

1 SB266
2 106030-2
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 05-FEB-09

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SYNOPSIS: Under existing law, the Community Punishment and Corrections Act authorizes the establishment of community punishment and corrections programs as an alternative to imprisonment for misdemeanor and felony offenders. Nonprofit entities are included in the act, but not in the definition of "board."

This bill would include the boards of nonprofit entities in the definition of board under the act. The bill would also provide that the civil liability limitation applicable to authorities would apply to nonprofit entities and would require nonprofit entities to maintain liability insurance. The bill would also authorize county commissions to provide coverage to authorities and nonprofit entities under the act.

The bill would also add a definition of "offender" under the act and make this definition applicable to participants in the programs rather than referring to inmates, would delete the

1 exclusion of persons convicted of selling drugs
2 from participation in the programs, would provide
3 that a sentence to a community punishment and
4 corrections program must be pursuant to a suspended
5 sentence, and would specifically authorize
6 participants in community punishment and
7 corrections programs to perform community service.

8
9 A BILL
10 TO BE ENTITLED
11 AN ACT

12
13 To amend Sections 15-18-171, 15-18-172, 15-18-175,
14 15-18-176, 15-18-180, 15-18-181, 15-18-183, and 15-18-184,
15 Code of Alabama 1975, of the Community Punishment and
16 Corrections Act, to broaden the scope of certain provisions to
17 include nonprofit entities, to define "offender" and to
18 consistently reference community correction participants as
19 offenders rather than inmates; to further allow for program
20 eligibility; to delete the exclusion of offenders convicted of
21 selling controlled substances from participation in programs;
22 and to further authorize county commissions to provide
23 liability insurance to authorities and nonprofit entities.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 15-18-171, 15-18-172, 15-18-175,
26 15-18-176, 15-18-180, 15-18-181, 15-18-183, and 15-18-184,
27 Code of Alabama 1975, are amended to read as follows:

1 "§15-18-171.

2 "As used in this article, the following terms shall
3 have the following meanings, respectively, unless the context
4 otherwise requires:

5 "(1) APPLICATION PROCESS AND PROCEDURES. The
6 criteria and guidelines developed by the Department of
7 Corrections for the establishment of community punishment and
8 corrections programs, the granting of funds for programs
9 authorized herein, and the monitoring, evaluation, and review
10 of programs funded herein.

11 "(2) BOARD. The Board of Directors of the authority
12 or the board of directors of a nonprofit entity.

13 "(3) COMMISSIONER. The Commissioner of the
14 Department of Corrections.

15 "(4) COMMUNITY. The county or counties comprising
16 one or more judicial circuits.

17 "(5) COMMUNITY PUNISHMENT AND CORRECTIONS AUTHORITY.
18 A public corporation organized pursuant to the provisions of
19 this article.

20 "(6) COMMUNITY PUNISHMENT AND CORRECTIONS PROGRAM.
21 Any program designed as an alternative to incarceration and
22 maintained by a county commission or an authority or nonprofit
23 entity for the purpose of punishing and for correcting a
24 person convicted of a felony or misdemeanor or adjudicated a
25 youthful offender and which may be imposed as part of a
26 sanction, including, but not limited to confinement, work
27 release, day reporting, home detention, restitution programs,

1 community service, education and intervention programs, and
2 substance abuse programs.

3 "(7) COMMUNITY PUNISHMENT AND CORRECTIONS PLAN. A
4 document prepared by the county commission or an authority, or
5 nonprofit entity, and submitted to the Department of
6 Corrections in accordance with the requirements set forth in
7 the application process and procedure, which identifies
8 proposed community-based programs to be implemented within the
9 county in accordance with the terms of this article and
10 justifies the funding of such programs with regard to local
11 need and community support.

12 "(8) COUNTY COMMISSION CHAIRPERSON. The chair of the
13 county commission or his or her representative.

14 "(9) COUNTY INMATE. A person convicted of a
15 misdemeanor.

16 "(10) COURT. The trial judge exercising sentencing
17 jurisdiction over an eligible offender under this article and
18 includes any successor of the trial judge.

19 "(11) DEPARTMENT. The Department of Corrections.

20 "(12) DIVISION. The Community Corrections Division
21 ~~within of the department that is the state administrative~~
22 ~~agency responsible for administering this article and~~
23 ~~assisting in establishing and maintaining community based~~
24 ~~punishment programs.~~

25 "(13) ELIGIBLE. A person who has committed an
26 offense not excluded by subdivision (14) and who meets the
27 criteria of Section 15-18-175.

1 "(14) EXCLUDED FELONY OFFENDERS. One who is
2 convicted of any of the following felony offenses: murder,
3 kidnapping in the first degree, rape in the first degree,
4 sodomy in the first degree, arson in the first degree, ~~selling~~
5 ~~or~~ trafficking in controlled substances, robbery in the first
6 degree, sexual abuse in the first degree, forcible sex crimes,
7 lewd and lascivious acts upon a child, or assault in the first
8 degree if the assault leaves the victim permanently disfigured
9 or disabled.

10 "(15) GOVERNING BODY. With respect to a county, its
11 county commission or other like governing body exercising the
12 legislative functions of a county.

13 "(16) INCORPORATORS. The persons forming a public
14 corporation pursuant to this article.

15 "(17) NONPROFIT ENTITY. Any not-for-profit
16 organization, agency, or other entity other than a community
17 punishment and corrections authority that provides treatment,
18 guidance, training, or other rehabilitation services to
19 individuals, families, or groups in such areas as health,
20 education, vocational training, special education, social
21 services, psychological counseling, and alcohol and drug
22 treatment.

23 "(18) OFFENDER. Any county or state inmate sentenced
24 to or legally authorized to participate in a community
25 punishment and corrections program.

26 "~~(18)~~(19) PLAN. The community punishment and
27 corrections plan defined in subdivision (7).

1 "~~(19)~~(20) RECIPIENT. Any entity receiving directly
2 or indirectly any financial grant or contractual remuneration
3 under this article.

4 "~~(20)~~(21) RENOVATION. The repair, remodeling,
5 alteration, or expansion of existing buildings or structures
6 to make them habitable or suitable for community punishment
7 and corrections program operations, and includes the
8 acquisition and installation of necessary equipment.

9 "~~(21)~~(22) RESTITUTION. Payment to the victim who has
10 suffered financial losses as a result of a crime. Restitution
11 shall include, but not be limited to, payment in cash or in
12 kind for the value of stolen or damaged property; for medical
13 expenses due to physical, emotional or psychological trauma;
14 wages lost as a result of time absent from work; and value of
15 property lost or transferred through theft or exercise of
16 control by deception or fraud.

17 "~~(22)~~(23) STATE INMATE. A person convicted of a
18 felony.

19 "~~(23)~~(24) USER FEES. Fees assessed against an
20 offender under a community punishment and corrections program
21 to help defray the costs of such programs.

22 "~~(24)~~(25) VICTIM SERVICE OFFICER. A person employed
23 to directly assist crime victims and their families with court
24 attendance, restitution, compensation, property return, victim
25 impact statements, and other needs expressed.

26 "~~(25)~~(26) YOUTHFUL OFFENDER. A person adjudicated as
27 a youthful offender.

1 "§15-18-172.

2 "(a) A county or group of counties may establish a
3 community punishment and corrections program for state and
4 county ~~inmates~~ offenders or youthful offenders in custody of
5 the county. The program shall be established by a county by
6 resolution adopted by the county commission or by community
7 punishment and corrections authorities or other nonprofit
8 entities as provided herein. The program shall establish the
9 maximum number of offenders who may participate in the program
10 and participation shall be limited to space availability. No
11 offenders may be sentenced or assigned to the program in
12 excess of the maximum number established for the program. No
13 county is obligated to fund any activities of a community
14 corrections program established under this article without an
15 affirmative vote of the affected county commission.

16 "(b) The department may contract with such counties,
17 authorities, or other nonprofit entities as provided herein
18 concerning start-up costs and the costs of maintenance,
19 including medical expenses, of state inmates participating in
20 any program authorized under this article or under any county
21 program functioning pursuant to any state or local act.

22 "(c) The department shall promulgate rules and
23 regulations pursuant to the Alabama Administrative Procedure
24 Act establishing conditions for state inmates' participation
25 in the community punishment and corrections program, the
26 observance of which may be a condition to such participation.

1 "(d) A state inmate incarcerated in a state facility
2 may be approved by the department for participation in a
3 community punishment and corrections program established under
4 this article and be assigned to a program in the county from
5 which the ~~inmate~~ offender was sentenced if a community
6 punishment and corrections program under this article has been
7 established in that county and if the sentencing judge of the
8 county authorizes the ~~inmate~~ offender to participate in the
9 program. An ~~inmate~~ offender may be assigned to a community
10 punishment and corrections program in another county if the
11 presiding judge of the other county and the sentencing judge
12 agree to the assignment and if the county has agreed in the
13 contract to accept ~~inmates~~ offenders originally sentenced in
14 other counties. In the event the sentencing judge is
15 unavailable due to death, retirement, or any other reason, the
16 presiding judge from the sentencing circuit shall act in the
17 sentencing judge's stead. An ~~inmate~~ offender assigned to a
18 community punishment and corrections program pursuant to this
19 article shall not be eligible for parole consideration.

20 "§15-18-175.

21 "(a) An offender who meets one of the following
22 minimum criteria shall be considered eligible for punishment
23 in the community under this article:

24 "(1) Persons who, without this option, would be
25 incarcerated in a correctional institution or who are
26 currently incarcerated in a correctional institution.

27 "(2) Persons who are convicted of misdemeanors.

1 "(b) The following offenders are excluded from
2 consideration for punishment in the community:

3 "(1) Persons who are convicted of offenses as listed
4 in subdivision (14) of Section 15-18-171.

5 "(2) Persons who demonstrate a pattern of violent
6 behavior. In reaching this determination, the court may
7 consider prior convictions and other acts not resulting in
8 conviction or criminal charges, and the offender's behavior
9 while in state or county confinement.

10 "(c) The eligibility criteria established in this
11 section shall be interpreted as guidelines for the benefit of
12 the court in making a determination of eligibility of
13 offenders and assessment of funds under this article.

14 "(d) (1) Except as provided in subsection (a) of
15 Section 15-18-172, the court may suspend all or part of a
16 sentence and sentence an eligible offender as defined in this
17 section directly to any appropriate community-based
18 alternative provided, either as a part of or in conjunction
19 with a split sentence as provided for in Section 15-18-8, or
20 otherwise as an alternative to prison; or as a condition for a
21 defendant to meet in conjunction with probation; and under
22 such additional terms and conditions as the court may
23 prescribe. Notwithstanding the foregoing, a defendant may only
24 be sentenced to participate in community punishment and
25 corrections programs when adequate space and staff are
26 available. No program shall be required to operate beyond its

1 staffing and design capabilities as provided in Section 15-18-172.

2 "(2) In sentencing an eligible offender to any
3 community-based alternative to incarceration, the court shall
4 possess the authority to set the duration of the sentence for
5 the offense committed to any period of time up to the maximum
6 sentence within the appropriate sentence range for the
7 particular offense. A court may not sentence an eligible
8 offender to any community punishment and corrections program
9 if the sentencing would cause the offender participation level
10 to exceed the maximum participation level established for that
11 program in its community punishment and corrections plan as
12 provided in Section 15-18-172.

13 "(3) After a hearing on the violation, the court may
14 alter the sentence imposed for a violation of the conditions
15 imposed by the court, as follows:

16 "a. If the defendant violates a condition of the
17 sentence at any time prior to the expiration or termination of
18 the term of the sentence, the court may implement one or more
19 of the following options:

20 "1. Continue the offender on the existing sentence.

21 "2. Issue a formal or informal warning to the
22 offender that further violations may result in revocation of
23 the sentence.

24 "3. Conduct a formal or informal warning to
25 reemphasize the necessity of compliance with the conditions of
26 the sentence.

1 "4. Modify the conditions of serving the sentence,
2 possibly including the inclusion of short periods of
3 confinement in local facilities for time for which supervision
4 of sentence was formerly given.

5 "5. Revoke the sentence as listed in paragraph b
6 below.

7 In lieu of a formal hearing, the court may issue a
8 standing court order authorizing program administrators to
9 impose the disciplinary sanctions listed in subparagraphs 1.,
10 2., and 3. or any preapproved sanction that does not include a
11 period of confinement. All instances of noncompliance and
12 disciplinary actions shall be immediately reported to the
13 court.

14 "b. A revocation hearing shall be conducted before
15 the court prior to revocation of the community corrections
16 sentence. The court shall apply the same due process
17 safeguards as a probation revocation proceeding and may modify
18 or revoke the community punishment sentence and impose the
19 sentence that was suspended at the original hearing or any
20 lesser sentence, including any option listed in subdivision
21 (1) of subsection (d).

22 "c. If revocation results in a sentence of
23 confinement, credit shall be given for all time spent in
24 custody prior to revocation. Full credit shall be awarded for
25 full-time confinement in facilities such as city or county
26 jails, state prisons, and boot camps.

1 "d. The court shall not revoke the sentence and
2 order the confinement to prison of the offender unless the
3 court finds, on the basis of the original offense and the
4 offender's intervening conduct, that either of the following
5 apply:

6 "1. No measure short of confinement will adequately
7 protect the community from further criminal activity by the
8 offender.

9 "2. No measure short of confinement will avoid
10 depreciating the seriousness of the violation.

11 "e. The willful failure of an ~~inmate~~ offender to
12 remain within the extended limits of his or her confinement or
13 to return to the place of confinement within the time
14 prescribed shall be deemed an escape from a state penal
15 institution in the case of a state ~~inmate~~ offender and an
16 escape from the custody of the sheriff in the case of a county
17 ~~inmate~~ offender and shall be punishable accordingly.

18 "f. The victim will be notified in accordance with
19 procedures established in the community punishment and
20 corrections plan prior to sentencing under this article.

21 "g. Restitution, when appropriate, shall be ordered
22 by the court as a condition for a community-based sentence
23 under this article in addition to any mandatory victim
24 assessment fees.

25 "1. Nothing herein shall prevent a court from
26 sentencing an eligible defendant to community-based punishment

1 in conjunction with a suspended sentence confinement pursuant
2 to the split sentences or probation.

3 "2. The State of Alabama and any county or
4 municipality may become employers of community punishment and
5 corrections ~~inmates~~ offenders under this article, and as such,
6 may employ ~~inmates~~ offenders to perform any state or county or
7 municipal job available, including, but not limited to, road
8 or bridge work, garbage collection, and public grounds
9 maintenance. ~~Inmates~~ Offenders so employed shall not be
10 eligible to participate in group health, accident, and life
11 insurance programs, or retirement programs provided regular
12 state or county or municipal employees. Worker's compensation
13 benefits may be provided the ~~inmates~~ offenders at the
14 discretion of the state or employing county or municipality.

15 "3. ~~Inmates~~ Offenders employed under this section
16 shall be paid at least the federally established minimum wage.

17 "4. Counties or community punishment and corrections
18 programs may utilize ~~inmates~~ offenders or others required by a
19 court of competent jurisdiction to perform community service
20 in county work, including, but not limited to, removal of
21 debris or trash from roads and rights-of-way, road or bridge
22 work, garbage collection, and public grounds maintenance.

23 "5. ~~State and county inmates~~ Offenders performing
24 community service shall not be entitled to any compensation.

25 "§15-18-176.

26 "(a) A community punishment and corrections plan
27 shall be developed and submitted to the department which

1 sufficiently documents the local need and support for the
2 proposed program. The community punishment and corrections
3 plan shall have the approval of the county commission in the
4 affected counties prior to submission to the department. Any
5 plan shall specifically state the maximum number of ~~inmates~~
6 offenders eligible to participate in the program.

7 "(b) The format for any community punishment and
8 corrections plan shall be specified by the division in its
9 application process and procedures. Funding and grant
10 evaluation criteria shall be outlined in the application
11 process and procedures to be developed by the division in
12 order that each applicant may know the basis upon which funds
13 will be granted. The department shall adopt rules pursuant to
14 the Administrative Procedure Act outlining the application
15 process and procedures.

16 "(c) Participation in the programs set forth in this
17 article is voluntary. Any participating authority, county
18 commission, or other nonprofit entity may notify the director
19 of the division of its intention to withdraw from
20 participation in the community punishment and corrections
21 program contract. The withdrawal will become effective on the
22 last day of the grant year.

23 "§15-18-180.

24 "(a) Community punishment and corrections funds may
25 be used to develop or expand the range of community
26 punishments and services at the local level. Community-based

1 programs options may include, but are not limited to, the
2 following:

3 "(1) Community service supervision; victim
4 restitution, community detention and restitution centers; day
5 reporting centers; victim-offender reconciliation programs;
6 home confinement/curfew; electronic surveillance; intensive
7 supervision probation; alcohol/drug outpatient treatment and
8 psychiatric counseling.

9 "(2) Short-term community residential treatment
10 options that involve close supervision in a residential
11 setting may include, but are not limited to, the following
12 options: detoxification centers; community detention centers
13 for special needs offenders and probation and parole
14 violators; and inpatient drug/alcohol treatment.

15 "(3) Residential in-house drug and alcohol treatment
16 for detoxification and residential and nonresidential drug and
17 alcohol counseling.

18 "(4) Individualized services which provide
19 evaluation and treatment for special needs of the population
20 served under this article. The services may include the
21 purchase of psychological, medical, educational, vocational,
22 drug and alcohol urine screening, and client specific plan
23 diagnostic evaluations. Other services which may be pursued on
24 an individualized basis may include, but shall not be limited
25 to, job training, alcohol and drug counseling, individual and
26 family counseling, educational programs leading to a GED
27 certificate, or transportation subsidies.

1 "(b) Community punishment and corrections funds may
2 also be used to acquire, renovate, and operate community
3 facilities established to provide the options and services set
4 forth in subsection (a).

5 "(c) Counties, authorities, and other nonprofit
6 entities receiving funding herein may provide or contract with
7 qualified proprietary, nonprofit, or governmental entities for
8 the provision of services under this article.

9 "(d) Any options or services established under this
10 article may serve offenders from any county in the judicial
11 circuit which has established a program.

12 "(e) As a part of a community punishment and
13 corrections plan, user fees may be assessed to help defray the
14 cost of the plan. User fees paid by an offender participating
15 in any option or service established under this article shall
16 not diminish the payment of restitution by the offender to the
17 victim of the crime for which he or she was sentenced and
18 shall not diminish fines, court costs, or other court fees
19 unless expressly reduced or remitted by the court.

20 "(f) In the event a defendant is assigned to a work
21 release or other residential punishment program operated by a
22 community corrections provider authorized under this article,
23 the defendant's employer shall send the ~~inmate's~~ offender's
24 wages directly to the community corrections provider
25 responsible for housing the defendant. Of the ~~inmate's~~
26 offender's earnings, 25 percent of the gross wages shall be
27 applied to costs incident to the ~~inmate's~~ offender's

1 confinement, upkeep, and a minimum of an additional 20 percent
2 shall be applied, 10 percent to payment of court costs, fines,
3 court-ordered attorney fees, and other court-ordered fees or
4 assessments, and 10 percent to restitution. The remainder of
5 the ~~inmate's~~ offender's wages may be credited to an account
6 established for the defendant with the community corrections
7 provider and may be paid out for dependent care, savings, and
8 spending money. Modes of accounting and disbursement of these
9 funds shall be addressed in the community punishment and
10 corrections plan. Upon release from a residential program, any
11 balance remaining in the defendant's account shall be returned
12 to the defendant, and the defendant shall remain responsible
13 for paying for any court-ordered monies owed. If the defendant
14 remains under community corrections supervision after his or
15 her release from a residential program, the community
16 corrections provider shall verify that the defendant is paying
17 any remaining court-ordered payments owed.

18 "§15-18-181.

19 "(a) Administrative costs connected with the
20 expenditures of community punishment and corrections funds
21 under this article shall not exceed a percentage amount
22 established by the commissioner.

23 "(b) The Chief Examiner of the Department of
24 Examiners of Public Accounts is directed to develop a uniform
25 accounting system conforming to generally accepted accounting
26 principles. Such uniform accounting system shall be subject to
27 the approval of the State Chief Examiner of Public Accounts.

1 Community punishment and corrections programs shall establish
2 and maintain the uniform accounting system.

3 "(c) (1) The annual reports and all records of
4 accounts and financial records of all funds received by grant,
5 contract or otherwise from state, local or federal sources,
6 shall be subject to audit annually by the Chief Examiner of
7 the Department of Public Accounts or the Department of
8 Corrections, or both. The audit may be performed by a licensed
9 independent certified public accountant approved by the Chief
10 Examiner of the Department of Public Accounts. The cost of any
11 such audit shall be paid by the contracting entity.

12 "(2) All audits shall be completed as soon as
13 practicable after the end of the fiscal year of the board. One
14 copy of each audit shall be furnished to the board, if
15 established, the Department of Corrections and the Chief
16 Examiner of the Department of Public Accounts. Copies of each
17 audit shall also be made available to the ~~press~~ news media.

18 "§15-18-183.

19 "The recovery of damages under any judgment or
20 judgments against an authority or nonprofit entity established
21 under this section shall be limited to one hundred thousand
22 dollars (\$100,000) for bodily injury or death for one person
23 in any single occurrence. Recovery of damages under any
24 judgment or judgments against an authority shall be limited to
25 three hundred thousand dollars (\$300,000) in the aggregate
26 where more than two persons have claims or judgments on
27 account of bodily injury or death arising out of any single

1 occurrence. Recovery of damages under any judgment or
2 judgments against an authority or nonprofit entity shall be
3 limited to one hundred thousand dollars (\$100,000) damages or
4 loss of property arising out of any single occurrence.
5 Counties shall be exempt from civil liability for any injury
6 or loss to any person resulting from the operation of a
7 community punishment and corrections program established under
8 this article. This section shall not be construed as limiting
9 any other immunities from civil liability or defenses
10 established under the Constitution of Alabama or any other
11 section of the code or common law, to which counties,
12 authorities, state departments, agencies, courts, or nonprofit
13 entities might be entitled.

14 "§15-18-184.

15 "An authority or nonprofit entity contracting with
16 the department under this article shall maintain ~~general~~
17 appropriate liability insurance in an amount sufficient to
18 insure against loss resulting from bodily injury, death or
19 property damage, subject to the limitations on recovery of
20 damages contained in this article and any other immunities
21 from civil liability or defenses established under the
22 Constitution of Alabama or any other section of the code or
23 common law, to which said entities might be entitled. The
24 insurance may be obtained through any source available to an
25 approving county commission."

1 Section 2. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.