

The Senate Judiciary Non-Civil Committee offered the following substitute to HB 837:

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 revise certain standards
8 for private corporations, private enterprises, and private agencies who enter into written
9 contracts for probation services; to change provisions relating to confidentiality of records;
10 to revise certain standards for counties, municipalities, or consolidated governments who
11 enter into written agreements to provide probation services; to provide for related matters;
12 to provide for an effective date; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

14 (a) The General Assembly finds that:

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

20 (2) In enacting such legislation, the General Assembly intended to authorize judges to use
21 county and municipal probation offices and private probation services providers to
22 supervise misdemeanor and county and city ordinance offenders in the same manner as the
23 judges of the superior courts use state probation services as a means of supervising felony
24 offenders;
25

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

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

(b) It is the intention of the General Assembly to improve the use and provision of probation services by courts for misdemeanor and ordinance violations by enacting this Act.

SECTION 2.

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

"42-8-100.

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

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

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

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

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

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

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

67 (d) In every case that a court of this state sentences a defendant to probation under this
 68 article with supervision of a probation officer or private probation officer, in addition to
 69 any fine or order of restitution imposed by the court, there shall be imposed a probation
 70 supervision fee as a condition of probation. The probation supervision fee may be waived,
 71 amended, or converted to community service upon determination by the court prior to or
 72 subsequent to sentencing, as to the undue hardship, inability to pay, or any other
 73 extenuating factors which prohibit collection of such fee; provided, however, that the
 74 imposition of sanctions for failure to pay such fees shall be within the discretion of the
 75 court through judicial process or hearings. The court may convert probation supervision
 76 fees to community service on the same basis as it allows a defendant to pay a fine through
 77 community service as set forth in subsection (d) of Code Section 17-10-1. Probation
 78 supervision fees shall be waived on probationers incarcerated or detained in a jail or other
 79 confinement facility which prohibits employment for wages.

80 ~~(d)~~(e) The court may, in its discretion, require the payment of a fine or costs, or both, as
 81 a condition precedent to probation of probation, including the costs of probation
 82 supervision and the costs of electronic monitoring as provided in subsection (a) of Code
 83 Section 42-8-100.1.

84 ~~(e)~~(f) The sentencing judge shall not lose jurisdiction over any person placed on probation
 85 during the term of his or her probated sentence. The judge is empowered to revoke any or
 86 all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed
 87 advisable by the judge, modify or change the probated sentence, including tolling the
 88 sentence as provided in this article, at any time during the period of time originally
 89 prescribed for the probated sentence to run.

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

95 ~~(g)~~(h)(1) The chief judge of any court within the county, with the approval of the
 96 governing authority of that county, is authorized to enter into written contracts with
 97 corporations, enterprises, or agencies to provide probation supervision, counseling,
 98 collection services for all moneys to be paid by a defendant according to the terms of the

99 sentence imposed on the defendant as well as any moneys which by operation of law are
100 to be paid by the defendant in consequence of the conviction, and other probation
101 services for persons convicted in that court and placed on probation in the county. In no
102 case shall a private probation corporation or enterprise be charged with the responsibility
103 for supervising a felony sentence. The final contract negotiated by the chief judge with
104 the private probation entity shall be attached to the approval by the governing authority
105 of the county to privatize probation services as an exhibit thereto. The termination of a
106 contract for probation services as provided for in this subsection entered into on or after
107 July 1, 2001, shall be initiated by the chief judge of the court which entered into the
108 contract, and subject to approval by the governing authority of the county which entered
109 into the contract and in accordance with the agreed upon, written provisions of such
110 contract. The termination of a contract for probation services as provided for in this
111 subsection in existence on July 1, 2001, and which contains no provisions relating to
112 termination of such contract shall be initiated by the chief judge of the court which
113 entered into the contract, and subject to approval by the governing authority of the county
114 which entered into the contract and in accordance with the agreed upon, written
115 provisions of such contract.

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

123 ~~(h)~~(i)(1) The judge of the municipal court of any municipality or consolidated
124 government of a municipality and county of this state, with the approval of the governing
125 authority of that municipality or consolidated government, is authorized to enter into
126 written contracts with private corporations, enterprises, or agencies to provide probation
127 supervision, counseling, collection services for all moneys to be paid by a defendant
128 according to the terms of the sentence imposed and on the defendant as well as any
129 moneys which by operation of law are to be paid by the defendant in consequence of the
130 conviction, and other probation services for persons convicted in such court and placed
131 on probation. The final contract negotiated by the judge with the private probation entity
132 shall be attached to the approval by the governing authority of the municipality or
133 consolidated government to privatize probation services as an exhibit thereto. The
134 termination of a contract for probation services as provided for in this subsection entered
135 into on or after July 1, 2001, shall be initiated by the chief judge of the court which

136 entered into the contract, and subject to approval by the governing authority of the
 137 municipality or consolidated government which entered into the contract and in
 138 accordance with the agreed upon, written provisions of such contract. The termination
 139 of a contract for probation services as provided for in this subsection in existence on
 140 July 1, 2001, and which contains no provisions relating to termination of such contract
 141 shall be initiated by the chief judge of the court which entered into the contract, and
 142 subject to approval by the governing authority of the municipality or consolidated
 143 government which entered into the contract and in accordance with the agreed upon,
 144 written provisions of such contract.

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

153 **SECTION 3.**

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

155 "42-8-100.1.

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

160 (1) Avoid injurious and vicious habits;

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

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

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

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

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

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

- 171 (B) In which any service or program in which the probationer must participate as a
172 condition of probation is not available;
- 173 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused
174 by the probationer's offense, in an amount to be determined by the court in accordance
175 with the provisions of Article 1 of Chapter 14 of Title 17. Unless otherwise provided by
176 law, no reparation or restitution to any aggrieved person for the damage or loss caused
177 by the probationer's offense shall be made if the amount is in dispute unless the same has
178 been determined as provided in Article 1 of Chapter 14 of Title 17;
- 179 (8) Make reparation or restitution as reimbursement to a municipality or county for the
180 payment for medical care furnished the person while incarcerated pursuant to the
181 provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local
182 governmental unit for the provision of medical care shall be made if the amount is in
183 dispute unless the same has been determined as provided in Article 1 of Chapter 14 of
184 Title 17;
- 185 (9) Repay the costs incurred by any municipality or county for wrongful actions by an
186 inmate covered under the provisions of paragraph (1) of subsection (a) of Code
187 Section 42-4-71;
- 188 (10) Support the probationer's legal dependents to the best of the probationer's ability;
- 189 (11) Violate no local, state, or federal laws and be of general good behavior;
- 190 (12) If permitted to move or travel to another state, agree to waive extradition from any
191 jurisdiction where the probationer may be found and not contest any effort by any
192 jurisdiction to return the probationer to this state;
- 193 (13) Submit to evaluations and testing relating to rehabilitation and participate in and
194 successfully complete rehabilitative programming as directed by the court, including
195 periodic screening for drugs and alcohol as ordered by the court and mental health
196 evaluations as ordered by the court. The court may assess and the probation officer or
197 private probation officer, as the case may be, shall be authorized to collect the costs or
198 a portion of the costs, as determined by the court, of such evaluations, testing,
199 rehabilitation programs, and screenings from the probationer;
- 200 (14) Wear a device capable of tracking the location of the probationer by means
201 including electronic surveillance or global positioning satellite systems. The court shall
202 assess and the probation officer or private probation officer, as the case may be, shall
203 collect fees from the probationer for such monitoring;
- 204 (15) Wear a device capable of detecting drug or alcohol use by the probationer. The
205 court shall assess and the probation officer or private probation officer, as the case may
206 be, shall collect fees from the probationer for such monitoring;

207 (16) Complete a residential or nonresidential program for substance abuse or mental
208 health treatment as indicated by a risk and needs assessment for which the court may
209 assess and the probation officer or private probation officer, as the case may be, shall be
210 authorized to collect the costs of or a portion of the costs, as determined by the court, of
211 such program from the probationer; and

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

213 (b)(1) It shall be the duty of a probationer, as a condition of probation, to keep his or her
214 probation officer or private probation officer, as the case may be, informed as to his or
215 her residence and mailing address. The court may also require, as a condition of
216 probation and under such terms as the court deems advisable, that the probationer keep
217 his or her probation officer or private probation officer, as the case may be, informed as
218 to his or her whereabouts.

219 (2)(A) The running of a probated sentence may be tolled upon the failure of a
220 probationer to report to his or her probation officer or private probation officer, as the
221 case may be, as directed or failure to appear in court for a probation revocation hearing;
222 either of such failures may be evidenced by an affidavit from the probation officer or
223 private probation officer, as the case may be, setting forth such failure and stating
224 efforts made by the probation officer to contact the probationer.

225 (B) Upon receiving an affidavit from the probation officer or private probation officer
226 as provided in subparagraph (A) of this paragraph, the court may enter an order tolling
227 the probation of the probationer and may issue a rule nisi requiring the probationer to
228 appear in court for a hearing on whether such tolling order should be continued or
229 lifted. Said rule nisi shall be served by first-class mail to the last known address of the
230 probationer or by personal service. The tolling order shall be effective upon the
231 issuance of the rule nisi. Should the probationer fail to appear at the hearing, the court
232 may, in its discretion, continue the tolling of the probated sentence. If, at the hearing,
233 the court finds that the tolling order was inappropriately issued, the court shall rescind
234 the tolling order and give the probationer credit toward his or her sentence for the time
235 that the tolling order was in effect.

236 (3) The effective date of the tolling of the sentence shall be the date the court enters a
237 tolling order and shall continue until the probationer shall personally report to the
238 probation officer or private probation officer, as the case may be; is taken into custody
239 in this state; or is otherwise available to the court, whichever event occurs first.

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

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

244 of his or her probation is revoked, all the conditions of probation, including moneys
 245 owed, shall be negated by his or her imprisonment. If only part of the balance of the
 246 probation is revoked, the probationer shall still be responsible for the full amount of the
 247 unpaid fines, restitution, fees, and other moneys upon his or her return to probation after
 248 release from imprisonment, provided that the court may waive or reduce such amounts
 249 after considering all circumstances, including undue hardship, inability to pay,
 250 extenuating factors, and the availability of other alternatives, including community
 251 service.

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

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

257 **SECTION 4.**

258 Said article is further amended by revising subsection (a) of Code Section 42-8-103, relating
 259 to quarterly report to judge and council and records to be open for inspection, as follows:

260 "(a) Any private corporation, private enterprise, or private agency contracting to provide
 261 probation services or any county, municipality or consolidated government entering into
 262 an agreement under the provisions of this article shall provide to the judge with whom the
 263 contract or agreement was made and the council a quarterly report summarizing the number
 264 of offenders under supervision; the amount of fines, statutory surcharges, and restitution
 265 collected; the number of offenders for whom supervision or rehabilitation has been
 266 terminated and the reason for the termination; and the number of warrants issued during
 267 the quarter, in such detail as the council may require. Upon request of the court, the
 268 governing authority, or the council, the private corporation, private enterprise, or private
 269 agency contracting to provide probation services or any county, municipality, or
 270 consolidated government entering into an agreement under the provisions of this article
 271 shall provide to the court, the governing authority, or the council the amount of fees
 272 collected and the nature of such fees, including probation supervision fees, rehabilitation
 273 programming fees, electronic monitoring fees, drug or alcohol detection device fees,
 274 substance abuse or mental health evaluation or treatment fees, and drug testing fees.
 275 Information reported pursuant to this subsection shall not be subject to disclosure pursuant
 276 to Article 4 of Chapter 18 of Title 50."

277

SECTION 5.

278

Said article is further amended by revising Code Section 42-8-106, relating to confidentiality of records, by adding a new subsection to read as follows:

279

280

"(c) Any individual who is or was under probation supervision by a private corporation, private enterprise, or private agency contracting under the provisions of this article or by a county, municipality, or consolidated government providing probation services under this article shall be permitted, upon written request, to inspect and copy his or her own probation file, including correspondence, payment records, and reporting history; provided, however, that supervision case notes shall not be subject to inspection or copying. The first request for such copies in a calendar year shall be provided by the entity at no charge to the individual. For all other requests, the entity providing such copies may charge a reasonable fee for such copies. Such individual may not request such inspection or copies more than once each calendar quarter."

281

282

283

284

285

286

287

288

289

290

SECTION 6.

291

Said article is further amended by revising paragraph (3) of subsection (a) and paragraph (3) of subsection (b) of Code Section 42-8-108, relating to the applicability of the article to contractors for probation services, as follows:

292

293

294

"(3) Employ at least one person who is responsible for the direct supervision of probation officers employed by the corporation, enterprise, or agency and who shall have at least five years' experience in corrections, jail officer, parole, or probation services."

295

296

297

"(3) Employ at least one person who is responsible for the direct supervision of probation officers employed by the governing authority who shall have at least five years' experience in corrections, jail officer, parole, or probation services; provided, however, that the five-year experience requirement shall not apply to any probation services supervised or administered by the office of sheriff of any county or to any such supervisor employed by a county, municipality, or consolidated government which was engaged in the provision of probation services on April 15, 2006."

298

299

300

301

302

303

304

SECTION 7.

305

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

306

307

SECTION 8.

308

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