

1 SB64  
2 146923-2  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 05-FEB-13  
6 PFD: 01/29/2013

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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.