

## Private Probation Company Issues Revisited:

AJC ARTICLE, COMMENTS BY CHIEF JUSTICE HARRIS HINES, ANDERSON v. SENTINEL OFFENDER SERVICES, LLC. 298 Ga. 854, No. S15Q1816(2016) and SENTINEL OFFENDER SERVS. LLC v. GLOVER, 296 Ga. 315, 766 S.E.2d 456(2014),

by: Margaret Gettle Washburn, cont. sr. editor



In follow up to one of my articles in the December 2014 GCBA Newsletter, I have found that Private Probation Companies continue to be in the news. In a recent article in the AJC, entitled “**Private probation company settles lawsuits for more than \$2 million,**” posted on Thursday, February 02, 2017, by Rhonda Cook, who covers the courts, it was disclosed that Sentinel Offender Services would pay out over \$2 million to settle multiple law suits and it is anticipated that next week, “12 Georgians, all of them poor, will receive \$1.5 million to end a years-long lawsuit against the state’s largest private probation provider over illegally throwing them in jail for not paying supervision fees and fines for traffic offenses or minor crimes like public intoxication”.

The article also states: “Georgia Supreme court ruled decades ago that people couldn’t be jailed simply because they could not afford to pay a fine. In 2015, the state Legislature put the court ruling into law, saying people who can’t pay should be given an alternative punishment, like community service — not jailed...In all, private probation companies in Georgia reported collecting \$15.7 million in fees during the first nine months of last year. Those probation fees have been the issue in the multiple lawsuits.”



“Last month, the Southern Center for Human Rights settled for \$130,000 with Sentinel over a practice in its Cleveland office of requiring probationers to submit to drug-testing that was not court ordered. Georgia leads the nation in the number of people on probation for felonies and misdemeanors, as well as for traffic offenses and city ordinance violations, according to the Bureau of Justice Statistics. This research includes probationers supervised by a government or a private company”.

On October 13, 2016, I attended a meeting of the Georgia Probation & Sentencing Subcommittees meeting on behalf of the Council of Municipal Court Judges of Georgia. In a presentation by Christopher L. Barnett, Executive Director and Chenise Bonilla, Policy Analyst, the Council of State Governments Justice Center presented the data they have analyzed on Georgia’s sentencing patterns.

We learned that Georgia has a higher number of people on probation than any other state, with a total correctional rate of 7,580 per 100,000 people. Of that 7,580, 6,161 people per 100,000 are on probation, and 550, 686, and 334 in jail, prison, or on parole respectively. There are three main drivers which contribute to this: 1) A high number of people on misdemeanor probation, 2) lengthy felony sentences, and 3) the use of probation instead of incarceration. Compared with North Carolina Justice Michael Boggs, Chair of the Committee, pointed out that the average felony sentence of 19 years usually breaks down to 3.6 years in prison, 7.3 years on parole, and 8 years on probation. North Carolina has a post incarceration supervision period of 9-12 months. According to data provided by the Council of State Governments, Georgia has a total of

166,383 people on felony probation with a correctional rate of 1,629 per 100,000 residents. By comparison other states have a much lower felony probation rate. North Carolina only has a total of 39,979 felony probationers and a rate of 388 per 100,000, and Texas has a total of 198,911 felony probations with a rate of 724 per 100,000. Mr. Barnett pointed out that these long-term probation sentences increase probation officer's caseloads. Probationers have the highest rates of recidivism during the first two years of probation. He recommended front loading supervision resources during the early years of probation to reduce recidivism. I very much appreciate James Rodatus' synopsis of this meeting. James is a Policy Analyst for the Administrative Office of the Courts.



A recent article entitled: **“Chief Justice Calls on Lawmakers to Tackle Probation Reform,”** by Kathryn Hayes Tucker, Daily Report, on January 25, 2017, detailed Georgia Supreme Court Chief Justice P. Harris Hines' first State of the Judiciary address to a joint session of the General Assembly at the Capitol. Justice Hines “pushed this year's priority for the criminal justice reform movement Gov. Nathan Deal launched when he took office in 2011: probation. Hines noted that, while efforts led by the Council on Criminal Justice Reform have reduced the prison population and spending and made the state a model for others, more work needs to be done.

"We have the highest rate of people on probation in the United States," Hines said. "Our prison rate is now comparable to that of other Southeastern states, but we place four times as many adults on probation per capita than the national average. And we keep them on probation longer. Half are on probation for misdemeanors, including such infractions as not having enough money to pay a \$100 fine for a broken tail light."

Hines asked for the Legislature's support for forthcoming recommendations from the reform council on sentencing of low-risk, nonviolent offenders. "The goal is to shift low-level probationers off supervision rolls, but only after they have successfully completed a defined period of supervision," Hines said. He added the council expects to eventually save more than \$7 million in the budget by freeing up 140 probation officers to concentrate on high-risk offenders."

The cases that have brought these issues to the forefront are Anderson v. Sentinel Offender Services and Sentinel Offender Servs. LLC v. Glover.

In the Anderson v. Sentinel Offender Services, a case following the first Sentinel decision, the Supreme Court answered the following certified questions: 1. Is tolling authorized for privately supervised misdemeanor probated sentences under Georgia common law? 2. If so, has the common law rule that allows tolling of misdemeanor probated sentences been abrogated by the State-wide probation Act? The Court answered the first question in the affirmative and the second question in the negative.

This matter was stayed pending the Court's decision in Sentinel Offender Servs. LLC v. Glover, in which the Court concluded that Georgia's private probation statutory framework does not allow for the tolling of misdemeanor probationers' sentences. Following that decision, Sentinel took the position that Anderson's misdemeanor probation was properly tolled under Georgia common law.

The district court determined that Anderson's civil action hinged on the question of common law tolling and certified questions for the Court's consideration.

Justice Carol Hunstein, for the Court, stated: “In *Sentinel Offender Services, LLC. v. Glover*, we concluded that Georgia's private probation statutory framework, see OCGA § 42-8-100 et seq., does not allow for the tolling of misdemeanor probationers' sentences. Thus, she concluded in the *Anderson* case, that, as a matter of common law, the mere passage of time does not extinguish an unserved sentence and that the common law principle has not been abrogated by the State-wide probation Act. The Court noted that any construction of the misdemeanor probation scheme that abrogates common law tolling would render misdemeanor probation unenforceable in some situations, as it would allow defendants to avoid their sentences by simply avoiding apprehension until the expiration of their original sentence. The Court declined to find that the General Assembly meant to enact an ineffective misdemeanor probation scheme without any mention of abrogating the well-established common law and common sense principle of tolling.