

House Bill 837

By: Representatives Hamilton of the 24th, Powell of the 32nd, Golick of the 40th, Maxwell of the 17th, Powell of the 171st, and others

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 for probation services, so as to provide for legislative findings and
3 intent; to provide for the supervision of misdemeanor and county and city ordinance
4 offenders by county and municipal probation officers and private probation services
5 providers; to provide for the revocation, modification, and tolling of sentences under certain
6 circumstances by county and municipal courts; to provide for the conditions of probation;
7 to provide for the assessment and collection of costs of probation; to provide for related
8 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 The General Assembly finds that:

12 (1) The authorization for county and municipal probation offices and private probation
13 services was enacted to provide cost savings to the state by using state probation services
14 for felony offenders and utilizing county and municipal probation offices and private
15 probation entities which contract with courts for the supervision of misdemeanor and
16 county and city ordinance offenders;

17 (2) In enacting such legislation, the General Assembly intended to authorize judges to
18 use county and municipal probation offices and private probation services providers to
19 supervise misdemeanor and county and city ordinance offenders in the same manner as
20 the judges of the superior courts use state probation services as a means of supervising
21 felony offenders;

22 (3) The General Assembly did not intend to restrict the powers of judges to impose,
23 suspend, toll, revoke, or otherwise manage the probation of misdemeanor and county and
24 city ordinance offenders sentenced in such courts when utilizing county and municipal
25 probation offices and private probation services providers;

26 (4) The General Assembly intended that county and municipal probation officers and
 27 private probation officers, when acting in performance of their official duties in
 28 supervising probationers in accordance with law and the orders of a court, would have
 29 the same rights, authority, and protections as state probation supervisors;

30 (5) This Act is being enacted in response to the decision of the Superior Court of
 31 Richmond County in a series of cases in which the court found limitations on the use of
 32 such probation officers by courts that the General Assembly did not intend to exist; and

33 (6) This Act is enacted to clarify the intent of the General Assembly with regard to the
 34 use and provision of probation services by courts for misdemeanor and ordinance
 35 violations.

36 SECTION 2.

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

42 "42-8-100.

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

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

46 (2) 'Private probation officer' means a probation officer employed by a private
 47 corporation, private enterprise, private agency, or other private entity that provides
 48 probation services.

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

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

56 (c) If it appears to the court upon a hearing of the matter that the defendant is not likely to
 57 engage in an unlawful course of conduct and that the ends of justice and the welfare of
 58 society do not require that the defendant shall presently suffer the penalty imposed by law,
 59 the court in its discretion shall impose sentence upon the defendant but may stay and
 60 suspend the execution of the sentence or any portion thereof or may place him or her on
 61 probation under the supervision and control of a probation officer for the duration of such

62 probation, subject to the provisions of this Code section. The period of probation or
63 suspension shall not exceed the maximum sentence of confinement which could be
64 imposed on the defendant; provided, however, that nothing in this chapter shall be
65 construed to limit the ability of a court to toll a sentence as provided in this article.

66 (d) The court may, in its discretion, require the payment of a fine or costs, or both, as a
67 condition precedent to probation or as a condition of probation, including the costs of
68 probation supervision and electronic monitoring.

69 (e) The sentencing judge shall not lose jurisdiction over any person placed on probation
70 during the term of his or her probated sentence. The judge is empowered to revoke any or
71 all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed
72 advisable by the judge, modify or change the probated sentence, including tolling the
73 sentence as provided in this article, at any time during the period of time originally
74 prescribed for the probated sentence to run.

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

80 (g)(1) The chief judge of any court within the county, with the approval of the governing
81 authority of that county, is authorized to enter into written contracts with corporations,
82 enterprises, or agencies to provide probation supervision, counseling, collection services
83 for all moneys to be paid by a defendant according to the terms of the sentence imposed
84 on the defendant as well as any moneys which by operation of law are to be paid by the
85 defendant in consequence of the conviction, and other probation services for persons
86 convicted in that court and placed on probation in the county. In no case shall a private
87 probation corporation or enterprise be charged with the responsibility for supervising a
88 felony sentence. The final contract negotiated by the chief judge with the private
89 probation entity shall be attached to the approval by the governing authority of the county
90 to privatize probation services as an exhibit thereto. The termination of a contract for
91 probation services as provided for in this subsection entered into on or after July 1, 2001,
92 shall be initiated by the chief judge of the court which entered into the contract, and
93 subject to approval by the governing authority of the county which entered into the
94 contract and in accordance with the agreed upon, written provisions of such contract. The
95 termination of a contract for probation services as provided for in this subsection in
96 existence on July 1, 2001, and which contains no provisions relating to termination of
97 such contract shall be initiated by the chief judge of the court which entered into the
98 contract, and subject to approval by the governing authority of the county which entered

99 into the contract and in accordance with the agreed upon, written provisions of such
100 contract.

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

108 (h)(1) The judge of the municipal court of any municipality or consolidated government
109 of a municipality and county of this state, with the approval of the governing authority
110 of that municipality or consolidated government, is authorized to enter into written
111 contracts with private corporations, enterprises, or agencies to provide probation
112 supervision, counseling, collection services for all moneys to be paid by a defendant
113 according to the terms of the sentence imposed ~~and~~ on the defendant as well as any
114 moneys which by operation of law are to be paid by the defendant in consequence of the
115 conviction, and other probation services for persons convicted in such court and placed
116 on probation. The final contract negotiated by the judge with the private probation entity
117 shall be attached to the approval by the governing authority of the municipality or
118 consolidated government to privatize probation services as an exhibit thereto.

119 (2) The judge of the municipal court of any municipality or consolidated government of
120 a municipality and county of this state, with the approval of the governing authority of
121 that municipality or consolidated government, is authorized to establish a probation
122 system to provide probation supervision, counseling, collection services for all moneys
123 to be paid by a defendant according to the terms of the sentence imposed ~~and~~ on the
124 defendant as well as any moneys which by operation of law are to be paid by the
125 defendant in consequence of the conviction, and other probation services for persons
126 convicted in such court and placed on probation."

127 **SECTION 3.**

128 Said article is further amended by adding a new Code section to read as follows:

129 "42-8-100.1.

130 (a) A court which utilizes the services of a probation officer or private probation officer
131 shall determine the terms and conditions of probation under this article and may provide
132 such terms and conditions of probation as the court deems appropriate, including, but not
133 limited to, providing that the probationer shall:

134 (1) Avoid injurious and vicious habits;

- 135 (2) Avoid persons or places of disreputable or harmful character;
136 (3) Report to the probation officer or private probation officer, as the case may be, as
137 directed;
138 (4) Permit the probation officer or private probation officer, as the case may be, to visit
139 the probationer at the probationer's home or elsewhere;
140 (5) Work faithfully at suitable employment insofar as may be possible;
141 (6) Remain within a specified location; provided, however, that the court shall not banish
142 a probationer to any area within the state:
143 (A) That does not consist of at least one entire judicial circuit as described by Code
144 Section 15-6-1; or
145 (B) In which any service or program in which the probationer must participate as a
146 condition of probation is not available;
147 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused
148 by the probationer's offense, in an amount to be determined by the court in accordance
149 with the provisions of Article 1 of Chapter 14 of Title 17. Unless otherwise provided by
150 law, no reparation or restitution to any aggrieved person for the damage or loss caused
151 by the probationer's offense shall be made if the amount is in dispute unless the same has
152 been determined as provided in Article 1 of Chapter 14 of Title 17;
153 (8) Make reparation or restitution as reimbursement to a municipality or county for the
154 payment for medical care furnished the person while incarcerated pursuant to the
155 provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local
156 governmental unit for the provision of medical care shall be made if the amount is in
157 dispute unless the same has been determined as provided in Article 1 of Chapter 14 of
158 Title 17;
159 (9) Repay the costs incurred by any municipality or county for wrongful actions by an
160 inmate covered under the provisions of paragraph (1) of subsection (a) of Code
161 Section 42-4-71;
162 (10) Support the probationer's legal dependents to the best of the probationer's ability;
163 (11) Violate no local, state, or federal laws and be of general good behavior;
164 (12) If permitted to move or travel to another state, agree to waive extradition from any
165 jurisdiction where the probationer may be found and not contest any effort by any
166 jurisdiction to return the probationer to this state;
167 (13) Submit to evaluations and testing relating to rehabilitation and participate in and
168 successfully complete rehabilitative programming as directed by the court, including
169 periodic screening for drugs and alcohol as ordered by the court and mental health
170 evaluations as ordered by the court;

171 (14) Wear a device capable of tracking the location of the probationer by means
172 including electronic surveillance or global positioning satellite systems. The court shall
173 assess and the probation officer or private probation officer, as the case may be, shall
174 collect fees from the probationer for such monitoring;

175 (15) Wear a device capable of detecting drug or alcohol use by the probationer. The
176 court shall assess and the probation officer or private probation officer, as the case may
177 be, shall collect fees from the probationer for such monitoring;

178 (16) Complete a residential or nonresidential program for substance abuse or mental
179 health treatment as indicated by a risk and needs assessment;

180 (17) Pay for the cost of any drug and alcohol screening ordered by the court; and

181 (18) Pay for the cost of probation supervision services as ordered by the court as a
182 precedent to probation.

183 (b)(1) It shall be the duty of a probationer, as a condition of probation, to keep his or her
184 probation officer or private probation officer, as the case may be, informed as to his or
185 her residence. The court may also require, as a condition of probation and under such
186 terms as the court deems advisable, that the probationer keep his or her probation officer
187 or private probation officer, as the case may be, informed as to his or her whereabouts.

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

189 (A) The failure of a probationer to report to his or her probation officer or private
190 probation officer, as the case may be, as directed or failure to appear in court for a
191 probation revocation hearing; either of such failures may be evidenced by an affidavit
192 from the probation officer or private probation officer, as the case may be, setting forth
193 such failure; or

194 (B) The filing of a return of non est inventus or other return to a warrant, for the
195 violation of the terms and conditions of probation, that the probationer cannot be found
196 in the county that appears from the records of the probation officer or private probation
197 officer, as the case may be, to be the probationer's county of residence. Any officer
198 authorized by law to issue or serve warrants may return the warrant for the absconded
199 probationer showing non est inventus.

200 (3) The effective date of the tolling of the sentence shall be the date the court enters a
201 tolling order and shall continue until the probationer shall personally report to the
202 probation officer or private probation officer, as the case may be; is taken into custody
203 in this state; or is otherwise available to the court.

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

206 (5) Any unpaid fines, restitution, or any other moneys owed as a condition of probation
207 shall be due when the probationer is arrested; provided, however, that if the entire balance

208 of his or her probation is revoked, all the conditions of probation, including moneys
209 owed, shall be negated by his or her imprisonment. If only part of the balance of the
210 probation is revoked, the probationer shall still be responsible for the full amount of the
211 unpaid fines, restitution, and other moneys upon his or her return to probation after
212 release from imprisonment.

213 (c) Nothing in this Code section shall be construed as prohibiting a court in appropriate
214 circumstances from imposing additional special conditions of probation unless otherwise
215 prohibited by law."

216 **SECTION 4.**

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

219 **SECTION 5.**

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