

2010 COSTS AND FEES CHANGES - FREQUENTLY ASKED QUESTIONS
 PURSUANT TO S.L. 2010-31, AS AMENDED BY S.L. 2010-123
 COSTS EFFECTIVE OCTOBER 1, 2010
 Prepared October 15, 2010

Note: All of the answers to the following frequently asked questions (FAQ) reflect the interpretation of the relevant fee provisions by the Administrative Office of the Courts (NCAOC). Individual judgments of the court may hold otherwise, and should be adhered to notwithstanding any advice below. Any party's dispute concerning the validity of a court's judgment must be addressed to the court, not to the clerk.

I. CRIMINAL COSTS – G.S. 7A-304 AND RELATED STATUTES

QUESTION	ANSWER
A. General Criminal Cost Questions	
Q: What are the basic court costs when assessed on or after October 1, 2010?	A: Basic court costs for each type of conviction are provided in the "Criminal Court Cost Totals – October 1, 2010," appended to the end of this FAQ.
Q: If the defendant was convicted in court and the court assessed costs prior to October 1, 2010, but the court gave the defendant until after October 1 to pay, should we charge the new costs?	A: No. The defendant's obligations were fixed in the court's judgment, so he pays the costs specified in the judgment.
B. The "Waiver Exception," S.L. 2010-123, § 6.1.	
Q: Does the waiver exception apply to older cases in which the defendant failed to appear but is allowed to plead guilty as if it were a waiver on or after October 1, 2010?	<p>A: No. If the person failed to appear and twenty days have passed since the court date on which he failed to appear, he must pay the new costs amounts. However, he pays the fine that was in effect at the time of the offense.</p> <p>The new costs are due because, if a person has failed to appear (FTA) and twenty days have passed without any corrective action, he technically may no longer waive the offense. Although we allow FTA defendants to pay off waivable offenses without going to court as a matter of efficiency, it is not technically a waiver, so the waiver exception does not apply.</p> <p>However, because the State and federal constitutions prohibit increasing a person's punishment retroactively, the courts must assess the fine for the offense in effect at the time of the offense.</p> <p>Therefore the rule for any person in FTA status who is allowed to pay off an old charge as if it were a waiver is "old fine, new costs."</p>

QUESTION	ANSWER
Q: Does the waiver exception apply to a defendant who is waiving a worthless check offense on a process issued prior to October 1, 2010?	A: No. The waiver exception applies only to timely waivers of “waiver list offenses” under G.S. 7A-180(4) and G.S. 7A-273(2). Worthless check offenses are waived under other subsections of those statutes that are not covered by the waiver exception, so worthless check defendants must pay the new costs even when waiving.
Q: What if the charging officer wrote an incorrect costs amount on the citation? Must we charge the amount written by the officer?	A: No. Although the text of the waiver exception provides that the defendant may pay the lesser of the costs in G.S. 7A-304(a) or those “specified in the notice portion of the ... citation or other criminal process,” a law enforcement officer has no authority to alter the costs amounts set by the General Assembly, so an inadvertent entry of incorrect costs does not change what the defendant owes. If the officer lists an amount that is too high, the clerk will need to refund any overpayment by the defendant. If the officer lists an amount that is too low, the clerk will need to obtain the difference from the defendant.
Q: Does the waiver exception apply if the defendant waives after the district attorney has entered a misdemeanor statement of charges (including a reduction noted on the original citation or other process) to replace the original charge?	A: The law is not clear, but the NCAOC takes the position that the waiver exception applies in this situation. The waiver exception applies when: 1. The offense is a misdemeanor or infraction; 2. The defendant pleads guilty by waiver; and 3. The “citation or other criminal process” was issued before October 1, 2010. Although a misdemeanor statement of charges supersedes a previous criminal pleading, G.S. 15A-922(a), a statement of charges is not a “criminal process” as defined in G.S. 15A-301. So if the original process was issued prior to October 1, 2010, the waiver exception would appear to apply. Note that the clerk should assess the fine and costs applicable to the amended charge(s) on the misdemeanor statement (or amended citation), not the original charge(s) on the original process.
Q: Does it matter if the misdemeanor statement was filed on or after October 1, 2010?	A: No. If the original process was issued prior to October 1, 2010, the waiver exception applies, even if the modification of the charge occurs after that date.



QUESTION	ANSWER
C. Failure to Comply (FTC) Fee – G.S. 7A-304(a)(6).	
Q: When does the fee apply?	<p>A: The fee is assessed when the defendant fails to pay the monetary obligations of a judgment within 20 days of the date specified in the court’s judgment, and the 20th day falls on or after September 1, 2009.</p> <p>The fee applies to all judgments, not just those reported to DMV for a Chapter 20 offense. For Chapter 20 offenses, the fee must be assessed regardless of whether or not the clerk has reported the case to DMV.</p>
Q: Does the FTC fee apply if the defendant’s 20-day FTC occurred prior to September 1, 2009?	A: No. When the General Assembly repealed the FTC fee in 2007, they repealed it for all cases until its reinstatement in 2009. The FTC fee applies only when the 20 th day falls on or after September 1, 2009.
Q: If the 20-day FTC occurred on or after September 1, 2009, but before October 1, 2010, and the defendant pays on or after October 1, does he pay the \$25.00 FTC fee in effect when he failed to comply, or the increased \$50.00 FTC fee?	<p>A: The defendant must pay the \$50.00 fee.</p> <p>Any pending FTC fee that accrued prior to October 1, 2010, but was not collected by October 1st increased to the new amount on that date.</p>
D. DNA Fee – G.S. 7A-304(a)(9)	
Q: When does the fee apply?	A: The fee is assessed for conviction of any criminal offense, which means all misdemeanors and felonies.
Q: Does it apply to misdemeanors under Chapter 20 (i.e., “T” offenses)?	A: Yes, it applies to all misdemeanors, including those under Chapter 20.
Q: Should the DNA fee be assessed if the defendant is charged with a misdemeanor, but the charge is reduced to an infraction?	A: No. Court costs are assessed based on the offense of conviction. If the defendant is not convicted of a criminal offense, the DNA fee does not apply.



QUESTION	ANSWER
<p>Q: What if the defendant is charged with both a misdemeanor and an infraction on the same citation and disposes of both offenses by waiver? Does the clerk assess the DNA fee for the misdemeanor?</p>	<p>A: It depends.</p> <p>When the defendant waives two offenses on the same citation, the longstanding approach has been for the clerk to assess the higher of the two fines and the higher of the two costs amounts.</p> <p>Because the DNA fee might not result in the higher total, the clerk should determine the cost totals for both offenses and assess the higher of the two.</p> <p>For example, a defendant is charged on the same citation with infraction-level speeding at 7 MPH over the limit and with intentional or reckless littering under G.S. 14-399(c). The defendant waives on both charges. The clerk should assess the costs for the traffic infraction (\$141.00), because they are higher than the costs for the non-traffic misdemeanor (\$133.00), but should assess the fine for the littering (\$250.00), because it is higher than the waiver fine for speeding 6-10 MPH over the limit (\$15.00).</p>
<p>Q: Because of the DNA fee, infractions costs are now different from misdemeanor costs. How will the cashier know if the offense is a misdemeanor or an infraction when the defendant appears before the clerk to waive?</p>	<p>A: If the defendant is waiving to the exact offense charged, the file designation (CR or IF) will indicate whether the offense is a misdemeanor or an infraction.</p> <p>If the defendant is waiving to a reduced or amended offense, the clerk may rely on (i) a notation made by the assistant district attorney that the amended offense is a misdemeanor or an infraction or (ii) a list of offenses commonly used by the district attorney's office when reducing offenses. So, if the common substitute offenses in the county are infraction-level offenses like speeding and improper equipment-speedometer, the clerk could keep a "cheat sheet" near the cashier's window that identifies these offenses as infractions.</p>

QUESTION	ANSWER
<p>Q: OK, so what are the most common infractions to which district attorneys reduce misdemeanors?</p>	<p>A: The following offenses are all infractions, and they accounted for about 97.5% of the reductions in cases originally charged as misdemeanors in 2009:</p> <ul style="list-style-type: none"> • SPEEDING [Not >15 MPH over limit, and not >80 MPH] G.S. 20-141(b), offense code 4450. • IMPROPER EQUIP – SPEEDOMETER G.S. 20-123.2, offense code 4418. • FAIL TO WEAR SEAT BELT-DRIVER G.S. 20-135.2A, offense code 4470. (Note that a driver’s seat belt violation must be assessed the specific costs under G.S. 20-135.2A, not the regular infraction costs.) • IMPROPER MUFFLER G.S. 20-128, offense code 4486. • IMPROPER STEERING MECHANISM G.S. 20-123.1, offense code 4423. • EXCEEDING SAFE SPEED G.S. 20-141(a), offense code 4467. • UNSAFE MOVEMENT G.S. 20-154, offense code 4458. • TRAFFIC INFRACTION - FREE TEXT Ch. 20, offense code 4499. • EXPIRED/NO INSPECTION G.S. 20-183.8(a)(1), offense code 4440. • FAIL STOP STOPSIGN/FLSH RED LT G.S. 20-158(b)(1)(3), offense code 4454.
<p>E. Probation Supervision Fees – G.S. 15A-1343(c1)</p>	
<p>Q: If a defendant was placed on supervised probation prior to October 1, 2010, will he or she be “grandfathered in” and not have to pay the new supervision fee amount?</p>	<p>A: No. Even for defendants already on supervised probation, the probation supervision fee will increase for supervision fees accruing on or after October 1, 2010. See S.L. 2010-31, § 19.3(d).</p>
<p>Q: Do supervision fees that accrued prior to October 1, 2010, increase by \$10.00 retroactively? What if they’re in arrears and haven’t been paid yet?</p>	<p>A: No. The \$40.00 supervision fee applies only when it accrues from October 2010, forward. Fees that accrued through September 2010 remain at \$30.00 per month. This answer does not change for arrearages; fees accrued through September 2010 remain at \$30.00 per month.</p>

QUESTION	ANSWER
<p>Q: What if a defendant who is still on supervised probation paid all of his or her supervision fee amounts in advance prior to October 1?</p>	<p>A: The defendant will owe the difference between the old supervision fee amount and the new supervision fee amount (a difference of \$10.00) for each month of the defendant's probation from October forward. Even though a probationer might pay the supervision fee for a particular month in advance, the fee does not actually accrue until that month arrives, and fees that accrue from October 2010 forward will accrue at the new rate of \$40.00 per month.</p> <p>For example, if the defendant prepaid all supervision fees and is scheduled to remain on probation through December 2010, he will owe an additional \$10.00 each month for October, November, and December. See S.L. 2010-31, § 19.3(d).</p>
<p>F. AOC-CR-381 – Criminal Bill of Costs</p>	
<p>Q: Why does the revised bill of costs form contain the new base costs amount for misdemeanors (\$133.00), but not the new base costs amount for infractions (\$131.00)?</p>	<p>A: The NCAOC has updated the bill of costs form so that it now contains the base costs amounts for both criminal offenses and infractions.</p> <p>The updated form has a revision date of "10/5/10" in the bottom left corner, and is available online at: http://www.nccourts.org/Forms/Documents/1211.pdf.</p>
<p>Q: Why does the bill of costs list the General Court of Justice fee (GCJF) as \$3.00 less than the amount in the costs chart?</p>	<p>A: The GCJF includes \$3.00 allocated to the State Bar for provision of civil legal services to indigents. Because that portion of the GCJF is allocated to a specific agency rather than the General Fund, it is listed on the criminal bill of costs with the appropriate account numbers for proper distribution in each of the three GCJF line items (magistrate, district, and superior).</p>
<p>Q: Why is \$3.00 of the GCJF labeled "LAA?" What happened to the "IDA" fee?</p>	<p>A: This is the same fee described in the previous question. The State Bar is now using the term "Legal Aid Account (LAA)" rather than "Indigent Defense Account (IDA)" for the account that holds these funds, so the NCAOC updated the bill of costs accordingly.</p>

II. CIVIL COSTS – G.S. 7A-305

QUESTION	ANSWER
<p>Q: What is the basic filing fee for divorce?</p>	<p>A: \$175.00.</p> <p>G.S. 7A-305(a2) provides that the divorce fee "shall be in addition to any other costs assessed under this section." Therefore the base filing fee is the sum of the divorce fee of subsection (a2) (\$75.00) and the regular District Court filing fees (now \$100.00): \$175.00.</p>

Criminal Court Cost Totals – October 1, 2010

Category¹	Total Amount	Amounts	Amount Descriptions
District Court Infraction (IFC/IF_)	\$131.00	100.50 12.00 4.00 7.50 2.00 5.00	General Court of Justice Facilities Telephone LEO Retirement LEO Training Service
District Court Infraction Chapter 20 Offense (IFTC/IFT_)	\$141.00	100.50 12.00 4.00 7.50 2.00 5.00 10.00	General Court of Justice Facilities Telephone LEO Retirement LEO Training Service Chapter 20
District Court Misdemeanor (CRDC/CRD_)	\$133.00	100.50 12.00 4.00 7.50 2.00 5.00 2.00	General Court of Justice Facilities Telephone LEO Retirement LEO Training Service DNA
District Court Misdemeanor Chapter 20 Offense (CRTC/CRT_)	\$143.00	100.50 12.00 4.00 7.50 2.00 5.00 2.00 10.00	General Court of Justice Facilities Telephone LEO Retirement LEO Training Service DNA Chapter 20
<u>without</u> Superior Court First Appearance in District Court (CRSC/CRS_)	\$153.00	102.50 30.00 4.00 7.50 2.00 5.00 2.00	General Court of Justice Facilities Telephone LEO Retirement LEO Training Service DNA
<u>without</u> Superior Court First Appearance in District Court Chapter 20 Offense	\$163.00	102.50 30.00 4.00 7.50 2.00 5.00 2.00 10.00	General Court of Justice Facilities Telephone LEO Retirement LEO Training Service DNA Chapter 20
<u>with</u> Superior Court First Appearance in District Court (CRDS)	\$253.50	102.50 100.50 30.00 4.00 7.50 2.00 5.00 2.00	General Court of Justice (Sup) General Court of Justice (Dist) Facilities Telephone LEO Retirement LEO Training Service DNA
<u>with</u> Superior Court First Appearance in District Court Chapter 20 Offense	\$263.50	102.50 100.50 30.00 4.00 7.50 2.00 5.00 2.00 10.00	General Court of Justice (Sup) General Court of Justice (Dist) Facilities Telephone LEO Retirement LEO Training Service DNA Chapter 20

¹ Note that these totals do not apply to offenses for which specific court costs are assessed, such as adult front seat belt offenses, G.S. 20-135.2A, or offenses that do not bear court costs, such as failure to burn headlights with wipers on, G.S. 20-129(a)(4).

Category	Total Amount	Amounts	Amount Descriptions
Superior Court Infraction Appealed from District Court for Trial De Novo (IFDA)	\$269.50	100.50 12.00 4.00 7.50 2.00 5.00 102.50 30.00 4.00 2.00	General Court of Justice (Dist) Facilities (Dist) Telephone (Dist) LEO Retirement LEO Training (Dist) Service General Court of Justice (Sup) Facilities (Sup) Telephone (Sup) LEO Training (Sup)
Superior Court Infraction Appealed from District Court for Trial De Novo Chapter 20 Offense	\$289.50	100.50 12.00 4.00 7.50 2.00 5.00 10.00 102.50 30.00 4.00 2.00 10.00	General Court of Justice (Dist) Facilities (Dist) Telephone (Dist) LEO Retirement LEO Training (Dist) Service Chapter 20 (Dist) General Court of Justice (Sup) Facilities (Sup) Telephone (Sup) LEO Training (Sup) Chapter 20 (Sup)
Superior Court Misdemeanor Appealed from District Court for Trial De Novo (CRDA)	\$273.50	100.50 12.00 4.00 7.50 2.00 5.00 2.00 102.50 30.00 4.00 2.00 2.00	General Court of Justice (Dist) Facilities (Dist) Telephone (Dist) LEO Retirement LEO Training (Dist) Service DNA (Dist) General Court of Justice (Sup) Facilities (Sup) Telephone (Sup) LEO Training (Sup) DNA (Sup)
Superior Court Misdemeanor Appealed from District Court for Trial De Novo Chapter 20 Offense	\$293.50	100.50 12.00 4.00 7.50 2.00 5.00 2.00 10.00 102.50 30.00 4.00 2.00 2.00 10.00	General Court of Justice (Dist) Facilities (Dist) Telephone (Dist) LEO Retirement LEO Training (Dist) Service DNA (Dist) Chapter 20 (Dist) General Court of Justice (Sup) Facilities (Sup) Telephone (Sup) LEO Training (Sup) DNA (Sup) Chapter 20 (Sup)

