

Operator: I'll step away to start the recording. Come back with your introduction. One moment please.

Victoria Moreno: The recording has started.

Operator: Ladies and gentlemen today is Tuesday, March 15th, 2022, at 12:00PM Eastern Time. Welcome to the web briefing of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights. This briefing is being recorded. Present on today's call are staff from the Commission and members of the North Carolina Advisory Committee. There may also be members of the public on the line who will remain in a listen only capacity until the end of the briefing. I will now turn the briefing over to the Chair of the North Carolina Advisory Committee. Olga Morgan Wright. Please go ahead.

Olga Morgan Wright: Good afternoon. I am Olga Morgan Wright, Chair of the North Carolina Advisory Committee. Thank you all for joining today. I will now take the roll. Daniel Bowes?

Daniel Bowes: Present.

Olga Morgan Wright: Pearl Burris-Floyd? Travis Cook?

Travis Cook: Present.

Olga Morgan Wright: Christopher Duggan?

Christopher Duggan: Present.

Olga Morgan Wright: Marcus Gadson?

Marcus Gadson: Present.

Olga Morgan Wright: Steven Greene?

Steven Greene: Present.

Olga Morgan Wright: Jonathan Guze?

Jonathan Guze: Present.

Olga Morgan Wright: Jennifer Lechner?

Jennifer Lechner: Present.

Olga Morgan Wright: Angelo Mathay?

Angelo Mathay: Present.

Olga Morgan Wright: Patrick Mincey?

Patrick Mincey.: Present.

Olga Morgan Wright: Donna Oldham? Catherine Read?

Catherine Read: Present.

Olga Morgan Wright: Mercedes Restucha-Klem? Gregory Wallace?

Gregory Wallace: Present.

Olga Morgan Wright: Bradley Young? Mrs. Pearl Burris-Floyd?

Pearl Burris-Floyd: Present.

Olga Morgan Wright: Thank you. I will make a repeat announcement. The United States Commission on Civil Rights is an independent, bipartisan agency of the federal government charged with studying discrimination or denial of equal protection of the laws. In all 50 states, the District of Columbia and the United States territories, an Advisory Committee to the Commission has been established, and they are made up of responsible persons to serve without compensation to advise the Commission on relevant information concerning their respect of jurisdiction.

Olga Morgan Wright: Today, our purpose is to hear additional testimony regarding legal financial obligations in North Carolina and related civil rights concerns. This is a continuation of the study that was initiated by the North Carolina Advisory Committee in 2020. Though some of the statements made today may be controversial, we want to ensure that all invited guests do not defame, degrade any person or any organization. As the Chair, I reserve the privilege to cut short any statements that defame, degrade, or do not pertain to the issue of hand.

Olga Morgan Wright: Given that we have a lot to cover today, and out of respect to our invited speakers, I want to note that we will abide strictly to the time limits for each speaker. Panelists have 10 minutes for prepared remarks. Committee members have one minute to ask one question, and members of the public have up to three minutes for comment. Speakers will be notified when their time is almost up. I reserve the right to request that a speaker be

reeded after your time has ended. And I have provided up to two warnings.

Olga Morgan Wright: Based on these proceedings, the Committee will prepare an advisory memorandum to the United States Commission on Civil Rights, detailing findings and recommendations for addressing this issue of national importance. This report will be available for public review, and we are grateful to all speakers for their willingness to share their experiences with us today. At the outset, I want to remind everyone present of the ground rules. This is a public meeting and remarks will be recorded and transcribed for the public record.

Olga Morgan Wright: We have a very full schedule of limited time available. After hearing from each speaker today, I will use our roll call list and ask each Committee member, if they have a question for the panelists. Committee members will be given one minute to ask one question. As time permits, I will use a roll call list to ask if there are any follow up question.

Olga Morgan Wright: To accommodate persons who are not on the agenda but wish to make statements, we will ask for public comment towards the end today's meeting. We will go in the order of any public speakers who registered in advance. Three minutes will be allowed per speaker. If time allows any members of the public who did not register but wish to provide comment will have opportunity to do so.

Olga Morgan Wright: After public comment, if time allows, we will revisit any final Committee questions. In addition, written statements may be provided by April 14th to Liliana Schiller at L-S-C-H-I-L-L-E-R@U-S-C-C-R.gov for inclusion in public record and I think we will provide that email address again. And now we will commence to our briefing.

Olga Morgan Wright: Today we are scheduled to hear from three speakers. Mr. Joe Coletti, Professor Jamie Markham, and Judge Brian Ratledge. We will begin today with Mr. Joe Coletti, North Carolina General Assembly House Majority Oversight Staff Director. We'll give staff a minute to transition to his presentation, and Mr. Coletti, hopefully Liliana will let you know when it is time for you to speak. You will have 10 minutes on the floor, and I will keep your time and give you a two-minute warning. Are we ready Mr. Coletti? I'm so sorry.

Joe Coletti: Sure. I appreciate the opportunity and to speak to you all and I work at the General Assembly, but my comments are my own. Please don't take them one way or the other for either the representative I work for or any of the other members of either chamber or anybody else on staff. But this is what I was able to learn and appreciate the opportunity again to share this with

you all. So, want to begin by taking a quick thumb nail sketch of the different types of legal financial obligations.

Joe Coletti: We have fees which pay for services, fines that punish wrongdoing, forfeitures that take the ill-gotten gains from people who have done something and restitution, which is where the person pays the victims for the harm done.

Joe Coletti: I'm going to comment... My focus today is going to be on fees because the other three have some obvious relationship to an act that's been committed. Fees because they theoretically pay for services. It would seem to service two goals. First would be to discourage people from using the system, if you want more of something, you subsidize it. If you want less with something, you make somebody pay for it. And they also then help pay for the system. We know that fees do work in the civil courts, including parking, other administrative challenges.

Joe Coletti: They can keep people out of the courts, but as previous speakers have already indicated, the monetary cost of a court appearance in criminal court does very little to keep a person from wrongdoing except immediately after paying the fine. There are three flaws that I've been able to identify with the criminal court fees and share those with you now. First is that they are not voluntary. The person who pleads guilty or is found guilty, has court fees. They have to pay those fees.

Joe Coletti: It's not that they're opting into the system or opting into paying the fees, they're at not seeking that. Judges will often consider a sentence of court costs as lenient. They kind of start to fall into the fine category and not a voluntary payment. They're also not based on cost. The courts themselves of us do not set the amount of fees. The General Assembly does that. The administrative office of courts imposes and collects the fines, but they don't weigh in even as the General Assembly is considering what fines should be. They don't weigh in on what those appropriate amounts should be. Judges and administrators also don't know the cost of their operations.

Joe Coletti: They don't know what it costs to run the courts for the folks who are imposing the fees at an individual level. If we take a look back to the last recession, from 2007 to 2009 and the impact on state finances continued onwards beyond after that. We can see that this was the last time that the General Assembly increased fees in a large way during the democratic legislature and Democratic Governor [Doug Perdue 00:10:50] increased number of fees in 2007, 2009, 2010 yet the Republican General Assembly in 2011, added \$68 million more in fees trying to offset the costs or the impact to the budget when temporary tax increases were rolling off and they were trying to let those actually expire.

Joe Coletti: Altogether those four rounds of fee increases, added \$165 million to the cost of the justice system for those who entered into it. They've been less sweeping since 2011, they've been more clearly tied to specific services, such as dispute resolution, criminal record expunction, magistrate marriage, estate settlement, and in REM foreclosure. So, you can see that most of those were on the civil side and with the expunction it was something that somebody was actually volunteering for.

Joe Coletti: A number of these other fees were the general court costs. Which is also the largest bulk of the fees as well. We know that they're not voluntary, they're not based on cost and the money that is not actually used for the court itself, which is as I said at the start, one of the definitions of a fee is that it pays for the services.

Joe Coletti: So, if they're not paying for the services of the courts, what are the fees going for? And only \$5 million is going to court operations and those are very specific areas of court operations that you can see in the disbursements from the court annual reports. But of those fees, 88% of fees go to the State General Fund and other state agencies. \$249 million in 2018, '19 went to the general fund, \$35 million went to specific state agencies to cover specific items, whether that's lab costs or mental health costs.

Joe Coletti: There is another \$31 million, went to the counties and fines, and that's not including the fines and forfeitures money, estimate about \$2 million to municipalities. There's a million dollars that went to the state bar as part of those overall general court costs. We know that they don't pay for services or courts collect money that for services they don't provide by charging fees to people who would not otherwise choose to use the services they do provide.

Joe Coletti: That means that calling courts fees is kind of a misnomer and in practice, they work more like taxes or fines. Knowing that though doesn't help us answer the question of what to do with fees. There are a number of other questions that we have to answer to be able to get to that, but I have four of them on this slide that came to my mind and probably would come to yours as well.

Joe Coletti: What would state and local governments do to offset loss of fee revenue? If we were to get rid of the fees, would it make sense to keep some of the fees? Would you have to increase other fees or taxes, would you have to cut spending if you were to just completely eliminate them and not replace them with something else? If you were to replace them with fines, because if it's not a tax, it's a fine, how would you adjust the fines either in statute or in practice to have the same impact for both the court system, for the

state, for the local governments and for the retribution part of the fee, fine, the impact to deal with the criminal and for the misconduct? And then two questions that actually are really hard to answer, the administrative office courts doesn't track it and neither do many other courts, in part because fees often end up being lumped into civil judgements.

Joe Coletti: Once they are a part of a civil judgment, they disappear from the statistics as fees and sometimes they do go uncollected, but nobody knows how much it costs to collect the fees that we already have. And nobody really knows how much is unpaid in fees, because they're often lumped into the civil judgment. That was less than 10 minutes. I hope you have some other questions for me, but I know that this discussion hasn't really provided you a path forward, but hopefully it acknowledges that you do have a really difficult goal path ahead of you.

Joe Coletti: As you're taking a look at fees being the easiest thing to adjust and still having all of these challenges and then adding it to the fines and the other aspects of the overall legal financial obligation. That's the conclusion of my presentation and look forward to any questions that you all have. And I appreciate greatly the opportunity to be able to present to you and share what I've been able to learn.

Olga Morgan Wright: Thank you very much, Mr. Coletti. I will now begin to ask questions of the Committee and I will begin myself. I do have a question, if you can compare tax versus fee, I wasn't quite clear how that differentiate from one another.

Joe Coletti: A tax is a general source of revenue. Your income tax there's no specific thing that you're paying for with your income tax. You're just paying for state government or federal government. Your property tax pays for city and county services. But a fee generally is intended to pay for the service that you're actually using. If you're parking, the parking meter is your fee for that parking service.

Olga Morgan Wright: Thank you very much. And I will begin with Mr. Daniel Bowes. Do you have a question for Mr. Coletti? And we have three minutes each.

Daniel Bowes: Thank you, Chair.

Olga Morgan Wright: I'm sorry, one minute, one minute. I'm sorry.

Daniel Bowes: Let me first thank Mr. Coletti that was a very insightful presentation and I appreciate your candor. I think that you really have helped us along already by [inaudible 00:17:32] looked at this problem and so really appreciate that. Looking at your last slide, my question is when we talk

about the cost of collection, any insights you can provide about some of the more extreme collection mechanisms like indefinite driver's license suspensions, and just sort of like the policy implications of that. Any thoughts you've had.

Joe Coletti: I was only focused in this case, on the dollar costs and when it comes to acknowledging that when you get to the cost for the individual of what are the ramifications if they do not pay, whether that's driver's license suspension or other things, that on that side, there is a significant cost to the individual involved, but the dollar amount for the state to be able to collect, that's a harder thing to be able to... That's just a black box on that side.

Daniel Bowes: Thank you.

Olga Morgan Wright: Thank you, Mrs. Pearl Burris-Floyd, do you have a question?

Pearl Burris-Floyd: Thank you, Madam Chair and thank you Mr. Coletti for sharing information with us today. My question for you is with 88% of the total collections, not really being available or accounted for, how do we justify that to taxpayers?

Joe Coletti: As somebody who didn't know the system before I started looking at... In the past I've looked at the state budget for years. And when these fees were being imposed and increased during the recession, in my mind, it was that you had individuals paying for the court costs, for the court system itself, even though they were going into the general fund. For most people, I don't know that they draw that connection. That by having a court fee go into the general fund and pay for other services, I don't think for most people they make the... They go to the "Oh, this is actually not paying for courts." So, for most people, they look at it as this is a way to offset the cost of the state, dealing with the court system.

Speaker 1: [Inaudible 00:19:59].

Olga Morgan Wright: Thank you very much. Mr. Travis Cook, do you have a question?

Travis Cook: Yes, ma'am. Thank you. I'd like to also thank Mr. Coletti. I thought that was very clear and helpful and I appreciate it. When you made your distinctions, I thought something was very interesting. Can I assume that fees were only paid upon conviction or required upon conviction, that if you're exonerated, you're not charged a fee, is that correct?

Joe Coletti: That is my understanding. [inaudible 00:20:36] That may be able to correct us both on that, but that's my understanding.



Travis Cook: And then I'm assuming from-

Olga Morgan Wright: Mr. Cook, was that your one question? Excuse me. Was that your question? Hopefully we'll have time to follow up and we do have to get to everyone. So hopefully put a pin in that.

Travis Cook: ... Sure, I didn't realize it wasn't within my minute. Thank you.

Olga Morgan Wright: Okay, go ahead. Go on.

Travis Cook: I'm not objecting. I just didn't understand. I was wondering whether or not the distinctions we're making. It would be helpful for me to understand whether the discrete, if you could say whether or not when you pay a fee, it's not a flat fee, is that correct? It's targeted at the...

Joe Coletti: No, the fees are set and provided to the staff, the schedule of court fees. They are specific to different items, but there is also the general court fee. Many of the fees are not geared to, "This is the crime that you committed," the way that a fine would be. They are more directed by book and not as variable or otherwise directed by the judge in relation to the wrongdoing.

Travis Cook: Thank you. That's helpful.

Olga Morgan Wright: Thank you very much, Mr. Christopher Duggan, do you have a question?

Christopher Duggan: Thank you Madam Chair. Mr. Coletti thank you very much for your presentation. My question is-

Speaker 1: [inaudible 00:22:21].

Christopher Duggan: ... With regard to the last slide that you had in talking about the fees being used for the state court system. And I believe it was a 1% of it go to the state court system that does not fund, or that 1% is not representative of what the courts need to function, is that right? There's funds coming elsewhere. My question is the court system not funded completely based upon these fines and fees that are collected, is that right?

Joe Coletti: The fees part of the justification for the courts not being involved in the amount of the fees and not for those to be just set in law in that schedule is so that the judges and those involved in the courts of system do not feel obligated to try to fund the courts on the backs of people.

Joe Coletti: They go into the general fund and the general fund then pays for the entire cost of the courts, except for that \$5 million and the cost of running the court system from the general fund, is this year close to \$700 million. So,



the fees collected are nowhere near enough. There is a justification for that distinction the same way that when we think about asset forfeiture at the local level. We've seen in some jurisdiction across the country, that when they rely on speeding tickets, or otherwise to try to fund themselves, they may be overly aggressive and that's part of the reason for the distinction here, is so that the judges don't feel like they have to raise their own revenue and pay their own way.

Christopher Duggan: Thank you Madam Chair.

Olga Morgan Wright: Thank you, sir. Mr. Marcus Gadson, do you have a question?

Marcus Gadson: Not at this time. Mr. Coletti thank you so much for your insightful presentation.

Olga Morgan Wright: Thank you, Mr. Steven Greene?

Steven Greene: Thank you again so much. I found it really interesting that we just don't know the costs of collection involved in all of this interestingly and frustrating. Is that the sort of thing where it's even possible within reason to try and find out and get a handle on that. Because for one thing, obviously if we're spending a ton of money to even get this there's a lot of reasons to look at this from a pretty stringent cost benefit perspective and not knowing what we're charging, what is costing us to get these fees back is an important part of that. I think so just if you had more insight on that?

Joe Coletti: So, one of the frustrating things of dealing with state budget in general, is that things that you would expect to be able to tell how much it costs are often really impossible to tell how much it costs, the way that we account for things inside doesn't match up with the way that we think about it from outside. So that's general rule and with court costs, you have the added difficulty that the fees do often get rolled into a civil judgment. So that as a person has gone through whatever other penalties they may face, it's usually incarceration or parole, probation that after they've gone through it, paid the restitution, done those things. Then they say, "Well, let's lump everything else into a civil judgment." And then that then gets lost in with fines and the rest of it. Yeah. Frustrating.

Olga Morgan Wright: Thank you. Mr. Jonathan Guze, do you have a question?

Jonathan Guze: I think it's already implied by what Joe has said but let me just ask it explicitly and Mr. Greene's comments also. Go to this, but we've read, and we've heard from other witnesses that when it comes to indigent defendants, at least, there's really no net revenue gets generated by the imposition of these fees because cost of collections exceeds whatever

meager amounts get collected. There's no way to actually confirm that's true in North Carolina. Is that correct?

Joe Coletti: That's my sense based on how I've looked at these things, that it is really difficult to be able to get the cost or the cost side is really hard to be able to judge.

Jonathan Guze: Okay, thanks.

Olga Morgan Wright: Thank you, Mr. Guze. Jennifer Lechner, do you have a question?

Jennifer Lechner: Yes. Thank you, Chairwoman Wright. Thank you, Mr. Coletti, you've noted a couple of times that the AOC doesn't have any responsibility for setting the fines. And I'm wondering if in your experience with the General Assembly, if there's been conversation about the general-

PART 1 OF 4 ENDS [00:27:04]

Jennifer Lechner: Panelists of the general assembly, if there's been conversation about the general assembly studying this, your slides sort of outlining how that had significantly increased over the years. Has anybody gone back at the general assembly and said, "Maybe we need to study this issue and have a reset on fees and fines?"

Joe Coletti: Well, I just started in here about nine months ago, at the beginning of June. So, I don't know what the whole history is, but there is a justice public safety Committee and part of what part of my role is oversight. If there is an appetite for that, it will likely come through me, and so we'll see where that goes. Again, I don't know what the past was. I don't remember seeing anything on it. But there may be a future, we'll see.

Olga Morgan Wright: Thank you. Angelo Mathay, do you have a question?

Angelo Mathay: Yes, Director Coletti. Thank you so much for joining us today. My question is, with the three flaws that you discuss, and I know you've only been in this role for nine months now, are there any policy solutions that have come your way to address one or more of those flaws that you can share with us today? Just in the conversations that you've had with others.

Joe Coletti: No, not that anybody's brought to me and not that it made themselves abundantly clear in my observation of it. In some ways I'm looking forward to your report to see if you all come up with anything.

Olga Morgan Wright: Thank you. I am going to go to Mercedes Restucha-Klem. She may have computer difficulties. So, if you like to ask a question before your

computer is no longer with us, if you're still there, she's not. [crosstalk 00:29:03]

Mercedes Restucha-Klem: Thank you so much, I appreciate you. Tyrrell County, North Carolina. And so, the Wi-Fi here and battery is about to die. I, in the chat, your thoughts on alternatives to find if there's any other systems or approaches that you've...

Greg Wallace: Read it in the chat Joe.

Joe Coletti: Okay.

Olga Morgan Wright: Is it in the chat?

Joe Coletti: That's on alternatives to fine, to hold people accountable? Yeah. I'm sorry. Your audio did cut out, but I did see your question there. And so, part of why I looked at the fees specifically is because fines, restitution, forfeitures. Those are so tied to the accountability and fees are less so. And so, because they're less so they're easier to be able to analyze in the way that I was. And it avoids that question that you have, Mr. [inaudible 00:30:25] that of what is the alternative for a fine, because that's the challenge of how do you hold people accountable while in a way that actually holds them accountable? The question that came up earlier of part of why you're asking about why the others have asked about the cost versus the benefit, and the question of what happens when somebody is indigent, all of those play more into that accountability and the question of collection becomes even more difficult on that side.

Joe Coletti: So, I have not explored fully alternatives. And, as I answered to Mr. Mathay, I hope that it, some ways your report can help provide some direction for the legislators who actually make policy. And for those of us who do the oversight of it.

Olga Morgan Wright: Thank you very much. Mr. Patrick Mincey do you have a question?

Patrick Mincey: Good afternoon Mr. Coletti, thank you for your time and comments. One of the suggestions that has been put forward to this Committee, and as a part of our mandate on this issue is that there is some sort of insidious or systemic problem within the fines and fees regime within the North Carolina Criminal Justice System that leads to alleged disparate impacts on minorities, alleged marginalized groups. My question is, does any of the data that you have talked about today, support that conclusion? And if so, in what way does it support that conclusion? And if not, would you agree that this is at the end of the day, ultimately, an issue about budgeting. And within the discretion of the legislature to determine

budgeting. With respect to its application with the administrative office of courts?

Joe Coletti: Yeah. On the fee side this is far more, it is more about budgeting the fines and the other financial obligations, they deal more directly with punishment, fall into a different category because those are also partly discretionary to the judges. And based on the facts of the case that they're dealing with. The fees are set in law instead set in statute. I think to your point when legislators, even though the money doesn't go directly to courts, that 88% of it goes to the rest of the general fund and other state agencies. And some of it does go back to cities and counties to help. The city and county money does help pay for courts. The money that comes up to the general fund, not already directed to other agencies.

Joe Coletti: I think for a number of people, their thought is that it is an offset. So, getting into the, what is the purpose of the fee? Does it offset some portion of state cost even though it doesn't direct come in and do that? Because we do have agencies like the insurance agency and the treasurer, where there is money that they receive through investments that they consider themselves revenue generators for the general fund. There is an entire set of questions on the fiscal aspects of fees. That is strictly a budgetary consideration. And you can see that the way that the fees increased from 2007 through 2011, we are short of revenue. Where else can we get revenue? Let's get it from the court system.

Joe Coletti: And, in looking at the fine, looking at the fee revenue, I did not ask the court system if they collect demographics on who's paying fees and how fees are being paid. So, I don't know on that side, but I know that most people involved in it, aren't thinking about one of the demographics. So, the impacts of it is potentially open question, get, and probably ties more to who ends up in the criminal courts in the first place. And to the extent that there are demographic issues for the setting of fees and the collecting of fees, that's a separate issue.

Olga Morgan Wright: Thank you, sir. Mr. Gregory Wallace, do you have a question?

Greg Wallace: Yes. Joe, thank you for your time and your presentation. I'm not a budget expert or accountant. I mean, they promised me when I went to law school that I wouldn't have to deal with math, but I wonder you said that the budget for state courts is around \$700 million, and the fees bring in around half of that \$323 million. Since money is fungible, I mean, correct me if I'm misstating this here, but I mean, you've got \$325 million going into the state general fund. You've got \$700 million coming out of it to support the courts. Why can't it be characterized as these fees actually offsetting the \$700 million that goes out for, for state courts? And if that's the case, then

is the general assembly going to be more reluctant to reduce these fees? I mean, it seems to me, from what you've said, this is a sort of equal opportunity. Imposer here with both Democrats and Republicans imposing these fees.

Joe Coletti: Right. Your point is well taken on that, and that was the impression that I had from outside, as I said, is that, if I take a look at, and I can't get into the minds of all the appropriators, and all the folks, and all the finance folks on the Committees. But I think there is to agree an expectation that this is an offset, and whether it's going to the total revenue pool and offsetting that we have less revenue coming in. And so how do you make up for that? But I'm sure that if a policy were advanced in the legislature of let's eliminate all fees, and that's why I brought that up as one of the questions on that last slide as well, that first question is what do you do to make up for this lost revenue?

Joe Coletti: Because whether it's going back as an offset, that the courts in my mind only cost us \$350 million, because half of that money is already coming in. Or if it's just simply as a revenue tool for the overall general fund, there's going to be a gap one way or the other. And because it's completely fungible, it doesn't matter where that gap is. There's going to be a gap of \$300 plus million dollars that has to be offset. And whether that comes out of the return appropriation to the theoretically return appropriation to the court, or whether that comes from something else, because the courts are a core function of government. And so, where else can we make up \$300 million? That's becomes a question, but in either event, yes sir, there is a \$300 eliminating fees or transferring them into fines. Transferring them into fines becomes a separate issue for the judges to handle and for the justice and public safety folks to worry about. If you eliminated it entirely, that's a finance and appropriation question that is difficult in itself.

Olga Morgan Wright: Thank you very much, sir. And I'm going to add two minutes so that the last two Committee members may have a chance to ask a question so that we can get to the next panel as Ms. Catherine Read. Do you have a question?

Catherine Read: Yes. Thank you, Mr. Coletti. This is sort of a follow up to a couple of the other questions. You said you were looking forward to potential policies that the Committee is able to offer. And I think one of the things that's been striking to me is that there has been consensus among those with her testimony from that these fees are often excessive. And there's obviously some backing up of that today that we've heard from you. I just wondered if you think in your experience in the last nine months, that there is a bipartisan consensus in the general assembly to do something about this. So, if we bring forward policies, would we find fertile ground for change

here? And, and what would we need to do as a Committee to help further that along?

Olga Morgan Wright: And sir, if you can answer that, excuse me in one minute, thank you very much. We're, we're falling behind now, but everything is very important, but we need to move on. Thank you.

Joe Coletti: Yes. So, the answer to that one, fortunately, is a quick answer is I don't know, my desire to see the answer was strictly for selfish reasons. And as I said, I can't speak for the others who are in the legislature and I'm not really sure what the appetite is one way or the other.

Olga Morgan Wright: [crosstalk 00:40:29] Mr. Bradley Young. I'm sorry.

Joe Coletti: [crosstalk 00:40:33] Just making [inaudible 00:40:34] was quick enough.

Olga Morgan Wright: That was very quick, Mr. Young, do you have a question? All right then, we shall move on. Mr. Coletti, thank you very much. I'm sure we all learned, well, I learned a lot and I would hope that the fellow members have. So, thank you very much for your time, if you're able to stay on the line so that in the end, perhaps we would have time for follow up questions. And thank you very much.

Joe Coletti: Thank you.

Olga Morgan Wright: Now we will hear from our... Thank you. Now we will hear from our next panelist, Jamie Markham, Thomas Willis Lambeth Distinguished Chair in Public Policy, University of North Carolina School of Government. Professor Markham, you have the floor for 10 minutes.

Jamie Markham: All right. Thank you, Madam Chair. Good afternoon, everybody. I'm Jamie Markham. I work at the School of Government at the University of North Carolina at Chapel Hill. I've been on the faculty here since 2007, and I focus on Criminal Law with a particular emphasis on the law of sentencing and corrections. And for anyone that doesn't know my work at the school is a little different from traditional academic work. And that most of my teaching is not in the University's Degree granting programs, but rather is for public officials like judges, prosecutors, defense lawyers, probation, officers, and others. And by tradition, the School of Government is a nonpartisan non advocacy institution. I'd like to thank the Committee for the invitation to speak on this important subject. My observation is that it's not glamorous. It can be frustratingly technical. Even before you get to the law, there are issues with terminology and Mr. Coletti touched on this too.

Jamie Markham: People speak generally about fines and fees, but in North Carolina, you really need to distinguish it further between court costs, fines, restitution, attorney fees, and then other fees that don't fit within our statutory definition of costs. And those distinctions matter every day in court. For example, clerks are trained to do something different when a judge says waive all the costs, than they are when a judge says waive all the money, the complexity in North Carolina's law related to monetary obligations has only grown over the past decade. Though the overall amount of court costs I agree has not actually grown much over the past decade. The rules for granting relief from those obligations have become much more complicated.

Jamie Markham: An important moment. I think in the recent history of monetary obligations practice in North Carolina came in 2011. When the law was amended to say that court costs automatically apply to all convictions, regardless of sentence, including an active sentence. Before that cost applied in active sentence cases only if the judge affirmatively said so, and judges rarely did. And when it became the law that costs always applied and less waived, there was a sense that something needed to be done with these costs that were assessed as part of active sentences, which everyone knew were unlikely to be paid by a defendant who wasn't going to be placed on probation. That led to an increase in the now widespread practice of imposing those costs as a civil judgment. And when I teach new district court judges, for example, on the rules for imposing and granting relief on different types of monetary obligations, they'll often say something like, "Is that when we do the civil judgment, the clerk tells me I need to do a civil judgment."

Jamie Markham: Then aside from attorney fees, there is never a requirement to do that, but it's become so ingrained in the practice that I sometimes find it difficult to convince people otherwise not to convince them of what, but just of what the law is. In a case from January this past January, the court of appeals held for the first time, in a published opinion that there's no authority for a judge to immediately convert certain non-victims' rights act restitution into a civil judgment. Nevertheless, defendants are often before the court asking for obligations to be imposed civilly rather than criminally. And from the defendant's standpoint, that might make sense. In an individual case, the civil obligation is not going to result in a probation violation or other incarceration, but it does have a long-term cost in that even an unpaid civil judgment can, for example, trigger a license revocation, or of course, cloud title to a person's real property,

Jamie Markham: if they have any, it can negatively affect their credit. I know you've talked about that with previous testimony, and it could hang around for decades or in some cases, indefinitely. Court actors, I think sometimes



misunderstand whether and how civil judgements will be satisfied if they will at all. They'll sometimes say that it's worth imposing that judgment because it might be collected through garnishment of a tax refund or lottery winnings. North Carolina does have a process for doing that through the debt set off program that's codified in Chapter 105A of the general statutes, but it only applies to government entities that are actually enrolled in the program. And the fact of the matter is that essentially none of the typical recipient of court costs and fees are enrolled in that program.

Jamie Markham: My observation is that similar disconnects permeate other aspects of the system, for example, judges ask me why do probation officers bring monetary violations before the court as probation violations, when they know from their interaction with the defendant, sometimes over years that the person does not have the wherewithal to pay the money and that the violations are there for non-willful. Probation officers will tell me, "We bring the violations before the court because the court imposed the condition and presumably wants it enforced." They also correctly point out that at the burden to establish the defendant's inability to pay, is on the defendant. So, a defendant potentially winds up arrested and in court for an alleged violation that in many cases will ultimately be deemed non willful.

Jamie Markham: That will be resolved not by an actual remission of the obligation though, but rather by unsuccessful termination of probation, accompanied by a docketing of the unpaid amount as a civil judgment at the end of the probation case if it hasn't been already. In state versus Patterson, a case from 2012, the court of appeals held that a trial judge erred when he declined to waive costs saying I have no discretion, but to charge court costs, the appellate court said that was incorrect for anything aside from the \$75 attorney appointment fee, which is unable by statute.

Jamie Markham: You can waive any cost. You just have to make findings of fact and conclusions of law to do it. And I think that case underscores the need for additional training related to monetary obligations. The conference of superior court judges has devoted multiple sessions to this topic in recent. Are they focused on court costs, waivers, civil judgements for restitution, and the important rule from a 2019 case called state versus Rieger. R I E G E R, in which the court of appeal said that when a person has multiple charges adjudicated at the same time, the court should assess costs against only one of those cases. At their last conference in October of 2021, the judges devoted 90 minutes to a session entitled national perspectives on criminal monetary obligations presented by Dr. Karin Martin. Who's a scholar from the University of Washington who offered insight based on her experience, studying the use of monetary sanctions in eight states.

Jamie Markham: I'm not as directly involved with the training of district court judges or other court actors. So, I can't speak to the training that they've been provided on these issues. In 2018, in partnership with the Harvard Criminal Justice Policy Program in the A.C.L.U, I worked on a bench card that summarized a judge's authority to grant relief from various monetary obligations, both at sentencing, and later in the life of a case. The card also offered, suggested approaches to the consideration of a defendant's ability to pay. I think it was a worthwhile first effort at summarizing those laws, but it's clear to me in hindsight, that it needs to be streamlined in order to be more effective. I offered a draft of a simplified version to the governor's task force for racial equity and criminal justice in May of 2021. And I'd be interested in working to develop that more fully. I've written many blog posts over 20 on the subject of criminal monetary obligations since 2011, including for example, given [crosstalk 00:49:52]

Olga Morgan Wright: Excuse me Mr. Markham...

Jamie Markham: Yes... Two minutes

Olga Morgan Wright: You have two minutes. I apologize for interrupting.

Jamie Markham: Oh, no problem. That'll be fine. The two-part series in June of 2018 that offered, suggested approaches to consideration of ability to pay. And in 2019 posted an early draft of a form that could be used to request in grant relief from financial obligations. That form eventually evolved into the recently promulgated AOC CR 415, which is the form that's mentioned by name and new rule 28 of the general rules of practice for the superior and district court judges, promulgated by the Supreme Court of North Carolina.

Jamie Markham: And finally, I would say the issuance of that Rule 28, I think marks an important moment for doing more training on this topic. I think that would ideally be done jointly with the many stakeholders who have a role in this issue, including judges, clerks, prosecutors, probation, officers, and others in the room together to discuss it. I think with a more complete mastery of their available legal options, some better communication between those stakeholders and a more complete understanding of the intended consequences of some of the actions that are taken now. I think districts could develop a more thoughtful and intentional and ultimately more effective approach to the role of monetary obligations in their criminal judgements. Thank you.

Olga Morgan Wright: Thank you Professor Markham very much for your comments. We will now take questions from our Committee members and I will begin with

Daniel Bowes. Do you have a question? Mr. Bowes? Do you have a question?

Daniel Bowes: Sorry. [crosstalk 00:51:45] Yes, I have one question.

Olga Morgan Wright: Do you want me to come back? Are you there?

Daniel Bowes: I'm here. Let me first thank Professor Markham for really good presentation. And as he said, his leadership in this arena for a long time, my question is, can you talk a little bit more about the impact of these collection mechanisms? I really appreciated you talking about the probation. And so, if you want to focus on that more or talk about another sort of collection mechanisms where the disconnect exists that you were talking about.

Jamie Markham: Sure. Thank you for the question. It's good to see you. A couple things come to mind. I know I spent a good bit of time talking about civil judgements and the collection of those, I agree with Mr. Coletti, it's just really hard to get good data on whether the extent to which, or really whether at all, any of it is collected. We do know some is collected through set off debt. And, and I think something to know about that is that when we impose obligations criminally the statute 7 8 3 0 4 sets a collection priority for that collection. And it goes from restitution first, always restitution first then costs you the county then costs you the city then finds then costs you the state. And finally, attorney fees. One of the very few entities that's enrolled in the department of revenues set off debt program is indigent defense services to collect their judgements for attorney fees.

Jamie Markham: And if they're the only ones enrolled, and a civil judgment is imposed for all of these different obligations. If the defendant does have any tax refund coming back or lottery winnings, it's going to be intercepted by and garnished by the entity enrolled in the program. And if I.D.S is the only one there, they get it first. So, it moves attorney fees from the lowest priority, which would highlight the really what are intended to be the punitive and effort to make a victim whole in restitution. It would move attorney fees to the top of that list.

PART 2 OF 4 ENDS [00:54:04]

Jamie Markham: It would move attorney fees to the top of that list. So, that's one phenomenon. And then in terms of when people are on probation, when somebody is alleged to have violated probation, an order for arrest can issue for them. And there was some discussion of this, after Mr. Coletti, that just from a policy standpoint, it doesn't take very long for somebody

to be incarcerated. Any sheriff would tell you, would have a figure in mind for their per diem cost of incarcerating somebody. It doesn't take very long for them to be incarcerated before the amount of expense to the county for incarcerating them exceeds the amount that's probably owed. There'd be some exceptions for high restitution cases and others, but as far as the court costs and that \$200 range, it's not going to take many days of confinement before you exceed that at a simple cost benefit analysis, much less the larger costs of that incarceration.

Olga Morgan Wright: Thank you, sir. Ms. Pearl Burris-Floyd, do you have a question?

Pearl Burris-Floyd: Yes, Madam Chair. Thank you, Professor Markham for your very insightful presentation. My question is how do we correct or improve how we treat the indigent in terms of these fees? How do we, what can we do if there is anything that we can do about this and how do we write about it? Or how do we talk about it?

Jamie Markham: Good question. Thank you. I mean, I think a first step would be aware, but for the judges that are on sort of the front lines of this are all court actors, lawyers representing defendants, prosecutors prosecuting these cases, and then the judges and clerks representing the court that are ultimately going to decide on and memorialize these obligations to know the law that does allow them to waive or remit these obligations in almost every case, just so they know they have that tool in their toolkit available in an appropriate case.

Jamie Markham: And then to do training on a more refined consideration of a person's ability to pay on the front end from the very beginning. And I think that's the emphasis of this new rule of practice promulgated by our Supreme Court to say, before we get years into a case on probation, let's take a bit more time, hopefully not a tremendous amount of time, just given the speed of the docket, particularly in district court to make a more educated determination of a person's ability to pay. So, we don't have years of downstream effects that whether through probation or license revocations and other consequences that are really not directly connected to what we're trying to accomplish through these obligations. So, I think that my suggestion would be a first step would be a more refined look at a person's ability to pay.

Olga Morgan Wright: Thank you very much. Um, Mr. Travis Cook, do you have a question?

Travis Cook: Thank you, Madam Chairman, and thank you professor. I thought that was very intelligent and helpful set of remarks when you, it sounds to me as though this is in part, not through any malice, a poorly designed law, set of laws, but would you apply the inability to pay problem to what we would

properly call penalties rather than simply the court fees? I'm not sure if that makes sense.

Jamie Markham: I think I understand what you're asking and maybe when we get to follow ups or certainly following your process, maybe if I get it wrong, again, but as opposed to a fine and fines by under our state institution always go to the public schools in North Carolina. If the purpose of a fine is to punish somebody, then, if obviously there's a difference between an indigent person receiving that statutory fine for a speeding ticket, then when, Jeff Bezos gets pulled over, it's just, it doesn't. And, and so in some countries, European countries, Scandinavian countries in particular have developed a process of considering day fines that adjust a fine based on a person's income to try to make the pain of that punishment, roughly commensurate it, whether you're wealthy or don't have means.

Jamie Markham: So, we don't have that. We don't have an upward dial in North Carolina, but we do have the potential for the judge to choose, to impose a lesser fine. A judge often in many cases, there are some crimes that carry a particular statutory fine, but in most cases, the judge has discretion to set that and could exercise that discretion to set it lower. But of course, doing that, there has to be a threshold determination of what that ability is. I know, just given the number of cases on again, on a district court docket in particular, whatever way we choose to evaluate that needs to be something that administratively can be done quickly.

Jamie Markham: That's something I think, through training with stakeholders together, that people could, they may not agree on every aspect of it, but could explore things like, Hey, are we going to look at this marker to decide whether, how indigent is indigent? Because my impression is a lot of these are not close cases. Oh, that person was just barely not solvent enough to pay this cost or fine. I think a lot of times it's not close.

Travis Cook: Thank you. Thank you very much.

Olga Morgan Wright: Mr. Christopher Duggan, do you have a question?

Christopher Duggan: Thank you Madam Chair. Thank you, professor. The question I have is, we heard in a prior hearing or briefing regarding programs that would allow for payment type programs that would eliminate some of the sting, perhaps either taking out interest or some other collection or costs that are associated there with, what is your experience in those types of programs and their ability to maybe lessen an impact and, or increase the collection.

Jamie Markham: It's not something I have studied at an empirical level. I certainly hear the commentary that, but for example, being allowed time to pay is a good

idea, except that you have to pay for access to the ability to have time to pay, because there's an additional cost that applies, of course, that cost too can be waived for just cause. And, and I think just cause for that could be a person's financial state right now, perhaps particularly as they are in the midst of a criminal prosecution where their ability to pay might be at its lowest. I hear from probation officers talk about a sort of a sweet spot in the length of a probation period that works best. There's often an impulse when somebody owes a lot of money to give them the longest probation period possible, which is five years in North Carolina.

Jamie Markham: There's a limited prospect of extending it out to eight, but it's rarely applied correctly, that actually you would do better. And Dr. Martin, Dr. Karin Martin's comments to the superior court judges gave some empirical teeth to this, that you would actually get more money if you focused it over a shorter period of time than you would, if you tried to, like a car payment, put it out over five, five years, that her experience in other jurisdictions and jurisdiction showed that a more focused and shorter front end with something people could get their head around and did better at complying with than a longer term. It's not something that I profess individual expertise in, but it's something that I've tried to find speakers, scholars like Dr. Martin to come educate our court officials on what the experience of other states has been. And so, they could try to apply that here in North Carolina.

Christopher Duggan: Thank you. Thank you, Madam speaker.

Olga Morgan Wright: Thank you, Marcus Gadson, do you have a question for panelists?

Marcus Gadson: Yes, ma'am. Thank you so much, professor. You mentioned that many of the trainings you've done have been helpful, but that it seems like judges still haven't been able to correctly apply all of the different options that they have. And so I'm curious if there's a degree to which appellate review could be streamlined or better utilized to help protect people, because it seems like what's happening with lower court judges is they're not properly applying these is not withstanding the different trainings that are being offered, but you cited to a couple of court of appeals opinions that have kind of stepped in. So, are there ways that appellate review could be better utilized in these situations?

Jamie Markham: Good question. I think I understand. We certainly, I guess I can only speak for myself. It's that if there's a case like that, I am certain myself, certainly prone to amplify that in my case law update for the Supreme Court judges, for example, and to write about it and some of the outlets that we have at the school of government online. I gave you a few examples of appellate cases, but still, it's just a handful of cases to do with court costs over the



last decade. It's not, there've been many cases about the notice and hearing that's due before a court imposes a civil judgment or attorney fees. But aside from that narrow issue, there's not been a tremendous number of them. And I think in the trial courts, my main observation is that the real issue never really gets teed up for review because, they find relief in the escape valve of the civil judgment, which in that moment seems like the right answer for everybody.

Jamie Markham: And I've now that a little bit to ordering a cocktail that you've seen in the movies, and you only order it because you know how to say it. And when you say it, everybody's like, oh, okay, yeah, I know that I've heard of that. Civil judgment being that, but it may not actually be what you want. You only do it because you know how to say it and because everybody nods approvingly when you do that. And in fact, what's happening behind the scenes is you don't actually get what you want. You just did it because it sounded right. The busy bartender might be sort of cursing you under their breath because they have to do it just like a clerk might be, I don't want to put words in their mouth, but they might be saying, I got to go docket all of these things like they have to actually do that paperwork.

Jamie Markham: And with the final irony again, that you're not actually getting what you want. So, I think the release valve there, the work around of the civil judgment is a little bit sort of ships passing in the night. And when, in terms of, it's bypassing the actual relief in question that I think would be better evaluated, is does the person have ability to pay it at all? If they did, it should be remitted by law. And therefore, there would be nothing left to convert to a civil judgment.

Olga Morgan Wright: Thank you very much. I am going to add too minutes to our time for members. We have eight members left and six minutes. So, if each member can please be very brief with that questions and professor brief in your response so that we can move on to our last panelist. Mr. Steven Greene, do you have a question?

Steven Greene: I will help with that because I do not have a question at this time. Thanks.

Olga Morgan Wright: Thank you so much, Jonathan Guze, do you have a question?

Johnathan Guze: Yeah, but I'll try to be quick professor. You made it clear that you think part of the solution here is more training for court actors, but I want to go back to something you talked about at the beginning. Would you recommend returning to the rule that was in place before 2011, under which the default rule was, there were no cost for active sentences, people who were had active sentences?



Jamie Markham: No. Good question. I don't advocate for particular solutions. I don't mean to say that like a mantra, but that's one where I could say the practice was different in my observation. I started in 2007 here and it was different for those first years. But I can say, I think the current law is workable if there's a simultaneous understanding of the authority to waive or remit when the judge chooses to.

Olga Morgan Wright: Thank you. Let's see. Who's next, Jennifer Lechner. Do you have a question?

Jennifer Lechner: Yes. Thank you. Thank you, Professor Markham for being here today. And I want to tangent a little bit off of what Professor Gadson asked you and your response and that these issues just don't seem to be teed up appropriately for district court judges and ask if you think that CR 415, which you've talked about and has come out in its second iteration recently, and we have the new Supreme Court rule. If you think that will be partially at least a remedy for that for teen up those issues and getting it before judges, since they now have to consider that.

Jamie Markham: Yes, it seems like it would be, it'd be a prompt for it to be asked for more frequently and then just make it a more regular part of the courtroom discussion, in a more organized and structured way. So, I do think that's likely to, especially as cases then get to superior court and where a record is created, that can be reviewed on appeal. I think it is likely to increase the number of cases that are reviewed.

Jennifer Lechner: Thank you.

Olga Morgan Wright: Mr. Angelo Mathay do you have a question?

Angelo Mathay: Yes, Professor Markham. Thank you so much for speaking with us today. I know you shared recommendations related to the streamlining of training, but I wonder whether you have any sort of, if you could share for us today, just your understanding of the impact of fines and fees on particular populations in North Carolina and how, whether you have policy recommendations to address that if any.

Jamie Markham: That is not something I've studied personally at an empirically one of the again, when we invited Dr. Martin to speak to the superior court judges, one of the things we that she talked about and that I hope she would talk about was just a more informed discussion of the scope of poverty and the impact of what might seem to some court officials or some citizens has not a lot of money, that just a richer understanding of how even small amounts of money could have a tremendous consequence in a person's life. And so that is again, though, I don't personally make policy recommendations

related to that. I have no problem bringing people before the judges who do have policy recommendations on that and who do work in an advocacy sphere.

Jamie Markham: So, the judges can hear those perspectives and make their own decisions about what they're trying to accomplish, just so they can be more, as I mentioned, more intentional about that. But to answer your initial question, I don't mean to avoid it. That has not been the focus of my work at the school, just from a lawyer's perspective, just trying to acknowledge that those likely exist and make sure the judges are informed about the tools, the statutory tools or rule-based tools at their disposal to address them is how I view my roll.

Angelo Mathay: Thank you.

Olga Morgan Wright: Thank you, sir. Patrick Mincey, do you have a question?

Patrick Mincey: Good afternoon, Mr. Markham, thank you for your time and comments today. I have been the beneficiary of, in my practice for many years of your work, and it's a pleasure to speak with you. I want to make sure that I accurately walk away from your testimony with a good synopsis of it. You testified a moment ago that the current law is workable. Is it accurate that some of your testimony is that our court system and our judges need further understanding of that law and how to apply it and the options that are available to them under the current regime rather than reform to the regime itself?

Jamie Markham: No, whatever the regime is, with the regime as it is so far, I think I could do a better job of teaching it well, and whatever the regime winds up being, I can see the importance of it, and you try to teach it and prepare materials that help people administer it effectively.

Patrick Mincey: Well, I want to make sure I understand. You're, you testify that the current laws.

Olga Morgan Wright: Mr. Mincey. Mr. Mincey. Excuse me, we're going to have to go on, we have three more, hopefully we'll have time in the end. Thank you, sir, Catherine Read, do you have a question?

Catherine Read: Yes. Thank you. We've had, I think on this issue of training, I wonder about a couple of things. One is the difference we heard from judges last time in the differences between counties and how through training you would actually ensure that the follow through from the training was there was accountability for it across the different counties, because it seemed to vary widely in what was followed. And Judge Hartsfield also said that the

docket is so busy, that she often doesn't have time to consider ability to pay. So how do we get around that issue too? It's just she said, that's one of the issues here, right? Is that being where does that come in? How does that sort of, we get more time to make sure that this actually is considered as well?

Jamie Markham: No, thank you for your question. I unfortunately was, did not hear that testimony from the prior session, so I don't know exactly what was said, but, I do think jurisdictions would have, it would make sense to agree upon on evaluation methods that can be administered quickly, for example, rather than if some defendants are already receiving certain means tested benefits that have been through an elaborate vetting process that people agree is reliable.

Jamie Markham: Then I think if people agree that if you ask that question or do you receive X and the answer is yes, then it could raise a presumption of a waiver, for example. I'm not advocate for that specific approach, but things like that, rules of thumb like that could speed things along for many cases, even if they didn't resolve every case. And again, would be rebuttable perhaps if the district attorney had information about a particular case or if the sheriff had particular information about a case about a person's course through the jail, for example. So, I think thinking about rules of thumb, like that would be one possible solution to what you're talking about.

Olga Morgan Wright: Thank you. Mercedes Restucha-Klem, do you have a question for the panelists?

Mercedes Restucha-Klem: Yes. Thank you so much, Professor Markham, following up on some questions that were previously asked and your own testimony you kind of said at the beginning, right? It's a lot of just words, right? Fines, fees, costs, waivers, exemptions, and the judges really are just like, how do we waive the money? And so, you mentioned how Sweden has this kind of an option of turning up the dial and we have an option of turning down a dial. I'm curious if you know of any systems that don't have money in it at all.

Jamie Markham: I don't, none that I could name by.

Olga Morgan Wright: Alright. Thank you, Mr. Gregory Wallace, do you have a question for the panelist?

Gregory Wallace: Yes. Thank you, Professor Markham for your presentation today. I sort of want to, you mentioned about the complexity of the system right at the beginning of your remarks. And I want to try to cut through that and I know your hesitancy for making recommendations, but if you could have

one policy change, one rule change that the legislature could implement to alleviate the problem that we're talking about here, what would it be?

Jamie Markham: That alone, I understand, I appreciate your framing of that. It's still difficult for me to answer that without getting into, I take very seriously the school's non-partisan and non-advocacy role.

Jamie Markham: I can say though, just by observation of what has happened over the past few years, the requirement that was instituted to give written notice to any affected party, any affected government entity before a judge considers waving or remitting, the money that would be owed to that recipient is difficult to administer on the ground just to have for 15 days' notice by mail, just given the speed of a district court docket, especially, or any court docket to try to would, turns every one hearing into at least two. And that is a real challenge. I understand that better in the context of waivers of restitution, where the victim's perspective on that clearly means so much more than the recipient of, the city police might have served process in a case one time they arrested this guy, this person months ago, and no individual person may remember that, or the details of it, but for them to come and say, hey, we have information about whether you could, you should waive the \$5 out of this 200 or so that are headed toward us, our sliver of this pie.

Jamie Markham: I don't mind saying that I, that makes less sense to me than the restitution aspect of it. And that if, I understand the idea of giving notice to the affected parties, but perhaps could be done electronically or in a more streamlined way than the laws that exist now.

Olga Morgan Wright: All right. Thank you so much, Professor Markham. I think we could probably have another complete hour with you, but at this point we will have to move on to our next panelists and we very much thank you for your information at this time. And now we will hear from our panelist Judge Brian Ratledge, excuse me, of the wake county district court Judge Ratledge. You will have 10 minutes and I will have to ask our Committee members to please be very brief. We do have other, we have to get to the public comments, so I will be quiet so that Judge Ratledge can now begin this.

PART 3 OF 4 ENDS [01:21:04]

Olga Morgan Wright: Comments, so I will be quiet so that Judge Ratledge can now begin his 10 minutes. Thank you.

Brian Ratledge: Thank you for the opportunity to attend and participate today. I don't have office days very much so it's nice that it worked out on this March 15th.

Let me preface my comments by informing that I have not read all the meeting transcript. In fact, I've only scanned a few pages from the February 2022 one. I did read the May 2020 draft from the Advisory Committee, which Ms. [Marino 01:21:29] forwarded on to me, along with the original invite. So, most of my comments I'm going to give today provide or made the context of that draft memo, which contained a number of comments from, I think, Committee members.

Brian Ratledge: And like the other speakers have said, I'm not speaking on behalf of any other district court judges here in Wake County. My response is limited to my perspective from the bench and also in what I recall in doing criminal defense work, which included being on the court appointed list for a couple of years.

Brian Ratledge: A quick snapshot of my time on the bench, my first six months on the district court bench, I had a 50/50 split monthly case load of criminal court and civil court. For nearly three years now, though, my primary caseload has been family court. So, on a given month, three of my four court weeks are in family court. Then I will cycle out one week into another of court, such as general misdemeanors, traffic court, impaired driving court, low level criminal felonies or domestic violence, for example.

Brian Ratledge: I want to start by answering the three different questions that were posed to me when I got this invite in February, so here goes. Do North Carolina courts issue warrants for arrest in cases on LFO nonpayment, where the individual cannot afford to pay? Frankly, I was quite surprised when I saw this question, because this was not anything that I've ever heard of before. I'm not aware of any North Carolina courts issuing arrest warrants for LFO nonpayment, [crosstalk 01:23:02] but I certainly can't speak for all the counties in North Carolina.

Brian Ratledge: A more realistic scenario I have observed is something like this. Don is on probation for impaired driving. The probation officer notices a hearing on a probation violation, which includes his failure to pay court costs, fines, supervision fees, in addition to the fact that Don hasn't completed his substance abuse assessment or gotten his recommended treatment. And so, when Don doesn't come to court and then the file shows that he's been properly served, it's not unusual for an order for arrest to then be issued. Now, I don't know what Don may later say or think, but it's foreseeable that he might, albeit incorrectly, conclude that he was arrested for failure to pay monies or court costs. When in fact, he was arrested for his failure to come to court so the court could address the issue.

Brian Ratledge: To the best of my knowledge, I have never heard of a Wake County district court judge issuing an arrest warrant for a LFO nonpayment. If

y'all have heard other counties doing so, then I would suggest contacting those and learning more. But I've never known that to be a practice here in Wake. And words could travel fast in the courthouse, as y'all know, but this isn't anything that I've ever heard to be occurring here.

Brian Ratledge: What type of training do judges receive on making inquiries into ability to pay? Great question. As best I can recall, and I do, although Mr. [Marcum 01:24:33] probably doesn't remember seeing me. I remember sitting under his [inaudible 01:24:37] new district court judges' school, he talked about probation. But in terms of ability to pay the training that I remember receiving on this issue mainly involved criminal or civil contempt in the context of child support. That's where we tend to see a lot of this. As to the overall specifics of that training, y'all would need to contact the School of Government or the North Carolina Judicial College, because they're the one that hosts the two training weeks for new district court judges. I believe it's in December and March of each year. I don't recall all the resources given, but the topic was generally addressed. In all candor though, I don't believe much time was spent diving into the ability of a defendant in a criminal case to pay for court costs.

Brian Ratledge: Third question, in what ways do administrative barriers [crosstalk 01:25:28] limit judges from waving court costs? And this has already been talked about by the previous two speakers, especially I think Mr. Marcum just finished some of his comments talking about this. But it is fair to say that waving costs and fines has been cumbersome to do in the past. And it might be viewed under certain circumstances as a barrier to the court waiving them. To begin with, the courts now use this or supposed to use this Form 415. And I have rule 28 that Mr. Markham talked about. From a regular practice standpoint though, even without this form, I haven't observed many occasions where defense attorneys raised the issue of waiving court costs and fines when an indigent defendant is sentenced. I might get asked this a couple of times per week what I'm in a criminal session, if even that, to consider. So, it's not something that's usually brought up. [crosstalk 01:26:22] And I don't think it's necessarily a failure on the attorney's part. And I'll revisit the why of that shortly.

Brian Ratledge: Another barrier is the court, as Ms. Read was referencing in one of the questions to Mr. Markham, the court could have a hearing on the matter to further inquire or scrutinize the accuracy of what's being disclosed on a 415 or on an [inaudible 01:26:47] defendant submits. Should hearings start to occur, then as Mr. Markham accurately stated, one hearing turns into two. This could realistically affect the overall management of cases because prosecutors, court clerks and bailiffs are going to need to be present for those hearing sessions, not to mention any other stakeholders.



Brian Ratledge: And I think it's a fair question that a larger challenge, regardless of the form of the process, is how can the court ensure that the info it is receiving from a petitioner is an accurate portrayal of their financial condition? I don't think that's an unfair question or an unfair expectation. For example, I know certain localities I've seen or heard it advertised on the radio. They might have an assistance per program which helps people pay their utilities like electricity, gas, or water. But it's not unusual, I think, for some of those entities to have folks provide evidence of income, pay stubs or bank statements, in addition to the information that they provide on an application. So just like other entities don't necessarily take people's word at face value, I don't know that the court always has too either.

Brian Ratledge: Some final thought, because I want to track my time here, I know we're a little bit behind. In my experience, I don't sense at all district court judges here intentionally hammering defendants with court costs and heavy fines or doing so haphazardly, or with a callous disregard as to how it will affect the defendant or with callous disregard toward minority groups. I've simply not seen a judge look for ways to target a person with onerous fines. I do sense judges wanting to reach measured decisions and wanting defendants to have some sort of personal investment in the outcome of their sentence. And in no way am I trying to toot my own horn, but I consider myself to be very judicious and thoughtful when assessing fines for the very reason that Mr. Markham Said, "Hey, small amounts of money can impact a person."

Brian Ratledge: The second thing, I would tread carefully on looking at the back end of LFO statistics and concluding that LFOs are unfairly punishing a person in a state of poverty or concluding that a court isn't making inquiries on a person's ability to pay at the time of sentence. I think looking at post-conviction LFOs alone would be a mistake. And the reason is simple. I think it's important to remember how a particular case ended up with the resolution that it did. Speaking from my own experience, I can remember a number of times, though it's anecdotal and not empirical, where-

Olga Morgan Wright: Excuse me, Judge Ratledge. You have two minutes.

Brian Ratledge: Thank you.

Olga Morgan Wright: Excuse me, please. You have two minutes, sir. Thank you.

Brian Ratledge: Okay. Where I would show up and we didn't have a good case. And the state has its witnesses and it's not looking favorable. And my client tells me, "Hey, I don't want to go to jail. I don't want supervised probation. Can you get me court costs and a fine?" And we're able to work that out. And in preserving good relationships with a prosecutor, a court appointed



attorney, and y'all would obviously want to take the input of the defense bar on this, but I don't know that an attorney is always going to turn around after they've negotiated court costs and fines, and then turn around and open court and ask for waving those. I think y'all could probably see why that might be a bit unpalatable. And it's a hard pill to swallow too, if a defendant has asked their attorney to get them court costs and fines only to then later months down the road say, "Hey, I can't pay this." But again, it's a complicated question.

Brian Ratledge: The last thing I'll mention is the context of indigency. And so, let me back up because I think a clear picture of seeing how cases-

Olga Morgan Wright: Sir, you have one minute. You have one minute.

Brian Ratledge: A quick picture of seeing how cases turned out the way that they did, I think is much better gleaned and learned from following a subset of cases throughout the life of them, traffic charges, general misdemeanors and impaired driving felonies. And really see the full trail of how it ended up the way that it did. I'll defer to the legislative branch on how establish court costs and how they go about the collection process. Also, and I probably won't have enough time to talk about this unless somebody asks a question, but indigency, remember, I think it looks to be a little bit conflated in this draft that I read. Remember the indigency question is raised because the person is in front of me who is facing potential jail time and they cannot afford to hire a lawyer. So that scope as it pertains to indigency is limited to the context of their ability to hire legal counsel in connection with the charge. A court is not making a determination that they cannot ever pay any kind of fine or court costs. That's all.

Olga Morgan Wright: Thank you so much. Again, we could probably spend another hour, but we do have to move on with everything. Thank you so much, Judge Ratledge, for your time and your information. And let's see what time. We are at 1:36, and we do have to have time for public comment. Is there any Committee member that has a dying question for Judge Ratledge at this time that you would like to...? Yes. Mr. Wallace, do you have a question?

Greg Wallace: Yeah, I think Judge Ratledge got cut short there a little bit on this difference between indigency. Last time we met, Ms. Mistr seemed to collapse the two in her comments and accused district court judges in Wake County of blatantly telling her regularly that they couldn't remit everyone's costs and fines, even though she only represented indigent clients. So, I wanted to give you a chance to sort of conclude your thoughts and explain the difference between indigency and ability to pay, and how they don't necessarily reflect the same thing.

Brian Ratledge: Yeah. And so that's kind of where I-

Olga Morgan Wright: Excuse me, Judge Ratledge. We'll have three minutes, please start to respond.

Brian Ratledge: Okay. So, when a person comes, the indigency question is raised when we inform the person of their right to counsel. It's their first appearance. And I ask them if they want to represent themselves, hire their own lawyer, or apply for court appointed counsel. And when people say that they want to apply, often they will fill out an affidavit. In many of the situations, and Mr. Marcum, I certainly agree it's not close. But that's not true in all of them. And so, the indigency question when they're applying for counsel is, "Hey, does this person have the ability to hire a lawyer?" The question of their ability to pay is often six months, eight months, 12, sometimes 15 months down the road at sentencing. And I have seen situations where people have since become employed.

Brian Ratledge: And so, it seems like when I was reading the memo, the issue of indigency that because a person can't afford to hire a lawyer... And please know I'm not minimizing the cost of a lawyer or court costs. I grew up in a family, neither of my parents had college degrees and they had dead end jobs. But I think it's to separate indigency for the purposes of hiring a lawyer, which flows out of the Sixth Amendment in the Gideon v. Wainwright case where the court rightly appoints a person legal counsel because they cannot afford to hire a lawyer. Separating that from their ability to pay certain court costs and fines, completely foreseeable a person may not have \$2,000 or \$2,500 lying around for their DWI charge, but they might have the ability to pay \$300 to \$400 in court costs over a few months.

Brian Ratledge: And though it was an anecdotal comment regarding, I think, a superior court judge I also would say that I find it to be experientially true that shorter time periods generally tend to work out better for people paying court costs and fines, as opposed to that car payment thing that Mr. Markham mentioned. I hope that clears it up.

Olga Morgan Wright: Thank you very much, sir. Thank you. Does anyone else have a question, because we have to move on to our comment section if we're done.

Daniel Bowes: I was hoping to just follow up on Mr. Wallace's question.

Olga Morgan Wright: Okay. You've got one minute. Thank you.

Daniel Bowes: Judge Ratledge, thank you very much for your comments. My question is just looking at the indigency status for appointed counsel, which as you say comes out of the Sixth Amendment and is required. A lot of what

we've heard is just the courtroom functioning. And so, if you have a process that has to happen, is there a way to draft off of that to look at indigency as it relates to fines and fees? For example, to say that if somebody has been appointed counsel and been determined indigent for Sixth Amendment purposes, that when the fine is actually given out as a court cost, that individual automatically sort of gets the review to determine ability to pay as a default. Yeah. Any sort of thoughts on that process or how that could work?

Brian Ratledge: No. I mean, I hope I'm saying your name right, Mr. Bowes. What you're asking is certainly logical and it would seem to flow, what you're talking about. I think one of the challenges here is that sometimes, again, attorneys aren't raising this issue. And my guess is because some of the reason why, and again, this is just my gut, but also having been there for years. My guess is that they feel like they've negotiated the best possible outcome they can for their client. They don't want to press their luck.

Brian Ratledge: The other aspect too, is I think it is difficult. Let's be, let's be honest here. Sometimes clients don't help out their lawyers very much on that issue. And although it's been just a couple of situations, I have had a couple of situations when the questions start getting asked, the inquiry kind of stops because the person really doesn't want to go there. Now granted, that's a small subset. I wouldn't want that to be over generalized. But yeah, I think if you're going to go down this road, like I said, there's a number of stakeholders that would have to be involved. And in a place like Wake County where we have 1.1, 1.2 million people and a quite heavy caseload, it would take brains much smarter than mine to figure out how to make all that work. I hope I answered your question without giving you a non-answer because that's not what I want to do.

Olga Morgan Wright: All right. Thank you, Judge Ratledge, very much for your time. We have had a quite interesting and fulfilling day today. I will have to conclude at this time. Any Committee members that have further questions will have to submit them. And we may have a few moments in the end, but I do have to ask at this time. I want to thank the panelists today. And we will now transition to public comment. If we run out of time and members of the public are interested in sharing comments with the Committee, please remember we will accept written testimony until April 14th. Do we have any public commenters on the line? I would like to ask CenturyLink if there are any members of the public on the line.

Olga Morgan Wright: Maybe he's getting names. Okay. Well, I will not waste our time. Is there any Committee member that has a question for Judge Ratledge until we get a public commenter on the line? I don't want to just sit here if there's someone who has a question.

Victoria Moreno: Chairwoman, I apologize for interrupting. This is Victoria.

Olga Morgan Wright: Okay.

Victoria Moreno: I just want to check one more time. I want to confirm that there are no registered public speakers for today. And I'd like to check one more time with the CenturyLink operator. If you can hear us, can you please check with the interpreter if there are any members of the public on the line? And you are currently muted.

Victoria Moreno: Okay. I would also like to ask if there are any members of the public on this WebEx call who would like to provide a comment. If so, you may unmute. And please provide your name and you will have three minutes for public comment.

Victoria Moreno: And one last call. If there are any members of the public, either through CenturyLink and our interpreter's line or on this WebEx call who would like to make a public comment? Chairwoman, it appears you do not have public comment at this time. You may move on to the Committee questions.

Olga Morgan Wright: Okay. All right, great. We do have additional time. Judge Ratledge, are you ready to answer more questions?

Brian Ratledge: Sure. I [crosstalk 01:41:01].

Olga Morgan Wright: Thank you, sir. Are there any other Committee members? I don't think we have time, but if everyone could please be respectful of everyone else coming behind you. If someone else does have a question, if you could please limit your questions briefly. And Judge Ratledge, please respond. And hopefully we'll be able to get through everyone that has a question. So, is there any? I'll start with Mr. Bowes. Did you speak to Judge Ratledge? [crosstalk 01:41:29]

Daniel Bowes: Thank you very much. I don't have a question. Thank you.

Olga Morgan Wright: You're welcome. Pearl Burris Floyd?

Pearl Burris-Floyd: No questions at this time. Thank you so much, Madam Chair.

Olga Morgan Wright: Thank you. You're very welcome, ma'am. Travis Cook?

Travis Cook: Not at this time. Thank you very much.

Olga Morgan Wright: Thank you very much. Christopher Duggan?

Christopher Duggan: None at this time. Thank you, Chairman.

Olga Morgan Wright: Thank you very much. Mr. Steven Greene?

Steven Greene: No questions.

Olga Morgan Wright: Mr. Marcus Gadson.

Marcus Gadson: No questions for me, ma'am.

Olga Morgan Wright: Thank you very much. Jonathan Guze?

Jon Guze: Oh, no questions. I just want to thank all of our speakers. It was very interesting and helpful.

Olga Morgan Wright: Thank you, sir. Jennifer Lechner?

Jennifer Lechner: I have no questions.

Olga Morgan Wright: Okay. And Mr. Mathay, have you asked a question already? I can't remember. I think you did.

Angelo Mathay: No questions, Chairwoman. Thank you, Judge [crosstalk 01:42:33].

Olga Morgan Wright: Thank you very much. Patrick Mincey?

Patrick Mincey: No. Thank you for your time, Judge.

Olga Morgan Wright: Catherine Read.

Brian Ratledge: You're welcome.

Catherine Read: Yes, thank you. I wanted to ask if you... We heard from some of the other judges that they supported the idea of community service and other alternatives to fines and fees. Judge Hartsfield also talked about the importance of restitution, but it wouldn't necessarily always need to be financial. It could be something like, she gave the example of an arson case and then volunteering at the local fire department. What are your thoughts on those sorts of alternatives to fines, and particularly in this issue of restitution?

Brian Ratledge: Well, great question. And it's something that people have been battling around for quite some time and I expect it will be. I think the general assembly... Well, again, I'm not a legislator, so I want to stay within my province of the pillar of government that I'm in. I'm going to have to defer

to the solutions that they seek, but it seems like the ultimate question being asked here is what investments, whether that's time or resources, does an individual have in the outcome of a case in which they've been found guilty? I mean, isn't that really the larger issue?

Brian Ratledge: And that's like pulling up this weekend, I considered doing some yard work. And I looked at a bush that I wanted to pull up. But if I pull it up, it's going to have roots that shoot everywhere. And I think that's kind of the issue here is, that there are some cases where confinement is warranted, others where probation is, then others where court costs and the fines are.

Brian Ratledge: But ultimately in all those common threads that a person has some sort of involvement, my sense is that a lot of judges are well, I'm going to speak for myself. I like seeing people do a community service where they can. And I will certainly opt for that because I think that works well. I don't make people in DWI cases pay a community service fee if they've come to court and they've already done their community service. I'll wave that fee. I have a habit of doing that. And so, I think there are alternatives that are out there, but I think at the end of the day, I think Mr. Markham said it well, "How indigent is indigent?" And to what extent does that impair or effect of person's ability to make right their sentence? Does that answer your question, Ms. Read?

Catherine Read: It does. Thank you so much.

Brian Ratledge: Okay. You're welcome.

Olga Morgan Wright: Mercedes, do you have a question for Judge Ratledge? You're on the line. Hello? Hey, Mr. Wallace, let me go to Bradley Young first and then we'll come back to you. Mr. Young, do you have a question? Mr. Wallace, did you have a follow up question?

Greg Wallace: No but thank you for the opportunity. And I want to express my appreciation to all of the speakers today. Thank you so much.

Brian Ratledge: You're welcome. Thank you for the invite.

Olga Morgan Wright: All right. Thank you, sir, very much for your time. And at this time, I would like to thank all of our Committee members, panelists who participated today. We will continue to accept written testimony for this briefing until April 14th, 2022. And I want to thank everyone for your time. Is there any questions right now from the Committee members?

Christopher Duggan: Madam Chairman?

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Olga Morgan Wright: Yes.

Christopher Duggan: The next meeting is on Friday, is that correct? The debrief?

Olga Morgan Wright: Yes, that is correct. Yes.

Christopher Duggan: Okay. Thank you.

Olga Morgan Wright: And I'm sure we'll get probably two reminders, but if there's no other further business, I will conclude today's meeting at 1:51 PM. And thanks everyone for your participation.

Brian Ratledge: Thank you, good luck.

Olga Morgan Wright: Thank you.

PART 4 OF 4 ENDS [01:47:06]