



Misdemeanor Probation Reform

WHAT IT REALLY MEANS TO LOCAL GOVERNMENTS AND COMMUNITIES

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Change is Upon Us

Primarily because of Governor Deal's Criminal Justice Reform Council, there were sweeping changes in the conduct of misdemeanor probation beginning July 1, 2015. The vehicle for this change was House Bill 310 that provided for landmark changes in misdemeanor probation operations and oversight. The following year, House Bill 367 solidified these changes. These changes may affect local governments dependent upon their individual situations.

The major philosophy behind the changes in the legislation were to address the concerns of multiple lawsuits and media articles that highlighted alleged incidents of false imprisonment and the use of probation in the proliferation of "debtors prisons". Much of the intent behind the legislation appears to encourage judges to utilize alternatives to incarceration and established procedures for specific high profile and high liability issues.

MAJOR ISSUES:

1. Tolling (Suspension of time running on a sentence)
2. Financial Collections, especially in the case of "pay only cases". These are cases where the only reason a person is on probation is in order to pay fines/fees.
3. Community Service as a method to be used in lieu of incarceration or able to be converted from a fine in the case of financial hardship. Community Service may also be used as a sanction at revocations.

Transparency to Local Government: The overall encouragement of information flow to local government officials and the **requirement** of an annual report by probation services to the local government.

LEGAL HIGHLIGHTS:

The majority of applicable laws affected by the House Bills are OCGA § 42-8-100 to 42-8-109.5.

Major points include:

1. Formation of the Department of Community Supervision (DCS) at State level that combined felony probation, parole, and some aspects of juvenile supervision. Regulatory oversight of misdemeanor probation, both governmental and private was given to the DCS Misdemeanor Probation Oversight Unit (MPOU).
2. Community Service ordered for traffic, ordinance, or misdemeanors can range from not less than 20 hours to no more than 250 hours.
3. The Chief Judge of any court is authorized, **subject to the approval of the governing authority**, to enter into a contract with a private probation entity or establish probation system for those services.
4. A revocation for Failure to Pay or Failure to Report has a limit of confinement not to exceed the balance or 120 days, whichever is less.
5. "Pay-Only Probation" supervision fees are capped at three (3) months and termination of the case shall be done when all fines/fees/surcharges have been paid. There are some legal exceptions to this rule.
6. Tolling: Tolling or the suspension of probation running time may be requested and approved by the judge; however, there is an extensive process that must be completed before this occurs.
7. If the balance of a case is revoked, then all moneys owed are negated.
8. The Misdemeanor Probation Oversight Unit has the authority to regulate and promulgate rules for all misdemeanor probation entities including private and public entities.
9. Probation Services must submit quarterly reports to the MPOU and an annual report to the **local government**.
10. Probationers have a right to a copy of their file except for case notes. Case notes release require approval of the Commissioner of DCS.
11. Probationers shall be provided with a receipt, including a balance statement for any payments made.
12. MPOU has the authority to audit for compliance, investigate complaints, and issue sanctions to misdemeanor probation entities, both private and public.

BEST PRACTICES FOR LOCAL GOVERNMENT OFFICIALS:

1. Have a good contract or service plan with your probation services entity. Know what it says.
2. Establish good communication with your judges, prosecutors, and probation chief.
3. Do not shortcut or try to circumvent the law, especially trying to save money. For smaller governments, one major lawsuit can do serious damage.
4. Require the highest ethics and professionalism of your probation services. Do not be afraid of change if it is needed.
5. Ask for help and education if needed. There are numerous resources available.

Transparency is the key. Know what is going on with your probation entity and read the reports that they provide.