

Civil Rights and Equity of Legal Financial Obligations in North Carolina



A Report of the
North Carolina Advisory Committee to the
U.S. Commission on Civil Rights

August 2023

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states, the District of Columbia, and the U.S. territories. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their jurisdiction.

Acknowledgments

The North Carolina Advisory Committee (Committee) thanks each of the speakers who presented to the Committee during their public meetings on the critically important and timely topic of Legal Financial Obligations in North Carolina. The Committee appreciates and recognizes the work of Commission intern, Kimberly Henry, for her significant contributions to this project. The Committee is also grateful to members of the public who spoke during the selected periods of public comment, and those who shared their testimony in writing.

Letter of Transmittal

The North Carolina Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding Civil Rights and Equity of Legal Financial Obligations. The Committee submits this report as part of its responsibility to study and report on civil-rights issues in the state. The contents of this report are primarily based on testimony the Committee heard during public meetings held via video-conference in 2020 and 2022. The Committee also includes related testimony submitted in writing during the relevant period of public comment.

This report begins with a brief background of the issues to be considered by the Committee. It then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil-rights concerns. This report is intended to focus on civil-rights concerns specifically regarding post-conviction legal financial obligations. While additional important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil-rights mandate are left for another discussion.

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Overview

On May 8, 2020, the North Carolina Advisory Committee to the U.S. Commission on Civil Rights adopted a proposal to undertake a study of civil rights and equity of legal financial obligations (LFOs) in North Carolina. The focus of the Committee's proposed inquiry was to review LFOs to examine (a) state practices governing LFOs, including the fees levied under the remit of LFOs; (b) collection practices by the state; (c) whether LFOs have a disparate impact on minority and indigent groups; and (d) the impact of LFOs on the basis of race, color, and income. The focus for this project is post-conviction LFOs as there is significant, separate work to be conducted around bail reform.

As part of this inquiry the Committee heard testimony via video-conferences held on June 25, 2020, July 23, 2020, August 13, 2020, February 15, 2022 and March 15, 2022, as well as related testimony submitted to the Committee in writing during the period of public comment that concluded on September 13, 2020 and April 14, 2022. The following report results from a review of testimony provided at these meetings, combined with written testimony submitted during this timeframe. While other important topics may have surfaced throughout the Committee's inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted by a unanimous vote of the Committee on August 3, 2023.

Background

Legal Financial Obligations (LFOs) refer to the fines, fees and charges attached to criminal convictions and citations. The costs of supporting the operation of the criminal justice system have grown.¹ To ease the burden on public finances, states, including North Carolina, impose a variety of financial obligations and charges on adult and juvenile individuals that become involved in the criminal justice system.² Though these fines and fees represent fixed payments with respect to an individual's ability to pay, these payments show large variance across local jurisdictions, offense categories and offender characteristics due to judicial discretion and have a disproportionate impact on individuals living on low incomes.³

¹ Council of Economic Advisers, "Issue Brief, Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor." Obama White House Archives. https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf (retrieved June 1, 2023).

² Ibid; *See also*: Conference of State Court Administrators, "Courts Are Not Revenue Centers, 2011-2012 Policy Paper." https://cosca.ncsc.org/data/assets/pdf_file/0019/23446/courtsarenorevenuecenters-final.pdf (retrieved June 1, 2023).

³ Lechner, Jennifer and B. Leigh Wicclair. "Driven to Despair: Confronting Racial Inequity in North Carolina's License Suspension Practices." Campbell Law Review. <https://scholarship.law.campbell.edu/clr/vol43/iss2/3/> (retrieved April 18, 2023); *See also*: Council of Economic Advisers, *Issue Brief, Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor*, p. 4 (Dec. 2015), https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf; *See also*: ACLU of North Carolina. "The Consequences of Rising Court Fines and Fees in North Carolina: At All Costs." https://www.acluofnorthcarolina.org/sites/default/files/field_documents/aclu_nc_2019_fines_and_fees_report_17_singles_final.pdf (retrieved June 15, 2023).

General fines and fees have been increasing regardless of ability to pay, and are expected to exceed \$500 per case by the year 2025.⁴ The number and type of LFO varies greatly, and can vary by local court decisions.⁵ In North Carolina, monetary obligations can include court costs, attorney fees, restitution, late payment fees for a failure to pay the monetary penalty on time, collection fees, payment plan fees as well as interest on these fees that can keep growing until the debt is repaid.⁶

The Eighth Amendment to the U.S. Constitution states that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”⁷ This clause has various interpretations throughout state level Supreme Courts, as is the case with the Colorado Supreme Court where this clause is utilized to determine if the effects of a fine were unconstitutionally excessive.⁸ In order to determine if the impacts of a fine are excessive, the United States Supreme Court “has adopted the gross disproportionality test, which requires a comparison between the severity of the punishment and the seriousness of the offense. If the punishment is grossly disproportionate to the offense, it is constitutionally excessive.”⁹ The United States Supreme Court, however, has not been asked to consider the effects that fines might have on people and their families in being able to meet their basic needs.¹⁰ In North Carolina, the payment of economic sanctions are standard conditions of probation and parole.¹¹

In a March 2016 Letter, the Civil Rights Division of the Department of Justice requested all states review and evaluate their practices for setting, monitoring, and collecting LFOs.¹² For example, following the Justice Department’s review of police and court practices in Ferguson, Missouri, concern grew around the extensive reliance on LFOs by states within the criminal (and civil) justice system. Commentators note that the municipal courts in Ferguson, Missouri are used to advancing the city’s financial interests and have a disproportionately harmful impact on the African American population there.¹³ Relatedly, the Justice Department has encouraged states to improve their coordination and oversight of the collection of LFOs knowing that the inability to

⁴ Birkhead, Tamar. “Time to end our modern-day debtor’s prisons.” *News Observer*, December 36, 2015. Accessed April 28, 2020. <https://www.newsobserver.com/opinion/op-ed/article51496595.html>.

⁵ Ibid.

⁶ Markham, James. “Monetary Obligations Card.” University of North Carolina School of Government. <https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/08/2018-07-31-20180094-Monetary-Obligations-Card%E2%80%9393for-proofing.pdf> (retrieved June 1, 2023) See also: Thompson, Michael D. and Rachel L. McLean. “Repaying Debts.” U.S. Department of Justice Office of Justice Programs. https://csgjusticecenter.org/wp-content/uploads/2020/02/repaying_debts_full_report-2.pdf (retrieved June 1, 2023); See also: Bannon, Alicia, Nagrecha, Mitali, and Rebekah Diller. “Criminal Justice Debt: A Barrier to Reentry.” Brennan Center for Justice. <https://www.brennancenter.org/our-work/research-reports/criminal-justice-debt-barrier-reentry> (retrieved June 1, 2023).

⁷ U.S. CONST. AMEND VIII; Beth A. Colgan, UCLA School of Law, *Written Statement for the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, August 28, 2020, at 1 (hereinafter Colgan Statement).

⁸ Colgan Statement, 4.

⁹ Colgan Statement, 3; See also: *United States v. Bajakajian*, 524 U.S. 321, 337 (1998).

¹⁰ Colgan Statement, 3.

¹¹ Id, 7.

¹² Mason, Karol, Gupta, Vanita, and Lisa Foster. “Dear Colleague Letter, March 14, 2016.” Civil Rights Division, U.S. Department of Justice. <https://www.justice.gov/opa/file/832541/download> (retrieved June 1, 2023).

¹³ Civil Rights Division, U.S. Department of Justice. “Investigation of the Ferguson Police Department.” https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson_findings_3-4-15.pdf (retrieved June 1, 2023).

pay is a burden for many individuals facing these costs that can even lead to reincarceration.¹⁴ This guidance is consistent with the North Carolina Constitution. Since 1868, the North Carolina Constitution has sought to keep the legal system from imposing excessive consequences on those with debts.¹⁵

At the time the Committee undertook this study, voter disenfranchisement of individuals serving sentences for felony convictions (which included non-payment of fines and fees) was identified in the testimony as a collateral consequence of legal financial obligations, with approximately 70,000 North Carolinians impacted.¹⁶ According to North Carolina General Statute, the right to vote is restored to individuals serving felony convictions upon unconditional discharge of the sentence, unconditional pardon of the individual, or the satisfaction of all conditions of the unconditional pardon.¹⁷

Finally, the Committee also received testimony on the need for judges to assess a defendant's ability to pay before imposing fines or fees.¹⁸ On March 2, 2022, the North Carolina Supreme Court adopted a new general rule of practice, Rule 28, "Equitable Imposition of Monetary Obligations in Criminal Cases and Infractions Based on the Defendant's Ability to Pay," and the North Carolina Administrative Office of the Courts re-issued its AOC Form CR-415, titled "Motion for Relief from Fines, Fees and Other Monetary Obligations, and Order on Motion" for judges to use when determining a defendant's ability to pay.¹⁹ The form includes an ability to pay worksheet that collects information on monthly income, monthly expenses, and public assistance, among other information.²⁰

¹⁴ Mason, Karol, Gupta, Vanita, and Lisa Foster. "Dear Colleague Letter, March 14, 2016." Civil Rights Division, U.S. Department of Justice. <https://www.justice.gov/opa/file/832541/download> (retrieved June 1, 2023).

¹⁵ NC Const. art. 1 § 28.

¹⁶ Doran, Will. "Could North Carolina's gerrymandering rulings also help felons vote? Advocates say yes." *News Observer*, November 21, 2019. Accessed April 28, 2020. <https://www.newsobserver.com/news/politics-government/article237580554.html>.

¹⁷ N.C. GEN. STAT. § 13-1.

¹⁸ Daniel Bowes, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, June 25, 2020, transcript, p. 13 (hereafter cited as *June 2020 Briefing*), *See also*, Thomas Maher, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, August 13, 2020, transcript, p. 22 (hereafter cited as *August 2020 Briefing*).

¹⁹ Rule 28 – Equitable Imposition of Monetary Obligations in Criminal Cases and Infraction Cases Based on the Defendant's Ability to Pay, within Supreme Court of North Carolina. "General Rules of Practice for the Superior and District Courts" <https://www.nccourts.gov/assets/inline-files/General-Rules-of-Practice-for-the-Superior-and-District-Courts-Codified-13-February-2023.pdf?VersionId=bACZb.z5JPisHiHnqw2cDC5ZLBdW9Tyn?VersionId=bACZb.z5JPisHiHnqw2cDC5ZLBdW9Tyn> (accessed June 21, 2023); *See also*: North Carolina Judicial Branch. "Form AOC-CR-415 Request For Relief From Fines, Fees And Other Monetary Obligations, And Order On Request." Administrative Office of the Courts. https://www.nccourts.gov/assets/documents/forms/cr415_3.pdf?VersionId=nS22gZSK7rAHve63oys0MBaQUIouACa (accessed June 21, 2023); *See also*: Lock Testimony, *February 2022 Briefing*, p. 14.

²⁰ Daniel Bowes, Fair Chance Criminal Justice Project, *Written Statement for the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, September 11, 2020, attachment (hereinafter Bowes Statement),

Methodology

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts that have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

Committee studies require Committee members to utilize their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires Committee members to draw from their own experiences, knowledge, opinions, and views to gain understanding of the issue and possible policy solutions. Committees are composed of volunteer professionals that are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, races, ages, and gender identities, as well as a variety of backgrounds, skills, and experiences. The intentional diversity of each Committee promotes vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of the Committees' responsibility to advise the Commission of civil rights matters in their locales, Committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Committee members use this publicly collected information, often from those directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and recommendations to report to the Commission. Drafts of the Committee's report are publicly available and shared with panelists and other contributors to ensure that their testimony was accurately captured. Reports are also shared with affected agencies to request for clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data suggested, revealed, or indicated based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take a specific action, or that the Commission forward recommendations to other federal or state agencies, policy makers, or stakeholders.

Overview of Testimony

The Committee is comprised of North Carolina citizens who sought balanced perspectives in their study of this topic. During a series of briefings, Committee members heard from academics, researchers, legal experts, community advocates, and government officials. In addition, the Committee invited broad participation through written testimony. Materials related to their study can be found in the appendix. The following findings reflect the assertions made by panelists in their testimony, and the subsequent recommendations comprise the Committee's recommendations to the Commission.

Findings

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress, the North Carolina Advisory Committee submits the following findings to the Commission regarding equity in LFOs in North Carolina. There was general agreement on the need for more and better data regarding the use of and impact of LFOs in North Carolina. Nevertheless, it was possible to make the following findings based directly on the testimony received and reflecting the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and firsthand knowledge of the topics at hand. Briefing transcripts and written testimony are included in the Appendix for further reference.

1. There are four general categories of LFOs:²¹
 - a. Fines, which are imposed as punishment for wrongdoing.²²
 - b. Forfeitures, which take ill-gotten gains from convicted criminals.²³
 - c. Restitution, which compensates crime victims for harm.²⁴
 - d. Fees, which ostensibly pay for services.²⁵
2. While procedures related to LFOs vary by county across North Carolina (see below at Finding 8), LFOs are commonly imposed in criminal actions throughout the state.²⁶

²¹ Joe Coletti, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, March 15, 2022, transcript, pg. 4.

²² Coletti Testimony, *March 2022 Briefing*, p. 4.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ John Nieman, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, June 25, 2020, transcript, p. 7 (hereafter cited as *June 2020 Briefing*).

- a. Of those incarcerated in North Carolina, 80% or more will finish their sentence with remaining fees and fines.²⁷ There are approximately 120,000 cases per year in which individuals have LFOs they are unable to pay.²⁸
 - b. Data from the late 1980s to January 2020 indicate that 1.7 million people in North Carolina were subject to the consequences of a failure to comply.²⁹ As of January 2020, slightly over 650,000 people had uncured failures to comply.³⁰ The estimate is that as many as 85% of people currently in prison have unresolved court debt in addition to their prison debt.³¹
3. All four categories of LFOs listed above have increased over the last 20 years, but fees increased the most, increasing 400% during that period.³² That is one reason why fees are considered one of the most problematic of the four categories.³³
 4. Another reason fees are considered especially problematic is that, whereas the money collected through the first three categories is allocated to specific recipients, the money collected through fees is mostly used to defray general governmental expenses.³⁴
 - a. The North Carolina Constitution requires that all funds collected through fines and forfeitures be appropriated for maintaining the public school system.³⁵
 - b. Restitution payments are used to compensate crime victims. In 2019 nearly 49% of funds collected through LFOs went to citizens for restitution.³⁶
 - c. Fees, on the other hand, are treated as a general source of revenue. In the five-year period beginning in fiscal year 2007-08 and ending in fiscal year 2011-12, the General Assembly imposed \$165 million worth of fee increases for the explicit purpose of closing revenue shortfalls.³⁷ In fiscal year 2018-19, the most recent for which data are available, the courts collected \$323 million in fees, of which 88% (\$249 million) went to the general fund.³⁸ Of the remainder, \$35 million went to other

²⁷ Vernetta Alston, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, July 23, 2020, transcript, p. 3 (hereafter cited as *July 2020 Briefing*).

²⁸ Thomas Maher, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, August 13, 2020, transcript, p. 20 (hereafter cited as *August 2020 Briefing*).

²⁹ *Ibid.*

³⁰ Maher Testimony, *August 2020 Briefing*, p. 20.

³¹ Satana Deberry, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, August 13, 2020, transcript, p. 14 (hereafter cited as *August 2020 Briefing*).

³² Deberry Testimony, *August 2020 Briefing*, p. 14.

³³ Coletti Testimony, *March 2022 Briefing*, p. 4.

³⁴ Coletti Testimony, *March 2022 Briefing*, p. 4.

³⁵ N.C. Const. Art. IX, § 7, “County school fund, state fund for certain moneys”; *See also*: Colgan Testimony, *June 2020 Briefing*, p. 5.

³⁶ Pricey Harrison, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, July 23, 2020, transcript, p. 12 (hereafter cited as *July 2020 Briefing*).

³⁷ Coletti Testimony, *March 2022 Briefing*, p. 4-5.

³⁸ *Id.*, p. 5; *See also*: North Carolina Judicial Branch. “Statistical and Operational Report of the Budget Management and Financial Services. North Carolina Administrative Office of the Courts.

state agencies, \$33 million went to county and municipal governments, \$5 million went to court operations, and \$1 million went to the State Bar.³⁹

- d. Allocating most fee revenue to the general fund is preferable to allocating it directly to the courts because it avoids the incentives that have led to predatory prosecutions in other states.⁴⁰ Moreover, revenue collected in fees defrays only about half of the actual costs of court operations.⁴¹ Nevertheless, the fact that fees are treated as a general source of revenue creates at least the perception of abuse, and the steep increases in fees in 2007 and 2012 suggest that perception is at least partially justified.⁴²
5. The courts may issue warrants for arrest in cases of nonpayment that can result in incarceration, not for the original offense, but for debts individuals simply cannot pay.⁴³ Even if payments are made on time, the debt continues to increase, typically, through the addition of interest and collection costs.⁴⁴ As a result, many people cannot reach the principal and so are locked into a perpetual cycle of debt.⁴⁵
6. LFOs have detrimental, long-lasting impacts that go beyond the consequences of the defendant's original offense such as potential reincarceration and the loss of important public benefits.⁴⁶ Increased reliance on rising court costs and fees to generate revenue has drastically exacerbated these impacts.
 - a. People with LFOs may forego basic necessities like food, rent, medical care or child support in order to pay their debt.⁴⁷
 - b. One panelist shared their personal narrative of committing new offenses such as driving on a suspended license in order to earn an income, as a result of not being able to afford LFOs. Through their work as a community organizer, they regularly came across similar stories from other individuals with LFOs.⁴⁸

https://www.nccourts.gov/assets/documents/publications/2018-19-Budget-Financial-Statistical-Operational-Report.pdf?6_QFOMDsLmS9VBAkvJOGUb49xzzofXEi (accessed June 20, 2023).

³⁹ Ibid.

⁴⁰ Coletti Testimony, *March 2022 Briefing*, p. 8.

⁴¹ Id, p. 8, 13.

⁴² Id, p. 4.

⁴³ Colgan Testimony, *June 2020 Briefing*, p. 4; *See also*: ACLU of North Carolina. "The Consequences of Rising Court Fines and Fees in North Carolina: At all Costs."

https://www.acluofnorthcarolina.org/sites/default/files/field_documents/aclu_nc_2019_fines_and_fees_report_17_singles_final.pdf (retrieved June 15, 2023).

⁴⁴ Colgan Testimony, *June 2020 Briefing*, p. 4.

⁴⁵ Ibid.

⁴⁶ Harrison Testimony, *July 2020 Briefing*, p. 5.

⁴⁷ Colgan Testimony, *June 2020 Briefing*, p. 3; Anna Stearns, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, August 13, 2020, transcript, p. 17 -18 (hereafter cited as *August 2020 Briefing*); Andrea "Muffin" Hudson, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, August 13, 2020, transcript, p. 6.

⁴⁸ Powell Testimony *August 2020 Briefing*, p. 3.

- c. LFO debt can be detrimental to a person’s credit, making it difficult for them to access housing and employment.⁴⁹
 - d. Legal financial obligations that are entered as civil judgements and not paid may not result in probation violations or other incarceration but can have unintended consequences such as negative effects on credit and liens on property.⁵⁰
 - e. Other collateral consequences include prohibiting people from antipoverty programs which pushes people further into a cycle of poverty.⁵¹
 - f. One of the most common and paradoxical collateral consequence is having a driver’s license suspended indefinitely due to LFO debt. Such a suspension often makes paying the debt difficult or impossible and intensifies the debtor’s personal and financial strains.⁵²
7. People of color are overrepresented in the court system and, as a result, carry the greatest burden of LFOs.⁵³
- a. 82% of those charged with failure to comply or failure to pay were people of color, and 54% of the North Carolina prison population incarcerated because of inability to pay were people of color.⁵⁴
 - b. The Board of Governors of the Federal Reserve System highlighted that in 2019, 5% of white families had unpaid LFO debt whereas 9% of Hispanic families and 12% of Black families did.⁵⁵
8. Judges generally strive to impose LFOs in a fair and consistent way.⁵⁶ However, the Committee has found that many North Carolinians believe that several problems confront judges and the courts.⁵⁷ Some statutory requirements are too burdensome, judges need

⁴⁹ Colgan Testimony, *June 2020 Briefing*, p. 3.

⁵⁰ Lock Testimony, *February 2022 Briefing*, p. 14; Jamie Markham, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, March 15, 2022, transcript, p. 15.

⁵¹ Kristie Puckett-Williams, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, August 13, 2020, transcript p. 10.

⁵² Colgan Testimony, *June 2020 Briefing*, p. 4; *See also*: Harrison Testimony, *July 2020 Briefing*, p. 4; *See also*: Bowes Testimony, *June 2020 Briefing*, p. 8-10, 12-13; *See also*: Maher Testimony, *July 2020 Briefing*, p. 20; *See also*: Powell Testimony, *August 2020 Briefing*, pp. 3-5; *See also*: Hudson Testimony, *August 2020 Briefing*, p. 6; *See also*: Deberry Testimony, *August 2020 Briefing*, p. 14-15; *See also*: Stearns Testimony, *August 2020 Briefing*, p. 18; *See also*: Maher Testimony, *August 2020 Briefing*, pp. 20-21, 23.

⁵³ Vernetta Alston, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, July 23, 2023, transcript, p. 3; *See also*: Colgan Testimony, *June 2020 Briefing*, p. 2; *See also*: Deberry Testimony, *August 2020 Briefing*, p. 14; *See also*: Puckett-Williams Testimony, *August 2020 Briefing*, p. 9; *See also*: Alston Testimony, *July 2020 Briefing*, p. 3; *See also*: Deberry Testimony, *August 2020 Briefing*, p. 15; *See also*: Harrison Testimony, *July 2020 Briefing*, p. 4.

⁵⁴ Deberry Testimony, *August 2020 Briefing*, p. 15. The panelist noted that the statistic 82% of those charged with failure to comply or failure to pay were people of color is specific to Durham, North Carolina; *See also*: Harrison Testimony, *July 2020 Briefing*, p. 4.

⁵⁵ Colgan Testimony, *June 2020 Briefing*, p. 3; *See also*: Board of Governors of the Federal Reserve System. “Report on the Economic Well-Being of U.S. Households in 2019.”

<https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf> (accessed June 21, 2023).

⁵⁶ Lock Testimony, *February 2022 Briefing*, p. 18–19.

⁵⁷ *See generally*: Lock Testimony, *February 2022 Briefing*.

additional training in assessing inability to pay, defendants need better information about raising inability to pay in court proceedings, and alternate payment programs need to be implemented.⁵⁸

- a. N.C.G.S. 15A-1362(a) requires courts to consider the ability of criminal defendants to pay fines.⁵⁹ N.C.G.S 15A-1563 provides that the judge may remit or revoke, in whole or in part, fines or costs whenever the circumstances for imposing the fines or costs no longer exist, it otherwise would be unjust to require payment, or the proper administration of justice requires resolution of the case.⁶⁰ At a high level, judges are aware that criminal judgments can have severe financial consequences for defendants.⁶¹ The Committee heard testimony suggesting that many judges try to help defendants mitigate those consequences.⁶² Fines are seldom imposed, except in drug trafficking cases where statutorily mandated and for driving while intoxicated.⁶³ Costs and fees often are waived at the time of judgment or remitted later, such as at a probation violation hearing.⁶⁴
- b. N.C.G.S 15A-1340.36(A) provides that in imposing restitution, the court shall consider the resources of the defendant, the defendant's ability to earn, the defendant's ability to support dependents, and any other relevant matters.⁶⁵ Most North Carolina judges do not impose LFOs without first inquiring into a person's ability to pay, especially in cases involving large amounts of restitution.⁶⁶ It is common for sentencing judges to ask about the defendant's ability to pay and any need for additional time to pay. It also is common for judges to strike all costs without objection from prosecutors.⁶⁷
- c. Judges seldom revoke suspended sentences and impose jail time for failure to pay in probation violation hearings; rather, they just terminate probation without revocation.⁶⁸ More frequently, judges will order that unpaid monies are to be entered as a civil judgment against the defendant, especially with unpaid restitution; less frequently, the unpaid monies are simply remitted.⁶⁹
- d. Judges typically are thoughtful, judicious, and act in good faith when imposing court costs and fines.⁷⁰ While the specific procedure varies by judge, most judges conduct thorough examinations about ability to pay when it is feasible to do so. It is not

⁵⁸ Lock Testimony, *February 2022 Briefing*, p. 20; *See also*: Denise Hartsfield Testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, February 15, 2022, transcript, p. 21-22.

⁵⁹ N.C.G.S. § 15A-1362(A): *See also*: Lock Testimony, *February 2022 Briefing*, p. 14.

⁶⁰ N.C.G.S. § 15A-1363: *See also*: Lock Testimony, *February 2022 Briefing*, p. 14.

⁶¹ Lock Testimony, *February 2022 Briefing*, p. 13.

⁶² Lock Testimony, *February 2022 Briefing*, p. 13.

⁶³ *Ibid*.

⁶⁴ *Id*, p. 13–14.

⁶⁵ N.C.G.S. § 15A-1340.36(A): *See also*: Lock Testimony, *February 2022 Briefing*, p. 14.

⁶⁶ Lock Testimony, *February 2022 Briefing*, p. 15, 19.

⁶⁷ Andrew Gregson Testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, February 15, 2022, transcript, p. 5.

⁶⁸ Gregson Testimony, *February 2022 Briefing*, p. 5; Lock Testimony, *February 2022 Briefing*, p. 18.

⁶⁹ Lock Testimony, *February 2022 Briefing*, p. 18.

⁷⁰ Ratledge Testimony, *March 2022 Briefing*, p. 28.

- unusual to see offenders come back to court two or three times about LFOs before their probation expires.⁷¹ Judges listen to lawyers and *pro se* defendants when providing information about their ability to pay.⁷²
- e. Judges seldom impose any period of confinement merely for nonpayment of court indebtedness if the offender has made any effort to pay it.⁷³ North Carolina judges typically do not issue arrest warrants for LFO nonpayment, although arrest warrants sometimes are issued for failure to appear at a hearing for LFO nonpayment.⁷⁴
 - f. LFOs are imposed across the board in a uniform, consistent, and nondiscriminatory matter, even though there are LFOs that may have a disparate impact on certain groups.⁷⁵ Judges proactively work to avoid disparate impact through their practices.⁷⁶
 - g. LFOs include court costs, fines, restitution, attorney fees, and certain other fees that do not fit within the statutory definition of costs.⁷⁷
 - h. There is broad consensus that LFOs in the criminal system sometimes are onerous, excessive, and unfairly burdensome.⁷⁸
 - i. The complexity of North Carolina's laws related to LFOs have grown over the past decade.⁷⁹ Rules for granting relief have become much more complicated and cumbersome.⁸⁰
 - j. Judges face real challenges in assessing the truthfulness and accuracy of financial information provided by defendants who are claiming inability to pay.⁸¹
 - k. Indigency determinations only assess whether a person facing jail time can afford to hire a lawyer. They do not determine that the defendant cannot ever pay LFOs.⁸²
 - l. Court statistics track the number of continuances. The vast majority of those continuances are due to the inability of the defendant to pay, especially in district court and traffic court.⁸³

⁷¹ Gregson Testimony, *February 2022 Briefing*, p. 6-7.

⁷² *Id.*, p. 9.

⁷³ Lock Testimony, *February 2022 Briefing*, p. 13-14.

⁷⁴ Ratledge Testimony, *March 2022 Briefing*, p. 26-27; *See also*: Emily Mistr, Written Testimony, p. 2, Appendix C. There was written testimony from Emily Mistr that arrest warrants routinely are issued for inability to pay in Nash, Edgecombe, and Wilson counties.

⁷⁵ Gregson Testimony, *February 2022 Briefing*, p. 7; *See also*: Lock Testimony, *February 2022 Briefing*, p. 13; *See also*: Hartsfield Testimony, *February 2022 Briefing*, p. 21.

⁷⁶ *See*: Finding #8, Sections a through e, p. 11-12.

⁷⁷ Jamie Markham, testimony, *Web Briefing Before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights*, March 15, 2023, transcript, p. 14.

⁷⁸ Gregson Testimony, *February 2022 Briefing*, p. 4; *See also*: Lock Testimony, *February 2022 Briefing*, p. 13; *See also*: Hartsfield Testimony, *February 2022 Briefing*, p. 22.

⁷⁹ Markham Testimony, *March 2022 Briefing*, p. 14.

⁸⁰ Markham Testimony, *March 2022 Briefing*, p. 14; Ratledge Testimony, *March 2022 Briefing*, p. 28.

⁸¹ Ratledge Testimony, *March 2022 Briefing*, p. 28.

⁸² *Id.*, p. 29-30.

⁸³ Gregson Testimony, *February 2022 Briefing*, p. 11.

- m. Form AOC-CR-415 is a pre-printed form for a motion and order for relief from fines, fees, and other LFOs.⁸⁴ One judge stated that “pro se applicants would need the assistance of an accountant to complete it.”⁸⁵ The form is rarely used. Pro se litigants know on their own to ask orally for relief and attorneys make oral motions, describing their client’s income, expenses, and a suggested amount to pay.⁸⁶
- n. Judges need express authority to remit or reduce mandated fees, such as the lab fee in drug cases.⁸⁷
- o. There is insufficient training for judges about considerations involved in ability to pay.⁸⁸ With the issuance of Rule 28, additional training could be done jointly with judges, clerks, prosecutors, probation officers, and others who have a role in administering LFOs.⁸⁹
- p. One helpful aid is a bench card summarizing a judge’s authority to grant relief from various monetary obligations, both at sentencing and in subsequent proceedings, which also offers suggested approaches to considering a defendant’s ability to pay. Such a card has been designed by Jamie Markham.⁹⁰
- q. North Carolina law was amended in 2011 to provide that court costs apply automatically to all convictions regardless of sentence, including an active sentence.⁹¹ Costs are unlikely to be paid by a defendant who is given an active sentence rather than being placed on probation.⁹² That led to an increase in the now widespread practice of imposing those costs as a civil judgment.⁹³
- r. Criminal defendants often ask for LFOs to be imposed as a civil rather than criminal obligation.⁹⁴ The civil obligation is not going to result in a probation violation or

⁸⁴ North Carolina Judicial Branch. “Form AOC-CR-415 Request For Relief From Fines, Fees And Other Monetary Obligations, And Order On Request.” Administrative Office of the Courts. https://www.nccourts.gov/assets/documents/forms/cr415_3.pdf?VersionId=.nS22gZSK7rAHve63oys0MBaQUIouACa (accessed June 21, 2023); *See also*: Lock Testimony, *February 2022 Briefing*, p. 14.

⁸⁵ Lock Testimony, *February 2022 Briefing*, p. 14.

⁸⁶ *Id.*, p. 17.

⁸⁷ *Ibid.*

⁸⁸ *Id.*, p. 20.

⁸⁹ Markham Testimony, *March 2022 Briefing*, p. 17, 19, 20; *See also*: Rule 28 – Equitable Imposition of Monetary Obligations in Criminal Cases and Infraction Cases Based on the Defendant’s Ability to Pay, within Supreme Court of North Carolina. “General Rules of Practice for the Superior and District Courts”

<https://www.nccourts.gov/assets/inline-files/General-Rules-of-Practice-for-the-Superior-and-District-Courts-Codified-13-February-2023.pdf?VersionId=bACZb.z5JPisHiHnqw2cDC5ZLBdW9Tyn?VersionId=bACZb.z5JPisHiHnqw2cDC5ZLBdW9Tyn> (accessed June 21, 2023).

⁹⁰ Markham Testimony, *March 2022 Briefing*, p.16; *See also*: Markham, James. “Monetary Obligations Card.” University of North Carolina School of Government. <https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/08/2018-07-31-20180094-Monetary-Obligations-Card%E2%80%93for-proofing.pdf> (retrieved June 1, 2023).

⁹¹ NCGS Chapter 7A-305; *See also*: Markham Testimony, *March 2022 Briefing*, p.14.

⁹² Markham Testimony, *March 2022 Briefing*, p.15.

⁹³ *Ibid.*

⁹⁴ Markham Testimony, *March 2022 Briefing*, p.15.

- other incarceration but will have long-term costs if unpaid such as license revocation, clouding title to real property, or negatively affecting credit.⁹⁵
- s. Civil judgments imposed for inability to pay disproportionately effect poor people and African Americans. They can prevent persons from buying a house or being admitted to public housing.⁹⁶
 - t. More data is needed as to the actual collection of civil judgments imposed for unpaid LFOs.⁹⁷
 - u. Publishing statistics on LFO waivers by individual judges is not viewed favorably by those judges.⁹⁸
 - v. A delayed payment program was effective in reducing the effects of LFOs as well as repeated hearings for failure to pay.⁹⁹
 - w. Defendants in district court often do not know about waiver of LFOs or deferred prosecution programs.¹⁰⁰ Prosecutors can and often do help inform them, but additional court personnel are needed, especially in counties with larger populations in lower-economic categories.¹⁰¹ Unrepresented defendants who are concerned about their inability to pay need better information about how to raise this with the judge.¹⁰²
 - x. The statutory requirement that written notice be given to any affected party or government agency before a judge waives or remits LFOs (other than restitution) is unduly burdensome.¹⁰³
9. While judges have the authority to waive many court costs, they only do so in about 8% of cases statewide.¹⁰⁴ Panelists highlighted administrative barriers, such as judicial waiver tracking, placed on judges as a potential reason for the decline in waivers.¹⁰⁵
 - a. For example, as part of the Appropriations Act in 2017, the state legislature required that courts could not waive fees unless notice was given via first class mail to all directly impacted government entities (approximately 600 in total).¹⁰⁶

⁹⁵ Markham Testimony, *March 2022 Briefing*, p.15.

⁹⁶ Hartsfield Testimony, *February 2022 Briefing*, p. 20-21, 23, 28-29.

⁹⁷ Markham Testimony, *February 2022 Briefing*, p. 17-18.

⁹⁸ Hartsfield Testimony, *February 2022 Briefing*, p. at 23-24.

⁹⁹ *Id.*, p. 21-22, 25.

¹⁰⁰ *Id.*, p. 31.

¹⁰¹ *Ibid.*

¹⁰² Emily Mistr, March 1, 2022 E-Mail to Designated Federal Officer and Committee Chair in response to Committee request for clarification on public comment provided at February 15, 2022 Briefing, Appendix C.

¹⁰³ NCGS Chapter 7A-350; *See also*: Markham Testimony, *March 2022 Briefing*, p. 25.

¹⁰⁴ Harrison Testimony, *July 2020 Briefing*, p. 5; *See also*: North Carolina Poverty Research Fund. "Court Fines and Fees: Criminalizing Poverty in North Carolina", https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1443&context=faculty_publications (accessed June 21, 2023).

¹⁰⁵ Harrison Testimony, *July 2020 Briefing*, p. 6; *See also*: Bowes Testimony, *June 2020 Briefing*, p. 8; *See also*: Hunt Statement, at 3.

¹⁰⁶ North Carolina Administrative Office of the Courts. November 13, 2017 Memorandum from the General Counsel on New Fee Waiver Provision in the 2017 Appropriation Act.

The North Carolina Administrative Office of the Courts determined that the best approach to this is to send monthly general notices to all directly impacted state and local government entities.¹⁰⁷

- b. The number of waivers being granted was already very low even before these requirements were implemented. For example, in 2016, over 86,000 waivers were granted compared to only 28,000 granted in 2018.¹⁰⁸
10. LFOs have legal repercussions yet are applied to cases without legal representation or other certain legal processes.¹⁰⁹
- a. As part of the 2013 Appropriations Act, the North Carolina state legislature reclassified punishments for Class 3 Misdemeanor offenses so that many resulted only in fines and not prison time.¹¹⁰ One of the outcomes of this change was that many of these cases were no longer eligible for court-appointed attorneys.¹¹¹
 - b. The Sixth Amendment right to counsel does not apply if the sentence involves an economic sanction but no period of incarceration, no matter how complicated the factual, legal, or evidentiary questions involved in the case.¹¹² This results in many people being sentenced to jail without being provided a lawyer or a meaningful process when voluntarily waiving their right to counsel.¹¹³
11. Since participation in criminal justice system, including the requirement to pay legal financial obligations, is involuntary,¹¹⁴ the government needs to consider its responsibility in paying for the operations of the court system.
- a. Fees that are paid are allocated into the General Fund, and the General Fund then pays for the entire cost of the courts; however, \$5 million are spent on the courts and the cost of running the court system is close to \$700 million.¹¹⁵

https://www.nccourts.gov/assets/documents/publications/Fee_Waiver_Memo_w_attachments.pdf?nxKvQXSILwVJYRYbiGnnCo2gzDydb7s (accessed June 21, 2023).

¹⁰⁷ Ibid; *See also*: Nieman Testimony, *June 2020 Briefing*, p. 6-7; *See also*: Bowes Testimony, *June 2020 Briefing*, p. 9.

¹⁰⁸ Puckett-Williams Testimony, *August 2020 Briefing*, p. 9-10; *See also*: North Carolina Administrative Office of the Courts. “2016 Report on Criminal Cost Waivers G.S. 7A-350.” <https://nccriminallaw.sog.unc.edu/wp-content/uploads/2016/04/20160201-NCAOC-Report-on-Criminal-Cost-Waivers.z.pdf> (accessed June 21, 2023); *See also*: North Carolina Administrative Office of the Courts. “2018 Report on Criminal Cost Waivers G.S. 7A-350.” <https://webservices.ncleg.gov/ViewDocSiteFile/23693> (accessed March 13, 2023).

¹⁰⁹ Puckett-Williams Testimony, *August 2020 Briefing*, p. 10.

¹¹⁰ NCGS Session Law 2013-360, Senate Bill 402 <https://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2013-2014/SL2013-360.pdf> (accessed June 21, 2023); *See also*: Harrison Testimony, *July 2020 Briefing*, p. 5; *See also*: Rubin, John. “Public Defense Education – Appointment of Counsel for Class 3 Misdemeanors.” University of North Carolina School of Government, November 2013. <https://www.sog.unc.edu/resources/faq-collections/appointment-counsel-class-3-misdemeanors> (Accessed June 21, 2023).

¹¹¹ Harrison Testimony, *July 2020 Briefing*, p. 5.

¹¹² Colgan Testimony, *June 2020 Briefing*, p. 17.

¹¹³ Puckett-Williams Testimony, *August 2020 Briefing*, p. 10.

¹¹⁴ Coletti Testimony, *March 2022 Briefing*, p. 4-5.

¹¹⁵ Coletti Testimony, *March 2022 Briefing*, p. 8.

Recommendations

Among their duties, advisory committees are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.¹¹⁶ In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the North Carolina Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this report and issue a formal request to the North Carolina General Assembly and North Carolina Governor to:
 - a. Appoint a bipartisan, legislative committee to study and make recommendations regarding the financial impact of fines, fees, and costs. The study should include a history of fines and fees, time and resources used in assessing monetary obligations, cost of collections, tracking of assessments, purpose, payments once made, legal representation, enacting an incentive, such as a reduced rate for early payment, and the feasibility of an income-based sliding scale fee structure. The courts are a core function of government and there needs to be an assessment of how the funding gap for the court system will be addressed, or if fees will continue to be used as a revenue tool for the overall General Fund.
 - b. End the practice found in NCGS Chapter 7A-350 of requiring the North Carolina Administrative Office of the Courts to report “by the name of each judge granting a waiver” of LFOs.
 - c. Fund training for judges and court personnel that will ensure enforcement of state statutes and procedures that require the courts to consider a defendant’s ability to pay before imposing obligations.
 - d. Create incentives for jurisdictions to eliminate longstanding LFO debt and its collateral consequences such as the indefinite suspension of drivers’ licenses.
 - e. Repeal the installment plan fee found in NCGS Chapter 7A-304(f).
 - f. Provide explicit statutory authority allowing judges to waive costs and fees related to community service (NCGS Chapter 143B-708) and lab fees (NCGS Chapter 7A-304).
 - g. Repeal the requirement found in the General Statutes providing notice to agencies before waiving fines and fees.

¹¹⁶ 45 C.F.R. § 703.2 (a).

Appendix

Documents related to the Committee's study of this topic may be accessed at the following link:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvOond0011ef58&id=L05D

A. Briefing Agenda, Minutes, and Presentation Slides

B. Briefing Transcripts

C. Written Testimony

D. Additional Resources

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