



# Mecklenburg County District Court

## Bench card: Imposition of Fines, Costs, Fees, and Restitution

### Guiding Principles

Based on the U.S. Constitution and North Carolina law, the Mecklenburg County District Court has adopted the following guidelines for imposing fines, costs, fees, and restitution (“legal financial obligations” or LFOs).

Excessive LFOs may be a barrier to reentry. Under North Carolina law, sentences should be commensurate with the offense and the individual’s culpability, and should assist the defendant toward **rehabilitation** and **restoration** to the community. N.C.G.S. § 15A-1340.12.

The Supreme Court noted in **Bearden v. Georgia**, 461 U.S. 660, 671 (1983), a sentencing court should evaluate “the entire background of the defendant in order to tailor an appropriate sentence for the defendant and crime.”

### Imposition of LFOs

1. The Court shall consider an individual’s ability to pay **before** imposing LFOs.
2. The Court has statutory authority to **reduce and remit LFOs**<sup>1</sup> to tailor LFOs to an individual’s ability to pay.
3. The Court shall use the steps below to determine ability to pay.
4. Note that according to 2017 N.C. Sess. Laws 2017-57, § 18B, N.C.G.S. § 7A-304 is amended to read: “[n]o 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.” Mecklenburg County is waiting for further clarification from the North Carolina Administrative Office of the Courts about implementation and will update this bench card accordingly.

### The Court can reduce and remit LFOs based on ability to pay.

- **Fines:** The court “**should**” consider ability to pay. N.C.G.S. § 15A-1362(a).
- **Restitution:** The court “**shall**” consider ability to pay. N.C.G.S. § 15A-1340.36(a).
- **Costs:** Costs can be waived or modified with “**just cause.**” N.C.G.S. § 7A-304(a); *State v. Patterson*, 223 N.C. App. 180, 183 (2012) (holding it was an error for the sentencing court to say it lacked the authority to waive costs).
- **Authority to Remit:** The Court may “**at any time**” remit or revoke the fine or costs or any unpaid portion of it. N.C.G.S. § 15A-1363.
- For other fees see LFO Schedule.

(emphases added.)

### Ability-to-Pay Inquiry

1. Individuals meeting the following criteria are **presumed unable to pay** or unable to pay in full.
  - Eligibility for **appointed counsel**; or
  - Income at or below **200% of the poverty guidelines**;<sup>\*</sup> or
  - **Full-time student**; or
  - Whether individual is, or within the past six months has been, **homeless, incarcerated**, or residing in a **mental health or other treatment program**; or
  - Receiving means-tested **public assistance**.<sup>2</sup>

| *Number of people in household | Monthly gross income at 200% of poverty guidelines |
|--------------------------------|--|
| 1                              | \$2,010  |
| 2                              | \$2,707  |
| 3                              | \$3,403  |
| 4                              | \$4,100  |
| 5                              | \$4,797  |
| 6                              | \$5,493  |
| 7                              | \$6,190  |
| 8                              | \$6,887  |

1 *Restitution:* “If the court orders partial restitution, the court shall state on the record the reasons for such an order.” N.C.G.S. § 15A-1340.36(a). *Costs:* “Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause” may the court waive or reduce. N.C.G.S. § 7A-304(a). *Authority to remit:* The court may remit or revoke fines and costs when “it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine or costs no longer exist, that it would otherwise be unjust to require payment, or that the proper administration of justice requires resolution of the case.” N.C.G.S. § 15A-1363. *Additional authority in sidebar.*

2 Means-tested benefits include SNAP, TANF, SSI, Medicaid, and housing subsidies. For TANF, SSI, SSDI, and veteran’s disability benefits, according to 42 U.S.C § 407(a), “The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the money paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.”

2. LFOs **should not pose an undue hardship** to the individual or his or her dependents or deprive them of money needed for basic living expenses, including food, shelter, clothing, necessary medical expenses, child support/care, utilities, and transportation. **The Court will consider the following factors to set LFO amounts. N.C.G.S. § 15A-1340.36(a).**<sup>3</sup>

- **Resources of defendant.** Include debts (including other LFOs) and assets that can be liquidated without harm to individual or dependents.

- **Ability to Earn.** Consider employment history and educational attainment; discrimination, including because of criminal justice history; homelessness, health, or mental health issues including disability; and limited access to public transportation or limitations on driving privileges.

- **Obligation to support dependents.**

Include child support obligations and support of elderly dependents.

- **Any other** matters that pertain to the defendant's ability to make payment.

**\*\* Monthly Necessary Expenses for Health and Welfare (IRS)<sup>4</sup>**

Examples of totals:

- **1 person with public transportation: \$2,306 (+\$511 if car)**
- **Family of 4 with public transportation: \$4,573**

|   | 1      | 2      | 3      | 4      | 5+                     |
|---|--------|--------|--------|--------|------------------------|
| Housing, utilities, food, and other living expenses <sup>5</sup>      | \$2068 | \$2810 | \$3146 | \$3621 | \$2,003 + \$325/person |
| <b>Other allowances per person per month</b>                          |        |        |        |        |                        |
| Transportation (Public): \$189/person in household                    |        |        |        |        |                        |
| Transportation (Car): \$700/month/car                                 |        |        |        |        |                        |
| Out-of-pocket health cost: \$49 if below age 65; \$117 if over age 65 |        |        |        |        |                        |

3. **Using the information above, the Court should set a payment plan<sup>6</sup> for proportionate LFOs.** Payment plans should be based on common sense. *State v. Carter*, 186 N.C. App. 680 (2007).<sup>7</sup>

4. The **monthly payment amount for LFOs** should be set to a level **proportionate to the individual's ability to pay and to the offense.** Guideline: 10% of **net** monthly income **after** basic living expenses.**\*\***

5. The Court should consider **waiving costs and fees** to arrive at a proportionate payment plan. In *Richmond Cty. Bd. of Educ. v. Cowell*, 776 S.E. 2d 244, 247-48 (N.C. Ct. App. 2015), the Court held fees and costs are remedial in nature. They may not be punitive unless collected money is allocated to the State's public schools. *Id.*

6. **Payment plan length:** Individuals should be required to pay over a reasonable time frame based on the severity of the offense. For example, the Court may set payment plans to last no longer than the maximum sentence length for the offense. See *State v. Smith*, 90 N.C. App. 161, 168 (1998) (considering how much individual could reasonably pay over probation term). Further, the court may remit or revoke fines or costs when "the proper administration of justice requires resolution of the case." N.C.G.S. §15A-1363.

7. Pursuant to Mecklenburg County policy, the Court **shall not impose a conditional order to show cause.**

## Alternatives to LFOs

1. If an individual is found unable to pay in part or in full, the Court may consider **a community service or program sentence** (e.g. mental health or drug treatment, education) ("Community Service"). N.C.G.S. § 143B-708.
2. Community Service hours should be **proportionate to the offense fine and to the individual.** The court should consider limitations on the nature or amount of community service the individual can complete because of physical or mental limitations, childcare, employment or school obligations, and lack of access to transportation. *State v. Mucci*, 163 N.C. App. 615, 627 (2004) (considering defendant's ability to complete his community service order in light of his need for gainful employment to pay restitution and support his family). If an individual is unable to pay, the Court may remit the \$250 Community Service Supervision fee. N.C.G.S. §15A-1363; N.C.G.S. § 143B-708(c).

## Probation

**LFOs as a Condition of Supervision:** Payment of LFOs is a default condition of probation but the Court may exclude payment as a condition of supervised or unsupervised probation. N.C.G.S. § 15A-1343.<sup>8</sup> Court should set proportionate supervision lengths and be mindful that unsupervised probation includes several default conditions. N.C.G.S. § 15A-1343(b).<sup>9</sup>

<sup>3</sup> Consideration of these factors is required for restitution and recommended for other LFOs.

<sup>4</sup> *Collection Financial Standards*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> (last visited Oct. 3, 2017) ("The necessary expense test is defined as expenses that are necessary to provide for a taxpayer's (and his or her family's) health and welfare and/or production of income.")

<sup>5</sup> National standard calculated for food, housekeeping supplies, apparel & services, personal care products & services, and miscellaneous.

<sup>6</sup> Payment plans are authorized under state law if the person is unable to pay LFOs upfront. N.C.G.S. § 7A-304(f) (costs); N.C.G.S. § 15A-1362(b) (fines); N.C.G.S. §15A-1340.36(b) (restitution).

<sup>7</sup> The court applied a 'common sense' test to vacate restitution award, finding defendant unable to pay when his monthly income was almost half the lower court's ordered monthly restitution award.

<sup>8</sup> The court may exclude the supervised probation fee and electronic monitoring device fee "for good cause." N.C.G.S. § 15A-1343(c1), (c2). The court may excuse court costs and fees and costs for appointed counsel when the "court finds there are extenuating circumstances." N.C.G.S. § 15A-1343(e).

<sup>9</sup> Individuals on unsupervised probation are subject to nine of the eighteen regular conditions of probation, including: pay LFOs; commit no criminal offense; satisfy child support; and remain gainfully and suitably employed or faithfully pursue a court of study that will lead to employment.