

The Senate Judiciary Non-Civil Committee offered the following substitute to SB 120:

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 construction with other laws; to provide for an effective  
6 date; to repeal conflicting laws; and for other 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, an  
36 assistant district attorney may be appointed as the prosecuting attorney of a probate court  
37 with the prior written consent of the district attorney who employs such assistant district  
38 attorney. Such consent may be withdrawn at any time by the employing district attorney.  
39 Notice that consent for such appointment is being withdrawn shall be done in writing to the  
40 governing authority of such county not less than 30 days prior to the day that such assistant  
41 district attorney shall cease to serve as the prosecuting attorney of a probate court.

42 15-9-152.

43 (a) In addition to the oaths prescribed by Chapter 3 of Title 45, relating to official oaths,  
44 the prosecuting attorney of a probate court shall take and subscribe to the following oath:  
45 'I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or  
46 affection discharge my duties as prosecuting attorney for the Probate Court of (here state  
47 the county) County.'

48 (b) The oath shall be administered and attested by the judge of the probate court of such  
49 county as provided in Code Section 45-3-3 and filed as provided in Code Section 45-3-5.

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 by interest or relationship from  
 62 engaging in the prosecution of a particular case or is unable to perform the duties of said  
 63 office due to illness or incapacity, the district attorney of such judicial circuit may  
 64 prosecute such case. If the district attorney is to prosecute such case, the provisions of  
 65 Code Section 15-18-5 shall apply.

66 15-9-155.

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

69 (1) In the probate court:

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

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

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

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

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

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

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

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

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

90 (2) Dismiss, amend, or enter a nolle prosequi on any accusation, citation, or summons  
 91 filed in the probate court as provided by law, except that the prosecuting attorney of a  
 92 probate court shall not have the authority to dismiss or enter a nolle prosequi in any case

93 in which the accused is charged with a violation of state law other than one which the  
94 probate court has jurisdiction to try and dispose of such offense without the consent of  
95 the proper prosecuting officer having jurisdiction to try and dispose of such offense. As  
96 used in this paragraph, the term 'proper prosecuting officer' means the district attorney  
97 for the judicial circuit;

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

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

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

112 15-9-156.

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

118 15-9-157.

119 The prosecuting attorney of a probate court may employ such additional assistant  
120 prosecuting attorneys and other employees or independent contractors as may be provided  
121 for by local law or as may be authorized by the governing authority of the county. The  
122 prosecuting attorney of a probate court shall define the duties and fix the title of any  
123 attorney or other employee of the prosecuting attorney's office. Personnel employed  
124 pursuant to this Code section shall be compensated by the county.

125 15-9-158.

126 (a) Any assistant prosecuting attorney or other attorney at law employed by the county for  
127 the purposes of prosecuting in the probate court shall be a member in good standing of the  
128 State Bar of Georgia.

129 (b) A qualified law student or law school graduate who is allowed to practice pursuant to  
130 Code Section 15-18-22 or the Supreme Court of Georgia's rules governing such practice  
131 may assist in the prosecution of cases in the probate court."

132 **SECTION 2.**

133 The provisions of this Act shall not be construed as altering any agreement in existence on  
134 the effective date of this Act between a county governing authority or a probate court of a  
135 county with the district attorney for the judicial circuit in which such probate court for the  
136 district attorney to prosecute case in the probate court of such county nor shall this Act apply  
137 in any county in which the General Assembly has by local act provided for a prosecutor in  
138 the probate court.

139 **SECTION 3.**

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

142 **SECTION 4.**

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