

KNOW YOUR RIGHTS: MISDEMEANOR PROBATION IN GEORGIA

Probation is a sentence of imprisonment that is suspended so that you avoid serving time in jail. In exchange for avoiding jail time, you are required to follow court-imposed rules called “probation conditions.” Courts have broad discretion in imposing these conditions,¹ which typically include reporting to a probation officer regularly, paying fines and monthly supervision fees, and performing community service.² If you deliberately violate a condition, the court may revoke some or all of your remaining probation time, and you may have to spend that time in jail.

THE MISDEMEANOR PROBATION SYSTEM

In Georgia, cities and counties are responsible for supervising people placed on probation for misdemeanors.³ A misdemeanor is an offense punishable by up to 12 months in jail or less, plus a fine of up to \$1,000 in most cases.⁴ Cities and counties have two options for supervising people on misdemeanor probation.⁵ Some establish government-funded probation offices that use city or county employees as probation officers.⁶ More often, they enter contracts with companies that supervise probationers for a profit.⁷

YOUR RIGHTS BEFORE BEING PLACED ON PROBATION

You can only be placed on probation after pleading guilty or being found guilty of a crime. In your underlying case, you have the right to court-appointed counsel if you are indigent.⁸

YOUR RIGHTS AT SENTENCING

After you are convicted (by either pleading guilty or being found guilty at a trial), the court will sentence you. If you entered a “negotiated” guilty plea with the prosecutor, the prosecutor may make a sentence recommendation to the judge, and the judge will generally accept the recommendation. For this reason, it is important to inform the prosecutor of your particular hardships during plea negotiations and ensure that you can comply with the prosecutor’s recommended probation conditions and fine payments before accepting a plea deal. It is also best to have a lawyer representing you during plea negotiations. If you represent yourself, anything you say to the prosecutor may be used against you if the negotiations fail.

If you are convicted after a trial or you plead guilty without an agreement with the prosecutor, the sentencing hearing will be your opportunity to explain to the judge why you should receive a lesser sentence. Very often, courts have a fixed schedule of fines that they use to punish certain

¹ See *State v. Pless*, 282 Ga. 58, 60 (2007).

² See, e.g., O.C.G.A. § 42-8-104(a).

³ O.C.G.A. § 42-8-101.

⁴ O.C.G.A. § 16-1-3(9).

⁵ O.C.G.A. § 42-8-101.

⁶ O.C.G.A. § 42-8-101(a)(2), (b)(2).

⁷ O.C.G.A. § 42-8-101(a)(1), (b)(1).

⁸ *Alabama v. Shelton*, 535 U.S. 654, 658 (2002).

misdemeanors, and some offenses carry mandatory fines, fees, or jail time. However, judges usually have the discretion to reduce the sentence based on your individual circumstances.

If you are placed on probation, the court should consider your financial circumstances before setting fines, probation supervision fees, and restitution. Factors that the court must consider include your income, the property you own, and your financial obligations.⁹ Therefore, it is important to bring evidence of your hardships to your sentencing hearing or to any court proceeding where you expect to plead guilty. For example, documentation of public benefits, medical conditions, income, child care costs or child support payments, and monthly bills may help to show that court that you will not be able to afford the fines, probation supervision fees, or restitution that the court would otherwise impose.

If paying fines or supervision fees would cause a hardship, courts are always authorized to reduce the amount you owe or convert the obligations to community service.¹⁰ In addition, there are some situations in which the court *must* either waive fines or fees, reduce them to an amount you can afford, or convert them to community service. The court must waive, reduce, or convert your fines and fees in the following situations¹¹:

- You have a developmental or intellectual disability.
- You are totally and permanently disabled.
- You earn less than 100% of the federal poverty guidelines.
- You have been released from confinement (e.g. jail or prison) within the preceding 12 months and were incarcerated for more than 30 days before your release.
- You will probably not be able to meet your financial obligations for two or more months unless the court waives, reduces, or converts the fines and fees.

If you live in a city or county outside of the jurisdiction that sentences you, you may request that your probation supervision be transferred to the city or county where you reside.¹²

If you are placed on probation solely because you cannot afford to pay your fines on the day of court, your supervision fees cannot exceed three months' worth of the fees ordinarily collected.¹³

YOUR RIGHTS WHILE ON PROBATION

Once you are on probation, you must comply with your probation conditions if you are able to do so. The most important condition is to report to your probation officer as scheduled. Even if you cannot pay all of the money you owe, you should continue to report and pay what you can, even if it is less than the full amount you owe. If you will be unable to report to the probation officer, you should contact the probation officer as soon as possible and arrange a new report date to avoid having a warrant issued for your arrest or having your probation time "tolled."

As long as you continue to report, your time on probation will count against your sentence. If you stop reporting, the probation officer may seek a "tolling" order from the court, which will stop your probation sentence from running until you report to your probation officer or are

⁹ O.C.G.A. § 42-8-102(c); *id.* at 17-14-10(a).

¹⁰ O.C.G.A. § 42-8-102(d).

¹¹ O.C.G.A. § 42-8-102(e)(3).

¹² O.C.G.A. § 42-8-102(g).

¹³ O.C.G.A. § 42-8-103.

arrested.¹⁴ If your sentence is tolled, you will still have to serve whatever amount of time remains on your probation sentence at the time the tolling order is entered. For example, if you have twelve months of probation and the sentence is tolled after you have served six months, you will still have to serve the six months remaining on your sentence after you are arrested or begin reporting to your probation officer again. A probation officer can only seek a tolling order if you have failed to report twice and the probation officer attempted to contact you at your last-known telephone number or e-mail address, sent a warning letter to your last-known address, and checked with local jails to ensure that you were not incarcerated.¹⁵

While you are on probation, you have a right to a written receipt and balance statement each time you make a payment.¹⁶ In addition, you may make a written request to have a copy of any correspondence, payment records, and reporting records from your probation file.¹⁷ If you believe that there are discrepancies in your case file, you may file a motion with the sentencing court requesting that the court to examine your file for missing information.¹⁸

The court that sentences you to probation has the power to modify or terminate your probation at any time.¹⁹ If you have a hardship that prevents you from paying fines, performing community service, or remaining on probation, you may file a written request with the court asking the court to accommodate your circumstances by modifying your probation conditions or terminating probation. Courts are specifically authorized to convert fines, surcharges, and supervision fees to community service upon request.²⁰ In addition, courts may transfer your probation supervision to the city or county where you live if you move while you are on probation.²¹

PROBATION REVOCATION HEARINGS

If a probation officer believes that you have violated a condition of your probation, the officer may file a petition to revoke or modify your probation sentence. Depending on the circumstances, the probation officer may also seek an arrest warrant. The court will then set a date for a revocation hearing.

At the revocation hearing, the court will decide whether or not you violated your probation conditions. Unlike criminal trials, where the state must prove your guilt beyond a reasonable doubt, probation hearings are to determine whether it is more likely than not that you violated probation conditions. You do not necessarily have the right to the assistance of a lawyer, but you may request counsel if you believe that your case is complicated or that you will have difficulty speaking on your own behalf.²² If the court denies your request for counsel, it must state its reasons for doing so.²³

¹⁴ O.C.G.A. § 42-8-105(b).

¹⁵ O.C.G.A. § 42-8-105(b).

¹⁶ O.C.G.A. § 42-8-109.2(b)(1)(A).

¹⁷ O.C.G.A. § 42-8-109.2(b)(1)(B).

¹⁸ O.C.G.A. § 42-8-109(b)(2).

¹⁹ O.C.G.A. § 17-10-1(a)(5)(A); *id.* at § 42-8-102(f)(1), (3).

²⁰ O.C.G.A. § 17-10-1(d); *id.* at § 42-8-102(d).

²¹ O.C.G.A. § 42-8-102(g).

²² *Gagnon v. Scarpelli*, 411 U.S. 778, 789-90 (1973).

²³ *Id.*

Generally, your probation cannot be revoked if you did not have the ability to comply with your probation conditions. For example, if you did not have fair warning that your alleged conduct violated your probation conditions, your probation cannot be revoked.²⁴ Similarly, if you are accused of violating probation solely by failing to pay money, but you have otherwise reported to your probation officer and complied with your other probation conditions, the court cannot revoke your probation unless it finds either that you had the ability to pay or that alternatives to incarceration will not meet the state's interest in preventing and punishing crime.²⁵

If the court finds that you have violated probation only by failing to report or make payments, the court must consider alternatives to incarceration, including community service, and cannot revoke more than 120 days of your probation.²⁶ In all other cases, the court must consider alternatives to incarceration, but may revoke the balance of probation.²⁷ However, if the court revokes the balance, all fines, fees, and other court-imposed monetary obligations are negated.²⁸

COMMON QUESTIONS ABOUT PROBATION

Can my probation sentence be extended if I cannot pay my fines on time?

No. As long as you report to your probation officer as required, your time on probation will continue to count against your sentence and your sentence will terminate automatically.

Can my probation officer refuse to convert my fines and fees to community service?

No. The law gives the judge authority to convert a person's fines and fees to community service, and in some cases the court must either convert or reduce the money owed. If the probation officer will not assist you, you may file a motion with the court requesting conversion.

What if my probation officer threatens to arrest me for failing to pay fines and fees?

The most important thing is to continue reporting. Your probation cannot be revoked solely because you cannot afford to pay through no fault of your own. Although the probation officer may eventually seek to revoke your probation, you will have an opportunity to explain yourself to the court and will be in a better position if you have reported on time. If the probation officer continues to threaten you after you have explained your circumstances, you may file a motion with the court requesting that the court modify your monetary obligations.

Complaints about misdemeanor probation officers may be directed to:

Misdemeanor Probation Oversight
Department of Community Supervision
2 Martin Luther King, Jr. Drive SE
Atlanta, GA 30334-4909
Telephone: (404) 558-0180

²⁴ *Douglas v. Buder*, 412 U.S. 430, 432 (1973) (per curiam).

²⁵ *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983).

²⁶ O.C.G.A. § 42-8-102(f)(4)(A).

²⁷ O.C.G.A. § 42-8-102(f)(4)(B).

²⁸ O.C.G.A. § 42-8-105(f).

Complaints about misdemeanor probation officers and misdemeanor and/or traffic courts may also be directed to:

Southern Center for Human Rights
83 Poplar Street, NW
Atlanta, GA 30303
(404) 688-1202

Please Note: This document provides general information and is not intended to be an exhaustive summary of the law. In addition, the law is always evolving. The date at the bottom of this page indicates when this information sheet was last updated.