

The House Committee on Judiciary offers 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 may
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, he or she
21 shall notify the probate court in writing, and the governing authority of the county, in its
22 discretion, shall be authorized to create by ordinance or resolution the office of prosecuting
23 attorney of the probate court, and the governing authority shall have the authority to hire
24 the prosecuting attorney, who shall have the authority to prosecute criminal cases subject

25 to the jurisdiction of such probate court as set forth in Article 2 of this chapter and Article
 26 2 of Chapter 13 of Title 40. A copy of the resolution or ordinance creating the office of
 27 prosecuting attorney of the probate court shall be provided to the Prosecuting Attorneys'
 28 Council of the State of Georgia.

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

32 (d) Unless otherwise provided by local law, the prosecuting attorney of the probate court
 33 shall serve at the pleasure of the governing authority of such county.

34 15-9-151.

35 (a) Any person appointed as the prosecuting attorney of a probate court pursuant to
 36 subsection (b) of Code Section 15-9-150 shall be a member in good standing of the State
 37 Bar of Georgia and admitted to practice before the appellate courts of this state.

38 (b) Notwithstanding the provisions of subsection (a) of Code Section 15-18-21, an
 39 assistant district attorney may be appointed as the prosecuting attorney of a probate court
 40 when:

41 (1) The district attorney who employs such assistant district attorney consents to such
 42 appointment; and

43 (2) If such assistant district attorney is not employed in the judicial circuit in which the
 44 probate court is located, the district attorney for the judicial circuit in which the probate
 45 court is located consents to such appointment.

46 (c) A district attorney may withdraw consent for an assistant district attorney's
 47 appointment pursuant to subsection (b) of this Code section at any time, provided that the
 48 probate court and the governing authority of the county in which such probate court is
 49 located is given notice not less than 30 days prior to the day that such assistant district
 50 attorney shall cease to serve as the prosecuting attorney of the probate court.

51 15-9-152.

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

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

59 15-9-153.

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

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

65 (c) Any part-time prosecuting attorney of a probate court and any part-time assistant
 66 prosecuting attorney of a probate court may engage in the private practice of law, but shall
 67 not practice in the probate court or appear in any matter in which that prosecuting attorney
 68 has exercised jurisdiction. A prosecuting attorney of a probate court and any assistant
 69 prosecuting attorney of a probate court shall be subject to all laws and rules governing the
 70 conduct of prosecuting attorneys in this state.

71 15-9-154.

72 If the prosecuting attorney of a probate court is disqualified by interest or relationship from
 73 engaging in the prosecution of a particular case or is unable to perform the duties of said
 74 office due to illness or incapacity, the district attorney of such judicial circuit may
 75 prosecute such case. If the district attorney is to prosecute such case, the provisions of
 76 Code Section 15-18-5 shall apply.

77 15-9-155.

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

80 (1) In the probate court:

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

84 (B) In the prosecution of any violation of state laws which by general law probate
 85 courts have been granted jurisdiction to try and dispose of such offenses, specifically
 86 including those offenses described in Article 2 of this chapter and Code Section
 87 40-13-21; and

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

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

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

94 (4) To administer the oaths required by law to the bailiffs or other officers of the court
 95 and otherwise to aid the presiding judge in organizing the court as may be necessary; and
 96 (5) To perform such other duties as are or may be required by law or ordinance or which
 97 necessarily appertain to such prosecuting attorney's office.

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

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

101 (2) Dismiss, amend, or enter a nolle prosequi on any accusation, citation, or summons
 102 filed in the probate court as provided by law, except that the prosecuting attorney of a
 103 probate court shall not have the authority to dismiss or enter a nolle prosequi in any case
 104 in which the accused is charged with a violation of state law other than one which the
 105 probate court has jurisdiction to try and dispose of such offense without the consent of
 106 the proper prosecuting officer having jurisdiction to try and dispose of such offense. As
 107 used in this paragraph, the term 'proper prosecuting officer' means the district attorney
 108 for the judicial circuit;

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

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

117 (c) The provisions of this Code section shall not be deemed to restrict, limit, or diminish
 118 any authority or power of the district attorney or any solicitor-general to represent this state
 119 in any criminal case in which the accused is charged with a felony or misdemeanor, when
 120 the probate court is acting as a court of inquiry pursuant to Article 2 of Chapter 7 of Title
 121 17 or setting bail for any such offense, other than one which the probate court has, by law,
 122 jurisdiction to try and dispose of.

123 15-9-156.

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

129 15-9-157.

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

136 15-9-158.

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

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

143 **SECTION 2.**

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

150 **SECTION 3.**

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

153 **SECTION 4.**

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