

1 HB114
2 146923-2
3 By Representative Hill
4 RFD: Public Safety and Homeland Security
5 First Read: 05-FEB-13
6 PFD: 02/01/2013

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8 SYNOPSIS: This bill would provide standards for
9 contracts relating to private probation services
10 and qualifications for private probation officers,
11 including criminal history record checks.

12 This bill would authorize the presiding
13 judge of any circuit or district court, or the
14 district judge in a county with only one district
15 judge, to contract with private business entities
16 to provide probation services for offenses other
17 than violent felony offenses.

18 This bill would authorize the court
19 administrator of any municipal court to contract
20 with private business entities to provide probation
21 services for criminal convictions in its court.

22 This bill would create the County and
23 Municipal Probation Advisory Council to review the
24 uniform professional standards for private
25 probation officers and uniform contract standards
26 for private probation contracts and submit a report
27 with its recommendations to the Legislature, to

1 adopt rules relating to qualifications and training
2 of private probation officers, to provide for
3 registration of entities providing private
4 probation services, and to produce an annual report
5 related to private probation services.

6 This bill would preclude business entities
7 providing private probation services from
8 specifying, either directly or indirectly, a
9 particular alcohol or substance abuse program that
10 a probationer may or is required to attend, and
11 would provide criminal penalties for violations.

12 This bill also would provide for the
13 confidentiality of records generated by private
14 probation officers, with access to these records
15 granted to certain state agencies.

16 Amendment 621 of the Constitution of Alabama
17 of 1901, now appearing as Section 111.05 of the
18 Official Recompilation of the Constitution of
19 Alabama of 1901, as amended, prohibits a general
20 law whose purpose or effect would be to require a
21 new or increased expenditure of local funds from
22 becoming effective with regard to a local
23 governmental entity without enactment by a 2/3 vote
24 unless: it comes within one of a number of
25 specified exceptions; it is approved by the
26 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

3 The purpose or effect of this bill would be
4 to require a new or increased expenditure of local
5 funds within the meaning of the amendment. However,
6 the bill does not require approval of a local
7 governmental entity or enactment by a 2/3 vote to
8 become effective because it comes within one of the
9 specified exceptions contained in the amendment.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 Relating to probation, to authorize the presiding
16 circuit or district judges or the district judge in counties
17 with only one district court judge to contract with private
18 entities for probation services for persons convicted of
19 certain offenses; to authorize the court administrator of a
20 municipal court to contract with private entities for
21 probation services for persons convicted of certain offenses;
22 to create the County and Municipal Probation Advisory Council
23 to review standards for contracts related to private probation
24 services and qualifications of private probation officers and
25 make recommendations to the Legislature; to authorize the
26 council to adopt rules relating to the qualifications and
27 training of private probation officers; to require the council

1 to make an annual report; to prohibit certain activities by
2 private probation officers and to provide for criminal
3 penalties for certain violations; to provide for
4 confidentiality of certain records; and in connection
5 therewith would have as its purpose or effect the requirement
6 of a new or increased expenditure of local funds within the
7 meaning of Amendment 621 of the Constitution of Alabama of
8 1901, now appearing as Section 111.05 of the Official
9 Recompilation of the Constitution of Alabama of 1901, as
10 amended.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 (1) BUSINESS ENTITY. A person or group of persons
15 performing or engaging in any private activity, enterprise,
16 profession, or occupation for gain, benefit, advantage, or
17 livelihood, whether for profit or not for profit.

18 (2) COUNCIL. The County and Municipal Probation
19 Advisory Council created under Section 3.

20 (3) PRIVATE PROBATION OFFICER. A probation officer
21 employed by a business entity that provides probation
22 services.

23 Section 2. (a) (1) The presiding judge of any
24 district or circuit court, or the district judge in county
25 with only one district judge, may enter into a written
26 contract with a business entity to provide probation
27 supervision, counseling, collection services for all moneys to

1 be paid by a defendant according to the terms of the sentence
2 imposed, for supervision of child support orders where the
3 payer has been adjudicated in arrears, and other probation
4 services for persons convicted in that court and placed on
5 probation in the county.

6 (2) The probation services provided by the business
7 entity shall be paid for by monthly supervision fees collected
8 from probationers.

9 (3) A business entity providing probation services
10 may not supervise a defendant who has been convicted of a
11 felony, other than those nonviolent felonies identified by the
12 council.

13 (4) The final contract between the presiding judge
14 or the district judge and the business entity providing
15 probation services shall be made available to the public for
16 inspection upon request.

17 (5) A contract for probation services as provided
18 for in this section may be terminated by the judge executing
19 the contract in accordance with any express termination
20 provisions included in the contract.

21 (b) (1) The court administrator of the municipal
22 court of any municipality, with the consent of the senior
23 municipal judge, may enter into written contracts with
24 business entities to provide probation supervision,
25 counseling, collection services for all moneys to be paid by a
26 defendant according to the terms of the sentence imposed, and

1 other probation services for persons convicted in the court
2 and placed on probation.

3 (2) The probation services provided by the business
4 entity shall be paid for by monthly supervision fees collected
5 from probationers.

6 (3) The final contract between the municipal court
7 administrator and the business entity providing probation
8 services shall be made available to the public for inspection
9 upon request.

10 (4) A contract for probation services as provided
11 for in this section may be terminated by the municipal court
12 administrator executing the contract in accordance with any
13 express termination provisions included in the contract.

14 Section 3. (a) There is created the County and
15 Municipal Probation Advisory Council, placed within the
16 Administrative Office of Courts for administrative purposes
17 only, to be composed of all of the following members:

18 (1) A circuit court judge designated by the
19 president of the Circuit Judges' Association.

20 (2) A district court judge designated by the
21 president of the District Judges' Association.

22 (3) A municipal court judge designated by the
23 president of the Municipal Judges Association of Alabama.

24 (4) A sheriff appointed by the Governor.

25 (5) A municipal magistrate designated by the
26 Association of Municipal Court Clerks and Magistrates.

1 (6) A private probation officer or individual with
2 expertise in private probation services by virtue of his or
3 her training or employment appointed by the Governor.

4 (7) A mayor or member of a municipal governing
5 authority appointed by the Governor.

6 (8) A county commissioner appointed by the Governor.

7 (b) Members of the council appointed by the Governor
8 shall be appointed for terms of office of four years. With the
9 exception of the county commissioner, the sheriff, and the
10 mayor or member of a municipal governing authority, each
11 designee or representative shall be employed in his or her
12 representative capacity in a judicial circuit operating under
13 a contract with a business entity to provide probation
14 services. No person may serve beyond the time he or she holds
15 the office or employment by reason of which he or she was
16 initially eligible for appointment. In the event of death,
17 resignation, disqualification, or removal for any reason of
18 any member of the council, the vacancy shall be filled in the
19 same manner as the original appointment and any successor
20 shall serve for the unexpired term. The council shall adopt
21 rules regarding contracts or agreements for probation services
22 and the conduct of business by business entities providing
23 probation services.

24 (c) The council shall do all of the following:

25 (1) Annually elect a chair and a vice chair from
26 among its membership. The offices of chair and vice chair
27 shall be filled in such a manner that they are not held in

1 succeeding years by representatives of the same component,
2 such as law enforcement, courts, or corrections, of the
3 criminal justice system.

4 (2) Meet at such times and places as it shall
5 determine necessary or convenient to perform its duties. The
6 council shall also meet on the call of the chair or at the
7 written request of three of its members.

8 (3) Maintain minutes of its meetings and such other
9 records as it deems necessary.

10 (4) Adopt rules for the transaction of its business
11 and appoint committees necessary to carry out its business and
12 duties.

13 (d) Members of the council shall serve without
14 compensation but shall receive the same expense allowance per
15 day as that received by a member of the Legislature for each
16 day the member of the council is in attendance at a meeting of
17 the council. Payment of expense and travel allowance shall be
18 subject to availability of funds.

19 (e) (1) The funds necessary to support the activities
20 of the council shall be derived from fees remitted to the
21 Administrative Office of Courts under subdivision (2) and
22 funds appropriated to the Administrative Office of Courts or
23 otherwise available to the council. The council is authorized
24 to accept and use grants of funds for the purpose of carrying
25 out this act.

26 (2) A business entity providing probation services
27 under this act shall remit each calendar month one dollar (\$1)

1 for each offender under its supervision where the offender has
2 not been deemed indigent by the court, placed in jail on any
3 charge, committed to a medical facility, or is subject to a
4 warrant for the case that is under supervision. Except as
5 otherwise provided in this act, the remittance of one dollar
6 (\$1) shall be made for each offender who was under supervision
7 for any period for any number of days during a calendar month.
8 The remittance shall be made to the Administrative Office of
9 Courts on a quarterly basis along with an accounting of
10 offenders under supervision during the quarter for which the
11 money is remitted.

12 (f) The council shall have all of the following
13 powers and duties:

14 (1) To adopt rules for the administration of the
15 council, including rules of procedure for its internal
16 management and control.

17 (2) To review the uniform professional standards for
18 private probation officers and uniform contract standards for
19 private probation contracts established in this act and submit
20 a report with its recommendations to the Legislature.

21 (3) To adopt rules establishing training and
22 education requirements for private probation officers.

23 (4) To adopt rules relative to compliance with this
24 act and enforcement mechanisms that may include, but are not
25 limited to, the imposition of sanctions and fines and the
26 voiding of contracts or agreements.

1 (5) To adopt rules establishing registration for any
2 business entity providing probation services under this act.

3 (6) To make an annual summary report of probation
4 services provided by business entities in this state. The
5 report shall not contain information identifying individual
6 business entities or related contracts.

7 (7) To adopt rules establishing procedures for
8 criminal history information background checks of private
9 probation officers and disqualifying offenses for eligibility
10 to serve as a private probation officer.

11 Section 4. (a) (1) Any person employed as and using
12 the title of a private probation officer shall meet all of the
13 following uniform professional standards:

14 a. Be at least 21 years of age at the time of the
15 appointment to the position.

16 b. Have no felony conviction.

17 c. Have completed a standard two-year college course
18 or have four years of law enforcement or equivalent
19 experience. A person employed as a private probation officer
20 and who has completed at least 12 months of experience as a
21 private probation officer or probation officer in this state
22 shall not be required to satisfy the college education
23 requirement.

24 d. Complete an initial 40 hours of orientation upon
25 employment and complete 20 hours of continuing education each
26 year as approved by the council. A person who has successfully
27 completed a probation or parole officer basic course of

1 training certified by the Peace Officers' Standards and
2 Training Commission or any private probation officer who has
3 been employed by a business entity to provide probation
4 services for at least 12 months, shall not be required to
5 complete the 40-hour orientation.

6 (2) A business entity providing probation services
7 may conduct a criminal history background information check of
8 a person employed as a private probation officer or an
9 applicant for a private probation officer position by
10 submitting a request to the Department of Public Safety for a
11 criminal history background information check accompanied by
12 appropriate fees, two complete functional sets of
13 fingerprints, properly executed by a criminal justice agency
14 or an individual properly trained in fingerprinting
15 techniques, and written consent from the applicant for release
16 of criminal background information to the business entity.

17 (b) The following uniform contract standards shall
18 apply to all private probation contracts executed under the
19 authority of this act and shall be included as a term of any
20 contract for probation services:

21 (1) The extent of the services to be rendered by the
22 business entity providing probation supervision, including the
23 monthly fee to be charged to probationers for supervision
24 services.

25 (2) Any requirements for staff qualifications, to
26 include those contained in this section, as well as any
27 surpassing those contained in this section.

1 (3) Requirements for criminal history background
2 information checks of staff in accordance with the rules
3 adopted by the council.

4 (4) Policies and procedures for the training of
5 staff that comply with rules adopted by the council.

6 (5) Bonding of staff and a requirement for business
7 entities providing probation services to obtain liability
8 insurance coverage.

9 (6) Staffing levels and standards for offender
10 supervision, including frequency and type of contacts with
11 offenders.

12 (7) Procedures for handling the collection of all
13 court-ordered fines, fees, and restitution, to include a
14 description of the method and schedule of disbursement of
15 funds collected.

16 (8) Procedures for handling indigent offenders to
17 ensure placement of indigent offenders irrespective of the
18 ability to pay.

19 (9) Circumstances under which revocation of an
20 offender's probation may be recommended.

21 (10) Reporting and recordkeeping requirements.

22 (11) Default and contract termination procedures.

23 (c)(1) Nothing in this section shall be construed to
24 permit court referral officers to serve as a probation officer
25 without first meeting all the requirements of a private
26 probation officer.

1 (2) A person who primarily serves as a court
2 referral officer may not concurrently serve as a private
3 probation officer.

4 (d) The council shall review the uniform
5 professional standards and uniform contract and agreement
6 standards contained in subsections (a), (b), and (c) and shall
7 submit a report of its findings to the Legislature. The
8 council shall submit its initial report on or before January
9 1, 2015, and shall submit a report every two years thereafter.
10 Nothing contained in the report shall be considered to
11 authorize or require a change in the standards without action
12 by the Legislature. This report shall provide information that
13 will allow the Legislature to review the effectiveness of the
14 minimum professional standards and, if necessary, to revise
15 these standards. This subsection shall not be interpreted to
16 prevent the council from making recommendations to the
17 Legislature prior to its required review and report.

18 Section 5. (a) A business entity contracting to
19 provide probation services shall provide to the judge with
20 whom the contract or agreement was made and the council a
21 detailed quarterly report summarizing all of the following:

22 (1) The number of offenders under supervision.

23 (2) The amount of fines, statutory surcharges, and
24 restitution collected.

25 (3) The number of offenders for whom supervision or
26 rehabilitation has been terminated and the reason for the
27 termination.

1 (4) The number of warrants issued during the
2 quarter.

3 (b) All records of a business entity contracting to
4 provide probation services shall be open to inspection upon
5 the request of the affected county, municipality, court, the
6 Department of Examiners of Public Accounts, or the council or
7 its designee.

8 (c) A business entity contracting to provide
9 probation services shall provide access to defendant case
10 histories, correspondence, court orders, and financial history
11 via a searchable online database and server to the presiding
12 judge, district judge, or municipal court administrator, or
13 their designee. All information provided via the online server
14 shall be posted no later than one business day after the date
15 of the transaction.

16 Section 6. (a) A business entity contracting to
17 provide probation services or an employee of the business
18 entity may not engage in any other employment, business, or
19 activity which interferes or conflicts with the duties and
20 responsibilities under contracts authorized in this act.

21 (b) A business entity contracting to provide
22 probation services or an employee of the business entity may
23 not engage in personal or business dealings, including the
24 lending of money or posting of sureties or bonds, with
25 probationers under supervision.

26 (c) (1) A business entity contracting to provide
27 probation services or an employee of the business entity may

1 not own, operate, have any financial interest in, be an
2 instructor at, or be employed by, a business entity providing
3 drug or alcohol education services.

4 (2) A business entity contracting to provide
5 probation services or an employee of the business entity may
6 not specify, directly or indirectly, a particular alcohol or
7 substance abuse program which a probationer may or is required
8 to attend. This subdivision shall not prohibit business
9 entities or employees providing probation services from
10 furnishing to any probationer, upon request, the names of
11 certified alcohol and substance abuse programs. Any person
12 violating this subdivision shall be guilty of a Class C
13 misdemeanor.

14 Section 7. (a) All reports, files, records, and
15 other papers relative to the supervision of probationers by a
16 business entity are declared to be confidential and shall be
17 available only to the pertinent county or municipality, the
18 judge handling a particular case, the Department of Examiners
19 of Public Accounts, or the council or its designee.

20 (b) In the event of a transfer of the supervision of
21 a probationer from a business entity providing probation
22 services to the Department of Corrections, the Department of
23 Corrections shall have access to any relevant reports, files,
24 records, and papers of the transferring entity. All reports,
25 files, records, and other papers relative to the supervision
26 of probationers by business entities shall not be subject to a
27 subpoena.

1 Section 8. (a) A business entity providing probation
2 services or offering to contract for probation services shall
3 register with the council before entering into any contract to
4 provide probation services. The information included in the
5 registration shall include the name of the business entity,
6 its principal business address and telephone number, the name
7 of its agent for communication, and other information in such
8 detail as the council may require.

9 (b) A business entity providing probation services
10 required to register under subsection (a) who fails or refuses
11 to register shall be subject to the revocation of any existing
12 contracts, in addition to any other fines or sanctions imposed
13 by the council.

14 Section 9. (a) The following probation standards
15 shall be met by business entities who enter into written
16 contracts for probation services under Section 2:

17 (1) Meet all requirements as outlined in subsection
18 (b) of Section 4, relating to uniform contract standards.

19 (2) Not own or control any finance business or
20 lending institution which makes loans to probationers under
21 its supervision for the payment of probation fees or fines.

22 (3) Employ at least one person who is responsible
23 for the direct supervision of probation officers employed by
24 the corporation, enterprise, or agency and who shall have at
25 least five years' experience in corrections, parole, or
26 probation services.

1 (b) A business entity providing probation services
2 that fails to meet the standards established in subsection (a)
3 shall not be eligible to provide probation services in this
4 state.

5 Section 10. Although this bill would have as its
6 purpose or effect the requirement of a new or increased
7 expenditure of local funds, the bill is excluded from further
8 requirements and application under Amendment 621, now
9 appearing as Section 111.05 of the Official Recompilation of
10 the Constitution of Alabama of 1901, as amended, because the
11 bill defines a new crime or amends the definition of an
12 existing crime.

13 Section 11. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.