



Feds Focus on Fines and Fees

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The U.S. Department of Justice recently issued a [letter](#) regarding its “strong interest” in putting a stop to unconstitutional court fines and fees that target the poor. According to the authors, Vanita Gupta, Principal Deputy Assistant Attorney General of the Civil Rights Department, and Lisa Foster, Director of the Office for Access to Justice, “[T]he harm caused by unlawful practices . . . can be profound. Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape.” The DOJ sent the letter to judges and court administrators in all fifty states on March 14, 2016, directing them to review their procedures on imposing and enforcing fines and fees. An [article](#) from the New York Times states that the DOJ rarely issues “Dear colleague” letters of this sort; the last one went out in 2010 and concerned the need to provide interpreters for people who don’t speak English.

The DOJ names seven “basic constitutional principles” relevant to the enforcement of fines and fees:

- (1) courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful;
- (2) courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees;
- (3) courts must not condition access to a judicial hearing on the prepayment of fines or fees;
- (4) courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees;
- (5) courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections;
- (6) courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release; and
- (7) courts must safeguard against unconstitutional practices by court staff and private contractors.

In a [press release](#), the DOJ also announced a \$2.5 million grant program to help agencies restructure the way they assess and enforce fines and fees. In conjunction with the announcement, Attorney General Loretta Lynch expressed concerns about “the criminalization of poverty” and said that one of her top priorities “is to help repair community trust where it has frayed, and a key part of that effort includes ensuring that our legal system serves every American faithfully and fairly, regardless of their economic status.”

Should North Carolina court actors be concerned with the DOJ letter, or is it meant for some other states that have been bad actors? North Carolina is not named as one of the states that has come under recent scrutiny. See footnote 1

of the letter. In a [previous post](#), my colleague Shea Denning described North Carolina's uniform court system and the fines and forfeitures clause of our state constitution, which protect against the corruption that can occur when police officers and judges stand to profit from court fees, a practice that the DOJ recently condemned following an [investigation](#) of the police department in Ferguson, Missouri.

Members of the indigent defense bar have expressed concern, however, about a rise in criminal court costs as well as the number and amount of fees in North Carolina and the incarceration of clients who are too poor to pay. David Clark, Senior Assistant Public Defender in Guilford County, and Wake Forest Law Student Kevin Murtagh describe some of the fees in [this article](#), the first in a series:

The minimum costs in District Court for infractions and misdemeanors are \$178.00 and \$180.00 respectively. In Superior Court they are \$205.00. If a defendant makes a first appearance in District Court and the rest of her case is handled in Superior Court, she is charged both District and Superior Court fees, resulting in a total minimum cost of \$352.50. . . . [T]here are dozens of other criminal fees that can raise a defendant's debt burden substantially. These include a \$60.00 non-waivable Appointment of Counsel Fee for Indigent Defendants, a Community Service Supervision Fee of \$250.00, and a Probation Supervision Fee of \$40.00 per month.

The authors also discuss the impact of requiring payment for diversion programs such as first offender and community service programs. A person able to pay to participate receives a dismissal upon successfully completing a diversion program, while a person who cannot pay is saddled with a criminal record and possible jail time. They also describe consequences from the inability to pay fees, such as damage to credit scores that may affect the ability to obtain housing.

In a [second article](#), the authors describe the difficulty of collecting costs and fees from indigent defendants. A [briefing paper](#) by the Council of Economic Advisers and [study](#) by the Brennan Center for Justice have found that the financial expenditures in collecting unpaid costs and fees, in the form of court hearings, incarceration, and civil proceedings, often exceed the amount collected.

In short, the DOJ letter raises important issues about the impact and effectiveness of court fees in criminal cases, and is garnering attention in North Carolina and around the country. What is your view on North Carolina's practices and how they line up with the principles set out in the DOJ letter?