

1 HB494
2 149270-3
3 By Representative Hill
4 RFD: Judiciary
5 First Read: 20-MAR-13

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, various counties have
9 implemented pretrial diversion programs through
10 local acts.

11 This bill would allow any district attorney
12 or municipality throughout the state without a
13 local act to establish a discretionary pretrial
14 diversion program and would set basic operating
15 standards for the program. This bill would provide
16 for judicial oversight into the approval of the
17 disposition of the criminal charge. This bill would
18 provide for the voluntary application of an
19 offender, represented by an attorney, into the
20 pretrial diversion program and that any agreement
21 shall be approved by the court. This bill would
22 provide for program fees and their distribution.

23 This bill would make statutory drug courts
24 and specialty courts paramount to pretrial
25 diversion programs established pursuant to this
26 act.

1 This bill would provide that counties or
2 municipalities with existing discretionary pretrial
3 diversion programs established prior to the
4 effective date of this act may adopt this act in
5 its entirety or portions of the act.

6 This bill also would require the Office of
7 Prosecution Services to develop and maintain a
8 pretrial diversion offender database.

9
10 A BILL
11 TO BE ENTITLED
12 AN ACT

13
14 To provide for the establishment of a pretrial
15 diversion program; to allow any district attorney or
16 municipality throughout the state without a local act to
17 establish a discretionary pretrial diversion program; to set
18 basic operating standards for the program; to provide for
19 program fees and their distribution; to provide that counties
20 or municipalities with existing discretionary pretrial
21 diversion programs established prior to the effective date of
22 this act may adopt the act in its entirety or portions of the
23 act; and to require the Office of Prosecution Services to
24 develop a pretrial diversion offender database.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1 (1) ADMINISTRATION FEE. A fee imposed by the
2 district attorney or municipality as a condition precedent to
3 participation in a pretrial diversion program.

4 (2) COMMUNITY SERVICE. Work imposed as a condition
5 of a pretrial diversion program that is intended for the
6 common good of the community or to assist in restoration of
7 the victim. Community service should further serve to
8 rehabilitate an offender.

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

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

15 (5) OFFENDER. Any person who has been charged with a
16 criminal offense, including, but not limited to, any felony,
17 misdemeanor, violation, or traffic offense, as defined in the
18 Code of Alabama 1975, or municipal ordinance, which was
19 alleged to have been committed in the jurisdiction of the
20 State of Alabama.

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

24 (7) PRETRIAL DIVERSION PROGRAM or PROGRAM. A
25 voluntary option that allows an offender, upon advice of
26 counsel or where counsel is waived in a judicial process, to
27 knowingly agree to the imposition by the district attorney or

1 municipal prosecutor of certain conditions of behavior and
2 conduct for a specified period of time upon the offender which
3 would allow the offender to have his or her charges reduced,
4 dismissed without prejudice, or otherwise mitigated, should
5 all conditions be satisfied during the time frame set by the
6 district attorney or the municipal prosecutor as provided in
7 the agreement.

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

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

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

18 Section 2. (a) The district attorney of any judicial
19 circuit of this state may establish a pretrial diversion
20 program within that judicial circuit or any county within that
21 judicial circuit.

22 (b) All discretionary powers endowed by the common
23 law, provided for by statute and acts of this state, or
24 otherwise provided by law for the district attorneys of this
25 state shall be retained.

26 (c) A county pretrial diversion program established
27 under subsection (a) shall be under the direct supervision and

1 control of the district attorney. The district attorney may
2 contract with any agency, person, or corporation, including,
3 but not limited to, certified and judicially sanctioned
4 community corrections programs, certified mental health and
5 drug treatment programs, family service programs, or any
6 certified not-for-profit programs for services related to this
7 act. The district attorney may employ persons necessary to
8 accomplish the purposes of this act, who shall serve at the
9 pleasure of the district attorney.

10 (d) The pretrial diversion program should utilize
11 individual and realistic intervention plans which feature
12 achievable goals. Any plan formulated shall occur as soon as
13 possible after enrollment by the offender and shall be reduced
14 to writing.

15 (e) This act shall not apply to juvenile delinquency
16 proceedings in juvenile court.

17 Section 3. (a) A person charged with a criminal
18 offense specified in subsection (d) whose jurisdiction is in
19 the circuit court, district court, or municipal court in a
20 circuit in which a pretrial diversion program has been created
21 pursuant to this act may apply to the district attorney of the
22 circuit for admittance to the program.

23 (b) A municipality within the judicial circuit of
24 any pretrial diversion program may, but shall not be required
25 to, participate in a pretrial diversion program established
26 under this act. Any agreement between a municipality and a
27 district attorney shall be governed by the provisions of this

1 act. If a municipality is situated in more than one judicial
2 circuit, the municipality may enter into an agreement with any
3 district attorney of a judicial circuit in which it is
4 situated to participate in a pretrial diversion program.

5 (c) The governing body of any municipality of this
6 state with a municipal court may establish a pretrial
7 diversion program within the municipality for violations of
8 municipal ordinances occurring in the jurisdiction of the
9 municipality or its police jurisdiction. A municipal pretrial
10 diversion program shall be consistent with the provisions of
11 this act and shall be under the direct supervision and control
12 of the municipal prosecutor. The municipal governing body,
13 with the approval of the municipal prosecutor, may contract
14 with any agency, person, or corporation, including, but not
15 limited to, certified and judicially sanctioned community
16 corrections programs, certified mental health and drug
17 treatment programs, family service programs, or any certified
18 not-for-profit programs for services related to this act. The
19 municipality, with the approval of the municipal prosecutor,
20 may employ persons necessary to accomplish the purposes of
21 this act, who shall serve at the pleasure of the municipality.

22 (d) A person charged with any of the following
23 offenses may apply for the pretrial diversion program:

24 (1) A drug offense, excluding sale of a controlled
25 substance as provided in Section 13A-12-211, Code of Alabama
26 1975, trafficking in controlled substances or cannabis as
27 provided in Section 13A-12-231 of the Code of Alabama 1975,

1 manufacturing controlled substances in the first degree as
2 provided in Section 13A-12-218 of the Code of Alabama 1975, or
3 trafficking in an analog controlled substance.

4 (2) A property offense.

5 (3) An offense that does not involve serious
6 physical injury, death, a victim under the age of 14, or a sex
7 offense involving forcible compulsion or incapacity of a
8 victim.

9 (4) A misdemeanor, violation, or violation of an
10 ordinance.

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

19 (6) Notwithstanding subdivision (4), the district
20 attorney or municipal prosecutor may determine that a person
21 charged with a misdemeanor offense is ineligible to apply for
22 the program if it is in the best interest of the victim, the
23 offender, the community, or justice.

24 (e) The following offenses are ineligible for
25 consideration for the pretrial diversion program:

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

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

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

8 (4) Any offense involving death.

9 (5) A person deemed by the district attorney or
10 municipal prosecutor to be a threat to the safety or
11 well-being of the community.

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

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

16 (8) Abduction or kidnapping.

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

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

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

24 (12) Perjury in any degree, as defined in Section
25 13A-10-100, et seq., of the Code of Alabama 1975.

26 (13) Any crime motivated by a victim's race, color,
27 religion, national origin, ethnicity, or physical or mental

1 disability, as defined in Section 13A-5-13, et seq., of the
2 Code of Alabama 1975.

3 (f) As new offenses are created by the Legislature
4 or new criminal acts trend, the Office of Prosecution Services
5 may promulgate rules to include additional disqualifying
6 offenses or eligibility to participate in any pretrial
7 diversion program operating under this act.

8 Section 4. (a) In determining whether an offender
9 may be admitted into a pretrial diversion program established
10 under this act, it shall be appropriate for the district
11 attorney or municipal prosecutor to consider any of the
12 following circumstances:

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

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

17 (3) It is determined the needs of the community and
18 of the offender can be met through the pretrial diversion
19 program.

20 (4) The offender appears to pose no substantial
21 threat to the safety and well-being of the community or law
22 enforcement.

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

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

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

3 (8) Undue hardship upon the victim.

4 (9) Whether the victim or the offender has medical,
5 psychiatric, or vocational difficulties that would impede the
6 administration of justice.

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

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

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

15 (13) The availability of other programs which may
16 serve the needs of the community or the rehabilitation of the
17 offender.

18 (b) The district attorney or municipal prosecutor
19 may waive any of the standards specified in subsection (a) if
20 justice or special circumstances dictate.

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

25 (d) (1) In jurisdictions where the district attorney
26 or municipal prosecutor elects to establish a pretrial
27 diversion program pursuant to this act, an offender's

1 qualifications, application, or entry into any other existing
2 statutorily created drug court or other successful specialty
3 court shall be paramount to the pretrial diversion program
4 created pursuant to this act. If an offender qualifies for a
5 drug or specialty court program, that program shall have
6 priority over the pretrial diversion program created pursuant
7 to this act.

8 (2)a. Nothing in this act shall prohibit a district
9 attorney or municipal prosecutor and the presiding circuit
10 judge or the presiding judge in charge of the specialty court
11 or drug court to enter into an agreement or memorandum of
12 understanding, whereby the pretrial diversion program and the
13 other specialty or drug court will work to complement each
14 other in a cohesive and unified effort to serve the needs of
15 the community, victims, and to rehabilitate the offender.

16 b. Nothing in this act shall prevent the pretrial
17 diversion program from accepting applicants who have been
18 referred from or denied acceptance into a drug or specialty
19 court program.

20 (e) No potential pretrial diversion program
21 applicant shall be denied access to a program based on race,
22 ethnic background, religion, gender, disability, marital
23 status, or economic status. No person who is protected by
24 applicable federal or state laws against discrimination should
25 be otherwise subjected to discrimination for eligibility
26 purposes.

1 Section 5. (a) Notwithstanding current law,
2 admittance into the pretrial diversion program shall be in the
3 discretion of the district attorney or municipal prosecutor.
4 To assist the district attorney or municipal prosecutor in his
5 or her decision to admit the offender into the pretrial
6 diversion program, the district attorney or municipal
7 prosecutor, prior to the offender being admitted to the
8 pretrial diversion program or as a part of the district
9 attorney's or municipal prosecutor's evaluation process, may
10 require an offender to furnish to the district attorney or
11 municipal prosecutor information concerning past criminal
12 history, educational history, work history, family history,
13 medical or psychiatric treatment history, psychological tests,
14 or any other information concerning the offender which the
15 district attorney or municipal prosecutor believes is
16 applicable to determine whether the offender should be
17 admitted into the pretrial diversion program.

18 (b) The district attorney or municipal prosecutor
19 may require the offender to submit to any examinations, test,
20 or evaluation process the district attorney or municipal
21 prosecutor deems appropriate in evaluating the offender for
22 admittance into the pretrial diversion program. The costs of
23 any test or evaluation shall be paid by the offender or as
24 otherwise agreed to or provided for by this act.

25 (c) If requested by the district attorney, municipal
26 prosecutor, or the court, a program certified by the Alabama
27 Department of Mental Health may provide a mental health

1 evaluation, including a drug addiction assessment for any
2 offender who has applied for the program pursuant to this act,
3 any local pretrial diversion program, or any drug court
4 program created by statute.

5 Section 6. (a) An offender who enters into a
6 pretrial diversion program established under this act shall be
7 brought before a court of competent jurisdiction and shall
8 satisfy each of the following requirements:

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

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

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

16 (b) Prior to entering into any agreement or seeking
17 entry into a pretrial diversion program created pursuant to
18 this act, an offender must be represented by counsel, or waive
19 his or her right to have counsel before a judge of a court of
20 competent jurisdiction. If the offender is indigent, nothing
21 in this act shall prevent the court from appointing counsel to
22 represent an offender.

23 (c) An offender who enters a pretrial diversion
24 program pursuant to this act shall reasonably be informed of
25 the cost of the administrative fee and, as practicable as
26 possible, any other costs that will be required for the
27 offender to pay for participation in the program. Restitution,

1 or portions thereof, may be left open where amounts are
2 difficult to determine or, due to the nature of the harm, may
3 increase or decrease over the period.

4 Section 7. (a) An offender who enters into a
5 pretrial diversion program established under this act may
6 satisfy each of the following requirements:

7 (1) Provide a statement admitting his or her
8 participation in, and responsibility for, the offense which is
9 the subject of the application for entry into the pretrial
10 diversion program. The statement provided by the offender
11 shall be admissible in any criminal trial.

12 (2) Agree, in writing, to the conditions of the
13 pretrial diversion program established by the district
14 attorney or municipal prosecutor.

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

19 (4) If the investigating law enforcement agency
20 incurred extraordinary investigative expenses, agree in
21 writing to a specific restitution agreement to be paid within
22 a specified period of time and in an amount to be determined
23 by the district attorney or municipal prosecutor.

24 (5) Agree in writing to the jurisdiction of the
25 court beyond completion of any disposition of the case, end of
26 sentence, or conclusion of the pretrial diversion program to
27 enforce collection of restitution, cost of court, fines, fees,

1 or other agreed upon or court-ordered monies, pursuant to
2 Section 12-17-225, Code of Alabama 1975.

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

7 (7) Submission, to a court of competent
8 jurisdiction, of a written plea of guilty to the offense or
9 offenses charged, agreed upon included offenses, or mitigated
10 disposition, together with an agreement as to whether the case
11 is to be dismissed or nolle prossed upon successful completion
12 of the program, and an agreement as to the recommended
13 sentence should one be imposed by the court. The agreement
14 shall, as practicable as possible, set forth all fees, fines,
15 cost, restitution, or any other conditions or expectations
16 upon the offender or the state.

17 (b) (1) Upon acceptance of an offender into the
18 program by the district attorney or municipal prosecutor, the
19 district attorney or municipal prosecutor shall submit the
20 written application of the offender, together with a statement
21 of fact of the offense, and the agreement of the offender and
22 the district attorney or municipal prosecutor, to a court of
23 competent jurisdiction presiding over the affected case for
24 approval.

25 (2) The determination as to which judge within a
26 judicial circuit, county, or municipality will preside over
27 the case shall be made according to the local approved method

1 of criminal case assignment that is practiced in all other
2 criminal case assignments within that jurisdiction. However,
3 the district attorney and the presiding circuit judge may
4 enter into an agreement as to an alternative method of case
5 assignment for pretrial diversion cases to a judge pursuant to
6 this act in order to serve judicial economy.

7 (c) If the offender is terminated from the program
8 for a violation of agreed upon conditions, the administration
9 fees shall not be refundable. However, if at the time the
10 agreement is initially presented to the court, the court
11 rejects the agreement and disposition of the charges involved,
12 any monies paid by the offender in satisfaction of the
13 administration fee shall be refunded to the offender. The
14 offender shall remain liable for any agency or service
15 provider in furtherance of the application and evaluation
16 process, and the same shall be deducted from any money
17 refunded to the offender. Any deducted money shall be paid
18 solely to the office of the district attorney or municipality,
19 respectively, for payment of the expenses.

20 (d) Upon approval of the agreement and acceptance of
21 the guilty plea, the court shall expressly place the case or
22 cases in an administrative docket until such time that the
23 court is notified that the offender has fulfilled the terms of
24 the pretrial diversion agreement, upon motion of the district
25 attorney or municipal prosecutor that the offender has been
26 terminated from the program by the court, or otherwise
27 withdraws from the program. Imposition of punishment or

1 sentence by the court shall be deferred until the offender has
2 successfully completed the program or is terminated from the
3 program, by the court or upon motion of the district attorney
4 or municipal prosecutor.

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

10 (f) Upon successful completion of the program by the
11 offender, the district attorney or municipal prosecutor shall
12 notify the court in writing of that fact, together with a
13 request that the court enter an order of dismissal of the case
14 pursuant to the agreement or any other disposition that was
15 agreed upon by the district attorney or municipal prosecutor
16 and the offender and approved by the court.

17 (g) Pretrial diversion program records or records
18 related to pretrial diversion program admission, with the
19 exception of the statement of the applicant concerning his or
20 her involvement in the crimes charged or other crimes, shall
21 not be admissible in subsequent proceedings, criminal or
22 civil, unless a court of competent jurisdiction determines
23 there is a compelling public interest in disclosing the
24 records. Communications between pretrial diversion program
25 counselors and offenders shall be privileged unless a court of
26 competent jurisdiction determines there is a compelling public
27 interest in disclosing the communication.

1 (h) The district attorney and the presiding judge
2 may establish a Restorative Justice Initiative (RJI) within
3 the judicial circuit. The guidelines, rules, and mechanisms
4 for such an initiative shall be promulgated by the Alabama
5 Office of Prosecution Services and the Administrative Office
6 of Courts.

7 (i) After any violation of any pretrial diversion
8 program terms or conditions or upon any breach of any program
9 agreement by the offender, the district attorney shall notify
10 the court, and the district attorney may do any of the
11 following:

12 (1) Terminate the offender from the pretrial
13 diversion program.

14 (2) Require the adoption of a new agreement as a
15 condition of continued participation.

16 (3) Continue with the agreement with or without
17 modification.

18 Section 8. An offender shall make application to a
19 pretrial diversion program established under this act at a
20 time to be determined by the district attorney or municipal
21 prosecutor, but in the case of a felony, may not be more than
22 90 days after arraignment.

23 Section 9. (a) An offender may be assessed an
24 administration fee when he or she is approved for a pretrial
25 diversion program established under this act. The amount of
26 the fee for participation in the program shall be in addition
27 to any court costs, assessments for crime victim's

1 compensation fund, Department of Forensic Sciences
2 assessments, drug, alcohol, or anger management treatments
3 required by law, restitution, or costs of supervision or
4 treatment. A schedule of payments for any of these fees may be
5 established by the district attorney or municipal prosecutor.

6 (b) The amount of the administration fee shall be
7 determined by the district attorney or municipal prosecutor.
8 In a municipality, the administration fee shall not exceed the
9 maximum fine for the offense charged or one thousand dollars
10 (\$1,000), whichever is less. Otherwise, the administration
11 fees shall not exceed the amount assessed for a first offense
12 pursuant to Section 13A-12-281(a), Code of Alabama 1975, for
13 each case for which the offender makes application for
14 acceptance into the pretrial diversion program.

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

20 (2) If an offender, upon application, claims
21 indigency, he or she shall be brought before a court of
22 competent jurisdiction for a determination of indigency. In
23 the event that a court determines the offender to be indigent,
24 any fees or costs shall not be waived or remitted unless the
25 defendant or the party responsible for paying any fees or
26 costs proves to the reasonable satisfaction of the judge
27 presiding or sentencing judge that the defendant or party is

1 not capable of paying the same within the reasonably
2 foreseeable future. In the event the offender is determined to
3 be indigent, a periodic review of the offender's indigent
4 status may be conducted by the court upon motion of the
5 district attorney or municipal prosecutor to determine if the
6 offender is no longer indigent.

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

19 Administration fees required by this act for municipal
20 pretrial diversion programs shall be collected by the
21 municipal clerk or treasurer for deposit into the general
22 municipal fund.

23 (e) Notwithstanding Section 12, twenty-five dollars
24 (\$25) of the administration fee shall be allocated to the
25 appropriate circuit or district court clerk and shall be
26 available for use at the discretion of the clerk to support
27 the office of the clerk in the same way and manner as monies

1 received from or through the District Attorney's Restitution
2 Recovery Unit. In the event that a municipal clerk is the
3 appropriate clerk, the twenty-five dollars (\$25) shall be paid
4 to the municipal clerk or treasurer for use in the same manner
5 as prescribed for the circuit clerk.

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

18 (g) Fees allocated or funds retained by the district
19 attorney and deposited into the District Attorney's Solicitor
20 Fund shall be kept and maintained by the district attorney to
21 be available for use, at the discretion of the district
22 attorney, as prescribed by this act or for any other
23 legitimate law enforcement purposes or to support the
24 functions of the office of the district attorney. The funds
25 shall be in addition to the amount allocated to the district
26 attorney pursuant to this act or any other act, grant, fee,
27 assessment, fine, restitution, other monies, or alternative

1 funding retained by the district attorney, and shall not
2 reduce the amount payable to the district attorney of funding
3 allocated by the State of Alabama to the budget of the
4 district attorney.

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

16 Section 11. (a) In any case in which an offender is
17 admitted into a pretrial diversion program established under
18 this act, there shall be a written agreement between the
19 district attorney or municipal prosecutor and the offender.
20 The agreement shall include the terms of the pretrial
21 diversion program, the length of the program, as practicable
22 as possible, the costs of the program to the offender, and the
23 period of time after which the district attorney or municipal
24 prosecutor must dispose of the charges against the offender.
25 If, as part of the pretrial diversion program, the offender
26 agrees to plead guilty to a particular charge or charges and
27 receives a specific sentence, an agreement concerning when the

1 plea of guilt will occur, to what charges to which the
2 offender will plead guilty, and any sentence to be imposed
3 shall be approved by and submitted to an appropriate circuit,
4 district, or municipal court judge having jurisdiction over
5 the offender within the judicial circuit prior to admission of
6 the offender in the pretrial diversion program.

7 (b) As a condition of being admitted to the pretrial
8 diversion program, the district attorney or municipal
9 prosecutor may require the offender to agree to any of the
10 following terms or conditions:

11 (1) Pay restitution.

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

17 (3) If appropriate, attempt to learn to read and
18 write.

19 (4) Financially support his or her children or pay
20 child support.

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

23 (6) Refrain from contact with certain persons or
24 premises.

25 (7) Maintain or seek employment.

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

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

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

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

7 (12) Be required to be absolutely truthful in any
8 oral or written application or reports to the pretrial
9 diversion program.

10 (13) Be required to pay supervision fees to the
11 agency or entity responsible for monitoring and verifying the
12 offender's compliance with the terms of the pretrial diversion
13 program set forth by the district attorney. These fees shall
14 be paid by the offender, the district attorney, or the
15 municipal prosecutor to the supervising agency or entity in a
16 timely manner, pursuant to the agreement.

17 (14) Observe curfews, home detention, electronic
18 monitoring, or travel constraints as set out in the offender's
19 agreement.

20 (15) Enter into an agreement with the district
21 attorney or municipal prosecutor to have restitution, court
22 costs, fines, fees, or child support withheld, forfeiture of
23 accounts, assets, or garnished from the wages or salary of the
24 offender.

25 (16) Complete approved community service.

1 (17) Agree to the terms and conditions of the
2 pretrial diversion program established by the district
3 attorney or municipal prosecutor.

4 (18) Provide a statement admitting his or her
5 participation in, and responsibility for, the offense which is
6 the subject of the application for entry into the pretrial
7 diversion program.

8 (19) Refrain from the possession of or use of any
9 firearm.

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

11 (21) Participate in and complete a certified drug
12 court program, approved by the Administrative Office of
13 Courts.

14 (22) Complete a certified drug or alcohol addiction
15 evaluation and treatment program.

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

18 (24) Abide by all conditions imposed for treatment
19 by the United States Department of Veterans' Affairs and
20 provide certified proof of completion to the district attorney
21 or municipal prosecutor.

22 (25) Not to leave the State of Alabama without prior
23 written consent of the district attorney, municipal
24 prosecutor, or supervising agency or personnel and to execute
25 a waiver of extradition from any other jurisdiction outside
26 the State of Alabama, to exist only during the term of the
27 pretrial diversion program.

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

6 (27) Agree to be subject to any other terms or
7 conditions as required by the district attorney or municipal
8 prosecutor set out in the pretrial diversion agreement. The
9 district attorney shall be given broad discretion in designing
10 a program specifically for each offender and circumstances of
11 the offender.

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

25 (d) The offender shall further agree to the court's
26 jurisdiction beyond the term of pretrial diversion,
27 incarceration, probation, parole, or end of sentence for the

1 purposes of the collection of court-ordered or agreed upon
2 fines, fees, court costs, and restitution pursuant to Section
3 12-17-225, et seq., Code of Alabama 1975

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

19 (b) (1) All fees paid to the district attorney
20 pursuant to this act shall be paid into the District
21 Attorney's Solicitor Fund and shall be used to pay costs
22 associated with the administration of the pretrial diversion
23 program or for any other law enforcement purpose.

24 (2) Seven dollars (\$7) per applicant shall be paid
25 by the district attorney, or municipal prosecutor, or
26 municipality if the applicant is from a municipality, to the
27 Office of Prosecution Services for creation and maintenance of

1 the offender database described in Section 18, regardless of
2 whether the program was created pursuant to this act, a local
3 act authorizing a pretrial diversion program, or any existing
4 district attorney or municipal pretrial diversion program.

5 (c) Costs associated with program administration
6 include, but are not limited to, salaries, rent, vehicles,
7 uniforms, telephones, postage, office supplies, public
8 education, reports, equipment, training and travel services,
9 service contracts, or professional services. The district
10 attorney may pay for services or programs for an offender
11 while the offender is in the pretrial diversion program if
12 special circumstances and justice dictate.

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

24 (2) The court and the offender shall be given
25 written notice of the intent of the district attorney or
26 municipal prosecutor to terminate the offender from the
27 pretrial diversion program including the reason for the

1 termination. If the offender is unavailable for notice or has
2 absconded, the district attorney or municipal prosecutor may
3 provide notice of termination from the pretrial diversion
4 program, or any portion thereof, by giving notice to the
5 offender's attorney of record or by regular mail to the most
6 recent known address provided by the offender.

7 (b) The district attorney or municipal prosecutor
8 may waive a violation for good cause shown why the offender
9 should stay in the pretrial diversion program

10 Section 14. (a) Absent wantonness, gross negligence,
11 or intentional misconduct, the district attorney or his or her
12 staff, or the municipality or its officers or employees, shall
13 have no liability, criminal or civil, for the conduct of any
14 offender while participating in a pretrial diversion program
15 established under this act or of any service provider or its
16 agents that are contracted to or who have agreed to provide
17 services to the pretrial diversion program.

18 (b) The district attorney or his or her staff, or
19 the municipality or its officers or employees, shall have no
20 liability, criminal or civil, for any injury or harm to the
21 offender while the offender is a participant in any pretrial
22 diversion program administered pursuant to this act. The
23 district attorney or municipal prosecutor may require written
24 agreed upon waivers of liability as a prerequisite for
25 admittance into the pretrial diversion program.

26 Section 15. A pretrial diversion program established
27 under this act may apply for grants, may accept donations from

1 individuals or corporations, and may receive funding or
2 appropriations from city, county, or state agencies or
3 departments to be used in the maintenance or expansion of the
4 pretrial diversion program.

5 Section 16. If a district attorney establishes a
6 pretrial diversion program under this act, the district
7 attorney may form an advisory board within the county or
8 judicial circuit, which may be known as the Citizens Justice
9 Advisory Board for Pretrial Diversion, for the purpose of
10 assisting the district attorney in the determination of
11 appropriate pretrial diversion candidates. The district
12 attorney shall retain the final decision as to the admittance
13 or denial of individuals into the pretrial diversion program,
14 the fees, the guidelines of the program, and any resources the
15 pretrial diversion program utilizes. The district attorney
16 shall appoint all members of any advisory board and shall
17 determine when or if it should meet. The board shall be
18 inclusive and reflect the racial, gender, geographic, urban
19 and rural, and economic diversity of the circuit. The advisory
20 board shall serve without personal profit, but may be paid
21 from the District Attorney's Solicitor Fund for actual
22 expenses incurred in connection with its duties.

23 Section 17. (a) A district attorney or municipality,
24 to the extent practicable, may enter into an agreement with a
25 community correction entity, to utilize the services of
26 existing community corrections programs established pursuant
27 to Section 15-18-170, Code of Alabama 1975, or faith based

1 community programs, which are certified by the Alabama
2 Department of Mental Health, to provide for the supervision of
3 defendants participating in a pretrial diversion program
4 established under this act. The district attorney or
5 municipality may enter into an agreement with a drug court
6 entity to utilize the services of existing certified drug
7 court programs established pursuant to Section 12-23A-4, Code
8 of Alabama 1975, provided that the district attorney or
9 municipal prosecutor determines it would serve the best
10 interest of justice and the community.

11 (b) If, upon enactment of this legislation, a
12 pretrial diversion program, or an equivalent, has been
13 established in the circuit or municipality by local law, the
14 district attorney or municipality may choose to adopt this act
15 in its entirety or any portion or portions that the district
16 attorney or municipality believes would best serve the
17 interest of justice and the community.

18 (c) If, pursuant to subsection (b), a district
19 attorney or municipality elects to opt into any provision or
20 provisions of this act, he or she must file such an election
21 with the Office of Prosecution Services.

22 Section 18. (a) The Office of Prosecution Services
23 shall develop and maintain a pretrial diversion offender
24 database. Each district attorney and each municipal prosecutor
25 shall submit the name and identifying personal vital
26 information of each participating offender. The district
27 attorney or municipal prosecutor shall also submit the

1 criminal statute or municipal ordinance violated, a brief
2 description of any underlying qualifying offense, and the
3 ultimate disposition of the offenses. Regardless of whether a
4 pretrial diversion program was established by this act or
5 created by local law, or is an existing district attorney or
6 municipal pretrial diversion program, upon successful
7 completion of, or termination from the program, a district
8 attorney or municipal prosecutor shall submit information for
9 entry into the database pursuant to this section. If the
10 offender was terminated from the program, the information
11 submitted for inclusion into the database shall include the
12 reason for termination.

13 (b) The information entered into the database must
14 contain identifiers sufficient to provide any future court of
15 competent jurisdiction the ability to determine the original
16 underlying offense or charge which was diverted, nolle
17 prossed, or otherwise disposed of by conviction.

18 (c) Information in the database concerning any
19 applicant may be used by any district attorney or municipal
20 prosecutor in determining admittance into a pretrial diversion
21 program or its equivalent. A district attorney or municipal
22 prosecutor may submit prior pretrial diversion dispositions
23 from any jurisdiction contained within the database to the
24 court for the purpose of assisting the court in its ruling
25 with regard to sentencing, a ruling on youthful offender, or
26 any first offender or first offender-type judicial
27 determination. Nothing in this act shall prohibit any district

1 attorney or municipal prosecutor from entering pretrial
2 diversion dispositions of offenders, pursuant to this section,
3 that were previously disposed of in a pretrial diversion
4 program or its equivalent, prior to this act. Unless otherwise
5 provided for by law, information contained in the database
6 shall only be accessible by court order, the district
7 attorney, municipal prosecutor, or other law enforcement
8 agency. In no event shall a prosecuting agency be charged for
9 accessing the information in the database.

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

15 Section 19. Notwithstanding Section 11 (c), upon
16 conviction for any criminal offense, felony, misdemeanor, or
17 violation of the Code of Alabama 1975, or ordinance violation,
18 any fees or costs shall not be waived or remitted unless the
19 defendant or party responsible for paying the fees proves to
20 the reasonable satisfaction of the presiding or sentencing
21 judge that the defendant or party is not capable of paying the
22 fees or costs within the reasonably foreseeable future.

23 Section 20. The provisions of this act are
24 severable. If any part of this act is declared invalid or
25 unconstitutional, that declaration shall not affect the part
26 which remains.

1 Section 21. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.