

Senators Stokes of the 43rd, Thompson of the 33rd and Tanksley of the 32nd offered the following substitute to SB 467:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 19 of the Official Code of Georgia Annotated, relating to domestic relations,
2 so as to create standards, uniformity, oversight, and certification for family violence
3 intervention programs; to provide a short title; to change provisions relating to family
4 violence counseling; to add an article to manage family violence intervention programs; to
5 define terms; to provide for the administration of the programs; to establish a certification
6 process; to include compliance standards and annual reporting; to provide for penalties; to
7 require courts and the State Board of Pardons and Paroles to utilize certified family violence
8 intervention programs, with certain exceptions; to change provisions relating to the
9 administrative attachment and duties of the State Commission on Family Violence; to amend
10 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as to
11 conform certain language relating to family violence intervention programs; to provide for
12 other matters relative to the foregoing; to provide for effective dates and applicability; to
13 repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

15 This Act shall be known and may be cited as the "Georgia's Family Violence Intervention
16 Program Certification Act."
17

SECTION 2.

18 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
19 amended in Code Section 19-9-7, relating to parental visitation, by striking paragraph (3) of
20 subsection (a) and inserting in lieu thereof the following:
21

22 "(3) Order the perpetrator of family violence to attend and complete, to the satisfaction
23 of the court, a certified family violence intervention program ~~of intervention~~ for
24 perpetrators ~~or other designated counseling~~ as defined in Article 1A of Chapter 13 of this
25 title as a condition of the visitation;"

SECTION 3.

Said title is further amended in Chapter 13, relating to family violence, by inserting between Articles 1 and 2 a new Article 1A to read as follows:

"ARTICLE 1A

19-13-10.

As used in this article, the term:

(1) 'Commission' means the State Commission on Family Violence.

(2) 'Commissioner' means the commissioner of corrections.

(3) 'Department' means the Department of Corrections.

(4) 'Family or household members' means past or present spouses, persons who are parents of the same child, or other persons living or formerly living in the same household.

(5) 'Family violence' means the commission of the offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, or criminal trespass between family or household members.

(6) 'Family violence intervention program' or 'program' means any program that is certified by the Department of Corrections pursuant to Code Section 19-13-14 and designed to rehabilitate family violence offenders. The term includes, but is not limited to, batterer intervention programs, anger management programs, anger counseling, family problem resolution, and violence therapy.

19-13-11.

In carrying out the purpose of this article, the department shall charge a fee for the consideration of applications for certification of family violence intervention programs and instructors. The amount of this fee shall be established by the commission and shall, as best as the commission shall determine, approximate the expense incurred by the department in consideration of an application. These certifications shall be valid for a period of two years unless suspended or revoked prior to the expiration of that time period.

19-13-12.

It shall be unlawful for an owner, agent, servant, or employee of any program certified by the department to solicit business, directly or indirectly, by personal solicitation on public property, by telephone, by e-mail, by mail, or by any other means. A violation of this Code section shall be a misdemeanor. Advertising in any mass media, including, but not limited

1 to, newspapers, radio, television, magazines, or telephone directories, by a family violence
2 intervention program shall not be considered a violation of this Code section.

3 19-13-13.

4 (a) A program certified pursuant to this article shall be administered by the commissioner.
5 The commissioner is authorized to promulgate, adopt, and enforce rules and regulations
6 necessary to carry out this article, including, but not limited to, prescribing the form of
7 applications, visiting program facilities, and investigating complaints.

8 (b) The department shall be responsible for the approval and certification of programs and
9 staff. This responsibility includes the training for and monitoring of all programs under this
10 article.

11 19-13-14.

12 (a) The commission and the department shall establish standards and requirements
13 concerning the content of courses, including, but not limited to, duration of courses,
14 qualifications of instructors, program and certification fees, attendance requirements, and
15 examinations. In order to be certified, a program shall meet the standards established by
16 the commission and the department.

17 (b) Programs may be operated by any individual, partnership, corporation, association,
18 civic group, club, county, municipality, board of education, school, or college or any
19 public, private, or governmental entity.

20 (c) Notwithstanding the provisions of any law, rule, or regulation which prohibits any
21 individual who is a probation officer or other official or employee of the probation division
22 of the department or a spouse of such individual from owning, operating, instructing at, or
23 being employed by a program, any individual who is a probation officer or other official
24 or employee of the probation division of the department or a spouse of such individual who
25 owns, operates, instructs at, or is employed by a program on June 30, 2002, and who in all
26 respects is and remains qualified to own, operate, instruct at, or be employed by a program
27 is expressly authorized to continue on and after June 30, 2002, to engage in such activities.

28 (d) The department is responsible for establishing requirements for the certification of
29 programs. An applicant must meet the certification requirements promulgated by the
30 department through standards established by the commission and the department. No
31 program shall be approved unless the owner of the program agrees in writing to submit
32 reports as required in the rules and regulations of the department and to allow the
33 examination and audit of the books, records, and financial statements of the program or its
34 authorized agent. No program will be certified unless the owner of the program agrees in

1 writing to pay to the state, for the costs of administration, a fee as established by the
 2 commission, provided that nothing in this Code section shall be construed so as to allow
 3 the department to retain any funds required by the Constitution of this state to be paid into
 4 the state treasury; and provided, further, that the department shall comply with all
 5 provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act,' except Code
 6 Section 45-12-92, prior to expending any such miscellaneous funds. All programs operated
 7 by the department shall be exempt from fee provisions relating to obtaining certification.

8 (e) The department has the authority to deny, suspend, or revoke a certificate under this
 9 article or to impose sanctions upon and discipline a program which is not complying with
 10 the rules and regulations set forth by the department. The commissioner shall establish
 11 criteria to determine noncompliance with department rules and regulations, sanctions for
 12 noncompliance, and methods of appeal if certification is denied, suspended, or revoked.

13 (f) The department shall maintain a list of programs certified pursuant to this article and
 14 make the list available to the public and all courts.

15 19-13-15.

16 The department and the State Board of Pardons and Paroles may operate family violence
 17 intervention programs which meet the requirements of the department. The courts and the
 18 State Board of Pardons and Paroles may accept such programs in lieu of certified family
 19 violence intervention programs as defined in paragraph (1) of Code Section 19-13-10.

20 19-13-16.

21 (a) A court, in addition to imposing any penalty provided by law, when sentencing a
 22 defendant or revoking a defendant's probation for an offense involving family violence,
 23 or when imposing a protective order against family violence, shall order the defendant to
 24 participate in a family violence intervention program, whether a certified program pursuant
 25 to this article or a program operated pursuant to Code Section 19-13-15, unless the court
 26 determines and states on the record why participation in such a program is not appropriate.

27 (b) The State Board of Pardons and Paroles, when revoking a conditional releasee for a
 28 violation of parole or conditional release for an offense involving family violence, shall
 29 require the conditional releasee to participate in a family violence intervention program,
 30 whether a certified program pursuant to this article or a program operated pursuant to Code
 31 Section 19-13-15, unless the State Board of Pardons and Paroles determines and states on
 32 the record why participation in such a program is not appropriate.

33 (c) Unless the defendant is indigent, the cost of the family violence intervention program
 34 as provided by this Code section shall be borne by the defendant. If the defendant is

1 indigent, then the cost of the program shall be determined by a sliding scale based upon the
2 defendant's ability to pay.

3 19-13-17.

4 As an alternative to criminal or other civil enforcement, the commissioner or his or her
5 designee, in order to enforce this article or any orders, rules, or regulations promulgated
6 pursuant to this article, may issue an administrative fine not to exceed \$1,000.00 for each
7 violation, whenever that commissioner or his or her designee, after a hearing, determines
8 that any person, firm, or corporation has violated any provision of this article or any order,
9 rule, or regulation promulgated pursuant to this article. The hearing and any administrative
10 review thereof shall be conducted in accordance with the procedures for contested cases
11 under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Any person,
12 firm, or corporation that has exhausted all administrative remedies available and that is
13 aggrieved or adversely affected by a final order or action of the commissioner or his or her
14 designee shall have the right of judicial review in accordance with Chapter 13 of Title 50.
15 All fines collected or recovered by the commissioner under this Code section shall be
16 remitted to the Office of Treasury and Fiscal Services to the credit of the general fund of
17 this state. The commissioner or his or her designee may file in the superior court (1)
18 wherein the person under order resides; (2) if such person is a corporation, in the county
19 wherein the corporation maintains its principal place of business; or (3) in the county
20 wherein the violation occurred, a certified copy of a final order of the commissioner or his
21 or her designee, whether unappealed from or affirmed upon appeal, whereupon the court
22 shall render judgment in accordance with the judgment and notify the parties. The
23 judgment shall have the same effect and proceedings in relation thereto shall thereafter be
24 the same as though the judgment had been rendered in an action duly heard and determined
25 by the court. The penalty prescribed in this Code section shall be concurrent, alternative,
26 and cumulative with any and all other civil, criminal, or alternative rights, remedies,
27 forfeitures, or penalties provided, allowed, or available to the commissioner or his or her
28 designee with respect to any violation of this article or any order, rule, or regulation
29 promulgated pursuant to this article."

30 **SECTION 4.**

31 Said title is further amended in Code Section 19-13-31, relating to the creation of the State
32 Commission on Family Violence, its plan for ending family violence, and the establishment
33 of community task forces, by striking the Code section in its entirety and inserting in lieu
34 thereof the following:

1 "19-13-31.

2 There is created a State Commission on Family Violence which shall be responsible for
3 developing a comprehensive state plan for ending family violence. This plan shall include
4 the initiation, coordination, and oversight of the implementation of family violence laws
5 and the establishment in each judicial circuit of a Community Task Force on Family
6 Violence. These task forces shall be supported by and work in collaboration with the state
7 commission. The commission shall be assigned for administrative purposes only, as set out
8 in Code Section 50-4-3, to the ~~Administrative Office of the Courts~~ Department of
9 Corrections."

10 SECTION 5.

11 Said title is further amended in Code Section 19-13-34, relating to powers and duties of the
12 commission, in subsection (a) by striking "and" at the end of paragraph (7), by striking the
13 period and inserting "; and" at the end of paragraph (8), and by adding a new paragraph (9)
14 to read as follows:

15 "(9) To develop standards to be utilized by the Department of Corrections in the
16 certification and regulation of family violence intervention programs."

17 SECTION 6.

18 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
19 by striking Code Section 42-8-35.6, relating to a family violence intervention program or
20 counseling related to family violence as a condition of probation, and inserting in lieu
21 thereof the following:

22 "42-8-35.6.

23 (a) Notwithstanding any other terms or conditions of probation which may be imposed,
24 a court sentencing a defendant to probation for an offense involving family violence as
25 such term is defined in Code Section ~~19-13-1~~ 19-13-10 shall, ~~to the extent that services are~~
26 ~~available,~~ require as a condition of probation that the defendant participate in a ~~court~~
27 ~~approved~~ family violence intervention program ~~or receive counseling related to family~~
28 ~~violence~~ certified pursuant to Article 1A of Chapter 13 of Title 19, unless the court
29 determines and states on the record why participation in such a program is not appropriate.
30 ~~Unless the defendant is indigent, the cost of such participation in the program or counseling~~
31 ~~shall be borne by the defendant.~~

32 (b) A court, in addition to imposing any penalty provided by law, when revoking a
33 defendant's probation for an offense involving family violence as defined by Code Section
34 19-13-10, or when imposing a protective order against family violence, shall order the

1 defendant to participate in a family violence intervention program certified pursuant to
2 Article 1A of Chapter 13 of Title 19, unless the court determines and states on the record
3 why participation in such program is not appropriate.

4 (c) The State Board of Pardons and Paroles, when revoking a conditional releasee for a
5 violation of parole or conditional release for an offense involving family violence as
6 defined by Code Section 19-13-10, shall require the conditional releasee to participate in
7 a family violence intervention program certified pursuant to Article 1A of Chapter 13 of
8 Title 19, unless the State Board of Pardons and Paroles determines and states on the record
9 why participation in such a program is not appropriate.

10 (d) Unless the defendant is indigent, the cost of the family violence intervention program
11 as provided by this Code section shall be borne by the defendant. If the defendant is
12 indigent, then the cost of the program shall be determined by a sliding scale based upon the
13 defendant's ability to pay."

14 **SECTION 7.**

15 This section and Sections 1, 4, 5, and 8 of this Act shall become effective on July 1, 2002.
16 Section 2 of this Act shall become effective on July 1, 2003. Section 3 of this Act shall
17 become effective on July 1, 2002, for the purposes of the development process by the
18 Department of Corrections and the State Commission on Family Violence for certified family
19 violence intervention programs and for the purposes of collecting application fees; for all
20 other purposes, Section 3 of this Act shall become effective on July 1, 2003. Section 6 of
21 this Act shall become effective on July 1, 2003, and shall apply to sentences or conditional
22 release revocations that occur on or after that date.

23 **SECTION 8.**

24 All laws and parts of laws in conflict with this Act are repealed.