



HUMAN
RIGHTS
WATCH

“Set up to Fail”

The Impact of Offender-Funded Private Probation on the Poor



“Set up to Fail”

The Impact of Offender-Funded Private Probation on the Poor

Copyright © 2018 Human Rights Watch

All rights reserved.

Printed in the United States of America

ISBN: 978-1-6231-35737

Cover design by Rafael Jimenez

Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Seoul, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: <http://www.hrw.org>



“Set Up to Fail”

The Impact of Offender-Funded Private Probation on the Poor

Summary	1
Recommendations	7
To the Federal Government	7
To State Governments in Florida, Kentucky, Missouri, and Tennessee.....	7
To Courts and Judges in Florida, Kentucky, Missouri, and Tennessee	10
To Prosecutors.....	11
To Private Probation Companies	11
Methodology	13
I. Background: Offender-Funded Criminal Justice Systems	16
Budgetary Pressures in the Criminal Justice System	16
The Motivation to Privatize Probation.....	18
Tables: National and state trends in probation	22
Inherent Conflicts of Interest.....	30
Major Private Probation Companies in Florida, Kentucky, Missouri, and Tennessee	31
Florida	32
Kentucky.....	32
Missouri.....	33
Tennessee	33
II. The Heavy Burden of Private Probation	35
No Choice in the Matter	36
Onerous Costs of Private Probation Supervision.....	40
No Relief Available	48
III. The Consequences of Not Paying	55
Inability to pay fees and fines	55
Proxies for Failure to Pay.....	60
A Family Burden.....	64
Invasive and Duplicative.....	67

Driver’s License Suspensions	73
Jailed for Being Poor	76
IV. Human Rights and US Law	81
International human rights norms	81
National law	83
Acknowledgments.....	85
Appendix I: Examples of private probation contracts.....	86
Appendix II: Examples of private probation fee schedules.....	98
Appendix III: Examples of court costs and jail fees.....	100
Appendix IV: Example rules for private probation and daily drug testing	106
Appendix V: Example of fee waiver form.....	108
Appendix VI: Examples of arrest warrants and consequences for failure to pay	109
Appendix VII: Letter to Kentucky judges (responses on file with Human Rights Watch)	113
Appendix VIII: Human Rights Watch letter to private probation companies and overview of responses (full responses on file with HRW)	116
Appendix IX: List of probation companies and agencies in Florida and Tennessee.....	121

Summary

Cindy Rodriguez, a 53-year old woman living in Murfreesboro, Tennessee, had never been in trouble – “never had a parking ticket” – until 2014, when she was charged with shoplifting. Rodriguez survives on disability payments due to injuries to her neck and back, and lives in constant pain. When her case went to court, she was represented by a public defender, provided to individuals living in poverty who meet certain criteria. Rodriguez said her public defender advised her to plead guilty and accept probation, saying it was the best deal she would receive from the state.

Rodriguez was placed on probation for 11 months and 29 days under the supervision of Providence Community Corrections, Inc. (PCC), a private company that had contracted with the Rutherford County government to supervise misdemeanor probationers. Rodriguez’s lawyer told her probation was nothing to worry about, that she would just have to visit her probation officer once a week and pay her fees and fines. When she informed the judge about her stark financial situation and disability payments, he told her to do the best that she could. She owed the court US\$578 for the fine and associated fees, and on top of that she would have to pay PCC a \$35-45 monthly supervision fee. PCC also conducted random drug tests, though she was not charged with a drug-related offense, for which she would pay approximately \$20 a test. The costs of probation ruined her life.

Every time Rodriguez went to PCC to visit her probation officer, she was pressured to make payments. On one visit when she did not have the money to make a payment, her probation officer told her that she would “violate” her and that she would go to jail, which is what happened. Rodriguez turned herself in, saying it was “the most humiliating thing I’ve ever had to do in my whole life.... They took a mug shot of me, fingerprinted me, and treated me like I was garbage for about two and a half hours. Then [they] told me I could go home, they'd see me next time. That's what the police officer said, ‘I'll see you next time. You'll violate again.’ That's how they treat you.”

Feeling the financial pressure of probation, backed by the threat of jail time, Rodriguez was spending far too much of her \$753 monthly disability check on probation instead of basic necessities. She told Human Rights Watch: “I struggled to pay them the payments they needed every week. I ended up selling my van, because I was threatened all the time. If I

didn't make the payments, they were going to put me in jail. I lost my apartment, and it's been a struggle ever since.... There were times [my daughter and I] didn't eat, because I had to make payments to probation." The consequences of her time on probation are still haunting Rodriguez: "No matter what I do, I can't get back up."

Rodriguez's experience with private probation is not unique. Probation is a criminal sentence in lieu of jail time and is widely employed as an alternative to incarceration in the United States. One goal of probation supervision is to ensure that an individual does not commit further offenses, while also providing rehabilitative services. Traditionally performed by state agencies or local law enforcement, probation supervision for misdemeanors and criminal traffic cases has in many states increasingly been outsourced to for-profit, private companies.

This report focuses on the impact of private probation on people living in poverty in four states: Florida, Kentucky, Missouri, and Tennessee. In these four states, private probation is predominantly imposed for misdemeanor offenses, such as disorderly conduct, possession of small quantities of illegal drugs, or petty theft, and criminal traffic offenses, including driving with a suspended or revoked driver's license, not maintaining vehicle insurance, and driving under the influence of drugs or alcohol. From November 2016 to October 2017, Human Rights Watch interviewed individuals supervised by private probation companies, as well as judges, law enforcement officials, lawyers, and other experts.

This is Human Rights Watch's second report on the impacts of private probation and the offender-funded criminal justice system. It follows up on the first report, *Profiting from Probation: America's "Offender-Funded" Probation Industry*, released on February 4, 2014, focusing on the private probation industry in Alabama, Georgia, and Mississippi. One of the main findings of that report was evidence of "pay only" probation, or the imposition of a probation sentence simply to supervise the payment of costs, rather than as an alternative to a jail sentence. Pay only probation means that an individual who can pay their court costs up front is not subject to probation supervision and its associated conditions and costs, leading to significantly different financial and legal outcomes for poor defendants. The 2014 report also documented cases of incarceration when an individual was unable to pay their supervision fees. The current report documents the impacts of private probation in a different geographic region, focusing on Florida, Kentucky, Missouri, and Tennessee. The report finds that the impacts of private probation

are unique in every state, and research did not find widespread use of pay-only probation or incarceration in cases when a person was unable to pay supervision fees.

This report finds that private probation companies exert significant control over the lives of people on probation. In the states studied for this report, private probation companies can impose supervision fees, order drug and alcohol tests, and, if a person does not fulfill all the terms and conditions of their probation, they can issue a violation of probation and request arrest, which can lead to jail time. The services of private probation companies are attractive for cash-strapped jurisdictions because they typically do not charge for their services; instead, their revenues and profits come entirely from probationers' fees. The companies, therefore, have a direct financial interest in keeping their clients under probation as long as possible, and using every tool available to urge payment of fees, particularly those paid directly to the company. Judges also often require people on probation to complete courses that ostensibly improve public safety and support the rehabilitation of the person on probation, including alcohol and drug testing, domestic violence and anger management courses, and monitoring devices, such as electronic instruments that monitor a probationer's location or alcohol consumption. Many private probation companies offer courses, treatment, and monitoring device services to courts, directly benefitting when courts mandate these services as conditions of probation. The cost for all these services is passed directly to the probationer in all four states researched for this report, creating an "offender-funded" system.

The spiraling costs many probationers face only partly explains how misdemeanor or criminal traffic offenses can lead to severe criminal debt in the US. The same individuals who qualify for a court-appointed public defender or government benefits, such as food stamps and housing support, may still be ordered by courts to pay hundreds or thousands of dollars not only in fines levied as punishment for an offense, but in various fees and other surcharges. Courts bill defendants for prosecutors, public defenders, jailing and transportation, and other costs associated with the court, as well as unrelated fees, like the sheriff's retirement fund or brain injury trust funds. In all four states researched for this report, if probationers cannot pay for the direct or indirect costs of probation, they face a number of legal consequences, including jail time. The incarceration of people who do not pay fines and fees because they are genuinely unable to pay was outlawed in 1983 by the US Supreme Court, yet it remains a reality.

Not all types of criminal defendants are subject to private supervised probation. Felony probation, in contrast to misdemeanor and traffic probation, continues to be monitored by state agencies, and is subject to greater transparency and accountability standards. In some misdemeanor cases, judges will allow probationers who have met their financial obligations to the court to transition to unsupervised probation. However, defendants without adequate resources to pay court fees, or who need more time to make payments, often must continue under supervision, subjecting them to additional fees, testing, and monitoring.

Increased supervision, monitoring, and testing create more opportunities for a violation of probation, which is why many individuals on private probation feel that they are “set up to fail.” When a person does not meet the weekly and monthly obligations of probation, then a private probation officer can issue violation of probation, which can entail the issuing of a court summons or an arrest warrant. Many probationers interviewed for this report said their probation officers made threatening or coercing statements when they did not have enough money to pay for their supervision and other conditions. In all four states researched for this report, after being arrested or summoned to court, a probationer will have to go before a judge once again, potentially through several hearing dates, and may be subject to additional court costs and fines, extended probation periods, new probation conditions, jail time, and new opportunities to fail. This can lengthen a person’s criminal record, which has long-term effects on the ability to get a job or find housing.

In Florida, Tennessee, and Missouri, probationers often must pay court costs, fines, and supervision fees directly to the private probation officer. While costs owed to the courts are not unique to private probation, the probationers supervised by companies in all four states included this report told Human Rights Watch that the payment of these costs was burdensome, and many did not distinguish between costs owed to the court system and the private probation company. In cases in Tennessee and Florida, where only partial payments are made or when a probationer is in arrears, courts leave probation officers free to decide how payments are allocated between company fees and courts costs. If most payments are going to the probation company rather than the court, then a person can be left with significant unpaid debt to the court at the end of their probation.

When non-payment of fines and costs is the only reason that an individual has violated probation, the US Supreme Court has said that US courts are required to ensure that they do not jail a person who failed to pay because they were genuinely unable to do so.

Human Rights Watch finds few instances in the four states researched where individuals were incarcerated because they were unable to pay court costs and probation supervision fees. However, research in the four states reveals that people more often face incarceration for inability to pay for additional probation requirements, including court-mandated classes or background checks. If an individual is using his or her limited income to pay probation supervision fees and court costs, they may have difficulty saving enough to also cover a required course, regular drug testing, or background checks. Some probationers, fearing the consequences of reporting to probation without enough money in hand, stop reporting entirely. As a result, probationers were not facing incarceration for failing to pay their fines and fees, but rather for “proxies” for failure to pay, including not completing classes, submitting to drug tests and treatment, conducting background checks, or other conditions that impose financial a burden because they could not afford to pay for these requirements.

In some of the states researched by Human Rights Watch, unpaid fines and court costs can result in a suspended or revoked driver’s license, which can be the result of private probation officers applying payments to probation rather than court costs. A revoked driver’s license can have a catastrophic impact, as many people on probation feel that they have no choice but to drive, particularly in the rural regions of the states studied for this report, though this can have criminal consequences, including going back on private probation. This endless cycle of criminal charges, probation, and debt can trap some until they have no option left but jail. Those who can pay down their debts usually escape the cycle.

The impact of onerous conditions of probation, including payment of private probation fees – from ballooning debt to possible incarceration – often extends to family, friends, and the wider community. Many probationers rely on the help of friends and family members to make payments, drive them to probation appointments and court hearings, and assist with housing and food. Some family members also provide emotional support through stressful and uncertain times.

Children are particularly impacted when a parent is arrested, incarcerated, or simply does not have the money to pay for basic needs or child support because they are paying probation fees. Family members step in to care for children while a parent is attempting to resolve criminal cases and comply with probation conditions. The offender-funded system of justice is most burdensome and punitive for those who cannot afford its costs.

As states attempt to reform criminal justice systems and reduce spending on incarceration, many have increased their reliance on alternatives to incarceration. Private companies have entered the market to offer states, counties, and municipalities lower cost options for criminal justice functions. New systems are emerging in the changing landscape of criminal justice, but they often lack transparency, regulation, and oversight, particularly for the individuals most vulnerable to abuses.

The focus on criminal justice debt and its impacts on people living in poverty has gained increased public attention in recent years, though much action is still needed to correct these abusive practices. Some states, like Kentucky and Tennessee, have increasingly regulated excesses in the private probation industry, yet implementation and oversight are sorely lacking. States need to do more to ensure that courts and private probation companies are not acting abusively because of their incentive to maximize profits, and that they instead provide quality services with the intent of supporting individuals to successfully complete probation.

Probation companies should review and assess their practices to ensure that they are complying with state and national legal standards and in a manner that fully respects the rights of the people under their supervision. Working with state governments, probation companies should establish processes for identifying and addressing any attempts by probation companies or courts to sidestep rules or abuse their power. Greater transparency, paralleling government agencies that provide probation supervision services, can improve accountability in their operations.

The drive to privatize criminal justice services in many states is fueled by budgetary shortfalls. Private probation companies shift the cost of supervision from the state to the system's "users," and that larger dynamic gives rise to many of the abuses outlined in this report. In the face of shrinking budgets and increasing costs, probation that is "free" for the courts offers an attractive option for states and local governments. State and federal governments should examine alternative ways to reduce criminal justice system costs in a way that preserves and promotes both justice and safety.

Recommendations

To the Federal Government

- Expand the authority of the Department of Justice to investigate court practices, and authorize an examination of the impact of criminal justice debt, including fees for private probation supervision and associated conditions, on the poor. An investigation should, at a minimum, include analysis of the processes to determine an individual's total criminal justice debt, their ability to pay within a reasonable timeframe, long-term impact on the individual and his or her family, collection methods by public officials and private agencies, and consequences for inability to pay.
- Establish national standards for criminal justice debt, including guidelines on ability to pay determinations and collection practices.
- Through the Bureau of Justice Assistance, make technical assistance and resources available to state and local court systems to end offender-funded criminal justice systems.

To State Governments in Florida, Kentucky, Missouri, and Tennessee

- Cease the practice of relying on user fees to fund criminal justice and other state systems.
- Ensure the process of selection of and contracting with private probation agencies is free of conflicts of interest.
 - Implement open bid contracting for private probation companies, with adequate transparency of all documents, including description of services, fees, and restrictions. Allow relevant state agencies, whether an administrative body or the state Supreme Court, to make decisions on the use of private probation in a given jurisdiction, removing discretion from judges or other local authorities.
 - Eliminate exclusive contracts for private probation companies in a jurisdiction.
 - Require contractual terms that eliminate incentives for private probation companies to increase their revenue by removing any discretion on the part of private probation officers regarding supervision fees and surcharges, collection methods, sanctions for violations, and probationary periods.
 - Require private probation officers to disclose any conflicts of interest for themselves or their company to the judge prior to making

- recommendations on sanctions, fines, or other consequences for violations of probation.
- Empower an independent state agency to oversee compliance with all private probation rules and regulations, including through regular monitoring, robust reporting requirements, and sanctioning power.
 - Ensure transparency in the operation of private probation companies.
 - Establish procedures for relevant state agencies to vet and track information about private probation companies and where they operate.
 - Track the number of probationers under the supervision of each private probation company, including the length and outcome of supervision; any violation of probations, the reasons for each violation, and their ultimate dispositions; description of other services provided to probationers under supervision, such as community service or work placements, classes, drug testing, monitoring devices, and their outcomes; and a breakdown of all fees collected.
 - Disclose potential or perceived conflicts of interest, particularly regarding recommendations on sanctions, fines, or other consequences associated with a violation of probation.
 - Publish all of the above information on a regular basis, both online and in print.
 - Establish safeguards to ensure legal financial obligations do not create undue hardship for those who cannot afford to pay.
 - Formulate guidelines that ensure criminal justice costs, fees, and fines are adjusted to a person's ability to pay so that they have comparable impact for people with differing levels of income/wealth, such as a "day fines" system. Establish clear processes for seeking waivers, reductions, and substitutes for all required cash payments, especially court costs, fees, and fees paid to private service providers.
 - Exempt indigent defendants from all courts costs and probation fees. Ensure judges have, and are aware that they have, the discretion to waive fees and costs.
 - When conditions of probation, such as courses, treatment, or monitoring devices, are considered vital for public safety, provide these services on a sliding fee scale or without cost. Always provide these without cost for indigent defendants.
 - Ensure that the collection of court costs is not used as a central measure of judicial or clerk performance.

- Eliminate payment of court costs and fees as conditions for successful completion of probation, including payment of costs associated with courses, monitoring devices, treatment, and other requirements associated with probation.
- Create adequate regulation to safeguard probationers unable to make payments toward court costs, probation fees or associated conditions from being incarcerated, having their driver's license revoked, or other punitive measures unrelated to their offense.
- Implement alternative methods to address failure to pay violations, such as a system of graduated sanctions.
- Provide clear education, training, and professional conduct standards for private probation officers and any other personnel working with probationers.
 - Restrict ability of private probation companies to collect only supervision fees, and not handle restitution, fines, and court costs payments.
 - Standardize drug testing guidelines, procedures, and cutoffs across criminal justice institutions.
 - Require private probation companies and officers to provide probationers with clear information about their rights.
- Establish state-level agencies, or expand the mandate of existing institutions, that are empowered to monitor private probation companies, enforce regulations, and investigate grievances from people on probation.
 - Create monitoring protocol to ensure compliance with all state and federal regulations pertaining to probation supervision.
 - Authorize grievance mechanisms to handle issues arising from all aspects of supervision, including assignment to private probation, payments and waivers, drug testing, and probation officer misconduct or abuse. Require the timely and transparent handling of grievances. Provide written guidance on grievance procedures to every individual at the time they are placed on private probation. Create systems for appealing decisions of the grievance mechanism to courts.
 - Clearly post information on rules and regulations, including the process to submit a grievance or complaint, at every private probation reporting office and courtroom.
 - Create guidelines to protect probationers who raise concerns or complaints about their supervision from retaliatory action by probation officers, judges, clerks, or other court officials. Protect confidentiality of complainants.

- Empower state oversight agencies to censure or suspend private probation companies or specific officers for non-compliance.

To Courts and Judges in Florida, Kentucky, Missouri, and Tennessee

- Ensure selection of private probation companies is done in a public and transparent manner, with no actual or perceived conflicts of interest. Judges should refrain from engaging in or making any statements about the selection or contracting with private probation companies.
- Ensure that only appropriate officers of the court engage in decision-making for probation orders and violations of probation. Restrict access of private probation officers from the section of the courtroom reserved for attorneys, court personnel, and litigants (commonly known as “the bar”), as is already the practice in some states.
- Guarantee that the right to counsel is made known during all sentencing and violation of probation hearings, and that an individual can request a public defender in any of these proceedings.
- Evaluate an individual’s ability to make payments toward fines, fees, and the costs associated with probation and its conditions at the time of sentencing. Waive costs when a defendant cannot afford payments, or make alternatives available, such as community service.
- Ensure that individuals offered probation as part of plea deals are aware of all details related to private probation, including supervision requirements, conditions, costs, and consequences for noncompliance before accepting. In addition, ensure that individuals sentenced to probation are aware that they cannot be incarcerated if they are unable to pay for supervision, drug tests, or other conditions of probation, and are entitled to a hearing before the court to determine if they have the ability to pay. Communicate and distribute information on private probation complaints and appeals processes at the time that a probation order is made.
- Use appropriate systems for notice and summons when individuals violate their probation for inability to pay. For example, where appropriate, instead of issuing arrest warrants, use a less burdensome summons procedures.
- Ensure compliance with *Bearden v. Georgia* through hearings that meaningfully assess an individual’s ability to make payments to the court and/or private probation company. Similarly, if an individual has violated probation because of an inability to pay for a drug test, class, training, treatment, monitoring device, or other condition of probation, judges should conduct an ability to pay determination and not incarcerate them if unable to pay.

To Prosecutors

- Include unsupervised probation or alternatives that do not incur fees in plea deals with indigent defendants or where supervision is not reasonably required.
- When offering a plea agreement that includes private probation supervision, ensure that the defendant is aware of all details related to supervision requirements, conditions, associated costs, and consequences for noncompliance before accepting the offer.
- Restrict conditions on probation included in plea deals to those that are truly necessary, offering low cost or free alternatives whenever possible.

To Private Probation Companies

- Establish clear guidelines for probation officers on interactions with clients and create systems of internal accountability for ensuring compliance with the guidelines. Ensure that staff never threaten or coerce probationers who are unable to pay, and never refuse supervision, drug testing, background checks, courses or other conditions, due to insufficient funds.
- Exercise adequate diligence, including background checks and screenings, in hiring probation officers and any other staff who have contact with individuals being supervised under court order, whether that be through a treatment program, course, or monitoring system. Create and educate staff on their professional and ethical responsibilities, including procedures for investigating and sanctioning violations.
- Require regular training for staff on best practices in probation supervision. Provide probation officers information, tools, and resources so they are able to offer rehabilitative services and address challenges in the life of probationers related to employment, transportation, housing, healthcare, mental illness, substance abuse treatment, and childcare.
- Educate probationers on their rights.
 - Provide clear verbal and written information about application of payments toward restitution, court costs, and probation fees.
 - Establish a process by which probationers can apply for waivers, work programs, or other alternatives to cash payments, through the probation company and the court. Make all steps of that procedure and the number of pro bono/sliding scale clients publicly available.
- Establish a method for receiving and addressing complaints from probationers. Disseminate information about company and state complaint processes to probationers when commencing supervision and make complaint information

visible in all probation offices. Due to fears of reprisal, allow confidential complaints to be made.

Methodology

This report examines the use and impact of privatized probation services for misdemeanor offenses in four US states: Tennessee, Missouri, Kentucky, and Florida. These states were selected because of the historic and widespread presence of privatized probation services, varying levels of regulation and oversight, and reports of human rights abuses associated with private probation companies. Human Rights Watch published a report on private probation companies in 2014 focusing on abuses in Alabama, Georgia, and Mississippi.

In late 2016 and 2017, Human Rights Watch conducted more than 150 interviews with probationers and their families; criminal defense attorneys and public defenders, judges and court staff, prosecutors; criminal justice experts; members of civil society organizations; attorneys who have investigated or brought lawsuits against private probation companies; local law enforcement; and probation company representatives. Due to concerns about reprisals, Human Rights Watch has withheld the identity of certain probationers and their family members, unless they consented to being identified; the report indicates where pseudonyms were used. Other individuals, primarily attorneys and court staff, requested anonymity for fear of impact on their ability to do their jobs; their names and other identifying information have not been included in this report.

Human Rights Watch visited over 20 county and municipal courts, and in nearly all of them observed cases where misdemeanor offenders were either sentenced to private probation or were in hearings for violation of probation terms. In addition, we interviewed dozens of probationers at reporting locations in Kentucky, Missouri, and Tennessee. We reviewed court records, where available, to verify details relating to individual cases.

Human Rights Watch, in collaboration with civil society organizations and pro bono lawyers, obtained information through records requests in Kentucky and Tennessee. Records requests were sent to every county in Kentucky, in partnership with the American Civil Liberties Union (ACLU) of Kentucky, to ascertain their use of private probation companies.¹ In Tennessee, Human Rights Watch obtained records on private probation permits, revenue generated for the Private Probation Services Council, and quarterly reports filed by private

¹ ACLU of Kentucky, "Private Probation in Kentucky," September 2017, <https://www.documentcloud.org/documents/4061870-Private-Probation-Ky-FINAL.html> (accessed February 2, 2018).

probation companies in Giles County. In Florida and Missouri, Human Rights Watch relied on case documents and practices available through online databases.

Detailed questionnaires were sent to 22 companies operating in the four states researched for this report, particularly those companies that were researched for this report. Two company representatives provided written responses: Private Probation Service TBN, LLC, of Hillsboro, Missouri, and the now defunct Correctional Services Incorporated (doing business as Tennessee Correctional Services) in Memphis, Tennessee.² PSI Probation of Cookeville, Tennessee, provided an interview by phone, responding to several questions about how they supervise probationers.

Human Rights Watch also conducted extensive desk research through academic articles, media reports, and civil society reports pertaining to legal financial obligations, private probation, and alternative models for criminal justice debt.

No compensation was offered for interviews. Everyone interviewed for this report was informed of the nature of the research and that their participation was completely voluntary.

² Tennessee Correctional Services was closed in 2017, but was operational at the time research was conducted.

What's the difference between a fee and a fine?

Fines are generally imposed as a penalty for a crime, either on their own or in conjunction with a jail or prison sentence. Courts also charge a wide range of **fees** that may not be directly related to the punishment of a crime, but rather the process of prosecution and the functioning of the court. There may also be **fees and surcharges** completely unrelated to court function, like state funds to support specific causes, retirement funds, and surcharges like partial or late payment fees. This report refers to court-imposed fees and fines as **court costs**.

Restitution can also be imposed by a court and is meant to compensate a victim of a crime for their losses. Costs associated with restitution can place significant financial burdens on an individual. However, this report does not address restitution obligations.

Private probation companies can charge their own **fees** for supervision and the cost of other probation conditions, like courses, treatment, monitoring devices, and drug testing. These fees are not included in the term court costs.

Regular payment of fines, court fees, restitution, and private probation fees are all generally conditions for the successful completion of probation.

I. Background: Offender-Funded Criminal Justice Systems

Budgetary Pressures in the Criminal Justice System

States, counties, and municipalities across the United States face budget shortfalls, which have increased since the economic recession of the late 2000s and early 2010s.³

Budgetary pressures have forced state and local governments not only to cut expenses but also protect and augment revenue sources. Numerous state and local governments now pay some or all of the costs of running their criminal justice systems through a combination of taxes and various fines and fees.⁴ In some cases, the fines and fees generated through the criminal justice system are also used to cover state or local expenditures not related to the judicial system.⁵

States and localities are generating more revenue to fill budget shortfalls by shifting the costs of criminal justice functions to the individual “users.”⁶ Some jurisdictions have turned to mandatory fines and fees, where a judge has no discretion, particularly for minor offenses and traffic violations.⁷ A number of jurisdictions have come under fire for using local courts to generate revenue by fining individuals for minor infractions. And in

³ Between FY2007 and FY2013, Florida state court appropriations fell by nearly US\$50 million, approximately one tenth of its budget. See <http://www.flcourts.org/administration-funding/court-funding-budget/> (accessed August 30, 2017).

⁴ However, in a 2004 report, the ABA Commission on State Court Funding recommended courts maintain a “predictable general funding stream that is not tied to fee generation.” The federal government also provides grants and funding to support state and local justice systems.

⁵ For example, Florida courts “typically generate about \$1 billion a year, which is more than what is needed to support court operations.” See <http://www.flcourts.org/administration-funding/court-funding-budget/> (accessed September 12, 2017).

⁶ The Department of Justice investigation into policing practices in Ferguson, Missouri, has highlighted this practice. The investigation report states that “the City’s Finance Director stated publicly that Ferguson intends to make up a 2014 revenue shortfall in 2015 through municipal code enforcement, stating to Bloomberg News that ‘[t]here’s about a million-dollar increase in public-safety fines to make up the difference.’” United States Department of Justice Civil Rights Division, “Investigation of the Ferguson Police Department,” March 4, 2015, https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (accessed August 30, 2017).

⁷ “States facing lower revenue from income and property taxes are taking action that includes court cutbacks and fee increases,” John Schwartz, “Pinched Courts Push to Collect Fees and Fines,” *New York Times*, April 6, 2009, <http://www.nytimes.com/2009/04/07/us/07collection.html?mcubz=0> (accessed August 30, 2017). “State judiciary systems take up a tiny proportion of total state budgets, between 1% and 3%, on average. Yet many legislatures assume that the judiciary should be largely self-sustaining. When times are tight, they expect the courts to raise funds through civil filing fees, surcharges, and mandatory assessments heaped on largely indigent criminal defendants. Worse, states increasingly look to courts not just to fund themselves but also to boost revenue for other government functions,” Rebekah Diller, “Court Fees as Revenue?” July 30, 2008, <https://www.brennancenter.org/analysis/court-fees-revenue> (accessed August 30, 2017). For a deeper description of the types of fees and fines imposed on criminal defendants to raise revenues, see “Policing and Profit,” 128 *Harv. L. Rev.* 1723, <https://harvardlawreview.org/2015/04/policing-and-profit/> (accessed September 12, 2017).

Missouri, residents of Pagedale filed a class action lawsuit in 2015 against their municipality for excessive fines under local ordinances, which include restrictions on hedge height, curtain appearance, and the way that pants must be worn.⁸

Governments also impose a multitude of fees and surcharges on defendants to raise revenue. Fees are regularly imposed for various law enforcement functions, including arrest, processing and intake, drug testing (even in cases that do not involve drugs or alcohol), clerk services, and jail boarding. Florida prescribes a mandatory minimum fee of US\$50 to apply for indigent status to qualify for a public defender, a minimum \$50 fee for the assistance of a public defender in a traffic or misdemeanor case, and an additional \$50 “cost of prosecution fee.”⁹ While judges have the power to raise some of these fees, they do not have the discretion to waive or reduce them below the mandatory floor.¹⁰

Defendants in some states are also required to contribute to the costs for public defenders, state’s attorneys and prosecutors, juries, jail boarding, and prosecution. Judges can also add on unrelated surcharges for a wide range of causes, including sheriffs’ retirement funds, law enforcement training, crime victims’ restitution funds, brain and spinal cord injury programs, teen courts, children’s advocacy centers, and rape crisis centers, to name a few.¹¹ In Cape Girardeau County, Missouri, for example, local judges regularly imposed fees of \$150-\$300 on misdemeanor defendants for the “Cape County

⁸ *Whitner v. City of Pagedale*, No: 4:15-cv-01655 (E.D. Mo., 2015).. Monica Davey, “Lawsuit Accuses Missouri City of Fining Homeowners to Raise Revenue,” *New York Times*, Nov. 4, 2015, <https://www.nytimes.com/2015/11/05/us/lawsuit-accuses-missouri-city-of-fining-homeowners-to-raise-revenue.html> (accessed October 29, 2017). See also the Institute for Justice on the Pagedale litigation, <http://ij.org/case/pagedale-municipal-fines/> (accessed August 30, 2017).

⁹ “An applicant shall pay a \$50 application fee to the clerk for each application for court-appointed counsel filed,” Fla. Stat. §27.52(1)(b). “Attorney’s fees and costs shall be set in all cases at no less than \$50 per case when a misdemeanor or criminal traffic offense is charged and no less than \$100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher fees or costs incurred.... The court shall impose the attorney’s fees and costs notwithstanding the defendant’s present ability to pay,” Fla. Stat. §938.29(1)(a). “Costs for the state attorney must be set in all cases at no less than \$50 per case when a misdemeanor or criminal traffic offense is charged and no less than \$100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section must be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.” Fla. Stat. §938.2(8).

¹⁰ Fla. Stat. §938.29.

¹¹ To explore the full range of fees and surcharges statutorily authorized in each state, see the Criminal Justice Policy Program’s 50-State Criminal Justice Debt Reform Builder, www.cjdebtreform.org (accessed January 30, 2018).

Law Enforcement Restitution Fund” (normally restitution funds are for victims of violent property offenses, which are often felonies).¹² Multiple counties in Missouri charge inmates a daily jail boarding fee, ranging from \$22.50-\$45.¹³ These are just some of the examples of fees charged in the four states researched.

Individuals in the criminal justice system must also increasingly bear the costs of probation supervision and other alternatives to incarceration, whether provided by public or private entities. In all four states studied for this report, probationers make regular payments for supervision, in addition to paying their fees, fines, and any restitution costs. Several states place a cap on how much probation agencies, both public and private, can charge, while some states, like Florida, set a minimum monthly payment.¹⁴ In all the states in this report, the payment of costs, including fees to private companies, are a condition of probation. Failure to comply with all conditions of probation can lead to a violation of probation, arrest warrant or criminal summons, hearing, revocation, and potentially incarceration. Efforts to provide alternatives to incarceration through private probation are often also seen as ways to increase revenues for cash-poor courts, placing undue burden on poor defendants and trapping them in endless cycles of criminalization and debt.¹⁵

The Motivation to Privatize Probation

Many state probation and parole authorities are moving away from supervising misdemeanor probationers, in part due to budget constraints associated with handling the growing probation and parole populations.¹⁶ Under these circumstances, local courts must find alternative means to supervise probationers.¹⁷ Private companies offer cash-strapped

¹² Court documents from various private probation cases from Cape Girardeau, Missouri, on file with Human Rights Watch.

¹³ Court documents, on file with Human Rights Watch.

¹⁴ Under Fla. Stat. §948.09(1)(b), the cost of misdemeanor probation supervision is at least \$40 a month. Missouri provides an approved range for supervision fees – between \$30 and \$50 per month. RSMO §559.604.1.

¹⁵ For further discussion on private probation as a tool to raise government revenue, see “Policing and Profit,” 128 Harv. L. Rev. 1723.

¹⁶ Christine S. Schloss and Leanne F. Alarid, “Standards in the Privatization of Probation Services: A Statutory Analysis,” *Criminal Justice Review*, Vol 32 No 3, September 2007, pp. 233-4.

¹⁷ In Missouri, for example, the Board of Probation and Parole is statutorily prohibited from providing supervision services to most classes of misdemeanor offenses. RSMO §217.750.2. Other states’ laws are permissive of private entities supervising probationers, and counties may select the type of agency they use.

courts an appealing alternative by offering supervision services free of cost to the courts, and rely on fees paid by people on probation as their source of revenue.¹⁸

Florida was the first state to allow private entities to supervise probationers, with the approval of Salvation Army Misdemeanor Probation in 1975, followed by legislation permitting approved private entities to supervise probation in 1976.¹⁹ Missouri and Tennessee followed in 1989.²⁰ While Tennessee requires private probation companies to apply to a state council for approval before providing services,²¹ Kentucky, Florida, and Missouri leave the selection and approval of private probation companies to local courts and judges.²² There are also few rules or regulations and little to no oversight regarding the qualifications required of company probation officers.²³ Most states that allow the use of private probation companies restrict their use to certain types of crimes, usually misdemeanors and traffic offenses, though Tennessee permits private supervision for felony cases under particular conditions.²⁴

The private probation companies studied in this report do not charge the court system for their services, and instead generate revenues from probationers directly, through supervision fees and provision of other services, including drug testing, treatment, classes, and electronic monitoring. These services may be court-mandated conditions of probation. While fee structures may be written into contracts between private probation companies and courts, Missouri statute specifically states that neither the state nor any

¹⁸ For example, see the Kentucky Alternative Programs website, where they state that one of their goals is to “Operate at no cost to the courts,” <http://www.kyalternatives.com/other/mission.htm> (accessed September 12, 2017). PSI Probation in Tennessee takes it a step further by pledging not only to collect court costs but also to donate back to the community, <http://psiprobation.com/expected-results/> (accessed September 12, 2017).

¹⁹ Schloss and Alarid, “Standards in the Privatization of Probation Services: A Statutory Analysis,” *Criminal Justice Review*, pp. 234-5.

²⁰ *Id.*, p. 234.

²¹ Tenn. Comp. R. & Regs. R. 1177-01.

²² For the Missouri rules on the process of approving a private probation company, see RSMO 559.602 and 559.609. Kentucky’s requirements for district courts to follow before referring a probationer to a private entity for supervision can be found in SCR 9.040. Florida’s rules governing the contracting of private probation companies for misdemeanor supervision are found in Fla. Stat. §948.15. See also Schloss and Alarid, “Standards in the Privatization of Probation Services: A Statutory Analysis,” *Criminal Justice Review*, p. 236.

²³ Schloss and Alarid, “Standards in the Privatization of Probation Services: A Statutory Analysis,” *Criminal Justice Review*. In contrast, Tennessee imposes requirements regarding clean criminal records of private probation employees and qualifications of staff, including training and education. Tenn. Comp. R. & Regs. R. 1177-2 and 1177-3. For counties of a certain size, Tennessee also requires probation officers to have a certain level of education. Tenn. Code Ann. §40-35-302(g)(1)(B).

²⁴ For Class E felonies only. Tenn. Code Ann. §40-35-303(p).

county “shall be required to pay any part of the cost of probation and rehabilitation services provided to misdemeanor offenders” by private agencies.²⁵

In some states, including Tennessee, Florida, and Missouri, private probation companies are permitted to collect costs owed to the court by defendants, such as fees, fines, and restitution. Often, smaller jurisdictions that struggle to maintain personnel to enforce and collect these costs rely on private probation companies. A former director of a Tennessee private probation company claimed the company’s role was to “enforce court requirements and collect fees,” allowing the county to dramatically increase its collections.²⁶ Kentucky, however, has rules banning private probation companies from collecting court costs and restitution, though they can assist the court by monitoring payment and reporting progress.²⁷

In many jurisdictions, private probation companies also supervise defendants on pre-trial release or in diversion programs.

Outsourcing probation supervision appears attractive to many state and local governments because it offers a way to cut operation costs while improving collections of fees and fines.²⁸ Small jurisdictions may find it expensive to maintain a probation system for their own limited caseload, while private probation companies can offer their services to multiple counties. There is little evidence to prove, however, that private companies save courts money or even improve collection rates.²⁹ Lieutenant Joe Purvis, an officer in the

²⁵ RSMO §559.604.1.

²⁶ Between 2009 and 2014, Providence Community Corrections collected more than \$17 million in Rutherford County, Tennessee. Michelle Willard, “Probation violations help fill county jail,” *Daily News Journal*, October 18, 2014, <http://www.dnj.com/story/news/crime/2014/10/18/probation-violations-help-fill-county-jail/17522985/> (accessed September 12, 2017).

²⁷ Kentucky law prohibits private probation companies from collecting “fines, fees, or court costs for or on behalf of the district court.” Kentucky Supreme Court Rule 9.020(N) and 9.030(B). Some companies, such as PSI Probation in Tennessee, have also implemented this practice, requiring probationers under their supervision to make court cost payments directly to the clerk. Human Rights Watch phone interview with Tim Cook, owner of PSI Probation, October 24, 2017.

²⁸ Human Rights Watch interview with Judge Chris Craft, November 18, 2016. See generally Katherine Beckett and Alexes Harris, “On cash and conviction: Monetary sanctions as misguided policy,” *American Society of Criminology*, Vol. 10, Issue 3, p. 527 (“The operation of the criminal justice system is, of course, enormously expensive—increasingly so. These fiscal pressures undoubtedly explain why many governments are authorizing the imposition of additional fees and fines. Some states and localities do collect substantial revenues from the criminally convicted.”), <http://criminology.fsu.edu/wp-content/uploads/volume-10-issue-31.pdf> (accessed September 12, 2017).

²⁹ Some studies have documented how offender-funded criminal justice systems may actually end up costing the jurisdiction in attempts to collect fees. For example, see Mathilde Laisne, Jon Wool, and Christian Henrichson, “Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans,” *Vera Institute of Justice*, January 2017, <https://www.vera.org/publications/past-due-costs-consequences-charging-for-justice-new-orleans> (accessed January 30,

Giles County Sheriff's Department in Tennessee, explained that his office is required to deliver warrants and arrest individuals who are not complying with probation requirements. He also said that he does not believe that private probation companies are any more effective than state agencies at getting people to pay their fines and fees, but that private companies cost the government less.³⁰

Judges can waive probation supervision fees for those who cannot afford to pay, even when supervised by a private company. However, this is usually left to the discretion of the judge or probation company, and rarely requires consideration of objective factors, such as employment status or income of the probationer.³¹ When observing court proceedings for this report, Human Rights Watch saw situations in every state researched where even though a court determined that a probationer was indigent for the purposes of appointing a public defender, it did not waive, or even reduce, their supervision fees or other costs.³² Judges and defense attorneys interviewed for this report consistently said that private probation fees are seldom waived. Judges expressed concern that waiving private probation supervision fees would negatively impact the companies as they rely on these fees to operate.³³ Defense attorneys reported that supervision fees for felony offenders,

2018). See also Wendy Sawyer, "Punishing Poverty: The high cost of probation fees in Massachusetts," Prison Policy Initiative, December 8, 2016, https://www.prisonpolicy.org/probation/ma_report.html (accessed January 30, 2018).

³⁰ Human Rights Watch phone interview with Lt. Joe Purvis, June 6, 2017.

³¹ Missouri rules list various factors for consideration in reducing and waiving supervision fees, including dependents, income, age, handicap, etc., but does not require the court to make reductions if these factors are found. RSMO §559.604 ("The amount of the contribution shall be determined by the sentencing court. The court may exempt a person from all or part of the foregoing contribution if it finds any of the following factors to exist...."). Tennessee rules require a procedure for handling indigent clients, but do not require waiving or reducing fees. Tenn. Comp. R. & Regs. R. 1177-2-.03(1)(h) ("The terms of any contract between a contracting authority of this state and a private probation entity to provide probation services shall state at a minimum: (h) Procedures for handling indigent offenders to ensure placement of such offenders despite their inability to pay"). In Florida, the power to reduce fees for indigent clients is left to the private probation company to determine. Fla. Stat. §948.15(4)(d) ("The fees the entity charges for court-ordered services and its procedures, if any, for handling indigent offenders"). In contrast, Kentucky requires private probation companies to maintain a fee schedule that includes a sliding scale for indigent clients. SCR 9.020(F) ("provide the district court on an annual basis a written schedule of fees to be charged, including a sliding scale fee schedule for indigent defendants based upon the individual's ability to pay").

³² Based on observation of court proceedings in Tennessee (November 2016 and February 2017), Florida (January 2017), Missouri (March 2017), and Kentucky (June 2017). Definitions of "indigency" differ, but one possible objective standard is based on Washington Supreme Court decision applying a court rule: "courts must find a person indigent if the person establishes that he or she receives assistance from a needs-based, means-tested assistance program, such as Social Security or food stamps," or "if his or her household income falls below 125 percent of the federal poverty guideline." *City of Richland/Kennewick v. Wakefield*, No. 92594-1. Similar recommendations have been made by the Supreme Court of Missouri's Municipal Division Work Group in their March 1, 2016 report, <https://www.courts.mo.gov/file.jsp?id=98093> (accessed January 30, 2018).

³³ Human Rights Watch interview with judges in Memphis, Tennessee (November 14, 2016 and November 18, 2016) and Pensacola, Florida (January 10, 2017).

which are almost always handled by state probation agencies, were much more likely to be waived than in misdemeanor cases. The perverse result is that misdemeanor offenders can end up paying more for probation supervision than felony offenders.³⁴

Tables: National and state trends in probation

These tables are included here only to provide an indication of the scale of courts' use of probation across the country. Statistics are collected through national annual surveys conducted by the Bureau of Justice Statistics, but only some states report people supervised by private entities, such as Georgia. Florida and Kentucky provide some data on those supervised by probation companies, while Missouri and Tennessee do not. Lack of adequate data is a major obstacle in understanding the prevalence of private probation, any disparities in process and outcomes, and cost or savings to jurisdictions that use private probation.

Number and rate of persons on community supervision and incarcerated in 2015, selected states					
	Florida	Kentucky	Missouri	Tennessee	NATIONAL
Total correctional population	375,800	103,700	106,000	119,900	6,712,600
Correction supervision rate per 100,000 US adult residents	2,300	3,030	2,250	2,340	2,700
Correction supervision rate per 100,000 US residents (all ages)	1,840	2,340	1,740	1,810	2,080
Number of people in community supervision	225,400	70,600	62,600	75,400	4,650,900

³⁴ Felony probation can be onerous in other ways, such as requiring longer and more regular supervision, additional conditions, and property searches.

Rate of community supervision per 100,000 US adult residents	1,380	2,060	1,330	1,470	1,870
Rate of community supervision per 100,000 US residents (all ages)	1,100	1,590	1,030	1,140	1,441
Number in prison or local jail	153,000	33,800	43,400	48,000	2,145,100
Incarceration rate per 100,000 US adult residents	940	990	920	940	860
Incarceration rate per 100,000 US residents (all ages)	750	760	710	720	660

*All report December 31, 2015 numbers unless otherwise indicated. Sources: Bureau of Justice Statistics, Annual Surveys of Probation and Parole, Deaths in Custody Reporting Program, and National Prisoner Statistics Program, 2015; and U.S. Census Bureau, unpublished U.S. resident population estimates within jurisdiction on January 1, 2016. Caveats: They rely on voluntary responses to surveys. ONLY GA reported numbers for private probation.

Number and rate of persons on probation in 2015, selected states

	Number of people in probation - Jan 1, 2015	Number of people in probation, Dec 31, 2015	Rate of probation (per 100,000 US adult residents)	Change
Florida	227,540	220,769	1,353	-3.00%
Kentucky	53,923	54,049	1,579	0.20%
Missouri	47,082	44,876	953	-4.70%
Tennessee	64,223	62,325	1,215	-3.00%
NATIONAL	3,878,197	3,789,785	1,522	-2.30%

Source: Bureau of Justice Statistics, Annual Parole Survey, 2015.

Adults exiting probation, by type of exit, 2015

	Florida	Kentucky	Missouri	Tennessee	NATIONAL	
Total reported	155,313	26,405	27,030	24,253	1,887,556	
Completion	85,607	14,327	12,224	16,161	1,004,174	
Incarcerated	With new sentence	13,579	1,346	881	3,195	65,209
	Under current sentence	23,075	3,533	3,556	4,104	95,541
	To receive treatment	58	0	928	0	3,302
	Other/unknown	2,418	1,616	18	11	69,273
	Absconder	67	2,112	8,831	355	40,586
Discharged to warrant or detainer	3,846	0	16	0	14,454	
Other unsatisfactory	4,024	50	0	0	213,338	
Death	964	327	376	423	11,267	
Other	3,228	194	0	4	87,590	
Unknown or not reported	18,447	2,900	200	0	282,822	

Source: Bureau of Justice Statistics, Annual Parole Survey, 2015.

Change in probation rates

	Probation	Rate of probation, per 100,000 adult residents	U.S. adult residents on probation
2005	4,126,300	1,864	1 in 54
2010	4,055,900	1,715	1 in 58
2015	3,789,800	1,522	1 in 66
Change, 2005 to 2015	-8.90%		

Source: Bureau of Justice Statistics, Annual Probation Survey, 2005–2015; and U.S. Census Bureau, National Intercensal Estimates, 2006–2010, and Population Estimates, January 1, 2011–2016.

Characteristics of adults on probation, 2005 and 2015

	2005	2015
Sex %		
Male	77	75
Female	23	25
Race %		
White	55	55
Black	30	30
Latino	13	13
Native American	1	1
Asian	1	1
Two or more races	---	---
Type of offence %		
Felony	50	57
Misdemeanor	49	41
Infraction	1	2

Source: Bureau of Justice Statistics, Annual Probation Survey, 2005–2015

Kentucky: Regulation without oversight

In 2000 Kentucky created relatively comprehensive regulations of private probation companies through amendments to the Supreme Court Rules, which clearly outlined that private probation companies should only be used when probation supervision cannot be performed by a government agency, a non-profit group, or volunteers.³⁵ The Kentucky regulations set guidelines for avoiding conflict of interest for judges assigning defendants to supervision by a private company, provided for pro bono and sliding scale fee cases, established court oversight of fee schedules, prohibited the collection of court costs and fines by private probation, removed any discretion of probation officers over terms or conditions of probation, and ensured that employees of private probation companies do not sit in the section of the courtroom reserved for attorneys, court personnel, and litigants (or “the bar”).³⁶ The rules were amended in 2016 to include more comprehensive reporting requirements by private probation companies to district courts, establish confidential complaint mechanisms, and assure that probation is never revoked for inability to pay fees.³⁷ Though the rules do not encompass all aspects of transparency, regulation, and oversight, they do provide some of the most robust rules compared to the other states researched for this report.

When the amended rules went into effect in January 2017, at least five counties chose to end their use of it Kentucky Alternative Programs II, Inc. (KAP), the largest private probation company in Kentucky. Surprisingly, the judges in these counties discontinued private probation supervision not as a result of the 2016 amendments, but rather the realization that such regulations existed at all. Though these rules had been in place for 17 years, judges had either not been aware of their existence in the Supreme Court Rules or had failed to implement them. In an interview with local media, one judge cited the requirement created in 2000 to only use private probation as a last resort alternative for monitoring supervision as the reason behind his decision to stop using KAP in 2017.³⁸ The county prosecutor in Lincoln County indicated that the decision may have had something to do with the sliding scale fee requirement.³⁹

³⁵ The 1999 order amending the Rules of the Supreme Court can be found at https://courts.ky.gov/courts/supreme/Rules_Procedures/19991.pdf (accessed August 30, 2017).

³⁶ Kentucky Supreme Court Rule 9.030(G) says: “When utilizing a private agency for probation monitoring, the district court must: (G) assure no employee of the private agency is seated inside the bar within the courtroom.” The 1999 order amending the Rules of the Supreme Court can be found at https://courts.ky.gov/courts/supreme/Rules_Procedures/19991.pdf (accessed August 30, 2017).

³⁷ The updated 2016 order is available at https://courts.ky.gov/courts/supreme/Rules_Procedures/201609.pdf (accessed August 30, 2017).

³⁸ Ben Kleppinger, “Two judicial districts ending private probation monitoring, but others keeping KAP,” *The Advocate-Messenger*, February 10, 2017, <http://www.amnews.com/2017/02/10/two-judicial-districts-ending-private-probation-monitoring-but-others-keeping-kap/> (accessed August 30, 2017).

³⁹ Abigail Whitehouse, “Lincoln District Court ends use of Kentucky Alternative Programs,” *The Interior Journal*, February 24, 2017, <http://www.theinteriorjournal.com/2017/02/24/lincoln-district-court-ends-use-of-kentucky-alternative-programs/> (accessed August 30, 2017).

Though these measures had been in the rules for 17 years, lack of state oversight and enforcement meant they had not been implemented.

Though some judges in the state have taken note of the rules and adjusted their practices accordingly, Human Rights Watch observed continued violation of the rules in 2017 by a number of judges. It was not uncommon to see private probation officers attending court in front of the bar. Interviews with public defenders and prosecutors revealed that some judges used private agency supervision in almost all cases involving misdemeanor probation, without consideration of non-profit, volunteer, or government agency alternatives. One local lawyer in Shelbyville, Kentucky, said that alternatives to private probation had never been part of the consideration, and that an earlier competing probation agency had been forced to close operations.⁴⁰

Human Rights Watch and the American Civil Liberties Union (ACLU) of Kentucky sent requests to 100 county judges across the state for information on the private probation practices they are meant to oversee.⁴¹ Approximately 70 judges responded in either writing or by phone.⁴² Responses highlighted the gaps in oversight. For example, in their responses judges provided lists of clients to whom they provide free, or reduced, sliding scale fees that the private probation companies submitted on a monthly basis. Under Kentucky law, these lists should include all pro bono clients referred to the private probation company by that district court. However, the lists were not specific to the responding judge's jurisdiction, they were the same across counties and districts, including many clients not from the responding judge's jurisdiction, creating misleading information about how many individuals are actually receiving free probation supervision services in each jurisdiction. In addition, the KAP pro bono list contained only nine names in April 2017, and eight unique names in May 2017.⁴³ At that time KAP operated in at least 15 counties and supervises thousands of clients, but fewer than 10 of their current clients had had their fees fully waived. Several counties using KAP did not have a single pro bono client. No judge provided information on rejections of pro bono referrals, meaning the judge made no pro bono recommendations or the information was not provided. In their responses to records requests, not a single judge or clerk flagged this issue in KAP's reporting.

This report argues that state governments and courts using private probation must adopt robust regulations and practices. While states like Kentucky have taken an important first step by creating rules, without monitoring and oversight, rules will not have the intended effect of protecting probationers from potentially abusive private probation practices.

⁴⁰ Human Rights Watch interview with local lawyer, Shelbyville, Kentucky, June 20, 2017.

⁴¹ For a full analysis of results, see ACLU of Kentucky, "Private Probation in Kentucky," September 2017, <https://www.documentcloud.org/documents/4061870-Private-Probation-Ky-FINAL.html> (accessed February 2, 2018).

⁴² Responses are on file with Human Rights Watch.

⁴³ Open records request for private probation reporting documents, on file with Human Rights Watch.

Inherent Conflicts of Interest

Private probation companies rely on the fees paid by people on probation, potentially creating incentives for companies to increase the number of paying clients and extend the period of time that probationers are supervised. Conversely, the system does not incentivize reduced fees or waivers to ensure that poor individuals can actually afford to pay expenses; any such reductions mean that the company loses revenue. Probation companies also profit from other services, such as monitoring devices, courses, and drug testing, which can create real and perceived conflicts of interest if private probation officers have any discretion in recommending or requiring these services.

The role of private probation companies in recommending sanctions for violations of probation also gives rise to the perception of conflicts of interest, particularly when it involves longer supervision periods or additional conditions that materially benefit the company.⁴⁴ In a Bay County, Florida, court, Human Rights Watch observed defense attorneys and public defenders negotiate sanctions for probation violations with a company's private probation officers, followed by a simple sign-off by the prosecutor and judge. In other courts in Missouri and Tennessee, Human Rights Watch observed private probation officers testify in probation revocation hearings. This gives immense power to private probation officers, who stand to benefit both their companies and themselves with their recommendations for sanctions on violations of probation.

Courts' reliance on fines and fees can also raise questions of conflicts of interest. An examination of the issue by the Brennan Center for Justice, a nonpartisan law and policy institute, noted that "when courts are over-dependent on fees, such reliance can interfere with the judiciary's independent constitutional role, divert courts' attention away from their essential functions, and, in its most extreme form, threaten the impartiality of judges and other court personnel with institutional, pecuniary incentives."⁴⁵

⁴⁴ Human Rights Watch interview with Bay County public defender, Panama City Beach, January 11, 2017. Missouri court records, on file with Human Rights Watch.

⁴⁵ Alicia Bannon, Mitali Nagrecha, Rebekah Diller, "Criminal Justice Debt: A Barrier to Reentry," Brennan Center for Justice, <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> (accessed September 12, 2017).

Major Private Probation Companies in Florida, Kentucky, Missouri, and Tennessee

Many private probation companies are small operations, serving anywhere from one to a handful of counties, with a few notable exceptions in Florida and Kentucky. It is very difficult to get information about the industry as transparency around companies and their operations differs by state but is largely limited to voluntarily disclosed information. While government agencies generally have to provide certain public records under freedom of information laws, private companies, including private probation companies, are often exempt from these mandatory disclosures.⁴⁶

Policies and practices vary drastically between companies. For example, one Missouri company reported a sliding scale for clients who are indigent or on disability payments.⁴⁷ PSI Probation and Tennessee Correctional Services (TCS), both in Tennessee, implemented policies to ensure that payments owed to the court, including fines, fees, and restitution, are paid directly to the clerk, even though it is not required under state law.⁴⁸ TCS stated, in response to a Human Rights Watch questionnaire, that they did not adhere to directives to file probation violations for failure to pay court costs, fines, or program fees, in part because “it would have been the wrong thing to do,” and in part because it was unlikely that local judges would have issued arrest warrants solely for a failure to pay violation.⁴⁹ Some private probation officers and owners have expressed concerns about the financial element of private probation.⁵⁰ While some companies are taking steps to address the worst abuses of the private probation system, other companies are not. The recommendations in this report are aimed at creating rules and regulations that prevent abuses across the industry.

⁴⁶ For example, the Kentucky Attorney General issued an order stating that private probation company Kentucky Alternative Programs II, Inc. was not a “public agency” and therefore not in violation of the Kentucky Open Records Act for not responding to an informational request. In re: Jean Smallwood/Kentucky Alternative Programs II, Inc., 05-ORD-012, <https://ag.ky.gov/orom/20051/05ORD012.doc> (accessed January 31, 2018).

⁴⁷ Private Probation Service TBN response to Human Rights Watch questionnaire, stating “Disability is an automatic waive or reduction/all financial circumstances are taken into consideration with proof of household income and bills.”

⁴⁸ Human Rights Watch phone interview with Tim Cook, owner of PSI Probation, October 24, 2017.

⁴⁹ Human Rights Watch interview with L. Craig Turner, founder of Tennessee Correctional Services, Memphis, Tennessee, November 15, 2016.

⁵⁰ Ibid. Human Rights Watch phone interview with Tim Cook, owner of PSI Probation, October 24, 2017. Written response to Human Rights Watch questionnaire by Tammy Berg-Neuman of Private Probation Service TBN, October 14, 2017.

Florida

A full list of private and government probation agencies operating in Florida is maintained by a non-profit organization, which it makes publicly available.⁵¹ While many counties in Florida rely on county agencies or sheriff's offices to supervise all probation, a number also refer probationers to private entities, including non-profits like the Salvation Army and the Advocate Program.⁵² Two of the main for-profit probation companies operating in Florida are Judicial Correction Services, LLC and Professional Probation Services, Inc., both of which also operate in Georgia.⁵³ The two companies have recently come under common ownership, while still operating under separate names, creating the largest private probation company in Florida.⁵⁴ Florida Probation Service is a smaller company serving Bay, Gulf, and Jefferson Counties.⁵⁵

Kentucky

Kentucky similarly does not publish a full list of the companies operating in the state. Human Rights Watch, in partnership with the ACLU of Kentucky, requested private probation records from nearly all county judges in the state (more information available in Appendix VII).⁵⁶ Based on the responses to that request, it is clear that Kentucky Alternative Programs II, Inc. (KAP) is the largest private probation company in the state, operating in approximately 15 counties.⁵⁷ Other companies operating in Kentucky include

⁵¹ The Florida Association of Community Correction maintains an updated list of probation supervision agencies across the state, <http://www.facc-net.org/county-probation-directory> (accessed September 12, 2017).

⁵² Salvation Army Misdemeanor Probation Services, <http://www.salvationarmyflorida.org/correctional-services/misdemeanor-probation-services/> (accessed September 12, 2017). The Advocate Program, <http://advocateprogram.com/about/> (accessed September 12, 2017).

⁵³ Professional Probation Services website, <http://www.professionalprobation.com/>. The Judicial Correction Services website is no longer accessible, but a cached version is available at <https://web.archive.org/web/20120706165939/http://www.judicialservices.com/> (accessed September 12, 2017). Judicial Correction Services came under fire for their predatory practices in Alabama, settling a lawsuit brought by the Southern Poverty Law Center. "Cities across Alabama cancel contracts with company sued by SPLC," Southern Poverty Law Center, August 12, 2015, <https://www.splcenter.org/news/2015/08/12/cities-across-alabama-cancel-contracts-company-sued-splc> (accessed September 12, 2017).

⁵⁴ According to annual registration documents filed with the State of Georgia Corporations Division, which lists sitting Georgia House Representative Clay Cox as the CEO, and with the same address at 1770 Indian Trail Road, Suite 350, Norcross, GA 30093. Annual registration documents for both companies available at <https://ecorp.sos.ga.gov/BusinessSearch> (accessed September 12, 2017).

⁵⁵ Florida Probation Service website, <http://flprobation.com/> (accessed September 12, 2017).

⁵⁶ ACLU of Kentucky, "Private Probation in Kentucky."

⁵⁷ Kentucky Alternative Programs (KAP) was founded in 1989 and offer a range of services tailored to the needs of different courts and judges, <http://www.kyalternatives.com/other/default.htm> (accessed September 13, 2017).

CDS Monitoring, Inc., Commonwealth Mediation Services, Inc., Southern Kentucky Monitoring Services, LLC, Time Out Community Counseling and Correctional Services, LLC, and You Turn Court Monitoring Service, LLC.

Missouri

Missouri also does not publish a full list of probation companies operating in the state. Local operations serving one or two counties seem to predominate. The Missouri companies primarily discussed in this report are Private Correctional Services, LLC in Cape Girardeau County and Supervised Probation Services, LLC in Pike County, but others include at least three companies bearing the name Private Probation Service in different parts of the state,⁵⁸ as well as Outreach Consulting and Counseling Services, Inc.,⁵⁹ Eastern Missouri Alternative Sentencing Services, Inc.,⁶⁰ and Court Probationary Services, Inc.,⁶¹ among others.

Tennessee

While Tennessee requires private probation companies to obtain permits to operate, the state does not publish information on where companies are operating. Since 2005 Tennessee has issued approximately 75 permits to private probation companies, though only 33 were active as of January 2018.⁶² Community Probation Services, LLC and Probation Services Incorporated both operate in Giles County and are described in greater detail in this report.⁶³

⁵⁸ Missouri Private Probation Services in south-central Missouri, Private Probation Service TBN in eastern Missouri, and Private Probation Services in western Missouri.

⁵⁹ Outreach Consulting and Counseling Services (OCCS) of Missouri, <http://occsfmissouri.com/> (accessed September 13, 2017).

⁶⁰ Eastern Missouri Alternative Sentencing Services (EMASS), <https://www.dwi-emass.com/> (accessed September 13, 2017).

⁶¹ Court Probationary Services, Inc., <http://courtprobationaryservices.com/> (accessed September 13, 2017).

⁶² A full list of permits issued by the Tennessee Private Probation Services Council can be obtained through the search available at <http://verify.tn.gov/> (accessed January 26, 2018).

⁶³ Probation Services Incorporated operates in at least 13 Tennessee counties according to its website, <http://psiprobation.com/locations/> (accessed September 13, 2017). Community Probation Services did not have a working website at the time of writing.

The Scale of Private Probation in Tennessee

Tennessee gathers information on how many people private probation companies supervise every year, in part because the state oversight agency, the Private Probation Services Council (PPSC), charges probation agencies a licensing fee per probationer every quarter.⁶⁴ Based on PPSC’s records of its licensing revenue, Human Rights Watch was able to calculate the average number of people under private probation supervision every year, provided in the table below. Tennessee state statistics on criminal convictions do not differentiate between misdemeanors and felonies, but the total number of post-trial convictions and guilty pleas are provided in the third column as a reference.

Fiscal Year (July 1 – June 30)	Average # of private probationers	Total criminal cases (felony and misdemeanor) with guilty pleas or convictions ⁶⁵
FY 05-06	29,966	81,208
FY 06-07	30,749	86,607
FY 07-08	31,565	87,236
FY 08-09	29,651	86,237
FY 09-10	34,432	84,332
FY 10-11	34,572	87,904
FY 11-12	33,096	89,274
FY 12-13	32,661	86,053
FY 13-14	31,787	81,130
FY 14-15	31,515	78,447

⁶⁴ The PPSC licensing fee was initially \$1 per probationer per quarter, but was reduced to \$0.75 per probationer per quarter in calendar year 2016.

⁶⁵ Annual Reports of the Tennessee Judiciary, <http://www.tsc.state.tn.us/media/statistical-reports> (accessed September 13, 2017). In litigation against Providence Community Corrections (PCC) in Rutherford County, Tennessee (*Rodriguez et. al. v. Providence Community Corrections, Inc. et. al.*, No. 3:2015-cv-01048 (M.D. Tenn. 2015), Document 1, Exhibit 3), billing documents show that Providence Community Corrections passed on the cost of quarterly fees to probationers.

II. The Heavy Burden of Private Probation

Probation is an alternative to incarceration, particularly for minor crimes and nonviolent offenses. Probation allows individuals to reduce their time in jail, stay in their homes, keep their jobs, retain custody of children, and continue their lives while under supervision.⁶⁶ The objectives of probation include ensuring that the individual does not offend again, has access to the necessary treatment and support for rehabilitation, and pays restitution to any victims of the crime.⁶⁷ Since it allows individuals to remain at liberty, probation can be particularly crucial to prevent financial ruin for individuals living in poverty.

However, when probation is accompanied by excessive costs and conditions, it can quickly become a destabilizing force, undermining the intended objectives.⁶⁸ Individuals with adequate financial resources to pay court costs, probation fees, and the costs of additional probation conditions will not face the same challenges as an individual living in poverty, who may not be able to comply with probation conditions, and thereafter face arrest, probation revocation hearings, incarceration, and the long-term professional and personal consequences of a longer criminal record.⁶⁹ Private probation, without adequate

⁶⁶ Probation is distinct from parole, which refers to early release from a prison sentence. A judge can impose probation and retains jurisdiction over the probationer for the period of supervision. Fiona Doherty, "Obey All Laws and Be Good: Probation and the Meaning of Recidivism," *The Georgetown Law Journal*, 2016, Vol. 104, p.292, <https://georgetownlawjournal.org/articles/26/obey-all-laws-be/pd> (accessed January 30, 2018).

⁶⁷ *Burns v. United States*, 287 U.S. 216, 220 (U.S. Dec. 5, 1932) ("The Federal Probation Act confers an authority commensurate with its object. It was designed to provide a period of grace in order to aid the rehabilitation of a penitent offender; to take advantage of an opportunity for reformation which actual service of the suspended sentence might make less probable."). *Roberts v. United States*, 320 U.S. 264, 272 (U.S. Nov. 22, 1943) ("In no way does it impair the [Probation] Act's usefulness as an instrument to accomplish the basic purpose of probation, namely to provide an individualized program offering a young or unhardened offender an opportunity to rehabilitate himself without institutional confinement under the tutelage of a probation official and under the continuing power of the court to impose institutional punishment for his original offense in the event that he abuse this opportunity."). See generally Howard Abadinsky, *Probation and Parole* (8th edition, Prentice Hall, 2003).

⁶⁸ For an analysis on how standard probation conditions contribute to overcriminalization, see Fiona Doherty, "Obey All Laws and Be Good: Probation and the Meaning of Recidivism," *The Georgetown Law Journal*.

⁶⁹ Alternatives exist that take into consideration an individual's resources. For example, several countries in Europe use a day fines system, which involves a calculation to determine applicable fines that takes into account the severity of the crime and the wealth/income of the defendant. For an analysis of European day fine systems, see Elena Kantorowicz-Reznichenko, "Day Fines: Reviving the Idea and Reversing the (Costly) Punitive Trend," January 2018, https://www.researchgate.net/publication/315790645_Day_Fines_Reviving_the_Idea_and_Reversing_the_Costly_Punitive_Trend (accessed August 30, 2017). Much has also been written about applying the day fines system in the United States, for example, Douglas C. McDonald (ed.), "Day Fines in American Courts: The Staten Island and Milwaukee Experiments," National Institute of Justice, Department of Justice, April 1992, <https://www.ncjrs.gov/pdffiles1/Digitization/136611NCJRS.pdf> (accessed August 30, 2017).

regulation and oversight, can push the poor into indebtedness and have escalating consequences, including criminal repercussions, for failure to pay and meet conditions — fostering conditions for recidivism.

Probation companies have no incentive to provide meaningful rehabilitative services for which they do not receive a fee, such as supporting probationers to find housing, employment, transportation, child care, or mental health services. Quarterly reports from PSI Probation in Giles County, Tennessee, state that company probation officers allocate only 30 minutes per active client per month.⁷⁰ Probationers interviewed for this report said they spent 15 minutes or less speaking with their probation officer, and did not receive any form of support or advice for their daily needs. In Dyer County, Tennessee, outreach from local religious missions to probation officers has resulted in partnership to provide basic services, like transportation, job search resources, drug treatment, and other community services, but none is provided by private probation directly.⁷¹

No Choice in the Matter

Criminal defendants often settle their cases through guilty pleas, which can include private probation supervision. Misdemeanor defendants rarely benefit from the full judicial process, with the vast majority of misdemeanor convictions being reached through plea agreements.⁷² Plea deals can be beneficial in some cases, saving both the defendant and court system time and resources. However, the pressure to accept a plea deal and the inability to negotiate specific terms, such as the cost and conditions associated with

⁷⁰ Records on file with Human Rights Watch.

⁷¹ Human Rights Watch interview with social worker at Union Mission, Dyersburg, Tennessee, November 16, 2016.

⁷² “There is a growing body of evidence that suggests that innocent people frequently plead guilty.... In the misdemeanor context, this pressure can be even more compelling because the punishment in the plea offer, frequently time served or probation, appears minimal, and the prospect of fighting the charge has not only the risk of more substantial punishment, but also tremendous inconvenience, including possible ongoing pretrial detention, missing additional days of work, and having to find alternate child care, among others,” National Association of Criminal Defense Lawyers, “Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Courts,” April 2009, [http://www.nacdl.org/public.nsf/defenseupdates/misdemeanor/\\$FILE/Report.pdf](http://www.nacdl.org/public.nsf/defenseupdates/misdemeanor/$FILE/Report.pdf) (accessed September 13, 2017). See also William Glaberson, “In Misdemeanor Cases, Long Waits for Elusive Trials,” *New York Times*, April 30, 2013 (asserting that “For years, trials have been vanishing in the lower criminal courts around the country, transforming them into plea-bargaining mills. That trend can upend basic legal concepts, creating such profound disincentives to fighting a case that the accused are effectively treated as if they are presumed guilty rather than innocent.”), <http://www.nytimes.com/2013/05/01/nyregion/justice-denied-for-misdemeanor-cases-trials-are-elusive.html?pagewanted=all&mcubz=0> (accessed September 13, 2017).

private probation, can lead to unjust outcomes.⁷³ In addition, when a defendant is pressured to accept a plea agreement, regardless of whether it includes an admission of guilt, it often creates a criminal record that has long lasting implications on employment, housing, and access to government services.

Prosecutors have a great deal of discretion in formulating and offering plea deals. In many misdemeanor courts processing large numbers of cases every day, prosecutors will offer “standard deals,” and in the four states researched, this typically includes probation when the offense carried the possibility of jail time.⁷⁴ In many of the counties in these four states, criminal defendants have only two options: supervision by a private probation company, with all the associated costs, or going to jail. If probation is part of the plea deal, the defendant must accept private supervision. This is often incorporated into contracts with private probation companies. For example, Cape Girardeau County in Missouri has a contract with Private Correctional Services, LLC (PCS) that states that the judicial district “shall utilize PCS as an exclusive provider for all above Probationary and Pre-Trial services and programs.”⁷⁵ While some counties may have contracts with multiple private probation agencies, like Pulaski County in Tennessee, which employs two private probation companies, defendants are still faced with the choice of supervision by a private company or incarceration.

Kentucky law requires courts to consider alternatives before assigning a person to private probation supervision, but lawyers practicing in Kentucky told Human Rights Watch that the standard practice was to put everyone on private probation, often through a plea

⁷³ Human Rights Watch observed numerous cases in which prosecutors offered and defendants accepted plea deals without assistance of counsel. In some cases, judges told defendants that they had the right to counsel and that the deal would still be valid if they wanted to consult a lawyer, but also warned of the cost of applying and fees for a public defender. For more on the chilling effect of up-front application or registration fees for public defenders, see Devon Porter, “Paying for Justice: The Human Cost of Public Defender Fees,” ACLU of Southern California, June 2017, <https://www.aclusocal.org/sites/default/files/pdfees-report.pdf> (accessed September 13, 2017). See also Human Rights Watch, “*Not in it for Justice*”: How California’s Pretrial Detention and Bail System Unfairly Punishes Poor People, April 2017, https://www.hrw.org/sites/default/files/report_pdf/usbailo417_web_o.pdf and *An Offer You Can’t Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty*, December 2013, https://www.hrw.org/sites/default/files/reports/us1213_ForUpload_o_o_o.pdf.

⁷⁴ Court observation and search of public records, where available, showed that supervised probation was almost always included in a sentence.

⁷⁵ Contract between the County of Cape Girardeau and Private Correctional Services, LLC, October 29, 2015.

deal.⁷⁶ Courtroom observation in Shelbyville, Kentucky confirmed this prosecutorial approach: in a marijuana possession case, the prosecutor informed the defendant of the minimum jail sentence and \$250 fine, and then offered probation in place of the sentence and fine, arguing that probation would likely cost her less than the \$250 fine. No one explained to the defendant, however, the various monetary and financial requirements of probation before she accepted the plea deal.⁷⁷ While prosecutors may think they are offering defendants the best deal, defendants themselves are in the best position to assess and weigh in the balance the time and resources required to successfully comply with probation terms, and the potentially severe consequences of violating those terms.⁷⁸

Many counties rely heavily on plea deals to settle misdemeanor cases. In Cape Girardeau County, Missouri, misdemeanor defendants pleaded guilty in 80 percent of cases, compared to the 1 percent who go to trial and 18 percent whose cases are dismissed in FY 2016.⁷⁹ The Missouri state average for misdemeanors settled by a guilty plea was 62 percent, compared to 1 percent by trial in FY 2016.⁸⁰ In Bay County, Florida, of the 6,467 county misdemeanor cases disposed of in calendar year 2015, 3,535 — or about 55 percent — are settled in a guilty plea before trial. Only 15 cases went to trial, with 10 reaching a final verdict by trial. The remainder were dismissed or a plea agreement was reached during trial before its conclusion.⁸¹ The Florida state average for county misdemeanors settled by plea agreement in the same time period was 57.3 percent, with nearly 30 percent of cases dismissed.⁸² Tennessee statistics do not differentiate between misdemeanor and felony cases, but for all Giles County criminal cases in FY 2015, 62 percent were resolved through guilty pleas, 33 percent were dismissed, and only two cases

⁷⁶ Human Rights Watch interview with defense attorney practicing in Kentucky's 19th Judicial District (June 19, 2017), and defense attorneys practicing in Kentucky's 53rd Judicial District (June 20 and 22, 2017).

⁷⁷ Human Rights Watch courtroom observation in Shelbyville, Kentucky (June 22, 2017). The American Bar Association recommends that courts not accept guilty pleas until defendants understand “any special circumstances affecting probation.” *ABA Standards for Criminal Justice, Pleas of Guilty*, (3rd edition, 1999) https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pleas_guilty.authcheckdam.pdf (accessed September 13, 2017).

⁷⁸ In court observations, Human Rights Watch observed judges informing clients of their fines and fees, but rarely explained the costs associated with probation. Judges would also not explain the consequences of failure to pay for probation or associated conditions, many of which are described in Section III: III. The Consequences of Not Paying.

⁷⁹ Missouri Judicial Report Supplement – Fiscal Year 2016, <https://www.courts.mo.gov/page.jsp?id=109606> (accessed September 13, 2017).

⁸⁰ *Ibid.*

⁸¹ Florida Trial Court Statistics, <http://trialstats.flcourts.org/> (accessed September 13, 2017).

⁸² *Ibid.*

went to trial.⁸³ The Tennessee state average for guilty pleas in county court criminal cases was 45.9 percent in FY 2015-2016.⁸⁴

The choice to accept a plea deal is influenced by multiple factors. Misdemeanor defendants, whether guilty or not, are in the difficult position of either risking trial, including all the associated costs and fees and the possibility of incarceration, or choosing release under court-imposed conditions. A trial and possible incarceration could also negatively affect employment, housing, and family obligations. Many individuals therefore elect to take a guilty plea and private probation supervision, yet often without complete information about the future financial burden that it carries.⁸⁵ Statistics on the number and rate of misdemeanor offenders supervised by private probation are not available. However, all the probationers interviewed for this report stated that to avoid a lengthy and expensive trial and/or serving the full sentence, they had no choice but to accept probation and its accompanying conditions and fees.

The financial choice between probation and incarceration becomes even starker in jurisdictions with “pay-to-stay” or jail boarding arrangements, whereby an inmate can be charged for time in jail. Jail boarding fees are permitted in Florida,⁸⁶ Kentucky,⁸⁷ Missouri,⁸⁸ and Tennessee,⁸⁹ with requirements varying on taking the individual’s ability to pay into consideration. In Cape Girardeau County, Missouri, the county court regularly charges \$22.50 for every night a defendant spends in jail. Giles County, Tennessee, charges both a \$25 jail fee and a \$25 jail building tax. Kentucky defendants are told that they can “sit up,” or substitute, certain court costs and fines with jail time at the rate of \$50/day, but must

⁸³ This includes guilty pleas as charged and for lesser charges. Annual Report of the Tennessee Judiciary, Fiscal Year 2015-2016, p. 311, http://www.tncourts.gov/sites/default/files/docs/annual_report_fy2016.pdf (accessed September 13, 2017).

⁸⁴ Ibid.

⁸⁵ Other researchers have reported similar findings. A 2015 study interviewed a probationer on his decision to accept supervision fees: “Bob agreed to this supervision fee as a part of release procedures from jail: ‘If they told me it was \$1000 a month [for supervision], I would have signed it just to get out of jail, not thinking about what I would do to offset these costs.’” Mitali Nagrecha and Mary Fainsod Katzenstein, with Estelle Davis, “When All Else Fails, Fining the Family: First Person Accounts of Criminal Justice Debt,” Center for Community Alternatives, January 2015, <http://communityalternatives.org/pdf/Criminal-Justice-Debt.pdf> (accessed September 13, 2017).

⁸⁶ Fla. Stat. §951.24(3)(c).

⁸⁷ Ky. Rev. Stat. Ann. § 441.265, Ky. Rev. Stat. Ann. § 534.045.

⁸⁸ Sentencing forms in various county courts include a line for jail boarding fees.

⁸⁹ L.B. Eisen, “Tennessee Inmates Must ‘Pay-to-Stay,’” August 28, 2013, <https://www.brennancenter.org/blog/tennessee-inmates-pay-stay> (accessed September 13, 2017).

also pay a jail boarding fee of \$20-\$30/day.⁹⁰ Kentucky also offers defendants concerned about losing their jobs the option to serve jail sentences on weekends, one or two days at a time, but they may have to pay extra for that option.⁹¹ Boarding fees can be assessed for pre-conviction jail time, and do not include the cost of purchasing basic toiletries, telephone calls, and other commissary expenses.⁹²

Defendants find themselves between a rock and hard place when “choosing” between a trial with numerous court fees and possible jail time with boarding fees, or taking a plea deal with private probation and other conditions attached. This creates steady demand for private probation companies.

Onerous Costs of Private Probation Supervision

The cost of private probation often has a profound impact on individuals struggling to make ends meet. In addition to monthly supervision fees, probation may include myriad other requirements, such as drug testing, courses, treatment, or community service, all of which carry additional fees and costs. Probation companies may also charge a variety of administrative fees for enrollment, reinstatement, records, and late or partial payment fees. These same fees can have wildly different impacts for people depending on their income. Those with lower incomes may give up basic needs, like food, housing, childcare, and medical care, in order to pay fees.⁹³

In the states researched for this report, private probation monthly supervision fees generally run between \$30 and \$60, varying by state, county, and individual. This fee is assessed by the private probation company and may not always appear in official court documents, but payment is generally a condition of probation. Private probation

⁹⁰ Human Rights Watch interview with Kentucky public defender, Owensboro, Kentucky, June 19, 2017.

⁹¹ In some cases, defendants were ordered to pay \$35/day to serve their jail sentence on weekends. Kentucky court records, on file with Human Rights Watch.

⁹² Human Rights Watch interview with local attorney, Shelbyville, Kentucky, June 22, 2017. Court documents from Missouri, on file with Human Rights Watch.

⁹³ See generally Beckett and Harris, “On cash and conviction: Monetary sanctions as misguided policy,” *American Society of Criminology*, p. 517 (arguing that “legal debt substantially reduces household income and compels people living on tight budgets to choose between food, medicine, rent, and child support,” and that “[e]ven ‘small’ payments of, for example, \$50 a month can consume a significant share of defendants’ monthly income”).

companies may also apply surcharges, like start-up and reinstatement fees, ranging anywhere from \$10-\$25. Individuals who are unable to pay the full amount of their court costs may be put on a payment plan, whose installments are paid alongside probation fees. In some states, private probation companies also collect court costs and restitution for the courts, in addition to fees owed directly to probation companies, and may have the discretion to apply payments to different requirements as they see fit.⁹⁴ In Tennessee and Florida, some private probation companies have ensured that offenders pay company supervision fees first, before fines and fees owed to the court.⁹⁵

Avoiding further criminal activity is a common condition of probation.⁹⁶ Probationers may be required to report any contact with the police to their probation officers, though in general only a new criminal charge would result in a probation violation.⁹⁷ In Kentucky a common condition of probation requires probationers to obtain a periodic criminal background check through the probation company. While state agencies could conduct these checks at no cost, private companies charge probationers for the service.⁹⁸ Kentucky Alternative Programs charges \$20 for hardcopies of criminal records, and CDS Monitoring charges \$35 for each background check.⁹⁹

In some states, the period of supervised probation may be shortened if the probationer pays off all fees, fine, and other costs. Conversely, if a person does not complete their payments within the probation period, judges may extend supervised probation until all debts are paid.¹⁰⁰ This means that the poorest defendants, who take the longest time to pay their court debts, will have the highest amount of supervision fees. Extending the period of time on probation also increases the likelihood that the individual will somehow

⁹⁴ Collection of court costs by private probation companies is statutorily prohibited in Kentucky, KY SCR 9.030. However, private probation collection of court costs is permitted in Florida and Tennessee, and different companies adopt different practices with regard to court costs. While the collection of court costs by private probation companies in Missouri is not prohibited by statute, defendants often pay court costs to the clerk or through online payment systems, such as those available at <https://www.courts.mo.gov/page.jsp?id=1886> (accessed January 30, 2018).

⁹⁵ Class Action Complaint against Providence Community Corrections, Inc., Rutherford County, Tennessee, and various other defendants. Filed 10/1/15. Florida court records, on file with Human Rights Watch.

⁹⁶ Fiona Doherty, "Obey All Laws and Be Good: Probation and the Meaning of Recidivism," *The Georgetown Law Journal*.

⁹⁷ A conviction may not always be required to violate probation.

⁹⁸ The Criminal Record Request Form from the Administrative Office of the Courts states that "Criminal Justice Agencies [sic] do receive a waiver of fees for requests that are for criminal justice purposes." Other entities are charged \$20 for records checks. See <https://courts.ky.gov/resources/legalforms/LegalForms/RU004.pdf> (accessed September 13, 2017).

⁹⁹ KAP and CDS Monitoring fee schedules obtained through open records requests, on file with Human Rights Watch.

¹⁰⁰ Court documents, on file with Human Rights Watch.

violate probation terms, which may result in further fees or additional criminal consequences. Those who can pay off their debts will benefit not only from less monitoring, and fewer risks of violating, but also from fewer probation fees.

Supervision in all the states researched may include random drug testing for which the probationer must pay, even when the individual was not charged with a crime involving drugs or alcohol. Drug tests can cost \$12 for simple urine analysis to between \$35 and \$85 for more complex tests such as independent laboratory testing to confirm positive results. According to probationers interviewed, private probation officers often conduct random drug tests themselves.

Missouri probationers supervised by Private Correctional Services told Human Rights Watch that after a positive result in a random drug test, private probation officers required them to enroll in an intensive drug testing program, in some cases also run by private companies. Probationers were required to call a hotline every morning to see if they were selected to be tested that day. Probationers reported being tested from several times a month to several times a week, incurring charges of approximately \$20-\$50 per test, depending on the testing facility.¹⁰¹

Courses and treatment programs are also common probation requirements. Private probation companies in Tennessee and Florida sometimes provide these courses themselves, but in all states researched for this report, they are responsible for monitoring successful completion of courses and treatment as an element of probation supervision. These programs may be critical tools for rehabilitation and preventing individuals from re-offending, but their steep cost means that only those who can afford them can benefit. For example, in Florida an individual's driver's license will likely be revoked after a first conviction for driving under the influence (DUI). In order to have the license reinstated, individuals are required to complete DUI school, which is often included as a condition of probation. In Bay County, DUI school costs \$284 for a first offense and \$430 for a second.¹⁰² Probationers may also be required to complete a Victim Impact Panel course,

¹⁰¹ An example of an intensive drug testing program is described in the St. Louis Drug Courts Policy Manual, p.23 <http://www.stlcitycircuitcourt.com/DrugCourt/Policy%20and%20Procedure%20Manual.pdf> (accessed September 13, 2017).

¹⁰² The Fourteenth Judicial Circuit DUI Program, <http://www.pcdui.com/dui.asp> (accessed September 13, 2017).

which costs \$49.99 in Bay County.¹⁰³ In Missouri, the comparable required course is Substance Abuse Traffic Offender Program (SATOP) for license reinstatement.¹⁰⁴ The SATOP assessment fee alone is \$375, followed by specialized services, like the basic education program for \$130 or the \$1500 intensive program. While these fees may be waived by the court, most probationers interviewed who had undertaken these programs paid the full cost. More intensive treatment may also be required, such as at residential treatment facilities, and it is the responsibility of the probationer to cover the costs, either out-of-pocket or through insurance. Regulations on when intensive treatment can be ordered are often lacking or not strongly enforced. In one case, a Missouri court ordered a probationer to find and complete inpatient alcohol treatment, though for 16 months he had been wearing a continuous alcohol monitor, which according to him had showed little alcohol consumed during that time. With no apparent alcohol abuse, inpatient facilities were reluctant to accept him, he said, making it nearly impossible to comply with the court order.¹⁰⁵ When a probationer cannot complete a course or treatment, a private probation officer is charged with issuing a violation of probation.

In domestic violence and other violent misdemeanor offenses, judges may require defendants to complete domestic violence or anger management courses, and private probation companies may provide these services directly. The commonly mandated batterers' intervention program may run for six months to a year, with costs ranging from \$500-\$1000, depending on the length set by the court.¹⁰⁶ These programs attempt to educate and prevent further domestic violence, with critical public safety implications. However, the steep costs associated with batterers' intervention and other domestic violence programs make them not universally accessible, excluding the poorest defendants.

The use of various kinds of electronic monitoring devices may also be required under probation. They may include location monitors that restrict a probationer's movement to specified locations like home and work; continuous alcohol monitors that track alcohol

¹⁰³ Victim Impact Panel USA, <http://www.victimimpactpanelusa.com/vip-faq.htm> (accessed September 13, 2017).

¹⁰⁴ Missouri Department of Mental Health, Substance Abuse Traffic Offender Program, <https://dmh.mo.gov/ada/satop/> (accessed September 13, 2017).

¹⁰⁵ Interview with Ben (not real name), March 14, 2017.

¹⁰⁶ DV Class, Domestic Violence and Batterer Intervention Classes Online, <http://www.dvclass.com/> (September 13, 2017). See also fee schedule of Tennessee Correctional Services in Memphis, Tennessee, on file with Human Rights Watch. TCS's fee schedule includes up to 50% reductions for public defender clients.

levels through sweat; and ignition interlock devices, which require breathing into a device periodically to start or keep a vehicle running. The costs of monitoring devices are among the most expensive requirements of probation, and their installation can be made a precondition to be released from jail or to drive a vehicle. They may be provided by private probation companies directly,¹⁰⁷ or through third-party service providers. These devices often require a one-time installation charge that can vary considerably depending on location, costing anywhere between \$50 and \$150, and in some cases may also require a comparable removal fee.¹⁰⁸ Monthly monitoring fees generally range from \$400-\$500.¹⁰⁹ Ignition interlock devices may also require monthly or bimonthly calibration, adding on another \$60-\$150 for every check.¹¹⁰

While states may have some restrictions on the use of monitoring devices, judges often have discretion on whether to require or extend the time period for use of these devices, increasing the associated costs. In the case of Ben, for example, he received a first-time DUI conviction, and a Missouri judge required two years of supervision with both an ignition interlock device and a continuous alcohol monitor, generally only required for a second or subsequent offense under Missouri law.¹¹¹ While the prosecutor initially requested that Ben wear the alcohol-monitoring device for 90 days, he has not been allowed to remove it since September 23, 2015, and continued to wear the ankle device as of August 2017.¹¹² As part of Ben's sentence, the judge required him to spend 10 days in jail, but the alcohol-monitoring device had to be installed prior to incarceration. This meant that Ben paid \$12 a day, or \$120 in total, for the use of the alcohol monitoring

¹⁰⁷ For example, see services provided by Court Probationary Services, Inc., <http://www.courtprobationaryservices.com/newsite/index.php/services-offered> (accessed September 13, 2017).

¹⁰⁸ See Kentucky Alternative Programs II, Inc. fee list, Appendix VII. For comparable services, see also SCRAM Systems, p. 4 ("The offender pays an initial installation fee ranging from \$50 to \$100."), <https://www.scramsystems.com/images/uploads/general/media-pdf/media-kits/scram-mediakit-camFAQ.pdf> (accessed September 13, 2017), and Smart Start ignition interlock systems, ("A general estimate will be between \$70 to \$150 for installing the device into your vehicle" and "There is a device removal fee that can range from \$50 to \$100."), <https://www.smartstartinc.com/blog/ignition-interlock-cost/> (accessed September 13, 2017).

¹⁰⁹ See Kentucky Alternative Programs II, Inc. fee list, Appendix VII.

¹¹⁰ Smart Start ignition interlock systems, ("Calibration services are regular check-ups of your device by your service center. These appointments are usually monthly. Calibrating the device can range from \$60 to \$150."), <https://www.smartstartinc.com/blog/ignition-interlock-cost/> (accessed September 13, 2017).

¹¹¹ RSMO §577.010.4.

¹¹² Human Rights Watch interview with Ben (not real name), Camdenton, Missouri, March 14, 2017, and docket records from Missouri Case.net, on file with Human Rights Watch. The names of certain probationers and their family members in this report have been changed to protect their privacy and avoid potential retaliation, unless they consented to being identified.

device while in county jail, where he should not have had access to alcohol.¹¹³ The judge also required Ben to submit to regular testing, participate in alcohol treatment programs, and pay boarding fees for his 10 days in jail. Ben estimates that he has paid over \$13,000 as of March 2017 for all the required conditions of his probation, apart from court costs, fines, and supervision fees. In January 2017, Ben was found to be in violation of the terms of his probation for consuming alcohol.¹¹⁴ His probation was reset for an additional two years, carrying all the same conditions as his initial probation, meaning that he may have to wear and pay for the continuous alcohol monitoring and ignition interlock devices for over three years.

Monitoring devices can serve an important purpose in preventing intoxication and driving under the influence, potentially saving lives. Yet the prohibitive costs of using them mean that the freedoms these devices afford are only available to those who can pay. Ben could afford to pay and therefore did not serve a full sentence in jail or lose the ability to drive his vehicle. Those who cannot afford these payments may have to find alternative transportation options, or serve their full jail sentences. In Ben’s case, a Class B misdemeanor in Missouri, a full sentence would have carried a maximum sentence of six months in jail.¹¹⁵

Even community service requirements, often included as a probation term, may carry costs. In some states, private supervision companies charge probationers a fee to arrange and supervise community service or provide “community service insurance.”¹¹⁶ Some states, such as Florida, offer the ability to substitute court costs with community service or work programs. However, these programs often do not cover all costs, like public defender’s and prosecutor’s fees, nor do they cover fees paid to private agencies, like probation supervision, drug testing, and courses or treatment. While regulations call for

¹¹³ According to sentencing documents available on the Missouri Courts website, Ben was required to “serve 10 days shock in the county jail and pay the board bill...beginning on Sunday September 27 at noon” and “wear a SCRAM bracelet to be installed by 5:00 p.m. on 9-23-15.” Court records provided by probationer, on file with Human Rights Watch.

¹¹⁴ In August 2016, Ben consumed wine while on a vacation, a violation of a probation condition requiring him to completely abstain from all alcohol during his two-year probation term.

¹¹⁵ Ben was charged with a class B misdemeanor and sentence to six months in jail, suspended to two years of supervised probation. RSMO §558.011.

¹¹⁶ For examples, see contract between Private Correctional Services and Cape Girardeau County, Missouri, and Kentucky Alternative Program’s court approved fee schedule.

disabilities to be accommodated under these programs, Human Rights Watch interviewed some probationers with disabilities who felt unable to fulfill the duties assigned to them.¹¹⁷ In other cases, court costs were so high that fulfilling them through community service alternatives would have interfered with the probationers' ability to maintain their jobs. In one case in Bollinger County, Missouri, a first-time misdemeanor offender who was unable to pay his court costs was authorized to substitute them with community service, but was ordered to complete 101 hours within 21 days.¹¹⁸ At over 30 hours of community service a week, combining community service with a job would be extremely difficult. An employer in Bowling Green, Missouri, described the demanding schedule of one of her employees who is currently under private probation supervision: child care, a full-time job, regular supervision visits, court mandated courses and treatment, community service hours, and if delinquent in payments or other conditions, court dates to address violations of probation. While some employers may be understanding, these demands on a probationer's time make it difficult to be a consistent employee and some struggle to keep their jobs, leading probationers to conclude that the system is structured to make them fail. A probationer in Missouri making \$8 an hour and struggling to make payments for private probation and drug testing said: "They're trying to make sure you go to jail."¹¹⁹ Another former probationer in Tennessee described the system:

I think that the system is set up for you to fail, because I do feel that way. I do. Once you get in there, it's like a never-ending cycle. It just keeps going. Once you get on probation, especially, it's one fee after another and if you can't pay then you go to jail, and then once you're in jail and then you get out, you have more court fees, and then more fees, and more, and more, and more. It never ends, and that's why some people would just rather go to jail and just deal with it that way.¹²⁰

¹¹⁷ Human Rights Watch interviews with probationers [names withheld], Bowling Green, Missouri, March 15, 2017. Human Rights Watch interview with Craig Merrill, Panama City Beach, Florida, January 12, 2017.

¹¹⁸ Order for Community Service, Bollinger County. Court records from Bollinger County Court, on file with Human Rights Watch.

¹¹⁹ Human Rights Watch interview with probationer [name withheld], St. Louis, Missouri, March 16, 2017.

¹²⁰ Human Rights Watch interview with Crystal Bradford, Pulaski, Tennessee, October 15, 2017.

What's the alternative?

Privatizing probation is not the only option available to local courts. If state level agencies are unable or unwilling to supervise misdemeanor and traffic offenders, other public agencies can take their place. Roughly half of Florida counties rely on their sheriff's offices or county probation offices for these services.¹²¹ Some counties in Kentucky rely on court clerks, county attorney's offices, or Probation and Parole, which generally handles felony cases, to supervise misdemeanor probation, often with lower supervision fees than private agencies.¹²²

Other Kentucky counties do not require any type of supervision for misdemeanor or traffic probation, and therefore do not require probationers to pay any type of supervision fees. A judge in Daviess County, for example, requires that probationers not get any more criminal charges or fail to make payments toward their court costs, but instead of requiring probation these terms are monitored through periodic court hearings.¹²³

Differences in the approach to probation supervision mean highly divergent outcomes for individuals facing similar charges in the same state or even county. Within Daviess County, for example, one judge does not use private probation, while another judge uses Kentucky Alternative Programs to supervise some probationers. Depending on what county a person is charged in, or which judge decides their case, the financial outcomes for the same crime can vary substantively based on whether they are sentenced to supervised or unsupervised probation.¹²⁴

¹²¹ Florida Association of Community Corrections (FACC), County Probation Directory, <http://www.facc-net.org/county-probation-directory> (accessed September 13, 2017).

¹²² Lincoln County, Kentucky, will be relying on the offices of the clerk and county attorney to supervise misdemeanor probationers, Abigail Whitehouse, "Lincoln District Court ends use of Kentucky Alternative Programs," *The Interior Journal*, February 24, 2017, <http://www.theinteriorjournal.com/2017/02/24/lincoln-district-court-ends-use-of-kentucky-alternative-programs/> (accessed September 13, 2017). Boyle County, Kentucky, says they will use Probation and Parole to supervise misdemeanor probationers, Ben Kleppinger, "Boyle County attorney explains why court is phasing out KAP," *Advocate-Messenger*, February 9, 2017, <http://www.amnews.com/2017/02/09/boyle-county-attorney-explains-why-court-is-phasing-out-kap/> (accessed September 13, 2017). Kentucky Probation and Parole told one reporter that their budget allows them to supervise a limited number of misdemeanor probationers in 18 counties, James McNair, "Inside Kentucky's Unregulated Private Probation Industry," January 20, 2016, <http://kycir.org/2016/01/20/inside-kentuckys-unregulated-private-probation-industry/> (accessed September 13, 2017).

¹²³ In courtroom observation, the judge also regularly probated or suspended fines, and occasionally waived court costs.

¹²⁴ A 2016 investigation found similar disparities in outcomes. James McNair, "Inside Kentucky's Unregulated Private Probation Industry," January 20, 2016, <http://kycir.org/2016/01/20/inside-kentuckys-unregulated-private-probation-industry/> (accessed September 13, 2017).

No Relief Available

Several probationers interviewed for this report said they survive on fixed incomes or disability payments that barely cover their basic expenses. Every month they were left with the difficult decision of either paying their monthly supervision fees or paying for rent, food, utilities, health care costs, and childcare. Many expressed fear of losing their homes, electricity, or custody of their children. In almost all cases, probationers said they had communicated these concerns to their probation officers, and while some were granted additional time to make payments, few said they were granted reductions or waivers of their supervision fees.

Judges or private probation companies can reduce or waive fees for indigent defendants, but in many states they are not required to do this and in practice reducing fees is uncommon.¹²⁵ Human Rights Watch observed courtroom proceedings in various counties in which judges would ask defendants how much they could afford to pay every month toward court costs, but usually set a mandatory minimum monthly payment for all defendants. While judges allowed defendants to pay court costs and restitution on payment plans, the total amount was not reduced to reflect their financial situation. Probation supervision fees were rarely, if ever, reduced or waived. When defendants expressed concern about being able to afford the monthly minimum payment for court costs, judges would suggest “sitting out” the sentence in jail instead.¹²⁶

Kentucky is the only state researched for this report that requires supervision fees be assessed on a sliding scale based on income.¹²⁷ Private probation companies in the state must also accept all pro bono cases referred to them by the courts, or provide a reason for rejecting a referral.¹²⁸ While it is difficult to assess how this rule is implemented across the

¹²⁵ See discussion in Section i: I. Background: Offender-Funded Criminal Justice Systems. Definitions of “indigency” differ, but one possible objective standard is based on Washington Supreme Court decision applying a court rule: “courts must find a person indigent if the person establishes that he or she receives assistance from a needs-based, means-tested assistance program, such as Social Security or food stamps,” or “if his or her household income falls below 125 percent of the federal poverty guideline.” *City of Richland/Kennewick v. Wakefield*, No. 92594-1. Similar recommendations have been made by the Supreme Court of Missouri’s Municipal Division Work Group in their March 1, 2016 report, <https://www.courts.mo.gov/file.jsp?id=98093> (accessed January 30, 2018).

¹²⁶ Court observation in Tennessee. Human Rights Watch interview with criminal defense attorney, Cape Girardeau, Missouri, March 20, 2017.

¹²⁷ KY SCR 9.020.

¹²⁸ *Ibid.*

state, an open records request disclosed the number of pro bono and sliding scale clients accepted by the biggest private probation company in Kentucky, Kentucky Alternative Programs II, Inc. (KAP). As of November 2017, KAP claimed to supervise over 4,000 individuals in 15 counties across the state.¹²⁹ In the April and May 2017 disclosures to courts, they reported having only eight pro bono clients and 172 sliding scale clients, representing less than 5 percent of their reported caseload.¹³⁰ KAP provides documentation to courts indicating that they use a sliding scale for individuals who earn below 200 percent of the federal poverty guidelines, and waive fees entirely for people at or below 100 percent of the federal poverty guidelines.¹³¹ While they do not report how many of their clients fall below that level, 22.7 percent of adults in Kentucky between the ages of 18 and 64 were below 125 percent of the poverty level.¹³² Statewide approximately 17.2 percent of adults were below 100 percent of the poverty level, yet only eight out of the thousands of individuals supervised by KAP were pro bono clients in May 2017. The significant gap indicates that many people are either unaware of the sliding scale requirements in the state or unsuccessful in requesting reduced fees.

While fee reductions are possible in Tennessee, significant barriers exist for individuals attempting to secure them. Almost all probationers interviewed by Human Rights Watch said they were not aware of any procedure to reduce or waive supervision fees. In other cases, probationers were dependent on private probation officers to approach the court for a fee reduction or waiver. If probationers try to approach the court directly, but do so after sentencing, few have access to counsel and therefore may not be aware of their legal rights and options.¹³³ In a Giles County, Tennessee, court, a probationer said that a judge told her that if she could not make minimum payments, she could discuss it with her

¹²⁹ This information is reported on the KAP website, <http://www.kyalternatives.com/other/default.htm> (accessed November 1, 2017). However, media reports indicate that KAP may supervise many more. One newspaper article quoted KAP Director of Operations Bobby Cummins saying that KAP supervises “14,000-15,000” in Jessamine County alone. Ben Kleppinger, “Two judicial districts ending private probation monitoring, but others keeping KAP” *The Advocate-Messenger*.

¹³⁰ Human Rights Watch and ACLU of Kentucky sent open records request to judges in every county in Kentucky regarding their use of private probation companies. Responses from counties using KAP included lists of pro bono and sliding scale clients. The lists were identical across counties, indicating the list represented all pro bono and sliding scale KAP clients in the state. Records are on file with Human Rights Watch.

¹³¹ *Ibid.*

¹³² “Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months,” U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates, <https://factfinder.census.gov/> (accessed September 13, 2017).

¹³³ Human Rights Watch interview with public defenders, Giles County, Tennessee (November 10, 2016), interview with criminal defense attorneys, Memphis, Tennessee (November 11 and 15, 2016).

probation officer, but many probationers in the same county said they had tried that approach without success in adjusting fees to an amount they could afford.¹³⁴ Lt. Joe Purvis of the Giles County sheriff's office has observed other cases where individuals have told a judge that they could not afford probation fees, saying, "We have local judges that will say things like, 'if you can afford to buy cigarettes, you can afford to pay your probation fees,' and it's kind of hard to argue with that...cigarettes are expensive, and if you can afford to buy marijuana, you can afford to pay your probation fees."¹³⁵ Private probation officers have a clear conflict of interest in considering requests for fee reductions: their salaries are funded from supervision fees.

Providence Community Corrections, Inc. (PCC), a private probation company that operated in Rutherford County, Tennessee, until 2016, had established procedures to allow probationers to request fee waivers and reductions, but that did not mean they were any easier to obtain. The company recognized that some probationers may not be able to afford their fees and provided a document to its clients on how to request reductions in fines and other costs.¹³⁶ Yet PCC required individuals to report and make payments for several months before they could be eligible for financial relief. Even then the process was unlikely to be successful. The company made it clear in its instructions to clients that "PCC will most likely deny your request to reduce costs and fines after assessment is completed."

The instructions suggested that clients file a motion with the court, which costs \$25, for reduction of their fines and fees. The instructions also state, "the Judge will ask you very personal questions about your finances." PCC closed its operations nationally in 2016 under scrutiny that followed a class action lawsuit, which alleged that the high cost of private probation – and flawed procedures to reduce fees – resulted in debtors being imprisoned.¹³⁷ The suit noted that clients were mostly unsuccessful in getting their fees reduced unless they had a lawyer's assistance, despite PCC advising its clients that they

¹³⁴ Human Rights Watch interviews with probationers, Giles County, Tennessee (February 14, 16, and 17, 2017).

¹³⁵ Human Rights Watch phone interview with Lt. Joe Purvis, June 6, 2017.

¹³⁶ Exhibit 4, Class Action Complaint against Providence Community Corrections, Inc., Rutherford County, Tennessee, and various other defendants. Filed 10/1/15.

¹³⁷ Civil Rights Corps, <http://www.civilrightscorps.org/justice-not-profit/> (accessed October 30, 2017). See also Michelle Willard, "Suit against Rutherford County, PCC will continue," *Daily News Journal*, March 22, 2016, <http://www.dnj.com/story/news/local/2016/03/22/suit-against-county-pcc-continue/82112016/> (accessed September 13, 2017).

would not need a lawyer to complete the process.¹³⁸ The class action suit was settled in September 2017, with PCC agreeing to pay \$14 million to individuals in Rutherford County harmed by their practices.¹³⁹

Crystal Bradford experienced the inflexible private probation system in Tennessee. Bradford resides in rural Tennessee with her five children and husband. She has an autoimmune disorder and experiences chronic pain, and as a result is on Social Security Disability Insurance, receiving a fixed income of \$524 per month. That barely covers the \$475 monthly rent payments for her family's cramped trailer. Her husband provided for the rest of their family's expenses. In 2016 Bradford was charged with shoplifting at Walmart when the person accompanying her stole a bottle of infant Motrin. When store security stopped them, Bradford told Human Rights Watch that an agent found a case of water on the bottom of the cart for which they had not paid.¹⁴⁰

Bradford said she explained she would have been happy to pay for the items; she was instead charged with two counts of theft. She pleaded guilty and was sentenced to 11 months and 29 days on probation, the maximum sentence allowed in Tennessee for a misdemeanor, under the supervision of a private company. She was initially required to report to her probation officer every week. Her minimum mandatory payments were \$25 a week toward her court costs and almost \$50 a month in probation supervision fees. The judge asked her in court if she could afford to pay these costs and fees and Bradford explained her situation, saying she may not be able to afford to make these payments. Instead of reducing her fees, the judge, according to Bradford, told her to try making payments for a while, and if she was unable to keep up with them, she could speak to her probation officer about it.¹⁴¹

¹³⁸ The lawsuit against PCC and Rutherford County, Tennessee, was settled in September 2017, with an agreement to pay class members \$14.3 million. "\$14.3 Million Settlement Will Compensate Victims of Illegal Private Probation Practices in Rutherford County, Tennessee," Civil Rights Corps, September 18, 2017, <http://www.civilrightscorps.org/s/9.18-Press-Release> (accessed January 31, 2018).

¹³⁹ As of October 2017, judicial approval for the settlement agreement was pending. For details of the settlement agreement, see Settlement Agreement and Release, <https://static1.squarespace.com/static/57fd58f937c581b957965f8e/t/59c10a50f14aa13d632fbc6b/1505823313546/190-1+Settlement+Agreement+and+Release.pdf> (accessed October 30, 2017).

¹⁴⁰ Human Rights Watch interview in with Crystal Bradford, Pulaski, Tennessee, February 17, 2017.

¹⁴¹ *Ibid.*

Bradford described the visits with her probation officer as someone who “seemed to be happy about someone being in trouble.” She said her probation officer was surprisingly upbeat, responding to Bradford’s concerns about keeping up with her payments by saying, “If you don’t have all of your fees paid by the end of the month or at the end of probation, then just let me know and we’ll just sign the arrest warrant.” Bradford said her probation officer “didn’t seem to care at all” about her but rather seemed focused on collecting money, repeatedly telling her that she would receive a violation if she did not pay her probation fees. When making regular payments became difficult, Bradford tried to speak with her probation officer, but she said that the officer was not concerned about her situation. No effort was made to help her successfully complete probation. Bradford was never able to get her costs reduced. Bradford describes the constant stress of that period, saying “I felt like I was really going lose everything. I was worried that I was going be in jail, and I was going lose my kids. That's all I could think about was, ‘I'm going be homeless, my kids are going be in foster care.’ I worried about this constantly. My hair was falling out. It was just stress, constantly. I stayed sick all the time.”¹⁴²

Though Bradford’s offense was not drug-related, she was also subjected to regular drug testing. She said that some of the medications she took for her autoimmune disorder caused her to falsely test positive for THC, the active substance in marijuana.¹⁴³ Bradford informed her probation officer of her health condition and the medications she was taking, but the officer ordered her to get supplemental drug testing on her hair, which carried an additional cost.¹⁴⁴

Bradford had to start selling her personal possessions, including her family’s washer and dryer, jewelry, her children’s toys, and electronics, to collect enough to pay her legal and probation costs. Given the tight budget her family lived on, the household was forced to sacrifice some of their daily needs. When Bradford was left with no other option and was concerned she might go to jail, her pastor and church congregation helped with the remainder of her payments. Bradford said: “Without the help of my church, I believe that I

¹⁴² Ibid.

¹⁴³ Linda Russo, “Cannabinoid Poisoning Workup,” Medscape, January 24, 2018, <http://emedicine.medscape.com/article/833828-workup> (accessed January 31, 2018).

¹⁴⁴ Bradford says that though her probation officer “made a big deal” of the positive test, with an attitude of expecting her clients to get in trouble, eventually, she was not deemed in violation of probation. Human Rights Watch interview with Crystal Bradford, Pulaski, Tennessee, February 17, 2017.

would have lost my home, my children, and really everything that I had, because I knew that I could not do this by myself, and my kids had no one else.”

After completing her payments, Bradford was placed on unsupervised probation. She no longer had to pay fees or take regular drug tests. Bradford has since completed probation and qualified for federal means-tested housing assistance. As of March 2017, she was looking for a larger home with enough space for her children, and hoping to take better care of herself after the toll that a year of stress, fear, and worry took on her.¹⁴⁵

Felony probation: a financial comparison

Felony probation is generally regulated more rigorously than misdemeanor probation, including controls for the fees imposed on probationers. In most states, private probation companies are only authorized to supervise in misdemeanor cases. Even in states like Tennessee, where private probation companies can supervise in certain categories of felonies, most felony offenders are supervised by the government probation and parole agency. Supervision fees in felony probation are not uncommon, though they are generally lower than in misdemeanor probation and are more likely to be waived by the court. Tennessee, for example, places a cap of \$45 for monthly supervision fees in felony cases, while also providing clear requirements for investigating the “financial and other circumstances” of probationers, ensuring that payments will “not exceed ten percent (10 percent) of the offender’s net income,” and waiving fees entirely in hardship cases.¹⁴⁶

In Missouri the cost of monthly supervision for any probation provided by the Board of Probation and Parole had been capped at \$60.¹⁴⁷ After studying the fees charged by other states, however, the Board set the standard rate at \$30 per month.¹⁴⁸ In contrast to private probation, this is a flat fee that includes the cost of services provided by probation officers and other Department of Corrections contractors, such as

¹⁴⁵ Ibid.

¹⁴⁶ Tenn. Code Ann. § 40-28-201.

¹⁴⁷ RSMO 217.690(3).

¹⁴⁸ Missouri Department of Corrections Intervention Fee FAQs, <http://doc.mo.gov/Documents/prob/InterventionFeeFAQ.pdf> (accessed September 13, 2017).

“substance abuse assessment and treatment, mental health assessment and treatment, electronic monitoring services, residential facilities services, employment placement services, and other offender community corrections or intervention services designated by the board to assist offenders to successfully complete probation.”¹⁴⁹ In contrast, misdemeanor probationers in Missouri supervised by private companies pay as much as \$50 a month in supervision fees, while other services carry an additional price tag.

While judges in Tennessee must assess a felony defendant’s ability to pay before assessing supervision fees,¹⁵⁰ the same is not required for private misdemeanor probation. One Tennessee judge told Human Rights Watch: “No judge would waive fees for private probation.”¹⁵¹ Other judges in Tennessee and Florida echoed this sentiment, saying that waiving companies’ fees would affect private probation companies’ revenues and hence their ability to operate.¹⁵² As a result, an indigent individual facing felony charges may have a better chance of having their probation supervision fees waived or lowered than a defendant charged with a misdemeanor.

¹⁴⁹ RSMO 217.690(3).

¹⁵⁰ Tenn. Code Ann. § 40-28-201.

¹⁵¹ Human Rights Watch interview with Tennessee criminal court judge, November 18, 2016.

¹⁵² See, for example, Lorelei Laird, “Private probation company pulls out of Georgia, saying it can no longer make a profit,” *ABA Journal*, April 17, 2017, http://www.abajournal.com/news/article/private_probation_company_pulls_out_of_georgia_saying_it_can_no_longer_make/.

III. The Consequences of Not Paying

When the cost of private probation supervision becomes too high, individuals are often forced to find ways to continue making payments under the threat of arrest and incarceration. Private probation companies operate on “user fees” as their primary or sole source of revenue and therefore have a strong incentive to employ all means available to collect those fees, such as requesting arrest warrants for failure to pay. The US Supreme Court has found that it is unconstitutional to incarcerate a person who is truly unable to pay fees, fines, and restitution.¹⁵³ In spite of this precedent, many courts and private probation companies still can and do use the threat of incarceration to coerce payment without giving any serious consideration to whether a person is able to pay. Courts in many jurisdictions also incarcerate people for failure to complete probation conditions when they genuinely cannot afford the indirect costs of complying with them, even though those costs can be as or more prohibitive than the fees levied directly from probationers. And beyond incarceration, people on probation face a slew of other serious repercussions when they cannot pay their probation fees and court costs.

Inability to pay fees and fines

Probationers find themselves unable to pay supervision fees and courts costs for several reasons. In some cases, payments are too high to begin with because of fixed incomes, minimum wage jobs, multiple dependents, etc. Others face changes in life circumstances, such as the loss of a job or medical expenses, which raise their expenses and force them to decide which debt to pay first. Probationers in most states reported that private probation officers provided a month or two of leniency if they could not make payments, though they were encouraged to pay some amount rather than nothing.

Many courts routinely make payment of court costs and private probation fees a condition of probation. Failure to pay is then grounds for the private probation officer to issue a violation of probation, considered a technical violation.¹⁵⁴ This differs from a violation that results from being charged with a new crime while on probation. The process of issuing a technical violation differs from state to state and county to county, but often the private

¹⁵³ *Bearden v. Georgia*, 461 U.S. 672.

¹⁵⁴ Generally, a technical violation is any violation that is not new criminal offense. For example, see, Fla. Stat. §948.06(1)(g).

probation officer provides a report to the judge stating the grounds for violation. The probation officer may also be able to recommend a course of action, such as continuing the probation, possibly with additional conditions, or revoking probation. In some states, including Tennessee and Florida, a violation of probation leads to an arrest warrant that local law enforcement serves on a probationer, while in others like Kentucky, a technical violation only results in a citation and summons to appear in court. A criminal defense lawyer in Cape Girardeau, Missouri, explained that when probation officers issue multiple technical violations for failure to pay it creates a record of poor performance for the probationer. If a more serious violation later arises – like a positive alcohol or drug test or traffic ticket – the probationer could face harsher consequences, including jail time.¹⁵⁵

When a probationer is behind on payments, whether to the probation company or to the court, a judge can require the individual to appear in court every month until all debts are paid. These court dates are in addition to private probation reporting.¹⁵⁶ This forces an individual to either pay their fees and costs, or appear in court to explain the reason for the delay. In the case of someone who does not have a car or valid driver's license, it can be challenging to appear monthly in court, in addition to attending regular probation supervision meetings. Numerous probationers interviewed said they did not always have time to leave their jobs to make these monthly appearances during the day, making it difficult to keep the job that would allow them to pay their debts to the court.¹⁵⁷ Moreover, if an individual fails to appear in court even once, the judge may charge the probationer with failure to appear, set a bond, and issue an arrest warrant.¹⁵⁸

Warrants lead to arrest and possibly to time spent in jail. Even when they do not result in an arrest, research has found that an outstanding warrant can adversely influence an individual's life. A 2009 study described how an outstanding warrant can transform

¹⁵⁵ Human Rights Watch interview with criminal defense lawyer, Cape Girardeau, Missouri, March 20, 2017. This issue was raised in Human Rights Watch interviews with defense lawyers in interviews in Kentucky, June 2017.

¹⁵⁶ Court records from Missouri and Kentucky, on file with Human Rights Watch.

¹⁵⁷ Human Rights Watch interview with probationer, Shelbyville, Kentucky, June 20, 2017. Human Rights Watch interview with probationer, Pulaski, Tennessee, February 14, 2017. Human Rights Watch interview with David (not real name), St. Louis, Missouri, March 15, 2017. Human Rights Watch interview with probationer, Panama City Beach, Florida, January 12, 2017.

¹⁵⁸ In Tennessee, Tenn. Code Ann. §39-16-609. In Missouri, RSMO §544.665. In Florida, Fla. Stat. §901.31. In Kentucky, Ky. Rev. Stat. Ann. § 431.015.

normally safe places, like the home or workplace, into spaces that present the constant threat of confrontation with law enforcement.¹⁵⁹

Similarly, a violation of probation, even for technical reasons, leads to a hearing in which the judge decides whether to revoke probation and impose the original sentence, usually incarceration.¹⁶⁰ Private probation officers often serve as witnesses during revocation hearings to testify to the probation violations.¹⁶¹ Some probationers fear what could happen if they appear before the court without adequate funds to make payments, and therefore fail to appear. This ultimately leads to further charges, arrests, criminal records, and more court costs, potentially extending the probation period.

Human Rights Watch finds that jailing people only for failure to pay fees and court costs was uncommon in the states we studied, as the threat of incarceration often forces probationers to find some way to pay such fees even when this means sacrificing basic needs. However, incarceration resulting from failure to comply with all conditions of probation due to inability to pay was more common. Many probationers said that they made extra efforts to comply with supervision fees, but were not able to keep up with or save enough for classes, background checks, or monitoring devices.

Most states impose limits on the length of misdemeanor probation, but some judges, following recommendation of private probation officers, have found ways of extending those periods. The most straightforward approach was using a violation of probation as a

¹⁵⁹ Alexes Harris, Heather Evans, and Katherine Beckett, "Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States," *American Journal of Sociology*, Vol. 115, No. 6 (May 2010), <http://faculty.washington.edu/kbeckett/articles/AJS.pdf> (accessed September 13, 2017) (citing a 2009 study by Alice Goffman, "On the Run: Wanted Black Men in Philadelphia Ghetto," *American Sociological Review* 74 (June)).

¹⁶⁰ Kentucky has implemented graduated sanctions for violations of felony probation, which some courts also apply to misdemeanor cases. Kentucky's full probation and parole violation matrix is available at <https://corrections.ky.gov/communityinfo/Policies%20and%20Procedures/Documents/CH27/27-15-03%20-%20graduated%20sanctions%20and%20discretionary%20detention.pdf> (accessed August 30, 2017). See also "Graduated Sanctions: Strategies for Responding to Violations of Probation Supervision," Chief Probation Officers of California, Vol. 1 Issue 4, spring 2014, ("This brief looks at the practices of county probation departments to balance the use of incarceration for technical violations of supervision with other intermediate methods of sanctioning non-compliant and negative behavior."), <http://www.cpoc.org/assets/Realignment/graduatedsanctions%20brief%205.pdf> (accessed August 30, 2017).

¹⁶¹ "Likewise, in private probation, a private company decides who comes to court for alleged probation violations. A company employee is then the chief witness to alleged violations and also tells the court whether to jail the probationer. This entire process is informed by the company's financial stakes." "Policing and Profit," 128 Harv. L. Rev. 1723.

reason to extend the term of probation.¹⁶² Other judges revoked and reinstated probation, essentially restarting the clock.¹⁶³

Raymond's case illustrates how casually some judges dole out extensions. Raymond (not real name), a 27-year-old in Giles County, Tennessee, waived his right to counsel and pleaded guilty to simple possession of marijuana and drug paraphernalia (a pipe used to smoke marijuana).¹⁶⁴ His sentence was suspended to 11 months and 29 days on probation with Community Probation Services (CPS). A \$400 fine was also levied, alongside court costs and a fee, leaving him owing the court a total of \$1705. Raymond lives in neighboring Lawrence County, about 20 miles away, but the court would not allow him to transfer probation supervision to a location in his own county. Each time he reported, he attempted to pay at least \$25-50. On several occasions, however, he had been unable to travel to Giles to report and make payments.

Reporting to probation on a weekly basis interfered with Raymond's ability to hold a job. On one occasion, he reported to probation in the morning with the intent of returning home to work by 2 p.m. However, the private probation employee responsible for drug tests was delayed and Raymond was not able to leave until 4 p.m. He said he lost his job as a result. When he failed to report on other occasions, Raymond received his first violation of probation and a warrant for his arrest was issued. At his probation revocation hearing, the judge gave him a 30-day jail sentence, with probation to be reinstated upon his release and extended for 6 months, or until his costs were paid.¹⁶⁵ Raymond will have to serve the sentence, while still owing fees.

In two jurisdictions researched for this report – Dyer County, Tennessee, and Pike County, Missouri – any unpaid criminal justice debt at the end of a probationary period would not be enforced, but would stay on the books and become due if the individual was later convicted of a crime.¹⁶⁶ Defense attorneys said that in Dyer County, judges will request

¹⁶² Tennessee court records, on file with Human Rights Watch. Human Rights Watch phone interview with Lt. Joe Purvis, June 6, 2017.

¹⁶³ Tennessee court records, on file with Human Rights Watch.

¹⁶⁴ Court records from Giles County General Sessions Court, on file with Human Rights Watch.

¹⁶⁵ Ibid.

¹⁶⁶ Human Rights Watch interview with public defender, Dyersburg, Tennessee, November 16, 2016. Human Rights Watch interview with Allison (not real name), Bowling Green, Missouri, March 15, 2017.

extensions of probation if fees and fines are not paid in full by the end of the 11 months and 29 days allotted for misdemeanor probation, but if for some reason an extension is not granted before probation ends, the costs will lie dormant until a new charge arises.¹⁶⁷ In an interview in the Pike County courthouse, Allison explained that she had accepted a plea agreement including probation under Supervised Probation Services. She said she had been on private probation for a conviction in 2012, during which time a medical treatment prevented her from making probation payments.¹⁶⁸ During Allison's first meeting with her probation officer for the new charge, she was informed that she still owed approximately \$500 from the previous time she had been on probation, on top of the newest court costs and probation fees. Allison did not have a job at the time and was looking for housing, had recently completed drug rehabilitation, and was caring for a sick child. The judge had not reduced any of her court costs, and to the contrary, had imposed an additional \$100 payment to the Law Enforcement Restitution Fund, which supports law enforcement related expenses in the county.¹⁶⁹ Allison said she hoped to keep up with her payments if she is able to find a job, but that no one asked her at any point whether she could afford these costs.¹⁷⁰

In Kentucky, lawyers told Human Rights Watch that judges would use contempt proceedings to extend probation terms or order incarceration.¹⁷¹ While observing a courtroom in Kentucky, Human Rights Watch found that judges threatened contempt charges to compel people to comply with DUI school, appear in court, pay fees and fines, and make restitution to victims. In one case a judge initiated contempt proceedings when an individual failed to appear in court to provide evidence that he had completed his community service requirement even though he had less than one hour left to complete.¹⁷²

¹⁶⁷ Human Rights Watch interview with public defender, Dyersburg, Tennessee, November 16, 2016. Human Rights Watch interview with private defense attorney, Dyersburg, Tennessee, November 16, 2016.

¹⁶⁸ Human Rights Watch interview with Allison (not real name), Bowling Green, Missouri, March 15, 2017.

¹⁶⁹ RSMO 50.565. Allison's public defender had waived costs associated with his representation.

¹⁷⁰ Human Rights Watch interview with Allison (not real name), Bowling Green, Missouri, March 15, 2017.

¹⁷¹ Human Rights Watch interview with Xon Hostetter, Shelbyville, Kentucky, June 22, 2017. Human Rights Watch interview with local lawyer, Shelbyville, Kentucky, June 22, 2017.

¹⁷² Human Rights Watch observation in Hardin County, Kentucky, June 21, 2017.

A young man on probation in Cape Girardeau, Missouri, expressed how stressful and worrisome it was to be monitored for compliance with the numerous conditions placed by his probation terms:

It's frightening and draining, always worrying whether I have enough money, whether there'll be any more fees, whether I'll be able to pay my gas bill this month. And what happens if I don't have the money to pay them? How much longer will they draw this out? Could they throw me in jail? It starts to spiral to a point that you can't control.¹⁷³

Proxies for Failure to Pay

Conditions of probation often include requirements that probationers attend classes or treatment programs, and wear monitoring devices. All these cost money, which under private probation as well as many publicly-run models are almost invariably billed to the probationer. While the intent of these conditions is to provide rehabilitative services, they can impose onerous costs on probationers. When probationers cannot pay for and complete these court-mandated conditions, they may face technical violations and significant legal consequences for not complying, including incarceration. Violations for failure to complete probation conditions when a person is unable to pay for those services become proxies for failure to pay.

The US Supreme Court prohibits jailing defendants for failing to pay fines, fees, and restitution when they genuinely lack the means to do so.¹⁷⁴ Human Rights Watch finds numerous cases where individuals were incarcerated for inability to pay for a probation condition. As a result, indigent probationers may face incarceration when they cannot afford a drug test, a criminal background check, or DUI course. In its review of court documents, Human Rights Watch finds a common reason cited for a probation violation was failure to complete conditions of probation. In interviews and in court observation, probationers regularly cited inability to pay as the reason for not completing conditions.

¹⁷³ Human Rights Watch interview with probationer [name withheld], St. Louis, Missouri, March 16, 2017.

¹⁷⁴ *Bearden v. Georgia*.

Sarah’s story provides one striking example of how probation companies find ways to violate people for failure to pay by another name. Sarah is a 30-year-old single mother of three young children in Shelbyville, Kentucky. She was charged with theft when she was accused of stealing a phone that was inside a package UPS mistakenly delivered to her home.¹⁷⁵ Sarah was unemployed at the time, and her primary sources of income for herself and her family were monthly payments through Kentucky’s Temporary Assistance for Needy Families (TANF) of \$328, Supplemental Nutrition Assistance Program (SNAP, or food stamps) of \$771, and housing support. She also carried nearly \$700 in medical debt. After assessing her financial situation, the court declared her indigent and assigned a public defender.¹⁷⁶

Sarah ultimately pleaded guilty to a lesser misdemeanor offense and was sentenced to 12 months’ imprisonment, which was suspended to two years of probation with Kentucky Alternative Programs (KAP). The terms of her probation required her to report to a KAP office for supervision every quarter, to not pick up any new criminal charges, to pay for quarterly criminal background checks, and to “answer all reasonable” questions from her probation officer. She also had to pay her court costs, fines, and fees, which came to approximately \$150.¹⁷⁷

Despite her court-recognized indigent status and being the recipient of means-tested government benefits, the court did not assess whether she could afford the costs of probation supervision, and her fees were not lowered though she said she informed the court about her financial difficulties. Like many others facing unaffordable probation fees, Sarah may not have been aware that she could cite her poverty to demonstrate her inability to pay or request an ability to pay hearing, although the court was already aware of Sarah’s financial circumstances based on her application for a public defender.

At a minimum, supervision would cost Sarah \$35 every quarter, but with all the additional charges, including criminal background check costs, she said she would have to pay KAP up to \$65 per quarter. At that rate, Sarah would have to pay KAP \$520 during her probation

¹⁷⁵ Court records from Shelby County Court, on file with Human Rights Watch. Sarah (not real name) was arrested for the felony of “theft of property lost, mislaid, or delivered by mistake” because the phone was valued at \$649. Ky649. Rev. Stat. Ann. § 514.050(2).

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

term, more than three times the cost of the court's fees and fines. The court did not waive her supervision fees, and KAP did not include her in its list of sliding scale or pro bono clients. This meant Sarah had to choose between either paying KAP or paying other debts and expenses, such as medical bills and essentials for her children.¹⁷⁸

Sarah was not able to maintain her payments to KAP. In June 2017 she was brought before the court for not paying her probation fees. However, the official motion to revoke her probation states that she failed to obtain a criminal background check. There are no other reasons cited. Given that her only obstacle to obtaining a background check was money, the sole justification for her violation was that she failed to pay for a background check.¹⁷⁹ Though Kentucky law prohibits revocation of probation for inability to pay private probation fees, probation companies and courts have found a way around this rule by using proxies, such as failure to pay for probation conditions like background checks and drug tests, to threaten clients with incarceration.¹⁸⁰

In the same court in which Sarah's case was heard, Human Rights Watch observed a defendant appear before the judge for a payment review hearing. The defendant did not have the money to pay despite receiving several extensions. The judge did not conduct an ability to pay hearing, but rather told the defendant "it's pay or report," meaning the defendant could either pay the remaining costs or report to the detention facility that evening. In another case, a defendant was before the judge for not completing a hair drug test. The defendant informed the judge she could not afford the \$85 hair drug test. The judge did not respond to this point and simply told her that she would have about a month to complete the test, but did not carry out the required hearing to determine whether her failure to complete the drug test was due to a willful failure to pay.¹⁸¹ A local defense attorney confirmed that these types of exchanges were not uncommon. He added that when a person does not have money for a background check, a common condition of

¹⁷⁸ Human Rights Watch interview with Sarah (not real name), Shelbyville, Kentucky, June 22, 2017.

¹⁷⁹ Court records from Shelby County Court, on file with Human Rights Watch.

¹⁸⁰ See Kentucky Supreme Court Rule 9.030(E), "assure that no defendant's probation is revoked due to nonpayment of the fee charged by the agency unless...the court has held a hearing to determine why the fee has not been paid...inability to pay the fee does not constitute good cause, and probation shall not be revoked based solely on the defendant's inability to pay."

¹⁸¹ Human Rights Watch observation in Shelby County Court in Kentucky, June 22, 2017.

private probation in Kentucky, it may be considered a failure to report that can result in a violation of probation, which can add to a defendant's criminal record.¹⁸²

Jason's case highlights another reason many people fail to complete their probation — fearing the consequences of not fulfilling their extensive probation conditions because they do not have the money, they stop reporting for supervision altogether.¹⁸³ Jason is a 25-year old man who got a ticket for driving under the influence while on vacation in Panama City Beach. He accepted a plea deal that included 12 months of supervised probation by Florida Probation Service LLC (FPS), with a \$50 supervision fee each month, DUI school, a victim impact panel, 10 days of vehicle immobilization, 6 months with an ignition interlock device, and random urine and breath tests.¹⁸⁴ He also owed \$1550 in court costs and fines, and applied to the Bay County Work Program to work off those costs. Jason reported regularly to FPS for several months and made monthly supervision payments. But Jason was having trouble saving enough to also pay for the DUI school (\$430), Victim Impact Panel (\$50), vehicle immobilization (\$100), and other fees. Jason, who had recently moved to Panama City Beach to be closer to his girlfriend, lost his job a few months after starting probation. Fearing the consequences of reporting to the probation office, where he was repeatedly admonished for not paying fees or registering for expensive courses, he stopped reporting entirely.

Jason violated his probation and the court issued a warrant for his arrest. His probation officer submitted a full list of Jason's violations, including failing to report, pay court costs, complete DUI school, or immobilize his vehicle. It also included failure to pay \$410 for supervision fees to FPS. During his hearing, Jason applied for indigent status as he was not employed at the time, and the court appointed a public defender. The judge revoked Jason's probation, and sentenced him to 120 days in jail. He missed the birth of his daughter while serving his sentence. Jason expressed concern about being identified, for fear of being put back in the system and how it might affect his young family. He hopes to return to his old job and ask for loans from family to pay off the remainder of his court costs.

¹⁸² Human Rights Watch interview with Xon Hostetter, Shelbyville, Kentucky, June 22, 2017.

¹⁸³ Human Rights Watch interview with Jason (not real name), Bay County, Florida, January 13, 2017.

¹⁸⁴ Probation order from court records from Bay County Court, on file with Human Rights Watch.

Several individuals interviewed for this report said this was a common problem faced by probationers, namely failing to report for probation supervision or court dates because they did not have the money, either for supervision fees or to comply with other conditions of probation.¹⁸⁵ In some parts of Florida, Human Rights Watch observed judges instructing probationers to report whether or not they had the money to pay fines and fees, so as to avoid a violation for failure to report. But in Kentucky and Missouri, Human Rights Watch interviewed probationers and lawyers, and some of them said that without payment in hand for supervision, background checks, or drug testing, a probationer would be considered a “non-report” by companies and could be a violation of their probation terms.¹⁸⁶

A Family Burden

Jason is not alone in asking family and friends to help cover the costs of legal costs. The vast majority of probationers interviewed for this report said they had to rely on family members for money, housing, transportation, and food. Courts were often filled with family members of probationers, as were the parking lots of probation offices, where they waited in cars for their loved ones to finish appointments.¹⁸⁷ The cost of private probation are not borne only by probationers, but also by family members and the larger communities. Money that would have gone toward housing, food, education, and transportation is

¹⁸⁵ Human Rights Watch interview with public defender, Dyersville, Tennessee, November 16, 2016. Human Rights Watch interview with private defense attorney, Memphis, Tennessee, November 15, 2016. Human Rights Watch interview with probationer [name withheld], Bay County Jail, Florida, January 13, 2017. Human Rights Watch interview with probationer [name withheld], St. Louis, Missouri, April 24, 2017. Human Rights Watch interview with probationer [name withheld], St. Louis, Missouri, March 16, 2017.

¹⁸⁶ Human Rights Watch interview with public defender Xon Hostetter, Shelbyville, Kentucky, June 22, 2017. Human Rights Watch phone interview with probationer [name withheld], St. Louis, Missouri, April 24, 2017.

¹⁸⁷ Two prior studies in different parts of the country found similar trends in individuals on probation or parole: a 2015 study found that 71% of interviewees relied on family for “financial survival.” Nagrecha and Fainsod Katzenstein, with Davis, “When All Else Fails, Fining the Family: First Person Accounts of Criminal Justice Debt,” Center for Community Alternatives. Another report looked at reliance on families after incarceration, finding that “Seven months out, 84 percent were living with family, 92 percent had received cash from their family, and 83 percent received food from their family. Also, 92 percent said they had someone in their family to help them find a place to live.” “Life after Prison: Tracking the Experience of Male Prisoners Returning to Chicago, Cleveland, and Houston,” Urban Institute Justice Policy Center, May 2010, <http://www.urban.org/sites/default/files/publication/28671/412100-Life-after-Prison-Tracking-the-Experiences-of-Male-Prisoners-Returning-to-Chicago-Cleveland-and-Houston.PDF> (accessed September 13, 2017). See also Saneta deVuonopowell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, “Who Pays? The True Cost of Incarceration on Families,” Ella Baker Center, Forward Together, Research Action Design, 2015, <http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf> (accessed January 30, 2018).

diverted to probation and court costs.¹⁸⁸ When there are consequences for failure to pay, the probationer's family, friends, and community can also suffer.

Scholars have described how debt exacerbates poverty by reducing household wealth. The impacts of criminal justice debt on families can be even more onerous: "Indeed, legal debt is particularly injurious: unlike consumer debt, it is not offset by the acquisition of goods or property, is not subject to relief through bankruptcy proceedings, and may trigger an arrest warrant, arrest, or incarceration."¹⁸⁹ Legal debt may limit a person's access to credit, employment, and housing.¹⁹⁰ The impact of court costs, probation fees, and other forms of legal debt not only radiate outward to families and communities, but also into future generations, entrenching patterns of inequality.

Robert is a young man who was a student at Southeast Missouri State University in 2015.¹⁹¹ He said he was joining a fraternity and was told to steal a \$40 t-shirt from a nearby mall as part of his initiation. He was caught, charged with petty theft and sentenced to 60 days in jail and a fine of \$1000, which was suspended to 10 days of jail time, known as "shock probation," and 2 years of probation with Private Correctional Services (PCS). He was also ordered to pay court costs of \$668.50, which included \$300 to the Cape County Law Enforcement Restitution Fund and daily jail boarding fees of \$22.50 for the 10 days served. The court ordered Robert to pay \$35 every month toward court costs while on probation. Robert said the judge never asked him about his financial situation, or how much he could afford to pay, though the judge was aware he was a student.¹⁹²

The conditions of Robert's probation required him to report on a monthly basis, paying \$50 each time for supervision fees. Despite not having a drug or alcohol related charge, his

¹⁸⁸ Beckett and Harris, "On cash and conviction: Monetary sanctions as misguided policy," *American Society of Criminology*, p. 523 (finding that "spouses pay financially for the misdeeds of others not only through the lost income, travel costs, and phone bills associated with confinement, but also through the collection of monetary sanctions from family income. Moreover, in our interviews, respondents regularly told us that they had to choose between financially supporting their children and making payments toward their legal debt.").

¹⁸⁹ Harris, Evans, and Beckett, "Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States," *American Journal of Sociology*.

¹⁹⁰ Beckett and Harris, "On cash and conviction: Monetary sanctions as misguided policy," *American Society of Criminology*, p. 511.

¹⁹¹ Human Rights Watch phone interview with Robert (not real name), March 24, 2017.

¹⁹² *Ibid.*

probation also required him to not use or possess any drugs, to stay away from people using or possessing illegal drugs, and to be subject to random blood, breath, and urine tests.¹⁹³ Multiple probation officers told Robert, like many others on PCS probation in Cape Girardeau, that after 12 months of compliance and payments, he could be placed on unsupervised probation which would save him the cost of supervision fees. After 12 months of successful compliance with all his probation conditions and payments, he returned to the probation office to sign paperwork to transition to unsupervised probation. During that visit, he said he was asked to provide a urine sample. He tested positive for marijuana, and a probation violation and revocation hearing notice were issued.¹⁹⁴

At the probation revocation hearing, the judge ordered Robert to serve an additional two days of “shock probation” in jail, pay \$45 jail boarding fees, and participate in a random drug screen program for 120 days.¹⁹⁵ In the random drug screen program, Robert would be required to call a testing center every morning to see if he had been randomly selected for testing. If he were, he would have to report to the testing center within a certain number of hours and pay \$20 for a drug test.

By this time, Robert had moved home to St. Louis to care for his 8-year-old sister and his mother, who was suffering from mental illness and addiction that had worsened while he was away. He was also supporting his family by paying for a lease on their home. He said he did not have a car to go to the testing center nor enough money to pay for tests. When he failed to report, an arrest warrant was issued and he was jailed. Concerned about his mother and sister’s welfare if he was not present to care for them, Robert scraped together \$3000 from friends and family to pay for his bail.¹⁹⁶

Robert said his life has been ruined by probation. “I can’t really live life,” he said, “looking over my [shoulder] every second of the way, can’t really hold a job down...it’s just been really killing me.” At the time of the interview, Robert had a violation of probation hearing scheduled for the following week, but he felt trapped by his options. If he went to court, he risked further jail time and separation from his family, but if he failed to appear he could lose

¹⁹³ Docket records from Cape Girardeau County Court, on file with Human Rights Watch.

¹⁹⁴ Human Rights Watch phone interview with Robert (not real name), March 24, 2017.

¹⁹⁵ Docket records from Cape Girardeau County Court, on file with Human Rights Watch.

¹⁹⁶ Human Rights Watch phone interview with Robert (not real name), March 24, 2017.

his family and friends' \$3000.¹⁹⁷ Court records show that Robert ultimately did not appear for his hearing, forfeited his bond, and had an outstanding warrant for arrest.¹⁹⁸ Robert's probation was revoked, and as of September 2017 he was serving a 60-day jail sentence.¹⁹⁹

Invasive and Duplicative

In interviews with probationers supervised by private companies, Human Rights Watch finds a common issue that arose was court mandated drug testing and its associated costs. A common condition of both private and public-run probation in Florida, Tennessee, and Missouri, random property searches, and urine, blood, and breath tests are required even if the probationer's offense was not alcohol or drug-related.²⁰⁰ Most supervised probation, including by private companies, allow probation officers to administer these tests.²⁰¹ More intensive testing and monitoring are regularly mandated as probation conditions for alcohol and drug-related offenses. While monitoring and testing may serve a role in addressing addiction, without limits and oversight, they run the risk of becoming abusive practices, in the control of private probation officers.

Private probation officers regularly test probationers in their offices. Crystal Bradford described her experience with drug testing at Community Probation Services (CPS) office in Pulaski, Tennessee:

¹⁹⁷ Ibid.

¹⁹⁸ Docket records from Cape Girardeau County Court, on file with Human Rights Watch.

¹⁹⁹ Ibid.

²⁰⁰ The US Supreme Court defers to states to design search and testing protocols to meet their criminal justice objectives. The Supreme Court has found that searches of probationers by legal enforcement officers, not just probation or parole officers, can be Constitutional if state regulation allows for such searches. For a more detailed discussion, see Devallis Rutledge, "Parole and Probation Searches," *Police Magazine*, September 1, 2006, <http://www.policemag.com/channel/patrol/articles/2006/09/point-of-law.aspx> (accessed September 13, 2017). For further discussion of 4th amendment search exceptions for probationers and parolees, see Taylor S. Rothman, "Fourth Amendment Rights of Probationers: The Lack of Explicit Probation Conditions and Warrantless Searches," *University of Chicago Legal Forum*, Vol. 2016, Article 22.

²⁰¹ For discussion of random drug testing under probation, see Rolando V. del Carmen and Jonathan R. Sorensen, "Legal issues in drug testing probation and parole clients and employees," US Department of Justice, National Institute of Corrections, ("Probation and parole agencies may require clients to submit their urine for drug testing without violating the constitutional rights of probationers and parolees.... [N]o constitutional challenge to drug testing probationers and parolees has prevailed. This is because convicted offenders enjoy diminished constitutional rights, and whatever constitutional rights remain are balanced against the rehabilitation of the individual and/or the protection of society. While it is best if the drug testing requirement is imposed by the court or parole board, decided cases suggest that drug tests may be required by the agency or the probation or parole officer even if no such condition has been imposed, as long as such is reasonably related to the rehabilitation of the offender or the protection of society. Random testing of offenders has been upheld by the courts, and such programs may be implemented for those under a drug testing condition.") <https://www.ncjrs.gov/pdffiles1/Digitization/121383NCJRS.pdf> (accessed January 31, 2018).

They have a bathroom in there. They ask you to leave the door cracked and she stands outside the door. She doesn't really watch you. You leave the door cracked and she waits outside of the door and they use a big cup. You bring it out to her when you're done and set it on the table, and she puts her gloves on and she puts this square thing in it that.... I guess it screens for different drugs, I don't know.... She pours it inside of another cup that has one of those sticks in it. She pours it in there and then it measures everything, or reads it. And she writes her results down on a piece of paper and then lets me look at it and shows me what it said, and then pours it out and throws it away. We both can wash our hands and go back. That's how that goes.

Both public and private restrooms are used for drug testing. In St. Louis, Missouri, Human Rights Watch observed a Private Correctional Services (PCS) private probation officer meet with clients in the lobby of a courthouse, and conduct drug tests in the public bathroom, as described in David's story below. The probation officer was seen carrying urine samples from the public restroom through the lobby for testing.

Based on Human Rights Watch's interviews, some Missouri courts regularly mandate monitoring and testing at great cost to probationers.²⁰² Ben's story above of court mandated testing, alcohol treatment, an alcohol monitoring anklet, and an ignition interlock system on his car was one example of duplicative and punitive use of probation conditions.

David's story provides another example of the potential for abuse associated with drug testing as a condition of probation.²⁰³ David, a college junior who was born deaf and relies on reading lips, was picking up food for a late-night study session when a police officer in Cape Girardeau, Missouri pulled him over for speeding. The arresting officer suspected David was intoxicated and conducted sobriety tests at the site. The officer's statement says that David was "staring," that his "eyes appeared bloodshot and glassy and his

²⁰² In several rural jurisdictions, there were no local vendors for alcohol or location monitoring devices, and these conditions were not required by the court.

²⁰³ Human Rights Watch interview with David (not real name), St. Louis, Missouri, March 16, 2017. Court records from Cape Girardeau County Circuit Court, on file with Human Rights Watch.

speech was slurred.”²⁰⁴ While the arresting officer’s report states that David claimed to be under the influence of synthetic marijuana, the officer’s report did not include information on David’s hearing ability or that he was having difficulty reading the officer’s lips because of the flashing lights from the officer’s car.²⁰⁵ Recalling the advice of a family lawyer, David refused to take a breathalyzer test at the scene. His driver’s license was suspended.

The court deferred sentencing for David’s driving under the influence charge, instead placing David on SIS or “suspended imposition of sentence” probation, meaning the court would not make a finding during the probation period as long as there were no further violations.²⁰⁶ If an individual completes the SIS probationary period without issue, then the case can be closed without a conviction on record.

Private Correctional Services (PCS), a private probation company in Cape Girardeau, would supervise David for the two-year period, during which time he would have to stay out of trouble and comply with all the conditions of his probation: paying \$418 for court costs, avoiding all illegal drugs and alcohol, staying away from places where illegal drugs or alcohol might be sold or found, completing a substance abuse traffic offender program, doing 40 hours of community service, and not driving until he could reinstate his driver’s license. He would also have to follow all the orders of his probation officer, submit to periodic drug tests, pay monthly supervision fees of \$50, drug testing fees, and any other fees that PCS might assess.²⁰⁷

David returned to St. Louis to live with his family after graduating, but PCS would not allow him to report to a local agency or to report by phone or mail. Instead, a PCS probation officer would set up a reporting station in a St. Louis court once a month, during which all PCS probationers in St. Louis would have to appear. The probation officer would also conduct urine testing in a public restroom in the lobby of the courthouse.²⁰⁸

About eight months into his probation term, David was asked to provide a urine sample. His on-site screening test came out positive, so the probation officer sent the sample to a

²⁰⁴ Ibid.

²⁰⁵ Human Rights Watch interview with David (not real name), St. Louis, Missouri, March 15, 2017.

²⁰⁶ Missouri Trial Judges Criminal Benchbook, §31.2, “Suspended Imposition of Sentence (SIS).”

²⁰⁷ Court records from Cape Girardeau County Circuit Court, on file with Human Rights Watch.

²⁰⁸ Human Rights Watch interviewed multiple probationers on PCS’s reporting day St. Louis, Missouri, March 16, 2017.

laboratory for further testing. The private laboratory confirmed the presence of a metabolite of ethanol in David's urine, with a level of 718 ng/mL. While urine testing can confirm the presence of substances related to alcohol, they cannot identify how those chemicals entered the body. David, who at the time of testing was working at a fitness center, was exposed to large amounts of alcohol-based cleaning products, and used alcohol-based hygiene products, like mouthwash. The private laboratory used to test David's urine used a cutoff level of 100 ng/mL for the ethanol metabolite. PCS also alleged that David had attempted to dilute his urine because his creatinine level was found to be 19.8 mg/dL.²⁰⁹

These standards are not those used by other agencies within the criminal justice system in Missouri. A laboratory manager at the Missouri Department of Corrections Toxicology Laboratory, which conducts drug testing for felony probationers, parolees, and state inmates, stated that for testing the same alcohol metabolites, they use a cutoff of 1000 ng/mL, 10 times higher than the cutoff level used by the private probation laboratory. The reason for the higher cutoff level was that tests were otherwise picking up too many incidental exposures.²¹⁰ At the Department of Corrections' cutoff level, David's result of 718 ng/mL would not have been considered positive. Additionally, the state laboratory uses a cutoff of under 10 mg/dL of creatinine as a marker for potential dilution, instead of the under 20 mg/dL used by the private laboratory.²¹¹ David's creatinine result of 19.8 mg/dL would not have been considered a violation by state labs.

At a probation revocation hearing, David was found to have violated the terms of his probation due to the positive drug test, but his probation was not revoked nor was he given additional conditions.²¹² That same day of the hearing, David's probation officer told him to give another urine sample and this time found both alcohol and marijuana. Following the test, David's father took him to an independent laboratory to have him

²⁰⁹ Human Rights Watch interview with David (not real name), St. Louis, Missouri, March 15, 2017. David provided documentation of drug test results, on file with Human Rights Watch.

²¹⁰ Human Rights Watch phone interview with laboratory manager at Missouri Department of Corrections Toxicology Laboratory, May 22, 2017.

²¹¹ *Ibid.*

²¹² Court records from Cape Girardeau County Circuit Court, on file with Human Rights Watch.

tested again. The lab found him to be negative for marijuana.²¹³ Despite this, David's probation officer placed him on a random drug testing program, which requires David to call a testing center every day to see if he had been selected.²¹⁴ Each time he is selected for a test, he has to report to the testing site and pay for the test, ranging between \$15 and \$46, depending on the laboratory used.

As a result of the second positive drug test, David was again found to have violated his probation terms, and his SIS probation was converted to normal probation, meaning a conviction was entered on his record. The judge sentenced him to 60 days in jail and a \$500 fine, which was suspended to a new two-year probation sentence. For the violation, David was ordered to serve 4 days in jail, pay jail boarding fees of \$90, and be placed on a continuous alcohol monitoring device for 90 days, at the cost of \$91 every week. PCS installed and monitored the alcohol monitoring bracelet, and David was required to drive 2.5 hours to their office in Cape Girardeau each week to download information from the bracelet. To be able to drive, David also had to install an alcohol ignition interlock system on his car, an additional cost of over \$100/month.²¹⁵

Private probation was time-consuming and was taking a toll on David's professional life. He had to take time off work to report to his probation officer and appear in court for the multiple hearings to address the violations. He felt he had no choice but to resign from his job to avoid being fired.²¹⁶

After 90 days without incident on the alcohol monitoring bracelet, David requested he be released from the condition. His probation officer, however, wrote a note to the judge expressing reservations about David's ability to stay sober without the bracelet, and the judge denied the request. David was required to maintain, and pay for, the bracelet for an additional five months. During this time, he was also regularly getting tested through the

²¹³ Human Rights Watch interview David (not real name), St. Louis, Missouri, March 15, 2017. Probationer provided documentation of drug test results, on file with Human Rights Watch.

²¹⁴ Court records from Cape Girardeau County Circuit Court, on file with Human Rights Watch.

²¹⁵ Ibid.

²¹⁶ Ibid. Human Rights Watch interview with David (not real name), St. Louis, Missouri, March 15, 2017.

random drug testing program, which continued for a total of 18 months. Every test was negative, and he did not receive any violations from his alcohol monitoring device.²¹⁷

David estimates that his first and only DUI cost him and his family nearly \$10,000, not including transportation costs and lost wages. Though his family was able to support him financially, David suffered serious emotional and psychological stress through the process. As of October 2017, David had completed probation and has been working to rebuild his life and career.²¹⁸

In a class action lawsuit filed against Providence Community Corrections in Rutherford, Tennessee, one of the named plaintiffs, Steven Gibbs, also alleged false reports in drug testing.²¹⁹ In his case, when he explained to his probation officer that he was unable to afford payments, the officer threatened to order further drug tests if he did not bring additional money. The probation officer then told him he had tested positive for marijuana and threatened to revoke his probation. However, Gibbs knew he had not used marijuana, and even had a recent negative test result from his pain clinic. In order to be sure, he went to an independent clinic and was tested for a range of substances. All the results were negative.²²⁰ Gibbs described the attitude of his probation officer: “It's all about money. Money, money, money. If you got the money, you can go on and pay. That's fine. They won't bother you. But if you're on disability or if you ain't working or part-time work or whatever, I don't care, they're going to eat you alive.”²²¹ Despite his attempts to explain to the probation officer he could not afford his payments due to being on disability, the probation officer responded he would be “written up” if he did not make his payments.²²² The class action suit in which Gibbs was a named plaintiff was settled in September 2017, with PCC agreeing to pay \$14 million to individuals in Rutherford County harmed by their practices.²²³

²¹⁷ Court records from Cape Girardeau County Circuit Court, on file with Human Rights Watch. David provided documentation of drug test results, on file with Human Rights Watch.

²¹⁸ Human Rights Watch interview with David (not real name), St. Louis, Missouri, March 15, 2017.

²¹⁹ *Rodriguez et. al. v. Providence Community Corrections, Inc. et. al.*, No. 3:2015-cv-01048 (M.D. Tenn. 2015).

²²⁰ *Id.*, Document 1 at §40-41 and 126-28.

²²¹ Human Rights Watch interview with Steven Gibbs, Murfreesboro, Tennessee, October 16, 2017.

²²² *Ibid.*

²²³ As of October 2017, judicial approval for the settlement agreement was pending. For details of the settlement agreement, see Settlement Agreement and Release, <https://static1.squarespace.com/static/57fd58f937c581b957965f8e/t/59c10a50f14aa13d632fbc6b/1505823313546/190-1+Settlement+Agreement+and+Release.pdf> (accessed October 30, 2017).

Drug and alcohol testing can serve an important purpose, but when expensive and duplicative conditions are placed on probationers, they are more punitive than therapeutic. A number of individuals interviewed expressed the sentiment that private probation “set them up to fail,” and with constant monitoring and testing, this is much more likely to become the case.

Driver’s License Suspensions

Driver’s license suspension is another method increasingly employed to compel payment of criminal debt and compliance with other requirements, notably the payment of child support. Often these suspensions may be ordered even when the original charge was not vehicle-related. In many states, driver’s licenses can be suspended for failure to pay fines and fees, including fees associated with probation.

While states may be struggling to recover court costs and fines, suspending a person’s driver’s license can make it harder to get to work or find work, and more likely to default on payments.²²⁴ In parts of the country lacking adequate public transportation, not being able to drive may also interfere with childcare responsibilities, access to healthcare, and many other daily responsibilities. Many probationers interviewed faced charges for driving with a suspended license and were either forced to rely on rides from friends and family, use public transportation if available, or get behind the wheel and risk getting caught.

Florida law allows clerks to suspend licenses for failing to pay fines, court costs, or child support.²²⁵ A 2015 investigation found that failure to meet these financial obligations resulted in 77 percent of the total number of driver’s license suspensions in Florida between 2012 and 2015. It also found that approximately 29 percent of Miami-Dade County drivers had their license suspended, or nearly 550,000 people.²²⁶

²²⁴ Bannon, Nagrecha, and Diller, “Criminal Justice Debt: A Barrier to Reentry,” Brennan Center for Justice.

²²⁵ Fla. Stat. §322.245 (3-5) (Stating that “If a person charged with a violation of any of the criminal offenses enumerated in s. 318.170r with the commission of any offense constituting a misdemeanor under chapter 320 or this chapter fails to comply with all of the directives of the court within the time allotted by the court, the clerk of the traffic court shall mail to the person, at the address specified on the uniform traffic citation, a notice of such failure, notifying him or her that, if he or she does not comply with the directives of the court within 30 days after the date of the notice and pay a delinquency fee of up to \$25 to the clerk, his or her driver license will be suspended.”).

²²⁶ Rosalind Adams, “In Florida, failure to pay fees can result in suspended license – and then more fees,” *Miami Herald*, August 10, 2015, <http://www.miamiherald.com/news/local/community/miami-dade/article30665103.html> (accessed September 14, 2017).

Adam, a Florida resident, had first-hand experience of the spiraling consequences of a license suspension. Adam's license was suspended for unpaid parking tickets, but he needed to drive for his livelihood. In 2013 he was caught twice driving on a suspended license, and put on probation both times with Florida Probation Service LLC for 12 months. It was included in his "no contest" plea deal, which he said he had to accept if he wanted to avoid incarceration. Adam was represented by a public defender in some of his cases.²²⁷ The court-imposed costs were \$800 for his first offense and \$650 for his second offense.

Adam reported monthly to probation. His home was on the opposite side of the city from the probation office, about 25 miles each way, and without a valid license he was unable to drive there. His wife is disabled, and he was forced to ask for rides from friends and acquaintances.²²⁸ On one occasion, he had no choice but to bicycle the distance to the probation office and back. In addition to paying his probation fees of \$50 every month, a \$10 start-up fee, a \$25 partial payment fee, and \$15 for community service insurance, he also completed the traffic school requirement, at a cost of \$75.²²⁹ Adam told Human Rights Watch that he eventually paid between \$1160 and \$1360 toward private probation fees and conditions. Though he had a source of income and was trying to make steady payments, he said that he almost lost his home and job trying to keep up with the payments and the monthly check-ins.²³⁰

Near the end of his second probationary period, Adam was violated for failure to pay fines, court costs, and probation fees.²³¹ The affidavit filed by his probation officer stated that Adam had not made any payments toward his fine. He had already paid his probation officer \$630, but most of this amount, \$525, had been applied to fees going to the private

²²⁷ Human Rights Watch phone interview with Adam (not real name), January 12, 2017.

²²⁸ *Ibid.* Court records from Bay County Court, on file with Human Rights Watch.

²²⁹ Charges available at My Florida Training and Testing LLC, <http://web.archive.org/web/20140627122807/http://www.myfloridatrainingcenter.com:80/trafficdriver-education> (accessed January 31, 2018).

²³⁰ Human Rights Watch phone interview with Adam (not real name), January 12, 2017.

²³¹ The violation of probation affidavit also cited Adam's failure to complete 25 community service hours as a reason. He had actually completed the community service work, for which Florida Probation Service LLC had charged him a \$15 insurance fee, but the placement site had yet to confirm his hours. Court records from Bay County Court, on file with Human Rights Watch.

probation company. Only \$105 had been applied toward his court costs. The probation officer asked the court to issue a warrant for his arrest.²³²

Adam scrambled to find the money and did pay the remaining \$670 8 days after the 11-month deadline, but still within his 12-month probation period. For this he was charged an additional \$25 “criminal delinquent fee.” His wife wrote a personal letter to the judge asking that the arrest warrant against Adam be voided so he could spend the holidays with his family. Adam was, however, arrested for his failure to make timely payments and went before the court for violation of probation, where his probation was terminated.²³³

At the time of interviewing Adam, he had not yet been able to afford the \$300-\$400 he estimated it would cost to have his driver’s license reinstated, and was still relying on others to give him rides.²³⁴

In Tennessee a 2012 law allows the state to suspend driver’s licenses for failure to pay litigation taxes, court costs, and fines within a year of the final disposition of a case.²³⁵ As a result of this rule, over 146,000 people in the state lost their licenses between 2012 and 2016, and only 7 percent of those had been able to get their licenses back as of January 2017.²³⁶ Driving on a revoked license carries a maximum criminal penalty of six months in jail and a \$500 fine. In many cases observed in courtrooms in Tennessee, defendants charged with driving on a revoked license were placed on private probation, resulting in greater fees and costs.

Two Tennessee residents filed a class action suit in January 2017 challenging the law.²³⁷ It alleges that before a license is revoked there is no notice period and no process to

²³² Ibid.

²³³ Ibid.

²³⁴ Human Rights Watch phone interview with Adam (not real name), January 12, 2017.

²³⁵ TN Code § 40-24-105(b) (2016) (Stating that “[a] license issued under title 55 for any operator or chauffeur shall be revoked by the commissioner of safety if the licensee has not paid all litigation taxes, court costs, and fines assessed as a result of disposition of any offense under the criminal laws of this state within one (1) year of the date of disposition of the offense. The license shall remain revoked until such time as the person whose license has been revoked provides proof to the commissioner of safety that all litigation taxes, court costs, and fines have been paid.”).

²³⁶ Stacey Barchenger, “Lawsuit: Tennessee driver’s license law punishes the poor,” *Tennessean*, January 5, 2017, <http://www.tennessean.com/story/news/2017/01/05/lawsuit-tennessee-drivers-license-law-punishes-poor/96204462/> (accessed September 14, 2017).

²³⁷ *Thomas et. al. v Haslam et. al.*, No. 3:2017-cv-00005 (M.D. Tenn. 2017).

determine whether the individual willfully chose not pay costs and fines or was unable to do so. The complaint explained that one consequence of a license revocation for failure to pay court debt is being placed on private probation, which generates even greater financial obligations. This system “[f]or thousands of Tennessee’s poorest people...represents an endless cycle of poverty, debt, and jailing that makes it impossible to regain a driver’s license.” Finally, the plaintiffs allege that they are treated differently because they are indigent, and that those who have the resources to pay fines and court costs do not have to contend with the cycle of ever-increasing costs and consequences, including driver’s license revocations.

Jailed for Being Poor

Documented cases in which a court revoked probation and incarcerated a probationer simply because they were unable to pay supervision fees or court costs were rare to find in the four states researched for this report.²³⁸ However, Craig Merrill’s story illustrates how this practice, though rare, has not been abolished.

Merrill was living in Bay County, Florida, in 2013 when he was in a car accident. His vehicle rear-ended another vehicle and he was charged with a DUI and driving with a suspended license. Merrill denies he was driving the vehicle at the time of the accident and refused to submit to sobriety tests at the scene of the accident.²³⁹ At his hearing, Merrill applied for criminal indigent status, and the court found him indigent and appointed a public defender. The application cost him \$50 and a public defender fee of \$50 was also assessed.²⁴⁰ Merrill had hoped to challenge the charges for lack of evidence, but was informed that, while a jury trial was his right, there would be additional fees associated with empaneling a jury and proceeding with trial. At the time, Merrill was homeless and barely had enough money for food, so was concerned about the mounting legal costs and fees. He decided to drop the legal challenge and entered a plea of no contest.²⁴¹ In May 2013 he was sentenced to 120 days in jail, after which he was placed on supervised probation with Florida Probation Service for 12 months. In addition to his fines and court

²³⁸ However, numerous people interviewed for this report shared anecdotal evidence of this practice.

²³⁹ Court records from Bay County Court, on file with Human Rights Watch.

²⁴⁰ Ibid.

²⁴¹ Human Rights Watch interview with Craig Merrill, Panama City Beach, Florida, January 12, 2017.

fees of \$2688, he would have to pay the private probation company a start-up fee of \$10 and a monthly fee of \$50 for supervision, for a total of \$610. When Merrill submitted the first installment in his payment plan, he was assessed an additional \$25 “partial payment” administrative fee.²⁴² The total cost for his DUI was \$3,223.²⁴³ Merrill stated that despite reporting to probation regularly, his probation officer did not provide him support or services beyond collecting his payments.²⁴⁴

The court offered to allow Merrill to substitute most of his court costs and fines with 250 hours of work in the Bay County Work Program.²⁴⁵ He had been diagnosed with end-stage liver cirrhosis, however, and a doctor recommended he get on the transplant list. He was also in the process of applying for disability income payments through the Social Security Administration, which were granted in May 2014. Despite his health condition, Merrill said the Bay County Work Program did not make allowances and he was unable to avail himself of the work option to cover his court costs and fines.²⁴⁶

While Merrill attempted to pay what he could of the costs and fines, he was barely paying down his total legal debt. Documents provided by Merrill showed that he had paid Florida Probation Service a total of \$770 by July 2014. However, \$510 of his payments had been applied to private probation fees, with only \$135 going to his fine and \$100 to court costs. In July 2014, a few months before his probation period was set to expire, Merrill wrote the judge to request an extension due to his inability to pay his costs by the deadline due to his limited income and his doctor’s orders to avoid work (letter pictured on pages 74–75). He also made clear that he was in compliance with all other requirements of probation, including no new offenses, not drinking, and not missing any appointments to meet his probation officer. At the top of the letter is a note, presumably written by the judge, saying they “cannot extend” probation and a directive to “call [probation officer] and ask for warrant.”²⁴⁷

²⁴² Court records from Bay County Court, on file with Human Rights Watch.

²⁴³ Ibid.

²⁴⁴ Human Rights Watch interview with Craig Merrill, Panama City Beach, Florida, January 12, 2017.

²⁴⁵ Court records from Bay County Court, on file with Human Rights Watch.

²⁴⁶ Human Rights Watch interview with Craig Merrill, Panama City Beach, Florida, January 12, 2017.

²⁴⁷ Court records from Bay County Court, on file with Human Rights Watch. [letter pictured on pages 74–75]

FILED B-440CT

2014 JUL 22 A 7:47

BILL KINSAUL
CLERK OF COURT
BAY COUNTY, FLORIDA

cannot extend
call Clark Stewart
and ask for warrant.

Craig Merrill
1718 Monroe
Lynn Haven, FL

Judge Grammer
Bay County Courthouse
Panama City, FL

7-21-14
Called Clark
7/22/14
Omge

Sir,

I am writing you in regards to my probation conditions. They stipulate that I pay a fine of \$2488, in addition to court costs, attorney fees and probation fees. I have also an additional condition of vehicle immobilization.

I have been able to come up with probation fees etc. But I will not be able to come up with all of the fines by July 28. I have been unable to work as I have been very ill. I have end stage liver disease, and as such I am getting SSI disability. My monthly benefit is \$721. \$8550 a year which I started getting in May. Even while I was incarcerated the Dr told me not to work, + signed off as such.

I have enclosed a printout from the DMV stating that I do not own a car to immobilize, as well as my discharge papers from Bay Medical, and from SSI.

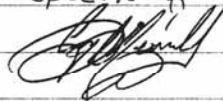
(13)

I have not had any missed appointments with Mr Stewart at the probation office, have had no interaction with Law Enforcement, and have not drunk at all since this incident.

I am asking for an extension of time if am allowed to pay those fine without being in violation. I have no family, friends or any resources to come up with that much money in the short time left.

I would greatly appreciate any consideration you could allow me.

Respectfully



2018 JUL 22 A 7 48
BILL KINSAIL
CLERK OF COURT
BAY COUNTY, FLORIDA

FILED

②

In August 2014, over a year after accepting a plea deal, the court issued an arrest warrant for Merrill for violating the terms of his probation, with a bond of \$4000. The warrant alleged that Merrill had not paid his fines, had failed to immobilize his vehicle for 10 days, and had not completed these requirements “one month prior to termination.” At the time, Merrill did not own a car to satisfy the immobilization requirement, and had only recently qualified for disability payments of \$721/month, before which he had no income.²⁴⁸

At his violation of probation hearing, Merrill was again granted criminal indigent status and appointed a public defender. He pleaded no contest and was sentenced to 60 days in jail. When he had been in jail earlier for the DUI charge, Merrill told Human Rights Watch that he contracted an antibiotic-resistant infection in his leg and was put in solitary confinement, and was therefore concerned about being incarcerated again, particularly in his advanced stage of liver disease. He sold some possessions and used his disability payments to pay the remainder of his fines and costs a few days prior to his hearing to his probation officer. Despite complying with the remaining conditions by paying the outstanding \$2193, Merrill’s jail sentence was not changed and he was again incarcerated.²⁴⁹

²⁴⁸ Ibid.

²⁴⁹ Ibid.

IV. Human Rights and US Law

International human rights norms

This report argues that the costs associated with private probation, as part of a larger “offender-funded” criminal justice system, discriminate against individuals with fewer resources and lower income. Many of these individuals are deemed needy or indigent, either by the court or other government agencies, and qualify for a public defender or government benefits on precisely that basis. However, there is often inadequate consideration of a person’s ability to pay before subjecting them to an array of consequences that cost money to comply with, including longer periods of supervision, additional fees and costs, revoked driver’s licenses, and incarceration.²⁵⁰

Under international law, governments are required to respect individuals’ right to adequate housing, food and other basic needs that are recognized as economic, social, and cultural rights. States are obligated to refrain from interfering with people’s ability to access and enjoy these rights.²⁵¹ The practical import of these rights here is to provide a useful practical framework for how courts should apply the requirements set forth by the US Supreme Court under the 1983 case *Bearden v. Georgia*. Specifically, courts should refrain from incarcerating offenders who are indigent for the sole reason that they are unable to pay fines, court costs, and probation fees, when doing so would impair their ability to feed, clothe, house, or provide healthcare for themselves and their dependents. Many states require courts to waive fines, probation fees, and other costs for offenders who are “indigent.” But this term is often left ambiguous and some courts and probation companies appear to interpret it as including only cases of absolute material deprivation.

Courts should reduce or waive probation fees and other costs where they would impose a significant impediment to an offender’s ability to fulfill basic needs that are recognized as

²⁵⁰ The American Convention on Human Rights specifically prohibits detaining anyone for debt, Article 7(7).

²⁵¹ A state is also required to work towards the progressive realization of these economic, social and cultural rights over time “to the maximum of its available resources” International Covenant on Economic, Social, and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc A/6316 (1966), 993 U.N.T.S. 3, entered into Force January 3, 1976, art. 2.1. The United States is not a party to the International Covenant on Economic, Social, and Cultural Rights, which elucidates these rights in the greatest detail. However, it does endorse the Universal Declaration of Human Rights, a foundational document of the United Nations that also states these basic rights, and which is commonly considered a statement of customary international law.

fundamental rights under international law. Probation fees and court costs are distinguishable from fines in this context because the financial costs involved are not penalties imposed to secure accountability for a crime, but ancillary costs that are simply intended to force criminal offenders to shoulder the public costs of operating a functioning court system or probation service.²⁵²

Similarly, Article 11 of the International Covenant on Civil and Political Rights prohibits imprisonment “merely on the ground of inability to fulfill a contractual obligation,” including failure to pay one’s debts.²⁵³ The strict applicability of Article 11 to the issues described in this report is debatable, since fines and probation fees flow from a criminal sanction, or a court’s order, rather than a civil contract. On the other hand, debt accrued in the form of probation fees is owed to private, for-profit companies rather than to the state. Offenders who are imprisoned for failure to pay are incarcerated for failure to pay both public and private debts, even if both are the result of a court order rather than a civil contract. Article 11 is therefore of clear relevance to these issues even if it is not directly binding. In any case, some national courts have read Article 11 as imposing requirements similar to those developed by the US Supreme Court in *Bearden* — namely, that debtors cannot be imprisoned for failure to pay unless the prosecution is able to meet its burden of proof at a fair trial that the individual’s failure to pay was willful rather than reflecting an inability to pay.²⁵⁴

Probation companies have an independent responsibility to ensure that they do not cause or contribute to human rights abuses.²⁵⁵ Company’s duties to respect human rights are laid out in the UN Guiding Principles on Business and Human Rights. Probation companies should identify the possible and actual human rights risks in their operations and conduct a human rights due diligence process to bring together findings and lay out steps to prevent or mitigate those risks. This process should include meaningful consultation with relevant

²⁵² For analogous reporting in the context of pretrial detention, see Human Rights Watch, United States—The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City, December 2010, <http://www.hrw.org/reports/2010/12/02/price-freedom-o>.

²⁵³ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 11.

²⁵⁴ See, for example, *McCann v. Judge of the Monaghan District Court and Others*, High Court of Ireland, 2006 4300P, Judgment, June 18, 2009, <http://www.bailii.org/ie/cases/IEHC/2009/H276.html> (accessed January 6, 2012).

²⁵⁵ OHCHR, “UN Guiding Principles on Business and Human Rights, Implementing the United Nations ‘Protect, Respect, and Remedy’ Framework,” 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed September 14, 2017).

stakeholders, including probationers. If a rights abuse did occur, then a probation company should ensure that effective remedy is available to victims and participate in remediation.

National law

The US Constitution establishes rights to due process and equal protection. Due process bars real or perceived conflicts of interest, particularly by officers of the court. Circuit courts in the US have found that probation officers serve as “arms of the court,” and therefore should be governed by the same rules regarding impartiality and neutrality that apply to judicial officials.²⁵⁶ But where a court’s probation service is a private company whose profits depend on their ability to collect money from offenders, asking it to determine whether an offender is able to pay the company’s own fees, to recommend consequences for non-compliance that generate profits for the company, or to use the threat of arrest or incarceration to induce payment present the perception of and potential for conflicts of interest.

In *Bearden v. Georgia* the court relied on the Fourteenth Amendment principles of equal protection and due process to find that probation could not be revoked and a person incarcerated purely for nonpayment of fines and restitution without first determining the reason for nonpayment.²⁵⁷ More specifically, the court must evaluate whether the nonpayment was willful or “if the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so.”²⁵⁸ Courts are encouraged to explore alternatives to incarceration. Applying the same logic as *Bearden*, courts should apply an ability to pay determination in cases where the sole reason for revoking probation is a technical violation, to assess whether it was driven by the probationer’s inability to pay, whether for supervision fees or conditions of probation, and explore alternative methods for achieving the same ends.

Some legal scholars argue that, “courts could root out discrimination by requiring hearings into indigence at different points in the process” and “require showing that an individual

²⁵⁶ See *US v. Johnson*, 935 F.2d 47 (4th Circuit); *US v. Woody*, 567 F.2d 1353 (5th Circuit); *US v. Jackson*, 886 F.2d 838 (7th Circuit); *US v. Gonzales*, 765 F.2d 1393 (9th Circuit). See also “Policing and Profit,” 128 Harv. L. Rev. 1723.

²⁵⁷ See also *Tate v. Short*, finding that courts cannot incarcerate indigent defendants solely for inability to pay legal debts.

²⁵⁸ *Bearden v. Georgia*.

is not indigent before imposing any new penalty or fee.”²⁵⁹ Instead of waiting until an individual fails to pay their costs and is before the court in a revocation hearing, the argument goes, justice would be better served by assessing how much an individual can actually pay at the time that the fees and costs are imposed.

Some US states already require an ability to pay determination at the time of assessing costs. The Washington Supreme Court has said that “[u]nder state law, [legal financial obligations] should be imposed only if an individual has a present or future ability to pay, and [legal financial obligations] may be remitted when paying them would impose a manifest hardship on a person.”²⁶⁰ In the decision, the court discussed expert testimony provided on “self-sufficiency” standards, or the minimum amount of money to afford necessities. “To be below this minimum means the inability to secure even the basic necessities with one’s own resources, and be forced to sacrifice one need for another, e.g., not eat in order to pay for heat, or be forced to rely on luck, on the uncertainty of the kindness of others.” The court offered two objective standards for assessing indigency: if a person has an income under 125% of the federal poverty guideline, or if he or she is eligible for means-tested assistance programs.

US law requires that no disability benefits paid through the Social Security Administration “shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.”²⁶¹ Federal and state courts have found that social security benefits cannot be used to pay legal costs, such as the cost of imprisonment,²⁶² restitution,²⁶³ or other legal financial obligations.²⁶⁴ The Supreme Court of Washington has said that this requirement does not apply only where social security benefits are directly garnished or attached, but rather that payment of legal financial obligations by a person who only receives social security disability payments falls under “other legal process” and are thereby also barred.²⁶⁵

²⁵⁹ “Policing and Profit,” 128 Harv. L. Rev. 1723.

²⁶⁰ *City of Richland/Kennewick v. Wakefield*, No. 92594-1.

²⁶¹ 42 USCS §407(a).

²⁶² *Bennett v. Arkansas*, 485 U.S. 395.

²⁶³ *In re Lampart*, 306 Mich. App. 226; *State v. Eaton*, 323 Mont. 287.

²⁶⁴ *City of Richland/Kennewick v. Wakefield*, No. 92594-1 (finding that “federal law prohibits courts from ordering defendants to pay [legal financial obligations] if the person’s only source of income is social security disability”).

²⁶⁵ *City of Richland/Kennewick v. Wakefield*, No. 92594-1 (finding that “These courts have rejected the view that the antiattachment provisions prohibit only direct attachment and garnishment, and have instead held that a court ordering LFO payments from a person who receives only social security disability payments is an “other legal process” by which to reach those protected funds.”).

Acknowledgments

This report was researched and written by Komala Ramachandra, senior researcher in the Business and Human Rights division at Human Rights Watch, with research support from Sara Darehshori, senior counsel in the US program at Human Rights Watch.

The report was reviewed and edited by Arvind Ganesan, business and human rights director; Chris Albin-Lackey, senior legal advisor; and Babatunde Olugboji, deputy program director. Additional review was provided by Alison Leal Parker, US program director; Amanda Klasing, senior researcher in the women's rights program; Carlos Rios-Espinosa, senior researcher in the disability rights program; and Bede Sheppard, deputy director, children's rights program. Additional research support was provided by interns Jason Horrell, Matthew McConnell, and Kevin Whitman. Amelia Neumayer, associate, business and human rights program, provided editorial and research support. The report was prepared for publication by Rebecca Rom-Frank, photo and publications coordinator, Jose Martinez, senior coordinator, and Fitzroy Hepkins, production manager.

Human Rights Watch is grateful to the many individuals and organizations that supported this research, including those who have generously supported our work on business and human rights. Human Rights Watch would like to thank William Sharp and Heather Gatnarek of the American Civil Liberties Union of Kentucky; Jonas Wang, Elizabeth Rossi, Alec Karakatsanis and the rest of the team at Civil Rights Corps; John and Jason DeFriese; Sara Zampierin of the Southern Poverty Law Center; Mitali Nagrecha and Chiraag Bains of the Harvard Law School Criminal Justice Policy Program; and the many public defenders, social justice lawyers, and experts in Florida, Missouri, Kentucky, and Tennessee who graciously shared their time and knowledge to assist with this research.

Most of all, we thank the probationers and the families who shared their stories with us.

2. PRE-SENTENCE INVESTIGATIONS.

PCS will prepare pre-sentence investigation reports as ordered by the Court, and will have present a probation officer in court to provide additional information as required. The format of the report will be similar to that previously utilized by the Missouri Division of Probation and Parole subject to modifications submitted by each Court. PCS shall be entitled to collect a fee of \$150.00 for the preparation of the pre-sentence report, which said fee shall be payable by the client and shall be paid prior to delivery of the report to the Court by PCS.

3. PROBATION SUPERVISION:

When assigned by the Court, PCS shall supervise and all felonies allowed by statutes, all misdemeanors, as well as any other cases assigned by the Court. All persons so assigned shall be required to meet the assigned officer in person unless excused by the assigning judge in writing. PCS will accept supervision for no fee or for a reduced fee for those defendants whom the Court finds to be indigent for the supervisory probation purposes or unable to pay the full probation supervision fee. PCS will have one basic monthly fee, which shall be \$50.00 per month for supervision and shall continue for the duration of the probation. Should statutes change during the contractual period allowing for additional permitted monthly compensation, PCS shall at their discretion be allowed to increase probation fees costs by \$5.00 every other year until the maximum allowed by statute is permitted. In the event that a fee increase shall be instituted, a minimum of 60 days notice shall be given to the judges of the Judicial Circuit establishing the date of the institution of the increase.

4. PRE-TRIAL SUPERVISION:

When assigned by the Court, PCS shall provide pre-trial release supervision. All persons placed on pre-trial supervision can be placed on either house arrest, SCRAM or any other form of supervision or combination deemed appropriate by the Court. The fees for electronic supervision will not exceed \$15.00 per day and are payable to PCS as their policy directs. Deposits to guarantee payment may be required. Any unused deposits at the end of the termination of the pre-trial services shall be returned by PCS within 10 days of the termination of said services. PCS will supervise the client and report any violations of the electronic supervision agreement to the appropriate Court within 24 hours of the occurrence of the violation. Correspondence regarding violations of electronic supervision can be done in the form of a letter, email, or phone call from the supervising officer to the Court.

5. REQUIRED SUPERVISION DUTIES INCLUDES:

- a. PCS will hold an initial personal contact with the client within six days of the notification by the Court of placement on supervision.
- b. After the initial personal contact, the officer will make a verifiable contact in person with the client unless excused in writing by the Court, at least once monthly during the entire probationary period unless otherwise ordered by the Court.
- c. PCS will verify that the Client is complying with all condition of probation in a timely manner.
- d. PCS will arrange for community service placement within thirty (30) days of placement on supervision. PCS will notify the sentencing Court within five (5) business days once the community service is complete.
- e. PCS will prepare timely detailed written violation reports and submit them to the sentencing Court within 10 business days of becoming aware of a violation and will have personnel available to testify at probation violation hearing upon notice from appropriate Court or Prosecuting Attorney's Office. In the event that the supervising officer has left the employ of PCS, PCS shall take all necessary steps to maintain contact with the withdrawing officer so that the supervising officer at the time of the violation may be properly subpoenaed to attend the violation hearing when set.
- f. On site drug testing will be conducted at PCS offices. In the event a urine sample is contested by the Client, the urine sample will be analyzed for all appropriate controlled substances at an approved laboratory. The cost of the testing will be assessed to the Client at the rate not to exceed \$25.00 per test unless forwarded to a toxicology laboratory. In the event the sample is sent to an approved laboratory, the cost of \$35.00 per substance tested will be assessed to the Client. Costs for onsite test and laboratory testing are in addition to any monthly fees and shall be collectable in the same manner as the monthly fees, and shall be due within thirty (30) days of the testing. Failure to pay the analysis fee by the Client shall be deemed a violation of the Client's probation. Additional random blood and breath testing will be performed at the requirement of the supervising officer or the sentencing Court.

Any costs associated with the tests shall be assessed to the Client and payable within thirty (30) days of the testing.

- g. PCS will organize and operate Random Drug Testing Program, which shall be available for either pre-trial release or probationary conditions. PCS will have one male and one female available from 6:00 a.m. until 10:00 a.m. to allow for supervised collection of specimens. The fee for this program will be reduced due to frequency of said testing. The fee shall not exceed \$20.00 for pre-trial participants and \$15.00 for probation participants.
- h. Chemical dependency evaluations will be arranged for offenders as needed or as ordered by the Court. The cost of the evaluations will be assessed to the Client. The cost of the evaluations shall be due within thirty (30) days of the evaluation or as may be required by the evaluating group. Failure to pay the evaluation fee by the Client shall be deemed a violation of the Client's probation. The appropriate releases will be retained and forwarded as required.
- i. PCS will arrange for enrollment in Court ordered programs, classes and meetings. Attendance in these programs will be verified by regular contacts. When the programs have been completed, the Court will be notified.
- j. Neither PCS, its agents or employees shall engage in or have any ownership interest in any other business, counseling, SATOP evaluations and follow-ups or other Court related services that would require payment of any fees or charges that would result from any referrals of persons who are being supervised by PCS or any other probation service. This shall not prevent PCS from being able to recoup its out of pocket expenses incurred from any training, treatment, classes, evaluations or other programming provided by PCS.
- k. PCS shall adjust its scheduling for hours to meet with clients on Saturdays and late afternoon if necessary to handle those clients with work conflicts.
- l. PCS will provide financial management services, anger management services, substance abuse education programs, as ordered by the Court or directed by the supervising officer at no charge to the Client. PCS shall be entitled to request the Court for reimbursement for out of pocket expenses incurred by PCS in the providing of these services.

- m. PCS will provide enhanced or intensive supervision to clients when deemed necessary or ordered by the Court.

6. SEPARATE COMMUNITY SERVICE ORDERS:

PCS will place and supervise defendants who are ordered to perform community service and who are not placed on supervised probation. The fee for this service is \$85.00 unless waived in whole or part by the Court.

7. VIOLATION REPORTS ON UNSUPERVISED PERSONS:

PCS will at the request of any judge of the 32nd Circuit prepare a probation violation report on any person who may be on unsupervised probation at the time of the request. The report shall be in the same form and style as those reports provided for person who are on supervision and who may have violated the terms of their probation. PCS shall be entitled to charge the unsupervised violator a fee of \$150 for the investigation and preparation of the report.

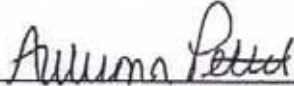
8. MISCELLANEOUS PROVISIONS:

1. This contract affords PCS no rights other than those specifically enumerated herein.
2. The contract is effective for a period of six years from the date of January 1, 2016 to December 31, 2021, however, this contract can be terminated for cause at any time upon written notice by the presiding judge of the JUDICIAL CIRCUIT.
3. PCS will conduct criminal histories on unsupervised Clients per the request of the Court. PCS will have 6 months to become MULES certified unless already completed. The MULES terminal, computer, printer and any cost associated with maintaining the terminal will be at PCS' expense other than the phone lines associated with the MULES terminal which said phone lines expense shall be paid by Cape Girardeau County upon receipt of billing from PCS.
4. In the event PCS should not be awarded the probation supervision contract in the future, PCS agrees to transfer all active cases to the awarded bidder. In addition, PCS will provide clients with address and phone number of the awarded bidder.
5. PCS will update the Court in the form of an email every month regarding classes, urine analyses, and any other business transpiring at PCS.

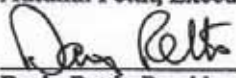
JUDICIAL CIRCUIT shall:

1. The JUDICIAL CIRCUIT shall require as a condition of probation payment by the defendants of the various fees for services listed above (subject to the reductions and waivers listed above).
2. The JUDICIAL CIRCUIT shall utilize PCS as an exclusive provider for all above Probationary and Pre-Trial services and programs.
3. The JUDICIAL CIRCUIT shall assist in the collection of any delinquent probation and other assessable fees set forth in this contract when requested by PCS. Any reasonable means may be employed by the Courts to seek compliance until all fees are current. Failure to pay said fees by the Probationer and Pre-Trial client shall be deemed a probation violation of the Probationer or a bond violation of the Pre-Trial client.

PRIVATE CORRECTIONAL SERVICES, LLC:

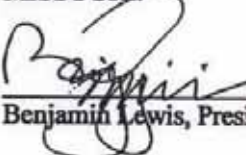


Autumn Pettit, Executive Director



Darin Pettit, President

THE THIRTY-SECOND JUDICIAL CIRCUIT OF
MISSOURI:



Benjamin Lewis, Presiding Judge

Agreement for Probation Supervision Services

This Agreement (this "Agreement") made and entered into this 16th day of March 2016, by and among GILES COUNTY, TN (Hereinafter referred to as "County Executive") and Community Probation Services, LLC (Hereinafter referred to as "CPS").

WITNESSETH:

WHEREAS, T.C.A. 40-35-302/303 provides for general probation supervision, court cost, monitoring, counseling and other probation services for persons convicted of certain misdemeanors; and

WHEREAS, CPS is qualified and experienced in providing comprehensive professional services regarding probation supervision, fine collections and counseling and other probation services for person convicted of certain misdemeanors; and

WHEREAS, the parties hereto deem it in their respective best interest and each will best be served by entering into said contract for the provision by CPS of such probation services as ordered by the court in TCA 40-35-302/303.

NOW, THEREFOR, in consideration of the premises and the mutual benefit and covenants provided under the terms and conditions of this agreement, the parties hereto agree as follows:

**ARTICLE 1
SCOPE OF SERVICES**

1.1. **Services and Programs for Misdemeanors Offenses.** CPS shall provide the services and programs for the misdemeanor offenders placed on probation by the Court which shall include the services set for in the Article II.

1.2. **Compliance with Legislative Enactment.** CPS shall comply with all applicable state laws (regarding probation standards and qualifications).

1.3. **Operation Conditions.** CPS shall operate under the conditions as specifically set forth in Exhibit A attached hereto and incorporated herein by this reference.

1.4. **Individual Files for Each Offender.** CPS shall maintain individual files for each offender participation in CPS. CPS shall maintain such files in a secured area, in a locked file cabinet or safe.

1.5. **Reports.** CPS shall provide timely and prompt reports as are, or may be reasonably required by TCA 40-30-302/303 during the period of this agreement including, without implied limitation, statistical reports, caseload data and other records documenting these types of program services provided and the identity of the offenders receiving such services.

1.6. **Counseling and Supervision.** CPS shall provide counseling and supervision services for any and all persons referred and/or ordered by the Court to participate in CPS programs during the period of this agreement.

1.7. **Charges to Offender.** CPS shall charge each offender participation in rehabilitation programs the reasonable cost of the program. No offender shall be charged any sum or sums in excess of the maximum allowed in TCA 40-35-302/303. 303.

1.8. **Billing of Offender.** CPS shall bill the offender for program services provided on such forms and in such manner to conform to acceptable business practice.

1.9. **Monthly Written Reports of Court Cost and Restitution.** CPS shall submit monthly written reports to the General Sessions Court Clerk on the amount of court cost and restitution ordered by the court and collected by CPS from the offender. The report shall include the total dollar amount applied to court cost and restitution to an offender's case(s).

1.10. **Tender Restitution.** CPS shall tender restitution ordered by the court and collected by CPS during the month from the offender to the victim (s) by the end of the last working day of each month.

1.11. **No Profit from Court Cost and Restitution.** CPS shall not attempt to profit from any fines, restitution or court cost collected from the offenders.

1.12. **Confidentiality of Records.** CPS shall comply with all laws regarding confidentiality of offender's records.

1.13. **Surety Bond of Letter Credit.** CPS shall furnish a surety bond or letter of credit to the amount of not less than twenty-five thousand dollars (\$25,000) as security for the satisfactory performance of this agreement.

ARTICLE 2 TERMS OF SERVICE

2.1. The term of this agreement shall begin immediately and shall not extend for any definite time period.

ARTICLE 3 TERMINATION

3.1. The County Executive or CPS may terminate this agreement, with or without cause, upon written notice, effective 90 days after/from the date of written notice.

ARTICLE 4 EFFECT OF TERMINATION

4.1. **Obligations Prior to Termination.** In the event of the termination of the agreement, with or without cause, by either party, such termination shall not effect or negate any obligations of each party to the other arising prior to the date of termination. Any termination of this agreement shall be without prejudice to any right or remedy to which termination party may be entitled wither by law, or in equity, or under this agreement.

4.2. **Obligation of CPS after Termination.** Upon termination of this agreement, all obligations of CPS pursuant to this agreement shall become the responsibility of the County.

4.3. **Possession of Premises and Equipment after Termination.** In the event of termination of this agreement, with or without cause, the Clerk/County Executive at its election and upon seven (7) working days prior written notice to CPS take possession of the premises and equipment assigned to CPS by the County Executive. In addition, CPS shall turn over all records and files of offenders which CPS has in its possession pursuant to this agreement. CPS agrees to surrender peacefully said premises, assigned equipment, records and files upon receiving an itemized receipt from the Clerk or County Executive for said items.

**ARTICLE 5
ACCESS TO BOOKS AND RECORDS**

5.1. **Access to Books and Records for Audit.** Upon ten (10) business days written notice CPS representatives of the county and the court clerk shall have access at all reasonable time to all Educational Consultants and CPS books, records, correspondence, and instructions, pertaining to work under this agreement, for the purpose of conduction and completed independent fiscal audit for any fiscal year or calendar year.

**ARTICLE 6
INSURANCE**

6.1. CPS hereby agrees that it shall, at its own expense, maintain in full force and effect during the term of this agreement or any renewal thereof, general liability insurance for bodily injury in amounts not less than one hundred thousand dollars (\$100,000) per each accident and five hundred thousand dollars (\$555,000) each occurrence.

**ARTICLE 7
IDEMNIFICATION AND HOLD HARMLESS**

7.1. With regard to the work to be performed by CPS the Court of the County, Giles County, TN, its representative divisions, departments, and/or county offices shall not be liable to CPS, nor anyone who claim a right resulting from any relationship with CPS for any act or omission of CPS, its employees, agents or participants in the performance of services conducted on the property of the County. In addition, CPS agrees to indemnify the Court and County, their employees, agents or participants with such, harmless from any and all claims, actions proceedings, expenses, damages, liabilities, or losses (including, by not limited to attorney's fees and court cost) arising out of or in connection with the services performed by CPS.

**ARTICLE 8
MISCELLANEOUS**

8.1. **Entire Agreement.** This agreement, contains all the promises, agreement, conditions, terms, understanding, warranties and representations of parties with respect to the matters set forth herein and therein, and there are not other promises, agreements, conditions, understandings, warranties or representations, oral or written express or implied, among them with respect to Employee other than as set forth herein and therein.

8.2. **Notices.** All notices, demands, consents, reports or other communications required under this agreement will be in writing and will be given to the parties at a permanent locations/address as CPS/Giles County shall specify in writing. Any such notice or other communication shall be hand

delivered, mailed by U.S. register or certified mail, return receipt requested, postage prepaid, deposited in a U.S. Post Office or a depository for the receipt of mail regularly maintained by the United States Postal Service, or sent by telex, tele-copier facsimile or other telecommunication device with receipt confirmed by the recipient of such notice or other communication. If hand delivered, notice shall be following the postmark date. If telecommunicated, notice shall be effective upon confirmation of receipt.

8.3. **Severability.** Nothing contained in the agreement will be construed to require the commission or omission of any act contrary to law. In the event there is any conflict between the provisions of this agreement and any statute, law, ordinance or regulation contrary to which the parties do not have the right to contract, the latter will prevail, but in such event, the provisions of this agreement thus affected will be curtailed and limited only to the extent necessary to conform with said requirement of law. In the event that any part, section, paragraph or clause of this agreement will be held to be indefinite, invalid or otherwise unenforceable, the entire agreement will not fail on account thereof, and the balance of the agreement will continue in full force and effect. The parties will use all reasonable efforts to substitute one or more valid, legal and enforceable provisions which, insofar as practicable, implement the purposes and intents of this agreement. To the extent permitted by law, each waives and provision of law which renders any provision of this agreement invalid, illegal or unenforceable in any respect.

8.4. **Governing Law.** This agreement and all amendments, modifications, authorization or supplements to this agreement and the rights, duties, obligations and liabilities of the parties under such documents will be determined in accordance with the applicable provision of the law of the State of Tennessee.

8.5. **Waiver.** No covenant, agreement, term or condition of this agreement to be performed or complied with by any party, nor any breach thereof will be waived, altered or modified except by a written instrument executed by the parties. No waiver of any breach will affect or alter this agreement, but each and every covenant, agreement, term and condition of this agreement will continue in full force and effect with the respect to any other existing or subsequent breach thereof.

8.6. **Binding Effect.** This agreement will be binding upon the parties, their personal and legal representatives, guardians, successors and assigns. This agreement will inure to the benefit of the parties, their personal and legal representative, guardians, successors and assigns.

8.7. **No Financial Obligation.** This agreement does not provide for any financial obligation for County to CPS.

8.8. **No Agency, Employment, Partnership or Joint Venture.** It is understood and agreed that no agency employment, partnership or joint venture is hereby created that no representations may be made by either party which would create a relationship or agency employment or partnership and that neither party has any authority to act on behalf of the other and create an obligation. The only relationship between the parties shall be that of independent contractors, and neither party shall be responsible for the act or omission of the other or any employee of the other.

8.9. **Incorporation of exhibits and Schedules.** All exhibits and schedules referred to in the agreement and attached hereto are hereby incorporated herein by this reference.

8.10. **Counterparts.** This agreement may be executed in any number of counterparts and by the parties hereto in separated counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts taken together constitute but one and the same instruments.

EXHIBIT "A"

Community Probation Services Basic Service Offerings

A. Services to the County:

1. Have probation staff present during sessions of court to perform intake on sentenced-misdemeanants.
2. Confer with the court staff on cases.
3. Confer with District Attorney's office on cases.
4. Confer with judges on cases.
5. Coordinate case scheduling with court staff.
6. Manage offender case limits, not to exceed 240 per probation officer, to provide attention to all court ordered terms.
7. Maintain appropriate record of those sentenced.
8. Prepare violation reports and submit to judges if required.
9. Prepare warrants when appropriate.
10. Coordinate scheduling for revocation hearings.
11. Provide testimony and supporting documentation at revocation hearings.
12. Collect fines, court cost, and restitution payments from probationers and make bi-monthly distribution of those monies payable.
13. Ensure accountability of all monies collected and distributed.
14. Employ professional probation personnel, 4 year degree or equivalent experience with a two year degree. Employed personnel must complete mandatory in-service training required by statute.
15. Provide for review, to authorized personnel, probation records within 48 hours' notice.
16. Perform periodic reviews of probation officers records to ensure case management in accordance to all ordered items.
17. Meet with Judges regularly to provide periodic services assessment and remedy problem areas within 30 days to court satisfaction.

B. Services to Probationer:

1. Set up and coordinate community service work and conduct periodic site visits.
2. Provide for regular contacts with probationers, either monthly, weekly and/or bi-monthly if needed to insure that they stay in compliance with the courts.
3. Provide counseling and/or referrals for treatment and education as ordered by the court.
4. Coordinate, monitor and report attendance in special treatment programs as ordered by the court.
5. Provide daily intensive probation supervision to include home confinement, drug testing, and breathe testing as needed.

C. Service to the Community:

1. Establish and maintain locations for community service work, including agencies of the City and County Governments.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed, sealed and delivered as of the day and year first above written.



County Executive of Giles County, Tennessee

3-16-16
Date



Community Probation Services (CPS)

3-16-16
Date

Appendix II: Examples of private probation fee schedules

Kentucky Alternative Programs II, Inc.
Lawrenceburg and Shelbyville Locations

2017-2018 Fee Schedule:

Supervision

\$15 - 25 Monthly Supervision Fee
\$35 Quarterly Supervision Fee
\$15 Community Service Insurance Fee
\$10 Enrollment Fee
\$25 Reinstatement Fee
\$5 Multiple Case Fee
\$10 Late Fee
\$20 for Hardcopy of Criminal Record (State Fee)

Drug Screens

\$27 Standard Test (Lab Analyzed)
\$15 On Site Test
\$30 ETG Only
\$40 ETG & Standard Test
\$20 Suboxone Only
\$60 Synthetic THC
\$80 Designer Drugs (Bath Salts)
\$50 Kratom
\$65 5-Panel Hair Test
\$84 5-Panel Hair Test with Extended Opiates
\$50 Neurontin

Technology

\$15.00 per day and \$100 hook up fee (Alcohol Bracelet)
\$10.00 per day and \$75-\$100 hook up fee (GPS Bracelet)

Supervision Regular Probation Fee:	\$45.00 a month
Pre-Trial Diversion Fee:	\$30.00 a month
Private Probation Council Fee	\$1.00 every quarter
Drug Screen Fee:	\$35.00 (every six months)
Confirmation on Drug - Screen when sent to Lab:	\$35.00
Missed Appointment Fee	\$35.00 (allowed one free every six months & used only at officers discretion for chronic offenders)
Re-Scheduling Fee	\$15.00 (allowed one free every six months & used only at officers discretion for chronic offenders)
Pre-Sentence Report:	\$75.00 (One time fee)
Pre-Trial Diversion Reports:	\$75.00 (One time fee)
DUI School	\$100.00 (One time fee)
Community Service- Referral Fee: Not on probation:	\$35.00 (One time fee for each placement)
Community Service-: On probation	\$25.00 (One time fee for each placement)
Alcohol Drug Assessment:	\$50.00 (One time fee)
Driving School:	\$35.00 (One time fee)
Bond Supervision	\$45.00 Month
Electronic Monitoring	\$10.00 Day
Check Writing Class	\$35.00 (One time fee)
Interlock	(Undetermined at this time as program is not active as of date of application)

Appendix III: Examples of court costs and jail fees

Criminal Fees Summary Page 1

Close More Options

General Audit

Display only fee sources with fees

Defendant: [Redacted]

- Charge: 6/27/2016 - SIMPLE POSS/CASUAL EXCHANGE - 1

Fee	Pay To	Total Assessed	Total Paid	Total Due
State Litigation Tax	Department of Revenue	\$29.50	\$0.00	\$29.50
Judicial Commissioners Tax	Department of Revenue	\$2.00	\$0.00	\$2.00
Victim Notification Fund Tax	Department of Revenue	\$3.00	\$0.00	\$3.00
CIC Tax	Department of Revenue	\$26.50	\$0.00	\$26.50
Local County Litigation - Judge	GILES COUNTY TRUSTEE	\$17.00	\$0.00	\$17.00
County Litigation Tax	GILES COUNTY TRUSTEE	\$28.50	\$0.00	\$28.50
Courthouse Security Tax	GILES COUNTY TRUSTEE	\$25.00	\$0.00	\$25.00
Jail Building Tax	GILES COUNTY TRUSTEE	\$25.00	\$0.00	\$25.00
Clerk Flat Fee - CR		\$64.00	\$0.00	\$64.00
TBI Lab (Drug)	Tn Bureau Of Investigation	\$20.00	\$0.00	\$20.00
Alcohol/Drug Addiction T/F (DRUG)	Department of Revenue	\$100.00	\$0.00	\$100.00
Drug Court Treatment Fund	GILES COUNTY TRUSTEE	\$70.00	\$0.00	\$70.00
Drug Test Fee - TBI Chem Unit	Department of Revenue	\$5.00	\$0.00	\$5.00
Jail Fee	Department of Revenue	\$250.00	\$0.00	\$250.00
Arrest Fee	GILES COUNTY TRUSTEE	\$25.00	\$0.00	\$25.00
Service Fee Data	Pulaski Police Dept	\$40.00	\$0.00	\$40.00
DRUG FINE	Pulaski Police Dept	\$2.00	\$0.00	\$2.00
	Pulaski Police Dept	\$250.00	\$0.00	\$250.00
	Total For Charge:	\$982.50	\$0.00	\$982.50

- Hearing: 9/15/2016 8:00:00 AM - Criminal Hearing

Fee	Pay To	Total Assessed	Total Paid	Total Due
Continuance Fee	GILES COUNTY TRUSTEE	\$5.00	\$0.00	\$5.00
		\$2.00	\$0.00	\$2.00
	Total For Hearing:	\$7.00	\$0.00	\$7.00

- Hearing: 9/29/2016 8:00:00 AM - Criminal Hearing

Fee	Pay To	Total Assessed	Total Paid	Total Due
Continuance Fee	GILES COUNTY TRUSTEE	\$5.00	\$0.00	\$5.00
		\$2.00	\$0.00	\$2.00
	Total For Hearing:	\$7.00	\$0.00	\$7.00

- Party Attorney: Public Defender

Fee	Pay To	Total Assessed	Total Paid	Total Due
Public Defender Fee - Amt Varies	Public Defenders Conference	\$150.00	\$0.00	\$150.00
Attorney Indigent Admin Fee	Department of Revenue	\$50.00	\$0.00	\$50.00
	Total For Party Attorney:	\$200.00	\$0.00	\$200.00
	Total For	\$1,196.50	\$0.00	\$1,196.50

Plaintiff: State Of Tennessee



Case Menu	
Case Information	
Party Information	
Participants	
Party Attorney	
Register of Actions	
Court Schedule	
Case Information	
Charge Information	
Payment Information	
Assessment Information	
Suspense Account	
Resolution/Judgment	
Out Traffic Penalty Assessments	
Vehicle Information	
Bond Information	
Arrest/Complaint/TA	
Case Note Information	
Sentencing Information	
Retained Cases	
Warrant/VOL Information	
Judge History	
Driver's License Suspension	
Date Calculator	

Assessment Information

05-2017-CT-014387-AJXXX-XXX

Party Type	Party No.	Receivable	Amt Assesd	Amt Waked	Amt Paid	Balance
D	1	2% SURCHARGE TRAFFIC	\$37.50	\$0.00	\$0.00	\$37.50
D	1	SUB ABUSE WCLK TRAF	\$15.00	\$0.00	\$0.00	\$15.00
D	1	TEEN COURT WCLK TRF	\$3.00	\$0.00	\$0.00	\$3.00
D	1	ADDL CT CLEAR TRAF	\$3.00	\$0.00	\$0.00	\$3.00
D	1	BREV POLICE TEST TR	\$3.00	\$0.00	\$0.00	\$3.00
D	1	BRAIN STIRAL TRAFFIC	\$60.00	\$0.00	\$0.00	\$60.00
D	1	COURT FACILITIES TR	\$30.00	\$0.00	\$0.00	\$30.00
D	1	ADDL COURT FUND TRF	\$65.00	\$0.00	\$0.00	\$65.00
D	1	EM-MED TRAFFIC DUI	\$25.00	\$0.00	\$0.00	\$25.00
D	1	CERT & RECD ORDER TR	\$13.00	\$0.00	\$13.00	\$0.00
D	1	PREF & RECD DAT TR	\$25.50	\$0.00	\$0.00	\$25.50
D	1	CRIME PREVENTION TRF	\$20.00	\$0.00	\$0.00	\$20.00
D	1	FL DEPT LAW ENF TRAF	\$50.00	\$0.00	\$0.00	\$50.00
D	1	POL ACADM LEEP TRAF	\$3.00	\$0.00	\$0.00	\$3.00
D	1	ST RADIO TR FUND TRF	\$3.00	\$0.00	\$0.00	\$3.00
D	1	STATE GEN CLK TF TR	\$10.00	\$0.00	\$10.00	\$0.00
D	1	DUI FINE 1ST UNDER	\$750.00	\$0.00	\$427.00	\$323.00
D	1	OOP PROSECUTION TR	\$50.00	\$0.00	\$0.00	\$50.00
D	1	CRIMES OO WCLK TRAF	\$50.00	\$0.00	\$0.00	\$50.00
D	1	CRIM JUST WCLK TRAF	\$50.00	\$0.00	\$50.00	\$0.00
D	1	CRIMSTOP WCLK TRAF	\$20.00	\$0.00	\$0.00	\$20.00
TOTAL DUE:						\$785.00
TOTAL AMOUNT ELIGIBLE FOR A CIVIL LIEN:						\$785.00

[Payment Center](#)



eFACTS

Case Menu
Case Information
Party Information
Participants
Party Attorney
Register of Actions
Court Schedule
Civil Information
Charge Information
Payment Information
Assessment Information
Suspense Account
Restitution/Judgment
Civil Traffic Penalty Amounts
Vehicle Information
Bond Information
Arrest/Complaint/TA
Case Note Information
Sentencing Information
Related Cases
Warrant/MTI Information
Judge History
Driver's License Suspension
Date Calculator

Assessment Information

05-2017-CT-014380-A,XXX-XX

Party Type	Party No.	Receivable	Amt Assess	Amt Waived	Amt PaM	Balance
D	1	5% SURCHARGE TRAFFIC	\$25.00	\$0.00	\$0.00	\$25.00
D	1	SUB ABUSE WOLK TRAF	\$15.00	\$0.00	\$0.00	\$15.00
D	1	TEEN COURSE WOLK TRF	\$3.00	\$0.00	\$0.00	\$3.00
D	1	ADDL CT CLEAR TRAF	\$3.00	\$0.00	\$0.00	\$3.00
D	1	BREV POLICE TEST TR	\$3.00	\$0.00	\$0.00	\$3.00
D	1	BRAIN SPINAL TRAFFIC	\$60.00	\$0.00	\$0.00	\$60.00
D	1	COURT FACILITIES TR	\$30.00	\$0.00	\$0.00	\$30.00
D	1	ADDL COURT FUND TRF	\$65.00	\$0.00	\$0.00	\$65.00
D	1	EMMED TRAFFIC DUI	\$25.00	\$0.00	\$0.00	\$25.00
D	1	CERT & REC'D ORDER TR	\$13.00	\$0.00	\$0.00	\$13.00
D	1	PREP & RECORD SAT TR	\$25.50	\$0.00	\$0.00	\$25.50
D	1	CRIME PREVENTION TRP	\$20.00	\$0.00	\$0.00	\$20.00
D	1	FL DEPT LAW ENF TRAF	\$50.00	\$0.00	\$0.00	\$50.00
D	1	POL ACAD/LEEF TRAF	\$2.00	\$0.00	\$0.00	\$2.00
D	1	ST RADIO TR FUND TRF	\$3.00	\$0.00	\$0.00	\$3.00
D	1	COI INDIANLANTIC CO	\$173.05	\$0.00	\$0.00	\$173.05
D	1	STATE GEN CLK TF TR	\$10.00	\$0.00	\$0.00	\$10.00
D	1	SPEED 20-29 OVER	\$284.00	\$0.00	\$0.00	\$284.00
D	1	PUB DEFAPPT CNSL TR	\$50.00	\$0.00	\$0.00	\$50.00
D	1	DUI FINE 1ST UNDER	\$200.00	\$0.00	\$0.00	\$200.00
D	1	COF PROSECUTION TR	\$50.00	\$0.00	\$0.00	\$50.00
D	1	CRIMES CO WOLK TRAF	\$50.00	\$0.00	\$0.00	\$50.00

D	1	CRIM JUST W/CLK TRAF	\$50.00	\$0.00	\$0.00	\$50.00
D	1	CRIMESTOP W/CLK TRAF	\$20.00	\$0.00	\$0.00	\$20.00
D	1	PD APP/INDG W/CLK CO	\$50.00	\$0.00	\$0.00	\$50.00
		TOTAL DUE:				\$1,579.55
		TOTAL AMOUNT ELIGIBLE FOR A CIVIL LIEN:				\$1,579.55

Payment Center

HARDIN DISTRICT COURT
DIVISION I
CASE NO. [REDACTED]

COMMONWEALTH OF KENTUCKY

PLAINTIFF

V. [REDACTED]

DEFENDANT

JAIL SERVICE ORDER

RULES FOR JAIL SERVICE:

1. The defendant shall pay \$ 35 per day in advance when reporting for jail service by cash, debit card, or credit card. The total fees for the entire jail service may be paid in advance. Reporting without the fee for that segment of jail service will be considered non-compliance.
2. The defendant shall not be under the influence of alcohol or illegal substances when reporting for jail service. The defendant shall be subject to testing of breath, blood, or urine for alcohol or illegal substances. A positive test will be considered non-compliance.
3. Prescription medications may be allowed subject to approval by jail medical staff. Prohibited medications include (but are not limited to) narcotics, muscle relaxers, tramadol, and as needed prn medication. All medications must be in its original container, dated within the last 30 days, and presented to jail personnel immediately upon reporting for jail service. Call Hardin County Detention Center at 270-765-4159 with questions about medications.
4. The defendant is allowed to bring two changes of underclothing to each report date. The defendant shall be dressed out in uniform during the time served. Hygiene items are furnished.
5. Additional orders: _____

NON-COMPLIANCE:

6. FAILURE TO APPEAR for jail service is considered non-compliance and will result in a bench warrant being issued for the defendant's arrest.
7. NON-COMPLIANCE may result in the defendant being held in jail and scheduled to appear at the Court's next video arraignment docket. Consequences for non-compliance include:
 - a) revocation of weekend/delayed reporting privilege with sentence served straight;
 - b) being held in contempt of court resulting in additional jail time;
 - c) revocation of probated jail time;
 - d) new criminal charge(s) if a violation of law occurs.
8. New criminal offense(s) may result in revocation of weekend/delayed reporting privileges.

ACKNOWLEDGMENT:

I have read, understand, and agree to comply with the Rules for Jail Service listed above. I further have read, understood, and acknowledge the consequences for non-compliance.

[REDACTED] 3/20/17 date
[Signature] 3/20/17 date
Defendant Attorney for Defendant

IT IS HEREBY ORDERED:

that the above-named defendant is granted the privilege of serving his/her sentence as follows:

- 6 days ^{one day per week} on weekends beginning 4/5/17 at 7:00 (am / pm) and continuing weekly until completed.
(date)
- _____ days straight time beginning on _____ at 7:00 (am / pm).
(date)
- other: _____

revised Jan. 2012

ENTERED: 3/20/17
ATTEST: LORETTA GRADY, CLERK JUDGE, HARDIN DISTRICT COURT date
HARDIN CIR/DIST COURT
By: [Signature] D.C.

AOC-205 Doc Code: OAPAD
Rev. 8-02
Page 1 of 1
Commonwealth of Kentucky
Court of Justice



Case Number [REDACTED]
Court **DISTRICT**
County **HARDIN**

KRS 31.120; KRS 31.051(2)

**Order Appointing
Public Defender
(With Partial Fee Determination)**

Plaintiff, COMMONWEALTH VS. [REDACTED]

The Court,

- having reviewed the Financial Statement, Affidavit of Indigence, Request for Counsel and Order (AOC-350) prepared by the Pretrial Services Officer; and,
- having determined the above-named Defendant is a needy person as defined in KRS Chapter 31,

HEREBY APPOINTS the Department of Public Advocacy to represent Defendant in the above-styled case.

(Office Name) HARDIN CO. DEPT. OF PUBLIC ADVOCACY is hereby appointed.

Pursuant to KRS 31.051(2), 31.120 and 31.211, the Court has reviewed Defendant's present ability to pay a partial fee for legal services and **HEREBY IMPOSES** a partial fee of \$ _____, to be paid to the Circuit Court Clerk:

in a lump sum by _____, 2 _____; OR

in installments as follows: _____

Pursuant to KRS 31.051(2) and/or KRS 31.120(1), the defendant has been advised of this Court's obligation to review Defendant's financial status at all stages of the proceedings and to order payment of an additional **PARTIAL FEE** in the event of a change in the Defendant's financial status. If any unpaid portion of the additional partial fee is ordered, it will be done by separate order.

Judge [Signature] **SIMCOE, HON. JOHN DAVID**
Date: _____

ENTERED
1-9-17
Circuit/District Clerk, **LORETTA CRADY**
By [Signature], DC

Distribution:
Court Clerk
Prosecuting Attorney
DPA Directing Attorney
Defendant

Appendix IV: Example rules for private probation and daily drug testing

BILL OF COSTS

Clerk \$

Data Processing \$

Officer's Service \$

Subpoenas \$

Attachments \$

Score Facian \$

Appearance Bond \$

Attorney Fee \$

Jail Board Fee \$


TOTAL \$

DISPOSITION

RECEIVED

CLERK

CLERK DIV. SHERIFF DEPT.



Low on 1/26/17 C11

VIOLATION OF PROBATION WARRANT
GENERAL SESSIONS COURT OF GILES
COUNTY TENNESSEE

DOCKET NO.: C080669 C11, C12

Address: [REDACTED]

DOB: 01/07/1990 SSN: [REDACTED]

Race: W Gender: M

Height: 62 Weight: 245

Hair: BRN Eyes: GRN

Phone #: [REDACTED]

Scar, Mark, Tattoo:

Driver's License #: TN108898446

Known Aliases:

RETURN ON SERVICE

Executed as commanded by arresting/citing defendant to appear before the court on 1/31/17 at 8:30 AM

Arrested/cited this date 1-26-17

By: Deputy Sheriff [REDACTED]

Bond fixed at Heard 2-16-17 @ 8:30 AM

COURT DATES

to _____

to _____

to _____

Defense Atty: _____ app?

Administrative fee _____

Appointed Public Defender _____

RULE VIOLATION

- I will obey the laws of the United States or any state in which I may be, as well as any municipal ordinances.
- I will report all arrests, including traffic violations immediately, regardless of the outcome to my probation officer.
- If convicted of a felony or a domestic violence charge, I will not receive, own, possess, ship or transport any firearms, ammunition, or illegal weapons. (Ref. Gun Control of 1968, Public Law 90-618, Title I, Section 922 Entitled "Unlawful Act") and (18USC922 (G)(9)). All other probationers required express permission of the court for use of firearms.
- I will work at a lawful occupation and support my dependents, if any, to the best of my ability.
- I will inform my probation officer before changing my residence or employment.
- I will allow my probation officer to visit my home, employment site or elsewhere and will carry out all lawful instructions he/she gives. I will report to my probation officer as instructed.
- I agree to a search, without a warrant, of my person, vehicle, property, or place of residence by any probation officer or law enforcement officer at any time.
- I will not use or have in my possession intoxicants, narcotic drugs or marijuana. I will not enter an establishment whose prime purpose is to sell alcoholic beverages (bars, taverns, clubs, etc). I will submit to random alcohol and drug screens as directed.
- I agree to pay all required court fines, costs and restitution unless waived by appropriate authorities.
- I will observe any special conditions imposed by the court.

IN OFFICE CASES:

I hereby acknowledge the current changes that Florida Probation Service is undergoing. I am aware that I am responsible for calling between the hours of 7:00 am CST and 1:59 pm CST (Closes at 2:00 pm CST) to see if I test Monday-Friday. **Failure to do so could lead to a sanction/revocation.**

Although I may call in to see if I am required to test between the stated hours above, I must report to Florida Probation Service between the hours of 8:00am CST – 11:00am CST or 1:30pm CST – 4:00pm CST, which are the hours they are open for testing. Failure to do so could lead to a sanction/revocation.

OUT OF COUNTY/STATE CASES:

I hereby acknowledge the current changes that Florida Probation Service is undergoing. I am aware that I am responsible for calling between the hours of 7:00 am CST and 1:59 pm CST (Closes at 2:00 pm CST) to see if I test Monday-Friday. **Failure to do so could lead to a sanction/revocation.**

FAILURE TO SHOW ON THE DAY YOU ARE REQUIRED TO TEST = REFUSAL TO SUBMIT TO DRUG SCREEN

UA Call Line Phone Number

The phone number that I am responsible for calling is:

888-529-3790

If you fail to get through the first time, continue to call until you get through.

I understand that I am not allowed to “make-up” a test if I fail to test the day I am required to. Failure to submit on the day I am required to could lead to a sanction/revocation.

Details for the UA Call Line

When calling the UA call line phone number you will receive the following prompt (during the times stated above)	You have reached the drug testing notification system. Press 1 for English. Press 2 for Spanish
Once the appropriate selection has been made, You will receive the following prompt:	Please enter your client ID number:
Once the ID has been entered you will receive the following prompt:	Does your last name begin with XXX? If yes press 1. If no, press 2. (if you press 2 you will be looped back to please enter your client ID number)
If the correct ID is used and the last name is also correct:	You are required to test today/ Do Not Test Today (it will repeat this three times)
If the caller receives the following prompt they have called too early:	You have called the drug testing notification system too early, please call back
If the caller receives the following prompt they have called too late:	You have called the drug testing notification system too late, please call back tomorrow.

Appendix V: Example of fee waiver form

PROCESS TO HAVE FINES & COSTS REDUCED

You do not need an attorney to complete this process

1. Pay something every time you report—regardless of the amount—for several months.
2. Keep all records of payments to PCC.
3. After successful completion of several continuous months of reporting and making payments, ask your probation officer to perform a Financial Assessment.
4. PCC will most likely deny your request to reduce costs and fines after assessment is completed.
5. *****Do not get discouraged by this. ***** Continue to make payments on every report date.
6. If denied, go to room 101 in the Rutherford County Judicial Building (20 N. Public Square, Murfreesboro, TN, 37139). Request to file a motion to reduce costs and fines. This motion will cost \$25. Obtain a date to have a Judge hear your case.
7. On your court date, the Judge will ask you very personal questions about your finances. Be completely honest during this process and answer the Judge's questions to the best of your ability. Be prepared to answer questions regarding: employment status, dependents under your care, living arrangements, property you own, etc. Most importantly, the Judge will ask if you have been making an attempt to pay your costs and fines. This why it is in your best interest to comply with step 1. This shows the Judge that you are making a good faith effort to pay off your costs and fines.

Appendix VI: Examples of arrest warrants and consequences for failure to pay

GILES COUNTY, TENNESSEE GENERAL SESSIONS COURT
Affidavit for
VIOLATION OF PROBATION

COMES NOW, the affiant Harriet Thompson, Probation Officer, who first being duly sworn, affirms that [redacted] hereinafter referred to as the Defendant, was on the 24th day of September 2015 convicted of the offense (s) of Failure to Appear (Case# [redacted]) for which the Court suspended the imposed jail sentence and placed the defendant on probation for a term of 11 months 29 days beginning 09/24/2015 and ending 09/22/2016 in accordance with the provisions of T.C.A. 40-35-311(a).

Affiant further states that the defendant has not properly conducted himself but has violated the conditions of his probation in a material respect by violation of one or more of the following conditions:

COURT COST: [redacted] \$512.50 **PROBATION FEES:** \$250.00

Condition #5: Pay all fines and court costs in a timely manner. On 09/24/2015, the Defendant was instructed to pay \$25.00 weekly to the clerk's office. To date, the Defendant has made no payments, leaving arrears of \$512.50.

Condition #8: Pay a probation supervision fee. To date, the Defendant's last payment was \$25.00 (07/13/2016), leaving arrears of \$250.00.

****THIS IS DEFENDANT'S 1st VIOLATION (Restitution: N/A)

Harriet Thompson
Harriet Thompson, Probation Officer

Sworn to and subscribed before me this
16th day of September 2016
Robert C. Richardson Jr
Honorable Robert C. Richardson Jr., Judge

Warrant

IN THE NAME OF THE STATE OF TENNESSEE, to all and singular the Sheriffs and Constables of the State of Tennessee:

WHEREAS Harriet Thompson, Probation Officer has this day made oath before Robert C. Richardson Jr. that the Defendant [redacted] was on the 24th day of September 2015 was convicted of the offense (s) Failure to Appear (Case# [redacted]) for which Court suspended the imposed jail sentence and placed the Defendant on probation for a term of 11 months 29 days beginning 09/24/2015 and ending 09/22/2016 in accordance with the provisions of T.C.A. 40-35-311 and that the defendant has not properly conducted himself but has violated the conditions of his probation in a material respect by violating one or more of the conditions stated in above Affidavit for Violation of Probation.

WHEREFORE, you are commanded to arrest instante, [redacted], and bring him before me to be dealt with according to law.

BOND: \$ 0.00
HEARING DATE: _____

Given under my hand and seal this
16th day of September 2016
Robert C. Richardson Jr
Honorable Robert C. Richardson Jr., Judge

02 16 2016 10:33 AM

An arrest warrant for failure to pay.

GILES COUNTY, TENNESSEE GENERAL SESSIONS COURT

Affidavit for

VIOLATION OF PROBATION

COMES NOW, the affiant Harriet Thompson, Probation Officer, who first being duly sworn, affirms that S [REDACTED], hereinafter referred to as the Defendant, was on the 31st day of March 2016 convicted of the offense (s) of Driving While License is Cancelled, Suspended or Revoked/Case#2 for which the Court suspended the imposed jail sentence and placed the defendant on probation for a term of 6 months 0 days beginning 03/31/2016 and ending 09/30/2016 in accordance with the provisions of T.C.A. 40-35-311(a).

Affiant further states that the defendant has not properly conducted himself but has violated the conditions of his probation in a material respect by violation of one or more of the following conditions:

COURT COST: \$151.00

PROBATION FEES: Current

Condition #5: Pay all fines and court costs in a timely manner. On 03/31/2016, the Defendant was instructed to pay \$25.00 weekly to the clerk's office. To date, the Defendant has paid a total of \$100.00, leaving arrears of \$151.00.

****THIS IS DEFENDANT'S 1st VIOLATION (Restitution: N/A)

Harriet Thompson
Harriet Thompson, Probation Officer

Sworn to and subscribed before me this

30th day of September, 2016
Robert C. Richardson Jr.
Honorable Robert C. Richardson Jr., Judge

Warrant

IN THE NAME OF THE STATE OF TENNESSEE, to all and singular the Sheriffs and Constables of the State of Tennessee:

WHEREAS, Harriet Thompson, Probation Officer has this day made oath before Robert C. Richardson Jr. that the Defendant [REDACTED] was on the 31st day of March 2016 was convicted of the offense (s) Driving While License is Cancelled, Suspended or Revoked/Case#2 for which Court suspended the imposed jail sentence and placed the Defendant on probation for a term of 6 months 0 days beginning 03/31/2016 and ending 09/30/2016 in accordance with the provisions of T.C.A. 40-35-311 and that the defendant has not properly conducted himself but has violated the conditions of his probation in a material respect by violating one or more of the conditions stated in above Affidavit for Violation of Probation.

THEREFORE, you are commanded to arrest instant [REDACTED], and bring him before me to be dealt with according to law.

BOND: \$ 500
HEARING DATE: _____

Given under my hand and seal this
30th day of September, 2016
Robert C. Richardson Jr.
Honorable Robert C. Richardson Jr., Judge

10/17/16
@9:00

78 82 100 CO 100000
GERT

Another arrest warrant for failure to pay.

GENERAL SESSIONS COURT OF GILES COUNTY TENNESSEE

STATE OF TENNESSEE vs. [REDACTED]

CHARGES: CR86969 C11 Simple Possession Schedule VI, C12 Possession of Drug Paraphernalia

AFFIDAVIT OF COMPLAINT FOR VIOLATION OF PROBATION

COMES NOW, the affiant, Patricia McNair, Probation Officer, who first being dully sworn, affirms that [REDACTED] hereinafter referred to as the Defendant, was on May 24 2016 convicted of the offense(s) of Simple Possession Schedule VI and Possession of Drug Paraphernalia, for which the Court suspended the imposition of sentence and placed the Defendant on probation for a term beginning 05/24/2016 and ending 05/22/2017 (11/29) in accordance with the provisions of T.C.A. § 40-35-311(a).

Affiant further states that the Defendant has not properly conducted himself but has violated the conditions of his probation in a material respect by violation of one or more of the following conditions:

COURT COST: \$1705.00

CONDITION NO. 6: "I WILL REPORT TO MY PROBATION OFFICER AS INSTRUCTED". Defendant has failed to report on several occasions.

CONDITION NO. 9: "I AGREE TO PAY ALL REQUIRED SUPERVISION FEES, COURT FINES AND COURT COST". On the 24th day of May, 2016 Defendant was ordered to pay a minimum of \$25/wk and failed to do so.

FILED 2017 JAN 18 AM 11:38 [REDACTED] PATRICIA G. GREENE CLERK OF COURT GILES COUNTY, TN Patricia McNair, Probation Officer

Sworn to and subscribed before me on this 18th day of January, 2017. Robert C. Richardson, Jr, Judge

WARRANT

IN THE NAME OF THE STATE OF TENNESSEE, to all and singular the Sheriffs and Constables of the State of Tennessee:

WHERE AS, Patricia McNair, Probation Officer, has this day made oath before Robert Richardson, Jr, Judge, that on May 24 2016 the Defendant [REDACTED] was convicted of the offense(s) of Simple Possession Schedule VI and Possession of Drug Paraphernalia for which the Court suspended the imposition of sentence and placed the Defendant on probation for a term beginning 05/24/2016 and ending 05/22/2017 in accordance with the provisions of T.C.A. § 40-35-311(a) and that the Defendant has not properly conducted himself but has violated the conditions of his probation in a material respect by violation of one or more of the rule violations stated in above Affidavit for Violation of Probation.

THEREFORE, you are commanded to arrest instantly [REDACTED] and bring him before me to be dealt with according to the law.

BOND: 2500 HEARING DATE:

Given under my hand and seal this 18th day of January, 2017. Robert C. Richardson, Jr, Judge

An arrest warrant for failure to pay, with jail time.

PD

GENERAL SESSIONS COURT, GILES COUNTY, TENNESSEE

NAME [REDACTED]
SSN [REDACTED]

CASE# [REDACTED]

17-90
DOB

ADDRESS

FILED

A.M. FEB 16 2017 P.M.

CRYSTAL G. GREENE
CIRCUIT COURT CLERK

ORDER / DISPOSITION

The Court, after _____ trial or _____ plea of the case finds the Defendant:

- 1. _____ Not Guilty
- 2. Guilty

A. The Defendant, after "plea discussions" with the District Attorney General, enters a plea of guilty to the following _____ offenses or violation of probation:

1. Probation Violation
2. _____
3. _____
4. _____

B. The Court imposes the following: _____ sentence after trial; upon the acceptance of the plea agreement reached between the Defendant and State; _____ retirement or _____ dismissal;

1. 30 days to serve + reinstate. - costs
2. Extend probation to months given today. - a wdt
3. costs as paid
4. 30 serve sentence beginning Saturday, March 4 @ 9AM through Monday, March 6, 2017, @ 9AM & each consecutive weekend until sentence is served. Must provide proof of employment each Saturday to jail or serve sentence.

- C. Probation _____ unsupervised or _____ supervised by: _____
- D. Case set for review on: _____, 20____ at _____ am/pm.
- E. Credit for Time served: 1/26/17 to 1/26/17
- F. Any Special Conditions: _____

Costs @ min. rate \$25 = per week beginning 3-10-17

straight through. & obey jail rules

IT IS SO ORDERED, this the 16th day of Feb., 2017

Robert C. Richardson, Jr.
Robert C. Richardson, Jr., Judge

Agreed for the State: [Signature] & for the Defendant: [REDACTED]

An arrest warrant for failure to pay, with jail time (continued).

GENERAL SESSIONS COURT, GILES COUNTY, TENNESSEE

NAME [REDACTED] CASE# [REDACTED]

SSN _____ DOB _____

ADDRESS _____

ORDER / DISPOSITION

FILED

The Court, after _____ trial or plea of the case finds the Defendant: **NOV 13 2016 P.M.**

- 1. _____ Not Guilty
- 2. Guilty

CRYSTAL S. GREENE
CIRCUIT COURT CLERK
GILES COUNTY, TN

A. The Defendant, after "plea discussions" with the District Attorney General, enters a plea of guilty to the following _____ offenses or _____ violation of probation:

- 1. Probation Violation
- 2. (non payment only)
- 3. _____
- 4. _____

B. The Court imposes the following: _____ sentence after trial; _____ upon the acceptance of the plea agreement reached between the Defendant and State; _____ retirement or _____ dismissal;

- 1. Extend 11 mos 29 days
- 2. _____
- 3. _____
- 4. _____

C. Probation _____ unsupervised or _____ supervised by: _____

D. Case set for review on: _____, 20____ at _____ am/pm.

E. Credit for Time served: _____

F. Any Special Conditions: probation may be terminated once financial obligation to court is met

IT IS SO ORDERED, this the 10th day of November, 2016.

Robert C. Richardson, Jr.
Robert C. Richardson, Jr., Judge

Agreed for the State: [Signature] & for the Defendant: [REDACTED]

Probation extension until fines paid.

Appendix VII: Letter to Kentucky judges (responses on file with Human Rights Watch)



April 14, 2017

[Name of District Judge]
[District Court]
[Mailing Address]
[City], KY [Zip Code]

Via first class mail

RE: Request for Public Records

Dear [Name of District Judge]:

On behalf of the ACLU of Kentucky and Human Rights Watch, we write to request copies of certain public records relating to the delivery of probation services by private companies operating within your district. The ACLU of Kentucky is the state affiliate of the American Civil Liberties Union, a nationwide, nonpartisan organization with over 750,000 members and supporters dedicated to the principles of liberty and equality embodied in the United States Constitution. Human Rights Watch is an independent organization dedicated to promoting and protecting human rights around the globe. Human Rights Watch has engaged with government officials and businesses regarding their responsibilities to protect human rights in the private probation systems in Georgia, Mississippi, and Alabama.

The Kentucky Supreme Court amended SCR 9.000, *et seq.* to clarify district courts' obligations regarding private probation companies, which took effect on January 1, 2017. Specifically, SCR 9.010 provides that district courts may utilize the services of a "private agency" to deliver probation services in misdemeanor and traffic cases *only where* "probation monitoring services are not being and cannot be performed by a governmental agency, a not-for-profit agency or volunteers." Once that determination is made, certain additional requirements apply to both the court's oversight of such agencies, as well as how such agencies conduct their business. For example, to receive referrals from the court to provide probation services, SCR 9.020 requires any "private agency" to agree in writing that it will:

- Maintain liability insurance of at least \$1 million dollars, and provide proof of such to the court annually;
- Accept pro bono referrals from the court;
- Report monthly to the court on all pro bono referrals, indicating whether the agency accepted or rejected the referrals and identifying the reason(s) for rejecting any referrals;

**RANDY STROBO, PRESIDENT | ERIN KENNEDY, VICE PRESIDENT | PATRICIA MINTER, SECRETARY
LEE LOOK, TREASURER | CHERIE DAWSON EDWARDS, NATIONAL BOARD REPRESENTATIVE
MICHAEL ALDRIDGE, EXECUTIVE DIRECTOR | AMBER DUNE, COMMUNICATIONS MANAGER
AFRICA HANDS, OPERATIONS & DEVELOPMENT ASSOCIATE | KATE MILLER, PROGRAM DIRECTOR
WILLIAM E. SHARP, LEGAL DIRECTOR**

**AMERICAN CIVIL LIBERTIES UNION OF KENTUCKY
315 GOUTHRIE STREET SUITE 200 LOUISVILLE, KY 40202-3820 | T 502-581-9748 | F 502-588-9887 | WWW.ACLU-KY.ORG**

- Provide the court with a written fee schedule on an annual basis, which includes a sliding scale for indigent defendants based upon ability to pay, and strictly conform to this schedule when assessing fees against defendants;
- Maintain an accurate and complete accounting of all monies received from a defendant, and provide such accounting to the court upon its request;
- Establish and maintain policies and/or procedures for the confidential receipt and investigation of a defendant's complaint alleging abusive behavior by the agency; and
- Establish and maintain training and/or certification requirements for anyone associated with the agency who supervises defendants.

In order to evaluate whether: a) private probation companies operating in Kentucky are complying with their obligations; and b) district courts are adequately exercising their oversight responsibilities of such companies, we respectfully request copies of public records that you have collected and maintained pursuant to SCR 9.000, *et seq.* This request for public records includes, but is not limited to, the following:

- 1) Document(s) evidencing each agency's written agreement to abide by the requirements to receive referrals from the court (SCR 9.020 *et seq.*);
- 2) Document(s) listing all agencies in your district that have met the requirements of SCR 9.000 *et seq.* and been approved to provide probation services (SCR 9.030(L));
- 3) Document(s) verifying that each agency maintains liability insurance of at least \$1 million (SCR 9.020(D));
- 4) Document(s) setting out each agency's fee schedule, including that agency's sliding fee scale for indigent defendants (9.020(F));
- 5) Document(s) confirming each agency's agreement to adhere to its submitted fee schedule (SCR 9.020(G));
- 6) Document(s) evidencing a court's approval of each agency's submitted fee schedule (SCR 9.030(C));
- 7) Monthly and/or annual reports submitted by each agency concerning any pro bono cases referred to it by the courts within your district between January 1, 2017, and the date of this request (SCR 9.020(H));
- 8) Document(s) evidencing any request made by a court to an agency for an accounting of all monies the agency has received from the defendant(s) it supervises (SCR 9.020(I));
- 9) Document(s) received by a court from an agency pursuant to the court's request for an accounting of all monies the agency has received from the defendant(s) it supervises (SCR 9.020(I));

- 10) Document(s) verifying that each agency has established and maintains policies and/or procedures for the confidential receipt and investigation of complaints from defendants alleging abusive behavior by the agency (SCR 9.020(K));
- 11) Document(s) verifying that each agency has established and maintained training and/or certification requirements for all within the agency who supervise defendants (SCR 9.020(L));
- 12) Court orders, local rules, and/or any other document(s) establishing that “probation monitoring services are not being and cannot be performed by a governmental agency, a not-for-profit agency or volunteers” (SCR 9.010); and
- 13) Document(s) evidencing a court’s denial or rescission of its approval of an agency to provide probation services to the court (SCR 9.040).

Of course, we recognize that the Court of Justice is not subject to Kentucky’s Open Records Act. *Ex Parte Farley*, 570 S.W.2d 617 (Ky. 1978). However, the Kentucky Supreme Court noted that it “fully appreciate[s] that *whatever belongs to the courts belongs to the public.*” *Ex Parte Farley* at 625 (emphasis added). In this regard, it seems evident that the above-requested records indeed relate to a core governmental function — probation supervision — *and* that public inspection of those records is essential to effective oversight of both the private agencies themselves *as well as* the government officials tasked with monitoring them. *See Roman Catholic Diocese of Lexington v. Noble*, 92 S.W.3d 724, 731 (Ky. 2002) (“Because monitoring courts is an essential feature of democratic control and judicial accountability, a trial court’s right to control access to its records and documents is constrained by a general, common-law right to inspect and copy public records and documents, including judicial records and documents.”) (internal quotations and citation omitted).

Moreover, the recent amendments to Rule 9 include an explicit obligation on courts to maintain and make available “upon written request” the “records and supporting documentation provided by the private agencies.” SCR 9.030(K).

Please accept this letter as our written request for such records. Thank you in advance for your attention to this matter, and we look forward to your reply.

Sincerely,



Komala Ramachandra
Senior Researcher, Business and Human Rights
Human Rights Watch
1630 Connecticut Ave NW, Suite 500
Washington, DC 20009



William Sharp
Legal Director
ACLU OF KENTUCKY
315 Guthrie Street, Suite 300
Louisville, KY 40202

Appendix VIII: Human Rights Watch letter to private probation companies and overview of responses (full responses on file with HRW)

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009
Tel: 202-612-4321
Fax: 202-612-4333; 202-478-2988

Kenneth Roth, Executive Director

DEPUTY EXECUTIVE DIRECTORS

Michelle Brundage, Development and Global Initiatives
Carroll Bogert, Executive Director
Joan Lamm, Program
Clare Kohlg, Operations

David Patterson, General Counsel
James Ross, Legal and Policy Director

DIVISION AND PROGRAM DIRECTORS

Brad Adams, Asia
Daniel Debevoise, Africa
Alicia Parks, United States
Jodi Sigler Vivanco, Americas
Sarah Leah Whitton, Middle East and North Africa
Hugh Williamson, Europe and Central Asia

Joseph Amos, Health and Human Rights
Shaitha Kai Hartig, Disability Rights
Peter Dauksaitis, Emergencies
Zama Coorsen Hoff, Children's Rights
Richard Decker, International Justice
Bill Frelick, Refugees
Ariad Gamerman, Business and Human Rights
Liesel González, Women's Rights
Steve Gense, Arms
Gracie Reid, Lesbian, Gay, Bisexual, and Transgender Rights

ADVOCACY DIRECTORS

Philippe Despinet, United Nations, New York
Maia Laura Custon, Brazil
Kanako Ohi, Japan
Jean Marie Fardoul, France
Meredith Campbell, South Asia
Tshako Kasambala, Southern Africa
Lothar Leuch, European Union
Sarah Morgan, Washington DC, Africa
David Stephen, United Kingdom
Wendy Achikala, Germany
Clare Pearson, Australia
Judette de Riviere, United Nations, Geneva

BOARD OF DIRECTORS

James F. Hoge, Jr., Chair
Susan Mendel, Vice-Chair
Joel Westley, Vice-Chair
Sid Shesberg, Vice-Chair
John J. Storzinski, Vice-Chair
Marcus Elinary, Treasurer
Bruce Rabb, Secretary
Karen Ackman
Jorge Castañeda
Tony Elliott
Michael G. Hoch
Michael E. Gilbert
Hina Jiani
Bethy Karel
Woody Keys
Robert McCann
Kimberly Marten Emerson
Ohn Matsumoto
Barry Meyer
Ashle O'Donnell
Juan R. Platt
Amy Rao
Ned Rimer
Victoria Rodin
Graham Robeson
Shelby Rubin
Kerim P. Ryan
Ambassador Helen Sanders
Jean Louis Servan-Schreiber
Javier Solana
Siri Stolt-Nielson
Darius W. Swigg
John R. Taylor
Amy Towers
Marie Warburg
Catherine Zemanová

September 26, 2017

Derek Fohey
Administrator, American Court Services
104 W Bourke St
Macon, MO 63552



HRW.org

Re: Human Rights Watch Research on Private Probation Companies

Dear Mr. Fohey,

We are writing to solicit your views on our research on human rights concerns linked to privatized, offender-funded misdemeanor probation services in the US. Our research includes efforts to reach out to all key stakeholders—including court officials, probationers, and private probation providers—to gather accurate information and understand the full range of perspectives on key issues.

Human Rights Watch is one of the world's leading independent organizations dedicated to protecting human rights. We conduct objective, rigorous field research in more than 90 countries worldwide and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change.

Later this year, we will publish a report that documents our findings and issues recommendations for private probation providers, court officials, and state and local governments. We anticipate that this report will garner significant media attention and be widely read by public officials at the state and local level.

Our key areas of concern include the impact of supervision, monitoring, and other fees on low-income offenders; allegations of abusive practices by private probation companies or officers in some localities; and the

AMSTERDAM · BEIRUT · BERLIN · BRUSSELS · CHICAGO · GENEVA · JOHANNESBURG · LONDON · LOS ANGELES · MOSCOW · NAIROBI · NEW YORK · PARIS · SAN FRANCISCO · SÃO PAULO · SYDNEY · TOKYO · TORONTO · WASHINGTON · ZÜRICH

apparent lack of meaningful government oversight of private probation providers in many parts of the country. In the interest of thorough and objective reporting, we are contacting you for further information about your operations.

We are also eager to document examples of good practice by private probation companies in ensuring responsible, lawful, and reasonable practices across their operations. Furthermore, we understand that there are many practical difficulties probation companies and their employees face in the day-to-day execution of their responsibilities.

We request that you provide us with the following information about your operations. The questions below drive at basic facts that we believe should be in the public domain. We are conveying the same request to other leading private probation companies in order to gather accurate, firsthand information about the scale, nature, and importance of the private probation industry.

- In which states, counties, and municipalities American Court Services operate offender-funded misdemeanor probation, bond supervision or pre-trial diversion programs?
- How many courts does American Court Services work with operating offender-funded misdemeanor probation, bond supervision or pre-trial diversion programs?
- How many people does American Court Services currently employ? Of these, how many are probation officers?
- How many misdemeanor offenders did American Court Services supervise through offender-funded probation programs across all of its operations as of the latest period for which you have records?
- What were American Court Services' total revenues in 2016, and to date in 2017?
- What were American Court Services' total profits, if any, in 2016, and to date in 2017?
- How many of the offenders supervised by American Court Services received probation as part of a guilty or no lo contendere plea agreement?
- How many offenders supervised by American Court Services qualified for a public defender or receive means-tested benefits?
- How much did American Court Services collect in fines for the courts that make use of your services during the last period for which you have records?
- What services, apart from probation supervision, does American Court Services provide for which it collects fees directly from offenders (such as drug testing,

classes, treatment, community service supervision, records checks, vehicle impoundment, alcohol or GPS monitoring, and any others)?

- Under what circumstances does American Court Services drug test offenders under its supervision? How often is drug testing carried out, and how is that determined?
- How much does American Court Services charge offenders for its services, including supervision and any other services provided?
- How much did American Court Services collect in supervision, monitoring, drug testing and any other fees from probationers during the last period for which you have records? If possible, please disaggregate these figures by type of fee.
- Does American Court Services offer waivers or a sliding scale fee structure according to the income levels of probationers? If so, please describe the process an offender would follow to avail of a fee waiver or reduction? In how many applications for a fee waiver or reduction American Court Services received and how many granted? Please disaggregate by year and location.
- Does American Court Services generally report the amounts collected in fees from supervised offenders to the courts you work with?
- How many probationers supervised by American Court Services received violations of probation for failure to pay fines or failure to pay fees in 2016 and 2017? How many probationers supervised by American Court Services received violations of probation for failure to complete other probation conditions in 2016 and 2017? In how many of those cases were warrants for their arrest issued? In how many cases were probationers under American Court Services supervision incarcerated for failure to pay fees or fines, or for failure to complete probation conditions?
- When American Court Services issues a violation of probation, what role does the American Court Services probation officer play in recommending or negotiating the penalty?
- Does American Court Services offer performance incentives of any kind to probation officers or branch office managers? If so, please describe these in as much detail as possible.
- Where probationers make only partial monthly payments American Court Services have a policy that dictates how these are divided between fines and fees? If so, please describe this policy.
- Where probationers make large payments to partially address fines and fees that are in arrears, does American Court Services have a policy that dictates how these are divided between fines and fees? If so, please describe this policy.
- What controls does American Court Services have in place to ensure that all probation officers and office managers act ethically and in accordance with the law in their treatment of probationers and in their management of funds collected from probationers?

- Does American Court Services maintain a grievance system for probationers to bring their complaints? If so, please describe the system and how complaints are investigated and addressed.

We ask that you respond to these queries by October 13, 2017 so we can ensure that your response is fully incorporated into our report and any other public comments Human Rights Watch issues on this topic. We will be certain to publicly acknowledge full and transparent responses to these queries if they are provided.

Finally, I would like to extend an offer to meet with American Court Services officials to discuss issues of mutual concern, and to provide more details about our ongoing research. Please let us know if this is of interest and we would be happy to schedule a meeting in late September or October at a time and place that is convenient for you. Please also feel free to be in touch with any questions. I can be reached by phone at 347-413-1356; by email at ramachk@hrw.org or at the mailing address given above.

Sincerely,



Komala Ramachandra
Senior Researcher
Business and Human Rights Program
Human Rights Watch

COMPANY RESPONSES

Name	Response
FLORIDA	
Judicial Correction Services	None
Professional Probation Services	None
Florida Probation Service	None
KENTUCKY	
Kentucky Alternative Programs	None
Commonwealth Mediation Services	None
You Turn Court Monitoring Services	None
Southern Kentucky Monitoring Services	None
Timeout Community Counseling and Correctional Services	None
CDS Monitoring	None
MISSOURI	
Private Probation Services	Steve Marshall, owner, said via phone that he was not planning on providing a response.
Private Probation Service TBN	Tammy Berg-Neuman, founder, sent responses.
Private Correctional Services	None
Outreach Consulting and Counseling Services	None
Court Probationary Services	None
Eastern Missouri Alternative Sentencing Services	None
American Court Services	None
Supervised Probation Services	Email from Kurtis Sanders, manager: "I do not care to participate. Thank you."
Community Services of Missouri	None
TENNESSEE	
Community Probation Services	None
Probation Services, Incorporated	Timothy Cook, owner, provided a phone interview.
Probation Services of Tennessee	None
The Justice Network	None
Westate Probation Services Inc	None
Tennessee Correctional Services	Craig Turner, founder, sent responses.

Appendix IX: List of probation companies and agencies in Florida and Tennessee



LOGIN

[Home](#) [County Probation Directory](#) [Training Events](#) [Event Calendar](#) [Links](#) [Board of Directors](#) [By-Laws](#)

FLORIDA MISDEMEANANT PROBATION PROGRAMS – Updated 9/28/2017

Please contact Dana McMahon at dana.mcmahon@mymanates.org to make changes to directory information.

Alachua

Department of Court Services
Transfer cases accepted
Contact: Sharon Longworth
14 NE 1st Street
Mail: 14 NE 1st Street
Gainesville, FL 32601
Phone: 352-338-7390
E-Mail: slongworth@alachuacountyus

Baker

Tri-County Probation, Inc.
Transfer cases accepted
Contact: Joy Beck
52 N 2nd Street
Mail: P.O. Box 1372
MacClenny, FL 32063
Phone: 904-259-3022
Fax: 904-259-6234
E-Mail: joy@tricityprobation.com
stacey@tricityprobation.com

Bay

Florida Probation Services
Transfer cases not accepted
Contact: Jessica Rogers
117 West 5th Street
Mail: PO Box 390, Apalachicola, FL 32401
Panama City, FL, 32401
Phone: 850-640-2980
Fax: 850-481-0504
E-Mail: Jessica.Rogers@f-ps.com

Bradford

Tri-County Probation, Inc.
Contact: Stacey Starling
Transfer cases accepted
998 North Temple Avenue
Mail: P.O. Box 313
Starke, FL, 32091
Phone: 904-964-2977
Fax: 904-964-2978
E-Mail: stacey@tricityprobation.com
joy@tricityprobation.com

Brevard

Professional Probation Services
contact: Rick Nay
571 Haverly Court, Suite J
Rockledge, FL 32955
Phone: 321-251-4703
Fax: 888-511-7951
E-Mail: rmay@ppsinfo.net

Broward

Broward County Sheriff's Office Probation Division

Transfers accepted on a case by case basis
Contact: Pearlle Meisel
504 SE3rd Ave, 1st Floor
Ft. Lauderdale, FL 33301
Phone: 954-785-8908
Fax: 954-785-5301
E-Mail: pearlle.meisel@sheriff.org

Calhoun
Calhoun County Probation Office
NO Transfer cases accepted
Contact: Robin Barfield
20859 Central Avenue E, Room 229
Maf. 20859 Central Avenue E
Blountstown, FL, 32424
Phone: 850-674-5543
E-Mail: barfieldc@sud14.flcourts.org

Charlotte
Charlotte County Probation
Transfer cases accepted on a case by case basis
Contact: Sherry Munroe, M.A.
350 E. Marion Avenue, 2nd Floor
Punta Gorda, FL, 33950
Phone: 941-505-4798
E-Mail: smunroe@ca.cjs20.org

Citrus
The Salvation Army Correctional Services
Transfer cases accepted
Contact: Mary Doyle
712 S. School Ave.
Mailing: P.O. Box 1630
Lecanto, FL, 34461
Phone: 352-513-4665
E-Mail: mary.doyle@uss.salvationarmy.org

Clay
The Salvation Army Correctional Services
Transfer cases accepted
Contact: Connie Bradford
726 Blanding Blvd, Suite 2
Maf. P.O. Box 608
Orange Park, FL, 32067
Phone: 904-213-4861
E-Mail: connie.bradford@uss.salvationarmy.org

Collier
Collier County Probation Department
Transfer cases accepted on a case by case basis
Contact: Juan Ramos
3315 Tamiami Trail E, Suite 101
Naples, FL, 34112
Phone: 239-252-8763
Fax: 239-774-6134
E-Mail: jramos@ca.cjs20.org

Columbia
The Salvation Army Correctional Services
Transfer cases accepted
Contact: Janet Lord
934 NE Lake DeSoto Circle #104
Maf. P.O. Box 4
Lake City, FL, 32056
Phone: 386-752-0126
E-Mail: jan_lord@uss.salvationarmy.org

Gateway Judicial
280 S. Marion Ave
Lake City, FL 32025-7030
386-755-9419
Contact: Wanda Jones

Desoto
Desoto County Probation
NO Transfer cases accepted
Contact: Douglas Mann
Desoto County Courthouse
126 N Hillsborough Avenue
Arcadia, FL 34266
Phone: 853-893-4888

Dixie

County Court Probation Services, Inc.
Transfer cases accepted - call first
Contact: Helen Liles / Brenda Fournier
37 SE 278 Street
Mail: P.O. Box 1619
Cross City, FL, 32628
Phone: 352-486-2307

Duval

The Salvation Army Correctional Services
Transfer cases accepted
Contact: Robert Schoemaker
328 N. Ocean Street
Mail: P.O. Box 52508
Jacksonville, FL, 32201
Phone: 904-301-4800
E-Mail: robert.schoemaker@uss.salvationarmy.org

Escambia

Escambia County Community Corrections
Transfer cases accepted
Contact: Tamara Jarvis
2251 N. Palafox Street
Pensacola, FL, 32501
Phone: 850-595-3100
E-Mail: tamara_jarvis@co.escambia.fl.us

Flagler

Judicial Correction Services
Contact: Kathleen Moore
2729 E. Moody Blvd. #708
Bunnell, FL, 32110
Phone: 386-261-1052
E-Mail: kmoore@judicialservices.com
Fax: 386-261-1265

Franklin

Panhandle Probation Services
Transfer cases accepted
Contact: Billy Rogers
33 Market Street #126
Apalachicola, FL, 32320
Phone: 850-653-1018
Fax: 850-653-1019
E-Mail: panhandleprobationservices@gmail.com

Gadsden

Gadsden County Probation
Transfer cases accepted w/ at least 3 months remaining on sentence
Contact: Tamika Chaney
5-A East Jefferson Street
Mail: P.O. Box 1799
Quincy, FL, 32353
Phone: 850-875-8667
Fax: 850-875-8649
E-Mail: tchaney@gadsdencountyfl.gov

Gilchrist

The Salvation Army Correctional Services
Transfer cases accepted
Contact: Janet Lord
Gilchrist County Courthouse
112 S. Main Street, Trenton 32693
Mail: P.O. Box 4
Lake City, FL, 32056
Phone: 386-752-0126
E-Mail: jan_lord@uss.salvationarmy.org

Glades

Glades County Probation Department
Transfer cases accepted
Contact: Michelle Lanier
500 Avenue J SW
Mail: P.O. Box 579
Moore Haven, FL, 33471
Phone: 863-846-6032
E-Mail: mlanier@ca.gls20.org

Gulf

Florida Probation Services
Transfer cases accepted
Contact: Billy Rogers

310 Highway 71 North
Weehatchie, FL 32465
Phone: 850-639-2095
Fax: 850-639-2105
E-Mail: billyrogers@fl-ps.com

Hamilton
Hamilton County Probation
Transfer cases accepted
Contact: Calvin Cone
114 S. Jefferson Street
Mail: P.O. Box 798, Perry, FL 32348
Perry, FL 32347
Phone: 850-584-7058

Hardee
Hardee County Probation Office
Transfer cases NOT accepted
Contact: Yolanda Villarreal
417 W. Main Street, Rm #121
Mail: 417 W. Main Rm #121
Wauchula, FL, 33873
Phone: 863-773-9323
Fax: 863-773-0966
E-Mail: Yolanda.villarreal@hardeecounty.net

Hendry
Hendry County Probation
Transfer cases accepted on a case by case basis
Contact: Dawn Oliver, Court Operations Manager
485 E. Cowboy Way
Labelle, FL, 33935
Phone: 863-675-5229
E-Mail: DOliver@ca.cjis20.org

Hernando
Professional Probation Services
Transfer cases accepted on a case by case basis - call first
Contact: Randy Story
328 W. Jefferson Street
Brooksville, Florida 34601
Phone: 352-795-8181
Fax: 352-540-4789
E-Mail: rstory@ppsinfo.net

Highlands
The Salvation Army Correctional Services
Transfer cases accepted on a case by case basis
Contact: Brian Naugle
3135 Kenilworth Blvd
Mail: P.O. Box 1643
Sebring, FL, 33870
Phone: 863-385-7548
E-Mail: brian.naugle@USS.salvationarmy.org

Hillsborough
Hillsborough County Sheriff's Office Misdemeanor Probation Services
Transfer cases accepted
Contact: Lieutenant Phillip Bates-King / Tina Kine - General Manager
George E. Edgecomb Courthouse - 1st floor
800 E. Twiggs Street
Tampa, FL, 33602
Phone: 813-318-5351 / 813-318-5368
General inquiries / information: 813-318-5385 (main line)

Holmes
Holmes County Probation
201 N. Oklahoma Street
Bonifay, FL 32425
Phone / Fax: 850-547-1117
Contact: Lisa Tate
Email: ltate@holmesclerk.com

Indian River
C.O.R.E. Program
Transfer cases accepted
Contact: Suzanne Caudell
1435-B Old Dixie Highway
Mail: 1435-B Old Dixie Highway
Vero Beach, FL, 32960
Phone: 772-567-1282
Toll Free: 888-465-8531
E-Mail: suzannep@coresprogram.com

Jackson

Jackson County Probation
Transfer cases accepted - please call first
Contact: Stacey Goodson
4445 E. Lafayette Street, Rm#104
Mail: P.O. Box 957
Marianna, FL, 32446
Phone: 850-482-9670
E-Mail: goodsons@jud14.flcourts.org

Jefferson

Florida Probation Services
Contact: Tim Donovan
Mail / Office: 1 Courthouse Circle - 3rd Floor
Monticello, FL, 32344
Phone: 850-342-0218 x 239
Fax: 850-342-0222

Lafayette

Suwannee Valley Probation Services, Inc.
Transfer cases accepted
Contact: Richard Calvert/Sandra Smith
105 S. Ohio Avenue
Mail: 105 S. Ohio Avenue
Live Oak, FL, 32060
Phone: 386-364-4723
E-Mail: rsinc@windstream.net

Lake

Lake County Probation
Transfer cases accepted
Contact: Tony Deaton
518 West Alfred Street
Mail: P.O. Box 7800
Tavares, FL, 32778
Phone: 352-742-6565
Fax: 352-742-6560
E-Mail: tdeaton@lakecountyfl.gov

Lee

Lee County Probation Office
Transfers accepted case by case – call first
Contact: Doug Jays, CPM, CSM
1700 Monroe Street
Fl. Myers, FL, 33902
Phone: 239-533-2621
E-Mail: Djays@cc.cjis20.org

Leon

Leon County Probation Division
No Transfer Cases
Contact: Teresa Broxton /
Kimberly Bivens
501 Appleyard Drive
Tallahassee, FL, 32304
Phone: 850-606-5600
E-Mail: broxtont@leoncountyfl.gov

Levy

County Probation Services, Inc.
Transfer cases accepted
Contact: Jann Underwood
151 Capital Street
Mail: P.O. Box 793
Bronson, FL, 32621
Phone: 352-486-4470
E-Mail: stanu@bellsouth.net

Liberty

Liberty County Probation Department
Transfer cases – please call first
Contact: Frankie Mercer
10816 NW ST Rd 20
Liberty County Courthouse
Mail: P.O. Box 687
Bristol, FL, 32321
Phone: 850-643-2272
Office hours – Tuesday only

Madison

Madison County Probation

Transfer cases accepted
Contact: Calvin Cone
114 S. Jefferson Street
Madison County Courthouse
Mail: P.O. Box 798
Perry, FL 32347
Phone: 850-584-7058

Manatee

Manatee County Probation Division
Transfer cases accepted
Contact: Jennifer Burgh
1051 Manatee Ave W, 5th Floor, Hensley Wing
Bradenton, FL 34205
Phone: 941-749-3051
E-Mail: jennifer.burgh@mymanatee.org

Marion

The Salvation Army Correctional Services
Transfer cases accepted
Contact: Greg Lacey
330 N. Magnolia Avenue
Mail: P.O. Box 5399
Ocala, FL 34478
Phone: 352-629-2389
E-Mail: greg.lacey@usa.salvationarmy.org

Martin

C.O.R.E. Program
Transfer cases accepted - Scott Harloff 772-465-9204
Contact: Suzanne Caudell
907 Johnson Avenue
Mail: P.O. Box 854
Stuart, FL 34995
Phone: 772-286-7352
Toll Free: 888-465-8531
E-Mail: suzannec@coreprogram.org

Miami-Dade - Central

Advocate Program, Inc.
Transfer cases accepted
Contact: Anna Pineda
1399 NW 17th Ave, 2nd Floor
Miami, FL 33125
Phone: 305-704-0112
E-Mail: anna@advocateprogram.org

Miami-Dade - North

Advocate Program, Inc.
Transfer cases accepted – send to Central Office
Contact: Clifford Brown
18425 NW 2nd Avenue, Suite 100
Miami, FL 33169
Phone: 305-493-9770
E-Mail: clifford@advocateprogram.org

Miami-Dade - South

Advocate Program, Inc.
Transfer cases accepted – send to Central Office
Contact: Esperanza Gooden
10700 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189
Phone: 305-255-7500
E-Mail: hopee@advocateprogram.org

Monroe

Professional Probation Services, Inc.
Transfer cases accepted
Plantation Key Contact: Adele Faris
89240 Overseas Hwy, Suite 5,
Tavernier, FL 33070
Phone: 305-330-9140
Fax: 305-440-2748
E-Mail: afaris@psinfo.net

Marathon Contact: Adele Faris
Transfer cases accepted
2945 Overseas Hwy, Marathon, FL 33050
Phone: 305-330-9140
Fax: 305-440-2748
E-Mail: afaris@psinfo.net

Key West Contact: Luann Huff

Transfer cases accepted
1111 12th St, #410
Key West, FL 33040
Phone: 305-330-9138
E-Mail: bjb@ppsinfo.net

Nassau
The Salvation Army Correctional Services
Transfer cases accepted
Contact: Melvin Malcolm
Nassau County Probation Office
9800 Lofton Square Ct
Yulee, FL 32097
Phone: 904-225-1958
Fax: 904-225-2729
E-Mail: melvin.malcolm@uss.salvationarmy.org

Okaloosa
Judicial Correction Services (satellite office)
Transfer cases accepted
Contact: Tina Ferland
775 N. Ferdon Blvd, Suite C
Crestview, FL 32539
Phone: 850-807-7005
Fax: 850-807-7311
E-Mail: TFerland@judicialservices.com

Judicial Correction Services
Transfer cases accepted
Contact: Tina Ferland
10 Industrial St
Fort Walton Beach, FL 32539
Phone: 850-807-7005
Fax: 850-807-2525
E-Mail: TFerland@judicialservices.com

Okeechobee
C.O.R.E. Program
Transfer cases accepted
Contact: Suzanne Caudell
406 NW 3rd Street
Okeechobee, FL 34972
Phone: 863-763-1865
E-Mail: suzanne@coresprogram.org

Orange
Orange County Community Corrections
Transfer cases accepted – contact Central Intake @ 407-836-3122
Contact: Harriet Mathis
3723 Vision Blvd
Mail: P.O. Box 4970
Orlando, FL 32802
Phone: 407-836-3011
E-Mail: harriet.mathis@occc.net

Osceola
Osceola County Probation Services
Transfer cases accepted
Contact: Margaret Jones - Manager
317 Church Street
Kissimmee, FL 34741
Phone: 407-742-4700
Fax: 407-343-1588

Palm Beach - South
Professional Probation Services, Inc.
Transfer cases accepted
Contact: Reina Corvil
4731 West Atlantic Avenue, Suite B-2
Delray Beach, FL 33445
Phone: 561-381-9072
Fax: 561-381-9076

Palm Beach - Main
Professional Probation Services, Inc.
Transfer cases accepted
Contact: Genny Curto
1280 North Congress Avenue, Suite 210
West Palm Beach, FL 33409
Phone: 561-800-1719

Fax: 561-800-1723

Palm Beach - West

Professional Probation Services, Inc.
Transfer cases accepted
Contact: Gwen Long
1540 NW Ave L, Suite 106
Belle Glade, FL, 33480
Phone: 561-992-7695
Fax: 561-992-9325

Pasco - East

Pasco County Misdemeanor Probation
No transfers accepted
Contact: Tracy Toner
38053 Live Oak Ave, #224
Dade City, FL, 33523
Phone: 352-521-4250
E-Mail: ttoner@pascocountyfl.net

Pasco - West

Pasco County Misdemeanor Probation
No transfers accepted
Contact: Tracy Toner
7517 Little Road, Suite A
New Port Richey, FL, 34854
Phone: 727-834-3300
E-Mail: ttoner@pascocountyfl.net

Pinellas

Pinellas County Sheriff's Office Probation Unit
Transfer cases accepted
Contact: Sgt Richard Bailey
14500 49th Street North, Suite 130
Clearwater, FL, 33762
Phone: 727-464-7383
Fax: 727-464-8145
E-Mail: rbailey@psconf.com

Polk

Polk County Probation
Transfer cases accepted – form must be completed prior to transfer
Contact: Lisa Ewing
1745 US 17 South
Mail: P.O. Box 9000, Drawer C J
Bartow, FL, 33830
Phone: 883-534-4125
E-Mail: lsewing@polk-county.net

Putnam

Human Resources Development Services, Inc.
Transfer cases accepted – Must call first
Contact: Debbie Odum
609 St. Johns Avenue
Mail: P.O. Box 1864
Palatka, FL, 32178
Phone: 386-325-0990
Fax: 386-325-0074
E-Mail: HRDS@bellsouth.net

Santa Rosa

Santa Rosa County Court Services
Transfer cases accepted on a case by case basis – please call first
Contact: Lotta Vinson
6816 Caroline St.
Mail: P.O. Box 775
Milton, FL, 32572
Phone: 850-623-0178
E-Mail: vinsonl@fcjn.net

Sarasota-Central

Professional Probation Services, Inc.
Transfer cases accepted
Contact: Cathy Shotwell (894-1235)
Mail: 1991 Main St, Suite #210
Sarasota, FL, 34238
Phone: 941-894-1232
Fax: 1-888-388-3210
Email: cshotwell@pppsinfo.net

Sarasota-South (Venice)

Probation Professional Services, Inc.

Transfer cases accepted
Contact: Cathy Shotwell (941-864-1262)
1660 South Tamiami Trail, Suite A
Venice, FL 34293
Phone: 941-864-1232
Fax: 1-888-385-3210
Email: cshotwell@ppinfo.net

Seminole
Seminole County Sheriffs Office / Probation Division
Transfer cases accepted
Contact: Lisa Zucker
212 Eslinger Way
Sanford, FL 32773
Phone: 407-665-4602
Fax: 407-665-4615

St. Johns
Probation Plus Correctional Services
Transfer cases accepted on a case by case basis – please call first
Contact: Darlene Schnitzler
Mail: 665 State Road 207, Unit 107
St. Augustine, FL, 32084
Phone: 904-824-8383
Fax: 904-824-8336
E-Mail: dsopplus@hotmail.com

St. Lucie
C.O.R.E. Program
Transfer cases accepted
Contact: Suzanne Caudell
800 Virginia Ave, Suite 4
Mail: P.O. Box 3840
Fl. Pierce, FL, 34982
Phone: 772-465-8531
Toll Free: 888-465-8531
E-Mail: suzanne@coreprogram.org

Sumter
Professional Probation Services
Transfer cases accepted
Contact: Louise Smith
217 North Florida Street, Suite 1
Bushnell, FL, 33513
Phone: 352-793-0255
E-Mail: lsmith@ppinfo.net

Suwannee
Suwannee Valley Probation Services, Inc.
Transfer cases accepted
Contact: Richard Cahvett/Sandra Smith
105 S. Ohio Avenue
Mail: 105 S. Ohio Avenue
Live Oak, FL, 32064
Phone: 386-364-4723
E-Mail: svppinfo@windstream.net

Taylor
Taylor County Probation Office
Transfer cases accepted
Contact: Daryn Willes
125 S. Jefferson St.
Perry, FL, 34347
Phone: 850-584-3400

Union
Tri-County Probation, Inc.
Transfer cases accepted
Contact: Joy Beck / Stacey Starling
898 N. Temple Avenue
Mail: P.O. Box 313
Starks, FL, 32091
Phone: 904-664-2977
Fax: 904-664-2978
E-Mail: joy@tricityprobation.com
stacey@tricityprobation.com

Volusia
Judicial Correction Services
Transfer cases accepted
Contact: Kathleen Moore
665 Pebble Road, #F

Daytona Beach, FL 32114
Phone: 386-323-0677
Fax: 888-456-0669
E-Mail: jmoore@judicialservices.com

Judicial Correction Services –(Satellite Office)
Transfer cases accepted
Contact: Kathleen Moore
2752 B. Enterprise Rd
Orange City, FL 32763
Phone: 386-323-0677
Fax: 888-456-0669
E-Mail: jmoore@judicialservices.com

Judicial Correction Services –(Satellite Office)
Transfer cases accepted
Contact: Kathleen Moore
224 N. Woodland Blvd
Deland, FL 32720-4219
Phone: 386-323-0677
Fax: 888-456-0669
E-Mail: jmoore@judicialservices.com

Judicial Correction Services –(Satellite Office)
Transfer cases accepted
Contact: Kathleen Moore
101 E. Yelka Terrace, Suite C
Edgewater, FL 32141
Phone: 386-323-0677
Fax: 888-456-0669
E-Mail: jmoore@judicialservices.com

Wakulla
Wakulla County Probation
Contact: Nakeisha Oliver
3056 Crawfordville Hwy, Rm# 111
Mail: P.O. Box 1516
Crawfordville, FL 32326
Phone: 850-626-0910
Fax: 850-626-0924
E-Mail: nowler@jmwakulla.com

Walton
Walton County Probation Office
Transfer cases accepted on a case by case basis
Contact: Donna Lowery or Nicole Echale
571 East Nelson Ave, Suite 201
Walton County Courthouse
Defuniak Springs, FL 32433
Phone: 850-892-8135
Fax: 850-892-8440
E-Mail: lowdonna@co.walton.fl.us

Washington
Washington County Probation
Transfer cases accepted – must call first
Contact: Marilyn Nelson
1293 Jackson Ave
Mail: P.O. Box 995
Chipley, FL 32428
Phone: 850-638-8011 ext 9012 / 850-638-8295
E-Mail: NelsonM@jud14.flcourts.org

2012 Florida Association of Community Corrections

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

Details	License #	Status	Expiry Date	Rank	Name	ATTN	Original Date
	1	Active License	Nov 6 2018	PRIVATE PROBATION COMPANY	THE JUSTICE NETWORK, INC., \\\	PAUL ROSS	Nov 7 2005
	2	Voluntary Surrender	Dec 6 2006	PRIVATE PROBATION COMPANY	MAXIMUS, \\\	LYNN DAVENPORT	Dec 7 2005
	3	Closed	Oct 24 2007	PRIVATE PROBATION COMPANY	ROANE COUNTY PROBATION SERVICES, INC., \\\	DAVID RIDENOUR	Oct 25 2005
	4	Active License	Nov 9 2018	PRIVATE PROBATION COMPANY	COMMUNITY PROBATION SERVICES, LLC, \\\	JAY D. COLTON	Nov 10 2005
	5	Expired	Nov 9 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \\\	JAY D. COLTON	Nov 10 2005
	6	Expired	Nov 9 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \\\	JAY D. COLTON	Nov 10 2005
	7	Expired	Nov 9 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \\\	JAY D. COLTON	Nov 10 2005
	8	Expired	Nov 9 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \\\	JAY D. COLTON	Nov 10 2005

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

9	Expired	Nov 9 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	JAY D. COLTON	Nov 10 2005
10	Active License	Dec 20 2018	PRIVATE PROBATION COMPANY	PROGRESSIVE SENTENCING, INC., \ \ \	PROGRESSIVE SENTENCING, INC.	Dec 21 2005
11	Expired	Dec 20 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	TIMOTHY R. COOK	Dec 21 2005
12	Active License	Nov 17 2018	PRIVATE PROBATION COMPANY	TENNESSEE CORRECTIONAL SERVICES, LLC, \ \ \	TIMOTHY R. COOK	Nov 18 2005
13	Expired	Nov 17 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	TIMOTHY COOK & WILLIAM WALKER	Nov 18 2005
14	Expired	Nov 17 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	TIMOTHY COOK & WILLIAM WALKER	Nov 18 2005
15	Expired	Nov 17 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	TIMOTHY COOK & WILLIAM WALKER	Nov 18 2005
16	Expired	Nov 17 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	TIMOTHY COOK & WILLIAM WALKER	Nov 18 2005
17	Active License	Jul 9 2018	PRIVATE PROBATION COMPANY	EAST TENNESSEE PROBATION, INC., \ \ \	LORETTA GROOMS	Jul 10 2006

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

18	Expired	Dec 20 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	VERONICA THORNTON	Dec 21 2005
19	Active License	Dec 20 2018	PRIVATE PROBATION COMPANY	SMITH COUNTY MISDEMEANOR PROBATION, \ \ \	LYNN SHRUM	Dec 21 2005
20	Expired	Mar 23 2006	PRIVATE PROBATION COMPANY	TRI COUNTIES SUPERVISED PROBATION SERVICE, \ \ \	LIZ SMITH	Mar 24 2006
21	Active License	Mar 21 2018	PRIVATE PROBATION COMPANY	NORTHWEST ALTERNATIVE CORRECTION, \ \ \	KEITH ARNOLD	Mar 22 2006
22	Active License	Dec 12 2018	PRIVATE PROBATION COMPANY	SUPERVISORY SERVICES, INC., \ \ \	MICHAEL MORRIS	Dec 13 2005
23	Active License	Dec 6 2018	PRIVATE PROBATION COMPANY	PROBATION MANAGEMENT GROUP, INC., \ \ \	DEBRA TAYLOR	Dec 7 2005
24	Active License	Feb 5 2018	PRIVATE PROBATION COMPANY	WESTN SERVICES, INC., \ \ \	ROBERT D. VAUGHN	Feb 6 2006
25	Active License	Feb 9 2019	PRIVATE PROBATION COMPANY	PROBATION WORKS LLC, \ \ \	DERRICK J. PHILLIPS	Feb 10 2006
26	Closed	Feb 20 2018	PRIVATE PROBATION COMPANY	CORRECTIONAL SERVICES, INCORPORATED DBA TENNESSEE, \ \ \	CRAIG TURNER	Feb 21 2006

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

27	Voluntary Surrender	Feb 8 2008	PRIVATE PROBATION COMPANY	ALTERNATIVE PROBATION SERVICES, \ \ \	PAULA A. LANDERS	Feb 9 2006
28	Expired	Dec 20 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	REVE MCDAVID	Dec 21 2005
29	Active License	Feb 6 2019	PRIVATE PROBATION COMPANY	CROSSROADS AREA ALCOHOL AND DRUG ASSOCIATION, \ \ \	PAMELA CABE	Feb 7 2006
30	Active License	Dec 12 2018	PRIVATE PROBATION COMPANY	PROBATION SERVICES, INCORPORATED, \ \ \	TOM GAGLIANO	Dec 13 2005
31	Active License	Feb 6 2019	PRIVATE PROBATION COMPANY	ALTERNATIVE CORRECTIONAL SERVICES, \ \ \	ROBERT W. BOGART	Feb 7 2006
32	Voluntary Surrender	Jul 29 2015	PRIVATE PROBATION COMPANY	PROBATION SOLUTIONS, LLC, \ \ \	VANESSA SCOTT	Feb 21 2006
33	Active License	Feb 12 2019	PRIVATE PROBATION COMPANY	COUNTY PROBATION, \ \ \	TRACEY HAYWOOD	Feb 13 2006
34	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	MICHAEL MORRIS	Dec 13 2005
35	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	MICHAEL MORRIS	Dec 13 2005

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

36	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	MICHAEL MORRIS	Dec 13 2005
37	Active License	Dec 20 2018	PRIVATE PROBATION COMPANY	WESTATE PROBATION SERVICES, INC., \ \ \	VERONICA THORNTON	Dec 21 2005
38	Application Withdrawn	*		DO NOT USE, \ \ \	CRAIG TURNER	*
39	Closed	Jul 20 2011	PRIVATE PROBATION COMPANY	COMPREHENSIVE COMMUNITY SERVICES, \ \ \		Dec 21 2005
40	Expired	*	Unapproved applicant for licensure	DO NOT USE, \ \ \	ROBIN SHAFFER	*
41	Expired	*	Unapproved applicant for licensure	DO NOT USE, \ \ \	ROBIN SHAFFER	*
42	Active License	Jun 6 2018	PRIVATE PROBATION COMPANY	NATIONAL PROBATION OF AMERICA, INC., \ \ \	JENNINGS BERNARD	Jun 7 2006
43	Active License	Feb 6 2019	PRIVATE PROBATION COMPANY	CORRECTIONS MANAGEMENT CORPORATION MISDE, \ \ \	JUDITH W. HARVEY	Feb 7 2006
44	Active License	Jun 6 2018	PRIVATE PROBATION COMPANY	MOUNTAIN EMPIRE CORRECTIONS, \ \ \	STEFANIE VARNER-PYRON	Jun 7 2006

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

	45	Active License	Dec 20 2018	PRIVATE PROBATION COMPANY	TN JUDICIAL COURT SUPPORT, INC., \ \ \	TONY BREWER	Dec 21 2005
	46	Active License	Jun 6 2018	PRIVATE PROBATION COMPANY	MISDEMEANOR PROBATION SERVICE, \ \ \	DAVID G. MITCHELL	Jun 7 2006
	47	Active License	Feb 6 2019	PRIVATE PROBATION COMPANY	MARSHALL COUNTY MISDEMEANOR PROBATION, \ \ \	KIMBERLY F. RICE	Feb 7 2006
	48	Closed	Feb 22 2007	PRIVATE PROBATION COMPANY	COURT SERVICES, INC., \ \ \	CAROLYN ANN BOWLING	Feb 23 2006
	49	Expired	Jun 6 2016	PRIVATE PROBATION COMPANY	BG CORRECTIONS, \ \ \	BRIAN KELLY BUTTREY	Jun 7 2006
	50	Active License	Jun 22 2018	PRIVATE PROBATION COMPANY	M.O.P. MISDEMEANOR OFFENDER PROGRAM, \ \ \	SHANNON C. MONZON	Jun 23 2006
	51	Expired	*	Unapproved applicant for licensure	DO NOT USE, \ \ \	JUDITH W. HARVEY	*
	52	Expired	*	Unapproved applicant for licensure	DO NOT USE, \ \ \	JUDITH W. HARVEY	*
	53	Expired	*	Unapproved applicant for licensure	DO NOT USE, \ \ \	SHANNON C. MONZON	*
	54	Expired	*	Unapproved applicant for licensure	DO NOT USE, \ \ \	DAVID G. MITCHELL	*

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

	55	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	LESLIE ANDERSON	Dec 13 2005
	56	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	LESLIE ANDERSON	Dec 13 2005
	57	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	LESLIE ANDERSON	Dec 13 2005
	58	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	LESLIE ANDERSON	Dec 13 2005
	59	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	LESLIE ANDERSON	Dec 13 2005
	60	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	LESLIE ANDERSON	Dec 13 2005
	61	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	LESLIE ANDERSON	Dec 13 2005
	62	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	LESLIE ANDERSON	Dec 13 2005
	63	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	LESLIE ANDERSON	Dec 13 2005

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

64	Expired	Dec 12 2006	PRIVATE PROBATION CO. BRANCH	DO NOT USE, \ \ \	LESLIE ANDERSON	Dec 13 2005
65	Active License	Mar 16 2018	PRIVATE PROBATION COMPANY	SOUTH CENTRAL PROBATION SERVICE, \ \ \	SANDIE SMITH WHITAKER	Mar 17 2006
66	Expired	Feb 6 2017	PRIVATE PROBATION COMPANY	PSI-PROBATION, II, LLC, \ \ \	TIM COOK	Feb 7 2006
67	Closed	Mar 16 2017	PRIVATE PROBATION COMPANY	SOUTHERN SUPERVISION SERVICES, INC., \ \ \	JAMES GENTRY	Mar 17 2006
68	Active License	Feb 20 2019	PRIVATE PROBATION COMPANY	PROBATION SERVICES OF TENNESSEE, INC., \ \ \	TAMMY HARDY	Feb 21 2006
69	Application Denied	.		GUARDIAN MISDEMEANOR PROBATION SERVICES, \ \ \	BRUCE JOSEPH ALBERT	.
70	Expired	Jun 1 2017	PRIVATE PROBATION COMPANY	TENNESSEE COMMUNITY COUNSELING SERVICES, INC., \ \ \	JENNIFER JACKSON	Jun 2 2006
71	Expired	Jun 6 2009	PRIVATE PROBATION COMPANY	AMERICA PROBATION SERVICES, \ \ \	DOAK PATTON	Jun 7 2006
72	Application Expired	.		COUNCIL FOR ALCOHOL & DRUG ABUSE SERVICES (CADAS), \ \ \	PAUL L. FUCHCAR	.

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

	73	Expired	Jan 9 2017	PRIVATE PROBATION COMPANY	PATHWAYS COMMUNITY CORRECTIONS, \ \ \	SEAN HOLLIS	Jan 10 2007
	74	Application Expired	.		CAMPBELL COUNTY EDUCATIONAL CONSULTANTS, \ \ \		.
	75	Active License	Dec 17 2018	PRIVATE PROBATION COMPANY	GRACE RESOURCE AGENCY, LLC, \ \ \	GEORGE F. MCFARLAND	Dec 18 2008
	76	Application Expired	.		WASHINGTON COUNTY PROBATION AGENCY, LLC, \ \ \	MICHAEL STEPHEN MOORE	.
	77	Application Expired	.		PROBATION SOLUTIONS, LLC, \ \ \	VANESSA SCOTT	.
	78	Active License	Mar 11 2018	PRIVATE PROBATION COMPANY	CORRECTIONAL MANAGEMENT SYSTEMS, LLC DBA CMS, \ \ \	JOSEPH KERINUK	Mar 12 2010
	79	Active License	Mar 28 2018	PRIVATE PROBATION COMPANY	COLUMBIA PROBATION SERVICES, LLC, \ \ \	MARIA L. DEVORE	Mar 29 2010
	80	Active License	Aug 25 2018	PRIVATE PROBATION COMPANY	SPARTAN PROBATION SERVICES, LLC, \ \ \	JEFFERY LYNN BOTTOMS	Aug 26 2010
	81	Expired	May 9 2013	PRIVATE PROBATION COMPANY	PROFESSIONAL PROBATION SERVICES, INC., \ \ \	JOHN CLAYTON COX	May 10 2011

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

82	Closed	Sep 6 2014	PRIVATE PROBATION COMPANY	JUDICIAL CORRECTION SERVICES, INC., \\\	ROBERT H. MCMICHAEL II	Sep 7 2011
83	Voluntary Surrender	Oct 4 2013	PRIVATE PROBATION COMPANY	ADVANCED DRUG SCREENING SERVICES, \\\	HAROLD EUGENE WARNER	Mar 9 2012
84	INVALID	*	Unapproved applicant for licensure	BUREAUS INVESTMENT GROUP PORTFOLIO NO. 8, LLC, \\\		*
85	INVALID	*	Unapproved applicant for licensure	BUREAUS INVESTMENT GROUP PORTFOLIO NO. 7, LLC, \\\		*
86	INVALID	*	Unapproved applicant for licensure	BUREAUS INVESTMENT GROUP PORTFOLIO NO.11, LLC, \\\		*
87	INVALID	*	Unapproved applicant for licensure	BUREAUS INVESTMENT GROUP PORTFOLIO NO. 10, LLC, \\\		*
88	Active License	Jun 8 2018	PRIVATE PROBATION COMPANY	ALTERNATIVE JUDICIAL SERVICES, LLC, \\\	DANNY HENRY	Jun 9 2014
89	Active License	Sep 18 2018	PRIVATE PROBATION COMPANY	COMMUNITY SUPERVISION INC, \\\	JOSEPH M. BOYD	Sep 19 2014
90	Expired	Oct 8 2016	PRIVATE PROBATION COMPANY	THE EASTLINK GROUP LLC DBA SECOND CHANCE SERVICES, \\\	JASON EAST	Oct 9 2014
91	Applicant	*		THE EASTLINK GROUP LLC DBA: SECOND CHANCE SERVICES, \\\		*

TENNESSEE PRIVATE PROBATION COMPANIES – February 1, 2018

92	Applicant	'		GEORGE N SHEALY, III		'
93	Applicant	'		TENNESSEE PROBATION SERVICES, III	THOMAS "ANDY" BAGGENSTOSS	'
94	Active License	Nov 30 2018	PRIVATE PROBATION COMPANY	Tennessee Court Services, LLC, III	STEVEN CHRISTOPHER TAYLOR	Dec 1 2015
95	Application Expired	'		TENNESSEE CORRECTIONAL SERVICES - MEMPHIS, INC., III	WILBERT HILL JR.	'
96	Application Expired	'		US Coastal Protection Service, III		'
97	Active License	Aug 24 2018	PRIVATE PROBATION COMPANY	TENNESSEE CORRECTIONAL SERVICES WEST, INC., III	STACY MILLER	Aug 25 2017

“Set up to Fail”

The Impact of Offender-Funded Private Probation on the Poor

Many US states allow private companies to supervise probation for minor offenses. People on probation pay fees to the private companies for supervision, and bear the costs of drug testing, document checks, community service, and other court-mandated conditions, which the same private probation companies often provide.

“Set up to Fail” documents the impact of privatized probation systems in four US states: Florida, Kentucky, Missouri, and Tennessee, and finds that people living in poverty often face the greatest consequences of the private probation system, as they have to forego basic necessities, including food, transportation, and rent, to pay their fees and fines. When individuals are unable to pay, they face potential arrest, extended probation periods, and incarceration.

Based on over 150 interviews, the report also documents numerous cases of human rights abuses associated with the private probation system and calls for greater government oversight and regulation of the industry.

Authorities in Florida, Kentucky, Missouri, Tennessee, and other states where probationers face excruciating costs should reduce the burden of private probation fees and court costs on the poor, ensuring that they do not face further criminalization as a result of their inability to meet costs related to their probation.



Sign in Bowling Green, MO, county courthouse instructing criminal defendants on how they can pay their court costs online.



Steve Gibbs outside his home in Murfreesboro, TN, is a named plaintiff in the class action lawsuit against Providence Community Corrections (PCC). PCC agreed to settle the lawsuit, paying plaintiffs \$14 million.



Cindy Rodriguez, outside her home in Murfreesboro, Rutherford County, TN, is a named plaintiff in the class action lawsuit against Providence Community Corrections (PCC). PCC agreed to settle the lawsuit, paying plaintiffs \$14 million.



Craig Merrill was incarcerated in Bay County, Florida, when he could not afford to pay his fines and fees, though he was suffering from terminal liver disease and unable to work.