

## Municipal Courts Post-Ferguson II: *Promoting Justice & Protecting City Assets*

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GMA Annual Convention 2022

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## “The Municipal Court is the only exposure many of Georgia’s citizens have to the judicial system.”

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## Due Process and Equal Protection in Ferguson

- In 2015, the United States Department of Justice found that the Ferguson Municipal Court had a pattern or practice of focusing on revenue over public safety.
- The DOJ also found that court practices violated the 14<sup>th</sup> Amendment’s due process and equal protection requirements



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*Edwards et al. v. Red Hills Community Probation LLC, et al.*

Adel Edwards

- Burning leaves in his yard w/o a permit
- Fine: \$500
- Probation: 12 months
- Probation Supervision Fees: \$528

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## Municipal Courts in Georgia

- 537 municipalities; 380 municipal court judges
- A fair, well-run court is essential for citizens' trust in law enforcement and the city itself
- **Better not to have a court than to have one that violates laws and diminishes trust**



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## Municipal Courts in Georgia

- In the Calendar Year 2019/2020, municipal courts in Georgia had filed:
- 69,637/45,889 ordinance cases
- 15,594/8,068 drug/marijuana cases
- 875,672/597,024 misdemeanor traffic cases
- 38,663/29,253 serious traffic cases (e.g. DUI)
- 1,064,691/725,930 total criminal cases
- 23,356/30,776 total civil cases



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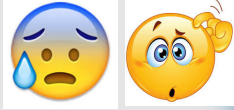
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**Mock Court Exercises**

- Please take a look at the materials provided to you for our exercises.
- Are you a defendant in a criminal matter? Civil? Traffic? Non-traffic?
- What is your primary language spoken?
- What is your financial situation?
- What is your age? Record?
- What are your fears, concerns?



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**The Court Experience – Perception**

- How is the court organized?
  - Does court staff separate defendants based upon type of offense?
  - Based on whether defendant has pled guilty?
  - Where does the Prosecuting Attorney sit?
  - Special rules for defendants coming from jail?
  - Where do police officers sit?
- Discussion on why these questions matter

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**Arrestable Offenses**

- What are some offenses for which a person can be arrested which can be heard in municipal court?





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## Failure to Appear

- What happens when someone does not show up for their court date?

Court Date is August 1, 2018, 10:00 am at 123 Main Street, Big City, GA 12345.

Failure to appear may result in arrest.



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## Bail and Bond

- Determination of Bail
- Hearing about Ability to Pay
- 5<sup>th</sup> Circuit Harris County Case
- Danger - "mechanical application of the secured bail schedule without regard for the individual arrestee's personal circumstances."
- Detaining indigent misdemeanor arrestees before trial when similarly situated arrestees who can afford bail go free violates constitutional protections.
- Placing arrestees, who are innocent until proven guilty, in pretrial detention without proper procedures or an opportunity to be heard deprives them of due process.

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## Bail Hearing Exercise

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## Bail and Bond

- "Sign Own Bond"
- Arrest itself is the punishment for failure to appear
- No bail is needed to secure appearance because defendant tends to show up after arrest
- Prevents risk of spending time in jail for minor offense + failure to appear
- City of Atlanta

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## Pre-Trial Diversion

- What is pre-trial diversion?
- What is required to have a pre-trial diversion program? Does your court have to have pre-trial diversion?



- SB 369 (2018) – Added a \$5 fee to pre-trial diversion!
- SB 73 (2019) – Ensured such fee was the responsibility of the clerk and that it went to the POAB Fund
- SB 249 (2020) – Changed the \$5 fee to be the "greater of 5 percent or \$5.00"

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## Pre-Trial Diversion Exercise

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## Constitutional Protections

- Due Process
  - The exercise of government power under the rule of law with due regard for the essential and fundamental fairness to individuals
  - Defendants must be given notice and the opportunity for a hearing before the government can deprive them of life, liberty, or property.



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## Constitutional Protections

- Equal Protection
  - Provides all people equal protection of the laws, which means that the government has to apply the law equally and should not give preference to one person or class of persons over another unless it can meet burdens established under the law.



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## Constitutional Protections

- Right to a free attorney (if indigent)
- Right to free, certified language interpreter
- Right to interpreter for deaf/hard of hearing
- Right to jury trial
- Right to equal treatment regardless of ability to pay
- How does court inform of rights?
- How does court obtain informed waiver? rights

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## Arraignment – How would you plead?

- What are the defendant's options at arraignment?
  - Guilty
  - Not Guilty
  - Nolo Contendere
- Would you plead guilty even if innocent?
- What are the consequences of pleading guilty?
- What are the consequences of pleading not guilty?
- What are the consequences of asking for a jury trial?
- How does this work without a Prosecuting Attorney?

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## Arraignment Exercise

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**Equal Protection Exercises**

- Eligibility for free attorney exercise
- Eligibility for free, certified language interpreter exercise w/bench cards
- Eligibility for free interpreter for deaf/hard of hearing interpreter w/bench cards

**Am I eligible?**

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**Significant Risk of Financial Hardship Exercise**

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**Alternative Sentencing**

- Remember the lessons learned in Municipal Courts Post-Ferguson Part I on alternatives to jail and fines!
- Options includes community service, a training obligation, educational obligations, fine reductions, waivers of penalties.

**Community Service**

**TRAINING**

**COSTS**

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**Punishment in the Municipal Court**

- Remember the risks to the city assets and brand from Municipal Courts Post-Ferguson Part II!
- Costs of incarceration and medical costs
- Stories and Bad Press
- Litigation costs and settlement costs



**Refresher Training**

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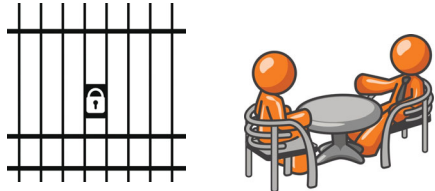
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**Punishment – The Taking of Liberty**



- Incarceration
- Probation

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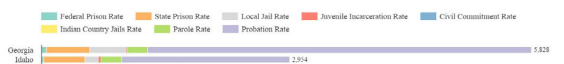
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**Taking of Liberty**

"... [I]n Georgia, a whopping 78% of people under correctional control are on probation. Georgia's rate of probation is more than double every other states' rate of probation . . . One reason why Georgia's use of probation has ballooned to these levels is that the state uses privatized probation, which unnecessarily puts Georgia residents with extremely minor offenses on probation."

Rates of correctional control



Georgia 5,828

<https://www.prisonpolicy.org/reports/50statepie.html>

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## Illegal to Incarcerate for Failure to Pay Fines if Unable to Pay!

- "Pay or Stay" cases:
  - Sharnalle Mitchell et. al v. City of Montgomery, Alabama (2014)(Settled)
  - Jerome Bell et. al v. City of Jackson, Mississippi (2015) (Settled)
- Brand damage!
  - "For more than 20 days, disabled 58-year-old Jerome Bell slept on the concrete floor of a cell with no cushion or mattress in a crowded Hinds County jail." "Bell, disabled and unable to work, uses a small Social Security check and other sources, like the Supplemental Nutrition Assistance Program, or SNAP, and a monthly "Senior Citizen box" from a local church to feed not only himself but his partner, who also lives with him in Jackson, and her teenage grandson."

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## Punishment – The Taking of Privilege



- For failure to appear in court on the date of traffic ticket or failure to admit guilt by paying the fine
- Once license is suspended, can be charged with driving on a suspended license

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## License Suspension



- How does a license get suspended?
- What can be done to get a license un-suspended?
- How does a license suspension impact people?

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## Judge Has Discretion

- If defendant appears in court, judge will evaluate.
- What if defendant can't afford the fine? Financial hardship hearing and alternatives required.
- To get license reinstated, defendant must provide proof of disposition and pay reinstatement fee to DDS.
- **Do NOT interfere with Judge's discretion!!!!**

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## Punishment – The Taking of Property



Court Fines and Fees + Probation Fees

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## Fines and Fine Add-Ons

- Remember the lessons learned in Municipal Courts Post-Ferguson Part I on who sets the fine schedule, the partial payment of fines, the fine add-on priority list!



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## Reporting Resolution of the Case

- After the case has been adjudicated, the results must be reported.
- What information must be reported?
- Who does the reporting?

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## Judicial Council of Georgia Administrative Office of the Courts

Service Offerings

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### Judicial Council Administrative Office of the Courts- portal.georgiacourts.gov

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## Judicial Council Administrative Office of the Courts- Office of Court Professionals

- Interpreters

coi.georgiacourts.gov

**Summary Court of Georgia Commission on Interpreters**  
**WORKING WITH LIMITED ENGLISH PROFICIENT PERSONS  
AND FOREIGN-LANGUAGE INTERPRETERS IN THE COURTROOM**  
— A Bench Card for Judges —

**The Law on Foreign-Language Interpreters for Participants in Court Proceedings**  
Under federal law, including Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, and Georgia state law, the use of an approved interpreter is required for participants in court proceedings who are limited English proficient (LEP). The court provides these services when necessary to ensure effective communication for all LEP participants. LEP participants can be judges, lawyers, witnesses, and jurors. Court proceedings include all court activities, programs, and services. LEP participants:

- Cannot be required to arrange or pay for their own interpreter, nor can their attorney be required to do so.
- Must be provided an interpreter for any criminal or civil proceeding.
- Can waive their right to an approved interpreter if the waiver has been made knowingly by the court, and the court must document this.
- Do not waive their right to an approved interpreter simply because they do not require one.
- Do not lose the right to an approved interpreter because they speak or understand some English.

**Identifying the Language of LEP Participants**  
LEP participants in court proceedings can self-identify their preferred language by using a language identification card.

**Determining the Need for a Foreign-Language Interpreter**

**Sample Questions to Assess the English Proficiency of a Participant**

- How do you know English?
- Please tell me about your native country.
- Describe some of the things you do in this courtroom.

After translation, the decision maker should note how the participant uses the word, and then use the word to fully understand the context. It is not sufficient to assume that an interpreter will be present when needed in any subsequent proceeding.

In some instances, the decision maker may appear on the interpret team with a participant's witness or other expert.

Courts should encourage participants to allow the court to determine if an interpreter and the language needed are needed. Possible reasons the court has obligations to provide a qualified interpreter: the court should not be required to wait to make sure that the request for an interpreter is given in time.

**Finding a Qualified Foreign Language Interpreter**  
The Superior Court Commission on Interpreters (SCCI) maintains a list of approved interpreters in the state. The list is available at [www.sccicourt.org](http://www.sccicourt.org). Interpreters listed on the list are fully trained and certified interpreters, meeting and meet other requirements, and have undergone background checks.

If there is an interpreter on the list for the language the court needs, the Commission or the SCCI will be contacted.

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## GMA SAMPLE PROBATION COMPANY CONTRACT

Protects City, Meets Misdemeanor Probation Oversight Unit Requirements

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## Probation Agreements

- All probation providers were required to enter into a written service agreement with the local governing authority for the court by January 1, 2018.
- Failure to adhere to service agreement standards subject the probation provider or individuals to sanctions!



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## Probation Agreements

- Probation Service Agreements must contain certain specific information and must be filed and maintained with the Misdemeanor Probation Oversight Unit (Rule 105-2-.08)



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## Probation Company Review Documents

- DCS Audit Report
- Probation Company Fee Report – quarterly to judge, annually to governing authority

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## Review of Annual Probation Fee Report to Governing Authority



- What duty does Governing Authority have to review annual probation report?
- What can result if there is a failure to review these reports?

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## GMA SAMPLE CONTRACT WITH JUDGE

Cities required to establish term; Sample contract provides list of issues to address

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### Considerations for the Contract with your Judge

- Ensuring availability on short notice for indigency hearings and other time-sensitive hearings
- The possibility of making available teleconferencing resources
- Expectations for Travel

**URGENT**



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### Considerations for the Contract with your Judge

- Powers, responsibilities for oversight of other court officers (clerk of court, probation officers)
- Expectations for review of quarterly probation company reports, DCS audit reports on probation company, and annual report to the Governing Authority on probation company fees

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## Considerations for the Contract with your Judge

- Requirements for Training
- Description of how proof of training completion will be provided and payment/reimbursement of training costs



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## Contact Information

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