

1 SB285
2 149270-1
3 By Senators Keahey and Ward
4 RFD: Judiciary
5 First Read: 28-FEB-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,

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

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

14 (9) SERIOUS PHYSICAL INJURY. As defined in Section
15 13A-1-2, Code of Alabama 1975.

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

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

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

1 (c) A county pretrial diversion program established
2 under subsection (a) shall be under the direct supervision and
3 control of the district attorney. The district attorney may
4 contract with any agency, person, or corporation, including,
5 but not limited to, certified and judicially sanctioned
6 community corrections programs, certified mental health and
7 drug treatment programs, family service programs, or any
8 certified not-for-profit programs for services related to this
9 act. The district attorney may employ persons necessary to
10 accomplish the purposes of this act, who shall serve at the
11 pleasure of the district attorney.

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

17 (e) This act shall not apply to juvenile delinquency
18 proceedings in juvenile court.

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

25 (b) A municipality within the judicial circuit of
26 any pretrial diversion program may, but shall not be required
27 to, participate in a pretrial diversion program established

1 under this act. Any agreement between a municipality and a
2 district attorney shall be governed by the provisions of this
3 act. If a municipality is situated in more than one judicial
4 circuit, the municipality may enter into an agreement with any
5 district attorney of a judicial circuit in which it is
6 situated to participate in a pretrial diversion program.

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

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

26 (1) A drug offense, excluding sale of a controlled
27 substance as provided in Section 13A-12-211, Code of Alabama

1 1975, trafficking in controlled substances or cannabis as
2 provided in Section 13A-12-231 of the Code of Alabama 1975,
3 manufacturing controlled substances in the first degree as
4 provided in Section 13A-12-218 of the Code of Alabama 1975, or
5 trafficking in an analog controlled substance.

6 (2) A property offense.

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

11 (4) A misdemeanor, violation, or violation of an
12 ordinance.

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

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

26 (e) The following offenses are ineligible for
27 consideration for the pretrial diversion program:

- 1 (1) Any Class A felony or capital offense.
- 2 (2) Any offense involving serious physical injury to
3 a person.
- 4 (3) An offense involving violence in which the
5 victim was a child under 14 years of age, a law enforcement
6 officer, a school officer, a correctional officer, active duty
7 military personnel of the United States military, or a person
8 over the age of 65.
- 9 (4) Any offense involving death.
- 10 (5) A person deemed by the district attorney or
11 municipal prosecutor to be a threat to the safety or
12 well-being of the community.
- 13 (6) Bribery of a government or public official.
- 14 (7) Any offense wherein the offender is a public
15 official and the charge is related to his or her capacity as a
16 public official.
- 17 (8) Abduction or kidnapping.
- 18 (9) Any sex offense involving forcible compulsion or
19 incapacity.
- 20 (10) A violation of Section 13A-12-191, et seq., of
21 the Code of Alabama 1975, or Section 13A-6-111, et seq., of
22 the Code of Alabama 1975.
- 23 (11) Any violation of Section 13A-10-120, et seq.,
24 of the Code of Alabama 1975.
- 25 (12) Perjury in any degree, as defined in Section
26 13A-10-100, et seq., of the Code of Alabama 1975.

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

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

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

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

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

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

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

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

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

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

5 (8) Undue hardship upon the victim.

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

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

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

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

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

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

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

1 (d) (1) In jurisdictions where the district attorney
2 or municipal prosecutor elects to establish a pretrial
3 diversion program pursuant to this act, an offender's
4 qualifications, application, or entry into any other existing
5 statutorily created drug court or other successful specialty
6 court shall be paramount to the pretrial diversion program
7 created pursuant to this act. If an offender qualifies for a
8 drug or specialty court program, that program shall have
9 priority over the pretrial diversion program created pursuant
10 to this act.

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

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

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

1 be otherwise subjected to discrimination for eligibility
2 purposes.

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

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

1 (c) If requested by the district attorney, municipal
2 prosecutor, or the court, a program certified by the Alabama
3 Department of Mental Health may provide a mental health
4 evaluation, including a drug addiction assessment for any
5 offender who has applied for the program pursuant to this act,
6 any local pretrial diversion program, or any drug court
7 program created by statute.

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

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

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

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

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

26 (c) An offender who enters a pretrial diversion
27 program pursuant to this act shall reasonably be informed of

1 the cost of the administrative fee and, as practicable as
2 possible, any other costs that will be required for the
3 offender to pay for participation in the program. Restitution,
4 or portions thereof, may be left open where amounts are
5 difficult to determine or, due to the nature of the harm, may
6 increase or decrease over the period.

7 Section 7. (a) An offender who enters into a
8 pretrial diversion program established under this act shall
9 satisfy each of the following requirements:

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

15 (2) Agree, in writing, to the conditions of the
16 pretrial diversion program established by the district
17 attorney or municipal prosecutor.

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

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

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

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

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

21 (b) (1) Upon acceptance of an offender into the
22 program by the district attorney or municipal prosecutor, the
23 district attorney or municipal prosecutor shall submit the
24 written application of the offender, together with a statement
25 of fact of the offense, and the agreement of the offender and
26 the district attorney or municipal prosecutor, to a court of

1 competent jurisdiction presiding over the affected case for
2 approval.

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

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

25 (d) Upon approval of the agreement and acceptance of
26 the guilty plea, the court shall expressly place the case or
27 cases in an administrative docket until such time that the

1 court is notified that the offender has fulfilled the terms of
2 the pretrial diversion agreement, upon motion of the district
3 attorney or municipal prosecutor that the offender has been
4 terminated from the program by the court, or otherwise
5 withdraws from the program. Imposition of punishment or
6 sentence by the court shall be deferred until the offender has
7 successfully completed the program or is terminated from the
8 program, by the court or upon motion of the district attorney
9 or municipal prosecutor.

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

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

22 (g) Pretrial diversion program records or records
23 related to pretrial diversion program admission, with the
24 exception of the statement of the applicant concerning his or
25 her involvement in the crimes charged or other crimes, shall
26 not be admissible in subsequent proceedings, criminal or
27 civil, unless a court of competent jurisdiction determines

1 there is a compelling public interest in disclosing the
2 records. Communications between pretrial diversion program
3 counselors and offenders shall be privileged unless a court of
4 competent jurisdiction determines there is a compelling public
5 interest in disclosing the communication.

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

12 (i) After any violation of any pretrial diversion
13 program terms or conditions or upon any breach of any program
14 agreement by the offender, the district attorney shall notify
15 the court, and the district attorney may do any of the
16 following:

17 (1) Terminate the offender from the pretrial
18 diversion program.

19 (2) Require the adoption of a new agreement as a
20 condition of continued participation.

21 (3) Continue with the agreement with or without
22 modification.

23 Section 8. An offender shall make application to a
24 pretrial diversion program established under this act at a
25 time to be determined by the district attorney or municipal
26 prosecutor, but in the case of a felony, may not be more than
27 90 days after arraignment.

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

11 (b) The amount of the administration fee shall be
12 determined by the district attorney or municipal prosecutor.
13 In a municipality, the administration fee shall not exceed the
14 maximum fine for the offense charged or one thousand dollars
15 (\$1,000), whichever is less. Otherwise, the administration
16 fees shall not exceed the amount assessed for a first offense
17 pursuant to Section 13A-12-281(a), Code of Alabama 1975, for
18 each case for which the offender makes application for
19 acceptance into the pretrial diversion program.

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

25 (2) If an offender, upon application, claims
26 indigency, he or she shall be brought before a court of
27 competent jurisdiction for a determination of indigency. In

1 the event that a court determines the offender to be indigent,
2 any fees or costs shall not be waived or remitted unless the
3 defendant or the party responsible for paying any fees or
4 costs proves to the reasonable satisfaction of the judge
5 presiding or sentencing judge that the defendant or party is
6 not capable of paying the same within the reasonably
7 foreseeable future. In the event the offender is determined to
8 be indigent, a periodic review of the offender's indigent
9 status may be conducted by the court upon motion of the
10 district attorney or municipal prosecutor to determine if the
11 offender is no longer indigent.

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

24 Administration fees required by this act for municipal
25 pretrial diversion programs shall be collected by the
26 municipal clerk or treasurer for deposit into the general
27 municipal fund.

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

11 (2) Notwithstanding Section 12, five dollars (\$5) of
12 the administration fee shall be allocated to Victims of Crime
13 and Leniency (VOCAL) and shall be available for use at the
14 discretion of the program to support its services.

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

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

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

26 Section 11. (a) In any case in which an offender is
27 admitted into a pretrial diversion program established under

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

17 (b) As a condition of being admitted to the pretrial
18 diversion program, the district attorney or municipal
19 prosecutor may require the offender to agree to any of the
20 following terms or conditions:

21 (1) Pay restitution.

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

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

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

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

7 (6) Refrain from contact with certain persons or
8 premises.

9 (7) Maintain or seek employment.

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

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

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

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

18 (12) Be required to be absolutely truthful in any
19 oral or written application or reports to the pretrial
20 diversion program.

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

1 (14) Observe curfews, home detention, electronic
2 monitoring, or travel constraints as set out in the offender's
3 agreement.

4 (15) Enter into an agreement with the district
5 attorney or municipal prosecutor to have restitution, court
6 costs, fines, fees, or child support withheld, forfeiture of
7 accounts, assets, or garnished from the wages or salary of the
8 offender.

9 (16) Complete approved community service.

10 (17) Agree to the terms and conditions of the
11 pretrial diversion program established by the district
12 attorney or municipal prosecutor.

13 (18) Provide a statement admitting his or her
14 participation in, and responsibility for, the offense which is
15 the subject of the application for entry into the pretrial
16 diversion program.

17 (19) Refrain from the possession of or use of any
18 firearm.

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

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

23 (22) Complete a certified drug or alcohol addiction
24 evaluation and treatment program.

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

1 (24) Abide by all conditions imposed for treatment
2 by the United States Department of Veterans' Affairs and
3 provide certified proof of completion to the district attorney
4 or municipal prosecutor.

5 (25) Not to leave the State of Alabama without prior
6 written consent of the district attorney, municipal
7 prosecutor, or supervising agency or personnel and to execute
8 a waiver of extradition from any other jurisdiction outside
9 the State of Alabama, to exist only during the term of the
10 pretrial diversion program.

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

16 (27) Agree to be subject to any other terms or
17 conditions as required by the district attorney or municipal
18 prosecutor set out in the pretrial diversion agreement. The
19 district attorney shall be given broad discretion in designing
20 a program specifically for each offender and circumstances of
21 the offender.

22 (c) Regardless of the ultimate disposition of the
23 criminal charge, upon an offender's completion of the program,
24 the district attorney or municipal prosecutor shall notify the
25 court that the offender has completed his or her obligations
26 under the program. At that time, the court shall order the
27 offender to pay any and all remaining unpaid restitution,

1 court costs, fines, fees, or other monies that the offender is
2 statutorily obligated to pay that would have been assessed or
3 owed upon a conviction or adjudication for the underlying
4 criminal offense. These may include, but are not limited to,
5 supervision or driver's license reinstatement fees or any
6 statutory fees or assessments to the Alabama Department of
7 Forensic Sciences.

8 (d) The offender shall further agree to the court's
9 jurisdiction beyond the term of pretrial diversion,
10 incarceration, probation, parole, or end of sentence for the
11 purposes of the collection of court-ordered or agreed upon
12 fines, fees, court costs, and restitution pursuant to Section
13 12-17-225, et seq., Code of Alabama 1975.

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

1 remaining administration fees shall be applied to the
2 municipal general fund.

3 (b) All fees paid to the district attorney pursuant
4 to this act shall be paid into the District Attorney's
5 Solicitor Fund and shall be used to pay costs associated with
6 the administration of the pretrial diversion program or for
7 any other law enforcement purpose. Seven dollars (\$7) per
8 applicant shall be paid by the district attorney, or
9 municipality if the applicant is from a municipality, to the
10 Office of Prosecution Services for creation and maintenance of
11 the offender database described in Section 18.

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

20 Section 13. (a) (1) If the offender violates the
21 conditions of a pretrial diversion program established under
22 this act, and the offender's participation is terminated, as
23 an alternative to the imposition of a prison sentence, an
24 offender who has violated the terms and conditions of a
25 pretrial diversion program may be placed under the supervision
26 of an existing community corrections program, or other
27 alternative diversionary program, provided that the

1 supervision is consistent with public safety and the best
2 interests of the offender in furtherance of his or her
3 treatment and rehabilitation in the community.

4 (2) The court and the offender shall be given
5 written notice of the intent of the district attorney or
6 municipal prosecutor to terminate the offender from the
7 pretrial diversion program including the reason for the
8 termination. If the offender is unavailable for notice or has
9 absconded, the district attorney or municipal prosecutor may
10 provide notice of termination from the pretrial diversion
11 program, or any portion thereof, by giving notice to the
12 offender's attorney of record or by regular mail to the most
13 recent known address provided by the offender.

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

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

25 (b) The district attorney or his or her staff, or
26 the municipality or its officers or employees, shall have no
27 liability, criminal or civil, for any injury or harm to the

1 offender while the offender is a participant in any pretrial
2 diversion program administered pursuant to this act. The
3 district attorney or municipal prosecutor may require written
4 agreed upon waivers of liability as a prerequisite for
5 admittance into the pretrial diversion program.

6 Section 15. A pretrial diversion program established
7 under this act may apply for grants, may accept donations from
8 individuals or corporations, and may receive funding or
9 appropriations from city, county, or state agencies or
10 departments to be used in the maintenance or expansion of the
11 pretrial diversion program.

12 Section 16. If a district attorney establishes a
13 pretrial diversion program under this act, the district
14 attorney may form an advisory board within the county or
15 judicial circuit, which may be known as the Citizens Justice
16 Advisory Board for Pretrial Diversion, for the purpose of
17 assisting the district attorney in the determination of
18 appropriate pretrial diversion candidates. The district
19 attorney shall retain the final decision as to the admittance
20 or denial of individuals into the pretrial diversion program,
21 the fees, the guidelines of the program, and any resources the
22 pretrial diversion program utilizes. The district attorney
23 shall appoint all members of any advisory board and shall
24 determine when or if it should meet. The board shall be
25 inclusive and reflect the racial, gender, geographic, urban
26 and rural, and economic diversity of the circuit. The advisory
27 board shall serve without personal profit, but may be paid

1 from the District Attorney's Solicitor Fund for actual
2 expenses incurred in connection with its duties.

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

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

25 (c) If, pursuant to subsection (b), a district
26 attorney or municipality elects to opt into any provision or

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

3 Section 18. (a) The Office of Prosecution Services
4 shall develop and maintain a pretrial diversion offender
5 database. Each district attorney and each municipal prosecutor
6 shall submit the name and identifying personal vital
7 information of each participating offender. The district
8 attorney shall also submit the criminal statute or municipal
9 ordinance violated, a description of any underlying qualifying
10 offense, and the ultimate disposition of the offenses.
11 Regardless of whether a pretrial diversion program was
12 established by this act or created by local law, upon
13 successful completion of, or termination from the program, a
14 district attorney shall submit information for entry into the
15 database pursuant to this section. If the offender was
16 terminated from the program, the information submitted for
17 inclusion into the database shall include the reason for
18 termination.

19 (b) The information entered into the database must
20 contain identifiers sufficient to provide any future court of
21 competent jurisdiction the ability to determine the original
22 underlying offense or charge which was diverted, nolle
23 prossed, or otherwise disposed of by conviction.

24 (c) Information in the database concerning any
25 applicant may be used by any district attorney or municipal
26 prosecutor in determining admittance into a pretrial diversion
27 program or its equivalent. A district attorney or municipal

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

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

21 Section 19. Notwithstanding Section 11 (c), upon
22 conviction for any criminal offense, felony, misdemeanor, or
23 violation of the Code of Alabama 1975, or ordinance violation,
24 any fees or costs shall not be waived or remitted unless the
25 defendant or party responsible for paying the fees proves to
26 the reasonable satisfaction of the presiding or sentencing

1 judge that the defendant or party is not capable of paying the
2 fees or costs within the reasonably foreseeable future.

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