Georgia Department of Audits and Accounts
Performance Audit Division
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Follow-Up Review
Misdemeanor Probation Operations

Issues raised in original report have been partially addressed

Why we did this review

This follow-up review was conducted to determine the extent to which providers and courts addressed recommendations from our April 2014 performance audit (Report #12-06).

The 2014 performance audit was conducted to assess the quality of oversight by courts and local governments over misdemeanor probation operations and case management practices employed by probation providers. The audit found that courts provided limited oversight of providers, with contracts that often lack the detail needed to guide provider actions. The audit also found that providers frequently had inadequate case management policies.

About Misdemeanor Probation

Courts may assign individuals to a term of probation for a conviction of a misdemeanor for up to 12 months per offense. Probation providers are responsible for monitoring the probationer and responding to probationers that fail to comply with all conditions of probation. In November 2015, Georgia had 79 providers (30 private and 49 public) registered with the state. The providers supervise approximately 217,000 probationers on behalf of 784 courts. Private providers serve approximately 82% of the courts and supervise 73% of the probationers. Providers are funded by supervision fees paid by the probationer.

What we found

With the adoption of House Bill 310 in 2015 and Senate Bill 367 in 2016, the General Assembly and Governor addressed the most questionable probation practices noted in the original report, including arrest largely resulting from the inability to pay financial obligations and large supervision fees for those placed on probation because they were unable to pay fines at sentencing.

State law now addresses probationers' indigence, including the factors used to determine the ability to pay, the necessity of a hearing before the probation revocation, and the alternate use of community service. It also limits supervision fees for those on "pay only" probation solely for an inability to pay fines and fees at sentencing, and it defines when "tolling" of a sentence is appropriate. HB 310 also requires that providers report the amount and nature of fees collected from probationers to judges and to the Board of Community Supervision. Finally, the bill moved oversight of probation providers to the new Board of Community Supervision and Department of Community Supervision (DCS). SB 367 further clarified the responsibilities of the Board and the agency and addressed revoking probation for failure to pay or to report. It emphasized holding a court hearing, when the probationer is available, before issuing an arrest warrant, and for those on "pay only" probation, ending the probation term once all fees are paid. These changes in law addressed many of the issues identified in the original report.

The report also identified actions the courts and probation providers could take to address problems. During the follow-up, we found some of the courts in our limited sample had taken

actions to address recommendations, such as adding reporting requirements to the contracts with probation providers. However, there are additional steps they could take to further improve oversight. It should be noted that a number of courts reviewed during the original audit have not issued new contracts, or updated current contracts as of this follow-up. While informal changes may have occurred, as discussed later in this report, additional actions are needed to ensure the recommendations are fully addressed.

In conducting the follow-up, we assessed the degree to which courts and providers have taken action. The original report found that courts provided limited oversight of providers, with contracts that often lacked the detail needed to guide provider actions. It noted that contracts and governmental agreements frequently did not include all provisions – some required by state law – needed to ensure providers were aware of court expectations. Recommendations were directed at the courts, probation providers, the General Assembly, and the County and Municipal Probation Advisory Council (CMPAC). The audit recommended that courts ensure that contracts and governmental agreements comply with all requirements of state law and best practices. The audit also recommended that courts ensure that contracts include their expectations in key operational areas.

We found that a small sample of courts, local governments and providers have taken steps to address many of the recommendations included in original report. During the follow-up, we obtained contracts for 21 of the 29 courts reviewed during the original report[1]; interviewed 12 courts and 5 probation providers. As of April 2016, 14 of 21 courts in our follow-up sample had new or updated contracts for probation services. Of these 14, 10 contracted with private probation providers and 4 had changed providers. The presence of established uniform standards and other operational and performance provisions in these contracts increased for the courts in our follow-up sample. **Appendix A** shows the provisions included in new probation services contracts as compared to the original audit. As shown in the table on the following pages, implementation varied. Overall, of the courts we reviewed, there now appears to be more discussion between judges and providers to clarify expectations with regard to probation.

It should be noted that, in November 2014, the Council of State Court Judges proposed an amendment to the uniform rules for state courts pertaining to contracts and standing orders for probation supervision services. However, the council delayed further action due to HB 310, which was expected to address similar issues. Similarly, the Council drafted a guide to establish best practices for entering into contracts and managing probation services; it was also tabled with the introduction of HB 310. On August 31, 2016, the Judicial Council of Georgia adopted a Bench Card for judges that "focuses on how to address the situation of indigent misdemeanor defendants and probationers and contains information about recent changes to Georgia law under SB 367 (2016) and HB 310 (2015)."

A copy of the report was provided to the Council of State Court Judges for review; they did not provide any comments. A copy was provided to the Department of Community Supervision. Their comments have been incorporated as appropriate into the table of findings and recommendations.

The following table summarizes the findings and recommendations in our 2014 report and actions taken to address them. A copy of the 2014 performance audit report 12-06 may be accessed at http://www.audits.ga. gov/rsaAudits.

[1] During the original review, 29 courts were reviewed. By the time of the follow-up, Macon and Bibb County had consolidated resulting in the combining of two courts. This left a total of 28 courts available for follow-up and 7 did not respond to our request for information.

Misdemeanor Probation Operations Follow-Up Review, September 2016	
Original Findings/Recommendations	**Current Status**
Procurement and Oversight	
Courts that contract for probation services should solicit proposals from multiple providers, adopt practices that maximize evaluation transparency and objectivity, and document key decisions. We found that jurisdictions and local governments did not always utilize best practices principles when procuring probation services. Some jurisdictions utilized competitive procurements but did not use common procedures that increase transparency and ensure evaluation and selection objectivity while some courts solicited service from only one provider. Often key decisions were not documented. We recommended that courts solicit proposals from multiple providers, develop clear criteria to evaluate and select providers to ensure objectivity, and consider utilizing a stakeholder panel to increase transparency. We also recommended courts document their procurement process and reasons for selecting their probation provider.	**Partially Addressed** – Of the nine courts we interviewed that contract with private providers, five had new contracts for probation services. One of the five reported using a request for proposal to solicit proposals from multiple providers. This court also noted it used objective and transparent procurement practices.
Courts should ensure that contracts and governmental agreements have the provisions necessary to communicate all relevant operational and performance expectations. We found that most contracts and government agreements did not adequately document provider operations and performance measures. A majority of contracts and government agreements failed to include at least a portion of the provisions required by state law. We recommended courts ensure that contracts and governmental agreements comply with all requirements of state law (including all uniform contract standards) and should include best practices. Additionally, courts should ensure that contracts and governmental agreements include expectations in key operational areas. The contracts and governmental agreements should also include a provision allowing a compliance audit or review. We also recommended that courts consider limiting contracts to no more than five years.	**Partially Addressed** – Overall, courts increased compliance with requirements of state law and best practices. Our analysis of 14 courts with new contracts found average compliance with contract content standards and best practices was 67% (321 of 476), as compared to 52% during the original audit for these same courts (see **Appendix A**). Compliance increased for 26 of the 34 contract provisions we analyzed. Most of the courts in our sample strengthened the language in their new contracts to specify expectations in key operational areas. Of the 14 new contracts we reviewed, 8 included language specifying supervision standards, including establishing the frequency and types of contacts with probationers and identifying expectations for response to non-compliance for reporting. In addition, 11 included provisions allowing a compliance audit or review, which is an increase since our previous audit. With regard to limited contract terms, at the time of the original report five of the sampled courts had limited their contract terms to no more than five years. As of the follow-up, 4 of the 14 courts that have established new contracts have limited the term of their contracts. This net decrease of one indicates improvements have not been made in this area. (Note: Three of the original five have continued to limit contract terms while two dropped the requirement; an additional court established the limitation when it issued a new contract.)

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Original Findings/Recommendations	**Current Status**
Courts should improve the monitoring of probation providers by requiring meaningful reports and periodic compliance reviews. We found that courts generally had not established sufficient methods to evaluate the performance of probation providers. While providers may have submitted periodic financial and activity reports to the court, the reports lacked the information necessary to effectively assess the probationer population or provider's performance. Furthermore, audits permitted by some provider contracts were limited to financial matters, which would not provide an assessment of other contract terms. We recommended providers report to the courts all data required by state law. We also noted that courts should request more comprehensive summary reports to more effectively monitor activity data, probationer outcomes, and provider performance/compliance. Finally, we recommended courts require periodic compliance audits to evaluate how well providers adhere to contract terms.	**Partially Addressed** – Under HB 310, providers are required to include the amount and nature of fees collected from probationers in their quarterly reports to the judge and also provide these reports to the Board of Community Supervision. A small number of private providers reported submitting quarterly reports containing probations activity data to courts. Quarterly reports include data such as the number of active cases, cases closed successfully and unsuccessfully, community service hours completed, community service hours converted to fines, statutory surcharges, fines collected, as well as the amount and type of fees collected. Another provider reported purchasing new software that will facilitate the generation of required reports. Of the new contracts we reviewed, 11 of 14 included language specifying the frequency and type of reports required from providers. Additionally, 10 required providers to submit reports of non-financial aspects of probation. As discussed previously, none of the 14 new contracts included language requiring periodic compliance reviews. However, one court that operates in-house probation services reported it began conducting random compliance reviews in late 2013. This court reported that its reviews primarily examine financial and supervision aspects of probation to ensure the conditions of probation are met.
The General Assembly and CMPAC can address issues identified in our review, but most issues can be addressed more effectively by the courts and providers. We found that courts and providers remain the key entities to improve misdemeanor probation operations, but additional statutory requirements, additional state enforcement, and changes to CMPAC reporting could all have an impact. We recommended the General Assembly consider addressing the most undesirable provider practices identified in the report and whether CMPAC had the resources necessary to ensure providers and courts were compliant with state law. We also recommended CMPAC provide the contracting judge with results of compliance reviews and summarize compliance reviews for inclusion in annual reports. Additionally, we noted that CMPAC should consider conducting a review of all contracts and governmental agreements in effect and requiring future documents be submitted upon their execution.	**Fully Addressed** – While other findings in our original audit are directed to courts and providers, this finding is directed to state level entities that can take actions to improve misdemeanor probation operations. With the adoption of HB 310, the General Assembly and the Governor addressed the most questionable probation practices noted in the original report including arrest largely resulting from an inability to pay financial obligations and large supervision fees for those placed on probation because they were unable to pay fines at sentencing. State law now addresses probationers' indigence, including the factors used to determine the ability to pay, the necessity of a hearing before the probation revocation, and the alternate use of community service. It also limits supervision fees for those on "pay only" probation and defines when "tolling" of a sentence is appropriate. SB 367, which was adopted in 2016, also includes provisions related to probation, supervision and revocation and specifies the process for revocation solely based on failure to report. It also requires DCS to review the uniform professional standards for private probation officers and uniform contract standards for private probation contracts and submit a report of its recommendations to the Board every two years.

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Original Findings/Recommendations	**Current Status**
	In 2015, the General Assembly passed and the Governor signed HB 310 assigning the functions of CMPAC to the new Board of Community Supervision and Department of Community Supervision (DCS). DCS established a Misdemeanor Probation Oversight Unit to implement the rules and regulations of the Board. In January 2016, the Misdemeanor Probation Oversight Unit began conducting compliance reviews of all probation service contracts. As of May 2016, DCS had completed 67 audits of probation services contracts and governmental agreements. Additionally, DCS requires courts to submit all new probation contracts upon execution. DCS reported that its Misdemeanor Probation Oversight Unit provides contracting judges with audit outcomes and findings and will provide annual reports as they are completed.
Reporting Standards and Practices	
Probation providers should have written reporting policies for both compliant and non-compliant probationers, and courts should require that provisions detailing the frequency and type of reporting are included in contracts and governmental agreements, as required by state law. We found that, while state law requires contracts to include supervision standards that providers are to use when managing probationers, many of the contracts did not. Our review found providers needed to develop written reporting policies or supervision standards for both compliant and non-compliant probationers. We recommended providers develop standards that detail the probationer actions that will change reporting requirements. We also recommended providers develop written policies explaining what actions will be taken for probationers who fail to report. Further, we recommended courts ensure contracts and governmental agreements include the type and frequency of reporting for both compliant and non-compliant probationers.	**Partially Addressed –** Of the 14 new contracts we reviewed, 1 contained language specifying the type and frequency of reporting for both compliant and non-compliant probationers. One additional court indicated that it was developing standard operating procedures to specify reporting requirements in greater detail.

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Original Findings/Recommendations	**Current Status**
Payment Collection Standards and Practices	
Probation providers should establish written policies to address financial non-compliance. In addition, providers and courts should ensure that probation terms are not improperly extended and that arrest warrants are not improperly used to compel payments. We found cases in which financial non-compliance was not addressed in a timely manner, as well as limited instances in which providers improperly extended probation terms or used arrest warrants in a questionable manner in order to collect fines and fees. We recommended providers develop written policies and procedures establishing criteria defining a probationer's financial non-compliance and explaining the type of administrative responses to be imposed. Providers should not actively supervise, require reporting or threaten probationers with punitive actions for failing to comply with financial obligations once the probation term has expired. We also recommended courts consider including a contract provision forbidding providers from requiring probationers to continue to address probation conditions beyond the term established in the original sentence and include a provision detailing the level of non-compliance for which an arrest warrant should be sought. Finally, we recommended the General Assembly consider amending state law to include, as a uniform contract standard, the conditions for which an arrest warrant should be sought.	**Partially Addressed** – With the revisions of HB 310, the law now requires scheduling a hearing to address non-compliance. Arrest warrants may only be issued if and after the probationer skips a hearing. At the time of the follow-up, providers we interviewed reported that new written policies had not been developed to establish criteria that define a probationer's financial non-compliance and the type of administrative responses that will be imposed. For 4 of the 14 new contracts we reviewed, courts included a provision forbidding providers from requiring probationers to continue to address probation conditions beyond the term established in the original sentence.
Probation providers should establish probationer payment plans based on the fine amount and time frame approved by the court. We found that some providers did not have written policies detailing how payment plans should be established and some had set payment schedules higher than those established by provider or court policy. We recommended providers consult with courts and establish written payment policies that are based on actual financial obligations and avoid unnecessarily short time standards.	**Partially Addressed** – Under HB 310 probation supervision fees are limited to three months when individuals have been placed on probation solely because of an inability to meet their financial obligations. Providers we interviewed reported that they had not developed new written payment plan policies since the original audit. However, one provider did note that payment plans are established in court orders. Our review found that 3 of the 14 new contracts established limits and/or methods for generating a payment schedule for probationers. This represents a 21% increase since the previous audit. Two of the contracts required payments to be completed within two months of the end of the probation period, which may make financial compliance more attainable. The third required payments be completed within the first half of the probation term.

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Original Findings/Recommendations	**Current Status**
Probation providers should establish policies and procedures for identifying potentially indigent probationers in a timely manner, and courts should ensure that the provider's role in the process is clearly defined. We found that, while a majority of probationers with a financial obligation were in arrears at some point during their term, probation providers rarely took adequate steps to determine whether the probationer was unable to pay. We recommended providers adopt policies that detail the criteria that will cause an indigence assessment and the assessment method. We also recommended providers consult with their courts when developing the policies.	**Partially Addressed** – HB 310 indicates that when determining the financial obligation, courts may consider certain factors such as the defendant's financial resources and other assets, income, the probation period and the goal of the punishment. The court can also waive, modify or convert imposed financial obligations when it determines the defendant has significant hardship or inability to pay. HB 310 also requires a hearing be held prior to revoking a probationary sentence for failure to pay. As a result, probationers must now have a hearing and their failure to pay be found willful, before their probation can be revoked. Since the original audit, one provider reported taking actions to improve the process for assessing indigence during probation. Specifically, the provider reported that it developed a written policy and a form for probation officers to use in assessing indigence. Another provider noted that in June 2015 it developed a contact report form for probation officers to collect information from probationers regarding changes in their circumstances. However, the provider noted that this form is primarily used to document probationer's statements, such as changes in their employment status and is not a tool for assessing indigence. Our review found that 2 of the 14 new contracts specified when potential indigence should be assessed; however, only one outlined specific methods for making the assessment.
Payment Allocation and Remittance Standards and Practices	
Probation providers should consult with courts when developing written policies for the allocation and remittance of probationer payments. The policies should address issues such as improperly prioritizing supervision fees, the allocation of partial payments, and remittance of funds to all recipients. We found that due to deficient and unclear policies, most of which were not adopted in consultation with the court, providers did not always allocate probation payments to the appropriate recipients. We recommended that, in consultation with the court, providers develop clear policies for allocating probationer payments. We noted the policies should not allow the front-loading of supervision fees, and they should address the allocation of partial payments or payments received by probationers who are in arrears. Additionally, courts should detail allocation and remittance standards in the contracts and government agreements.	**Partially Addressed** – Some courts with new contracts specified allocation and remittance standards, including the prioritization of supervision fees, allocation of partial probation payments, and remittance to recipients. For example, 9 of the 14 new contracts contained a priority schedule for payments among fund recipients, which is an increase among these courts since the original audit. Six of the contracts prohibit the front-loading of supervision fees and three contracts addressed the allocation of payments received from probationers in arrears. While now included in some contracts as noted above, none of the providers we interviewed during the follow-up had developed new policies for allocating probationer payments.

Misdemeanor Probation Operations Follow-Up Review, September 2016	
Original Findings/Recommendations	**Current Status**
Community Service	
Probation providers should develop written policies to ensure probationers complete community service work and to reduce the risk of fraudulent reporting. We found that providers could improve their monitoring of probationer community service work and recommended that, in consultation with the court, providers develop policies regarding the expected timeframe for community service completion when timeframes are not specified during sentencing. Also in consultation with the court, we recommended providers develop policies regarding actions to take when a probationer is not compliant. The policies should define noncompliance, consider the expected timeframe for completion, and describe the appropriate actions that can be taken (e.g., increased reporting requirements; requesting a court hearing).	**Partially Addressed** – HB 310 requires completed community service hours be reported to the court. During the follow-up, providers reported that they had not developed new policies regarding the expected timeframe for community service completion when timeframes are not specified during sentencing. We found that some new contracts outlined requirements for ensuring the completion of community service work. For example, 2 of the 14 new contracts defined noncompliance with community service and 3 described the appropriate actions for noncompliance. One contract specified the expected time frame for probationers to complete community service work.
Probation providers and courts should establish procedures to ensure appropriate conversions between community service hours and financial obligations. We found several jurisdictions and probation providers with problematic policies and controls for converting fines to/from community service. Some providers were allowed to convert fees and surcharges without a court review of the case, while several had inadequate policies to ensure that indigent probationers were identified in a timely manner. We recommended providers develop policies to identify probationers who may be potentially indigent and include a time standard for making the determination. We also noted that courts should explicitly approve the conversion rate and methods used as part of any contract or government agreement.	**Partially Addressed** – HB 310 provided that courts can waive, modify or convert imposed financial obligations when it determines the defendant has significant hardship or inability to pay. HB 310 also allows courts to convert fines and supervision fees to community service if deemed necessary. As discussed on page 6, only one provider reported taking actions to improve the process for assessing indigence. Specifically, the provider reported that it developed a written policy and a form for probation officers to use in assessing indigence. Additionally, 2 of the 14 new contracts specified the method for providers to determine potential indigence. Two contracts specified when potential indigence should be addressed, one of which also outlined the method for assessing indigence. Four of the new contracts we reviewed specified that the court approves the conversion rate. For three of these, the conversion rate was based on the federal minimum wage rate, while the remaining contract was based on a rate specified by the court. An additional court plans to specify its conversion rate in standard operating procedures being developed for its in-house probation service provider. Additionally, some courts we interviewed reported approving the conversion rate for community service work during court proceedings.

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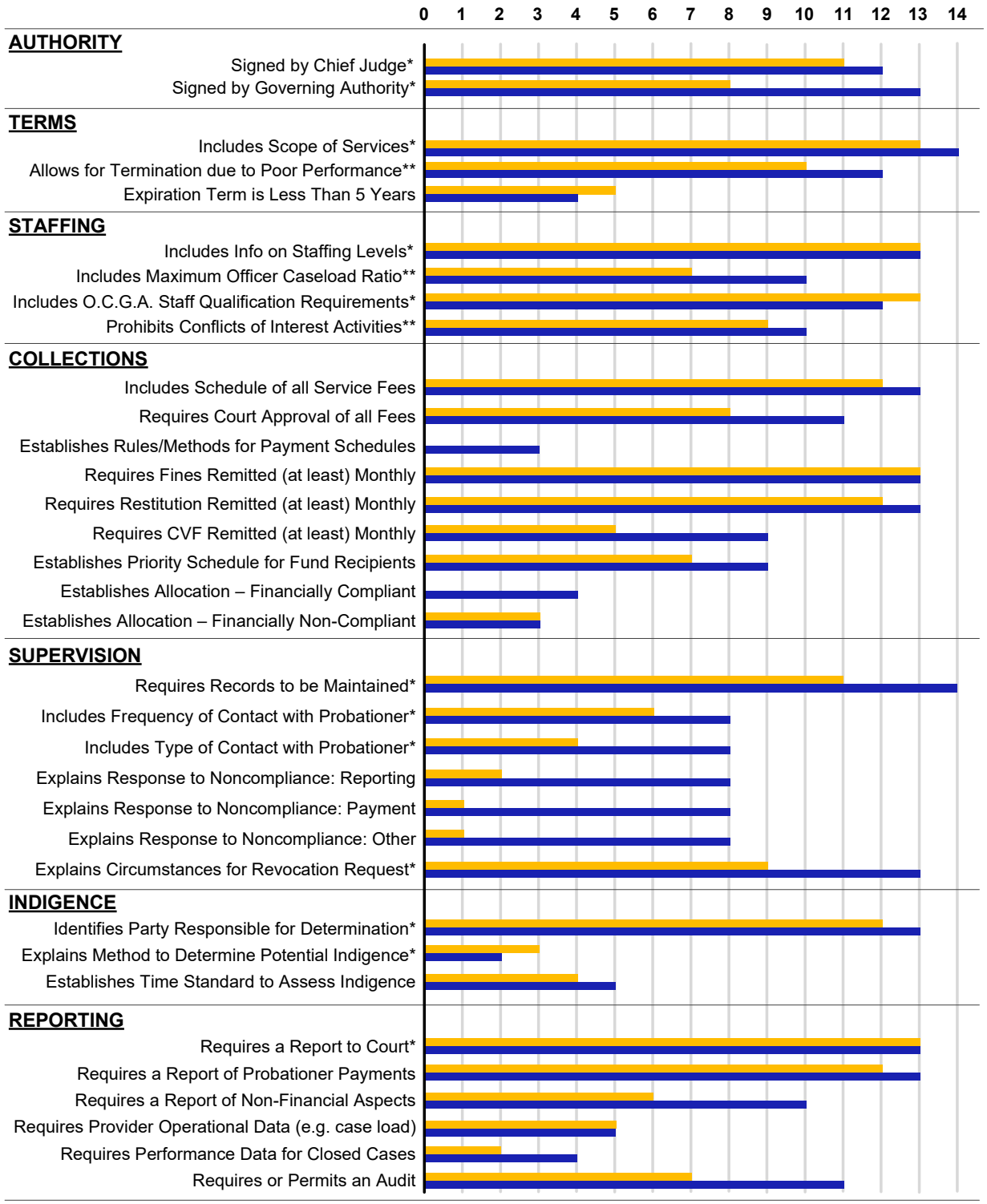
Original Findings/Recommendations	**Current Status**
Evaluation and Treatment	
Probation providers should develop written policies to ensure evaluations and treatments are completed in a timely manner. We found that providers could improve their procedures for overseeing probationer completion of evaluation and treatment requirements. To do so, we recommended they establish standards that define the level of non-compliance with evaluation and treatment conditions that warrant the administrative actions of increased reporting or a court hearing to modify or revoke probation.	**Not Addressed** – None of the providers we interviewed reported developing new policies defining the level of non-compliance with evaluation and treatment conditions that warrant the administrative actions.
Case Records and Quality Assurance Review Procedures	
Probation officers should maintain case records that describe all interactions with the probationer, contain supporting documents for all completed special conditions, and justify why administration actions are taken. We found that case files lacked some of the information necessary to effectively review the management of case records. We found examples in which case notes were missing, illegible, did not address all conditions of probation, and in some instances, did not contain sufficient records to support the credit given to probationers. We recommended providers ensure officers create and maintain case records (case notes and supporting documents) that clearly illustrate all interactions with the probationer, all major case management decisions, all punitive administrative actions (e.g., increased reporting requirements, request for hearing, and request for warrant/tolling) and the justification for them. In addition, case notes must be legible. Additionally, we recommended providers ensure officers follow up with all outstanding conditions of probation during every visit with the probationer and consider the use of instruments (case management systems; administrative forms) to facilitate the practice.	**Partially Addressed:** HB 310 provides that probationer can obtain upon written request a copy of information from case records, including correspondence, payment records, and reporting history. Under certain circumstances, probationers can also obtain a copy of supervision case notes. One provider reported taking steps to ensure officers maintain comprehensive case records by revising its checklist of information supervisors examine during probation supervision audits.

Misdemeanor Probation Operations Follow-Up Review, September 2016	
Original Findings/Recommendations	**Current Status**
Probation providers should improve quality assurance review practices to oversee officer case management and consider providing the results to court officials. We found that while providers indicated that they conduct quality assurance reviews to ensure officers are properly managing their cases, the quality of the reviews was not always adequate and the results were not always communicated to the court. We recommended providers develop written procedures detailing the method and frequency of quality assurance reviews. We also noted that providers should develop review instruments to standardize quality assurance reviews. Additionally, we recommended court officials consider whether to require providers to submit quality assurance review results (including corrective actions providers will take to address identified deficiencies) as part of an overall performance management framework.	**Partially Addressed** – One provider reported strengthening its efforts to improve quality assurance review practices. For example, since the original audit, the provider developed a new form for conducting quality assurance reviews and began enforcing existing policies for such reviews. One court reported that it will begin receiving these quality assurance review results from its provider this year. However, most courts we interviewed reported that they had not considered requiring providers to submit the results of quality assurance reviews.
14 Findings	**1 Fully Addressed** **12 Partially Addressed** **1 Not Addressed**

Appendix A: Comparison of Contract Provisions Reviewed During 2014 Audit and 2016 Follow-Up Review



*O.C.G.A. professional and contract standards
**DCS recommended content
Source: Audit team analysis

The Performance Audit Division was established in 1971 to conduct in-depth reviews of state-funded programs. Our reviews determine if programs are meeting goals and objectives; measure program results and effectiveness; identify alternate methods to meet goals; evaluate efficiency of resource allocation; assess compliance with laws and regulations; and provide credible management information to decision-makers. For more information, contact us at (404)656-2180 or visit our website at www.audits.ga.gov.