

House Bill 622

By: Representative Cox of the 102nd

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.