

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

A BILL TO BE ENTITLED
AN ACT

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

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

11 "ARTICLE 8

12 15-9-150.

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

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

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

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

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

31 15-9-151.

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

35 (b) Notwithstanding the provisions of subsection (a) of Code Section 15-18-21 or
36 subsection (b) of 15-18-72, an assistant district attorney may be appointed as the
37 prosecuting attorney of a probate court with the prior written consent of the district attorney
38 who employs such assistant district attorney. Such consent may be withdrawn at any time
39 by the employing district attorney. Notice that consent for such appointment is being
40 withdrawn shall be done in writing to the governing authority of such county not less than
41 30 days prior to the day that such assistant district attorney shall cease to serve as the
42 prosecuting attorney of a probate court.

43 15-9-152.

44 In addition to the oaths prescribed by Chapter 3 of Title 45, relating to official oaths, the
45 prosecuting attorney of a probate court shall take and subscribe to the following oath: 'I
46 swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or
47 affection discharge my duties as prosecuting attorney of the County of (here state the
48 county).' The oath shall be administered and attested by the judge of the probate court of
49 such county and filed in the minutes of the probate court.

50 15-9-153.

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

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

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

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

60 15-9-154.

61 If the prosecuting attorney of a probate court is disqualified from engaging in the
 62 prosecution of a particular case or is unable to perform the duties of said office due to
 63 illness or incapacity, the governing authority shall provide for the appointment of a
 64 substitute prosecuting attorney. At any time in which a substitute prosecuting attorney is
 65 not available or an appointment has not been made, the county attorney of the applicable
 66 county may serve as the substitute prosecuting attorney until such time as a prosecuting
 67 attorney or substitute prosecuting attorney is available or appointed.

68 15-9-155.

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

71 (1) In the probate court:

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

75 (B) In the prosecution of any violation of state laws which by general law probate
 76 courts have been granted jurisdiction to try and dispose of such offenses, specifically
 77 including those offenses described in Article 2 of this chapter and Code Section
 78 40-13-21; and

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

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

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

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

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

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

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

92 (2) Dismiss, amend, or enter a nolle prosequi on any accusation, citation, or summons
 93 filed in the probate court as provided by law, except that the prosecuting attorney of a
 94 probate court shall not have the authority to dismiss or enter a nolle prosequi in any case
 95 in which the accused is charged with a violation of state law other than one which the
 96 probate court has jurisdiction to try and dispose of such offense without the consent of
 97 the proper prosecuting officer having jurisdiction to try and dispose of such offense. As
 98 used in this paragraph, the term 'proper prosecuting officer' means, in the case of felonies,
 99 the district attorney and, in the case of misdemeanors, the solicitor-general in counties
 100 where there is a state court, or in counties where there is no solicitor-general, the district
 101 attorney;

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

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

110 (c) The provisions of this Code section shall not be deemed to restrict, limit, or diminish
 111 any authority or power of the district attorney or any solicitor-general to represent this state
 112 in any criminal case in which the accused is charged with a felony or misdemeanor, when
 113 the probate court is acting as a court of inquiry pursuant to Article 2 of Chapter 7 of Title
 114 17 or setting bail for any such offense, other than one which the probate court has, by law,
 115 jurisdiction to try and dispose of.

116 15-9-156.

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

122 15-9-157.

123 The prosecuting attorney of a probate court may employ such additional assistant
 124 prosecuting attorneys and other employees or independent contractors as may be provided
 125 for by local law or as may be authorized by the governing authority of the county. The
 126 prosecuting attorney of a probate court shall define the duties and fix the title of any

127 attorney or other employee of the prosecuting attorney's office. Personnel employed
128 pursuant to this Code section shall be compensated by the county.

129 15-9-158.

130 Any assistant prosecuting attorney or other attorney at law employed by the county for the
131 purposes of prosecuting in the probate court shall be a member in good standing of the
132 State Bar of Georgia or satisfy the provisions of Code Section 15-18-22."

133 **SECTION 2.**

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

136 **SECTION 3.**

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