



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**



PRIVATE PROBATION SERVICES COUNCIL

Performance Audit Report

December 2018

Justin P. Wilson, Comptroller



Division of State Audit

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December 11, 2018

The Honorable Randy McNally
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Jeremy Faison, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and

The Honorable Julie Mix McPeak, Commissioner
Department of Commerce and Insurance
500 James Robertson Parkway
Davy Crockett Tower
Nashville, Tennessee 37243-0565
and
The Honorable Larry J. Logan, Chair
Private Probation Services Council
8900 Hwy 436
McKenzie, TN 38201

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the Private Probation Services Council for the period July 1, 2013, through October 31, 2018. This audit was conducted pursuant to the requirements of the Tennessee Governmental Entity Review Law, Section 4-29-111, *Tennessee Code Annotated*.

Our audit disclosed a finding, which is detailed in the Audit Conclusions section of this report. The Private Probation Services Council has responded to the audit finding; we have included the responses following the finding. We will follow up the audit to examine the application of the procedures instituted because of the audit finding.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Private Probation Services Council should be continued, restructured, or terminated.

Sincerely,

A handwritten signature in black ink that reads "Deborah V. Loveless".

Deborah V. Loveless, CPA
Director

DVL/dww
18/026b



Division of State Audit
Private Probation Services Council

**Performance Audit
December 2018**

Our mission is to make government work better.

AUDIT HIGHLIGHTS

The Private Probation Services Council's purpose is to ensure that uniform professional and contract standards are practiced and maintained by private corporations, enterprises, and entities engaged in rendering general misdemeanor probation supervision, counseling, and collection services to the courts.

We have audited the Private Probation Services Council for the period July 1, 2013, through October 31, 2018. Our audit scope included a review of internal controls and compliance with laws, regulations, policies, and procedures related to the council's responsibilities in the following areas:

Scheduled Termination Date:

June 30, 2019

- council member appointments, meetings, and reserve balances;
- council oversight, including entity contract review and background screening;
- council conflict-of-interest disclosures; and
- initial licensure applications, annual license renewal applications, and quarterly fee collections.

KEY CONCLUSIONS

Our review resulted in one finding; two observations; and two matters for legislative consideration.

FINDING

- The Private Probation Services Council did not adequately oversee private probation entities, putting probationers at risk, and did not ensure that Combined Boards staff fulfilled its assigned duties for the council (page 8).

OBSERVATIONS

The following topics are included in this report because of their effect on the council's operations and on the citizens of Tennessee:

- Lawsuits against private probation entities call into question whether the council is adequately overseeing the entities (page 15).
- Clarity is needed between the courts and the council concerning the division of oversight responsibilities (page 16).

MATTERS FOR LEGISLATIVE CONSIDERATION

The General Assembly may want to consider a review of the statutes governing the oversight responsibilities of the courts and the council to identify and clarify any gaps or overlap in supervision of private probation entities. Additionally, the General Assembly may wish to consider an amendment to existing statute to include council meeting requirements, including frequency and member attendance (page 17). The General Assembly may also wish to consider whether statutory changes are needed to ensure that a private probation officer meets the clear criminal history requirements (page 19).

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Audit Authority	1
Background	1
AUDIT SCOPE	2
AUDIT CONCLUSIONS	3
Finding – The Private Probation Services Council did not adequately oversee private probation entities, putting probationers at risk, and did not ensure that Combined Boards staff fulfilled its assigned duties for the council	8
Observation 1 – Lawsuits against private probation entities call into question whether the council is adequately overseeing the entities	15
Observation 2 – Clarity is needed between the courts and the council concerning the division of oversight responsibilities	16
Matter for Legislative Consideration	17
Results of Other Audit Work: Background Checks for Employees of Private Probation Entities	18
Matter for Legislative Consideration	19
APPENDICES	
Appendix 1 – Private Probation Services Council Membership	20
Appendix 2 – Private Probation Services Council Unaudited Financial Data	21
Appendix 3 – Private Probation Services Council Actively Licensed Probation Entities	22

Performance Audit Private Probation Services Council

INTRODUCTION

AUDIT AUTHORITY

This performance audit of the Private Probation Services Council was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*. Under Section 4-29-240, the Private Probation Services Council is scheduled to terminate June 30, 2019. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. This audit is intended to aid the committee in determining whether the Private Probation Services Council should be continued, restructured, or terminated.

Although the General Assembly created the council in 1998, it did not place the council in the Governmental Entity Review Law until 2016.

BACKGROUND

The Private Probation Services Council is administratively attached to the Department of Commerce and Insurance (the department). The council's duties under Section 16-3-901, *Tennessee Code Annotated*, are to ensure that uniform professional and contract standards are practiced and maintained by private corporations, enterprises, and entities engaged in rendering general misdemeanor¹ probation supervision, counseling, and collection of court assessed fees, fines, and restitution. Based on the department's online license search system² there are 32 actively licensed private probation entities statewide as of May 2018 (see **Appendix 3**).

Additionally, as required by Section 16-3-909, *Tennessee Code Annotated*, the council is charged with

- providing oversight of private entities;
- promulgating uniform professional standards and uniform contract standards for private entities;
- establishing 40 hours of orientation for new private probation officers and 20 hours of annual continuing education;
- promulgating rules and regulations regarding noncompliance with the uniform professional standards and uniform contract standards;
- promulgating requiring periodic registration³ of all private entities;

¹ Misdemeanors are those crimes that are punishable by up to a year in jail.

² CORE is the department's Comprehensive Online Regulatory & Enforcement database.

³ The council, in rules, requires annual license renewal.

- publishing an annual summary report; and
- promulgating rules and regulations requiring criminal records checks of all private probation officers.

As required by Section 16-3-905, *Tennessee Code Annotated*, the council is composed of seven members (see **Table 1**), each serving four-year terms, while Section 16-3-908, *Tennessee Code Annotated*, states that the council should meet at such times and places as necessary and convenient. See **Appendix 1** for current membership information.

Table 1
Private Probation Services Council
Membership Summary

Number Appointed	Member	Appointing Authority
1	Criminal Court Judge representing a judicial district within which one or more private entities provide probation services	President of the Tennessee Judicial Conference
3	General Sessions Court Judge representing counties within which one or more private entities provide probation services	President of the Tennessee General Sessions Judges Conference
1	Publicly employed probation officer	Governor
1	Private probation officer or individual with expertise in private probation	Governor
1	County Commissioner	Governor

Source: Section 16-3-901, *Tennessee Code Annotated*.

AUDIT SCOPE

We have audited the Private Probation Services Council for July 1, 2013, through October 31, 2018. Our audit scope included a review of internal controls and compliance with laws, regulations, policies, and procedures, in the following areas:

- council member appointment, meetings, and reserve balance;
- council oversight, including entity contract review and background screening;
- council conflict-of-interest disclosures; and
- initial licensure applications, annual license renewal applications, and quarterly fee collections.

Management of the Private Probation Services Council is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, policies, procedures, and provisions of contracts and grant agreements.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT CONCLUSIONS

The Council's Administrative Functions Are Handled by the Department's Division of Regulatory Boards

Because the council has no staff of its own, the council's administrative functions are handled by the department's Division of Regulatory Boards (the division). The division provides administrative and staff support to the various boards that perform the occupational licensing and regulation of various professionals within Tennessee. The division receives fiscal and support services from the department's Administrative Division so that it can provide administrative and support staff services to the boards. In addition, the department's Office of Internal Audit assists the division and the various boards by investigating allegations of fraud, waste, and abuse of state funds and property. The Office of Internal Audit does not investigate complaints against licensees. Each board is responsible for handling licensee complaints.

The division is led by an Assistant Commissioner who is responsible for the overall functioning of the division. The Assistant Commissioner ensures that each board is assigned an Executive Director and administrative staff, such as licensing technicians and administrative assistants; however, some boards (such as the Combined Boards) share an Executive Director⁴ and the administrative staff. The Private Probation Services Council is one such entity that falls under the Combined Boards structure.

Based on discussion with the Executive Director, the Combined Boards have four⁵ employees who work directly with the council and other boards. This includes the Executive Director, a Director, an Administrative Manager, and an Administrative Assistant. Additionally, the division and Combined Boards management ensures that each board is assigned a lawyer who advises and handles various aspects of the complaint process for the board.

⁴ The Executive Director for the Combined Boards oversees 14 programs and professions representing approximately 130,000 licensees including the Athletic Commission; Court Reporters; Architects and Engineers; Cosmetology and Barbers; Real Estate Appraisers; Home Inspectors; Geologists; Scrap Metal Dealers; Soil Scientists; Land Surveyors; Auctioneers; Collection Agencies; Debt Management Services, and Private Probation Services.

⁵ One Executive Director, who oversees 14 entities; one Director who works with 14 entities; one Administrative Manager who works with 13 entities; and one Administrative Assistant who performs licensure activities for 3 entities.

Revenues, Expenditures, and Reserve Balance

The Private Probation Services Council receives revenue from initial licensure application and licensure fees; quarterly fee payments; late fees; annual renewal fees; and penalties.

Initial Application for Licensure and Licensure Fees

Private Probation Services Council Rule 1177-01-.03 stipulates that no private entity may provide probation services in Tennessee unless it is registered with and approved by the council. The council's application process requires the private probation entity to submit an application and pay a \$100 fee to the council for evaluation. The application process includes

- demonstrating the reasonable ability of the entity to provide the services continuously;
- demonstrating that staff qualifications meet or exceed requirements;
- submitting sworn criminal record reports on each employee or volunteer;
- submitting written policies and procedures, including the handling of court-ordered fees, fines, restitution, and community services;
- submitting proof of liability insurance and performance bond;
- describing staffing levels and written standards of supervision; and
- submitting a schedule of the range of all probation fees and charges paid by probationers they supervise.

Quarterly Fees

All licensed private probation entities are required by council Rule and Regulation 1177-01-.08(1) to pay quarterly provider fees based on the number of probationers supervised. From 2005 until November 2016, the fee was \$1 per probationer. Effective November 2016, the council reduced this amount to 75 cents to lower the reserve balance. Further, for every 10 days the quarterly provider fee payment is past-due, the company owes an additional 5 cents per probationer as a late fee.

Annual Renewal Fee

Council Rule 1177-01-.07 mandates an annual license renewal fee of \$100. The rule also stipulates that each private entity must notify the council within 30 days of a change in any information submitted for initial licensure.

Civil Penalties

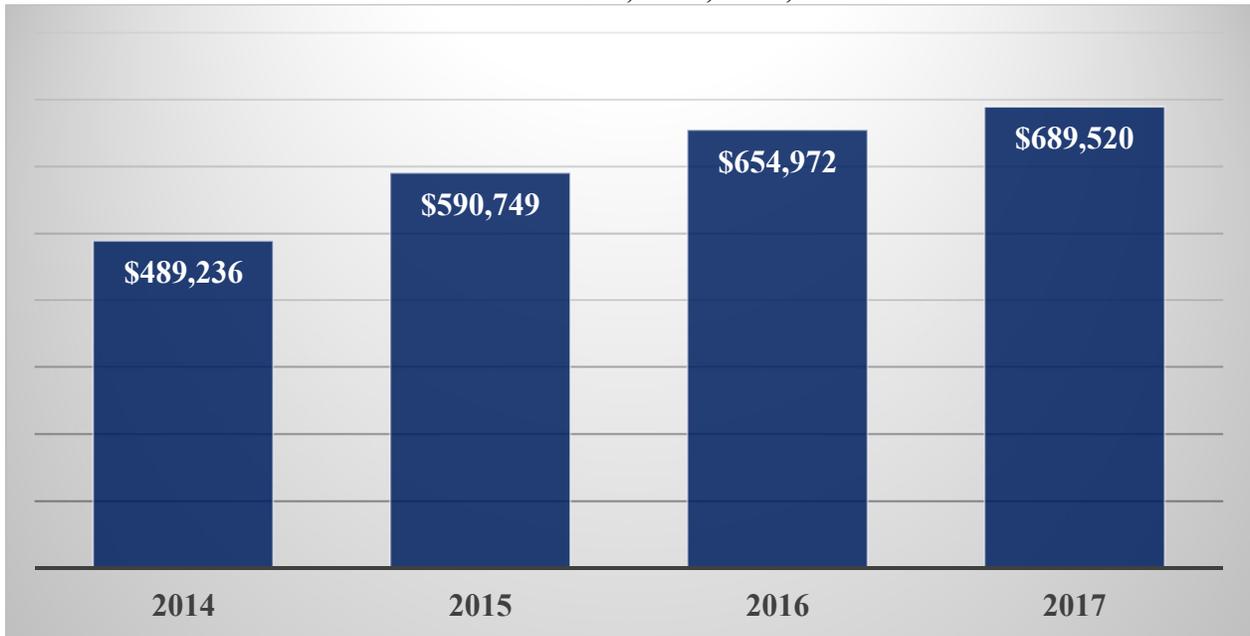
For regulatory enforcement, the council promulgated Rule and Regulation 1177-02-.07(2), which defines three civil penalty categories to aid the council in enforcing the laws and rules governing private probation entities:

1. Category I – (\$700-\$1,000) Violations involving fraud, providing false information or documents, and failure to account or produce official court documents and reports, including violations involving unregistered practice.
2. Category II – (\$300-\$699) Violations involving noncompliance with private entity registration requirements such as failure to submit required periodic reports and documents; violations involving Codes of Professional Conduct set forth in 177-02-.04.
3. Category III – (\$100-\$299) Violations involving private probation entity operations such as failure to maintain required records or documentation.

Reserve Balance

Section 16-3-910, *Tennessee Code Annotated*, empowers the council to establish fees sufficient to pay the annual expenses of the council. As of June 30, 2017,⁶ the council had a reserve balance of \$689,520. The chart below illustrates the council’s reserve balances respectively. (See **Appendix 2** for detailed council financial information.)

Chart 1
Private Probation Services Council
Reserve Balance
For Fiscal Years 2014, 2015, 2016, and 2017



Source: Provided by the Director of Operations, Division of Regulatory Boards.

⁶ At the time of our fieldwork, a reserve balance was not available for fiscal year 2018.

Council Complaint-Handling Process

To aid in regulatory enforcement, the council accepts complaints from the public, including Tennessee citizens, government employees, probation officers, and private probation entities. The council's website states the council was created to protect the public's health, safety, and welfare and that private probation entities and private probation officers who fail to follow the law and rules of the profession are subject to disciplinary action. This site also provides a link to the online complaint form.

Upon receipt of a complaint, council staff review the complaint to determine whether the possibility of imminent danger to health, safety, or welfare to the public exists. If so, the complaint is immediately routed to the council's assigned legal counsel. If there is no immediate issue, the complaint is forwarded to the respondent, who is given 14 days to provide a response. Upon receipt, both the complaint and response are routed to legal counsel for review and if additional information is warranted, an investigation is initiated. The legal counsel presents any findings to the council, which will determine any action.

Clear Criminal History

The council, in Rule 1177-02-.05, requires a continued clear criminal record for each owner, director, agent, employee, or volunteer who supervises probationers. The rule requires these individuals to maintain a criminal record free of any felony conviction or plea of guilty or nolo contendere,⁷ or any conviction or plea of guilty or nolo contendere for misdemeanors involving moral turpitude.⁸ If there is such a conviction or plea, the individual has five business days to report it to the council.

Audit Results

1. Audit Objective: Is the Private Probation Services Council properly organized as required by statute? Did the council meet and provide adequate public notice of meetings?

Conclusion: Our testwork disclosed that the council is composed of seven members as required. We found that the council met 14 times from January 1, 2014, through October 31, 2018, and provided adequate public notice.

2. Audit Objective: Did the Private Probation Services Council establish fees sufficient to pay the annual expenses of the council pursuant to Section 16-3-910(1), *Tennessee Code Annotated*?

Conclusion: The council has established fees and maintained a positive reserve balance for fiscal years beginning July 1, 2013, through June 30, 2017.

⁷ Nolo contendere is a plea of no contest with an explanation that the person is agreeing to the charges without admitting guilt.

⁸ Moral turpitude involves acts that shock the public conscience or do not fit with the moral standards of the community.

3. Audit Objective: Did the Private Probation Services Council fulfill its statutory obligation to provide oversight to ensure private probation entities complied with uniform professional and contract standards to carry out daily operations for private misdemeanor probation supervision, counseling, and collection services to the courts?

Conclusion: We determined that the council did not provide adequate oversight of private probation entities, and as such left private probation entities with limited regulation and probationers at risk (see **Finding, Observation 1,** and **Observation 2**).

4. Audit Objective: Did the council ensure that the assigned Combined Boards staff collected the private probation entities' licensure fees, quarterly fees, annual renewal fees, and late fees, when applicable, and that individuals supervising probationers received required training?

Conclusion: Due to missing documentation and files for initial licensure, renewal licensure, and quarterly fees, we were unable to perform all related objectives. Based on available information from our review, we found numerous instances where staff over-collected quarterly fees and over- or under-collected late fees. We also identified that the council's assigned staff did not maintain continuing education documentation and did not perform regulatory reviews for any of the private probation entities (see **Finding**).

5. Audit Objective: Did Private Probation Services Council members sign annual conflict-of-interest disclosure forms?

Conclusion: Our review revealed that each council member is subject to Executive Order 20 regarding Conflicts of Interest for Executive Branch Employees, as well as the prohibitions regarding lobbyists pursuant to Section 3-6-301, *Tennessee Code Annotated*. On behalf of the council, the Department of Commerce and Insurance's Human Resources staff annually collect conflict-of-interest disclosures from council members and forward the disclosure forms to each regulatory board. However, Combined Board management were unable to provide us with records of all member disclosures from 2014 through 2017 (see **Finding**).

6. Audit Objective: Did the council ensure that private probation entities complied with Section 16-3-909(a)(7), *Tennessee Code Annotated*, and council rule 1177-02-.05 to ensure that owners, directors, employees, and volunteers maintained a clear criminal record?

Conclusion: Based on our review, the entities' criminal record checks only included checks of convictions in Tennessee and only at the time of initial application for licensure (see **Matter for Legislative Consideration** on page 19).

Methodology to Achieve Objectives

To achieve our objectives, we researched laws, rules, and regulations; conducted interviews with Combined Board management and staff; reviewed available council meeting minutes from March 2014 to October 2018; and researched information on similar programs in other states to gain an understanding of the Private Probation Services Council. We reviewed the council's website for meeting dates. The council also provides notification on the website that some meetings may be canceled 30 days prior to the actual meeting date. For analysis purposes, we reviewed, for the 32 active private probation companies as of May 2018, original licensure files, annual renewals, and quarterly fee reports for private probation entities. We also requested to examine conflict-of-interest disclosures for all council members for calendar years 2014 through 2017.

We attempted to evaluate the council's oversight mechanisms, which included reviews of initial licensure files, quarterly provider fee collections, and annual renewals. However, because the Combined Boards did not maintain all documentation, we were unable to fully evaluate this process, specifically the initial licensure process. We also interviewed a Criminal Court Judge in Shelby County, who was the former council chair from 2004 to 2017; Criminal Court Clerk personnel in Shelby County; the Administrative Manager for Combined Boards; and the Executive Director for Combined Boards to discuss processes and oversight.

Finding – The Private Probation Services Council did not adequately oversee private probation entities, putting probationers at risk, and did not ensure that Combined Boards staff fulfilled its assigned duties for the council

Oversight Concerns

In order to fulfill its critical responsibilities to protect probationers and provide oversight of private probation entities, the Private Probation Services Council (the council) is required by statute to ensure these entities follow uniform professional and contract standards in dealing with probationers' supervision and counseling and with the collection of probation fees⁹ and/or court-ordered fees, fines, and restitution.

Based on our testwork and review, we found that the council conducted limited regulatory activity during their meetings and

- did not establish a process to review private probation entity contracts,
- did not establish a process to verify information reported by the private probation entities, and
- did not ensure the Combined Board staff fulfilled the administrative responsibilities of the council and maintained required documentation, such as conflict-of-interest disclosure forms.

⁹ Probation fees can include not only monthly supervision, monitoring, and rescheduling fees, but also costs associated with court-mandated classes, treatment, community service, and drug tests.

Limited Regulatory Activity Conducted at Meetings

From our review of the Department of Commerce and Insurance’s website, regulatory entities, like the council, are authorized to take disciplinary action—including revocation of licenses and assessment of civil penalties—against license holders found guilty of violating laws governing their professions. Regulatory entities hear violation allegations and decide on disciplinary action during publicly held meetings. Based on our review of minutes for 14 council meetings held from January 1, 2014, through August 31, 2018, we determined the council heard 18 complaints that resulted in 2 enforcement actions.¹⁰ The remaining 16 were either dismissed or closed without action. Since the council does not conduct regulatory audits, complaints were the only source of oversight and possible disciplinary action during this period. Relying on complaints as the only source of regulatory oversight, especially when not all concerns and noncompliance may be reported through the complaint process, does not allow the council to effectively regulate the private probation entities. Regulatory audits of these entities to assess compliance with statute, rules and regulations, and entities’ policies would allow the council to better regulate private probation entities, thereby protecting probationers from prohibited practices.

Based on discussions with the former long-serving council chair,¹¹ we determined that the council was largely inactive from its inception until approximately 2005, leaving private probation entities unregulated. This conclusion is further evidenced by the council’s failure to promulgate statutorily required rules, including uniform contract standards and professional code of conduct standards, until 2005 when encouraged by the then chair.

The council’s current chair was not appointed until August 2018; therefore, we did not interview him during our audit fieldwork.

The Council Has Not Established a Process to Review Private Probation Entity Contracts and Initial Applications for Licensure

The council has not established a contract review process to assist in the review of private probation entity contracts. As such, the council has no way to ensure the private probation entities complied with the uniform contract standards as outlined in council rules and regulations. Furthermore, the process for initial licensure of a private probation entity does not include a review or approval by the council. Without effective oversight of these entities, probationers are left vulnerable to unscrupulous practices.

¹⁰ One complaint resulted in a consent order for the surrender of the license, but this action was due to another company acquiring the licensed probation provider with the intent to cease probation monitoring services. The second complaint resulted in a \$1,000 civil penalty due to providing unlicensed private probation services.

¹¹ The former council chair served from 2004 until his resignation in 2017.

The Council Has Not Established a Process to Verify Information Reported by the Private Probation Entities

Because the council has not established a process to verify information reported by the private probation entities, the council has not obtained critical entity information, such as

- the location of all private probation entity satellite offices;
- a list of each entity's contracts to provide services and which court districts it serves;
- a list of individuals currently employed to supervise probationers; and
- a description of services each entity provides for probationers.

The council's process should include better collaboration with the courts, which have the statutory authority to audit these entities, and that could provide the council with critical information to strengthen the council's oversight of private probation entity operations. (See **Observation 2** on page 16 for further discussion).

The Council Did Not Ensure the Combined Boards Staff Carried Out the Council's Responsibilities

Combined Boards – Missing Initial Applications for Licensure and Quarterly Fee Collections

Initial Applications

We requested all initial application for licensure files for the 32 actively licensed entities as of May 2018 to determine whether the entities submitted the required information, such as policies and procedures, employee qualifications, employee background checks, and fee schedules. The Executive Director for Combined Boards was only able to provide us with four files. On behalf of the council, Combined Boards management is required by Record Disposition Authorization¹² number 10222 to retain all licensure and supplemental information for active licenses. Management reported that many of these files are presumed lost due to the May 2010 flood as they were stored in the lower level of the Andrew Johnson Tower.

Additionally, the Executive Director for Combined Boards determined upon taking the position that from July 2015 through 2016, the Division of Regulatory Boards' staff failed to scan any documents (including quarterly fee collections and licensure renewals) for placement into FileNet, the electronic file storage. Of the four files provided for review, one originated prior to the flood. From this file review, we identified an additional concern related to private probation entities' background screenings as described in the **Results of Other Audit Work** section.

¹² Records Disposition Authorizations describe the public record, retention period, and destruction method for each record type under an agency's authority.

Quarterly Entity Fee Collection Review

We requested to review all quarterly fee collections made by private probation entities submitted from January 2015 through May 2018. The quarterly fee payment form consists of two pages: page one lists the total number of probationers with no identifiable information, the quarterly fee payment due, and late fees due, while the second page is a notarized Applicant Affidavit certifying that the submitted information is true and correct.

Based on private probation entity initial licensure dates, we determined that staff should have provided us with 442 quarterly fee reports from the 32 actively licensed entities, but our review revealed a total of 48 fee reports were missing (11%). We also identified several issues with reports, leading us to conclude that staff did not review the reports. For example, we identified reports in which the entities overpaid quarterly fees or did not pay the required late fees. For overpaid fees, we determined that most overpayments were due to entities using old quarterly report forms that required the higher payment rate of \$1 rather than the current 75 cent rate. We asked whether entities were issued refunds for these overpayments or billed for unpaid late fees, and the Executive Director of Combined Boards reported that neither refunds nor bills were issued.

Combined Boards – Unattested Documentation

We also noted problems with one entity's quarterly fee payment notarized Applicant Affidavits. We documented several instances where the filings lacked a notarized affidavit and some that simply lacked information on the affidavit, such as the year. We noted that this particular entity reused photocopies of two old official notarized affidavit sheets a total of nine times. Therefore, for nine quarterly fee reports, there was no valid Applicant Affidavit of information submitted by this entity. Thus, there is no independent verification of a valid signature for the private probation entity applicant swearing to the validity of the quarterly report information. Because these affidavits are unattested documents as they were not properly executed, if staff had noted the discrepancies, the council could likely have imposed a civil penalty. Failure to identify these discrepancies further highlights the inadequate review of submitted documents and directly impacts the council's ability to effectively oversee private probation entities.

Combined Boards – Missing Annual Renewal Documentation

We requested all renewals for actively licensed companies from January 2015 through June 2018. The annual fee renewal documentation consists of an application for renewal, renewal payment, proof of insurance and performance bond, and continuing education compliance at a minimum. As with the other two document reviews discussed above, staff were unable to provide us with documentation needed to perform our testwork. Considering the original licensure dates of companies, we expected management to provide 108 annual renewal applications for the period reviewed, but management could only provide 76 of the 108, meaning 32 documents were missing (30%).

As part of our renewal application review, we attempted to document compliance with continuing education requirements. Council Rule 1177-3-.01(2) requires employees supervising probationers to complete 20 hours of annual in-service training. We found that 30 of 76 files

provided (40%) lacked either a detailed confirmation of employee continuing education or an affirmation letter from company management stating that employees received required training. In addition, council rule 1177-03.01(2) allows the council to withhold a renewal registration of any entity where any employee has not received the required annual in-service training hours. We did not see evidence that any renewal licenses were denied due to noncompliance of training.

We confirmed with the Executive Director of Combined Boards that staff did not conduct reviews of the entities to ensure training compliance. We also found that while rules and regulations specify the council can audit the companies to ensure compliance with orientation training requirements, there is no such provision for annual in-service training.

Combined Boards Did Not Maintain Council Members’ Conflict-of-Interest Forms

Based on discussion with the Executive Director for Combined Boards, each Private Probation Services Council member is subject to Executive Order 20 regarding Conflicts of Interest for Executive Branch Employees, as well as the prohibitions regarding lobbyists pursuant to Section 3-6-301, *Tennessee Code Annotated*.

The department’s Human Resources Division collects conflict-of-interest disclosures annually from council members and forwards the completed forms to Combined Boards staff. Staff were unable to provide us with records of all member disclosures from 2014 through 2017. Overall, staff could not provide 7 of 28 expected conflict-of-interest disclosures (25%) for the years reviewed. The breakdown of missing forms by year is in **Table 2**.

Table 2
Missing Conflict-of-Interest Disclosures
By Calendar Year

Year	Received Forms	Missing Forms	Total	Percent Missing
2017	4	3	7	43%
2016	5	2	7	29%
2015	6	1	7	14%
2014	6	1	7	14%

Based on discussions with the Executive Director for Combined Boards, the Human Resources Division collects conflict-of-interest forms and forwards them to the council staff but does not keep a copy of the completed forms in Human Resources. Therefore, neither the Human Resources Division nor the Combined Boards staff were scanning the disclosures for recordkeeping purposes. The absence of conflict-of-interest disclosures means that neither the staff nor the public is informed of potential conflicts.

The Executive Director for Combined Boards should ensure that conflict-of-interest disclosures for members are completed and properly maintained for public inspection.

Overall Effect

Private probation entities have been operating without adequate council oversight since the council's existence, leaving probationers vulnerable. The effect of inadequate oversight is exhibited by the recent lawsuits and settlements involving the operations of private probation entities. Our documentation review reinforces the immediate need for more direct oversight of these entities by the council and the courts they serve (see **Observation 1**).

Periodic reviews of these entities would allow the council to monitor each entity's compliance with state laws; council rules and regulations, such as compliance with continuing education requirements; and compliance with uniform professional code of conduct and contract standards. The results of these reviews would provide the council the critical information it needs to ensure entities' compliance with established rules and regulations. The council would also have information and evidence to carry out its civil penalty enforcement responsibilities. In the absence of these reviews, complaints are the only mechanism for regulatory violation discovery.

As for oversight clarity, if possible, the council should work with the courts to improve the content of contracts with the entities that would enhance entity reporting as well as identify ways to collaboratively monitor probationer placement and private probation entity performance (see **Observation 2**).

Recommendation

The Private Probation Services Council should do the following:

- Establish the processes needed to fulfill all oversight responsibilities, including entity contract reviews, and direct the division-assigned staff to perform the regular review of private probation entities. These reviews should include compliance with state statute, uniform contract standards; uniform professional conduct standards; orientation and continuing education; and determining whether the number of probationers submitted for quarterly fee payments are accurate, at a minimum, along with any regulatory noncompliance reported to the council for enforcement action.
- Consider adopting bylaws for consistent governance.
- Consider expanding the training audit provision in Rule and Regulation 1177-3-.01(1)(e) to include in-service training.
- Consider working with the courts to develop an enhanced or collaborative monitoring program for the private probation entities.

The Executive Director for Combined Boards should ensure staff are trained and understand their responsibilities to the Private Probation Services Council, including but not limited to

- obtaining and maintaining all required documentation from private probation entities;
- ensuring entities submit all required fees; and

- instituting a process to ensure the maintenance of complete files for each licensee as required by the Records Disposition Authorization 10222.

Management's Comment for Private Probation Services Council

I concur with the Private Probation Services Council final draft. Our board was only recently appointed. We have had only one meeting in person and one telephone conference. I was appointed chairman at the first meeting and am still trying to become familiar with this process. I apologize for my lack of familiarity with the audit process. I have stayed in contact with the agency and thoroughly reviewed the final draft.

Management's Comment for Department of Commerce and Insurance

We concur in part. We concur that the department's staff should carry out the legal responsibilities of the council to ensure documents are maintained, fees collected, reports notarized, required renewal documentation filed, and conflict of interest statements obtained and maintained according to statute. Regrettably, mistakes were made in the transition to the department's current licensing system and new processes will be followed to prevent reoccurrence of these issues. The quarterly fee issue was addressed through clarification to all licensees as well as improved internal tracking. Staff has been instructed to check that documents are properly attested. With respect to documentation of training compliance, staff is not required to "conduct reviews ... to ensure training compliance" because the licensee is tasked with supplying the correct information and attesting to its accuracy. Staff has been trained to timely gather council members' conflict of interest forms.

Regarding the statement that the only method of regulation by the council is through complaints, initial licensure requirements imposed by the council provide additional regulation. However, the department views a complaint-based regulatory scheme component as a positive means of effectively regulating the industry without overburdening the licensees with the higher costs that a "regulatory audit" scheme would require.

The findings include a recommendation establishing a private probation entity contract review process not currently required by statute to enforce the council rules and regulations. T.C.A. § 16-3-909(a)(2) requires promulgating uniform contract standards for private entities. The council met this requirement through Tenn. Comp. Rules & Regs. 1177-02-.03, which specifies what should be in a contract between the licensee and the probationer. Failure to follow the rules and regulations with respect to these contracts is currently enforced based on complaints, which could be anonymous, filed by probationers or local entities using the private probation entity, or any citizen. Implementing contract review for third parties, such as counties, would require either the establishment of a required form contract(s) or require increases in fees to cover the individual contract review services. Increasing the regulatory costs for private probation entities will increase the cost for probationers, which may pose a hardship on them.

Reviewing contracts between third parties should be a matter negotiated by those parties. Under the current statutory scheme, it is inappropriate for the council to dictate the terms of these contracts, for example, an indemnity provision.

Requiring a process to verify information reported by the private probation entities, including the location of all private probation entity satellite offices, list of contracts and districts served, individuals employed to supervise probationers, and a description of the services provided for probationers, could be viewed as a duplication of services as courts have the statutory authority to audit the entities.

In the finding, it is recommended that the council adopt bylaws. The department would want to ensure that consideration be given to whether bylaws, rules, or policies are appropriate in light of the newly adopted provisions in Title 4, Chapter 5 of the T.C.A. With respect to expanding the training audit provisions of Tenn. Comp. Rules & Regs. 1177-3-.01(1)(e) and developing an enhanced monitoring program for private probation entities, these are also currently enforced via complaint and the duty of the licensee to provide updated information to the department. The department would defer to the legislature for direction as to whether increased regulatory oversight is appropriate.

Auditor Comment

Section 16-3-909(a)(1), *Tennessee Code Annotated*, states that the council shall “provide oversight of private entities.” To fulfill its oversight role, the council would need to establish an enhanced monitoring process to meet its responsibilities. More specifically, the purpose and duties contained in Sections 16-3-902 and 16-3-909(a), *Tennessee Code Annotated*, state,

The purpose of the council is to ensure that uniform professional and contract standards are practiced and maintained by private corporations, enterprises and entities engaged in rendering general misdemeanor probation supervision, counseling and collection services to the courts.

Additionally, although the Department of Commerce and Insurance views a “complaint-based regulatory scheme component as a positive means to effectively regulate,” neither the enabling statute nor the council’s rules specifically mention “complaints” or describe a “complaint-based” process to fulfill the council’s statutory responsibilities.

Although the council has promulgated rules in satisfaction of its statutory mandate, the council does not currently have processes in place to ensure that the statutes and rules are followed. To comply fully with statute, the council needs to develop processes that proactively assess that compliance, not just respond to complaints as they arise.

Observation 1 - Lawsuits against private probation entities call into question whether the council is adequately overseeing the entities

In October 2015, Civil Rights Corps, on behalf of seven named plaintiffs, filed a lawsuit in the U.S. District Court in Nashville accusing Providence Community Corrections, on contract with Rutherford County, of punishing low-income people on probation with excessive fees, court costs, jail time, and probation extension. As a result, in December 2015, the judge ordered the release of inmates sent to jail for non-payment of fees and barred the serving or execution of warrants for arrest on the basis of nonpayment of court costs, fines, or probation or other fees.

The parties reached a settlement that was finalized July 18, 2018, the final order being approved for \$14.3 million (\$14 million being paid by Providence Community Corrections and an additional \$300,000 by Rutherford County). The final order stated that approximately 25,000 individuals could be eligible for awards.¹³ Overall, the court deemed 6,462 of 7,961 claims were valid, resulting in an award range of \$1,500 to \$2,100 for each claim. The seven named plaintiffs received incentive awards of \$10,000 each. Furthermore, Rutherford County reverted to in-house probation rather than entering into another contract for private probation services. Most recently, Civil Rights Corps filed another lawsuit in April 2018 against two private probation entities contracted by Giles County alleging similar grievances. Litigation is ongoing.

Observation 2 - Clarity is needed between the courts and the council concerning the division of oversight responsibilities

Oversight of private probation entities is divided between the Private Probation Services Council and the courts they serve, likely resulting in uncertainty about which entity (the council or the applicable court) should directly oversee these entities.

Misdemeanor sentencing guidelines in Section 40-35-302(g)(1)(A)(iv), *Tennessee Code Annotated*, require private probation entities to maintain documentation on all misdemeanor defendants supervised by the entity. All books, records, and documentation relating to work performed or money received for the supervision of misdemeanor defendants must be maintained for a period of three full years from the date of the final payment or audit. The records are subject to audit, both fiscal and performance, at any reasonable time and with reasonable notice by the court or courts in which the entity operates.

While this statute is specific to the court's authority to audit, the council's powers and duties listed in Section 16-3-909(a)(1), *Tennessee Code Annotated*, simply state the council is to provide oversight of private entities.

Court Probationer Assignment and Quarterly Report Data Verification

From our interviews with the previous chair of the council, who is a Shelby County Criminal Court Judge, and a Shelby County Criminal Court clerk employee in the same jurisdiction, we observed that the Shelby County courts lacked mechanisms to track probationers or verify quarterly report data submitted by the private probation entities.

No Mechanism to Track Probationers

Without a method to track probationer assignment, the courts are unable to evaluate compliance with misdemeanor private probation order requirements to ensure probationer

¹³ The Final Order defined the certified class as "All persons who, at any time from October 1, 2011, to October 5, 2017, (1) incurred court-imposed financial obligations arising from a traffic or misdemeanor case in Rutherford County General Sessions or Circuit Court; and (2) were supervised on probation in that case by Providence Community Corrections, Inc. or Rutherford County's Probation Department.

supervision and successful fulfillment of probation orders by the probationer, such as training, counseling, and payment of court fines, fees, and restitution.

In our discussion with the former chair, we learned that there is no centralized mechanism, electronic or otherwise, to determine which probation entity the court assigns each probationer for supervision. The current assignment process includes a triplicate probation order, with one copy placed in the court hard copy file, one copy to the probationer, and one to the probation company. Currently, to determine where a probationer is assigned, the court would have to review the physical file.

We also determined that currently these courts do not have a simple solution to correct the tracking problems and are currently unable to easily assess what fees, fines, and restitution are outstanding.

Neither the Courts nor the Council Has Mechanisms to Verify Quarterly Report Data

State statute and council rules require private probation entities to submit quarterly reports to every court to which they provide services. The reports include information such as caseloads, number of contact hours with offenders, services provided, and financial statements. Based on our discussions with Shelby County court clerk personnel, we determined that they receive and file the quarterly reports but do not review them. Moreover, we were told “no” when asked if there was a way to determine what fines and fees the private probation entities collected on behalf of the probationers.

Other Concerns

The Executive Director of Combined Boards expressed similar concerns to the council about auditing private probation entity information, specifically in-service training requirements. However, the council members, at that time, felt that either they should not audit or that they lacked the statutory authority to conduct these types of reviews.

Matter for Legislative Consideration

The General Assembly may want to consider reviewing the statutes governing the oversight responsibilities of the courts and the council to identify and clarify any gaps or overlap in supervision of private probation entities. Also, the General Assembly may wish to consider an amendment to existing statute to include council meeting requirements, including frequency of member attendance.

RESULTS OF OTHER AUDIT WORK: BACKGROUND CHECKS FOR EMPLOYEES OF PRIVATE PROBATION ENTITIES

The Private Probation Services Council does not require private probation entities to conduct national criminal record checks and periodic criminal record checks on its employees to ensure a clear criminal history. Based on our review of available documentation for the four initial licensure applications as mentioned in the **finding**, we determined that private probation entity criminal record checks of employees and volunteers consisted of only a Tennessee criminal history records request, which does not include fingerprinting. The Tennessee Bureau of Investigation (TBI) states in the criminal history record request results that

unless a fingerprint comparison is performed, it is impossible for the Tennessee Bureau of Investigation to be sure the record belongs to the individual you requested. A fingerprint comparison will only be performed in the event of a written appeal of criminal history results. The information you receive will be based on only those arrests which occurred within the state of Tennessee.

To further illustrate, the Tennessee Department of Correction employs probation and parole officers with similar job responsibilities as private probation officers. We determined that the Department of Correction requires Probation/Parole Officers, upon application for employment, to

- complete a criminal history disclosure form;
- agree to release all records involving their criminal history;
- supply a fingerprint sample to the TBI for a fingerprint-based criminal history records check; and
- have no conviction for a felony or any domestic assault convictions or have been discharged under any other than honorable conditions from any branch of the United States armed forces.

Simply verifying arrest records within Tennessee does not fully satisfy the rule that employees and volunteers must be free from any felony conviction or misdemeanor involving moral turpitude. Fingerprint checks would assist in preventing individuals who were convicted in these categories from obtaining employment as probation officers from any state, not just Tennessee. Likewise, periodic checks could provide additional assurance that employees of the entities have consistently maintained a clear record and assist in identifying convictions that were not reported to the council as required.

While the rules do not require fingerprint or national checks and statute does not expressly allow for fingerprint checks, the rule stipulates that employees or volunteers must be free of any felony conviction or misdemeanor involving moral turpitude. A complete criminal history check would include nationwide information using a fingerprint criminal history check.

Matter for Legislative Consideration

The General Assembly and the council should consider whether statutory changes are needed to ensure that a private probation officer meets the clear criminal history requirements. Changes could include conducting fingerprint checks and online checks, such as the Drug Offender Registry, Tennessee Felony Offender Database, and National Sexual Offender Registry.

APPENDIX 1
Private Probation Services Council Membership
as of October 10, 2018

Name	Term	Position
Judge Lynn Alexander	3/29/18 – 5/31/22 ¹⁴	Municipal Court Judge with General Sessions Jurisdiction
Linda Byford	10/14/14 – 8/31/18	Public Probation Officer
Stancil Ford ¹⁵	9/1/17 – 8/31/21	County Commissioner
Judge Brody Kane	5/9/18 – 5/31/22	Criminal Court Judge
Judge Larry Logan – Chair	6/1/18 – 5/31/22	General Sessions Court Judge
David Nimmo	5/26/16 – 8/31/22	Private Probation Officer
Judge Gary Starnes	6/1/18 – 5/31/22	General Sessions Court Judge

Source: Member Terms: Director of Combined Boards.

Judges: Administrative Office of the Courts website.

¹⁴ For terms expiring August 31, 2018, the member can continue to serve until a new appointment is made.

¹⁵ The member became ineligible on August 31, 2018, due to loss of county commission seat.

APPENDIX 2
Private Probation Services Council
Unaudited Financial Data*
For the Period July 1, 2013, Through October 31, 2018

Expenditures	2014	2015	2016	2017	2018¹⁶
Regular Salaries and Wages	\$6,528	\$3,542	\$15,633	\$13,453	\$15,736
Longevity	-	-	720	-	-
Overtime	-	-	-	-	-
Employee Benefits	3,599	2,176	10,136	8,142	9,730
Total Payroll Expenditures	<u>10,127</u>	<u>5,718</u>	<u>26,489</u>	<u>21,595</u>	<u>25,466</u>
Travel	898	169	95	303	7
Communications and Shipping	181	192	264	43	99
Third Party Prof. and Admin Services	72	104	229	38	110
Supplies and Office Furniture	107	-	-	7	29
Computer Related Items	111	-	-	-	-
State Professional Services	9,014	8,839	8,981	9,263	8,482
Total Other Expenditures	<u>10,382</u>	<u>9,304</u>	<u>9,568</u>	<u>9,655</u>	<u>8,727</u>
Cost Backs¹⁷					
Edison	-	-	-	-	34,191
Administration	5,044	8,604	4,929	5,721	5,664
Investigation	-	1,861	5,752	7,250	463
Legal	8,335	-	5,467	1,771	5,636
Field Enforcement	-	-	-	-	-
Customer Service Center	-	-	180	330	433
Total Cost Backs	<u>13,379</u>	<u>10,465</u>	<u>16,327</u>	<u>15,072</u>	<u>46,387</u>
Total Expenditures	<u>33,888</u>	<u>25,488</u>	<u>52,384</u>	<u>46,322</u>	<u>80,580</u>
Revenues					
Licensing Revenue	127,147	126,058	115,925	81,210	69,737
Case and Complaint Revenue	-	1,143	857	-	-
Less: State Regulatory Fee	190	200	175	340	300
Net Revenue	<u>126,957</u>	<u>127,001</u>	<u>116,607</u>	<u>80,870</u>	<u>69,437</u>
Fiscal Year Balance	93,069	101,513	64,223	34,548	(11,143)
Prior Fiscal Year Reserve	396,389	489,236	590,749	654,972	689,520
Reserve Balance	489,458	590,749	654,972	689,520	678,377
CORE Expense	222	-	-	-	-
Reserve Balance after CORE Expense	<u>\$489,236</u>	<u>\$590,749</u>	<u>\$654,972</u>	<u>\$689,520</u>	<u>\$678,377</u>

Source: Received from the Executive Director of Combined Boards.

*Totals may vary due to rounding.

¹⁶ Fiscal year 2018 revenues and expenditures were only available through May 2018.

¹⁷ Cost backs include administrative, investigation, legal, field enforcement, and customer service shared functions.

APPENDIX 3
Private Probation Services Council
Actively Licensed Private Probation Entities
As of May 2018

Private Probation Entity	Initial Licensure Date
Alternative Correctional Services	2/7/2006
Alternative Judicial Services LLC	6/9/2014
Community Probation Services	11/10/2005
Community Supervision Inc.	9/9/2014
Correctional Management Systems LLC	3/12/2010
Corrections Management Corporation	2/7/2006
County Probation	2/13/2006
Crossroads Area Alcohol and Drug Association	2/7/2006
East Tennessee Probation Inc.	7/10/2006
Grace Resource Agency LLC	12/18/2008
Marshall County Misdemeanor Probation	2/7/2006
Misdemeanor Offender Program	6/23/2006
Misdemeanor Probation Service	6/7/2006
Mountain Empire Corrections	6/7/2006
National Probation of America	6/7/2006
Northwest Alternative Correction	3/22/2006
Probation Management Group Inc.	12/7/2005
Probation Services Incorporated	12/13/2005
Probation Services of Tennessee Inc.	2/21/2006
Probation Works LLC	2/10/2006
Progressive Sentencing Inc.	12/21/2005
Smith County Misdemeanor Probation	12/21/2005
South Central Probation Service	3/17/2006
Spartan Probation Services	8/26/2010
Supervisory Services Inc.	12/13/2005
Tennessee Correctional Services West Inc.	8/25/2017
Tennessee Court Services LLC	12/1/2015
The Justice Network	11/7/2005
Tennessee Correctional Services LLC	11/18/2005
TN Judicial Court Support Inc.	12/21/05
Westin Services Inc.	2/6/2006
Westate Probation Services Inc.	12/21/2005

Source: CORE Licensure Data, Received from the Executive Director of Combined Boards.