



North Carolina Advisory Committee to the U.S. Commission on Civil Rights Civil Rights and Equity of Legal Financial Obligations in North Carolina

Legal financial Obligations (LFOs) refer to fines, fees, and charges attached to criminal convictions and citations. LFOs come in four general categories: fines, forfeitures, restitution, and fees. The payments greatly vary by local court decisions and determinations. In North Carolina, the payment of economic sanctions is a standard condition of probation or parole.

The Committee took up this project via a series of web briefings in 2020 and 2022. The contents of the report are primarily based on testimony heard by the Committee during public briefings. The report is intended to focus on civil rights concerns specifically regarding post-conviction legal financial obligations. The information in this policy brief is drawn from the testimony received by the Committee, which is referenced in the report.

Why does North Carolina use Legal Financial Obligations?

North Carolina uses LFOs to ease the burden of operating the criminal justice system on public finances. As previously stated, there are four general categories of LFOs. Fines are imposed as punishment, forfeitures take back gains acquired illegally, restitution compensates a victim of a crime for harm, and fees pay for court services and general governmental expenses.

While all four categories of LFOs have increased in North Carolina during the past 20 years, the LFO category of fees has increased by 400%. This is why fees are considered the most problematic LFO.

How is the revenue from Legal Financial Obligations used?

Money collected from fines, forfeitures, and restitution are all allocated to specific recipients; however, fines are used to defray general governmental expenses. The North Carolina Constitution requires fines and forfeitures to be appropriated to the public school system, while restitution goes directly to the victim of a crime. Conversely, fees are treated as a general source of governmental income. In the 2018-19 fiscal year, for example, the General Assembly applied \$323 million worth of fees collected by the courts

Key Points:

- Legal Financial Obligations (LFOs) have detrimental, long-lasting impacts on defendants' lives, such as potential reincarceration, loss of public benefits, or inability to access public housing.
- People of color are overrepresented in the court system and are disproportionately impacted by LFOs.
- LFOs have legal repercussions for defendants, however the defendant does not have access to legal representation during the proceeding due to a re-classification of punishments under Class 3 misdemeanors.
- While judges strive to be fair and consistent, they require more training on how to assess a defendant's inability to pay an LFO.
- Large administrative barriers lead to frequent rejection of waivers of payment.

to the general fund. One advantage of this is that having the funds go into a general pool rather than directly to pay for court services disincentivizes the courts from issuing harsher fees and predatory prosecutions, as they have in other states, in order to collect to higher revenues. Nevertheless, the recent dramatic increase of fees creates a perception of systematic abuse.

The North Carolina state government should consider the court system as a public good, wherein it would have a responsibility to pay for operations of the court system. The state currently covers only \$5 million of the \$700 million required for operations.

How do Legal Financial Obligations disproportionately impact communities of color?

People of color are overrepresented in the court system, and thus carry the heaviest burden of LFOs in North Carolina. For example, 82% of those charged with failure to pay or failure to comply were people of color, while 54% of the North Carolina prison population incarcerated due to failure to pay were people of color.

LFOs have detrimental and long-lasting impacts on the defendants who are mostly people of color, such as the potential for reincarceration or the loss of public benefits. People who struggle to pay back an LFO may forgo necessities such as food, rent, medical care, or child support. LFO debt can also have harmful impacts on the defendant's credit, limiting their access to housing or employment. 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. In some cases, a defendant's inability to pay can lead to reincarceration.

LFOs have legal repercussions yet may be applied to cases without legal representation. The Sixth Amendment right to counsel does not apply if the sentence involves an economic sanction but no jail time. Since the punishment for Class 3 misdemeanor offenses were re-classified as fines rather than jail time in North Carolina, defendants sentenced to LFOs are not being provided a lawyer. When the defendant is unable to pay an LFO, they are forced into a cycle of debt. This occurs when the debt amount continues to increase as interest accrues, making it more difficult for the defendant to pay off even the principle of their debt. In some cases, the courts will issue warrants for arrest in cases on nonpayment of debt.

What challenges do judges face in imposing Legal Financial Obligations in a fair and consistent way?

Judges generally strive to impose LFOs in a fair and consistent way. However, the Committee heard testimony that statutory requirements are too burdensome, and that judges require more training to assess if a defendant has the ability to pay. Further, even though LFOs are imposed across the board in a uniform, consistent, and nondiscriminatory manner, they have a disparate impact on certain communities. Judges work to mitigate financial consequences and only impose LFOs when necessary.

Most North Carolina judges do not impose LFOs without first inquiring into a defendant's financial situation and seldom impose any period of confinement merely for nonpayment of court indebtedness if the offender has made any effort to pay it. Overall, rules for granting relief have become much more complicated and cumbersome. Although judges listen to the defendant, they

face real challenges in assessing the financial information. Indigency determinations, for example, only assess if a defendant can afford to hire a lawyer, not if they can afford to pay an LFO. The complexity of North Carolina's laws related to LFOs have grown over the past decade.

Other administrative barriers placed on judges include judicial waiver tracking, which is a potential reason for the decline in waivers. For example, 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). This greatly limits the ability of judges to waive payment of LFOs and leads to continued harmful repercussions on groups who are overrepresented in the criminal justice system.

Recommendations (*selected*)

- (1) The North Carolina General Assembly and North Carolina Governor should appoint a bipartisan, legislative committee to study and make recommendations regarding the financial impact of fines, fees, and costs.
- (2) The North Carolina General Assembly and North Carolina Governor should 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.
- (3) The Supreme Court of North Carolina, Chief district Court Judges throughout North Carolina, and the North Carolina Administrative Office of Courts should require judges to conduct meaningful, rigorous ability to pay hearings that include a mandatory inquiry into a defendant's ability to pay before assessing costs.
- (4) The Supreme Court of North Carolina, Chief district Court Judges throughout North Carolina, and the North Carolina Administrative Office of Courts should prohibit the issuance of arrest warrants solely for failure to pay criminal court fines, fees, and penalties.

The United States Commission on Civil Rights maintains 56 Advisory Committees. Each committee is composed of citizen volunteers familiar with local and state civil rights issues. The members assist the Commission with its fact-finding, investigative, and information dissemination functions.

This product is part of the North Carolina Advisory Committee's study on the Civil Rights and Equity of Legal Financial Obligations. This policy-oriented summary of the published report is intended to aid stakeholders seeking solutions to this complex issue. You can find the full report here <https://www.usccr.gov/files/2023-08/nc-lfo-report.pdf>.

The brief may rely on testimony, studies, and data generated from third parties. The views, findings, and recommendations expressed in this report are those of a majority of the North Carolina Advisory Committee, and do not necessarily represent the views of the Commission, nor do they represent the policies of the U.S. Government. For more information, please contact Victoria Moreno at vmoreno@usccr.gov.