

## Private Probation Services: Recommended Contract Language

The Alabama League of Municipalities has received a number of calls regarding the use of private probation services by municipal courts. Many of the questions involve whether or not municipalities can contract with private probation service providers and what, if anything, municipalities need to do contractually.

The Alabama Supreme Court and two Alabama Attorney General Opinions specifically acknowledge that a municipality may legally contract for private probation services and charge a fee to probationers for those services. Even though a municipality can contract for these services, there are issues that you must consider. If you contract for private probation services, the municipal court must remain in control over those probation services.

Additionally, there have been some very significant and concerning lawsuits filed against Alabama municipalities. Allegations contained in those lawsuits have exposed municipalities to damages. These suits have included city prosecutors, public defenders, and municipal judges as named defendants. In addition, there continues to be very close scrutiny surrounding the use of private probation services.

Based on the potential exposure, municipalities that wish to use private probation services should strongly consider including provisions requiring private probation services to defend and indemnify the municipality, its officials and employees from lawsuits brought due to the use of a private probation service. Municipalities should consult with their attorney and liability insurance provider and consider adding language similar to the following to their contracts with private probation services:

**“[name of private probation company] shall provide commercial general liability and public officials liability coverage for it and its employees, to cover private probation services in an amount not less than Two Million (\$2,000,000). The City shall be named as an additional insured. [name of private probation company] will provide the City with the additional insured certificate of insurance within thirty (30) days of the execution of this Agreement or the Agreement will be void.**

**Regardless of any provisions regarding insurance, [private probation company] will defend, indemnify, and hold harmless the City, the municipal court, any officers, elected officials, appointed officials, and employees, whether being sued in their official or individual capacity, from any and all claims and/or suits regarding any aspect of private probation services. This indemnity agreement is to be interpreted broadly and in favor of defense and indemnity protection by [name of private probation company].”**