

## All the Jail Fees

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I get a lot of questions about court costs and other monetary obligations. Jail fees seem to be a particular concern. Let's talk about all the money that could change hands for every day an inmate spends in jail.

**Jail fees paid by the defendant.** There are three types of jail fees a defendant might have to pay.

*Pretrial jail fees.* Persons confined in jail awaiting trial shall be liable to the county maintaining the jail in the sum of \$10 for each 24 hours of confinement or fraction thereof. Years ago that fee was \$5 per day, but the General Assembly increased it to \$10 per day in 2011. G.S. 7A-313. This fee is a **court cost** within the meaning of G.S. 7A-304 (it is referenced in subsection (c) of that section), which means it applies unless the court waives it pursuant to a just-cause finding as provided in G.S. 7A-304(a).

*Probationary jail fees.* The second paragraph of G.S. 7A-313 sets out a jail fee for “[p]ersons who are ordered to pay jail fees pursuant to a probationary sentence.” The law is a little confusing because it doesn’t explicitly say who those persons are, but the general interpretation over the years has been that the fee can apply to defendants ordered to spend some time in jail as part of a term of special probation (a split sentence). The amount of the fee is pegged to the “per diem rate paid by [the prison system] to the jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts.” The only per diem reimbursement the state pays to the jails is the jail backlog fee (more about which below) mentioned in G.S. 148-29. The current rate, set in the latest appropriations act, is \$40 per day. [S.L. 2017-57, sec. 16C.2.](#)

The probationary jail fee probably could apply when a judge orders a so-called “quick dip” in the jail under G.S. 15A-1343(a1)(3) (but not when a probation officer orders a quick dip through delegated authority). Defendants ordered to a CRV should not, in my opinion, be ordered to pay the fee.

The most important thing to note about the probationary jail fee is that it is discretionary. That is, the trial judge has the discretion to impose it or not impose it, and a decision to not impose it does not require a waiver (and thus doesn’t require a just cause finding or 15-day notice to affected parties). Unlike pretrial jail fees, probationary fees should not be assessed unless the judge expressly orders them when imposing a split or quick dip. If the judge is silent on the matter, no fee is assessed.

I know some districts do this the other way around—not imposing the \$10 pretrial jail fee for jail credit days unless the judge affirmatively says to, and adding the \$40 probationary fee by default for every day of a split. That approach might make sense as a policy matter (why should pre-conviction confinement—served under a presumption of innocence and often as a result of the defendant's inability to post a bond—trigger a hard-to-waive fee by default, while the fee for post-conviction confinement is optional?), but I think it is contrary to law. Pretrial jail fees apply unless waived. Probationary jail fees apply only if the judge says so.

What jail fees apply when a judge credits pretrial confinement to a split sentence? (Under G.S. 15A-1351(a), the judge may, in his or her discretion, credit pretrial days to either the split or to the defendant’s suspended sentence.) It seems to me there should be a \$10 fee assessed for each day of pretrial confinement regardless of how the court applies the

credit, unless the court waives the fee pursuant to a just-cause finding. If the court applies the pretrial credit to the split and the credit is enough to cover it fully, then the \$10/day fee would be the only one that would apply. If the split exceeds whatever pretrial credit is awarded to it, the judge decides whether to assess \$40 for each remaining day.

No probationary *jail* fee applies when a defendant is ordered to serve a split in *prison*. That seems obvious, but I've seen it happen (and with the fee imposed as a civil judgment against the defendant to boot).

*Work release earnings.* In general a defendant is not assessed a jail fee for an *active* sentence served in the jail. *State v. Rowe*, 231 N.C. App. 462 (2013). There is somewhat of an exception to that rule for misdemeanor inmates ordered to work release from a jail. Under G.S. 148-33.1(f), a jail may collect from a jail inmate's work release earnings an amount of money sufficient to pay for the actual costs of the inmate's keep. The sentencing court (not the sheriff) sets the amount.

The inmates themselves are not the only ones who pay for days in the jail. There are also several other reimbursements that happen by law or by contract.

**Backlog fees.** Beginning on the day after the sheriff has notified the state prison system that a sentenced defendant is ready for transfer, the state must reimburse the county at a per diem rate set by the General Assembly, plus certain medical costs. G.S. 148-29. As noted above, the current reimbursement rate is \$40 per day.

**Statewide Misdemeanant Confinement Fund.** Counties that volunteer to house misdemeanor inmates pursuant to the Statewide Misdemeanant Confinement Program are paid a per diem rate for each inmate they house. The current reimbursement rate—set by the North Carolina Sheriffs' Association in the terms and conditions of the program—is \$40 per day. Out-of-jail medical expenses are also reimbursed.

**Other counties.** Sometimes one county houses a jail inmate for another—like when one jail is overcrowded, unsafe, or destroyed, or when a particular inmate raises medical or security issues best addressed elsewhere. See G.S. 162-38, 162-39, and 162-40. When that happens, the county receiving the inmates gets reimbursed "at the usual jail fee rate for each 24 hours of confinement or part thereof by the county from which the prisoner is transferred." G.S. 162-40.1. What is the "usual jail fee rate"? It's unclear, but at least some jails use the \$40 per day rate described above. To add to the confusion, G.S. 162-39 authorizes counties "to enter into contractual agreements with other counties to provide jail facilities to which prisoners may be transferred as deemed necessary," and further provides that "the county from which the prisoner is transferred shall pay to the county receiving the prisoner in its jail the actual cost of maintaining the prisoner." I doubt many jails would tell you that the \$40 rate covers their "actual cost of maintaining the prisoner."

**The federal government.** Under G.S. 162-34, counties with adequate and available housing space may house United States prisoners. Some jails do—on behalf of the Federal Bureau of Prisons, ICE, or the U.S. Marshals Service. The reimbursement rate for these arrangements is set by contract "as may be agreed upon between the county and the United States." The contract amounts vary by county.