

1 HB493  
2 55294-3  
3 By Representatives Baker, Carothers, Beck and Clouse (N & P)  
4 RFD: Local Legislation  
5 First Read: 03-APR-03

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ENROLLED, An Act,

Relating to Henry and Houston Counties and the Twentieth Judicial Circuit; providing for the establishment of a pretrial diversion program.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

The pretrial diversion program shall be under the direct supervision and control of the district attorney and the district attorney may contract with any agency, person, or corporation for services related to this act. The district attorney may employ necessary persons to accomplish this act and these persons shall serve at the pleasure of the district attorney.

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

(A) DISTRICT ATTORNEY. The elected District Attorney of the Twentieth Judicial Circuit or any of his or her staff.

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

9           (C) OFFENDER. Any person charged with a crime as  
10 defined by the Code of Alabama 1975, which was allegedly  
11 committed in the jurisdiction of the Twentieth Judicial  
12 Circuit.

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

15           Section 3. (a) A person charged with a criminal  
16 offense specified in this subsection whose jurisdiction is in  
17 the circuit or district court of the Twentieth Judicial  
18 Circuit may apply to the District Attorney of the Twentieth  
19 Judicial Circuit for admittance to the pretrial diversion  
20 program.

21           A person charged with any of the following offenses  
22 may apply for the program:

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

25           (2) A property offense.

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

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

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

8           (b) The following offenses are ineligible for  
9 consideration for the pretrial diversion program:

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

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

13           (3) Any sex offense.

14           (4) Any Class A felony.

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

17           (6) Any offense involving death.

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

21           (d) The opinion of law enforcement officers involved  
22 in the offense shall be sought and used in the decision  
23 whether to approve the applicant for the pretrial diversion  
24 program.

1           Section 4. (a) Admittance to the pretrial diversion  
2 program shall be appropriate in any of the following  
3 instances:

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

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

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

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

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

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

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

21           Section 5. (a) Prior to being admitted to the  
22 pretrial diversion program or as a part of the district  
23 attorney's evaluation process, an applicant may be required by  
24 the district attorney to furnish information concerning past  
25 criminal history, educational history, work record, family

1 history, medical or psychiatric treatment or care received,  
2 psychological test taken, and any other information concerning  
3 the offender which the district attorney believes has a  
4 bearing on the decision as to whether or not the offender  
5 should be admitted to the pretrial diversion program.

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

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

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

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

22 (3) Agree, in writing, to the conditions of the  
23 pretrial diversion program established by the district  
24 attorney.

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

6           (b) Pretrial diversion program records or records  
7 related to pretrial diversion program admission shall not be  
8 admissible in subsequent proceedings, criminal or civil.  
9 Communications between pretrial diversion program counselors  
10 and defendants shall be privileged unless a court of competent  
11 jurisdiction determines there is a compelling public interest  
12 that the communications be submitted to the court for an in  
13 camera review.

14           (c) The records of the offender maintained as a part  
15 of the pretrial diversion program shall be destroyed in a  
16 timely manner after the program has been successfully  
17 completed by the offender. However, the district attorney may  
18 keep the contract signed by the offender in order to maintain  
19 an accurate record of pretrial diversion program  
20 participation.

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

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

3           Section 8. (a) An applicant may be assessed a fee  
4 when the applicant is approved for the program. The amount of  
5 the assessment for participation in the program shall be in  
6 addition to any court costs and assessments for victims or  
7 drug, alcohol, or anger management treatment required by law,  
8 and are in addition to costs of supervision, treatment, and  
9 restitution for which the person may be responsible. Pretrial  
10 diversion program fees as established by this act may be  
11 waived or reduced for just cause at the discretion of the  
12 district attorney. A schedule of payments for any of these  
13 fees may be established by the district attorney.

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

16           (1) Felony offenses: up to seven hundred fifty  
17 dollars (\$750).

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

20           (3) Traffic offenses: up to three hundred dollars  
21 (\$300).

22           (c) Twenty-five dollars (\$25) of the fee for each  
23 applicant accepted into the pretrial diversion program shall  
24 be allocated to the Houston County Circuit Clerk's Office, for  
25 offenses filed in Houston County, and to the Henry County

1 Circuit Clerk's Office, for offenses filed in Henry County.  
2 Money allocated to a circuit clerk pursuant to this subsection  
3 shall be available for use, at the clerk's discretion, to  
4 support the clerk's office.

5 (d) Twenty-five dollars (\$25) of the fee for each  
6 applicant accepted into the pretrial diversion program shall  
7 be allocated to the Houston County General Fund, for offenses  
8 filed in Houston County and to the Henry County General Fund,  
9 for offenses filed in Henry County.

10 ~~(d)~~ (e) The district attorney may use fees collected  
11 by the pretrial diversion program to help support local and  
12 state law enforcement, or any agency or department of city or  
13 county government which assists local law enforcement. This  
14 support shall be provided to help employ more officers or  
15 staff, buy needed equipment or supplies, provide training  
16 opportunities, or any other law enforcement purposes.

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

24 Section 9. The district attorney and the offender  
25 may enter into an agreement as a part of the pretrial

1 diversion program of an offender that the offender be admitted  
2 to a drug or alcohol program on an in-patient or out-patient  
3 basis or receive other treatment alternatives for substance  
4 abuse. The district attorney may require the offender to  
5 submit to periodic or random drug testing as a part of the  
6 pretrial diversion program of the offender and other terms and  
7 conditions related to substance abuse as the district attorney  
8 may direct. The offender shall pay the costs of all services  
9 unless otherwise approved by the district attorney.

10 Section 10. (a) In any case in which an offender is  
11 admitted into a pretrial diversion program, there shall be a  
12 written agreement between the district attorney and the  
13 offender. The agreement shall include the terms of the  
14 pretrial diversion program, the length of the program, and the  
15 period of time after which the district attorney will dispose  
16 of the charges against the offender in a noncriminal manner or  
17 what charges the defendant will plead guilty to and the  
18 sentence the offender will receive. If, as part of the  
19 pretrial diversion program, the offender agrees to plead  
20 guilty to a particular offense and receive a specific  
21 sentence, this agreement concerning the offense and sentence  
22 shall be approved by an appropriate circuit or district judge  
23 of the Twentieth Judicial Circuit prior to admission of the  
24 offender in the pretrial diversion program.

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

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

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

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

11           (4) Refrain from the use of alcohol or drugs or  
12 frequenting places where alcohol or drugs are sold or used.

13           (5) Refrain from contact with certain persons or  
14 premises.

15           (6) Maintain or seek employment.

16           (7) Attend individual, group, or family counseling.

17           (8) Pay approved restitution to a victim if any is  
18 due.

19           (9) Pay court costs and fines.

20           (10) Pay supervision fees and application fees  
21 pursuant to this act.

22           (11) Observe curfews or home detention or travel  
23 constraints as set out in the offender's agreement.

24           (12) Enter into an agreement with the district  
25 attorney to have restitution, court costs, fines, fees, or

1 child support either withheld or garnished from the wages or  
2 salary of the offender and applied to the above.

3 (c) The offender shall be subject to other terms or  
4 conditions as the district attorney and the offender may agree  
5 to in the written agreement of the offender, it being the  
6 purpose of this act to allow the district attorney broad  
7 discretion in designing a program specifically for each  
8 offender and circumstances of the offender.

9 Section 11. The district attorney shall establish a  
10 pretrial diversion program fund. Except for the twenty-five  
11 dollars (\$25) payable to the circuit clerk pursuant to Section  
12 8(c), fees paid by offenders pursuant to Section 8 shall be  
13 placed into the pretrial diversion program fund. The district  
14 attorney shall use the funds in the pretrial diversion program  
15 fund to pay costs associated with the administration of the  
16 pretrial diversion program or for other law enforcement  
17 purposes. Costs associated with program administration shall  
18 include, but shall not be limited to, salaries, rent,  
19 vehicles, uniforms, professional or business attire,  
20 telephones, postage, office supplies and equipment, training  
21 and travel services, service contracts, and professional  
22 services. The district attorney may pay for services or  
23 programs for an offender while the offender is in the pretrial  
24 diversion program if special circumstances and justice  
25 dictate.

1           Section 12. (a) If the offender violates the  
2 conditions of the pretrial diversion program agreed to in  
3 writing by the offender and the district attorney, the  
4 district attorney may terminate the participation of the  
5 offender. The offender shall be given written notice of the  
6 intent of the district attorney to terminate him or her from  
7 the pretrial diversion program, including the reason for the  
8 termination.

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

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

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

21           Section 15. The district attorney may form an  
22 advisory board to assist in the determination of appropriate  
23 pretrial diversion candidates. The district attorney shall  
24 retain the final decision as to the admittance of individuals  
25 or administration of the program regardless of the board's

1 views. It shall be the district attorney's decision who will  
2 comprise the board and when or if it should meet.

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

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

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 15-APR-03.

Greg Pappas  
Clerk

Senate	10-JUN-03	Amended and Passed
House	11-JUN-03	Concurred in Senate Amendment