

This Self-Assessment of Municipal Court Best Practices was developed by Georgia Municipal Association, Inc. as an informational tool for cities, and does not contain legal guidance. This Self-Assessment may be used with, or as an alternative to, [GMA's Sample Annual Report & Affirmation of the Municipal Court Judge and Clerk](#), which is posted at [www.gacities.com](http://www.gacities.com) under publications/Municipal Courts for Elected Officials. Please consult your city attorney for legal advice about the proper use of this self-assessment.

<b>CITY SELF-ASSESSMENT OF MUNICIPAL COURT BEST PRACTICES</b>			
Best Practice Descriptions	<i>Examples of Supporting Documentation (City Keeps in its regular records)</i>	Initials (if following best practice)	Best Practice Reason Code
<b>Independence and Professionalism of Court</b>			
The city's elected and appointed officials have received training on the independence of the court.	Proof of training		1
The municipal court's funding for the upcoming year is independent of the fines/fees projected to be imposed by the municipal court for the upcoming year. Budget should include a footnote affirming this.	Budget with footnote		1
The judge and municipal court clerk are not employees of or under the direction or supervision of the police department.	Job descriptions, organization charts		1
<b>Court Operations</b>			
All court proceedings are recorded (either by audio-recording, video-recording or court reporting) and recordings are maintained in accordance with record retention schedule. Recordings show that: <ul style="list-style-type: none"> <li>Each defendant is individually read his rights regarding self-incrimination, right to jury trial (for misdemeanor offense or higher), right to counsel, etc., as well as waiver of those rights and an individual affirmative determination is made that the defendant understands those rights before the defendant is allowed to enter a plea. Signature on a rights waiver form occurs only after that individual determination has been completed.</li> <li>During the process of taking a plea of guilty or nolo contendere, the Judge questions the defendant individually as to his understanding of his rights, his understanding of the charges against him, and the voluntariness of his decision to plead.</li> </ul>	Log of audio-recordings, affirmation of court clerk		1
Copies of any Notice of Appeal, Petition for Certiorari, or Application for Discretionary Review are forwarded immediately to the judge and solicitor (or, if none, to the city attorney).	Procedure, affirmation of court clerk		1A
Discovery requests are immediately forwarded to the solicitor (or, if none, to the city attorney) for handling.	Procedure, affirmation of court clerk		1A

<p>A system exists for mail addressed to the judge, solicitor and/or public defender to be promptly forwarded or otherwise made available in a timely manner to those persons. In the case of the public defender, the system maintains the confidentiality of the communication between the public defender and any defendant he or she may represent or be called upon to represent.</p>	<p>Procedure, affirmation of court clerk</p>		<p>1A</p>
<p>Court operations comply with the requirements of any Judicial Emergency Order.</p>	<p>Court operational guidelines, as amended to comply with Judicial Emergency Order; affirmation of judge, affirmation of city attorney.</p>		<p>1B</p>

<b>Judge</b>			
The city has a written agreement, ordinance provision, or charter provision setting the term of the municipal court judge (of at least one year), and the agreement, ordinance provision or charter provision has been approved by the city attorney as accurately describing the obligations of the judge and the independence of the court and identifying judges pro tem. Note: review of obligations identified in <a href="#">GMA's Sample Municipal Court Judge Service Agreement</a> is recommended.	Contract, ordinance or charter provision, signature or affirmation of city attorney.		2
The city pays for required training of the judge, and maintains a copy of training certification as proof that training is up to date.	Receipts, training certifications		3
<b>Prosecuting Attorney (Solicitor)</b>			
A. The city retains an attorney who acts as prosecutor (often called a solicitor) and is present at all court sessions and pre-trial matters and is registered with the State OR	Copy of resolution or ordinance creating officer of the prosecuting attorney; contract with solicitor or job description if employee; proof of up to date, accurate information about prosecuting attorney that was submitted to Prosecuting Attorneys' Council		4
B. The city has considered the cost of retaining a prosecuting attorney, and, after input of the city attorney, decided not to retain one. To ensure consistent treatment of defendants, the city has: <ul style="list-style-type: none"> <li>• Adopted a policy or provided in the judge's contract or in the charter that the judge shall not engage in plea deals or act as a prosecutor in any case before the court;</li> <li>• Adopted a policy that police officers and code enforcement officers may only entertain plea arrangements with defendants in pre-trial matters and shall only act as a witness during trial, and provided training to officers on the policy;</li> <li>• Adopted a policy to retain the city attorney or other attorney to serve as solicitor on a case-by-case basis where there are pre-trial legal issues or complex facts beyond the police officer's knowledge;</li> <li>• In conjunction with the city attorney, an outside attorney, or POST training entities, provided training to police officers about changing charges or conducting pre-trial negotiations that are usually performed by a prosecuting attorney.</li> </ul>	Documentation of the cost of retaining a prosecuting attorney and the decision not to do so; policies, training materials; identification of the attorney who will be retained on a case-by-case basis when needed.		5

<b>Court Clerk</b>			
The city pays for all required training of the municipal court clerk, and maintains a copy of the municipal court clerk's certification of training completion.	Receipts, training certifications		6
The city authorizes the municipal court clerk to seek guidance directly from the city attorney when he or she has questions or concerns about court operations, procedures, and matters related to private probation companies.	Job description or correspondence or training materials or policy		6
<b>Public Defender</b>			
A. A public defender retained by the city is present at every court session OR	Contract or job description (if employee); budget		7
B. When the judge determines that a defendant is entitled to a public defender, he or she reschedules the defendant's case, ensures that a public defender will be present on the rescheduled date, and provides the defendant information necessary to contact the public defender.	Contract with public defender; documentation of re-scheduling when public defender needed but not present; copy of communication showing defendant is provided contact information for the public defender.		7
The court follows a process for determining eligibility for appointment of counsel due to indigency that meets legal standards.	Forms and other documents of the process, affirmation of judge.		7
<b>Interpreter</b>			
When the judge determines that a defendant is entitled to an interpreter, a qualified and certified interpreter present on that date is made available to the defendant at no cost OR the judge reschedules the defendant's case and ensures that a qualified and certified interpreter will be present on the rescheduled date at no cost to the defendant.	Budget (shows projected costs for interpreters); Proof of rescheduling; proof of qualification/certification of interpreter; affirmation of judge; affirmation of court clerk		8
The judge follows the guidelines of the Bench Cards entitled <b>"Working with Limited English Proficient Persons and Foreign-Language Interpreters in the Courtroom"</b> and <b>"Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom,"</b> as published on the <a href="#">website</a> of the Administrative Office of the Courts.	Contracts with interpreters, job description if interpreter is city employee, proof of certification of interpreters, affirmation of judge, affirmation of court clerk		8
<b>Fines/Fees/Alternatives</b>			
The city has a procedure in place to ensure that the judge is notified immediately when a defendant is incarcerated, so a first appearance hearing (which includes determination of indigent status and setting of appropriate bail) may be arranged ASAP and no later than 48 hours after arrest. The city enforces this procedure.	Procedure, proof of enforcement.		9
The city has an established method for defendants to complete community service as an alternative to paying fines and fees.	Description of community service options provided to defendants; contract or letter		10

	agreement with community service partners		
If a judge has determined that a fine, fee or bail amount is due, the judge routinely and consistently inquires whether payment of any fine, fee or bail amount presents a significant financial hardship to the defendant. If the defendant answers yes, the judge either offers community service or follows the guidelines of the Bench Card entitled <b>“Georgia and U.S. Constitutional Law Regarding Misdemeanor Probation,”</b> as posted on the <a href="#">website</a> of the Administrative Office of the Courts, to determine whether it is necessary to waive or reduce the fines/fees or impose community service as an alternative.	Affirmation of judge and affirmation of court clerk		10
Personnel handling fine money and recording payments follow a written procedure designed to ensure proper handling of payments and to prevent issuance of erroneous warrants, and receive periodic training on the procedure.	Procedure, proof of training.		10A
<b>Private Probation Company (Complete if City Uses a Private Probation Company)</b>			
The probation provider follows the guidelines of the Bench Card <b>“Georgia and U.S. Constitutional Law Regarding Misdemeanor Probation”</b> as posted on the <a href="#">website</a> of the Administrative Office of the Courts.	Affirmation of probation provider		11
Contract with private probation company is between the city and the private probation company, meets the requirements of Georgia law, and includes the provisions set forth in <a href="#">GMA’s Sample Private Probation Services Agreement</a> as posted on <a href="#">www.gacities.com</a> .	Contract, affirmation of city attorney		11, 12
The city has designated a “business owner” for the contract with the private probation company who is responsible for reviewing complaints about the private probation company and advising the city council about whether the private probation company is complying with the terms of the contract.	Document identifying business owner, correspondence		11, 12
The city attorney approves the contract with the private probation company and all changes to the contract prior to execution of the contract or changes.	Contract or amendment signature page with dated city attorney signature		11, 12
The chief judge reviews all quarterly and annual reports provided by the private probation company and 1) notifies the city that review is complete and there is no indication that the private probation company has provided unauthorized services or 2) notifies the city and the city attorney of any concerns arising from the reports.	Correspondence		12
The city council reviews the annual report provided by the private probation company and a report from the business owner of the private probation contract and makes a determination of whether to continue the contract.	Minutes		12

## Reasons for Affirmations in Self-Assessment

1. If the mayor or council members attend court or try to influence the judge, this leads to a perception that the court is not independent. If the court's operating costs are paid from fines and fees, this leads to a perception that the court's procedures and the judge's determinations are designed not to promote justice, but instead to bring in revenue. When the court staff are police department employees or under the supervision of the police department, this leads to a perception that the "deck is stacked" against the defendant and in favor of the police officer. If the process is fair, defendants are more likely to accept negative outcomes. See Ferguson Report, p. 42 ("The Ferguson municipal court handles most charges brought by FPD, and does so not with the primary goal of administering justice or protecting the rights of the accused, but of maximizing revenue. The impact that revenue concerns have on court operations undermines the court's role as a fair and impartial judicial body.")

See also Burke, K. & Legen, S., Procedural Fairness: A Key Ingredient in Public Satisfaction (2007); a White Paper of the American Judges Association; <http://aja.ncsc.dni.us/courtrv/cr44-1/CR44-1-2BurkeLeben.pdf> as visited 12/5/2016, p. 6. ("People are in fact more willing to accept a negative outcome in their case if they feel that the decision was arrived at through a fair method. Significantly, even a judge who scrupulously respects the rights of litigants may nonetheless be perceived as unfair if he or she does not meet these expectations for procedural fairness.")

Making and keeping an audio recording of every court proceeding demonstrates transparency and promotes a perception of fairness. Uniform Municipal Court Rule 26 requires "a verbatim mechanical recording" or a "contemporaneous paper record" or both of proceedings at which defendants enter pleas. However, it is best practice to require at least an audio recording of all proceedings coming before the court, not just pleas. This means proceedings involving probation revocation hearings, indigence hearings, etc. should be recorded as well. The reasons best practice dictates that all proceedings before the municipal court be recorded is that such recordings help prevent holes in the record which could be exploited in litigation against a city. By maintaining such records, no holes would exist, and the actual facts of all proceedings will be held out as fact in litigation.

- 1A. Failure to promptly forward these documents to the correct party can result in failure to meet deadlines and other negative consequences for the city.
- 1.B Courts must comply with the requirements of any Judicial Emergency Order. For example, Judicial Emergency Orders issued during the COVID-19 pandemic establish specific requirements for courts. These Orders are sent to all chief judges, are communicated to all municipal court judges by the Council of Municipal Court Judges, and are posted on [www.georgiacourts.gov](http://www.georgiacourts.gov). Failure to comply with such orders can result in discipline of the judge and exposure to litigation against the city.
2. Revisions to O.C.G.A. Section 36-32-2 and 36-32-2.1 in 2016 removed a statement that said the judge "shall serve at the pleasure of the governing authority," proscribed minimum one year terms, grounds for termination mid-year, and process for termination. ("Any individual appointed as a judge under this Code section shall serve for a minimum term of one year and until a successor is appointed or if the judge is removed from office as provided in Code Section 36-32-2.1. Such term shall be memorialized in a written agreement between such individual and the governing authority of the municipal corporation or in an ordinance or a

charter.”) It is common practice to document the responsibilities of the judge in a contract. The contract can serve as an important memorialization of the judge’s independence and responsibilities, and as documentation of the limited role played by the city.

O.C.G.A. Section 15-1-3 provides that the court has the power “to control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.” In March, 2016, the U.S. Department of Justice issued a letter emphasizing the judge’s responsibility to oversee court staff and probation officers: “Courts must safeguard against unconstitutional practices by court staff and private contractors. In many courts, especially those adjudicating strictly minor or local offenses, the judge or magistrate may preside for only a few hours or days per week, while most of the business of the court is conducted by clerks or probation officers outside of court sessions. As a result, clerks and other court staff are sometimes tasked with conducting indigency inquiries, determining bond amounts, issuing arrest warrants, and other critical functions—often with only perfunctory review by a judicial officer, or no review at all. Without adequate judicial oversight, there is no reliable means of ensuring that these tasks are performed consistent with due process and equal protection. Regardless of the size of the docket or the limited hours of the court, judges must ensure that the law is followed . . .”

It is reasonable to expect that the judge will be absent or recused periodically. It is important to identify judges pro tem and the process for using them. This is especially important during emergency situations such as the COVID-19 pandemic.

3. O.C.G.A. Section 36-32-11(d)(“The reasonable costs and expenses of such training shall be paid by the governing authority of the jurisdiction where the judge presides.”)
4. O.C.G.A. Section 15-18-91(“(a) Subject to the provisions of this article, the governing authority of a municipality shall be authorized to create the office of prosecuting attorney of the municipal court. A copy of the resolution or ordinance creating the office of prosecuting attorney of the municipal court shall be provided to the Prosecuting Attorneys' Council of the State of Georgia. (b) It shall be the duty of the municipal court clerk, or such other person designated by the governing authority of a municipality, to notify the Prosecuting Attorneys' Council of the State of Georgia of the name of any person appointed to be the prosecuting attorney of a municipal court within 30 days of such appointment.”)
5. Cities are not required by law to have a prosecuting attorney. Judges are prohibited from engaging in plea discussions. Uniform Municipal Court Rules 25 (a) “The trial judge shall not participate in plea discussions.” Usually, plea negotiations are handled by the city’s prosecuting attorney. If the city does not have one, it appears that law enforcement officers may be authorized to act in the capacity of a prosecutor for pre-trial matters and plea negotiations. Preamble to Uniform Municipal Court Rules: “It is not the intent of these rules, nor shall these rules be construed, to require any municipal, recorder or any other court deemed a municipal court, to become or remain a court of record or to employ the services of any personnel, including solicitors or prosecuting attorneys, unless otherwise provided by general law, charter or ordinance.”

Rule 20.2(c) of the Uniform Municipal Court Rules provides that law enforcement officers

may serve as prosecutors at commitment hearings, and suggests that they may serve as prosecutors in other pre-trial matters: “At the commitment hearing, the following procedures shall be utilized: (1) The rules of evidence shall apply except that hearsay may be allowed; (2) **The prosecuting entity** shall have the burden of proving probable cause; and **may be represented by a law enforcement officer**, a district attorney, a solicitor, or otherwise **as is customary in that court**; (3) The accused may be represented by an attorney or may appear pro se; and (4) The accused shall be permitted to introduce evidence.” (emphasis supplied)

However, the practice of using law enforcement officers to engage in plea deals creates exposure to the city due to conflicts of interest, the appearance of unfairness, and the risk of inconsistency in how plea deals are handled.

6. Georgia law requires municipal court clerks to receive minimum training that this paid for by the city. O.C.G.A. Section 36-32-13(b)(3) “The reasonable costs and expense of training required by this Code section shall be paid by the governing authority of the municipality from municipal funds.” Training designed for all clerks cannot address all questions associated with a particular court. Permitting the clerk to seek counsel from the city attorney promotes ongoing compliance with legal obligations.
7. Georgia statutes require every municipal court to provide a free public defender to any defendant who is determined by the judge to be indigent. O.C.G.A. Section 36-32-1 (f); (“Any municipal court . . . shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation, or other loss of liberty . . . unless the court provides to the accused the right to representation by a lawyer, and provides to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Council for representation of indigent persons in this state” O.C.G.A. Section 36-32-1 (g) “Any municipal court . . . that has jurisdiction over the violation of municipal or county ordinances or such other statutes as are by specific or general law made subject to the jurisdiction of municipal courts, and that holds committal hearings in regard to such alleged violations, must provide to the accused the right to representation by a lawyer, and must provide to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Council for representation of indigent persons in this state.)

Uniform Municipal Court Rules Rule 21, Appointment of Counsel for Indigent Defendants states: “The municipal court shall have a procedure and forms consistent with state law in order to determine indigence and to appoint counsel to defendants who apply and qualify for appointed counsel. The applications shall be available through the clerk of the municipal court. The rules of municipal courts shall embrace and include OCGA § 17-12-1 et seq. The Georgia Public Defender Standards, as amended, are incorporated by reference to the extent that they are applicable to municipal courts.”

The judge must make the final decision about whether the defendant is indigent. See



O.C.G.A Section 17-12-2(6)(A); Thomas v. State, 677 S.E.2d 433, 437 (“the determination of whether a defendant is indigent . . . lies within the discretion of the trial court, and this determination is not subject to review.”)

8. State Court Rules, Rules for Use of Interpreters Appendix A (A) (Attached)

Excerpts:

II. “An interpreter is needed and an interpreter shall be appointed when the decision maker, which would include the judge, magistrate, special master, commissioner, hearing officer, arbitrator, neutral, or mediator, determines, after an examination of a party or witness, that: (1) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (2) the witness cannot speak English so as to be understood directly by counsel, the decision maker, and/or the jury.

(B) The decision maker should examine a party or witness on the record to determine whether an interpreter is needed if: (1) a party or counsel requests such an examination; or (2) it appears to the decision maker that the party or witness may not understand and speak English well enough to participate fully in the proceedings, or (3) if the party or witness requests an interpreter. The fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter.

(C) To determine if an interpreter is needed the decision maker should normally include questions on the following:

1. Identification (for example: name, address, birth date, age, place of birth);
2. Active vocabulary in vernacular English (for example: “How did you come to the proceeding today?”, “What kind of work do you do?”, “Where did you go to school?”, “What was the highest grade you completed?”, “Describe what you see in the room”, “What have you eaten today?”). Questions should be phrased to avoid “yes or no” replies;
3. The criminal or civil proceedings (for example: the nature of the charge or the type of proceeding, the purpose of the proceedings and function of the decision maker, the rights of a party or criminal defendant, and the responsibilities of a witness).

(D) After the examination, the decision maker should state its conclusion on the record, and the file in the case should be clearly marked and data entered electronically when appropriate by personnel to ensure that an interpreter will be present when needed in any subsequent proceeding.”

...

(F) When a Certified, Conditionally Approved, or Registered interpreter is not being used, the decision maker or the decision maker’s designee should give instructions to interpreters, either orally or in writing, that substantially conform to the following . . .

VII. Interpreter's Fees and Expenses: Foreign language interpreters.

(A) Any interpreter providing service under this rule shall be compensated as directed by the local court or appropriate governing body.

(B) The expenses of providing an interpreter in any legal proceeding will be borne by the local court or appropriate governing body.

9. Municipal court judges surveyed by GMA in July, 2016 reported that the greatest barrier to complying with the requirement of a first appearance hearing within 48 hours of a defendant's arrest was the city's failure to notify the judge of the incarceration. A procedure designed to ensure prompt notification can be as simple as requiring the arresting officer to affirm that he or she has notified the judge before placing the defendant in custody. Uniform Municipal Court Rules Initial Appearance Hearing. "As soon as is reasonably practicable following any arrest but no later than forty-eight (48) hours if the arrest was without a warrant, or seventy-two (72) hours following an arrest with a warrant, unless the accused has made bond in the meantime, the arresting officer or other law enforcement officer having custody of the accused shall present the accused in person before a municipal judge or other judicial officer for first appearance." "At the first appearance, the municipal judge or judicial officer shall . . . Determine whether or not the accused desires and is in need of an appointed attorney and, if appropriate, advise the accused of the necessity for filing a written application "

Currently, the question of whether 48 hours is too long of a time period to have arrestees incarcerated before receiving their first appearance is being litigated in Georgia and in other jurisdictions throughout the country. It is entirely possible that the courts may hold that incarcerating arrestees for a maximum of 48 hours before their first appearance to determine indigency is too much time. In such event, the courts may determine that a first appearance for misdemeanor arrestees must take place immediately upon arrest and if this is not possible such persons may be required to be released immediately. The City of Calhoun, which is the defendant in the aforementioned litigation, currently has undertaken this practice due to a court decision and is not holding misdemeanor arrestees for first appearances. Some jurisdictions have a policy of automatically releasing misdemeanor arrestees on their own recognizance if the first appearance hearing is not held within 48 hours.

10. National law firms and civil rights groups have been joining forces to bring class actions against cities across the country for failure to properly determine financial hardship and waive fines and fees accordingly. These cases result in damage to the city's brand, attorneys' fees, forced adoption of new policies and procedures, forced training, and ongoing monitoring. The costs of being "forced" into compliance far outweigh the cost of proactively developing appropriate procedures and implementing necessary training. Examples of settlement agreements are attached.

- Cleveland v. City of Montgomery, No. 2:13CV732-MHT, 2014 WL 6461900, at \*1 (M.D. Ala. Nov. 17, 2014) (plaintiffs brought suit against city and two municipal court judges claiming they were put in jail because they couldn't afford to pay parking tickets and the city eventually settled agreeing to conduct constitutionally required hearings and provide public defenders);
- State v. Blazina, 344 P.3d 680, 685 (Wash. 2015) (individualized inquiries into defendants' ability to pay fines was required before the court imposed debt);
- Bell et al. v. City of Jackson, Mississippi, No. 3:15-cv-732-TSL-RHW (S.D. Miss. October 9, 2015)(A group of plaintiffs sued the city for being forced to sit out debts in jail, even for those who were disabled and unable to work);
- Thompson v. Dekalb County (ACLU, Southern Center for Human Rights, and Rogers & Hardin LLP represented plaintiff who was jailed for five days for failure to pay; settled for \$70,000 and judge's agreement to follow bench card), press release and bench card attached);
- Fuentes v. Benton County, ACLU and Terrell Marshall Law Group filed class action (Sup. Ct. Wash. Yakima County Oct. 6, 2015) claiming that Benton County routinely assesses fines and fees in an amount upwards of \$1,000 without considering a person's ability to pay, and indigent people who are unable to pay these charges are sentenced to incarceration in jail or to toil on a work crew. Settlement agreement requires city to pay \$3,000 to individuals, reasonable attorneys' fees, and to do the following: provide training on new procedures for indigence inquiries to prosecutors, public defenders and court staff, amend contracts with public defenders to address training requirements, collect data annually on public defender appointment, charges, jail visits, provide information to Plaintiff's counsel every six months for five years;
- Kennedy v. City of Biloxi (S.D. Miss. Oct. 21, 2015)(plaintiffs incarcerated for failure to pay fines and fees imposed by the court, but were allegedly not afforded ability-to-pay hearings or informed of right to request counsel prior to being jailed. City increased budget for court by \$253,000 for fiscal year 2016 and \$344,024 for subsequent fiscal years to pay for additional city duties set forth in the settlement agreement. City paid \$75,000 in damages and attorneys' fees. Agreement requires: audio recording of all hearings of inability to pay, procedures for inability to pay hearings, judge must follow a bench card. City must no longer use any private probation company after June 1, 2016. Secured money bonds will not be used to detain persons arrested unless the court determines that it is the only pretrial release option that will adequately assure presence at trial. City must place a notice on its website about individual rights to hearing on ability to pay. Required training on inability to pay hearings for judges, required training for police on inability to pay hearings and right to representation by public defender. Required training of probation company staff and city probation staff. Required training of public

defenders on ability to pay hearings. Required training of prosecutors on ability to pay hearings. Required Public defender contract language provisions. Required city to provide information to Plaintiffs' Counsel every six months for two years.

- 10A. If fines or fees are not properly recorded, bench warrants for failure to appear may be erroneously issued. This can result in exposure to lawsuits for unlawful arrest. Moreover, failure to properly handle certain fines and fees can result in loss of federal highway funds and other penalties, and in some case may warrant criminal charges.
11. O.C.G.A. Section 42-8-107 requires the contract to include certain provisions and describe certain requirements. The city can protect itself by including additional provisions that protect the city. For example, when a private probation company violates the constitutional rights of defendants by failing to identify the need for financial hardship hearings or threatening incarceration for failure to pay, the city is at risk of exposure. The city can protect itself by ensuring that the contract includes indemnification language.
- Georgia Department of Audits and Accounts Performance Audit Report No. 12-06, April, 2014 (audit 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.”)
  - Reynolds, et al. v. Judicial Correction Services, Inc., et al., 2:15-cv-00161-MHT-CSC (M.D. Ala., June 16, 2015) (Assisted by the Southern Poverty Law Center, a group of plaintiffs filed suit against the City of Clanton, Alabama and its private probation provider for threatening to jail them when they fell behind on paying fines for traffic violations. Particularly, the lawsuit accused the probation provider with extorting monthly payments from probationers which included an additional fee for the provider and accused the city of formalizing the relationship through an illegal contract with the probation provider. The probation company settled with the plaintiffs. The Southern Poverty Law Center sent letters to 100 cities in Alabama working with the probation company and all of them severed ties with the company.)
12. O.C.G.A. Section 42-8-108 requires probation providers to deliver detailed quarterly reports to the court and annual reports to the governing authority of the city. O.C.G.A. Section 42-8-101 authorizes the governing authority of the city to enter into or terminate a contract with a private probation company at the request of the chief judge and with his or her written consent. Formerly, the chief judge entered into the contract with the consent of the governing authority. This reporting is designed to address the lack of oversight identified in the audit described in Note 11. By ensuring the reports meet the legal requirements and reviewing the reports, the city demonstrates its compliance with oversight obligations.