

**Court Costs and Fines in Criminal Cases**

North Carolina District Court Judges Conference  
Training

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**Agenda**

- National overview of court costs and fines
- Introduction of Criminal Justice Policy Program
- Reforms across the country
  - Benchcards as a tool of reform
- Benchcard for North Carolina: North Carolina law on criminal justice debt
- Other opportunities for local projects

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**National Overview of  
Criminal Justice Debt**



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### Upward trend in number and amount of LFOs

- In 1991, 25% of inmates reported receiving LFOs. By 2004, that number had risen to 66 percent.
- Between 2010 and 2015, all but 3 states increased civil and/or criminal fee amounts.
- In 1994, seven jurisdictions allowed fee imposition for use of a public defender. By 2016, 43 jurisdictions utilized such fees, which ranged from \$10 to \$400.

National Consumer Law Center, *Debt and Democracy: How the Collection of Civil Fees and Fines Contributed to the Unrest in Ferguson*, available at [https://www.nclc.org/images/pdf/debt\\_democracy\\_civil\\_fees\\_and\\_fines\\_collection/2014-2015%20debt\\_and\\_democracy\\_state.pdf](https://www.nclc.org/images/pdf/debt_democracy_civil_fees_and_fines_collection/2014-2015%20debt_and_democracy_state.pdf)

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### Ability to Pay

“If the probationer has made all reasonable efforts to pay the fine or restitution, and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically.”

Certain enforcement mechanisms may be justified only when “probationer has **willfully refused** to pay the fine or restitution when **he has the means to pay.**”

*Bearden v. Georgia*, 461 U.S. 660 (1983)

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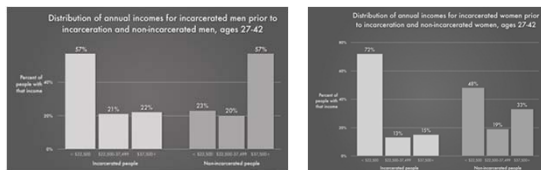
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### Poverty



Prison Policy Initiative, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned* (2015), available at <http://www.prisonpolicy.org/reports/income.html>

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### Enforcement mechanisms

- Additional fees, interest, financial penalties
- Driver's license revocation
- Warrants
- Incarceration
- Supervision consequences
- Civil judgments, garnishment, liens
- Voting Rights

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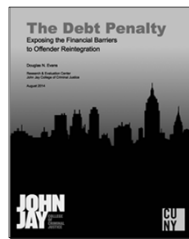
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### Impact on reentry

- "An important consequence of financial burdens is that they increase the likelihood of recidivism, particularly when offenders are unable to pay."



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### Conflicts of interest

State Law Specifies How Debt Revenue Must Be Distributed

Distribution Priority	Category	Major Beneficiary
1	Victim Restitution	Victim and State
2	Civil Recovery of Delinquent Collection Costs	Collection Program (Court or County)
3	State Surcharge	State
4	Fees and Penalty Assessments* (Prioritized across category)	State, Court, and County
5	Fees and Reimbursements* (Prioritized across category)	Court and County

\* Examples of fees and penalty assessments include the base fine and the state penalty assessment.  
 \* Examples of fees and reimbursements include the court operations fee and the civil assessment.

California Legislative Analyst's Office, "Restructuring the Court-Ordered Debt Collection Process," available at <http://www.lao.ca.gov/reports/2014/criminal-justice/debt-collection/court-ordered-debt-collection-111014-4.asp>

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**Criminal Justice Policy Program:  
What We Do**



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**Who we are**

- Legal and policy analysis designed to serve advocates or policy-makers throughout the country;
- Partnerships with government agencies to pilot and implement practical reforms;
- Convenings structured to diagnose problems and chart concrete reforms.



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**Our work on criminal justice debt**

State Partners



Arizona  
Arkansas  
Massachusetts  
Michigan

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**National Perspectives on Reform**

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**Growing momentum for reform**

- Over 100 pieces of LFO legislation filed in more than twenty states.
- LFO reform legislation passed several weeks ago in Texas.
- Legislation has been enacted over the past few years in Missouri, Colorado, California, Louisiana, Oklahoma, Delaware, Georgia, New Hampshire, Virginia, Arizona, and Oregon.

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**State legislation: themes**

- Require judges to determine ability to pay when imposing LFOs and assessing nonpayment.
- Presume inability based on certain factors (e.g. % of PL; benefits).
- Provide for judicial authority to tailor LFOs to individual ATP.
- Eliminating DL revocation as enforcement mechanism.
- Create commissions dedicated to LFO reform.

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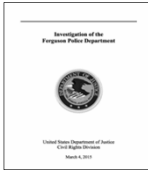
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### Ferguson and national commitment to LFO reform

- DOJ's Ferguson Report in March 2015 based on investigation of the Ferguson Police Department was a turning point in LFO reform.



Key findings:

- Officers and courts focused on generating revenue through fines and fees.
- Aggressive enforcement of low-level offenses.
- Disproportionate impact on minority communities.
- Routine use of warrants and incarceration.

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### Dear Colleague letter (March 2016)

- Addressed to state Chief Justices and court administrators.
- 5 main points
  - “[c]ourts must not incarcerate a person for nonpayment of fines and fees without first conducting an indigency determination and establishing that the failure to pay was willful.”
  - “[c]ourts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees.”



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### Dear Colleague letter (March 2016) continued

- “[c]ourts must not condition access to a judicial hearing on prepayment of fines or fees.”
- “[c]ourts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees.”
- “[c]ourts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections.”

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### Ferguson and *Dear Colleague* letter as impetus for judicial leadership

Judge Joanna Taylor, AR, on creating the Arkansas Joint Committee on Fines, Fees and Bail:

*"The DOJ letter had a profound impact on every judge that read it. For those judges that perceived these issues prior to the letter but were unable to generate enthusiasm for change, the letter provided a perfect platform for review and modification of policies and procedures. The letter directly impacted the decision of the Arkansas Judicial Council to form our joint committee, and the members of the committee have expressed appreciation that the DOJ used the 'Dear Colleague' letter to raise awareness throughout the judiciary of these issues rather than waiting until complaints and lawsuits were filed."*

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### Judicial leadership: national organizations

• Conference of Chief Justices and Conference of State Court Administrators created a **National Task Force on Fines, Fees and Bail Practices**.

- Purpose: "[A]ddress the ongoing impact that court fines and fees and bail practices have on communities – especially the economically disadvantaged – across the United States"
  - Drafts models statutes, policies and procedures for LFO collection and waiver.
  - Recommends guidelines and best practices.
- Composition: judicial and legal leaders, legal advocates, state policymakers, county and municipal government representatives, academics and public interest community.

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### Judicial leadership: understanding the shift

**OH Supreme Court Chief Justice Mary O'Connor:** "I don't think judges were intentionally not following the law . . . It wasn't: 'I don't care what the law is and I'm going to do it my way.' This was clearly an area they needed to brush up on."

**MO Supreme Court Chief Justice Patricia Breckenridge:** "My colleagues – the judges of the Supreme Court and the other judges and commissioners in Missouri's judicial system – work daily to properly administer justice in courtrooms all around the state . . . [b]ut as we learned, there are courts in our state that were not true to our system of justice."

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### Benchcards: Alternatives

#### Alternative Sanctions to Imprisonment That Courts Should Consider When There is an Inability to Pay

- a. Reduction of the amount due;
- b. Extension of time to pay;
- c. A reasonable payment plan or modification of an existing payment plan;
- d. Credit for community service (Caution: Hours ordered should be proportionate to the violation and take into consideration any disabilities, driving restrictions, transportation limitations, and caregiving and employment responsibilities of the individual);
- e. Credit for completion of a relevant, court-approved program (e.g., education, job skills, mental health or drug treatment); or
- f. Waiver or suspension of the amount due.

#### Alternative Sanctions to Imprisonment that Courts Should Consider When There is an Inability to Pay

If the court determines that the defendant is unable to comply with an order to pay money without manifest hardship, the court may consider:

- a payment plan;
- a modification of any existing payment plan;
- a reduction of the amount due;
- an extension of the time to pay;
- waiver of part or all of the money owed to the extent permitted by law;
- credit for community service;
- credit for completion of a relevant, court-approved program (e.g., education, job skills, mental health or drug treatment, youth-oriented projects);
- credit for school attendance and/or good grades.

See MCR 6.425(E)(1)(b); *Bearden*, 481 US at 672; SCAO Ability to Pay Workgroup's Tools and Guidance for Determining and Addressing an Obligor's Ability to Pay, p. 3, April 20, 2015.

NCS

Michigan



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### Benchcards: Bearden

#### OTHER REMEDIES FOR NONPAYMENT

- If a defendant fails to pay a fine, the court may reduce the fine to an amount the defendant is able to pay, continue or modify the payment schedule, or release the defendant from the obligation to pay.<sup>10</sup>
- For indigent defendants, the court should consider alternative public service in lieu of fines, where the State's goals of punishment and deterrence are adequately served.<sup>11</sup> Municipal courts have the authority to remit fines and require competent defendants to attend educational, corrective or rehabilitative programs.<sup>12</sup> Alternatively, municipal courts may allow a defendant to work off, under municipal direction, the amount of an unpaid judgment at a rate of at least \$10.00 per day of service.<sup>13</sup>

#### Alternative Sanctions to Imprisonment that Courts Should Consider When There is an Inability to Pay

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Alabama

Michigan



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### Benchcards: notice and counsel

#### Minimum Notice of the State Court Proceedings Before a Contempt Hearing

Notice should include the following information:

- hearing date and time;
- purpose for the appearance;
- that the person should bring any documentation that substantiates the court should consider an alternative ability to pay;
- that a person unable to pay may request payment deferrals or program modifications;
- that the court will not order incarceration if the person is found to have a lawful inability to pay; and
- that failure to appear at court may result in a warrant for the person's arrest.

Michigan

- Notice must be provided at a reasonable time prior to the hearing;
- A person has a right to counsel (including a public defender or court-appointed attorney) for the hearing.<sup>4</sup>

Ohio

See *Bearden*, 481 US at 672; SCAO Ability to Pay Workgroup's Tools and Guidance for Determining and Addressing an Obligor's Ability to Pay, p. 3, April 20, 2015.

#### Hearing Procedures and Standards

The Court must advise defendants of:

- (1) all defendants' right to an ability-to-pay hearing prior to jailing for nonpayment of fines, fees, state assessments, court costs, or assessments;
- (2) all defendants' right to be represented by legal counsel for defendant against possible incarceration for failure to pay LFOs;
- (3) indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration in proceedings concerning nonpayment of LFOs;
- (4) that ability to pay, efforts to secure resources, and alternatives to incarceration are critical issues in a Compliance Hearing;
- (5) the type of information relevant to determining ability to pay; and
- (6) the personal penalties if a person is found to have willfully failed to pay an LFO.

The Court must provide defendants an opportunity to present evidence that the amount allegedly owed is not accurate or not in fact owed if the defendant believes the amount is not correct.

Mississippi



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**North Carolina and LFOs**

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**Authority under state constitution**

**Article I, Section 18, Courts Shall Be Open:** "All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay."

**Article IV Section 1, Judicial Power:** "The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article."

**Article IV Section 2, General Court of Justice:** "The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration"

**Article I, Section 28, Imprisonment for Debt:** "There shall be no imprisonment for debt in this State, except in cases of fraud."

**Article IX, Section 7, County School Fund; State Fund for Certain Moneys:** "all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools."

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**Responsibility to pursue rehabilitation**

- Sentences should be commensurate with the offense and assist the defendant toward rehabilitation and restoration to the community. N.C.G.S. § 15A-1340.12.
- David Guice, NC Commissioner of Adult Correction and Juvenile Justice: "[North Carolina prisons] were built to control people, but not rehabilitate them . . . we are having to change the culture of how we do business and part of that is looking at the evidence - using a data based, evidence based approach to address the needs of our offender population."

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**North Carolina LFOs**

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**Fines**

*Financial obligations imposed as a penalty after a criminal conviction or admission of guilt to a civil infraction.*

§ 15A-340.23(b)	
Class	Maximum fine imposed
Class 1 and Class A1 misdemeanors	discretion of the court
Class 2 misdemeanors	\$1,000
Class 3 misdemeanors	\$200

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**Fees and costs**

*Financial obligations imposed as a way for jurisdictions to recoup costs of the "use" of the criminal justice system, including costs associated with public defenders, incarceration, probation supervision, GPS monitoring, and court proceedings.*

N.C.G.S § 7A-304	
Service of Process	\$5.00 each
Facilities	\$12.00 – 30.00
Telecommunications	\$4.00
Law Enforcement Officer (LEO) Retirement/Insurance	\$6.25
LEO Supplemental Pension Benefits	\$1.25
LEO Training and Certification	\$2.00
General Court of Justice Fee	\$147.50 - \$154.0
Chapter 20 Fee	\$10.00
Chapter 20 Improper Equipment Offense	\$50.00
Chapter 20 Subsequent Offense	\$100.00
Pretrial Release Services	\$15.00
Failure to Appear	\$50.00 - \$200.00
Lab Fee	\$600.00
DNA Fee	\$2.00
Lab Analysis Expert Witness	\$600.00
Installment Payment Fee	\$20.00

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### Standard costs for district court trial

N.C. Statutory Fee/Cost	Amount Due
Service of Process, N.C.G.S. § 7A-304(a)(1)	\$5.00
Use of courtroom and related judicial facilities N.C.G.S. § 7A-304(a)(2)	\$12
Support of the General Court of Justice	\$147.50
Appointment of Counsel, N.C.G.S. § 7A-455.1	\$60.00
LEO Retirement/Pension/Training, N.C.G.S. § 7A-304(a)(3)	\$9.50
Pretrial Release, N.C.G.S. § 7A-304(a)(5)	\$15.00
Criminal Record Check, N.C.G.S. § 7A-308(a)(17)	\$25.00
Lab Fee, Local N.C.G.S. §§ 7A-304(a)(8), 7A-304(a)(8a)	\$600.00
Chemical/Forensic Analysis Fee, N.C.G.S. § 7A-304(a)(11)	\$600.00
Expert Witness, Crime Lab Operated by Local Govt., N.C.G.S. § 7A-304(a)(12)	\$600.00
20 Days in Jail x \$10.00 per day, N.C.G.S. § 7A-313	\$200.00
40 Hours of Attorney Time x \$70.00	\$2,800.00
	<b>\$5,074.00</b>

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### Restitution

- Refers to financial obligations intended to compensate victims of a crime for their actual losses.
- In North Carolina: "For any injuries or damages arising directly and proximately out of the offense." N.C.G.S. § 15A-1340.34.

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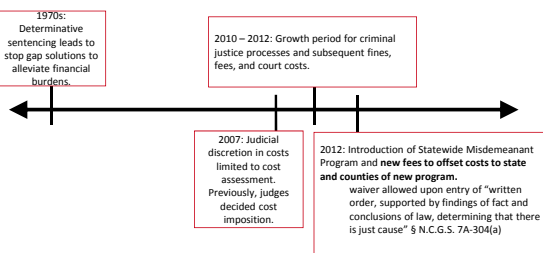
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### History of North Carolina LFOs



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### NC Benchcard: Constitutional law

- The Supreme Court held in *Bearden v. Georgia*, 461 U.S. 660, 673-674 (1983) a “sentencing court **must inquire into the reasons for the failure to pay.**” An individual who has “**made sufficient bona fide efforts to pay**” shall not be incarcerated for nonpayment unless alternate measures are not adequate.
- Further, **society’s interest in punishment and deterrence “can often be served fully by alternative means.”** *Id.* at 67-672.
- “A probationer’s sentence may not be revoked if he can demonstrate a **lawful excuse** for violating his probationary conditions.” *State v. Hill*, 510 S.E.2d 413, 415 (N.C. Ct. App. 1999).

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### Ability to Pay

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### NC Benchcard: Ability to pay at imposition

- **Fines:** N.C.G.S. § 15A-1362(a): “In determining the method of payment of a fine, the court **should** consider **the burden that payment will impose in view of the financial resources of the defendant.**”
- **Costs:** N.C.G.S. § 7A-304(a): “[U]pon entry of a written order, supported by **findings of fact and conclusions of law**, determining that there is **just cause**, the court may (i) waive costs assessed under this section or (ii) waive or reduce costs assessed [for certain statutory subdivisions].”
- **Restitution:** N.C.G.S. § 15A-1340.36(a): “In determining the amount of restitution to be made, the court shall take into consideration the **resources of the defendant** including all real and personal property owned by the defendant and the income derived from the property, the defendant’s **ability to earn**, the defendant’s **obligation to support dependents**, and **any other matters** that pertain to the defendant’s ability to make restitution.”

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### NC Benchcard: Factors for consideration in ability to pay

- **Fines**, N.G.C.S. § 15A-1362(a): “burden that payment will impose in view of the **financial resources** of the defendant.”
- **Fees and Costs**: not to be punitive. *Shore v. Edmisten*, 290 N.C. 628, 633 (1976).

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### NC Benchcard: Factors for consideration in ability to pay continued

• **Restitution**, N.C.G.S. § 15A-1340.36(a): “resources of the defendant including **all real and personal property** owned by the defendant and the income derived from the property, the defendant’s **ability to earn**, the defendant’s **obligation to support dependents**, and **any other matters**, that pertain to the defendant’s ability to make restitution.”

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### NC Benchcard: Collecting financial information

The image shows a screenshot of a state of North Carolina form titled "STATE OF NORTH CAROLINA" and "AFFIDAVIT OF INDIGENCE". The form includes fields for "County", "Name of Defendant", and "Address of Defendant". It also contains a table for "Assets and Liabilities" with columns for "Description", "Value", and "Date Acquired". The form is partially filled out with handwritten information.

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### NC Benchcard: Ability to pay in North Carolina

- As of 2016, North Carolina was ranked 39th in overall poverty across the US (ranked from rich to poor). The overall poverty rate was 16.4%.
- In 2016, North Carolina defendants were represented by public defenders in 117,333 out of 320,489 cases (36%).

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### NC Benchcard: Relevant information for ability to pay assessment

	Household Size							
	1	2	3	4	5	6	7	8
100% Federal Guideline	\$12,060	\$16,240	\$20,420	\$24,600	\$28,780	\$32,960	\$37,140	\$41,320
200% Federal Guideline (SUGGESTED)*	\$24,120	\$32,480	\$40,840	\$49,200	\$57,560	\$65,920	\$74,280	\$82,640

IRS cost of living statistics (ex; Mecklenburg County):

	Amount per month based on household income				
	1	2	3	4	5+
Housing and Utilities in Mecklenburg County	\$1,429	\$1,678	\$1,768	\$1,971	\$2,003
Food, housekeeping supplies, apparel & services, personal care products & services, and miscellaneous (National amount)	\$639	\$1,132	\$1,378	\$1,650	*\$125/month per person
Other allowances per person per month					
Transportation (Public)	\$189/person in household				
Transportation (Car Allowance)	\$700/month/car				
Out of Pocket Health Costs (plus cost of healthcare)	\$49 if below age 65 \$117 if over age 65				

\*Suggest 200% of guideline as reference point because Federal Poverty Guideline is outdated. Federal Poverty Guideline fails to account for regional differences in cost of living and fails to track increases in median family income.

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### NC Benchcard guidelines for determining ability to pay

- Presumptions of indigence:
  - Eligibility for **appointed counsel**;
  - Income at or below **200% of poverty guidelines**;
  - Whether individual is, or within the past six months has been, **homeless, incarcerated, or residing in a mental health or other treatment program**; or
  - Receiving **public assistance**. TANF, SSI, SSDI, and veteran's disability benefits are not subject to attachment, garnishment, execution, levy, or other legal process. Other benefits include food stamps, Medicaid, and housing subsidies.

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### NC Benchcard: Restitution statute factors

**1. Resources**

- Net monthly income;
- Adjusted for debts and liabilities; and any property or assets that can be liquidated without harm to individual or dependents; and
- All LFOs the individual may face in this and other cases;

**2. Ability to earn and any factors limiting individual's ability, including but not limited to:**

- Employment history and educational attainment;
- Discrimination, including because of criminal justice history;
- Homelessness, health or mental health issues including disability;
- Limited access to public transportation or limitations on driving privileges.

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### NC Benchcard: Restitution statute factors continued

**3. Obligation to support dependents, including child support obligations and support of elderly dependents.**

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### NC Benchcard: Restitution case law

- *State v. Hunter*, 315 N.C. 371, 376, 338 S.E.2d 99, 103 (1986): North Carolina Supreme Court case holding upfront ability to pay analysis is **required before imposing restitution** though findings of fact are not.
- *State v. Carter*, 652 S.E.2d 72 (2007): Applying “**common sense**” test. “Considering that defendant will earn wages of approximately \$2,500.00 per month, and the trial court required defendant to pay \$4,500.00 per month as restitution, common sense dictates that defendant will be unable to comply with this repayment schedule.”

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### NC Benchcard: Restitution case law continued

- *State v. Smith*, 90 N.C. App. 161, 168 (1998): Taking into account how much individual could reasonably pay **over probation term**.
- *State v. Mucci*, 594 S.E.2d 411, 419: Holding that the trial court's imposition of twenty-five hours per week of community service for three years as a condition of defendant's probation would make it **unduly burdensome** for defendant to be gainfully employed to the extent required to make his restitution payments while supporting his family.

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### NC Benchcard: Proportionality

- How much could the person reasonably pay over the course of a reasonable length of probation given the offense?
  - Guidelines, e.g. 2% of their net income. (Bankruptcy model)
- How long should a person reasonably be expected to pay?

Misdemeanants sentenced to community punishment N.C.G.S. § 15A-1343.2(d)(1)	Six to eighteen months
Misdemeanants sentenced to intermediate punishment N.C.G.S. § 15A-1343.2(d)(2)	Twelve to twenty-four months
Felons sentenced to community punishment N.C.G.S. § 15A-1343.2(d)(3)	Twelve to thirty months
Felons sentenced to intermediate punishment N.C.G.S. § 15A-1343.2(d)(4)	Eighteen to thirty-six months

- Maximums: Probation can be a maximum of five years long. N.C.G.S. § 15A-1342(a). Courts may extend a probation period by up to three years, with consent from the defendant, as necessary. N.C.G.S. § 15A-1343.2(d).

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### NC Benchcard: ATP Recap

- Consider ATP upfront. Standards vary by type of LFO.
- Presumptions of indigence.
- If LFO, how much?
  - Guidelines on poverty and proportionality.
  - Restitution factors and case law.
  - Proportionality

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**Alternatives to LFOs**

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**NC Benchcard: Remittance**

**Remittance.** The sentencing court may at any time remit or revoke the fine or costs or any unpaid portion of it. N.C.G.S. § 15A-1363 if:

- circumstances which warranted the imposition of the fine or costs no longer exist, OR
- it would otherwise be unjust to require payment, OR
- proper administration of justice requires resolution of the case.

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**NC Benchcard: Payment plans**

**Fines**  
N.C.G.S. § 15A-1362(b), Imposition of Fines: "Installment or Delayed Payments: When a defendant is ordered to pay a fine, the court may provide for the payment to be made within a specified period of time or in specified installments. If no such provision is made a part of the sentence, the fine is payable forthwith."

**Costs**  
N.C.G.S. § 7A-304(f), Costs in Criminal Actions: "The court may allow a defendant owing monetary obligations under this section to either make payment in full when costs are assessed or make payment on an installment plan arranged with the court."

**Restitution**  
N.C.G.S. § 15A-1340.36(b), Determination of Restitution: "The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period."

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**NC Benchcard: Community service**

- Court may sentence individual to complete a community service program “to promote rehabilitation and improve their communities in lieu of LFO payments.” N.C.G.S. § 143B-708
- Notes:
  - \$250 fee prior to participation. Can be granted extension.
  - No fee if person finds their own community service.
  - *State v. Mucci*, 594 S.E.2d 411, 419: “Twenty-five hours per week of community service for three years unduly burdensome . . . while supporting his family.”

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**LFOs and Probation**

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**NC Benchcard: LFOs as a condition of probation**

- Fines, costs, fees and restitution are regular conditions of probation (N.C.G.S. § 15A-1343(b)(6), (9), (10)).
- The Court may exclude LFO payment as a condition of supervised or unsupervised probation. N.C.G.S. § 15A-1343(b) (fines and costs); N.C.G.S. § 15A-1343(b) (restitution).
- An individual cannot be violated from probation for nonpayment.
  - The court may only revoke probation for a violation of a condition of probation under N.C.G.S. § 15A-1343(b)(1) or N.C.G.S. § 15A-1343(b)(3a), except as provided in N.C.G.S. § 15A-1344(d2).
    - Cannot commit new offense, abscond, etc.

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### NC Benchcard: Remitting LFOs after probation period

- Courts should remit LFOs at the end of probation period.
- Courts should be cautious about extending probation solely for payment. Consider probation length guidelines.

Misdemeanants sentenced to community punishment N.C.G.S. § 15A-1343.2(d)(1)	Six to eighteen months
Misdemeanants sentenced to intermediate punishment N.C.G.S. § 15A-1343.2(d)(2)	Twelve to twenty-four months
Felons sentenced to community punishment N.C.G.S. § 15A-1343.2(d)(3)	Twelve to thirty months
Felons sentenced to intermediate punishment N.C.G.S. § 15A-1343.2(d)(4)	Eighteen to thirty-six months

• Probation can be a maximum of five years long (N.C.G.S. § 15A-1342(a)). Courts may extend a probation period by up to three years, with consent from the individual, as necessary (N.C.G.S. § 15A-1343.2(d)).

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### LFO Nonpayment

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### NC Benchcard: Nonpayment

- Modification, remittance or revocation.
- Order to show cause and warrants.
- Notice and Counsel.
- Hearing upon non-payment.
  - Incarceration.
- Civil debt.
- Drivers' license revocation.

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### NC Benchcard: Modification, remittance or revocation

- The court can **remit or revoke or modify** the fine or costs or any unpaid portion of it.
  - **Circumstances which warranted the imposition** of the fine or costs **no longer exist** (N.C.G.S. § 15A-1363); or
  - it would otherwise be **unjust** to require payment (N.C.G.S. § 15A-1363); or
  - **proper administration of justice** requires resolution of the case (N.C.G.S. § 15A-1363); or
  - the individual has made a **good faith effort to pay**. N.C.G.S. § 15A-1364(c).

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### NC Benchcard: Orders to show cause or order for arrest

- Best practices: reminders before orders to show cause and avoid warrants.
- Courts **may** (not required) order defendants to appear and show cause for nonpayment. N.C.G.S. § § 15A-1364(a), 15A-1362(c)
- Court **must** issue **order to show cause first**. "If the defendant fails to appear, an order for his arrest may be issued." 15A-1364(a)
- "Courts must not use arrest warrants ... as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections."
- Bail amount should not be amount of outstanding debt: ROR.

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### NC Benchcard: Use of warrants in NC is costly

- Incarcerating individuals for inability to make LFO payments has a harmful effect on public funding:
  - Mecklenburg County example:
    - In 2009, 246 individuals were held in jail for an average of 4 days pending a compliance hearing for nonpayment.
      - County incurred over \$40,000 in costs for jail terms.
      - County collected only \$33,476 from individuals who were arrested.

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### NC Benchcard: Hearing upon non-payment

- *Bearden* inquiry into ability to pay.
  - “Shows inability to comply and that his nonpayment was not attributable to a failure on his part to make a **good faith** effort to obtain the necessary funds for payment” or “good faith excuse.”
  - Use **ability to pay guidelines and presumptions** discussed earlier.
- *State v. Hill*
  - First, trial court must consider and evaluate the evidence presented by the defendant.
  - Second, the trial court must make an actual finding of fact which clearly shows that it considered defendant’s evidence.

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### NC Benchcard: Hearing upon non-payment continued

- **Alternatives**
  - Allowing the defendant additional time for payment; or
  - Reducing the amount of the fine or costs or of each installment; or
  - Revoking the fine or costs or the unpaid portion in whole or in part.
- The Court’s interest in punishment and deterrence can often be served by means other than incarceration. *See generally Bearden v. Georgia*, 461 U.S. 660, 672 (1983)

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### NC Benchcard: Incarceration

- Best practices: no incarceration as non-payment of LFO. At least consider alternatives.
- Other relevant NC law:
  - Court can activate suspended sentence or imprison for a term not to exceed 30 days.
  - Court can reduce sentence.
  - May, after entering the order, reduce the sentence for good cause.

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### NC Benchcard: Notice and Counsel

*Turner v. Rogers*

- Notice to defendant ability to pay will be critical to hearing.
- Form provided to defendant to provide relevant financial information.
- Opportunity for defendant to respond to financial status inquiries.
- Court must make an express finding on defendant's ability to pay.
- Defendants have a right to counsel where they may face incarceration. N.C.G.S. § 15A-603(b)

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### NC Benchcard: Civil debt

- Courts may convert outstanding fines to a lien. N.C.G.S. § 15A-1365; N.C.G.S. § 15A-1340.38.
- Court should consider remittance if there is an inability to pay given the 8% interest. N.C.G.S. § 20-24.1(a)(2).
- Civil debt as alternative to incarceration.

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### NC Benchcard: Driver's license revocation

- Division of Motor Vehicles must revoke motor vehicle driver's licenses upon individual's failure to pay LFOs. N.C.G.S. § 20-24.1(a)(2).
- The Court is responsible for notifying the Division of Motor Vehicles.
  - Note: Ensure person receives proper notice and opportunity to resolve before taking this step.
- Defendants must be given an opportunity for trial or hearing within a reasonable time N.C.G.S. § 20-24.1(b1).

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### Final thoughts: opportunities for local projects

- Systems analysis
- Judicial training

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### Final thoughts: revenue flow

- Despite common belief that LFO revenue goes to the courts or schools, funds are widely dispersed across the state.
- FY 2015-2016, court revenues distributed as follows:
  - Approximately 77% of LFOs disbursed to state treasurer, other state agencies, and law enforcement retirement.
    - Approximately 23% of total disbursement appropriated to judicial branch.
  - Counties/municipalities received money from fines, forfeitures, facilities fees, officer fees, pretrial civil revocation fees, service of process fees, and jail fees.
    - Schools required by State Constitution to receive fines and forfeitures, largest source of revenue for counties. Article IX, Section 7

EXAMPLE OF FUNDS APPROPRIATION: GENERAL COURT OF JUSTICE FEE  
District Court Fee: \$147.50  
- \$145.05 goes to General Fund used by legislators to pay for almost all state operations

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