



Mecklenburg County District Court

Bench Card: Non-payment 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 to respond to non-payment of fines, costs, fees, and restitution (“legal financial obligations” or LFOs). Mecklenburg aims to eliminate the use of warrants and incarceration for non-payment and reduce orders to show cause.

The Supreme Court held in **Bearden v. Georgia**, 461 U.S. 660, 673-74 (1983), an individual who has “made sufficient bona fide efforts to pay” shall not be incarcerated for nonpayment unless alternate measures are not adequate. Society’s interest in punishment and deterrence “can often be served fully by alternative means” to incarceration. *Id.* at 671-72.

Responses to missed payment

Individuals paying to Clerk’s office:

1. If an individual fails to pay by the required date, the Court shall consider ability to pay and may:
 - Send reminders (at least 3 recommended before requiring a hearing);
 - Remit (N.C.G.S. § 15A-1363;¹ N.C.G.S. § 15A-1364(c));²
 - Convert to civil lien (N.C.G.S. § 15A-1365;³ N.C.G.S. § 15A-1340.38);⁴
 - Issue an order to show cause (N.C.G.S. § 15A-1364);
 - The Court cannot issue an order for arrest for non-payment (N.C.G.S. § 15A-1364(a)).
2. If the individual is ordered to show cause and appears, the Court shall conduct an ability-to-pay hearing.
3. If the individual fails to appear, the Court shall review the individual’s ability to pay and may:
 - Send reminders or order to show cause;
 - Remit (N.C.G.S. § 15A-1363; N.C.G.S. § 15A-1364(c));
 - Convert to civil lien (N.C.G.S. § 15A-1365; N.C.G.S. § 15A-1340.38);
 - Issue an order for arrest (N.C.G.S. § 15A-1364(a)). The Court cannot issue an order for arrest if the person was not served an order to show cause.

Individuals paying to Fines and Collections:

1. Fines and Collections sends reminders.
2. If LFOs remain unpaid, Court may review case. The Court shall consider ability-to-pay and may:
 - Remit (N.C.G.S. § 15A-1363; N.C.G.S. § 15A-1364(c));
 - Convert to civil lien (N.C.G.S. § 15A-1365; N.C.G.S. § 15A-1340.38);
 - Issue an order to show cause (N.C.G.S. § 15A-1364) or a notice of violation of unsupervised probation;
 - The Court cannot issue an order for arrest for non-payment (N.C.G.S. § 15A-1364).
3. If the individual is ordered to show cause and appears, the Court shall conduct an ability-to-pay hearing.
4. If the individual fails to appear, the Court can:
 - Remit (N.C.G.S. § 15A-1363; N.C.G.S. § 15A-1364(c));
 - Convert to civil lien (N.C.G.S. § 15A-1365; N.C.G.S. § 15A-1340.38).

Notes

1. Civil liens have serious consequences: they carry an 8% interest rate⁵ and are reported to credit agencies.
2. Orders to show cause and orders for arrest must be reviewed and signed by a judge.
3. Mecklenburg is trying to eliminate the use of orders for arrest.
4. If an individual is arrested for failure to pay or failure to appear on an order to show cause for non-payment, the Court shall conduct an ability-to-pay hearing before setting a bond. The presumption is that the individual will be released on an unsecured bond pending appearance.
5. 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.

1 The court may remit or revoke LFOs 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.”

2 “Modification of Fine or Costs. If it appears that the default in the payment of a fine or costs is not attributable to failure on the defendant’s part to make a good faith effort to obtain the necessary funds for payment, the court may enter an order: (1) Allowing the defendant additional time for payment; or (2) Reducing the amount of the fine or costs or of each installment; or (3) Revoking the fine or costs or the unpaid portion in whole or in part.”

3 “When a defendant has defaulted in payment of a fine or costs, the judge may order that the judgment be docketed. Upon being docketed, the judgment becomes a lien on the real estate of the defendant in the same manner as do judgments in civil actions.”

4 When an order of restitution under the Crime Victims’ Rights Act, N.C.G.S. § 15A-830(a)(7), requires payment above \$250, “the order may be enforced in the same manner as a civil judgment.” If restitution is a condition of probation, it cannot be collected as a civil lien until the entry of an order “terminating or revoking probation and finding the amount remaining due and payable.” N.C.G.S. § 15A-1340.38(c).

5 N.C.G.S. §24-1. This applies to restitution only. N.C.G.S. § 15A-1340.38.

Ability-to-Pay Hearing

These steps apply to any hearing at which non-payment is at issue (order to show cause, probation violation,⁶ contempt, failure to appear on non-payment). The Court shall inquire into ability to pay to determine an individual's good faith effort to obtain the necessary funds for payment. (N.C.G.S. § 15A-1364(a); N.C.G.S. § 15A-1363). Further, an individual can present evidence that the amount allegedly owed is not accurate or is not in fact owed if the defendant believes the amount is not correct.

Step 1: Access to Counsel: Indigent defendants who request counsel and who face incarceration, including at a hearing for revocation of probation, must be appointed counsel. N.C.G.S. § 7A-451(a)(1), (4).

Step 2: Presumptions of Indigence. 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**;^{*} 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**.⁷

Step 3: Ability to Pay Factors (N.C.G.S. § 15A-1340.36(a)).⁸

Please also refer to Bench card: *Imposition of Fines, Costs, Fees, and Restitution*, incorporated by reference, for additional details about ability to pay.

- **Resources of defendant.** LFOs should be set at an amount proportionate to ability to pay and level of offense, e.g. 10% of **net** monthly income **after** basic living expenses.⁹ Also consider 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.
- **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) (taking into account how much individual could reasonably pay over probation term).

*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

Step 4: Based on the ability-to-pay inquiry, the Court may:

- **Remit (waive or reduce) non-punitive costs and fees.** N.C.G.S. § 15A-1363;¹⁰ LFO Schedule; *Bearden*, 461 U.S. at 672.
- **Remit (waive or reduce) all LFOs.** N.C.G.S. § 15A-1563; N.C.G.S. § 15A-1364(c); N.C.G.S. § 15A-1340.36(a); N.C.G.S. § 7A-304(a); LFO Schedule; *Bearden*, 461 U.S. at 672.
- **Convert to civil lien.**¹¹ Civil liens have serious consequences: they carry an 8% interest rate¹² and are reported to credit agencies.
- **Allow the defendant additional time.** N.C.G.S. § 15A-1364(c)(1); N.C.G.S. § 15A-1340.36(b). The court should consider the proportionality guidelines¹³ before extending payment plan and/or supervised or unsupervised probation. 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.
- **Provide for a community service or program alternative sentence.** (e.g. mental health or drug treatment, education) ("Community Service"). Community Service hours should be proportionate to offense fine and the individual's circumstances.

Notes: Under state law, the Court cannot revoke probation for non-payment,¹⁴ and may incarcerate only for willful nonpayment.¹⁵ Mecklenburg County seeks to eliminate the use of incarceration and probation violations for non-payment and therefore the Court shall not use these options.

⁶ N.C.G.S. § 15A-1345 (probation violations for non-payment follow procedures of N.C.G.S. § 15A-1364.)

⁷ 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."

⁸ Consideration of these factors is required for restitution and recommended for other LFOs.

⁹ See Bench card: *Imposition of Fines, Costs, Fees, and Restitution* for IRS guidelines for basic living expenses.

¹⁰ The court may remit or revoke LFOs 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."

¹¹ N.C.G.S. § 15A-1365 ("When a defendant has defaulted in payment of a fine or costs, the judge may order that the judgment be docketed."); N.C.G.S. § 15A-1340.38(a) (setting out that an order of restitution, under the CVRA, above \$250 "may be enforced in the same manner as a civil judgment."); N.C.G.S. § 15A-1340.38(c) (if restitution is a condition of probation it cannot be collected as civil lien until the entry of an order "terminating or revoking probation and finding the amount remaining due and payable").

¹² N.C.G.S. § 24.1 (applies to restitution).

¹³ See Bench card: *Imposition of Fines, Costs, Fees, and Restitution*.

¹⁴ An individual cannot be incarcerated for violation of a payment related condition for probation. The court may only revoke probation for a violation of N.C.G.S. § 15A-1343(b)(1) (committing a crime) or N.C.G.S. § 15A-1343(b)(3a) (willfully fleeing), except as provided in N.C.G.S. § 15A-1344(d2). N.C.G.S. § 15A-1344(a).

¹⁵ For willful non-payment, "The court may order the suspended sentence, if any, activated, or, if the law provides no term of imprisonment for the offense for which the defendant was convicted or if no suspended sentence was imposed, the court may order the defendant imprisoned for a term not to exceed 30 days. The court, before activating a sentence of imprisonment, may reduce the sentence. The court may provide in its order that payment or satisfaction at any time of the fine and costs imposed by the court will entitle the defendant to his release from the imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine." N.C.G.S. § 15A-1364(b); see also *Bearden*, 461 U.S. at 668.