

House Bill 837 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Hamilton of the 24<sup>th</sup>, Powell of the 32<sup>nd</sup>, Golick of the 40<sup>th</sup>, Maxwell of the 17<sup>th</sup>, Powell of the 171<sup>st</sup>, 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;

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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~~ has pled guilty or nolo contendere may, at a time to be determined by  
 55 the court, hear and determine the 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 the costs of electronic monitoring as provided in subsection (a)  
69 of Code Section 42-8-100.1.

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

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

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

99 contract, and subject to approval by the governing authority of the county which entered  
 100 into the contract and in accordance with the agreed upon, written provisions of such  
 101 contract.

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

109 (h)(1) The judge of the municipal court of any municipality or consolidated government  
 110 of a municipality and county of this state, with the approval of the governing authority  
 111 of that municipality or consolidated government, is authorized to enter into written  
 112 contracts with private corporations, enterprises, or agencies to provide probation  
 113 supervision, counseling, collection services for all moneys to be paid by a defendant  
 114 according to the terms of the sentence imposed ~~and~~ on the defendant as well as any  
 115 moneys which by operation of law are to be paid by the defendant in consequence of the  
 116 conviction, and other probation services for persons convicted in such court and placed  
 117 on probation. The final contract negotiated by the judge with the private probation entity  
 118 shall be attached to the approval by the governing authority of the municipality or  
 119 consolidated government to privatize probation services as an exhibit thereto. The  
 120 termination of a contract for probation services as provided for in this subsection entered  
 121 into on or after July 1, 2001, shall be initiated by the chief judge of the court which  
 122 entered into the contract, and subject to approval by the governing authority of the  
 123 municipality or consolidated government which entered into the contract and in  
 124 accordance with the agreed upon, written provisions of such contract. The termination  
 125 of a contract for probation services as provided for in this subsection in existence on  
 126 July 1, 2001, and which contains no provisions relating to termination of such contract  
 127 shall be initiated by the chief judge of the court which entered into the contract, and  
 128 subject to approval by the governing authority of the municipality or consolidated  
 129 government which entered into the contract and in accordance with the agreed upon,  
 130 written provisions of such contract.

131 (2) The judge of the municipal court of any municipality or consolidated government of  
 132 a municipality and county of this state, with the approval of the governing authority of  
 133 that municipality or consolidated government, is authorized to establish a probation  
 134 system to provide probation supervision, counseling, collection services for all moneys  
 135 to be paid by a defendant according to the terms of the sentence imposed ~~and~~ on the

136 defendant as well as any moneys which by operation of law are to be paid by the  
 137 defendant in consequence of the conviction, and other probation services for persons  
 138 convicted in such court and placed on probation."

139 **SECTION 3.**

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

141 "42-8-100.1.

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

146 (1) Avoid injurious and vicious habits;

147 (2) Avoid persons or places of disreputable or harmful character;

148 (3) Report to the probation officer or private probation officer, as the case may be, as  
 149 directed;

150 (4) Permit the probation officer or private probation officer, as the case may be, to visit  
 151 the probationer at the probationer's home or elsewhere;

152 (5) Work faithfully at suitable employment insofar as may be possible;

153 (6) Remain within a specified location; provided, however, that the court shall not banish  
 154 a probationer to any area within the state:

155 (A) That does not consist of at least one entire judicial circuit as described by Code  
 156 Section 15-6-1; or

157 (B) In which any service or program in which the probationer must participate as a  
 158 condition of probation is not available;

159 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused  
 160 by the probationer's offense, in an amount to be determined by the court in accordance  
 161 with the provisions of Article 1 of Chapter 14 of Title 17. Unless otherwise provided by  
 162 law, no reparation or restitution to any aggrieved person for the damage or loss caused  
 163 by the probationer's offense shall be made if the amount is in dispute unless the same has  
 164 been determined as provided in Article 1 of Chapter 14 of Title 17;

165 (8) Make reparation or restitution as reimbursement to a municipality or county for the  
 166 payment for medical care furnished the person while incarcerated pursuant to the  
 167 provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local  
 168 governmental unit for the provision of medical care shall be made if the amount is in  
 169 dispute unless the same has been determined as provided in Article 1 of Chapter 14 of  
 170 Title 17;

- 171 (9) Repay the costs incurred by any municipality or county for wrongful actions by an  
172 inmate covered under the provisions of paragraph (1) of subsection (a) of Code  
173 Section 42-4-71;
- 174 (10) Support the probationer's legal dependents to the best of the probationer's ability;  
175 (11) Violate no local, state, or federal laws and be of general good behavior;
- 176 (12) If permitted to move or travel to another state, agree to waive extradition from any  
177 jurisdiction where the probationer may be found and not contest any effort by any  
178 jurisdiction to return the probationer to this state;
- 179 (13) Submit to evaluations and testing relating to rehabilitation and participate in and  
180 successfully complete rehabilitative programming as directed by the court, including  
181 periodic screening for drugs and alcohol as ordered by the court and mental health  
182 evaluations as ordered by the court. The court may assess and the probation officer or  
183 private probation officer, as the case may be, shall be authorized to collect the costs or  
184 a portion of the costs, as determined by the court, of such evaluations, testing,  
185 rehabilitation programs, and screenings from the probationer;
- 186 (14) Wear a device capable of tracking the location of the probationer by means  
187 including electronic surveillance or global positioning satellite systems. The court shall  
188 assess and the probation officer or private probation officer, as the case may be, shall  
189 collect fees from the probationer for such monitoring;
- 190 (15) Wear a device capable of detecting drug or alcohol use by the probationer. The  
191 court shall assess and the probation officer or private probation officer, as the case may  
192 be, shall collect fees from the probationer for such monitoring;
- 193 (16) Complete a residential or nonresidential program for substance abuse or mental  
194 health treatment as indicated by a risk and needs assessment for which the court may  
195 assess and the probation officer or private probation officer, as the case may be, shall be  
196 authorized to collect the costs of or a portion of the costs, as determined by the court, of  
197 such program from the probationer;
- 198 (17) Pay for the cost of any drug and alcohol screening ordered by the court; and  
199 (18) Pay for the cost of probation supervision services as ordered by the court as a  
200 precedent to probation.
- 201 (b)(1) It shall be the duty of a probationer, as a condition of probation, to keep his or her  
202 probation officer or private probation officer, as the case may be, informed as to his or  
203 her residence. The court may also require, as a condition of probation and under such  
204 terms as the court deems advisable, that the probationer keep his or her probation officer  
205 or private probation officer, as the case may be, informed as to his or her whereabouts.
- 206 (2) The running of a probated sentence may be tolled upon:

207 (A) The failure of a probationer to report to his or her probation officer or  
 208 private probation officer, as the case may be, as directed or failure to appear in court for  
 209 a probation revocation hearing; either of such failures may be evidenced by an affidavit  
 210 from the probation officer or private probation officer, as the case may be, setting forth  
 211 such failure and stating efforts made by the probation officer to contact the probationer.

212 (B) Before any probated misdemeanor sentence may be tolled, the court shall issue a  
 213 rule nisi requiring the probationer to appear in court for a hearing on whether the  
 214 probated sentence will be tolled. Said rule nisi may be served by certified mail or by  
 215 personal service. Should the probationer fail to appear at the hearing, the court may,  
 216 in its discretion, toll the probated sentence.

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

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

223 (5) Any unpaid fines, restitution, or any other moneys owed as a condition of probation  
 224 shall be due when the probationer is arrested; provided, however, that if the entire balance  
 225 of his or her probation is revoked, all the conditions of probation, including moneys  
 226 owed, shall be negated by his or her imprisonment. If only part of the balance of the  
 227 probation is revoked, the probationer shall still be responsible for the full amount of the  
 228 unpaid fines, restitution, and other moneys upon his or her return to probation after  
 229 release from imprisonment.

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

233 (d) Probation officers and private probation officers shall be authorized to participate in  
 234 and conduct pretrial diversion programs as directed by the prosecuting agency."

235 **SECTION 4.**

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

238 **SECTION 5.**

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