

1 SB64  
2 148974-5  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 05-FEB-13  
6 PFD: 01/29/2013

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to probation, to require the presiding  
12 circuit judge to appoint a district judge, to contract, with  
13 the consent of the district attorney, with private entities  
14 for probation services for persons convicted of certain  
15 offenses; to authorize the presiding judge of a municipal  
16 court, with the consent of the mayor, to contract with private  
17 entities for probation services for persons convicted of  
18 certain offenses; to create the County and Municipal Probation  
19 Advisory Council to review standards for contracts related to  
20 private probation services and qualifications of private  
21 probation officers and make recommendations to the  
22 Legislature; to create the County and Municipal Probation  
23 Advisory Council Fund; to authorize the council to adopt rules  
24 relating to the qualifications and training of private  
25 probation officers; to require the council to make an annual  
26 report; to prohibit certain activities by private probation  
27 officers and to provide for criminal penalties for certain

1 violations; to provide for confidentiality of certain records;  
2 and in connection therewith would have as its purpose or  
3 effect the requirement of a new or increased expenditure of  
4 local funds within the meaning of Amendment 621 of the  
5 Constitution of Alabama of 1901, now appearing as Section  
6 111.05 of the Official Recompilation of the Constitution of  
7 Alabama of 1901, as amended.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

17 (3) PRIVATE PROBATION OFFICER. A probation officer  
18 employed by a business entity that provides probation  
19 services.

20 Section 2. (a) (1) The presiding judge of any circuit  
21 court shall appoint a district judge who, with the consent of  
22 the district attorney, may enter into a written contract with  
23 a business entity to provide probation supervision, programs,  
24 classes, and collection services for all moneys to be paid by  
25 a defendant according to the terms of the sentence imposed,  
26 for supervision of child support orders where the payer has  
27 been adjudicated in arrears, and other probation services for

1 persons convicted or adjudicated in the district courts and  
2 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) A business entity providing probation services  
7 may not supervise a defendant for a felony offense.

8 (4) The final contract, approved by the district  
9 attorney, between the district judge and the business entity  
10 providing probation services shall be made available to the  
11 public for inspection upon request.

12 (5) A contract for probation services as provided  
13 for in this section may be terminated by the judge executing  
14 the contract in accordance with any express termination  
15 provisions included in the contract.

16 (b) (1) The presiding judge of the municipal court of  
17 any municipality, with the consent of the mayor, may enter  
18 into written contracts with business entities to provide  
19 probation supervision, counseling, collection services for all  
20 moneys to be paid by a defendant according to the terms of the  
21 sentence imposed, and other probation services for persons  
22 convicted or adjudicated in the municipal court and placed on  
23 probation.

24 (2) The probation services provided by the business  
25 entity shall be paid for by monthly supervision fees collected  
26 from probationers.

1           (3) The final contract between the municipal court  
2 judge and the business entity providing probation services  
3 shall be made available to the public for inspection upon  
4 request.

5           (4) A contract for probation services as provided  
6 for in this section may be terminated by the municipal court  
7 judge executing the contract in accordance with any express  
8 termination provisions included in the contract.

9           Section 3. (a) There is created the County and  
10 Municipal Probation Advisory Council, to be composed of all of  
11 the following members:

12           (1) A district attorney appointed by the Alabama  
13 District Attorneys' Association.

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

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

18           (4) A sheriff appointed by the Governor.

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

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

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

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

1           (b) All appointing authorities shall coordinate  
2 their appointments so that diversity of gender, race, and  
3 geographical areas is reflective of the makeup of this state.

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

21           (d) The council shall do all of the following:

22           (1) Annually elect a chair and a vice chair from  
23 among its membership. The offices of chair and vice chair  
24 shall be filled in such a manner that they are not held in  
25 succeeding years by representatives of the same component,  
26 such as law enforcement, courts, or corrections, of the  
27 criminal justice system.

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

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

7           (4) Adopt rules for the transaction of its business  
8 and appoint committees necessary to carry out its business and  
9 duties.

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

16           (e) (1) The funds necessary to support the activities  
17 of the council shall be derived from fees remitted to the  
18 council under subdivision (2) and funds otherwise available to  
19 the council. The council is authorized to accept and use  
20 grants of funds for the purpose of carrying out this act.

21           (2) A business entity providing private probation  
22 services under this act shall remit each calendar month fifty  
23 cents (\$.50) for each offender under its supervision where the  
24 offender has not been deemed indigent by the court, placed in  
25 jail on any charge, committed to a medical facility, or is  
26 subject to a warrant for the case that is under supervision.  
27 Except as otherwise provided in this act, the remittance of

1 fifty cents (\$.50) shall be made for each offender who was  
2 under supervision for any period for any number of days during  
3 a calendar month. The remittance shall be made to the council  
4 on a quarterly basis along with an accounting of offenders  
5 under supervision during the quarter for which the money is  
6 remitted. The council shall deposit these funds in the State  
7 Treasury, to be credited to the County and Municipal Probation  
8 Advisory Council Fund created in subsection (f).

9 (f) There is hereby established a special fund in  
10 the State Treasury to be known as the County and Municipal  
11 Probation Advisory Council Fund. The fund shall consist of all  
12 monies received pursuant to subdivision (2) of subsection (e)  
13 and shall be used, as determined by the council, exclusively  
14 for the purpose of funding and administering the duties and  
15 activities of the County and Municipal Probation Advisory  
16 Council. Interest earned from the investment of monies in the  
17 fund by the State Treasurer shall be deposited to the fund.  
18 The fund shall be administered by the administrator of the  
19 council pursuant to such authorization as may be given by the  
20 council. It shall be the duty of the administrator of the  
21 council to keep permanent records of all receipts and  
22 disbursements of the fund.

23 (g) The council shall have all of the following  
24 powers and duties:

25 (1) To adopt rules for the administration of the  
26 council, including rules of procedure for its internal  
27 management and control.



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

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

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

11           (5) To adopt rules establishing registration for any  
12 business entity providing private probation services under  
13 this act.

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

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

22           (8) To increase the fee established in subdivision  
23 (2) of subsection (e) of Section 3 to no more than one dollar  
24 (\$1). Any fee increase is subject to Section 41-22-5, Code of  
25 Alabama 1975.

26           (9) To employ or contract for the services of an  
27 administrator and other personnel as may be needed and to

1 arrange for the assistance, services, supplies, office space,  
2 and equipment as it may require for the performance of its  
3 duties. The number of employees, their compensation, and all  
4 other expenses of the council shall be paid at the rates and  
5 amounts approved by the council.

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

9 a. Be at least 21 years of age at the time of the  
10 appointment to the position.

11 b. Have no felony conviction or misdemeanor  
12 conviction involving violence.

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

20 d. Complete an initial 40 hours of orientation upon  
21 employment and complete 20 hours of continuing education each  
22 year as approved by the council. A person who has successfully  
23 completed a probation or parole officer basic course of  
24 training certified by the Peace Officers' Standards and  
25 Training Commission or any private probation officer who has  
26 been continuously employed by a business entity to provide

1 probation services for at least 12 months, shall not be  
2 required to complete the 40-hour orientation.

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

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

19 (1) The extent of the services to be rendered by the  
20 business entity providing private probation supervision,  
21 including the monthly fee to be charged to probationers for  
22 supervision services and how the fees are to be disbursed.

23 (2) Any requirements for staff qualifications, to  
24 include those contained in this section, as well as any  
25 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 private probation services to obtain  
8 liability 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 or any  
14 court-ordered monies, to include a description of the method,  
15 priority, and schedule of disbursement of funds collected. All  
16 funds collected shall be disbursed pursuant to state law.

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

20           (9) Circumstances under which revocation of an  
21 offender's probation may be recommended by private probation  
22 officers.

23           (10) Reporting and recordkeeping requirements.

24           (11) Default and contract termination procedures.

25           (c)(1) Nothing in this section shall be construed to  
26 permit court referral officers to serve as a probation officer

1 without first meeting all the requirements of a private  
2 probation officer.

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

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

19 Section 5. (a) A business entity contracting to  
20 provide private probation services shall provide to the judge  
21 with whom the contract or agreement was made, the council, and  
22 the district attorney, in the case of district court  
23 contracts, a detailed quarterly report summarizing all of the  
24 following:

25 (1) The number of offenders under supervision.

26 (2) The amount of fees, fines, statutory surcharges,  
27 and restitution collected, or other court-ordered monies.

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

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

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

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

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

25           (b) A business entity contracting to provide private  
26 probation services or an employee of the business entity may  
27 not engage in personal or business dealings, including the

1 lending of money or posting of sureties or bonds, with  
2 probationers under supervision. A private probation officer  
3 shall be subject to 14-11-31, Code of Alabama 1975.

4 (c) (1) A business entity contracting to provide  
5 private probation services or an employee of the business  
6 entity may not own, operate, have any financial interest in,  
7 be an instructor at, or be employed by, a business entity  
8 providing drug or alcohol education services, or any surety or  
9 bail bonding business.

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

20 Section 7. (a) All reports, files, records, and  
21 other papers relative to the supervision of probationers by a  
22 business entity are declared to be confidential and shall be  
23 available without the need for a subpoena to the pertinent  
24 county or municipality, the judge handling a particular case,  
25 the Department of Examiners of Public Accounts, the council or  
26 its designee, or the prosecuting attorney and law enforcement

1 agencies conducting a criminal investigation. Any other person  
2 or entity must obtain a subpoena.

3 (b) In the event of a transfer of the supervision of  
4 a probationer from a business entity providing probation  
5 services to the Department of Corrections, the Department of  
6 Corrections shall have access to any relevant reports, files,  
7 records, and papers of the transferring entity. All reports,  
8 files, records, and other papers relative to the supervision  
9 of probationers by business entities shall be subject to a  
10 subpoena.

11 Section 8. (a) A business entity providing private  
12 probation services or offering to contract for private  
13 probation services shall register with the council before  
14 entering into any contract to provide private probation  
15 services. The information included in the registration shall  
16 include the name of the business entity, its principal  
17 business address and telephone number, the name of its agent  
18 for communication, and other information in such detail as the  
19 council may require.

20 (b) A business entity providing private probation  
21 services required to register under subsection (a) who fails  
22 or refuses to register shall be guilty of a Class A  
23 misdemeanor and a civil penalty of not less than five thousand  
24 dollars (\$5,000) per occurrence, and shall be subject to the  
25 revocation of any existing contracts, in addition to any other  
26 fines or sanctions imposed by the council.



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

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

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

9           (3) Employ at least one person who is responsible  
10 for the direct supervision of private probation officers  
11 employed by the corporation, enterprise, or agency and who  
12 shall have at least five years' experience in corrections,  
13 parole, or probation services.

14           (b) A business entity providing private probation  
15 services that fails to meet the standards established in  
16 subsection (a) shall not be eligible to provide private  
17 probation services in this state.

18           Section 10. Although this bill would have as its  
19 purpose or effect the requirement of a new or increased  
20 expenditure of local funds, the bill is excluded from further  
21 requirements and application under Amendment 621, now  
22 appearing as Section 111.05 of the Official Recompilation of  
23 the Constitution of Alabama of 1901, as amended, because the  
24 bill defines a new crime or amends the definition of an  
25 existing crime.

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

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Senate

Read for the first time and referred to the Senate  
committee on Judiciary..... 05-FEB-13

Read for the second time and placed on the calen-  
dar with 1 substitute and..... 21-FEB-13

Read for the third time and passed as amended .... 25-APR-13

Yeas 26  
Nays 1

Patrick Harris  
Secretary