

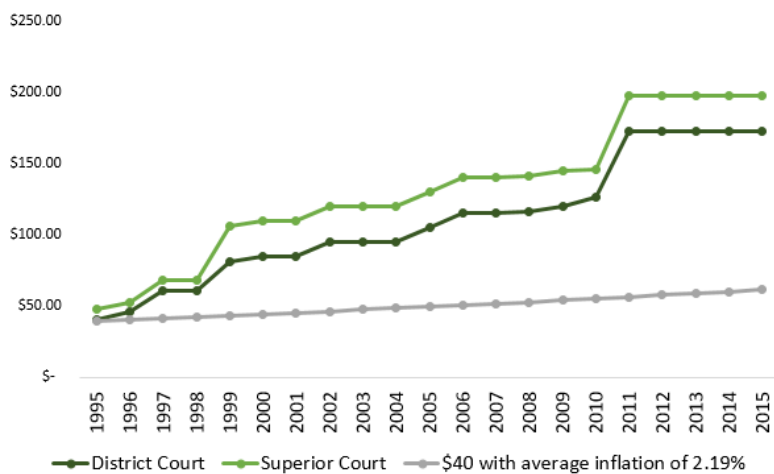
Criminalization of Involuntary Nonpayment of Legal Financial Obligations (LFOs) in North Carolina

Sarah Smith
April 17, 2019

What are Legal Financial Obligations?

Fines and fees, formally known as legal financial obligations (LFOs), are monetary sanctions for offenders convicted of breaking the law. Fines are a form of punishment, while fees generate revenue to fund the courts and other government activities.¹ The NC General Assembly defines the dollar amount of the state's court fines and fees. In the past 20 years, NC criminal court costs including fines and fees have increased at a rate past inflation. For example, the "General Court of Justice" fee more than quadrupled.²

NC General Court of Justice Costs since 1995



How is involuntary nonpayment criminalized?

For those who cannot afford to pay their LFOs, nonpayment results in additional sanctions including additional fees, interest penalties, driver's license suspension, and incarceration.³ In North Carolina, sanctions include 4% interest and mandatory driver's license suspension after 30 days of nonpayment.³ In 2017, nearly 1.2 million people in North Carolina had their license suspended for failing to pay fines or show up to court. Driving with a suspended license may result in incarceration.⁴

Implications of criminalization

Disproportionate harm:

Offenders who cannot afford their LFOs are "saddled with a substantial financial debt" that enhances their poverty and makes it less likely they will leave the criminal justice system.⁵ Poverty affects people of color at higher rates than white people.⁶ In addition, people of color are policed, stopped, searched, arrested, and incarcerated at higher rates than white people.⁷ Therefore, poor people and people of color face disproportionate harm related to the burden of court fines and fees.

De-legitimization of criminal justice system:

Court fines and fees breed resentment towards the criminal justice system.⁸ In the Boston Reentry Study, nearly half of released state prisoners agreed that the criminal justice "cares more about making money than reducing crime" among other sentiments. The resentment towards the criminal justice system makes offenders have less respect and acceptance for the system as a whole.⁸

Use of waivers by North Carolina judges

Background:

The Supreme Court has ruled it unconstitutional to imprison someone for nonpayment of LFOs unless the judge determines nonpayment is “willful”.^{9, 10} In the case that nonpayment is determined to be involuntary (in other words, nonpayment due to lack of financial resources), judges are allowed to waive court costs. In 2017, 45,882 or 4% of North Carolina court cases were waived.¹¹

NC Legislation making waiver use more difficult:

Since court fines and fees are often used as “necessary” revenue for the state, the NC General Assembly is incentivized to make waiver use more difficult.¹² In 2014, waivers began to be tracked by individual judge.¹³ In 2017, G.S. 7A-304 stated that “no court may waive or remit all or part of any court fines or costs without providing notice and opportunity to be heard by all government entities directly affected...at least 15 days prior to the hearing”.¹⁴

Significance:

Critics of these laws claim that the legislation is designed to “intimidate” judges to not waive court fees¹, make the process more cumbersome, and create a bureaucratic backlog of waivers, ultimately resulting in more non payers receiving sanctions like incarceration.¹⁵

Solution: Day Fines

What are day fines?

Day fines are sanctions in which judges determine how many non-monetary “punishment units” an offender deserves, such as 2 days, based on the gravity of the offense. The value of the LFO owed is then determined based on a percentage of the offender’s daily income. Day fines have been used broadly in Western Europe, Latin America, and U.S. experiments like Staten Island and Milwaukee.¹⁶

Case Study: Staten Island

Starting in Sep. 1988, Staten Island conducted a one-year pilot study to test the impact of a new day fine program. In addition to day fines, the program implemented individualized collection schedules instead of requiring full payment at the time of sentencing. The findings were positive:¹⁷

- **High utilization of day fines:** Over 70% of court cases used day fine sanctions as opposed to fixed fine sanctions.
- **Increased revenue:** Average fines imposed for penal law offenses rose 25%, from \$205.66 to \$257.85. Total amount of fines imposed by the court increased by 14%, from \$82,060 to \$93,856.
- **Decreased nonpayment:** Only 6% of day-fine cases resulted in no payment, compared to 22% of cases prior to the experiment. Even when full payment was not made, some payment was more likely than in day-fine control cases.
- **Fewer arrests:** Individualized collection schedules reduced the number of post-sentence court appearances, previously common if offenders did not pay in full at the time of sentencing. Therefore, courts issued fewer arrest warrants for failure to appear in court during the pilot.

North Carolina should implement day fines to reduce the burden of LFOs on offenders who cannot afford to pay, thereby reducing criminalization of involuntary nonpayment of LFOs.

Bibliography

- ¹Hunt, H. and Nichol, G. (2017, Winter). Court Fines and Fees: Criminalizing Poverty in North Carolina." North Carolina Poverty Research Fund. Retrieved from http://www.law.unc.edu/documents/poverty/publications/court_fines_and_fees.pdf
- ²UNC School of Government. (n.d.). Rising Court Costs in North Carolina. A UNC School of Government Blog. Retrieved from https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/1.Rising%20court%20costs%20in%20North%20Carolina%20-%20sentencing%20seminar.pdf
- ³Harris, A. et al. (2017, April). Monetary Sanctions in the Criminal Justice System. Laura and John Arnold Foundation. Retrieved from <http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf>
- ⁴Salas, M. and Ciolfi, A. (2017, Fall). Driven by Dollars: A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt. Legal Aid Justice Center. Retrieved from <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>
- ⁵Harris, A., Evans, H., & Beckett, K. (2010). Drawing blood from stones: Legal debt and social inequality in contemporary United States. *American Journal of Sociology* 115: 1753-1799.
- ⁶Jones, J., Schmitt, J. & Wilson, V. (2018). 50 Years after the Kerner Commission: African Americans are better off in many ways but still disadvantaged by racial inequality. Economic Policy Institute. Retrieved from <https://www.epi.org/publication/50-years-after-the-kerner-commission/>
- ⁷Drug Policy Alliance. (2018, January). The Drug War, Mass Incarceration and Race. Drug Policy Alliance. Retrieved from http://www.drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race_01_18_0.pdf
- ⁸Western, B. (2017). Review Essay of Alexes Harris, A Pound of Flesh: Monetary Sanctions as Punishment for the Poor. *SAGE Theoretical Criminology*, 21(2), 247-252. doi:10.1177/1362480617693706
- ⁹Williams v. Illinois, 399 U.S. 235 (1970).
- ¹⁰Bearden v. Georgia, 461 U.S. 660 (1983).
- ¹¹N.C. Research, Policy, and Planning Division. (2018, February 1). 2018 Report on Criminal Cost Waivers. (G.S. 7A-350). Retrieved from <https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/02/20180201-NAOC-Report-on-Criminal-Cost-Waivers.z.pdf>
- ¹²U.S. Department of Justice Civil Rights Division. (2015, March 4). Investigation of the Ferguson Police Department. Washington, DC: U.S. Department of Justice. Retrieved from https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf
- ¹³Markham, J. (2017, August 10). New Notice Requirements for Waivers and Remissions of Certain Monetary Obligations. North Carolina Criminal Law: A UNC School of Government Blog. Retrieved from <https://nccriminallaw.sog.unc.edu/new-notice-requirements-waivers-remissions-certain-monetary-obligations/>
- ¹⁴Uniform Costs and Fees in the Trial, § G.S. 7A-304(a) (2017).
- ¹⁵Shelton, C. and Stasio, F. (2017, December 5). New Law Makes It Harder for NC Judges to Waive Court Fees. WUNC The State of Things. Retrieved from <http://www.wunc.org/post/new-law-makes-it-harder-nc-judges-waive-court-fees>
- ¹⁶McDonald, D., Greene, J. & Worzella, C. (1992, April). Day Fines in American Courts: The Staten Island and Milwaukee Experiments. National Institute of Justice: Issues and Practices in Criminal Justice. Retrieved from <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=136611>
- ¹⁷Winterfield, L. and Hillsman, S. (n.d.). The Staten Island Day-Fine Project. U.S. Department of Justice. Retrieved from https://csgjusticecenter.org/wp-content/uploads/2013/07/1993-Staten_Island_brief.pdf