

Private Probation in Kentucky



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EXECUTIVE SUMMARY

In Kentucky, private probation companies operate in at least 13 of Kentucky's judicial districts by providing court-ordered probation monitoring services in low-level cases. For a fee that must be paid by the defendant (in addition to any other court-ordered fines, costs, and restitution), these companies supervise individuals who are on probation for misdemeanors or traffic offenses. The companies report probation violations to the court, and they also provide additional services that may be court-ordered, such as drug testing, counseling, *etc.*, each of which, of course, comes at an additional cost to the probationer.

These companies are not new to the Commonwealth, with the first known private probation company having been established in 1989. However, they have remained an opaque and largely unaccountable component of the criminal justice system. Specifically, there are presently six known private probation companies operating in at least 13 of Kentucky's 60 judicial districts. While the courts that utilize these companies have been required to collect certain information about them since 2000, those modest record-keeping requirements have been loosely followed, if at all. And the companies themselves have previously rejected other attempts to review their records asserting their private status and thus exemption from Kentucky's Open Records Act.



Exacerbating this lack of transparency, Kentucky has not maintained a centralized repository for information related to these companies. In an apparent attempt to address this deficiency, the Kentucky Supreme Court in 2016 did impose new disclosure requirements forcing companies to provide certain information annually to the Administrative Office of the Courts (AOC). Unfortunately, however, more than six months after that requirement went into effect, AOC possessed the required information for only one company.

In addition to problems related to transparency and oversight, Kentucky's use of private probation companies also creates disparities in justice administration between districts. Specifically, because probationers in districts that use private probation services will necessarily be required to pay for services that are not imposed upon probationers in other districts, those added financial burdens result in consequential differences in treatment among similarly situated individuals.

Moreover, because these companies cannot operate in a judicial district without a district court judge's approval *and* without receiving a sufficient number of court-ordered referrals, real or perceived conflicts may arise for the elected judge who chooses to use them. In many small Kentucky communities, these companies oftentimes provide critical employment opportunities. Thus, the elected judges in those districts are virtually single-handedly responsible for ensuring the continued viability of the private probation company as a local employer. Even absent a direct financial relationship, this scenario may nonetheless create a reasonable perception of a conflict of interest that can have the effect of undermining public confidence in the administration of justice.

In Part I of this report, we detail the ACLU of Kentucky's investigative efforts to uncover information about private probation companies in Kentucky. We also provide a summary of the relevant statutory and regulatory requirements for their utilization, including the recent amendments to Supreme Court Rule 9.

In Part II, we provide an analysis of the data obtained from our investigation, specifically identifying: a) the private probation companies currently operating in Kentucky and relevant details about their services; b) which judicial districts utilize these companies; and c) the adequacy of the responses we received from the courts and AOC regarding private probation companies in Kentucky.

Finally, in Part III of this report, we summarize our factual findings and submit specific proposals to address identified shortcomings in Kentucky's use and oversight of private probation companies, including:

- Eliminating private probation in Kentucky altogether, or alternatively;
- Amending Ky. Supreme Court Rule 9 by:
 - Establishing a framework by which the Supreme Court of Kentucky, not the locally elected district court judge, approves the use of private probation services in a judicial district;
 - Adopting a standard fee schedule to be used throughout the state;
 - Identifying a specific office within AOC that would be responsible for ensuring private probation companies' compliance with relevant requirements, and for imposing sanctions for any violations;
 - Imposing additional disclosure requirements upon district courts to allow AOC to adequately monitor their compliance with Rule 9;
 - Requiring AOC to receive and investigate complaints of abuse by private probation companies, and to routinely audit and report upon all such companies operating in the Commonwealth; and
 - Adopting clear training and certification requirements for probation officers employed by private probation companies.

PART I — BACKGROUND

In Kentucky, the law favors granting probation in criminal cases, whether in the form of conditional discharge (unsupervised probation), supervised probation, or probation with an alternative sentence.¹ In making sentencing decisions, Kentucky judges possess a great deal of discretion, both in terms of choosing among these alternatives as well as the ability to impose various conditions upon a grant of probation.²

When choosing supervised probation for that subset of low-level offenses (misdemeanor and traffic offenses) for which supervision is deemed appropriate, district court judges in Kentucky generally employ one of three options: 1) require probationers to return to court at a later date to prove that they've complied with the terms of probation; 2) order the probationer to be supervised by the Department of Corrections³; or 3) order the probationer to be supervised by a private probation company.⁴ For most judicial districts in Kentucky, the first option is sufficient to monitor probationers in these low-level cases. And while the Department of Corrections is authorized to provide probation supervision in these minor cases, it disfavors doing so because of budgetary concerns and thus does not provide that service throughout the state.⁵

This combination of judicial sentencing discretion and the Department of Corrections' focus on more serious offenses ostensibly gave rise to Kentucky's private probation industry which, it appears, began in 1989 with the formation of Kentucky Alternative Programs (KAP) — one of the six private probation companies currently operating in the state. Once a court decides to use private probation, it will then incorporate that provision into the sentence imposed and thus require the individual, as a condition of probation, to report to the private company. The probation company will

¹ K.R.S. § 533.010(2) (“probation or conditional discharge shall be granted” unless court determines that one of the enumerated factors present justifying imprisonment).

² K.R.S. § 533.030(1) (terms of probation “shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.”).

³ K.R.S. § 439.550(1).

⁴ K.R.S. § 533.010(12).

⁵ JAMES MCNAIR, *Inside Kentucky's Unregulated Private Probation Industry*, Kentucky Center for Investigative Reporting (Jan. 20, 2016), <http://kycir.org/2016/01/20/inside-kentuckys-unregulated-private-probation-industry/>.

then “report to the court on the defendant’s compliance” with the terms of probation,⁶ and “[t]he defendant shall be responsible for any reasonable charges which the private agency charges.”⁷

In 2000, the Kentucky Supreme Court promulgated SCR 9.000, *et seq.* governing district courts’ use of private probation companies. In it, the Court required that in order to utilize the services of a private probation company, a district court judge must first find that “probation monitoring services are not being and cannot be performed by a governmental agency, a not for profit agency or volunteers,”⁸ and that doing so is “in the best interest of the defendant and the public.”⁹ This decision, however, is within each district court judge’s discretion. Thus, judges within a single judicial district can reach differing conclusions about the need for utilizing private probation services — a result that has manifested itself in at least one of Kentucky’s judicial districts.¹⁰

The 2000 version of Rule 9 also set forth much needed requirements for companies seeking to provide probation services, and it imposed specific recordkeeping obligations on judges to oversee them. Specifically, SCR 9.020(A)-(G) required that the private probation company must:

- be an independent contractor and not an agent of the court;
- have no individual or financial relationship with the judge, the judge’s spouse, or the judge’s minor children;
- have no principal officer, director, or trustee (or their spouse) who is related by blood or marriage (within the third degree of relationship) to the judge or the judge’s spouse;
- maintain and provide upon request liability insurance of at least \$1 million dollars;
- agree, in writing, to accept pro bono referrals on a proportional basis with all other private probation companies providing services to the court;
- provide a written schedule of fees, including a sliding scale for indigent defendants based on the individual’s ability to pay; and

⁶ *Id.*

⁷ *Id.*

⁸ SCR 9.010.

⁹ SCR 9.000 (citing KRS 533.010(12)).

¹⁰ See Part II, *infra*, identifying Kentucky’s 6th Judicial District as one in which not all of the district court judges utilize private probation.

- agree, in writing, to assess fees in “strict conformity” with the fee schedule “submitted to and approved by the district court.”

Similarly, Rule 9.030(A)-(G) mandated that district court judges utilizing these companies must:

- ensure that the company “has no discretion as to the terms or conditions of probation”;
- prevent the company from collecting any fines, fees, or court costs for the court;
- approve all fees charged by the company and ensure that fees actually charged “comply with the approved schedule of fees”;
- “assure no employee of the private agency is seated inside the bar within the courtroom”;
- include terms of probation or conditional discharge are provided to the probationer on AOC-provided forms, not forms provided by the company;
- assign pro bono cases proportionately to all private companies approved by the court;
- “require all private agencies to report to the district court on a monthly basis all pro bono cases referred to such agency by the court and whether such agency accepted or rejected the pro bono referral and, if rejected, the reasons for such rejection.”

Unfortunately, the 2000 version of Rule 9 lacked any meaningful mechanisms by which the public could ensure that the companies were in compliance *or* that the judges were discharging their oversight obligations. This shortcoming became apparent when the ACLU of Kentucky launched its initial investigation into Kentucky’s private probation industry in 2015.

That year, after having received a number of complaints about private probation companies, the ACLU of Kentucky identified a select number of judicial districts in which private probation companies were reportedly operating. We then submitted requests to the judges in those districts seeking copies of the information required by SCR 9.030, including the fee schedules, the monthly pro bono reports, and proof of liability insurance. Of the approximately ten requests that were submitted, not a single judge responded.¹¹

¹¹ Presumably, the judges refused to respond because of *Ex Parte Farley*, 570 S.W.2d 617 (Ky. 1978) — a case we acknowledged in our request that exempts the judiciary from complying with Kentucky’s Open Records Act. As we also noted, however, Kentucky’s Supreme Court observed in that case that “*whatever belongs to the courts belongs to the public.*” *Id.* at 625 (emphasis added).

We also submitted requests for information directly to the private probation companies themselves but obtained only marginally better results. The companies responded, but they uniformly refused to provide the requested information on the basis that, as private entities, they were not subject to Kentucky's Open Records Act.¹² Finally, we also sought (and obtained) a meeting with an official with the Administrative Office of the Courts expressing our concerns about the Court of Justice's lack of meaningful oversight over the private probation companies operating within the state.

Our concerns were later shared by the Kentucky Center for Investigative Reporting which, in 2016, published an article detailing the shortcomings in Kentucky's private probation industry, including the lack of meaningful oversight or transparency.¹³ Highlighting these concerns was the article's observation that "[n]o one in the Kentucky Administrative Office of the Courts knows how many such companies operate in the state, which counties they serve, how many defendants they monitor or how much they charge. No state agency monitors the monitors."¹⁴

Perhaps not coincidentally, the Kentucky Supreme Court amended Rule 9 in 2016¹⁵ to incorporate more specific recordkeeping and reporting requirements, both on the companies and on the judges that utilize them. Under the newly amended Rule, these private agencies are now required to provide to AOC, on an annual basis: proof of liability insurance, their written fee schedules, and their sliding fee scale for indigent defendants.¹⁶ Companies must also create, and provide to AOC annually: policies governing "the confidential receipt and investigation of complaints made" by probationers against company employees¹⁷ and training and certification requirements for those employees who supervise probationers.¹⁸

¹² 05-ORD-012.

¹³ JAMES MCNAIR, *Inside Kentucky's Unregulated Private Probation Industry*, Kentucky Center for Investigative Reporting (Jan. 20, 2016), <http://kycir.org/2016/01/20/inside-kentuckys-unregulated-private-probation-industry/>.

¹⁴ *Id.*

¹⁵ Order 2016-09 (eff. January 1, 2017).

¹⁶ SCR 9.020(D); (F).

¹⁷ SCR 9.020(K).

¹⁸ SCR 9.020(L).

The 2016 amendments also require district courts to:

- “advise the defendant . . . of his or her right . . . to petition the court to modify or vacate its previous judgment or order on the grounds of change of circumstances with regard to the defendant's ability to pay the fee charged by the agency”¹⁹;
- “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,”²⁰;
- “make available upon written request all records and supporting documentation provided by the private agency to the district court pursuant to SCR 9.020”²¹; and
- “maintain a list of all private probation monitoring agencies in the district that have met the requirements of this rule.”²²

Despite that these new requirements have been in place for several months, however, our follow-up investigation conducted this year revealed that companies’ (and courts’) compliance with those requirements appear to be, at best, inconsistent.

Specifically, in 2017 we partnered with Human Rights Watch — an independent organization dedicated to promoting and protecting human rights around the globe — to again investigate whether private probation companies in Kentucky were complying with their obligations and whether district courts were adequately discharging their oversight function. In doing so, we mailed written requests to almost every district court judge in Kentucky²³ inquiring whether private probation companies operate within their district and, if so, requesting copies of records relating to those companies mandated by Rule 9. We specifically sought the following records for each company approved to provide private probation services:

- written agreement to receive referrals from the court;
- proof of liability insurance;
- fee schedule, including the sliding fee scale for indigent defendants;
- written agreement to adhere to the submitted fee schedule;
- court approval of the submitted fee schedule;

¹⁹ SCR 9.030.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ We submitted a written request only to the Chief District Court Judge in Jefferson County rather than to all of the judges in that district.

- all monthly/annual reports submitted concerning any pro bono cases referred since January 1, 2017;
- any requests made by the court for an accounting of all monies received from probationers;
- the policies and procedures for the confidential receipt and investigation of complaints from defendants alleging abusive behavior by the agency;
- verification of training and/or certification requirements for those employees who supervise probationers;
- 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”; and
- any documents establishing the denial (or revocation) of judicial approval to any private probation provider.

In Part II, we summarize the responses we received from the courts. We also analyze those responses against the information that is mandated by Rule 9, and we compare them to the information we received from AOC.

PART II — RESPONSE ANALYSIS

Kentucky’s 120 counties are divided into 60 judicial districts in which 116 district court judges preside.²⁴ Written requests were mailed to 100 of those district court judges²⁵, and we ultimately received 70 written or oral responses. From those responses, we divided the judicial districts into four categories²⁶: 1) private probation is used throughout the district (both in terms of every county within the district and by every district court judge); 2) private probation is not used in the district; 3) private probation is only partly used within the district (either because it is not present in every county or because not every judge utilizes private probation services); and 4) we did not receive a

²⁴ <http://courts.ky.gov/aoc/statisticalreports/Documents/INS018.pdf>.

²⁵ Because the Chief District Court Judge responded for the 30th Judicial District, the remaining sixteen judges in that district are subtracted from the total number of judges in calculating the percentages for this section.

²⁶ For those judicial districts in which we received only one response but that have more than one district court judge, we construed the single response as representing a district-wide response.

response. When the districts' responses are further analyzed by county, it appears that more than 25% of Kentucky's counties (31 of 120) utilize some form of private probation. The breakdown, by category, is as follows²⁷:

- | | |
|---------------------|---|
| Category I | 12 judicial districts acknowledged using private probation companies throughout the district. |
| Category II | 37 judicial districts do not use private probation companies. |
| Category III | 1 judicial district identified private probation as being used by one district judge but not the other. |
| Category IV | 10 judicial districts did not respond to our inquiry. |

We also identified 6 private probation companies that currently operate in Kentucky. These companies, and the number of judicial districts in which they are known to operate, are:

- | |
|--|
| 1) Kentucky Alternative Programs (KAP) — 9 judicial districts |
| 2) You Turn Court Monitoring Service — 1 judicial district |
| 3) Commonwealth Mediation Services — 2 judicial districts |
| 4) Southern Kentucky Monitoring Services — 1 judicial district |
| 5) Timeout Community Counseling & Correctional Services — 1 judicial district |
| 6) CDS Monitoring — 1 judicial district |

A substantive examination of the districts' responses revealed that, when compared to the current recordkeeping obligations imposed by Rule 9, most of the responses were deficient in one or more key ways. For example, private probation companies must provide to district courts (and to AOC), on an annual basis, a copy of their fee schedule and sliding fee scale for indigent defendants.²⁸ We sought copies of these documents both from the courts and from AOC because that information is critical

²⁷ A detailed listing of the judicial districts, by category, is attached as Appendix 2.

²⁸ SCR 9.020(F).

to understanding: the costs imposed on probationers by these companies, the frequency with which courts refer (and the companies accept) pro bono cases, and whether companies are complying with the fee schedules that have been approved by the courts. As for AOC, it responded to our request for information by providing the fee schedule for one private probation company — You Turn Court Monitoring Center.²⁹ However, it did not have the fee schedules for any of the other companies operating in Kentucky, even though companies have been required to provide that information to AOC for more than six months.³⁰

And as for the districts' responses, some, but not all, of those responses included companies' fee schedules and sliding fee scale.³¹ A listing of the fee schedules, by company, that were provided are attached as Appendix 3.

In addition to the companies' fee schedules, we also examined the districts' responses for the inclusion of three key components contained in our requests: 1) the mandatory monthly reports companies must provide to courts regarding their pro bono cases³²; 2) the companies' policies and procedures regarding any complaints made against them³³; and 3) records of the training and certificate requirements employees must undergo at these companies.³⁴

²⁹ Email from Heather Vatamaniuck, Litigation Coordinator, Administrative Office of the Courts, to William E. Sharp, Legal Director, ACLU of Kentucky (Aug. 3, 2017, 1:13 EST) (on file with author).

³⁰ *Id.*

³¹ Of those Judicial Districts that acknowledged using private probation companies, the following failed to provide either an approved fee schedule, sliding scale fee scale, or both: 6th, 18th, and 49th Judicial Districts.

³² SCR 9.020(H) (requiring private probation companies to “report to the district court on a monthly basis all pro bono cases referred to such agency by the court and whether such agency accepted or rejected the pro bono referral and, if rejected, the reasons for such rejection.”).

³³ SCR 9.020(K) (requirement to “establish and maintain policies and/or procedures for the confidential receipt and investigation of complaints made by defendants alleging abusive behavior of the agency's employees, agents, or representatives, and provide proof thereof to the district court on an annual basis, with copy of same submitted to the Administrative Office of the Courts.”).

³⁴ SCR 9.020(L) (private probation companies must “establish and maintain training and/or certification requirements for the agency's employees, agents, or representatives who supervise defendants, and provide proof thereof to the district court on an annual basis, with copy of same submitted to the Administrative Office of the Courts.”).

With respect to the mandatory monthly reports, we requested copies of the previous 14 months' of reports since that requirement has been part of Rule 9 since 2000. As with the fee schedule reporting, however, the comprehensiveness of the districts' responses varied greatly, ranging from nearly complete to completely lacking. For example, the 43rd Judicial District provided a two page document from You Turn Court Monitoring Service, LLC, purporting to note the current pro bono and reduced rate cases under its supervision. But this document appears to have been prepared specifically in response to our request, and there were no other documents that could be construed as a monthly report for any of the previous fourteen months. Inadequate responses such as this are highly indicative that no such reports have been collected or maintained as required by Rule 9.

Similarly, deficiencies were noted in many of the responses regarding the companies' policies and procedures relative to a confidential complaint process available to probationers in order to make claims of alleged abuse. The most common deficiency we noted was the absence of clear language making such a complaint process confidential and notifying probationers of that fact. Confidentiality in the complaint process is not only critical to protect probationers from potential retaliation, it is also an element of the complaint process that is specifically required by Rule 9.³⁵

The districts' responses also lacked any meaningful detail about the training and certificate requirements for employees who oversee probationers. Instead, the districts merely forwarded certificates of completion for various employees that were provided by the companies, but those certificates largely lacked any specifics about the requirements for obtaining the identified certification, the frequency of continuing education, or other objective criteria for issuing the certificates. The districts also failed to provide any written guidelines from the companies about what, if any, training requirements exist for those employees who are responsible for supervising probationers.

In addition to the substantive deficiencies noted above, another troubling element to the districts' responses is particularly noteworthy. Specifically, many of those districts that responded affirmatively to using Kentucky Alternative Program (KAP) sent in identical, or nearly identical, case-related documentation for that company even though those documents should have been specific to each judicial district. For example, the responses from the 19th and 53rd Judicial Districts each contained the *same list individuals* whose cases were accepted as pro bono referrals from the court. The 9th and 18th Judicial Districts also provided identical lists of pro bono referrals, and 6 of the 9

³⁵ SCR 9.020(K) (requirement to “establish and maintain policies and/or procedures for the confidential receipt and investigation of complaints made by defendants. . .”) (emphasis added).

individuals on those lists mirrored those provided by the 19th and 53rd Districts. Thus, it appears that some districts simply referred our requests to the private probation companies for a response without having collected or maintained the district-specific information that has been mandated by Rule 9 since its inception.

As evidenced by our attempts to collect information directly from the judicial districts, inconsistent, incomplete, and in some instances nonexistent recordkeeping prevents the public from having an accurate picture of private probation throughout Kentucky. And even though the 2016 amendments to Rule 9 are designed to correct some of these deficiencies by making companies report data directly to AOC, significant obstacles remain. First, as noted above, AOC possessed data for only one of the companies operating in Kentucky more than six months after that reporting requirement took effect. Moreover, Rule 9, even if adequately implemented and enforced, does not address the fact that Kentucky courts do not uniformly track the use of private probation services. Because of this, AOC is still unable to provide reliable data regarding: which counties use private probation, how many cases are affected, or the relative outcome of those cases compared to other forms of probation.³⁶

PART III — FINDINGS AND PROPOSALS

As a result of our 2015 and 2017 investigations, the ACLU of Kentucky's findings regarding the delivery of private probation services in Kentucky include:

- SCR 9.000, *et seq.* establishes Kentucky as a leader in the development and codification of policies specific to the implementation and oversight of private probation companies within the criminal justice system;
- Notwithstanding that Rule 9 creates a framework for the collection of data about private probation companies, those recordkeeping requirements have been loosely followed, if at all, by most judicial districts using private probation companies since 2000;
- Recent amendments to Rule 9 have resulted in marginal improvements by courts in the collection of mandated records from private probation companies;
- Rule 9's attempt to create a centralized location within AOC for receiving information about private probation companies lacks any meaningful enforcement

³⁶ See attached Appendix 4: *Records of Privately or State-Supervised Probation Statewide 1/1/2017 - 8/3/2017*, Dept. of Information and Technology Services (Aug. 14, 2017) (specifically noting that the report “does not represent a reliable count of statewide sentencing records” because sentencing details regarding private probation “could not be reliably aggregated from the CourtNet database”).

mechanism and, more than six months after its adoption, was ignored by all but one of the private probation companies;

- Because decision-making authority over whether (or not) a private probation provider can operate resides with each district court judge, real or perceived conflicts can arise in that a single elected district court judge may be solely responsible for the continued viability of an employer within the district; and
- The fiscal impact of probation for low-level offenses varies significantly from one judicial district to another depending on whether for-profit, private probation is used.

These findings, combined with our internal analysis of the data obtained, compels the ACLU of Kentucky to issue the following policy proposals regarding Kentucky's use of private probation:

- 1) Eliminate private probation in Kentucky. Probation supervision is a core governmental function within the criminal justice system that can be, and is, performed through alternative means in the majority of Kentucky's judicial districts. Moreover, Kentucky's ad hoc utilization of private probation results in disparate financial consequences for similarly situated, low level offenders who are among those least able to afford the added costs associated with it. Eliminating private probation in Kentucky would serve the public interest by eliminating these disparate and inequitable outcomes without adversely impacting public safety.³⁷

Recognizing that the elimination of private probation in Kentucky may not be immediately achievable, the ACLU of Kentucky further recommends the following commonsense solutions to address the obvious shortcomings in the current regulatory framework for utilizing and overseeing these companies:

- 2) The Supreme Court of Kentucky should further amend SCR 9.000, *et seq.* to incorporate the following provisions:
 - Implement a centralized approval process akin to the process for approving local court rules in which the Supreme Court of Kentucky, not individual district court judges, authorizes the use of private probation in a particular district and only upon a proper showing;

³⁷ Some districts, such as the 50th and 13th Judicial Districts, have already begun phasing out KAP and other private probation companies further highlighting that such services are not necessary to Kentucky's criminal justice system.

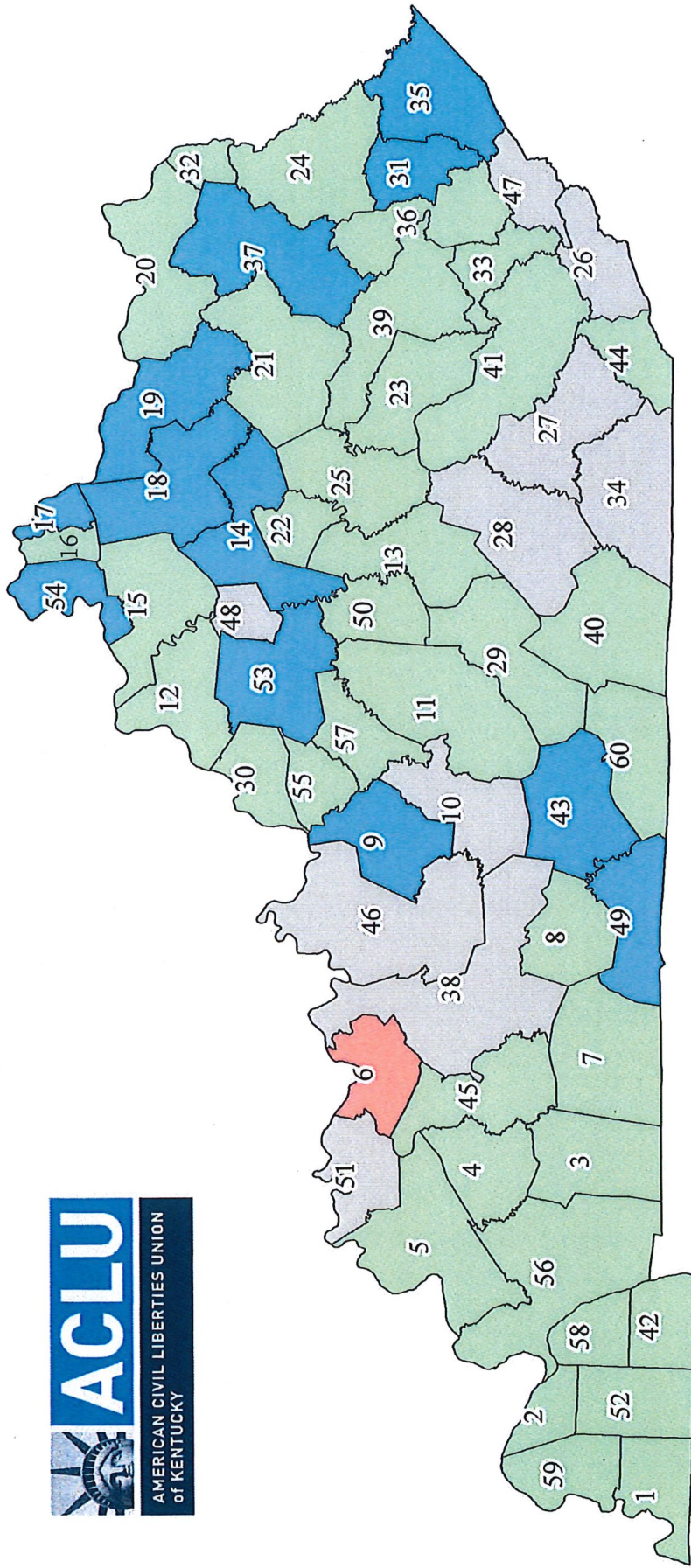
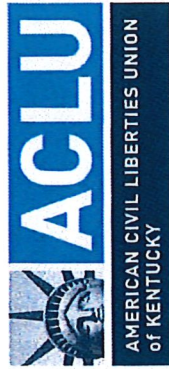
- Adopt a standard fee schedule, to be set by AOC, that must be utilized throughout the state rather than confer upon district courts the discretion to approve locally submitted fee schedules;
- Identify a specific office within AOC that would be responsible for oversight of private probation companies, which would include the authority to: collect and retain information related to those companies; receive and investigate confidential complaints by probationers alleging abuse by private probation company employees; implement additional reporting requirements related to substantiated instances of abuse by company employees; and enforce, through appropriate mechanisms, all regulations regarding the delivery of private probation services;
- Require district court judges to periodically report to AOC the status of private probation and impose an annual reporting requirement establishing the continued justification for utilizing those services;
- Mandating that AOC routinely audit and report upon all private probation companies operating in the Commonwealth; and
- Adopting clear training and certification requirements for probation officers employed by private probation companies.







The ACLU of Kentucky thanks Komala Ramachandra, Senior Researcher at Human Rights Watch and our 2017 Legal Program interns, Mashayla Hays and John Slack, whose contributions were instrumental in the preparation of this report.

APPENDIX 1

Appendix 1: Map of Private Probation Companies by Judicial Districts



	Category III - Private Probation Partly Used
	Category IV - No Response Received
	Category I - Private Probation Used Throughout District
	Category II - Private Probation Not Used

APPENDIX 2

LISTING OF JUDICIAL DISTRICTS BY CATEGORY

Category I - Private Probation Used Throughout District

- **9th District** (Hardin) — Kentucky Alternative Program
- **14th District** (Bourbon, Scott, Woodford) — Kentucky Alternative Program
- **17th District** (Campbell) — Kentucky Alternative Program; Commonwealth Mediation Services
- **18th District** (Harrison, Nicholas, Pendleton, Robertson) — Kentucky Alternative Program
- **19th District** (Bracken, Fleming, Mason) — Kentucky Alternative Program
- **31st District** (Floyd) — CDS Monitoring
- **35th District** (Pike) — Kentucky Alternative Program
- **37th District** (Carter, Elliott, Morgan) — Kentucky Alternative Program
- **43rd District** (Barren, Metcalfe) — You Turn Court Monitoring Service
- **49th District** (Allen, Simpson) — Southern Kentucky Monitoring Services; Time Out Community Counseling and Correctional Services
- **53rd District** (Anderson, Shelby, Spencer) — Kentucky Alternative Program
- **54th District** (Boone, Gallatin) — Kentucky Alternative Program; Commonwealth Mediation Services

Category II - Private Probation Not Used

- **1st District** (Fulton, Hickman)
- **2nd District** (McCracken)
- **3rd District** (Christian)
- **4th District** (Hopkins)
- **5th District** (Crittenden, Union, Webster)
- **7th District** (Logan, Todd)
- **8th District** (Warren)
- **11th District** (Green, Marian, Taylor, Washington)
- **12th District** (Oldham, Henry, Trimble)
- **13th District** (Garrad, Jessamine, Lincoln)
- **15th District** (Carroll, Grant, Owen)
- **16th District** (Kenton)
- **20th District** (Greenup, Lewis)
- **21st District** (Bath, Menifee, Montgomery, Rowan)
- **22nd District** (Fayette)
- **23rd District** (Estill, Lee, Owsley)

- **24th District** (Johnson, Lawrence, Martin)
- **25th District** (Clark, Madison)
- **29th District** (Adair, Casey)
- **30th District** (Jefferson)
- **32nd District** (Boyd)
- **33rd District** (Perry)
- **36th District** (Knott, Magoffin)
- **39th District** (Breathitt, Powell, Wolfe)
- **40th District** (Clinton, Russell, Wayne)
- **41st District** (Clay, Jackson, Leslie)
- **42nd District** (Calloway)
- **44th District** (Bell)
- **45th District** (McLean, Muhlenberg)
- **50th District** (Boyle, Mercer)
- **52nd District** (Graves)
- **55th District** (Bullitt)
- **56th District** (Caldwell, Livingston, Lyon, Trigg)
- **57th District** (Nelson)
- **58th District** (Marshall)
- **59th District** (Ballard, Carlisle)
- **60th District** (Cumberland, Monroe)

Category III - Private Probation Partly Used

- **6th District** (Davies) — Judge Jones utilizes privation probation but Judge Payne does not.

Category IV - No Response Received

- **10th District** (Hart, Larue)
- **26th District** (Harlan)
- **27th District** (Knox, Laurel)
- **28th District** (Pulaski, Rockcastle)
- **34th District** (McCreary, Whitley)
- **38th District** (Butler, Edmonson, Hancock, Ohio)
- **46th District** (Breckinridge, Grayson, Meade)
- **47th District** (Letcher)
- **48th District** (Franklin)
- **51st District** (Henderson)

APPENDIX 3

FEE SCHEDULES BY COMPANY³⁸

Kentucky Alternative Programs (KAP)³⁹

Drug Screens

\$27	Lab (default)
\$15	Onsite (only if specified by court)
\$30	ETG only
\$40	10-Panel lab and ETG
\$20	Suboxone only
\$60	Synthetic THC
\$80	Designer drugs
\$50	Kratom
\$65	5-Panel Hair test
\$84	5-Panel Hair test with extended opiates
\$50	Neurontin

Probation

\$10	Enrollment fee
\$25	Reinstatement fee
\$5	Multiple case fee
\$6	Certified mail fee for restitution cases
\$20	Criminal records
\$10	Late fee
\$25/month	No insurance cases
\$30/month	All other cases

Bracelets

\$9.50/day + \$100 hookup	Landline TAD
\$11.50/day + \$100 hookup	Cellular TAD
\$8.50/day + hookup (\$60/office or \$100/jail)	GPS

You Turn Court Monitoring Services

Drug Screens

\$15	12-Panel urine dip test
\$15	Single panel urine K-2 dip test
\$25	12-Panel urine dip + K-2 dip test
\$15	Single panel urine heroin dip test
\$25	12-Panel urine dip + heroin dip test
\$40	5-Panel lab test

³⁸ No fee schedules were provided by the 49th Judicial District for either Southern Kentucky Monitoring Services or Timeout Community Counseling & Correctional Services.

³⁹ KAP's maximum monthly supervision fee varies from \$20 to \$30 depending upon the district in which it is operating.

\$30 Lab test confirmation
\$40 ETG (lab test)
\$50 K-2 (lab test)

Probation

\$25/month Supervision fee
\$180 6 month diversion
\$20/month Diversion/probation fee > 6 months

Electronic Monitoring

\$11/day + \$100 hookup GPS
\$12/day + \$100 hookup SCRAM (alcohol monitor)

Commonwealth Mediation Services

Drug Screens

\$10 5-Panel (on-site urine sample)
\$16 6-Panel (on-site oral sample)
\$12 10-Panel (on-site urine sample)
\$24 Lab verified (urine sample)
\$35 Lab verified Spice test (urine sample)
\$46 Lab verified - ETG (urine sample for alcohol)
\$60 Lab verified Designer Stimulants
\$12 Breath Intoxilyzer - Alcohol only
\$7 Breath Intoxilyzer - With drug screen
\$65 Hair Drug Screen

DNA Testing

\$200 DNA Testing (mother, father, and one child)
\$75 - per additional party

Probation

\$35/month Alcohol/Drug related, theft, assault
\$25/month Restitution
\$10/month No insurance

Home Incarceration/Alcohol Bracelets

\$10/day + \$50 hookup fee Standard home incarceration
\$12/day + \$50 hookup fee Alcohol monitoring bracelet
\$18/day + \$50 hookup fee Home incarceration and alcohol monitoring

CDS Monitoring

Drug Screens

\$20 12-Panel rapid test
\$15 Lab confirmation

Probation

\$25-\$45/month Supervision fee
\$35 Background check

APPENDIX 4



The Department of Information and Technology Services
Research and Statistics
1001 Vandalay Drive
Frankfort, KY 40601
(502) 573-2350

**RECORDS OF PRIVATELY OR STATE-SUPERVISED PROBATION
STATEWIDE 1/1/2017 – 8/3/2017**

August 16, 2017

By

Daniel Sturtevant (*Research and Statistics Manager*)
Tammy Manley (*Technical Support Specialist*)

Requestor:
William Sharp

On Behalf of:

Kentucky House of Representatives:
ACLU of Kentucky

Due Date:
August 14, 2017

Statistics Request Overall Description

On August 7, 2017, William Sharp, with the ACLU of Kentucky, requested from Research and Statistics a supplemental report following a previously delivered report of sentencing data. This previous report did not include counts of cases with sentences of private or state-supervised probation, as it was determined that this data could not be reliably aggregated from the CourtNet database. The current report includes the aggregate count of all such records from cases disposed from January 1, 2017 through August 3, 2017 available from those counties in which such data can be aggregated. This report therefore does not represent a reliable count of statewide sentencing records. The absence of records from a county does not indicate that there have been no sentences of privately or state-supervised probation in that county, and the total records indicated in any county included in this report should not be assumed comprehensive or accurate.

The original court record is the only official, valid source for information on sentences of privately or state-supervised probation.

CourtNet, which provides a summary of cases statewide, was queried statewide for charges disposed from January 1, 2017 through August 3, 2017 in which an indication of privately supervised probation or state supervised probation was entered as part of a sentence.

Statewide Data Summary

There are many database fields related to sentences in CourtNet, and the reliability of each of them varies from county to county and within counties due to differences in data entry practice. The following numbers indicate what records exist and in how many counties, but as above, these records should not be considered a reliable indication of actual sentences, and the original county record is the only official source of this information.

RECORDS OF PRIVATELY OR STATE-SUPERVISED PROBATION STATEWIDE 1/1/2017 – 8/3/2017

Statewide Data Summary

The previous report (17_RS3227) included 55,388 District Court criminal cases including 69,830 charges with disposed from 1/1/17 through 8/3/17 sentences of jail time, and this data came from all 120 counties in Kentucky. These can be divided as follows:

	Sentences of Jail Time	
	No Sentence Suspended, Probated, or Conditionally Discharged.	Some sentence Suspended, Probated, or Conditionally Discharged.
Cases	13,174	43,149
Charges	16,717	53,107
Counties	117	120

	Sentences Suspended, Probated, or Conditionally Discharged	
	No Sentence Probated	Some Sentence Probated
Cases	30,503	12,617
Charges	37,243	15,864
Counties	114	60

	Sentences with Probation Indicated	
	Unsupervised Probation	Supervised Probation
Cases	10,587	2,331
Charges	13,533	2,054
Counties	48	43

	Supervised Probation	
	Private Supervision	State Supervision
Cases	1,243	814
Charges	1,352	975
Counties	32	23

Cross Tabulation Report (17_RS8028)

The attached cross-tabulation report counts instances of charges in District Court criminal cases disposed from 1/1/2017 through 8/3/2017 including a sentence with either privately supervised or state-supervised probation. Separate counts are included for type of supervision in each county. Counties with no accessible records of either type of supervised probation are omitted from the report.

Statistical Analysis Considerations:

- These statistics represent a snap shot in time, as of August 3, 2017.
- A case may consist of one or multiple charges. The reports represent distinct case counts, counting the case only once, regardless of the number of charges associated with the case.
- Charges consist of all original and amended charges.
- The case counts are not the same as number of defendants. A defendant may have one or multiple case throughout Kentucky during the requested timeframe.

**RECORDS OF PRIVATELY OR STATE-SUPERVISED PROBATION
STATEWUDE 1/1/2017 – 8/3/2017**

Data Variables Requested		
Database	Data Variable	Description
CourtNet	Counties	The county in which a charge was disposed/sentenced.
	Private Probation	An amount of time sentenced to privately supervised probation is entered into KYCourts as a number of years, months, days, and/or hours. This report counts the number of charges with any such sentence indicated.
	State Probation	An amount of time sentenced to state-supervised probation is entered into KYCourts as a number of years, months, days, and/or hours. This report counts the number of charges with any such sentence indicated.
	Charges	The total number of charges disposed with either a sentence of privately or state-supervised probation.

Disclaimer Associated with KCOJ/AOC Database(s) and Element(s)

RESEARCH AND STATISTICS DISCLAIMER

Information received from KYCourts/CourtNet is subject to change(s), reprogramming, modification(s) of format and availability at the direction of the Administrative Office of the Courts (AOC), and may not at any particular moment reflect the true status of court cases due to ordinary limitation(s), delay(s) or error(s) in the system's operation. The KYCourts/CourtNet database is not a real-time system. All datasets are a snapshot of case data at the time a query is run. Case counts are not counts of individuals as some persons may have multiple cases.

The AOC disclaims any warranties as to the validity of the information obtained from KYCourts/CourtNet. The recipient is solely responsible for verifying information received from KYCourts/CourtNet through the cross-referencing of official court records. The AOC shall not be liable to the recipient, or to any third party using the system or information obtained therefrom, for any damages whatsoever arising out of the use of KYCourts/CourtNet.



ADMINISTRATIVE OFFICE OF THE COURTS
Research & Statistics

17_RS8028

Records of Charges Sentenced Privately or State-Supervised Probation
Disposed 1/1/2017 - 8/3/2017 STATEWIDE

	Local Probation	State Probation
ADAIR	7	0
BATH	0	1
BELL	2	0
BOURBON	1	0
BOYD	1	0
BOYLE	68	92
BRACKEN	7	0
CALDWELL	0	1
CAMPBELL	79	1
CARROLL	0	5
CHRISTIAN	5	51
CRITTENDEN	1	0
CUMBERLAND	2	0
FAYETTE	242	67
FLEMING	3	0
FLOYD	84	2
GRAVES	0	1
GRAYSON	5	1
GREEN	1	0
GREENUP	0	1
HARDIN	504	1
HARLAN	1	0
HARRISON	1	0
HENRY	0	1
JEFFERSON	4	731
JESSAMINE	270	7
LETCHER	3	6
LEWIS	0	1
LIVINGSTON	0	1
LYON	0	1
MARION	1	0
MCCRACKEN	3	0
MONTGOMERY	1	0
OLDHAM	0	2
PULASKI	5	0
ROCKCASTLE	2	0
ROWAN	4	0
RUSSELL	1	1
SCOTT	8	1
TAYLOR	4	0
UNION	7	0
WARREN	27	0
WHITLEY	0	1

* This data is provided from the CourtNet database.

* This report reflects only the current state of CourtNet data, in which counts of sentences of supervised probation are known to be unreliable. The original court record is the only official, valid source of information on supervised probation sentences.