

2013 Bill Text AL H.B. 494

Enacted, May 23, 2013

Reporter

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Notice

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THE STATE OF ALABAMA BILL TEXT > ALABAMA 2013 REGULAR SESSION > HOUSE BILL 494 > ACT NO. 2013-361

Synopsis

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

Text

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

- (1) **ADMINISTRATION FEE.** A fee imposed by the district attorney as a condition precedent to participation in a pretrial diversion program.
- (2) **COMMUNITY SERVICE.** Work imposed as a condition of a pretrial diversion program that is intended for the common good of the community or to assist in restoration of the victim. Community service should further serve to rehabilitate an offender.
- (3) **DISTRICT ATTORNEY.** The district attorney of the judicial circuit or his or her designee, so designated to fulfill the goals, purposes, and objectives of this act.
- (4) **LAW ENFORCEMENT** or **LAW ENFORCEMENT OFFICER.** As defined in Section 41-8A-1 or 36-25-1, Code of Alabama 1975, whether employed in this state or elsewhere.
- (5) **OFFENDER.** Any person who has been charged with a criminal offense, including, but not limited to, any felony, misdemeanor, violation, or traffic offense, as defined in the Code of Alabama 1975, which was alleged to have been committed in the jurisdiction of the State of Alabama.
- (6) **PRETRIAL.** The term includes, but is not limited to, any moment within or during the disposition of a criminal or quasi-criminal action.
- (7) **PRETRIAL DIVERSION PROGRAM** or **PROGRAM.** A voluntary option that allows an offender, upon advice of counsel or where counsel is waived in a judicial process, to knowingly agree to the imposition by the district attorney of certain conditions of behavior and conduct for a specified period of time upon

the offender which would allow the offender to have his or her charges reduced, dismissed without prejudice, or otherwise mitigated, should all conditions be satisfied during the time frame set by the district attorney as provided in the agreement.

- (8) RESTITUTION. As defined by Section 15-18-142, Code of Alabama 1975, and may also include, but not be limited to, any extraordinary cost incurred during the investigation or prosecution by a law enforcement agency or the district attorney.
- (9) SERIOUS PHYSICAL INJURY. As defined in Section 13A-1-2, Code of Alabama 1975.
- (10) SUPERVISION FEE. Any fee other than the administration fee imposed by any agency providing supervision or treatment of an offender.

Section 2.

- (a) The district attorney of any judicial circuit of this state may establish a pretrial diversion program within that judicial circuit or any county within that judicial circuit.
- (b) All discretionary powers endowed by the common law, provided for by statute and acts of this state, or otherwise provided by law for the district attorneys of this state shall be retained.
- (c) A county pretrial diversion program established under subsection (a) shall be under the direct supervision and control of the district attorney. The district attorney may contract with any agency, person, or corporation, including, but not limited to, certified and judicially sanctioned community corrections programs, certified mental health and drug treatment programs, family service programs, or any certified not-for-profit programs for services related to this act. The district attorney may employ persons necessary to accomplish the purposes of this act, who shall serve at the pleasure of the district attorney.
- (d) The pretrial diversion program should utilize individual and realistic intervention plans which feature achievable goals. Any plan formulated shall occur as soon as possible after enrollment by the offender and shall be reduced to writing.
- (e) This act shall not apply to juvenile delinquency proceedings in juvenile court.

Section 3.

- (a) A person charged with a criminal offense specified in subsection (b) whose jurisdiction is in the circuit court or district court in a circuit in which a pretrial diversion program has been created pursuant to this act may apply to the district attorney of the circuit for admittance to the program.
- (b) A person charged with any of the following offenses may apply for the pretrial diversion program:
 - (1) A drug offense, excluding sale of a controlled substance as provided in Section 13A-12-211, Code of Alabama 1975, trafficking in controlled substances or cannabis as provided in Section 13A-12-231 of the Code of Alabama 1975, manufacturing controlled substances in the first degree as provided in Section 13A-12-218 of the Code of Alabama 1975, or trafficking in an analog controlled substance.
 - (2) A property offense.
 - (3) An offense that does not involve serious physical injury, death, a victim under the age of 14, or a sex offense involving forcible compulsion or incapacity of a victim.
 - (4) A misdemeanor or violation.
 - (5) A traffic or conservation offense, except that a holder of a commercial driver's license, an operator of a commercial motor vehicle, or a commercial driver learner permit holder who is charged with a violation of a traffic law in this state shall not be eligible for a deferred prosecution program, diversion program, or any deferred imposition of judgment program pursuant to Section 32-6-49.23 of the Code of Alabama 1975.

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- (6) Notwithstanding subdivision (4), the district attorney may determine that a person charged with a misdemeanor offense or violation is ineligible to apply for the program if it is in the best interest of the victim, the offender, the community, or justice.
- (c) The following offenses are ineligible for consideration for the pretrial diversion program:
- (1) Any Class A felony or capital offense.
 - (2) Any offense involving serious physical injury to a person.
 - (3) An offense involving violence in which the victim was a child under 14 years of age, a law enforcement officer, a school officer, a correctional officer, active duty military personnel of the United States military, or a person over the age of 65.
 - (4) Any offense involving death.
 - (5) A person deemed by the district attorney to be a threat to the safety or well-being of the community.
 - (6) Bribery of a government or public official.
 - (7) Any offense wherein the offender is a public official and the charge is related to his or her capacity as a public official.
 - (8) Abduction or kidnapping.
 - (9) Any sex offense involving forcible compulsion or incapacity.
 - (10) A violation of Section 13A-12-191, et seq., of the Code of Alabama 1975, or Section 13A-6-111, et seq., of the Code of Alabama 1975.
 - (11) Any violation of Section 13A-10-120, et seq., of the Code of Alabama 1975.
 - (12) Perjury in any degree, as defined in Section 13A-10-100, et seq., of the Code of Alabama 1975.
 - (13) Any crime motivated by a victim's race, color, religion, national origin, ethnicity, or physical or mental disability, as defined in Section 13A-5-13, et seq., of the Code of Alabama 1975.
- (d) As new offenses are created by the Legislature or new criminal acts trend, the Office of Prosecution Services may promulgate rules to include additional disqualifying offenses or eligibility to participate in any pretrial diversion program operating under this act.

Section 4.

- (a) In determining whether an offender may be admitted into a pretrial diversion program established under this act, it shall be appropriate for the district attorney to consider any of the following circumstances:
- (1) If the offender is 18 years of age or older at the time the offense was committed.
 - (2) There is a probability justice will be served if the offender is placed in the pretrial diversion program.
 - (3) It is determined the needs of the community and of 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 or law enforcement.
 - (5) The offender is not likely to be involved in further criminal activity.
 - (6) The offender will likely respond to rehabilitative treatment.
 - (7) The expressed wish of the victim for the offender to participate in the pretrial diversion program.
 - (8) Undue hardship upon the victim.

- (9) Whether the victim or the offender has medical, psychiatric, or vocational difficulties that would impede the administration of justice.
 - (10) Whether there is a reason to believe that the victim or offender will benefit from and cooperate with a diversionary program.
 - (11) If the offender honorably served and is eligible as a former member of the U.S. military to be treated by the United States Department of Veterans' Affairs.
 - (12) The impact of criminal charges or prosecution upon the victim, witnesses, or the community.
 - (13) The availability of other programs which may serve the needs of the community or the rehabilitation of the offender.
- (b) The district attorney may waive any of the standards specified in subsection (a) if justice or special circumstances dictate.
 - (c) Any participation in a pretrial diversion program should not preclude an offender from considering and pursuing other strategies which may be more beneficial to him or her than the program.
 - (d)
 - (1) In jurisdictions where the district attorney elects to establish a pretrial diversion program pursuant to this act, an offender's qualifications, application, or entry into any other existing statutorily created drug court or other successful specialty court shall be paramount to the pretrial diversion program created pursuant to this act. If an offender qualifies for a drug or specialty court program, that program shall have priority over the pretrial diversion program created pursuant to this act.
 - (2)a. Nothing in this act shall prohibit a district attorney and the presiding circuit judge or the presiding judge in charge of the specialty court or drug court to enter into an agreement or memorandum of understanding, whereby the pretrial diversion program and the other specialty or drug court will work to complement each other in a cohesive and unified effort to serve the needs of the community, victims, and to rehabilitate the offender.
 - b. Nothing in this act shall prevent the pretrial diversion program from accepting applicants who have been referred from or denied acceptance into a drug or specialty court program.
 - (e) No potential pretrial diversion program applicant shall be denied access to a program based on race, ethnic background, religion, gender, disability, marital status, or economic status. No person who is protected by applicable federal or state laws against discrimination should be otherwise subjected to discrimination for eligibility purposes.

Section 5.

- (a) Notwithstanding current law, admittance into the pretrial diversion program shall be in the discretion of the district attorney. To assist the district attorney in his or her decision to admit the offender into the pretrial diversion program, the district attorney, prior to the offender being admitted to the pretrial diversion program or as a part of the district attorney's evaluation process, may require an offender to furnish to the district attorney information concerning past criminal history, educational history, work history, family history, medical or psychiatric treatment history, psychological tests, or any other information concerning the offender which the district attorney believes is applicable to determine whether the offender should be admitted into the pretrial diversion program.
- (b) The district attorney may require the offender to submit to any examinations, test, or evaluation process 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.
- (c) If requested by the district attorney or the court, a program certified by the Alabama Department of Mental Health may provide a mental health evaluation, including a drug addiction assessment for any

offender who has applied for the program pursuant to this act, any local pretrial diversion program, or any drug court program created by statute.

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

- (1) Voluntarily waive, in writing, his or her right to a speedy trial.
- (2) Agree, in writing, to the tolling of periods of limitations established by statutes or rules of court while in the program.
- (3) If applicable, waive, in writing, his or her right to a jury trial.
 - (b) Prior to entering into any agreement or seeking entry into a pretrial diversion program created pursuant to this act, an offender must be represented by counsel or waive his or her right to have counsel before a judge of a court of competent jurisdiction. If the offender is indigent, nothing in this act shall prevent the court from appointing counsel to represent an offender.
 - (c) An offender who enters a pretrial diversion program pursuant to this act shall reasonably be informed of the cost of the ~~administrative~~ ADMINISTRATION fee and, as practicable as possible, any other costs that will be required for the offender to pay for participation in the program. Restitution, or portions thereof, may be left open where amounts are difficult to determine or, due to the nature of the harm, may increase or decrease over the period.

Section 7.

- (a) An offender who enters into a pretrial diversion program established under this act may satisfy any of the following requirements:
 - (1) Provide a statement 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. The statement provided by the offender shall be admissible in any criminal trial.
 - (2) Agree, in writing, to the conditions of the pretrial diversion program established by the district attorney.
 - (3) If there is restitution, agree in writing to a restitution amount to be paid within a specified period of time, or for restitution to remain open for future changes due to the nature of the injury or loss pursuant to the agreement.
 - (4) If the investigating law enforcement agency incurred extraordinary investigative expenses, agree in writing to a specific restitution agreement to be paid within a specified period of time and in an amount to be determined by the district attorney.
 - (5) Agree in writing to the jurisdiction of the court beyond completion of any disposition of the case, end of sentence, or conclusion of the pretrial diversion program to enforce collection of restitution, cost of court, fines, fees, or other agreed upon or court-ordered monies, pursuant to Section 12-17-225, Code of Alabama 1975.
 - (6) Agree to execute any agreement, covenant, note, or contract to pay any agreed upon sums of restitution, cost of courts, fines, fees, or other agreed upon or court-ordered monies, pursuant to Section 12-17-225, Code of Alabama 1975.
 - (7) Submission, to a court of competent jurisdiction, of a written plea of guilty to the offense or offenses charged, agreed upon included offenses, or mitigated disposition, together with an agreement as to whether the case is to be dismissed or nolle prossed upon successful completion of the program, and an agreement as to the recommended sentence should one be imposed by the court. The agreement shall, as practicable as possible, set forth all fees, fines, cost, restitution, or any other conditions or expectations upon the offender or the state.
- (b)

- (1) Upon acceptance of an offender into the program by the district attorney, the district attorney shall submit the written application of the offender, together with a statement of fact of the offense, and the agreement of the offender and the district attorney, to a court of competent jurisdiction presiding over the affected case for approval.
 - (2) The determination as to which judge within a judicial circuit or county will preside over the case shall be made according to the local approved method of criminal case assignment that is practiced in all other criminal case assignments within that jurisdiction. However, the district attorney and the presiding circuit judge may enter into an agreement as to an alternative method of case assignment for pretrial diversion cases to a judge pursuant to this act in order to serve judicial economy.
- (c) If the offender is terminated from the program for a violation of agreed upon conditions, the administration fees shall not be refundable. However, if at the time the agreement is initially presented to the court, the court rejects the agreement and disposition of the charges involved, any monies paid by the offender in satisfaction of the administration fee shall be refunded to the offender. The offender shall remain liable for any agency or service provider in furtherance of the application and evaluation process, and the same shall be deducted from any money refunded to the offender. Any deducted money shall be paid solely to the office of the district attorney for payment of the expenses.
 - (d) Upon approval of the agreement and acceptance of the guilty plea, the court shall expressly place the case or cases in an administrative docket until such time that the court is notified that the offender has fulfilled the terms of the pretrial diversion agreement, upon motion of the district attorney that the offender has been terminated from the program by the court, or otherwise withdraws from the program. Imposition of punishment or sentence by the court shall be deferred until the offender has successfully completed the program or is terminated from the program, by the court or upon motion of the district attorney.
 - (e) In the event the offender is terminated from the program, the court shall impose appropriate punishment or sentence in the same manner as with any guilty plea, finding of guilt, or admission and shall not be bound by the terms of the agreement as to what punishment or sentence to impose.
 - (f) Upon successful completion of the program by the offender, the district attorney shall notify the court in writing of that fact, together with a request that the court enter an order of dismissal of the case pursuant to the agreement or any other disposition that was agreed upon by the district attorney and the offender and approved by the court.
 - (g) Pretrial diversion program records or records related to pretrial diversion program admission, with the exception of the statement of the applicant concerning his or her involvement in the crimes charged or other crimes, shall not be admissible in subsequent proceedings, criminal or civil, unless a court of competent jurisdiction determines there is a compelling public interest in disclosing the records. Communications between pretrial diversion program counselors and offenders shall be privileged unless a court of competent jurisdiction determines there is a compelling public interest in disclosing the communication.
 - (h) The district attorney and the presiding judge may establish a Restorative Justice Initiative (RJI) within the judicial circuit for any case in the circuit or district court. The guidelines, rules, and mechanisms for such an initiative shall be promulgated by the Alabama Office of Prosecution Services and the Administrative Office of Courts.
 - (i) After any violation of any pretrial diversion program terms or conditions or upon any breach of any program agreement by the offender, the district attorney shall notify the court, and the district attorney may do any of the following:
 - (1) Terminate the offender from the pretrial diversion program.
 - (2) Require the adoption of a new agreement as a condition of continued participation.
 - (3) Continue with the agreement with or without modification.

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

Section 9.

- (a) An offender may be assessed an administration fee when he or she is approved for a pretrial diversion program established under this act. The amount of the fee for participation in the program shall be in addition to any court costs, assessments for crime victim's compensation fund, Department of Forensic Sciences assessments, drug, alcohol, or anger management treatments required by law, restitution, or costs of supervision or treatment. A schedule of payments for any of these fees may be established by the district attorney.
- (b) The amount of the administration fee shall be determined by the district attorney. The administration fees shall not exceed the amount assessed for a first offense pursuant to Section 13A-12-281(a), Code of Alabama 1975, for each case for which the offender makes application for acceptance into the pretrial diversion program.
- (c)
 - (1) 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. Fees established by this act may be waived or reduced for just cause, including indigency of the applicant.
 - (2) If an offender, upon application, claims indigency, he or she shall be brought before a court of competent jurisdiction for a determination of indigency. In the event that a court determines the offender to be indigent, any fees or costs shall not be waived or remitted unless the defendant or the party responsible for paying any fees or costs proves to the reasonable satisfaction of the judge presiding or sentencing judge that the defendant or party is not capable of paying the same within the reasonably foreseeable future. In the event the offender is determined to be indigent, a periodic review of the offender's indigent status may be conducted by the court upon motion of the district attorney to determine if the offender is no longer indigent.
- (d) Administration fees required by this act shall be collected by the district attorney's office or, if by agreement of the district attorney and the circuit clerk, the circuit clerk in the county of the judicial circuit in which the offense was filed may collect the fee. All pretrial diversion program fees under this act shall be deposited in a timely manner by the district attorney into the District Attorney's Solicitor Fund pursuant to Section 12. The district attorney shall make the deposits in a timely manner, pursuant to commonly accepted accounting practices. The District Attorney's Solicitor Fund shall be subject to regular audits by the Department of Examiners of Public Accounts.
- (e)
 - (1) Notwithstanding Section 12, twenty-five dollars (\$ 25) of the administration fee shall be allocated to the appropriate circuit or district court clerk and shall be available for use at the discretion of the clerk to support the office of the clerk in the same way and manner as monies received from or through the District Attorney's Restitution Recovery Unit.
 - (2) Notwithstanding Section 12, in pretrial diversion cases arising out of circuit or district court, five dollars (\$ 5) of the administrative fee shall be allocated to the Victims of Crime and Leniency (VOCAL) and shall be available for use at the discretion of the program to support its services.
- (f) The fees allocated to the circuit clerk shall be disbursed to the Restitution Recovery Fund of the Clerk as established pursuant to Section 12-17-225.4(2), Code of Alabama 1975. Funds deposited into the Restitution Recovery Fund shall be kept and maintained by the clerk to be available for use, at the discretion of the clerk, to support the functions of the office of the clerk and shall be in addition to the amount allocated to the Unified Judicial System for the clerks. Funds retained by the clerk shall not reduce the amount payable to the clerk under any local act or reduce or affect the amounts of funding allocated by the Administrative Office of Courts to the budgets of the clerks.

- (g) Fees allocated or funds retained by the district attorney and deposited into the District Attorney's Solicitor Fund shall be kept and maintained by the district attorney to be available for use, at the discretion of the district attorney, as prescribed by this act or for any other legitimate law enforcement purposes or to support the functions of the office of the district attorney. The funds shall be in addition to the amount allocated to the district attorney pursuant to this act or any other act, grant, fee, assessment, fine, restitution, other monies, or alternative funding retained by the district attorney, and shall not reduce the amount payable to the district attorney of funding allocated by the State of Alabama to the budget of the district attorney.

Section 10. The district attorney and the offender may enter into an agreement, as a part of a pretrial diversion program established under this act, that the offender be admitted to a certified drug or alcohol program on an inpatient 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 or other terms and conditions related to substance abuse. The offender shall pay the costs of all services unless otherwise approved by the district attorney.

Section 11.

- (a) In any case in which an offender is admitted into a pretrial diversion program established under this act, 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, as practicable as possible, the costs of the program to the offender, and the period of time after which the district attorney must dispose of the charges against the offender. If, as part of the pretrial diversion program, the offender agrees to plead guilty to a particular charge or charges and receives a specific sentence, an agreement concerning when the plea of guilt will occur, to what charges to which the offender will plead guilty, and any sentence to be imposed shall be approved by and submitted to an appropriate circuit or district court judge having jurisdiction over the offender within the 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 or conditions:
 - (1) Pay restitution.
 - (2) Participate in an education setting to include, but not limited to, K-12, college, job training school, trade school, GED classes, adult basic education courses, or any other workforce development program approved by the district attorney.
 - (3) If appropriate, attempt to learn to read and write.
 - (4) Financially support his or her children or pay child support.
 - (5) Refrain from the use of alcohol or drugs or frequenting places where alcohol or drugs are sold or used.
 - (6) Refrain from contact with certain persons or premises.
 - (7) Maintain or seek employment.
 - (8) Attend individual, group, or family counseling.
 - (9) Pay court costs, fees, and fines.
 - (10) Be required to conduct himself or herself in an honorable manner as a good member of the community, and not endanger in any way the person, property rights, dignity, or morals of others or himself or herself.
 - (11) Be required to comply with all municipal, county, state, and federal law, ordinances, or orders.
 - (12) Be required to be absolutely truthful in any oral or written application or reports to the pretrial diversion program.

- (13) Be required to pay supervision fees to the agency or entity responsible for monitoring and verifying the offender's compliance with the terms of the pretrial diversion program set forth by the district attorney. These fees shall be paid by the offender or the district attorney to the supervising agency or entity in a timely manner, pursuant to the agreement.
 - (14) Observe curfews, home detention, electronic monitoring, or travel constraints as set out in the offender's agreement.
 - (15) Enter into an agreement with the district attorney to have restitution, court costs, fines, fees, or child support withheld, forfeiture of accounts, assets, or garnished from the wages or salary of the offender.
 - (16) Complete approved community service.
 - (17) Agree to the terms and conditions of the pretrial diversion program established by the district attorney.
 - (18) Provide a statement 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.
 - (19) Refrain from the possession of or use of any firearm.
 - (20) Pay the application fee pursuant to this act.
 - (21) Participate in and complete a certified drug court program, approved by the Administrative Office of Courts.
 - (22) Complete a certified drug or alcohol addiction evaluation and treatment program, which may also include services pursuant to Section 22-50-17, Code of Alabama 1975.
 - (23) Complete a certified mental health evaluation and treatment program.
 - (24) Abide by all conditions imposed for treatment by the United States Department of Veterans' Affairs and provide certified proof of completion to the district attorney.
 - (25) Not to leave the State of Alabama without prior written consent of the district attorney or supervising agency or personnel and to execute a waiver of extradition from any other jurisdiction outside the State of Alabama, to exist only during the term of the pretrial diversion program.
 - (26) For, but not limited to, offenses involving a violation of any provision of Section 32-5A-191, Code of Alabama 1975, the offender may be required to operate only a motor vehicle installed with an approved ignition interlock device for the duration of his or her time in the program.
 - (27) Agree to be subject to any other terms or conditions as required by the district attorney set out in the pretrial diversion agreement. The district attorney shall be given broad discretion in designing a program specifically for each offender and circumstances of the offender.
- (c) Regardless of the ultimate disposition of the criminal charge, upon an offender's completion of the program, the district attorney shall notify the court that the offender has completed his or her obligations under the program. At that time, the court shall order the offender to pay any and all remaining unpaid restitution, court costs, fines, fees, or other monies that the offender is statutorily obligated to pay that would have been assessed or owed upon a conviction or adjudication for the underlying criminal offense. These shall include, but are not limited to, supervision or driver's license reinstatement fees or any statutory fees or assessments to the Alabama Department of Forensic Sciences.
 - (d) The offender shall further agree to the court's jurisdiction beyond the term of pretrial diversion, incarceration, probation, parole, or end of sentence for the purposes of the collection of court-ordered or agreed upon fines, fees, court costs, and restitution pursuant to Section 12-17-225, et seq., Code of Alabama 1975.

- (a) All remaining administration fees shall be allocated to the district attorney's office. At the discretion of the district attorney, all administration fees paid by the offender pursuant to this act may either be paid to the district attorney, to be placed in the District Attorney's Solicitor Fund, or if the district attorney and the clerk agree, may be paid to the circuit clerk of the jurisdiction for distribution to the District Attorney's Solicitor Fund. In the event that the district attorney elects to have the administration fee paid to the circuit clerk for ultimate distribution to the Solicitor Fund, the circuit clerk shall retain a fee of twenty-five dollars (\$ 25) for processing.
- (b) All fees paid to the district attorney pursuant to this act shall be paid into the District Attorney's Solicitor Fund and shall be used to pay costs associated with the administration of the pretrial diversion program or for any other law enforcement purpose.
- (c) Costs associated with program administration shall be paid from fees collected and include, but are not limited to, salaries, rent, vehicles, uniforms, telephones, postage, office supplies, public education, reports, equipment, training and travel services, service contracts, or 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.

Section 13.

- (a)
 - (1) If the offender violates the conditions of a pretrial diversion program established under this act, and the offender's participation is terminated, as an alternative to the imposition of a prison sentence, an offender who has violated the terms and conditions of a pretrial diversion program may be placed under the supervision of an existing community corrections program, or other alternative diversionary program, provided that the supervision is consistent with public safety and the best interests of the offender in furtherance of his or her treatment and rehabilitation in the community.
 - (2) The court and the offender shall be given written notice of the intent of the district attorney to terminate the offender from the pretrial diversion program including the reason for the termination. If the offender is unavailable for notice or has absconded, the district attorney may provide notice of termination from the pretrial diversion program, or any portion thereof, by giving notice to the offender's attorney of record or by regular mail to the most recent known address provided by the offender.
- (b) The district attorney may waive a violation for good cause shown why the offender should stay in the pretrial diversion program.

Section 14.

- (a) Absent wantonness, negligence, or intentional misconduct, the district attorney or his or her staff shall have no liability, criminal or civil, for the conduct of any offender while participating in a pretrial diversion program established under this act or of any service provider or its agents that are contracted to or who have agreed to provide services to the pretrial diversion program.
- (b) Absent wantonness, negligence, or intentional misconduct, the district attorney, or his or her staff or its officers or employees, shall have no liability, criminal or civil, for any injury or harm to the offender while the offender is a participant in any pretrial diversion program administered pursuant to this act. The district attorney may require written agreed upon waivers of liability as a prerequisite for admittance into the pretrial diversion program.
- (c) Absent an agreement which includes the consent of the county commission, the sheriff, and the district attorney, neither the county nor the sheriff shall have any responsibility for a pretrial diversion program established under this act, including, but not limited to, the payment of any expenses which may be necessary to operate the program. Under no circumstances shall the county or the sheriff have any liability, criminal or civil, for any conduct by an offender or any injury or harm to the offender while he or she is a participant in any program authorized by this act.

Section 15. A pretrial diversion program established under this act may apply for grants, may accept donations 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. Absent an express agreement between the county commission, sheriff, and district attorney, no county commission or any of its departments or agencies shall be required to participate in, or provide funding for, any pretrial diversion program established under this act.

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

Section 17.

- (a) A district attorney, to the extent practicable, may enter into an agreement with a community correction entity, to utilize the services of existing community corrections programs established pursuant to Section 15-18-170, Code of Alabama 1975, or faith based community programs, which are certified by the Alabama Department of Mental Health, to provide for the supervision of defendants participating in a pretrial diversion program established under this act. The district attorney may enter into an agreement with a drug court entity to utilize the services of existing certified drug court programs established pursuant to Section 12-23A-4, Code of Alabama 1975, provided that the district attorney determines it would serve the best interest of justice and the community.
- (b) Notwithstanding Section 12(b)(2), if, upon enactment of this legislation, a pretrial diversion program, or an equivalent, has been established in the judicial circuit by local law, with regard only to a pretrial diversion program in a circuit court or district court, the district attorney may choose to adopt this act in its entirety or any portion or portions that the district attorney believes would best serve the interest of justice and the community.
- (c) If, pursuant to subsection (b), a district attorney elects to opt into any provision or provisions of this act, he or she must file such an election with the Office of Prosecution Services.

Section 18.

- (a) The Office of Prosecution Services shall develop and maintain a pretrial diversion offender database. Any existing or newly created pretrial diversion program, regardless of whether it was established by this act or created by local law, municipal ordinance, or other administrative action, or is an existing district attorney or municipal pretrial diversion program, shall be subject to this section. Upon entry into any pretrial diversion program, the district attorney or municipal prosecutor shall submit information, including the name, date of birth, and identifying personal vital information of a participating offender. The district attorney or municipal prosecutor shall also submit the criminal statute or municipal ordinance violated, a brief description of any underlying qualifying offense, and a brief description of the agreed upon disposition of the offense. If the offender was prematurely terminated from the program, a brief description of the reasons for the termination shall be submitted for inclusion into the database.
- (c) (B) Information in the database concerning any applicant may be used by any district attorney in determining admittance into a pretrial diversion program or its equivalent. A district attorney may submit prior pretrial diversion dispositions from any jurisdiction contained within the database to the court for the purpose of assisting the court in its ruling with regard to sentencing, a ruling on youthful offender, or any first offender or first offender-type judicial determination. Nothing in this act shall

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

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

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

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

Section 20. 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 21. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

History

ACT NO. 2013-361

REP(S). BY REPRESENTATIVE HILL

HB494

ENROLLED , AN ACT,

Sponsor(s)

Hill

Classification

Subject: ALTERNATIVE SENTENCING (95%); JUSTICE DEPARTMENTS (94%); CRIMINAL OFFENSES (94%); CONTROLLED SUBSTANCES CRIME (92%); LEGISLATORS (82%); CONTROLLED SUBSTANCES (81%); LAW COURTS & TRIBUNALS (63%); SUBSTANCE ABUSE (62%); LAW ENFORCEMENT (62%)

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