

Senate Bill 120

By: Senators Crosby of the 13th, Stone of the 23rd, Jackson of the 24th, Cowser of the 46th
and Bethel of the 54th

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

To amend Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to probate courts, so as to provide for prosecuting attorneys in probate courts in counties where there is no state court; to provide for the appointment, compensation, oath of office, duties, and authority of such prosecuting attorneys; to authorize the appointment of staff; to provide for related matters; to provide for construction with other laws; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to probate courts, is amended by adding a new article to read as follows:

"ARTICLE 8

15-9-150.

(a) In any county in which there is no state court, the judge of the probate court may request the district attorney of the circuit in which the court is located to prosecute criminal cases subject to the jurisdiction of such probate court as set forth in Article 2 of this chapter and Article 2 of Chapter 13 of Title 40. The district attorney may designate one or more members of his or her staff to handle such cases in the probate court. The district attorney and any members of his or her staff who prosecute criminal cases in the probate court shall be compensated in an amount to be fixed by the governing authority of the county.

(b) If for any reason the district attorney is unable to assist the probate court, the governing authority of a county shall be authorized to create the office of prosecuting attorney of the probate court, and the governing authority shall have the authority to hire the prosecuting attorney. A copy of the resolution or ordinance creating the office of prosecuting attorney

of the probate court shall be provided to the Prosecuting Attorneys' Council of the State of Georgia.

(c) It shall be the duty of the probate court clerk to notify the Prosecuting Attorneys' Council of the State of Georgia of the name of any person appointed to be the prosecuting attorney of a probate court within 30 days of such appointment.

(d) Unless otherwise provided by local law, the prosecuting attorney of the probate court shall serve a term of office to be determined by the governing authority of such county.

15-9-151.

(a) Any person appointed as the prosecuting attorney of a probate court shall be a member in good standing of the State Bar of Georgia and admitted to practice before the appellate courts of this state.

(b) Notwithstanding the provisions of subsection (a) of Code Section 15-18-21, an assistant district attorney may be appointed as the prosecuting attorney of a probate court with the prior written consent of the district attorney who employs such assistant district attorney. Such consent may be withdrawn at any time by the employing district attorney. Notice that consent for such appointment is being withdrawn shall be done in writing to the governing authority of such county not less than 30 days prior to the day that such assistant district attorney shall cease to serve as the prosecuting attorney of a probate court.

15-9-152.

(a) In addition to the oaths prescribed by Chapter 3 of Title 45, relating to official oaths, the prosecuting attorney of a probate court shall take and subscribe to the following oath: 'I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or affection discharge my duties as prosecuting attorney for the Probate Court of (here state the county) County.'

(b) The oath shall be administered and attested by the judge of the probate court of such county as provided in Code Section 45-3-3 and filed as provided in Code Section 45-3-5.

15-9-153.

(a) Unless otherwise provided by local law, the governing authority of the county shall determine whether the prosecuting attorney of a probate court shall be a full-time or part-time prosecuting attorney.

(b) Any full-time prosecuting attorney of a probate court and any full-time employees of the prosecuting attorney of a probate court shall not engage in the private practice of law.

(c) Any part-time prosecuting attorney of a probate court and any part-time assistant prosecuting attorney of a probate court may engage in the private practice of law, but shall

not practice in the probate court or appear in any matter in which that prosecuting attorney has exercised jurisdiction.

15-9-154.

If the prosecuting attorney of a probate court is disqualified by interest or relationship from engaging in the prosecution of a particular case or is unable to perform the duties of said office due to illness or incapacity, the district attorney of such judicial circuit may prosecute such case. If the district attorney is to prosecute such case, the provisions of Code Section 15-18-5 shall apply.

15-9-155.

(a) The prosecuting attorney of a probate court shall have the duty and authority to represent the state:

(1) In the probate court:

(A) In the prosecution of any violation of the laws or ordinances of such county which is within the jurisdiction of such probate court and punishable by confinement or a fine or both or by a civil penalty authorized by Code Section 40-6-163;

(B) In the prosecution of any violation of state laws which by general law probate courts have been granted jurisdiction to try and dispose of such offenses, specifically including those offenses described in Article 2 of this chapter and Code Section 40-13-21; and

(C) In the prosecution of any weapons carry license revocation or denial pursuant to Code Section 16-11-129;

(2) In the appeal of any case prosecuted in the probate court to the superior court or the appellate courts of this state;

(3) In any case in which the defendant was convicted in the probate court and is challenging such conviction through habeas corpus;

(4) To administer the oaths required by law to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the court as may be necessary; and

(5) To perform such other duties as are or may be required by law or ordinance or which necessarily appertain to such prosecuting attorney's office.

(b) The prosecuting attorney of a probate court shall have the authority to:

(1) File, amend, and prosecute any citation, accusation, summons, or other form of charging instrument authorized by law for use in the probate court;

(2) Dismiss, amend, or enter a nolle prosequi on any accusation, citation, or summons filed in the probate court as provided by law, except that the prosecuting attorney of a probate court shall not have the authority to dismiss or enter a nolle prosequi in any case

in which the accused is charged with a violation of state law other than one which the probate court has jurisdiction to try and dispose of such offense without the consent of the proper prosecuting officer having jurisdiction to try and dispose of such offense. As used in this paragraph, the term 'proper prosecuting officer' means the district attorney for the judicial circuit;

(3) Reduce to judgment any fine, forfeiture, or restitution imposed by the probate court as part of a sentence in an ordinance case or forfeiture of a recognizance which is not paid in accordance with the order of the court. A prosecuting attorney of a probate court may institute such civil action in the courts of this state or of the United States or any of the several states to enforce such judgment against the property of the defendant; and

(4) Request and utilize the assistance of any other prosecuting attorney or other attorney employed by an agency of this state or its political subdivisions or authorities in the prosecution of any criminal action.

(c) The provisions of this Code section shall not be deemed to restrict, limit, or diminish any authority or power of the district attorney or any solicitor-general to represent this state in any criminal case in which the accused is charged with a felony or misdemeanor, when the probate court is acting as a court of inquiry pursuant to Article 2 of Chapter 7 of Title 17 or setting bail for any such offense, other than one which the probate court has, by law, jurisdiction to try and dispose of.

15-9-156.

The prosecuting attorney of a probate court shall be compensated by the county as provided by local law or, in the absence of such local law, as provided by the governing authority of such county. The prosecuting attorney of a probate court shall be entitled to be reimbursed for actual expenses incurred in the performance of his or her official duties in the same manner and rate as other county employees.

15-9-157.

The prosecuting attorney of a probate court may employ such additional assistant prosecuting attorneys and other employees or independent contractors as may be provided for by local law or as may be authorized by the governing authority of the county. The prosecuting attorney of a probate court shall define the duties and fix the title of any attorney or other employee of the prosecuting attorney's office. Personnel employed pursuant to this Code section shall be compensated by the county.

125 15-9-158.

126 (a) Any assistant prosecuting attorney or other attorney at law employed by the county for
127 the purposes of prosecuting in the probate court shall be a member in good standing of the
128 State Bar of Georgia.

129 (b) A qualified law student or law school graduate who is allowed to practice pursuant to
130 Code Section 15-18-22 or the Supreme Court of Georgia's rules governing such practice
131 may assist in the prosecution of cases in the probate court."

132 **SECTION 2.**

133 The provisions of this Act shall not be construed as altering any agreement in existence on
134 the effective date of this Act between a county governing authority or a probate court of a
135 county with the district attorney for the judicial circuit in which such probate court for the
136 district attorney to prosecute case in the probate court of such county nor shall this Act apply
137 in any county in which the General Assembly has by local act provided for a prosecutor in
138 the probate court.

139 **SECTION 3.**

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

142 **SECTION 4.**

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