

The Consequences of Rising Court
Fines and Fees in North Carolina

At All Costs



ACLU
North Carolina

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Glossary

Ability-to-Pay Hearing: a hearing on a defendant's financial circumstances before or after the imposition of court fines and fees. This hearing is required under the Constitution after a conviction if the defendant faces jail time.

Appointed List: a list of private attorneys available to provide court-ordered representation to indigent North Carolinians, a common means for indigent defendants to obtain representation in counties without a public defender office.

Court Fees: costs charged to those coming into contact with the criminal justice system, ranging from making defendants pay for their own prosecution, e.g., costs associated with blood tests and incarceration, to their court-appointed counsel, to general across-the-board user fees imposed regardless of the severity of the offense.

Court Fines: financial punishments directly correlated to the crime or infraction for which a person is responsible.

Criminal Contempt: sanction imposed for violating a court order and frequently the charge serving as the basis for a person to be locked up for inability to pay court debt.

District Attorney (DA): prosecuting attorney in local judicial district.

Indigent Defendant: pursuant to North Carolina General Statute 7A-450(a), a person who is financially unable to secure legal representation.

North Carolina Administrative Office of the Courts (AOC): state agency providing centralized administrative, budgeting, and legal support services for the state's courts.

North Carolina Department of Public Safety (DPS): state agency housing state law enforcement agencies, e.g., State Bureau of Investigation, as well as overseeing adult corrections, e.g., state prisons, probation services, and juvenile justice.

North Carolina Office of Indigent Defense Services (IDS): state agency overseeing the provision of legal representation to indigent persons and developing training, qualification, and performance standards to govern the provision of legal services to indigent persons.

Public Defender: attorney appointed by the court to represent indigent defendants who is a member of an established public defender office solely dedicated to indigent representation.

Restitution: court-ordered financial compensation to a victim of crime.

Suspended Sentence: an imposed sentence of confinement that is only activated if the defendant does not satisfy the court's sentencing or probationary requirements.



Executive Summary

The United States formally abolished “debtors’ prisons” — the incarceration of people who fail to pay off debts — nearly two centuries ago. But today in North Carolina, thousands of low-income people are in jail, trapped in a cycle of debt, or both, because they cannot afford the unconstitutional fines and fees that courts order them to pay when convicted of any crime, even as minor as a speeding ticket.

The cost and number of fines and fees have skyrocketed across North Carolina in recent years, thanks to a series of legislative changes enacted by the North Carolina General Assembly and the day-to-day decisions of judges who have too often bent to the legislative desire to turn the judiciary to debt collection.

In courtrooms across the state, there is no consistent standard for when and how fines and fees are imposed, and too many judges do not fulfill their constitutional obligation to inquire about an individual’s financial status before ordering them to pay fines and fees, as required by law. As a result, judges routinely order low-income North Carolinians — a disproportionate number of them people of color — to pay fines and fees that they cannot afford. Failure to pay will result in more fines, fueling a cycle of debt that forces people to forgo the basic necessities of life in order to avoid jail and collateral consequences.

In this racially-skewed, two-tiered system, the rich and the poor can commit the exact same offense, but the poor will receive harsher and longer punishments simply because they are poor. While some actors, from public defenders to state legislators to reform-minded judges, have fought for fairer processes and outcomes, too many North Carolina judges nevertheless routinely violate the rights of low-income people who appear in their courtrooms.

This report examines the history of those court costs, how North Carolina has sought to turn the judiciary from its role as a neutral arbiter of justice toward service as a state debt collector, and how the resulting unjust system criminalizes poverty, violates people’s rights, and preys on many of our state’s most vulnerable residents.

Methodology

In September 2016, the ACLU of North Carolina (ACLU-NC) launched an investigation into how court fines and fees operate in our state. Specifically, we sought to understand how frequently North Carolinians are incarcerated and/or trapped in poverty due to the imposition of court fines and fees.

Given that there is no comprehensive state or county data on the interplay of poverty and court fines and fees, the ACLU-NC submitted public record requests on the number of people arrested for nonpayment of court fines and fees for the previous six months and the daily cost of incarceration. These 400 requests went to the county managers, county finance managers, sheriff's offices, and court clerks in all 100 of North Carolina's counties.¹ The ACLU-NC reviewed the responses and sent another round of public record requests to the counties that did not respond. Ultimately, the ACLU-NC received responses as follows:

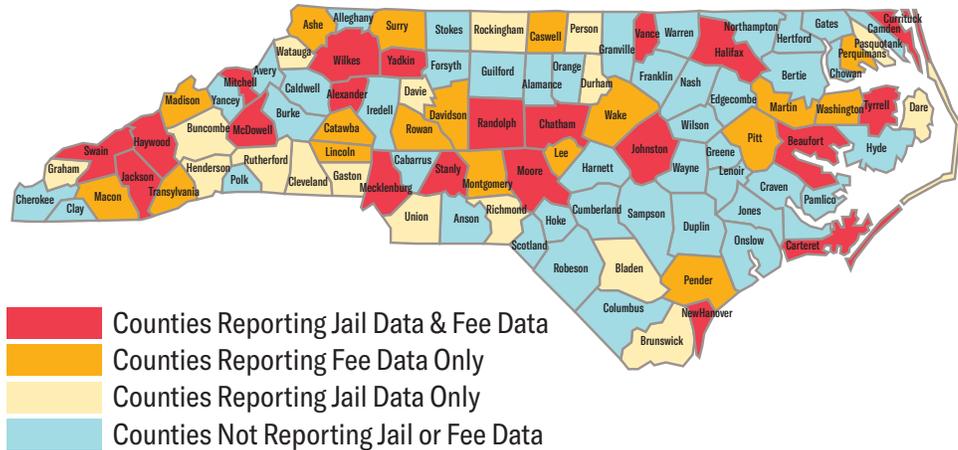
- 89 counties responded at least to acknowledge that they had received the requests
- 57 counties responded with some data responsive to the particular requests made
- 11 counties reported booking data for people arrested for unpaid court debt (296 total arrests)
- 34 counties reported data on budget costs of the county jail
- 40 counties reported data on fines and fees revenue

On the next page is a graphic representation of county responses. As seen on the map, the reporting counties represent a cross-section of rural, urban, and mid-sized counties in North Carolina.

The ACLU-NC also conducted court observations to document how court fines and fees were meted out in our state as well as the impact this form of punishment had on North Carolinians. The observations occurred in four counties spanning the state's geography and demographics:

Robeson County, a county on the South Carolina border in the eastern portion of the state with a large Native American population;

¹ ACLU-NC also sent public record requests to AOC and DPS seeking information including the number of North Carolinians incarcerated for fines and fees. AOC and DPS responded but did not produce responsive data on point.



Edgecombe County, an agrarian county in northeastern North Carolina with a majority Black population;

Avery County, a rural, overwhelmingly white Appalachian county on the Tennessee border in the northwestern corner of the state;

Mecklenburg County, North Carolina’s most populous county and home to the state’s largest city by population, Charlotte.

Between January 2017 and May 2018, the ACLU-NC’s staff and volunteer law students observed and documented how courts in these four counties imposed and enforced the collection of fines and fees. We conducted at least 100 court observations in each county and documented the experiences of 412 North Carolinians who appeared in court as defendants.

Each observation collected 26 data points, including the person’s demographic information, the type and date of their hearing, the charges they faced, if they had legal counsel present, and whether or not the court asked about their financial circumstances. These court observations were supplemented by interviews of public defenders and people personally ordered to pay excessive fines and fees to amplify on patterns and practices in the observed counties.

Key Findings

The data collected through public record requests, in-person court observations, and associated research revealed these key trends:

- 1.** Criminal court fines and fees in North Carolina have risen exponentially over the last 20 years. These costs are not proportional to the crimes charged, and they do not necessarily relate to any expense the state accrued in a particular case.
- 2.** Court fines and fees disproportionately harm communities of color and low-wealth North Carolinians.
- 3.** A large portion of the fees courts collect go directly to the state's general fund. Fines and fees revenue streams have helped replace funds that were lost due to cuts to the state's income, estate, and corporate tax rates. The increased state reliance on court fines and fees constitute a huge step toward regressive taxation given that low-wealth North Carolinians are overrepresented in court.
- 4.** The North Carolina General Assembly has adopted laws that make it more difficult for judges to waive court fines and fees. These efforts have largely succeeded, reducing the already low number of waivers granted.
- 5.** Court fines and fees harm the lives of hundreds of thousands of North Carolinians through incarceration or other civil penalties, such as losing the right to vote, losing access to public benefits, or losing driver's licenses.
- 6.** On average, a county spends more money incarcerating a North Carolinian for court debt than that individual owes in court debt.
- 7.** Courts often do not appoint legal counsel for people who face incarceration for nonpayment of fines and fees. Many people are unconstitutionally sentenced to jail without being provided a lawyer or a meaningful process to voluntarily waive counsel.
- 8.** State district court judges often do not conduct constitutionally-mandated inquiries into a person's financial situation before imposing court fines and fees. Even when appointed, defense attorneys often do not sufficiently advocate for the waiver of court fines and fees.

9. When judges inquire about a defendant's financial circumstances, the assessment is often not tethered to objective criteria such as the federal poverty level. This leads to arbitrary decisions regarding the imposition of fines and fees and results in many North Carolinians being ordered to pay despite their inability to do so.

10. Instead of waiving court fines and fees for people who are unable to pay, judges often keep defendants under court supervision. If this includes continuing probation, then North Carolinians can lose everything from the right to vote to the ability to drive. If someone's fines are not waived, they also have to repeatedly return to court, imperiling everything from educational opportunities to job security to childcare while spending their limited financial resources on court debt rather than life's necessities.

11. Court practices ensuring adequate legal representation and meaningful inquiries into a defendant's ability to pay can mitigate the harms caused by North Carolina's system of court fines and fees.

North Carolina Increasingly Relies Upon Court Fines and Fees as Revenue Source

In 1999, a North Carolinian charged with a felony would face a total of \$106 in court fines and fees. Today \$106 would barely cover two-thirds of the General Court of Justice fee in district court and less than half of the fines and fees associated with a typical traffic citation.

The breadth and punitive nature of court fines and fees have increased exponentially in recent decades. Further, these funds do not all stay in the court system but instead fund wide-ranging, non-judicial responsibilities as well.

First, the breadth of court fees the state asks North Carolinians to shoulder has increased dramatically. Over the course of the past 20 years, the number of fees has ballooned from four to 45 in North Carolina district court.²

As this staggering increase suggests, there are now fees associated with nearly every part of a criminal case. Someone who is detained before her trial can be charged \$10 for every day they are incarcerated if she is convicted of an offense.³ If a blood test is necessary as part of a criminal case, the criminal defendant can be charged \$600.⁴ If a lab technician comes to court to testify, the defendant is subject to another \$600 fee.⁵ If an indigent individual seeks a court-appointed attorney and is convicted, she is charged an initial \$60 and also can be charged hourly attorney fees.⁶ She could also be charged \$40 a day to be held in North Carolina state prison.⁷ Even efforts to avoid serving jail time come with potential costs. For example, community service that is imposed for an offense comes with a fee of \$250.⁸

2 *Compare* N.C. ADMIN. OFFICE OF THE COURTS, *Basic Court Costs and Fees* (Feb. 1, 1999), https://www.nccourts.gov/assets/documents/publications/court_cost_chart-1999final.pdf?JKjPSx-11mWG.6RmaFTi93Zd6RBjATk_o with N.C. ADMIN. OFFICE OF THE COURTS, *Court Costs and Fees Chart 1–2* (Dec. 1, 2018), https://www.nccourts.gov/assets/documents/publications/2018-court-costs-chart-criminal.pdf?mQXpZcjc21PxmH9gyq8_JfYmaZZ0rjX; see also Joseph Neff, *No Mercy for Judges Who Show Mercy*, THE MARSHALL PROJECT (Nov. 29, 2017 10:00 PM), <https://www.themarshallproject.org/2017/11/29/no-mercy-for-judges-who-show-mercy> (noting that, including superior court fees, there are now 52 fees associated with the state criminal justice system).

3 N.C. ADMIN. OFFICE OF THE COURTS, *Court Costs and Fees Chart 2* (Dec. 1, 2018), https://www.nccourts.gov/assets/documents/publications/2018-court-costs-chart-criminal.pdf?mQXpZcjc21PxmH9gyq8_JfYmaZZ0rjX (included herein as Appendix A).

4 *Id.*

5 *Id.*

6 N.C. Gen. Stat. § 7A-455.1(a)–(b) (2017).

7 N.C. ADMIN. OFFICE OF THE COURTS, *Court Costs and Fees Chart 2* (Dec. 1, 2018), https://www.nccourts.gov/assets/documents/publications/2018-court-costs-chart-criminal.pdf?mQXpZcjc21PxmH9gyq8_JfYmaZZ0rjX (included herein as Appendix A).

8 *Id.*

Further, court fines and fees do not necessarily relate to any expense the state accrued in a particular case. For example, a North Carolinian convicted of any criminal offense can be charged a DNA fee whether or not any DNA analysis was done in her case.⁹

Second, the cost of fees has risen over the same time period. For instance, anyone held responsible for a criminal offense is subject to the General Court of Justice Fee.¹⁰ Twenty years ago that fee was \$61.00 for cases in district court.¹¹ Today it is \$147.50.¹² Additional automatic fees drive the initial court costs up to \$173.00.¹³

In 1999, a North Carolinian charged with a felony would face a total of \$106 in court fines and fees.¹⁴ Today \$106 would barely cover two-thirds of the General Court of Justice fee in district court¹⁵ and less than half of the fines and fees associated with a typical traffic citation.¹⁶

These exploding fines and fees are symptomatic of a move toward regressive taxation in the state. Fines and fees are not simply used to fund the court system. Instead, they are often allocated to fund a range of completely unrelated government programs. In fiscal year 2016-17, the North Carolina judicial branch remitted nearly \$263 million to the state's General Fund.¹⁷ North Carolina taps that unrestricted pool of money to fund its general expenditures.¹⁸ While costs and fees have risen, North Carolina has repealed the state estate tax, created a modified flat income tax,¹⁹ and reduced the corporate income tax rate from 6.9 percent to 2.5 percent.²⁰

9 N.C. Gen. Stat. § 7A-304(a)(9) (2017).

10 N.C. Gen. Stat. § 7A-304(a) (2017).

11 N.C. ADMIN. OFFICE OF THE COURTS, *Basic Court Costs and Fees* (Feb. 1, 1999), https://www.nccourts.gov/assets/documents/publications/court_cost_chart-1999final.pdf?JKjPSx11mWG.6RmafTi93Zd6RBjATk_o.

12 N.C. ADMIN. OFFICE OF THE COURTS, *Court Costs and Fees Chart 1* (Dec. 1, 2018), https://www.nccourts.gov/assets/documents/publications/2018-court-costs-chart-criminal.pdf?mQXpZcjc21PxmH9gyq8_JfYmaZZ0rjX.

13 *Id.* (showing that statutorily appended fees—such as the Facilities Fee, Telecommunications and Data Connectivity Fee, and LEO Retirement/Insurance fee—increase initial court costs to \$173.00).

14 N.C. ADMIN. OFFICE OF THE COURTS, *Basic Court Costs and Fees* (Feb. 1, 1999), https://www.nccourts.gov/assets/documents/publications/court_cost_chart-1999final.pdf?JKjPSx11mWG.6RmafTi93Zd6RBjATk_o.

15 See N.C. ADMIN. OFFICE OF THE COURTS, *Court Costs and Fees Chart 1* (Dec. 1, 2018), https://www.nccourts.gov/assets/documents/publications/2018-court-costs-chart-criminal.pdf?mQXpZcjc21PxmH9gyq8_JfYmaZZ0rjX (included herein as Appendix A).

16 Heather Hunt & Gene Nichol, N.C. Poverty Research Fund, *Court Fines and Fees: Criminalizing Poverty in North Carolina 7* (Winter 2017), http://www.law.unc.edu/documents/poverty/publications/court_fines_and_fees.pdf (“Between January and October 2017, the average amount paid online for non-contested traffic citations was \$226.”).

17 N.C. ADMIN. OFFICE OF THE COURTS, STATISTICAL AND OPERATIONAL REPORT OF THE BUDGET MANAGEMENT AND FINANCIAL SERVICES 5 (2016-2017), https://www.nccourts.gov/assets/documents/publications/2016-17_budget_and_financial_statistical_and_operational_report.pdf?7bLMhqhE9_d_d5zs_YvxxOcW2ZZNKIVz.

18 Hunt & Nichol, *supra* note 16 at 21.

19 Mark Binker, *Breaking down the 2013 tax package*, WRAL (July 19, 2013), <https://www.wral.com/breaking-down-the-2013-tax-package/12678653/>.

20 N.C. JUSTICE CTR., *Corporate tax cuts are a boon to shareholders, not state economies* (Apr. 9, 2018), <https://www.ncjustice.org/budget-and-tax/>

North Carolina Pushes the Judiciary into Debt Collecting

Fines and fees are rising despite clear federal and state constitutional dictates that courts must consider whether a person can afford to pay court costs before ordering them to do so.

The United States Supreme Court held in 1983 in *Bearden v. Georgia* that judges “must inquire into the reasons for the failure to pay” court costs.²¹ Further, the *Bearden* Court held that the due process and equal protection guarantees of the Fourteenth Amendment prohibit “punishing a person for his poverty.”²²

Similarly, the North Carolina Constitution plainly states that “[t]here shall be no imprisonment for debt in this State.”²³

In March 2016, the U.S. Department of Justice wrote to state Chief Justices and state court administrators reminding them that incarcerating individuals for nonpayment of court debt without determining their ability to pay was unconstitutional.²⁴

And just this year the United States Supreme Court unanimously lamented ongoing state and local reliance “on fines and fees as a source of general revenue.”²⁵ Canvassing history from the 1215 signing of the Magna Carta, to the racist Black Codes of the Jim Crow South, to the present day, the Court reminded policymakers that “the protection against excessive fees has been a constant shield throughout Anglo-American history[.]”²⁶ Such protection is necessary to prevent “[e]xorbitant tolls” from “undermin[ing] . . . constitutional liberties.”²⁷

Unfortunately, North Carolina has instead adopted measure after measure that is at odds with these constitutional mandates and warnings.

corporate-tax-cuts-are-boon-shareholders-not-state-economies.

21 461 U.S. 660, 672 (1983).

22 *Id.* at 671. The due process and equal protection guarantees of the state constitution overlap vparallel nature of state and federal equal protection guarantees); *Patmore v. Town of Chapel Hill*, 757 S.E.2d 302, 304 (N.C. Ct. App. 2014) (noting parallel nature of federal due process guarantee and state “law of the land” clause).

23 N.C. CONST. art. I, § 28.

24 U.S. DEPT OF JUSTICE, *Dear Colleague Letter on Fines and Fees* (Mar. 14, 2016), <https://www.courts.wa.gov/subsite/mjc/docs/DOJDearColleague.pdf>.

25 *Timbs v. Indiana*, No. 17-1091, slip op. at 7 (S. Ct. Feb. 20, 2019) (quoting Brief of ACLU et al. as Amici Curiae Supporting Petitioner at 7).

26 *Id.* at 4-6.

27 *Id.* at 6.

First, as noted above, the state has exponentially increased the breadth and harshness of court fines and fees. As a consequence, more low-wealth North Carolinians face the prospect of greater court debt even for modest offenses such as minor traffic infractions.

Second, in 2013, North Carolina lawmakers passed a law that made a substantial portion of people charged with Class 3 misdemeanors, such as speeding more than 15 miles per hour over the posted limit²⁸ or possession of less than a half ounce of marijuana,²⁹ ineligible for court-appointed attorneys.³⁰ But even these minor offenses come with substantial court fines and fees. Now North Carolinians must navigate these charges and their attendant fines and fees without the benefit of a lawyer to advise them of their rights.

Third, state legislators have taken steps to deter judges from granting waivers to people who are unable to pay court debt. In 2015, the General Assembly approved legislation requiring the AOC to track the number of times individual judges waive court costs.³¹ This data is then publicly released in an annual report.³²

Many judges interpret this as a method of public shaming that seeks to end the waiver of court fines and fees entirely. “What purpose does it serve? To embarrass people, I guess,” said Richard Boner, a retired Mecklenburg County Superior Court judge and registered Republican.³³ Similarly, former Durham County District Court Judge and current Democratic state Representative Marcia Morey underscored the perversity in shaming judges for following the Constitution as part of an exercise in drawing blood from a stone: “Evidently the legislators wanted to know who the ‘soft’ judges were that allowed people not to fork over money they did not have.”³⁴

Fourth, the state has sought to make it more administratively difficult for judges to waive fines and fees faced by indigent North Carolinians.

28 N.C. Gen. Stat. § 20-141(j1) (2017).

29 N.C. Gen. Stat. § 90-95(d)(4) (2017).

30 Current Operations and Capital Improvements Appropriations Act of 2013, § 18B.13(a), 2013 N.C. Sess. Laws 2013-360 (codified at N.C. GEN. STAT. § 15A-1340.23(d) (2017)) (“Unless otherwise provided for a specific offense, the judgment for a person convicted of a Class 3 misdemeanor who has no more than three prior convictions shall consist only of a fine”); see also John Rubin, *Appointment of Counsel for Class 3 Misdemeanors*, UNC SCH. OF GOV’T (Nov. 2013), <https://www.sog.unc.edu/resources/faq-collections/appointment-counsel-class-3-misdemeanors> (discussing the ramifications of the Class 3 Misdemeanor legislation).

31 Current Operations and Capital Improvements Appropriations Act of 2015, § 18A.3(a), 2015 N.C. Sess. Laws 2015-241 (codified at N.C. Gen. Stat. § 7A-350 (2017)).

32 See, e.g., N.C. ADMIN. OFFICE OF THE COURTS, *2018 Report on Criminal Cost Waivers: G.S. 7A-350* (Feb. 1, 2018), <https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/02/20180201-NCAOC-Report-on-Criminal-Cost-Waivers.z.pdf>. In contrast, the AOC issues no annual report on how court fines and fees impact North Carolinians, nor were they able to provide meaningful data in response to ACLU-NC public record requests on point.

33 Michael Gordon, *His Sentence Carried No Jail Time. So Why Did He Keep Ending Up There?*, CHARLOTTE OBSERVER (Nov. 11, 2017), <https://www.charlotteobserver.com/news/politics-government/article183866506.html>.

34 Marcia Morey, *When Traffic Court Becomes Debtors’ Prison*, NEWS & OBSERVER (Apr. 24, 2016), <https://www.newsobserver.com/news/local/community/durham-news/dn-opinion/article72612127.html>.

After the North Carolina General Assembly began tracking which judges were waiving fees, the number of fee waivers granted fell by nearly half, from 87,006 in 2016 to 45,882 in 2017. And over the course of the following year, the number of fee waivers again fell by nearly half, to 28,036 in 2018.

A provision adopted in 2017 requires a judge to give 15 days' notice to all governmental entities affected by fee waivers and allow them an opportunity to be heard in court.³⁵ If agencies exercise this new right to contest fee waivers, huge inefficiencies will result. Having agencies travel across the state to seek what for them is a pittance and obligating an individual facing what to him or her is consequential debt to return to court will strain court calendars. According to Mecklenburg County Chief District Court Judge Regan Miller, "[i]t's clear that [this] provision is designed to make the process so cumbersome that judges will elect not to waive costs[.]"³⁶

AOC sought to comply with this requirement while alleviating these burdens by sending monthly notices to impacted agencies.³⁷ It remains unclear whether all judges consider this notice legally sufficient to satisfy the new requirement. Regrettably, one way a judge can avoid concerns about complying with this notice obligation is to simply not consider waiving fees.

While it is too soon to weigh the full effect of these new rules, it is already plain that they have succeeded at pushing the judiciary further into serving as North Carolina's debt collector. Most notably, after the North Carolina General Assembly began tracking which judges were waiving fees, the number of fee waivers granted fell by nearly half, from 87,006 in 2016 to 45,882 in 2017.³⁸ And over the course of the following year, the number of fee waivers again fell by nearly half, to 28,036 in 2018.³⁹

Notably, even before this precipitous drop in waivers, just eight percent of total fines and fees were waived.⁴⁰ Only judges in Mecklenburg and Cumberland counties waived more than 20 percent of fines and fees in 2016.⁴¹ Judges in Camden, Perquimans, Cabarrus, and Moore counties waived less than 1 percent of fines and fees in 2017.⁴²

35 N.C. Gen. Stat. § 7A-304(a) (2017).

36 Melissa Boughton, *House and Senate Differ Over Budget Provisions Making It Harder for Judges to Waive Fees for Poor Defendants*, N.C. POLICY WATCH (June 1, 2017), <http://www.ncpolicywatch.com/2017/06/01/house-senate-differ-budget-provision-making-harder-judges-waive-fees-poor-defendants/>.

37 See N.C. ADMIN. OFFICE OF THE COURTS, *Memorandum: New Fee Waiver Provision in the 2017 Appropriations Act* (Nov. 13, 2017), https://www.nccourts.gov/assets/documents/publications/Fee_Waiver_Memo_w_attachments.pdf?nxKvQXSILwVJYRYbiGnnCo2gzDydr7s.

38 Compare N.C. ADMIN. OFFICE OF THE COURTS, *2017 Report on Criminal Cost Waivers: G.S. 7A-350 Table 1* (Feb. 1, 2017), https://www.ncleg.gov/documents/sites/committees/JLOCJPS/Reports/FY%202016-17/AOC_Report_on_Criminal_Cost_Waivers_2017-01-31.pdf with N.C. Admin. Office of the Courts, *2018 Report on Criminal Cost Waivers: G.S. 7A-350 Table 1* (Feb. 1, 2018), <https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/02/20180201-NCAOC-Report-on-Criminal-Cost-Waivers.z.pdf>

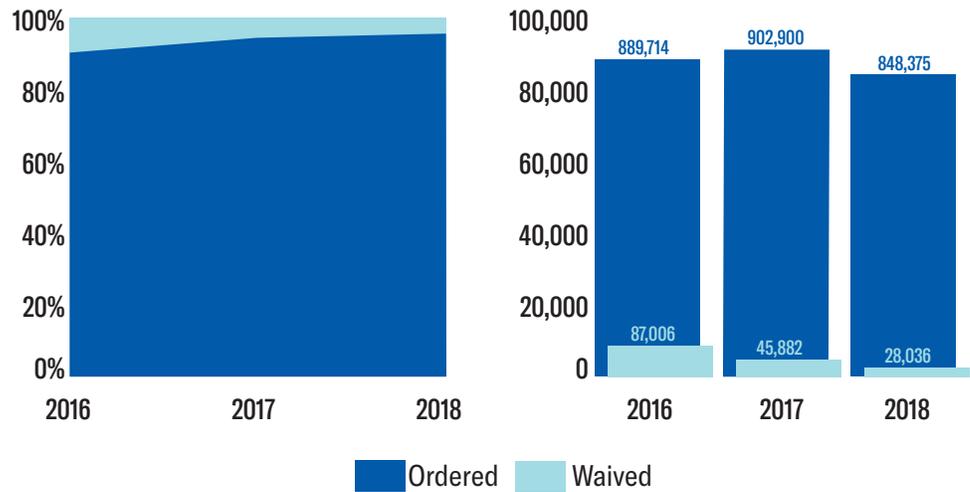
39 Jamie Markham, *2019 Cost Waiver Report Available*, UNC SCH. OF GOV'T: N.C. CRIMINAL LAW, (Feb. 7, 2019, 6:45 PM), <https://nccriminallaw.sog.unc.edu/2019-cost-waiver-report-available/>.

40 *His Sentence Carried No Jail Time. So Why Did He Keep Ending Up There?*, *supra* note 33.

41 N.C. ADMIN. OFFICE OF THE COURTS, *2017 Report on Criminal Cost Waivers Table 1* (Feb. 1, 2017), <https://nccriminallaw.sog.unc.edu/wp-content/uploads/2017/02/20170201-NCAOC-Report-on-Criminal-Cost-Waivers.z.pdf>.

42 *Id.*

Judicial Orders and Waivers of Costs



As discussed below in greater detail, the ACLU-NC’s more than 400 court observations reinforce this conclusion. Defendants facing court fines and fees in our observations rarely had counsel with them in court. A person’s ability to pay these fines and fees was rarely raised by defense counsel (when they were present) or by the presiding judge. While the ACLU-NC observed some judges scrupulously conducting ability-to-pay hearings as constitutionally required, far more frequently observers saw judges imposing court fines and fees without doing so.⁴³ In fact, the ACLU-NC observed judges who plainly regarded debt collecting as central to their judicial role. For example, upon the retirement of one of the judges the ACLU-NC observed, the local district attorney paid him a dispiriting compliment: “[Judge Herbert Richardson, Sr.] was the best money collector I’ve ever seen.”⁴⁴

43 In ACLU-NC’s courts observations in Robeson, Edgecombe and Avery counties, a defendant’s ability to pay court fines and fees was weighed in 24 percent, 5 percent, and 25 percent of cases, respectively. *Infra*, pp. 17, 20, 22.

44 Annick Joseph, *Richardson Putting Down Gavel at End of Year*, ROBESONIAN (Mar. 24, 2018), <https://www.robsonian.com/news/109225/richardson-putting-down-gavel-at-end-of-year>.

Beyond Debtors' Prisons: *The Collateral Consequences of Court Debt*

The quintessential and most commonly understood symbol of court debt is the debtors' prison. Since Charles Dickens sent Wilkins Micawber to the King's Bench Prison in *David Copperfield* and Mr. Pickwick to the Fleet in *The Pickwick Papers*, incarcerating the poor for their poverty has been broadly reviled. Unfortunately, and as discussed below in greater detail, North Carolina has not yet fully extinguished these ghosts of Dickens.

Less commonly understood, and far more pervasive than incarceration for debt, are the other collateral consequences of court fines and fees. For some people, fines and fees can be worse than a conviction as, for example, a person can keep her job with a criminal record but subsequently lose her housing as a result of fees.⁴⁵ As the brief snapshots below illustrate, these collateral consequences can not only trap North Carolinians in a cycle of poverty but also diminish their status as citizens of their state and country. And, as fewer and fewer court fines and fees are waived in North Carolina, more and more people are ensnared by these collateral consequences.

Probation and Associated Consequences

Probation is a form of court-ordered supervision short of incarceration for individuals convicted of a crime. It can range from largely an admonition to avoid further legal trouble in the case of unsupervised probation,⁴⁶ to far more intrusive in the case of supervised probation. Among other things, an individual on supervised probation reports to a probation officer, is subject to warrantless searches by said officer and law enforcement, and, of course, pays a \$40 per month supervision fee.⁴⁷ Payment of fines and fees is a condition of probation in North Carolina.⁴⁸ In other words, an individual is not free from some manner of court supervision until she can pay off her court debt or have it waived.

⁴⁵ Hunt & Nichol, *supra* note 16 at 21.

⁴⁶ Jamie Markham, *Unsupervised Probation*, UNC SCH. OF GOV'T: N.C. CRIMINAL LAW, (Mar. 5, 2014, 5:24 PM), <https://nccriminallaw.sog.unc.edu/unsupervised-probation/>.

⁴⁷ *Id.*

⁴⁸ N.C. GEN. STAT. § 15A-1344 (2017).

This impacts both individuals who have never been incarcerated as well as individuals who have just been released. In fact, an estimated 80 to 85 percent of Americans who have been incarcerated leave prison carrying court debt.⁴⁹

Research as well as data obtained by the ACLU-NC via public record requests and in-court observations makes plain the myriad consequences of remaining on probation due to court debt. They include:

- **Potential incarceration** as “[d]efaulting on court debt represents a violation of [probation] terms, even if the defendant is in complete compliance otherwise”⁵⁰;
- **Prolongation of probation**⁵¹ and consequent loss of liberty including, but not limited to, being subject to warrantless searches⁵²;
- **Continued imposition of court costs**, ranging from monthly fees associated with supervised probation⁵³ to the 8 percent interest rate charged on outstanding court debt;⁵⁴
- **Loss of the right to vote,**⁵⁵ **ability to seek elected office,**⁵⁶ **or serve on a jury**⁵⁷ for North Carolinians on felony probation;⁵⁸
- **Loss of access to anti-poverty programs** including Temporary Assistance to Needy Families (TANF),⁵⁹ the Supplemental Nutrition Assistance Program (SNAP),⁶⁰ housing assistance,⁶¹ and Supplemental Security Income (SSI);⁶² and
- **Day-to-day challenges** ranging from missing work and arranging for child care because of repeat court appearances or meetings with probation officers to having to choose between court debt and the necessities of life.

Tying court debt to probation potentially transforms “punishment from a temporally limited experience to a long-term status”⁶³ with dire consequences for those seeking to move forward with their lives.

49 Joseph Shapiro, *As Court Fees Rise, the Poor are Paying the Price*, NPR (May 19, 2014), <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

50 Hunt & Nichol, *supra* note 16 at 8.

51 See N.C. GEN. STAT. § 15A-1344 (2017).

52 Markham, *supra* note 46.

53 *Id.*

54 N.C. GEN. STAT. § 24-1 (2017) (stating that the legal rate of interest applicable to court debt “shall be eight percent”).

55 N.C. GEN. STAT. § 163A-841(a)(2) (2017).

56 N.C. CONST. art. VI, § 8.

57 N.C. GEN. STAT. § 9-3 (2017).

58 N.C. GEN. STAT. § 13-1 (2017).

59 42 U.S.C. § 608(a)(9)(A)(ii) (2012).

60 7 U.S.C. § 2015(k)(1)(B) (2012).

61 42 U.S.C. § 1437f(d)(1)(B)(v)(II) (2012).

62 42 U.S.C. § 1382(e)(4)(A)(ii) (2012).

63 Alexes Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOC. 1753, 1755 (2010).

There is only one traffic-related offense that automatically results in a North Carolinian having her driver's license revoked for more than 30 days: failure to pay traffic fines and associated court fees.

Driver's Licenses

There is only one traffic-related offense that automatically results in a North Carolinian having her driver's license revoked for more than 30 days: failure to pay traffic fines and associated court fees. While other, more serious traffic offenses bring no such long-term, categorical deprivation, North Carolina automatically, and without sufficient notice of potential recourse, revokes an individual's driver's license for an unpaid traffic ticket 40 days after a court judgment.⁶⁴ As of May 30, 2018, the North Carolina Division of Motor Vehicles (DMV) had revoked approximately 264,000 driver's licenses for nonpayment of court debt.⁶⁵ And when someone does come up with the money to pay off his or her traffic fines, there is a \$65 fee to restore a revoked license.⁶⁶

More than 91 percent of North Carolinians depend on a car to get to and from work.⁶⁷ In three of the four counties in which the ACLU-NC conducted court observations — Robeson, Edgecombe, and Avery — public transportation is not a meaningful option: respectively, 0.1 percent,⁶⁸ 0.6 percent,⁶⁹ and 0.5 percent⁷⁰ of these counties' residents use public transportation to commute to work. Even “in metropolitan regions with public transit, the typical resident without a car can reach only 30 percent or so of jobs in 90 minutes.”⁷¹

In short, potential incarceration is just the tip of the iceberg of ways that court debt can ruin the lives of low-wealth North Carolinians. And many of these collateral consequences — such as excluding people from anti-poverty programs and revoking driver's licenses — actively frustrate the state's efforts to collect outstanding court debt, as they further push people into a cycle of poverty.

Who Pays the Price?

There is currently no way to comprehensively assess the toll of court fines and fees on North Carolinians. Each county that responded to the

64 ACLU, *Civil Rights Groups Sue North Carolina DMV for Revoking Drivers' Licenses of People Who Cannot Pay Traffic Tickets* (May 31, 2018), <https://www.aclu.org/news/civil-rights-groups-sue-north-carolina-dmv-revoking-drivers-licenses-people-who-cannot-pay>. In May 2018, ACLU-NC and other groups challenged this license revocation regime as violating the Fourth Amendment to the United States Constitution's guarantee of due process of equal protection. *Id.*

65 Stipulated Joint Statement of Facts at 4, *Johnson v. Jessup*, No. 1:18-cv-00467 (M.D.N.C. Jan. 23, 2019).

66 N.C. DIV. OF MOTOR VEHICLES, *Driver License Restoration*, <https://www.ncdot.gov/dmv/license-id/license-suspension/Pages/driver-license-restoration.aspx> (last visited Dec. 20, 2018).

67 U.S. DEP'T OF TRANSP., BUREAU OF TRANSP. STATISTICS, *North Carolina: Transportation by the Numbers* (Jan. 2016), https://www.bts.gov/sites/bts.dot.gov/files/legacy/north_carolina.pdf.

68 N.C. DEP'T. OF COMMERCE, *County Profile: Robeson County (NC)* (Nov. 2018), <https://accessnc.nccommerce.com/DemoGraphicsReports/pdfs/countyProfile/NC/37155.pdf>.

69 N.C. DEP'T. OF COMMERCE, *County Profile: Edgecombe County (NC)* (Nov. 2018), <https://accessnc.nccommerce.com/DemoGraphicsReports/pdfs/countyProfile/NC/37065.pdf>.

70 N.C. DEP'T. OF COMMERCE, *County Profile: Avery County (NC)* (Nov. 2018), <https://accessnc.nccommerce.com/DemoGraphicsReports/pdfs/countyProfile/NC/37011.pdf>.

71 Hunt & Nichol, *supra* note 16 at 10.

ACLU-NC's public record requests had different methods of 1) documenting people who are arrested for unpaid court debt, 2) reporting the amount of money the county spends to house people per day, and 3) reporting data on fines and fees revenue.

As detailed above, many counties either did not have or did not provide information on their court debt practices.⁷² In fact, only three counties were fully responsive to the ACLU-NC's public record requests on point.

In addition, the comprehensiveness of the data supplied by responsive counties is suspect. For example, the 11 counties who responded reported only 296 arrests stemming from unpaid court debt in the six months prior to the response date. By contrast, the ACLU-NC observed 41 people jailed for outstanding court debt in just 412 court observations. This dissonance suggests counties are not capturing the full scope of this problem.

From the data received and the observations conducted, however, it is plain that court fines and fees fall most heavily on the poor and people of color and that counties lose money by locking people up for failure to pay court debts.

North Carolina's Poor

Nationally, 80 to 90 percent of people charged with a crime are indigent.⁷³ One outcome of this reality is plain: those least able to afford court fines and fees are most likely to face them. In the ACLU-NC's court observations, lack of legal representation corresponded with negative outcomes pertaining to court fines and fees.

For example, the vast majority of people incarcerated for failure to pay court fines and fees observed by the ACLU-NC occurred in the two poorest counties, which were also the counties in which people were least likely to have legal representation. Robeson County has a poverty rate of 30.8 percent⁷⁴; Edgecombe County's rate is 25.7 percent.⁷⁵ The poverty rates in Avery and Mecklenburg counties are, respectively, more modest: 16.7 percent⁷⁶ and 12.1 percent.⁷⁷ Defendants in Robeson and Edgecombe counties, respectively, had legal representation in 25

⁷² See *supra* Methodology.

⁷³ See generally Caroline Wolf Harlow, *Bureau of Justice Statistics Special Report: Defense Counsel in Criminal Cases*, U.S. DEP'T OF JUSTICE (Nov. 2000), <https://www.bjs.gov/content/pub/pdf/dccc.pdf> (discussing how publicly financed attorneys represent most criminal defendants).

⁷⁴ DATA USA, *Robeson County, NC*, <https://datausa.io/profile/geo/robeson-county-nc/> (last visited Dec. 17, 2018).

⁷⁵ DATA USA, *Edgecombe County, NC*, <https://datausa.io/profile/geo/edgecombe-county-nc/> (last visited Dec. 17, 2018).

⁷⁶ DATA USA, *Avery County, NC*, <https://datausa.io/profile/geo/avery-county-nc/> (last visited Dec. 17, 2018).

⁷⁷ DATA USA, *Mecklenburg, NC*, <https://datausa.io/profile/geo/mecklenburg-county-nc/> (last visited Dec. 17, 2018).

percent⁷⁸ and 15 percent⁷⁹ of cases observed by the ACLU-NC. Robeson County jailed 32 people for failure to pay court fines and fees,⁸⁰ while Edgecombe County jailed six.⁸¹ By contrast, a much higher percentage of individuals had legal representation in Mecklenburg – 88 percent –⁸² and Avery – 77 percent –⁸³ counties. In 200 ACLU-NC court observations in these two counties, only three people total were locked up for failure to pay court fines and fees.⁸⁴

Though it was generally associated with better outcomes, the presence of an attorney alone was not enough to ensure the vindication of constitutional rights. Though more than three in four individuals had legal representation in Avery County, in approximately nine of ten cases observed by the ACLU-NC, neither the party’s counsel nor the presiding judge raised the issue of ability to pay fines and fees.⁸⁵

These observations point to a broader reality: court culture impacts how fines and fees are meted out. While discussions of the constitutional rights of the impoverished vis-à-vis court fines and fees were almost nonexistent in Avery County, they were front and center in Mecklenburg County, which has recently focused on addressing financial burdens associated with the criminal justice system. Information on ability to pay court fines and fees was sought by Mecklenburg County judges and/or offered by counsel in nearly 80 percent of cases observed by the ACLU-NC.⁸⁶

North Carolina’s People of Color

It is well documented that people of color are disproportionately ensnared by the criminal justice system. Racial bias, both explicit and implicit, has fueled widespread disparities in which people of color are subjected to street stops, traffic stops, vehicle searches, arrests, and incarceration at alarming rates.⁸⁷ In North Carolina, for instance, though

78 Robeson County Courtroom Observations 1-8 (Jan. 23, 2017–Nov. 27, 2017) (on file with ACLU-NC).

79 Edgecombe County Courtroom Observations 1-5 (May 31, 2017–June 6, 2018) (on file with ACLU-NC).

80 Robeson County Courtroom Observations 1-8 (Jan. 23, 2017–Nov. 27, 2017) (on file with ACLU-NC).

81 Edgecombe County Courtroom Observations 1-5 (May 31, 2017–June 6, 2018) (on file with ACLU-NC).

82 Mecklenburg County Courtroom Observations 1-21 (Jan. 17, 2017–Dec. 6, 2017) (on file with ACLU-NC).

83 Avery County Courtroom Observations 1-9 (June 28, 2017–May 22, 2018) (on file with ACLU-NC).

84 *Id.*; Mecklenburg County Courtroom Observations 1-21 (Jan. 17, 2017–Dec. 6, 2017) (on file with ACLU-NC).

85 Avery County Courtroom Observations 1-9 (June 28, 2017–May 22, 2018) (on file with ACLU-NC).

86 Mecklenburg County Courtroom Observations 1-21 (Jan. 17, 2017–Dec. 6, 2017) (on file with ACLU-NC).

87 See, e.g., Radley Balko, *There’s Overwhelming Evidence that the Criminal-Justice System is Racist. Here’s the Proof.*, WASH. POST (Sept. 18, 2018), <https://www.washingtonpost.com/>

.....
In North Carolina, for instance, though Black people constitute only 22 percent of the general population, they represent 47 percent of people incarcerated in state prisons.
.....

Black people constitute only 22 percent of the general population,⁸⁸ they represent 47 percent of people incarcerated in state prisons.⁸⁹

A similar dynamic was apparent in the data provided to and the court observations conducted by the ACLU-NC.

First, in each county with a significant minority population,⁹⁰ people of color were overrepresented in the ACLU-NC's court observations. For example, though only 32.8 percent of Mecklenburg County is Black,⁹¹ 68 of 100 defendants were Black in court observations conducted by the ACLU-NC.⁹²

Given their disproportionate exposure to the criminal justice system, it is unsurprising that people of color were also disproportionately impacted by court fines and fees. Of the 11 counties reporting booking data, 296 individuals were locked up for failure to pay court fines and fees over a six-month period. However, even the data provided by the responsive counties was not comprehensive. For example, the race of those incarcerated was apparent in only 217 of the 296 reports. But, of the 217 individuals for whom racial and ethnicity data was provided, the disparate impact jumps off the page: 118 of these individuals, or more than 54 percent, were Black.⁹³ Black people make up only 11.8 percent of the population of these eleven counties.⁹⁴

Though smaller in sample size, the ACLU-NC's court observations paint a similar picture. In the three focus counties with significant communities of color, at least⁹⁵ 29 of 39 individuals, or 74 percent, incarcerated for failure to pay court fines and fees were people of color. These figures again outstrip the minority population of each county.⁹⁶

news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/?noredirect=on&utm_term=.5ad14ab15d4e.

88 U.S. CENSUS BUREAU, *QuickFacts: North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/nc>.

89 N.C. DEP'T PUB. SAFETY, *Fiscal Year 2016–2017 Annual Statistical Report* 11, <https://randp.doc.state.nc.us/pubdocs/0007081.PDF>.

90 Avery County does not have a significant minority population as it is nearly 95 percent white, U.S. CENSUS BUREAU, *QuickFacts: Avery County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/averycountynorthcarolina>, a fact reflected in ACLU-NC's court observations. Avery County Courtroom Observations 1-9 (June 28, 2017–May 22, 2018) (on file with ACLU-NC).

91 U.S. CENSUS BUREAU, *QuickFacts: Mecklenburg County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/mecklenburgcountynorthcarolina>.

92 Mecklenburg County Courtroom Observations 1-21 (Jan. 17, 2017–Dec. 6, 2017) (on file with ACLU-NC).

93 Delvin Davis, *ACLU Fines and Fees Public Record Data Report* (July 13, 2018) (included, in part, herein as Appendix C).

94 The counties in question are Brunswick, Dare, Davie, Haywood, Henderson, New Hanover, Person, Rutherford, Union, Vance, and Wilkes counties. See Appendix B included herein for a breakdown of each county's racial composition.

95 This "at least" qualifier reflects the fact that the race of some defendants was not plain in court observations.

96 Mecklenburg County is approximately 42 percent non-white. U.S. CENSUS BUREAU, *QuickFacts: Mecklenburg County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/mecklenburgcountynorthcarolina>. Edgecombe county is approximately 60 percent non-white. U.S. CENSUS BUREAU, *QuickFacts: Edgecombe County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/edgecombecountynorthcarolina>. And Robeson County is

North Carolina's Counties

Finally, the ACLU-NC found that these practices result in a net financial loss for county governments. According to 144 arrest records produced with responsive data, the average jail stay for someone arrested for failure to pay court debt is 20.5 days. For the 34 counties that provided responsive data, the daily amount counties pay to incarcerate a person ranges from \$18.00 per person in Person County to \$188.19 per person in Mecklenburg County. The median daily cost to jail someone for court debt was \$56.52 per person. Meanwhile, the data from 132 arrest records with responsive data on point indicate the average monetary balance owed to the court is \$525.48 per arrested person. In sum, and excluding administrative costs for court hearings, counties spend on average \$1,158.66 to jail someone for an average outstanding court debt of \$525.48.⁹⁷

These findings from the ACLU-NC's public record requests comport with other data on point. For example, records from 2009 show that Mecklenburg County jailed 246 defendants for failure to pay court debts. The cost of the jail terms alone totaled more than \$40,000, yet the county collected only \$33,746.⁹⁸ The reason so little money is collected? In the words of a former AOC director, defendants are "among the very poorest and most destitute in the state."⁹⁹

Even incomplete data makes clear that court debt exacts a terrible toll on vulnerable North Carolinians and, when it results in incarceration, further harms their counties' bottom lines.

approximately 69 percent non-white. U.S. CENSUS BUREAU, *QuickFacts: Robeson County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/robesoncountynorthcarolina>.

97 Davis, *supra* note 93.

98 Hunt & Nichol, *supra* note 16 at 19.

99 Letter from John W. Smith, Director, N.C. Admin. Office of the Courts, to Beth Wood, State Auditor, N.C. Admin. Office of the Courts (May 26, 2011), in Beth A. Wood, *Performance Audit: Judicial Department: Court-Ordered Fines, Fees, and Restitution*, N.C. ADMIN. OFFICE OF THE COURTS 20 (June 2011), <http://www.ncauditor.net/EPSWeb/Reports/Performance/PER-2011-7251.pdf>.

The Four Counties



Robeson County

“That’s not even enough to buy you a man in jail.”

Robeson is a rural county located in the southeast portion of the state, bordering South Carolina. Its racial composition is unique for North Carolina: approximately a quarter Black, one-third white, and two-fifths Native American, with a small population of other races and ethnicities.¹⁰⁰ In 2017 the county’s median household income was \$32,407, 35 percent lower than the state median. Twenty-nine percent of the county lives in poverty,¹⁰¹ and its unemployment rate in 2017 was 6.6 percent.¹⁰²

100 Compare U.S. CENSUS BUREAU, *QuickFacts: Robeson County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/robesoncountynorthcarolina/PST045217> with U.S. CENSUS BUREAU, *QuickFacts: North Carolina* (July 1, 2017) <https://www.census.gov/quickfacts/nc>.

101 *Id.* (showing a countywide median income of \$32,407 in comparison to a statewide median income of \$50,320).

102 N.C. DEP’T. OF COMMERCE, *County Profile: Robeson County (NC)* (Nov. 2018), <https://accessnc.nccommerce.com/DemoGraphicsReports/pdfs/countyProfile/NC/37155.pdf>

The county's Native American population predominantly comprises members of the Lumbee tribe.¹⁰³ The Lumbee have fought for federal recognition and protections since 1888, but the tribe continues to confront a series of onerous legislative hurdles and stringent processes that prevent them from obtaining full and meaningful federal recognition.¹⁰⁴ While the tribe received state recognition from North Carolina in 1953,¹⁰⁵ the United States government has yet to fully recognize them.¹⁰⁶ Currently, about 33 percent of Native Americans live in poverty in Robeson County.¹⁰⁷

"Despite the racial balance being similar, that is not what you see in court," says Deanna Glickman, an Assistant Public Defender in Robeson County. "You see a lot of American Indians and Black clients. There is a small amount of Hispanic clients. White clients are few and far between."¹⁰⁸

The ACLU-NC's court observations at the Robeson County courthouse in Lumberton support Glickman's statements. Out of 110 court observations conducted from January to December 2017, only 19 defendants were white. By contrast, at least 46 defendants were Native American and 39 were Black. Only 28 defendants had legal representation.¹⁰⁹

Of the four counties observed by the ACLU-NC, Robeson County presented the direst snapshot of the harms done by court fines and fees. Despite the county's pervasive poverty, in 84 out of 110 cases observed by the ACLU-NC, the defendant's ability to pay court fines and fees was raised neither by counsel (when present) nor by the presiding judge. A staggering 32 observations ended in an individual incarcerated for failure to pay fines and fees, 23 of whom did not have legal counsel. And

103 See Glenn Ellen Starr Stilling, *Lumbee Indians: The Fight for Federal Recognition*, in *ENCYCLOPEDIA OF NORTH CAROLINA* 699, 699 (William S. Powell ed., 2006).

104 *Id.* at 702–03 (discussing the Lumbee tribe's several attempts to become fully federally recognized and detailing the federal government's response that the 1956 Lumbee Act "forbade a relationship between the Lumbee and the federal government through [the Bureau of Indian Affairs]").

105 *Id.* at 702.

106 Congress passed the 1956 Lumbee Act designating the Indians living in and around Robeson County as the "Lumbee Indians of North Carolina." *Id.* That same act, however, withheld the federal benefits that come with full federal recognition and declared that federal laws affecting Indians would not apply to the Lumbee. *Id.* That feature of the legislation effectively meant that the federal government continued not to recognize the tribe. *Id.*; LUMBEE TRIBE OF NORTH CAROLINA, *History & Culture: Recognition*, <http://www.lumbee-tribe.com/history--culture> (last visited Dec. 23, 2018); see also Lisa Rab, *What Makes Someone Native American? One tribe's long struggle for full recognition*, WASH. POST (Aug. 20, 2018), https://www.washingtonpost.com/news/style/wp/2018/08/20/feature/what-makes-someone-native-american-one-tribes-long-struggle-for-full-recognition/?utm_term=.e69f3e4e26d7 (noting that this lack of full recognition means that the Lumbee tribe does not qualify for important federal Bureau of Indian Affairs benefits).

107 Sarah Willets, *Report: Poverty Entrenched*, ROBESONIAN (Apr. 15, 2016), <https://www.robsonian.com/news/86584/report-poverty-entrenched>.

108 Interview with Deanna Glickman, Assistant Public Defender, Robeson County Public Defender's Office, in Lumberton, N.C. (Apr. 23, 2018).

109 Robeson County Courtroom Observations 1-8 (Jan. 23, 2017–Nov. 27, 2017) (on file with ACLU-NC).

at least 24 of those locked up for failure to pay were Black or Native American.¹¹⁰

Arrests for court debt alternatively took place because failure to pay court debt activated a suspended sentence or was considered either a probation violation or criminal contempt.¹¹¹ Though law requires that an individual be afforded the opportunity to show cause for why he should not be held in contempt,¹¹² the ACLU-NC never observed such a hearing before an individual was jailed for contempt due to failure to pay in Robeson County.¹¹³

Glickman understands well the underpinnings of debtors' prisons in Robeson County. Before she started working at the Robeson County Public Defender's Office, the county created a monthly noncompliance court for those who failed to comply with their sentences. According to Glickman, the noncompliance matters were overwhelmingly for criminal contempt for nonpayment of court costs.¹¹⁴

Observing the revolving door of defendants going to jail for being poor, Glickman wondered how to stop the cycle. She noticed there was rarely an attorney present to defend the approximately 150 people facing jail time for nonpayment of fines and fees. "I was often in another courtroom, but I would get back just in time to see people escorted in chains," she said. Glickman became the first public defender to regularly sit in noncompliance court and represent any person in need of counsel.¹¹⁵

During the course of its observations, the ACLU-NC saw the harsh manner in which noncompliance court operated. For instance, the ACLU-NC observed Judge William Jeffrey Moore preside over 47 cases in noncompliance court on February 27, 2017, and March 27, 2017. Judge Moore never waived court fines and fees during the course of these observations,¹¹⁶ telling one defendant that he thought it was "unconscionable" not to impose any costs.¹¹⁷

A case observed on February 27, 2017, is sadly representative of how Judge Moore ran noncompliance court during the course of the ACLU-NC's observations. M.D.,¹¹⁸ a single mother, appeared before him due to \$250 in outstanding court debt. In response to M.D. telling him she did not have the \$250, Judge Moore told her to get the money by the end of the court session or she would go to jail. Fearing jail and losing

110 *Id.*

111 *Id.*

112 N.C. Gen Stat. § 5A-15 (2017).

113 Robeson County Courtroom Observations 1-8 (Jan. 23, 2017–Nov. 27, 2017) (on file with ACLU-NC).

114 Interview with Deanna Glickman, Assistant Public Defender, Robeson County Public Defender's Office, in Lumberton, N.C. (Apr. 23, 2018).

115 *Id.*

116 Robeson County Courtroom Observation 2 (Feb. 27, 2017) (on file with ACLU-NC); Robeson County Courtroom Observation 4 (Mar. 27, 2017) (on file with ACLU-NC).

117 Robeson County Courtroom Observation 4 (Mar. 27, 2017) (on file with ACLU-NC).

118 ACLU-NC observed this interaction in open court but did not have the opportunity to interview M.D. ACLU-NC is thus using M.D.'s initials in the interests of preserving her privacy.



Gregory Patterson

her children, M.D. paid her court debt out of her monthly rent. When she told Judge Moore that she had paid using her rent money and was unsure what she was going to tell her landlord, he said, “See, I told you you had the money.” The woman left the courtroom crying.¹¹⁹

The problems in the Robeson County courthouse are not limited to Judge Moore’s courtroom or noncompliance court more generally, however.

On August 23, 2017, 23-year old Gregory Patterson walked into the courtroom of the aforementioned “best [judicial] money collector” in Robeson County, Judge Richardson.¹²⁰ Patterson faced traffic charges for speeding as well as operating a car without valid registration and inspection, and with a revoked license.¹²¹ Minutes after he walked into traffic court, Judge Richardson announced, “The first person to make me mad is going to jail.”¹²²

Soon after, Patterson’s name was called and he nervously approached the judge. “Why are you in my county, boy?” Judge Richardson asked. Patterson explained that he was a student at Shaw University and was visiting his relatives who live in a nearby town. Patterson told the

119 Robeson County Courtroom Observation 2 (Feb. 27, 2017) (on file with ACLU-NC).

120 Robeson County Courtroom Observation 6 (Aug. 23, 2017) (on file with ACLU-NC).

121 Motion for Appropriate Relief at 2, *State v. Patterson*, No. 16CR709802-03 (Sup. Ct. Robeson Cty. Oct. 20, 2017).

122 Robeson County Courtroom Observation 6 (Aug. 23, 2017) (on file with ACLU-NC).

Judge Richardson asked how much money Patterson had in his pocket. He replied he had around \$200. “That’s not even enough to buy you a man in jail,” the judge said. “And that’s where you’re going to end up. In jail. Boy, do you know what they will do to you in jail? They will have fun with you in jail.”

ACLU-NC that he had worked all summer as a cashier at an Italian ice shop to earn money to pay for his impending traffic fines.¹²³ Judge Richardson told him that he was a “disgrace” to his university and not to come back to his county.¹²⁴

Judge Richardson asked how much money Patterson had in his pocket. He replied he had around \$200. “That’s not even enough to buy you a man in jail,” the judge said. “And that’s where you’re going to end up. In jail. Boy, do you know what they will do to you in jail? They will have fun with you in jail.” The judge tallied the court costs and asked Patterson if he could pay around \$600 that day. Patterson said he could not and asked for more time. The judge said that it would be handled “today” and entered a conviction for Patterson, who neither pled guilty nor was afforded a hearing.¹²⁵ The judge sentenced him to \$561 in fines and 30 days in jail if he failed to pay, even though his charge was not eligible for jail time.¹²⁶

Patterson said that he remembers telling the judge “thank you” before he walked out of the courtroom. “I wish I could take that back,” he said. “He dehumanized everyone, including treating the people in jail like animals.” Patterson said he wished that someone had taught him to deal with police and the courts. He knew the judge’s actions were wrong, but he was thinking, “Damn, I don’t want to call my mom and dad from jail.”¹²⁷ With the help of the ACLU-NC, Patterson subsequently obtained pro bono counsel, who filed a motion¹²⁸ and succeeded in having the conviction overturned as the suspended sentence was illegally imposed given that the charges were only subject to a monetary punishment.¹²⁹ The charges were ultimately reduced to speeding 64 miles per hour in a 55 miles per hour zone and the fines and fees reduced to \$258.00.¹³⁰

That was not the only time the ACLU-NC witnessed Judge Richardson joke about jail rape in his courtroom. Just three months after Patterson’s case, on November 27, 2017, Judge Richardson addressed a line of Black and brown men waiting to resolve their court matters in noncompliance court. “I can’t send you to jail, they would throw you back. They need fresh meat. This is the worst crop of men...” Here Judge Richardson paused for effect. “...wussy and wimpy. How can you even find a woman?” One of the men standing in line made a

123 Interview with Gregory Patterson, in Durham, N.C. (May 28, 2018).

124 Robeson County Courtroom Observation 6 (Aug. 23, 2017) (on file with ACLU-NC).

125 *Id.*

126 Motion for Appropriate Relief at 1-2, *State v. Patterson*, No. 16 CR 709802-03 (Sup. Ct. Robeson Cty. Oct. 20, 2017).

127 Interview with Gregory Patterson, in Durham, N.C. (May 28, 2018).

128 Motion for Appropriate Relief, *State v. Patterson*, No. 16CR709802-03 (Sup. Ct. Robeson Cty. Oct. 20, 2017).

129 Interview with Gregory Patterson, in Durham, N.C. (May 28, 2018).

130 N.C. Admin. Office of the Courts, *Case Details for Court Case No. Robeson 16CR709802* (Jan. 9, 2019) (Automated Criminal/Infraction System (ACIS) record on file with ACLU-NC).

face in response. A sheriff's deputy approached the defendant and said, "If you don't like what the judge is saying, you can step outside."¹³¹

At the time of that exchange, Judge Richardson was the longest-serving judge in North Carolina, having spent nearly 40 years on the bench. He retired at the end of 2018.¹³²

Edgecombe County

Squeezing blood from a stone

Edgecombe is an agricultural, predominately African American county located in the northeastern part of the state. Over a quarter of its 52,000 inhabitants live in poverty.¹³³ In the last 10 years, the county has experienced a large decline in its agricultural industry, creating financial struggles for many families.¹³⁴ The county's 2017 unemployment rate was 7.8 percent and its median household income was \$34,612 in 2016.¹³⁵

During the course of the ACLU-NC's January to December 2017 court observations, the defendants in the Tarboro courthouse were disproportionately Black. While nearly 58 percent of Edgecombe County's population is Black,¹³⁶ 71 percent of those facing charges during the ACLU-NC's observations were Black.¹³⁷

And, despite persistent poverty in Edgecombe County, people's ability to pay court fines and fees was rarely discussed. Out of 102 court observations conducted, only 15 people had attorneys. Edgecombe County does not have a public defender's office, and as in Robeson County, judges failed to properly appoint counsel from the appointed list, and people frequently faced jail time without the benefit of legal representation. An individual's ability to pay court fines and fees was only raised by counsel or the presiding judge in five out of 102 cases. In total, the ACLU-NC observed six people incarcerated for nonpayment, four of whom were without counsel. Four of those incarcerated were Black and only one of those four individuals had legal representation.¹³⁸

131 Robeson County Courtroom Observation 8 (Nov. 27, 2017) (on file with ACLU-NC).

132 *Richardson Putting Down Gavel at End of Year*, *supra* note 44.

133 U.S. Census Bureau, *QuickFacts: Edgecombe County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/edgecombecountynorthcarolina>.

134 See Edgecombe Cty. Gov't, *Economic Development: Industry*, http://www.edgecombecountync.gov/departments/economic_development/industry.php (last visited Dec. 19, 2018).

135 N.C. Dep't of Commerce, *County Profile: Edgecombe County (NC)* (Nov. 2018), <https://accessnc.ncommerce.com/DemoGraphicsReports/pdfs/countyProfile/NC/37065.pdf>.

136 U.S. Census Bureau, *QuickFacts: Edgecombe County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/edgecombecountynorthcarolina>. Edgecombe County is less than five percent Latinx. *Id.* Latinx individuals were not significantly represented in ACLU-NC court observations. Edgecombe County Courtroom Observations 1-5 (May 31, 2017-June 6, 2018) (on file with ACLU-NC).

137 Edgecombe County Courtroom Observations 1-5 (May 31, 2017-June 6, 2018) (on file with ACLU-NC).

138 *Id.*



Steven Edwards and daughter, Paris

Steven Edwards is one local resident who has fallen into the court debt trap. A 42-year-old Black man born and raised in Edgecombe County, Edwards lost one of his legs in a 2003 car accident that also killed his brother.¹³⁹

Devastated, Edwards fell on hard times and eventually found himself tangled in the criminal justice system. In 2012, Edwards was convicted of drug charges for which he was incarcerated until 2014.¹⁴⁰ He left prison owing \$1,354.50 in court debt and was also placed on supervised probation,¹⁴¹ which comes with a \$40 per month supervisory fee.¹⁴² Edwards has since completed all of his probationary requirements, including not receiving any new charges, but he remains on probation because he has not been able to pay off the court fines and fees that he incurred while in prison.¹⁴³

After the loss of his leg and criminal conviction, Edwards struggled to find work so he could take care of his family and pay his outstanding court debt. It took Edwards 10 years after his accident to receive

139 Interview with Steven Edwards, in Pinetops, N.C. (July 16, 2018).

140 *Id.*

141 Criminal Bill of Costs, *State v. Edwards*, No. 12CRS053764 (Sup. Ct. Edgecombe Cty. Feb. 4, 2014).

142 Markham, *supra* note 46.

143 Order on Violation of Probation or on Motion to Modify, *State v. Edwards*, No. 12CRS053764 (Sup. Ct. Edgecombe Cty. Dec. 1, 2015).

“There simply isn’t anything I could do or could not do that is legal that would make it possible for me to pay all my court cost and fees and take care of my family.”

a disability check from the state. Today his \$725 disability check barely pays rent and utilities for him, his fiancé, and their 5-year-old daughter.¹⁴⁴

Edwards has now spent more than four years in and out of jail and courtrooms because of his outstanding court debt.

On August 31, 2015, the year after he was originally released, Edwards was sent to jail for 90 days for a probation violation stemming from his failure to pay his court costs. He did not have counsel when sentenced to jail for failure to pay.¹⁴⁵

On June 6, 2018, a week after his mother died, Edwards returned to court again for a probation violation hearing due to his outstanding court debt, which had by that point been reduced to \$1,189.50. Still unrepresented, he explained that he could not feed his family, bury his mother, and pay the outstanding fines and fees. The assistant district attorney agreed and signaled that the state was amenable to waiving his outstanding court debt. Judge Walter Godwin, Jr., however, refused to waive all of this debt. Judge Godwin concluded that Edwards’s failure to pay was purposeful because he spent too much of his disability check on rent and electricity. Judge Godwin cited no authority for his determination, but reduced his costs to \$539.50.¹⁴⁶

The ACLU-NC represented Edwards at his next probation hearing on December 3, 2018, at least the seventh time he had returned to court due to his debt. Judge Godwin concluded that Edwards’ financial circumstances did not “leave him destitute” despite evidence demonstrating that his expenses exceeded his income. While Judge Godwin again reduced his costs to \$145, he also told Edwards that he must pay by the next hearing date.¹⁴⁷

When asked if he ever saw himself being able to pay the remaining court cost, Edwards replied, “There simply isn’t anything I could do or could not do that is legal that would make it possible for me to pay all my court cost and fees and take care of my family.”

Edwards now must stretch his \$725 monthly disability check to cover \$300 per month in rent, \$200 in average monthly electrical expenses, \$83 per month to a local funeral home for the costs associated with cremating his mother, and his outstanding court debt, or he will potentially return to jail.¹⁴⁸

144 Interview with Steven Edwards, in Pinetops, N.C. (July 16, 2018).

145 Order on Violation of Probation or on Motion to Modify, *State v. Edwards*, No. 12CRS053764 (Sup. Ct. Edgecombe Cty. Aug. 31, 2015).

146 Edgecombe County Courtroom Observation 5 (June 6, 2018) (on file with ACLU-NC).

147 Order on Violation of Probation or on Motion to Modify, *State v. Edwards*, No. 12CRS053764 (Sup. Ct. Edgecombe Cty. Dec. 3, 2018).

148 Interview with Steven Edwards, in Pinetops, N.C. (July 16, 2018).

Avery County

Defense counsel bad practices leave defendants vulnerable

Avery is a rural county nestled in the Appalachian Mountains near the Tennessee border. More than 90 percent of its 17,689 residents are white, and around 20 percent of those residents struggle with poverty.¹⁴⁹ The unemployment rate in Avery County was 4.4 percent in 2017 and the median household income was \$38,098 in 2016.¹⁵⁰

The Avery County courthouse in Newland reflects the overall population of the county. Out of the 100 defendants observed between January and May 2018, 97 were white.¹⁵¹ Avery County does not have a public defender's office so indigent defendants often rely upon attorneys from the appointed list.

The ACLU-NC's court observations presented a nuanced picture in which ability to pay was rarely considered and fines and fees never waived, but defendants were rarely locked up for failing to pay. In the vast majority of cases observed by the ACLU-NC – 77 percent – defendants had counsel. Yet, despite the substantial level of poverty in the community, the ACLU-NC never saw a defense attorney seek to have her clients' costs waived due to inability to pay. Relatedly, the presiding judges did not inquire into a person's ability to pay court fines and fees in 75 percent of these cases. Judges in Avery County locked up two people for failure to pay; both were represented by counsel.¹⁵²

Though defendants the ACLU-NC observed were less likely to be incarcerated for failure to pay court fines and fees in Avery County than Robeson or Edgecombe, the system still takes its toll.

Brandon Sutton is an 18-year-old resident of Avery County. According to his mother, Sherry Sutton, Brandon has cognitive disabilities and suffers from severe social anxiety. He dropped out of school after the 8th grade. When the ACLU-NC met Sutton, he did not have any source of income and was living in a two-bedroom trailer with his mother, his father, his uncle, his sister, and three young children belonging to family friends. The family subsisted on his father's \$738 disability check.¹⁵³

Sutton does not have a driver's license or own a car. There is no public transit system in Avery County so for trips like the 20 minute-drive from his parents' trailer to the courthouse, he relies upon others for transportation.¹⁵⁴

149 U.S. Census Bureau, *QuickFacts: Avery County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/averycountynorthcarolina/PST045217>.

150 N.C. Dep't of Commerce, *County Profile: Avery County (NC)* (Nov. 2018), <https://accessnc.nccommerce.com/DemoGraphicsReports/pdfs/countyProfile/NC/37011.pdf>.

151 Avery County Courtroom Observations 1-9 (June 28, 2017–May 22, 2018) (on file with ACLU-NC).

152 *Id.*

153 Interview with Sherry & Brandon Sutton, in Boone, N.C. (June 12, 2018).

154 *Id.*



Brandon Sutton

Sutton was convicted of possession of less than half an ounce of marijuana on July 17, 2017. As a result, he was placed on supervised probation and ordered to perform community service, take a substance abuse class, and pay court costs.¹⁵⁵

On May 22, 2018, Sutton's grandfather gave him a ride to court in Newland¹⁵⁶ to face an allegation that he had violated his probation due, in part, to failure to pay outstanding court debt.¹⁵⁷ In court that day, his attorney did not tell Judge Theodore McEntire that Sutton had only an 8th grade education or that his family barely made ends meet. Judge McEntire did not inquire about Sutton's ability to pay.¹⁵⁸ After his court-appointed attorney submitted fees for his representation, Sutton owed more than \$1,311.50 in court fines and fees, or almost twice the amount of his father's monthly disability check.¹⁵⁹

¹⁵⁵ Conditional Discharge Under G.S. 90-96(a1), *State v. Sutton*, No. 17CR50299 (Dist. Ct. Avery Cty. July 17, 2017).

¹⁵⁶ Interview with Sherry & Brandon Sutton, in Newland, N.C. (May 22, 2018).

¹⁵⁷ Disposition/Modification of Conditional Discharge, *State v. Sutton*, No. 17CR50299 (Dist. Ct. Avery Cty. May 22, 2018).

¹⁵⁸ Avery County Courtroom Observation 9 (May 22, 2018) (on file with ACLU-NC).

¹⁵⁹ Disposition/Modification of Conditional Discharge, *State v. Sutton*, No. 17CR50299 (Dist. Ct. Avery Cty. May 22, 2018).

Since Sutton's last court date, he has moved into his great grandmother's trailer, where he shares a room with his cousin. His financial struggles continue. His great grandmother, Doyle Sutton, told the ACLU-NC that, unknown to her great grandson, she and Brandon's grandmother, Sherry Sutton, pooled money to pay for his court costs. Fearing that Sutton would otherwise be sent to jail, Doyle tapped her winter kerosene savings, and Sherry took out a small loan to cover the court costs and fees.¹⁶⁰

Though these steps saved Brandon from jail, the family does not now know how they will pay for heat this winter.

Mecklenburg County

Promising steps but challenges remain

Mecklenburg County is located in the southwestern part of North Carolina. Its county seat is Charlotte, the largest city in the state. With more than a million people, Mecklenburg is the most populous county in the state and one of the fastest-growing in the nation.¹⁶¹ The unemployment rate in Mecklenburg County was 4.3 percent in 2017; its median household income was \$63,197 in 2016.¹⁶²

Though by far the wealthiest county studied by the ACLU-NC for this report, Mecklenburg County is still deeply divided along racial lines on everything from wage growth¹⁶³ to neighborhood segregation.¹⁶⁴ As the ACLU-NC's courtroom observations made plain, interactions with the criminal justice system are also racially skewed and reflect the dismal overrepresentation of people of color also seen in Robeson and Edgecombe counties. Of the 100 court observations conducted during the course of 2017 and 2018, 68 of the defendants were Black. Just under a third of Mecklenburg County is Black.¹⁶⁵

160 Interview with Doyle & Brandon Sutton, in Cranberry, N.C. (July 22, 2018).

161 U.S. CENSUS BUREAU, *QuickFacts: Mecklenburg County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/mecklenburgcountynorthcarolina/PST045217>; MECKLENBURG CTY. GOV'T, *Mecklenburg County Community: Pulse Report 2*, 8 (2017), <https://www.mecknc.gov/CountyManagersOffice/Documents/2017%20Mecklenburg%20County%20Community%20Pulse%20Report.pdf>.

162 N.C. DEP'T. OF COMMERCE, *County Profile: Mecklenburg County (NC)* (Nov. 2018), <https://accessnc.nccommerce.com/DemoGraphicsReports/pdfs/countyProfile/NC/37119.pdf>.

163 MECKLENBURG CTY. GOV'T, *Mecklenburg County Community: Pulse Report 2*, 8 (2017), <https://www.mecknc.gov/CountyManagersOffice/Documents/2017%20Mecklenburg%20County%20Community%20Pulse%20Report.pdf> (last visited July 21, 2018).

164 David A. Graham, *Shattering Charlotte's Myth of Racial Harmony*, ATLANTIC (Sept. 22, 2016), <https://www.theatlantic.com/politics/archive/2016/09/charlotte-race-history/501221/>.

165 U.S. CENSUS BUREAU, *QuickFacts: Mecklenburg County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/mecklenburgcountynorthcarolina/PST045217>. Though comprising nearly 20% of Mecklenburg County's population, *id.*, Latinax and Asian individuals were not significantly represented in ACLU-NC's court observations. Mecklenburg County Courtroom Observations 1-21 (Jan. 17, 2017-Dec. 6, 2017) (on file with ACLU-NC).



Elizabeth Gerber

However, courtroom observations in Mecklenburg County did provide glimmers of hope. The vast majority – 88 percent – of criminal defendants had legal representation, often from the office of the Mecklenburg County Public Defender. In 82 out of 100 observations, judges conducted a financial inquiry before imposing court costs. The ACLU-NC observed only one individual locked up for court debt.¹⁶⁶

Elizabeth Gerber has seen the good and the bad over the course of her years as a Mecklenburg County assistant public defender. Though Gerber said she rarely sees people locked up for nonpayment, she added that she does see judges continue cases in the hopes that defendants will come up with money. Though better than being locked up, return trips to court can imperil jobs and child care for her low wealth clients, Gerber said.¹⁶⁷

Recent legislative changes have made it even harder for these individuals to get relief from court fines and fees. As noted previously, in 2013, the North Carolina General Assembly passed and then Governor Pat McCrory signed legislation making those charged with Class 3 misdemeanors ineligible for court-appointed attorneys.¹⁶⁸ Gerber quickly saw the effects: “When those people had public defenders, many times we were able to get those cases resolved without the imposition of cost.” Now that the law changed “they don’t know how to ask to have the money waived. Even when they have public defenders, Indigent Defense Services forces their attorneys to close their cases after sentencing, resulting in defendants having to fend for themselves during money reviews.”¹⁶⁹

The silver lining is that Mecklenburg County has begun acknowledging the damage done by court debt and started deploying resources to lessen the harm it imposes on low-income residents.

In response to a legal challenge by Gerber and pressure from the public, including from local members of the clergy, Mecklenburg County District Attorney Spencer Merriweather recently ended a requirement that non-violent, first-time defendants pay down their court ordered restitution to \$1,000 in order to be eligible for deferred prosecution.¹⁷⁰ Gerber estimated hundreds are admitted to this program annually. Merriweather’s office said the move “will enable more first-time

166 Mecklenburg County Courtroom Observations 1-21 (Jan. 17, 2017-Dec. 6, 2017) (on file with ACLU-NC).

167 Interview with Elizabeth Gerber, Assistant Public Defender, Mecklenburg County Public Defender’s Office, in Charlotte, N.C. (Apr. 30, 2018).

168 See *supra* note 30.

169 Interview with Elizabeth Gerber, Assistant Public Defender, Mecklenburg County Public Defender’s Office (Apr. 30, 2018).

170 See Michael Gordon, *DA Drops ‘Pay to Play’ Requirement for Program that Helps Defendants Avoid Trial*, CHARLOTTE OBSERVER (Feb. 16, 2018), <https://www.charlotteobserver.com/news/local/crime/article200492979.html>; Nancy Ellett Allison, et al, *Rahman Bethea’s Case Raises Question: Is Justice a Privilege or a Right?* CHARLOTTE OBSERVER (Oct. 10, 2017), <https://www.charlotteobserver.com/opinion/op-ed/article178125101.html>.

“They can put my name on a list if they want to, but I wasn’t going to send people to jail if they were doing the best they could, and for bad health or some other reason they couldn’t afford the payments. That’s no better than a debtor’s prison.”

offenders to have a chance of keeping their records clean, instead of excluding some merely because of a lack of financial resources.”¹⁷¹

In 2017, with the help of Harvard’s National Criminal Justice Debt Initiative and the Arnold Foundation, Mecklenburg County judges undertook a fundamental re-evaluation of their criminal debt practices. As the ACLU-NC’s court observations bear out, this resulted in simple yet substantial change: “the county’s 21 members of the District Court bench” began “holding formal hearings to determine a defendant’s economic status before levying penalties.”¹⁷² To aid in this effort, Mecklenburg County judges committed to consulting a “bench card” that provides guidance on whether and, if so, how much in fines and fees should be imposed given an individual’s fiscal circumstances.¹⁷³

“There’s nothing renegade about it. It’s black-letter law,” District Court Judge Becky Tin told the Charlotte Observer. “What we see far too often is a defendant who has been arrested for not paying court costs. And you’re sitting on the bench, and you see them after they’ve been in jail for seven days because they do not have the money. This should never happen. It is our intent in Mecklenburg County that this will no longer happen.”¹⁷⁴

Referring to state monitoring of court debt waivers, the aforementioned retired Mecklenburg County Superior Court Judge Boner is even more blunt: “They can put my name on a list if they want to, but I wasn’t going to send people to jail if they were doing the best they could, and for bad health or some other reason they couldn’t afford the payments. That’s no better than a debtor’s prison.”¹⁷⁵

Mecklenburg County courts, of course, are not perfect. Communities of color are overrepresented on the docket and not everyone who needs an attorney gets one. Gerber sounds a note of caution even when it comes to progress on costs and fees: “I hope what we see is movement [to] not charg[e] people more than they can afford,” she said. “When I say ‘afford’ I mean something different than what the judges mean. I mean can you meet your expenses and have money to live on and is there any left over for fines and fees? I don’t think that it is right or in

171 *DA Drops ‘Pay to Play’ Requirement for Program that Helps Defendants Avoid Trial*, *supra* note 170.

172 *His Sentence Carried No Jail Time. So Why Did He Keep Ending Up There?*, *supra* note 33.

173 Maura Ewing, *The Presence of Justice: A Judicial Pact to Cut Court Costs for the Poor*, ATLANTIC (Dec. 25, 2017), <https://www.theatlantic.com/politics/archive/2017/12/court-fines-north-carolina/548960/>. The UNC School of Government has also created a statewide bench card to “bring greater precision to matters related to money in criminal court[,]” including the waiver of court fines and fees. Jamie Markham, *Criminal Monetary Obligations Bench Card Available*, UNC SCH. OF GOV’T: N.C. CRIMINAL LAW, (Aug. 16, 2018, 5:35 PM), <https://nccriminal-law.sog.unc.edu/criminal-monetary-obligations-bench-card-available/>.

174 *His Sentence Carried No Jail Time. So Why Did He Keep Ending Up There?*, *supra* note 33.

175 *Id.*

the interest of public safety to have people . . . defer their light bill or rent payment.”¹⁷⁶

Determined judges, a strong public defender’s office, the wise deployment of internal and external resources, and public pressure has changed the culture in Mecklenburg County courts. That cultural shift is evident in the ACLU-NC’s court observations: 82 percent saw a judge ask whether the defendant was able to pay, more than three times the rate in any other county observed.

176 Interview with Elizabeth Gerber, Assistant Public Defender, Mecklenburg County Public Defender’s Office, in Charlotte, N.C. (Apr. 30, 2018).

Conclusion and Recommendations for Reform

Over the last 10 years, states as ideologically diverse as Washington, Ohio, California, and Alabama have implemented large-scale reforms so that they no longer jail individuals due to their poverty or make court debt an inescapable maze.¹⁷⁷ States reformed their fines and fees structures by reducing costs, codifying procedures that prevent unlawful detentions, and in some cases, agreeing to pay financial settlements to impacted people.¹⁷⁸

North Carolina, on the other hand, has moved in the opposite direction by increasing the breadth and harshness of court fines and fees and making it more difficult for judges to waive them. Taken together, these laws signal that the state's leadership views judges as debt collectors rather than arbiters of justice. Unfortunately, the message has too often had the desired effect, cementing a system that punishes people for being poor and traps them in a cycle of poverty.¹⁷⁹

North Carolina must follow the lead of other states and work to end this two-tiered system of unequal justice in which the poor receive harsher, longer punishments for committing the same crimes as the rich, simply because they are poor. Lawmakers, administrative officials, and the courts should develop a more robust, rational, and equitable infrastructure that better documents these problems, accurately assesses people's financial situation, provides indigent North Carolinians with an attorney at every step of the process, encourages judges to waive fees

177 See NAT'L CTR. FOR STATE COURTS, *National Task Force on Fines, Fees and Bail Practices*, <https://www.ncsc.org/Topics/Financial/Fines-Costs-and-Fees/Fines-and-Fees-Resource-Guide.aspx>; Matt Sledge, *Poor New Orleans defendants land victory in 'debtors' prison' lawsuit against criminal court*, NEW ORLEANS ADVOCATE (Dec. 13, 2017), https://www.theadvocate.com/new_orleans/news/courts/article_02f9cfde-e068-11e7-b7e0-2b9351df9f15.html; Joseph Shapiro, *Lawsuits Target 'Debtors' Prisons' Across the Country*, NPR (Oct. 21, 2015), <https://www.npr.org/2015/10/21/450546542/lawsuits-target-debtors-prisons-across-the-country>; ACLU WASH., *Benton County Debtors' Prison Lawsuit: Frequently Asked Questions*, <https://www.aclu-wa.org/benton-county-debtors-prison-lawsuit-frequently-asked-questions> (last visited Dec. 19, 2018); ACLU, *ACLU Challenges Unconstitutional Debtors' Prison Practices in South Carolina County* (June 1, 2017), <https://www.aclu.org/news/aclu-challenges-unconstitutional-debtors-prison-practices-south-carolina-county>; see also John Herskovitz, *Arkansas town reaches settlement in 'debtors' prison' lawsuit*, REUTERS (Nov. 14, 2017), <https://www.reuters.com/article/us-arkansas-civilliberties/arkansas-town-reaches-settlement-in-debtors-prison-lawsuit-idUSKBN1DE31Q> (showing a similar movement to end debtors' prisons in Arkansas).

178 See *supra* note 177.

179 See *supra* notes 38-39 and accompanying text.

when appropriate, and ensures that no one in our state is sent to jail or prison simply because they are poor.

What the Legislature Can Do

1. Eliminate, or greatly reduce, court fines and fees. The North Carolina General Assembly should eliminate many of the newly adopted court fines and fees and trim remaining fines and fees back to more manageable levels. The legislature, for example, should repeal the imposition of attorneys' fees on indigent defendants through North Carolina General Statute 7A-455.1. The North Carolina General Assembly should also reduce the ever-ballooning General Court of Justice Fee, applicable to all criminal offenses, by a minimum of 50 percent.

2. Repeal judicial waiver tracking. The North Carolina General Assembly should repeal North Carolina General Statute 7A-350, which tracks how frequently individual judges waive court costs and fees. This provision has served only to intimidate judges and encroach upon judicial independence, leading to a clear drop in the number of waivers granted. The perversity of this requirement is amplified by the fact that the state does not require data collection regarding how court debt impacts North Carolinians. To the extent data on court waivers is necessary, it should be tracked at a county level to ensure compliance with constitutional guarantees, while providing data less susceptible to serving as a tool of intimidation.

3. Repeal provision requiring additional hearing and notice before waiver of fines and fees. The North Carolina General Assembly should repeal the provision of North Carolina General Statute 7A-304(a) that requires judges to give any impacted government entity notice and an opportunity to be heard before the waiver, reduction or modification of any court fine or fee. Judicial decisions about fines and fees should focus exclusively on an individual's ability to pay, not how the state has chosen to fund services.

4. Repeal provision depriving indigent defendants of court-appointed attorneys. The North Carolina General Assembly should adopt legislation making all those charged with Class 3 misdemeanors eligible for court-appointed attorneys. North Carolina General Statute 15A-1340.23(d) currently makes a Class 3 misdemeanor only punishable by fines if an individual has fewer than three convictions. However, these fines can result in incarceration. Providing these individuals with counsel would help to ensure court fines and fees are waived appropriately and curb debtors' prisons.

5. Expand and improve state public defender system. The North Carolina General Assembly should pass legislation that requires public defender offices to serve every county in the state and funds all offices

such that they can provide meaningful representation.¹⁸⁰ Only 33 of North Carolina’s 100 counties currently have public defender systems.¹⁸¹ At the very least, “IDS should establish uniform standards for performance of counsel for all cases in which it provides services” and provide “training and . . . resources for new counsel.”¹⁸² Again, providing indigent North Carolinians with attorneys experienced in advocating for the waiver of fines and fees law will reduce the number of people incarcerated because of their inability to pay and help them to avoid the court debt cycle.

6. Mandate ability to pay hearings. The state and federal constitutions require ability-to-pay hearings before the imposition of court fines and fees. Our state statutes present them merely as an option,¹⁸³ instead of accurately reflecting them as obligatory. To make plain that they are required, the North Carolina General Assembly should amend North Carolina General Statute 15A-1364 to make ability-to-pay hearings mandatory.

What Administrative Agencies Can Do

1. Standardize data collection. Currently every county in North Carolina collects data pertaining to court fines and fees differently. The Administrative Office of the Courts (AOC) should annually seek the following information from counties on each case in their district and superior court system: race, indigency status, criminal charges, the types and amount of fines and fees imposed or waived, judicial findings on waiver, administration of ability-to-pay hearings, sentencing conditions, and jail time related to fines and fees. The AOC should make this data publicly available. It should further analyze the data to ensure counties are not punishing defendants for their poverty. AOC can then provide guidance and training to court systems failing to live up to constitutional requirements.

2. Create and promulgate resources to aid court personnel in appropriately waiving court debt. The AOC should develop, promulgate, and train court personnel with tools that ensure fines and fees are waived where constitutionally obligatory. These should include tools to appropriately conduct ability-to-pay hearings. Mecklenburg County

180 A recent report from the Research Division of the National Center for State Courts “shows a need for 497 attorneys to effectively handle current public defender office caseloads, an increase of 73 percent over current staffing levels.” CYNTHIA G. LEE, LYDIA E. HAMBLIN & BRITTNEY VIA, NAT’L CTR. FOR STATE COURTS, NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES WORKLOAD ASSESSMENT, at ii (2019).

181 INDIGENT DEFENSE SERVICES, N.C. PUBLIC DEFENDER DIRECTORY, Nov. 27, 2018, <http://www.ncids.org/State%20Defender%20Offices/Directory%20Pages/Public%20Defender%20Directory.pdf?c=Defender%20Offices%20and%20%20Depts,%20Statewide%20Defender%20Directory>.

182 N.C. COMM’N ON THE ADMIN. OF LAW AND JUSTICE, CRIMINAL INVESTIGATION & ADJUDICATION COMMITTEE REPORT at 28 (Oct. 2016), https://nccalj.org/wp-content/uploads/2017/pdf/nccalj_criminal_investigation_and_adjudication_committee_report.pdf.

183 N.C. Gen. Stat. § 15A-1364 (2017).

provides an example AOC could seek to emulate. In 2017, its judges began using a bench card to provide guidance “on how to determine a person’s economic means, like asking about their monthly income, existing debts, and any limitations on their driving privileges that would inhibit their ability to earn.”¹⁸⁴ The AOC should then randomly observe court proceedings throughout the state to ensure these tools are being properly utilized, providing follow up training where necessary.

3. Create clearer standards for indigency assessments. IDS should adopt a definition of indigency to guide judges on everything from when to appoint counsel to an indigent defendant to when to waive court fines and fees. This indigency definition should meaningfully consider an individual’s basic needs, e.g., food, shelter, health care, childcare, and transportation. Further, a finding of indigency should trigger court-appointed counsel as well as the waiver of any court fines and fees.

4. Require mandatory training of attorneys on appointed list before assigning them cases. Before an attorney is assigned cases off of the appointed list, they should be required to complete mandatory training by IDS focusing on the issues particular to indigent clients. This training should touch upon how to advocate for the waiver of court fines and fees when appropriate.

What Judges Can Do

1. Ensure right to counsel. Judges need to appoint attorneys when defendants are eligible for court-appointed counsel. This includes both before and after conviction. Providing indigent North Carolinians with counsel knowledgeable of their case will reduce the number of people incarcerated due to poverty and help them avoid the court debt cycle.

2. Judges must stop issuing warrants for criminal contempt charges due to outstanding court debt in general and, more particularly, must cease doing so without a show cause hearing. Charging North Carolinians with criminal contempt due to outstanding court debt both perverts this charge’s purpose and obscures how many people are locked up due to inability to pay. This practice must stop. At the very least, judges must adhere to the requirement in North Carolina General Statute 5A-15 of holding a hearing to ensure non-payment was purposeful before locking up an individual.

3. Judges must waive court fines and fees for those incapable of paying. In the course of ability-to-pay hearings, judges must meaningfully consider an individual’s financial circumstances and waive court fines and fees for those incapable of paying without compromising basic necessities including food, shelter, health care, childcare, and transportation.

¹⁸⁴ A *Judicial Pact to Cut Court Costs for the Poor*, *supra* note 173.

Acknowledgements

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Appendix A

Criminal Court Costs and Fees Chart

The chart below shows court costs in effect as of December 1, 2018 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 not 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.		
District Court (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
		147.50
Facilities Fee.G.S. 7A-304(a)(2).		12.00
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
Total		173.00
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.G.S. 7A-304(a)(1).		+5.00
Superior Court		
General Court of Justice Fee. G.S. 7A-304(a)(4)	General Fund	153.55
	State Bar Legal Aid Account (LAA)	.95
		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
Total		198.00
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.G.S. 7A-304(a)(1).		+5.00

Other Criminal Fees	Amount
Appointment of Counsel Fee for Indigent Defendants. G.S. 7A-455.1.	60.00
Certificate of Relief Fee. G.S. 15A-173.2(h).	50.00
Civil Revocation Fee(impaired driving CVRs, only). G.S. 20-16.5(j).	100.00
Continuous Alcohol Monitoring (CAM) Fee (offenses prior to Dec. 1, 2012).G.S. 20-179.	Varies
Continuous Alcohol Monitoring (CAM) Fee (parolees, only). G.S. 15A-1374.	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, 15A-145.4, and 15A-145.7.	175.00
Expunction Fee, petitions under G.S. 15A-145.5.	175.00
Expunction Fee, petitions under G.S. 15A-146.11	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). Note: Applies only to offenses committed on or after December 1, 2011.	100.00
Improper Equipment Fee. G.S. 7A-304(a)(4b).	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: If Issued:(G.S.20-20.2).	CVD Costs +100.00
Limited Driving Privilege Fee –Other than under G.S. 20-20.1. Note: If there is no underlying conviction in the county, Charge. Civil filing fees explained on form AOC-CV-350. If Issued: (G.S. 20-20.2).	+100.00
PretrialRelease Service Fee (county). G.S. 7A-304(a)(5).	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).	600.00
State Lab Analyst Expert Witness Fee. G.S. 7A-304(a)(11).	600.00
Local Lab Analyst Expert Witness Fee. G.S. 7A-304(a)(12).	600.00
Private Hospital Analyst Expert Witness Fee.G.S. 7A-304(a)(13).	600.00
State Crime Lab Digital Forensics Fee. G.S. 7A-304(a)(9a).	600.00
Local Lab Digital Forensics Fee. G.S. 7A-304(a)(9b).	600.00
Seat Belt Violations (adult, front seat) and Motorcycle/Moped Helmet Violations.G.S. 20-135.2A and G.S. 20-140.4. General Court of Justice Fee, G.S. 7A-304(a)(4). Telecommunications and Data Connectivity Fee. G.S. 7A-304(a)(2a). LEO Training and Certification Fee, G.S. 7A-304(a)(3b).	25.50 fine +costs below: 147.50 (Dist.) 154.50 (Sup.) 4.00 2.00
Total	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).	60.00

Appendix B

Racial Composition of North Carolina Counties Reporting Booking Data

County	Black (%)	Latinx (%)	Native American (%)	White (non-Latinx) (%)	Total Population ¹⁸⁵
Brunswick ¹⁸⁶	10.5	4.8	0.8	81.9	130,897
Dare ¹⁸⁷	2.7	7.3	0.6	87.6	33,920
Davie ¹⁸⁸	6.5	6.9	0.7	84.2	42,456
Haywood ¹⁸⁹	1.3	3.9	0.6	92.7	61,084
Henderson ¹⁹⁰	3.4	10.3	0.7	83.3	115,708
New Hanover ¹⁹¹	14.0	5.5	0.6	77.2	227,198
Person ¹⁹²	26.9	4.3	0.9	66.3	39,370
Rutherford ¹⁹³	9.8	4.4	0.4	83.3	66,551
Union ¹⁹⁴	12.3	11.3	0.6	72.1	231,366
Vance ¹⁹⁵	51.4	7.7	0.8	39.8	44,211
Wilkes ¹⁹⁶	4.6	6.5	0.4	87.3	68,576
Total for All 11 Counties	11.8	7.3	0.6	77.9	1,061,337

185 County population totals reflect the U.S. Census Bureau’s estimates as of July 1, 2017.

Chart does not include percentages for county residents who identified as Asian, Native Hawaiian/Pacific Islander, or Two or More Races.

186 U.S. CENSUS BUREAU, *QuickFacts: Brunswick County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/brunswickcountynorthcarolina/PST045218>.

187 U.S. CENSUS BUREAU, *QuickFacts: Dare County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/darecountynorthcarolina/PST045218>.

188 U.S. CENSUS BUREAU, *QuickFacts: Davie County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/daviecountynorthcarolina/PST045218>.

189 U.S. CENSUS BUREAU, *QuickFacts: Haywood County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/haywoodcountynorthcarolina/PST045218>.

190 U.S. CENSUS BUREAU, *QuickFacts: Henderson County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/hendersoncountynorthcarolina/PST045218>.

191 U.S. CENSUS BUREAU, *QuickFacts: New Hanover County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/newhanovercountynorthcarolina/PST045218>.

192 U.S. CENSUS BUREAU, *QuickFacts: Person County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/personcountynorthcarolina/PST045218>.

193 U.S. CENSUS BUREAU, *QuickFacts: Rutherford County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/rutherfordcountynorthcarolina/PST045218>.

194 U.S. CENSUS BUREAU, *QuickFacts: Union County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/unioncountynorthcarolina/PST045218>.

195 U.S. CENSUS BUREAU, *QuickFacts: Vance County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/vancecountynorthcarolina/PST045218>.

196 U.S. CENSUS BUREAU, *QuickFacts: Wilkes County, North Carolina* (July 1, 2017), <https://www.census.gov/quickfacts/fact/table/wilkescountynorthcarolina/PST045218>.

Appendix C

ACLU-NC Fines and Fees Public Record Data Report

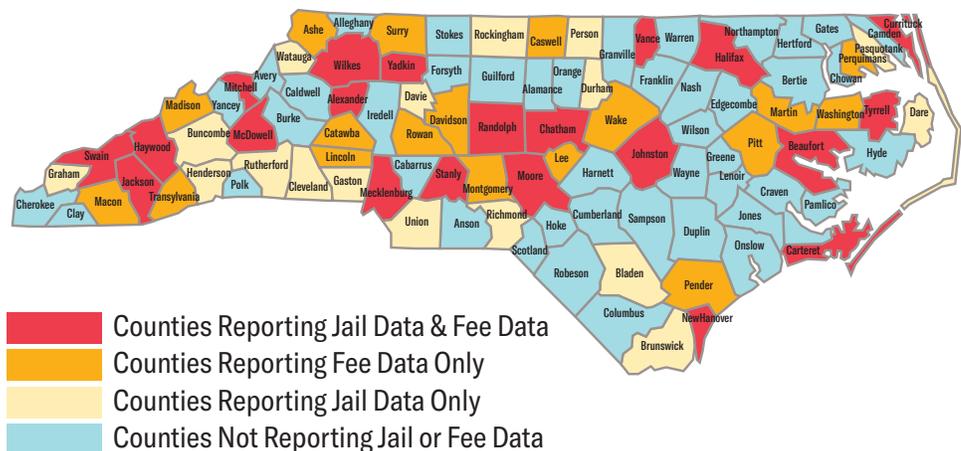
July 13, 2018

Data Responses

The following is a summary of findings from the ACLU-NC fines and fees public record requests from North Carolina counties. After issuing record requests to County clerks, sheriffs, managers, and finance departments of all 100 NC counties, the ACLU-NC received responses from 89 counties at least indicating that they had received the request. However, only 57 counties responded with valid data of some form. Different counties reported varying levels of information that was available:

- 11 counties reported booking data for people arrested for unpaid court debt
- 34 counties reported data on budget costs of the county jail
- 40 counties reported data on fines and fees revenue

As indicated by the below graphic, the ACLU-NC received responses from a cross-section of the state geographically as well as a mix of urban and rural counties.

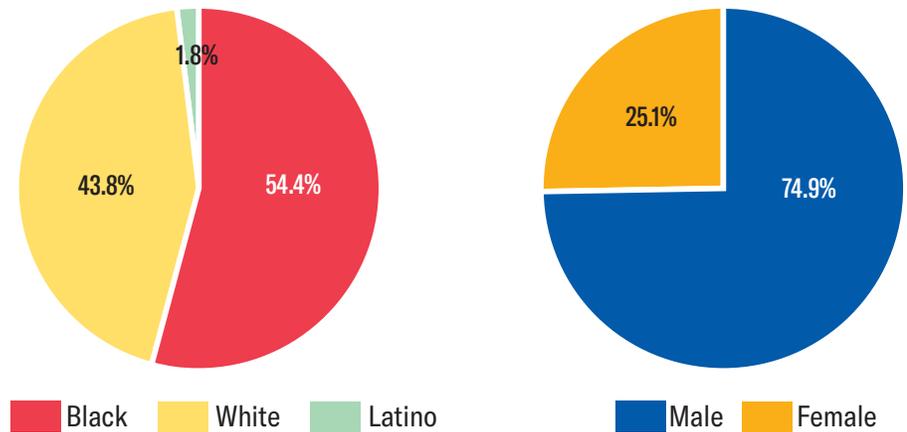


Data on Arrests and Jail Costs

There are 11 counties that reported some level of arrest data from not paying fees – 296 arrests in total. Of the 296 arrests, 217 had additional information on the person’s race and ethnicity, and 219 had information on the person’s gender.

While the overall sample size is relatively small if trying to represent the entire state, we do see some clear disparities in what data we have. The majority of these arrests are African-American (54.4%) and men (74.9%). We should note that the Latino category is typically underreported in crime statistics, with many Latinos miscoded as “white” or “Other”.

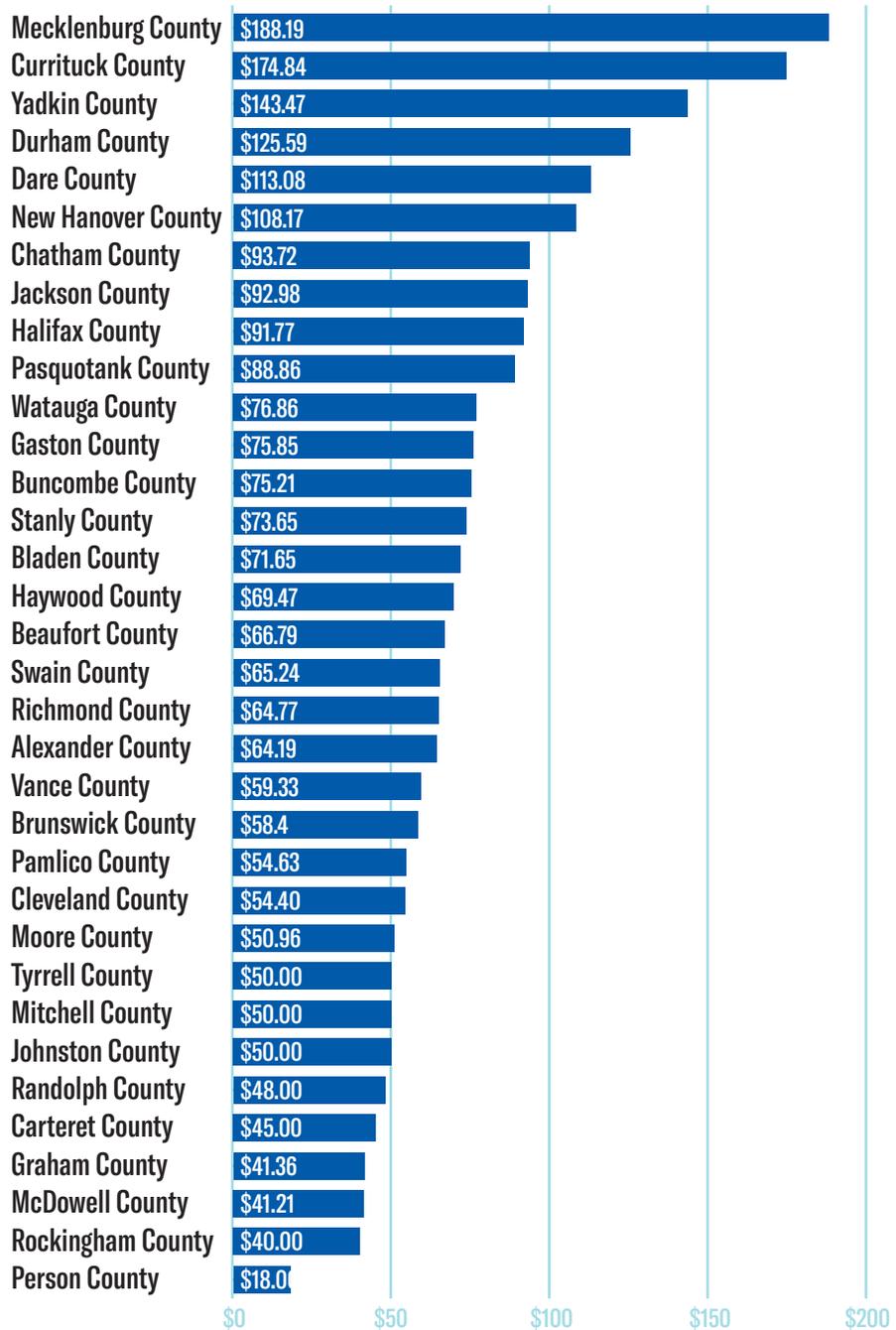
Percent Arrested for Nonpayment of Court Debt (n=217)



Also in the arrest data, there were 3 counties (132 arrests total) that reported the monetary balance still owed to the court, which averaged \$525.48 per arrested person. Again, given the small sample size, it may not be representative of a much larger group. However, compared to other research this average figure may be conservative.

There were 34 counties reporting enough data to estimate the daily cost of jailing each person. The median value of these counties was \$56.52 per person per day to incarcerate someone. Daily incarceration costs ranged from \$18.00 per person in Person County to a high of \$188.19 per person in Mecklenburg County. Note that some counties only reported the overall jail budget from the Sheriff’s office. In these cases, average county jail population numbers were acquired from www.measuresforjustice.org, allowing the estimation of a daily cost per person figure. Also, note that some rural counties reported not having a county jail facility, but housing arrestees in a neighboring county jail while paying them a daily usage fee.

Daily Cost of Incarcerating a Person



There were 5 counties reporting the length of jail stay for someone arrested for fines and fees (144 arrests total), which averaged 20.5 days. With the small amount of data we have, we would estimate that counties spend \$1158.66 (avg daily jail cost * average jail stay) incarcerating someone in order to collect \$525.48 in fees. In other words, the money used to chase after fines and fees is more than twice what counties would even collect.

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