



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the COURTS*

Legal and Legislative  
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## **MEMORANDUM**

(via E-Mail)

TO: Clerks of Superior Court<sup>1</sup>  
Magistrates  
Superior Court Judges  
District Court Judges  
District Attorneys  
Public Defenders

FROM: Peter E. Powell, Legal Counsel  
Pamela Weaver Best, Deputy Legal Counsel  
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DATE: August 6, 2012

RE: 2012 Legislative Changes for Court Costs and Fees

The General Assembly has ended the 2012 short session, and has enacted minimal legislation affecting court costs. Generally:

- o There are no new costs or fees.
- o There are no changes in the amounts of existing costs and fees.

The only changes to costs and fees enacted in the 2012 short session of the General Assembly concern the collection, waiver, or receipt of existing costs in criminal cases. There are no changes to the costs for civil actions, estates, or special proceedings, or to miscellaneous fees.

Because there are no new or changed court costs, the current cost charts for each case type, last updated effective January 1, 2012, remain in effect. The frequently asked questions (FAQ) and their answers also remain the same. The January 2012 cost charts and the FAQ, along with all previous charts and memos from the 2011 session, can be found in the "Prior Court Costs" page for 2011 on the Administrative Office of the Courts' (NCAOC) court costs page.<sup>2</sup>

The few changes for criminal costs were enacted by the primary budget bill for 2012, S.L. 2012-142 (House Bill 950, Modify 2011 Appropriations Act, referred to herein as "the Act").<sup>3</sup> The effective dates for individual court cost provisions in S.L. 2012-142 and related legislation vary slightly, so effective dates are addressed individually below. A citation of "Act § ##" indicates the relevant section number (##) of the

<sup>1</sup> We ask that clerks provide a copy of this memo to local law enforcement agencies and to personnel in your offices. This memo also will be posted on the NCAOC website at [www.nccourts.org/Courts/Trial/Costs/](http://www.nccourts.org/Courts/Trial/Costs/) and on the NCAOC intranet site for Judicial Branch personnel at <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/costs.jsp>.

<sup>2</sup> <http://www.nccourts.org/Courts/Trial/Costs/>. See the "Prior Court Costs" link at the left side of the page.

<sup>3</sup> Full text of the Act is online at: <http://www.ncleg.net/Sessions/2011/Bills/House/PDF/H950v7.pdf>. S.L. 2012-142 was amended by S.L. 2012-145 (Senate Bill 187, Modifications/2012 Appropriations Act), but there were no court cost provisions in the later act.

Act that affects the cost or fee described. Other legislation affecting court costs is cited in full. The descriptions below describe only cost procedures that are changing; they are not a comprehensive description of the costs that apply to a particular case. For the total costs to be assessed in a particular case, see the relevant cost chart for each case type.

As the result of legislation that became effective as soon as the relevant bills became law, some of the cost changes described below are already in effect.<sup>4</sup> Courts should be applying the following changes already:

- Expanded findings of fact and conclusions of law for waiver of criminal costs, G.S. 7A-304;
- Findings of fact and conclusions of law for waiver of criminal mediation fees, G.S. 7A-38.7; and
- Assessment of community service fees for the community service condition of probation under G.S. 15A-1343(a1)(2).

Because there are no new or changed cost amounts, there will be no updates to the bills of costs. Changes to bookkeeping procedures resulting from a change in payment priority that takes effect in December (see the changes for continuous alcohol monitoring, below) will be addressed in subsequent communications from the NCAOC. Forms affected by cost changes (e.g., the criminal judgment forms) will be updated during the regular form revision cycle this fall. Form updates will be announced by NCAOC's Court Services Division and the relevant teams for automated systems as those form updates take effect.

- **General Costs**

- Phone systems fee/Court Information Technology and Facilities Fund.

The Act amended the cost statutes in Chapter 7A that require assessment of the phone systems fee for each case type and the statutes governing the Court Information Technology Fund (now the Court Information Technology "and Facilities" Fund). However, these changes concern only the expenditure of monies collected and deposited in that Fund.<sup>5</sup> There are no changes to the amounts or collection of the phone fees. Act §16.5.

- **Criminal Costs**

- Waiver of costs upon finding of just cause. G.S. 7A-304(a).

In the budget bill for 2011,<sup>6</sup> the General Assembly enacted a constraint on the waiver of criminal costs under G.S. 7A-304, requiring that when waiving any cost assessed under that section, the trial court must make "a written finding of just cause to grant such a waiver."<sup>7</sup> The 2012 Act expands that provision to require more detailed findings to justify a waiver of costs.

- The amended G.S. 7A-304(a) now provides that, "Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause, the

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<sup>4</sup> The changes already in effect for waivers of costs in criminal and infraction cases were addressed in the preliminary costs e-mail, "court costs 2012 - initial changes," sent to court officials and other interested parties on July 16, 2012. Those changes were effective with the override of the Governor's veto of House Bill 950 on July 2, 2012. An additional change to the assessment of community service fees was covered in the July 18, 2012, memo "Justice Reinvestment Clarifications - S.L. 2012-188," effective July 16, 2012. Along with this memo, a copy of the preliminary costs e-mail is posted on the NCAOC intranet site at <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/costs.jsp>. The memo covering the community service fee is posted with the memos on criminal issues at <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/criminal.jsp>. So that all court cost changes for 2012 will be covered in one place, this memo repeats the content of those prior communications.

<sup>5</sup> For one fiscal year, expiring June 30, 2013, the Act allows monies in the Fund collected from the phone fees to be used for the upgrade, maintenance and operation of State judicial facilities, in addition to the maintenance of telephone systems. After June 30, 2013, all of the amended statutes will revert to their previous versions, and the portion of the technology fund derived from the phone fees again will be designated for phone systems, only.

<sup>6</sup> S.L. 2011-145, § 15.10.(a), available online at: <http://www.ncleg.net/Sessions/2011/Bills/House/PDF/H200v9.pdf>.

<sup>7</sup> For a description of the just cause waiver requirement as enacted originally in 2011, see "Legislative Increases in Court Costs and Fees, July 2011," effective July 1, 2011, on the prior court costs page at: <http://www.nccourts.org/Courts/Trial/Costs/PriorCC/>.

court may (i) waive costs assessed under this section or (ii) waive or reduce costs assessed under subdivisions (7) or (8) of this section.”<sup>8</sup> Act §16.6.(b).

- There were no changes to related statutes that dictate situations in which the court must waive specific fees,<sup>9</sup> or in which waiver is prohibited.<sup>10</sup> Courts should continue to follow those cost provisions when applicable.
- There currently is no designated space on the criminal judgment forms for the additional “findings of fact and conclusions of law.” Currently, the forms provide only for the “just cause” finding enacted in 2011:  The Court finds just cause to waive costs.

That finding will be adjusted in the next revision of the judgment forms to account for the new requirement of “findings of fact and conclusions of law.” Until the forms are revised, any such findings and conclusions can be recorded in other available space on the judgment forms.<sup>11</sup>

- The expanded findings of fact and conclusions of law apply only to costs under G.S. 7A-304. The waiver of costs and fees found in other statutes does not require a finding of justification (though as noted above, some statutes prohibit the waiver of certain costs and fees, altogether). The costs under G.S. 7A-304 for which the findings are required are therefore:

- Service of process fee
- Facilities fee
- Phone systems fee
- Misd. Confinement Fund fee
- LEO retirement/benefit fees
- LEO training/cert. fee
- General Court of Justice fee
- Chapter 20 fee
- Improper Equipment fee
- Pretrial services fee
- FTA fee
- FTC fee
- SBI or local lab test fee
- DNA fee
- Impaired driving fee
- Witness fee
- Jail fee
- Parentage blood test fee
- Installment fee

- There is no change to the uncodified provision in the 2011 budget bill, S.L. 2011-145, §15.10.(b), that the NCAOC “maintain records of all cases in which the judge makes a finding of just cause to grant such a waiver” and report annually to the General Assembly on waivers of costs. Therefore there will be no changes to the “WCC” (Waive Court Cost) field added to the Automated Criminal/Infraction System (ACIS) in 2011, and clerks should continue to use that field to indicate a finding by the court of just cause to waive costs.
- Waiver of criminal mediation fees. G.S. 7A-38.7(a).

Similar to the requirement of written findings of fact and conclusions of law for waiver of costs under G.S. 7A-304, the Act amends G.S. 7A-38.7(a) to provide that the fee for criminal cases resolved through a community mediation center (currently \$60.00) may be waived or reduced “only upon entry of a written order, supported by findings of fact and conclusions of law, determining there is just cause to grant the waiver or reduction.” Act § 16.6.(a).<sup>12</sup>

- The Act did not amend G.S. 7A-38.3D(m), which continues to provide that, “The judge may in the judge’s discretion waive the [criminal mediation] fee for good cause shown.” However,

<sup>8</sup> Subdivisions (7) and (8) concern criminal laboratory fees for the NC Department of Justice and for local laboratories, respectively.

<sup>9</sup> *E.g.*, G.S. 7A-304(a)(6), which requires that the fee for a failure to appear “shall” be waived when the defendant’s failure to appear was the result of an error by a criminal justice official (*i.e.*, when striking the FTA). For the distinction between an FTA fee ‘waived’ when the FTA is stricken versus a true waiver of the fee without striking the underlying FTA, see page 2 of the 2011 court costs FAQ at <http://www.nccourts.org/Courts/Trial/Costs/PriorCC/Default.asp>.

<sup>10</sup> *E.g.*, G.S. 7A-455.1(b), prohibiting remission of the attorney appointment fee for appointed counsel.

<sup>11</sup> Some forms provide additional space in the “Monetary Conditions” section, while others provide space for free text under the heading of “The Court further Orders.” For findings that require more space than is available on the judgment forms, the court may wish to use the AOC-CR-618, Additional Findings, and incorporate it by reference in the court’s judgment.

<sup>12</sup> There is no specific form for disposition by the court of a criminal case resolved through mediation, particularly for counties in which dismissal of the underlying proceeding is entered by the district attorney. For entry of the required findings and conclusions, the court may wish to use the AOC-CR-305 (Judgment/Order Or Other Disposition) or the available space on the AOC-CR-700 (Report of Mediator), when the parties and/or mediator have requested a waiver on that form.

that provision for waiver in the court's discretion will be repealed effective for offenses committed on or after December 1, 2012, by S.L. 2012-194, § 63.3 (Senate Bill 847, GSC Technical Corrections/Other Changes).<sup>13</sup>

- S.L. 2012-194 is the General Statutes Commission's "technical corrections" bill, so although the correction to G.S. 7A-38.3D(m) is effective only for offenses committed on or after December 1, the NCAOC understands it to be merely a conforming change to the Act's amendment of G.S. 7A-38.7(a). As such, it appears that the already-effective G.S. 7A-38.7(a), requiring written findings of fact and conclusions of law, is the controlling provision.
- S.L. 2012-194 also will amend G.S. 7A-38.5 to make mediation of many misdemeanor criminal actions mandatory, effective for offenses committed on or after December 1, 2012, unless the district attorney for the district opts out of such mediation. This change will be addressed in a subsequent memo to trial court officials.
- Community service fees. G.S. 15A-1343(a1)(2).

The Justice Reinvestment Act (JRA) of 2011, S.L. 2011-192, made numerous changes to the statutes governing criminal sentencing, probation, and post-release supervision. Among its changes, the JRA enacted a new provision for community service as a condition of probation, effective for offenses committed on or after December 1, 2011.

As originally enacted, that provision, G.S. 15A-1343(a1)(2), omitted any requirement to assess the community service fee of G.S. 143B-708.<sup>14</sup> As a result, the judgment forms that include the new community service condition<sup>15</sup> contain a note instructing the clerk not to assess the fee for that condition, unless specifically ordered by the Court to assess the fee.

As explained in the July 18, 2012, memo titled, "Justice Reinvestment Clarifications - S.L. 2012-188,"<sup>16</sup> the General Assembly amended G.S. 15A-1343(a1)(2) to require payment of the fee for community service under that subdivision.<sup>17</sup> This change was effective immediately with the Governor's signature on July 16, 2012, so for all orders entered since that date that impose community service under G.S. 15A-1343(a1)(2) (whether in original judgments or orders modifying existing probationary sentences), the clerk should ignore the note that the fee not be assessed. The clerk should assess the fee for community service under this provision, unless the court orders otherwise. The forms in question will be amended this fall to match the amended condition.

- Continuous alcohol monitoring changes. S.L. 2012-146 (House Bill 494, Continuous Alcohol Monitoring Law Changes).<sup>18</sup>

Effective for offenses committed on or after December 1, 2012, S.L. 2012-146 will expand the use of continuous alcohol monitoring (CAM) systems for criminal cases. Among its provisions, S.L. 2012-146 makes two significant changes to the assessment of court costs and fees.<sup>19</sup>

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<sup>13</sup> Full text of the enacted bill is available at <http://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S847v6.pdf>.

<sup>14</sup> Formerly G.S. 143B-262.4, recodified in 2012 by the Revisor of Statutes.

<sup>15</sup> Page Two of both the AOC-CR-603C (Judgment Suspending Sentence - Felony), at <http://www.nccourts.org/Forms/Documents/1291.pdf>, and AOC-CR-609 (Order On Violation Of Probation Or On Motion To Modify) at <http://www.nccourts.org/Forms/Documents/1100.pdf>.

<sup>16</sup> Available at <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/criminal.jsp>.

<sup>17</sup> S.L. 2012-188 made additional changes to the statutes governing sentencing, probation, and post-release supervision, some effective immediately and others effective only for offenses committed on or after December 1, 2012. For a more complete description of the effects of S.L. 2012-188, see the memo linked above.

<sup>18</sup> For a general discussion of the changes to continuous alcohol monitoring in criminal cases, effective for offenses committed on or after December 1, 2012, see "Authorization for Continuous Alcohol Monitoring Expanded by S.L. 2012-146" on the UNC School of Government's Criminal Law Blog, at <http://nccriminallaw.sog.unc.edu/?p=3726>.

<sup>19</sup> This memo addresses only the court cost and fee impact of S.L. 2012-146. The NCAOC will distribute additional guidance on the bill's impact closer to its effective date of December 1, 2012, after the criminal forms subcommittee has had the opportunity to amend the affected forms.

- o Payment priority in criminal cases. G.S. 7A-304(d)(1), G.S. 15A-1343(b).

Effective only for offenses committed on or after December 1, 2012, the priority for disbursement of certain payments made under probationary judgments will change slightly.

Currently, G.S. 15A-1343(b) provides that, “A defendant shall not pay costs associated with a substance abuse monitoring program or any other special condition of probation in lieu of, or prior to, the payments required by this subsection” (emphasis added). “This subsection” means subsection (b), which provides all of regular conditions of probation. As a result, no fee associated with a special condition of probation (e.g., community service fees, electronic house arrest fees, and satellite-based monitoring fees) can be paid prior to a cost or fee associated with a regular condition of probation in subsection (b). This means effectively that the fees for special conditions of probation always are paid last, because all of the monetary obligations listed in the priority of payment under G.S. 7A-304(d)(1) are found among the regular conditions of G.S. 15A-1343(b).<sup>20</sup>

Effective for offenses committed on or after December 1, 2012, S.L. 2012-146, § 4, repeals the sentence quoted above from G.S. 15A-1343(b). As a result, the fees for special conditions of probation will not be forced into the last priority for payment, but instead will be paid in the priority order appropriate to the category in which they belong. Because most of the fees affected by this change are fees due to the State, like community service fees, they will be paid at priority level 6 as “Costs due the State” under G.S. 7A-304(d)(1)f.

For offenses committed prior to December 1, 2012, the affected fees will remain subject to the former G.S. 15A-1343(b), so they will continue to be paid last, regardless of the actual date the judgment is entered. A chart attached as an appendix to this memo illustrates the differences in payment priority between offenses committed before December 1, 2012, and those committed on or after that date.

- o Clerk will no longer receipt CAM fees. G.S. 15A-1343.3(b) and 20-179(h3) (repealed).

Currently, the only statutory authority for the clerk to receipt and disburse fees for CAM is limited to CAM imposed as a condition of probation for an impaired driving offense. G.S. 20-179(h3). Effective for offenses committed on or after December 1, 2012, subsection (h3) is repealed by S.L. 2012-146, § 9. As part of expanding the use of CAM to any probationary sentence, § 7 of the bill instead enacts G.S. 15A-1343.3(b), providing that costs of CAM imposed as a condition of probation must be paid directly (by the defendant) to the CAM provider.

So for impaired driving offenses committed prior to December 1, 2012, for which the court imposes CAM as a condition of probation, the clerk will continue to receipt CAM fees and disburse them to the appropriate vendor. For any offense committed on or after December 1, 2012, impaired driving or otherwise, the clerk will have no authority to receipt CAM fees at all.

This change applies only to CAM fees when imposed as a condition of probation. S.L. 2012-146 also will expand the use of CAM as a condition of pretrial release for offenses committed on or after December 1, 2012. However, the General Assembly enacted no authority to charge the defendant for pretrial CAM, so there will be no fees to receipt in that context.<sup>21</sup>

Court officials with questions about the cost and fee changes described above should contact NCAOC’s Court Services Analyst (CSA) or Financial Management Analyst (FMA) for the county.

<sup>20</sup> Restitution (priorities 1 for victims and 5 for non-victims), all costs (whether due the county, city, or State under priority levels 2, 3 and 6, respectively) and fines (priority 4) are covered by the regular condition of G.S. 15A-1343(b)(9). Attorney fees for appointed counsel, normally paid 7th in the priority order of G.S. 7A-304(d)(1), are regular condition (b)(10).

<sup>21</sup> The NCAOC will distribute additional guidance on the expanded use of pretrial CAM closer to the effective date of December 1, 2012. However, for analysis of the lack of authority to tax the costs of pretrial CAM to a defendant, see the memo “Pretrial Release Legislation - December 2011,” dated Nov. 22, 2011, at <https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/criminal.jsp>. With two exceptions (that pretrial CAM no longer will be limited to certain impaired driving defendants, and that pretrial CAM must use a system approved by the Division of Adult Correction), the prior analysis from that memo will continue to apply to pretrial CAM imposed for offense committed on or after December 1, 2012.

**Appendix**  
**Payment Priority - Offenses Before and After December 1, 2012**  
 G.S. 7A-304(d)(1) - Dec.1 changes in **bold**.

Priority Level	Offenses Committed Before Dec. 1, 2012		Offenses Committed On or After Dec. 1, 2012	
	Category	Examples	Category	Examples
1 (i.e., paid first)	Victim restitution	VRA and non-VRA restitution for actual victims	Victim restitution	VRA and non-VRA restitution for actual victims
2	Costs due the county	Process fee; facilities fee; pretrial release fee; local lab fee; jail fees	Costs due the county	Process fee; facilities fee; pretrial release fee; local lab fee; jail fees
3	Costs due the city	Process fee; facilities fee; local lab fee; jail fees	Costs due the city	Process fee; facilities fee; local lab fee; jail fees
4	Fines to the county schools	Fines	Fines to the county schools	Fines
5	Non-victim restitution	Restitution to entities other than a victim	Non-victim restitution	Restitution to entities other than a victim
6	Costs due the State	Telephone fee; Misdemeanor Confinement Fund fee; law enforcement retirement fees; law enforcement training fee; GCOJ fee; Chapter 20 fee; improper equipment fee; FTA fee; FTC fee; SBI lab fee; DNA fee; DWI fee; witness fees; installment fee; probation supervision fee	Costs due the State	Telephone fee; Misdemeanor Confinement Fund fee; law enforcement retirement fees; law enforcement training fee; GCOJ fee; Chapter 20 fee; improper equipment fee; FTA fee; FTC fee; SBI lab fee; DNA fee; DWI fee; witness fees; installment fee; probation supervision fee; <b>EHA fee; community service fee; SBM fee</b>
7	Attorney fees and appointment fee	Attorney fees (and other expenses of indigent representation) and the attorney appointment fee	Attorney fees and appointment fee	Attorney fees (and other expenses of indigent representation) and the attorney appointment fee
8 (i.e., paid last)	Costs associated with a substance abuse monitoring program or any other special condition of probation, G.S. 15A-1343(b)	<b>EHA fee; community service fee; SBM fee; CAM fees</b>	-	-

**CAM fees** paid directly to vendor, outside of the courts' the priority order.