

**Authority to Grant Relief from Monetary Obligations  
AT SENTENCING**

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| <b>Restitution</b>   | <p><b>The court must consider ability to pay.</b> Under G.S. 15A-1340.36, in determining the restitution amount, the court shall take into consideration the resources of the defendant including:</p> <ul style="list-style-type: none"> <li>• Real property</li> <li>• Personal property</li> <li>• Income derived from property</li> <li>• Ability to earn</li> <li>• Obligation to support dependents</li> <li>• Any other matters that pertain to the defendant’s ability to make restitution</li> </ul> <p><b>TO GRANT RELIEF: Don’t impose or order partial</b></p> <p><input type="checkbox"/> <b>Non-imposition.</b> In cases not covered under the CVRA, restitution is discretionary. G.S. 15A-1340.34(c). In CVRA cases, the court shall require restitution, G.S. 15A-1340.34(b), although it may require partial restitution as described immediately below.</p> <p><input type="checkbox"/> <b>Order partial restitution.</b> The court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, it shall state on the record the reasons for doing so.</p> <p><input type="checkbox"/> <b>Civil Judgment.</b> In cases covered under the CVRA, restitution to a victim in excess of \$250 may be enforced like a civil judgment. If the defendant receives probation, the order is not enforceable until a judge finds, upon terminating or revoking probation, that restitution in a sum certain remains due and payable. G.S. 15A-1340.38. Use form AOC-CR-611.</p>                   |
| <b>Fines</b>         | <p><b>The court should consider ability to pay.</b> In determining the method of payment of a fine, the court should consider the burden the payment will impose in view of the financial resources of the defendant. G.S. 15A-1362.</p> <p><b>TO GRANT RELIEF: Don’t impose</b></p> <p><input type="checkbox"/> <b>Non-imposition.</b> A fine need not be “waived.” Rather, it is part of the sentence that a judge generally may, in his or her discretion, choose not to impose, without any requirement of findings or notice.</p> <p><input type="checkbox"/> <b>Excessive fines.</b> If a statute calls for a particular fine as a mandatory component of a sentence the judge should impose it unless he or she determines that it would violate the constitutional prohibition against excessive fines. N.C. Const. Art. I § 27; State v. Zubiena, 251 N.C. App. 477 (2016) (\$1,000 fine not excessive).</p>  |
| <b>Costs</b>         | <p><b>Remember: One set of costs.</b> The court should impose only one set of costs for all charges stemming from the same underlying incident that are adjudicated together. State v. Rieger, 267 N.C. App. 647 (2019).</p> <p><b>TO GRANT RELIEF: Waive or reduce</b></p> <p><input type="checkbox"/> <b>Waiver.</b> The court may waive costs upon entry of a written order, supported by findings of fact and conclusions of law, that there is just cause to do so. Before waiving costs the court must provide notice by first-class mail to directly affected government entities of the date and time of the hearing and the right to be heard make objection at least 15 days prior to the hearing. The AOC provides statewide monthly notice to all potentially affected government entities, which may satisfy this requirement. It is error for a judge to operate under the impression that he or she has no discretion to waive costs. State v. Patterson, 223 N.C. App. 180 (2012).</p> <p><input type="checkbox"/> <b>Exception for probationary jail fees.</b> The \$40/day jail fee for split sentences and other probationary confinement applies only when the court specifically imposes it; no findings or notice are required when the court chooses not to impose that fee. G.S. 7A-313. Note, however, that the \$10/day fee for pretrial jail confinement is a cost that applies unless waived as described above.</p> <p><input type="checkbox"/> <b>Reduction.</b> If not waived, the state and local lab or hospital fee (\$600) and testifying lab expert fee (\$600) may, in the alternative, be reduced.</p> |
| <b>Fees</b>          | <p><b>TO GRANT RELIEF: Exempt</b></p> <p><input type="checkbox"/> <b>Probation supervision fee (\$40/month).</b> The court may exempt a person from paying the fee for good cause and upon motion of the probationer. G.S. 15A-1343(c1). There is no requirement for notice or findings.</p> <p><input type="checkbox"/> <b>EHA fee (\$90 setup fee plus \$4.48/day).</b> The court may exempt a person from paying the fee for good cause and upon motion of the probationer. G.S. 15A-1343(c2). There is no requirement for notice or findings.</p> <p><input type="checkbox"/> <b>Satellite-based monitoring fee (\$90 fee).</b> The court may exempt a person from paying the SBM fee for good cause and upon motion of the defendant. There is no requirement for notice or findings.</p> <p><input type="checkbox"/> <b>Community Service fee.</b> No statute governs waiver of the \$250 community service fee. G.S. 143B-708.</p>  |
| <b>Attorney Fees</b> | <p><b>Attorney fees.</b> Attorney fees are a judgment against the defendant, determined in accordance with rules adopted by IDS. G.S. 7A-455(b).</p> <p><b>Appointment fee.</b> The \$75 appointment fee is mandatory and may not be remitted or revoked by the court. G.S. 7A-455.1(b).</p>   |

**Authority to Grant Relief from Monetary Obligations  
LATER ACTION**

**Constitutional limitation on imprisonment.** Before imprisoning a defendant for a failure to pay money, the court must inquire into the reasons for a failure to pay. If the probationer could not pay despite a good faith effort, the court must consider alternative measures of punishment. Only if alternative measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. *Bearden v. Georgia*, 461 U.S. 660 (1983).

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| <b>Restitution</b>       | <p><b>TO GRANT RELIEF: Remit all or part</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Remission.</b> The court may remit all or part of an order of restitution after providing notice and an opportunity to be heard to the district attorney, the victim, the victim's estate, or any other recipient of restitution. The notice must be made by first-class mail and must provide the date and time of the hearing and notice of the right to be heard and make objection to the remission. G.S. 15A-1340.39.</li> <li><input type="checkbox"/> <b>Civil Judgment.</b> In cases covered under the CVRA, restitution to a victim in excess of \$250 may be enforced like a civil judgment. If the defendant received probation, the order is not enforceable until a judge finds, upon terminating or revoking probation, that restitution in a sum certain remains due and payable. G.S. 15A-1340.38. Use form AOC-CR-612 for balances due upon revocation or termination of probation.</li> </ul>  |
| <b>Fines &amp; Costs</b> | <p><b>TO GRANT RELIEF: Remit or modify</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Remission.</b> At any time, upon petition of the defendant or a prosecutor to the sentencing court, the court may remit a cost or fine if it appears to the court that: <ul style="list-style-type: none"> <li>(1) The circumstances which warranted imposition of the obligation no longer exist;</li> <li>(2) It would otherwise be unjust to require payment; or</li> <li>(3) the proper administration of justice requires resolution of the case. G.S. 15A-1363.</li> </ul> Before remitting a cost or fine in whole or in part, the court must provide notice by first-class mail to directly affected government entities of the date and time of the hearing and the right to be heard make objection at least 15 days prior to the hearing. G.S. 7A-304(a). The AOC provides statewide monthly notice to all potentially affected government entities, which may satisfy this requirement. </li> <li><input type="checkbox"/> <b>Modification upon by default.</b> If it appears that the default in the payment of a fine or costs is not attributable to failure on the defendant's part to make a good faith effort to obtain the necessary funds for payment, the court may enter an order: <ul style="list-style-type: none"> <li>(1) Allowing the defendant additional time for payment; or</li> <li>(2) Reducing the amount of the fine or costs or of each installment; or</li> <li>(3) Revoking the fine or costs or the unpaid portion in whole or in part. G.S. 15A-1364(c).</li> </ul> </li> <li><input type="checkbox"/> <b>Civil judgment.</b> If a defendant has defaulted in payment of a fine or costs, the court may order that the unpaid obligation be docketed as a lien on the defendant's real estate. G.S. 15A-1365.</li> </ul> |
| <b>Fees</b>              | <p><b>TO GRANT RELIEF: Exempt from further payment, modify, or remit</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Probation supervision fee (\$40/month).</b> The court may exempt a person from paying the fee for good cause and upon motion of the probationer. G.S. 15A-1343(c1). There is no requirement for notice or findings.</li> <li><input type="checkbox"/> <b>EHA fee (\$90 setup fee plus \$4.48/day).</b> The court may exempt a person from paying the fee for good cause and upon motion of the probationer. G.S. 15A-1343(c2). There is no requirement for notice or findings.</li> <li><input type="checkbox"/> <b>Satellite-based monitoring fee (\$90 fee).</b> The court may exempt a person from paying the SBM fee for good cause and upon motion of the defendant. There is no requirement for notice or findings.</li> <li><input type="checkbox"/> <b>Community Service fee.</b> No statute governs waiver of the \$250 community service fee. G.S. 143B-708.</li> <li><input type="checkbox"/> Balances owed for these fees probably may be modified or remitted.</li> </ul>   |
| <b>Attorney Fees</b>     | <p><b>Attorney fees.</b> Attorney fees are a judgment against the defendant, determined in accordance with rules adopted by IDS. In probation cases, the judgment for attorney fees is docketed when probation terminates, expires, or is revoked. G.S. 7A-455.</p> <p><b>Appointment fee.</b> The \$75 appointment fee is mandatory and may not be remitted or revoked by the court. G.S. 7A-455.1(b).</p>  |