shall
3 not be admissible in subsequent proceedings, criminal or
4 civil, unless a court of competent jurisdiction determines
5 there is a compelling public interest in disclosing the
6 records. Communications between pretrial diversion program
7 counselors and offenders shall be privileged unless a court of
8 competent jurisdiction determines there is a compelling public
9 interest in disclosing the communication.

10 (h) The district attorney and the presiding judge
11 may establish a Restorative Justice Initiative (RJI) within
12 the judicial circuit for any case in the circuit or district
13 court. The guidelines, rules, and mechanisms for such an
14 initiative shall be promulgated by the Alabama Office of
15 Prosecution Services and the Administrative Office of Courts.

16 (i) After any violation of any pretrial diversion
17 program terms or conditions or upon any breach of any program
18 agreement by the offender, the district attorney shall notify
19 the court, and the district attorney may do any of the
20 following:

21 (1) Terminate the offender from the pretrial
22 diversion program.

23 (2) Require the adoption of a new agreement as a
24 condition of continued participation.

25 (3) Continue with the agreement with or without
26 modification.

1 Section 8. An offender shall make application to a
2 pretrial diversion program established under this act at a
3 time to be determined by the district attorney, but in the
4 case of a felony, may not be more than 90 days after
5 arraignment.

6 Section 9. (a) An offender may be assessed an
7 administration fee when he or she is approved for a pretrial
8 diversion program established under this act. The amount of
9 the fee for participation in the program shall be in addition
10 to any court costs, assessments for crime victim's
11 compensation fund, Department of Forensic Sciences
12 assessments, drug, alcohol, or anger management treatments
13 required by law, restitution, or costs of supervision or
14 treatment. A schedule of payments for any of these fees may be
15 established by the district attorney.

16 (b) The amount of the administration fee shall be
17 determined by the district attorney. The administration fees
18 shall not exceed the amount assessed for a first offense
19 pursuant to Section 13A-12-281(a), Code of Alabama 1975, for
20 each case for which the offender makes application for
21 acceptance into the pretrial diversion program.

22 (c) (1) An applicant may not be denied access into
23 the pretrial diversion program based solely on his or her
24 inability to pay pretrial diversion program fees. Fees
25 established by this act may be waived or reduced for just
26 cause, including indigency of the applicant.

1 (2) If an offender, upon application, claims
2 indigency, he or she shall be brought before a court of
3 competent jurisdiction for a determination of indigency. In
4 the event that a court determines the offender to be indigent,
5 any fees or costs shall not be waived or remitted unless the
6 defendant or the party responsible for paying any fees or
7 costs proves to the reasonable satisfaction of the judge
8 presiding or sentencing judge that the defendant or party is
9 not capable of paying the same within the reasonably
10 foreseeable future. In the event the offender is determined to
11 be indigent, a periodic review of the offender's indigent
12 status may be conducted by the court upon motion of the
13 district attorney to determine if the offender is no longer
14 indigent.

15 (d) Administration fees required by this act shall
16 be collected by the district attorney's office or, if by
17 agreement of the district attorney and the circuit clerk, the
18 circuit clerk in the county of the judicial circuit in which
19 the offense was filed may collect the fee. All pretrial
20 diversion program fees under this act shall be deposited in a
21 timely manner by the district attorney into the District
22 Attorney's Solicitor Fund pursuant to Section 12. The district
23 attorney shall make the deposits in a timely manner, pursuant
24 to commonly accepted accounting practices. The District
25 Attorney's Solicitor Fund shall be subject to regular audits
26 by the Department of Examiners of Public Accounts.

1 (e) (1) Notwithstanding Section 12, twenty-five
2 dollars (\$25) of the administration fee shall be allocated to
3 the appropriate circuit or district court clerk and shall be
4 available for use at the discretion of the clerk to support
5 the office of the clerk in the same way and manner as monies
6 received from or through the District Attorney's Restitution
7 Recovery Unit.

8 (2) Notwithstanding Section 12, in pretrial
9 diversion cases arising out of circuit or district court, five
10 dollars (\$5) of the administrative fee shall be allocated to
11 the Victims of Crime and Leniency (VOCAL) and shall be
12 available for use at the discretion of the program to support
13 its services.

14 (f) The fees allocated to the circuit clerk shall be
15 disbursed to the Restitution Recovery Fund of the Clerk as
16 established pursuant to Section 12-17-225.4(2), Code of
17 Alabama 1975. Funds deposited into the Restitution Recovery
18 Fund shall be kept and maintained by the clerk to be available
19 for use, at the discretion of the clerk, to support the
20 functions of the office of the clerk and shall be in addition
21 to the amount allocated to the Unified Judicial System for the
22 clerks. Funds retained by the clerk shall not reduce the
23 amount payable to the clerk under any local act or reduce or
24 affect the amounts of funding allocated by the Administrative
25 Office of Courts to the budgets of the clerks.

26 (g) Fees allocated or funds retained by the district
27 attorney and deposited into the District Attorney's Solicitor

1 Fund shall be kept and maintained by the district attorney to
2 be available for use, at the discretion of the district
3 attorney, as prescribed by this act or for any other
4 legitimate law enforcement purposes or to support the
5 functions of the office of the district attorney. The funds
6 shall be in addition to the amount allocated to the district
7 attorney pursuant to this act or any other act, grant, fee,
8 assessment, fine, restitution, other monies, or alternative
9 funding retained by the district attorney, and shall not
10 reduce the amount payable to the district attorney of funding
11 allocated by the State of Alabama to the budget of the
12 district attorney.

13 Section 10. The district attorney and the offender
14 may enter into an agreement, as a part of a pretrial diversion
15 program established under this act, that the offender be
16 admitted to a certified drug or alcohol program on an
17 inpatient or outpatient basis or receive other treatment
18 alternatives for substance abuse. The district attorney may
19 require the offender to submit to periodic or random drug
20 testing or other terms and conditions related to substance
21 abuse. The offender shall pay the costs of all services unless
22 otherwise approved by the district attorney.

23 Section 11. (a) In any case in which an offender is
24 admitted into a pretrial diversion program established under
25 this act, there shall be a written agreement between the
26 district attorney and the offender. The agreement shall
27 include the terms of the pretrial diversion program, the

1 length of the program, as practicable as possible, the costs
2 of the program to the offender, and the period of time after
3 which the district attorney must dispose of the charges
4 against the offender. If, as part of the pretrial diversion
5 program, the offender agrees to plead guilty to a particular
6 charge or charges and receives a specific sentence, an
7 agreement concerning when the plea of guilt will occur, to
8 what charges to which the offender will plead guilty, and any
9 sentence to be imposed shall be approved by and submitted to
10 an appropriate circuit or district court judge having
11 jurisdiction over the offender within the judicial circuit
12 prior to admission of the offender in the pretrial diversion
13 program.

14 (b) As a condition of being admitted to the pretrial
15 diversion program, the district attorney may require the
16 offender to agree to any of the following terms or conditions:

17 (1) Pay restitution.

18 (2) Participate in an education setting to include,
19 but not limited to, K-12, college, job training school, trade
20 school, GED classes, adult basic education courses, or any
21 other workforce development program approved by the district
22 attorney.

23 (3) If appropriate, attempt to learn to read and
24 write.

25 (4) Financially support his or her children or pay
26 child support.

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

3 (6) Refrain from contact with certain persons or
4 premises.

5 (7) Maintain or seek employment.

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

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

8 (10) Be required to conduct himself or herself in an
9 honorable manner as a good member of the community, and not
10 endanger in any way the person, property rights, dignity, or
11 morals of others or himself or herself.

12 (11) Be required to comply with all municipal,
13 county, state, and federal law, ordinances, or orders.

14 (12) Be required to be absolutely truthful in any
15 oral or written application or reports to the pretrial
16 diversion program.

17 (13) Be required to pay supervision fees to the
18 agency or entity responsible for monitoring and verifying the
19 offender's compliance with the terms of the pretrial diversion
20 program set forth by the district attorney. These fees shall
21 be paid by the offender or the district attorney to the
22 supervising agency or entity in a timely manner, pursuant to
23 the agreement.

24 (14) Observe curfews, home detention, electronic
25 monitoring, or travel constraints as set out in the offender's
26 agreement.

1 (15) Enter into an agreement with the district
2 attorney to have restitution, court costs, fines, fees, or
3 child support withheld, forfeiture of accounts, assets, or
4 garnished from the wages or salary of the offender.

5 (16) Complete approved community service.

6 (17) Agree to the terms and conditions of the
7 pretrial diversion program established by the district
8 attorney.

9 (18) Provide a statement admitting his or her
10 participation in, and responsibility for, the offense which is
11 the subject of the application for entry into the pretrial
12 diversion program.

13 (19) Refrain from the possession of or use of any
14 firearm.

15 (20) Pay the application fee pursuant to this act.

16 (21) Participate in and complete a certified drug
17 court program, approved by the Administrative Office of
18 Courts.

19 (22) Complete a certified drug or alcohol addiction
20 evaluation and treatment program, which may also include
21 services pursuant to Section 22-50-17, Code of Alabama 1975.

22 (23) Complete a certified mental health evaluation
23 and treatment program.

24 (24) Abide by all conditions imposed for treatment
25 by the United States Department of Veterans' Affairs and
26 provide certified proof of completion to the district
27 attorney.

1 (25) Not to leave the State of Alabama without prior
2 written consent of the district attorney or supervising agency
3 or personnel and to execute a waiver of extradition from any
4 other jurisdiction outside the State of Alabama, to exist only
5 during the term of the pretrial diversion program.

6 (26) For, but not limited to, offenses involving a
7 violation of any provision of Section 32-5A-191, Code of
8 Alabama 1975, the offender may be required to operate only a
9 motor vehicle installed with an approved ignition interlock
10 device for the duration of his or her time in the program.

11 (27) Agree to be subject to any other terms or
12 conditions as required by the district attorney set out in the
13 pretrial diversion agreement. The district attorney shall be
14 given broad discretion in designing a program specifically for
15 each offender and circumstances of the offender.

16 (c) Regardless of the ultimate disposition of the
17 criminal charge, upon an offender's completion of the program,
18 the district attorney shall notify the court that the offender
19 has completed his or her obligations under the program. At
20 that time, the court shall order the offender to pay any and
21 all remaining unpaid restitution, court costs, fines, fees, or
22 other monies that the offender is statutorily obligated to pay
23 that would have been assessed or owed upon a conviction or
24 adjudication for the underlying criminal offense. These shall
25 include, but are not limited to, supervision or driver's
26 license reinstatement fees or any statutory fees or
27 assessments to the Alabama Department of Forensic Sciences.

1 (d) The offender shall further agree to the court's
2 jurisdiction beyond the term of pretrial diversion,
3 incarceration, probation, parole, or end of sentence for the
4 purposes of the collection of court-ordered or agreed upon
5 fines, fees, court costs, and restitution pursuant to Section
6 12-17-225, et seq., Code of Alabama 1975.

7 Section 12. (a) All remaining administration fees
8 shall be allocated to the district attorney's office. At the
9 discretion of the district attorney, all administration fees
10 paid by the offender pursuant to this act may either be paid
11 to the district attorney, to be placed in the District
12 Attorney's Solicitor Fund, or if the district attorney and the
13 clerk agree, may be paid to the circuit clerk of the
14 jurisdiction for distribution to the District Attorney's
15 Solicitor Fund. In the event that the district attorney elects
16 to have the administration fee paid to the circuit clerk for
17 ultimate distribution to the Solicitor Fund, the circuit clerk
18 shall retain a fee of twenty-five dollars (\$25) for
19 processing.

20 (b) All fees paid to the district attorney pursuant
21 to this act shall be paid into the District Attorney's
22 Solicitor Fund and shall be used to pay costs associated with
23 the administration of the pretrial diversion program or for
24 any other law enforcement purpose.

25 (c) Costs associated with program administration
26 shall be paid from fees collected and include, but are not
27 limited to, salaries, rent, vehicles, uniforms, telephones,

1 postage, office supplies, public education, reports,
2 equipment, training and travel services, service contracts, or
3 professional services. The district attorney may pay for
4 services or programs for an offender while the offender is in
5 the pretrial diversion program if special circumstances and
6 justice dictate.

7 Section 13. (a) (1) If the offender violates the
8 conditions of a pretrial diversion program established under
9 this act, and the offender's participation is terminated, as
10 an alternative to the imposition of a prison sentence, an
11 offender who has violated the terms and conditions of a
12 pretrial diversion program may be placed under the supervision
13 of an existing community corrections program, or other
14 alternative diversionary program, provided that the
15 supervision is consistent with public safety and the best
16 interests of the offender in furtherance of his or her
17 treatment and rehabilitation in the community.

18 (2) The court and the offender shall be given
19 written notice of the intent of the district attorney to
20 terminate the offender from the pretrial diversion program
21 including the reason for the termination. If the offender is
22 unavailable for notice or has absconded, the district attorney
23 may provide notice of termination from the pretrial diversion
24 program, or any portion thereof, by giving notice to the
25 offender's attorney of record or by regular mail to the most
26 recent known address provided by the offender.

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

4 Section 14. (a) Absent wantonness, negligence, or
5 intentional misconduct, the district attorney or his or her
6 staff shall have no liability, criminal or civil, for the
7 conduct of any offender while participating in a pretrial
8 diversion program established under this act or of any service
9 provider or its agents that are contracted to or who have
10 agreed to provide services to the pretrial diversion program.

11 (b) Absent wantonness, negligence, or intentional
12 misconduct, the district attorney, or his or her staff or its
13 officers or employees, shall have no liability, criminal or
14 civil, for any injury or harm to the offender while the
15 offender is a participant in any pretrial diversion program
16 administered pursuant to this act. The district attorney may
17 require written agreed upon waivers of liability as a
18 prerequisite for admittance into the pretrial diversion
19 program.

20 (c) Absent an agreement which includes the consent
21 of the county commission, the sheriff, and the district
22 attorney, neither the county nor the sheriff shall have any
23 responsibility for a pretrial diversion program established
24 under this act, including, but not limited to, the payment of
25 any expenses which may be necessary to operate the program.
26 Under no circumstances shall the county or the sheriff have
27 any liability, criminal or civil, for any conduct by an

1 offender or any injury or harm to the offender while he or she
2 is a participant in any program authorized by this act.

3 Section 15. A pretrial diversion program established
4 under this act may apply for grants, may accept donations from
5 individuals or corporations, and may receive funding or
6 appropriations from city, county, or state agencies or
7 departments to be used in the maintenance or expansion of the
8 pretrial diversion program. Absent an express agreement
9 between the county commission, sheriff, and district attorney,
10 no county commission or any of its departments or agencies
11 shall be required to participate in, or provide funding for,
12 any pretrial diversion program established under this act.

13 Section 16. If a district attorney establishes a
14 pretrial diversion program under this act, the district
15 attorney may form an advisory board within the county or
16 judicial circuit, which may be known as the Citizens Justice
17 Advisory Board for Pretrial Diversion, for the purpose of
18 assisting the district attorney in the determination of
19 appropriate pretrial diversion candidates. The district
20 attorney shall retain the final decision as to the admittance
21 or denial of individuals into the pretrial diversion program,
22 the fees, the guidelines of the program, and any resources the
23 pretrial diversion program utilizes. The district attorney
24 shall appoint all members of any advisory board and shall
25 determine when or if it should meet. The board shall be
26 inclusive and reflect the racial, gender, geographic, urban
27 and rural, and economic diversity of the circuit. The advisory

1 board shall serve without personal profit, but may be paid
2 from the District Attorney's Solicitor Fund for actual
3 expenses incurred in connection with its duties.

4 Section 17. (a) A district attorney, to the extent
5 practicable, may enter into an agreement with a community
6 correction entity, to utilize the services of existing
7 community corrections programs established pursuant to Section
8 15-18-170, Code of Alabama 1975, or faith based community
9 programs, which are certified by the Alabama Department of
10 Mental Health, to provide for the supervision of defendants
11 participating in a pretrial diversion program established
12 under this act. The district attorney may enter into an
13 agreement with a drug court entity to utilize the services of
14 existing certified drug court programs established pursuant to
15 Section 12-23A-4, Code of Alabama 1975, provided that the
16 district attorney determines it would serve the best interest
17 of justice and the community.

18 (b) Notwithstanding Section 12(b)(2), if, upon
19 enactment of this legislation, a pretrial diversion program,
20 or an equivalent, has been established in the judicial circuit
21 by local law, with regard only to a pretrial diversion program
22 in a circuit court or district court, the district attorney
23 may choose to adopt this act in its entirety or any portion or
24 portions that the district attorney believes would best serve
25 the interest of justice and the community.

26 (c) If, pursuant to subsection (b), a district
27 attorney elects to opt into any provision or provisions of

1 this act, he or she must file such an election with the Office
2 of Prosecution Services.

3 Section 18. (a) The Office of Prosecution Services
4 shall develop and maintain a pretrial diversion offender
5 database. Any existing or newly created pretrial diversion
6 program, regardless of whether it was established by this act
7 or created by local law, municipal ordinance, or other
8 administrative action, or is an existing district attorney or
9 municipal pretrial diversion program, shall be subject to this
10 section. Upon entry into any pretrial diversion program, the
11 district attorney or municipal prosecutor shall submit
12 information, including the name, date of birth, and
13 identifying personal vital information of a participating
14 offender. The district attorney or municipal prosecutor shall
15 also submit the criminal statute or municipal ordinance
16 violated, a brief description of any underlying qualifying
17 offense, and a brief description of the agreed upon
18 disposition of the offense. If the offender was prematurely
19 terminated from the program, a brief description of the
20 reasons for the termination shall be submitted for inclusion
21 into the database.

22 ~~(c)~~ (b) Information in the database concerning any
23 applicant may be used by any district attorney in determining
24 admittance into a pretrial diversion program or its
25 equivalent. A district attorney may submit prior pretrial
26 diversion dispositions from any jurisdiction contained within
27 the database to the court for the purpose of assisting the

1 court in its ruling with regard to sentencing, a ruling on
2 youthful offender, or any first offender or first
3 offender-type judicial determination. Nothing in this act
4 shall prohibit any district attorney from entering pretrial
5 diversion dispositions of offenders, pursuant to this section,
6 that were previously disposed of in a pretrial diversion
7 program or its equivalent, prior to this act. Unless otherwise
8 provided for by law, information contained in the database
9 shall only be accessible by court order, the district
10 attorney, or other law enforcement agency. In no event shall a
11 prosecuting agency be charged for accessing the information in
12 the database.

13 ~~(d)~~ (c) Any information submitted pursuant to this
14 section whereby the offender has been adjudicated or convicted
15 as a youthful offender shall be sealed pursuant to state law.
16 This information may only be retrieved from the database or
17 used upon an order of a court of competent jurisdiction.

18 ~~(e)~~ (d) Within 30 days of entry of the applicant
19 into a pretrial diversion program, seven dollars (\$7) per
20 applicant shall be paid by the district attorney or
21 municipality if the applicant is from a municipality, to the
22 Office of Prosecution Services for creation and maintenance of
23 the offender database described in this section, regardless of
24 whether the program was created pursuant to this act, a local
25 act, a municipal ordinance, or an administrative action
26 authorizing a pretrial diversion program, or any existing
27 district attorney or municipal pretrial diversion program.

1 Section 19. Notwithstanding Section 11 (c), upon
2 conviction for any criminal offense, felony, misdemeanor, or
3 violation of the Code of Alabama 1975, or ordinance violation,
4 any fees or costs shall not be waived or remitted unless the
5 defendant or party responsible for paying the fees proves to
6 the reasonable satisfaction of the presiding or sentencing
7 judge that the defendant or party is not capable of paying the
8 fees or costs within the reasonably foreseeable future.

9 Section 20. The provisions of this act are
10 severable. If any part of this act is declared invalid or
11 unconstitutional, that declaration shall not affect the part
12 which remains.

13 Section 21. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-ferred to the House of Representatives committee on Judiciary 20-MAR-13

Read for the second time and placed on the calendar with 1 substitute and 1 amendment..... 23-APR-13

Read for the third time and passed as amended..... 25-APR-13

Yeas 98, Nays 1, Abstains 0

Jeff Woodard
Clerk