

# All the "Justice" Money Can Buy

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“How am I supposed to pay that?” That’s a typical refrain heard from indigent criminal defendants in Public Defender offices across the State in response to their “Bill of Costs.”<sup>1</sup> In North Carolina, criminal court costs have been steadily rising, – far outpacing the rate of inflation<sup>2</sup> - over the past twenty years. Not only has the monetary cost of these fees increased exponentially, the number of fees has as well. Upon conviction, criminal defendants, including the indigent – those who a court has determined are too poor to contribute to their representation – are required<sup>3</sup> to pay a litany of fees to support causes ranging from “supplemental pension benefits of sheriffs”<sup>4</sup> to “staffing and operations of the Criminal Justice Education and Standards Commission.”<sup>5</sup>

In this article we will discuss the increasing burden these fees are placing on indigent criminal defendants who are often punished more severely and even

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<sup>1</sup> Court Costs Form – Guilford County Criminal Court – Revised 12/15. Provided by the clerk in Guilford County to every defendant after conviction.

<sup>2</sup> For example, in 1995 the “General Court of Justice” fee, N.C. Gen. Stat. §7A-304(4), was \$41.00, 20 years later it is \$147.50; an increase of 260% or almost five times the rate of inflation in the United States which rose 54% during the same time period.

<sup>3</sup> Most of these fees can only be waived “upon entry of written order, supported by findings of fact and conclusions of law”. See N.C. Gen. Stat. §7A-304.

<sup>4</sup> N.C. Gen. Stat. §7A-304(3a).

<sup>5</sup> N.C. Gen. Stat. §7A-304(3b).

incarcerated for no reason other than that their poverty prevents payment of these fees.

Take for example, two typical High School students: one from an indigent family, the other from a family with resources. One student insults the other's girlfriend which leads to a fight and both being charged with "simple affray," a Class 2 misdemeanor.<sup>6</sup> Neither has a record and both plead guilty. In an attempt to be fair, the State offers both the first offender's program.<sup>7</sup> Upon completion of this program the State will dismiss the defendant's criminal record. In Guilford County, the program has a mandatory \$200.00 admission fee.<sup>8</sup> The student with the means to pay does so and, after completing the program, walks away with no criminal record. The poor student, with no means to pay to for the program, is saddled with a conviction and, typically, placed on probation for a year with a 30-day sentence hanging over his head. If he doesn't find some way to pay all the standard court costs,<sup>9</sup> attorney fees<sup>10</sup> and probation fees<sup>11</sup> the State will attempt to

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<sup>6</sup> N.C. Gen. Stat §14-33(a).

<sup>7</sup> N.C. Gen. Stat § 15A-1341(a4).

<sup>8</sup> Outer Limits (<http://www.outerlimitsprogram.org/>) the deferral program approved by the District Attorney of Guilford County sets the rate for admission at \$200.00.

<sup>9</sup> \$180.00 in district court in 2015. See "Court Costs and Fees Chart," Administrative Office of the Courts, *available at* [http://www.nccourts.org/Courts/Trial/Documents/court\\_costs\\_chart-Oct2015-criminal.pdf](http://www.nccourts.org/Courts/Trial/Documents/court_costs_chart-Oct2015-criminal.pdf).

<sup>10</sup> \$55.00 per hour for a public defender in district court. See, Memorandum, "IDS Policies Governing Attorney Fee and Expense Applications in Non-Capital Criminal and Non-Criminal Cases at the Trial Level," *available at* <http://www.ncids.org/Rules%20&%20Procedures/Fee%20and%20Expense%20Policies/Atty%20Fee%20policies,%20non-capital.pdf>.

<sup>11</sup> \$40.00 per month. N.C. Gen. Stat. § 15A-1343.

revoke his probation and send him to jail for the 30-day term.<sup>12</sup> One student can buy his way out of the criminal charge; the other is shackled with a criminal record and possible jail time. The only difference: poverty.

Because the numerous criminal court costs are scattered throughout the General Statutes, the easiest way to see their true scope is to consult the “Court Costs and Fees Chart” from the Administrative Office of the Courts.<sup>13</sup> Each defendant who is convicted or pleads guilty is charged a fee that is statutorily mandated to support various entities within the criminal justice system.<sup>14</sup> The minimum costs in District Court for infractions and misdemeanors are \$178.00 and \$180.00 respectively. In Superior Court they are \$205.00.<sup>15</sup> If a defendant makes a first appearance in District Court and the rest of her case is handled in Superior Court, she is charged both District and Superior Court fees, resulting in a total minimum cost of \$352.50. Appealing a District Court conviction to Superior Court for a *Trial de Novo* results in being double-charged for the minimum court fees. These ever-increasing fees are indicative of the substantial efforts the North Carolina legislature has made to place an increasingly large burden on criminal defendants

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<sup>12</sup> If the probation were violated, the student would be charged a “jail fee” for his own incarceration of \$40.00 per day. See N.C. Gen. Stat §§ 7A-313 and 148-29.

<sup>13</sup> [http://www.nccourts.org/Courts/Trial/Documents/court\\_costs\\_chart-Oct2015-criminal.pdf](http://www.nccourts.org/Courts/Trial/Documents/court_costs_chart-Oct2015-criminal.pdf).

<sup>14</sup> In addition to the General Court of Justice fee, defendants are charged a Facilities fee, Telecommunications and Data Connectivity fee, Law Enforcement Officer Retirement/Insurance and Training and Certification fees, Service of Criminal Process fee, and, for misdemeanor and felony defendants, a DNA fee.

<sup>15</sup> See “Appendix – Criminal Costs Summary” to the “Court Costs and Fees Chart.”

to fund the day-to-day operation of the court system. Beyond these charges, which themselves can be highly burdensome to indigent defendants, there are dozens of other criminal fees that can raise a defendant's debt burden substantially. These include a \$60.00 non-waivable Appointment of Counsel Fee for Indigent Defendants<sup>16</sup>, a Community Service Supervision Fee of \$250.00<sup>17</sup>, and a Probation Supervision Fee of \$40.00 per month<sup>18</sup>. A Crime Lab Fee of \$600.00 is charged to a defendant who is convicted or pleads guilty when the State Crime Laboratory or another facility performs forensic testing. If that case goes to trial and the laboratory analyst is called as an expert witness, the defendant is charged an additional \$600.00 for the witness' services.<sup>19</sup>

As illustrated, these costs can result in substantial burdens on indigent defendants that go beyond the obvious effects of taking money out of the hands of people who are already struggling to make ends meet. On top of the prospect of getting a criminal record or being incarcerated for failure to pay court debts, North Carolina allows some criminal justice debt to be collected in the same manner as civil judgments,<sup>20</sup> resulting in the debt being filed with the county clerk and becoming

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<sup>16</sup> N.C. Gen. Stat. § 7A-455.1.

<sup>17</sup> N.C. Gen Stat. § 143B-708.

<sup>18</sup> N.C. Gen Stat. § 15A-1343.

<sup>19</sup> N.C. Gen. Stat. § 7A-304. If more than one type of evidence is tested and/or more than one witness testifies, additional \$600.00 fees apply for each test and each testimony.

<sup>20</sup> See N.C. Gen Stat §15A-1365. "When a defendant has defaulted in payment of a fine or costs, the judge may order that the judgment be docketed. Upon being docketed, the judgment becomes a lien on the real estate of the

available to credit reporting agencies.<sup>21</sup> This can result in substantial damage to credit scores, thereby minimizing prospects to obtain housing and employment.<sup>22</sup> Payment of court costs are a regular condition of probation.<sup>23</sup> Failure to pay subjects defendants to active prison time - even the poorest defendants. Under federal law, those who violate a term of their probation become ineligible for Temporary Assistance to Needy Families, Supplemental Nutrition Assistance Program benefits (formerly known as Food Stamps), low-income housing and housing assistance, and Supplemental Security Income for the Aged, Blind, and Disabled (Social Security).<sup>24</sup> While many states allow individuals with criminal justice debt to work it off through community service, North Carolina does not present this as an option.<sup>25</sup> This leaves indigent defendants, many of whom have mental and/or physical limitations, limited education and no significant job skills, with almost no way to get out from under these court debts and the threat of incarceration.

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defendant in the same manner as do judgments in civil actions;” *See also*, N.C. Gen Stat § 24-1, imposing a mandatory 8% interest on civil debt owed to the State.

<sup>21</sup> ALICIA BANNON ET AL., BRENNAN CENTER FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 27 (2010), *available at* <https://www.brennancenter.org/publication/criminal-justice-debt-barrier-reentry>.

<sup>22</sup> *Id.*

<sup>23</sup> N.C. Gen Stat §15A-1343.

<sup>24</sup> BANNON ET AL., *supra* note 21, at 28.

<sup>25</sup> *Id.* at 15.

In future articles, we hope to show that this policy decision to increase the costs assessed in criminal court can often be counterproductive causing the State to expend more time and resources in an effort to collect these fees than they can ever hope to recover from indigent criminal defendants.