

House Bill 622

By: Representative Cox of the 102<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 6 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated,  
2 relating to agreements between chief judges of county courts or judges of municipal courts  
3 and corporations, enterprises, or agencies for probation services, so as to clarify certain  
4 limitations on the authority of the County and Municipal Probation Advisory Council; to  
5 provide for related matters; to provide an effective date; to repeal conflicting laws; and for  
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 6 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to  
10 agreements between chief judges of county courts or judges of municipal courts and  
11 corporations, enterprises, or agencies for probation services, is amended by revising Code  
12 Section 42-8-100, relating to jurisdiction of probation matters in ordinance violation cases,  
13 costs, agreements between chief judges of county courts or judges of municipal courts and  
14 corporations, enterprises, or agencies for probation services, as follows:

15 "42-8-100.

16 (a) As used in this article, the term:

17 (1) 'Council' means the County and Municipal Probation Advisory Council created under  
18 Code Section 42-8-101.

19 (2) 'Private probation officer' means a probation officer employed by a private  
20 corporation, private enterprise, private agency, or other private entity that provides  
21 probation services and who has supervisory authority over probationers as directed by  
22 court order.

23 (3) 'Probation officer' means a person employed to supervise defendants placed on  
24 probation by a county or municipal court for committing an ordinance violation or  
25 misdemeanor and who has supervisory authority over probationers as directed by court  
26 order.

27 (b) Any county or municipal court which has original jurisdiction of ordinance violations  
28 or misdemeanors and in which the defendant in such a case has been found guilty upon  
29 verdict or any plea may, at a time to be determined by the court, hear and determine the  
30 question of the probation of such defendant.

31 (c) If it appears to the court upon a hearing of the matter that the defendant is not likely to  
32 engage in an unlawful course of conduct and that the ends of justice and the welfare of  
33 society do not require that the defendant shall presently suffer the penalty imposed by law,  
34 the court in its discretion shall impose sentence upon the defendant but may stay and  
35 suspend the execution of the sentence or any portion thereof or may place him or her on  
36 probation under the supervision and control of a probation officer for the duration of such  
37 probation, subject to the provisions of this Code section. The period of probation or  
38 suspension shall not exceed the maximum sentence of confinement which could be  
39 imposed on the defendant.

40 (d) The court may, in its discretion, require the payment of a fine or costs, or both, as a  
41 condition precedent to probation.

42 (e) The sentencing judge shall not lose jurisdiction over any person placed on probation  
43 during the term of his or her probated sentence. The judge is empowered to revoke any or  
44 all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed  
45 advisable by the judge, modify or change the probated sentence at any time during the  
46 period of time originally prescribed for the probated sentence to run.

47 (f) If a defendant is placed on probation pursuant to this Code section by a county or  
48 municipal court other than one for the county or municipality in which he or she resides for  
49 committing any ordinance violation or misdemeanor, such defendant may, when  
50 specifically ordered by the court, have his or her probation supervision transferred to the  
51 county or municipality in which he or she resides.

52 (g)(1) The chief judge of any court within the county, with the approval of the governing  
53 authority of that county, is authorized to enter into written contracts with corporations,  
54 enterprises, or agencies to provide probation supervision, counseling, collection services  
55 for all moneys to be paid by a defendant according to the terms of the sentence imposed  
56 on the defendant as well as any moneys which by operation of law are to be paid by the  
57 defendant in consequence of the conviction, and other probation services for persons  
58 convicted in that court and placed on probation in the county. In no case shall a private  
59 probation corporation or enterprise be charged with the responsibility for supervising a  
60 felony sentence. The final contract negotiated by the chief judge with the private  
61 probation entity shall be attached to the approval by the governing authority of the county  
62 to privatize probation services as an exhibit thereto. The termination of a contract for  
63 probation services as provided for in this subsection entered into on or after July 1, 2001,

64 shall be initiated by the chief judge of the court which entered into the contract; and  
65 subject to approval by the governing authority of the county which entered into the  
66 contract and in accordance with the agreed upon, written provisions of such contract. The  
67 termination of a contract for probation services as provided for in this subsection in  
68 existence on July 1, 2001, and which contains no provisions relating to termination of  
69 such contract shall be initiated by the chief judge of the court which entered into the  
70 contract, and subject to approval by the governing authority of the county which entered  
71 into the contract and in accordance with the agreed upon, written provisions of such  
72 contract. The council shall not have authority to alter, cancel, void, dictate the terms of,  
73 or otherwise interfere with any contract lawfully entered into between a private probation  
74 entity and a judge or entered into between a private probation entity and a governing  
75 authority or other such agreement entered into pursuant to this subsection.

76 (2) The chief judge of any court within the county, with the approval of the governing  
77 authority of that county, is authorized to establish a county probation system to provide  
78 probation supervision, counseling, collection services for all moneys to be paid by a  
79 defendant according to the terms of the sentence imposed on the defendant as well as any  
80 moneys which by operation of law are to be paid by the defendant in consequence of the  
81 conviction, and other probation services for persons convicted in that court and placed  
82 on probation in the county.

83 (h)(1) The judge of the municipal court of any municipality or consolidated government  
84 of a municipality and county of this state, with the approval of the governing authority  
85 of that municipality or consolidated government, is authorized to enter into written  
86 contracts with private corporations, enterprises, or agencies to provide probation  
87 supervision, counseling, collection services for all moneys to be paid by a defendant  
88 according to the terms of the sentence imposed and any moneys which by operation of  
89 law are to be paid by the defendant in consequence of the conviction, and other probation  
90 services for persons convicted in such court and placed on probation. The final contract  
91 negotiated by the judge with the private probation entity shall be attached to the approval  
92 by the governing authority of the municipality or consolidated government to privatize  
93 probation services as an exhibit thereto. The council shall not have authority to alter,  
94 cancel, void, dictate the terms of, or otherwise interfere with any contract lawfully  
95 entered into between a private probation entity and a judge or entered into between a  
96 private probation entity and a governing authority or other such agreement entered into  
97 pursuant to this subsection.

98 (2) The judge of the municipal court of any municipality or consolidated government of  
99 a municipality and county of this state, with the approval of the governing authority of  
100 that municipality or consolidated government, is authorized to establish a probation

101 system to provide probation supervision, counseling, collection services for all moneys  
 102 to be paid by a defendant according to the terms of the sentence imposed and any moneys  
 103 which by operation of law are to be paid by the defendant in consequence of the  
 104 conviction, and other probation services for persons convicted in such court and placed  
 105 on probation."

106 **SECTION 2.**

107 Said article is further amended by revising Code Section 42-8-101, relating to the County and  
 108 Municipal Probation Advisory Council, as follows:

109 "42-8-101.

110 (a) There is created the County and Municipal Probation Advisory Council, to be  
 111 composed of one superior court judge designated by The Council of Superior Court Judges  
 112 of Georgia, one state court judge designated by The Council of State Court Judges of  
 113 Georgia, one municipal court judge designated by the Council of Municipal Court Judges  
 114 of Georgia, one sheriff appointed by the Governor, one probate court judge designated by  
 115 The Council of Probate Court Judges of Georgia, one magistrate designated by the Council  
 116 of Magistrate Court Judges, the commissioner of corrections or his or her designee, one  
 117 public probation officer appointed by the Governor, one private probation officer or  
 118 individual with expertise in private probation services by virtue of his or her training or  
 119 employment appointed by the Governor, one mayor or member of a municipal governing  
 120 authority appointed by the Governor, and one county commissioner appointed by the  
 121 Governor. Members of the council appointed by the Governor shall be appointed for terms  
 122 of office of four years. With the exceptions of the public probation officer, the county  
 123 commissioner, the sheriff, the mayor or member of a municipal governing authority, and  
 124 the commissioner of corrections, each designee or representative shall be employed in their  
 125 representative capacity in a judicial circuit operating under a contract with a private  
 126 corporation, enterprise, or agency as provided under Code Section 42-8-100. No person  
 127 shall serve beyond the time he or she holds the office or employment by reason of which  
 128 he or she was initially eligible for appointment. In the event of death, resignation,  
 129 disqualification, or removal for any reason of any member of the council, the vacancy shall  
 130 be filled in the same manner as the original appointment and any successor shall serve for  
 131 the unexpired term. Such council shall promulgate rules and regulations regarding  
 132 ~~contracts or agreements~~ for the provision of probation services and the conduct of business  
 133 by private entities providing probation services and county, municipal, or consolidated  
 134 governments establishing probation systems as authorized by this article; provided,  
 135 however, that such rules and regulations shall not be adopted and applied so as to void or

136 materially alter an existing contract for probation services and shall not be applied  
137 retroactively to any contract existing at the time such rules and regulations are adopted.

138 (b) The business of the council shall be conducted in the following manner:

139 (1) The council shall annually elect a chairperson and a vice chairperson from among its  
140 membership. The offices of chairperson and vice chairperson shall be filled in such a  
141 manner that they are not held in succeeding years by representatives of the same  
142 component (law enforcement, courts, corrections) of the criminal justice system;

143 (2) The council shall meet at such times and places as it shall determine necessary or  
144 convenient to perform its duties. The council shall also meet on the call of the  
145 chairperson or at the written request of three of its members;

146 (3) The council shall maintain minutes of its meetings and such other records as it deems  
147 necessary; and

148 (4) The council shall adopt such rules for the transaction of its business as it shall desire  
149 and may appoint such committees as it considers necessary to carry out its business and  
150 duties.

151 (c) Members of the council shall serve without compensation but shall receive the same  
152 expense allowance per day as that received by a member of the General Assembly for each  
153 day such member of the council is in attendance at a meeting of such council, plus either  
154 reimbursement for actual transportation costs while traveling by public carrier or the same  
155 mileage allowance for use of a personal motor vehicle in connection with such attendance  
156 as members of the General Assembly receive. Payment of such expense and travel  
157 allowance shall be subject to availability of funds and shall be in lieu of any per diem,  
158 allowance, or other remuneration now received by any such member for such attendance.

159 (d) The council is assigned to the Administrative Office of the Courts for administrative  
160 purposes only in accordance with Code Section 50-4-3. The funds necessary to carry out  
161 the provisions of this article shall come from funds appropriated to the Administrative  
162 Office of the Courts or otherwise available to the council. The council is authorized to  
163 accept and use grants of funds for the purpose of carrying out the provisions of this article.

164 (e) The council shall have the following powers and duties:

165 (1) To promulgate rules and regulations for the administration of the council, including  
166 rules of procedure for its internal management and control;

167 (2) To review the uniform professional standards for private probation officers and  
168 uniform contract standards for private probation contracts established in Code Section  
169 42-8-102 and submit a report with its recommendations to the General Assembly;

170 (3) To promulgate rules and regulations to implement those uniform professional  
171 standards for probation officers employed by a governing authority of a county,  
172 municipality, or consolidated government that has established probation services and

173 uniform agreement standards for the establishment of probation services by a county,  
174 municipality, or consolidated government established in Code Section 42-8-102;

175 (4) To promulgate rules and regulations establishing a 40 hour initial orientation for  
176 newly hired private probation officers and for 20 hours per annum of continuing  
177 education for private probation officers, provided that the 40 hour initial orientation shall  
178 not be required of any person who has successfully completed a probation or parole  
179 officer basic course of training certified by the Georgia Peace Officer Standards and  
180 Training Council or any private probation officer who has been employed by a private  
181 probation corporation, enterprise, or agency for at least six months as of July 1, 1996; and  
182 provided, further, that employees of private probation entities who are not serving as  
183 probation officers shall not be required to attend the training mandated by this paragraph;

184 (5) To promulgate rules and regulations establishing a 40 hour initial orientation for  
185 probation officers employed by a county, municipality, or consolidated government that  
186 has established probation services and for 20 hours per annum of continuing education  
187 for such probation officers, provided that the 40 hour initial orientation shall not be  
188 required of any person who has successfully completed a probation or parole officer basic  
189 course of training certified by the Georgia Peace Officer Standards and Training Council  
190 or any probation officer who has been employed by a county, municipality, or  
191 consolidated government as of March 1, 2006; and provided, further, that employees of  
192 such local governing probation entities who shall not serve as probation officers shall not  
193 be required to attend the training mandated by this paragraph;

194 (6) To promulgate rules and regulations relative to compliance with the provisions of this  
195 article, and enforcement mechanisms that may include, but are not limited to, the  
196 imposition of sanctions and fines ~~and the voiding of contracts or agreements;~~ provided,  
197 however, that no sanction or fine shall be entered against any party until such party has  
198 had an opportunity to an administrative hearing pursuant to Chapter 13 of Title 50;

199 (7) To promulgate rules and regulations establishing registration for any private  
200 corporation, private enterprise, private agency, county, municipality, or consolidated  
201 government providing probation services under the provisions of this article, subject to  
202 the provisions of Code Section 42-8-107; provided, however, that the council shall not  
203 require as a condition of registration that a private or public entity or any person allow  
204 the council to:

205 (A) Conduct warrantless searches and seizures of private property;  
206 (B) Void private agreements or contracts;  
207 (C) Trespass upon private property; or  
208 (D) Issue subpoenas or orders for the production of documents unrelated to the  
209 supervision of or collection of funds from probationers;

210 (8) To produce an annual summary report. Such report shall not contain information  
211 identifying individual private corporations, nonprofit corporations, or enterprises or their  
212 contracts; and

213 (9) To promulgate rules and regulations requiring criminal record checks of private  
214 probation officers registered under this Code section and establishing procedures for such  
215 criminal record checks. The Administrative Office of the Courts on behalf of the council  
216 shall conduct a criminal records check for probation officers as provided in Code Section  
217 35-3-34. No applicant shall be registered who has previously been convicted of a felony.  
218 The council shall promulgate rules and regulations regarding registration requirements,  
219 including restrictions regarding misdemeanor convictions. An agency or private entity  
220 shall also be authorized to conduct a criminal history background check of a person  
221 employed as a probation officer or an applicant for a probation officer position. The  
222 criminal history check may be conducted in accordance with Code Section 35-3-34 and  
223 may be based upon the submission of fingerprints of the person whose records are  
224 requested. The Georgia Bureau of Investigation shall submit the fingerprints to the  
225 Federal Bureau of Investigation under the rules established by the United States  
226 Department of Justice for processing and identification of records. The federal record,  
227 if any, shall be obtained and returned to the requesting entity or agency."

228

### SECTION 3.

229 Said article is further amended by revising Code Section 42-8-102, relating to uniform  
230 professional standards and uniform contract standards, as follows:

231 "42-8-102.

232 (a) The uniform professional standards contained in this subsection shall be met by any  
233 person employed as and using the title of a private probation officer or probation officer.  
234 Any such person shall be at least 21 years of age at the time of appointment to the position  
235 of private probation officer or probation officer and must have completed a standard  
236 two-year college course or have four years of law enforcement experience; provided,  
237 however, that any person employed as a private probation officer as of July 1, 1996, and  
238 who had at least six months of experience as a private probation officer or any person  
239 employed as a probation officer by a county, municipality, or consolidated government as  
240 of March 1, 2006, shall be exempt from such college requirements. Every private  
241 probation officer shall receive an initial 40 hours of orientation upon employment and shall  
242 receive 20 hours of continuing education per annum as approved by the council, provided  
243 that the 40 hour initial orientation shall not be required of any person who has successfully  
244 completed a probation or parole officer basic course of training certified by the Peace  
245 Officer Standards and Training Council or any private probation officer who has been

246 employed by a private probation corporation, enterprise, or agency for at least six months  
247 as of July 1, 1996, or any person employed as a probation officer by a county, municipality,  
248 or consolidated government as of March 1, 2006. In no event shall any person convicted  
249 of a felony be employed as a probation officer or utilize the title of probation officer.  
250 Employees of public or private probation entities who are not serving as probation officers  
251 or private probation officers shall not be required to attend the training required by this  
252 subsection.

253 (b) The uniform contract standards contained in this subsection shall apply to all private  
254 probation contracts executed under the authority of Code Section 42-8-100. The terms of  
255 any such contract shall state, at a minimum:

- 256 (1) The extent of the services to be rendered by the private corporation or enterprise  
257 providing probation supervision;
- 258 (2) Any requirements for staff qualifications, to include those contained in this Code  
259 section as well as any surpassing those contained in this Code section;
- 260 (3) Requirements for criminal record checks of staff in accordance with the rules and  
261 regulations established by the council;
- 262 (4) Policies and procedures for the training of staff that comply with rules and  
263 regulations promulgated by the council;
- 264 (5) Bonding of staff and liability insurance coverage;
- 265 (6) Staffing levels and standards for offender supervision, including frequency and type  
266 of contacts with offenders;
- 267 (7) Procedures for handling the collection of all court ordered fines, fees, and restitution;
- 268 (8) Procedures for handling indigent offenders to ensure placement of such indigent  
269 offenders irrespective of the ability to pay;
- 270 (9) Circumstances under which revocation of an offender's probation may be  
271 recommended;
- 272 (10) Reporting and record-keeping requirements; and
- 273 (11) Default and contract termination procedures.

274 (c) The uniform contract standards contained in this subsection shall apply to all counties,  
275 municipalities, and consolidated governments that enter into agreements with a judge to  
276 provide probation services under the authority of Code Section 42-8-100. The terms of any  
277 such agreement shall state at a minimum:

- 278 (1) The extent of the services to be rendered by the local governing authority providing  
279 probation services;
- 280 (2) Any requirements for staff qualifications, to include those contained in this Code  
281 section;

282 (3) Requirements for criminal record checks of staff in compliance with the rules and  
 283 regulations established by the council;

284 (4) Policies and procedures for the training of staff that comply with the rules and  
 285 regulations established by the council;

286 (5) Staffing levels and standards for offender supervision, including frequency and type  
 287 of contacts with offenders;

288 (6) Procedures for handling the collection of all court ordered fines, fees, and restitution;

289 (7) Circumstances under which revocation of an offender's probation may be  
 290 recommended;

291 (8) Reporting and record-keeping requirements; and

292 (9) Default and agreement termination procedures.

293 (d) The council shall review the uniform professional standards and uniform contract and  
 294 agreement standards contained in subsections (a), (b), and (c) of this Code section and shall  
 295 submit a report on its findings to the General Assembly. The council shall submit its initial  
 296 report on or before January 1, 2007, and shall continue such reviews every two years  
 297 thereafter. Nothing contained in such report shall be considered to authorize or require a  
 298 change in the standards without action by the General Assembly having the force and effect  
 299 of law. This report shall provide information which will allow the General Assembly to  
 300 review the effectiveness of the minimum professional standards and, if necessary, to revise  
 301 these standards. This subsection shall not be interpreted to prevent the council from  
 302 making recommendations to the General Assembly prior to its required review and report.  
 303 Nothing contained in this article shall be construed as providing the council with authority  
 304 to require additional contract or training standards, to impose additional sanctions against  
 305 private or public probation entities, or to establish additional qualifications or standards for  
 306 private probation entities or their employees other than those standards, sanctions, or  
 307 qualifications established by law; provided, however, that a judge, when contracting for  
 308 probation services and as a part of such agreement as expressed by its terms, may require  
 309 additional standards, training, sanctions, or qualifications as deemed necessary and not in  
 310 conflict with the requirements of this article."

311 **SECTION 4.**

312 Said article is further amended by revising Code Section 42-8-107, relating to registration  
 313 with the County and Municipal Probation Advisory Council, as follows:

314 "42-8-107.

315 (a)(1) All private corporations, private enterprises, and private agencies contracting or  
 316 offering to contract for probation services shall register with the council before entering  
 317 into any contract to provide services. The information included in such registration shall

318 include the name of the corporation, enterprise, or agency, its principal business address  
 319 and telephone number, the name of its agent for communication, and other information  
 320 in such detail as the council may require. No registration fee shall be required.

321 (2) Any private corporation, private enterprise, or private agency required to register  
 322 under the provisions of paragraph (1) of this subsection which fails or refuses to do so  
 323 shall be subject to ~~revocation of any existing contracts, in addition to any other~~ fines or  
 324 sanctions imposed by the council; provided, however, that the council shall not be  
 325 permitted to refuse to accept the registration or cancel or suspend the registration of any  
 326 private probation entity which satisfies the requirements of this article, and  
 327 noncompliance with any rule or regulation initiated by the council which creates a  
 328 standard or qualification in addition to the standards or qualifications established by this  
 329 article shall not be a basis for refusing to accept the registration or for canceling or  
 330 suspending the registration of any private probation entity.

331 (b)(1) All counties, municipalities, and consolidated governments agreeing or offering  
 332 to agree to establish a probation system shall register with the council before entering into  
 333 an agreement with the court to provide services. The information included in such  
 334 registration shall include the name of the county, municipality, or consolidated  
 335 government, the principal business address and telephone number, a contact name for  
 336 communication with the council, and other information in such detail as the council may  
 337 require. No registration fee shall be required.

338 (2) Any county, municipality, or consolidated government required to register under the  
 339 provisions of paragraph (1) of this subsection which fails or refuses to do so shall be  
 340 subject to ~~revocation of existing agreements, in addition to any other~~ sanctions imposed  
 341 by the council; provided, however, that the council shall not be permitted to refuse to  
 342 accept the registration or cancel or suspend the registration of any government probation  
 343 entity which satisfies the requirements of this article, and noncompliance with any rule  
 344 or regulation initiated by the council which creates a standard or qualification in addition  
 345 to the standards or qualifications established by this article shall not be a basis for  
 346 refusing to accept the registration or for canceling or suspending the registration of any  
 347 government probation entity."

#### 348 **SECTION 5.**

349 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 350 without such approval.

#### 351 **SECTION 6.**

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