

House Bill 582

By: Representatives Greene of the 151st, Neal of the 2nd, and Dunahoo of the 30th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to
2 probation, so as to modify provisions related to the state-wide probation system and
3 agreements for private probation services; to clarify that probation tolling provisions apply
4 to private probation services; to provide for good faith immunity for private probation
5 officers; to provide for related matters; to provide for an effective date and applicability; to
6 repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, is
10 amended by revising Code Section 42-8-30.1, relating to applicability to counties
11 establishing probation systems pursuant to Code Section 42-8-100, as follows:

12 "42-8-30.1.

13 In any county where the chief judge of the superior court, state court, municipal court,
14 probate court, or magistrate court has provided for probation services for such court
15 through agreement with a private corporation, enterprise, or agency or has established a
16 county or municipal probation system for such court pursuant to Code Section 42-8-100,
17 the provisions of this article relating to probation supervision services shall not apply to
18 defendants sentenced in any such court; provided, however, that nothing in this Code
19 section shall be construed as precluding a sentencing judge or a probation system from
20 setting the terms and conditions of probation as authorized by law."

21 **SECTION 2.**

22 Said chapter is further amended by revising Code Section 42-8-36, relating to duty of
23 probationer to inform probation supervisor of residence and whereabouts, violations, and
24 unpaid moneys, as follows:

25 "42-8-36.

26 (a) For purposes of this Code section, the term 'probation supervisor' means any probation
 27 supervisor whether employed by a public or private entity and shall include a probation
 28 supervisor who is a private probation officer as defined in Code Section 42-8-100.

29 ~~(a)~~(b)(1) It shall be the duty of a probationer, as a condition of probation, to keep his or
 30 her probation supervisor informed as to his or her residence. Upon the recommendation
 31 of the probation supervisor, the court may also require, as a condition of probation and
 32 under such terms as the court deems advisable, that the probationer keep the probation
 33 supervisor informed as to his or her whereabouts.

34 (2) The running of a probated sentence shall be tolled upon:

35 (A) The failure of a probationer to report to his or her probation supervisor as directed
 36 or failure to appear in court for a probation revocation hearing; either of such failures
 37 may be evidenced by an affidavit from the probation supervisor setting forth such
 38 failure; or

39 (B) The filing of a return of non est inventus or other return to a warrant, for the
 40 violation of the terms and conditions of probation, that the probationer cannot be found
 41 in the county that appears from the records of the probation supervisor to be the
 42 probationer's county of residence. Any officer authorized by law to issue or serve
 43 warrants may return the warrant for the absconded probationer showing non est
 44 inventus.

45 (3) The effective date of the tolling of the sentence shall be the date ~~the court enters a~~
 46 tolling order and that either subparagraph (A) or (B) of paragraph (2) of this subsection
 47 becomes applicable to the probationer. The tolling of the sentence shall continue until
 48 the probationer shall personally report to the probation supervisor, is taken into custody
 49 in this state, or is otherwise available to the court.

50 (4) Any tolled period of time shall not be included in computing creditable time served
 51 on probation or as any part of the time that the probationer was sentenced to serve.

52 ~~(b)~~(c) Any unpaid fines, restitution, or any other moneys owed as a condition of probation
 53 shall be due when the probationer is arrested; but, if the entire balance of his probation is
 54 revoked, all the conditions of probation, including moneys owed, shall be negated by his
 55 imprisonment. If only part of the balance of the probation is revoked, the probationer shall
 56 still be responsible for the full amount of the unpaid fines, restitution, and other moneys
 57 upon his return to probation after release from imprisonment.

58 (d) The provisions of this Code section shall apply to all persons serving probation
 59 whether such persons are being supervised by a public or private probation service and
 60 shall include a municipal probation system operated pursuant to Code Section 42-8-100."

61 **SECTION 3.**

62 Said chapter is further amended by revising Code Section 42-8-100, relating to agreements
 63 between chief judges of county courts or judges of municipal courts and corporations,
 64 enterprises, or agencies for probation services, as follows:

65 "42-8-100.

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

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

69 (2) 'Private probation officer' means a probation officer employed by a private
 70 corporation, private enterprise, private agency, or other private entity that provides
 71 probation services.

72 (3) 'Probation officer' means a person employed to supervise defendants placed on
 73 probation by a county or municipal court for committing an ordinance violation or
 74 misdemeanor.

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

79 (c) If it appears to ~~the~~ any county or municipal court upon a hearing of the matter that the
 80 defendant is not likely to engage in an unlawful course of conduct and that the ends of
 81 justice and the welfare of society do not require that the defendant shall presently suffer the
 82 penalty imposed by law, the court in its discretion shall impose sentence upon the
 83 defendant but may stay and suspend the execution of the sentence or any portion thereof
 84 or may place him or her on probation under the supervision and control of a probation
 85 officer for the duration of such probation, subject to the provisions of this Code section.
 86 The period of probation or suspension shall not exceed the maximum sentence of
 87 confinement which could be imposed on the defendant.

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

90 (e) The sentencing judge shall not lose jurisdiction over any person placed on probation
 91 during the term of his or her probated sentence. The judge is empowered to revoke any or
 92 all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed
 93 advisable by the judge, modify or change the probated sentence at any time during the
 94 period of time originally prescribed for the probated sentence to run. The sentencing
 95 judge's authority to modify a probated sentence at any time during the probated sentence
 96 includes the authority to toll the probated sentence pursuant to Code Section 42-8-36.

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

102 (g)(1) The chief judge of any court within the county, with the approval of the governing
 103 authority of that county, is authorized to enter into written contracts with corporations,
 104 enterprises, or agencies to provide probation supervision, counseling, collection services
 105 for all moneys to be paid by a defendant according to the terms of the sentence imposed
 106 on the defendant as well as any moneys which by operation of law are to be paid by the
 107 defendant in consequence of the conviction, and other probation services for persons
 108 convicted in that court and placed on probation in the county. A private probation service
 109 is authorized to provide probation supervision services in misdemeanor and ordinance
 110 violation cases, but in ~~in~~ no case shall a private probation ~~corporation or enterprise~~
 111 service be charged with the responsibility for supervising a felony sentence. The final
 112 contract negotiated by the chief judge with the private probation entity shall be attached
 113 to the approval by the governing authority of the county to privatize probation services
 114 as an exhibit thereto. The termination of a contract for probation services as provided for
 115 in this subsection entered into on or after July 1, 2001, shall be initiated by the chief
 116 judge of the court which entered into the contract, and subject to approval by the
 117 governing authority of the county which entered into the contract; and in accordance with
 118 the agreed upon, written provisions of such contract. The termination of a contract for
 119 probation services as provided for in this subsection in existence on July 1, 2001, and
 120 which contains no provisions relating to termination of such contract shall be initiated by
 121 the chief judge of the court which entered into the contract; and subject to approval by
 122 the governing authority of the county which entered into the contract and in accordance
 123 with the agreed upon, written provisions of such contract.

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

131 (h)(1) The judge of the municipal court of any municipality or consolidated government
 132 of a municipality and county of this state, with the approval of the governing authority
 133 of that municipality or consolidated government, is authorized to enter into written

134 contracts with private corporations, enterprises, or agencies to provide probation
 135 supervision, counseling, collection services for all moneys to be paid by a defendant
 136 according to the terms of the sentence imposed and any moneys which by operation of
 137 law are to be paid by the defendant in consequence of the conviction, and other probation
 138 services for persons convicted in such court and placed on probation. The final contract
 139 negotiated by the judge with the private probation entity shall be attached to the approval
 140 by the governing authority of the municipality or consolidated government to privatize
 141 probation services as an exhibit thereto. Subject to the terms of such contract, a private
 142 probation service shall be authorized to provide probation supervision services in all
 143 cases within the jurisdiction of such municipal court.

144 (2) The judge of the municipal court of any municipality or consolidated government of
 145 a municipality and county of this state, with the approval of the governing authority of
 146 that municipality or consolidated government, is authorized to establish a probation
 147 system to provide probation supervision, counseling, collection services for all moneys
 148 to be paid by a defendant according to the terms of the sentence imposed and any moneys
 149 which by operation of law are to be paid by the defendant in consequence of the
 150 conviction, and other probation services for persons convicted in such court and placed
 151 on probation.

152 (i) A private probation service that has entered into a contract to provide probation services
 153 pursuant to this Code section shall provide for liability insurance coverage for the actions
 154 of its officers and employees. A private probation officer acting in good faith and in
 155 accordance with applicable contract provisions, court orders, rules, regulations, and laws
 156 shall have immunity from liability, both civil and criminal, for his or her actions or failure
 157 to act."

158 **SECTION 4.**

159 Said chapter is further amended by revising Code Section 42-8-102, relating to uniform
 160 professional standards and uniform contract standards, as follows:

161 "42-8-102.

162 (a) The uniform professional standards contained in this subsection shall be met by any
 163 person employed as and using the title of a private probation officer or probation officer.
 164 Any such person shall be at least 21 years of age at the time of appointment to the position
 165 of private probation officer or probation officer and must have completed a standard
 166 two-year college course or have four years of law enforcement experience; provided,
 167 however, that any person employed as a private probation officer as of July 1, 1996, and
 168 who had at least six months of experience as a private probation officer or any person
 169 employed as a probation officer by a county, municipality, or consolidated government as

170 of March 1, 2006, shall be exempt from such college requirements. Every private
 171 probation officer shall receive an initial 40 hours of orientation upon employment and shall
 172 receive 20 hours of continuing education per annum as approved by the council, provided
 173 that the 40 hour initial orientation shall not be required of any person who has successfully
 174 completed a probation or parole officer basic course of training certified by the Peace
 175 Officer Standards and Training Council or any private probation officer who has been
 176 employed by a private probation corporation, enterprise, or agency for at least six months
 177 as of July 1, 1996, or any person employed as a probation officer by a county, municipality,
 178 or consolidated government as of March 1, 2006. In no event shall any person convicted
 179 of a felony be employed as a probation officer or utilize the title of probation officer.

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

- 183 (1) The extent of the services to be rendered by the private corporation or enterprise
 184 providing probation supervision;
- 185 (2) Any requirements for staff qualifications, to include those contained in this Code
 186 section as well as any surpassing those contained in this Code section;
- 187 (3) Requirements for criminal record checks of staff in accordance with the rules and
 188 regulations established by the council;
- 189 (4) Policies and procedures for the training of staff that comply with rules and
 190 regulations promulgated by the council;
- 191 (5) Bonding of staff and liability insurance coverage;
- 192 (6) Staffing levels and standards for offender supervision, including frequency and type
 193 of contacts with offenders;
- 194 (7) Procedures for handling the collection of all court ordered fines, fees, and restitution;
- 195 (8) Procedures for handling indigent offenders to ensure placement of such indigent
 196 offenders irrespective of the ability to pay;
- 197 (9) Circumstances under which revocation of an offender's probation may be
 198 recommended;
- 199 (10) Reporting and record-keeping requirements; ~~and~~
- 200 (11) Procedures for obtaining a tolling order for a probated sentence; and
- 201 ~~(11)~~(12) Default and contract termination procedures.

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

- 206 (1) The extent of the services to be rendered by the local governing authority providing
 207 probation services;
- 208 (2) Any requirements for staff qualifications, to include those contained in this Code
 209 section;
- 210 (3) Requirements for criminal record checks of staff in compliance with the rules and
 211 regulations established by the council;
- 212 (4) Policies and procedures for the training of staff that comply with the rules and
 213 regulations established by the council;
- 214 (5) Staffing levels and standards for offender supervision, including frequency and type
 215 of contacts with offenders;
- 216 (6) Procedures for handling the collection of all court ordered fines, fees, and restitution;
- 217 (7) Circumstances under which revocation of an offender's probation may be
 218 recommended;
- 219 (8) Reporting and record-keeping requirements; and
- 220 (9) Procedures for obtaining a tolling order for a probated sentence; and
- 221 ~~(9)~~(10) Default and agreement termination procedures.
- 222 (d) The council shall review the uniform professional standards and uniform contract and
 223 agreement standards contained in subsections (a), (b), and (c) of this Code section and shall
 224 submit a report on its findings to the General Assembly. The council shall submit its initial
 225 report on or before January 1, 2007, and shall continue such reviews every two years
 226 thereafter. Nothing contained in such report shall be considered to authorize or require a
 227 change in the standards without action by the General Assembly having the force and effect
 228 of law. This report shall provide information which will allow the General Assembly to
 229 review the effectiveness of the minimum professional standards and, if necessary, to revise
 230 these standards. This subsection shall not be interpreted to prevent the council from
 231 making recommendations to the General Assembly prior to its required review and report."

232 **SECTION 5.**

233 This Act shall become effective on July 1, 2013, and the provisions of this Act applicable
 234 to the terms of contracts shall apply to contracts entered into on or after such date.

235 **SECTION 6.**

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