


# Rule 28

## Equitable Imposition of Monetary Obligations

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www.sog.unc.edu

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# GENERAL RULES OF PRACTICE FOR THE SUPERIOR AND DISTRICT COURTS

**Rule 28. Equitable Imposition of Monetary Obligations in Criminal Cases and Infraction Cases Based on the Defendant's Ability to Pay**

(a) **Scope.** This rule applies only in criminal cases and infraction cases in which the court has discretion to impose costs, fees, fines, restitution, or other monetary obligations equitably based on the defendant's ability to pay.

(b) **Motion for Relief.** A defendant convicted of a crime or found responsible for an infraction may use AOC-CR-415, Request for Relief from Fines, Fees, and Other Monetary Obligations, to move the court to impose costs, fees, fines, restitution, or other monetary obligations equitably based on the defendant's ability to pay.

(c) **Determination by Court.** The court must consider the defendant's motion and, if necessary, conduct a hearing. The court must rule on the motion prior to imposing costs, fees, fines, restitution, or other monetary obligations and may grant the defendant any relief permitted by law.



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## Actually three things...

- AOC-CR-415
- Rule 28
- DMV Settlement



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# Recent Court Costs History

- Pre-2011 Costs generally don't apply in "active" cases
- 2011 Costs always apply unless waived for **just cause**
- 2012 Judge must make written findings of fact and conclusions of law to waive costs
- 2014 Cost waivers **reported** to General Assembly, tracked by individual judge
- 2017 No waiver or remission without **notice by first-class mail** and opportunity to be heard for all directly affected government entities

- **AOC-CR-415**
- **Rule 28**
- **DMV Settlement**

2018

Criminal Monetary Obligations 2018	AMOUNT	PERMISSIBLE RELIEF				CIVIL JUDGMENT	
		Waive	Other Relief	Remit	Waive Upon Appeal	Permissibility	Waiver
<b>Basic Costs (applicable by default)</b>							
General Court of Justice Fee (District)	C.S. 8B-00401	▲	▲	▲	●	●	●
General Court of Justice Fee (Superior)	C.S. 8B-00401	▲	▲	▲	●	●	●
Facilities Fee (District)	C.S. 8B-00402	▲	▲	▲	●	●	●
Facilities Fee (Superior)	C.S. 8B-00402	▲	▲	▲	●	●	●
Telecom Data Fee	C.S. 7B-00020	▲	▲	▲	●	●	●
LED Information Fee	C.S. 8B-00403	▲	▲	▲	●	●	●
LED Training Fee	C.S. 8B-00403	▲	▲	▲	●	●	●
DMV Fee	C.S. 8B-00404	▲	▲	▲	●	●	●
<b>Court-appointed Costs (applicable to certain non-prosecutorial)</b>							
Arrest Process Fee	C.S. 8B-00405	▲	▲	▲	●	●	●
Charger 20 Case	C.S. 8B-00406	▲	▲	▲	●	●	●
Impound Equipment Fee	C.S. 8B-00407	▲	▲	▲	●	●	●
Impound Storage Fee	C.S. 8B-00408	▲	▲	▲	●	●	●
Pretrial Jail Fee	C.S. 8B-00409	▲	▲	▲	●	●	●
Pretrial Release Services Fee	C.S. 8B-00410	▲	▲	▲	●	●	●
Translocal/Inpatient Lab Fee	C.S. 8B-00411	▲	▲	▲	●	●	●
Digital Forensics Lab Fee	C.S. 8B-00412	▲	▲	▲	●	●	●
Training Lab Report Fee	C.S. 8B-00413	▲	▲	▲	●	●	●
Witness Fee	C.S. 8B-00414	▲	▲	▲	●	●	●
Blood Test Photocopy Fee	C.S. 8B-00415	▲	▲	▲	●	●	●
Treatment Plan Writing Fee	C.S. 8B-00416	▲	▲	▲	●	●	●
Failure to Appear Fee	C.S. 8B-00417	▲	▲	▲	●	●	●
Failure to comply Exam	C.S. 7B-00021	▲	▲	▲	●	●	●
<b>Discretionary Costs</b>							
Restitutional Lab Fee	C.S. 8B-00418	▲	▲	▲	●	●	●
<b>Non-Cost Fees</b>							
Production Supervision Fee	C.S. 8B-00419	▲	▲	▲	●	●	●
DMV Fee	C.S. 7B-00022	▲	▲	▲	●	●	●
Community Service Fee	C.S. 8B-00420	▲	▲	▲	●	●	●
Guidelines Based Monitoring/SMB Fee	C.S. 8B-00421	▲	▲	▲	●	●	●
<b>Attorney Fees</b>							
Attorney Fee	C.S. 8B-00422	▲	▲	▲	●	●	●
Attorney Appointment Fee	C.S. 8B-00423	▲	▲	▲	●	●	●
Exam	C.S. 7B-00023	▲	▲	▲	●	●	●
<b>Restitution</b>							
Civil/County/Supers Act/USBA Restitution	Varies	▲	▲	▲	●	●	●
Non-CRBA Restitution	Varies	▲	▲	▲	●	●	●
Non-CRBA Restitution	Varies	▲	▲	▲	●	●	●

Note: Blank cells in the table indicate that no law expressly allows or prohibits the indicated action.

▲ The court has clear statutory authority to take the indicated action, with no requirement for findings or notice to affected parties.

● The court may take the indicated action after satisfying the following requirement:  
 Discretionary matters: The court must enter an order on the record for waiving partial restitution. C.S. 7A-100.31(a).  
 Arred costs or fees: The court must give 15-day written notice and an opportunity to be heard for directly affected government entities. C.S. 7B-305(a). The AOC's extensive monthly restorative justice program.  
 Arred restitution: The court must give 15-day written notice and an opportunity to be heard for the district attorney, the victim, the victim's estate, or any other required of restitution. C.S. 7A-100.31(b).

■ The court may take the indicated action after satisfying the following two requirements:  
 1. The court must enter a written order, supported by findings of fact and conclusions of law, determining that there is just cause for the waiver; and  
 2. The court must give 15-day written notice and an opportunity to be heard for directly affected government entities. C.S. 7A-305(a). The AOC's extensive monthly restorative justice program.

□ Indicates that the authority to waive the cost includes the authority to reduce it at the point of imposition.

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2019

# North Carolina Criminal

A UNC School of Government Blog

## A Swiss Army Form for Fines and Fees

Posted on Jun. 17, 2019, 6:10 pm by Jamie Markham



Some of you have probably seen the School's bench card on Criminal Monetary Obligations (it is available [here](#)). It may sometimes be helpful as a background reference, but it's not set up in a way that helps a court put the law into action.



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(b) Motion for Relief. A defendant convicted of a crime or found responsible for an infraction may use AOC-CR-415, Request for Relief from Fines, Fees, and Other Monetary Obligations, to move the court to impose costs, fees, fines, restitution, or other monetary obligations equitably based on the defendant's ability to pay.

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(c) Determination by Court. The court must consider the defendant's motion and, if necessary, conduct a hearing. The court must rule on the motion prior to imposing costs, fees, fines, restitution, or other monetary obligations and may grant the defendant any relief permitted by law.

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- AOC-CR-415
- Rule 28
- **DMV Settlement**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SETI JOHNSON and MARIE )  
BONHOMME-DICKS, on behalf of )  
themselves and all others )  
similarly situated, and SHAREE )  
SMOOT and NICHELLE YARBOROUGH, )  
on behalf of themselves and )  
those similarly situated, )  
 )  
Plaintiffs, ) 1:18-cv-00467  
 )  
v. )  
 )  
WAYNE GOODWIN, in his official )  
capacity as Commissioner of )  
the North Carolina Division of )  
Motor Vehicles, )


**Johnson et al. v. Goodwin (M.D.N.C. 2022)**

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## Johnson v. Goodwin

- Class action against DMV. Two classes:
  - **“The Revoked Class”**—Those whose licenses were revoked by DMV on or after May 30, 2015 for unpaid money in a Chapter 20 case
  - **“The Future Revocation Class”**—Those whose licenses will be revoked in the future due to unpaid money in a Chapter 20 case

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**YOUR DRIVER'S LICENSE IS  
SCHEDULE TO BE SUSPENDED ON  
07/27/2021 FOR NOT PAYING THE  
CITATION ABOVE**

|Questions? Help? Please call: |  
| Phone: (919)792-4300 |  
|Please visit [www.XXXXXXXXXX](http://www.XXXXXXXXXX) |

YOUR DRIVER'S LICENSE IS SCHEDULED TO BE SUSPENDED ON 07/27/2021 FOR NOT  
PAYING THE CITATION ABOVE

You can prevent this suspension by acting NOW! Choose Option A or Option B.

\*\*\*\*\*  
\* ALL STEPS MUST OCCUR BEFORE 07/27/2021 \*  
\* to keep your license from being suspended \*  
\*\*\*\*\*

|Please visit [www.XXXXXXXXXX](http://www.XXXXXXXXXX) |

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\*\*\*\*\*  
\* ALL STEPS MUST OCCUR BEFORE 07/27/2021 \*  
\* to keep your license from being suspended \*  
\*\*\*\*\*

Option A: I CAN'T afford to pay now.

When people have a hard time paying off tickets, they ask the court to  
reduce or waive the amount owed. You can too!

**When people have a hard time paying  
off tickets, they ask the court to  
reduce or waive the amount owed.  
You can too!**

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Please visit [www.XXXXXXXXXX](http://www.XXXXXXXXXX)

021 FOR NOT  
or Option B.

**Fill out the Motion for Relief. AOC-CR-415.**

When people have a hard time paying or they ask the court to reduce or waive the amount owed. You can

Step 1: Fill out the Motion for Relief. AOC-CR-415. You can download the Motion at [bit.ly/35AsMQc](http://bit.ly/35AsMQc). Due to high call volumes, please call DMV at 919-715-7000 only if want a copy of the motion by mail. For help filling out the motion, go to [www.XXXXXXXXXX](http://www.XXXXXXXXXX).

Step 2: Go to the Clerk's Office at the above-listed court, and give the Clerk the Motion. Ask the Clerk for a hearing ASAP.

Step 3: Attend the hearing (you do not need a lawyer but may use one) and tell the Judge why you cannot afford to pay.  
-> The Judge might reduce the amount you owe, give you a payment plan you can afford, or waive what you owe.

Final Step: The court will notify the DMV once you have either obtained a waiver of the amount owed or fully paid off your new payment amount, and the DMV will stop your suspension.

Option B: I CAN afford to fully pay now.

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Please visit [www.XXXXXXXXXX](http://www.XXXXXXXXXX)

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Option B: I CAN afford to fully pay now.

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Please visit [www.YYYYYYYYYY](http://www.YYYYYYYYYY)

**Attend the hearing . . . and tell the judge why you cannot afford to pay.  
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Option B: I CAN afford to fully pay now.

- **AOC-CR-415**
- **Rule 28**
- **DMV Settlement**

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**AOC-CR-415 (2022)**

**NORTH CAROLINA** File No. \_\_\_\_\_

\_\_\_\_\_ County In The General Court Of Justice  
 District  Superior Court Division

**STATE VERSUS**

\_\_\_\_\_

\_\_\_\_\_ Defendant's Date Of Birth

I am homeless. Name And Address Of Attorney \_\_\_\_\_  I am self-represented.

\_\_\_\_\_

\_\_\_\_\_ Attorney's Telephone No. \_\_\_\_\_

**ABILITY TO PAY WORKSHEET**

(per month)  I am unemployed. \$ \_\_\_\_\_

\_\_\_\_\_

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## Rule 28: Process

- Clearly requires you to consider any motion on ability to pay at sentencing
- Arguably requires consideration of ability to pay at later times (probation violation, request for remission, etc.)

UNC SCHOOL OF GOVERNMENT

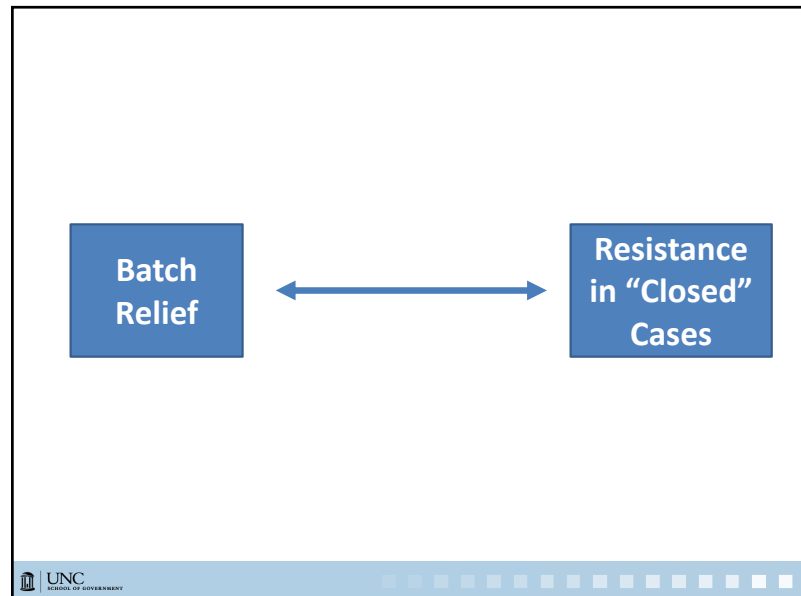
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## Rule 28: Process

- AOC advice: Process the CR-415 as a motion in the criminal case
- Calendar according to local rule and practice
  - Calendaring ensures notice to affected parties
  - Simeon v. Hardin, 339 N.C. 358 (1994)

UNC SCHOOL OF GOVERNMENT

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## Rule 28: Substance

- Consider the defendant's ability to pay

## § 15A-1362. Imposition of fines.

(a) General Criteria. - 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.**

## § 15A-1340.36. Determination of restitution.

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,** but the court is not required to make findings of fact or conclusions of law on these matters.

## § 20-24.1. Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.

(b) A license revoked under this section remains revoked until the person whose license has been revoked:

...

(3) pays the penalty, fine, or costs ordered by the court; or

(4) **demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted.**

ABILITY TO PAY WORKSHEET	
Employment Income (per month) <i>List employer(s):</i>	<input type="checkbox"/> I am unemployed. \$
Other Income (per month) <i>Specify, including for example rental income, investment income, pension, spouse's income, and gifts and financial support from family:</i>	\$
How many people, including yourself, does this income support?	
What is the total value of your cash on hand and in bank accounts?	\$
What is the total value of all real property you own?	\$
What is the total value of all major personal property you own (vehicles, jewelry)?	\$
Rent/mortgage you pay monthly	\$
Childcare/child support payments you pay monthly	\$
<i>(check all that apply)</i> I receive the following public assistance:	
<input type="checkbox"/> TANF (Temporary Assistance for Needy Families)	<input type="checkbox"/> I have been homeless in the past 6 months
<input type="checkbox"/> Supplemental Security Income (SSI)	<input type="checkbox"/> I have been incarcerated on an active sentence in the past 6 months
<input type="checkbox"/> Social Security Disability Insurance (SSDI)	<input type="checkbox"/> I am under 18
<input type="checkbox"/> SNAP/Food Stamps	<input type="checkbox"/> I am a full-time student
<input type="checkbox"/> Veterans' Benefits	

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## Evaluating Ability to Pay

- Presumptions
  - Under age 18
  - Appointed counsel?
  - Incarceration or other institutionalization (recent or impending)?
  - Student?
  - Receipt of public assistance?

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## Evaluating Ability to Pay

- Income thresholds
  - % of Federal Poverty Guidelines

2021 Federal Poverty Guidelines					
Household Size	100%	138%	150%	200%	400%
1	\$12,880	\$17,774	\$19,320	\$25,760	\$51,520
2	\$17,420	\$24,040	\$26,130	\$34,840	\$69,680
3	\$21,960	\$30,305	\$32,940	\$43,920	\$87,840
4	\$26,500	\$36,570	\$39,750	\$53,000	\$106,000
5	\$31,040	\$42,835	\$46,560	\$62,080	\$124,160
6	\$35,580	\$49,100	\$53,370	\$71,160	\$142,320
7	\$40,120	\$55,366	\$60,180	\$80,240	\$160,480
8	\$44,660	\$61,631	\$66,990	\$89,320	\$178,640

\*For households with more than 8 persons, add \$4,540 for each additional person

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## Rule 28: Substance

- You “may grant the defendant any relief permitted by law.”

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# What relief is permitted?

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## Authority to Grant Relief from Monetary Obligations: AT SENTENCING

	<p>The court must consider ability to pay. Under G.S. 15A-1340.36, in determining the restitution amount, the court shall take into consideration the resources of the defendant including:</p> <ul style="list-style-type: none"> <li>Real property</li> <li>Personal property</li> <li>Income derived from property</li> <li>Ability to earn</li> <li>Obligation to support dependents</li> <li>Any other matters that pertain to the defendant's ability to make restitution</li> </ul> <p>Consider any Rule 28 Motion (AOC-CR-413) made by the defendant.</p>
<b>Restitution</b>	<p><b>TO GRANT RELIEF: Order partial restitution (or no restitution at all)</b></p> <ul style="list-style-type: none"> <li><b>Non-impediment.</b> In cases not covered under the CYBA, restitution is discretionary. G.S. 15A-1340.34(c). In CYBA cases, the court shall require restitution. G.S. 15A-1340.34(d), although it may require partial restitution as described immediately below.</li> <li><b>Order partial restitution.</b> The court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, it shall state on the record the reasons for doing so.</li> <li><b>Civil Judgment.</b> In cases covered under the CYBA, restitution to a victim in excess of \$250 may be enforced like a civil judgment. If the defendant receives probation, the order is not enforceable until a judge finds, upon terminating or revoking probation, that restitution in a sum certain remains due and payable. G.S. 15A-1340.38. Use form AOC-CR-811.</li> </ul>
<b>Fines</b>	<p>The court should consider ability to pay. In determining the method of payment of a fine, the court should consider the burden the payment will impose in view of the financial resources of the defendant. G.S. 15A-1362. Consider any Rule 28 Motion (AOC-CR-413) made by the defendant.</p> <p><b>TO GRANT RELIEF: Don't impose</b></p> <ul style="list-style-type: none"> <li><b>Non-impediment.</b> A fine need not be "waived." Rather, it is part of the sentence that a judge generally may, in his or her discretion, choose not to impose, without any requirement of findings or notice.</li> <li><b>Excessive fines.</b> If a statute calls for a particular fine as a mandatory component of a sentence the judge should impose it unless he or she determines that it would violate the constitutional prohibition against excessive fines. N.C. Const. Art. 1, § 20; State v. Tubert, 293 N.C. App. 477 (2008) (\$5,000 fine not excessive).</li> </ul>
<b>Costs</b>	<p><b>Remember: One set of costs.</b> The court should impose only one set of costs for all charges stemming from the same underlying incident that are adjudicated together. State v. Rieger, 267 N.C. App. 647 (2019).</p> <p><b>TO GRANT RELIEF: Waive or reduce</b></p> <ul style="list-style-type: none"> <li><b>Waive.</b> The court may waive costs upon entry of a written order, supported by findings of fact and conclusions of law, that there is just cause to do so. Before waiving costs the court must provide notice by first-class mail to directly affected government entities of the date and time of the hearing and the right to be heard make objection at least 15 days prior to the hearing. The AOC provides statewide monthly notice to all potentially affected government entities, which may satisfy this requirement. It is an error for a judge to operate under the impression that he or she has no discretion to waive costs. State v. Patterson, 223 N.C. App. 180 (2012). Consider any Rule 28 Motion (AOC-CR-413) made by the defendant.</li> <li><b>Exception for probationary jail fees.</b> The \$40/day jail fee for split sentences and other probationary confinement applies only when the court specifically imposes it; no findings or notice are required when the court chooses not to impose that fee. G.S. 2A-315. Note, however, that the \$10/day fee for pretrial jail confinement is a cost that applies unless waived as described above.</li> <li><b>Reduction.</b> If not waived, the state and local lab or hospital fee (\$600) and testifying lab expert fee (\$500) may, in the alternative, be reduced.</li> </ul>
<b>Fees</b>	<p><b>TO GRANT RELIEF: Exempt</b></p> <p>Consider any Rule 28 Motion (AOC-CR-413) made by the defendant.</p> <ul style="list-style-type: none"> <li><b>Probation supervision fee (\$40/month).</b> The court may exempt a person from paying the fee for good cause and upon motion of the probationer. G.S. 15A-1343(c). There is no requirement for notice or findings.</li> <li><b>ESA fee (\$90 setup fee plus \$4.48/day).</b> The court may exempt a person from paying the fee for good cause and upon motion of the probationer. G.S. 15A-1343(g). There is no requirement for notice or findings.</li> <li><b>Satellite-based monitoring fee (\$300 fee).</b> The court may exempt a person from paying the SSM fee for good cause and upon motion of the defendant. There is no requirement for notice or findings.</li> <li><b>Community Service fee.</b> No statute governs waiver of the \$200 community service fee. G.S. 143B-708.</li> </ul>
<b>Attorney Fees</b>	<p><b>Attorney fees.</b> Attorney fees are a judgment against the defendant, determined in accordance with rules adopted by IOS. G.S. 7A-455(d).</p> <p><b>Appointment fee.</b> The \$75 appointment fee is mandatory and may not be remitted or revoked by the court. G.S. 7A-455.1(b).</p>

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## Costs

Criminal Monetary Obligations 2018	AMOUNT	PERMISSIBLE RELIEF				CIVIL JUDGMENT	
		Waive	Order Partial	Exempt	Reduce	Permissibility	Interest
<b>Basic Costs (collectible by default)</b>							
General Court of Justice Fee (District)	G.S. 18-100(a)	▲	▲	▲	▲	▲	▲
General Court of Justice Fee (Superior)	G.S. 18-100(b)	▲	▲	▲	▲	▲	▲
Facilities Fee (District)	G.S. 18-100(d)	▲	▲	▲	▲	▲	▲
Facilities Fee (Superior)	G.S. 18-100(e)	▲	▲	▲	▲	▲	▲
Telecom/Data Fee	G.S. 18-100(f)(4)	▲	▲	▲	▲	▲	▲
LEO Retention Fee	G.S. 18-100(f)(5)	▲	▲	▲	▲	▲	▲
LEO Training Fee	G.S. 18-100(f)(6)	▲	▲	▲	▲	▲	▲
LEO Fee	G.S. 18-100(f)(7)	▲	▲	▲	▲	▲	▲
<b>Reimbursement Costs (collectible in certain circumstances)</b>							
Arrest Process Fee	G.S. 18-100(g)	▲	▲	▲	▲	▲	▲
Charge 20 Fee	G.S. 18-100(h)	▲	▲	▲	▲	▲	▲
Impound Equipment Fee	G.S. 18-100(i)(1)	▲	▲	▲	▲	▲	▲
Impound Storage Fee	G.S. 18-100(i)(2)	▲	▲	▲	▲	▲	▲
Pretrial Jail Fee	G.S. 18-100(j)	▲	▲	▲	▲	▲	▲
Pretrial Release Services Fee	G.S. 18-100(k)	▲	▲	▲	▲	▲	▲
Transit Local Hospital Lab Fee	G.S. 18-100(l)(1)	▲	▲	▲	▲	▲	▲
Digital Forensics Lab Fee	G.S. 18-100(l)(2)	▲	▲	▲	▲	▲	▲
Testifying Lab Expert Fee	G.S. 18-100(m)	▲	▲	▲	▲	▲	▲
Witness Fee	G.S. 18-100(n)	▲	▲	▲	▲	▲	▲
Blood Test Packaging Fee	G.S. 18-100(o)	▲	▲	▲	▲	▲	▲
Treatment Plan Writing Fee	G.S. 18-100(p)	▲	▲	▲	▲	▲	▲
Failure to Appear Fee	G.S. 18-100(q)	▲	▲	▲	▲	▲	▲
Failure to comply Exam	G.S. 18-100(r)	▲	▲	▲	▲	▲	▲
<b>Discretionary Costs</b>							
Probationary Jail Fee	G.S. 18-100(s)	▲	▲	▲	▲	▲	▲
<b>Non-Cost Fees</b>							
Publication Supervision Fee	G.S. 18-100(t)	▲	▲	▲	▲	▲	▲
ESM Fee	G.S. 18-100(u)(1)&(2)&(3)	▲	▲	▲	▲	▲	▲
Community Service Fee	G.S. 143B-708	▲	▲	▲	▲	▲	▲
Qualifying Social Monitoring/SMF Fee	G.S. 18-100(v)	▲	▲	▲	▲	▲	▲
<b>Attorney Fees</b>							
Attorney Fee	G.S. 7A-455(d)	▲	▲	▲	▲	▲	▲
Attorney Appointment Fee	G.S. 7A-455.1(b)	▲	▲	▲	▲	▲	▲
Fees	G.S. 7A-100	▲	▲	▲	▲	▲	▲
<b>Restitution</b>							
Costs to Enforce Order Act C.Y.B.A. Restitution	Varies	▲	▲	▲	▲	▲	▲
Non-CYBA Restitution	Varies	▲	▲	▲	▲	▲	▲
Non-CYBA Restitution	Varies	▲	▲	▲	▲	▲	▲

Note: Blank cells in the table indicate that no law expressly allows or prohibits the indicated action.

▲ The court has clear statutory authority to take the indicated action, with no requirement for findings or notice to affected parties.

▲ The court may take the indicated action after satisfying the following requirements:  
 - Other-permitted: The court must enter on the record the reasons for ordering partial restitution. G.S. 15A-1340.34(d).  
 - Amount or fee: The court must give 15-day written notice and an opportunity to be heard for directly affected government entities. G.S. 7A-305(a). The AOC's statewide monthly notice might satisfy this requirement.  
 - Amount or fee: The court must give 15-day written notice and an opportunity to be heard for the district attorney, the victim, the victim's estate, or any other required of restitution. G.S. 15A-1340.38.

■ The court may take the indicated action after satisfying the following two requirements:  
 1. The court must enter a written order, supported by findings of fact and conclusions of law, determining that there is just cause for the waiver; and  
 2. The court must give 15-day written notice and an opportunity to be heard for directly affected government entities. G.S. 7A-305(a). The AOC's statewide monthly notice might satisfy this requirement.

□ Indicates that the authority to waive the cost includes the authority to reduce it at the point of imposition.

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## Waiver

- Front-end relief from costs

**G.S. 7A-304:** Only upon 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 under subdivision (7), (8), (8a), (11), (12), or (13) of this section.

## Waiver

- G.S. 7A-304: No court may waive or remit all or part of any court fines or costs without providing notice and opportunity to be heard by all government entities directly affected. The court shall provide notice to the government entities directly affected of (i) the date and time of the hearing and (ii) the right to be heard and make an objection to the remission or waiver of all or part of the order of court costs at least 15 days prior to hearing.



ADMINISTRATIVE OFFICE OF THE COURTS

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January 15, 2020

GRAHAM POLICE DEPT.  
P. O. DRAWER 357  
GRAHAM, NC 27253

Re: Notice to Government Entities Receiving Court Costs and Fines

To Whom It May Concern—

The North Carolina Administrative Office of the Courts (NCAOC) is sending you this notice because you have been identified as a state or local government entity that may receive court costs or fines imposed in criminal and infraction cases. Effective December 1, 2017, government entities “directly affected” by any waiver or remission of court costs and fines are entitled to notice and the opportunity to be heard, through counsel, on any such waiver or remission.<sup>1</sup>

## Other Fees: “Exempt”

**G.S. 15A-1343(c1) Supervision Fee.** - Any person placed on supervised probation pursuant to subsection (a) of this section shall pay a supervision fee of forty dollars (\$40.00) per month, **unless exempted by the court**. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on supervised probation.

## Exemption

- On motion of the defendant or the State, the court may “exempt” a defendant from paying certain non-cost fees
  - Probation supervision fees (\$40/month)
  - EHA fees (\$90 + \$4.35/day)
  - SBM fee (\$90)
- No written finding required
- No requirement for notice to affected parties

## Remit

### § 15A-1363. Remission of a fine or costs.

A defendant who has been required to pay a fine or costs, including a requirement to pay fine or costs as a condition of probation, or a prosecutor, **may at any time petition the sentencing court** for a remission or revocation of the fine or costs or **any unpaid portion of it. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine or costs no longer exist, that it would otherwise be unjust to require payment, or that the proper administration of justice requires resolution of the case, the court may remit or revoke the fine or costs or the unpaid portion in whole or in part or may modify the method of payment.**

## Remit

- G.S. 7A-304: No court may waive **or remit** all or part of any court fines or costs without providing notice and opportunity to be heard by all government entities directly affected. The court shall provide notice to the government entities directly affected of (i) the date and time of the hearing and (ii) the right to be heard and make an objection to the remission or waiver of all or part of the order of court costs at least 15 days prior to hearing.

# Remitting Restitution

§ 15A-1340.39. Remission of restitution, notice, and hearing required. (a) Notice and Hearing Required. – No court may remit all or part of an order of restitution entered pursuant to G.S. 15A-1340.34 without providing notice and an opportunity to be heard to the district attorney and the victim, victim's estate, or any other entity to which the order directs restitution to be paid. The court shall provide notice to the district attorney and the victim, the victim's estate, or other entity of (i) the date and time of the hearing and (ii) the right to be heard and make an objection to the remission of all or part of the order of restitution, at least 15 days prior to hearing. Notice shall be made to the victim, victim's estate, or other entity by first-class mail to the address provided for receipt of funds paid pursuant to the order of restitution.

Court may remit if, after hearing, it finds that remission is “warranted and serves the interests of justice”

# Attorney Fees: IDS Rules

Attorney Appointment Fee:  
“May not be remitted or revoked”

### Authority to Grant Relief from Monetary Obligations: AT SENTENCING

<b>Restitution</b>	<p>The court must consider ability to pay. Under G.S. 15A-1340.36, in determining the restitution amount, the court shall take into consideration the resources of the defendant including:</p> <ul style="list-style-type: none"> <li>• Real property</li> <li>• Personal property</li> <li>• Income derived from property</li> <li>• Ability to earn</li> <li>• Obligation to support dependents</li> <li>• Any other matters that pertain to the defendant's ability to make restitution</li> </ul> <p>Consider any Rule 28 Motion (ADC-CR-415) made by the defendant</p> <p><b>TO GRANT RELIEF: Order partial restitution (or no restitution at all)</b></p> <p>❑ <b>Non-impediment.</b> In cases not covered under the CUSA, restitution is discretionary. G.S. 15A-1340.34(c). In CUSA cases, the court shall require restitution, G.S. 15A-1340.34(b), although it may require partial restitution as described immediately below.</p> <p>❑ <b>Order partial restitution.</b> The court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, it shall state on the record the reasons for doing so.</p> <p>❑ <b>Child judgment.</b> In cases covered under the CUSA, restitution to a victim in excess of \$250 may be enforced like a civil judgment. If the defendant receives probation, the order is not enforceable until a judge finds, upon terminating or revising probation, that restitution in a sum certain remains due and payable. G.S. 15A-1340.38. Use form ADC-CR-911.</p>
<b>Fines</b>	<p>The court should consider ability to pay. In determining the method of payment of a fine, the court should consider the burden the payment will impose in view of the financial resources of the defendant. G.S. 15A-1362. Consider any Rule 28 Motion (ADC-CR-415) made by the defendant.</p> <p><b>TO GRANT RELIEF: Don't impose</b></p> <p>❑ <b>Non-impediment.</b> A fine need not be “waived.” Rather, it is part of the sentence that a judge generally may, in his or her discretion, choose not to impose, without any requirement of findings or notice.</p> <p>❑ <b>Excessive fines.</b> If a statute calls for a particular fine as a mandatory component of a sentence the judge should impose it unless he or she determines that it would violate the constitutional prohibition against excessive fines. N.C. Const. Art. 1, § 27; State v. Zubiera, 251 N.C. App. 477 (2016) (\$1,000 fine not excessive).</p> <p><b>Remember: One set of costs.</b> The court should impose only one set of costs for all charges stemming from the same underlying incident that are adjudicated together. State v. Rieger, 287 N.C. App. 647 (2019).</p> <p><b>TO GRANT RELIEF: Waive or reduce</b></p> <p>❑ <b>Waivers.</b> The court may waive costs upon entry of a written order, supported by findings of fact and conclusions of law, that there is just cause to do so. Before waiving costs the court must provide notice by first-class mail to directly affected government entities of the date and time of the hearing and the right to be heard make objection at least 15 days prior to the hearing. The ADC provides statewide monthly notice to all potentially affected government entities, which may satisfy this requirement. It is error for a judge to operate under the impression that he or she has no discretion to waive costs. State v. Patterson, 223 N.C. App. 380 (2012). Consider any Rule 28 Motion (ADC-CR-415) made by the defendant.</p> <p>❑ <b>Exception for probationary jail fees.</b> The \$40/day jail fee for jail sentences and other probationary confinement applies only when the court specifically imposes it; no findings or notice are required when the court chooses not to impose that fee. G.S. 7A-313. Note, however, that the \$10/day fee for pretrial jail confinement is a cost that applies unless waived as described above.</p> <p>❑ <b>Reduction.</b> If not waived, the state and local lab or hospital fee (\$600) and testing/lab expert fee (\$600) may, in the alternative, be reduced.</p>
<b>Costs</b>	<p><b>TO GRANT RELIEF: Exempt</b></p> <p>Consider any Rule 28 Motion (ADC-CR-415) made by the defendant.</p> <p>❑ <b>Probation supervision fee (\$40/month).</b> The court may exempt a person from paying the fee for good cause and upon motion of the probationer. G.S. 15A-1343(i). There is no requirement for notice or findings.</p> <p>❑ <b>ESB fee (\$90 extra fee plus \$4.86/day).</b> The court may exempt a person from paying the fee for good cause and upon motion of the probationer. G.S. 15A-1343(j). There is no requirement for notice or findings.</p> <p>❑ <b>Satellite-based monitoring fee (\$90 fee).</b> The court may exempt a person from paying the \$90 fee for good cause and upon motion of the defendant. There is no requirement for notice or findings.</p> <p>❑ <b>Community service fee.</b> No statute governs waiver of the \$250 community service fee. G.S. 143B-708.</p>
<b>Fees</b>	<p><b>Attorney fees.</b> Attorney fees are a judgment against the defendant, determined in accordance with rules adopted by 806. G.S. 7A-455(b).</p> <p><b>Appointment fee.</b> The \$75 appointment fee is mandatory and may not be remitted or revoked by the court. G.S. 7A-455.3(b).</p>
<b>Attorney Fee</b>	


# Collection Priority

- Sums in restitution to the victim;
- Costs due the county;
- Costs due the city;
- Fines to the county school fund;
- Sums in restitution prorated among the persons other than the victim;
- Costs due the State;
- Attorney’s fees, including appointment fees assessed pursuant to G.S. 7A-455.1.

# Criminal Monies Owed as Criminal and/or Civil Judgments

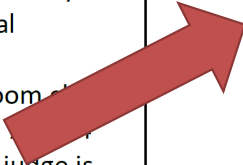

**INSTRUCTOR GUIDE**

This one-day course provides an overview of assessing G.S. 7A-304 costs and Non G.S. 7A-304 amounts for a criminal judgment that may or may not also be docketed as a civil judgment. This class tracks the workflow for a criminal judgment from the criminal courtroom to the criminal, civil, and bookkeeping departments through the payment process. Hands-on activities give the participants an opportunity to practice and apply the workflow of a criminal judgment.



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<p>Victim Restitution is in Section IV. are 1<sup>st</sup> in payment priority.</p>	<p>Victims are 5<sup>th</sup> in priority.</p>
<p>be docketed if judicially ordered by on criminal judgment form. in criminal courtroom to assess GS 7A-304 costs only if the judge is not ordered to costs.</p>	<p>1. If judge states to remit costs, remit GS 7A-304 costs only.</p>





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## While we're talking about money...

## State v. Rieger

- State v. Rieger (2019)
  - “When multiple criminal charges arise from the same underlying event or transaction and are adjudicated together in the same hearing or trial, they are part of a single ‘criminal case’ for purposes of N.C. Gen. Stat. § 7A-304. In this situation, the trial court may assess costs only once.”



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## State v. Crew (2022)

“The restitution statutes do not expressly address whether a restitution award for an offense in the second category— offenses not covered by the VRA—can be converted into a civil judgment.”

**“Because there is no statutory provision authorizing the immediate entry of civil judgments for the restitution in this case, we vacate those civil judgments.”**

## Consideration of Alternatives

- Time to pay
- Reduction of total obligation
- Community service
- Early transfer to unsupervised probation
- Civil judgments

