This Sample Report was developed by Georgia Municipal Association, Inc. after public presentation at municipal court judges' training and with input from municipal court judges. ***It should not be used "as is."*** Review this document with the City Attorney before use. Consider including City Attorney in discussions with judge or clerk of any "no" answers.

Chief Judge: _____ Municipal Court Clerk: _____

Annual Report to the Governing Authority for the City of _____

Date: _____ For Year: _____

Caseload Report (same data as reported to the AOC or the GSCCCA)
Ordinance violations _____
Minor Traffic Violations _____
Serious Traffic Violations ____
Non-Traffic State Offenses _____

Narrative (Describe noteworthy activities of the court, accomplishments of court personnel):

Affirmation	**Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed**	**Yes/No**	**Initials**
Independence and Professionalism			
I have completed all mandatory training required for the past year. (judge, clerk) (attach proof of training)			
During the last year, I have requested changes to court operations to align with changes in or clarifications to the law that I learned during training. (judge) During the last year, I have implemented changes to court operations to align with changes in or clarifications to the law that I learned during training, or which were requested by the judge. (clerk)			
It is conveyed to the public, through signage, seating arrangements, and conduct in the courtroom, that the judicial operations of the court are independent from the executive and legislative functions of the city government. (judge) (clerk)			
I understand that I may seek guidance directly from the city attorney if I have questions or concerns about court operations, procedures, and matters related to private probation companies. (clerk)			
The court has a survey, feedback form, or other standard method for those who interact with the court to provide feedback about their experience in court. Feedback collected is promptly provided to [supervisor of clerk] and the judge for review. (clerk) I review all feedback about court operations and determine whether any changes are warranted. (Summary of top areas of feedback attached if appropriate) (judge)			

Affirmation	Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed	Yes/No	Initials

Approved Forms			
I have approved use of a financial considerations form that gives me sufficient information to make judicial determinations that involve consideration of a defendant's or a pre-trial detainee's financial resources (judge)	No AOC form yet		
I have approved use of a form describing a defendant's rights, which is used to document a waiver of those rights, and I affirm that this form accurately describes those rights and the consequences of waiving them. (judge)	AOC form is in bench book		
I have approved use of a form for defendants to use to enter pleas. (judge)	AOC form is in bench book		
I affirm that all forms approved for use in the court meet current legal standards.			
Notification of Rights/Waiver of Rights			
The rights waiver form approved by the judge is provided to every defendant, and defendants are instructed to read the form carefully and bring it with them when the speak to the judge. (clerk)			
I orally inform every defendant individually of the information in the approved rights form, and I only ask the defendant to sign the waiver form after making a determination that the waiver is voluntary and informed. (judge) I make sure that every defendant has a copy of the approved rights form and ask the defendant to take the form when approaching the judge. (clerk)			
I engage individually with each defendant to make sure he or she understands the charges and the consequences of making a plea of guilty or nolo contendere (judge)			

Affirmation	Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed	Yes/No	Initials

Court Operations			
I have reviewed all standing orders of the court, including those issued by other judges, and affirm that they are lawful and appropriate.			
I have approved a record retention schedule for all recordings of court proceedings and all documents collected or created through the operation of the court and I affirm that the schedule is in accordance with the requirements of the Uniform Rules of Municipal Court. (judge) All court proceedings are recorded (either by audio-recording, video-recording or court reporting) and recordings are maintained in accordance with a record retention schedule approved by the judge. (clerk)			
I receive copies of any Notice of Appeal, Petition for Certiorari, or Application for Discretionary Review in a timely manner (judge). I promptly forward copies of any Notice of Appeal, Petition for Certiorari, or Application for Discretionary Review to the judge and prosecutor (or, if no prosecutor, to the city attorney). (clerk)	Number of Appeals, petitions for Cert., applications for discretionary review for the year: _____		
I promptly forward copies of discovery requests to the prosecutor (or, if no prosecutor, to the city attorney). (clerk)			
I promptly forward any correspondence addressed to the judge or prosecutor. (clerk)			
I promptly forward any correspondence addressed to the public defender, and I ensure that the system for delivery of such correspondence maintains the confidentiality of the communication between the public defender and any defendant he or she may represent or be asked to represent. (clerk)			
I follow a written procedure approved by [_____] when handling fine money and recording payments. I was last trained on this procedure on _____. I understand that following this procedure ensures proper handling of payments and prevents issuance of erroneous warrants. (clerk)			
I use approved court software, and I have completed all appropriate training for the current version of this software. I last received training on use of the software on _____. (judge, clerk)			

Affirmation	Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed	Yes/No	Initials

Public Defender			
I affirm that the the process for determining eligibility for appointment of free legal counsel due to indigency meets current legal standards. (judge)			
I affirm that I consistently use the approved financial consideration form and follow the process for gathering information needed for the judge to determine eligibility for appointment of free legal counsel. (clerk)			
Interpreter/Hard of Hearing			
When I determine that a pre-trial detainee or a defendant is entitled to an interpreter, I ensure that a qualified and certified interpreter is present during all communications with the court at no cost OR I reschedule the defendant's case and ensure that a qualified and certified interpreter will be present on the rescheduled date at no cost to the defendant.			
Our court follows the guidelines of the Bench Cards entitled **"Working with Limited English Proficient Persons and Foreign-Language Interpreters in the Courtroom"** and **"Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom,"** attached as **Exhibits A.1 and A.2,** or as updated by the Administrative Office of the Courts. (judge, clerk)			
Mental Illness			
When mental illness in the courtroom appears to be a factor, I observe and consider the matters set forth in the Bench Card entitled **"Judge's Guide to Mental Illness in the Courtroom,"** attached as **Exhibit A.3,** or as updated by the Administrative Office of the Courts. (judge)			

Affirmation	Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed	Yes/No	Initials

Bail			
If I have issued or approved a bail schedule, I affirm that it is appropriate and lawful. (judge)			
Our court follows the guidelines set forth in the Bench Card entitled **"Georgia Misdemeanor Bail Practices,"** attached as **Exhibit A.4**, or as updated by the Administrative Office of the Courts. (judge, clerk)			
I have issued a Standing Bail Order that directs the release of pre-trial detainees on their own recognizance (without payment of any bond) if a first appearance by a judicial officer has not occurred within 48 hours of pre-trial detention. (judge)	See Calhoun Standing Bail Schedule (approved as constitutional by 11th Circuit)		
To the best of my knowledge, a judicial officer conducts a first appearance hearing of all pre-trial detainees that includes determination of indigent status and setting of appropriate bail in accordance with the bail considerations below within 48 hours (no warrant)/72 hours (warrant). (judge)			
Bail considerations. When determining bail for an individual person who is detained pre-trial, I do not impose excessive bail and I only set conditions reasonably necessary to ensure such person attends court appearances and to protect the safety of any person or the public given the circumstances of the alleged offense and the totality of circumstances. When determining bail, I consider: (A) The accused's financial resources and other assets, including whether any such assets are jointly controlled; (B) The accused's earnings and other income; (C) The accused's financial obligations, including obligations to dependents; (D) The purpose of bail; and (E) other factors I deem appropriate. (judge)			

Affirmation	Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed	Yes/No	Initials

Sentencing			
I affirm that each defendant has been afforded due process of law in conformity with standards of the United States Constitution and the Constitution of the State of Georgia and that sentences entered in this Court are in compliance with the laws of the State of Georgia and the United States. (judge)			
The court follows the guidelines of the Bench Card attached as **Exhibit A.5** (or as updated by the Administrative Office of the Courts) entitled **"Georgia and U.S. Constitutional Law Regarding Misdemeanor Probation"** to determine whether it is necessary to waive or reduce the fines/fees or impose community service as an alternative. (judge, clerk) If a "presumption of significant financial hardship" exists, and if the judge has not waived or reduced the fines and fees or converted to community service, the judge makes a record of why no significant financial hardship exists. (judge, clerk)			
Probation			
I make all determinations about whether to issue an arrest warrant related to violation of a probation condition, and I enter the issue date on such warrants. (judge) I do not schedule hearings for revocation of probation unless the probation company is able to provide notice at least 72 hours in advance. (clerk) At every petition for revocation hearing, I confirm that the defendant received at least 72 hours of notice before the hearing. If not, I reschedule the hearing or obtain a written waiver of notice. (judge)	AOC form is in bench book		
I have received and reviewed all quarterly and annual reports provided to me by the private probation company and there is no indication in these reports that the private probation company has provided services that were not authorized by me. (judge)	Legally mandated quarterly reports of Probation company were received on these dates _____		
I reviewed any audit report about the probation services company that was provided to me by the Misdemeanor Probation Oversight Division of the Department of Community Supervision and forwarded a copy of it to the primary city contact for the probation services company contract, along with my comments. (judge)	Audit reports (if any) were provided on these dates _____		

Supreme 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. § 2000d, and Georgia statutory law, case law, and Supreme Court rules, Georgia courts are required to provide qualified foreign-language interpreters to participants in court proceedings who are limited English proficient (LEP). They must provide these services when necessary to ensure effective communication by and with LEP participants. LEP participants can include litigants, witnesses, and spectators. Court proceedings include all court services, programs, and activities. LEP participants:

- Cannot be required to arrange or pay for their own interpreters, nor can their attorneys be required to do so;
- Must be provided an interpreter for any criminal or civil proceeding;
- Can waive their right to an appointed interpreter if the waiver is in writing and is approved by the court, and can revoke that waiver at any time;
- Do not waive their right to an appointed interpreter simply because they do not request one;
- Do not lose the right to an appointed 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 Guide: coi.georgiacourts.gov/content/language-identification-guide.

Determining the Need for a Foreign-Language Interpreter

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 the participant in the court proceeding, that:

- The party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or
- The witness cannot speak English so as to be understood directly by counsel, the decision maker, and/or the jury.

Sample Questions to Assess the English Proficiency of a Participant

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

After examination, the decision maker should state his or her conclusion on the record, and the case file should be clearly marked and data entered electronically to ensure that an interpreter will be present when needed in any subsequent proceeding.

In some instances, the decision maker may appoint an interpreter based solely on a participant's written or verbal request.

Courts should encourage participants to alert the court to their need for an interpreter and the language needed as soon as possible so the court has adequate time to locate a qualified interpreter. Participants should not be required to wait to make their first request for an interpreter in person in court.

Finding a Qualified Foreign-Language Interpreter

The Supreme Court Commission on Interpreters (Commission) maintains an online database of state-licensed interpreters that can be searched by language and by county, at coi.georgiacourts.gov.

Interpreters licensed through the Commission have fully satisfied rigorous examinations, training, and court observation, and have undergone background checks.

If there is no interpreter on the registry for the language you need, contact the Commission at 404-463-3808 or gcr@georgiacourts.gov.

Credentials of Foreign-Language Interpreters

Courts should make a diligent effort to appoint a "Certified" interpreter. If a Certified interpreter is unavailable, a "Conditionally Approved" or "Registered" interpreter should be given preference. If the court is unsure of an interpreter's qualifications, the court should *voir dire* the interpreter:

Sample *Voir Dire* to Assess an Interpreter's Qualifications

- "What training/credentials do you have?"
- "What is your native language?"
- "State some canons from the Code of Professional Responsibility for Interpreters."
- "How many times have you interpreted in court?"
- "What types of cases have you interpreted?"

If, after a diligent search by the court, a Certified or other licensed interpreter is unavailable, the court should weigh the need for immediacy in conducting a hearing without a licensed interpreter or with an unlicensed interpreter or telephonic interpreter, against the potential compromise of due process, or the potential of substantive injustice, if the quality of interpreting is inadequate. Failure to appoint a qualified interpreter or no interpreter at all can result in reversible error on appeal.

If the court determines that the use of a non-licensed interpreter is warranted, refer to the Commission's Instructions for Use of a Non-Licensed Interpreter: coi.georgiacourts.gov/content/forms-brochures. When a non-professional interpreter is used, the court should personally verify the interpreter's basic understanding of his or her role, on the record.

Additional Considerations When Selecting Foreign-Language Interpreters

Courts should consider other factors to determine whether an interpreter is suited to work in court. For example:

- The interpreter's prior professional and/or social contact or association with the LEP participants;
- Education, professional training, and formal legal training completed by the interpreter; and
- The types of court proceedings in which the interpreter has experience.

Courts should also consider that:

- The ability to speak a foreign language does not equal the ability to interpret nor qualify a person to interpret;
- Relatives or friends of LEP parties, witness, judges, or attorneys should not interpret court proceedings. Minor children should never be used to interpret;
- Court personnel or bilingual staff should not function as interpreters unless they are Certified and employed as staff interpreters;
- Court interpreting is strenuous, so it advisable to schedule regular breaks. Sometimes, appointing more than one interpreter may be necessary for proceedings expected to last more than two hours;
- The interpreter is a neutral party whose sole job is to facilitate communication by interpreting everything said during the proceedings;
- The interpreter cannot participate in any capacity other than as the interpreter;
- The interpreter may not provide advice or explanations about what was said or done in court;
- The interpreter is a conduit for information exchange, and not a direct participant in the proceeding.

Recording the Proceedings

Where a Certified interpreter is used, no audio or audio-visual record of the non-English testimony is required, but the court may authorize the making of a recording.

Where a non-Certified (e.g., Conditionally Approved, Registered, or unlicensed) interpreter is used, the court shall make an audio or audiovisual recording of any non-English testimony. This recording shall become part of the record of the proceeding: coi.georgiacourts.gov/content/supreme-court-rules.

Foreign-Language Interpreter's Ethics

All Georgia-licensed court interpreters are subject to the Code of Professional Responsibility for Interpreters: coi.georgiacourts.gov/content/supreme-court-rules.

Foreign-Language Interpreter's Oath

The court should administer an oath prior to the start of court proceedings. Below is an example:

"Do you solemnly swear or affirm that you will faithfully interpret from (the foreign language) into English and from English into (the foreign language) the proceedings before this court in an accurate manner to the best of your skill and knowledge?"

Resources

Georgia Supreme Court Rule on Interpreters
coi.georgiacourts.gov/content/supreme-court-rules

"Is It Reversible Error?" *Georgia Courts Journal* (March 2015)
http://journal.georgiacourts.gov/it-reversible-error

Georgia Council of State Court Judges 2016 Benchbook, Chapter on Appointing Qualified Interpreters (appropriate for all trial courts)
statecourt.georgiacourts.gov/content/chapter-11-appointing-qualified-interpreters

National Association of Judiciary Interpreters & Translators Code of Ethics and Professional Responsibilities
www.najit.org/about/NAJITCodeofEthicsFINAL.pdf

Federal Interagency Website on Limited English Proficiency
www.lep.gov/

Produced with the assistance of the Judicial Council/Administrative Office of the Courts.

Supreme Court of Georgia Commission on Interpreters

WORKING WITH DEAF OR HARD OF HEARING PERSONS AND SIGN LANGUAGE INTERPRETERS IN THE COURTROOM

— A Bench Card for Judges —

The Law on Sign Language Interpreters for Participants in Court Proceedings

Under the Americans with Disabilities Act (ADA) and state law (O.C.G.A. § 24-6-650 to 658), Georgia courts must provide auxiliary aids or services – such as qualified sign language interpreters – to participants in court proceedings who are deaf or hard of hearing (DHH). They must provide these aids or services when necessary to ensure effective communication by and with DHH participants. DHH participants can include litigants, witnesses, and spectators. Court proceedings include all court services, programs, and activities. DHH participants:

- Cannot be required to arrange or pay for their own interpreters;
- Must be provided an interpreter for any criminal or civil proceeding;
- Can waive their right to an interpreter if the waiver is in writing and it is approved by the court;
- Do not waive their right to an interpreter simply because they do not request an interpreter.

Establishing the Communication Preference of the Participants

The court must ask DHH participants to identify the type of reasonable accommodation needed.[1] If a request for an interpreter is not made, but the participants could benefit from the services of an interpreter, the judge should address the need on the record:

- "Please tell the court your name."
- "You have the right to participate and understand these proceedings. Tell the court the best way to communicate with you, so you know what is being said."
- "Do you need an interpreter?"

Finding a Qualified Sign Language Interpreter

The Registry for Interpreters for the Deaf (RID), the national certification organization for all sign language interpreters, has a searchable database of certified members on its website, www.rid.org

Credentials of Sign Language Interpreters

An ability to sign does not equate to being able to interpret. To effectively communicate, the interpreter must possess the necessary skills to process spoken language into equivalent sign language and to process sign language into equivalent spoken language. Family members or friends of DHH participants should never be called upon to interpret court proceedings. Court personnel should not function as interpreters unless they are certified and employed as staff interpreters.

A court official or designee should assess an interpreter's qualifications prior to scheduling the interpreter's appearance in court. To be recognized as qualified in Georgia, an interpreter must hold a current certification from the Registry of Interpreters for the Deaf (RID). For legal proceedings, courts should first try to use certified sign language interpreters who hold this credential:

- SC:L (Specialist Certificate: Legal) *Preferred and recommended credential based on demonstrated specialized knowlege of legal system, language, and settings.*

If an SC:L interpreter cannot be located, interpreters with these RID certifications may also be used. However, it is recommended that they have additional specialized training in legal interpreting:

- NIC (National Interpreter Certification), Master
- NAD V (National Association of the Deaf: Certification –Master)
- CI and CT (Certificate of Interpretation and Certificate of Transliteration)
- CDI (Certified Deaf Interpreter)
- CSC (Comprehensive Skills Certificate)

If the court is unsure of an interpreter's qualifications, the court should *voir dire* the interpreter:

Sample *Voir Dire* to Assess an Interpreter's Qualifications

- "Are you certified by RID?"
- "What specialized training have you completed?"
- "How long have you been an interpreter?"
- "How many times have you interpreted in court?"
- "Describe the Code of Ethics as it applies to legal interpreters."
- "How did you learn American Sign Language?"

Additional Considerations When Selecting Sign Language Interpreters

Courts should take additional steps to determine whether a particular interpreter is suited to work in a court setting. Some considerations could include:

- Prior professional and/or social contact or association with the DHH participants.
- Education, professional training, and formal legal training completed by the interpreter.
- The types of court proceedings in which the interpreter has experience.

(A full list of suggested *voir dire* questions, considerations, and acceptable answers may be requested from the Judicial Council/Administrative Office of the Courts.)

Sign Language Interpreter's Ethics

The Registry of Interpreters for the Deaf and the National Association of the Deaf (NAD) together have enacted a Code of Professional Conduct for interpreters that com-prises seven ethical tenets:

1. Adhere to standards of confidential communication.
2. Possess the professional skills and knowledge required for the specific interpreting situation.
3. Conduct themselves in a manner appropriate to the specific interpreting situation.
4. Demonstrate respect for consumers.
5. Demonstrate respect for colleagues, interns, and students of the profession.
6. Maintain ethical business practices.
7. Engage in professional development.

The Code applies to RID's certified and associate members and NAD's certified members; is superseded by any local, state, or federal laws and regulations; and applies to both face-to-face and remote interpretations.

Sign Language Interpreter's Oath

The court should administer an oath prior to the start of court proceedings. Below is an example:

"Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law, follow all official guidelines established by this court for legal interpreting, and discharge all of the solemn duties and obligations of legal interpretation?"

Best Practices for Interacting with DHH Persons[2]

- DHH persons experience differing levels of hearing loss and may prefer varying methods of communication. Ask DHH persons which method they prefer.
- When speaking with DHH persons, whether through a sign language interpreter or not, speak directly to them, look directly at them, and maintain eye contact. Natural facial expressions and gestures will be helpful in facilitating your conversation.
- The role of a sign language interpreter is only to facilitate communication between DHH and hearing people. Therefore, the interpreter should never be asked to participate in any activity other than interpreter for the DHH individual.

Resources

Georgia Supreme Court Rule on Interpreters
coi.georgiacourts.gov/content/supreme-court-rules

State of Georgia ADA Coordinator's Office
http://ada.ga.gov

Georgia Registry of Interpreters for the Deaf
www.garid.org

Georgia Council for the Hearing Impaired
www.gachi.org

National Association of the Deaf
www.nad.org

Registry of Interpreters for the Deaf/National Assoc. for the Deaf Code of Professional Conduct
http://coi.georgiacourts.gov/sites/default/files/coi/NAD_RID_ETHICS.pdf

National Association of Judiciary Interpreters & Translators Code of Ethics and Professional Responsibilities
http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf

Working with Sign Language Interpreters in Texas: A Bench Card for Judges
http://www.najit.org/asl/benchcardtexas.pdf

U.S. Dept. of Justice/Americans with Disabilities Act
www.ada.gov

[1] As set out in the final ADA Title II rule, "[t]he type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communi-cation used by the individual, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities." 28 C.F.R. 35.160(b)(2) (analysis).

[2] Best Practices when Interacting with Persons with Disabilities: A Customer Service Guide for State Government Agencies – Georgia State Financing and Investment Commission, State ADA Coordinator's Office.
http://ada.georgia.gov/sites/ada.georgia.gov/files/related_files/document/BestPractices%20Handbook%20final%20copy%20with%20Corrina%20M%20foreward.pdf

Produced with the assistance of the Judicial Council/Administrative Office of the Courts.

JUDGE'S GUIDE TO MENTAL ILLNESS IN THE COURTROOM

When Mental Illness Appears to be a Factor, Consider:

Prevalence:

Serious Mental Illness: 4% of all adults in the United States have a serious mental illness.

Any Mental Illness: 17.9% of all adults in the United States have a mental illness.*

*2015 Data from National Institute of Mental Health https://www.nimh.nih.gov/

Contextualizing observations:

While these categories of observation are provided to alert judges that an individual may have a mental illness that requires judicial action and/or attention by a mental health professional, they are not definitive signs of mental illness. Certain contextual elements are important to remember:

- Appearing in court is an anxiety-provoking experience for most people.
- Individuals may not be prepared to navigate a system as complex and demanding as the justice system.
- Individuals may exhibit skills that have allowed them to survive in their communities but are poor fits for interacting with the court (e.g. toughness, argumentativeness, silence).

Categories of Observation: ***Do you see something in one of the following areas that does not make sense in the court context?***	**Courtroom Observations:** ***Examples of how behaviors in the observational areas can indicate that the individual may have a mental illness:***
Appearance: Age, hygiene, attire, ticks/twitches	• Looks older/younger than the listed date of birth • Wears inappropriate attire (e.g. multiple layers of clothing in the summertime) • Trembles or shakes, is unable to sit or stand still *Please be mindful that other disabilities may also impact appearance.
Cognition: Understanding/appreciation of situation, memory, concentration	• Does not understand where s/he is • Seems confused or disoriented • Has gaps in memory of events • Answers questions inappropriately *Please be mindful that other disabilities may also impact cognition and memory.
Attitude: Cooperativeness, appropriate participation in court proceeding	• Stays distant from attorney or bench • Acts belligerently or disrespectfully • Is not attentive to court proceedings *Please be mindful that other disabilities may impact attitude and behavior.
Affect/Mood: Eye contact, outbursts of emotion/indifference	• Does not make eye contact with judge or court staff • Appears sad/depressed, or too high-spirited • Switches emotions abruptly • Seems indifferent to severity of proceedings • Appearance of responding to voices (or other stimuli) • Lack of emotional response *Please be mindful that other disabilities may also impact affect/mood.
Speech: Pace, continuity, vocabulary (Note: Can this be explained by discomfort with English language?)	• Speaks too quickly or too slowly • Misses words • Uses vocabulary inconsistent with level of education • Stutters or has long pauses in speech *Please be mindful that other disabilities may also impact speech. **Special care may be necessary if a language interpreter is being used.
Thought Patterns and Logic: Rationality, tempo, grasp of reality	• Seems to respond to voices/visions • Expresses racing thoughts that may not be connected to each other • Expresses unusual ideas

Adapted with permission from "Judges' Guide to Mental Illnesses in the Courtroom," The Council of State Governments Justice Center, 22 January 2012. https://csgjusticecenter.org/courts/publications/judges-guide-to-mental-illnesses-in-the-courtroom/. Additional information can be found in the 2017 Handbook for Georgia Court Officials on Accessibility for Individuals with Disabilities and in the 2018 Companion Guide for Mental Illness and Cognitive Disabilities.

JUDICIAL INTERACTIONS

Before Interacting with a Court Participant, Consider:

- **How the courtroom environment is affecting the defendant:**
  - Are there noises or distractions in the courtroom that are negatively affecting the court participant?
  - Is there a family member or defense attorney who can help calm the person?
- **Safety** for yourself, the court staff, and the individual.
- **What is being asked and said in open court** and how this may affect future proceedings.

While Interacting with a Court Participant, Consider:

Courtroom Situations: *Examples of commonly observed scenarios*	Immediate Responses: *Recommendations for immediate situation management*
When a mental illness is affecting a person's courtroom participation:	• Speak slowly and clearly • Avoid jargon • Explain what's happening • Write instructions down if dates/addresses are involved • Treat the individual with the respect you would give other adults • If appropriate, use principles of Motivational Interviewing. (developed by Drs. William Miller and Stephen Rollnick). -Express empathy -Point out discrepancies between goals and current behavior -Roll with resistance -Support self-efficacy
Loss of Reality: *When the person appears confused or disoriented*	• Ground person in the here and now (based on LOSS Model developed by Paul Lilley)
Loss of Hope: *When the person appears sad, desperate*	• As appropriate, instill hope in positive end result • To the extent possible, establish a personal connection
Loss of Control: *When the person appears angry, irritable*	• Listen, defuse, deflect • Ask the person about why s/he is upset • Avoid threats and confrontation
Loss of Perspective: *When person appears anxious, panicky*	• Seek to understand • Reassure and calm person • Deflect concerns

When Taking Action, Consider:

- **Have the person approach the bench:** Would this de-escalate the situation or create a safety risk?
- **Re-calling the case later in the session/calendar:** Could this help the court participant calm down?
- **Determining whether to proceed:** Is a fitness or competency evaluation appropriate?
- **Entering orders:**
  - Does the person have the capacity to understand the order?
- **Bond conditions/sentences in criminal cases:**
  - What effect will bond/conditions have on regularity of treatment?
  - What effect will time in jail have on mental health, access to medication, benefits maintenance, etc.?
  - How will bond/conditions/time in jail affect the defendant's access to a primary caregiver?
- **Requesting mental health information:** What exactly do you need to make the decision facing you?
- **Making a referral** (to mental health services provider or other services).

Judicial Council of Georgia • Ad Hoc Committee on Criminal Justice Reform

GEORGIA MISDEMEANOR BAIL PRACTICES

(INCLUDING S.B. 407 (2018) PROVISIONS)

— A Bench Card for Judges —

All misdemeanor defendants in Georgia (inclusive of offenses that are violations of local ordinances) have a right to pretrial bail. "When determining bail for a person charged with a misdemeanor, courts shall not impose excessive bail and shall impose only the conditions reasonably necessary to ensure such person attends court appearances and to protect the safety of any person or the public given the circumstances of the alleged offense and the totality of circumstances." O.C.G.A. § 17-6-1(b)(1).

Judges ***sitting by designation,*** under the express written authority of an authorized elected judge, may release on bail or his or her own recognizance a person charged with a bail-restricted offense for the purpose of entering a pretrial release program, a pretrial release and diversion program, or a pretrial intervention and diversion program. O.C.G.A. § 17-6-12(b).

KEY CONSIDERATIONS

INITIAL APPEARANCE WITHIN 48/72 HOURS OF ARREST

Every person arrested on a misdemeanor must be brought before a judge for a bail determination as soon as possible, but in no case later than 48 hours after a warrantless arrest (O.C.G.A. § 17-4-62) or 72 hours after an arrest on a warrant (O.C.G.A. § 17-4-26). See also Unif. Mag. Ct. R. 25.

- Per SB 407 (2018), determinations regarding bail should be made "as soon as possible." O.C.G.A. § 17-6-1(e)(2). "'As soon as possible' means within a reasonable time, having due regard to all the circumstances." O.C.G.A. § 1-3-3. (See also "Ability to Pay.").
- All offenses not included in O.C.G.A. § 17-6-1(a), including violations of local ordinances, are bailable by any court of inquiry (including magistrate courts). O.C.G.A. § 17-6-1(b)(1).

RELEASE ON "ONLY THE CONDITIONS REASONABLY NECESSARY"

SB 407 established that, when determining bail, the court must consider the defendant's ability to pay and that "courts shall not impose excessive bail and shall impose **only the conditions reasonably necessary** to ensure such person attends court appearances and to protect the safety of any person or the public given the circumstances of the alleged offense and the totality of circumstances." (Emphasis added) O.C.G.A. § 17-6-1(b)(1). (See also "Ability to Pay.").

ADDITIONAL CONDITIONS OF RELEASE

For a defendant in need of services, the court should consider referrals to *voluntary* supportive services (including substance abuse or mental health treatment, employment or education resources, counseling, or transportation assistance). O.C.G.A. § 17-6-1(e)(2)(E). Other possible conditions of release include requirements that a defendant report by phone weekly or monthly; seek or maintain employment; continue or enroll in an educational program; continue or enroll in substance abuse or mental health treatment; report to a pretrial services agency or day reporting center; abide by a curfew; refrain from contact with specified persons; abide by travel or activity restrictions; or other reasonable conditions tailored to managing the particular risk a defendant presents. O.C.G.A. §§ 17-6-1(b)(1) & 17-6-1(e)(1).

ABILITY TO PAY

If the court initially sets a monetary bail which the defendant cannot make, the defendant may seek to have the bail reduced pursuant to a hearing with enhanced protections to ensure that the bail was not excessive. O.C.G.A. § 17-6-1(b)(1). And, while nothing prohibits an earlier/initial ability-to-pay determination, *Walker v. City of Calhoun* provides that indigency determinations made pursuant to a judicial hearing with court-appointed counsel for purposes of setting bail are presumptively constitutional if made within 48 hours of arrest. 901 F.3d 1245, 1266 (11th Cir. 2018). SB 407 clarified that, "[w]hen determining bail, as soon as possible, the court shall consider: (A) [t]he accused's financial resources and other assets, including whether any such assets are jointly controlled; (B) [t]he accused's earnings and other income; (C) [t]he accused's financial obligations, including obligations to dependents; (D) [t]he purpose of bail; and (E) [a]ny other factor the court deems appropriate." O.C.G.A. § 17-6-1(e)(2)(A)-(E). While not binding, the American Bar Association Standards on Pretrial Release suggest that "[f]inancial conditions other than unsecured bond should be imposed only when no other less restrictive condition of release will reasonably ensure the defendant's appearance in court. The judge should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay." ABA Standard 10-5.3.

FORMS OF BAIL

The following forms of bail are permissible under Georgia law:

RELEASE ON RECOGNIZANCE

Defendant is released on her/his pledge to return to court as required and to obey all laws. The court may still impose additional conditions of release *if necessary.* O.C.G.A. §§ 17-6-1(b)(1); 17-6-1(i) & 17-6-17; Unif. Mag. Ct. R. 23.3.

SECURED BOND

Defendant is required to secure a bond in a specified amount in order to be released. SB 407 established that, before setting bail, the court must consider the financial circumstances of the accused. O.C.G.A. § 17-6-1(e)(2) (See also "Ability to Pay" and "Use of Bail Schedules".). The court may still impose additional conditions of release *if necessary*. (See "Additional Conditions of Release."). Bail may be secured by:

- ***Cash:*** Deposited with the sheriff and returned at the conclusion of the case so long as the defendant makes all required appearances. Unif. Mag. Ct. R. 23.3; see also O.C.G.A. §§ 17-6-4; 17-6-9 & 17-6-10.

- ***Personal Surety:*** A third party guarantees the defendant's future appearance and agrees to forfeit the bond amount if the defendant does not appear. O.C.G.A. § 17-6-4.

- ***Commercial Surety:*** A bail bondsman ("commercial surety") guarantees the bond for a nonrefundable fee paid by or on the behalf of the defendant. O.C.G.A. §§ 17-6-4 & 17-6-30.

- ***Property:*** "[B]y real estate located within the State of Georgia with unencumbered equity, not exempted, owned by the accused or surety, valued at double the amount of bail set in the bond." Unif. Mag. Ct. R. 23.3(2).

- ***Driver's License:*** The court may order a bond secured by the defendant's driver's license. Additionally, if a misdemeanor defendant has been incarcerated for five days, the sheriff can accept the defendant's driver's license as collateral for *any* secured bond up to $1,000, provided the license is not suspended, expired, or revoked. After execution of the bond agreement, the license will be returned to the defendant. O.C.G.A. § 17-6-2. Defendants charged with DUI are not eligible. O.C.G.A. §§ 17-6-2 & 40-5-67. The court or sheriff should inform defendants clearly that failure to appear will result in automatic license suspension and may result in criminal prosecution for bail jumping as well as an arrest warrant for the failure to appear. O.C.G.A. §§ 17-6-2 & 16-10-51.

ELECTRONIC MONITORING

Defendant is released to an electronic pretrial release and monitoring program. O.C.G.A. § 17-6-1.1(j). The defendant must have no outstanding warrants, accusations, indictments, holds, or incarceration orders that require the posting of bond or further adjudication. O.C.G.A. § 17-6-1.1(a), (d) & (i). The court still may impose additional conditions of release *if necessary.* O.C.G.A. § 17-6-1(b)(1) & 17-6-1.1(e). (See also "Additional Conditions of Release.").

USE OF BAIL SCHEDULES

Use of a bail schedule as the sole mechanism of assessing pretrial bail is improper, but the Eleventh Circuit has held that it is constitutional to use a bail schedule in conjunction with an individualized hearing that is held within 48 hours of arrest to determine whether the arrestee is indigent and also if the amount of bail should be reduced or another form of bail should be imposed. See *Walker v. City of Calhoun*, 901 F.3d 1245 (11th Cir. 2018). Family violence offenses must be excluded from any bail schedule. O.C.G.A. § 17-6-1(f).

ESTABLISH A LINE OF CONTACT AND PROVIDE CLEAR INFORMATION

Before release, it is essential to establish a means of contacting the defendant and to provide clear notice of the next steps in the case. For any defendant, a risk of failure to appear because of logistical or cognitive challenges is not a sufficient basis to restrict a person's pretrial liberty. Instead, the court should provide clear notice of the person's next court date and establish a reliable means of communication with the accused. Courts should (a) ask each defendant how the court can contact him or her (phone, address, e-mail, etc.); (b) gather multiple contact numbers (spouse, immediate family, etc.); and (c) offer referrals to any local organizations that assist people in getting to court. Additionally, provide each defendant clear verbal *and* written notice of the following:

A. Next Court Date: Day, time, and precise location.

B. Consequences of Failure to Appear or Violation of Conditions: An arrest warrant may be issued, release may be revoked, any bond security may be forfeited, the case may be marked as resolved and any bond security applied as a fine, and the defendant may be prosecuted for bail jumping. Any driver's license posted as collateral will be automatically suspended. O.C.G.A. §§ 17-6-2; 17-6-8; 17-6-10(c); 17-6-12(d); 17-6-17; 17-6-71; 17-6-72 & 16-10-51. "[A]bsent a finding of sufficient excuse to appear, the court shall summarily issue an order for his or her arrest" upon the failure of a person released on his or her own recognizance to appear for trial. O.C.G.A. § 17-6-12(d).

C. How to Contact the Court: By phone, in person, online, etc.

BAIL IN FAMILY VIOLENCE CASES

SB 407 requires a judge to set bail on an individualized basis in family violence cases, giving "particular consideration to the exigencies of the case at hand" and imposing "any specific conditions as he or she may deem necessary." The court should maintain a list of possible conditions of release, and specific restrictions may apply in cases involving stalking. O.C.G.A §§ 17-6-1(b)(2)(B); 17-6-1(b)(3) & 17-6-1(f)(1)-(3).

GEORGIA AND U.S. CONSTITUTIONAL LAW REGARDING MISDEMEANOR PROBATION

— A Bench Card for Judges —

This bench card is designed to provide judges with guidance on the relevant legal principles regarding misdemeanor probation, including first offenders placed on misdemeanor probation under Article 6 of Title 42, Chapter 8. It focuses in particular on how to address the situation of indigent misdemeanor defendants and probationers and contains information about recent changes to Georgia law under S.B. 367 (2016) and H.B. 310 (2015).

KEY CONSIDERATIONS

CONSTITUTIONAL REQUIREMENTS BEFORE IMPOSING OR REVOKING PROBATION

- Before being placed on probation, a defendant is entitled to the assistance of counsel absent a proper waiver. *Alabama v. Shelton*, 535 U.S. 654, 658 (2002).
- When revoking probation, a court **must** find that the probationer has willfully violated probation conditions. Failure to comply is not willful if the probationer lacks notice of a condition. *Douglas v. Buder*, 412 U.S. 430, 432 (1973) (per curiam).
- Failure to comply is not willful if the probationer lacks the ability to comply. *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983). A probationer may not be imprisoned for failing to pay fines, fees, or restitution if the court has not inquired into the reasons for failure to pay. If the failure to pay is not willful, the court must consider alternative conditions rather than imprisonment. *Id*.
- In revocation proceedings, the probationer must be informed of the right to request counsel. *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973). If counsel is denied, the reasons **must** be stated in the record. *Id*.

GEORGIA LAW REGARDING INDIGENT DEFENDANTS AND DEFENDANTS WITH A "SIGNIFICANT FINANCIAL HARDSHIP"

- If the defendant is unable to pay or demonstrates a significant financial hardship, either before or after sentencing, the court must:
  - o **Waive** the fine, surcharges, or fees;
  - o **Reduce** the fine, surcharges, or fees to an amount that the defendant can pay; and/or
  - o **Convert** the fine, surcharges, or fees to community service. O.C.G.A. § 42-8-102(e).
- Notably, Georgia law now defines significant financial hardship as occurring where there is *a reasonable probability that the defendant will be unable to satisfy his or her financial obligations for two or more consecutive months.* O.C.G.A. § 42-8-102(e)(1)(c). A significant financial hardship is presumed where the defendant:
  - o Has a developmental disability under O.C.G.A. § 37-1-1;
  - o Is totally and permanently disabled under O.C.G.A. § 49-4-80;
  - o Earns less than 100% of the Federal Poverty Guidelines;
  - o Has been released from confinement within the past 12 months and was incarcerated for more than 30 days before release.

SETTING FINES AND FEES IN MISDEMEANOR PROBATION CASES

INQUIRING INTO ABILITY TO PAY AND SIGNIFICANT FINANCIAL HARDSHIP, O.C.G.A. § 42-8-102(e)

At sentencing, the court must determine whether fines, surcharges, or probation supervision fees that the court would otherwise impose would be impossible for the defendant to pay or would create a significant financial hardship. *See above.*

CONVERTING FINES & FEES TO COMMUNITY SERVICE, O.C.G.A. §§ 17-10-1(d), 42-8-102(d)

The court may convert fines, surcharges, or probation supervision fees to community service. The number of service hours is determined by dividing the fine, surcharges, or fees by an appropriate hourly wage, which must be at least the minimum wage under the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206 (currently $7.25), but may be higher at the court's discretion.

SETTING FINES, FEES, AND RESTITUTION, O.C.G.A. §§ 17-14-10(a), 17-14-7, 42-8-102(c)

If fines, restitution, or probation supervision fees are imposed, the amount should be adjusted to the defendant's circumstances, including:

- The defendant's financial resources and income;
- The defendant's financial obligations and dependents;
- The length of the defendant's probation sentence;
- The goals of deterrence, retribution, and rehabilitation;
- Any other factor the court deems appropriate to consider. If restitution is imposed, the court **must** consider, in addition to the above factors, the amount of damages and any restitution previously made. If the amount of restitution is contested, the court **must** hold a hearing at which the burden is on the State to establish the amount of the victim's loss, and the burden is on the defendant to establish hardships justifying a reduction in the restitution amount.

WHAT THE COURT SHOULD TELL MISDEMEANOR DEFENDANTS OR PROBATIONERS

When a misdemeanor defendant or probationer appears before the court for any reason, the court should advise the person that he or she:

- **May request counsel at sentencing or revocation** (*Alabama v. Shelton*, 535 U.S. 654, 658 (2002) (sentencing); *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973) (revocation));
- **May request community service or other probation modifications to avoid hardships** (O.C.G.A. § 42-8-102(d)-(e));
- **Must continue to report even if unable to pay** (O.C.G.A. § 42-8-102(f)(4)(A));
- **Will be subject to tolling if he or she fails to report** (O.C.G.A. § 42-8-105(b)).

SPECIAL REQUIREMENTS FOR PAY-ONLY PROBATION

LIMITS ON PAY-ONLY PROBATION, O.C.G.A. § 42-8-103(a), (c)

If a defendant is placed on supervised probation solely due to inability to immediately pay fines and surcharges, total probation supervision fees may not exceed three months' worth of the fees ordinarily collected. The collection of probation supervision fees must end when fines and surcharges are paid in full. If fines and surcharges are converted to community service, a probation officer may petition for probation fees under O.C.G.A. § 42-8-103(c).

EARLY TERMINATION BY PROBATION OFFICER'S MOTION, O.C.G.A. § 42-8-103(b)

When all fines and surcharges are paid, the probation officer shall submit an order terminating probation within thirty days. The court shall terminate the probated sentence or issue an order stating why the sentence shall continue.

EARLY TERMINATION BY DEFENDANT'S MOTION, O.C.G.A. § 42-8-103(d)

The court may terminate supervision upon the defendant's motion when "it is satisfied that its action would be in the best interest of justice and the welfare of society."

PROBATION REVOCATION

APPOINTMENT OF COUNSEL

• Prior to revocation hearing, the court should make the probationer aware of the opportunity to request appointed counsel; however, there is no categorical Sixth Amendment right to appointment of counsel in probation revocation proceedings, only a more limited due process right, determined on a case-by-case basis where fundamental fairness requires it. *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973).

• In determining whether due process demands the appointment of counsel, the court should consider whether "the probationer makes such a request based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present." The court "also should consider, especially in doubtful cases, whether the probationer appears to be capable of speaking effectively for himself." *Gagnon v. Scarpelli*, 411 U.S. 778, 790-791 (1973).

• In every case in which a request for counsel is refused, the grounds for refusal should be stated in the record. *Gagnon v. Scarpelli*, 411 U.S. 778, 791 (1973).

REVOCATION GENERALLY, O.C.G.A. § 42-8-102(f)(4)

If the court determines that the probationer has violated probation by failing to report, make court-imposed payments, or comply with any general probation condition, the court must consider alternatives to confinement, including:

- Community service;
- Modification of probation conditions to facilitate the probationer's good-faith efforts to comply (in the case of failure to report or failure to pay);
- Any other alternative deemed appropriate.

NOTE: Different penalties and notice requirements may apply to the imposition and revocation of special conditions of probation. See *Hill v. State,* 270 Ga. App. 114 (2004); O.C.G.A. § 42-8-34.1(e).

CONCURRENT VS. CONSECUTIVE SENTENCES

When a probationer is before the court on multiple sentences, the court must consider those sentences to run concurrently unless it is expressly indicated that the sentences are to be served consecutively. OCGA 17-10-10(a); *Rooney v. State* 287 GA. 1 (2010)

PROBATION REVOCATION cont.

NEGATING FINES, SURCHARGES, AND FEES, O.C.G.A. § 42-8-105(f)

If the entire balance of probation is revoked, all the conditions of probation, including moneys owed, shall be negated by a defendant's imprisonment. If only part of the balance is revoked, the court shall determine the probationer's responsibility for the amount of unpaid sums and may reduce arrearages considering probationer's ability to pay.

REVOKING FOR FAILURE TO PAY, O.C.G.A. § 42-8-102(f)(2)(A)

If the sole basis for a probation revocation is failure to pay fines, surcharges, or probation supervision fees, the court shall not issue a prehearing arrest warrant and shall schedule an appearance on the next available court calendar for a hearing. A warrant may be issued if the probationer fails to appear for this hearing.

In cases of failure to pay, the court must inquire into the probationer's ability to pay, and make express written findings that:

- The failure to pay was willful and the probationer has not made sufficient efforts to pay; or
- Adequate alternative punishments do not exist.

If the court determines that imprisonment is necessary and permissible, it may revoke the balance of probation or up to 120 days, whichever is less.

REVOKING FOR FAILURE TO REPORT TO PROBATION, O.C.G.A. § 42-8-102(f)(3)(A)

If the sole basis for revocation is failure to report to probation, the probation officer must submit an affidavit describing efforts to contact the probationer and swearing that the probationer has failed to report. The affidavit must show that:

- The probationer has failed to report twice;
- The officer has tried to contact the probationer twice at a last-known telephone number or e-mail address shown in the affidavit;
- The officer has checked local jails and determined that the probationer is not incarcerated;
- The officer has sent a letter by first-class mail to a last-known address shown in the affidavit, warning the probationer that a tolling order would be sought if the probationer failed to report in person within ten days. (If a probationer reports within the ten day period, the probationer may be scheduled to appear on the next available court calendar for a revocation hearing.); and
- The probationer failed to report as directed in the letter.

The probation officer may submit this affidavit along with a request for prehearing arrest warrant, although the court has discretion to issue the prehearing arrest warrant or decline to do so.

If the court determines that imprisonment is necessary and permissible, it may revoke the balance of probation or up to 120 days, whichever is less.

TOLLING

TOLLING PROBATION SENTENCES, O.C.G.A. § 42-8-105(b)

Before a sentence is tolled, the probation officer must submit an affidavit describing efforts to contact the probationer and swearing that the probationer has failed to appear in court for a revocation hearing or failed to report to the assigned probation officer. If tolling is based solely on failure to report to probation, the affidavit must show that:

- The probationer has failed to report twice;
- The officer has tried to contact the probationer twice at a last-known telephone number or e-mail address shown in the affidavit;
- The officer has checked local jails and determined that the probationer is not incarcerated; and
- The officer has sent a letter by first-class mail to a last-known address shown in the affidavit, warning the probationer that a tolling order would be sought if the probationer failed to report in person within ten days, and the probationer failed to report as directed in the letter.

CALCULATING THE TOLLING PERIOD, O.C.G.A. § 42-8-105(b), (d)

The tolling period begins when the court enters a tolling order supported by a valid affidavit. The clerk of court must send a copy of the tolling order to the Georgia Crime Information Center within thirty days of when the order is filed. Tolling ends, and the sentence begins to run again, when the probationer reports to the probation officer, is taken into custody in this state, or is otherwise available to the court.

NOTE REGARDING PROBATION SENTENCES IMPOSED PRIOR TO JULY 1, 2015:

Statutory authority to toll misdemeanor probation sentences did not exist prior to this date, but common law principles authorized tolling in some situations. For probation sentences imposed prior to that date, the Supreme Court of Georgia has found that under the common law "mere failure of a defendant to abide by the terms of a misdemeanor sentence will not alone toll that sentence; instead, tolling requires a judicial determination of a violation sufficiently serious that the defendant was not serving the sentence imposed and of the time when that violation occurred." *Anderson v. Sentinel Offender Services*, 298 Ga. 854, 857 n. 3 (2016).

TERMINATING AND MODIFYING PROBATION SUPERVISION

TERMINATING OR REDUCING PROBATION SENTENCES, O.C.G.A. §§ 17-10-1(a)(5)(A); 42-8-102(f)(1), (3)

The court may reduce or terminate the sentence at any time if it finds that probation is no longer appropriate for the ends of justice, protection of society, and rehabilitation of the probationer. A probationer who is eligible for modification or termination of probation does not become ineligible solely due to failure to pay fines, surcharges, or supervision fees.

EARLY TERMINATION OF CONSECUTIVE SENTENCES BY DEFENDANT'S MOTION, O.C.G.A. §§ 42-8-103.1(a); 42-8-60(e)(2)

If a defendant is serving consecutive misdemeanor probation sentences, the court may terminate supervision upon the defendant's motion when "it is satisfied that its action would be in the best interest of justice and the welfare of society." The defendant may file the motion 12 months after sentencing and every four months thereafter. This provision also applies to defendants placed on first offender probation.

EARLY TERMINATION OF CONSECUTIVE SENTENCES BY PROBATION OFFICER'S MOTION, O.C.G.A. §§ 42-8-103.1(b); 42-8-60(e)(2)

If a defendant is serving consecutive misdemeanor probation sentences, the probation officer is required to review the case after 12 months of supervision. If the defendant has paid court-ordered fines, surcharges, and restitution, and completed court-ordered testing, evaluation, or rehabilitation, the probation officer may submit an order for early termination. After 12 months of supervision, the officer shall review the file every four months to determine if early termination is warranted. This provision also applies to defendants placed on first offender probation.

TERMINATING FIRST OFFENDER PROBATION, O.C.G.A. § 42-8-60(e)(1)

A defendant sentenced to first offender probation pursuant to the First Offender Act "shall be exonerated of guilt and shall stand discharged as a matter of law," when the defendant completes the terms of his or her probation, including the time of the probation sentence as long as it is not tolled or suspended.

MODIFYING TERMS OF A PROBATION SENTENCE, O.C.G.A. § 42-8-34(g); 17-10-1(a)(5)(A)

At any time during a probation sentence, "[t]he judge is empowered to…in any manner deemed advisable by the judge, modify or change the probated sentence," as long as the modification is not punishment. *Stephens v. State* 289 Ga. 758 (2011). Examples of permissible modifications include, but are not limited to:

- Making the probation non-reporting;
- Modifying a probation requirement for "no violent contact" with victim to "no contact." *Bell v. State* 323 Ga. App. 751 (2013);
- Adding requirement to stay away from victims' neighborhood. *Tyson v. State*, 301 Ga. App. 295 (2009);
- Require appropriate counseling for the defendant. *Gould v. Patterson*, 253 Ga.App. 603 (2002).

Special thanks to the Criminal Justice Policy Program at Harvard Law School.