



# **COURT FINES AND FEES: CRIMINALIZING POVERTY IN NORTH CAROLINA**

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## ACKNOWLEDGMENTS

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## Preface

Jill and Alex are married, in their early to mid-thirties, with two children under five. Jill is sassy and outgoing; Alex is reserved and thoughtful. They live in Orange County, North Carolina. Jill stays home to take care of the kids and avoid the high cost of daycare. Alex works full time in a local restaurant. Like many others living at the edge of poverty, they have had run-ins with the North Carolina criminal justice system.

Jill pled guilty earlier this year to misdemeanor larceny. Her public defender convinced her that it was the safest course. When the court accepted her plea, it assessed \$560 in fines and fees against her. She was told she would have six months to pay. If she failed to come up with it, she would be in violation of her probation. When we asked if she could come up with that money, she replied, “absolutely not, I will probably end up violating.” “We don’t even have a hundred dollars to spare,” she reported.<sup>1</sup>

Jill and Alex share a cell phone. They don’t have a car because they can’t afford it. Her driver’s license has already been revoked for failure to pay an earlier fine. That means there are a lot of jobs she can’t get. The day she appeared in court, hearings were supposed to start at nine. They didn’t get underway until ten and she was the last case called, at almost 5 p.m. She brought the kids with her, since she had no other options. Neither Jill nor the kids ate lunch because there was no affordable restaurant within walking distance of the courthouse.

She has been incarcerated before for failure to pay court fees, for about ten days at a time, though it is supposed to be unconstitutional in the United States to put people in jail because they don’t have any money. The judge who assessed her fees never asked if she had a way to pay them. She fears she’ll be incarcerated again. If she goes to jail, even for a short while, Alex will have to quit his job to take care of the kids. Then, she says, they will probably lose their home. The “whole thing leaves my family feeling hopeless,” she said, “like we’ll never get back on our feet.” She called it a trap or a cycle: her family “is just never able to pay and is always burdened with these costs.” It is “almost like a set-up,” she said, “they know I won’t be able to pay.”

Alex’s story is tough too. He had a difficult upbringing and has been on his own since he was 16. He got his first DWI last year. He was represented by a public defender, pled guilty and was placed on two and a half years unsupervised probation. The court assessed \$850 in fines and fees, which are now due. He worries he’ll eventually be sent to jail because there’s no way he can come up with the money. Then, ironically, he’ll lose his job and his ability to support his family. It’s the “big scare” that hangs over his head. He, too, has been jailed before for failure to pay court fees and fines. And his driver’s license has been suspended. Owing the court has “made it impossible for us to get on our feet and save any money.” He doesn’t “have the luxury to ask his parents for help—never has had.” For him, it’s feed the kids or pay the court fees. “I wish fees could be paid off with volunteering or community service,” he stated. And no judge has ever asked him if he could pay the money, they just assume you can or don’t care if you can or not. People in his position “are forced to make hard decisions and end up getting in more trouble trying to come up with money to pay the courts.” It doesn’t seem to him like you should have to go to jail because you don’t have any money.

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<sup>1</sup> Jill and Alex Poulos interview with the North Carolina Poverty Research Fund, October 31, 2017.

Marcia Morey now represents Durham in the North Carolina General Assembly. But until 2017, she was Durham County's much-admired chief district judge. Almost two decades on the bench, including being chief since 2010, taught her much. And some of it, especially concerning the legal system's treatment of poor people, causes her to lose sleep. "Think of it," she told us, "the great percentage of criminal defendants are poor, but every step of the judicial process involves money, starting with bond."<sup>2</sup> In this system, she said, "You need money, it all turns on money, but most defendants don't have it. Where's the fairness in that?"

If lucky, a defendant who pleads guilty might receive a suspended sentence. That sounds good, but it includes an order to pay court-imposed costs and fees. The basic fee for going to court is about \$180-\$200, never mind bail fees or fees for pre-trial detention. If community service is ordered, an additional \$250 fee is tacked on. If probation is entailed, supervision is \$40 a month. It is not at all unusual, Judge Morey indicates, for the costs and fees, even in minor criminal cases, to approach or even exceed a thousand dollars. If the already-indigent defendant can't come up with the required tab, other costs and penalties ensue: an installment payment fee, late fees, probation violation, and, if payment isn't forthcoming, actual incarceration. All of this flows from conduct that the court originally believed unworthy, or impermissible, as a basis for jail time. Poverty has its costs. High and punitive ones.

Judge Morey spoke of a defendant she remembers whom she called Walter Smith (not his real name). One day in traffic court, Smith appeared before her, charged with driving with a revoked license. His license had been taken away some months earlier, when he couldn't pay \$230 in fines and fees for a speeding ticket.

When he appeared in Judge Morey's court, Smith's problems were multiplying. He had an unpaid order for court costs for the original infraction, a revoked license, the fine and fees that followed from that, and a new criminal charge. Smith requested a public defender. Morey was unable to appoint counsel, though, because a few months earlier the General Assembly had restricted the categories of crimes for which a lawyer could be appointed. So she explained to Smith that he would need to hire his own counsel.

"Your Honor," she recalled that he protested, "I got picked up while driving to the grocery store. I was taken to jail because I didn't pay that old ticket and y'all yanked my license. I have heart disease and can't work. Now do you really think I can afford to hire my own lawyer? I need some help here." As Judge Morey remembers, "Smith was standing in front of me in desperation, and there was nothing I could do to help him with his plea. I said, 'I am very sorry. I have to follow the law which does not allow me to appoint you an attorney.'" Smith "was unemployed, disabled and simply had no money or ability to pay." She feared jail was about to become the punishment for his poverty. She urged the district attorney to find a way to accommodate him. For her part, she waived his court costs and a \$40 jail fee. (He had already spent a day in jail.) She wished him well and, as he walked out of the courtroom, she heard him mutter, "all they want is damn money."

Smith spent some time in jail, and faced more, simply because he couldn't pay for his traffic ticket. He didn't do it stubbornly, or on purpose. He simply didn't have any money or any way to get some. Judge Morey writes:

Every day, people all over North Carolina face a judge for a minor offense or traffic infraction and are ordered to make payments of hundreds of dollars they simply cannot afford. Far too often nonpayment is not willful. It is because he or she is unemployed, disabled, or suffers from mental illness or addiction.

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<sup>2</sup> Marcia Morey interview with the North Carolina Poverty Research Fund, July 27, 2017.

Similarly, when a person is arrested on a minor offense like trespassing, marijuana, disorderly conduct—or someone has failed to appear in court, a bond is required. For many a \$500 bond might as well be \$5 million. They are held, not because they are a danger to the community, but because they are poor. Jail becomes “debtor’s prison.”<sup>3</sup>

We outlawed debtor’s prisons in the United States in the 19<sup>th</sup> century. In North Carolina, we even wrote the prohibition into our constitution: “There shall be no imprisonment for debt in this State.”<sup>4</sup>

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The due process and equal protection clauses of the Fourteenth Amendment prohibit states from “punishing a person for his poverty.”<sup>5</sup> Though the rule seems to be accepted in theory, in practice it is violated across North Carolina and much of the country on a routine, and increasing, basis. This report is the first in a series of six to be issued by the North Carolina Poverty Research Fund exploring a broad array of state criminal justice practices that work to criminalize poverty. As a result, they deny constitutional principle, cast pervasive doubt upon the openness and fundamental fairness of our courts, demean the independence and professionalism of our judges, crush the dignity and life prospects of many low-income Tar Heels, and seek to shift the responsibility for funding an effective, accurate and impartial system of justice from the broad citizenry to an unlikely cohort of the most economically distressed North Carolinians. Most fundamentally, the practices deploy the power of the state to sanction, or to increase punishments, simply because the defendants are poor.

## Fines and Fees in North Carolina

Fines and fees are among the monetary sanctions, sometimes referred to as legal financial obligations, courts impose on criminal defendants. Fines are levied as the punishment for breaking a law. Fees are meant to generate revenue and are used to fund the courts and other government activities. In North Carolina and elsewhere, fees attach to every step of the criminal justice process. On top of fines and fees, defendants may be ordered to pay restitution to the victim and, in some states, additional surcharges.

The sharp rise of fines and fees in recent years—and the enormous number of people who owe them—has given the topic a new urgency. Since 2010, at least 48 states have increased court fees, added new ones, or both.<sup>6</sup> It is estimated that about 80-85% of inmates leave prison owing court-imposed costs.<sup>7</sup> In North Carolina, fees have increased 400% over the past twenty years.<sup>8</sup>

Fees are defined by North Carolina statute. One of the most common is the General Court of Justice fee, which is assessed against all defendants in criminal court (including traffic infractions) who plead guilty or are convicted. The fee is \$147.50 for cases in district court and \$154.50 in superior court. Other fees accompany the General Court of Justice fee and all together a defendant can expect to pay a minimum fee

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<sup>3</sup> Morey, “When Traffic Court Becomes Debtors’ Prison.”

<sup>4</sup> North Carolina Constitution, Article I, Section 28.

<sup>5</sup> *Bearden v. Georgia*, 461 U.S. 660, 671 (1983).

<sup>6</sup> Shapiro, “As Court Fees Rise, the Poor Are Paying the Price.”

<sup>7</sup> Shapiro.

<sup>8</sup> Gordon, “His Sentence Carried No Jail Time. So Why Did He Keep Ending Up There?”



amount of \$178 in district court for an infraction and \$180 for a misdemeanor (Table 1). Defendants appearing in superior court face fees starting at \$205.<sup>9</sup>

As noted above, other fees may apply depending on the case. Defendants with a driving related conviction have to pay an additional \$10 fee, \$50 if they are convicted of an improper equipment offense.<sup>10</sup> Defendants are charged \$600 for each lab test and expert witness used in their prosecution.<sup>11</sup> There are collection fees, fees for paying on an installment plan or paying late.<sup>12</sup> There are failure to appear fees for missing court dates and failure to comply fees for not paying on time; fees for participating in court-sponsored community service, monthly fees for supervised probation and one-time and daily fees for electronic monitoring systems.<sup>13</sup> Astonishingly, defendants who request a public attorney have to pay an appointment fee and an hourly attorney fee, even if they are declared indigent by the court.<sup>14</sup> There are jail fees and other incarceration costs.<sup>15</sup> (Appendix 1 contains a schedule of court costs.)

**Table 1. District Court Fees, Criminal Case**

<b>Mandatory Fees</b>	<b>Amount</b>
General Court of Justice Fee	\$147.50
Facilities Fee	\$12.00
Telecommunications and Data Connectivity Fee	\$4.00
LEO Retirement/Insurance*	\$7.50
LEO Training and Certification Fee*	\$2.00
Service Fee (for each arrest or service of process)	\$5.00
DNA Fee (for criminal conviction, not infraction)	\$2.00
	<b>Total \$180.00</b>
<b>Other Common Fees</b>	
Chapter 20 Fee (driving-related)	+\$10.00
Appointment of Counsel Fee	+\$60.00
Installment Payments Fee	+\$20.00
Community Service Fee	+\$250.00
Improper Equipment Fee	+\$50.00
Jail Fee (pre-conviction)	+\$10.00/day
Jail Fee (local facility)	+\$40.00/day

\*Note: Law Enforcement Officer

Source: North Carolina Administrative Office of the Courts

The payment of fines and fees is enforced with penalties that include additional monetary sanctions, driver's license revocation and, incredibly, jail time. Although debtor's prison in the United States was banned in 1833, poor people are still regularly incarcerated because they can't pay their court debts. Courts are required by law to inquire into defendants' ability to pay before jailing them but this rule is often unknown, skirted or ignored.

Judges have the authority to waive many court costs. However, judges waive costs in only about 8% of cases statewide.<sup>16</sup> (See appendix 2 for a map of waiver rates by county.) This occasional reprieve is still

<sup>9</sup> North Carolina Administrative Office of the Courts, "Court Costs and Fees Chart."

<sup>10</sup> N.C. Gen. Stat. § 7A-304(a)(4a) and (4b). Examples of improper equipment include driving with a burned-out headlamp or illegal window tinting.

<sup>11</sup> N.C. Gen. Stat. § 7A-304(a)(7)-(8a) (labs) and N.C. Gen. Stat. § 7A-304(a)(11)-(13) (expert witness).

<sup>12</sup> See N.C. Gen. Stat. § 7A-321 (collection fees); N.C. Gen. Stat. § 7A-304(f) (installment payment fee); N.C. Gen. Stat. § 7A-304(a)(6) (late payments).

<sup>13</sup> N.C. Gen. Stat. § 7A-304(a)(6) (fees for failure to appear and failure to comply); N.C. Gen. Stat. § 143B-708 (community service fee); N.C. Gen. Stat. § 15A-1343(c1) (supervised probation fee); N.C. Gen. Stat. § 15A-1343(c2) (electronic monitoring fees).

<sup>14</sup> N.C. Gen. Stat. § 7A-455.1

<sup>15</sup> Eisen, "Paying for Your Time"; Evans, "Doing Time on Their Own Dime."

<sup>16</sup> Judges in two counties (Mecklenburg and Cumberland) waived over 20% of fees and fines, while judges in four counties (Camden, Perquimans, Cabarrus and Moore) waived fewer than 1% of fines and fees. North Carolina Administrative Office of

too much for state lawmakers, who have taken a disturbing series of steps in recent years to rein in the use of waivers. As a result, judicial waiver—already rarely used—is an endangered species in North Carolina. The ability to pay inquiry and judicial waiver are the two main tools available to mitigate or prevent the unjust and unconstitutional imposition of fines and fees. As we discuss below, they currently fall far short of the task.

## Consequences of Fines and Fees

### *Perpetual debt*

Most criminal defendants are poor. Nationally, about 80-90% of those charged with a criminal offense are poor enough to qualify for a court-appointed lawyer.<sup>17</sup> Around 20% of jail inmates report having no income before they were incarcerated and 60% earned less than \$1,000 per month (in 2002 dollars, about \$16,000 a year now).<sup>18</sup> Almost a third of defendants are unemployed before their arrest.<sup>19</sup> Many defendants are disadvantaged in other, related ways. In North Carolina, 30% of prison inmates have no more than a ninth-grade education; 99% are, at most, high school graduates.<sup>20</sup> Seventy percent of newly-arrived prisoners screened for chemical dependence in North Carolina need substance abuse treatment.<sup>21</sup> A state Department of Correction survey found that 36% of people entering prison had been homeless at some point, and 7% had been homeless immediately before imprisonment. The primary reasons given for homelessness were unemployment, substance abuse and a previous criminal conviction.<sup>22</sup>

Court costs disrupt lives already complicated by poverty and dislocation. “For lots of people, fines and fees are worse than the conviction,” one expert commented. “The thinking goes, ‘I can keep my job with the conviction, but I lose my housing with fees.’”<sup>23</sup> Fines and fees of a few hundred dollars can present a substantial hurdle—and several studies show that court debt is often worse.

Researchers in Washington State found that the average amount of court costs per felony conviction was \$2,450. When the study authors randomly selected 500 defendants out of the larger pool, they found that these individuals accumulated an average of \$11,471 in court debt over time.<sup>24</sup> A Texas study estimated that defendants released to parole owed from \$500 to \$2000 in court debt.<sup>25</sup> A Massachusetts study, looking at defendants who had spent time in jail due to failure to pay fines and fees, discovered that in

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the Courts, 2017 Report on Criminal Cost Waivers, Research and Planning Division, February 1, 2017, <http://nccriminallaw.sog.unc.edu/wp-content/uploads/2017/02/20170201-NCAOC-Report-on-Criminal-Cost-Waivers.z.pdf>.

<sup>17</sup> Bannon, Nagrecha, and Diller, *Criminal Justice Debt*, 4.

<sup>18</sup> James, *Profile of Jail Inmates*, 9. In 2015, the median pre-incarceration income for people detained in local jails who could not make bail was \$15,109—or less than half of the median income for non-incarcerated people of a similar age. Rabuy and Kopf, “Detaining the Poor.”

<sup>19</sup> Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*.

<sup>20</sup> North Carolina Department of Public Safety, DPS Research and Planning, Automated System Query, <http://webapps6.doc.state.nc.us/apps/asqExt/ASQ>.

<sup>21</sup> Division of Adult Correction and Juvenile Justice, *Substance Use Disorder Treatment Programs Annual Report*, 5.

<sup>22</sup> Edwards, *Homelessness in the North Carolina Resident Offender Population*, 3.

<sup>23</sup> Cristina Becker interview with the North Carolina Poverty Research Fund, June 27, 2017.

<sup>24</sup> Beckett and Harris, “On Cash and Conviction: Monetary Sanctions as Misguided Policy.” 516. The authors did not include a variety of legal non-court debts and therefore underestimate the total amount owed by defendants.

<sup>25</sup> Bannon, Nagrecha, and Diller, *Criminal Justice Debt*, 10.



over a third of cases, the defendant owed more than \$500—despite most charges being for relatively minor non-DWI automobile violations or public order offenses (disorderly conduct, trespassing).<sup>26</sup> In 2011, the median amount of court debt owed by residents of Philadelphia who had unpaid debt was about \$4,500.<sup>27</sup> With fines and fees reaching into the thousands of dollars, it's not just the most destitute who feel their sting. For the almost 60% of Americans who don't have enough money in savings to cover a \$500 emergency, court costs can overwhelm.<sup>28</sup>

Data from North Carolina, while scant, indicates that fees easily reach hundreds of dollars for small traffic infractions and misdemeanors, and increase from there. Between January and October 2017, the average amount paid online for a traffic citation was \$226.<sup>29</sup> Between January and May 2017, the average for court-appointed attorney's fees for lesser charges (misdemeanors, traffic cases, probation violations) was \$205.<sup>30</sup> Add in common court fees of \$200 or so, extra fees for an array of court "services," and fines, and the total can easily reach \$1,000 without breaking a sweat.

Court costs accumulate for defendants unable to pay what they owe. Late fees, installment payment fees, collection fees, probation supervision fees and the like exploit poor people in the same way payday loans do—by keeping debtors on a never-ending debt loop. Since a sentence is not discharged until all court costs are paid in full, a defendant's continuing legal entanglements puts him or her at risk of incurring new penalties, compounding both difficulties and debt. This is the nonsensical contradiction at the core of the system of fines and fees: defendants are punished for failing to climb out of a hole that their court debt makes deeper and more intractable. In the words of one scholar, defendants are forced to pay over and over, "in a way that dooms them to a perpetual state of poverty and instability."<sup>31</sup>

Poor households have to juggle food, shelter, medicine, transportation and other household necessities against fines and fees. Research suggests that half of the families of defendants have difficulty affording food, housing and utilities.<sup>32</sup> As one woman we spoke to put it, she and her family were "not as comfortable with food for [that] month" when she paid a portion of her court bill.<sup>33</sup>

### ***The difference \$90 makes***

Small dollar amounts can make a big difference in case outcomes and yet ask too much of poor defendants and their families. We were told of one defendant, a fast food manager with school age children, who was involved in a scuffle and charged with larceny. He was offered a plea deal: pay \$200 and admit to a lesser charge. On the due date, in late August, he only had \$110. Promising to come back later that day with the full amount, he left court and returned his kids' school supplies to make up the difference. His next paycheck wasn't until the end of the month, he didn't have any extra money and this was the only thing he could think to do to avoid a more serious charge.

"We're making poor people make choices they shouldn't have to make," said his public defender. "And his kids end up paying and that's not fair. Sure, [defendants] make stupid mistakes just like the rest of us do. But rich people buy their way out of it."<sup>1</sup>

1. Mani Dexter interview with the North Carolina Poverty Research Fund, August 21, 2017.

<sup>26</sup> Report of the Committee on Post Audit and Oversight, *Fine Time Massachusetts: Judges, Poor People, and Debtors Prison in the 21st Century*, 11.

<sup>27</sup> Shapiro, "As Court Fees Rise, the Poor Are Paying the Price."

<sup>28</sup> Cornfield, "Bankrate Survey: Just 4 in 10 Americans Have Savings They'd Rely on in an Emergency."

<sup>29</sup> payNCticket Activity, "Statistics," *North Carolina Court System*, <http://www.nccourts.org/Citizens/SRPlanning/Statistics/Default.asp>.

<sup>30</sup> 2017, "Fee Transparency," *Office of Indigent Defense Services*, <http://www.ncids.org/Public/Text.html>.

<sup>31</sup> Beckett and Harris, "On Cash and Conviction: Monetary Sanctions as Misguided Policy." 529.

<sup>32</sup> deVuono-powell et al., *Who Pays?*, 18.

<sup>33</sup> Jill Poulos interview with the North Carolina Poverty Research Fund, October 31, 2017.

When defendants are unable to pay fines and fees, they often turn to family members for help.<sup>34</sup> One study found that two-thirds of respondents with legal debt were living with friends or family. Almost all were unemployed and therefore unable to contribute financially to the household.<sup>35</sup> Other researchers reported that 63% of defendants interviewed in a multi-state study relied on their family to take care of court costs. Nearly half claimed that their families could not afford those costs and 20% of families had taken out loans to cover them.<sup>36</sup> Most of the financial burden fell on women who also had dependent children; almost half were mothers and one in ten were grandmothers.<sup>37</sup>

### *Court debt and child support*

Many defendants owe child support. The majority of incarcerated people are parents and about half do not live with their children.<sup>1</sup> Court debt makes it more difficult for defendants to pay child support and vice versa. Because child support is enforced in much the same way as fines and fees, including the loss of driving privileges and jail, a slip-up with either one can cause debt—and other associated penalties—to accumulate rapidly, even as defendants' financial prospects dim. Defendants forced to choose between child support and court debt are caught between competing obligations. One defendant we interviewed, recalled that when he had to choose, he paid fines and fees over child support because he thought he was less likely to go to jail that way. He also sold narcotics to pay both debts. As he noted, “why not do more crimes if you’re already in trouble?”

1. Mumola, *Incarcerated Parents and Their Children*, 1.

### *Extension of probation*

In North Carolina, payment of fines and fees is a condition of probation.<sup>38</sup> Defaulting on court debt represents a violation of those terms, even if the defendant is in complete compliance otherwise. In response, judges in North Carolina often extend the probationary period. Defendants who remain under the supervision of the criminal justice system, are subject to its demands. They must report to a probation officer, appear in court when summoned, observe other terms of probation and, of course, continue to pay court costs, including the monthly supervised probation fee. Extended probation transforms “punishment from a temporally limited experience to a long-term status.”<sup>39</sup>

Remaining on probation penalizes defendants in other ways too. Some defendants are denied certain civic privileges until they have completely discharged the terms of their sentence. Probationers with a felony conviction cannot vote, run for office or serve on a jury.<sup>40</sup> Disfranchisement is especially concentrated in black communities where one in thirteen adults have lost the right to vote due to their criminal records.<sup>41</sup>

Probation violations also disqualify defendants from accessing public benefits. Strangely, defendants' inability to pay off fines and fees renders them ineligible for poverty alleviation programs. Federal law mandates that any violation of probation, even for failure to pay court debt, disqualifies defendants for

<sup>34</sup> Nagrecha, Katzenstein, and Davis, *When All Else Fails, Fining the Family*.

<sup>35</sup> Martin and Spencer-Suarez, *Criminal Justice Debt*. 2.

<sup>36</sup> deVuono-powell et al., *Who Pays?* 13-14.

<sup>37</sup> deVuono-powell et al., 13-14.

<sup>38</sup> N.C. Gen. Stat. § 15A-1344.

<sup>39</sup> Harris, Evans, and Beckett, “Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States.” 1755.

<sup>40</sup> N.C. Gen. Stat. § 163-55(a)(2).

<sup>41</sup> Jean Chung, “Felony Disenfranchisement: A Primer,” *The Sentencing Project*.

Temporary Assistance to Needy Families (TANF), Supplemental Nutrition Assistance Program benefits (SNAP, formerly food stamps), housing assistance and Supplemental Security Income (SSI).<sup>42</sup> Sometimes an arrest warrant is enough to trigger the termination of benefits, despite statements to the contrary by the federal government.<sup>43</sup>

## Driver's license revocation

The cessation of driving privileges for nonpayment of court debt is a widespread practice, affecting almost 1.2 million drivers in North Carolina, 1.8 million in Texas, 4 million in California and almost 1 million in Virginia.<sup>44</sup> Approximately 60% of driver's license suspensions in Wisconsin and Vermont are for nonpayment of debt.<sup>45</sup>

In North Carolina, the Division of Motor Vehicles (DMV) will revoke the licenses of drivers who are convicted of a motor vehicle offense if they fail to appear in court or fail to pay the associated fines and fees.<sup>46</sup> The license remains revoked indefinitely until the conditions of reinstatement, including payment of all court costs, are satisfied.<sup>47</sup> That means paying all of the fines and fees from the initial violation, plus a \$50 service fee for drivers who neglect to return their license to the DMV in time, and a \$65 restoration fee. Beginning in 2018, drivers who request a license restoration hearing with the DMV—hearings which were free in the past—will have to pay a new fee in full upfront.<sup>48</sup> The barriers to license restoration are sufficiently high that only about 6% of drivers with licenses revoked for failure to appear or failure to pay regained their licenses in the past year.<sup>49</sup>

The consequences of losing a driver's license can be devastating, but the destructive spiral intensifies if a person is caught behind the wheel with a revoked license. Unlike a traffic infraction, driving with a revoked license is a Class 3 misdemeanor, a criminal charge that not only leads to new costs but becomes part of the defendant's record.<sup>50</sup> Poor defendants often let auto insurance or registration lapse, which leads to yet more charges. Nonetheless, 75% of motorists without a license continue to drive despite the threat of additional penalties.<sup>51</sup>

People drive without a license because, for many, driving is an indispensable part of their routine. A license can be the key to employment.<sup>52</sup> A valid driver's license is often required by employers, either because the job requires driving or simply as an indication of reliability. In metropolitan regions with

<sup>42</sup> 42 U.S.C. § 608(a)(9)(A) (TANF), 7 U.S.C. § 2015(k)(1) (food stamps), 42 U.S.C. § 1437d(l)(9) (public housing) and 42 U.S.C. § 1437f(d)(1)(B)(v) (section 8 vouchers), 42 U.S.C. § 1382(e)(4)(A)(ii) (Supplemental Security Income). See Social Security Administration, "Are Probation and Parole Violators Eligible for SSI?" [https://www.ssa.gov/OP\\_Home/handbook/handbook.21/handbook-2120.html](https://www.ssa.gov/OP_Home/handbook/handbook.21/handbook-2120.html).

<sup>43</sup> Bannon, Nagrecha, and Diller, *Criminal Justice Debt*, 28.

<sup>44</sup> Salas and Ciolfi, *Driven by Dollars: A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt*. 1. The number for North Carolina includes revocation for both failure to pay and failure to appear.

<sup>45</sup> Marsh, "Rethinking Driver's License Suspensions for Nonpayment of Fines and Fees," 20.

<sup>46</sup> N.C. Gen. Stat. § 20-24.1(a). Revocation of a driver's license in North Carolina means a complete cessation of driving privileges. Individuals seeking license restoration must apply for a new driver's license.

<sup>47</sup> N.C. Gen. Stat. § 20-24.1(b).

<sup>48</sup> See North Carolina Department of Transportation, Division of Motor Vehicles proposed temporary rule 19A NCAC 03K .0101, .0102. As of the writing of this report, the fee amounts were still under consideration.

<sup>49</sup> Fain, "1 in 9 Licensed NC Drivers Suspended, but Not for Bad Driving."

<sup>50</sup> N.C. Gen. Stat. § 20-28.

<sup>51</sup> Marsh, "Rethinking Driver's License Suspensions for Nonpayment of Fines and Fees," 22.

<sup>52</sup> See Semuels, "No Driver's License, No Job."

public transit, the typical resident without a car can reach only 30% or so of jobs in 90 minutes.<sup>53</sup> Residents of areas without transit are effectively stranded. In one New Jersey study, almost half of drivers who had their licenses suspended due to nonpayment lost their jobs, and about half of that group could not find another. For those who found subsequent employment, 88% reported a decrease in income. The results were starker for low-income drivers, who were more likely to suffer job loss and less likely to find a job afterward.<sup>54</sup>

While being able to get to work is critical, driving grants access, mobility and flexibility in innumerable ways. Basic everyday activities—shopping, doing laundry, chauffeuring kids, going to a doctor’s appointment, volunteering, attending church services—become far more complicated in the absence of a license. Revoking the licenses of those who can’t pay doesn’t magically compel payment nor does it make roads safer. Instead, it derails defendants and forces the courts, law enforcement and motor vehicle agencies to take time and resources away from other core functions.<sup>55</sup>

## Jail time

Low-income North Carolinians are sent to jail because they lack the money to pay their court debt. They are not being punished for the underlying offense; they are punished for the fact of their debt.

The U.S. Supreme Court has held that a defendant cannot be incarcerated for nonpayment unless the judge, after conducting a meaningful hearing, finds that the defendant “willfully refused to pay or failed to make sufficient bona fide efforts” to acquire the resources to pay.<sup>56</sup> However, judges routinely sidestep this constitutional rule, applying hostile, incredulous or highly subjective criteria when evaluating a defendant’s ability to pay. Judges have ordered defendants who were homeless or receiving government assistance to pay. Some judges base their decisions on the defendant’s appearance, deciding that someone who looks able-bodied or well-dressed should be able to get a job or find the money somehow. Judges have told defendants they could pay off their fines and fees by collecting cans, quitting cigarettes or giving blood. One judge in North Carolina suggested that the defendant sell his car.

Not a few judges disregard the test altogether. One of the individuals we interviewed recalled how he went to court after his hearing was rescheduled. The judge, apparently peeved that the defendant’s case had been moved to his docket, summarily ordered the defendant jailed for four days without giving him a reason or inquiring into his ability to pay.

Defendants in North Carolina can be jailed for nonpayment in several ways. If the defendant is on probation, failure to pay—a probation violation—can be punished with jail time.<sup>57</sup> Some judges will activate a defendant’s suspended sentence, imposing the full term of incarceration.<sup>58</sup> Judges can order time in jail for defendants who “willfully” fail to pay on the theory that nonpayment is a type of contempt

<sup>53</sup> Tomer et al., *Missed Opportunity: Transit and Jobs in Metropolitan America*, 1. It typically takes much longer to get to work using public transportation. See Maciag, “Riding Transit Takes Almost Twice as Long as Driving.”

<sup>54</sup> Carnegie, *Driver’s License Suspensions, Impacts and Fairness Study*, 56–57.

<sup>55</sup> American Association of Motor Vehicle Administrators, *Best Practices Guide to Reducing Suspended Drivers*.

<sup>56</sup> *Bearden v. Georgia*, 461 U.S. 660, 672.

<sup>57</sup> N.C. Gen. Stat. § 15A-1344(d2).

<sup>58</sup> James Williams interview with the North Carolina Poverty Research Fund, June 30, 2017. A public defender in an unidentified county in North Carolina reported that she advised her clients who she knew couldn’t pay to accept a plea deal with jail time, rather than a suspended sentence. Diller, Bannon, and Nagrecha, *Criminal Justice Debt*, 23.

of court.<sup>59</sup> Because no legal standard exists for “willfulness,” defendants who fall short of a judge’s arbitrary or excessively harsh criteria can be jailed, even if payment is not a realistic option. Lastly, defendants can be arrested if they fail to appear at a hearing or have fallen behind on payments.<sup>60</sup>

### *Jailed for failure to appear*

During the writing of this report, “Joe” was charged with littering, a fine-only offense. He failed to appear at his hearing and was arrested in Mecklenburg County. Unable to come up with \$1,000 for the secured bond, he spent three weeks in jail waiting for his hearing. His wife was due to give birth while he was locked up.

Jasmine, a 16-year-old in Durham, was cited for littering when she tossed aside a Mountain Dew bottle. She put the citation in her backpack and forgot about it. Several weeks later, the officer that cited her sat in her driveway until she came home, arrested her for failure to appear, handcuffed her and took her to jail, where she was held on a \$500 bond.

Failure to appear in court can be a result of fear of arrest, inability to pay, lack of notice, misunderstanding, scheduling conflict, transportation issues or the unpredictability of life on the margins. If your bus delivers you late or you don’t hear your name called in court, you risk a \$200 failure to appear fee and the possibility of arrest. Typically, people who miss a hearing are not “seriously delinquent.” A study in Rhode Island found that defendants on average had appeared at three hearings before missing the one that generated the warrant for their arrest.<sup>1</sup>

1. Rhode Island Family Life Center, *Court Debt and Related Incarceration in Rhode Island from 2005 through 2007*, 12.

It is important to note, as one former public defender we interviewed reminded us, that while defendants are regularly jailed for failure to pay fines and fees, they are even more frequently incarcerated for other poverty-related reasons. Although often well-intentioned, probation terms like community service or substance abuse treatment programs require resources—money, transportation, time—which are often in short supply for poor people. When defendants can’t comply with those terms, jail is a real possibility.

We don’t know how many people are in jail in North Carolina because of their inability to pay fines and fees, but the number is not trivial. A recent estimate found that approximately 18% of inmates in the Mecklenburg County Jail were there because of nonpayment.<sup>61</sup> Court observers have witnessed defendants being jailed for nonpayment in counties across the state, from the most urban to the most rural.

A judge can send a defendant to jail at a hearing or can issue a bench warrant in the defendant’s absence. Defendants can be jailed unexpectedly, thrusting families into emergency mode without warning. Defendants might remain in jail for weeks. The dread of going to jail for nonpayment of fines and fees haunts poor defendants. One person we interviewed identified “fear” as his main feeling about fines and fees. He observed that people who owe court debt are forced to make hard decisions and end up getting in more trouble trying to come up with the funds. “A majority of us will pay with money we don’t have instead of going to jail,” he asserted.<sup>62</sup>

Time behind bars often erases any progress defendants make toward climbing out of debt. One defendant, on the verge of re-arrest for court debt, described the effect. “I lost my job twice, they gave it back to me before, I don’t think they will this time. I try so hard but I’m losing everything over and over again. After

<sup>59</sup> N.C. Gen. Stat. § 15A-1364. Contempt in North Carolina has been described as “an additional ‘stick’ as part of the probation supervision process, imposing periods of incarceration on top of what a defendant is subject to through probation.” Diller, Bannon, and Nagrecha, *Criminal Justice Debt*, 49n131.

<sup>60</sup> See Diller, Bannon, and Nagrecha, *Criminal Justice Debt*, 51n145.

<sup>61</sup> Gordon, “His Sentence Carried No Jail Time. So Why Did He Keep Ending Up There?”

<sup>62</sup> Alex Poulos interview with the North Carolina Poverty Research Fund, October 31, 2017.

awhile you just feel like giving up and putting a bullet in your head.”<sup>63</sup> Job loss, interference with medical care or therapy, the threat of eviction or homelessness, stress, humiliation, anxiety and other harms can occur after even a short period of incarceration.

The trauma of incarceration extends to defendants’ families, especially children. Ten percent of North Carolina’s children have parents who have been incarcerated.<sup>64</sup> Children with imprisoned parents feel the financial deprivations that stem from incarceration, but they suffer in other ways too. The hardship, uncertainty and disruption caused by the incarceration of a parent can lead to emotional or behavioral disorders, such as depression, withdrawal and aggression. Children with incarcerated parents are more likely to be unhappy in school, experience higher suspension and dropout rates, and turn to crime later in life.<sup>65</sup> These cumulative impacts stack the deck against already-disadvantaged kids and “can have intergenerational and community-wide effects, leaving neighborhoods struggling under the multiple burdens of poverty, debt, trauma, and loss of opportunities.”<sup>66</sup>

Incarceration and its consequences make it harder for poor defendants to pay off their court debt. As one inmate remarked, “Me being in here isn’t doing them any good, they’re not getting any money that way.”<sup>67</sup> Jailing people for court debt also takes its toll on the state. In effect, North Carolina is spending money to erect additional barriers to poor people ever paying off their court debt—all at tremendous cost to defendants and their families.

### Scenes from a Courtroom

Hearings were scheduled to begin at 9 a.m. The judge arrived in court a little after 10, heard a few cases, and then stepped out at 10:20. He did not return to the courtroom until 11:27. During that time, many defendants were restless and asked the officers and attorneys when the judge would return. At 11:12, after the judge had been gone almost an hour, a male defendant approached nearby officers and asked them when the judge would be back because he wanted to use the bathroom. A sheriff threatened to put him in jail if he missed his turn and told him that the judge “finds a lot of people in contempt of court” so he should be careful.<sup>1</sup>

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The judge you appear before as a defendant can make all the difference. We heard of one defendant who owed more than \$3,000 for a DWI. The defendant was a single dad, raising a daughter who was in 6<sup>th</sup> grade. His only source of income was his deceased wife’s social security. Thanks to an understanding probation officer and a judge who waived his fees, he didn’t go to jail. But under different circumstances, his story could have turned out much worse.

One judge described the defendants who would cry in front of her “because they didn’t expect to be treated decently.” She explained, “Many of my brothers and sisters suffer from Black Robe-itis, playing at God. They think, ‘if you don’t have money, it’s because you’re lazy, you didn’t take advantage of opportunities.’” She continued, “A judge without experience will misread certain behaviors as stubbornness or contempt,” when poverty or mental health issues are the cause. Part of a judge’s job is to “have a sensitivity to the person standing before you.” You have to remember, she said, “Each case is a big deal to the person it’s happening to.”<sup>2</sup>

1. North Carolina Poverty Research Fund court observation.
2. Pat DeVine interview with the North Carolina Poverty Research Fund, August 7, 2017.

<sup>63</sup> Rhode Island Family Life Center, *Court Debt and Related Incarceration in Rhode Island from 2005 through 2007*. 16.

<sup>64</sup> Annie E. Casey Foundation, Kids Count Data Center, North Carolina, “Children Who Had a Parent Who Was Ever Incarcerated,” <http://datacenter.kidscount.org/data/tables/9688-children-who-had-a-parent-who-was-ever-incarcerated?loc=35&loc=2-detailed/2/any/false/1539/any/18927,18928>.

<sup>65</sup> Frederickson and Lassiter, *Debtors’ Prison Redux: How Legal Loopholes Let Courts Across the Country Criminalize Poverty*, 7; La Vigne, Davies, and Brazzell, *Broken Bonds*, 7–8. See also Annie E. Casey Foundation, *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities*.

<sup>66</sup> deVunono-powell et al., *Who Pays?* 37.

<sup>67</sup> Rhode Island Family Life Center, *Court Debt and Related Incarceration in Rhode Island from 2005 through 2007*. 26.



*A Public Defender's Perspective*

Mani Dexter worked for many years as a public defender in Orange County, North Carolina. She described, with great empathy, a less obvious way the criminal justice system mistreats poor defendants: devaluing their worth as people.

Because the costs and fees are so high and so arbitrarily waived, and because the impact on our clients' lives is so great, we (those in public defense) end up focusing on our clients' poverty. We make the story about the desperate situations that our clients are in—because that's the only chance of getting them some relief.

But what does this do to our clients' dignity? We stand in front of the judge, with an entire gallery of people listening in, and explain all the ways in which our clients haven't been able to make it. For people with money, the story is about the ways they have been able to give back to the community. We hear about therapy and volunteer hours, higher education and altruistic work. Because our clients spend so much of their lives trying to provide the basic necessities for themselves and their families, they don't have the luxury of activities like volunteering. People who have working cars that are insured and registered don't know how much more difficult life can be if your transportation is the bus, or paying a friend with a car a few dollars to give you a ride.

The current system forces us to present our clients' lives in the most abject way we can, because there is very little understanding of what it means to live in poverty. We are forced to choose between the chance of real relief for our clients and upholding their dignity. We try to do both, but it is a difficult task.

## Fines, Fees and the Constitution

North Carolina's potent and spiraling scheme of criminal case user fees, restricted and disfavored waivers, and harsh tools of enforcement raise a troubling cascade of constitutional issues. They open a chasm, to be sure, between the broad-ranging American aspiration, frequently etched on courthouse walls, of equal justice under law and the present state of criminal justice administration in North Carolina—an extreme version of “poor man’s justice.” But the fee and fine structure also burdens the exercise of core constitutional rights and often denies due process of law, the foundational requirements of equality, and the necessary independence of the judicial branch. Many of these issues, individually, merit extensive, thorough and detailed study. In the months ahead, we plan to provide some of it. But the central constitutional challenges are introduced and briefly highlighted below.

First, even apart from the fees and fines regime's worrisome impact on poor people, much of it may violate North Carolina's constitutional command for a strict separation of governmental powers. In March 2016, the U.S. Department of Justice sent a “Dear Colleague” letter to state and federal judicial officers across the nation warning of the impropriety of using court costs to raise revenue for governments more broadly, thus casting doubt on the impartiality, independence and separate functioning of the courts.<sup>68</sup>

North Carolina's criminal fees and costs regime is large, growing, increasingly expensive to defendants, and, often, not closely linked to expenses directly incurred in particular prosecutions. It frequently serves no actual judicial function and is, instead, seen as a revenue source for the General Fund. As the Louisiana Supreme Court has explained, courts, “should not be made tax collectors for [the] state, nor

<sup>68</sup> Civil Rights Division, U.S. Department of Justice, “Dear Colleague.”

should the threshold to our justice system be used as a toll booth to collect money for random programs created by the legislature.”<sup>69</sup>

North Carolina fees sweep broadly, including paying for sheriff’s pension plans, law enforcement officer insurance and retirement plans, and the like. State courts have typically ruled that criminal case fee assessments must be closely related to “judicial services rendered.”<sup>70</sup> In *State v. Johnson*, the North Carolina Court of Appeals held that criminal prosecution court fees should be “clearly incidental to the function”<sup>71</sup> of the court and “reasonably related to the costs of administering the criminal justice system.”<sup>72</sup> The Conference of State Court Administrators has warned against an increasing legislative turn to user fees to fund criminal justice systems while providing general budgetary support to state coffers stating, “The benefit derived from the efficient administration of justice is not limited to those who utilize the system for litigation, but is enjoyed by all those who would suffer if there was no such system—the entire body politic.”<sup>73</sup>

In the fiscal year 2015-16, the judicial branch in North Carolina disbursed about \$266 million to the state treasury, over \$71 million to local governments, over \$44 million to other entities and about \$351 million to citizens. The judicial branch operating budget was just a hair over \$486 million.<sup>74</sup> A revenue raising role can cast doubt on the fairness of state tribunals and erode trust between judicial tribunals and their constituents. Senator Shirley Randleman, one of the legislature’s principal proponents of fees, has explained that it is “all about the revenue.”<sup>75</sup> It is unsurprising then that one of the district judges we interviewed observed many poor defendants she encountered thought “all [the courts] want is damn money.”<sup>76</sup> Like greedy tax collectors.

Second, even when costs and fees are constitutionally instituted, it is clear that they cannot be employed to put someone in jail because of inability to pay. To do so, the United States Supreme Court held, in *Bearden v. Georgia*, deprives a defendant of “his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.”<sup>77</sup> The due process and equal protection requirements of the fourteenth amendment prohibit “punishing a person for his poverty.”<sup>78</sup> *Turner v. Rogers*, more recently, ratified the principle.<sup>79</sup>

As a result, state and local courts must inquire, through a hearing, into a person’s ability to pay prior to imposing incarceration for nonpayment. Courts have an affirmative constitutional duty to conduct these determinations sua sponte. To understate, this does not regularly and uniformly occur in North Carolina. Many state judges have indicated they are unaware of *Bearden*’s requirements. Both anecdotal reports and court observations demonstrate substantial failures to comply with this fourteenth amendment demand, particularly in some judicial districts in the state. The *Charlotte Observer* reports that, each day,

<sup>69</sup> *Safety Net for Abused Persons v. Segura*, 692 So.2d 1038, 1042 (La. 1997).

<sup>70</sup> *LeCroy v. Hanlon*, 713 S.W.2d 335, 341 (Tex. 1986). See also, *Crocker v. Finley*, 459 N.E.2d 1346 (Ill. 1984); *Fent v. State*, 236 P.3d 61 (Okla. 2010); *People v. Brown*, 755 N.W.2d 664 (Mich. Ct. App. 2008) (criminal case fees must be based on expenses actually incurred in the particular prosecution); *Arnold v. State*, 306 P.2d 368 (Wyo. 1957) (fees cannot be used to defer the general costs of judicial administration).

<sup>71</sup> *State v. Johnson*, 124 N.C. App. 462, 474 (1996) (quoting *State v. Ballard*, 868 P.2d 738, 742 (Okla. Crim. App. 1994)).

<sup>72</sup> *State v. Johnson*, 124 N.C. App. at 478 (quoting *State v. Claborn*, 870 P.2d 169 (Okla. Crim. App. 1994)).

<sup>73</sup> Reynolds and Hall, *Courts Are Not Revenue Centers*, 9.

<sup>74</sup> North Carolina Administrative Office of the Courts Budget Management and Financial Services, *Statistical and Operational Report of Budget Management and Financial Services: July 1, 2015 - June 30, 2016*, 4–6.

<sup>75</sup> Neff, “No Mercy for Judges Who Show Mercy.”

<sup>76</sup> Morey, “When Traffic Court Becomes Debtors’ Prison.”

<sup>77</sup> *Bearden v. Georgia*, 461 U.S. at 672–73.

<sup>78</sup> *Bearden v. Georgia*, 461 U.S. at 671.

<sup>79</sup> *Turner v. Rogers*, 131 U.S. 2507 (2011).

hundreds of people are held at the Mecklenburg County Jail for failure to pay fines or fees in connection to their criminal convictions.<sup>80</sup> To make *Bearden* meaningful, courts should also examine a defendant's ability to pay at sentencing, when contemplating the assessment of fees and fines, rather than waiting until failure to pay the imposed obligation. Fundamental notions of due process of law, at a minimum, demand notice to the defendant of the centrality of ability to pay to the punishment determination and an opportunity to explain financial exigency and hardship. Many courts in North Carolina fail to meet such a basic standard.

Third, even without directly triggered incarceration, substantial fees and court-imposed financial obligations can impermissibly burden the constitutional rights and interests of low income defendants. North Carolina law, for example, indicates a \$250 community service fee “shall be paid by all persons who participate in the program or receive services from the program staff.”<sup>81</sup> This important alternative to harsher sanction can thus be foreclosed to those unable to pay the daunting charge, effectively denying equal protection under law and penalizing defendants for their poverty. The installment fee, pre-trial release fee, probation fee, home monitoring fee, expunction fee, failure to pay fee, and others, in operation, similarly discriminate potently against poor North Carolinians without constitutional justification—closing doors, opportunities, programs and potential benefits based on income status.

An even larger array of costs and fees directly burden the exercise of explicit constitutional rights. The fifth and sixth amendments of the United States Constitution assure rights of due process, jury trial, witness confrontation and assistance of counsel. Fees for bail, court facilities, state crime lab work, state lab analysts, and the general use of the court system can burden the exercise of such constitutionally secured rights in ways that fall very disproportionately upon poor Tar Heels. Perhaps most invidious, North Carolina General Statute § 7A-455.1 imposes a mandatory appointment fee on (already determined) indigent defendants who request counsel. National reports suggest that “poor people sometimes skip using an attorney” to avoid legally assessed financial obligations.<sup>82</sup> Our North Carolina court observations and interviews with criminal defendants, judges and public defenders indicate that poor defendants refuse appointed (constitutionally-mandated) counsel out of fear of judicially-imposed fees and the sanctions that accompany them. This makes a mockery of the landmark decision in *Gideon v. Wainwright*.

Fourth, North Carolina, as indicated, has an unusually long list of user fees in criminal cases. It joins that burgeoning lineup with what is likely the nation's most aggressive scheme to restrict the judicial waivers that are necessary to assure that poor people aren't punished criminally for their poverty. In 2011, the North Carolina General Assembly moved to limit traditional judicial discretion to waive economically burdensome fees by requiring “a written finding of just cause” before any waiver can be issued. The next year, 2012, the requirement was expanded to demand “findings of fact and conclusions of law” to support the determination. Then, in 2014, legislators took the path-breaking step of requiring the state's Administrative Office of the Courts to issue an annual report, outlining by court and individual judge, how many times fees and fines have been waived—a report many judges describe as a legislative “shaming” effort. Then, in 2017, yet another restriction was passed demanding that courts provide a 15-day notice and opportunity to be heard to an array of government and quasi-governmental agencies—615 in all—that stand to receive a portion of the fines and fees under consideration to be waived.<sup>83</sup>

In response, Mecklenburg Chief District Court Judge Regan Miller remarked, “It's clear that the provision is designed to make the process so cumbersome that judges will elect to not waive costs.”<sup>84</sup> Judge Pat

<sup>80</sup> Gordon, “His Sentence Carried No Jail Time. So Why Did He Keep Ending Up There?”

<sup>81</sup> N.C. Gen. Stat. § 143B-708(c).

<sup>82</sup> Shapiro, “As Court Fees Rise, the Poor Are Paying the Price.” See Diller, Bannon, and Nagrecha, *Criminal Justice Debt*, 12.

<sup>83</sup> Schofield, “This Is What Government Looks Like When You Run It on the Cheap.”

<sup>84</sup> Boughton, “House and Senate Differ Over Budget Provision Making It Harder for Judges to Waive Fees for Poor Defendants.”

DeVine of Orange County was more frank. “The whole scheme is meant to intimidate judges.”<sup>85</sup> The law’s primary public spokesperson, Senator Randleman, indicated it was designed to make sure judges “seriously consider their action.”<sup>86</sup> The North Carolina scheme mirrors components of the Federal Sentencing Guidelines passage and implementation that were held unconstitutional by federal courts. The Feeney Amendment (to the federal guidelines) made courts declare reasons for departures from the guidelines and demanded the Sentencing Commission compile a list of all downward departures imposed, with the names of the judges who imposed them. The reporting requirement was deemed a clear “violation of the separation of powers.”<sup>87</sup>

## Larger Impact of Fines and Fees

### *Fines and fees inflict disproportionate harm*

North Carolina’s system of fines and fees raise serious questions about the neutrality of the criminal justice system. Poor people pay more and are more likely to suffer collateral consequences than their better-off neighbors. Fines and fees take on a racial cast as well. Because a higher percentage of African Americans, Hispanics and other minorities are poor, the burden of court costs falls on them more squarely.

Additionally, the criminal justice system is pervasively racialized: minorities, especially African Americans, are stopped, searched, arrested and incarcerated at higher rates than whites.<sup>88</sup> Structurally discriminatory practices such as the over-policing of minority neighborhoods, the school-to-prison pipeline, mandatory sentencing and racial profiling combine with bias to ensure that criminal punishment is concentrated in poor, minority communities.<sup>89</sup> African American men serve longer sentences than white men convicted of the same crime.<sup>90</sup> Cities with large populations of African Americans rely more heavily on fines and fees to raise municipal revenue.<sup>91</sup> African Americans are more likely to receive harsher plea deals,<sup>92</sup> be charged higher court fees and be jailed for nonpayment of fees.<sup>93</sup>

Seen in this light, court costs are an extension of our nation’s long history of racial control through the criminal justice system: a practice that extends through convict leasing and, more recently, mass

<sup>85</sup> Pat DeVine interview with the North Carolina Poverty Research Fund, August 7, 2017.

<sup>86</sup> Fain, “Budget Language Targets Court Fee Waivers for Poor Defendants.” The law was introduced into the budget anonymously and has no official sponsors.

<sup>87</sup> *United States v. Mendoza*, 2004 WL 1191118 (C.D. Cal. 2004) (holding various portions of the Federal Sentencing Act constitutional, with the exception of the Department of Justice reporting on individual judges sentencing practices, which the court held violated separation of powers.)

<sup>88</sup> See Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*; Benns and Strode, “Debtors’ Prison in 21st-Century America”; Kahn and Kirk, “What It’s Like to Be Black in the Criminal Justice System”; Makarechi, “What the Data Really Says About Police and Racial Bias”; Rothwell, “How the War on Drugs Damages Black Social Mobility.”

<sup>89</sup> See Harris, Evans, and Beckett, “Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States”; Pew Charitable Trusts, *Collateral Costs*; Shannon and Uggen, “Visualizing Punishment.”

<sup>90</sup> Schmitt, Reedt, and Blackwell, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*, 2.

<sup>91</sup> Kopf, “The Fining of Black America.”

<sup>92</sup> Rolnick Borchetta and Fontier, “When Race Tips the Scales in Plea Bargaining.”

<sup>93</sup> Bastien, *Ending the Debt Trap: Strategies to Stop the Abuse of Court-Imposed Fines and Fees*, 5.

incarceration.<sup>94</sup> Monetary sanctions, considered “integral to systems of criminal justice, debt bondage, and racial domination in the American South for decades,” have transmuted into a new type of peonage.<sup>95</sup>

In September 2017, African Americans were over half of prisoners in North Carolina despite making up 21% of the general population.<sup>96</sup> The rate of incarceration for blacks per 100,000 people is four times that for whites.<sup>97</sup> North Carolina’s youth of color are over-represented in the juvenile justice system and are treated worse than whites at every turn.<sup>98</sup> State data on traffic stops, searches and arrests show that black and Hispanic motorists are disproportionately targeted at each juncture.<sup>99</sup> Municipal level data produces similar results. In 2017, police departments in two of North Carolina’s largest cities, Charlotte and Greensboro, searched black motorists at more than twice the rate for white motorists despite the fact that each group’s contraband hit rates for the past fifteen years are almost identical.<sup>100</sup>

Approximately 10 million people nationwide owe more than \$50 billion in criminal justice debt.<sup>101</sup> That’s a lot of money, stripped in large part from poor and minority neighborhoods. Adding injury to insult is the fact that this abuse is not at the hands of an exploitative subprime lender but the government itself. In the larger picture, fines and fees combine with other social and economic challenges, leading to the “accumulation of disadvantage” and deepening racial, ethnic and economic inequality.<sup>102</sup>

## ***Fines and fees have a corrosive effect on criminal justice system***

Fines and fees are unfair and excessively punitive, and defendants know it. They breed resentment and suspicion of the courts and the legal system more broadly, eroding legitimacy and fomenting cynicism. Defendants with debt have described how “the criminal justice system was designed to make them fail and remain under criminal justice surveillance.”<sup>103</sup> One woman we interviewed characterized fines and fees as “insane, way too high.” From her point of view, “it’s just greed.”<sup>104</sup>

<sup>94</sup> For a good summary of the historical and race-based roots of “extractive practices” like fines and fees, see Murch, “Paying for Punishment: The New Debtors’ Prison” and Birkhead, “The New Peonage.”

<sup>95</sup> Harris, Evans, and Beckett, “Drawing Blood from Stones,” 1758.

<sup>96</sup> North Carolina Department of Public Safety Research and Planning, Automated System Query, <http://webapps6.doc.state.nc.us/apps/asqExt/ASQ> and 2016 American Community Survey 1-Year Estimates, DP05, <https://factfinder.census.gov/>.

<sup>97</sup> As of September 2017, the rate of incarceration for blacks in North Carolina is 913 per 100,000; the rate for whites is 234 per 100,000. North Carolina Department of Public Safety Research and Planning, Automated System Query, <http://webapps6.doc.state.nc.us/apps/asqExt/ASQ> and 2016 American Community Survey 1-Year Estimates, DP05, <https://factfinder.census.gov/>.

<sup>98</sup> North Carolina Office of the Juvenile Defender, *Addressing Disproportionate Minority Contact (DMC) in Juvenile Delinquency Court*.

<sup>99</sup> Baumgartner and Epp, *North Carolina Traffic Stop Statistics Analysis, Final Report to the North Carolina Advocates for Justice Task Force on Racial and Ethnic Bias*, 5-8.

<sup>100</sup> “Open Data Policing,” Southern Coalition for Social Justice, <https://opendatapolicing.com/nc/>. See LaFraniere and Lehen, “The Disproportionate Risks of Driving While Black.”

<sup>101</sup> Eisen, *Charging Inmates Perpetuates Mass Incarceration*, 1.

<sup>102</sup> Harris, Evans, and Beckett, “Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States,” 1789.

<sup>103</sup> Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*, 59.

<sup>104</sup> Jill Poulos interview with the North Carolina Poverty Research Fund, October 31, 2017.

The futility of trying to pay off insurmountable debt and the fear of arrest generated by excessive fines and fees cause people to drop out of mainstream institutions. Once that happens:

There are a lot of things you can't do. A lot of jobs you can't apply for ... Lots of benefits you can't apply for. If you have a license, a driver's license that needs to be renewed, you can't renew it. So what it means is you live your entire life under a cloud.<sup>105</sup>

We interviewed a man who described how he “hid out” for ten years to avoid being arrested for court debt. In an attempt to escape sanctions, defendants sever the “bonds of conformity” (steady employment, stable housing, social relationships) that are associated with criminal desistance.<sup>106</sup> As a result, fines and fees can foster marginalization and recidivism.

In North Carolina, recent legislation has been geared toward cutting court system costs and raising revenue.<sup>107</sup> These moves often frame defendants as “customers” and monetary sanctions as “user fees,” reinforcing a notion that the dispensation of justice is simply a commercial enterprise.<sup>108</sup> This cheapens and diminishes the value of the courts, downplays the hardships and inequities imposed by fines and fees, and suggests that defendants (as “customers”) somehow deserve to bear the costs of “doing business.” But we all have a stake in the operation of the criminal justice system. One attorney we interviewed stated, “I’d like to see a court funded by taxpayers rather than users. I have a strong interest as a community member in the court system. I want my neighbor to have a fair trial and just sentence, and they shouldn’t have to pay for that.”<sup>109</sup> A user fee framework allows the courts and legislators to evade broader questions about the scope and direction of the judicial department and sends a “distorted message about the real costs of enforcement” to the public.<sup>110</sup> As the U.S. Department of Justice found in Ferguson, Missouri, and as demonstrated elsewhere, the emphasis on user fees transforms citizens into “sources of revenue.”<sup>111</sup> “They’re searching to find something wrong,” a defendant observed. “If you dig deep enough, you’ll always find dirt.”<sup>112</sup>

## ***Fines and fees in North Carolina are impossible to evaluate***

Information on the statewide impact of fines and fees in North Carolina is scant to nonexistent. Basic measures—the number of people who owe court debt, the amount owed, the length of time it takes to discharge debt, the repayment rate—are unavailable. Data on collateral consequences is limited and anecdotal. As a result, fines and fees defy and escape evaluation.

Fines and fees, we’ve been told, are “all about revenue.”<sup>113</sup> They are sold on their ability to generate funds without raising taxes, yet their net economic impact is curiously unexamined. The little evidence at hand provides reason to be skeptical. Records from Mecklenburg County, North Carolina, show that in 2009

<sup>105</sup> Shapiro, “As Court Fees Rise, the Poor Are Paying the Price.”

<sup>106</sup> Harris, *A Pound of Flesh*, 73.

<sup>107</sup> Woodman, “Wait, Are You Sure You Want to Plead Guilty? North Carolina’s Bad Plan to Take Lawyers Away from Poor People.”

<sup>108</sup> “‘The only reason that the court is in operation and doing business at that point in time is because that defendant has come in and is a user of those services,’ says Michael Day, the administrator for the Allegan County Circuit Court. ‘They don’t necessarily see themselves as a customer because, obviously, they’re not choosing to be there. But in reality they are.’” Shapiro, “As Court Fees Rise, The Poor Are Paying the Price.”

<sup>109</sup> Mani Dexter interview with the North Carolina Poverty Research Fund, August 21, 2017.

<sup>110</sup> Logan and Wright, *Mercenary Criminal Justice*, 1178.

<sup>111</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 2.

<sup>112</sup> Harvey et al., *ArchCity Defenders: Municipal Courts White Paper*, 16.

<sup>113</sup> Neff, “No Mercy for Judges Who Show Mercy.”



the county jailed 246 defendants with unpaid debt who had failed to update their addresses. The cost of the jail terms alone totaled more than \$40,000; the county collected only \$33,476.<sup>114</sup> A study of fines and fees in Washington State calculated that direct expenditures (which consisted of personnel hired to collect fines and fees and the cost of mailings to defendants) came to about \$16 million, while the state made about \$21.6 million. However, this comparison did not include any indirect costs stemming from hearings, arrests, incarceration and the like.<sup>115</sup>

Low rates of collection—substantially less than 50% in a number of jurisdictions—suggest that state resources are expended chasing uncollectable fines and fees when they could be put to better use.<sup>116</sup> Our own Administrative Office of the Courts (AOC) has admitted that many court debts are a lost cause. Responding to a critical state audit, the AOC defended its failure to bring in millions of dollars in outstanding fines and fees by writing off the sum as uncollectable.<sup>117</sup> In the words of the AOC director at that time, defendants are “among the very poorest and most destitute in the state.”<sup>118</sup> Yet the courts, he acknowledged, continue to jail them for failure to comply—in an empty and possibly unlawful charade.

We hear assertions about the state’s pressing need for the funds that fines and fees provide, but we don’t hear much about the resources required to assess, manage and collect fines and fees or the costs involved in overseeing and sanctioning defendants—never mind the broader social harms at play. Without the data to test these claims, they remain unchallenged. Maybe that’s the point. If fines and fees can’t stand on the arguments—fiscal exigency and cost efficiency—advanced in their defense, they should be recognized solely as punitive measures attacking some of the state’s most disadvantaged citizens.

## History of Fines and Fees in North Carolina

The massive growth of the criminal justice system in recent decades fueled steep increases in state expenditures. In the 1970s and 1980s, incarceration rates nationwide rose inexorably, driven by a “get tough on crime” mentality, mandatory sentencing, and the wars on crime and drugs. In 40 years, the number of people behind bars in the U.S. jumped 700 percent.<sup>119</sup> The number of people incarcerated in North Carolina has grown dramatically as well. The combined prison and jail population rose from about 16,000 in 1978 to about 55,000 in 2013—an increase of 244% (Fig. 1). The prison inmate population grew so quickly in the 1980s that federal takeover due to overcrowding was imminent. The number of people under correctional supervision has almost doubled since 1985 (Fig. 2). In 2016, 57,000 people were incarcerated in state prisons or local jails, 89,000 were on probation and 9,600 were on parole.<sup>120</sup>

<sup>114</sup> Bannon, Nagrecha, and Diller, *Criminal Justice Debt*, 26.

<sup>115</sup> Beckett and Harris, “On Cash and Conviction: Monetary Sanctions as Misguided Policy,” 527–28.

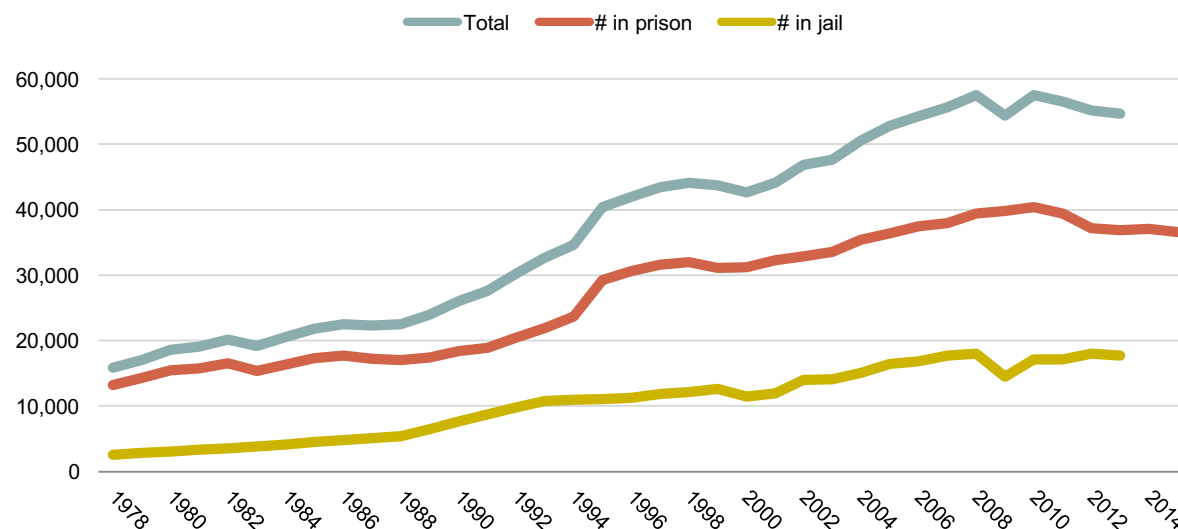
<sup>116</sup> Surveys have found collection rates ranging from around 50% in Virginia to well under half in Alabama to 9% in Florida. Pepin, *The End of Debtors’ Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations*, 3.

<sup>117</sup> Office of the State Auditor, *Performance Audit, Judicial Department, Court-Ordered Fines, Fees, and Restitution*, 18.

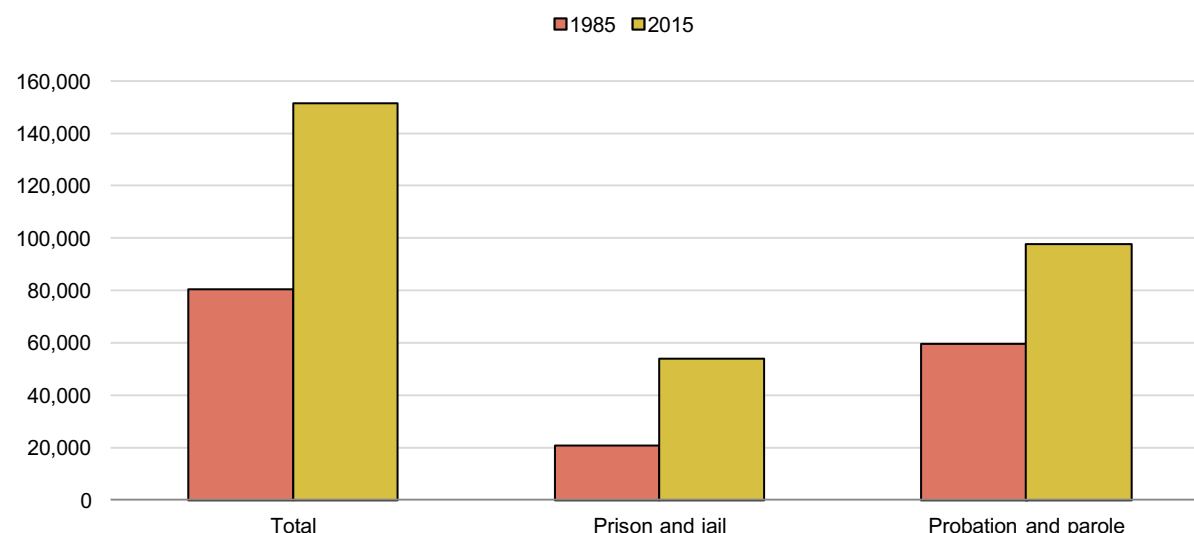
<sup>118</sup> Office of the State Auditor, 20. In the same breath, the head of the AOC also claims, “When consulting banking executives, they are surprised that our collection rate is as high as it is *given the population from whom our collections are made* [italics added]. Office of the State Auditor, 20.

<sup>119</sup> Shapiro, “As Court Fees Rise, the Poor Are Paying the Price.”

<sup>120</sup> Prison Policy Initiative, “North Carolina Profile.”

**Figure 1. Number of people incarcerated in North Carolina**

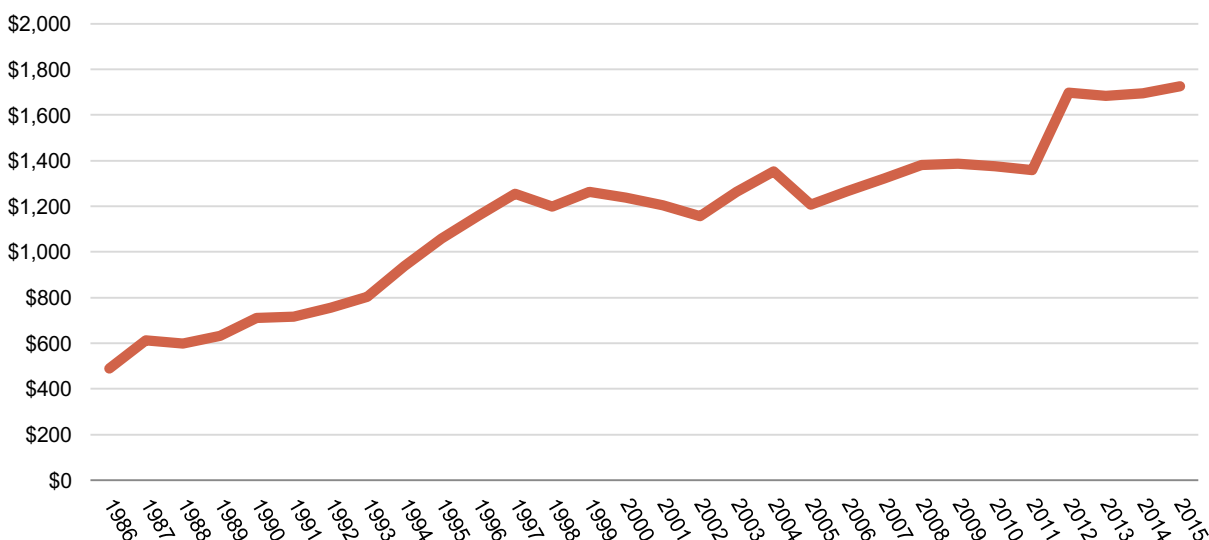
Source: Prison Policy Initiative

**Figure 2. Population in correctional custody, care or control in North Carolina, 1985 and 2015**

Source: Bureau of Justice Statistics

As more people entered North Carolina's criminal justice system, it became vastly more expensive to run. In the thirty years between 1986 and 2015, state spending on corrections from the state's General Fund alone increased 253% (Fig. 3). Judicial branch expenditures also rose, climbing from about \$401 million in 2003 to its peak of about \$546 million in 2009, before the recession, a newly elected cadre of "small government" adherents and state budget cuts brought it back down again.<sup>121</sup>

<sup>121</sup> North Carolina Administrative Office of the Courts Budget Management and Financial Services, *Statistical and Operational Report of Budget Management and Financial Services: July 1, 2015 - June 30, 2016*.

**Figure 3. North Carolina corrections spending from General Fund (2015 constant dollars in millions)**

Source: National Association of State Budget Officers

By the 2000s, the practice in North Carolina of relying on fees for revenue was entrenched, with the number of fees proliferating throughout the decade. “We began to see this legislative constant,” said a former chief public defender. “Each session we’d see an add-on or increase in a cost or fee.”<sup>122</sup> The General Court of Justice fee has increased 260% (for district court) and 243% (for superior court) since 1995. Had the fees gone up at the rate of inflation, they would be about \$66 (district court) and \$73 (superior court)—approximately a third of their current amount.

As discussed above, the courts are not the primary beneficiary of fines and fees. The state constitution requires that fines go to local public school districts.<sup>123</sup> The most common fees are remitted to the state’s General Fund, which is the central “bucket” of unrestricted money the state draws on to pay its expenses. In fiscal year 2015-16, the judicial branch disbursed about \$266 million in fees to the General Fund alone<sup>124</sup> and over \$737 million in fines, fees, restitution, forfeiture and other receipts—a 212% increase from 1992 (Fig. 4).<sup>125</sup>

Despite siphoning millions of dollars from defendants, the court system itself has been starved for funds. The judicial branch annual report from 2000 bluntly summarized the situation, stating that it “has and will likely to continue to struggle with chronic underfunding.”<sup>126</sup> Subsequent years brought little change. In 2007, North Carolina ranked 49<sup>th</sup> out of the fifty states in per capita spending on its judicial branch. Five years later, in 2012, it was still firmly lodged at the bottom at 45<sup>th</sup>.<sup>127</sup> According to the most recent annual

<sup>122</sup> James Williams interview with the North Carolina Poverty Research Fund, June 30, 2017.

<sup>123</sup> North Carolina Constitution, Article IX, Section 7.

<sup>124</sup> North Carolina Administrative Office of the Courts Budget Management and Financial Services, *Statistical and Operational Report of Budget Management and Financial Services: July 1, 2015 - June 30, 2016*, 5–6.

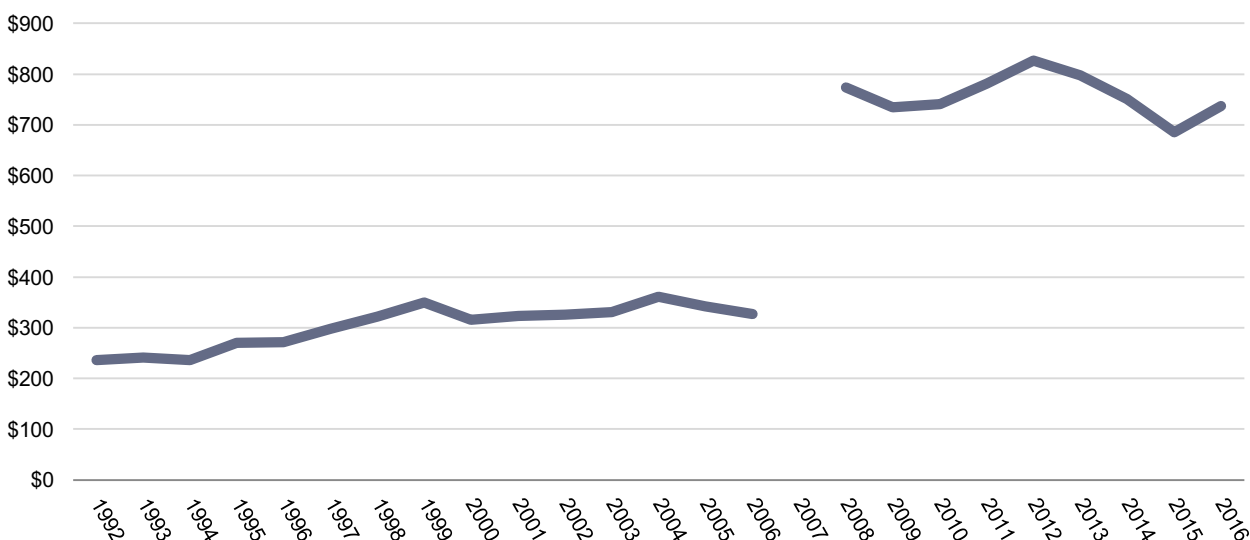
<sup>125</sup> Remittance amounts are included in the annual Budget Management and Financial Services report issued by the AOC and available at <http://www.nccourts.org/Citizens/SRPlanning/Statistics/Operational.asp>.

<sup>126</sup> Lakin and Hardee, *2000 Annual Report: North Carolina Courts: Working Together for Our Families and Our Future*, 15.

<sup>127</sup> North Carolina Administrative Office of the Courts, *Annual Report of the North Carolina Judicial Branch: July 1, 2015 - June 30, 2016*, 6.

report, cuts to positions and other forms of attrition have left the judicial branch “in an unsustainable position” going forward.<sup>128</sup>

**Figure 4. Total funds disbursed by North Carolina Judicial Branch (2016 constant dollars)**



Note: No data available for fiscal year 2006-07. A slew of new fees went into effect in that same year.

Source: North Carolina Administrative Office of the Courts

## Recommendations

We ask defendants, who are overwhelmingly poor, to shoulder an array of government expenses. As long as the General Assembly shirks its duty to fully fund the courts and other state activities, the imposition and collection of fees will remain a powerful political imperative. The decision to rely on a vulnerable and distressed portion of the population for funding is, as one judge said, “the root of the problem” posed by fines and fees. Legislative solutions like repealing the fees that penalize and ensnare poor defendants would be the most efficient and far-reaching cure, but the General Assembly in recent years has gone in the opposite direction. In recognition of this political reality, the recommendations below focus on steps the courts themselves can (and have started to) take.

As mentioned above, judges should perform a mandatory inquiry into defendants’ ability to pay before assessing costs. While an ability to pay inquiry is not constitutionally required at this stage (only before jailing a defendant), it would make far more sense for that determination to occur at sentencing. Waiting until courts have already expended time and money trying to collect money that isn’t there, even as the defendant becomes more enmeshed in debt, is wasteful and cruel.

Courts should identify and apply uniform factors when determining whether a defendant can afford fines and fees. Benchmarks such as a percentage of the poverty threshold, percentage of area median income, homelessness or receipt of specified services provide clear, bright line standards. Defendants who are found indigent for these purposes should be exempt from fines and fees, or at least enjoy a rebuttable

<sup>128</sup> North Carolina Administrative Office of the Courts, 6.

presumption of exemption. If defendants can pay some amount, payment plans should be tailored to the defendant's budget (as a percent of discretionary income, for example).

Mecklenburg County has already taken laudable steps in this direction. District courts in the county will start to hold hearings on defendants' ability to pay before handing out fines and fees. Judges will use criteria such as defendants' income and expenses, recent bouts of homelessness, participation in a treatment program, or whether defendants can afford their own attorney in determining ability to pay. "In the end," says Judge Becky Tin, one of the main forces behind this move, "we don't want to saddle low-income defendants with unfair monetary obligations they aren't able to meet, and that might cause them to go back to jail and never dig themselves out."<sup>129</sup>

The ACLU of North Carolina, Harvard Law School's Criminal Justice Debt Initiative and others are spearheading the adoption of bench cards that lay out, in clear and concise terms, guidelines for judges who are screening defendants for ability to pay. The bench card should be adopted by trial courts throughout the state to clarify judges' authority and outline judicial options in waiving fines and fees. The guidance provided by the bench card can be reinforced with judicial training. We're fortunate in North Carolina to have the UNC School of Government, which does an admirable job reaching and teaching judges across the state.

Well-designed alternatives to fines and fees such as free community service or drug/alcohol treatment programs should be emphasized and made accessible to defendants with limited time and resources. These programs can be valuable experiences but must be matched to defendant's situation and needs. Transportation, especially in rural areas, can also make it very difficult for defendants to reach their assigned program. In some places, eligible or suitable programs may not exist. Courts should consider creative measures to broaden the scope of eligible programs, including for example quality job skills training, additional education, or other types of treatment and counseling.

Probation should not be extended simply because the defendant has not paid all fines and fees. Ending probation for those who have fulfilled all terms except payment would free up probation officers to concentrate on probationers with bigger issues, spare the courts from monitoring defendants unnecessarily and release defendants from oversight and continued expense.

Because they senselessly inflict a great deal of harm, the penalties for defaulting on fines and fees (such as driver's license revocation and jail) should be off the table unless the defendant is clearly able to pay but refuses to do so. Penalties should never be assessed without first conducting a meaningful ability to pay hearing. Other measures can incentivize payment and ensure that debt doesn't persist for years. An annual amnesty of fines and fees of a certain age or amount, statutes of limitation for older debt or waiver of some or all fines and fees after a specified number of (reasonable) payments would encourage defendants to cooperate, secure in the knowledge that they would not become saddled with permanent indebtedness.

Court-appointed attorneys are no longer available for Class 3 misdemeanors, which do not carry the threat of jail time. However, eliminating the right to counsel in these cases is, in the words of one judge, "unfair and improper" because "the ramifications of having a criminal record are real."<sup>130</sup> As she pointed out, the basis of our adversarial system "depends on a delicate balance of players": the prosecutor, the judge and the public defender or other appointed counsel. An attorney for the defendant can protect the defendant's rights, press for a better outcome, present evidence of indigency, and prevent damage from fines and fees down the road. Courts should also ensure that poor defendants do not reject the offer of a court-appointed attorney out of concern for costs.

<sup>129</sup> Gordon, "His Sentence Carried No Jail Time. So Why Did He Keep Ending Up There?"

<sup>130</sup> Pat DeVine interview with the North Carolina Poverty Research Fund, August 7, 2017.

Finally, the court system should be required to gather and produce information on how fines and fees operate in the criminal justice system. Lawmakers, researchers, advocates and others should be able to track and analyze the impact of fines and fees on North Carolinians, especially on low income Tar Heels, and on the state coffers. It is telling that the most readily available data focuses on judges' waiver rates and the judicial branch remittances to the state. This reflects legislative and court system priorities. It is also telling that the data that would allow researchers, advocates and others to evaluate fines and fees—and hold lawmakers accountable—is missing.

## Conclusion

Over the last two decades, the North Carolina General Assembly has levied a very broad and costly array of fees against even indigent defendants that are meant to help finance the operation of the criminal justice system and supplement government revenues. This “user fee” program works massive hardship upon low income Tar Heels and their families. It frequently locks them into a cycle of punishment and debt from which they cannot escape. As one public defender put it, “Clients enter the criminal justice circle of hell. Every day there are cases where poor people get harsher treatment. It puts the poor in a tough place and it keeps them there.”<sup>131</sup>

The broad and growing user fee program raises a cascade of constitutional problems. It often converts the courts into tax collection agencies, in violation of an appropriate separation of powers. It deprives many poor defendants of the essentials of due process, frequently leading to incarceration and other punishments based merely on their poverty. It also regularly denies equal protection of the laws to the poorest members of society and burdens other protections secured by the bill of rights. And the harsh and bullying enforcement scheme designed to secure payment, and to eliminate fee waivers, is a rank violation of the independence of the North Carolina judiciary.

The cost and fee program is also frequently Kafkaesque in operation. Under it, we take relatively minor offenses, minor enough that they typically don't implicate jail time, and we assess charges against defendants that we know can't pay. We then penalize them for not paying and impose further charges and harsher sanctions for their non-compliance. Each successive step is built on a defiance of logic and candor, a knowing miscalculation. It is cynicism on stilts.

The oddness arises, in major part, from the decision to try to fund the judicial system by user fees wrung from the most unlikely group of donors—criminal defendants who are largely indigent. It crushes lives for modest offenses and forces judges into roles that cast doubt on their independence and essential fairness. It also ignores the reality that all citizens have potent interest in a strong, fair, functioning justice system. Citizens ought to pay for it, like they do police, or the fire department, or, for that matter, the legislature.

Until the mistaken course is legislatively corrected, North Carolina courts can embrace a significant list of ameliorative steps, discussed above, to diminish the hardship and constitutional impropriety of the imposed fee system; recognizing, as Justice Hugo Black put it 75 years ago, “there can be no equal justice where the kind of trial a person gets depends on the amount of money he has.”

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<sup>131</sup> Mani Dexter interview with the North Carolina Poverty Research Fund, August 21, 2017.



## Appendix 1: Schedule of Criminal Court Costs

The full document is available at

[http://www.nccourts.org/Courts/Trial/Documents/2017\\_court\\_costs\\_chart\\_criminal.pdf](http://www.nccourts.org/Courts/Trial/Documents/2017_court_costs_chart_criminal.pdf).

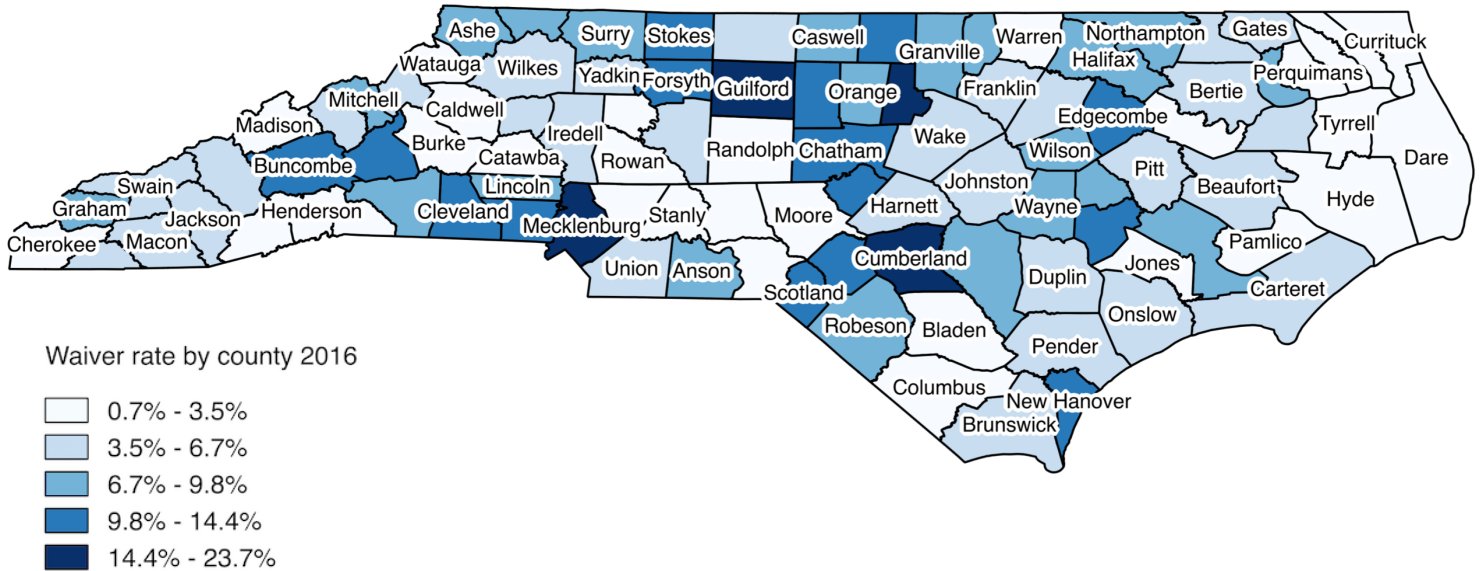
### COURT COSTS AND FEES CHART

The chart below shows court costs in effect as of **August 1, 2017<sup>1</sup>** and applies to all costs assessed or collected on or after that date, except where otherwise noted, and unless subject to the “waiver exception” of G.S. 7A-304(g).

CRIMINAL COURT COSTS G.S. 7A-304, unless otherwise specified		AMOUNT
An additional summary chart of criminal costs has been attached to this cost chart as “Appendix - Criminal Costs Summary.” The appendix summarizes the basic costs common to all dispositions in a particular trial division. It does <b>not</b> include additional cost items that must be assessed depending on individual factors for each case (e.g., FTA fees, supervision fees, jail fees, etc.) or for specific offenses of conviction (e.g. improper equipment or impaired driving); those costs are assessed separately. Neither does it apply to offenses for which the relevant statute assesses specific costs or prohibits the imposition of costs.		
<b>DISTRICT COURT</b> (including criminal cases before magistrates)		
General Court of Justice Fee. G.S. 7A-304(a)(4).	General Fund	146.55
	State Bar Legal Aid Account (LAA)	.95 <sup>2</sup>
		147.50
Facilities Fee. G.S. 7A-304(a)(2).		12.00
Telecommunications and Data Connectivity Fee. G.S. 7A-304(a)(2a). <sup>3</sup>		4.00
LEO Retirement/Insurance. G.S. 7A-304(a)(3) & (3a).		7.50
LEO Training and Certification Fee. G.S. 7A-304(a)(3b).		2.00
<b>TOTAL</b>		173.00
Chapter 20 Fee. G.S. 7A-304(a)(4a) (for conviction of any Chapter 20 offense).		+10.00 <sup>4</sup>
DNA Fee. G.S. 7A-304(a)(9) (criminal offenses, only; does not apply to infractions).		+2.00
Plus \$5.00 service fee for each arrest or service of criminal process, including citations and subpoenas. G.S. 7A-304(a)(1).		+5.00
<b>SUPERIOR COURT</b>		
General Court of Justice Fee. G.S. 7A-304(a)(4).	General Fund	153.55
	State Bar Legal Aid Account (LAA)	.95 <sup>5</sup>
		154.50
Facilities Fee. G.S. 7A-304(a)(2).		30.00
Telecommunications and Data Connectivity Fee. G.S. 7A-304(a)(2a).		4.00
LEO Retirement/Insurance. G.S. 7A-304(a)(3) & (3a).		7.50
LEO Training and Certification Fee. G.S. 7A-304(a)(3b).		2.00
<b>TOTAL</b>		198.00 <sup>6</sup>
Chapter 20 Fee. G.S. 7A-304(a)(4a) (for conviction of any Chapter 20 offense).		+10.00
DNA Fee. G.S. 7A-304(a)(9) (criminal offenses, only; does not apply to infractions).		+2.00
Plus \$5.00 service fee for each arrest or service of criminal process, including citations and subpoenas.		+5.00

OTHER CRIMINAL FEES	AMOUNT
Appointment of Counsel Fee for Indigent Defendants. G.S. 7A-455.1.	60.00
Civil Revocation Fee (impaired driving CVRs, only). G.S. 20-16.5(j).	100.00
Community Service Fee. G.S. 143B-708.	250.00
Continuous Alcohol Monitoring (CAM) Fee (offenses prior to Dec. 1, 2012). G.S. 20-179. <sup>7</sup>	Varies <sup>8</sup>
Continuous Alcohol Monitoring (CAM) Fee (parolees, only). G.S. 15A-1374. <sup>9</sup>	Varies
Criminal Record Check Fee. G.S. 7A-308(a)(17).	25.00
Dispute Resolution Fee. G.S. 7A-38.3D and G.S. 7A-38.7.	60.00 per mediation
Expunction Fee, petitions under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, and 15A-145.4.	175.00
Expunction Fee, petitions under G.S. 15A-145.5.	175.00
Expunction Fee, petitions under G.S. 15A-146. <sup>10</sup>	175.00
Failure to Appear Fee. G.S. 7A-304(a)(6).	200.00
Failure to Comply Fee. G.S. 7A-304(a)(6).	50.00
House Arrest with Electronic Monitoring (EHA) One-Time Fee. G.S. 15A-1343(c2).	90.00
House Arrest with Electronic Monitoring (EHA) Daily Fee. G.S. 15A-1343(c2).	4.48/day
Impaired Driving Fee. G.S. 7A-304(a)(10).	
<b>Note:</b> Applies only to offenses committed on or after December 1, 2011.	100.00
Improper Equipment Fee. G.S. 7A-304(a)(4b). <sup>11</sup>	50.00
Installment Payments Fee. G.S. 7A-304(f).	20.00
Jail Fees (pre-conviction). G.S. 7A-313.	10.00 per 24 hours or fraction thereof
Jail Fees (split sentence served in local facility). G.S. 7A-313 and G.S. 148-29.	40.00 per day
Limited Driving Privilege Fee – Petitions under G.S. 20-20.1. At petition/Application: CVD Costs If Issued: (G.S. 20-20.2). +100.00	
Limited Driving Privilege Fee – Other than under G.S. 20-20.1. If Issued: (G.S. 20-20.2). <b>Note:</b> If there is no underlying conviction in the county, Charge. Civil filing fees explained on form AOC-CV-350.	+100.00
Pretrial Release Service Fee (county). G.S. 7A-304(a)(5). <sup>12</sup>	15.00
Satellite-Based Monitoring Fee for Sex Offenders. G.S. 14-208.45.	90.00
State Crime Lab Fee. G.S. 7A-304(a)(7).	600.00
Local Government Lab Fee. G.S. 7A-304(a)(8).	600.00
Private Hospital Lab Fee. G.S. 7A-304(a)(8a). <sup>13</sup>	600.00
State Lab Analyst Expert Witness Fee. G.S. 7A-304(a)(11). <sup>14</sup>	600.00
Local Lab Analyst Expert Witness Fee. G.S. 7A-304(a)(12). <sup>15</sup>	600.00
Private Hospital Analyst Expert Witness Fee. G.S. 7A-304(a)(13). <sup>16</sup>	600.00
State Crime Lab Digital Forensics Fee. G.S. 7A-304(a)(9a). <sup>17</sup>	600.00
Local Lab Digital Forensics Fee. G.S. 7A-304(a)(9b). <sup>18</sup>	600.00
Seat Belt Violations (adult, front seat) and Motorcycle/Moped Helmet Violations. G.S. 20-135.2A and G.S. 20-140.4.	25.50 fine +costs below:
General Court of Justice Fee, G.S. 7A-304(a)(4).	147.50 (Dist.) 154.50 (Sup.)
Telecommunications and Data Connectivity Fee. G.S. 7A-304(a)(2a).	4.00
LEO Training and Certification Fee, G.S. 7A-304(a)(3b).	2.00
<b>TOTAL</b>	179.00 (Dist.) 186.00 (Sup.)
Seat Belt Violations (adult, rear seat). G.S. 20-135.2A(e).	No Costs 10.00 fine only
Supervision Fee. G.S. 15A-1343, G.S. 15A-1368.4, and G.S. 15A-1374.	40.00 per month
Worthless Check Program Fee. G.S. 7A-308(c). <sup>19</sup>	60.00

## Appendix 2: Waiver Rate by County



Note: Map made using QGIS

Source: North Carolina Administrative Office of the Courts

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## More Information

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