

**2009 COSTS AND FEES CHANGES-FREQUENTLY ASKED QUESTIONS**  
**PURSUANT TO S.L. 2009-451, AS AMENDED BY HB 836<sup>1</sup>**  
**COSTS EFFECTIVE SEPTEMBER 1, 2009**

Prepared September 8, 2009

**Note:** All of the questions and answers below are based upon the NCAOC’s interpretation of the relevant fee provisions. Individual judgments of the court may determine otherwise, and should be adhered to notwithstanding any advice below to the contrary. Any party’s dispute concerning the validity of a court’s judgment must be addressed through the appropriate appeal process.

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

QUESTION	ANSWER
<b>A. General Criminal Cost Questions</b>	
Q: What are the basic court costs for waivable offenses committed on or after September 1, 2009?	A: For processes charging no Chapter 20 offense: \$125.00.  For processes charging any Chapter 20 offense: \$130.00, unless the offense has its own special costs amount or is not assessed costs at all. Also see section C. on page 4.  Note that the issuing officer should assess the Chapter 20 fee on the citation when it applies.
Q: If the defendant was convicted in court and the court assessed costs prior to September 1, 2009, but the court gave the defendant until after September 1 to pay, should we charge the new costs?	A: No. The defendant’s obligations were fixed in the court’s judgment.  Concerning the installment fee in this scenario, see section F. on page 6.
Q: Why does the criminal bill of costs, form AOC-CR-381, list the General Court of Justice fee (GCJF) as \$3.00 less than the amount in the costs chart?	A: The General Court of Justice fee includes \$3.00 allocated to the State Bar for provision of 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 as a separate line item corresponding to each of the three GCJF line items (magistrate, district, and superior).

<sup>1</sup> As of the date of publication of this Frequently Asked Questions (FAQ) sheet, House Bill 836 (Modify Appropriations Act) has not been signed by the Governor. However, absent a veto of the bill, it will take effect by operation of law on Thursday, September 10, 2009. At this time, a veto is not anticipated.

QUESTION	ANSWER
<b>B. The “Waiver Exception,” S.L. 2009-451, §15.20.(n).</b>	
<p>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 and pay the fines and costs on or after September 1, 2009?</p>	<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.</p> <p>If a person has failed to appear and twenty days have passed without any corrective action by the person (<i>i.e.</i>, once the person is in an FTA situation), 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. The new costs are due.</p> <p>However, because the State and federal constitutions prohibit increasing a person’s punishment retroactively, the courts must assess the fine in effect for the offense when the person was charged.</p> <p>Therefore the rule for any person in FTA status who is allowed to pay off an old charge as if it is a waiver is “old fine, new costs.”</p>

QUESTION	ANSWER
<p>Q: Does the waiver exception apply if the defendant waives after the district attorney has entered a misdemeanor statement of charges to replace the original charge on the citation?</p>	<p>A: The law is not clear, but the NCAOC takes the position that the waiver exception applies.</p> <p>The waiver exception applies when:</p> <ol style="list-style-type: none"> <li>1. The offense is a misdemeanor or infraction;</li> <li>2. The defendant pleads guilty by waiver; and</li> <li>3. The “citation or other criminal process” was issued before September 1, 2009.</li> </ol> <p>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.” If the defendant’s actual process was issued prior to September 1, 2009, the waiver exception would appear to apply.</p> <p>Because the DA’s change to the offense may change the fine and costs that apply, the clerk should assess the fine and costs for the new offense(s) as if the original process had charged that offense(s). <i>For Example:</i> If a citation issued prior to September 1, 2009, charged failure to use a child restraint system (\$25 fine and full court costs), but the statement of charges amends it to a front seat belt violation (\$25 fine and \$75 costs, before September 1), the clerk should assess the fine and costs for the front seat belt offense if the defendant waives.</p>
<p>Q: Does it matter whether the misdemeanor statement was entered as a new document, as opposed to a modification written on the original citation?</p>	<p>A: No. The waiver exception applies.</p>
<p>Q: Does it matter if the misdemeanor statement was issued after September 1, 2009?</p>	<p>A: No. If the original process was issued prior to September 1, 2009, the waiver exception apparently applies, even if the modification of the charge occurs after that date.</p>

QUESTION	ANSWER
<b>C. Chapter 20 Fee – G.S. 7A-304(a)(4a).</b>	
Q: Does the fee apply to all Chapter 20 offenses?	A: No. It applies only to Chapter 20 offenses for which regular court costs are assessed. If the offense has specific costs (e.g., adult front seat belt offenses under G.S. 20-135.2A(e)) or is not subject to court costs (e.g., windshield wiper/headlight offenses under G.S. 20-129(a)(4)), then the \$5.00 Chapter 20 fee does not apply.
Q: If the defendant was charged with a Chapter 20 offense prior to September 1, 2009, but failed to appear, and disposes of the case as if it were a waiver after that date, does the Chapter 20 fee apply?	A: Yes. See the first answer in section B. on page 2.
Q: Does the Chapter 20 fee apply when the defendant pleads guilty by waiver for a process issued on or after September 1, 2009?	A: Yes. For all Chapter 20 offenses (except for those with specific costs or no costs) charged on or after September 1, 2009, the fee must be assessed at conviction.  There is no waiver exception for costs when the process was issued for an offense committed on or after September 1, 2009.
Q: But the “Court Costs Error” e-mail of August 31 <sup>st</sup> ended with: “Therefore Chapter 20 offenses for which conviction is entered by a method other than a waiver on or after September 1 must be assessed the new \$5.00 fee.”  Doesn’t this mean that Chapter 20 offenses charged on or after September 1 and disposed of by waiver don’t have to pay the fee?	A: No. That statement was made in the context of the effective date of the fee <i>as it applied to the waiver exception</i> – which is limited to defendants whose processes were issued <i>prior</i> to September 1.  All Chapter 20 offenses (except for those with specific costs or no costs) charged on or after September 1, 2009, require assessment of the new fee upon conviction, whether disposed by waiver or by judgment of the court.
Q: If the defendant is charged with an offense under Chapter 20 (e.g., speeding) and an offense under a different chapter (e.g., littering under Chapter 14), and the defendant is acquitted of the Chapter 20 offense or it is dismissed, does the \$5.00 fee apply to a conviction for the non-Chapter 20 offense?	A: No. Court costs are assessed based upon conviction. If the defendant was not convicted of a Chapter 20 offense, the \$5.00 should not be assessed.

QUESTION	ANSWER
Q: If the defendant is convicted of a Chapter 20 offense, but that offense is consolidated for judgment in a more serious offense from another chapter, does the \$5.00 fee apply?	A: Yes. Because the defendant was convicted of the Chapter 20 offense, the fee applies.
Q: Does the Chapter 20 fee apply to PJCs?	A: Yes, if the court conditions the PJC upon payment of costs. The Chapter 20 fee is a cost under G.S. 7A-304.
<b>D. Failure to Appear (FTA) Fee – G.S. 7A-304(a)(6).</b>	
Q: If the defendant failed to appear prior to September 1, 2009, but the FTA fee was assessed (in a court's judgment or at waiver) after that date, does he owe \$100 as the fee in effect when he failed to appear or the new \$200 fee in effect when assessed?	A: \$200.  The new and increased court costs are effective when "assessed or collected" on or after September 1, 2009.
Q: Does the FTA fee apply to seat belt offenses?	A: Front seat belt – Yes. Rear seat belt – No.  The FTA fee is a court cost under G.S. 7A-304. The position of the AOC and the School of Government is that the FTA fee may be assessed only when the underlying offense can be assessed court costs.  So the FTA fee applies to an adult, <i>front-seat</i> seat belt offense under G.S. 20-135.2A(e), because that offense is subject to court costs (even though they are non-standard costs). The adult, <i>rear-seat</i> seat belt offense, on the other hand, is not subject to the FTA fee, because that offense is subject to "no court costs." G.S. 20-135.2A(e).
<b>E. Failure to Comply (FTC) Fee – G.S. 7A-304(a)(6).</b>	
Q: When does the fee apply?	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 20 <sup>th</sup> day falls on or after September 1, 2009.  The fee applies to <i>all</i> 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.

QUESTION	ANSWER
Q: Does the fee apply if the defendant's 20-day failure occurred prior to September 1, 2009, but he's pleading guilty by waiver on or after that date?	A: No. When the General Assembly repealed the FTC fee in 2007, they repealed it for all cases, new and old. The FTC fee now applies <i>only</i> when the 20 <sup>th</sup> day falls on or after September 1, 2009.
Q: How will the clerk know when to assess the fee for non-Chapter 20 cases?	A: The ACIS team is developing a report for 20-day FTCs on non-Chapter 20 convictions, similar to the current report for Chapter 20 cases. The new report should be operational on or around September 21 <sup>st</sup> , when the first failures to comply under the amended G.S. 7A-304(a)(6) would occur.
Q: Does the FTC fee apply to seat belt offenses?	A: Front seat belt – Yes. Rear seat belt – No.  See this question in section D., on page 5, for the reasons why.
<b>F. Installment Fee – G.S. 7A-304(f).</b>	
Q: When does the installment fee apply?	A: The fee applies whenever the defendant does not make “payment in full when costs are assessed.”  If the defendant makes any payment on a date after the day on which costs are assessed, the fee applies.
Q: Does the installment fee apply if the defendant is given time to pay, such as “by the end of next week?”	A: Yes.  The installment fee applies whenever the defendant does not make “payment in full when costs are assessed.” Because the defendant has not made payment in full on that date, the fee applies.
Q: Does the installment fee apply if the defendant is to pay on the date of judgment but does not do so?	However, see questions on page 8 about situations in which payment on the date of assessment is not logistically possible.
Q: If the defendant was convicted in court and the court assessed costs prior to September 1, 2009, but the court gave the defendant until after September 1 to pay, should we charge the installment fee?	A: No. The defendant's obligations were fixed in the court's judgment before the effective date of the installment fee's creation. The clerk should collect only the monetary obligations specified in the judgment entered.

QUESTION	ANSWER
<p>Q: Does the installment fee apply to supervised probation cases if the defendant pays all but the upcoming supervision fees on the date costs are assessed?</p>	<p>A: Yes. If all monetary obligations of the judgment are not paid in full when costs are assessed, the fee applies.</p> <p>However, in the rare cases when a defendant pays all supervision fees (both current and future) in advance on the date of assessment in addition to any other monetary obligations, the fee would not apply.</p>
<p>Q: Doesn't the defendant have 20 days to pay fines and costs? Shouldn't the installment fee apply only if he waits more than 20 days?</p>	<p>A: No. The installment fee has no relationship to the failure-to-comply fee under G.S. 7A-304(a)(6).</p> <p>A defendant does not have "20 days to pay" the monetary obligations in the court's judgment, though common practice is to delay payment due to the lack of consequences for 20 days.</p> <p>Payment is due on the date specified in the judgment. If there is no date specified, all monetary obligations therein are an immediate obligation of the defendant, just like the other incidents of the judgment (e.g., compliance with conditions of probation).</p> <p>The failure-to-comply fee (and, for Chapter 20 offenses, reporting to the Division of Motor Vehicles) is merely an additional consequence of delaying payment if such payment is delayed by 20 days. With the installment fee, the General Assembly has enacted a consequence of non-payment that apparently takes effect the day after the assessment of costs.</p>
<p>Q: Does the installment fee apply to deferred prosecution cases or defendant's complying with conditions of probation as part of a conditional discharge (e.g., G.S. 90-96)?</p>	<p>A: Yes, if the conditions of probation in the order placing the defendant on deferred prosecution or in conditional discharge status include the payment of costs.</p>
<p>Q: Does the installment fee apply when the defendant pleads guilty by waiver and pays the fine and costs?</p>	<p>A: Not if the defendant pays all monetary obligations at the time of the waiver.</p> <p>If, on the other hand, the defendant waives but does not pay all monetary obligations due at the time the waiver is tendered, then the installment fee should be assessed.</p>

QUESTION	ANSWER
<p>Q: Does the installment fee apply in “admin court?”</p>	<p>A: It depends.</p> <p>If a county’s “admin court” is an actual session of court with a presiding judicial official (judge or magistrate) who enters judgment during the session, the installment fee applies to any judgment for which the defendant does not make payment in full on that date.</p> <p>If, on the other hand, “admin court” is actually a setting for defendants (and counsel) to negotiate charges with the district attorney’s office, but any amended charges are disposed by waiver before the clerk, see the previous answer about waiver cases.</p>
<p>Q: If the defendant’s case is disposed at the end of the day when the cashier’s window is closed (or about to close), does the fee apply?</p>	<p>A: According to G.S. 7A-304(f), yes, but the court may wish to account for this in its judgment.</p> <p>Because the inability to make payment in full on the date of disposition is the result of the court’s schedule and not the defendant’s delay, it would appear that the court should provide for such cases in its judgments or in the court’s administrative authority. See the last question of section F on the next page for more detail.</p>
<p>Q: If a local attorney disposes of numerous cases near the end of the day and the cashier can not process all of the payments before the end of day, does the fee apply to all of the cases for which payment can not be receipted that day?</p>	<p>A: This is a variation of the preceding question. Because the court’s own schedule has made compliance with the statute impossible, the court may wish to make some accommodation for this practice in its judgments.</p>



QUESTION	ANSWER
<p>Q: If the defendant fails to make payment in full when costs are assessed (e.g., on the date of judgment), should the clerk assess the installment fee if the court did not address the fee when entering judgment?</p>	<p>A: The actual mechanics of assessing court costs are largely a matter of local practice, so the local officials involved – clerk of superior court, senior resident superior court judge, and chief district court judge – should confer on the best approach to take locally.</p> <p>In some districts, common practice is for the courtroom clerk to assess all costs that might apply to the defendant’s case without any direction from the court or reference by the court to court costs. Other judges, when entering judgment, will specify that the defendant is to pay “costs” without addressing specific cost items, in which the case the class of costs incorporated in that instruction is left to historical practice and the common understanding of the officials involved.</p> <p>Because the installment fee is both new and enacted in a separate subsection of G.S. 7A-304 from most criminal costs, the court should provide the clerk’s office with some direction about the procedures for assessing this fee. Some judges may elect to provide for the fee in individual judgments, while others may see fit to establish a standard practice for the district by administrative order.</p> <p>For courts that elect to provide for the installment fee in individual judgments, template language is suggested below for inclusion in the monetary obligations sections of the court’s judgments. This language reflects the NCAOC’s interpretation of G.S. 7A-304(f) and should avoid any need to pre-determine the defendant’s ability to pay on the date of judgment (and possibly revisit the judgment for modification if circumstances change) or any challenge concerning the clerk’s authority to assess the fee independent of the court’s entry of judgment:</p> <p><i>Suggested Judgment Instruction:</i>  The clerk is to assess the installment fee under G.S. 7A-304(f), if all other monies are not paid in full by end of business today.</p> <p>Courts that elect to provide for the fee in individual judgments but also wish to allow for scheduling variations addressed in earlier answers (e.g., cases disposed near the end of business) may wish to change “today” in the above text to “on the next business day.”</p> <p>Because some courts may prefer to set a standard practice for the installment fee by administrative order, rather than in each individual judgment, and because some officials have requested a template order that accounts for the variations in how the fee may be assessed, a draft order reflecting the NCAOC’s interpretation of G.S. 7A-304(f) and accounting for the scenarios described in the preceding questions has been provided to the administrative judges for each district and the clerks of superior court. The NCAOC has no formal position on the entry of such an order, but has provided the draft for consideration if local officials deem such an order appropriate.</p>

QUESTION	ANSWER
<b>G. Jail Fees – G.S. 7A-313; S.L. 2009-451, §19.3.</b>	
Q: If a defendant began a split sentence before September 1, 2009, but the split extends beyond that date, should the jail fees be \$18.00 per day up to September 1 and \$40.00 per day thereafter?	A: No. The judgment imposing the split and the fees associated with the split was entered before the change in fees was effective. Therefore the \$18.00 per day will be applicable for the entire duration of the split.

**II. CIVIL COSTS – G.S. 7A-305**

QUESTION	ANSWER
Q: What is the filing fee for divorce?	A: \$167.00.  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 \$92.00): \$167.00.

**III. SPECIAL PROCEEDINGS COSTS – G.S. 7A-306 AND G.S. 7A-308**

There have been no recurring questions concerning special proceedings costs.

**IV. ESTATES COSTS – G.S. 7A-307**

There have been no recurring questions concerning estates costs.

**V. MISCELLANEOUS COSTS – G.S. 7A-308**

There have been no recurring questions concerning miscellaneous fees and commissions.