THE DEBT SPIRAL:
ENFORCEMENT OF CRIMINAL JUSTICE DEBT IN NORTH CAROLINA

BY QUISHA MALLETTE

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EXECUTIVE SUMMARY

This report examines the debt spiral for individuals indebted to the criminal justice system in North Carolina, and argues for targeted reforms at state and local levels. Across the state, there is evidence of disproportionately high contact with the criminal justice system among people of color and low-income communities. For these individuals and their families, criminal justice debt can be an insurmountable burden.

This report provides the following: 1. A description of historical context and current trends in criminal justice debt across the Unites States, particularly in the south; 2. A discussion of criminal justice debt in North Carolina, including the impacts and current state laws furthering the debt spiral; 3. Enforcement mechanisms for criminal justice debt; 4. An overview of current reform efforts across the state; and 5. A proposal for principles of fairness in addressing criminal justice debt, including policy recommendations for managing the risk and reality of criminal justice debt.

This report builds on a growing body of work in North Carolina and across the country addressing criminalization of poverty. It is intended as a call to action for decision-makers and advocates to engage in reforms that are equitable, transparent and effective. Key findings are highlighted below:

- During the early years of the United States, people were criminalized based on race and poverty, through slavery, debt peonage and later enforcement of the Black Codes.
- Law enforcement continues to be racialized today and target low-income communities.
- In the name of public safety, the justice system has benefitted the wealthy while burdening low-income households.
- Today, from the point of initial contact with the criminal justice system, individuals from

communities of color and low-income communities can be quickly caught in a cycle of criminalization:

- Communities of color and low-income communities are often targeted for ticketing and arrest.
- Individuals who are arrested and cannot afford to be released on bail prior to trial end up sitting in jail with the increased likelihood of being convicted for the charged crime.
- For individuals convicted of crimes, North Carolina imposes discretionary court fines or penalties, and mandatory costs or administrative fees per statute.[1]

  There is no requirement in North Carolina that the court determine whether an individual can afford to pay before imposing court costs.

- The State of North Carolina uses varying approaches to enforcing criminal justice debt, which may result in added financial burdens for low-income families:
  - If someone fails to pay court fees, they may get their driver license revoked.
  - Based on Durham County data compiled from a six-month period in 2017, black residents had driver licenses revoked disproportionately based on driving while license revoked convictions and failure to appear or pay court costs.
  - Other consequences may include incarceration for non-payment, and lasting debt.
  - Employment, housing stability, and food access and health may all be impacted by inability to pay costs.

This report proposes several principles of fairness concerning the cost burden for individuals and families impacted by the criminal justice system:

- Address racial and social inequities in law enforcement, application of court costs and enforcement

of criminal justice debt.

- Ensure that costs for use of state and local government resources, such as the court system, do not unfairly burden households with low and moderate incomes.
- Follow the constitutional principle of due process for individuals with outstanding debts and ensure that any penalties imposed for non-payment are based on willful non-payment, based on evidence of effectiveness and correlated/ proportional to one's failure to pay.
- Set clear standards for collecting civic debt in a transparent manner and monitor collection practices by private entities acting on behalf or in furtherance of collecting civic debts from individuals.

Introduction

Many people today, including our own families, friends and neighbors face high levels of debt from medical bills, student loans, mortgages, credit cards and other expenses they cannot afford.[2] A recent study of America's workers showed that 78% live paycheck to paycheck and 73% of workers making under $50,000 per year are living in debt.[3]

Further, according to a 2018 report by the Federal Reserve, four in ten adults do not have enough cash or savings to handle $400 in unexpected expenses.[4]

It is worth noting that the median income in North Carolina is just over $48,000, and 15% of state residents live in poverty.[5]

Additionally, one in five North Carolina residents has a criminal record.[6]

A few financial missteps could lead most people into a debt spiral, where 'debt begets more debt.'[7] Although debts owed to privately-owned entities may be a burden for many, civic debt - owed by individuals to the government- creates an added burden for low-income households, particularly families of color. Such debt can hang like a cloud over one's head, impacting households and communities, and potentially spiraling out of control.

Civic Debt Basics

Debt owed to the state or local government may be described generally as civic debt. In North Carolina and other states, civic debt can be the result of court-related debt or other debts owed to the state or local municipalities, including parking tickets, unpaid utility payments or fines from toll roads. Court-related

debt may be the result of monies owed to the government through civil judgments or criminal court financial obligations.

Criminal court debt includes, but is not limited to financial obligations incurred through bail, court fines and fees, jail costs, probation or supervision, and participation in mandatory programs. For example, if a person is charged with a felony and fails to pay bail, that person generally has to sit in jail awaiting trial. Pre-trial incarceration drastically increases the likelihood that someone will plead guilty and be convicted of a crime they may not have committed.[8] Per a Philadelphia study, pre-trial detention leads to a "13% increase in the likelihood of being convicted . . . a 41% increase in the amount of non-bail court fees owed and a 42% increase in the length of the incarceration sentence."[9]

In the scenario described above, the same person, who originally could not afford to pay bail, suddenly has to come up with money to pay court costs. The likely result is default on debts owed the court. If the offense is traffic related, one consequence will be driver license suspension or revocation until the debt is repaid. Without a driver license, a person's transportation or employment may be in jeopardy. Without transportation or employment, housing, food access and health may be at risk. If that person risks driving without a license and happens to get ticketed or arrested, the cycle starts all over again. Even worse, that individual could become incarcerated, adding additional financial burdens and hardship for themselves and their families.

A few financial missteps could lead many people into a debt spiral, where 'debt begets more debt.'

As pointed out in a 2017 multi-state report, there is no national standard concerning legal financial obligations.[10] The amounts owed for use of the court system and to pay other court obligations vary by state or local court systems. Even the terms used to describe money owed to the criminal justice system may differ between states. "Conceptualized variably as a dimension of punishment, an opportunity for restorative justice, and a source of revenue, legal financial obligations both widen the net and intensify the entanglements with, the criminal

justice system."[11] Where someone lacks legal representation or the court fails to take into account their ability to pay, the consequences of fines and fees are "exacerbated."[12]

Debtor systems have existed in this country since its founding, in most cases, targeting people of color across incomes and other low-income individuals.

Court costs or fees are the primary focus of this report because this form of legal financial obligation applies most broadly to anyone with a conviction in criminal court, from traffic infraction to felony. While assigned merely as 'user fees,' court fees can feel like punishment for low-income individuals. As a result of the current system of legal financial obligations, including court costs, many people who cannot afford to pay court costs may be required to pay anyway.

Part of the challenge with advocating for criminal justice debt policy reforms is getting beyond the prevailing notion that people with legal financial obligations are simply "paying" for their crimes. Some may assume that a person who owes money to the court should be required to do so as a part of their "punishment" or as a deterrent for wrongdoing. However, this argument does not account for the fact that court fees, described as court costs in North Carolina, are the *mandatory* price to pay for *use* of the court system and not intended for punishment. Fines and penalties on the other hand, are actual punishment, and may be imposed at the court's option. Hence, court fees have been described by advocates as "user fees," placing an unfair burden on individuals who enter the courthouse and are convicted of even the smallest infraction, such as not wearing a seatbelt as a passenger.

The bills can pile up, with very little say from the person who is impacted. Individuals may owe additional money for paying late or failing to comply, and simultaneously lose their driver's license or be incarcerated, which

hinders their ability to take care of their family and may result in job loss, loss of government benefits, and other challenges. When several members of a community face these same challenges, it can contribute to disenfranchisement, blight and loss to the local economy. In this way, debt arising from contact with the justice system can spiral out of control.

Part I. Overview of Criminal Justice Debt

History of Criminal Justice Debt

The existing debt burden must be understood within the context of systemic oppression and individual actions that are often responding to that system. Low-income communities and communities of color often overlap in population and they disproportionately bear the burden of criminal justice debt. This modern barrier to wealth is rooted in history. As noted by Alexes Harris, expert on inequality in the criminal justice system, "[r]eminiscent of the days [of] slavery, poor people convicted today face fiscal servitude to the court."[13]

This section begins by examining the historical context across the southern part of the country, and then looks to the current day challenges in the United States. Debtor systems have existed in this country since its' founding, in most cases targeting people of color across incomes and other low-income individuals, extracting wealth from communities and creating a ceiling for potential economic gains.

Economic justice and criminal justice meet at an intersection, where the cycle of criminal justice involvement is often a barrier to individual financial stability and community wealth building.

In the decades following slavery, many poor black and white farmers faced the reality of debt peonage. This system allowed wealthy landowners to rent plots of land, or make pay advances to their workers, leaving many of them in inescapable debt.[14] At the same time, southern state legislatures enacted the Black Codes, and later Pig Laws, restrictive laws that

were "effectively designed to criminalize black life,"[15] including penalties for unpaid debts. This extensive set of laws applied to all residents. However, they were primarily, if not exclusively, enforced against African-American men, in many cases sentencing them to hard labor at the hands of wealthy white landowners.[16] This system is said to have pushed black people away from the political process and then use the justice system to return them to "a state of de facto slavery." [17] The Pig Laws remained in place until the Jim Crow era.[18]

Moving ahead to 1970, the US Supreme Court found that individuals could not be incarcerated for not paying legal financial obligations if they were not able to pay the amount imposed.[19] By the early 2000s, fiscal crises prompted use of increased court fines and fees as a viable alternative to shrinking state and local budgets.[20] Throughout the 2000s, justice systems across the country, including North Carolina, have dramatically raised the rates of legal financial obligations and expanded the types of obligations that can be imposed.

Criminal Justice Debt Today

Today, anti-poverty advocates are starting to recognize that economic justice and criminal justice meet at an intersection, where the cycle of criminal justice involvement is often a barrier to individual financial stability and community wealth-building, particularly for people of color. Still, the influence of criminal justice policy and practice on opportunities for economic justice requires continued attention.

A person with lower income plus a lesser criminal offense equals a disproportionately high consequence.

The 2014 case in Ferguson, Missouri, identifies the intersection between areas of economic and criminal justice. In 2016 the U.S. Department of Justice completed an investigation of collusion between law enforcement and the courts in Ferguson, Missouri, finding a "financial relationship between Ferguson's municipal

courts and its police department resulted in the disproportionate ticketing, fining and jailing of its African American residents."[21]

In 2017, the United States Commission on Civil Rights submitted a briefing report with recommendations for the U.S. Department of Justice on *Targeted Fines and Fees Against Low-income Communities of Color*. The Commission noted in its report that

> Excessive imposition of fines and fees can damage judicial credibility and the relationship between law enforcement and residents . . . . Court imposition of fines and fees for criminal and civil justice activities has become a common practice in many jurisdictions . . . . [and] a significant number of low-level fines and fees are for traffic violations . . . . There are inconsistent policies in determining the ability to pay fines and fees and the consequences for individuals' failure to pay.[22]

Recognizing the historical context of criminalization of low-income communities and communities of color, it may be argued that the credibility of the justice system has always been questionable. Further, whereas debt peonage is not imposed as often today as it was historically, the legacy of insurmountable debt continues with court-imposed fines and fees. Finally, even minimal contact with the justice system, such as a minor traffic ticket, can send someone who is unable to afford the costs spiraling into debt.

Across the country, involvement in the criminal justice system may come with additional costs imposed by private companies contracting with state justice systems. For example, in recent years contractors have profited from allowing video visitation of individuals who are incarcerated, a debt burden that extends to families of individuals who are in jail awaiting trial.[23] Another example might be the pre-paid cards provided upon reentry of formerly incarcerated persons. Per a national consumer advocate, "[t]hese cards often have high fees, lack for clear disclosures, and offer little or no PIN security."[24]

Such allowances unfairly burden those who cannot afford to pay court debts. Moreover, in recent years, the use of legal financial obligations has become more widespread. While the costs of criminal justice contact have increased,

so has the urgency to address this issue.

As discussed above, historically and today, court debt disproportionately impacts communities of color and low-income communities. The same issues in Ferguson, Missouri, are found in North Carolina and other parts of the country**.** The cycle begins with law enforcement targeting of low-income, communities of color for minor drug and traffic offenses. Targeting leads to higher rates of ticketing or arrest. The disproportionality continues through the process for charging and convicting individuals for committing crimes.

Part II. Criminal Justice Debt in North Carolina

Court Fines and Fees in North Carolina

North Carolina has a system of justice that, in some instances, punishes people beyond the measure of the crime committed. Individuals who cannot afford to pay their way out of the system often face a debt burden that goes well beyond "fines and fees." [25] The debt burden arising from court fees has even been challenged by several North Carolina attorneys as unconstitutional.[26] In North Carolina, criminal justice debt may include costs incurred at any point of involvement with the court system, from ticketing or arrest to bail, to conviction, incarceration, and probation or supervision.

In North Carolina, court fees are statutorily authorized for anyone with a criminal conviction, and amounts are set based on a fee schedule.[27] Total costs vary depending on the nature of the infraction, misdemeanor or felony and the details of each case. Added fines or penalties may be imposed for reasons such as failure to appear or failure to comply with imposed costs. However, the base cost for use of the court begins at $178.[28] The fee schedule is set regardless of income, which results in wealthier people being able to pay the cost and move on with their lives, and traps lower income individuals in a cycle of debt.

North Carolina residents face additional barriers to justice just for living in poverty, such as being unable to afford a private attorney or

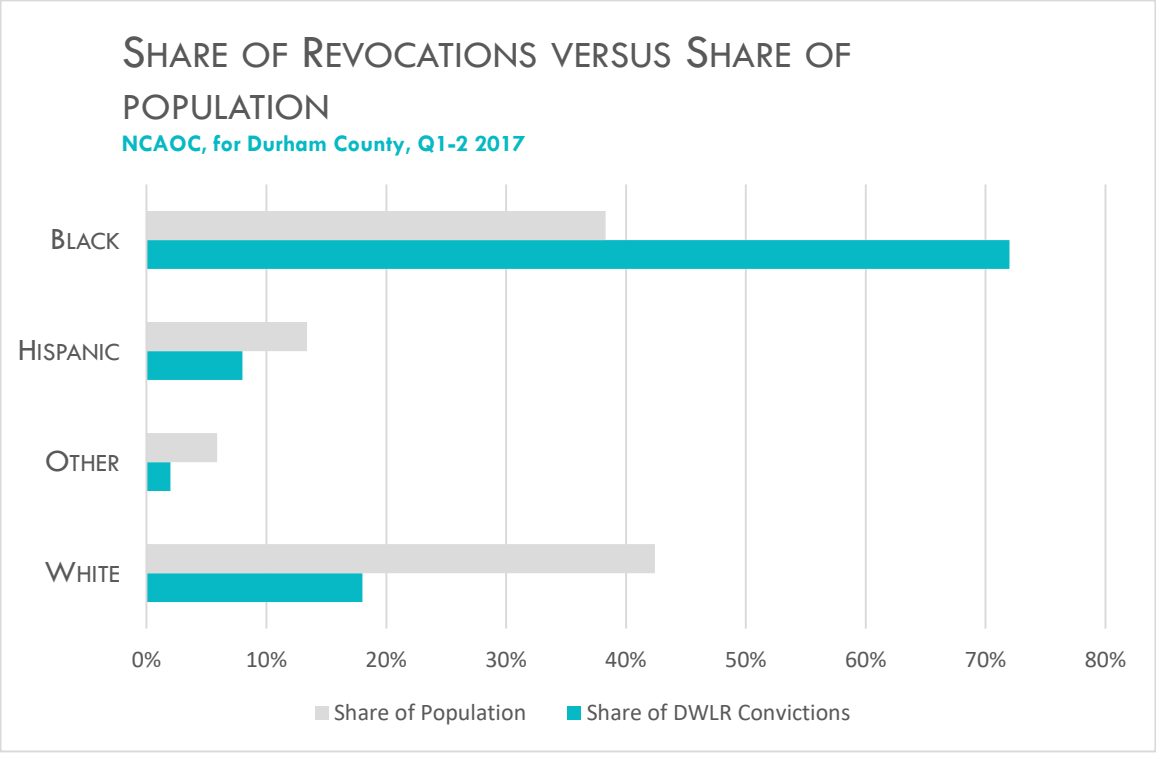
even for having a low-level offense that does not qualify them for a court-appointed attorney. The equation here is simple, and yet convoluted: A person with lower income plus a lesser criminal offense equals a disproportionately high consequence.

The Burden of Criminal Justice Debt

In North Carolina, statutory changes have made court costs, fines and penalties higher and higher, and harder and harder to waive. In past years, funding for the court system was mostly based on taxes paid by all North Carolinians, but the burden has shifted to individuals who use the court system.[29] Mandatory court costs first emerged in 1995 and have increased drastically since that time.[30] Quoting an expert in North Carolina Criminal Law:

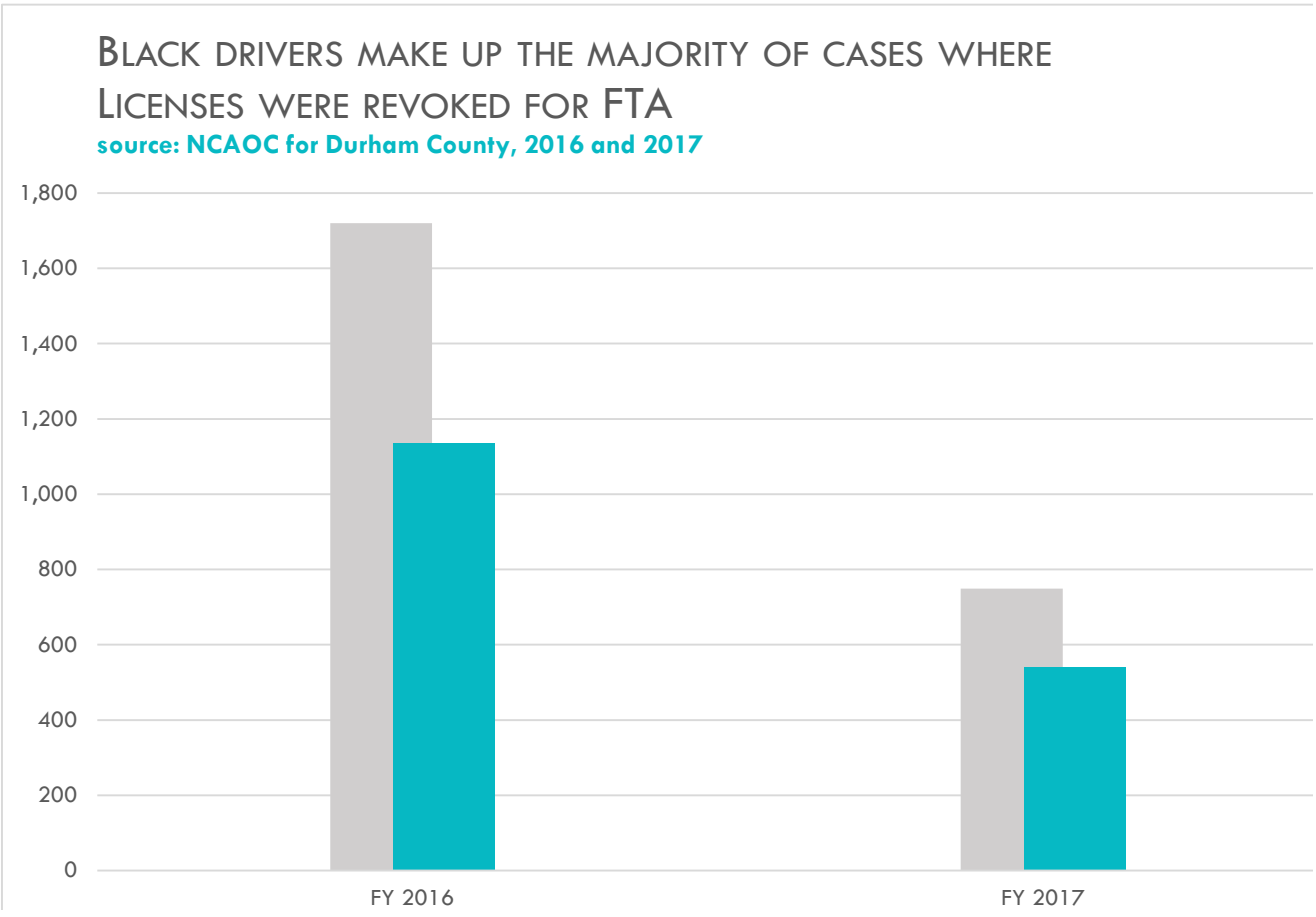
> Overall, North Carolina's court fees have risen at a rate quadruple the 54% rate of inflation in the United States over the past twenty years. If fees continue to go up at the rate that they have been increasing over the past twenty years, the general court fees in district court will exceed $500 by the year 2024![31]

It is important to recognize this dangerous trend



of making justice less accessible for state residents. The imposition of fees is not merely an added expense, but a force that influences judicial outcomes – and in a way that has the effect of disadvantaging people of color. As discussed, non-payment of court costs can have lasting consequences. For example, non-payment of court costs is considered a probation violation. As a result, a family may lose eligibility for SNAP, housing assistance and disability benefits.[32]

In North Carolina, the current political climate penalizes court-involved individuals and court officials attempting to offer alternatives to the high costs of the justice system. Since 2011, the legislature has increased court fees, creating what many describe as a regressive tax.[33] To add insult to injury, the state legislature passed a 2017 law requiring that judges provide notice to all interested agencies receiving a portion of court fees, prior to waiving the fees. This move essentially strips judges of the discretion to waive fees for individuals dealing with special



circumstances, including inability to pay.

Nevertheless, ability to pay court costs must be considered. The Supreme Court case *Bearden v. Georgia* requires courts to consider ability to pay debts prior to imposing punishment for non-payment of court costs.[34] Unfortunately, in practice, North Carolina courts may be enforcing such debts without an ability to pay determination.

Part III. Mechanisms for Criminal Justice Debt Enforcement

In North Carolina, the world of costs, fines, restitution, and other monetary obligations can be quite a maze. The collections process can also be confusing. Criminal court costs are generally 'coerced' through revocation of driver licenses, converted into a civil judgment, or collected through debt setoff. Although not discussed at length here, the threat of incarceration may also loom for someone who fails to appear or pay court costs.[35]

Revocation of Driver Licenses

Per statute, North Carolina requires indefinite revocation of driver's licenses for individuals who have certain traffic violations or anyone who is determined to have failed to appear or failed to comply with court costs in cases involving a motor vehicle offense. A recent 2017 law requires payment of an additional administrative fee (beyond existing DMV fees for license reinstatement) for individuals seeking a hearing to get their license reinstated. Some may argue that these policy shifts are promoting public safety or making up for economic losses due to unpaid court debts, but these claims are yet to be substantiated. Particularly when it concerns public safety, there is no direct correlation between inability to pay court costs and someone's dangerousness on the road.

While a driver license revocation may be an appropriate means of ensuring public safety in some instances, non-payment of court costs is not a public safety issue. Plus, North Carolina has not shown clear evidence of effectiveness of revoking driver licenses for the purpose of

ensuring payment of outstanding court debts. In a 2011 audit, the Administrative Office of the Courts, the state entity over the county court system, failed to provide data to support claims of compliance with repayment of debt following license revocation.[36]

Across the state, approximately one million drivers do not have a license.[37] While this fact can be attributed to a variety of factors, one of the primary reasons is due to having a revoked driver license due to inability to pay court costs.[38] In the city of Durham, one in five residents have a suspended driver license and more than 22,000 residents have had their license revoked or suspended for failure to pay or comply with court costs.[39] The numbers in Durham County help illustrate this point.

According to the most recent data available, fifty percent of Durham County residents are white, and 37.2% of residents are black, with other races making up the remainder of the population.[40] Hispanic or Latinx individuals make up 13.4% of the population, an ethnic classification that is included within racial classifications for the county.[41] North Carolina Division of Motor Vehicles (DMV) data from fiscal years 2016 and 2017 includes the number of driver license revocations each year due to either Driving While License Revoked (DWLR) convictions or failures to pay or appear:[42]

- In Fiscal Year 2016, 588 Durham County residents had driver license revocations extended for additional time for driving with a revoked license. 1720 driver license revocations for failure to appear or pay court costs.[43]
    - Between the two categories, just over three out of four revocations were due to failure to appear or pay court costs.
    - Sixty-six percent or 1136, of those revocations were for black drivers.
- In Fiscal Year 2017, Durham County saw 159 driver license revocations due to DWLRs and 749 revocations due to failure to appear or pay court costs.
    - That year, approximately

four out of five revocations were due to failure to appear or pay court costs.

- 542, or 72%, of those revocations were for black drivers. While additional data on rates of enforcement would provide additional context, the data provided suggests that proportionally more African Americans were charged and convicted for DWLRs than whites.

A review of individual court records based on DWLR charges during a six-month period in 2017 supports the DMV numbers from the last two years: [44]

- African American represented 76% of disposed or completed cases based on DWLR charges between April and October 2017.[45]
- Of the disposed cases, less than half resulted in DMV notification events, meaning that the convicted person's driver license was revoked once the case was completed.[46]
- Nearly half of driver license revocations were for black drivers.[47]
- Black individuals also accounted for more than 50% of the DMV notifications for failure to appear or pay court costs.

The trends here suggest that black drivers in Durham County have a higher rate of conviction and resulting driver license suspension for DWLRs and failure to appear or pay court costs. A key challenge is whether individuals could afford to pay the applicable court costs or penalties. Unfortunately, the data on ability to pay appears to be unavailable to the public.[48]

Other than revocation of a driver license, what happens when someone does not pay the court costs they owe? The Judicial Department is authorized to select from a few different options[49]:

1. Assess a collection assistance fee for amounts still owed thirty days after the allotted repayment period.

2. Contract with a collection agency to collect unpaid amounts owed.

3. Intercept state tax refund or lottery winnings through the debt setoff program.

Although the option is available, the Judicial Department generally does not use private companies for collection of criminal justice debt, which can often be predatory in nature.[50] Even government attempts at collections can be harsh and unfruitful. In 2009, Mecklenburg County attempted to collect outstanding court debt to make up for a budget deficit, arresting and incarcerating those who could not pay on the spot.[51] While the detention cost for debtors was $40,000, the final collected amount was only around $33,000.[52] This outcome suggests that the costs of detention outweighed any benefits of collecting outstanding debts.

Civil Judgments and Debt Setoff

Unpaid criminal court debt is commonly docketed as civil judgment upon default, which allows for a judgment creditor to collect on amounts owed for up to ten years, but the state could sue to collect on the debt indefinitely, with no statute of limitations.[53] While interest is not attached to outstanding court fees, interest on fines, penalties and attorney's fees may accrue annually at eight percent each year.[54] As one attorney has noted, people do not understand that they are entering an 8% loan agreement when they agree to have their outstanding debt converted to a civil judgment.

The state's Debt Setoff program allows state and local agencies to collect unpaid debts, such as a civil judgment, owed to those government entities by intercepting state tax refunds and lottery winnings.[55] Debt setoff is often used by Indigent Defense Services, the body of court-appointed attorneys representing individuals who cannot afford a private attorney. An accused individual, who is declared indigent by the court, will generally be assigned a court-appointed attorney when a public defender is not available. The court-appointed attorney acts as a substitute, with additional attorney's fees.[56] If the accused is found guilty, then the state must collect payment for the court-appointed attorney, even though the person has been declared indigent. The hopeful news is that Indigent Defense

services is reportedly developing statewide standards for determining whether someone qualifies for a court-appointed attorney, which may give more people access to legal representation which they otherwise could not afford.[57] However, regardless of indigence, individual defendants would still have to pay non-waivable costs for a court-appointed attorney.

Options for Those Who Cannot Afford to Pay Monetary Obligations

Considering the high costs for non-payment of court fees, fines and penalties, it is essential to consider what options may be available for those who cannot afford to pay. As noted in a 2018 report on *Court Fines and Fees: Criminalizing Poverty in North Carolina*, "[w]aiver and the ability to pay inquiry are the two main tools available to mitigate or prevent the worst abuses of fines and fees . . . . [T]hey currently fall far short of the task."[58] In North Carolina, two options include waiver and remission. While there are a lot of restrictions for waiving court costs or "user fees" in North Carolina, costs may be reduced or eliminated in other ways.[59] Further, certain court costs may actually be reduced, such as the $600 lab fees, which are those costs outside of the range of those on the fee schedule applied in most cases, currently $178 for district court and $205 for superior court.[60]

It bears noting that, in light of recent laws making judicial waiver of court costs more burdensome, waiver is not the only means of reducing or eliminating court costs. For example, different from a waiver, a cost may be "remitted" or forgiven by the court upon petition by a defendant or prosecutor for certain reasons, such it being unjust to require payment.[61] Similar to waiver, this option requires notice to and an opportunity to be heard to any government agency that would have otherwise received a portion of the costs owed, but it does not require a written finding of just cause, so it may be more accessible for judges.[62] While the law appears to provide a window out of possible court debt, remission, along with waiver and other relief from legal financial obligations, are based on the decision of each individual judge, and therefore are not

uniformly applied.

Part IV. Existing Reform Efforts in North Carolina

In response to the downward spiral created by criminal justice debt, reforms are necessary to protect impacted individuals and preserve the integrity of the criminal justice system. The US Commission on Civil Rights includes in its recommendations that "states and municipalities should create accountability mechanisms concerning the constitutionality of fines and fees, determination of indigency, and alternatives to the imposition of fines and fees."

Current reform efforts in North Carolina focus on accountability, standardizing court practice, promoting policy change and providing relief for impacted individuals. Initiatives vary by county and some examples are provided below.

Mecklenburg County judges have started using a bench card that sets clear standards to determine appropriateness of court fines and fees for those convicted of criminal charges.[63] The bench card, created with support from the National Criminal Justice Debt Initiative at Harvard Law School, calls for a presumption of inability to pay for certain individual defendants such as those who qualify for a court-appointed attorney and full-time students.[64]

In Durham and Wilmington, local government has worked with advocacy organizations to offer amnesty days for individuals with revoked driver licenses to get driver licenses restored.[65] In Durham, the amnesty project was led by the City of Durham Innovation Team, as a part of their overall goals of "lowering the recidivism rate and increasing employment rate of justice-involved individuals."[66]

Grassroots groups and advocacy organizations have launched campaigns to end money bail, and end or limit pre-trial incarceration. Local and national organizations have also pushed for decriminalization platforms for district candidates for the 2018 election cycle.[67]

Starting with the NC Poverty Research Fund's January 2018 report, state and local organizations are also researching and producing

reports on issues of fines, fees and bail. Attorney advocates and practitioners and other concerned parties have published series of articles and thought pieces on the issue.[68] With prompting from advocates across the state, there has also been a lot of recent media attention covering the issues of court fines and fees and bail.[69]

As described above, a growing number of state and local officials, attorneys, non-profit and grassroots organizations, and other professional or community advocates across the state are working individually and in tandem to push for changes in the justice system that will decriminalize poverty and remove some barriers to wealth.

These steps are headed in the right direction, and they remind us that state and local officials, attorneys, consumer advocates, service providers and concerned community members can all play a role in curbing the injustices of the current justice system, specifically addressing the financial barriers to justice and lasting consequences for inability to pay off criminal justice debt.

Part V. Policy Recommendations

Recognizing the continued economic challenges faced by justice-involved individuals, the justice system should adhere to certain principles of fairness in setting, imposing and collecting criminal justice debt. Importantly, advocacy efforts should have an equitable approach: directly impacted individuals, families and community members must be central to reform efforts, informing the goals and direction of the work. Further, advocates must not lose sight of the fact that residents of our state are currently facing court costs they cannot afford, as well as driver's license revocations and other consequences. Many people are in need of pre-trial assistance from advocates who can guide them through the system and ensure they are treated fairly, adequate legal representation to request waiver or remission of costs, as well as support during incarceration and re-entry in order to prevent recidivism and ensure people can pay their debts.

There is also a desperate need for funding and support for financial counseling and

literacy. In many cases, if a consumer does not already have certain supports or financial assets, they may not even be able to access services intended to support consumers, such as access to credit and housing counseling. It is unfortunate that poverty is criminalized by the justice system.

Bearing in mind the above considerations, provided below are principles, outlined in bold, with policy recommendations specific to criminal justice debt, and recommendations for consumer advocates and concerned community members.

Principles of Fairness

Address racial and social inequities in law enforcement, application of court costs and enforcement of criminal justice debt:

- The Department of Public Safety and Judicial Department should monitor existing policies and practices, to prevent targeting and other forms of discrimination against low-income communities and communities of color, and implement evidence-based reforms to address disparities.

Ensure that costs of use of state and local government resources, such as the court system, do not unfairly burden households with low and moderate incomes:

- The court system should be accessible to all people regardless of income. Individuals should not be penalized for not being able to afford legal representation or pay legal financial obligations such as bail and court costs. The state Judicial Department should also make sure the payment system is accessible for users with special needs.
- The Administrative Office of the Courts should keep the public informed regarding payment plan options and any reasonable alternatives to payment. Moreover, the state legislature should implement a sustainable funding model for the Justice Department that relies on all taxpayers, rather than burden those who come in direct contact with the courts.

Follow the constitutional principle of due process for individuals with outstanding debts and ensure that any penalties imposed for

non-payment are based on willful non-payment, based on evidence of effectiveness and correlated/ proportional to one's failure to pay:

- North Carolina should end revocation of driver licenses for failure to appear or pay court costs. Relevant state law should require ability to pay determinations, such that the court must determine whether someone can pay court costs prior to getting a driver license revoked. The court system should incorporate alternative models for payment of court debt or other civic debts, including sliding scale payment systems and no-cost opportunities for community service. Outstanding debts or debts in default should not be converted to civil judgments, or debt setoff without a determination of ability to pay.

Set clear standards for collecting civic debt in a transparent manner and Monitor collection practices by private entities acting on behalf or in furtherance of collecting civic debts from individuals:

- The justice system should review current enforcement procedures for effectiveness and disproportionality, making the process and findings available to the public. Standards should limit accrual of interests, added costs, and collection tactics such as wage garnishment that put individuals at risk of being unable to repay their financial obligations.

Example of Possible Policy Shift with Ability to Pay Determinations

As mentioned at the start of this report, the challenge of criminal justice debt is one that arises as both a criminal justice and consumer rights issue. Although it primarily involves the legal system, criminal justice debt quickly becomes a consumer issue because it can initiate a debt spiral and hurt access to credit. Approaching criminal justice debt through a consumer rights lens may help provide some solutions. The

Pew Charitable Trusts proposes a standard for affordable installment loan payments as 5% of a typical customer's gross paycheck.[70] While this recommendation arises in the context of lending to underbanked customers who were more likely to be susceptible to abuses from payday lenders, it translates well for an individual's ability to pay court costs or other outstanding debts.

The Pew plan allows for repayment of court debt without triggering a cascade of late fees and interests. Consider the scenario below for a family of four, earning $26,000 per year, just above the federal poverty line. One of the adults is convicted of a traffic infraction and owes a minimum of $188 for a motor vehicle infraction in district court, not including possible attorney fees and other costs. If that individual is not able to pay up front, they may owe an additional $50 for failure to pay. This adds up to an expense of at least $238, which equals 11% of the family's monthly take home pay. This amount could have gone a long way to cover the costs of groceries, transportation or medication. Under a 5% plan, rather than owe $238 up front, that family could pay several installments of $108.33 per month. Although a $108.33 installment is still a high monthly cost for a family living in poverty, it is much more manageable than $238. Even more, by being enrolled in the payment pan, the family is able to avoid additional penalties and interests that create a debt trap. A possible 5% plan is outlined below:

<u>Short-term change</u>

- Ensure that a payment plan option is made user-friendly and readily available to justice-involved individuals.
- Installments for repayment of court-related debt should not exceed 5% of income.[71]

<u>Mid-term change (Requires change to existing payment structure)</u>

- Allow individual defendant to provide evidence of income at court appearance, similar to the financial affidavit used by civil court. If someone cannot provide evidence, allow affirmation under oath.[72] Those with the inability to

pay court fees outright should be allowed to "opt- in" to a payment plan where court costs would be more than 5% of income.

Long-term change (Requires changes in state statute)

- Provide sliding scale court costs with cap based on low percentage of income (i.e. 5%)
- Change the dollar amount allotted to each agency in the existing set fee schedule to a percentage amount per agency to allow reduction of costs based on ability to pay analysis
- Offer an optional payment plan allowing for payment of past due criminal justice debt at a 5% rate

PART VI. CONCLUSION

The nature of criminal justice debt has changed form over time. Even so, the current racial disparities in the criminal justice system, which lead to criminal justice debt today, are rooted in American history. The challenge remains the same: People of color and low-income households often bear the brunt of criminal justice debt.

In North Carolina, and across the United States, court costs, fines, penalties and other charges have increased over the last twenty years, helping fill gaps in local and state budgets. However, the rate of costs increase in this state exceeds the rate of inflation. Further, the costs are akin to a "tax" on individuals with any level of criminal conviction. The lower someone's income, the higher the percentage of their hard-earned money goes to pay this tax.

Moreover, recent state laws make fee waivers both unpopular and virtually impossible, while other forms of relief from fines and fees, such as remission, are left up to a judge's discretion. As a result, legal financial obligations penalize people because of their economic status, trapping many in a debt spiral simply because they cannot afford to pay.

When someone fails to pay fines and fees, the mechanisms employed can be harsh and unyielding. While the court system has wisely avoided using predatory third-party debt

collectors, the other means of "collecting" unpaid costs can be just as problematic.

Driver license revocation is the primary means of enforcement of criminal justice debt and it is an illogical consequence for non-payment. If someone has their driver license revoked, then it is even harder for them to make a living and come up with the necessary funds to pay the costs.

Finally, additional barriers to license reinstatement, such as a new fee for an administrative hearing, leave many without hope of getting their license back. Incarceration and conversion to civil judgment are other mechanisms with lasting ramifications for non-payment of fines and fees, including possible loss of employment, government benefits and household stability.

The reality is sad, but there is a glimmer of hope. Reform efforts across the state, including research, amnesty days, judge's bench cards, grassroots campaigns and direct representation of impacted people, all demonstrate that political will is mounting in favor of a more equitable justice system. With support from court officials, advocates of all forms and engaged community members, North Carolina courts can one day ensure justice for all.

ENDNOTES

1 See, e.g., N.C. Gen. Stat. §7A-304 (2017). The proceeds from court fees are paid towards a number of different government entities including counties, municipalities and state agencies.

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This research contributes to a compilation of reports by members of a multi-state collaborative, including California Reinvestment Coalition, Woodstock located in Illinois, Maryland Consumer Rights Coalition and Reinvestment Partners located in North Carolina. Each of these consumer advocacy organizations has researched key issues related to enforcement of civic debt in their respective states. The compilation of reports is forthcoming.

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