

Rep(s). By Representatives Clouse, Beck and Boothe

HB621

ENROLLED, An Act,

Relating to Dale and Geneva Counties and the Thirty-Third Judicial Circuit; providing for the establishment of a pretrial diversion program.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The District Attorney of the Thirty-Third Judicial Circuit of Alabama may establish a pretrial diversion program.

All discretionary powers endowed by the common law and provided for by statutes and acts of this state or powers or discretion otherwise provided by law for the District Attorney of the Thirty-Third Judicial Circuit shall be retained.

The pretrial diversion program shall be under the direct supervision and control of the district attorney. The district attorney may employ necessary persons to accomplish this act and these persons shall serve at the pleasure of the district attorney.

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

(1) DISTRICT ATTORNEY. The elected District Attorney of the Thirty-Third Judicial Circuit or any of his or her assistant district attorneys.

(2) LAW ENFORCEMENT or LAW ENFORCEMENT OFFICER. Any person who is employed by an agency or department whose purpose is to protect people. This may include, but is not limited to, police personnel, sheriff personnel, Department of Human Resources personnel, parole and probation personnel, community corrections office personnel, court referral office personnel, whether that agency or department is in the State of Alabama or located elsewhere.

(3) OFFENDER. Any person charged with a crime as defined by the Code of Alabama 1975, which was allegedly committed in the jurisdiction of the Thirty-Third Judicial Circuit.

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

Section 3. (a) A person charged with a criminal offense specified in this subsection whose jurisdiction is in the circuit or district court of the Thirty-Third Judicial Circuit

may apply to the District Attorney of the Thirty-Third Judicial Circuit for admittance to the pretrial diversion program.

(b) A person charged only with any of the following offenses may apply for the program:

(1) A traffic offense, other than driving under the influence (DUI).

(2) A property offense.

(3) An offense wherein the victim did not receive serious physical injury.

(4) An offense in which the victim was not a child under 14 years of age, a law enforcement officer, a school official, or a correctional officer.

(5) A misdemeanor other than one specifically excluded in this section.

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

(1) Trafficking or distribution of drugs, or both.

(2) Any offense involving the abuse of a child or an elderly person.

(3) Any forcible sex offense.

(4) Any Class A felony.

(5) Any offense involving serious injury to a person.

(6) Any offense involving death.

(7) Driving under the influence or a traffic offense charged to a commercial driver license holder, whether or not the holder was operating a commercial motor vehicle at the time of the offense.

(8) Domestic violence.

(9) Bribery in any degree.

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

(d) A person deemed by the district attorney to be a threat to the safety or well-being of the community shall not be eligible for the pretrial diversion program.

(e) The opinion of law enforcement officers involved in the offense may be sought and used in the decision whether to approve the applicant for the pretrial diversion program.

(f) Applicants who satisfy all other requirements to enter the pretrial diversion program who have any prior felony convictions that can be used for enhancement purposes under the Habitual Felony Offender Act must also receive consent from a district or circuit judge to enter the pretrial diversion program.

Section 4. Admittance to the pretrial diversion program shall be appropriate in any of the following instances:

(1) The offender is 18 years of age or older, or 16 years of age or older if the offense is a traffic citation, at the time the alleged offense was committed.

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

(3) It is determined that the needs of the state and the offender can be met through the pretrial diversion program.

(4) The offender appears to pose no substantial threat to the safety and well-being of the community.

(5) It appears the offender is not likely to be involved in further criminal activity.

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

Section 5. (a) Prior to being admitted to the pretrial diversion program or as a part of the district attorney's evaluation process, an applicant may be required by the district attorney to furnish information concerning past criminal history, educational history, work record, family history, medical or psychiatric treatment or care received, psychological test taken, and any other information concerning the offender which the district attorney believes has a bearing on the decision as to whether or not the offender should be admitted to the pretrial diversion program.

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

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

(1) The offender must be eligible for and must sign to have any bond on his or her case where diversion is sought based on personal recognizance, cash or a property bond and not a security bond.

(2) Voluntarily waive, in writing, and contingent upon the successful completion of the program, his or her right to a speedy trial.

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

(4) Agree, in writing, to the conditions of the pretrial diversion program established by the district attorney.

(5) If there is a victim of the crime, agree in writing to a restitution agreement within a specified period of time and in an amount to be determined by the district attorney taking into account circumstances of the offender and victim.

(6) A statement by the offender admitting his or her participation in, and responsibility for, the offense which is the subject of the application for entry into the pretrial diversion program.

(b) The district attorney's pretrial diversion program records or records related to pretrial diversion program admission are confidential records and shall not be admissible in subsequent proceedings, criminal or civil, except in a subsequent criminal sentencing, probation, youthful offender hearings, or otherwise in the discretion of the trial judge in accordance with Alabama Rules of Evidence.

Section 7. (a) An offender shall make application to the pretrial diversion program no later than 21 days after his or her first appearance or arraignment, whichever occurs first. In the case of traffic citations, application shall be made with 21 days of the issuance of the citation.

(b) At the discretion of the district attorney, the time provision of this section may be waived.

Section 8. (a) An applicant may be assessed a fee when the applicant is approved for the program. The amount of the assessment for participation in the program shall be in addition to any court costs and assessments for victims of drug, alcohol, or anger management treatment required by law, and are in addition to costs of supervision, treatment, and restitution for which the person may be responsible. An applicant may not be denied access into the pretrial diversion program based solely on his or her inability to pay. Pretrial diversion program fees as established by this act may be waived or reduced for just cause, including indigency of the applicant, at the discretion of the district attorney. Any determination of indigency of the offender for the purposes of pretrial diversion fee waiver or reduction shall be made by the district attorney. A schedule of payments for any of these fees may be established by the district attorney.

(b) The following fees shall be applied to applicants accepted into the pretrial diversion program:

(1) Felony offenses: Up to eight hundred and fifty dollars (\$850).

(2) Misdemeanor offenses (excluding traffic): Up to five hundred dollars (\$500).

(3) Traffic offenses: Up to three hundred dollars (\$300).

(4) Violations: Up to two hundred dollars (\$200).

(c)(1) An applicant may be assessed additional fees if the services of the Department of Forensic Sciences are used in a case involving a drug offense in the following amount:

a. Felony: Up to one hundred dollars (\$100).

b. Misdemeanor/violation: Up to fifty dollars (\$50).

(2) An applicant may be assessed additional fees for distribution to the arresting or ticketing agency in the following amounts:

a. Felony: Up to one hundred dollars (\$100).

b. Misdemeanor/violation: Up to fifty dollars (\$50).

c. Traffic: Up to twenty-five dollars (\$25).

(3) The additional fees provided for by this subsection may not be paid into the pretrial diversion program fund.

(d) Each applicant accepted into the pretrial diversion program shall be assessed an additional fee between twenty-five dollars (\$25) and one hundred dollars (\$100) as determined by the district attorney which shall be allocated to the Dale County Circuit Clerk's Office, for offenses filed in Dale County, and to the Geneva County Circuit Clerk's Office, for offenses filed in Geneva County. Money allocated to a circuit clerk pursuant to this subsection shall be available for use, at the clerk's discretion, to support the clerk's office.

(e) Each applicant accepted into the pretrial diversion program shall be assessed an additional fee between fifty dollars (\$50) and one hundred dollars (\$100) as determined by the district attorney which shall be allocated to the Dale County General Fund, for offenses filed in Dale County and to the Geneva County General Fund, for offenses filed in Geneva County.

(f) The district attorney may use fees collected by the pretrial diversion program to help support local and state law enforcement, or any agency or department of city or county

government which assists local law enforcement. This support shall be provided to help employ more officers or staff, buy needed equipment or supplies, provide training opportunities, or any other law enforcement purposes.

(g) The district attorney may use a portion of the proceeds to fund other organizations that help support law enforcement.

(h) Fees required by this act shall be collected by the circuit clerk's office in which the offense was filed. Those fees due to the district attorney shall then be disbursed to the district attorney and shall be deposited by the district attorney into the pretrial diversion fund as described in Section 10 of this act. The circuit clerk shall make the disbursement in a timely manner.

Section 9. The district attorney and the offender may enter into an agreement as a part of the pretrial diversion program of an offender that the offender be admitted to a drug or alcohol program on an inpatient basis or outpatient basis or receive other treatment alternatives for substance abuse. The district attorney may require the offender to submit to periodic or random drug testing as a part of the pretrial diversion program of the offender and other terms and conditions related to substance abuse as the district attorney may direct. The offender shall pay the costs of all services unless otherwise approved by the district attorney.

Section 10. (a) In any case in which an offender is admitted into a pretrial diversion program, there shall be a written agreement between the district attorney and the offender. The agreement shall include the terms of the pretrial diversion program, the length of the program, and the period of time after which the district attorney will dispose of the charges against the offender in a noncriminal manner or what charges the defendant will plead guilty to and the sentence the offender will receive. If, as part of the pretrial diversion program, the offender agrees to plead guilty to a particular offense and receive a specific sentence, this agreement concerning the offense and sentence shall be approved by an appropriate circuit or district judge of the Thirty-Third Judicial Circuit prior to admission of the offender in the pretrial diversion program.

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

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

(2) If appropriate, attempt to learn to read and write.

(3) Financially support his or her children or pay child support.

(4) Refrain from the use of alcohol or drugs or frequenting places where alcohol or drugs are sold or used and submitting to periodic or random drug testing.

- (5) Refrain from contact with certain persons or premises.
 - (6) Maintain or seek employment.
 - (7) Attend individual, group, or family counseling.
 - (8) Pay approved restitution to a victim if any is due.
 - (9) Pay court costs and fines.
 - (10) Pay supervision fees and application fees pursuant to this act.
 - (11) Observe curfews or home detention or travel constraints as set out in the offender's agreement.
 - (12) Enter into an agreement with the district attorney to have restitution, court costs, fines, fees, or child support either withheld or garnished from the wages or salary of the offender and applied to the above.
 - (13) Participation in a substance abuse program, including, but not limited to, being admitted to a drug or alcohol treatment program on an inpatient or outpatient basis or receive other treatment alternatives for substance abuse.
 - (14) Refraining from the possession or use of any deadly weapon or dangerous instrument.
- (c) The offender shall be subject to other terms or conditions as the district attorney and the offender may agree to in the written agreement of the offender, it being the purpose of this act to allow the district attorney broad discretion in designing a program specifically for each offender and circumstances of the offender.

Section 11. The district attorney shall establish a pretrial diversion program fund. The district attorney shall use the funds in the pretrial diversion program fund to pay costs and expenses associated with the administration of the pretrial diversion program or for other purposes contained in other pretrial diversion programs in this state. Costs associated with program administration shall include, but shall not be limited to, salaries, rent, vehicles, telephones, postage, office supplies and equipment, training and travel services, service contracts, and professional services. The district attorney may pay for services or programs for an offender while the offender is in the pretrial diversion program if special circumstances and justice dictate. The pretrial diversion program fund shall be subject to audit every two years in accordance with state law by the Examiners of Public Accounts. In years not subject to audit, the district attorney shall obtain an independent review of the fund by a certified public accountant.

Section 12. (a) If the offender violates the conditions of the pretrial diversion program agreed to in writing by the offender and the district attorney, the district attorney may

terminate the participation of the offender. The offender shall be given written notice of the intent of the district attorney to terminate him or her from the pretrial diversion program, including the reason for the termination.

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

Section 13. The district attorney shall have no liability, criminal or civil, for the conduct of any offender while participating in the pretrial diversion program.

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

Section 15. The district attorney may form an advisory board to assist in the determination of appropriate pretrial diversion candidates. The district attorney shall retain the final decision as to admittance of individuals or administration of the program regardless of the board's views. It shall be the district attorney's decision who will comprise the board and when or if it should meet.

Section 16. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

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