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Misdemeanor Probation Operations

Both courts and providers should improve management practices

Why we did this review

Approximately 175,000 Georgians are on misdemeanor probation, and they pay approximately $125 million annually in fines and surcharges that support state and local programs. This performance audit assesses the quality of oversight executed by courts and local governments over misdemeanor probation operations, as well as the management systems and case management practices employed by public and private probation providers. The audit also examines how well providers and officers report performance and comply with state law and contract terms.

About Misdemeanor Probation

Courts may assign individuals to a term of probation for a conviction of a misdemeanor for up to 12 months per offense. Probation providers are charged with monitoring the probationer and responding to probationers that fail to comply with all conditions of probation (e.g., report as directed, pay fines and fees, complete community service work). In August 2013, Georgia had 88 providers (34 private and 54 public) registered with the state. The providers supervise approximately 175,000 probationers on behalf of 776 courts. Private providers serve approximately 85% of the courts and supervise 80% of the probationers. Providers are paid by supervision fees imposed on the probationer.

What we found

Municipal and county governments manage misdemeanor probation services by establishing their own probation office or by contracting with a private probation provider. With the approval of the governing authority, the chief judge of each local court system enters into a contract (private providers) or a governmental agreement (public providers) that defines certain rules and procedures for operations and case management.

Our review of misdemeanor probation operations in a sample of jurisdictions found that courts provided limited oversight of providers, with contracts that often lack the detail needed to guide provider actions and periodic reports from providers that tell little about their own or their probationers' performance. We also found that providers frequently had inadequate case management policies and that some providers' reporting and payment policies were likely to increase probationer non-compliance.

O.C.G.A. § 42-8-100 provides courts with the authority to determine which provider will supervise misdemeanor probationers. Inherent in this authority is a responsibility to ensure the selected provider's actions follow the expectations of the court. However, we found that contracts and governmental agreements frequently did not include all provisions – some required by state law – needed to ensure providers are aware of court expectations. For example, contracts did not always include a probationer's reporting frequency, reasons the frequency could be increased, or the frequency for a probationer deemed non-compliant with probation terms. The contracts also rarely communicated to providers when, or if, a probationer that is not current with payments should be returned to the court for a determination of indigence.

We also found that courts do not receive useful performance reports from the providers. Monthly or quarterly reports are most likely to detail collections for the court and the number of cases handled by the provider. They are less likely to provide information regarding the quality or results of supervision, such as information on community service work performed, drug tests administered, the percentage of cases closed successfully and unsuccessfully, and the percentage of total payments owed that were paid or not paid.

Our review of the supervision of a sample of probationers found several case management issues, many resulting from a lack of clear written policies and procedures to guide the actions of probation officers, as well as inadequate quality assurance reviews of case files by management of some providers. Examples of problems identified during the review of case files and provider policies include:

- Probation noncompliance was not adequately addressed in many cases. We found numerous probationers that failed to report for long periods of time, or to make progress on financial obligations, community service, or evaluation and treatment, without an adequate response by the provider. In some instances, case notes indicated either no contact or probation conditions not addressed for months. In other cases, the provider's response was ineffective but no additional action was taken (e.g., requesting probation revocation or a modification hearing).

- In many cases, providers can increase reporting frequency to a point that exceeds that of most felony probationers. While many providers begin with monthly reporting schedules, if an offender becomes non-compliant (e.g., pays too little, fails to report), the provider may require the probationer to report each week. A more frequent reporting schedule increases the likelihood that a probationer becomes non-compliant due to a missed report date.

- Probation providers could set monthly or weekly payment amounts that were much higher than necessary to collect funds owed during the probation term. In some cases, probationers were expected to pay all court fines and surcharges, as well as provider supervision fees, in less than half of the term. If a probationer failed to pay, the probationer becomes financially non-compliant. As noted above, a non-compliant probationer is subject to increased reporting.

- Probation providers failed to consider whether probationers had the ability to meet financial obligations. When probationers fell into arrears, providers often increased reporting frequency instead of determining if the probationer cannot make the required payments (necessitating a return to the court for a final determination).

- We found a few instances in which providers improperly extended the probation term, obtained an arrest warrant, or improperly allocated probationer payments to provider supervision fees instead of the court.

What we recommend

To address the most notable issues, we recommend that courts document expectations regarding operations and performance during the procurement process and in the contract, and require providers to submit meaningful performance reports on a periodic basis. We also recommend that providers improve case management policies and procedures to define the level of non-compliance that will warrant particular actions to be taken by probation officers. These policies should be adopted in consultation with the court. Specific recommendations for each finding are in Appendix A.

Response to Audit: *CMPAC, as well as courts and probation providers reviewed by the audit team, received report drafts for review. CMPAC responded that it was implementing one of two recommendations. One provider submitted written comments stating that various contract provision, policies and procedures were being updated. Other providers and courts did not provide written responses.*

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Purpose of the Audit

This audit examined the oversight and management of misdemeanor probation operations by local government and private probation providers. The objectives of the audit were:

- To assess courts' procurement and oversight of probation providers and
- To assess whether probation providers supervise offenders effectively.

A description of the objectives, scope, and methodology used in this review is in Appendix B. A draft of the report was provided to the County and Municipal Probation Advisory Council (CMPAC) for review. Its response is included on page 19. Drafts were also submitted to the probation providers we visited, as well as the associated courts from which a sample of cases was reviewed. One provider submitted a written response, which is incorporated at the end of each relevant finding.

Background

History of Misdemeanor Probation Operations in Georgia

In 1991, changes in state law gave municipal and county governments responsibility for managing misdemeanor probation operations in the state and permitted them to contract with private probation companies for the service (O.C.G.A. § 42-8-100 through § 42-8-108). Prior to changes in the law, misdemeanor probation operations were managed by the Georgia Department of Corrections (GDC), a local government probation office, or court staff. In 2000, the General Assembly passed legislation to limit GDC management to felony probationers only, requiring local governments to either establish internal probation units or contract with private probation providers.

Entity Roles in Probation Operations and Oversight

Courts and probation providers are the entities primarily involved in daily misdemeanor probation operations. The chief judge (with approval from the local governing authority) is authorized by state law to enter into contracts with private providers or establish governmental agreements (similar to contracts) with public providers to establish operations. The state's County and Municipal Probation Advisory Council (CMPAC) regulates both private and public probation providers and enforces statutory requirements related to probation staff training and contract content.

Courts

Courts may assign individuals to a term of probation for a conviction of a misdemeanor. Misdemeanors are crimes not designated by law as a felony. Misdemeanor offenses that could cause a probated sentence and subsequent probation term include: driving without insurance or driving under the influence of a controlled substance, shoplifting, and possession of marijuana. In some cases, the nature of the offense may result in probation, while in other cases, the probation may be ordered because the individual cannot pay an ordered fine at the time of sentencing.

During sentencing the court establishes both the term and the conditions of probation. The term for a misdemeanor offense is 1 to 12 months. Typical probation conditions require the probationer to avoid using drugs or getting re-arrested, to report to a probation officer, and pay financial obligations. Probationers may also be ordered to complete community service work and submit to an evaluation and treatment to address substance abuse or behavioral issues. To successfully complete probation, a probationer must complete all conditions within the probation term. If some conditions have not been completed at the end of the term, the probationer's sentence is still completed. The provider may designate the case as an "unsuccessful" completion.

O.C.G.A. § 42-8-100 authorizes the chief judge to enter into a written contract/agreement with private probation companies or local government offices with the approval of the local "governing authority."[1] The local courts and approving authorities decide whether to procure supervision services from a private probation company or to establish (or continue using a pre-existing) probation supervision operations within the county or municipal government. The court is also responsible for ensuring the provider executes services to the court adequately and complies with the terms of the agreement.

Probation Providers

A provider's interaction with probationers begins at intake, during which an officer communicates the conditions of probation and establishes a reporting and payment schedule. Probationers are generally required to make periodic payments and to report in-person, by telephone, or by mail on a weekly, bi-weekly, or monthly schedule. If the court assigns additional conditions of probation (such as community service work) the provider is charged with instructing the probationer on the timeframe for completing those conditions if the court does not include it as part of the sentence.

Officers instruct probationers on how to comply with the terms ordered by the court and monitoring probationer compliance. In many offices, the providers establish timeframes and schedules for payments, community service work, and evaluation/treatment. Officers have the authority to increase or decrease reporting requirements in response to the probationer's compliance/non-compliance.

Officers maintain case notes that document interactions with the probationer and the probationer's compliance status. In instances of significant non-compliance by the probationer, the case notes and associated documentation support administrative actions, such as increasing reporting requirements or requesting a probation modification or revocation hearing.

A chief probation officer or similar official oversees the general operations of the probation provider office. Provider management establishes the general policies and procedures for the operations within an office and/or company. In addition, management establishes and executes quality control procedures to ensure that officers comply with court orders and office policy for case management. This may take the form of a periodic or random sample review of case files by management.

[1] Governing authorities may include county commissioners, mayors, and city managers.

Probation providers are not funded by the local government but through fees paid by the probationers. Providers charge a monthly supervision fee, typically $30 to $40, and may charge additional fees if the probationer is subjected to drug tests or receives treatment services from the provider.

County and Municipal Probation Advisory Council

O.C.G.A. § 42-8-101 establishes an 11-person regulatory oversight unit, the County and Municipal Probation Advisory Council (CMPAC), made up of representatives from the courts, the Georgia Department of Corrections, local government, law enforcement, and public/private probation providers. CMPAC is charged with registering probation providers, enforcing uniform professional and contract standards, levying sanctions, and submitting annual reports to the General Assembly. CMPAC is administratively attached to the Administrative Office of the Courts and is supported by a three-person staff.

CMPAC conducts compliance audits of probation providers for areas of statutory requirement, including contract content and staff qualifications (e.g., training requirements, criminal background). However, CMPAC does not determine if probation providers comply with the terms established in any individual court contract or governmental agreement.

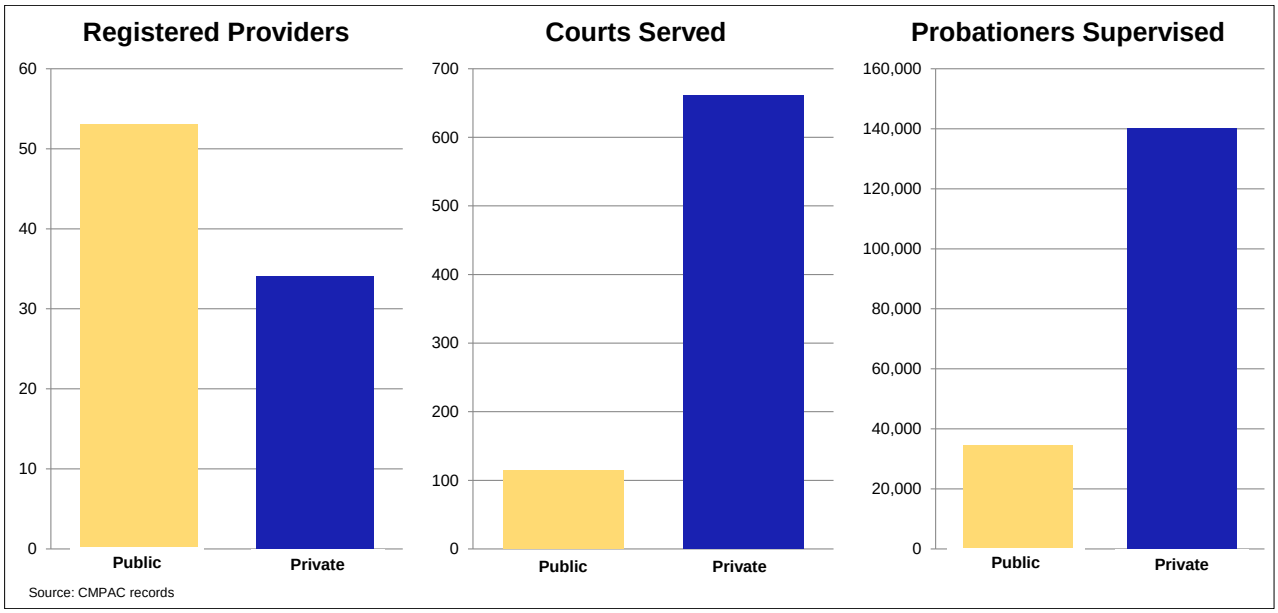
Georgia's Misdemeanor Probation Providers

Private and public probation providers must register annually with CMPAC. As shown in **Exhibit 1**, 88 probation providers (34 private and 54 public) were registered with the state as of August 2013. Together they manage misdemeanor probation operations for the state's 776 courts and supervise approximately 175,000 active probationers.

Generally, public probation providers serve a single local government and the associated court(s),[2] while private probation providers frequently contract with more than one local government and the associated court(s). As a result, private probation providers serve a significantly larger percentage of courts (85%) and active probationers (80%). Among private probation providers, a relatively small number serve a majority of the courts, with the eight largest providers serving 52% of courts in the state.

[2] Public providers created by a county may serve multiple county courts, such as Superior, State, and Magistrate. Providers created by a municipality generally serve only a single municipal court.

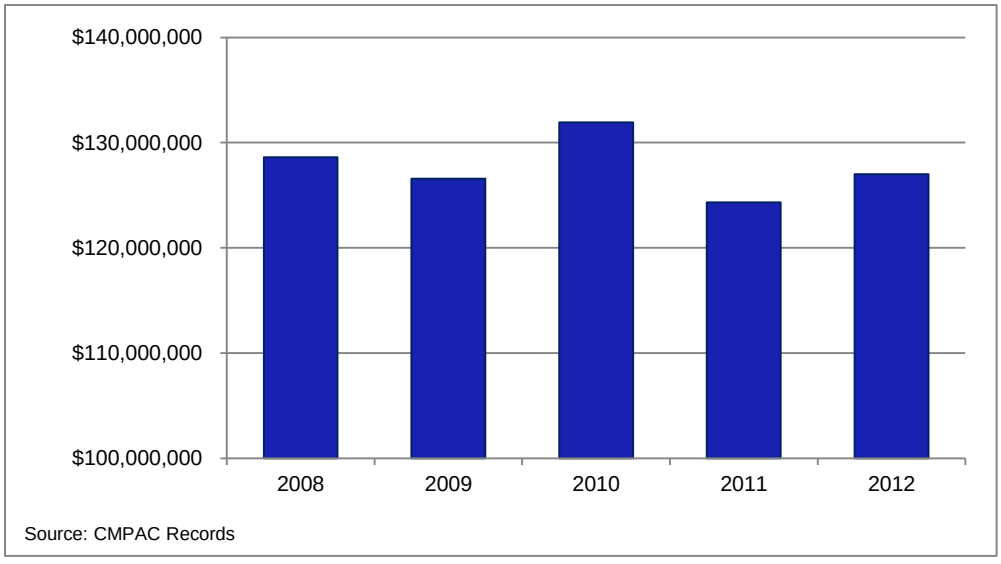
Exhibit 1
Private companies provide most misdemeanor probation services in Georgia (As of July 2013)



Financial Data

Each quarter, providers report to CMPAC the funds collected for the court and the state. As shown in **Exhibit 2**, providers have reported collections between $124 million and $132 million during each of the last five calendar years. Collections include funds paid to satisfy court fines and surcharges, restitution, and Georgia Crime Victims Emergency Fund.

Exhibit 2
Providers reported collections exceeding $120 million in recent years



Findings and Recommendations

Procurement and Provider Oversight

Courts that contract for probation services should solicit proposals from multiple providers, adopt practices that maximize evaluation transparency and objectivity, and document key decisions.

Many courts can improve procurement procedures by increasing transparency and standardizing evaluation and selection criteria.

Jurisdictions and local governments did not always utilize best practice principles when procuring probation services. For example, some jurisdictions utilized competitive procurements but did not use common procedures that increase transparency and ensure evaluation and selection objectivity. In other jurisdictions, courts solicited service from only one provider. Often key decisions were not documented.

O.C.G.A. § 42-8-100 allows the chief judge, with approval from the local governing authority, to enter into and terminate written contracts with private probation providers. However, the law establishes no requirements for courts and local governments to comply with when procuring services. Many judges we interviewed established their own procurement methods and did not rely on methods used by their county or municipal government.

Best practices in procurement solicitation and evaluation emphasize transparency and objectivity. When soliciting services, courts should establish methods to notify a reasonable number of providers. When evaluating providers, courts should use objective criteria determined prior to the evaluation phase. The procurement process – from solicitation to award – should be documented. By using methods that are objective and transparent, courts increase the likelihood of selecting a quality provider and guard against perceptions or accusations of impropriety (see box below).

To evaluate court procurement methods, we selected 6 state and 14 municipal courts that entered into a new contract with a private probation provider between 2008 and 2011. We interviewed applicable personnel (chief judge, court clerk, government staff, and/or probation provider) and requested supporting documents.

Risks to Courts Associated with Probation Procurement

Given the potential value of contracts for probation services, courts and local governments are vulnerable to real and perceived inappropriate influences. For example:

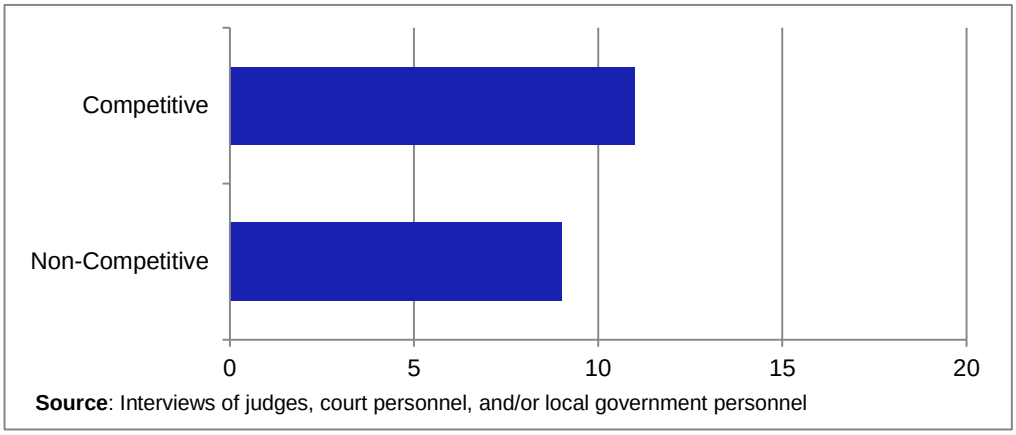
- During one procurement a representative from a prospective provider attempted to bribe a judge on the selection panel with campaign contributions. The judge reported the attempt to prosecutors, and the provider was removed from consideration. The individual who offered the bribe pled guilty to felony bribery.
- One court was accused of improperly bypassing the county's sealed-bid procurement process to select a probation company with connections to a former commissioner. Another former commissioner and a provider that did not receive the contract publicly accused judges of awarding the contract based on personal relationships.
- One state court judge was accused by the Judicial Qualifications Commission of threatening a private probation provider for failing to publicly support his candidacy. According to JQC, the provider's contract was terminated just days after the election.

Solicitation Procedures

To demonstrate transparency and take advantage of the market place, governments often use a competitive process in which multiple providers are notified of a service need. Courts that allow multiple providers to submit proposals can better compare services and reduce the appearance of impropriety.

As shown in **Exhibit 3**, more than half of the jurisdictions in our sample (11 of 20) (including most large jurisdictions) notified more than one probation provider when soliciting probation management services. However, one large state court and a majority of smaller municipal courts notified only one provider.

Exhibit 3
Over half of 2008-2011 procurements involved multiple bids



Source: Interviews of judges, court personnel, and/or local government personnel

Among the nine courts that notified only one provider, court officials indicated that the decision to contact only one provider was based on one of the following reasons:

- a neighboring jurisdiction recommended the provider;
- the court official had prior experience working with the provider; and/or
- the provider had offices in proximity to the jurisdiction.

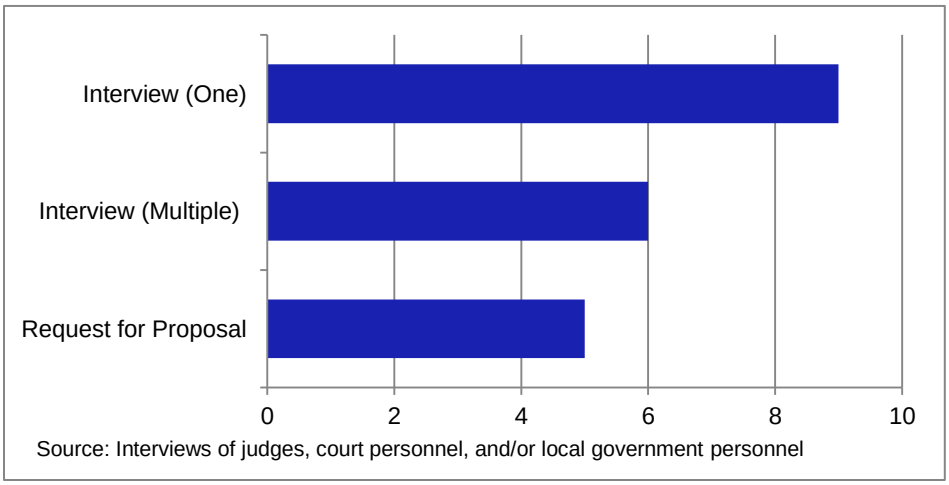
In some smaller, rural jurisdictions, officials indicated the provider pool was limited to one provider. However, it is unclear whether other probation providers would establish local offices if notified and awarded a contract.

It is worth noting that one judge indicated that a competitive process is unnecessary because the probation providers do not receive public funds but instead are funded by probationer fees. While public funds are not used, a public entity is awarding a contract that may have considerable value (depending upon the number of probationers, supervision fee amounts and collection rates, and provider costs). This alone calls for transparency to ensure that the selection process is not compromised.

Evaluation and Selection Procedures

Most jurisdictions did not maintain documentation related to their procurement methods and decision making, so we relied upon interviews to explain the methods used to evaluate and select probation providers. As shown in **Exhibit 4**, the most common methodology was to interview providers.

Exhibit 4
Most courts relied on interviews to select a provider



Source: Interviews of judges, court personnel, and/or local government personnel

- *Interview(s)* – The most common method for evaluating probation providers were interviews. Fifteen of twenty jurisdictions indicated some form of interview was conducted to evaluate and choose a service provider.
- *One Provider* – Nine courts interviewed only one provider before contracting for services.[3]
- *Multiple Providers* – Six courts interviewed multiple providers before contracting for services. Two of the courts had multiple individuals conduct interviews/evaluate proposals, while four relied on a single judge or court clerk to conduct the interview/evaluation.
- *Requests for Proposals (RFPs)* – RFPs are formal solicitation documents that outline a scope of services and often present criteria used to evaluate the proposal. Five courts reported they issued a RFP, including the four of the five largest in our sample. While all five would have received proposals for review, two courts abandoned the RFP process during the evaluation phase.

Quality of Evaluation and Selection

Using a competitive method does not ensure that the procedure will result in a transparent and objective process. The quality of the procedures and documentation of decisions are critical to ensure transparent and objective evaluations and selections. We found that competitive procurements did not always contain characteristics of a transparent, objective process. Those characteristics include:

- *Developing evaluation criteria* – Developing criteria before reviewing proposals ensures that courts have independently identified the most important attributes of a provider. Documenting the criteria before proposals are reviewed also reduces the appearance that an award decision was predetermined.

[3] One official indicated that the court used a newspaper advertisement to solicit proposals. Only one provider responded and was interviewed.

Request for Proposal Using Best Practices

One formal method for soliciting and selecting a probation service provider is through a request for proposals (RFP). A best practice guide for RFP procedures is presented in **Appendix C**. It presents and defines preferred RFP components and presents examples from jurisdictions we reviewed.

Among the five jurisdictions we reviewed that utilized an RFP, only one utilized each of the best practices noted above. The City of East Point's RFP included a scope of services, parameters for proposals, and specific weighted scoring criteria. A selection committee was used to grade each proposal, and the provider with the highest average score was recommended to the judge and the city council. All relevant documentation related to the procurement was available for review.

Other courts that utilized an RFP had less transparent evaluation and selection procedures. In some instances court officials abandoned the RFP procedure due to misgivings about its efficacy. In other instances, the RFP did not contain critical elements, such as the evaluation criteria to be used.

Source: DOAA Analysis

- *Panel Evaluation* – A few jurisdictions we reviewed established a panel to evaluate proposals. While the chief judge has the authority to select a provider, ensuring that more than one individual reviews proposals and/or observes interviews reduces the appearance and risk of impropriety.

- *Documenting the basis for the decision* – Courts that document the rationale for selecting a provider (especially when a single proposal was solicited) provide the public with greater assurance that the selection was justified.

RECOMMENDATIONS

1. Courts should balance the number of providers notified and method of notification with available resources. Courts should solicit proposals from multiple providers whenever possible.

2. Courts should develop clear criteria to evaluate and select a probation provider to ensure objectivity and consider utilizing a stakeholder panel to increase transparency.

3. Courts should document their procurement process and reasons for selecting their probation provider.

Courts should ensure that contracts and governmental agreements have the provisions necessary to communicate all relevant operational and performance expectations.

Most of the contracts and government agreements reviewed did not adequately document provider operations and performance measures. While provisions required by state law were more likely to be found, a majority of the documents failed to include at least a portion of those provisions as well.

Contracts and government agreements are essential to a court's oversight of providers. They are a method to ensure that the court and provider agree on a provider's operations and performance. Whether the court writes the contract or accepts a standard contract used by the provider is less important than ensuring the

court understands what will transpire during the service period. For example, a well-written document will detail items such as how a probationer's payment amount will be calculated, how frequently and by what method a probationer will report, and how collected funds will be prioritized among recipients. The documents also allow the court to set performance goals and to hold the provider accountable to them.

Many contracts and governmental agreements did not comply with state law or adopt best practices recommended by CMPAC.

O.C.G.A. § 42-8-102 establishes a set of uniform standards for contracts and governmental agreements, and CMPAC has created a best practice model for contract content that expands upon those standards. We considered these and other operational and performance provisions when evaluating the content of 23 contracts (private providers) and 6 government agreements (public providers).

As shown in **Exhibit 5**, few of the provisions were present in all of the contracts and governmental agreements reviewed, and many were present in less than half of the documents. Provisions most likely to be included were those required by state law. Details of the contract review are below.

- *Authority and Approval* – State law authorizes the chief judge of any court to enter into written contracts or governmental agreements with a private or public probation provider with the approval of the local governing authority. However, we found that approximately one-quarter of contracts and government agreements did not contain the signatures of the chief judge or the governing authority (7 of 29).

- *Service and Terms* – Nearly all contracts or governmental agreements reviewed contained a required scope of services, which provides a general description of the type of work the provider will conduct (27 of 29). However, detailed information regarding operations was often not present, as noted in the staffing, supervision, and collections categories below.

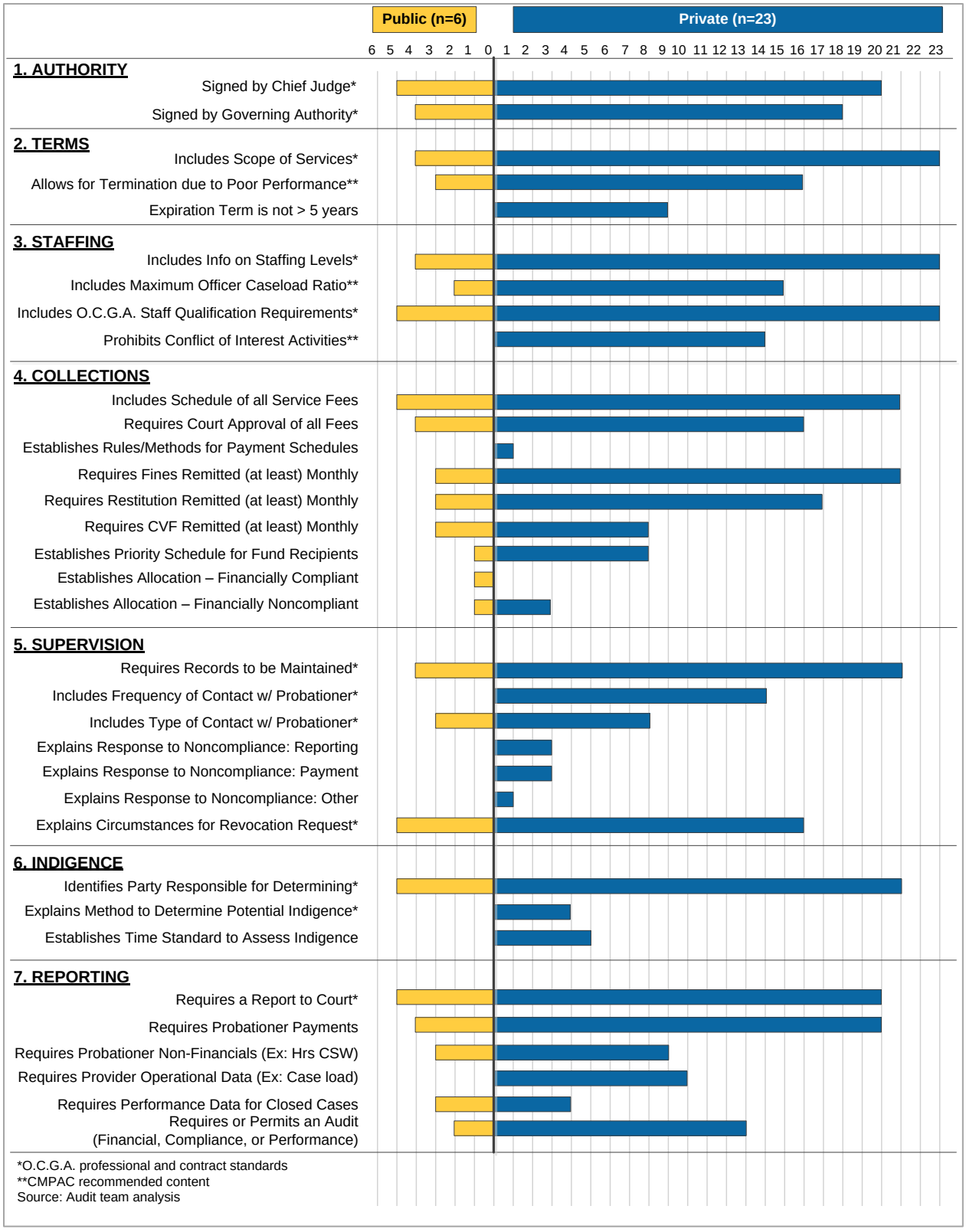
  Less common were provisions that allowed for termination due to cause or time limits on the contract term. In approximately two-thirds of contracts and governmental agreements (20 of 29) were provisions for termination due to cause included, and less than half of contracts had expiration terms of 5 years or less (9 of 23). A commonly adopted term we found establishes an automatic annual renewal without an explicit expiration (or maximum number of renewals). In one case, the term was listed as "indefinite." Renewals should be limited so the contracting entity can re-evaluate service terms and ensure it is receiving the best services available.

- *Staffing* – Staffing provisions ensure providers employ an adequate number of officers to supervise probationers, that the employees are qualified, and that they have no personal or professional interests that conflict with their contracted responsibilities.

  Nearly all contracts and governmental agreements had statutorily required clauses concerning staffing levels and requirements (e.g. training, background checks) (27 of 29). Just over half had specific limits on officer caseload ratios, with those ranging from 150 to 400 per officer (17 of 29). When the provision was not present, contracts contained a qualitative

target (such as "appropriate" or "adequate" staffing levels). Just over half of the contracts and none of the government agreements had an employee conflict of interest provision (14 of 29).

Exhibit 5
Provisions required by state law are more likely to be included in contracts



*O.C.G.A. professional and contract standards
**CMPAC recommended content
Source: Audit team analysis

- *Collections* – Collections provisions address a primary activity of providers and include actions that significantly impact probationers and recipients of their payments. As noted in multiple findings beginning on page 20, we observed significant variation in provider practices, and these practices were not always transparent to the court.

  Approximately two-thirds of contracts and governmental agreements require the court to approve all fees (including supervision, evaluation/treatment, and drug testing), and most list the fee schedule (20 of 29). However, they often lacked provisions in other areas we found deficient during our review of case files. Only one specified how the provider should calculate payments. Few detailed how payments should be allocated between court fines, supervision fees, crime victims' fees, and restitution, and they were unlikely to address both full and partial payments. While we found incomplete allocation standards in a few contracts, we found one in which the instructions were clear:

  > "If a payment is made that is less than the amount necessary to fully pay both the monthly supervision fee and the monthly fine/restitution payment that is due, the monies received . . . Shall be disbursed as follows: 50% of money to the provider and 50% to court."

- *Supervision* – Supervision provisions also address a primary activity of providers. As noted on page 20, providers vary in supervision methods and frequency, as well as when they use increased supervision as a punitive measure, and it is not clear that these practices are made known to the court. The law requires that the standards of offender supervision – both the *frequency* and *type* of contacts with probationers – be included in contracts and governmental agreements. However, only one-third contain complete supervision standards as required (10 of 29). We also found that contracts do not contain standards for both *compliant* and *non-compliant* probationers, even though probation providers frequently increase reporting requirements significantly once a probationer becomes non-compliant.

  Approximately three-fourths of contracts and governmental agreements included the circumstances under which a probation provider should request a revocation of probation as required by the uniform contract standards (21 of 29).

- *Indigence* – The law requires that contracts and governmental agreements establish procedures for handling indigent offenders (probationers who are unable to pay financial obligations such as fines, surcharges, and fees). And while most contracts and governmental agreements appropriately define the court as the party responsible for making the final and formal determination on whether a probationer should be considered indigent, few clarify the role (if any) that probation providers should fill in helping the court identify probationers under their supervision who might be indigent. Only a small number establish the method (4 of 29) or the time standard (5 of 29) for identifying probationers that are potentially indigent.

- *Reports and Audits* – Periodic reports and compliance audits can be an effective method for courts to monitor probation provider operations. Most contracts and governmental agreements require some type of report to the courts (27 of 29), and most specify that reports should include details on payment collections/remittance (26 of 29). However, less than half of the contracts required non-financial aspects of probation (e.g., community service hours) to be reported (12 of 29). Fewer contracts required operational indicators such as case load ratios (7 of 29) or probationers outcomes (e.g., successful or unsuccessful completion) (10 of 29).

  A majority of contracts and governmental agreements include a clause that permits or requires a periodic (usually annual) audit (15 of 29). However, as noted on page 16, usually the type of audit identified is financial; only one specifically identifies a performance or compliance audit – a more useful form of audit to evaluate whether probation providers adhere to contract terms. Among two local governments we found that had conducted a performance audit and a compliance audit, both were conducted by staff internal to the local government.

RECOMMENDATIONS

1. Courts should ensure that contracts and governmental agreements comply with all requirements of state law (including all uniform contract standards) and should include the best practices put forth by CMPAC.

2. Courts should ensure that contracts and governmental agreements include their expectations in key operational areas, such as staffing levels, payments/collections, supervision standards, and the identification of potentially indigent probationers. The contracts and governmental agreements should also include a provision allowing a compliance audit or review.

3. Courts should consider limiting contracts to no more than five years.

Provider Response: *One provider responded to the report. Regarding this finding, the provider stated that it would add provisions to its contract to address conflicts of interest, compliance audits, methods for payments, and noncompliance thresholds.*

Courts should improve the monitoring of probation providers by requiring meaningful reports and periodic compliance reviews.

Most courts do not receive quality reports of activity or probationer performance and few require providers to undergo performance or compliance reviews.

Courts generally have not established sufficient methods to evaluate the performance of probation providers. While providers may submit periodic financial and activity reports to the court, the reports lacked the information necessary to effectively assess the probationer population or provider's performance. Furthermore, audits permitted by some provider contracts were limited to financial matters, which would not permit an assessment of other contract terms.

While a provider is responsible for day-to-day operations, the court is responsible for monitoring the provider to ensure performance is satisfactory. State law grants

the chief judge of a court the authority to establish a public probation office or select a private probation provider. The power to choose a provider is necessarily accompanied by a responsibility to ensure the selected provider is performing as expected. In the case of private providers, a government can outsource the provision of services. But it cannot outsource the responsibility for ensuring the services are provided properly. The responsibility for contract monitoring falls to the entity requesting and receiving the service.

Several judges we interviewed indicated performance assessments are largely based on their interaction with provider management and officers during court hearings. While interaction is a valid method of oversight, a comprehensive assessment requires additional methods. Routine, periodic reports of key information submitted to the court and less frequent compliance reviews conducted by court or third party personnel can provide both the court and public with greater assurance that the probation provider is acting in accordance with court expectations and providing the level of service expected.

Reports to the Court

A well-designed summary (or "dashboard") report of activity data and performance indicators can be an effective means for the court to monitor provider operations, contract compliance, and probationer outcomes. A dashboard report like the one in **Exhibit 6** can provide court officials and providers with a summary of data for the entire probation population without burdening the court with lengthy content. Including multiple time periods allows a court to compare prior period activity and performance.

Reports submitted to courts vary significantly in content and length. One court receives a one-page operations summary report quarterly that contains active case counts, staffing ratios, total financial collections, and prior period baseline data, while another receives a 1,000+ page report that details the payments made by each probationer over the past quarter.

O.C.G.A. § 42-8-103 requires providers to submit a quarterly report to CMPAC and the court official with whom a contract or governmental agreement has been established. These reports require only limited activity and performance information, such as total financial collections and the number of cases closed successfully and unsuccessfully. Courts can require additional information from the providers to better assess the performance of the probationers and the provider.

We analyzed the content of reports submitted to court officials from 29 jurisdictions and found that most do not provide the type of information needed to assess performance. In fact, many reports do not meet the minimum requirement in state law. **Exhibit 6** shows the number and percentage of jurisdictions that receive report content for three categories: active cases, closed cases, and probation provider operations.

- **Active Cases** – Providers were most likely to include case load and financial information about active cases in reports to the court.
    - *Case Load* – Fewer than half of reports include overall active case load, closed cases, and warrants issued (13 of 29). Not only are these useful for performance assessment, state law requires they be reported to the court.

Exhibit 6
Reports provide little information to inform a performance assessment

Item	Number with Item (of 29)	%
ACTIVE CASES		
Case Load		
# Active Cases*	13	45%
# Warrants Outstanding*	13	45%
# Cases Added*	12	41%
# Cases Closed*	13	45%
Collections		
Supervision Fees	2	7%
Fines, Surcharges, and Court Costs*	26	90%
Crime Victim's Fee (CVF)*	12	41%
Victim Restitution *	18	62%
Drug Testing		
# Administered	1	3%
% Passed	1	3%
Community Service Work		
# Hours Completed*	9	31%
# Probationers w/ Financial Obligations Converted to CSW	1	3%
$ Converted to Community Service Hours	1	3%
CLOSED CASES		
Case Load		
# Closed Successful*	12	41%
# Closed Unsuccessful *	13	45%
- % Due to Re-arrest/Revocation	0	0%
- % Due to Failure to Make All Payments	0	0%
- % Due to Failure to Complete Comm. Service	0	0%
- % Due to Failure to Complete Evaluation/Treatment	0	0%
Collections		
$ Collected	1	3%
$ Outstanding	1	3%
% Fines, Surcharges, and Court Costs Paid	0	0%
% Crime Victim's Fee Paid	0	0%
% Restitution Paid	0	0%
OPERATIONS		
# Probation Officers (Full-time Equivalent)	1	3%
Average PO Caseload	0	0%
Maximum PO Caseload	0	0%

*Indicates data reported quarterly to comply with OCGA 42-8-103
Source: Reports provided by probation providers

- *Financial Collections* – Many of the reports did not contain adequate financial collection data for court fines, state surcharges, and restitution, which is required by state law. Most reports included data related to financial collections remitted directly to the court (e.g., court fines, most surcharges, and court costs) (26 of 29), but far fewer included data related to financial collections remitted to external parties, such as crime victims (restitution) (18 of 29) or the state (crime victim's fund fee) (12 of 29).

Few reports included collections for supervision fees paid to the probation provider (2 of 29). State law does not require providers to report collections for supervision fees or other provider fees (e.g., sign-up fee, drug test fees); however, a court may require the information to monitor the ratio of supervision fee collections to funds collected for the court.

- *Drug Testing* – Only one report included data on the number of drug tests administered or the percentage of tests passed/failed by probationers. Because drug testing fees can be significant and may be prioritized ahead funds to the court, transparency regarding the frequency of drug testing can be useful to ensure tests are not used as a revenue generator.

- *Community Service Work* – Approximately one-third of reports included data on the number of community service hours worked by probationers (9 of 29).[4] However, few reports included data on the number of probationers who had financial obligations converted to community service and/or the total financial obligations converted (2 of 29).

- **Closed Cases** – Courts received little information on cases that closed during the reporting period.

  - *Successful/Unsuccessful Outcomes* – Fewer than half of the reports to the court identified the number of cases closed successfully (all conditions of probation were completed) and unsuccessfully (at least one condition of probation was not completed at the end of the term). This information allows courts to evaluate how well probationers are completing conditions of probation. It may also allow a court to compare the number of unsuccessful completions with provider efforts to bring non-compliant probationers back before the court.

    State law requires that probation providers report the number of terminated cases to the court and the reason for the termination. CMPAC requires this report in the form of a count of cases closed successfully and unsuccessfully.[5] We found that all public providers (6 of 6) included this data in reports to the court, though less than one-third of private providers (7 of 23) did. No reports contained data detailing the reasons cases were closed unsuccessfully, such as a failure to complete community service or failure to make all required payments.

  - *Financial Obligations Collected/Uncollected* – Only one report included the amount of funds collected and the amount of funds outstanding for the cases closed during the period. In this case, the court can measure the

[4] CMPAC requires probation providers to report the community service hours worked, but it is not specifically required by state law.

[5] We found evidence suggesting that this data being reported to CMPAC may be inaccurate. For example, one large private probation provider reported a successful outcome rate of greater than 95%, compared to a rate of less than 30% found during our limited file review. It should be noted that the size of our case file review sample was not large to confirm an error in reporting. However, the office manager confirmed that the data reported to the state by the provider's corporate office was incorrect and estimated that the success rate we observed in our limited sample was likely more accurate.

percentage of funds paid/unpaid for cases that were terminated during the period. No report differentiated the percentage of funds paid by type (e.g., % of restitution, % of fines, % of surcharges).

- **Operations** – Courts can request data relevant to probation provider operations (including officer staff count and officer caseloads) to evaluate efficiency and ensure compliance. For example, some jurisdictions have officer case load maximums established in contracts. However, few courts receive reports to track compliance.

Auditing Compliance

Periodic compliance audits can be an effective means to ensure that providers comply with the contract terms. A compliance audit consists of comparing a provider's operation to a court's expectations as detailed in the contract or agreed-upon policies and procedures. An audit does not have to include all aspects of a provider's operations, and the aspects reviewed can change from one audit to the next.

We found that courts have not always included clauses to allow compliance audits in contracts. Only half of the contracts and governmental agreements we reviewed included a clause that authorized any type of audit (15 of 29), and with many referring only to a financial-related audit. No contract clearly identified compliance audits as the type of review to be conducted and few address performance or operations audits. Among the 13 jurisdictions we visited, only two *required* providers to have audits conducted, and most of the audits permitted by contracts and governmental agreements are financial in nature. One provider that was required by contract to provide the court with a written copy of their annual financial audit had not done so because the court had not requested it.

We found evidence in a neighboring state of a county government that has developed an effective contract checklist to facilitate compliance audits. It was designed to measure compliance with agreements for staffing levels, evaluation referrals, completeness of file maintenance, case management of special conditions, and administrative actions (e.g., request for revocations). The box below includes a sample of questions from the checklist.

Case Study: Compliance Audits

In a Florida county, the local government has created an audit checklist to evaluate contract compliance. It is a straight-forward review instrument that identifies operational areas the county wanted to ensure were adhered to, including staffing levels, evaluation referrals, completeness of file maintenance, case management of special conditions, and administrative actions.

Below are a sample of questions included in the instrument:

- ***Records****: Are files maintained for each case that include all appropriate data fields (e.g., probationer name, case number, charges, payment records, violations, etc.)?*
- ***Special Conditions****: Do records show that special conditions are enforced appropriately (e.g., community service, evaluation and treatment, and restitution payment)?*
- ***Violations****: Do violation affidavits include circumstances under which revocation is recommended?*
- ***Case Load****: Is the probation officer to probationer ratio at or below the agreed upon ratio?*
- ***Payments***: *Is the contractor charging the appropriate fees? Are funds remitted completely and in accordance to time standards?*

Source: Florida County Compliance Survey

RECOMMENDATIONS

1. Providers should report to the courts all data required by O.C.G.A. § 42-8-103.

2. Courts should request more comprehensive summary reports to more effectively monitor activity data, probationer outcomes, and provider performance/compliance.

3. Courts should require periodic compliance audits to evaluate how well providers adhere to contract terms.

The General Assembly and CMPAC can address issues identified in our review, but most issues can be addressed more effectively by the courts and providers.

State oversight of misdemeanor probation providers is directed by requirements found in O.C.G.A. § 42-8-100 through § 42-8-108. The law establishes both professional standards (see **Exhibit 7**), such as criminal background checks and initial and on-going training for officers, as well as contract standards, such as staffing levels, standards for supervision, procedures for handling funds and indigent probationers, and others. Through audits of a sample of providers, CMPAC determines if providers are in compliance with state law and its own associated regulations. It does not have the authority to address case management issues or resources to ensure compliance with all contract terms.

The scope of our audit exceeded the statutory requirements noted above. Our scope focused on the management of cases by probation providers and the oversight of providers performed by the courts. Our review of compliance with the statute above was limited to determining whether certain required provisions were included in contracts and governmental agreements. Given our scope, the issues identified are largely operational and the recommendations are made primarily to the providers and courts.

Courts and providers remain the key entities to improve misdemeanor probation operations, but the state can consider steps to address any or all of the deficiencies noted in the report. Additional statutory requirements, additional state enforcement, and changes to CMPAC reporting could all have an impact.

- *Statutory Requirements* – The General Assembly could address the topics of the report with additional legislation. However, many of the deficiencies were in areas already included in uniform contract standards. We found numerous contracts that did not contain the required provisions and many that contained a provision that was not specific enough to prevent the operational deficiencies observed. For example, statute requires the handling of indigent probationers be included, and many contracts provide that the court will determine indigence. However, the contracts rarely state when the provider should request a court determination (e.g., multiple missed payments; lack of employment). As a result, some providers rarely sought the court's assessment despite the majority of probationers falling behind in payments and some failing to ever pay all funds owed.

The General Assembly could expand the standards to require that contracts prohibit or require certain actions. Since more than 700 courts receiving misdemeanor probation services have varying expectations, some flexibility in contracting requirements is necessary. Specifying contract provisions would be most useful if prohibiting a specific undesirable practice (e.g., extending probation term without tolling approved by court; charging excessive supervision fees).

Exhibit 7
Summary of O.C.G.A. § 42-8-102 Uniform professional and contract standards

The uniform professional standards require probation officers:

- Be at least 21 years of age and have completed a two-year college course or have four years of law enforcement experience (some officers were grandfathered)
- Receive 40 hours of orientation upon employment and 20 hours of continuing education per year

The uniform contract and governmental agreement standards require that the following terms be included in all contracts and governmental agreements.

- The extent of the services to be rendered by the provider
- Any staff qualification, including those in state law and others
- Requirements for criminal record checks
- Policies and procedures for the training of staff
- Bonding of staff and liability insurance coverage*
- Staffing levels and standards for offender supervision, including frequency and type of contacts with offenders
- Procedures for handling the collection of all court ordered fines, fees, and restitution
- Procedures for handling indigent offenders to ensure placement*
- Circumstances under which revocation of an offender's probation may be recommended
- Reporting and record-keeping requirements; and
- Default and contract/agreement termination procedures.

* Private probation providers only

The code section also requires CMPAC to provide a report to the General Assembly every two years that includes a review of the uniform professional and contract standards.

Source: DOAA review of state law

- *CMPAC Enforcement* – In fiscal year 2013, CMPAC conducted 21 compliance reviews, representing approximately one quarter of registered providers.[6] The reviews focus on statutory requirements and associated regulations, such as staff background checks and training and contract standards. CMPAC also conducts a limited file review to observe case management practices, though its findings cannot be enforced by state law or regulation. However, CMPAC reviews only a single contract/governmental agreement and conducts the file review at a single provider location. Larger providers may have contracts with dozens of courts. It should also be noted that new statutory requirements could expand the scope of CMPAC's reviews and its workload.

[6] While our scope did not include a review of CMPAC's performance of its duties, we obtained CMPAC compliance reviews for a sample of providers and found that they covered the topics included in state law and CMPAC regulations. We also observed CMPAC had taken administrative actions against a number of providers as a result of poor compliance reviews. These actions included placing providers on probation and license revocation.

Since contracts and governmental agreements are the primary methods of courts documenting their expectations of providers, CMPAC could temporarily re-direct resources to allow for a review of all current documents. CMPAC could require that all contracts and governmental agreements be submitted, ensure the required provisions are present and adequate, and require all new documents be submitted upon execution.

- *CMPAC Reporting* – While a complete review of CMPAC operations was outside the scope of our review, we noted a number of issues that could be addressed by existing CMPAC staff. The results of CMPAC compliance reviews are not shared with the contracting judge, and a summary of compliance reviews is not included in its annual report.

While state action can positively impact misdemeanor probation operations, additional engagement by the courts and management controls by the providers are essential. Over 700 courts have contracts and governmental agreements with misdemeanor probation providers, and the judges in those courts express different expectations. Therefore, compliance reviews completed by CMPAC – even with an expanded scope in law – cannot be relied upon to ensure that court expectations are met. Contract oversight can most effectively be performed by the entity contracting for services.

RECOMMENDATIONS

1. The General Assembly can consider addressing any of the operational deficiencies in the report through additional uniform contract standards. Given varying service expectations of courts, the General Assembly should focus on the practices to be most abusive or undesirable.

2. The General Assembly should consider whether CMPAC has the resources necessary to ensure that providers and courts comply with current state law (or any future law).

3. CMPAC should provide the contracting judge with results of compliance reviews and summarize compliance reviews for inclusion in annual reports.

4. CMPAC should consider conducting a review of all contracts and governmental agreements in effect and requiring future documents be submitted upon their execution.

CMPAC Response: *Regarding the first recommendation directed to CMPAC, the Council stated has "instituted a policy of providing the Chief Judge of the court…with a copy of the compliance review report completed by CMPAC staff." Regarding the second recommendation, the Council stated, as part of its compliance visits, it reviews contracts and/or governmental agreement to ensure appropriate signatures and statutorily required law are included. It also stated, "As mentioned in this report due to limited resources staff does not have the capability to review contracts to the extent of this recommendation."*

Reporting

Probationers are typically required to report to their probation officer as a condition of probation. Probationers are instructed on both the required frequency and type of reporting necessary to comply. Depending on the provider's practices, probationers may be required to report weekly, bi-weekly, or monthly. Most reporting takes place in the provider's office, though phone calls or mail may be permitted in some instances.

The frequency and method of reporting may be changed during their term of probation as a result of continuing compliance or non-compliance with conditions of probation. For example, providers will often increase reporting frequency for probationers who miss reporting appointments or who are not fulfilling other conditions of probation, such as making payments, completing community service, or completing evaluation and treatment programs. When a probationer consistently fails to report, it is often considered a serious probation violation that can result in a request for revocation or a request for an arrest warrant.

Probation providers should have written reporting policies for both compliant and non-compliant probationers, and courts should ensure that provisions detailing the frequency and type of reporting are included in contracts and governmental agreements, as required by state law.

We found many cases in which reporting requirements were not properly enforced, as well as inadequate policies detailing thresholds of probationer compliance and non-compliance that will change reporting requirements or result in other administrative actions. Finally, a majority of contracts and governmental agreements we reviewed did not include both the frequency and type of reporting required of the probationer, as mandated by state law.

Reporting Requirements and Case Management

We found problems related to how officers imposed and managed reporting requirements in approximately one-quarter of the cases reviewed (94 of 390). Case management problems fell into three categories: failure to impose general supervision standards, failure to respond to probationers who missed reporting dates, and extending the reporting requirements beyond the term of probation—in some cases—to collect outstanding fines and fees. Case examples are presented below:

- ***Failure to Impose General Supervision Standards*** – Officers failed to impose the supervision standards established in provider policy (when they existed) or by court order in some cases.
    - One provider requires officers to increase reporting to a weekly schedule if the probationer is materially non-compliant. However, in many cases we reviewed, probationers who failed to report, complete required programs, or complete community service were not required to report more frequently than compliant probationers.

The supervising officer indicated that staff shortages prevent them from executing the policy in practice.

- A probationer had to report for 12 months, undergo a drug and alcohol evaluation, complete a risk reduction program and MADD impact panel, and complete 40 hours of community service. While the sentencing order permitted the probation officer to change the supervision to non-reporting status after 6 months if conditions were completed, the officer authorized non-reporting status after only 2 months with several conditions outstanding.

- A probationer sentenced to 12 months supervision in February 2011 paid all fines and fees (including 12 months of supervision fees) at sentencing. The probationer reported via telephone in March 2011 and failed to report again. The case was closed successfully after 12 months.

- ***Failure to Respond to Missed Reports*** – In some instances probationers missed reporting requirements for months without the officer taking administrative action.

  - In January 2011, a probationer charged with DUI was sentenced to 12 months of probation, payment of fines and fees, 40 hours of community service work, and DUI school. The provider policy requires that probationers report every week if all conditions have not yet been met. However, once all outstanding fines and fees were paid at sentencing, the probationer failed to report for seven months. When the officer mailed a letter of outstanding conditions in September, the probationer reported the following week for the first time, began DUI school, and began community service work.

  - A probationer was sentenced to 12 months of probation for a DUI in January 2011, given 80 hours of community service work, and instructed to report monthly. The probationer reported via mail monthly through March but made no further contact with the officer. The officer failed to take any action until August (nearly five months after the probationer's last mail report), at which time a probation revocation and warrant were requested.

  - A probationer was sentenced to 12 months of probation for speeding and driving with a suspended license in January 2011. In June the probationer paid all outstanding balances for fines, surcharges, and supervision fees. The officer continued to make case notes indicating the probationer failed to report as instructed for the next four months, but the officer took no administrative actions. The case was closed successfully in January 2012, with no other case notes entered.

- ***Extended Reporting Beyond Term*** – In at least 10 cases, the officer required a probationer to report (and pay financial obligations) after their probation term had expired. In many cases, the probationer was instructed

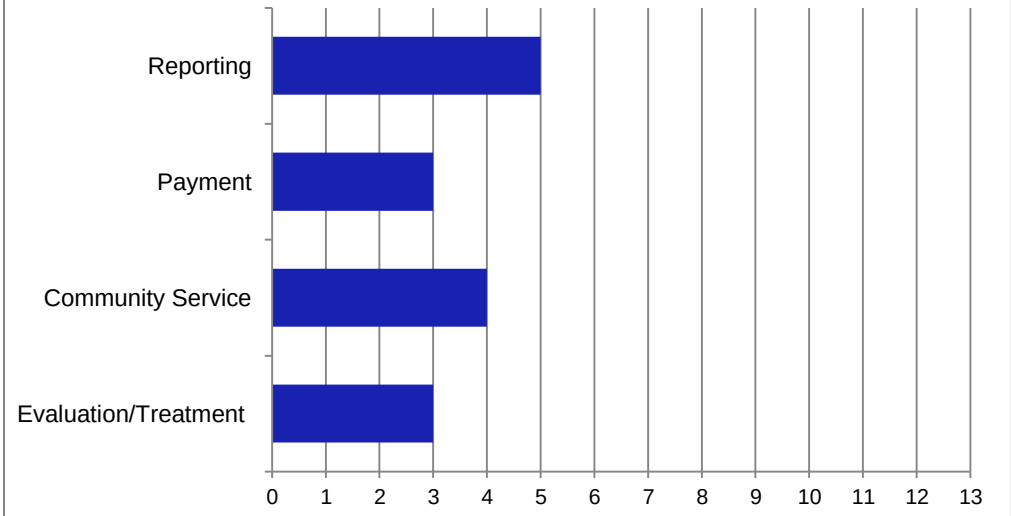
to report for several weeks or months after the term expired. This is discussed in greater detail on page 27.

Reporting Policies

The content and completeness of supervision policies varied among the 13 providers reviewed. Most had policies detailing the frequency and type of reporting required of compliant probationers. Nine of 13 providers required compliant probationers to report monthly, while 4 of 13 providers required compliant probationers to report more frequently (e.g., twice a month or weekly reporting).

While reporting is a standard condition of probation, it is also used by providers as a response to probationer non-compliance. Providers increase the reporting frequency for a probationer who becomes non-compliant with conditions of probation (e.g., from monthly to weekly). However, when increased reporting will be required is unclear. As shown in **Exhibit 8**, less than half of the 13 providers reviewed have written policies detailing how reporting requirements will change for probationers who become non-compliant due to a failure to make required payments, report as required, perform community service, or complete evaluation and/or treatment. Only two providers had adequate policies for each of the four conditions.

Exhibit 8
Many providers lack written policies detailing whether reporting will be increased due to non-compliance with typical probation conditions



Source: DOAA review of provider policies

In addition, many provider policies do not address how, or if, reporting requirements will be reduced because of the probationer becoming compliant (e.g., becoming current with payments, completing community service).

When a probationer's non-compliance includes repeatedly missing scheduled reporting dates, increasing reporting frequency is no longer an effective option. However, only about half of probation providers have sufficient policies explaining

when officers should use other actions, such as requests for revocations and warrants, for probationers who fail to comply with reporting requirements.

Reporting frequency can greatly affect the ability of a probationer to remain compliant. For example, a weekly reporting requirement provides 52 opportunities for the probationer to become non-compliant. Providers typically will include missed reports along with payment violations as a basis for requesting arrest warrants.

It should be noted that some misdemeanor probationers report more frequently than individuals convicted of felonies, whose contacts vary from monthly phone calls to three times a month for the most high-risk individuals.

Contract Content

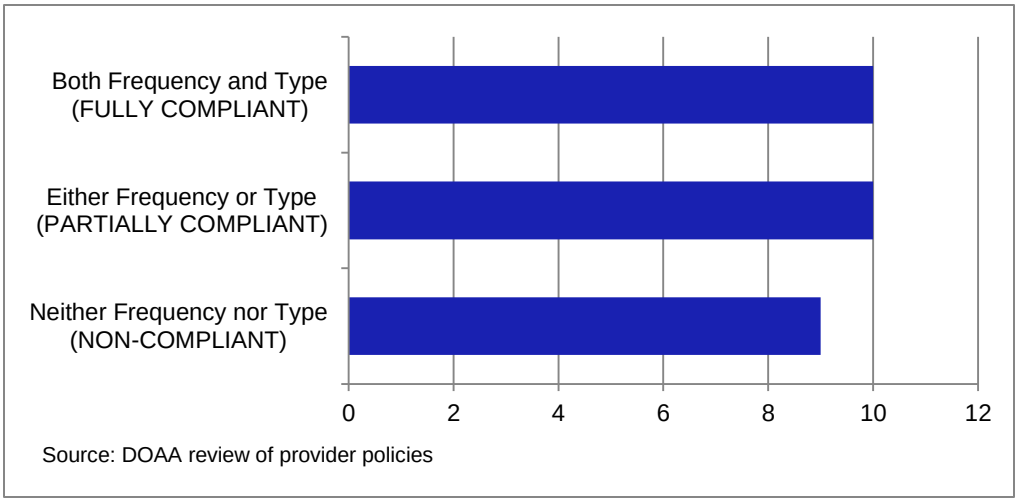
State law requires that contracts and governmental agreements include supervision standards that probation providers will use when managing probationers. Uniform contract standards established in state law (O.C.G.A. § 42-8-102) require that both the *frequency* and *type* of contacts with probationers be included. However, many contracts and governmental agreements do not comply.

Most contracts and governmental agreements do not include complete supervision standards and therefore do not comply with state law.

As shown in **Exhibit 9**, nearly one-third (10 of 29) of contracts and governmental agreements failed to identify the reporting frequency (e.g., weekly, bi-weekly, monthly) for probationers and nearly two-thirds (18 of 29) failed to identify the reporting type (e.g., in-office, telephone, mail). Nearly two-thirds (19 of 29) failed to comply fully complied with state law by including both the frequency and type of reporting requirements for supervision standards.

While providers frequently have policies to increase reporting requirements for probationers deemed non-compliant with certain conditions of probation, contracts and government agreements often did not explain the reporting frequency for those cases.

Exhibit 9
Only 10 of 29 contracts reviewed explain both the frequency and type of probationer contact



Source: DOAA review of provider policies

RECOMMENDATIONS

1. Providers should ensure that officers execute the reporting requirements as established in policies and procedures.

2. Providers should develop written supervision standards that explain reporting requirements for compliant and non-compliant probationers. Standards should detail the violations that will cause increased reporting requirements and the compliance that will cause decreased reporting.

3. Providers should develop written policies explaining what actions will be taken (e.g., request for revocation or warrant) for probationers who fail to report.

4. Courts should ensure that contracts and governmental agreements include both the type and frequency of reporting for both compliant and non-compliant probationers.

Payment Collection

Probationers frequently have to satisfy a financial obligation of court fees and state surcharges at the onset of the probation term and may have to pay victim restitution. In addition, they incur charges during the term in the form of monthly supervision fees and (possibly) other fees, such as drug testing fees or treatment program fees. The probation provider establishes a payment plan for the probationer to follow to remain compliant and eventually satisfy the financial obligations.

A probationer's payment plan requires equal payments at designated intervals for a specified length of time. The plan may spread the amount owed of fines and surcharges over the entire probation term or over a shorter period. This payment time standard may be issued directly by the judge as part of the sentence, but often the standard is derived from the probation provider's policy.

If the probationer fails to comply with the established payment plan, the probationer's account will fall into arrears and the probationer is considered non-compliant. If a probationer is non-compliant, the officer may take administrative actions, such as requiring the probationer to report more frequently. If the violation is persistent or substantial, the officer may require the probationer to return to court for a hearing and present evidence to the judge explaining the violation. Officers may recommend the probationer be deemed indigent (unable to pay the financial obligation to the court).

In instances of potential indigence, courts may waive financial obligations such as court fines and surcharges and convert the obligation to community service work. The court may depend on the officer to present information to help determine indigence.

Probation providers should establish written policies to address financial non-compliance. In addition, providers and courts should ensure probation terms are not improperly extended and that arrest warrants are not improperly used to compel payments.

Although probationers in our sample frequently fell into arrears at some point during their term, many providers did not have proper methods in place to address financial non-compliance. We found cases in which financial non-compliance was not addressed in a timely manner, as well as limited instances in which providers improperly extended probation terms or used arrest warrants in a questionable manner in order to collect fines and fees. We found problems with the management of about one-third of the 291 non-compliant cases.

Addressing Financial Non-Compliance

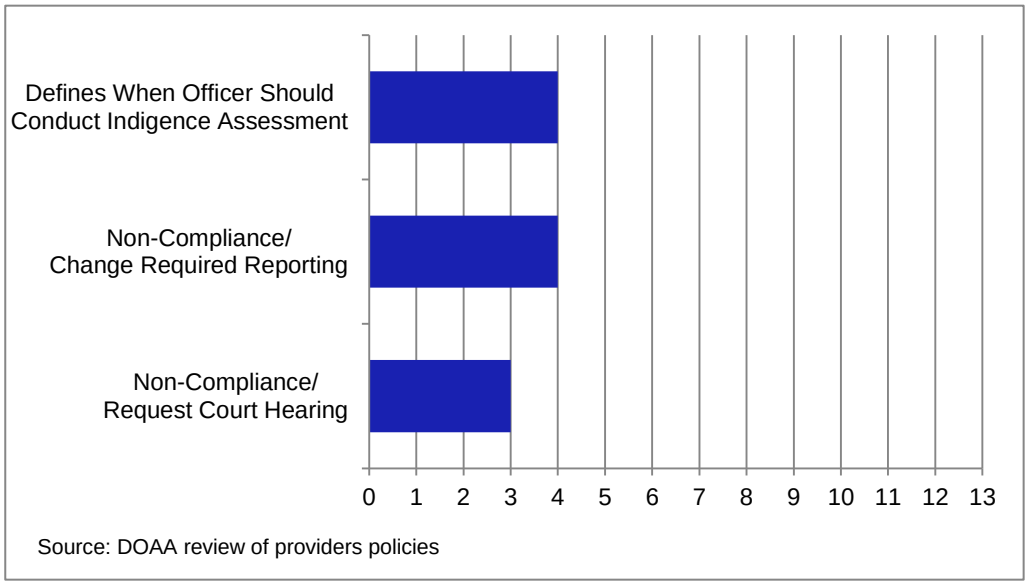
The most common problem with handling non-compliant cases was the lack of action taken by providers. These cases included those in which the probationer fell months behind scheduled payments and the officer failed to take any administrative action, or did so many months after the problem began. For example:

- A probationer sentenced to 6 months of probation in January 2011 and required to pay $871 in court fines failed to make any payments. The case notes show no evidence that the case was supervised during the entire term. The officer sent a letter to the probationer's address in July acknowledging the term was expired and the entire balance of fines, surcharges, and supervision fees (and community service hours) had not been completed.

- A probationer was sentenced to 12 months of probation in January 2011 and required to pay $1,036.50 in court fines and state surcharges. The probationer last reported in October with an outstanding balance of $948.50. The probation officer never attempted to contact or take administrative action on the case before closing it in January 2012.

These types of cases are partly the result of insufficient policies for managing financial non-compliance. Provider policies rarely defined the level of payment non-compliance that should result in a particular action by the probation officer. For example, as shown in **Exhibit 10**, few providers have developed policies explaining how far behind a probationer should be in expected payments to prompt the officer to conduct an indigence assessment (4 of 13), to require increased reporting (4 of 13), or to request a court hearing (3 of 13). One provider that provides an example of a detailed policy requires officers to schedule a revocation hearing if a probationer's account falls two months into arrears. The hearing allows the court to address the non-compliance, which could cause a conversion of fines to community service or a revocation of probation.

Exhibit 10
Few probation providers have adequate financial non-compliance policies



Source: DOAA review of providers policies

Providers frequently increase probationer reporting requirements as a first administrative response to payment non-compliance; however the level of non-compliance to trigger the change was often not defined.

Even if policies are established, they may not be complied with. For example, one provider with a policy requiring financially non-compliant probationers to report every week failed to take the expected action. The chief probation officer indicated the policy is not enforced due to staff shortages. Half of the cases we reviewed from this provider did not comply with their policies for responding to financial non-compliance.

Our review of provider practices also indicated that case notes and probation provider financial systems often did not contain a precise record of an arrears balance and non-compliant probationers were not specifically informed of a payment amount that would bring them back into compliance.

Extending the Probation Term

When a probationer fails to report as instructed, the officer may submit an arrest warrant to the court. The officer may also submit an affidavit to "toll," or pause, the probation term during the period when the probationer is unavailable to the court (or probation provider). Except for circumstances related to tolling, the term of probation constitutes the entire time period for which the probationer must comply with instructions from the officer. Once the term has expired, probation providers legally may not require the probationer to continue to report to pursue outstanding financial obligations (including supervision fees or court fines).

We found at least 10 cases (managed by 5 providers) in which the probationer was required to continue reporting and paying financial obligations beyond the expiration of the probation term. In many of these cases, the probationer was instructed to report for several weeks or months after the term expired. For example:

- When a probationer's term expired in January 2012, the officer required the probationer to continue reporting. The probationer reported 34 times between January and November 2012, paying more than $1,500 in financial obligations.

- A probationer whose term expired in January 2012 was instructed to continue reporting on a weekly schedule and to pay outstanding financial obligations. The probationer reported four times and paid $611 in outstanding financial obligations ($371 in fines and $240 in supervision fees) for several weeks during this expired period.

For three of five providers with these types of cases, we did not find written policies addressing the extension of a probationer's term. Consequently, we could not conclude if the cases followed management expectations.

A fourth provider imposed a policy of extending probation beyond the original term as evidenced by a monthly financial report to the court that contained a category of probationers "expired, but paying." We found cases in which probationers were reporting and making payments on terms that had expired years earlier.

Use of Arrest Warrants

Probation officers may submit a request for an arrest warrant to the court for any type of probation violation. However, requests for warrants often cite more significant probation violations such as absconding, testing positive for drugs, being

re-arrested, or posing an immediate threat to public safety (e.g., appearing drunk during an office visit). The arrest of a misdemeanant probationer actively reporting, not considered a flight risk, and not posing a public safety threat is a questionable use of resources. It can cause substantial costs to both the probationers and local taxpayers. A less costly option for recurring probation violations is often a court hearing for probation modification or revocation.

In our sample of 390 probationers, arrest warrants were requested for approximately 120 at some point during their probation term. Providers typically include missed reports along with payment violations as a basis for requesting arrest warrants. It should be noted that warrant requests are typically reviewed and signed by a judge.

O.C.G.A. § 42-8-102 requires that contracts and government agreements include circumstances under which a request for probation revocation can be made, but a similar provision for arrest warrant requests does not exist.

When multiple violations are noted, it is not possible to determine the condition that served as the *primary basis* for seeking the warrants. However, our review of case notes and warrant requests found several instances in which providers appeared to improperly use warrants or the threat of arrest to compel payments. In other instances, providers sought warrants for cases that included non-compliance with payment but did not similarly address cases of significant non-compliance with other probation terms (if the probationer had made all payments). Examples of practices and cases include:

- One provider required probationers to sign a document stating failure to pay supervision fees will "result in a warrant being issued." The provider also created warrant requests stating probationers actively reporting could not be located, held warrants in the probationer's file instead of providing to law enforcement, and dismissed warrants upon payment.

- In one case we reviewed, the provider threatened the probationer with arrest in month 10 of probation for failing to make payments on $352 in supervision fees. Though the probationer was actively reporting, the provider stated on the warrant request that "all attempts to locate the subject have failed." Case notes stated that the probationer's "fees must be current for the warrant to be dismissed" and that the warrant was to be held in the probationer's folder (as opposed to forwarded to law enforcement officials). When the probationer paid $150 several weeks later, probation office personnel dismissed the warrant. A month later, a second warrant request was drafted, also indicating the probationer had absconded. The second request was not submitted to the court before full payment was made by the probationer.

- One provider obtained 13 arrest warrants (among the 30 cases reviewed) for cases in which non-payment was a factor but failed to request warrants for any cases in which significant non-compliance of other conditions was present. For example, one probationer sentenced to 12 months supervision paid all fines and fees on the date of sentencing. Despite a requirement to report monthly, the provider had no contact with the probationer for the final 11 ½ months before designating the case as successfully closed. Another probationer, who had already paid all fines and fees, did not report for the final four months of the 12-month term with no action taken, while a third failed to complete a defensive driving course (case notes indicate the course was never discussed).

Arrest warrants may be sought for any type of probation violation, including non-payment of fines and fees; however, our review indicated that some warrant requests were questionable. While courts review all warrant requests, they may have a limited understanding of provider operations and, for a warrant request, largely rely on the limited documentation submitted by the provider. Contracts do not provide guidance regarding the types of violations or frequency of violations that might result in a warrant request.

O.C.G.A. § 42-8-102 requires that contracts and government agreements include circumstances under which a request for probation revocation can be made, but a similar provision for arrest warrant requests does not exist. Unlike a probation revocation request, a warrant request does not provide a probationer with an opportunity to appear before the judge prior to incarceration. Provisions detailing the types of probation violations that merit a warrant request could ensure that providers do not emphasize just one condition (e.g., payment) unless directed to do so by the court.

RECOMMENDATIONS

1. Providers should develop written policies and procedures that establish criteria that define a probationer's financial non-compliance and explain the type of administrative responses, such as increased reporting requirements, that will be imposed.

2. Providers should ensure that officers monitor probationers in a manner consistent with court-established deadlines and provider policies.

3. Providers should not actively supervise, require reporting, or threaten probationers with punitive actions for failing to comply with financial obligations once the probation term has expired.

4. Courts should include a contract provision forbidding providers from requiring probationers to continue to address probation conditions beyond the term established in the original sentence, or for a time period beyond that which is provided under appropriate tolling procedures.

5. Courts should consider including a contract provision detailing the level of non-compliance for which an arrest warrant should be sought. This may include prohibiting warrant requests for actively reporting probationers, unless they are arrested or fail a drug test. If many warrant requests include non-payment as a significant condition of non-compliance, courts should consider requiring providers to conduct an indigent assessment early in the probation term.

6. The General Assembly should consider amending O.C.G.A. § 42-8-102 to include as a uniform contract standard the conditions for which an arrest warrant should be sought.

Provider Response: *One provider responded to the report. Regarding this finding, the provider stated that it would add policies and procedures for addressing financial noncompliance.*

Probation providers should establish probationer payment plans based on the fine amount and time frame approved by the court.

More than 90% of probationers in our review were assessed fines and other financial obligations as part of their sentence.

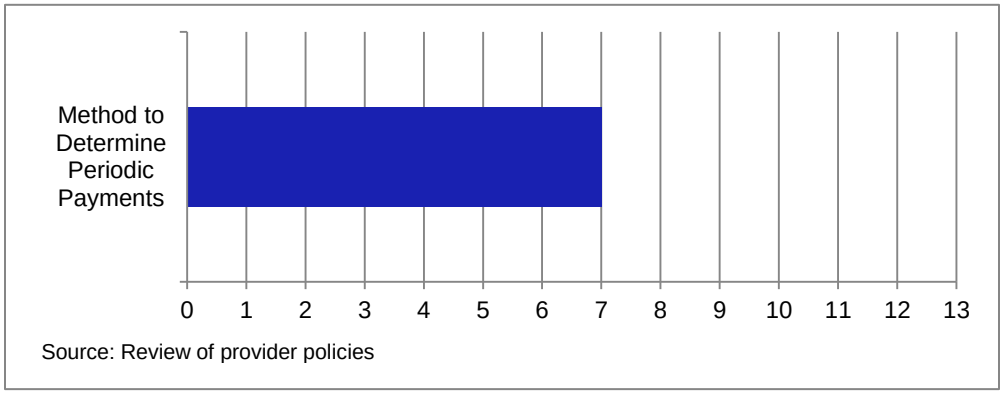
Providers vary in the methods they use to set the periodic amount that probationers must pay to remain compliant with financial terms of probation. Most providers require either weekly, bi-weekly, or monthly payments to pay off financial obligations. Some providers (or courts) require that financial obligations to the court be paid off well before the end of the probation term, while others allow pay off over the entire term.

We found that some providers do not have written policies detailing how payment plans should be established. We also found cases in which officers set payment schedules higher than those established by provider or court policy.

Payment Policies

As shown in **Exhibit 11**, seven[7] of 13 providers have written policies that guide how officers set probationer payment amounts. Five other providers indicated their office had a policy, though unwritten, that was known by officers. The remaining provider did not set payment amounts; the amounts were set by the court clerk.

Exhibit 11
Just over half of providers had a written policy guiding the calculation of payment amounts



Source: Review of provider policies

Our review of the seven written and five stated policies found that some had methods that could increase the likelihood of probationer non-compliance. All policies required either a minimum payment each period (weekly, bi-weekly, or monthly) or required a payment calculated by dividing the financial obligation by a period of time (e.g., $1,200 divided by six months=$200/month). While five providers calculated payments using most of the probationer's term, seven providers (or courts) had policies that could require probationers to make full payment long before their probation term was set to end.

- *Minimum Payments* – Three providers apply a "minimum payment" standard that requires probationers to bring in a set amount of funds regardless of the actual monies owed in a case. The minimum payments ranged from $140 - $180 a month. These policies can result in payment amounts larger than

[7] One court included the timeframe for payment of all fines and restitution on the sentencing sheet.

necessary to meet the financial obligation to the court during the probation term, especially if the financial obligation to the court is not large. We saw a limited number of cases in which probationers with 12-month sentences and fines of less than $350 had to pay the entire balance within one to two months, due to the minimum payment policy.

- *Time Period* – Four providers require payments be completed within the first half of the probation term. This doubles the amount owed each month when compared to a payment plan using the entire probation term. It should be noted that courts may desire the shorter period for full payment so that there is ample time to address non-compliance. If a probationer fails to make a payment owed in the final month of a term, the provider and court have a limited ability to address the non-compliance.

As noted above, five providers had policies that considered a longer portion of the probationer's sentence. Two providers divided the financial obligation by the total number of months of probation, while three based the payment amount on a slightly shorter time frame (e.g., probationers serving 12 months would make all payments in 10 months). The latter policy makes financial compliance more attainable but still allows time for the court to address non-compliance.

While a payment plan can encourage compliance by decreasing the likelihood that a probationer will need to produce a large sum at the end of the probation term, payment plans can increase non-compliance early in the term if the payment amount is set unnecessarily high. Any non-compliance permits a provider to take an administrative action, such as increasing required reporting or seeking a modification or revocation of probation.

While the method for setting payment amount can affect the degree of probationer non-compliance, it is not clear that courts have always provided guidance to the probation providers. Only one of 13 contracts and government agreements contained the method that providers should use for calculating payments. Another court set the expected payment timeframe during sentencing.

Policies Not Followed

We found more than 60 cases in which the provider's written or stated policy was not applied. Often, the probationer had to comply with a payment obligation that was higher than that put forth by the provider's policies. For example:

- A public provider required a probationer to comply with a bi-weekly payment plan of $151 though the policy required $59 bi-weekly. The result was an increased financial obligation of $184 per month.

- A private provider required a probationer to comply with a weekly payment plan of $145 though the policy required only $73 weekly. The result was an increased financial obligation of $288 per month.

These types of cases may be partly attributed to the use of unwritten policies, as well as inadequate methods to monitor officers' compliance with provider policies. As previously noted, only seven providers have written payment plan policies. Written policies increase the likelihood that officers would comply with management

expectations. In addition, as discussed on page 54, a quality assurance review process would ensure that payment plan standards are executed consistently.

RECOMMENDATIONS

1. Providers should establish written payment plan policies based on actual financial obligations and avoid unnecessarily short time standards. Providers should consult with the court when developing these policies.

2. Providers should ensure that officers establish payment plans that are consistent with provider policies.

Probation providers should establish policies and procedures for identifying potentially indigent probationers in a timely manner, and courts should ensure the provider's role in the process is clearly defined.

Although a majority of probationers fall into arrears, very few were tested for potential indigence.

Most probationers begin their term with financial obligations to multiple entities. Most owe fines and surcharges to the court, while some also must pay victim restitution. While a majority of probationers with a financial obligation were in arrears at some point during their term, probation providers rarely took adequate steps to determine whether the probationer was unable to pay. Appropriately scheduled financial assessments would identify potentially indigent probationers and allow the court to consider a sentence modification, such as community service.

In Bearden v. Georgia, 461 U.S. 660 (1983), the U.S. Supreme Court established that courts may not incarcerate a probationer for failing to a pay a levied fine or restitution unless it can be proven that the probationer has done so willfully. Therefore, if failure to pay a financial obligation is the only non-compliant condition of probation, the court is expected to establish the non-compliance is willful before ordering incarceration. If the probationer cannot pay, the court may convert the financial obligation to community service or to another probation condition.

We found that approximately 75% of cases with a financial obligation (291 of 390) fell into arrears at some point during the term. In some jurisdictions, we found evidence that probationers were returned to the court for a conversion of fines. We also found cases in which non-payment was addressed too late in the probation term to complete the assigned community service. We rarely saw a systematic process for assessing whether the probationer was able to make the scheduled payment.

The identification of potentially indigent probationers could be improved by clarifying probation provider responsibilities, adopting provider policies and procedures regarding the timing and method of assessments, and including contract clauses to provide financial protection to probation providers.

- *Clarifying Provider Role* – Contracts and governmental agreements rarely provide a clear role for the provider. Although the documents for a majority of jurisdictions (26 of 29) state the court is the final arbiter in classifying the probationer as indigent, only six clarify the provider's role in determining potential indigence. For example, one states that the provider should return those probationers unable to make the scheduled payments to the court by

the mid-point of their probation term, while others detail the method a provider will use to determine a probationer's indigence (for recommendation to the court).

- *Provider Policies* – Policies to identify potentially indigent probationers should address circumstances under which financially non-compliant probationers will be assessed for potential indigence, as well as the assessment method.

  Only four of 13 providers we reviewed had a policy that stated when potential indigence should be addressed. The policies either required probationers behind on payments be returned to the court by the mid-point of their term or that a financial assessment be conducted when a probationer is in arrears by a certain amount.

  To help determine whether a probationer's failure to pay is willful, five providers have developed policies to assess a probationer's income and expenses similar to the one in Appendix D. The forms usually have a formula to help gauge whether the probationer is likely to have sufficient funds to pay the financial obligations to the court. The assessment may consider income in relation to federal poverty guidelines or may also consider expenses, allowing the provider and court additional information about the probationer's ability to pay any financial obligation. It should be noted that while five providers had a financial assessment form as part of their policy, we found that only three probationers had a financial assessment form in the case notes.

- *Contracts with Indigent Reimbursement Clauses* – Identifying potentially indigent probationers can lead to revenue loss for the provider, if the court absolves the probationer of the supervision fee. Some contracts with private providers contain a maximum indigent probationer reimbursement clause. The local government provides assurance to the provider that if the caseload contains a certain percentage of indigent probationers (those with supervision fees waived), the local government will pay a portion of the waived fees.

RECOMMENDATIONS

1. Courts and providers should work together to ensure that contracts and government agreements clearly state the provider's role in identifying potential indigent probationers.

2. Providers should adopt policies that detail the criteria (i.e., timing; amount of arrears) that will cause an indigence assessment and the assessment method. Providers should consult with their courts when developing the policies.

3. Courts should consider including indigent reimbursement clauses in contracts to help probation providers cover costs if a significant percentage of the probationers they supervise are found to be indigent and supervision fees waived.

Provider Response: *One provider responded to the report. Regarding this finding, the provider stated that it would add policies and procedures for determining indigence.*

Payment Allocation and Remittance

Most probationers begin their term with financial obligations to multiple entities Most owe fines and surcharges to the court, while some also must pay victim restitution. For each month on probation, they also incur a supervision fee (usually between $25 and $40) and a $9 crime victim's emergency fund (CVF) fee. Probationers may also incur other additional charges if required to participate in evaluation and treatment or submit to random drug testing.

As probationers make payments, providers allocate payments among the various accounts and remit the funds to the appropriate recipients.[8] Financial obligations to the court are commonly remitted to the court clerk at regular intervals (usually weekly or monthly), while victim restitution is remitted directly to victims. State law requires the CVF surcharge be remitted directly to the Criminal Justice Coordinating Council at monthly intervals.

Probation providers should consult with courts when developing written policies for the allocation and remittance of probationer payments. The policies should address issues such as improperly prioritizing supervision fees, the allocation of partial payments, and remittance of funds to all recipients.

Providers did not always allocate probation payments to the appropriate recipients. Three providers ensured the payment of their supervision fees before allocating funds to other groups, while most providers were inconsistent in their allocation practices. This was largely due to unclear policies, most of which were not adopted in consultation with the court. In addition, we noted deficient policies regarding the timely remittance of funds to all recipient groups.

Allocation of Probationer Payments

Improper payment allocation included improper prioritization of supervision fees and practices that were inconsistent with a provider's policies.

Some probation providers front-load supervision fees and subordinate court fines and state surcharges.

- ***Improper Prioritization of Supervision Fees*** – Three of 13 probation providers consistently prioritized the collection of supervision fees over other accounts, such as court fines, state surcharges, and restitution. This included ensuring all supervision fees were paid before allocating funds to other recipients (front-loading), as well as altering the allocation method late in a probation term to ensure supervision fees were paid in full.

  Front-loading or otherwise improperly prioritizing supervision fees can lead to payments for services never rendered, as well as delays in payments to other entities. A supervision fee is a form of a service fee, to be paid for the provision of services. However, front-loading[9] allows fee collection many months before any services occur, and even where some services never occur.

[8] Some probation providers are not responsible for collecting financial obligations to the court. In these cases, the court clerk collects payments from probationers directly.

[9] We did not consider probationers choosing to pay the entire balance (court fees and surcharge, restitution, and supervision fees) early in the probation term as front-loading.

Probation terms can be shortened, either by the court or by a probationer absconding. Improperly prioritizing supervision fees also delays payments to other entities owed funds by the probationer, such as the local government, the state government, and victims awaiting restitution.

The two methods of prioritizing supervision fees are discussed below.

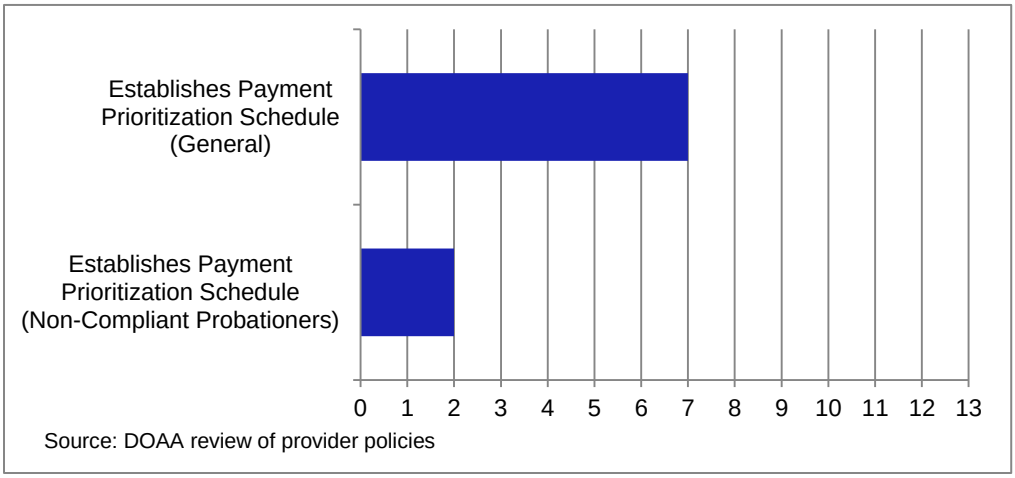
- *Front-Loading* – Two providers front-load supervision fees, collecting fees for the entire probation term before allocating funds to other accounts. One is a large public provider whose unwritten policy is approved by the court, while the second is a private provider whose practice is expressly forbidden by its contract. Examples of cases where supervision fees were front-loaded include:
  - A probationer assigned to 24 months of probation was ordered to pay $1,730 for victim restitution. During the first three months of probation, the probationer paid $940. The provider allocated $720 to 24 months of supervision fees, up to 21 months before the services were to be provided. In month 13, the court granted the probationer an early release upon payment of the restitution balance. By allocating the initial payments to supervision fees, the provider delayed the victim's restitution and the probationer's ability to satisfy the obligation. In addition, the probation provider collected $270 in supervision fees for nine months of service never provided.
  - A probationer was initially incarcerated and required to pay a bail bond before release to probation. The $1,114 bond was equal to the court fines and state surcharges. In this jurisdiction, the probation provider (not the court clerk) is given the bond payment to allocate among accounts. Subsequently, the provider allocated $360 of the amount to its supervision fees, receiving 11 months of fees before services were rendered and delaying payment to the court.
  - A probationer assigned to 12 months of probation was ordered to pay a financial obligation to the court of $407. During the first three months, the probationer paid $340, all of which the provider allocated to supervision fees. The probationer failed to make another payment during the term.
- *Altering Allocation Method* – One provider shifts payments from the state crime victim fund to supervision fees during the final months of the term to ensure that supervision fees are paid in full. During early months of probation, the provider allocates payments correctly: $35 to supervision fees and $9 to CVF. During the final months of probation, however, the same payment is allocated to increase supervision fees until they are fully collected.

- ***Misallocation of Partial or Arrear Payments*** – We found that many cases were not managed in compliance with written or stated account allocation standards. Among the 390 cases we reviewed from 13 providers, 291 probationers were in arrears at some point. While providers did not receive "make-up" payments from all probationers, in 56 cases the provider did not

distribute those payments to the correct recipient, as defined by provider management. The errors did not consistently benefit one type of recipient. Depending on the case, the payments were misallocated to court fines, supervision fees, victim restitution, and the state CVF surcharge.

Allocation problems were partially attributable to unwritten and/or unclear provider policies that inappropriately prioritized supervision fees. As shown in **Exhibit 12**, only seven of 13 providers had written policies regarding the allocation of payments. However, one had an impractical policy that required the provider to forgo all revenue until all obligations owed to the court and victims were paid in full.[10] (Because it was impractical, the policy was not followed by the provider.) In addition, only two of these addressed allocation of payments received from probationers in arrears.

Exhibit 12
Most providers have not developed policies to allocate payment from non-compliant probationers



Source: DOAA review of provider policies

While the significance of payment allocation demands court approval of any policy, only 11 of 29 contracts reviewed contained payment allocation policies. It should be noted that court approval did not always result in a reasonable policy, as impractical prioritization schedules were contained in the contracts too. In addition, one provider that was front-loading supervision fees was permitted to do so by the court.

Remittance of Provider Payments

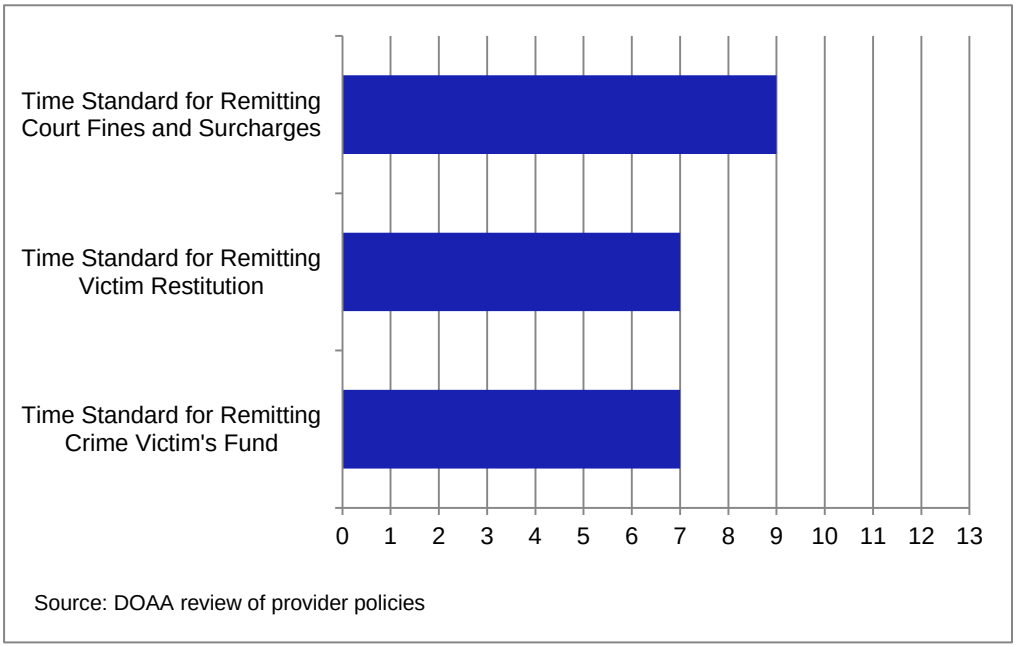
Remittance policies should detail the frequency that funds collected by probation providers will be remitted to recipients, such as the court, crime victims, and the state. However, in many jurisdictions we visited, providers and courts had not established sufficient written policies to address remittance of funds collected. For example, only 5 of 13 providers had developed written policies detailing remittance schedules for all three of the fund types: victim restitution, court fines and surcharges, and crime victim funds. As shown in **Exhibit 13**, written policies

[10] In this scenario, providers would often provide several months of supervision with no revenue to cover the associated costs.

addressing court fines were most common (9 of 13), while crime victim funds and victim restitution were addressed in only about half of the jurisdictions (7 of 13).

In contracts between the court the provider, court fines and state surcharges were addressed in nine of 13, crime victim fee addressed in seven, and victim restitution addressed in five. Among a larger sample of contracts and governmental agreements, approximately 83% (24 of 29) included remittance standards for court fines and state surcharges. In approximately 69% (20 of 29), victim restitution payments are addressed. The remittance of the crime victim fee to the Criminal Justice Coordinating Council is included in approximately 37% of the documents.

Exhibit 13
Many providers have not developed policies for remitting all fund types



Source: DOAA review of provider policies

RECOMMENDATIONS

1. In consultation with the court, providers should develop clear, rational policies for allocating probationer payments. The policies should not allow the front-loading of supervision fees, and they should address the allocation of partial payments or payments received by probationers in arrears.

2. Providers should not alter their prioritization method during a probation term without consent from the court.

3. In consultation with the court, providers should develop policies for remitting funds to all recipients, including the court, victims, and the Criminal Justice Coordinating Council.

4. Courts should detail allocation and remittance standards in the contracts and government agreements.

5. Courts should consider assessing whether a provider's payment allocation remittance practices comply with agreed-upon policies as part of a periodic compliance audit.

Provider Response: *One provider responded to the report. Regarding this finding, the provider stated that it would add policies and procedures for the remittance of funds.*

Community Service

Courts may assign community service hours as a condition of probation. Like other conditions, the probation provider is charged with overseeing the probationer's progress in completing the required activity. In most jurisdictions, probationers perform community service work at governmental agencies or non-profits. In many offices, the probationer must bring a record of the hours worked when they meet with a probation officer, and many offices require the record to be signed by an official at the community service site.

During sentencing, some courts establish a timeframe for completing community service (e.g., entire balance within 3 months or 10 hours per month). However, courts often rely on the probation provider to determine whether probationers are making adequate progress. If probationers are not making adequate progress, they may be subject to administrative actions, such as more frequent reporting or a court hearing.

Probationers unable to pay fines and surcharges may have a portion of their financial obligation converted to community service hours. Generally, the provider identifies potentially indigent probationers and making recommendations to a court that fines and surcharges be converted to community service hours. Courts or probation providers generally establish an hourly rate, such as the federal minimum hourly wage of $7.25, to convert a financial obligation to community service hours (e.g., $725 in fines and surcharges becomes 100 hours of community service). A probationer may also be permitted to convert community service hours to an additional financial obligation in extraordinary cases.[11]

Probation providers should develop written policies to ensure probationers complete community service work and to reduce the risk of fraudulent reporting.

Community service oversight can be improved by requiring work logs and establishing a network of community service sites.

Many of the 13 probation providers we reviewed could improve their monitoring of probationer community service work. We found a monitoring deficiency in 37 of the 163 cases[12] (23%) that included a requirement for community service. These included cases in which documentation of community service was absent, community service credit was granted despite questionable documentation, and/or the probation officer did not take action in response to failure to perform community service. For example:

- *No Documentation* – A probationer was given credit for a required 40 hours of community service even though the file contained no documentation that the hours were performed. The probationer's file contained no work log explaining where and when service was conducted, and the officer's case notes did not have sufficient detail either.

[11] According to probation provider personnel, these would include cases in which the probationer is physically unable to perform community service or has an irreconcilable schedule conflict.

[12] 163 of 390 (42%) cases we reviewed included community service work as a condition of probation. All 13 courts we reviewed assigned community service work in at least 1 case.

In two cases, probationers were given credit for completing 240 hours of community service, while records indicated significantly fewer hours were performed. Records in the probationers' case files indicate 132 and 122 hours were completed in each case.

- *Questionable Documentation* – A probationer was given credit for 40 hours of community service for participating in religious services at a church. The church was not on the provider's list of approved community service work sites, and the individual at the church who signed the work log – attesting to the hours being performed – was the probationer's mother.

  A probationer submitted a community service record indicating he had performed 26 hours of community service in a single day. While the officer's notes indicate the illogical figure was recognized, we found no evidence the officer contacted the site supervisor to question the reported hours and the probationer was given credit for 26 hours.

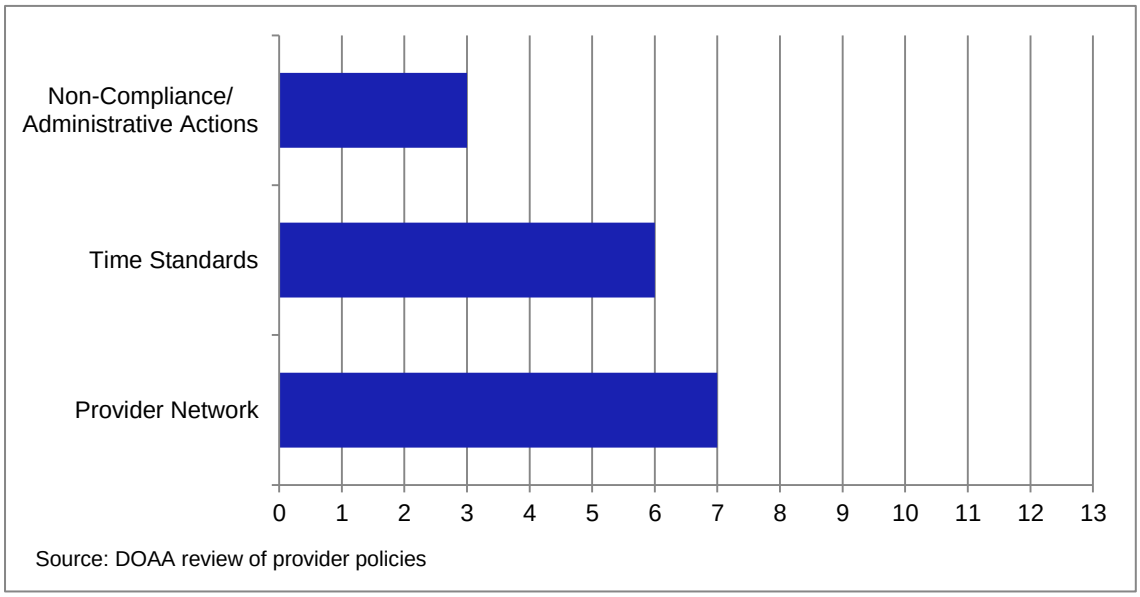
  A probationer received credit for 130 hours of community service despite signatures on the work log appearing to be a forgery (i.e., probationer and work site supervisor signatures in the same handwriting). Additionally, the work site from which the work was allegedly conducted was not on the probation provider's list of approved community service agencies. Despite this, the case file contained no evidence that the officer attempted to contact the work site supervisor to confirm the accuracy of the log.

- *No Response to Non-Compliance* – A probationer required to complete 20 hours of community service never did so. The case file does not indicate that the officer responded to the non-compliance. The probation provider closed the case successfully, despite the lack of community service work.

  A probationer was required to complete 40 hours of community service within 60 days completed just a fraction during their twelve month probation term. Officer case notes and a failure to report letter sent to the probationer document that the officer only addressed the probationer's financial obligations. After the probation term expired the probationer turned in a work log showing only eight hours of completed community service and paid $232 in lieu of the outstanding hours.

The monitoring deficiencies can result from a combination of officers failing to perform basic case management activities and probation providers failing to provide adequate policies to guide the work of their officers. In several of the case examples, officers appeared to place little emphasis on community service requirement or failed to question dubious documentation. We also found that probation providers can improve the monitoring of community service work by establishing a list of approved providers, articulating time standards for completing community service work, and clarifying non-compliance thresholds and administrative actions staff should execute (see **Exhibit 14**). For example:

Exhibit 14
Few probation providers have adequate community service policies



Source: DOAA review of provider policies

- *Provider Network* – Probation providers can reduce the risk of fraudulent or inadequate community service reports by pre-screening work sites and establishing clear rules regarding community service credit and approval. We found that only slightly more than half of the probation providers (7 of 13) we reviewed have established a list of pre-approved work sites where community service work may be completed.

- *Case Management Policies* – Less than half of the probation providers (6 of 13) have written policies that sufficiently explain the time standards their officers should use to track and evaluate a probationer's progress in completing community service. For example, if the probation provider expects a probationer to complete a certain number or percentage of hours per month, per quarter, or by the midpoint of their term, a time standard should be established to clarify the expectation for staff.

  Additionally, several probation providers (9 of 13) have not established sufficient written policies to explain the appropriate punitive administrative actions staff should execute for substantial non-compliance (e.g., increase reporting frequency or request a court hearing). Case records suggest that officers do not always respond in a timely manner when probationers are non-compliant with terms. Formalizing the thresholds that define substantive non-compliance and administrative actions can help ensure officers respond appropriately.

- *Inaction by Probation Officers* – While the presence of clear policies impact the quality of case management, some deficiencies identified in our review can be attributed to officers failing to perform basic case management responsibilities. When a court requires a probationer to complete community service, the lack of a policy does not excuse an officer who fails to respond to non-compliance until to the final month of the term. In other

Case Study: Managing Community Service Network

In 2010, the Athens-Clarke County government uncovered a bribery scheme that led to three county employees being charged with felonies for making false statements and signing false documents related to community service work. Athens-Clarke police found that the employees accepted money to sign-off on work that was never completed. In response, the Chief Probation Officer initiated comprehensive system reforms to ensure the quality of work conducted and the authenticity of hours reported. The system has four primary control points.

- **Pre-Approve Work Sites**: To enhance supervision of and verification of hours, community service work must be completed at an approved site.
- **Establish Guidelines**: To improve accountability for the quality of work completed, written expectations are issued to each community service organization explaining the requirements Athens-Clarke County places on participating probationers and organizations.
- **Verify Hours**: Before work logs are submitted as proof of work conducted, they must be signed by three parties: the probationer, the work supervisor, and the community service site manager.
- **Respond to Unacceptable/Unlawful Acts**: Community service organizations not in compliance with the law or Athens-Clarke County's established guidelines may be removed from the program and can face legal actions such as arrest and prosecution.

Source: Athens-Clarke County Probation Unit

instances, the officer did not enforce existing provider policies. As noted on page 54, provider management has a responsibility to ensure officers properly supervise probationers, but we identified deficiencies in the quality assurance practices of some providers.

RECOMMENDATIONS

1. Providers should take steps to reduce community service-related fraud, such as establishing a network of approved community service sites with a contact person who attests to reported hours and verifying completed community service hours whenever reported hours are questionable.

2. In consultation with the court, providers should develop policies regarding the expected timeframe for community service completion when timeframes are not specified during sentencing.

3. In consultation with the court, providers should develop policies regarding actions to take when a probationer is not compliant. The policies should define noncompliance, consider the expected timeframe for completion, and describe the appropriate actions that can be taken (e.g., increased reporting requirements; requesting a court hearing).

4. Providers should ensure that officers monitor probationers in a manner consistent with court-established deadlines and provider policies.

Provider Response: *One provider responded to the report. Regarding this finding, the provider stated that it would add policies and procedures for determining indigence and conversions of fines/fees to community service.*

Probation providers and courts should establish procedures to ensure appropriate conversions between community service hours and financial obligations.

Probation personnel in 11 of 13 jurisdictions we reviewed reported that the court will – if the probationer is deemed indigent – convert all or a portion of a probationer's fine and surcharge balance to community service, while seven jurisdictions will convert community service to a financial penalty (i.e., permit a buy-out of community service).

We found several jurisdictions and probation providers with problematic policies and controls for converting fines to/from community service. Some providers were allowed to convert fees and surcharges without a court review of the case, while several had inadequate policies to ensure that probationers – whose fees and surcharges should be converted due to their inability to pay – were identified in a timely manner or that conversion rates were in accordance with state law.

Courts should not permit providers to convert fines to community service, and courts should ensure conversion rates comply with the law.

- *Conversion Authority* – Three courts reviewed have authorized the probation provider to convert a financial obligation to community service without formal court approval. This allows a provider to unilaterally reduce a probationer's financial obligation to the court, ensuring limited funds paid by the probationer will be allocated to the provider's supervision fee. We did not conduct audit testing to determine the frequency with which this occurs. However, a provider with this authority converted more than $12,000 in fines and surcharges owed to a court in a three-month period. During this period, the provider collected approximately $87,000 for the court.

- *Identifying Potentially Indigent Probationers* – As noted on page 32, few providers had adequate policies to identify if a probationer was potentially indigent. Conversion of a financial obligation to community service is most applicable in cases when the probationer is potentially indigent and may be unable to pay. A conversion generally must be initiated by a provider and in a timely manner so converted community service work can be completed before the end of the term. Despite some policies indicating the conditions and methods staff should use to determine if a probationer is potentially indigent and the high frequency of financial non-compliance, we found few cases when a probationer was assessed properly and in a timely manner. In one case, a probationer's financial obligation of $475 was converted to 66 hours of community service on the last day of the term.[13]

- *Conversion Rates* – Three probation providers had conversion rates either in violation with state law or unusual.

    - *Below Minimum Wage* – O.C.G.A. § 17-10-1 requires conversions of financial obligation to community service be done using the federal minimum wage of $7.25 per hour or a rate specified by the court. One provider we reviewed used a rate lower than the federal minimum wage ($6.00) that

[13] It is possible this conversion was requested to improve the provider's collection rate since the financial obligation of probation was technically removed.

resulted in probationers being assigned additional community service hours, including 18 extra hours in one case.

- *Food Bank Exchange* – One provider permitted probationers to donate food items to a food bank in lieu of community hours. For example, probationers could donate a 6 lb. jar of peanut butter or 24 regular sized cans of fruits/vegetables to receive credit for 8 hours of community service work.

- *Pay What You Earn* – One provider uses the probationer's hourly earning rate to convert community service hours to a financial obligation. In one case we reviewed, a probationer's wage was $28 per hour and the probation office used the figure to allow him to buy out of 240 hours of community service work for more than $6,000.

We did not find evidence the court knew about the conversion of community service hours below the federal minimum wage, and the provider has since corrected this policy. According to probation officials, the court approved the food bank exchange and the earned pay rate conversion policies.

RECOMMENDATIONS

1. Probation providers should develop policies to identify probationers who may be potentially indigent and include a time standard for making the determination.

2. Courts should approve each conversion of a probationer's financial obligation to community service hours.

3. Courts should explicitly approve the conversion rate and methods used as part of any contract or government agreement. Courts should consider the cost of bartered items in relation to the more common conversion rate of federal minimum wage.

Evaluation and Treatment

Courts may require probationers to undergo evaluations and treatments as a condition of probation. Evaluations are commonly assigned in cases with a substance-abuse related offense, while treatments vary in type and address a range of issues from shoplifting to domestic violence. Treatment frequently involves completing some type of course associated with the probationer's conviction (e.g., Family Violence Intervention Program for a domestic violence conviction).

Like other conditions of probation, the probation provider ensures that probationers undergo court-ordered assessments, begin treatment in a timely manner, make adequate progress, and complete treatment. The timeframe for beginning or completing evaluations and/or treatment may be determined by the court or the provider. For example, a court may require a probationer found guilty of possession of marijuana to undergo a substance abuse assessment within 30 days and to undergo any treatment recommended because of the evaluation. Absent a court-imposed deadline, the probation provider may set the time frames. When adequate progress is not made by the probationer, a provider is expected to take action intended to compel compliance, such as bringing the probationer back before the court.

When a probationer is required to receive an evaluation or treatment, the probation provider will provide a list of qualified clinicians or simply tell the probationer how to find qualified clinicians. Some providers offer evaluation and treatment services in-house. The probationer may be charged an additional fee for the in-house services.

Probation providers should develop written policies to ensure probationers complete evaluations and treatments in a timely manner.

In approximately 14% of cases, probation officers did not appropriately enforce court-ordered deadlines or provider standards.

Many of the providers we reviewed can improve their procedures for overseeing probationer completion of evaluation and treatment requirements. Our review of 390 cases found 125 in which the probationer was required by the court to undergo an evaluation and/or treatment. In 18 of those cases (14%), the probation provider did not appropriately enforce court-ordered deadlines, follow its own standards for managing non-compliance, or manage the case consistent with industry practices (for providers without their own policies). For example:

- A probationer convicted of battery on January 3, 2011 was required by the court to enroll in a family violence intervention program within 30 days. The probationer did not enroll until April 28, nearly four months after the court-imposed deadline. The case notes indicate the officer took no action to enforce the deadline.

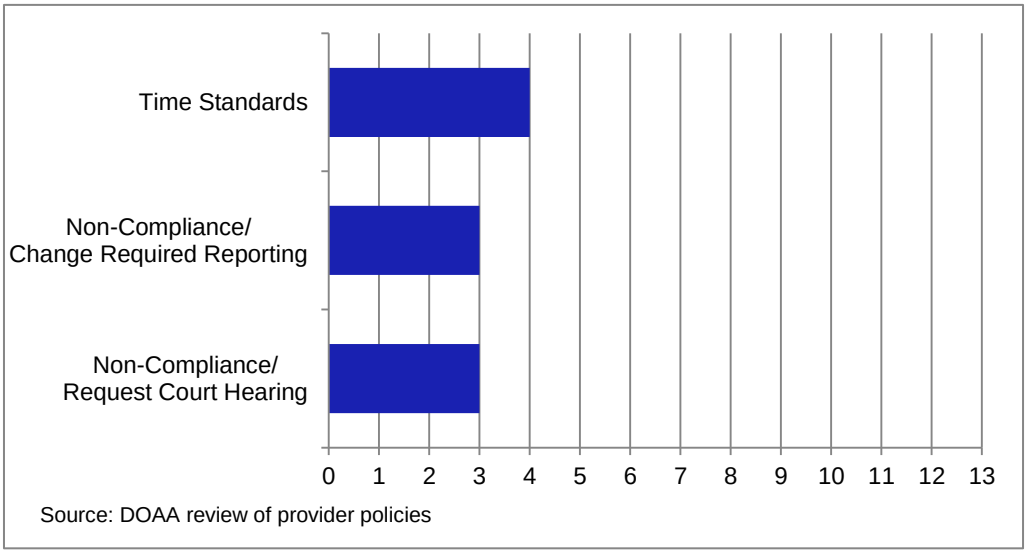
- A probationer convicted of driving under the influence in January 2011 was required by the court to complete an evaluation within 30 days and enroll in a risk reduction program within 60 days. The case was closed as unsuccessful the following November without either condition satisfied. Case notes indicate that the officer frequently reminded the probationer of

the need to complete these conditions, but the officer never took the case back before the court despite the non-compliance.

- A probationer convicted of possession of marijuana in January 2011 had to complete a risk reduction program. Case documents show that the probationer completed a substance abuse evaluation but never attended the court-ordered treatment. While the provider's supervision policy requires probationers to report weekly if they fail to make progress toward completing required evaluations and treatments, the officer failed to require weekly reporting despite being aware of the non-compliance.

- A probationer convicted of (under-aged) driving under the influence in January 2011 was given 60 days by the court to attend a Mothers Against Drunk Driving victim impact panel. The provider's supervision policy requires probationers to report in-person until they begin treatment and demonstrate compliance. However, the officer permitted the probationer to report via mail-in despite the outstanding condition. The probationer did not complete the impact victim panel until more than four months after the court-ordered deadline.

Exhibit 15
Few probation providers have adequate evaluation and treatment policies



Source: DOAA review of provider policies

The monitoring deficiencies result from probation providers failing to have adequate policies to guide and monitor their officers' actions (see **Exhibit 15**), and officers failing to perform basic case management activities, such as enforcing court-ordered deadlines.

- *Case Management Policies* – Many probation providers (9 of 13) have not articulated time standards for beginning and completing evaluations and treatment. For example, a policy may require evaluations to be conducted within 30 days or enrollment in a treatment program within 60 days. Evaluations conducted early in the probation term allow more time for a

treatment to be completed before the term expires. Without time standards, it is not clear how much evaluation and treatment progress probationers must achieve to remain compliant.

We also found that many providers (9 of 13) have not adopted policies that describe the level of non-compliance that will lead to administrative actions, such as increasing a probationer's reporting frequency or requesting a court hearing to modify or revoke probation. For example, a policy may require increased reporting frequency if a treatment provider reports the probationer missed a meeting or a policy may mandate the request of a court hearing when enrollment has not occurred within 90 days of beginning probation. Of the four providers with a policy, two have policies that note both when a probationer's reporting will be increased and when a court hearing will be sought. Two other providers have policies that address one of the two actions. Specifying the thresholds that define substantive non-compliance leading to administrative actions can help ensure that all officers respond in a manner consistent with provider and court expectations.

- *Inaction by Probation Officers* – While the presence of clear policies impact the quality of case management, some deficiencies identified in our review can be attributed to officers failing to perform basic case management responsibilities. For example, when the court requires an evaluation to occur within 30 days, the absence of a provider policy regarding time frames is immaterial. In other instances, the officer did not enforce existing provider policies. As noted on page 54, provider management has a responsibility to ensure officers properly supervise probationers, but we identified deficiencies in the quality assurance practices of some providers.

RECOMMENDATIONS

1. Providers should establish written time standards to manage evaluation and treatment conditions when court orders do not establish them. Time standards should clearly define deadlines for beginning and completing evaluation and treatment and explain what periodic progress is necessary to remain compliant.

2. Providers should establish standards that define the level of non-compliance with evaluation and treatment conditions that warrant the administrative actions of increased reporting or a court hearing to modify or revoke probation.

3. Providers should ensure that officers monitor probationers in a manner consistent with court-established deadlines and provider policies.

Courts should ensure all necessary actions are taken to address the inherent conflict of interest that exists when probation providers deliver evaluation and treatment in-house.

Some probation providers deliver evaluation and treatment services to the probationers they supervise. The probationers often pay additional fees for these services. Because of the potential conflict of interest, certain actions are necessary to ensure that providers do not improperly enroll and charge probationers for these services. We found jurisdictions in which the practice of in-house treatment was permitted but the necessary protections to control conflicts of interest were not in place.

More than half of contracts permit private probation providers to deliver court-ordered treatments in-house. Courts must ensure appropriate conflict of interests controls are in place.

Just over half of the providers in our sample offered evaluation and/or treatment services in-house. We found that 14 of 23 contracts with private providers referred to treatment programs provided in-house. The types of programs delivered by probation providers include those related to drug and alcohol abuse (e.g., alcohol awareness, substance abuse assessments) or to other social issues (e.g., personal finance, job readiness).

The inherent risk of probation providers delivering additional paid services to those on probation has been recognized by legislators and court officials. OCGA § 42-8-104 forbids probation providers from owning or operating risk reduction programs (DUI schools). In addition, eight of ten judges we interviewed stated that having probation providers facilitate or deliver treatment in-house posed a clear conflict of interest. However, some court officials and probation providers recognized circumstances under which in-house evaluation and treatment should be considered. In-house programs may be more convenient to probationers already reporting to the probation office. In addition, some rural areas of the state may not have other providers in the area that can provide the required treatments.

If the court contracts with the probation provider to provide services in-house, several protections should be in place to limit the potential for abuse. We found these protections were not always present. For example:

- *Conflict of Interest Clause* – A conflict of interest clause is intended to ensure that the provider and its employees do not engage in behavior intended to benefit them at the expense of the court or the probationer.

  Seven of the 14 contracts that referred to treatment services contained a conflict of interest clause. One contract explicitly barred the provider from engaging in certain treatment services. Another stated that the provider must "avoid a conflict of interest and even appearance of impropriety" and notify court officials whenever a potential conflict of interest arises.

  Some conflict of interest clauses may not address the identified risk, stating the business and its employees may not engage in activities that conflict with the responsibilities in the contract. Assigning probationers to classes – even without an objective evaluation – may not violate the clause as written.

- *Charges for Evaluation and Treatment Programs* – Contracts containing the fees charged to probationers for evaluation and treatment programs ensure that the court has agreed that the amounts are reasonable.

  All of the contracts (14 of 14) that referred to treatment services contained fee information. However, several did not contain enough information to determine the total amount that a probationer may be required to pay. For example, eight contracts contain an amount for a session (or class) but do not state how many sessions a probationer will or may be required to attend. Other contracts contain an amount for the entire program or course. In one contract, the judge has the authority to override the established costs of treatment services and modify the treatment price based on the circumstances of the case.

- *Court Approval of Enrollment* – Requiring the court to approve the enrollment of a probationer in a class reduces the likelihood of improper enrollment by a provider.

  During our review of case files, we found it was the courts that required probationers to undergo an evaluation. They frequently allowed the probation provider to require treatment on the basis of the evaluation results. Court approval of enrollment in the treatment program or court review of the frequency that evaluations result in assignment to treatment would ensure that probationers are assigned to treatment when necessary.

RECOMMENDATIONS

1. The General Assembly and courts should consider whether allowing probation providers to deliver evaluations and treatments in-house presents a conflict of interest.

2. Courts should require that evaluation and treatment services be provided by different entities whenever possible. When provided by the same entity, the courts should ensure that contracts contain conflict of interest clauses that address the risks posed by the delivery of evaluation and treatment services and a list of charges that will be required of the probationer.

3. Courts should either approve the enrollment of each probationer assigned to a treatment program offered by the probation provider or review the cumulative results of evaluations conducted by the provider to assess whether an unusually high percentage of probationers are deemed in need of services delivered by the probation office.

Drug Testing

Illicit drug use is prohibited and is universally recognized as a violation of probation. Courts typically permit or require probation providers to periodically test probationers for drug use. Probation providers may conduct the test on-site in a probation office or require the probationer to have a test conducted by an independent testing facility. It is common for the probation provider to request an arrest warrant if the probationer fails a drug test.

Courts should work with probation providers to clarify expectations regarding drug testing frequency and fee amounts.

In approximately 16% (12 of 76) of cases in which the court required drug testing, the probationer was classified as having completed all conditions without being required to undergo a drug test during their term. When probationers underwent drug testing, a majority were subjected to only one test during their term. Regarding the cost of drug testing, most probation providers in our sample have fees that are less than $20 per test, while some providers charge as much as $50 per test.

Testing Compliance

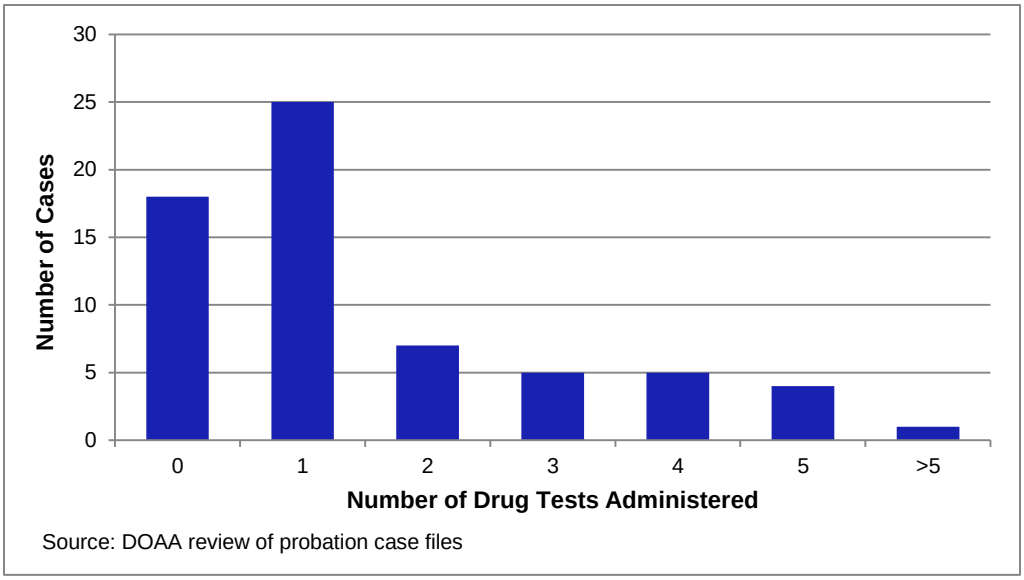
In some cases, the court specifies on the sentencing sheet that the probationer must undergo drug tests during the probation term. In 76 of 390 (20%) cases we reviewed, the court made drug testing a required condition of probation. In 28 of these cases, the probationer did not undergo a drug test. In 8 of these cases, this was partly due to the probationer absconding or being rearrested. However, in the remaining 20 cases, the probationer completed the term of probation without undergoing a drug test. In 12 of these cases, the officer closed the case "successfully," implying that all conditions of probation had been satisfied despite never subjecting the probationer to the required testing.

Many probationers required by the court to undergo drug testing were never tested.

In most jurisdictions we visited, the court's sentence did not specify the frequency the officer should conduct drug testing. Instead, the court relied on the policy of the probation provider and/or the discretion of the officer to determine when a drug test is appropriate. In 25 of the 48 cases in which drug testing was required and conducted, the probationer underwent one test during their probation term. In nearly all of the remaining 23 cases, probationers took 2 to 5 tests during the term (see **Exhibit 16**).

When the court does not explicitly require drug testing as a condition of probation, probationers undergo drug tests if instructed to do so by their officer. In these cases, officers are charged with using discretion on whether and when to require the probationer to undergo a drug test. When drug testing was permitted, but not required, probationers were subjected to tests in only 13 of 315 (4%) cases.

Exhibit 16
When courts required drug testing, probationers often had few or none



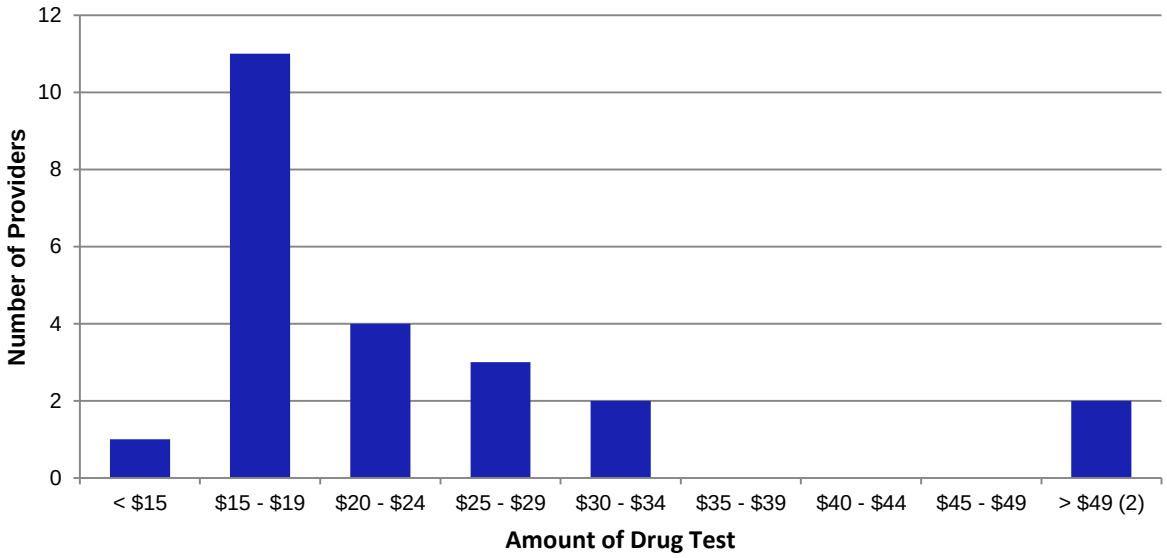
Source: DOAA review of probation case files

Drug Testing Fees

The drug test fees that probation providers charge ranged from $14 to $50 per test, with a majority charging less than $20 (see **Exhibit 17**). We did not determine if the variation in fee amounts is associated with different costs to the provider, or if providers generate different profit levels from the administration of tests. One public provider stated that the purchase price for their drug test kit cost less than $6, though the drug testing fee the office charges is $30.

While courts approve drug test fees for private providers as part of their contract, it is unclear if courts know of providers' costs of administering drug tests. Contracts generally allow an amount, but they do not state a court expectation regarding drug testing to generate additional revenue. As noted above, in our sample of cases, we did not find providers requiring a large number of tests. However, courts should be aware that drug test fees set at amounts significantly higher than costs may provide an improper basis for testing.

Exhibit 17
Drug fee amounts vary by jurisdiction, with some notable outliers[1]



(1) Not all of the providers we reviewed conducted drug tests.

(2) A drug test fee of $25-$50 was established in the contract; however, we observed a lower fee applied in practice ($20).

Source: Contracts and Governmental Agreements

RECOMMENDATIONS

1. Providers should ensure that officers conduct drug testing when required by the court.

2. Courts should consider making explicit on sentence sheets the minimum number of times a probationer required to undergo drug testing should be tested during the term.

3. If frequent testing is occurring, courts should determine if the fee amounts are giving the provider a financial incentive to conduct the tests.

Case Records and Quality Assurance Review Procedures

Probation officers maintain case records to document activities pertinent to the cases they supervise. Case records include case notes and supporting documents, such as sentence sheets, payment records, community service work logs, evaluation and treatment certificates, and administrative forms (e.g., "failure to report" letters and requests for warrant).

Case notes are used to document all interactions with or instructions to the probationer (e.g., next report date, payments made, community service work, evaluation and treatment completed). In addition, case notes are used to document probation violations. They provide officers with supporting evidence that administrative actions taken or requested are justified. For example, if an officer increases a probationer's reporting schedule, the case notes should contain details to justify the change. If the officer requests a court hearing or an arrest warrant/tolling order, the case notes should contain sufficient details to provide evidence to the court the request is appropriate.

Quality assurance reviews (QARs) are the methods that probation providers employ to oversee the activities of officers. QARs usually consist of a periodic review of a sample of case records by a senior officer or manager. Often using a checklist, they review the details of a case – in case notes and supporting documents – to evaluate how well the supervising officer complied with the supervision standards of the office or court requirements. A QAR would determine whether the officer executed appropriate reporting standards, appropriately monitored payment and special condition progress, and responded appropriately to probation violations.

Probation officers should maintain case records that describe all interactions with the probationer, contain supporting documents for all completed special conditions, and justify why administrative actions are taken.

Nearly 10% of cases we reviewed did not include sufficient data to allow an audit of the quality of case management.

We could not effectively review the management of approximately 10% (39 of 390) of cases[14] because the files lacked some necessary information. Usually, this resulted when case notes were sparse or missing. In some instances, the notes did not adequately address all conditions of probation or were illegible. In other instances, the case files did not contain sufficient records/documentation to support the credit given to probationers (e.g., no community service work log).

- *Gaps in Case Notes* – Some case records contained significant lapses in time between entries by the officer. As a result, we could not determine whether the officer interacted with the probationer or whether the probationer was given instructions for compliance during significant periods during the probation term. In one extreme case, the general case notes for a 12 month probation term were completely blank, even though the officer initiated significant administrative actions, such as requesting a revocation and a warrant.

[14] We reviewed 30 files from thirteen jurisdictions. In ten jurisdictions, at least one case file had inadequate information to assess case management.

In some jurisdictions this failure was directly linked to the form of the notes. One probation provider requires officers to input case notes into an accounting information system that is over 30 years old. The system never was intended to be used as a case management system and has significant limits on the text that officers can enter. Nearly half of the 39 cases we deemed unable to audit were from this provider.

- *Incomplete Monitoring* – Often, case notes did not show evidence that the officer effectively monitored all outstanding conditions (e.g., community service, treatment) during probationer reporting events. Ideally, officers will follow up with probationers on the progress (or lack of progress) for each outstanding condition during each report.

  As noted above, an inadequate case management system can lead to a lack of documentation addressing all conditions of probation. The provider with the system noted above had limited space to document whether the conditions were discussed. By contrast, a system – electronic or paper-based – that includes separate spaces to record information about each probation condition would prompt an officer to include the needed information.

- *Illegible Case Notes* – In many probation offices, officers may maintain case notes in handwritten form. During our case review, we found it difficult in some instances to decipher the handwriting of officers. If case notes are barely legible or illegible, any audit (or supervisory review) is hampered by the illegibility of case notes.

- *Incomplete or Questionable Supporting Documentation* – Many case records did not include sufficient supporting documentation for conditions that were credited. These cases are addressed in findings related to the condition (e.g., community service work, evaluation and treatment).

RECOMMENDATIONS

1. Providers should ensure that officers create and maintain case records (case notes and supporting documents) that illustrate all interactions with the probationer, all major case management decisions, all punitive administrative actions (e.g., increased reporting requirements, request for hearing, and request for warrant/tolling) and the justification for them. In addition, case notes must be legible.

2. Providers should ensure that officers follow up with all outstanding conditions of probation during every visit with the probationer. Providers should consider the use of instruments (case management systems; administrative forms) to facilitate the process.

Probation providers should improve quality assurance review practices to oversee officer case management and consider providing the results to court officials.

Nearly all providers indicated they conduct quality assurance reviews (QARs) to ensure officers are properly managing their cases. However, we found that the

quality of the reviews was not always adequate to serve their desired purpose and that the results are not communicated to the courts.

Quality assurance reviews consist of the efforts that provider management undertakes to evaluate how well officers manage cases. An effective QAR process includes policies that address the method, frequency, and quantity of cases that will be reviewed, as well as the use of a standardized instrument to promote consistency across reviews and reviewers. QAR results can also be summarized and reported to the court.

QAR Procedures

Quality assurance review procedures varied significantly among probation providers. In one office, the chief probation officer rotates with other officers to manage cases, allowing for a review of each officer's case management. Another provider has officers conduct self-audits of cases selected by management. While nearly all providers reported quality assurance reviews were conducted, only five had written policies and procedures that detailed the frequency (e.g., monthly, quarterly) and method (e.g., random sample, active cases, closed cases) of reviews.

Probation providers should establish quality assurance reviews to audit probation officer work and should consider providing these results to the court.

Review Instruments

Eight of 13 providers reported the use of a standardized QAR instrument. Among providers without an instrument, it was common for management to review case documents and note deficiencies. However, this practice lacks standardization and consistency between reviews. Using a QAR instrument, or audit checklist, ensures that the same factors of case management (e.g., oversight of reporting, payment, special conditions) are reviewed consistently by management and allows results to be quantifiable. The results can identify systemic strengths and weaknesses of case management and can provide evidence of case management quality beyond anecdotal occurrences. While QARs are an effective means for management to monitor the efforts of staff, they can also convey to court officials how well officers are enforcing probation conditions.

While eight providers used an instrument, the design of some providers' review instruments would not facilitate a consistent and comprehensive file review. For example, one provider relied on a basic "closed case" checklist that contained no specific criteria for evaluating how well the officer managed the case. An improved instrument that identifies the components of case management to be evaluated, such as time standards for completing conditions of probation, is useful and was used by several providers we reviewed. **Exhibit 18** shows an example of a QAR instrument.

Reporting Results to Courts

Court officials generally indicated their efforts to oversee case management practices were limited to interactions with officers during court proceedings (e.g., a hearing) and a cursory review of supporting case documents. While this allows a limited review of some cases, it only includes those cases put forth by officers. Judges would not see cases in which officers do not properly hold probationers accountable for non-compliance because the cases are not brought back before the court.

No probation providers stated they forwarded QAR results to courts, though a majority of court officials interviewed indicated that QAR results would be useful information for review. QARs results are valuable performance information for probation office managers, but they could be useful (in summary form) to courts as a

demonstration of the service quality delivered by the provider. QARs result reports could include several indicators of office performance but would be restricted to a few data points, such as the percentage of officers with a passing or failing grade, operational areas that consistently marked well or poorly, and corrective actions management will take.

Exhibit 18
Sample quality assurance review checklist

Probation Officer: PO ABC
Case Number: 12345

Name of Reviewer: CPO XYZ
Date of Review: 1/1/2013

Subject	Item	Yes	No	N/A
1. Reporting	1.1: Non-compliance standard applied?	√		
	1.2: Followed failure to report procedures?	√		
2. Payment	2.1: Non-compliance standard applied?	√		
	2.2: Financial assessment properly conducted?			√
	2.3: Conversion to community service work appropriate/court approved?			√
3. Community Service	3.1: Non-compliance standard applied?		√	
	3.2: Used an approved provider?	√		
	3.3: Proper documentation?	√		
	3.4: Adequate follow up on progress?		√	
4. Evaluation and Treatment	4.1: Non-compliance standard applied?	√		
	4.2: Used an approved provider?	√		
	4.3: Proper documentation?	√		
	4.4: Adequate follow up on progress?	√		
5. Drug Testing	5.1: Non-compliance standard applied?			√
	5.2: Conducted at appropriate time intervals?			√
	5.3: Proper documentation?			√
6. Administrative Actions	6.1: Request for hearing appropriate?	√		
	6.2: Request for modification/revocation appropriate?			√
	6.3: Request for warrant/tolling appropriate?			√
	6.4: Probation tolling accurately calculated/applied?			√
7. Close out	7.1: Case closed at proper time?	√		
	7.2: Case close-out procedures followed?	√		
	7.3: Case classified correctly (successful/unsuccessful/warrant/revoked)?	√		

Comments: The supervising probation officer executed standards in most material instances, but could improve on timeliness addressing probationer non-compliance with community service time standards set by the court.

Grade:	Pass √ Fail

RECOMMENDATIONS

1. Providers should develop written procedures detailing the method and frequency of quality assurance reviews.

2. Providers should develop review instruments to standardize quality assurance reviews.

3. Court officials should consider whether to require providers to submit quality assurance review results (including corrective actions providers will take to address identified deficiencies) as part of an overall performance management framework.

Provider Response: *One provider responded to the report. Regarding this finding, the provider stated that it would add quality assurance review procedures regarding methods, checklists, and other items.*

Appendix A: Table of Recommendations

Recommendations	Courts	Providers	General Assembly
Procurement and Oversight			
Courts that contract for probation services should solicit proposals from multiple providers, adopt practices that maximize evaluation transparency and objectivity, and document key decisions. (p.5)			
1. Courts should balance the number of providers notified and method of notification with available resources. Courts should solicit proposals from multiple providers whenever possible.	X		
2. Courts should develop clear criteria to evaluate and select a probation provider to ensure objectivity and consider utilizing a stakeholder panel to increase transparency.	X		
3. Courts should document their procurement process and reasons for selecting their probation provider.	X		
Courts should ensure that contracts and governmental agreements have the provisions necessary to communicate all relevant operational and performance expectations. (p.8)			
4. Courts should ensure that contracts and governmental agreements comply with all requirements of state law (including all uniform contract standards) and should include the best practices put forth by CMPAC.	X		
5. Courts should ensure that contracts and governmental agreements include their expectations in key operational areas, such as staffing levels, payments/collections, supervision standards, and the identification of potentially indigent probationers. The contracts and governmental agreements should also include a provision allowing a compliance audit or review.	X		
6. Courts should consider limiting contracts to no more than five years.	X		
Courts should improve the monitoring of probation providers by requiring meaningful reports and periodic compliance reviews. (p.12)			
7. Providers should report to the courts all data required by O.C.G.A. § 42-8-103.		X	
8. Courts should request more comprehensive summary reports to more effectively monitor activity data, probationer outcomes, and provider performance/compliance.	X		
9. Courts should require periodic compliance audits to evaluate how well providers adhere to contract terms.	X		
The General Assembly and CMPAC can address issues identified in our review, but most issues can be addressed more effectively by the courts and providers. (p.17)			
10. The General Assembly can consider addressing any of the operational deficiencies in the report through additional uniform contract standards. Given varying service expectations of courts, the General Assembly should focus on the practices to be most abusive or undesirable.			X
11. The General Assembly should consider whether CMPAC has the resources necessary to ensure that providers and courts comply with current state law (or any future law).			X
12. CMPAC should provide the contracting judge with results of compliance reviews and summarize compliance reviews for inclusion in annual reports.	CMPAC		
13. CMPAC should consider conducting a review of all contracts and governmental agreements in effect and requiring future documents be submitted upon their execution.	CMPAC		

Appendix A: Table of Recommendations (continued)

Recommendations	Courts	Providers	General Assembly
Reporting Standards and Practices			
Probation providers should have written reporting policies for both compliant and non-compliant probationers, and courts should ensure that provisions detailing the frequency and type of reporting are included in contracts and governmental agreements, as required by state law. (p.20)			
14. Providers should ensure that officers execute the reporting requirements as established in policies and procedures.		X	
15. Providers should develop written supervision standards that explain reporting requirements for compliant and non-compliant probationers. Standards should detail the violations that will result in increased reporting requirements and the compliance that will result in decreased reporting.		X	
16. Providers should develop written policies explaining what actions will be taken (e.g., request for revocation or warrant) for probationers who fail to report.		X	
17. Courts should ensure that contracts and governmental agreements include both the type and frequency of reporting for both compliant and non-compliant probationers.	X		
Payment Collection Standards and Practices			
Probation providers should establish written policies to address financial non-compliance. In addition, providers and courts should ensure that probation terms are not improperly extended and that arrest warrants are not improperly used to compel payments. (p.25)			
18. Providers should develop written policies and procedures that establish criteria that define a probationer's financial non-compliance and explain the type of administrative responses—such as increased reporting requirements—that will be imposed.		X	
19. Providers should ensure that officers monitor probationers in a manner consistent with court-established deadlines and provider policies.		X	
20. Providers should not actively supervise, require reporting, or threaten probationers with punitive actions for failing to comply with financial obligations once the probation term has expired.		X	
21. Courts should consider including a contract provision forbidding providers from requiring probationers to continue to address probation conditions beyond the term established in the original sentence, or for a time period beyond that which is provided under appropriate tolling procedures.	X		
22. Courts should consider including a contract provision detailing the level of non-compliance for which an arrest warrant should be sought. This may include prohibiting warrant requests for actively reporting probationers, unless they are arrested or fail a drug test. If many warrant requests include non-payment as a significant condition of non-compliance, courts should consider requiring providers to conduct an indigent assessment early in the probation term.	X		
23. The General Assembly should consider amending O.C.G.A. § 42-8-102 to include as a uniform contract standard the conditions for which an arrest warrant should be sought.			X

Appendix A: Table of Recommendations (continued)

Recommendations	Courts	Providers	General Assembly
Probation providers should establish probationer payment plans based on the fine amount and time frame approved by the court. (p.30)			
24. Providers should establish written payment plan policies that are based on actual financial obligations and avoid unnecessarily short time standards. Providers should consult with the court when developing these policies.		X	
25. Providers should ensure that officers establish payment plans that are consistent with provider policies.		X	
Probation providers should establish policies and procedures for identifying potentially indigent probationers in a timely manner, and courts should ensure that the provider's role in the process is clearly defined. (p.32)			
26. Courts and providers should work together to ensure that contracts and government agreements clearly state the provider's role in identifying potential indigent probationers.	X	X	
27. Providers should adopt policies that detail the criteria (i.e., timing; amount of arrears) that will cause an indigence assessment and the assessment method. Providers should consult with their courts when developing the policies.		X	
28. Courts should consider including indigent reimbursement clauses in contracts to help probation providers cover costs if a significant percentage of the probationers they supervise are found to be indigent and supervision fees waived.	X		
Payment Allocation and Remittance Standards and Practices			
Probation providers should consult with courts when developing written policies for the allocation and remittance of probationer payments. The policies should address issues such as improperly prioritizing supervision fees, the allocation of partial payments, and remittance of funds to all recipients. (p.34)			
29. In consultation with the court, providers should develop clear, rational policies for allocating probationer payments. The policies should not allow the front-loading of supervision fees, and they should address the allocation of partial payments or payments received by probationers who are in arrears.	X	X	
30. Providers should not alter their prioritization method during a probation term without consent from the court.		X	
31. In consultation with the court, providers should develop policies for remitting funds to all recipients, including the court, victims, and the Criminal Justice Coordinating Council.	X	X	
32. Courts should detail allocation and remittance standards in the contracts and government agreements.	X		
33. Courts should consider assessing whether a provider's payment allocation remittance practices comply with agreed-upon policies as part of a periodic compliance audit.	X		

Appendix A: Table of Recommendations (continued)

Recommendations	Courts	Providers	General Assembly
Community Service			
Probation providers should develop written policies to ensure probationers complete community service work and to reduce the risk of fraudulent reporting. (p.38)			
34. Providers should take steps to reduce community service-related fraud, such as establishing a network of approved community service sites with a contact person who attests to reported hours and verifying completed community service hours whenever reported hours are questionable.		X	
35. In consultation with the court, providers should develop policies regarding the expected timeframe for community service completion when timeframes are not specified during sentencing.	X	X	
36. In consultation with the court, providers should develop policies regarding actions to take when a probationer is not compliant. The policies should define noncompliance, consider the expected timeframe for completion, and describe the appropriate actions that can be taken (e.g., increased reporting requirements; requesting a court hearing).	X	X	
37. Providers should ensure that officers monitor probationers in a manner consistent with court-established deadlines and provider policies.		X	
Probation providers and courts should establish procedures to ensure appropriate conversions between community service hours and financial obligations. (p.42)			
38. Providers should develop policies to identify probationers who may be potentially indigent and include a time standard for making the determination.		X	
39. Courts should approve each conversion of a probationer's financial obligation to community service hours.	X		
40. Courts should explicitly approve the conversion rate and methods used as part of any contract or government agreement. Courts should consider the cost of bartered items in relation to the more common conversion rate of federal minimum wage.	X		
Evaluation and Treatment			
Probation providers should develop written policies to ensure evaluations and treatments are completed in a timely manner. (p.44)			
41. Providers should establish written time standards to manage evaluation and treatment conditions when court orders do not establish them. Time standards should clearly define deadlines for beginning and completing evaluation and treatment and explain what periodic progress is necessary to remain compliant.		X	
42. Providers should establish standards that define the level of non-compliance with evaluation and treatment conditions that warrant the administrative actions of increased reporting or a court hearing to modify or revoke probation.		X	
43. Providers should ensure that officers monitor probationers in a manner consistent with court-established deadlines and provider policies.		X	

Appendix A: Table of Recommendations (continued)

Recommendations	Courts	Providers	General Assembly
Courts should ensure that all necessary actions are taken to address the inherent conflict of interest that exists when probation providers deliver evaluation and treatment in-house. (p.47)			
44. The General Assembly and courts should consider whether allowing providers to deliver evaluations and treatments in-house presents a conflict of interest.	X		X
45. Courts should require that evaluation and treatment services be provided by different entities whenever possible. When provided by the same entity, the courts should ensure that contracts contain conflict of interest clauses that address the risks posed by the delivery of evaluation and treatment services and a list of charges that will be required of the probationer.	X		
46. Courts should either approve the enrollment of each probationer assigned to a treatment program offered by the probation provider or review the cumulative results of evaluations conducted by the provider to assess whether an unusually high percentage of probationers are deemed in need of services delivered by the probation office.	X		
Drug Testing			
Courts should work with probation providers to clarify expectations regarding drug testing frequency and fee amounts. (p.49)			
47. Providers should ensure that officers conduct drug testing when required by the court.		X	
48. Courts should consider making explicit on sentence sheets the minimum number of times a probationer who is required to undergo drug testing should be tested during the term.	X		
49. If frequent testing is occurring, the court should determine if the fee amounts are giving the provider a financial incentive to conduct the tests.	X		
Case Records and Quality Assurance Review Procedures			
Probation officers should maintain case records that describe all interactions with the probationer, contain supporting documents for all completed special conditions, and justify why administrative actions are taken. (p.52)			
50. Providers should ensure officers create and maintain case records (case notes and supporting documents) that clearly illustrate all interactions with the probationer, all major case management decisions, all punitive administrative actions (e.g., increased reporting requirements, request for hearing, and request for warrant/tolling) and the justification for them. In addition, case notes must be legible.		X	
51. Providers should ensure officers follow up with all outstanding conditions of probation during every visit with the probationer. Providers should consider the use of instruments (case management systems; administrative forms) to facilitate the practice.		X	

Appendix A: Table of Recommendations (continued)

Recommendations	Courts	Providers	General Assembly
Probation providers should improve quality assurance review practices to oversee officer case management and consider providing the results to court officials. (p.54)			
52. Providers should develop written procedures detailing the method and frequency of quality assurance reviews.		X	
53. Providers should develop review instruments to standardize quality assurance reviews.		X	
54. Court officials should consider whether to require providers to submit quality assurance review results (including corrective actions providers will take to address identified deficiencies) as part of an overall performance management framework.	X		

Appendix B: Objectives, Scope, and Methodology

Objectives

This audit examines misdemeanor probation operations in Georgia and assesses: (1) how well courts procure private probation services and oversee public and private probation providers; and (2) whether probation providers supervise offenders effectively.

Scope

The audit covered misdemeanor probation activity associated with state and municipal courts. Depending on the objective, the timeframe of court and provider actions ranged from 2008 to 2012.

To assess procurement activity, we selected a sample of jurisdictions that entered into new contracts with private probation providers during calendar years 2008–2011. Our review of contracts and governmental agreements included those in effect during 2012 (some were originally executed as early as the 1990s), while our assessment of court oversight of provider performance included court methods in place during 2012 through mid-2013. Finally, our assessment of case management activities included cases managed and provider policies in place during calendar years 2011 and 2012.

We relied upon CMPAC data to identify the population of probation providers and to estimate the case load of jurisdictions, which we used to establish our sample of courts and probation providers. We used the data for planning purposes only; therefore, we did not perform rigorous data reliability testing. Findings, conclusions, and recommendations were based upon primary data collection methods conducted by DOAA staff.

We did not encounter any significant scope impairments, as courts and probation providers provided us with access to procedures and case files as requested. Government auditing standards require that we note if pertinent information is not disclosed in the report due to a sensitive or confidential nature. Although confidential data was collected and reviewed, the results presented should be considered complete. Throughout the report, we present results that are not traceable to a specific jurisdiction or probation provider to protect the confidentiality of records and procedures, as required by O.C.G.A. § 42-8-106.

Government auditing standards require that we report the scope of work on internal control significant within the context of the audit objectives. All of the work conducted for both objectives can be classified as an assessment of internal controls, or management controls, over misdemeanor probation operations. The first objective addresses the court's controls over probation providers, while the second objective addresses the provider management's controls over operations. Specific information related to the scope of our internal control work is described by objective in the methodology section below.

Methodology

To determine how well courts procure and oversee probation providers, we assessed a sample of courts' procurement methods, a sample of contracts and governmental

agreements in effect, and the methods by which a sample of courts assess performance. Specifically:

- *Procurement* – We selected a sample of courts that had contracted with a new private probation provider between 2008 and 2011. Using total case load as an indicator of size, we stratified the sample into large, medium, and small jurisdictions and selected contracts from each jurisdiction group. In total, 20 of 57 (35%) jurisdictions were selected, 14 municipal courts and 6 state courts.

  We developed principles of best practices for soliciting and selecting vendor services through interviews of procurement professionals and a review of the *Georgia Procurement Manual*. We then interviewed court personnel and collected supporting documents (if available) to determine the techniques and methods used to solicit, evaluate, and select probation providers.

- *Contract/Governmental Agreements* – We selected a sample of 29 jurisdictions—13 municipal and 16 state courts—from a population of 440 (7%). In total, these jurisdictions were served by 6 public and 10 private probation providers. Using total case load as an indicator of jurisdiction size, we stratified the sample into large, medium, and small jurisdiction groups and selected jurisdictions from each group. We also considered geography and population density. As a result, jurisdictions in the sample were located throughout the state and were in both rural and urban areas.

  We compared the 29 documents best practices for contract content that were based on state law, CMPAC rules and regulations, and principles for oversight of operational areas of office and case management.

- *Court Oversight* – We visited 13 providers – 5 public and 8 private – that were part of our contract/governmental agreement sample of 29. Those visited include six providers for municipal courts and seven for state courts; five were public providers and eight were private.

  For those providers visited, we analyzed the financial, activity, and performance content present in reports currently submitted to the courts and interviewed the judges and/or court administrators that interact with the providers. We also created a performance management dashboard report that included content required by state law and additional activity and performance indicators, vetted the dashboard report with stakeholders from local governments and courts, and compared the content of reports submitted to the courts to this best practice model.

To determine whether probation providers supervise offenders effectively, we (a) assessed provider policies and procedures related to case management, including standards for supervision, financial collections, and other conditions (e.g., community service work, evaluation and treatment); (b) conducted interviews with probation provider management to establish additional standards for case management and oversight of operations; (c) reviewed a sample of probationer case files. For this objective, we used the sample of 13 jurisdictions noted above. We

reviewed a sample of 30 cases that began in January and February 2011.[15] Supervision of most of the cases ended in 2012.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[15] This sample size does not produce statistically-significant results. However, the sampling technique is similar to those established in general quality assurance reviews conducted by managers to review the quality of case management practices; therefore, we consider the methodology appropriate to support the objective.

Appendix C: Request for Proposals Best Practices

RFP Components	Definition	Example from Court RFPs
General Instructions and Administrative Requirements	Identify the officer assigned to the process, how responses should be submitted, what information must be submitted, the period of time the offer will be open, the due date and time for submitting responses.	Proposals should be submitted in sealed envelopes Description of documentation required in the proposal No contact during procurement process
Schedule of Events	List of activities and corresponding dates	Posting date of RFP Deadline for inquiries, requests for clarification Deadline for submission of proposals Estimated date of contract award
Scope Description/Purpose of Procurement	Statement of need, including minimum provider requirements	A successful vendor shall provide comprehensive probation supervision services and management for misdemeanor offenders. These include offender management, alcohol and drug screening, fine and fee collection, etc.
Supplier Qualification Requirements	Relevant qualifications to perform under the contract, including previous business experience or licensure requirements	Project manager with a minimum of five years of work experience Availability of Spanish-speaking probation officers Education requirements
Performance Requirements	Specifications, requirements, and key questions	Meet with probationers once every 30 days Provide a convenient location Maintain an appropriate probationer/officer ratio Provide court a case record management system Submit monthly reports on probationers' status
Requesting Samples	Product or work samples that demonstrate performance	Example reports Copies of letters sent to probationers
Developing Cost Worksheets	Identifies the price of the requested services	Fee schedule showing the cost to the probationer for supervision, electronic monitoring, drug/alcohol screening, etc.
Evaluation Criteria	Factors used to determine the technical value of the proposal	Methodology and approach to the service (25 points) Experience, including length of time in business (25 points) Past performance with other courts and references (25 points) Appropriateness and flexibility of fee schedule (25 points)

Source: Georgia Procurement Manual, review of court RFPs

Appendix D: Example of a Financial Assessment Form

OFFICER NAME				
ASSESSMENT DATE				
PROFILE				
Name: JOHN DOE				
Case Number: 123-45-678				
			TOTAL	MONTHLY
FINANCIAL OBLIGATIONS OF PROBATION				
	Court Fines and Surcharges		$ 600	$ 50
	Supervision Fees		$ 420	$ 35
	Crime Victim Fees		$ 108	$ 9
	TOTAL FINANCIAL OBLIGATIONS		$ 1,128	$ 94
		YES	NO	AMOUNT
CURRENT INCOME				
	Monthly Income (Net)	X		$ 2,000
	Spouse Monthly Income (Net)		X	$ -
	Other Income		X	$ -
	TOTAL INCOME			$ 2,000
CURRENT EXPENSES				
	Child Support/Alimony		X	$ -
	Rent/Mortgage	X		$ 650
	Transportation	X		$ 450
	Utilities (Electric, Water, Gas)	X		$ 200
	Telecommunications (TV, Phone)	X		$ 200
	Food	X		$ 300
	Medical	X		$ 40
	Entertainment	X		$ 60
	Other		X	$ -
	TOTAL EXPENSES			$ 1,900
FINANCIAL ASSESSMENT				
	Current Net Revenue			$ 100
	Proposed Monthly Probation Payment Plan			$ 94
	Difference			$ 6
		YES	NO	
1. Does the probationer have current net revenue greater than the proposed payment plan?		X		
2. Are there non-essential expense items that can be reduced or eliminated to meet the monthly payment plan?		X		
3. Should the probationer be returned to court to assess indigent status?			X	
PROBATIONER NAME				
PROBATIONER SIGNATURE				

Source: DOAA analysis based on review on financial assessment instruments

The Performance Audit Division was established in 1971 to conduct in-depth reviews of state-funded programs. Our reviews determine if programs are meeting goals and objectives; measure program results and effectiveness; identify alternate methods to meet goals; evaluate efficiency of resource allocation; assess compliance with laws and regulations; and provide credible management information to decision-makers. For more information, contact us at (404)657-5220 or visit our website at www.audits.ga.gov.