

O.C.G.A. § 42-8-101

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**Official Code of Georgia Annotated TITLE 42 Penal Institutions (Chs. 1 – 13) CHAPTER 8
Probation (Arts. 1 – 9) Article 6 County and Municipal Probation (§§ 42-8-100 – 42-8-109.5)**

42-8-101. Agreements for probation services; termination of contract for probation services.

(a)

(1) Upon the request of the chief judge of any court within a county and with the express written consent of such judge, the governing authority of such county shall be authorized to enter into written contracts with corporations, enterprises, or agencies to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation in such county. In no case shall a private probation corporation or enterprise be charged with the responsibility for supervising a felony sentence. The final contract negotiated by the governing authority of the county with the private probation entity shall be attached to the approval by the governing authority of the county to privatize probation services as an exhibit thereto. The termination of a contract for probation services as provided for in this subsection may be initiated by the chief judge of the court which is subject to such contract and shall be subject to approval by the governing authority of the county which entered into the contract and in accordance with the agreed upon, written provisions of such contract.

(2) Upon the request of the chief judge of any court within a county and with the express written consent of such judge, the governing authority of such county shall be authorized to establish a county probation system to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any

moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation in such county.

(b)

(1) Upon the request of the judge of the municipal court of any municipality or consolidated government of a municipality and county of this state and with the express written consent of such judge, the governing authority of such municipality or consolidated government shall be authorized to enter into written contracts with private corporations, enterprises, or agencies to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation. The final contract negotiated by the governing authority of the municipality or consolidated government with the private probation entity shall be attached to the approval by the governing authority of the municipality or consolidated government to privatize probation services as an exhibit thereto. The termination of a contract for probation services as provided for in this subsection may be initiated by the chief judge of the court which is subject to such contract and shall be subject to approval by the governing authority of the municipality or consolidated government which entered into the contract and in accordance with the agreed upon, written provisions of such contract.

(2) Upon the request of the judge of the municipal court of any municipality or consolidated government of a municipality and county of this state and with the express written consent of such judge, the governing authority of such municipality or consolidated government shall be authorized to establish a probation system to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation.

History

Code 1981, § **42-8-100**, enacted by Ga. L. 1991, p. 1135, § 2; Ga. L. 1992, p. 3221, § 7; Ga. L. 1995, p. 396, § 2; Ga. L. 1996, p. 1107, § 2; Ga. L. 2000, p. 1554, § 2; Ga. L. 2001, p. 813, § 2; Ga. L. 2006, p. 727, § 2/SB 44; Code 1981, § 42-8-101, as redesignated by Ga. L. 2015, p. 422, § 3-2/HB 310; Ga. L. 2016, p. 443, § 7-2/SB 367.

▼ Annotations

Notes

The 2015 amendment, effective July 1, 2015, redesignated former subsections (g) and (h) of Code Section **42-8-100** as present subsections (a) and (b) of Code Section 42-8-101; and rewrote the section. See Editor's notes for applicability.

The 2016 amendment, effective July 1, 2016, rewrote this Code section.

Editor's notes.

Ga. L. 1995, p. 396, § 4, not codified by the General Assembly, provides in subsection (b): "No local funds shall be used to implement Sections 1 and 2 of this Act without the consent of the local governing authority."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Constitutionality. —

In a suit brought by misdemeanor defendants challenging the privatization of probation services under O.C.G.A. § **42-8-100(g)(1)**, the Georgia Supreme Court agreed with the trial court that § **42-8-100(g)(1)** was not unconstitutional on the statute's face and did not offend due process or equal protection nor condone imprisonment for debt. *Sentinel Offender Services, LLC v. Glover*, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 940 (2014).

Requirement for payment of probation supervision fees by probationers to private probation services company did not violate the separation of powers since the imposition of the fees pursuant to contract constituted a civil fee for services, not a criminal punishment. Furthermore, the mere act of privatizing probation services did not violate the Georgia Constitution since a probation services company was not authorized to deprive probationers of property or liberty without due process, the private probation services were not fundamentally unfair, and the sentencing court continued to oversee the probation process. *Keen v. Judicial Alternatives of Ga., Inc.*, 124 F. Supp. 3d 1334, 2015 U.S. Dist. LEXIS 110957 (S.D. Ga.), *aff'd in part, vacated in part*, 637 Fed. Appx. 546, 2015 U.S. App. LEXIS 21961 (11th Cir. 2015).

Collection of electronic monitoring fees by private probation service. —

Trial court erred by finding that electronic monitoring fees imposed by the sentencing court and collected by a private probation service for monitoring services rendered during a probationer's original term of sentence were prohibited because only when electronic monitoring was unlawfully imposed by the court on a misdemeanor probationer after the expiration of the probationers' original sentence would such fees potentially be recoverable. *Sentinel Offender Services, LLC v. Glover*, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 967 (2014).

Under current Georgia statutes, the tolling of a misdemeanor probationer's sentence is not permitted and courts utilizing probation systems established pursuant to O.C.G.A. § **42-8-100(g)(1)** are specifically precluded from applying the provisions of the State-wide Probation Act, O.C.G.A. § 42-8-20 et seq., including those pertaining to tolling, to the defendants the courts sentence. *Sentinel Offender Services, LLC v. Glover*, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 967 (2014).

Validity of private probation services. —

Under Georgia law, a private probation company can act as a probation provider and the company's employees may serve as probation officers only if the company complies with the terms and provisions of O.C.G.A. § **42-8-100(g)(1)**. *Sentinel Offender Services, LLC v. Glover*, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 967 (2014).

Contract between a court and a probation services company was valid since the contract was not formally terminated and was thus automatically renewed year to year regardless of the lack of

express approval by the governing authority of the county. *Keen v. Judicial Alternatives of Ga., Inc.*, 124 F. Supp. 3d 1334, 2015 U.S. Dist. LEXIS 110957 (S.D. Ga.), *aff'd in part, vacated in part*, 637 Fed. Appx. 546, 2015 U.S. App. LEXIS 21961 (11th Cir. 2015).

Class certification in suit challenging private probation services. —

In a suit challenging private probation services, the trial court's orders conditionally certifying class actions on behalf of misdemeanor probationers were reversed and the cases remanded to the trial court for reconsideration of the class certification issues in light of the Georgia Supreme Court's opinion and its requirement that the trial court carefully consider issues of justiciability with respect to the scope of any class certified and the relief available to potential class members. *Sentinel Offender Services, LLC v. Glover*, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 967 (2014).

Tolling of probationer's sentence prohibited. —

Georgia Supreme Court held that the private probation statutory framework did not allow for the tolling of misdemeanor probationers' sentences and to the extent Georgia courts have recognized O.C.G.A. § 42-8-36 as a basis for allowing courts utilizing probation systems established pursuant to O.C.G.A. § **42-8-100**(g)(1) to toll a probationer's sentence, such analysis was in error and was disapproved. *Sentinel Offender Services, LLC v. Glover*, 296 Ga. 315, 766 S.E.2d 456, 2014 Ga. LEXIS 940 (2014).

Opinion Notes

OPINIONS OF THE ATTORNEY GENERAL

Intergovernmental agreements for probation services are legal

in instances in which the contracting parties are authorized by law to provide probation services. Also, when providing probation services for a judicial circuit, a probation entity must be authorized to provide the service and must enter into separate agreements with the court of each county that composes that judicial circuit. 2012 Op. Att'y Gen. No. 12-7.

Research References & Practice Aids

Law reviews.

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 159 (2014).

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

For article on the 2016 amendment of this Code section, see 33 Ga. St. U. L. Rev. 139 (2016).

For note, "Safe Haven No Longer: The Role of Georgia Courts and Private Probation Companies in Sustaining a De Facto Debtors' Prison System," see 48 Ga. L. Rev. 227 (2013).

Hierarchy Notes:

O.C.G.A. Title 42

O.C.G.A. Title 42, Ch. 8

O.C.G.A. Title 42, Ch. 8, Art. 6

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