



## Ticket torment

Georgia probation systems ensnares those too poor to pay traffic fines

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Vera Cheeks, of Bainbridge, received a \$135 for rolling through a stop sign. Going on probation gave her time to pay, but money was so tight that she was unable to make an immediate payment of \$50. Her fiancé resorted to pawning Cheeks' engagement ring and a Weed Eater so she could leave the building. "It just broke my heart," Cheeks said. MARK WALLHEISER / Special for the AJC.

Vera Cheeks was hoping for mercy when she appeared in court for rolling through a stop sign.

What she got was probation: Georgia's high-cost solution for people who can't immediately pay a traffic fine.

"I'm thinking, for a ticket - I'm on probation?" Cheeks said. "What the heck happened?"

Probation in most states is reserved for shoplifters, drunk drivers and felons who need community supervision instead of lock-up. In Georgia, probation handles those kinds of cases. But probation in the Peach State has also become a massive system for collecting money from people who can't afford to pay off traffic tickets and other misdemeanor fines on the day they go to court.

This unique - and often lucrative - use of community supervision has turned Georgia into the nation's probation kingpin. More than 500,000 Georgians were on probation in 2013, according to a new federal report. That's

far more in sheer numbers than any other state and represents a probation rate that is more than quadruple the national average.

An investigation of probation by The Atlanta Journal-Constitution found that waitresses, teachers, construction workers, mothers and children, and people who haven't worked in months stream into probation offices across the state trying to pay off fines that can quickly double in cost once the probation system adds its slate of fees.

The probation officers in Georgia who handle most of the misdemeanor cases are employees of for-profit probation companies that state law authorizes local courts to hire. Poor Georgians on probation often claim they are threatened with jail if they get behind on payments, even though a U.S. Supreme Court decision doesn't allow this kind of lock-up.

Vera Cheeks' penalty for the stop-sign violation was a \$135 fine. Going on probation gave her time to pay, but various fees upped the cost

of her punishment to \$267 over three months. Cheeks said her probation officer in a small town in South Georgia told her she would have to report in every week and make payments when due or face a warrant for her arrest.

Cheeks said she was ordered to make an immediate payment of \$50, which she didn't have. Her fiancé resorted to pawning Cheeks' engagement ring and a Weed Eater so she could leave the building.

"It just broke my heart," Cheeks said.

### 'A bad rap'

Georgia's moment to rethink probation has arrived.

The Supreme Court of Georgia is set to rule any day on a high-profile case that could upend the way probation plays out in courtrooms across the state. The case is an appeal of a lower court's ruling that prohibited the state's largest probation company from extending misdemeanor sentences and charging probationers for some services.

Plus, Gov. Nathan Deal asked his Criminal Justice Reform Council to study the state's misdemeanor probation system and recommend changes by year's end. Deal vetoed a misdemeanor probation bill passed by the General Assembly this year, citing provisions that would have allowed probation companies to keep information about their operations secret from the public. The governor said he was also concerned about a state audit released this spring that reported widespread problems in Georgia's misdemeanor probation system.

The audit's long list of findings included a lack of oversight by judges and abusive practices by probation officers such as improper threats to seek warrants, excessive reporting requirements and questionable methods for collecting payments.

The court case, the audit and the veto have placed important questions in front of Georgia's most influential judges and policymakers: Is the state's massive probation system properly holding people accountable? Or, have revenue-hungry cities, counties and probation companies transformed probation into an abusive system?

Georgia's system started more than two decades ago, when the General Assembly gave local courts the option to hire private companies to handle misdemeanor probation. In 2000, the legislature went a step further and limited the state to supervising only felons on probation. That meant that local courts had to either set up their own offices to oversee misdemeanor cases or hire a company to do so.

Private companies filled the void for many cities and counties. The probation companies operating across Georgia today range from small mom and pops to large, multi-state operations.

Most in the business feel like they've gotten a bad rap. Private probation companies say they follow the direction of the judges they work for and do the difficult work that local courts aren't staffed to handle, which includes collecting about \$125 million in fines and surcharges for the cities, counties and the state. The companies also make sure probationers complete any community service hours and court-ordered programs.

Plus, they do it at no cost to the courts: The companies get their income from monthly fees paid by people on probation. The fees vary, but \$35 a month is typical.

The industry doesn't believe abuses are widespread, but most companies expect that some changes may be coming.

"While I believe the system is working, the Community Corrections Association of Georgia supported the idea of more detailed instruction related to case supervision and administrative processes from our judges in a position paper we shared with the Criminal Justice Reform Council," said John Prescott, a probation company executive and president of the association, which represents probation agencies.

Charles Barrett, chief judge at the city of Duluth's court and the legislative committee chairman for the state's municipal court judges, said some changes in law may be needed to improve practices statewide. But he said at his court, relying on a private probation company works well.

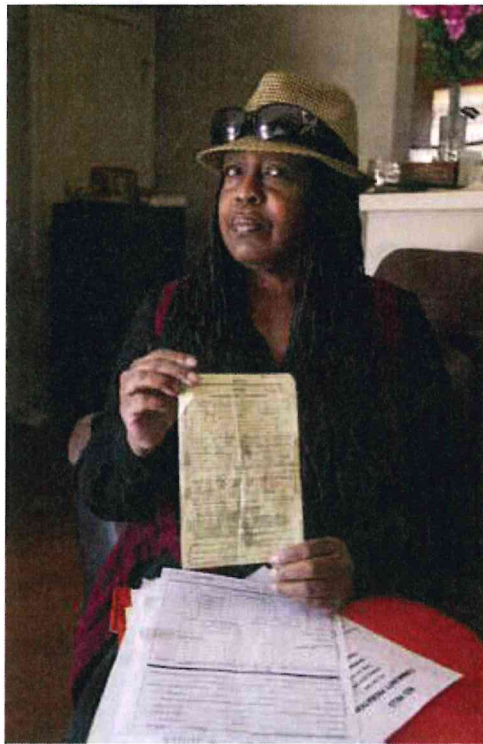
"Basically, the system works," Barrett said.

Barrett said he does use probation to give people time to pay fines, if they can't come up with the money within 24 hours of their court date. He said he's comfortable with the monthly fees that come along with the payment plans — about \$44 a month in his court. "It's the only way we can operate that system right now," he said.

However, he said the probation company brings people back to his court if they are truly indigent and he converts fines to community service.

"I do not think somebody should be put in jail for not being able to pay a fine," Barrett said. **Strong-arming the poor?**

While it may not happen in Barrett's jurisdiction, critics of Georgia's approach say that judges and probation officers around the state regularly threaten people with jail if they do not make payments. The system, they say, is definitely not working.



Vera Cheeks, of Bainbridge, shows her ticket and assorted documents. She said being placed on a payment plan through probation felt like a shake-down operation. "It was like they were thugs and gangsters taxing poor people that don't have income and keeping them in the system, and when they can't pay, throwing them in jail," she said. MARK WALLHEISER / Special for the AJC

"In many cases, the companies function solely as bill collectors demanding money from indigent people who can't afford to pay," said Sarah Geraghty, a senior attorney with the Southern Center for Human Rights. "They cause indigent people to have to live day to day with the stress of uncertainty about whether they will face jail for being poor."

Cheeks, who got the stop-sign ticket, said being placed on a payment plan through probation felt like a shakedown operation. "It was like they were thugs and gangsters taxing poor people that don't have income and keeping them in the system, and when they can't pay, throwing them in jail," she said.

Cheeks has worked as a pharmacy technician. But right now, she's not working at all. Her father is terminally ill. She said she is focused on caring for her dad, but she is filled with anxiety about her probation payments. Her fiancé is retired and right now money is extremely tight. Cheeks, who is now represented by the Southern Center, feels like a just system would offer community service requirements or a payment plan without the extra fees.

"If you can't afford to pay a \$135 ticket," Cheeks said, "what makes them think you are going to be able to pay \$267, whether they break it down in payments or not?"

Jack Long, an Augusta attorney, said the state's probation system is guilty of all sorts of abuses,

from improper extensions of probation terms and improper warrants, to overcharging people for services that aren't necessary in the first place. Many of the problems, Long contends, are tied to the desire of probation companies to earn profits.

Long filed a series of lawsuits, and his challenge to the system is the one that ended up before the Georgia Supreme Court. Long said private probation companies shouldn't be allowed to handle probation in Georgia anymore. Counties and cities could use existing state laws to treat unpaid fines like bad debts, and use garnishment or other tools to collect the fines instead of relying on the threat of jail to induce people to pay.

"For regular traffic tickets and minor infractions of the law, we should not have probation at all," Long said.

Cities, counties cash in

While some critics believe getting rid of the profit motive in private probation operations would help address many of the shortcomings, the AJC's investigation found some public probation offices may profit from probation as well. After all, cities and counties are often anxious to earn money from traffic tickets.

Charmaine Hammonds got popped in Warwick, a small South Georgia town with a ticket-writing reputation, for a suspended vehicle registration.

The judge ordered a \$580 fine. The option to pay it off over a year came with \$60-a-month in fees ordered by a government probation office, according to Hammonds' probation documents, which the AJC reviewed. The total due over a year: \$1,300.

There's no "supervision" involved. Hammonds lives in a small town near Savannah and was told to mail her payments.

"I was told that a bench warrant would be issued if they do not receive the payment by the 8th of each month," she said. "I have to pay it."

Hammonds said she completely understands the need to keep the roads safe and to enforce all the traffic laws, whether it's required insurance coverage or speeding. But she doesn't understand why the fees have to be so high.

"The fact that I'm paying more for probation charges than I am for my actual ticket, it's just ridiculous," she said.

#### Pay or jail

A lot of the controversy about Georgia's approach to probation is tied to questions about whether Georgia is living up to requirements of a 1983 U.S. Supreme Court decision.

The court ruled in *Bearden v. Georgia* that an offender's probation cannot be revoked for failure to pay a fine if the offender is poor and truly does not have the means to pay.

Some judges around the state routinely ask people if they have a job before sentencing them to a payment plan through probation. Many of these judges offer community service as an alternative to a fine.

John C. Carbo III, the chief judge for the Clayton County State Court, said it's rare for him to use probation as a payment plan for those who can't afford their traffic fines. He questions people to find out if they can pay that day and if not, when they can. He'll give them a chance to come back with the money if they need a few weeks or assign community service to people without the means to pay.

"We do not view probation as a vehicle to pay fines unless there is absolutely no other choice," he said.

But other judges take a hard line.

Take a morning in October, when Judge Trichelle Simmons appeared on the bench at DeKalb Recorders Court before a courtroom packed with people accused of failing at probation. Simmons is an attorney and "pro hac" judge who hears cases when needed, court officials said.

Stephanie Toler was the first to appear before the judge, since she had her toddler with her and he was crying. Toler owed \$443 for fines and probation fees for a speeding ticket and seat belt violations, a probation officer told the judge. Toler had been given a year on probation to pay but had only paid \$60 during the first four months.

The waitress and mother of two asked the judge if she could convert the fines to community service.

The judge quickly refused, saying Toler needed to pay that day. If not, the judge said, she was going to send her "across the street" — the location of the DeKalb County jail.

Toler decided to pay off the fine with her rent money. With a job and two kids, she really couldn't go to jail.

After Toler and her son left, the judge heard one case after another and eventually made good on her threat to send failing probationers "across the street" when they hadn't paid their fines, had missed appointments with their probation officer and their probation term was close to over.

Those included a woman whose original charge was an improper left turn (she still owed \$330), a man whose original charge was speeding (he still owed \$131), a woman with an expired tag and suspended registration (she still owed \$502), and a woman busted for no insurance and a suspended registration (she owed \$437). Two men whose fines stemmed from public intoxication cases were also sent to jail.

Simmons declined comment.

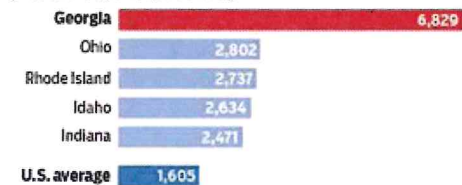
### Reforming the system

Nelly Withers is the chief judge at DeKalb County's Recorders Court. She said she doesn't want the kind of system where low-income people are threatened with jail for failure to pay a fine. Indeed, other judges at DeKalb Recorders Court generously offer community service when defendants are having difficulty paying. But it's not consistent.

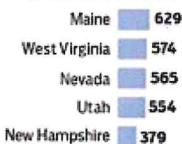
## Nation's probation leader

More than 500,000 Georgians were on misdemeanor or felony probation in 2013, far more in sheer numbers than any other state in the nation. Georgia also tops the charges for its probation rate. Most Georgia probation cases are for traffic offenses and other misdemeanors.

### Top 5: States with highest probation rates (Probationers per 100,000 adults)



### Bottom 5: States with lowest probation rates



Footnote: Georgia's counts include probation cases, not individuals. That may inflate Georgia's rate because probationers with multiple sentences can be on probation with more than one agency. Some counts for Ohio, Rhode Island and West Virginia were estimated. Counts include probationers in warrant status.

Source: Bureau of Justice Statistics, Probation and Parole in the United States, 2013

STEVE LOPEZ/STAFF

Georgia the national leader in probations

After years of watching how the system works for misdemeanors, Withers is pushing for a complete overhaul of probation at her court.

"Our defendants are our neighbors, our kid's teachers, sometimes our acquaintances," she said in a report to DeKalb commissioners. "They are not hardened criminals, and we want to stop treating them like traditional probation does, which is as criminals."

Withers wants to give people time to pay without saddling them with the expensive supervision fees that come with probation. About 60 to 70 percent of the probation cases that come from DeKalb Recorders Court, she said, are simply payment plans. She wants to move her court to a system that would offer a completely different approach, and that would make a concerted effort to determine whether someone is indigent.

"It's not going to be probation as usual here," Withers told the AJC. "I believe the whole face of probation has to change to curb the perception of and potential for abuse."

While Withers is looking for a dramatic re-making of probation in DeKalb, the governor's panel of criminal justice experts is working on its slate of recommended changes that would apply to every misdemeanor probation operation in the state.

Georgia Court of Appeals Judge Michael Boggs, co-chairman of the Criminal Justice Reform Council, has carefully studied the issue, holding meetings with all sorts of stakeholders and reviewing the critical state audit that proposed 54 changes to the system.

The offenses involved may be misdemeanors, but the issues involved could not be more serious,

Boggs said.

"We are dealing," he said, "with people's lives and their freedom."

## Misdemeanor probation in Georgia

Last year, 776 courts across the state relied on 88 probation providers — 34 private companies and 54 public offices.

Private probation companies supervise 80 percent of Georgians on misdemeanor probation.

Public and private misdemeanor probation offices collect about \$125 million a year in fines and surcharges. Probation companies collect millions more in supervision fees that they keep, but they do not report these fees to the state.

Georgia reported 514,000 felony and misdemeanor probation cases in 2013. The majority — more than 300,000 — were misdemeanor cases.



Nelly Withers, chief judge at DeKalb County's Recorders Court, is pushing for a complete overhaul of probation at her court. Withers wants to stop penalizing people who need time to pay with the expensive supervision fees that come with probation. RENEE HANNANS/STAFF

Not all of those cases are active: 133,000 were inactive cases in warrant status.

Georgia's probation supervision rate is four times the national average. Some in the probation system say Georgia's supervision rates aren't as high as they appear because Georgians with tickets in more than one jurisdiction can be on probation with more than one agency.

"Our defendants are our neighbors, our kid's teachers, sometimes our acquaintances. They are not hardened criminals, and we want to stop treating them like traditional probation does, which is as criminals." Chief Judge Nelly Withers of DeKalb County's Recorders Court.