

1 HB397  
2 106030-2  
3 By Representative Black  
4 RFD: Judiciary  
5 First Read: 05-FEB-09

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

15 This bill would include the boards of  
16 nonprofit entities in the definition of board under  
17 the act. The bill would also provide that the civil  
18 liability limitation applicable to authorities  
19 would apply to nonprofit entities and would require  
20 nonprofit entities to maintain liability insurance.  
21 The bill would also authorize county commissions to  
22 provide coverage to authorities and nonprofit  
23 entities under the act.

24 The bill would also add a definition of  
25 "offender" under the act and make this definition  
26 applicable to participants in the programs rather  
27 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 "~~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.