



FEBRUARY 5, 2014

# Profiting from Probation

America's "Offender-Funded" Probation Industry



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## Summary

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## US: For-Profit Probation Tramples Rights of Poor

Minor Offenders, Charged Huge Fees, End up Jailed

The United States Supreme Court has ruled that a person sentenced to probation cannot then be incarcerated simply for failing to pay a fine that they genuinely cannot afford. Yet many misdemeanor courts routinely jail probationers who say they cannot afford to pay what they owe—and they do so in reliance on the assurances of for-profit companies with a financial stake in every single one of those cases.

Every year, US courts sentence several hundred thousand people to probation and place them under the supervision of for-profit companies for months or years at a time. They then require probationers to pay these companies for their services. Many of these offenders are only guilty of minor traffic violations like speeding or driving without proof of insurance. Others have shoplifted, been cited for public drunkenness, or committed other misdemeanor crimes. Many of these offenses carry no real threat of jail time in and of themselves, yet each month, courts issue thousands of arrest warrants for offenders who fail to make adequate payments towards fines and probation company fees.

This report, based largely on more than 75 interviews conducted with people in the states of Alabama, Georgia, and Mississippi during the second half of 2013, describes patterns of abuse and financial hardship inflicted by the “offender-funded” model of privatized probation that prevails in well over 1,000 courts across the US. It shows how some company probation officers behave like abusive debt collectors. It explains how some courts and probation companies combine to jail offenders who fall behind on payments they cannot afford to make, in spite of clear legal protections meant to prohibit this. It also argues that the fee structure of offender-funded probation is inherently discriminatory against poor offenders, and imposes the greatest financial burden on those who are least able to afford to pay. In fact, the business of many private probation companies is built largely on the willingness of courts to discriminate against poor offenders who can only afford to pay their fines in installments over time.

The problems described in this report are not a consequence of probation privatization per se. Rather, they arise because public officials allow probation companies to profit by extracting fees directly from probationers, and then fail to exercise the kind of oversight needed to protect probationers from abusive and extortionate practices. All too often, offenders on private probation are threatened with jail for failing to pay probation fees they simply cannot afford, and some spend time behind bars. This report tells many of their stories.

In Georgia, Thomas Barrett pled guilty to stealing a can of beer from a convenience store and was fined US\$200. He was ultimately jailed for failing to pay over a thousand dollars in fees to his probation company, even though his entire income—money he earned by selling his own blood plasma—was less than what he was being charged in monthly probation fees.

In Mississippi, a middle-aged woman was fined \$377 for driving without a valid license. Months later, she called the court in tears because her probation officer was threatening to have her jailed over \$500 in unpaid supervision fees she said she could not afford. At the time she was trying to make ends meet working the night shift at a local gas station. Court officials told Human Rights Watch that she had already paid off her entire fine to the court, but still owed money to her probation company—and that the court had in no way authorized the probation company to threaten her with arrest.

In Alabama, a judge told Elvis Mann that he would go to jail unless he came up with \$500 by the end of the day to pay part of what he owed in fines and probation company fees. His wife Rita spent an afternoon frantically begging and borrowing money from members of the couple's church congregation to keep her husband from going to jail that very day. He had already been on probation for several years and had paid thousands of dollars in fines and probation company fees, but still owed thousands more.

Traditionally, courts use probation to offer a criminal offender conditional relief from a potential jail sentence. If the offender meets regularly with a probation officer and complies with court-mandated benchmarks of good behavior for a fixed period of time, they escape a harsher sentence the court would otherwise impose. Courts in some US states charge offenders fees to help defray the costs of running a probation service. This is called “offender-funded” probation.

Probation companies offer courts, counties, and municipalities a deal that sounds too good to be true—they will offer probation services in misdemeanor cases without asking for a single dime of public revenue. All they ask in return is the right to collect fees from the probationers they supervise, and that courts make probationers' freedom contingent on paying those fees. Those fees make up most probation companies' entire stream of revenue and profits.

Some local officials turn to probation companies because they are facing genuine financial hardship. An increasing number of counties and municipalities depend on local courts as sources of revenue by trying to fund through misdemeanor fines what they cannot or will not fund through taxation. But the same courts often argue that they cannot afford to hire clerks or other personnel to track whether offenders on long-term payment plans are paying what they owe in fines.

Many courts have repurposed probation into a debt collection tool and are primarily interested in the services of probation companies as a means towards that end. In what is euphemistically referred to as “pay only” probation, people are sentenced to probation for just one reason: they don't have money and

they need time to pay down their fines and court costs. Pay only probation is an extremely muscular form of debt collection masquerading as probation supervision, with all costs billed to the debtor. It is essentially a legal fiction and it is the cornerstone of many probation companies' business.

Offenders on pay only probation could wash their hands of the criminal justice system on the day of their court appearance if only they had the money on hand to pay their fines and court costs immediately and in full. Because they can't, they are put on probation for periods of up to several years while they gradually pay down their debts to the court. Each month, they are charged an additional "supervision fee" by their probation company, whose only task is to collect their money and monitor whether they are keeping up with scheduled payments.

The central problem with offender-funded, pay only probation is this: the longer it takes offenders to pay off their debts, the longer they remain on probation and the more they pay in supervision fees. In other words, the poorer a person is the more they ultimately pay and the longer they have to live with the threat of possible incarceration hanging over their heads. Some low-income offenders end up paying more in fees to their probation company than they were sentenced to pay in fines to begin with. Those fees are costs an offender of greater economic means could avoid altogether.

Most courts do not even track and do not know how much their probation companies collect in fees from the probationers they assign to them. Companies treat those figures as a trade secret and refuse to publish them. Human Rights Watch estimates that in Georgia alone, probation companies take in at least \$40 million in revenues from fees they charge to probationers.

In other cases, offenders are on private probation where a court believes the offender requires supervision and imposes substantive conditions of probation. Arguments rage as to whether it is appropriate to privatize probation at all. But in these cases, at least the sentence of probation itself is undoubtedly legitimate as there are clear and compelling policy reasons for imposing it apart from inability to pay.

Human Rights Watch takes no position on the broader issue of privatization—and some publicly run probation programs have seen their fair share of abuses. But government oversight and transparency are especially crucial where private companies are hired to provide probation services. The absence of that oversight has given rise to serious allegations of abusive practices leveled against leading probation firms like Sentinel Offender Services and Judicial Correction Services.

Many probation company officials argue that whether accurate or not, allegations of abusive behavior are inappropriately laid at their doorstep. They contend that all coercive power lies with the courts and that their employees do nothing more than faithfully execute the commands of the judges they work with. This is all true in theory, and a large share of the blame for all of the problems described in this report does lie squarely with the courts. But it is also true that the day-to-day reality of privatized

probation sees many courts delegate a great deal of responsibility, discretion and coercive power—sometimes inappropriately—to their probation companies. And there is little meaningful government oversight of the industry in most states where it exists.

In the 1983 case *Bearden v. Georgia*, the US Supreme Court ruled that a probationer cannot have their probation revoked and be jailed simply for failing to pay a fine if they truly cannot afford to pay it. But many courts do not bother to make any determination as to whether an offender is able to pay the fines, court costs and probation fees they have been sentenced to. This problem is compounded by the fact that many misdemeanor offenders have no legal representation, are broadly unaware of their rights and see their cases disposed of by the court in just one or two minutes.

Instead of taking it on themselves, many courts delegate the task of determining whether an offender possesses the financial means to pay their fines and probation fees to a probation officer. When that probation officer is the employee of a private company, this creates a direct conflict of interest. A probation company's revenues are entirely derived from the fees probationers pay them, so waiving those fees negatively impacts companies' financial bottom line. Companies' financial interests are often best served by using the threat of imprisonment to squeeze probationers and their families as hard as possible to pay as much as they can, no matter how severe a hardship this imposes. It is by no means the case that all company probation officers engage in such practices, but financial incentives push them in that direction. They are exactly the wrong people to task with determining whether an offender is able to pay.

This report includes stories of probationers who say their company probation officers responded with overt hostility and threats when they attempted to explain that they could not afford to keep up with payments. In Augusta, Georgia numerous former probationers accuse Sentinel Offender Services of ignoring their inability to pay hundreds and even thousands of dollars in company fees. Probationers allege that company employees instead squeezed them as hard as they could for as much as they could get before turning to the courts to secure their arrest when they stopped paying.

Just as troubling, many judges ask probation companies rather than their own clerks to prepare arrest warrants for probationers whom the companies allege have violated the terms of their probation. Those warrants require a judge's signature but some judges do not bother to inquire into the facts around a probationer's alleged violation. One judge acknowledged to Human Rights Watch that he does not even have time to scrutinize warrants and other company-prepared orders before signing them.

Abuses can and do flow from such de facto delegations of power to probation companies. Human Rights Watch interviewed one probation officer with a medium-sized Georgia firm who explained how she regularly obtains the arrest of offenders who fall behind on their payments. She then approaches their families to negotiate for what she calls "good faith money"—a partial payment on the offender's arrears—in order to secure the person's release. She tells family members quite bluntly that it is up to

them whether their son, daughter or spouse comes home that night or spends the week in jail awaiting a probation revocation hearing that could land him or her behind bars for weeks or months. Some judges may condone such practices. Others may simply be asleep at the wheel.

Leading officials with Judicial Correction Services and Sentinel Offender Services—the two large probation companies that feature most prominently in this report—expressed zero tolerance for the alleged abuses described in this report. Yet some of the most serious allegations documented by Human Rights Watch involve their employees.

Probation companies have a clear responsibility to prevent abuse by their employees and to remedy any abuses that do occur. But the responsibility for all of the abusive practices described in this report lies just as much with courts and other public officials as it does with any probation company. Too often, courts that work with private probation companies exercise no meaningful oversight over their activities. And some officials may be tempted to judge their probation companies exclusively by the size of the checks they cut to the court rather than on whether they respect the fundamental rights of all concerned.

Human Rights Watch believes that the patterns of abuse described in this report are inevitable without strong government oversight of probation companies. It lays out recommendations on how courts and state governments as well as probation companies themselves can better live up to their key responsibilities. Fundamentally, it also argues that public officials must accept that living up to their oversight responsibilities means dedicating public resources to that task and not viewing probation companies as a cost-free source of cash.

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## **Recommendations**

### **To State Governments where Privatized Misdemeanor Probation is Permitted**

- Pass legislation that prohibits courts from imposing supervision fees in pay only probation cases. Mandate that probation must terminate early in pay only cases upon full payment of all fines and costs owed.

- Encourage courts to explore alternatives to probation in these cases, such as having low-risk offenders make regular payments through court clerks as a way of collecting fines, court costs and restitution over a longer term.
- Pass legislation that prohibits courts from outsourcing determinations of whether an offender has the means to pay their fines, costs and probation fees to a probation company.
- Collect and publish data at a court-by-court level that details:
  - How much money probation companies collect in fees from the offenders they supervise;
  - How much money probation companies collect in fines, costs and restitution for the court;
  - How many arrest warrants are issued for alleged probation violations and for what cause; and
  - How many probationers have their probation revoked and for what cause.
- Establish clear regulatory frameworks governing the operation of private probation services with an emphasis on transparency and on safeguarding the rights of probationers. Set clear, reasonable minimum professional qualifications for private probation company staff.
- Establish robust oversight mechanisms, possibly modeled on Georgia's regulatory framework but with the following enhancements:
  - A mandate to carry out unannounced inspections of probation company operations at the court level;
  - A mandate to include interviews with probationers as part of the compliance review process;
  - A mandate to publish in full the reports from all inspections and regular compliance reviews;
  - Sufficient professional staff to conduct scheduled compliance reviews and surprise inspections with frequency and rigor;
  - An emphasis on determining whether courts and probation companies are acting in full compliance with probationers' constitutional rights as articulated by the US Supreme Court in *Bearden v. Georgia*.
  - A mandate to receive and investigate confidential complaints of abusive behavior involving private probation firms from probationers and other members of the public.



- In the case of Georgia, pass legislation to amend the mandate of County and Municipal Probation Advisory Council of Georgia (CMPAC) and adequately resource the Council along the lines of the preceding recommendations. Consider whether a new institution with a strong investigative role is needed to complement CMPAC's work.
- Pass legislation prohibiting probation company employees from approaching the family members of probationers to solicit payments.
- Pass legislation prohibiting courts from imposing supervision fees in pretrial situations, or pass legislation capping these fees to ensure that defendants are not unduly penalized for lengthy judicial delays beyond their control.

## **To Courts and Local Governments that Use Private Probation Companies**

- Do not require offenders on pay only probation to pay supervision fees. Consider alternatives to probation in dealing with offenders as a means of collecting payments from offenders' long-term payment plans.
- Ensure that all determinations of whether an offender has the ability to pay any fines, costs and probation fees lie with officials of the court, not probation company employees. Dedicate sufficient staff to ensure rigorous and proactive performance of this duty.
- Ensure that any arrest warrants prepared by company probation officers for alleged probation violations are thoroughly vetted by the court before being issued.
- To the extent not already provided for by state law, collect and publish data that details:
  - How much money probation companies collect in fees from the offenders they supervise;
  - How much money probation companies collect in fines, costs and restitution for the court;
  - How many arrest warrants are issued for alleged probation violations and for what cause; and
  - How many probationers have their probation revoked and for what cause; and
  - Establish channels for probationers to complain about any alleged abuses by probation company employees and ensure that these are made explicitly known to all probationers at the time of sentencing.

## To Probation Companies

- Immediately publish, at a court-by-court and company-wide level, data that details:
    - How much money the company collects in fees in a year from the offenders they supervise;
    - How much money the company collects in fines, costs and restitution for each court each year;
    - How many arrest warrants are issued each year for alleged probation violations by the company's probationers, and for what cause; and
    - How many of the company's probationers have had their probation revoked, when, and for what cause.
  - Establish or bolster effective internal oversight mechanisms specifically geared towards preventing and addressing allegations of abusive behavior towards probationers by company employees.
  - Where these do not exist already, establish and publicize confidential channels probationers can use to complain about alleged abuses by company employees without fear of reprisal.
  - Include on all receipts issued to probationers under company supervision the total amount the probationer has paid in supervision and other company probation fees to date, and indicate what part of any arrearage consists of company probation fees.
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## Methodology

This report is based largely on more than 75 interviews conducted during the second half of 2013 with people in three US states: Alabama, Georgia and Mississippi. Georgia was selected because the state's courts put more people on probation with private companies than any other state. It also has a more advanced regulatory and oversight model than any other state that permits privatized probation services. Mississippi was selected because leading probation firms have aggressively expanded into new markets there recently, and there has been no independent scrutiny of industry practices there prior to this report. Alabama, where less research was conducted than in Georgia and Mississippi, was selected because of a combination of a strong industry presence, weak state government oversight, and serious allegations of abuse related to privatized probation services.

The vast majority of the interviews for this report were done in person and the remainder by phone. Interviewees included misdemeanor offenders sentenced to probation with private companies; judges; court clerks and other court officials; probation company officials; probation officers employed by private firms and publicly run probation services; public defenders; prosecuting attorneys; former state regulatory officials; attorneys who have brought civil suits against probation companies and the municipalities or counties that use them in Alabama and Georgia; local elected officials; and others. The identity of some interviewees—primarily probationers and probation company employees—has been withheld at their request or at Human Rights Watch's discretion in order to protect them from any possible reprisals.

Human Rights Watch sent a written questionnaire to roughly a dozen probation firms including the leading firms present in Georgia, Alabama and Mississippi, and all of the probation companies mentioned in this report. None of those companies responded in writing but several firms subsequently agreed to a meeting organized under the auspices of the Private Probation Association of Georgia. That meeting took place in Tucker, Georgia on October 10, 2013. The firms in attendance were Sentinel Offender Services, Judicial Correction Services, Southeast Corrections, AD Probation, Georgia Probation Services and CSRA Probation. For about four hours, representatives of these companies engaged Human Rights Watch in an open and wide-ranging dialogue concerning the alleged patterns of abuse described in this report as well as a number of other issues. Human Rights Watch has also had email correspondence with some of the same company officials.

Human Rights Watch visited more than two dozen county and municipal level courts. In many of those courts, we were able to observe cases where misdemeanor offenders were sentenced to probation with private firms. Where available, we collected court documents and records issued to probationers by their probation companies to verify details relating to individual cases. We also obtained information through Open Records Act requests filed in Georgia and Mississippi with local courts and with the Municipal and County Probation Advisory Council of Georgia (CMPAC). This report is also grounded in an extensive review of existing literature and media coverage of issues related to privatized probation and probation fees more generally.

No compensation of any kind was offered or requested for any interviews. All interviewees were clearly informed about the nature of our research and made to understand that they were free to end the interviews at any time.

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## I. Background: Why Privatize Probation Services?

### Probation in Misdemeanor Cases

When a court sentences a criminal offender to probation, it conditionally suspends part or all of the punishment it would otherwise impose. Typically, an offender who would otherwise serve time behind bars is instead conditionally released for a fixed period of time. During his or her term of probation, an offender meets regularly with a probation officer and is required to demonstrate adherence to court-mandated benchmarks of good behavior. Courts can revoke the probation of an offender who fails to comply with all mandated conditions and reinstate the sentence probation was intended to replace.

Probation is widely used in misdemeanor cases, which typically involve relatively minor offenses. In these cases probation can give courts the flexibility they need to deal with low-level offenders who simply do not belong behind bars. But in an era of shrinking public budgets, many US states have stopped providing misdemeanor probation services in order to focus scarce resources on felony probationers.<sup>[1]</sup> In theory, misdemeanor probation supervision then falls to county and municipal governments. But in reality many local governments and courts lack the financial and institutional resources to set up effective probation services. In these situations local courts can lose probation as a viable sentencing option in misdemeanor cases. As Tony Moreland of the private firm Georgia Probation Services put it in an interview with Human Rights Watch, courts are then left with just two options: “put ‘em in jail or let them go.”<sup>[2]</sup>

The for-profit probation industry has thrived as a direct response to these realities and now has roots in more than a dozen US states.<sup>[3]</sup> The industry's growth also reflects broader ideological trends in favor of privatization in some parts of the country.<sup>[4]</sup>

Probation companies offer to provide the misdemeanor probation services that local governments and courts either cannot or do not want to operate themselves. Some states, like Georgia, have passed statutory frameworks that explicitly authorize and even encourage local governments to privatize their misdemeanor probation services.<sup>[5]</sup> In other states, like Mississippi, localities have simply read the authority to outsource misdemeanor probation services into broader contractual powers.

Arguments persist as to whether the outsourcing of probation services is proper or wise from a policy standpoint. Whatever one's views on privatization per se, however, it is important to understand that many probation companies are not exclusively or even primarily selling probation supervision services in the traditional sense—that is, supervised release as a substitute for prison time. What many of them are really selling—and what many courts are really in the market for—is a particularly robust form of debt collection that can be billed to the debtors themselves.

## Financial Pressures on Local Courts and Low-Income Offenders

Many local governments across the US are starved for revenue.<sup>[6]</sup> One result is that some localities expect their criminal courts to fund most or even all of their own operations with fines and fees extracted from defendants and offenders. Some local governments go further, expecting their criminal courts to earn a profit and serve as key sources of public revenue.<sup>[7]</sup> The obvious danger in all of this lies in the possibility that some courts come to focus more on harvesting money from the people who appear before them than on the rational and humane administration of justice.

In tandem with these trends, court costs and other usage fees have proliferated and grown to the point that they can eclipse the fines imposed as penalties for low-level offenses. Residents of Montgomery, Alabama who violate the city's noise ordinance face only a \$20 fine for a first offense, but must also pay \$257 in court costs if they choose to contest the citation in court and lose.<sup>[8]</sup> In Georgia, misdemeanor offenders face an extensive menu of state-mandated surcharges in addition to court costs.<sup>[9]</sup>

Accumulated fines and costs can easily stretch into the thousands of dollars and low-income misdemeanor offenders often struggle to pay all of what they owe.<sup>[10]</sup> This problem can be especially severe in parts of the country that suffer from poverty, job loss and economic stagnation. In some cases these are precisely the localities where public revenues are low and the pressure on courts to generate revenue is most acute.

All of these factors conspire to create a situation where some courts are increasingly anxious to collect fines, costs and other fees that offenders are increasingly unable to pay. It is common in many areas for courts to put offenders on long-term payment plans when they cannot afford to pay all of what they owe immediately. Many poor offenders need months or even years to pay down their debts to the court. At the same time, local level courts often lack the institutional capacity to efficiently track whether the offenders who owe them money are making good faith efforts to pay down outstanding debts.<sup>[11]</sup> What many courts feel that they need in light of these difficulties is an efficient, cost-free way of ensuring that offenders pay what they owe over time, and punishing those who do not. Private probation companies market themselves as a zero cost solution to precisely this dilemma.

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## II. Overview of the Private Probation Industry

### The “Offender-Funded” Business Model

“Offender-funded” probation offers precisely what the name implies. Under this model, the costs of probation services are passed on to the offenders themselves through various fees. No public money is spent directly on the provision of probation services.

In some states it is common for publicly run misdemeanor probation services to operate on an offender-funded basis. Some states, such as Montana, statutorily require them to do so.<sup>[12]</sup> But if probation fees don’t actually cover the full costs of a publicly run probation service, the courts or local governments that operate them must still draw on public resources to make up the balance. Only private probation firms can offer courts a probation service that is guaranteed to cost them nothing. Probation company revenues from these arrangements consist entirely of the fees probationers pay them, and any profits or losses are theirs alone. The entire business of many probation companies lies in the provision of offender-funded probation services. Some probation companies engage in other work on a contractual basis with government clients as well.<sup>[13]</sup>

In marketing themselves to courts and local governments, probation companies are not shy about acknowledging the central importance of financial returns as opposed to traditional notions of probation supervision. Leading company Judicial Correction Services (JCS) advertises on its website that:

Supervision is completely offender funded. This means your tax dollars are not going to support the probation office.... Court collections have increased in every community that has made the transition to JCS. This helps fund the court itself.

[14]

Sentinel Offender Services boasts that since 1992 its offender-funded programs have saved public agencies “hundreds upon hundreds of millions of dollars.”<sup>[15]</sup>

Courts that use private probation companies include a condition in probationers’ sentences requiring them to pay all fees the company is entitled to levy against them in full. Failing to pay a probation company its money thus becomes a violation of probation conditions just as serious as failing to pay court-ordered fines. As this report shows, in practice if not in theory, the privatization of probation often means delegating a significant amount of the courts’ coercive power to probation companies as well.

## Scale and Economics of the Industry

Hundreds of thousands of Americans are sentenced to probation with private companies every year by well over 1,000 courts across the US. In Georgia, a state of less than 10 million people, 648 courts assigned more than 250,000 cases to private probation companies in 2012.<sup>[16]</sup> In Tennessee, probation companies supervised a minimum of 50,000 offenders that year, and probably at least 80,000.<sup>[17]</sup> Probation companies in Alabama work with well over 100 courts across the state.<sup>[18]</sup> And in Mississippi, leading firm Judicial Correction Services expanded aggressively into new markets in the Mississippi Delta region, including some of the poorest counties in the country, before abruptly pulling out of the state altogether in December 2013.<sup>[19]</sup> The industry also has deep roots in Florida, the first state to allow privatized probation services, and a significant presence in courts across at least a dozen states all told.<sup>[20]</sup> The most robust markets for offender-funded probation services are in the South, but states as geographically diverse as Michigan, Montana, Utah and Washington have also embraced the industry to one degree or another.

The probation business thrives on volume. Relatively low margins on a per-offender basis can translate into significant profits when multiplied out over large numbers of probationers.<sup>[21]</sup> For this reason, courts that sentence high volumes of offenders to probation simply as a way of collecting fines and costs

are great prizes for probation companies and their business is the object of stiff competition. On the other hand, courts with low volumes of offenders that make only sparing use of probation companies' services can be a financial dead end.

At the lucrative end of the spectrum, the DeKalb county Recorder's Court in Georgia sentences thousands of people to probation with leading firm Judicial Correction Services (JCS) each year, and the company probably collects over \$1 million in annual revenues from probationers in that one court alone.<sup>[22]</sup> At the other extreme, the Justice Court in Greenville, Mississippi also worked with JCS until December 2013 but sentenced only a handful of people to probation each month. The head of JCS' office in a nearby county said of the company's Greenville operation that "I really don't know how they stay afloat."<sup>[23]</sup>

Often, companies address low-volume contracts by assigning one probation officer to multiple courts across different counties, allowing for economies of scale that those counties and municipalities could never hope to achieve on their own.<sup>[24]</sup> Human Rights Watch interviewed one company probation officer in Georgia who at any given point in time personally "supervised" an average caseload of 600 offenders from five different courts across multiple counties.<sup>[25]</sup>

There is virtually no transparency about the revenues of private probation companies. All or practically all of the industry's firms are privately held and not subject to the disclosure requirements that bind publicly traded companies.<sup>[26]</sup> No state requires probation companies to report their revenues, or by logical extension the amount of money they collect for themselves from probationers. Companies refuse to publicize this information voluntarily.<sup>[27]</sup>



## Financial Scale of Georgia's Probation Industry

The only state where it is possible to produce a plausible minimum estimate of probation company revenues is Georgia, which is also home to the country's largest population of offenders on private probation. As of mid-2013, 30 probation companies worked in 648 courts across Georgia. In 2012, probation firms collected \$98.6 million in fines, court costs and restitution for those courts, and collections continued at a similar pace through the first two quarters of 2013. <sup>[28]</sup>

Like other states, Georgia does not require probation companies to report how much they collect in fees for themselves from probationers. However, state law requires all probationers to pay a \$9 monthly fee to a Crime Victims Emergency Fund (GCVEF) along with any probation supervision fee they pay to their probation provider. Those fees are collected by probation companies and then turned over to the government. Companies are required to report the amount they collect for the GCVEF, an amount that totaled \$10.1 million in 2012. <sup>[29]</sup> Monthly company supervision fees average roughly \$35 in Georgia. Since every \$9 of GCVEF money is attached on one distinct supervision fee payment, it is possible to use this data to reverse engineer a rough estimate of the amount companies collect in supervision fees from their probationers, where:

Total Supervision Fees = (Total GCVEF collections/\$9) \*\$35

Using this approach, it is possible to estimate that companies collected more than 1.1 million supervision fee payments from probationers in 2012. Assuming an average monthly supervision fee of \$35, this means that companies were entitled to collect something on the order of \$39.3 million in supervision fees. This is almost certainly a significant overestimate of actual collections since many financially struggling probationers make only partial payments towards their company fees in any given month. On the other hand, the figure of \$39.3 million does not include other fees companies are allowed to charge some offenders such as fees for GPS monitoring and court-ordered drug tests, whose total amounts are unreported and shrouded in complete secrecy.

Taking all of this together, Human Rights Watch believes that \$40 million represents a reasonable, if very rough, minimum estimate of the total annual revenues that probation companies in Georgia collect from the people they supervise. Several probation company executives and public officials interviewed by Human Rights Watch agreed that this method as well as the resulting estimates were sound. <sup>[30]</sup>

## Major Players

The probation industry is highly decentralized and includes a large proliferation of firms. Many are small businesses that only operate in a handful of localities.<sup>[31]</sup> On the other hand, the industry's leading firms each operate on a large scale across scores or even hundreds of different jurisdictions. These include Judicial Correction Services, Sentinel Offender Services, Providence Community Corrections and several others.

The two companies that feature most prominently in this report are Sentinel Offender Services and Judicial Correction Services. They are arguably the most significant industry players, and they are also the two firms that have been most widely implicated in alleged abuses.

## Judicial Correction Services

Judicial Correction Services is, relatively speaking, an industry giant. As of October 2013 it operated in some 480 courts across four different states—Georgia, Alabama, Florida and Mississippi. In late 2013 the company reportedly pulled out of Mississippi, where it had aggressively expanded into several counties in Mississippi’s impoverished Delta region, including some with a per capita income of under \$15,000.<sup>[32]</sup>

At any given point in time JCS employees are supervising approximately 38,000 probationers. JCS is headquartered in Georgia, where it works in 220 courts. It is the dominant industry player in Alabama with a presence in at least 100 courts.

In 2011 JCS was acquired by Correctional Healthcare Companies, a privately held corporation that also focuses on the provision of healthcare services to prisons and bills itself as a provider of “integrated healthcare solutions” to the criminal justice system “including inmate healthcare, outpatient treatment, mental health, behavioral programming and treatment case management services.”<sup>[33]</sup> In 2012, CHC was itself acquired by private equity group GTCR.<sup>[34]</sup>

### **Sentinel Offender Services**

Sentinel is a privately held California corporation whose physical presence is largely based in Georgia. It is largely controlled by its founder Bob Contestabile and his son Mark Contestabile, who heads up the company’s east coast operations. Sentinel claims to operate in 48 US states, mostly providing GPS monitoring and other services for government clients. The company’s offender-funded probation supervision business operates exclusively in Georgia.<sup>[35]</sup> There, the company works with 80 courts and supervises between 23,000 and 35,000 offenders at any given point in time.<sup>[36]</sup> Sentinel boasts that it has supervised more than 500,000 probationers since 1992.<sup>[37]</sup>

Sentinel also provides electronic monitoring and other services to government clients in California and elsewhere. It operates a monitoring center in Irvine, California that tracks offenders on various forms of electronic monitoring for Sentinel’s government clients as well as its own probation business.<sup>[38]</sup>

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### III. Probation Fees, Financial Hardship, and the Poor

Probation companies and the public officials who hire them cast offender-funded probation as a tax-free way to provide probation services. This is somewhat disingenuous. In reality, the offender-funded model simply shifts the entire financial burden of paying for probation services onto one very specific group of taxpayers: probationers themselves. As the following pages describe, for many offenders that burden can be crushingly punitive. In some cases, it is impossible for them to shoulder.

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## Never-ending Probation

Sitting on the porch of his modest home in Childersburg, Alabama, Elvis Mann explained that he had been struggling for more than seven years to pay off \$8,928 in accumulated fines and costs he owed the town's Municipal Court for several misdemeanor offenses. He had been on probation with Judicial Correction Services since 2006 when he was fined for two traffic violations. Elvis, 55, said his entire monthly income consists of \$800 in disability benefits and about \$300 in food stamps. His wife Rita had been without work since being laid off in 2012. The couple's estimated annual income of roughly \$13,200 puts them significantly below the federal poverty line.<sup>[39]</sup>

Elvis was no deadbeat. He worked diligently to pay down his debt little by little over the years. He produced JCS-issued receipts showing that in a typical month he might scrape together a payment of between \$50 and \$100. All told, he had paid off more than \$6,500, but this still left him owing more than \$2,400 to the court.

Elvis said that a few months before Human Rights Watch interviewed him, he had given up and stopped paying. He said he and Rita had been struggling to make ends meet since she lost her job and that neither JCS nor the court seemed to care that he could not afford to pay. He had stopped reporting to his JCS probation officer and had missed at least one court appearance, explaining that:

These people at JCS don't want to hear it.... They gonna tell you, you got to come up with that money one way or another or you going to jail. They don't want to hear why you can't pay. I know if I go to court they are going to carry me off to jail, so I don't go.<sup>[40]</sup>

These fears were not baseless. Several years ago, Elvis was summoned to court for falling behind on his payments and the judge told him that he would revoke his probation and send him to prison unless he came up with \$500 by the end of the day. Rita spent the afternoon frantically begging and borrowing money from members of their church congregation and managed—just barely—to bring her husband home that night.

Elvis didn't know how much he has paid in JCS fees over the years—the receipts the company gives him each month conspicuously omit that total. But Elvis' incomplete records show that often, only half of the money he brought to the JCS office would be applied towards his debt to the court. The company put the rest towards its own monthly fees, which were also in arrears. The \$40 fee the company was entitled to collect from him every month would add up to more than \$3,000 during the time he had spent on probation with them if paid in full—more than enough to pay off his entire remaining debt to the court.<sup>[41]</sup>

## Supervision Fees

Probation companies charge all probationers flat monthly supervision fees, and courts are contractually obligated to sentence all probationers to pay these fees.<sup>[42]</sup> Supervision fees are the financial cornerstone of the private probation business.<sup>[43]</sup> Rates, which are generally determined on a contractual basis between a court and its probation company, vary considerably from state to state. As of October 2013, company supervision fees across Georgia averaged around \$35 per month and \$40 across much of Alabama and Mississippi.<sup>[44]</sup> In Montana the rates reach as high as \$100 per month for basic supervision.

[45]

To many outside observers, a \$35 monthly supervision fee might sound trivial. But as discussed below, many probationers are only on probation to begin with because they could not come up with a few hundred dollars to pay off their fines immediately at sentencing. For many offenders struggling with poverty and unemployment, supervision fees are a substantial burden.<sup>[46]</sup>

The larger issue is the way supervision fees can accumulate over time into sums that would present a real hardship even to people of greater financial means. In some cases, accumulated supervision fees can equal or surpass the fines offenders were sentenced to pay by the court. In Mississippi, court clerks showed Human Rights Watch records for offenders who had been sentenced to pay down fines in the region of \$1,000 over a period of 24 months on pay only probation with JCS.<sup>[47]</sup> At \$40 per month that adds up to \$960 in supervision fees, almost doubling the original fine.

In Sandersville, Georgia, Human Rights Watch interviewed Van Houston, a 64-year-old Vietnam veteran on the day he was sentenced to 24 months' probation for a driving under the influence (DUI) offense. An admitted alcoholic on the verge of entering a residential treatment facility, Houston said that his only income was a monthly \$599 social security check, or about \$7,200 annually. The court sentenced him to \$4,500 in fines and other costs not including probation fees of \$40 per month payable to a private firm called Providence Community Corrections.<sup>[48]</sup> His required monthly payments came in at \$216 per month, more than a third of his meager income—with almost 20 percent of each payment going to company fees rather than to pay down his fines. Wearing a stained white shirt and a faded red tie to court on the day of his sentencing, Houston explained to Human Rights Watch that:

I'll be 65 in October. When I was working I made \$600 in just one week, but now I'm getting that one week's pay every month. Don't let this tie and these shoes fool you—I've got class but I 'aint got money. I wish I had more money but I'm out of time for that.<sup>[49]</sup>

Houston's probation company calculated that he would owe an estimated total of \$840 in supervision fees over 24 months on probation—more than 10 percent of his entire annual income.<sup>[50]</sup>

### **“Pay Only” Probation**

If you don't have your money together you get on probation. Remember, probation is a privilege and not a right. If you don't meet your probation requirements you might say, “Now what can you do about that?” Well, we can haul you back in here and revoke your probation and put you in jail and we will, straight up.

—Robert Wynne, Solicitor General, Sandersville, Georgia, July 2013, to assembled criminal defendants in State Court. The court contracts with Providence Community Corrections for probation services, July 2013.<sup>[51]</sup>

“Pay only” probation is used for offenders who would not be on probation at all if they had more money. They pose no threat to public safety and require no supervision. Many are guilty of offenses that carry no real threat of jail time such as speeding, driving without proof of insurance, noise violations and the like. At sentencing, judges who use probation this way ask offenders whether they can pay their fines and court costs immediately and in full. Those that can walk free and wash their hands of the criminal justice system. Those that can’t are put on a long-term payment plan and sentenced to probation.

Regular, timely payments are the sole substantive condition of pay only probation. Courts generally allow pay only probationers to terminate their probation early if they are able to pay all of what they owe the court ahead of schedule.

In other contexts, a sentence of probation is often the most humane, logical and cost-effective way for a court to keep an offender out of jail. Pay only probation turns this on its head. In these cases, the sole purpose of probation is to allow the courts a straightforward and efficient way to jail people who do not pay their fines. It is often most common in communities suffering from high unemployment, poverty and other forms of economic distress. Robert Wynne, Solicitor General in Sandersville, Georgia, told Human Rights Watch that:

When the economy got bad in 2008 or 2009 I could see it. I mean, I could *see* it. More and more people on probation. They just didn’t have any money. And this county is wealthy compared to some others.... It used to be, probation was for more serious cases or bigger fines. But with the economy, we’re seeing a lot more cases with smaller fines people can’t pay.<sup>[52]</sup>

Offender funding makes probationers pay for the “privilege” of being put on probation instead of being imprisoned because they are unable to immediately pay their entire debt to the court. From a legal standpoint, the logic underpinning this practice is fundamentally untenable. The US Supreme Court has ruled that an offender cannot be jailed simply because they lack the means to pay a fine, so there is in fact no realistic sentence to probate in these cases at all.<sup>[53]</sup> Yet each year, courts issue thousands and perhaps tens of thousands of arrest warrants for people who allegedly fail to make timely payments to a private probation company and many of those people are arrested. Some of these probationers could pay but simply choose not to. Many others genuinely cannot keep up with payments but are treated as though they have simply refused to pay.

The job of probation officers in pay only cases is not to supervise offenders. It is to collect money, and to use the credible threat of incarceration to coerce offenders into paying down their fines along with their probation fees. Pay only probation is essentially a convenient legal fiction. It allows courts to hire debt collectors who can have people put behind bars if they don't pay. Add private probation companies to the mix and supervision fees in these pay only cases boil down to this: a discriminatory tax that many offenders are required to pay precisely because they cannot afford to pay their court-ordered fines, with all of the revenues going directly to private companies instead of public treasuries.

### **Supervision Fees and “Pay Only” Probation: A Tax on Poverty**

In pay only probation cases, the supervision fee model is inherently discriminatory against poor offenders and should be abolished. There are three interrelated reasons why the fees are inherently discriminatory.

First, an offender who can afford to pay the total amount of their fine immediately does not have to pay supervision fees at all. Those fees are charged only to offenders who lack the present financial ability to pay their entire debt to the court.

Second, because supervision fees are set as a flat monthly rate they consume a larger proportion of an offender's monthly payment if that offender can only afford to pay relatively small installments. An offender who can afford to make payments of \$70 per month sees a \$35 supervision fee consume half of each monthly payment. If the same offender could afford to pay \$350 per month, the supervision fee would consume only 10 percent of each payment. The poorer probationer sees less of his payment go towards settling the court fine, and thereby stays on probation longer. A more equitable approach to supervision fees might see them capped at a percentage of the fines levied by the court, but this is not how the business works.

Third, because supervision fees have no upward limit and because probation in pay only cases generally ends once all debts to the court are settled, the fees accumulate into higher totals for offenders who need more time to pay down their fines. In essence, the poorer you are, the more you ultimately pay.

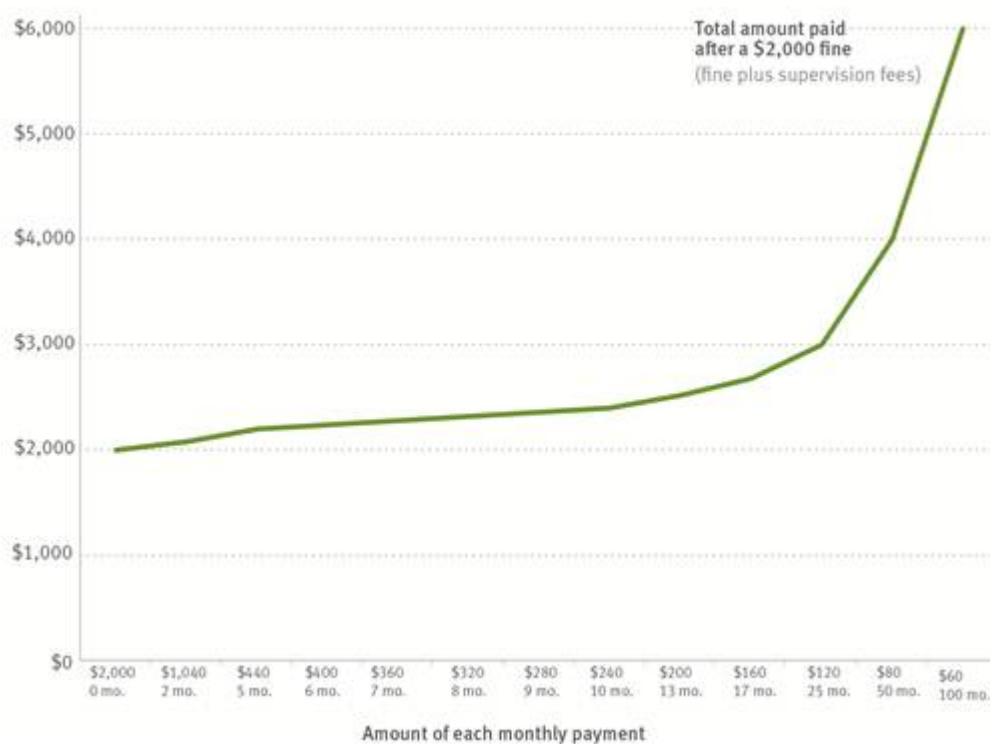
To illustrate the point, take the example of a court whose practice is to put any offender who cannot pay their fine immediately and in full on pay only probation with a private firm contracted by the court. That probation company charges supervision fees of \$35 per month and the court allows for probation to terminate early on full payment of the fine. Consider the different fates of three hypothetical offenders who are each sentenced to pay a \$1,200 fine by this court:

- The first offender pays the \$1,200 fine in court on the day of their hearing. She goes home that day free of any further obligations, financial or otherwise. She is not put on probation at all and owes nothing in probation fees.

- The second offender can afford to make monthly payments of \$335. She will pay off her fines and leave probation after four months, having paid \$140 in supervision fees and \$1,340 in total.
- The third offender can only afford to pay \$85 per month. She will leave probation after 24 months, having paid \$840 in supervision fees and \$2,040 in total.

The third offender pays 52 percent more than the second offender and 70 percent more than the first—*precisely because she is less able to afford it*. The following graph illustrates the same problem visually, using an initial fine of \$2,000:

Figure: Estimated Cost of Fine Repayment by Monthly Payment Amount



At the extreme end of this spectrum, offenders would be financially better off taking out loans on even the most abusive of terms. They could use that money to pay off their fines immediately, avoid probation, and save money despite having to pay extortionate rates of interest. An offender who requires 24 months on probation to pay off a \$1,200 fine, with a \$35 monthly supervision fee, would be financially better off taking out a \$1,200, 24-month loan with an APR of 50 percent.<sup>[54]</sup> She would also not have to face the direct threat of incarceration over missed payments, as she would while on probation.

State laws generally limit the length of time an offender can be sentenced to probation for any one offense, but offenders guilty of multiple offenses can be sentenced to consecutive terms that leave them paying supervision fees to their probation companies for many years.<sup>[55]</sup> Some courts and probation



company officials argue that this is beneficial to offenders because it gives them more time to pay down accumulated fines that they might struggle to pay on a shorter time frame.<sup>[56]</sup> But it also increases the total amount of an offender's debt over time, along with the amount of revenue flowing to probation companies.

It is important to note that many judges reject the routine use of offender-funded probation as a debt collection tool—even in courts that contract with private probation firms. For example, Judge Laverne Simpson in Greenville, Mississippi sits on the bench of a Justice Court that contracted with JCS as of June 2013. Yet she told Human Rights Watch that:

Putting people on probation is not something I would do hastily.... If it's a really high fine—or if it's already a hardship situation—I'm not going to put an additional hardship by putting you on probation because then you have to pay them as well as us. I wouldn't dare do that. You can't just say, "I need to collect this fine," you have to look at this person's circumstances. Just because they have incurred a fine does not mean they have no other obligations. They have utilities. They have kids. They have food they need to buy. <sup>[57]</sup>

Judge Simpson estimated that she had sentenced no more than 10 people to probation with JCS between 2010 and 2013. "At one of these judges' conventions [a JCS representative] did say to me that they need more business from us—it was just something in passing, like in the hallway," she recalled. "But I am not going to sentence someone to their business just because they need to make more money."<sup>[58]</sup> Judge Simpson said that in most cases where offenders are on long-term payment plans, she sees no need for a sentence of probation—she simply has her clerks track whether those offenders are keeping up with payments and brings them back into court if they are not. <sup>[59]</sup>

## Squeezing Water from a Stone

The Mississippi Delta town of Greenwood has 15,000 residents and a per capita income of just \$14,000. The local Municipal and Justice Courts began working with JCS in early 2013. By August, the town's Municipal Court had more than 1,200 offenders on probation with the company. According to court records, a large proportion of those probationers were guilty of traffic offenses. <sup>[60]</sup>

By June 2013, JCS' supervision fees had elicited widespread discontent. Speaking to a Human Rights Watch researcher, the police officer posted outside the municipal courtroom door one summer morning grumbled, "Our judge puts everyone on probation now. Everyone. We get a lot of complaints." <sup>[61]</sup>

During the first eight months of 2013, JCS collected an average of \$21,500 per month in fines for the court. The company does not disclose what it manages to collect for itself in supervision fees, but with supervision fees set at \$40 and a population of 1,200 offenders JCS would have been entitled to collect nearly \$48,000 a month. Clearly, however, many offenders were unable to pay. As of August 2013, 295 JCS probationers—almost 25 percent of the company's total caseload—had warrants out for their arrest. <sup>[62]</sup>

Wayne Self is a member of the Board of Supervisors for Leflore county, which includes Greenwood. In 2013 he launched a bid to persuade the Board to rescind JCS' contract with the county's Justice Court, citing the economic hardship probation fees had imposed on his constituents:

Economically they are doing pretty rough. Some are supporting a whole family on \$15,000 a year. There are a lot of single parent families. Unemployment is high. You got 'em out there looking for jobs but the jobs aren't there. \$40 a month is hard on a lot of people here. Some people might have to decide on not purchasing medication or some kind of household necessity." <sup>[63]</sup>

He added that he was opposed to the JCS contract because "I felt like you are just making a job for these people off the backs of the poor people." <sup>[64]</sup> Records obtained from Greenwood's Municipal Court via an Open Records Act request show that many of the 1,200 offenders on probation had been making payments of only \$5 or even \$10 at a time. <sup>[65]</sup>

In a move that was not binding on the municipal court, in January 2014 the Board of Supervisors voted 4-1 to cancel its contract with JCS. <sup>[66]</sup> Sam Abraham, the local chancery clerk and a member of the Board of Supervisors, told Human Rights Watch that "The Board felt that they were charging more than people could afford. We had numerous complaints." He added, "I wish we had done something sooner." <sup>[67]</sup>

The move was largely symbolic. JCS had reportedly sold off its Mississippi operations to another firm and pulled out of the state altogether in late 2013. <sup>[68]</sup> In January 2014, the Greenwood Municipal court responded by signing a contract with a new probation company, Professional Probation Services. It remains to be seen whether anything will change.

## Pretrial Supervision Fees

Some courts use probation companies to supervise criminal defendants who are awaiting trial. Companies typically charge the same supervision fees they do in probation cases and defendants are required to report to their company probation officer as a condition of their pretrial release.

This use of probation companies is troubling because it makes the freedom of people who have not been found guilty of a crime conditional on payment of non-recoverable fees to a private company. Courts do not always articulate a convincing rationale—or any rationale at all—for resorting to this practice. In Jackson, Mississippi the court of Circuit Judge Tomie Greene routinely sentences felony defendants to pretrial supervision with a local probation company that charges them supervision fees. The court generally does not offer any specific rationale for this in the individual case and does not even specify what conditions of supervision should apply. Instead, it issues conditional bond orders that simply require defendants to comply with “whatever conditions and fees” the company might choose to impose.<sup>[69]</sup>

The imposition of supervision fees in these cases can also have the practical effect of imposing financial penalties on defendants for judicial delays that are beyond their control. As Sentinel’s branch manager in Brunswick, Georgia noted in an interview, “We’ve got people on bond supervision two years and their case hasn’t moved.”<sup>[70]</sup>

## **The Crushing Costs of Other Probation Company Fees and Services**

Outside the abusive fiction of pay only probation, supervision fees have at least some plausible justification beyond mere debt collection. At the very least, they are arguably not distinguishable from broader trends to charge the costs of the criminal justice system to the defendants and offenders who are brought before it. But some of the other fees misdemeanor offenders are required to pay in order to comply with conditions of probation can be exorbitant in comparison with supervision fees.

Many courts require probationers sentenced to GPS monitoring, drug testing and other conditions of probation to pay for the costs of those services. The fees involved are steep and many low-income probationers struggle mightily to keep up. Arrears can quickly spiral into the thousands of dollars, and offenders who fall too far behind may face revocation of their probation and time behind bars. The fact that these already punishing costs are padded to allow probation firms to operate at a profit is deeply troubling.

### **Electronic Monitoring and Alcohol Monitoring**

Courts require some misdemeanor probationers to wear electronic monitoring devices to help enforce restrictions on their movement, or alcohol monitoring devices to help enforce restrictions on their alcohol intake. Location monitoring devices range from simple devices that track whether an offender is in their home to Global Positioning System (GPS) technology that can pinpoint an offender’s exact location at all times. Alcohol monitoring devices range from home breathalyzers to anklets that continually monitor a probationer’s blood alcohol content.<sup>[71]</sup>

None of this technology is cheap. Where the costs are passed on to low-income probationers through offender funding they can be punitive on a scale that dwarfs the other terms of their sentences. Charges typically range from \$6 to \$12 per day, or \$180 to \$360 per month, depending on the type of monitoring being used and the fee schedules of individual companies.<sup>[72]</sup> Many companies also charge an initial “startup fee,” often in the range of \$50-\$80, and some use technology that requires an offender to have a landline telephone installed in their home.<sup>[73]</sup>

Sentinel says that it monitors 10,000 offenders every day through electronic monitoring and GPS technologies.<sup>[74]</sup> In general, probation companies offer no transparency about the profits they earn through these services and public officials do not require them to provide any.

## Thomas Barrett

By the time Thomas Barrett hit rock bottom, he had lost just about everything he had to addiction. One day in April 2012, he walked into a Georgia convenience store and was caught stealing a \$2 can of beer. He pled guilty and was sentenced to a \$200 fine and 12 months’ probation with Sentinel Offender Services. Richmond county State Court Judge David Watkins’ sentence also required Barrett to wear an alcohol monitoring ankle bracelet, a service administered by Sentinel.<sup>[75]</sup>

Barrett spent more than a month in jail because he could not afford to pay an \$80 “startup fee” to Sentinel.<sup>[76]</sup> Eventually, he persuaded his Alcoholics Anonymous sponsor to give him the money and was released.

Once free, Barrett faced a rapid accumulation of monitoring fees that he had no way of paying. He was unemployed, living in subsidized housing and subsisting largely off food stamps. He earned his entire cash income by selling his own blood plasma.

“You can donate plasma twice a week as long as you’re physically able to,” he explained. He could make up to \$300 a month this way. “Basically what I did was, I’d donate as much plasma as I could and I took that money and I threw it on the leg monitor.” Still, he said, “It wasn’t enough.”<sup>[77]</sup> His monitoring fees totaled some \$360 a month and he had to use some of the plasma money to pay for his own basic needs.

Barrett said that when he explained his situation to his Sentinel probation officer, “They just said I need to pay what I could and when [the arrears] got to a certain amount, then I’d have to go in front of the judge and they were just pretty matter of fact about it.”<sup>[78]</sup>

He started skipping meals—which saved money but sometimes left him too debilitated to donate plasma—and regularly went without household essentials like laundry detergent and toilet paper. In spite of all these efforts, by February 2013 Barrett owed Sentinel more than \$1,000 in monitoring fees—more than five times the amount of the fine the court had sentenced him to. The company filed a petition with the court to revoke his probation.<sup>[79]</sup>

“We went back in front of the judge and well, it didn’t work out in my favor,” he said. The judge told him he could stay out of jail if he paid several hundred dollars of what he owed Sentinel right then and there. “And I’m thinking, ‘But the whole problem is, I don’t have money.’ So they locked me up. And I just said, ‘Golly.’ I just felt like they kept putting me behind the eight ball.”<sup>[80]</sup>

Thomas Barrett’s story has a Kafkaesque twist to it. The court’s decision to put him on alcohol monitoring in the first place served no discernible purpose because his probation did not include a condition that he refrain from consuming alcohol. As Augusta attorney Jack Long put it in an interview with Human Rights Watch, “He could have sat around and drank beer all day and it would have monitored that but it would not have been a violation of his probation.”<sup>[81]</sup>

Human Rights Watch documented one case in Augusta, Georgia where a court sentenced an offender to electronic monitoring through Sentinel even though it was actually impossible for him to comply.

Quentone Moore is an ex-marine in Augusta who pled guilty to misdemeanor battery charges and was sentenced to probation with Sentinel. The court required him to wear an electronic monitoring bracelet that only works in conjunction with a landline telephone. But Mr. Moore was homeless at the time, and spent 52 days in jail simply because he had no residence where a landline telephone could be installed.

[82]

## Drug Testing

Mandatory drug tests—another service probation companies offer on an offender-funded basis—are also a source of cumulative financial hardship for many offenders. Courts order weekly drug tests as a condition of probation in some cases. Companies generally charge offenders about \$25 per test.<sup>[83]</sup> An offender required to undergo weekly drug tests over a 12 month sentence of probation must pay their probation company \$1,250 per year, excluding supervision fees.

There is no publicly available data that would make it possible to gauge how significant a part of overall revenues drug testing make up for probation companies, but it represents a significant income source in some localities. In Glynn county, Georgia Providence Community Corrections (PCC) runs what the company's local staff described as a kind of informal pretrial diversion program for defendants facing felony drug charges. Defendants are required to report to Providence's office for drug testing once a week for periods that average around 18 months and if they stay clean, charges are eventually dropped. "I go into the bathroom and watch them piss in a cup and I test it right here," Providence's lone Brunswick-based employee told Human Rights Watch.<sup>[84]</sup>

These cases constitute the bulk of PCC's caseload in Glynn county. The company's probation officer there said that "Our money really comes from drug testing fees." He added that county prosecutors seem to lose track of some cases, especially where defendants have no attorney, and that he has seen defendants who have been reporting for mandatory drug tests for as long as five years—which would add up to a total cost of \$6,000 in drug testing fees. "Sometimes I will contact the District Attorney myself," he said, "or tell the defendant to contact the public defender. Because if you're on for three years, that's just ridiculous."<sup>[85]</sup>

## "Moral Reconciliation Therapy" and Other Services

Some probation companies offer classes that offenders can be sentenced to take as a condition of their probation. These are generally short courses taught either by company employees or outside providers that contract with probation firms. Some companies simply require offenders to purchase workbooks from them and then complete a short written test at the end of the book.<sup>[86]</sup>

Like all other probation services offered by these firms, these classes are billed to the offender. Classes in job skills and financial management might set an offender back \$65 for a one-day course.<sup>[87]</sup>

Some companies offer courses that are both implausibly ambitious and quite expensive. For example, JCS offers “Moral Reconciliation Therapy,” described as a “cognitive behavioral program” for “treatment resistant offenders.” For \$325, this 12-step program purports to empower offenders with “higher stages of moral (right v. wrong) reasoning ... thereby reducing recidivism.”<sup>[88]</sup> Many courts appear to sentence offenders to take these courses purely on the basis of one paragraph course descriptions that provide little concrete information about the content of these courses or the qualifications of their instructors.

These programs are controversial, with some probationers and company critics questioning their utility.<sup>[89]</sup> They can also add significantly to the financial burden of an offender’s sentence of probation.

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## IV. Ignoring Offenders’ Inability to Pay

It’s not our fault they’re indigent and owe hundreds of dollars due to court and probation fees. It’s not the court’s fault ... It is the offender’s fault. I don’t care whether they’re rich or whether they’re poor, they have the right to decide whether to commit that crime or not.

— Lisa Hancock, AD Probation Services, Tucker, Georgia, October 2013.<sup>[90]</sup>

**I**n the 1983 case *Bearden v. Georgia* the US Supreme Court ruled that a court cannot revoke an offender’s probation for failing to pay a fine or restitution unless the court determines that the offender’s failure to pay was willful, or that no adequate alternative forms of punishment exist.<sup>[91]</sup> To find that a defendant’s failure to pay was willful, a court must make a determination that the individual

“has willfully refused to pay the fine or restitution when he has the resources to pay or has failed to make sufficient bona fide efforts to seek employment or borrow money to pay.”<sup>[92]</sup> Georgia’s Court of Appeals, applying *Bearden*, has held that a court cannot revoke an offender’s probation for failure to pay absent “express or written findings as to the reasons for [the offender’s] failure to pay or as to the inadequacy of alternative punishments.”<sup>[93]</sup>

All courts purport to adhere to *Bearden*’s dictates but this sometimes means very little in practical terms.<sup>[94]</sup> Whether by negligence or by design, some courts and probation companies make what amounts to an end run around *Bearden* by simply treating all offenders as though their failure to pay is willful.

Many probationers who were jailed for failure to pay complain that the judges at their revocation hearings flatly dismissed their claims that they were unable to come up with the money. One Georgia probationer who was homeless and destitute at the time he was jailed for failing to keep up with payments on his fines and probation fees described his probation revocation hearing this way: “I said, ‘Judge, I don’t have any money.... He didn’t believe me. But he knows best, I guess. He’s the judge.’”<sup>[95]</sup> In many courts, probation revocation hearings are often disposed of in just a few minutes. There is often no meaningful opportunity for an offender to convince the court that they are not able to pay their fine. Few offenders are represented by legal counsel and many are entirely unaware of the protections *Bearden* offers them.

There is also generally little effort made to determine whether an offender is able to pay at the time of their sentencing. Many courts do not address the issue at all unless the offender affirmatively raises it. In many of the courts visited by Human Rights Watch a typical misdemeanor case occupied no more than sixty to ninety seconds of the court’s time. In courts that use pay only probation, many offenders who plead guilty to traffic offenses and other minor crimes are asked just one question after the fine is handed down: “Can you pay that today?” If the answer is no, the offender is sentenced to pay only probation and told to speak with a probation company representative.

When courts do not make the time to find out whether a probationer can afford to pay the fines, costs and probation fees they are sentenced to, this task falls to their probation officer. It is ultimately the responsibility of the courts and not the probation companies to decide whether an offender is unable to pay their fines, but courts often rely on their probation officers to bring these cases to their attention. Some probation companies sign contracts that explicitly mark off determinations about an offender’s ability to pay as the company’s responsibility.<sup>[96]</sup>

Many probation officers understand the importance of this responsibility. As Dale Allen, the chief probation officer of the publicly run misdemeanor probation service in Athens-Clarke county, Georgia explained:

We're all well aware of the Supreme Court ruling from 1983. The judges [here] will reduce or waive supervision fees if the person is indigent. At my level I can waive the fee if that's the only issue. If you looked through all my warrants you might find one or two in a year that's for failure to pay—and that's because we have strong indications that it's willful. I do a financial analysis form with people who say they can't pay. I find out where they work, what their family situation is, etc. If they can't pay we don't chase the money.<sup>[97]</sup>

In an interview with Human Rights Watch, representatives of several leading probation companies all said that they take their obligation to determine whether offenders have the ability to pay their fines and probation fees very seriously. JCS and other companies say that they have procedures in place to do financial analyses of offenders who claim that they lack the means to pay their fines. One JCS official told Human Rights Watch that:

Once they bring all their bills, we assess their situation and we bring that before the judge and say they have proven they are in hardship and this is someone who's taking their probation seriously ... we will ask the judge if they can convert their fines to community service. That's one option.<sup>[98]</sup>

At the same time, though, some company officials cited alarmingly superficial factors as evidence that an offender can afford to pay whatever they were sentenced to. Dana Philmon of JCS emphasized that, "These people aren't always going to get what they want, even if they bring me all their bills [and other required documentation for a financial analysis], especially if they walk in with two cell phones and Air Jordans on their feet."<sup>[99]</sup>

Another probation company official said that if an offender claims to be unable to pay their fines but is in possession of a pack of cigarettes, a probation officer should say, "Your perspective is skewed. You think it's OK not to pay for your criminal offense and you're smoking a pack of cigarettes a day."<sup>[100]</sup> That kind of personal responsibility rhetoric may have some visceral appeal, but an offender's decision to buy a pack of cigarettes does not actually indicate anything about their ability to pay down hundreds or thousands of dollars in fines, court costs and fees.

Such attitudes raise real questions about whether company probation officers are making—or are even equipped to make—rigorous, good faith determinations about offenders' ability to pay. That problem is by no means unique to privatized probation services. But probation companies face a unique and fundamental conflict of interest when handling these issues that compound the broader problems with the judicial system's day-to-day implementation of *Bearden*.



## “Animal Control” in Dekalb County, Georgia

On March 21, 2013 roughly 600 people were subpoenaed to appear in the Dekalb county, Georgia Recorder’s Court. The summons they received by mail did not explain why they were being requested to appear in court. Of the 300 people who obeyed the summons only one had legal representation, through the office of the county’s public defender.

Unknown to them, all 300 people had been summoned to court because they had not kept up with payments on fines and on supervision fees owed to the Court and JCS. Human Rights Watch estimates that JCS collects over \$1 million in fees every year from Dekalb county Recorder’s Court probationers, whose caseload consists largely of traffic-related offenses.<sup>[101]</sup> The probationers were now facing revocation of their probation and time behind bars. The cases had been appended to a docket of animal control cases and listed on the Court’s calendar as “Animal Control.”<sup>[102]</sup>

The first few cases proceeded quickly. According to lawyers and one probationer who were in the room, Judge Angela Brown called probationers forward and then turned to a JCS employee seated next to her to ask whether there was a warrant out for the person’s arrest. In each case, the JCS employee responded in the affirmative—though she did not actually produce evidence of that warrant for the court. Judge Brown then told the probationer the total amount they allegedly owed in fines and JCS fees and asked whether they could pay that amount immediately and in full. Whenever a probationer said that they could not, Judge Brown ordered their arrest. The witnesses interviewed by Human Rights Watch emphasized that no offender had an opportunity to explain why they had not paid and the judge made no inquiries aimed at determining whether that failure was willful. Most cases were disposed of in under a minute.

As the hundreds of people assembled in the courtroom realized why they were there, and that they faced jail time if they couldn’t pay what the judge said they owed that very morning, many stood up and scrambled towards the exits. “It kind of became chaos very quick,” one witness recalled.<sup>[103]</sup> But Judge Brown ordered her deputies to man the doors to the courtroom and prevent anyone from leaving. The session continued.

All told, some 60 probationers on the “Animal Control” docket reportedly went to jail that day for want of money.<sup>[104]</sup>

## Conflicts of Interest

Under the best of circumstances, it is not necessarily an easy matter to determine whether an offender is being truthful in asserting that they lack the means to pay a fine or probation fees. A rigorous, objective financial analysis is generally required to assess the credibility of these claims. But when courts delegate the burden of identifying offenders who are unable to pay their fines, costs, and supervision fees to employees of a private probation company, it presents a direct conflict of interest.

Probation companies’ contracts often stipulate that they will supervise indigent offenders free of charge.<sup>[105]</sup> This means that at best, offenders who are determined to be unable to pay their probation fees represent a loss of potential revenues. Probationers with substantive conditions of probation require company time and resources to oversee and represent an unrecoverable cost if they are unable to pay their probation fees.

This inherent conflict of interest is compounded when companies offer financial bonuses to probation officers and local office supervisors based on the amount they are able to collect in fees from probationers. These programs set specific monetary targets for fee collections and pay out bonuses to probation officers and supervisors who meet or exceed them.<sup>[106]</sup> Some are based on whether probation officers are able to maintain consistent levels of fee collection over time.<sup>[107]</sup>

One problem with these incentives programs is that they reinforce already dangerous pressures on company probation officers as well as the supervisors directly responsible for overseeing their conduct to view fee collection as the primary focus of their jobs. One former employee of two different probation companies told Human Rights Watch that:

I've seen the bulletin boards in the break room where they are trying to figure out how much fees you collected because you want to get the bonuses. It always made me kind of queasy. It's kind of slimy.... It creates the perception—which might then slide into reality—that it's just about money. You've also got the fear that private services start to look the other way on violations [of substantive probation conditions] as long as people are paying their money.<sup>[108]</sup>

Fee-based incentives programs can also incentivize probation officers to engage in inappropriately aggressive collections tactics, and put their supervisors in the position of potentially benefitting from such abuses. Probation companies have no real control over the size and nature of their caseloads. The number of probationers they supervise, and the ability of those probationers to pay company fees, depends entirely on the actions of the court. If numbers are down, the only way for a probation officer to improve their odds of meeting a financial target is to squeeze the probationers they supervise that much harder.

In addition, some probation officers may feel quite correctly that their livelihoods depend entirely on their ability to collect fees in excess of what it costs to employ them. This is especially true in rural areas where a company may employ only one probation officer to oversee offenders with several small Municipal or County Courts. As one probation officer with a medium-sized firm in Georgia put it:

Things are much harder with the economy.... There's been a big dropoff in collections the last few years. People just can't get jobs—there aren't any jobs around here anymore. Everyone wants their fees waived but that's what pays my bills. That's what puts food on the table. That's what keeps my lights on.<sup>[109]</sup>

The bottom line is that probation companies should have no role in determining whether an offender possesses the ability to pay. Yet probation companies are asked to do this every day, against their own financial self-interest.

The problems presented by this fundamental conflict of interest are not just hypothetical. When the system breaks down—when neither courts nor probation companies make any serious effort to determine an offender’s ability to pay—offenders can wind up behind bars for failing to pay money they don’t have.

In Georgia, Human Rights Watch interviewed Clifford Hayes who was arrested in January 2013 when he went to a police station to seek clearance to enter a homeless shelter.<sup>[110]</sup> Hayes was homeless at the time. He was arrested on an outstanding warrant for failure to comply with terms of probation including his failure to pay more than \$2,000 in accumulated fines and probation fees—a sum Mr. Hayes says he simply could not even make a dent in. The fees and the arrest warrant dated back to convictions for driving under the influence of alcohol, driving without a valid license and improper lane change he pled guilty to in 2007.<sup>[111]</sup>

When Human Rights Watch interviewed Hayes in July 2013 he was off the streets and renting a room in a dilapidated house for \$400 a month. He said that his entire monthly income consisted of \$700 in disability benefits. He told Human Rights Watch that the payments he owed towards his fines and supervision fees would destroy this precarious and hard-won stability if he tried to keep up with them—and that neither his Sentinel probation officer nor the court had been willing to examine the truth of these assertions:

Right now, I’m struggling. That little money I got, before I get it it’s gone. I have to go to the soup kitchen to get food. I have to go to the thrift store to get clothes. But now that I’m getting some kind of income and have a place to live, you want me to give you *all my money* and be homeless again. But I refuse to do that. I refuse to be out on the street again. I’ve done that. I can’t do that no more.<sup>[112]</sup>

Clifford Hayes’ situation is far from unique. As the next section of this report describes, some company probation officers engage in harsh and abusive collections practices, display open contempt for offenders’ assertions that they cannot afford to keep up with their payments, and even secure the arrest of struggling offenders as a way of shaking them or their families down for money.

## V. “I Hope You Have My Money”: Abusive Collection Tactics

They [JCS] were slow at first getting those arrest warrants out so I said, “Look, the only thing these people understand is putting their feet to the fire.” And they did it and collections went up.

— Municipal Court clerk, Clarksville, Mississippi, June 2013.<sup>[113]</sup>

Some of the probationers interviewed by Human Rights Watch described their company probation officers as professional, compassionate and helpful in the face of difficulty. But others alleged that their company probation officers behaved like abusive debt collectors. They described a consistent pattern of probation officers displaying a relentless, singular focus on payment and routinely threatening to have probationers jailed when their payments of fines and company fees fell into arrears.<sup>[114]</sup> In some cases, company probation officers have courts jail offenders in order to coerce their families into paying some of what they owe in exchange for their freedom.

In a refrain echoed by many other interviewees, one JCS probationer in Childersburg, Alabama complained to Human Rights Watch that when he reports to his probation officer, “The first thing they say is, “I hope you have all my money today.” He continued:

They acting like you owe *them* instead of you owing the city. They ‘aint going to ask you, “Is you working, is you doing any good,” or nothing—just, “Give me that money.” Lots of people ‘round here paying them and they ‘aint got no jobs. I know people selling drugs and paying them every month. They like, “Hey, I’m doing what they told me, ‘aint I?”<sup>[115]</sup>

Another man on JCS probation in the same town added, “You can’t talk to them like you grown. You have to talk to them like you a kid—‘Yes, ma’am, no ma’am.’ If you don’t, they say, ‘I’m telling you: keep on running your mouth.’”<sup>[116]</sup>

Probation company executives interviewed by Human Rights Watch condemned this kind of behavior while acknowledging that it was a problem in at least some cases. Mark Contestabile of Sentinel said, “There’s always a chance for rudeness. We constantly talk about respectfulness and about how it’s not your money, so don’t say ‘You owe me.’”<sup>[117]</sup> But mere rudeness is not the problem. These complaints exist alongside allegations that some company probation officers misuse the threat of jail to squeeze offenders who fall behind on payments, while ignoring the protestations of offenders who claim they are genuinely unable to pay.

A lawsuit alleging abusive practices by JCS and the Municipal Court in Harpersville, Alabama is still pending and has already led that court to being shut down altogether.<sup>[118]</sup> The judge in that case has described the Harpersville/JCS operation as a “judicially sanctioned extortion racket” and a “debtors’ prison.”<sup>[119]</sup> Another case against JCS and the nearby town of Childersburg involves similar allegations—that probationers are wrongfully kept on probation for years at a stretch and routinely imprisoned over their inability to pay exorbitant fines and company fees.<sup>[120]</sup> JCS has called the Childersburg allegations “baseless,” “ridiculous” and “patently false.”<sup>[121]</sup>

In Augusta, Georgia Sentinel probationers have filed suit alleging a broad range of abusive practices linked to the collection of probation fees.<sup>[122]</sup> The suits allege, along with other violations, that Sentinel and the Richmond county State Court routinely imprisoned offenders who were destitute and unable to pay probation and monitoring fees. In September 2013, Superior Court Daniel Craig granted partial summary judgment in favor of the plaintiffs but Sentinel successfully sought temporary relief from the state Supreme Court pending final resolution of the case.<sup>[123]</sup>

Sentinel has strongly rejected all of the allegations against it in the Augusta litigation, while agreeing that local courts sentenced some probationers in violation of their basic rights.<sup>[124]</sup> Company executive Mark Contestabile insisted to Human Rights Watch that, “we do not have a service problem there,” adding, “Not one of those people ever called corporate [Sentinel’s offices] before they went to a lawyer.” He and officials from several other probation companies cast the litigation as a self-interested adventure by Augusta attorney Jack Long, who has brought the cases forward.<sup>[125]</sup>

Human Rights Watch interviewed some of the plaintiffs and potential plaintiffs in the Georgia and Alabama litigation, and some of their arduous experiences as probationers are described in the pages below. But the more important point is that while some of the allegations at issue in those cases are at the extreme end of the spectrum, they are not mere aberrations.<sup>[126]</sup> Rather, they fit into broader patterns of alleged abuse that often go completely unpublicized, as discussed in our findings, below.

## Threats of Incarceration

Many of the probationers interviewed by Human Rights Watch alleged that their company probation officers routinely threatened to have them jailed for failing to make payments or for falling into arrears—while refusing to take seriously their assertions that they could not afford to keep up with scheduled payments. Those allegations are echoed by the lawsuits against JCS and Sentinel in Alabama and Georgia. The complainants in a civil suit against JCS and the town of Harpersville, Alabama allege that “On many occasions, JCS stated that Plaintiffs must pay certain amounts, such as \$200 or \$500, or face immediate jail.”<sup>[127]</sup>

Probation company officials argued to Human Rights Watch that their employees have no ability to jail anyone and that this power lies exclusively with the courts. But as a later section of this report shows, some courts are so lax in their oversight of the probation companies they hire and so eager to delegate responsibility to them that company employees end up with a great deal of coercive power.<sup>[128]</sup> And even where company probation officers’ threats of incarceration are partly empty, they can still be coercive and abusive. Many probationers do not realize the theoretical limits of their probation company’s authority and take the threats at face value.<sup>[129]</sup>

In July 2013, Human Rights Watch interviewed a young woman who was then checked in to a drug rehabilitation facility in Augusta, Georgia. In 2012 a Richmond county State Court judge had modified her preexisting order of probation with Sentinel Offender Services to require her to wear and pay for an electronic monitoring bracelet. Already struggling to make ends meet and care for a young daughter while careening between unemployment and low-wage jobs at Waffle House and McDonalds, she now owed Sentinel roughly \$300 per month in fees. She quickly fell behind and found her Sentinel probation officers unwilling to take seriously her insistence that she was unable to pay:

Every time I went down there they was nasty. They’d threaten me with jail and I said “Please, don’t throw me in jail. I don’t want to lose my kid.” I’d be sitting there crying in front of these people and they’d just say, “Ma’am, that’s not our problem. You are the one who got into trouble, you got to figure this out yourself.” ... I always felt like I was never going to get out from under these people.<sup>[130]</sup>

Some court officials may openly or tacitly sanction such aggressive tactics. But in other cases there is evidence that probation company employees threaten to jail offenders without the knowledge or approval of the court. Judge James Straight, a Justice Court judge in Bolivar county, Mississippi, told Human Rights Watch about a woman who had called his court in tears, claiming that her JCS probation officer was threatening to have her jailed over roughly \$500 in arrears. Working a low-paying job at a local gas station, she had struggled to keep up with her payments. Judge Straight recalled:

They were telling her, “If you don’t get us \$545 or whatever it was, we will get [the judge] to put you in jail.” She had called [her probation officer] and said she could come up with about \$200. [The probation officer] said, “No, you have to pay it *all* or I’m getting the judge to put you in jail.” This lady was crying on the phone to me.<sup>[131]</sup>

Judge Straight asked his clerk to look into the woman’s case and what they found was surprising. She had only been fined \$377 to begin with, for driving without a valid license. What’s more, court records show that she already paid off that entire amount—but still owed JCS about \$500 in fees.<sup>[132]</sup> In Judge Straight’s view, the court would never issue an arrest warrant on that basis, but probationers have no way of knowing that. He added, “They are misusing the court system to collect their fee. They are using us as judges. I think they are after a fee and that’s it.”<sup>[133]</sup>

Company probation officers take great pains to ensure that no offender can pay off their debt to the court before paying all of their probation fees. They do this by splitting each payment made by their probationers between themselves and the court in a way that guarantees the two debts will be paid down simultaneously.<sup>[134]</sup> This reflects how heavily reliant they are on the coercive powers of the court to collect their revenues. Even though courts make payment of company fees a condition of probation, many courts would balk at ordering the arrest of a person whose only debt is to a private company. One company probation officer in Georgia explained the dilemma this way:

This is going to sound bad, but when it gets down to not that much money I make sure there are still some fines left along with the fees. I can’t get a warrant out on someone who only owes [company] fees.<sup>[135]</sup>

## Jailing Offenders to Induce Payment

Vast numbers of arrest warrants are issued every year for offenders on private probation. In Georgia alone, 124,788 arrest warrants were issued for offenders on private probation in 2012.<sup>[136]</sup> In other states the numbers reside solely with individual probation companies, who do not make them public. In theory, these warrants are issued so offenders can be brought before the court for a probation revocation hearing. But some company probation officers secure the arrest of probationers who are behind on their payments as a way of coercing them or their families into coming up with some of what they owe.

It works like this: an offender is arrested and put behind bars, nominally in order to await a probation revocation hearing. The probation revocation hearing never takes place. Instead, the company probation officer negotiates with the jailed probationer for partial payment of what they owe. If they can come up with an agreed-upon sum, often just a few hundred dollars, the probation officer asks the judge to order their release and they remain on probation. Often, the offender never appears in court at all.<sup>[137]</sup>

In some cases, company employees approach jailed probationers' families and negotiate with them for payment. This disturbing practice essentially sees some company probation officers use the courts to jail offenders in order to use them as hostages in financial negotiations with spouses, parents and other relatives who are desperate to get them released. A probation officer employed by one Georgia company described the process this way:

I always try and negotiate with the families. Once they know you are serious they come up with some money. That's how you have to be. They have to see that this person is not getting out unless they pay something. I'm just looking for some good faith money, really. I got one guy I let out of jail today and I got three or four more sitting there right now.... It's hard. You get cussed at, you get called every name in the book, you get people crying.<sup>[138]</sup>

She added that she “tries to avoid” bringing these cases in front of a judge, casting court as a headache best avoided by everyone.<sup>[139]</sup> But this approach essentially left her with unfettered discretion and no judicial oversight of her efforts to use incarceration to extract payments from offenders.

There is no evidence that most company probation officers engage in such practices and many probation companies categorically reject them. Mark Contestabile of Sentinel described direct approaches to probationers' family members for money as “poor case management” and said he doubted that any reputable probation company condoned such practices on the part of their employees. But the line between permissible and impermissible practice can be a fine one. Sentinel's branch manager in Brunswick, Georgia told Human Rights Watch that if an offender faces incarceration for failing to pay, “We do not go calling his momma and saying, ‘Hey, bring us \$500 of this \$1,000 he owes.’ Now, if she comes in here on her own with that money, we might take it. We don't go telling his momma, ‘You can't pay it,’ or, ‘It won't help his case.’”<sup>[140]</sup>

## Hidden Costs to the Public



The misuse of incarceration as a collections tactic by some company probation officers is not only abusive, but it also undercuts companies' claim to provide services at no cost to the public. In Georgia, it costs an average of \$50 per day to keep an individual behind bars, a cost borne by local taxpayers.<sup>[141]</sup> In purely financial terms, a municipality loses money if it keeps an offender behind bars for a week in order to collect \$250 in fines. A 2012 Brennan Center study showed that one North Carolina county spent more to pursue and jail 246 offenders for debt-related reasons than it ultimately collected from them.<sup>[142]</sup> But such calculations look very different from the perspective of a probation company that does not have to account for these costs.

At least one local jurisdiction in Georgia has made an apparent and very disturbing attempt to grapple with this issue by requiring its probation company to essentially rent jail space as a condition of its contract. The town of Griffin requires its private probation provider to pay a minimum of \$2,500 per month in exchange for the right to “utilize seventy-two (72) existing bed spaces per month for the incarceration of probation inmates.”<sup>[143]</sup> A subsequent communication to probation firms interested in bidding on the contract confirmed that the fee was “for jail space used to house probationers.”<sup>[144]</sup>

In Human Rights Watch's view, the imposition of such fees is troubling because they stand as implicit confirmation of public authorities' acceptance of the notion that private probation companies have the de facto power to jail probationers. One probation company executive derisively referred to this requirement as a “kickback fee” that served no legitimate public purpose and stated that his company refused to bid on Griffin's contract for precisely this reason.<sup>[145]</sup>

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## **VI. Where Responsibility Lies: Companies, Courts, and Governments**

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any company officials contend that their employees have no real autonomy and therefore little or no responsibility for any alleged abuses. Such arguments belie the vast amount of power and discretion many company probation officers actually have in dealings with probationers—a reality discussed in more detail in the pages that follow. Probation companies have a clear responsibility to take effective steps to prevent abuse and to provide redress for abuses that they bear responsibility for.<sup>[146]</sup>

That said, an enormous share of the responsibility for the problems described in this report lies with state and local governments and with local courts. Many have failed to live up to their responsibilities in three key ways:

- Failing to exercise meaningful oversight over the operations of probation companies and their treatment of probationers;
- Inappropriately pushing a range of court responsibilities onto the private probation firms they contract with; and
- Tacitly or even overtly condoning the abusive company practices described in this report by focusing exclusively on the financial returns secured by probation companies rather than displaying concern for the rights of all involved.

The following pages discuss each of these problems in more detail.

## **Local Realities: Little Oversight and Unfettered Company Discretion**

Many probation company officials complain that the blame for alleged abuses is unfairly laid at their doorsteps. They contend that their employees have no authority to do anything other than faithfully execute the wishes of the courts they work with. As Tim Lewis of Sentinel Offender Services put it, “The offenders we supervise are not sought by us. We sometimes read that we prey upon people.... We don’t prey. We don’t lurk in the shadows.”<sup>[147]</sup>

To the extent that harsh or abusive practices prevail, company officials argue, this simply reflects the actions of the court and not any exercise of power on their part.<sup>[148]</sup> Because of that, media and other reports critical of the industry simply “demonstrate that they don’t understand the basics of what we do.”<sup>[149]</sup> Tony Moreland of Georgia Probation Services put it this way: “If you think that indigent people are getting locked up in this state, then you need to be looking at the courts. I can’t declare anyone indigent. I have no authority.”<sup>[150]</sup>

The day-to-day reality of privatized probation in many localities is squarely at odds with such assertions. Many company probation officers exercise considerable and largely unfettered discretion in their dealings with probationers—whether the companies want it that way or not.

Some company probation officers interviewed by Human Rights Watch candidly acknowledged the wide power and discretion they possess in dealing with probationers. Asked who decides whether to jail an offender who is behind on payments, one company probation officer in Georgia replied, “I do, pretty much.” She explained that the municipal judges she works with generally sign warrants and release orders that she has prepared, without asking for any information about the cases. As of July 2013 she said that she had over 100 arrest warrants out for probationers under her supervision, out of a total caseload of 600 people.<sup>[151]</sup>

Many courts exercise little meaningful oversight over the probation companies they hire. The primary reason many local authorities hire probation companies is because their services promise increased collections at no public cost. Many courts lack the institutional resources to ensure proper oversight of those companies—the entire staff of some local courts consists of just one overburdened clerk. But if public officials dedicate public resources to solving this problem, it cuts back on net financial returns. The temptation is to adopt a “hear no evil, see no evil” approach to hiring probation companies, where courts happily accept the checks probation companies cut them without asking too many questions about how collections are secured.

The net result is this: in many courts the only people tracking important baseline data about a probation company’s dealings with probationers are the company’s own employees. Some court clerks interviewed by Human Rights Watch referred even the most basic questions about probation caseloads, revenues collected from probationers and even the number of probationers arrested for nonpayment back to the company.<sup>[152]</sup>

As a result of these problems, some judges and other court officials know very little about the tactics their probation companies use to induce payment by offenders. For example, the chief clerk of one Mississippi Justice Court that works with JCS told Human Rights Watch that the company had been effective at pulling in revenues from probationers. But when asked how JCS managed to get offenders to pay she replied, “I don’t know exactly what all they do but they seem effective.”<sup>[153]</sup> Some judges do not appear to have even a basic notion of what the probation companies they hire actually *do*. When Human Rights Watch asked one Justice Court judge in Jackson what kind of supervision is offered by the probation company to which he regularly assigns offenders, he replied that the company’s probation officer “is a pastor. I’m not; I just wear a black dress. He can go deeper. He can really talk about what is going on in a person’s soul. I don’t have the ability to do that.”<sup>[154]</sup>

As this report shows, what some company probation officers actually do is have probationers arrested to coerce them or their families into coming up with cash. While a judge must sign the arrest warrants in those cases, it is often a company employee who prepares the warrant and presents it to the judge for signature. Some judges do not make the time even to verify why the warrants are being requested, or that they have been sworn under oath.<sup>[155]</sup> As one Mississippi judge whose court contracts with a private probation company put it, “You get a lot of paperwork and you see it and they give their reasons there and you just sign it. You don’t have time to scrutinize everything.”<sup>[156]</sup>

One result is that some judges may have no clear idea of how many probationers they have ordered to be arrested, or why. In Greenwood, Mississippi, Municipal Judge Carlos Palmer told Human Rights Watch that he had “maybe two or three” active arrest warrants out for JCS probationers. But data later obtained by Human Rights Watch showed that as of August 2013 there were 295 active warrants for JCS probationers issued by his court—25 percent of JCS’ total caseload there at the time.<sup>[157]</sup> Judge Palmer’s caseload contains a heavy preponderance of traffic offenses.

Some judges appear to believe that their private probation officers are providing more in the way of supervision and assistance than they really are. Judge Palmer told Human Rights Watch that his JCS probation officers, “are really diligent about having one on one services with people ... they work with people about their circumstances.”<sup>[158]</sup> But several probationers who Judge Palmer had sentenced to JCS probation described the company’s Greenwood office as concerned solely with collecting payments. A deputy with the local sheriff’s department told Human Rights Watch that he had been paying down an \$897 fine his adult son had incurred, along with JCS’ supervision fees, for several months.<sup>[159]</sup> “When I go to pay they say, ‘You come to pay on your son?’ I say, ‘Yep,’ and they say ‘OK’ and go right to the computer, hit the button, and then you give them the money and you leave.” To his knowledge, his son—the probationer supposedly under supervision—never set foot in the JCS office at all.<sup>[160]</sup>

Finally, it is important to note that some company probation officers appear to exacerbate all of these problems by actively discouraging probationers from approaching the courts with questions, problems, or concerns about their probation. Written instructions for new probationers that are widely used by JCS probation officers, for instance, contain the following admonition: “**Do not contact the court**, they will be unable to help you.” (emphasis in the original).<sup>[161]</sup>

### **Inappropriate Delegation of Court Responsibilities**

Some courts do more than just fail to provide strong oversight to the probation companies they work with—they deliberately push some of their own responsibilities and powers onto those companies’ shoulders. An earlier section of this report described what is arguably the most important example of this: courts that expect probation companies to determine whether the offenders assigned to them possess the ability to pay the fines, court costs and probation fees they are sentenced to—even though this poses a direct conflict with the companies’ own financial interests. Some courts inappropriately delegate other core responsibilities to probation firms as well.

The head of one Georgia probation company complained to Human Rights Watch that some courts require probation companies to perform tasks as diverse as transporting offenders sentenced to community service to and from their job assignments; preparing sentencing sheets for all cases that come before the court; and providing interpreters for all court sessions, whether the cases involve probation or not.<sup>[162]</sup> Requirements like these essentially see courts—often in response to shrinking budgets—try to turn their offender-funded probation service into offender-funded officers of the court.

In some cases all of this can add up to serious allegations that courts unlawfully delegate a range of coercive powers to their probation companies.

### Harpersville’s Cautionary Tale

Harpersville is a small town in Alabama’s Shelby county that was hit hard by the US economic recession.<sup>[163]</sup> Struggling to pay for basic services, Harpersville leaned increasingly heavily on its Municipal Court to generate revenue. The court contracted with JCS, which works with at least 100 Alabama courts, to collect money from offenders on long-term payment plans.

Ultimately, Harpersville’s attempts to use its criminal court as a money maker landed the town in serious trouble. In 2012, JCS and the Harpersville Municipal Court were hit with a lawsuit alleging illegal and abusive collections practices. The plaintiffs allege along with other abuses that the town’s Municipal Court “abrogated its judicial responsibilities and has allowed JCS to operate as a quasi-judicial agency” in violation of state law.”<sup>[164]</sup>

JCS commissioned R. Bernard Harwood Jr., a former Associate Justice of the Alabama Supreme Court, to produce a report on the allegations at issue in the Harpersville litigation. Harwood found no merit to any of the allegations against JCS, arguing that in each case all responsibility for alleged abuses lay squarely with the court and not JCS.<sup>[165]</sup> But in a blistering 2012 ruling, county Circuit Court Judge Hub Harrington blasted both the company and the court.

Judge Harrington accused the Harpersville court of running a “debtor’s prison” and a “judicially sanctioned extortion racket” and labeled its performance “disgraceful.” Along with other abuses “so numerous as to defy a detailed chronicling in this short space,” his ruling found that the Harpersville court had allowed JCS to issue orders for probationers to appear in court independent of any judicial authority—and then incarcerating those who failed to comply with those “orders.”<sup>[166]</sup> The county sheriff seized the court’s records.<sup>[167]</sup>

Harpersville ultimately responded to this litigation by shutting the Municipal Court down altogether. This left the town facing a \$300,000 revenue shortfall in 2013—the amount it had expected to receive from court and JCS collections. Moving forward, the town is faced with two unpalatable options—cutting back on emergency services, or raising revenue through an increase in the local sales tax.<sup>[168]</sup> The litigation is still pending as of January 2014. Harpersville now faces the prospect of another serious financial hit should the case go against it.

### Weak State Government Oversight

Many probation companies make serious efforts to prevent abuse through their own internal controls, and every probation company at least claims to do so. Chief Executive Officer of JCS Robert McMichael acknowledged to Human Rights Watch that: “We’ve hired some bad apples. We’ve hired some folks who stole from us. We’ve hired some people who’ve been abusive.” He added, “You have to show that you are not going to tolerate it.”<sup>[169]</sup>

But companies can’t go it alone, and their own efforts can never be an adequate substitute for responsible government oversight.<sup>[170]</sup> As Amy Hartley, a former official with the oversight body set up by the state of Georgia to regulate misdemeanor probation services there said, “in this business you really can’t have *enough* oversight.” She added that even where probation firms might be well-

intentioned, “some companies have gotten so large that it’s difficult for them to oversee their own operations.”<sup>[171]</sup> Unfortunately, state government oversight is generally weak and some states have all but abdicated these responsibilities.<sup>[172]</sup>

A good place for state governments to start would be to require basic transparency about the revenues probation companies extract from probationers. No state does this now.

Probation companies defend their lack of transparency on fee collection on commercial grounds, casting it as a trade secret they are loath to share with their competitors. Tony Moreland, the head of Georgia Probation Services, explained to Human Rights Watch that if his larger competitors knew which of the courts he contracted with were particularly lucrative, “They would be all over them like a chicken on a June bug.”<sup>[173]</sup> These commercial imperatives may be real, but in Human Rights Watch’s view they are vastly outweighed by the public interest in transparency around this issue. Not only is this important because of the potential for corruption—an issue discussed in greater detail below—but it is necessary to allow for public understanding about the financial impact of offender-funded probation on probationers.

### **Georgia: A Credible Model With Serious Flaws**

Georgia is the only US state with a regulatory framework that provides meaningful public oversight of the private probation industry. Structurally, Georgia’s model is a useful example for other states that do far less. However, the state’s approach is insufficient in key respects and should be bolstered dramatically.

Georgia state law lays down basic requirements for contracting, standards of professional conduct and transparency by probation firms. It also establishes an oversight body with audit and investigatory powers, the County and Municipal Probation Advisory Council (CMPAC). CMPAC aims to “ensure the provision of quality, ethical and professional misdemeanor probation service to the courts and citizens of Georgia through evaluation, education, and regulation.”<sup>[174]</sup> Its mandate includes oversight of both private and publicly run misdemeanor probation services across the state. Staff monitors have the power to refer companies to the Council to revoke their registration.

### **Transparency and its Limits**

All private probation companies in Georgia are required to register with CMPAC and to provide it with quarterly reports that include a range of important baseline data about their operations at a court-by-court level. This includes figures for the amount of court revenues collected, the number of cases supervised; and the number of active warrants taken out for probationers. Unfortunately this

information is not made readily available to the public and CMPAC is not statutorily required to publish it—though Human Rights Watch was easily able to obtain the information by formally requesting it under Georgia’s Open Records Act.

This is more data than any other US state collects from probation companies, but Georgia’s efforts here are undermined by one crucial, glaring omission. Probation companies are required to report how much money they collect for the courts they work with, but not how much money they collect for themselves from probationers. The only people who know exactly how much money probation firms are extracting in fees from the people they supervise are those companies’ own employees.

## Audits and Investigations

CMPAC subjects all probation companies operating in the state—as well as publicly run misdemeanor probation services—to periodic compliance reviews. These reviews scrutinize companies’ records and look generally to ensure that they are in compliance with state laws and regulations.

CMPAC’s audit regime is a sound approach in principle but is under-resourced and, partly as a consequence, its audits are too predictable and too narrow. Eighty-eight different private probation companies work with 643 courts across Georgia yet CMPAC—which is also responsible for overseeing publicly run misdemeanor probation services—has just two compliance monitors on staff.<sup>[175]</sup> This means any one company generally has to face a compliance review only once every 18-24 months. That review focuses on a headquarters-level audit plus just one site-level visit. Some companies work with dozens of courts scattered all across Georgia so most of their local offices will never be directly scrutinized by a compliance review.

Another key shortcoming is that CMPAC does not carry out unannounced inspections as part of its compliance reviews. These would add a vital extra layer of vigor to CMPAC’s activities because as things currently stand, companies are able to prepare in advance for any site-level visits by CMPAC staff—meaning that there is ample opportunity for unscrupulous firms or local staff to try to paper over any problems before the visit happens.

All of this argues for dramatically increasing CMPAC’s monitoring capacity. Amy Hartley, who worked as a compliance review officer and as interim staff director at CMPAC before leaving to head up a publicly run probation service in Macon, told Human Rights Watch that:

Ideally you’d want to have at least 10 monitors, for how many courts are supervised. That way you could do surprise visits.... My goal [at CMPAC] was to make sure that people at least get some minimum standard of due process and have their rights respected. Not everyone did. And I’m sure some still do not. But some [companies] do a really good job.<sup>[176]</sup>

In addition to regular compliance reviews, CMPAC is empowered to investigate allegations of wrongdoing by probation companies. The institution has in fact uncovered serious abuses and illegalities by both private and publicly run probation companies in recent years.<sup>[177]</sup> Unfortunately, the reports generated by CMPAC investigations are not made readily available to the public.<sup>[178]</sup>

### **Other States: Weak or Nonexistent Oversight**

As flawed as Georgia's regulatory model is, it is far more comprehensive than the efforts of other states where private probation is in widespread use. Many of those states have no statutory or regulatory frameworks in place at all. Others, like Florida and Missouri, provide for some regulation of the terms of local authorities' contractual relationships with probation companies but no systematic oversight of actual company conduct.<sup>[179]</sup>

In Mississippi, JCS and other probation companies have expanded rapidly into some of the poorest counties in the United States. Yet the state has no laws on the books that specifically address private probation. Oversight takes place at the local level or not at all. Justice Court Judge James Straight, whose court contracted with JCS in Mississippi's Bolivar county, put it this way: "Oversight? You've hit the nail on the head right there. There's no oversight, no rules. No regulations and no penalties."<sup>[180]</sup>

Alabama presents a similar regulatory vacuum. One recent effort to pass legislation regulating the probation industry was widely criticized as overly deferential to the interests of large probation companies and lacking in real regulatory vigor.<sup>[181]</sup>

Where states do have a regulatory framework in place, it is generally far weaker than the Georgia model. Tennessee has established a Private Probation Services Council that registers all private probation companies active in the state and oversees the implementation of mandatory orientation and background check requirements for company probation officers.<sup>[182]</sup> The state does not track baseline data about probation companies—this is left to individual courts if it happens at all.<sup>[183]</sup> It also has the power to receive complaints, but these must be very limited in scope. The Council's enforcement powers largely relate to recordkeeping requirements and a broad prohibition against fraud.<sup>[184]</sup> Many of the complaints the Council does address revolve around alleged company failures to submit required quarterly activity reports the courts.<sup>[185]</sup>



## Opportunities for Corruption

Where government oversight is weak or nonexistent, some private probation officers are presented with easy opportunities for corruption. While courts stand to lose revenue to this kind of graft, probationers whose payments are stolen risk losing their freedom if they are wrongly accused of non-payment.

As described above, many courts that contract with private probation companies take no independent steps to verify the amount of revenue collected by those firms.<sup>[186]</sup> Companies pass along the revenues they have collected for the court at regular intervals, often alongside one or two-page reports that break down how much the company has collected for the court from each offender.<sup>[187]</sup> These reports generally do not include receipts or any other supporting documentation. If a probation company employee were to skim money off the top of probationers' payments before passing them on to the court, many courts would have no way of knowing unless probationers pieced the theft together through their own receipts and complained. As one official with the Municipal Court in Birmingham, Alabama, which contracts with JCS, put it, "No one here sees what they collect in fees. They could ask but no one does."<sup>[188]</sup>

This is not just a hypothetical problem. Probation company officials interviewed by Human Rights Watch acknowledged that instances of corruption have occurred. But in general, company officials interviewed by Human Rights Watch expressed confidence that incidents were rare and that they were quickly detected and harshly dealt with.

It is not at all clear that such confidence is warranted. A then JCS probation officer working with the Municipal Court in Clarksdale, Mississippi was arrested in April 2013 and charged with embezzlement.<sup>[189]</sup> Court officials alleged that she regularly skimmed money off the top of checks she handed over to the court each month for quite some time before being caught and arrested.<sup>[190]</sup> In an interview, court clerk John King told Human Rights Watch that his court only caught on to the problem in mid-2013 because the alleged culprit started stealing more than she could hide. He said that sometimes she failed to deliver regular weekly payments to the court altogether.<sup>[191]</sup>

Asked whether the ongoing theft would have been detected had it been kept to a more modest level, the clerk replied, "Would anyone have noticed if she was just taking \$100 or \$150 off the top every time? Probably not."<sup>[192]</sup> Yet that modest-sounding level of ongoing theft could very easily land people in jail, because every dollar stolen by a corrupt probation officer is a dollar a probationer is wrongly accused of failing to pay. In the Clarksdale case, JCS apparently did not know whether the graft had resulted in the issuance of baseless arrest warrants against probationers. JCS area supervisor Crystal Beach told Human Rights Watch that the company had suspended processing arrest warrants out of that office because "we want to make sure we don't falsely arrest anyone who was doing what they were supposed to do."<sup>[193]</sup>

In fact, the very origins of Georgia's probation industry are bound up with a corruption scandal. Bobby Whitworth, then chairman of Georgia's Board of Pardons and Parole was prosecuted and jailed for accepting an illegal payment of \$75,000 from a probation firm called Detention Management Services (later acquired by Sentinel). The payment was allegedly in exchange for Whitworth's efforts to help secure passage of the state law that transferred misdemeanor probation services from the state to individual counties in 2,000—opening the door to the private probation industry in Georgia.<sup>[194]</sup>

## VII. Human Rights Norms and “Offender-Funded” Probation

The problems described in this report implicate US Constitutional protections as well as international human rights norms. These issues are discussed where relevant throughout this report but it is worthwhile to summarize the most important points here.

The US Supreme Court ruled in *Bearden v. Georgia* that a court cannot revoke a person’s probation and imprison them simply because they are genuinely unable to pay a fine.<sup>[195]</sup> An earlier section of this report discussed *Bearden* and its implications in detail.<sup>[196]</sup> Our research raises concerns that the spirit if not the letter of the court’s holding in that case is routinely flouted by overburdened courts that make little or no effort to ascertain whether offenders are genuinely unable to pay fines and probation fees. Many courts rely on their probation services to determine when an offender is genuinely unable to pay fines or probation fees—which may be an entirely reasonable approach in some cases. But where a court’s probation service is a private company whose profits depend on their ability to collect money from offenders, asking it to determine whether an offender is able to pay the company’s own fees presents a direct and insoluble conflict of interest.<sup>[197]</sup> This is compounded by the fact that under existing legal frameworks, private probation firms are often far less transparent about the revenues they collect from offenders than publicly run probation services are obliged to be. Courts that decide to contract with probation companies on an offender-funded basis should take on the responsibility for assessing whether offenders have the financial means to pay what they owe themselves—even if this means hiring additional court staff.

Under international law, governments are required to respect individuals’ right to adequate housing, food and other basic needs that are recognized as economic, social and cultural rights. States are obligated to refrain from interfering with people’s ability to access and enjoy these rights.<sup>[198]</sup> The practical import of these rights here is to provide a useful practical framework for how courts should apply the requirements set forth under *Bearden*. Specifically, courts should refrain from incarcerating offenders who are entirely indigent for the sole reason that they are unable to pay fines, court costs, and probation fees, when doing so would impair their ability to feed, clothe, house or provide healthcare for themselves and their dependents. Many states require courts to waive fines, probation fees and other costs for offenders who are “indigent.” But this term is often left ambiguous and some courts and probation companies appear to interpret it as including only cases of absolute material deprivation.

This report has also argued that the imposition of supervision fees in pay only cases discriminates against low-income offenders by saddling them with significantly higher financial penalties than offenders of greater financial means.<sup>[199]</sup> Courts should reduce or waive probation fees where they would impose a significant impediment to an offender's ability to fulfill basic needs that are recognized as fundamental rights under international law because they are discriminatory as well. As discussed in this report, fees are only assessed when a probationer is unable to pay fines or other court penalties immediately, which is most often for reasons of poverty. Indeed, probation fees are the highest, and time on probation the longest, for those least able to pay. Probation fees, therefore, constitute a discriminatory penalty, as well as a discriminatory impediment to the realization of basic rights, imposed on the basis of property or lack thereof.

Probation fees are distinguishable from fines in this context because the financial costs involved are not penalties imposed to secure accountability for a crime, but ancillary costs that are simply intended to force criminal offenders to shoulder the public costs of operating a functioning court system or probation service.<sup>[200]</sup>

Similarly, Article 11 of the International Covenant on Civil and Political Rights prohibits imprisonment “merely on the ground of inability to fulfill a contractual obligation,” including failure to pay one's debts.<sup>[201]</sup> The strict applicability of Article 11 to the issues described in this report is debatable, since fines and probation fees flow from a criminal sanction, or a court's order, rather than a civil contract. On the other hand, debt accrued in the form of probation fees is owed to private, for-profit companies rather than to the state. Offenders who are imprisoned for failure to pay are incarcerated for failure to pay both public and private debts, even if both are the result of a court order rather than a civil contract. Article 11 is therefore of clear relevance to these issues even if it is not directly binding. In any case, some national courts have read Article 11 as imposing requirements similar to those developed by the US Supreme Court in *Bearden*—namely, that debtors cannot be imprisoned for failure to pay unless the prosecution is able to meet its burden of proof at a fair trial that the individual's failure to pay was willful rather than reflecting an inability to pay.<sup>[202]</sup>

Some of the alleged abusive collection practices described in this report—in particular the threat and actual use of incarceration as a way of coercing offenders or their families into payment—also raise human rights concerns. Under *Bearden* as well as internationally guaranteed norms of due process, offenders have a right to present evidence that they are unable to pay fines and probation fees before having their probation revoked and being incarcerated.

When company probation officers, acting as de facto agents of the court, threaten offenders with automatic incarceration should they fail to make payment and refuse to acknowledge evidence of an offender's inability to pay, they are interfering with the offender's fundamental due process rights. When company probation officers use the courts to secure the actual arrest of probationers who are behind on

their payments in order to pressure them or their relatives into making a payment rather than because they intend to bring them into court for a probation revocation hearing, the offender's due process rights are directly and inexcusably denied.

Finally, it is important to underscore that business themselves have a clear responsibility under international human rights norms to take effective steps to prevent human rights abuses linked to their operations and to provide redress for any abuses that do occur.

Even where state and local governments are woefully lax and permissive in their dealings with probation companies, the companies themselves have a responsibility to prevent abuse and to effectively address any abuses that do occur. The United Nations-backed Guiding Principles on Business and Human Rights outline the responsibility of governments to protect individuals from human rights abuses tied to business operations, the responsibility of companies to respect human rights, and the need for abuse victims to be able to access effective remedy. The Guiding Principles recognize that companies have a responsibility to identify potential human rights risks associated with their operations—placing great emphasis on the importance of human rights due diligence—and take effective steps to prevent those potential abuses. Companies should also establish effective and confidential channels that individuals can use to safely and effectively complain about alleged abuses linked to company operations. Where abuses do occur, businesses have a responsibility to identify victims and ensure that they have access to a suitable and effective remedy.<sup>[203]</sup>

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