



## CRIMINAL MONIES OWED UPDATE

May 31, 2020

NCAOC's Office of General Counsel (OGC) provides legal advice and guidance to court officials around the State. OGC guidance to court officials concerning the court system's response to the COVID-19 pandemic is posted below for informational purposes only. It is not intended and should not be interpreted as legal advice or guidance to parties to individual proceedings before the courts. **OGC cannot give legal advice or guidance to attorneys or members of the public and cannot respond to inquiries about this guidance from anyone who is not a court official.** Parties with questions about how their individual rights or obligations may be affected by the current changes to court operations pursuant to the emergency orders of the Chief Justice and any guidance posted here should consult an attorney for assistance.

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**From:** Osborne, Matt E.

**Sent:** Sunday, May 31, 2020 11:03 PM

**To:** Judicial.NC Judicial Branch

**Cc:** Denning, Shea R.; Markham, James M; Brooks, Chris; Dalton, Neil; Marsh, William A; Hathcock, Kathryn

**Subject:** criminal monies owed update / May 30 order

[**Note:** This message involves the payment of monies in criminal and infraction cases. The NCAOC Office of General Counsel is sending it to all Judicial Branch officials and employees to avoid inadvertently omitting someone. If your work does not involve criminal and infraction matters, please feel free to disregard this message.]

Dear Court Officials:

On Saturday, 30 May 2020, Chief Justice Beasley entered an order that, among other actions, modified Emergency Directive 7 regarding the payment of monies owed in criminal and infraction cases. The full order is available here:

[https://www.nccourts.gov/assets/news-uploads/30%20May%202020%20-%207A-39%28b%29%282%29%20Extension%20Order.pdf?JrCQ.9a8WOPuh82NQFvq\\_Pp7ZNBlnQKF](https://www.nccourts.gov/assets/news-uploads/30%20May%202020%20-%207A-39%28b%29%282%29%20Extension%20Order.pdf?JrCQ.9a8WOPuh82NQFvq_Pp7ZNBlnQKF)

The modification of Emergency Directive 7 requires the NCAOC Office of General Counsel (OGC) to update its guidance regarding the application of this directive. The modified language of Emergency Directive 7 and the updated guidance are set out immediately below. Changes are **highlighted**.



## Emergency Directive 7

For all monies owed pursuant to a judgment or order entered by a court prior to 6 April 2020 in a criminal or infraction case with a payment due date on or after 6 April 2020 and before or on **29 June 2020**, the date by which payment must be made is hereby extended 90 days. Nonpayment of monetary obligations in such cases shall not be deemed a willful failure to comply, and the clerks of superior court are directed not to enter or report a failure to comply as a result of nonpayment during the 90-day extension period.

**This directive \*delays the payment due date\* for payments that otherwise would come due during the period on or after 6 April 2020 and before or on **29 June 2020**.**

**Specifically, this directive provides that if a court entered a judgment or order (for example, a judgment following a finding of guilty or responsible, an order in a deferred prosecution or conditional discharge case, or a prayer for judgment continued) prior to 6 April 2020, and the payment due date falls during the period on or after 6 April 2020 and before or on **29 June 2020**, then that payment due date is extended by 90 days.**

**So, for example, if the court entered judgment prior to 6 April 2020, and set a payment due date of 9 April 2020, then the payment due date now will be 8 July 2020. In this example, this means that the count for the 40-day FTC period also will not start until 8 July 2020, meaning that the 40<sup>th</sup> day (i.e., the FTC date if the defendant fails to pay) would fall on 17 August 2020. If the defendant in this example has not paid in full before the close of business on 17 August 2020, then the clerk would process the FTC.**

The clerks of superior court also are directed not to enter or report, until after the expiration of this order, a failure to comply for a criminal or infraction case [Note: The reference to the payment due date being before 6 April 2020 has been omitted from this latest version.] where the 40th day following nonpayment falls on or after 6 April 2020 and before or on **29 June 2020**.

**This directive \*temporarily delays certain FTCs\* that the clerk otherwise would enter and report to DMV.**

**It applies to cases where the defendant has failed to pay the fine/penalty and costs in full, and the 40<sup>th</sup> day (i.e., the FTC date) falls during the period on or after 6 April 2020 and before or on **29 June 2020**.**

**OGC will send an updated version of the FTC processing table in a subsequent email.**

If a court enters a judgment or order on or after 6 April 2020 and before or on **29 June 2020** in a criminal or infraction case, then the payment due date must be at least 90 days after the date of entry of the judgment or order, and the installment fee of N.C.G.S. § 7A-304(f) shall not be assessed until after the due date has passed.

**This directive \*mandates that judges provide an extended payment due date for new judgments and orders entered\* and \*delays the assessment of the installment fee in these cases\*.**



It applies to new judgments and orders entered during the period on or after 6 April 2020 and before or on 29 June 2020. The payment due date set by the court must be at least 90 days from the date of entry of the judgment or order.

Even though the defendant will not be making payment in full on the date of judgment (again, payment will not be due until at least 90 days later), this directive prohibits the assessment of the installment fee until after the payment due date set by the court has passed.

Monetary obligations owed pursuant to a term of probation which is scheduled to end within 30 days after the date that this order is issued are excluded from the operation of this emergency directive.

This directive provides that \*certain probation cases are to be processed as normal without any delay of the payment due date\*.

Specifically, if the defendant is on probation and the probation term is set to end during the period on or after 31 May 2020 and before or on 29 June 2020 (i.e., if the probation term is scheduled to end within thirty days after the date of issuance of the Chief Justice's order), then the defendant's payment due date remains the same, and the defendant's compliance with the conditions of probation will be processed as normal without regard to the special provisions above.

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If you need to contact a member of OGC during this emergency period, it likely will be easier to reach us by email rather than by telephone. We appreciate your understanding as we work for the most part away from the Judicial Center.

Please note that OGC cannot provide legal advice or guidance to entities outside the Judicial Branch. Accordingly, law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the impact of the Chief Justice's recent orders should consult their own legal counsel.

Thanks.

-- Matt

Matt Osborne  
North Carolina Judicial Branch

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**From:** Osborne, Matt E.  
**Sent:** Friday, May 22, 2020 9:24 AM  
**To:** Judicial.NC Judicial Branch  
**Cc:** Denning, Shea R.; Markham, James M; Brooks, Chris; Dalton, Neil; Marsh, William A; Hathcock, Kathryne  
**Subject:** criminal monies owed update / May 1 and May 21 orders



Dear Court Officials:

Set out immediately below is the 4 May 2020 guidance on monies owed in criminal and infractions cases that the Official of General Counsel (OGC) provided following the order entered by Chief Justice Beasley on 1 May 2020.

Neither of the orders entered yesterday by the Chief Justice alter this guidance. The 1 May 2020 emergency directive of the Chief Justice regarding criminal monies owed remains in effect.

Specifically, in the extension order the Chief Justice entered yesterday, the Chief Justice clarified that this extension “does *not* alter Emergency Directive 7 [regarding criminal monies owed], which continues to be governed in accordance with my 1 May 2020 order pursuant to N.C.G.S. § 7A-39(b)(2).” (Emphasis added.)

Accordingly, the information set out immediately below in the email of 4 May 2020 remains OGC’s guidance on criminal monies owed.

(Note that the extension order entered yesterday *does* require revisions to our guidance on failures to appear (FTAs) and certain failures to comply (FTCs), which we will address in a separate email later today.)

If you need to contact a member of OGC during this emergency period, it likely will be easier to reach us by email rather than by telephone. We appreciate your understanding as we work for the most part away from the Judicial Center.

Please note that OGC cannot provide legal advice or guidance to entities outside the Judicial Branch. Accordingly, law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the impact of the Chief Justice’s recent orders should consult their own legal counsel.

Our continued best to you during this time.

-- Matt

**Matt Osborne**  
North Carolina Judicial Branch

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**From:** Osborne, Matt E.  
**Sent:** Monday, May 04, 2020 11:27 AM  
**To:** Judicial.Clerks of Superior Court  
**Cc:** Judicial.Assistant Clerks of Superior Court; Judicial.Deputy Clerks of Superior Court; Lassiter, Jamie L.; Vernon, Shellie L.; Brooks, Chris; Dalton, Neil; Marsh, William A; Hathcock, Kathryne; Baker, David J.; Sheppard, Brent; Wynter-Mitchell El, Dorinda G.; Havenook, Scott; Blue, Deidra T.; Tarleton, Kristy S.; Tart, Krystal G.; Whitfield, Kimberly Y.; Melton, Nichole L.; Tyson, Takeeta R.; Rackley, Sherry; McLamb,



Tamela L.; Hicks, Meredith S.; Brendle, Rebecca T.; Hilliard, Amber E.; Wooten, McKinley; Carman, Danielle M.; Mckinney, Tony A.; Plemmons, Joe; Hughes, Deanna; Barnett, Amy K.; Nelson, Michael D.; Jackson, Michael A.; Barber, Bert L.; Robertson, Laurin; Graves, Barbara; Smith, Lisa; Lachance, Paul K.; Taylor, Faith; Hair, Kathryn W.; Jackson, Melissa S.; Hudson, Bill; Brinkley, Nicole N.; Croom, Elizabeth B.; Holloway, Antares S.; Krasner, Tina A.; Kraus, Matthew R.; Lusic, Corrine L.; Page, Troy D.; Powell, LaToya B.; Denning, Shea R.; Markham, James M; Judicial.Senior Resident Superior Court Judges; Judicial.Superior Court Judges; Judicial.Special Superior Court Judges; Judicial.Chief District Court Judges; Judicial.District Court Judges; Dorer, Peg; Spahos, Kimberly N.; Fairbanks, Whitney B.; Brooks, Susan E.  
**Subject:** criminal monies owed update / 1 May 2020 emergency directive

Dear Clerks:

As you will recall, in her order of 2 April 2020, Chief Justice Beasley issued an emergency directive addressing monies owed in criminal and infraction cases.

The directive in the order of 2 April 2020 applied to the period on or after 6 April 2020 and before or on 1 May 2020, and is addressed in the email below from 3 April 2020.

In her order of this past Friday, 1 May 2020, the Chief Justice extended the criminal monies owed directive to apply to the period on or after 6 April 2020 and before or on **30 May 2020**.

These updated provisions may be summarized as follows:

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### Emergency Directive 7

For all monies owed pursuant to a judgment or order entered by a court prior to 6 April 2020 in a criminal or infraction case with a payment due date on or after 6 April 2020 and before or on 30 May 2020, the date by which payment must be made is hereby extended 90 days. Nonpayment of monetary obligations in such cases shall not be deemed a willful failure to comply, and the clerks of superior court are directed not to enter or report a failure to comply as a result of nonpayment during the 90-day extension period.

**This directive \*delays the payment due date\* for payments that otherwise would come due during the period on or after 6 April 2020 and before or on **30 May 2020**.**

**Specifically, this directive provides that if a court entered a judgment or order (for example, a judgment following a finding of guilty or responsible, an order in a deferred prosecution or conditional discharge case, or a prayer for judgment continued) prior to 6 April 2020, and the payment due date falls during the period on or after 6 April 2020 and before or on **30 May 2020**, then that payment due date is extended by 90 days.**

**So, for example, if the court entered judgment prior to 6 April 2020, and set a payment due date of 9 April 2020, then the payment due date now will be 8 July 2020. In this example, this means that the count for the 40-day FTC period also will not start until 8 July 2020, meaning that the 40<sup>th</sup> day (i.e., the FTC date if the defendant fails to pay) would fall on 17 August 2020. If the defendant**



**in this example has not paid in full before the close of business on 17 August 2020, then the clerk would process the FTC.**

The clerks of superior court also are directed not to enter or report, until after the expiration of this order, a failure to comply for a criminal or infraction case with a payment due date before 6 April 2020 where the 40th day following nonpayment falls on or after 6 April 2020 and before or on 30 May 2020.

**This directive \*temporarily delays certain FTCs\* that the clerk otherwise would enter and report to DMV.**

**It applies to cases where the defendant has failed to pay the fine/penalty and costs in full, and the 40<sup>th</sup> day (i.e., the FTC date) falls during the period on or after 6 April 2020 and before or on 30 May 2020.**

**For a summary table addressing FTC processing, please see the email with the subject line “additional update on FTA and FTC processing / 1 May 2020 order” with the date and time stamp of Monday, 4 May 2020, at 8:51 AM.**

If a court enters a judgment or order on or after 6 April 2020 and before or on 30 May 2020 in a criminal or infraction case, then the payment due date must be at least 90 days after the date of entry of the judgment or order, and the installment fee of N.C.G.S. § 7A-304(f) shall not be assessed until after the due date has passed.

**This directive \*mandates that judges provide an extended payment due date for new judgments and orders entered\* and \*delays the assessment of the installment fee in these cases\*.**

**It applies to new judgments and orders entered during the period on or after 6 April 2020 and before or on 30 May 2020. The payment due date set by the court must be at least 90 days from the date of entry of the judgment or order.**

**Even though the defendant will not be making payment in full on the date of judgment (again, payment will not be due until at least 90 days later), this directive prohibits the assessment of the installment fee until after the payment due date set by the court has passed.**

Monetary obligations owed pursuant to a term of probation which is scheduled to end within 30 days after the date that this order is issued are excluded from the operation of this emergency directive.

**This directive provides that \*certain probation cases are to be processed as normal without any delay of the payment due date\*.**

**Specifically, if the defendant is on probation and the probation term is set to end during the period on or after 2 May 2020 and before or on 31 May 2020 (i.e., if the probation term is scheduled to end within thirty days after the date of issuance of the Chief Justice’s order), then the defendant’s payment due date remains the same, and the defendant’s compliance with the conditions of probation will be processed as normal without regard to the special provisions above.**



If you need to contact a member of OGC during this emergency period, it likely will be easier to reach us by email rather than by telephone. We appreciate your understanding as we work for the most part away from the Judicial Center.

Please note that OGC cannot provide legal advice or guidance to entities outside the Judicial Branch. Accordingly, law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the impact of the Chief Justice's recent orders should consult their own legal counsel.

Thank you for all you are doing to keep your offices operating during this time.

-- Matt

**Matt Osborne**  
**North Carolina Judicial Branch**

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**From:** Osborne, Matt E.  
**Sent:** Friday, April 03, 2020 5:59 PM  
**To:** Judicial.Clerks of Superior Court  
**Cc:** Judicial.Assistant Clerks of Superior Court; Judicial.Deputy Clerks of Superior Court; Lassiter, Jamie L.; Vernon, Shellie L.; Brooks, Chris; Dalton, Neil; Marsh, William A; Hathcock, Kathryne; Baker, David J.; Sheppard, Brent; Wynter-Mitchell El, Dorinda G.; Havenook, Scott; Blue, Deidra T.; Tarleton, Kristy S.; Tart, Krystal G.; Whitfield, Kimberly Y.; Melton, Nichole L.; Tyson, Takeeta R.; Rackley, Sherry; McLamb, Tamela L.; Hicks, Meredith S.; Brendle, Rebecca T.; Hilliard, Amber E.; Wooten, McKinley; Carman, Danielle M.; Mckinney, Tony A.; Plemmons, Joe; Hughes, Deanna; Bartnett, Amy K.; Nelson, Michael D.; Jackson, Michael A.; Barber, Bert L.; Poole, Amanda C.; Robertson, Laurin ; Graves, Barbara; Smith, Lisa; Lachance, Paul K.; Taylor, Faith; Hair, Kathryn W.; Jackson, Melissa S.; Hudson, Bill; Brinkley, Nicole N.; Croom, Elizabeth B.; Holloway, Antares S; Krasner, Tina A.; Kraus, Matthew R.; Lusic, Corrine L.; Page, Troy D.; Powell, LaToya B; Denning, Shea R.; Markham, James M  
**Subject:** criminal monies owed / 2 April 2020 emergency directive

Dear Clerks:

As you know, on 2 April 2020, Chief Justice Beasley entered an order that contains (along with several other items) a new emergency directive regarding monies owed in criminal and infraction cases.

This directive is intended to reduce the need for defendants to appear before the clerk to make payments in criminal and infraction cases during the current public health emergency.

Set out below are the provisions of this directive, and guidance from the NCAOC Office of General Counsel (OGC) on each provision.

Please also see the failure to comply (FTC) processing table at the end of this message.



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## Emergency Directive 7

For all monies owed pursuant to a judgment or order entered by a court prior to 6 April 2020 in a criminal or infraction case with a payment due date on or after 6 April 2020 and before or on 1 May 2020, the date by which payment must be made is hereby extended 90 days. Nonpayment of monetary obligations in such cases shall not be deemed a willful failure to comply, and the clerks of superior court are directed not to enter or report a failure to comply as a result of nonpayment during the 90-day extension period.

**This directive \*delays the payment due date\* for payments that otherwise would come due during the period on or after 6 April 2020 and before or on 1 May 2020.**

**Specifically, this directive provides that if a court entered a judgment or order (for example, a judgment following a finding of guilty or responsible, an order in a deferred prosecution or conditional discharge case, or a prayer for judgment continued) prior to 6 April 2020, and the payment due date falls during the period on or after 6 April 2020 and before or on 1 May 2020, then that payment due date is extended by 90 days.**

**So, for example, if the court entered judgment prior to 6 April 2020, and set a payment due date of 9 April 2020, then the payment due date now will be 8 July 2020. In this example, this means that the count for the 40-day FTC period also will not start until 8 July 2020, meaning that the 40<sup>th</sup> day (i.e., the FTC date if the defendant fails to pay) would fall on 17 August 2020. If the defendant in this example has not paid in full before the close of business on 17 August 2020, then the clerk would process the FTC.**

The clerks of superior court also are directed not to enter or report, until after the expiration of this order, a failure to comply for a criminal or infraction case with a payment due date before 6 April 2020 where the 40<sup>th</sup> day following nonpayment falls on or after 6 April 2020 and before or on 1 May 2020.

**This directive \*temporarily delays certain FTCs\* that the clerk otherwise would enter and report to DMV.**

**It applies to cases where the defendant has failed to pay the fine/penalty and costs in full, and the 40<sup>th</sup> day (i.e., the FTC date) falls during the period on or after 6 April 2020 and before or on 1 May 2020.**

**In such a case, the clerk will not enter the FTC, assess the FTC fee, or report the FTC to DMV. Instead, the clerk will delay the clerk's usual FTC processing duties until after the close of business on 1 May 2020.**

**So, for example, if the court entered judgment and set a payment due date of 27 February 2020, then the 40<sup>th</sup> day (i.e., the FTC date) will fall on 7 April 2020. If the defendant has failed to pay the fine/penalty and costs in full on or before that date (i.e., 7 April 2020), rather than entering an FTC, attaching the FTC fee, and (if it is a Chapter 20 case) reporting the FTC to DMV, the clerk will**





**delay the usual processing of the FTC. If the defendant has not made payment in full by the close of business on 1 May 2020, then the clerk will process the FTC.**

**This directive does not require clerks to back out FTC entries, FTC fees, and FTC reports already appropriately made.**

If a court enters a judgment or order on or after 6 April 2020 and before or on 1 May 2020 in a criminal or infraction case, then the payment due date must be at least 90 days after the date of entry of the judgment or order, and the installment fee of N.C.G.S. § 7A-304(f) shall not be assessed until after the due date has passed.

**This directive \*mandates that judges provide an extended payment due date for new judgments and orders entered\* and \*delays the assessment of the installment fee in these cases\*.**

**It applies to new judgments and orders entered during the period on or after 6 April 2020 and before or on 1 May 2020. The payment due date set by the court must be at least 90 days from the date of entry of the judgment or order.**

**Even though the defendant will not be making payment in full on the date of judgment (again, payment will not be due until at least 90 days later), this directive prohibits the assessment of the installment fee until after the payment due date set by the court has passed.**

Monetary obligations owed pursuant to a term of probation which is scheduled to end within 30 days after the date that this order is issued are excluded from the operation of this emergency directive.

**This directive provides that \*certain probation cases are to be processed as normal without any delay of the payment due date\*.**

**Specifically, if the defendant is on probation and the probation term is set to end during the period on or after 3 April 2020 and before or on 2 May 2020 (i.e., if the probation term is scheduled to end within thirty days after the date of issuance of the Chief Justice’s order), then the defendant’s payment due date remains the same, and the defendant’s compliance with the conditions of probation will be processed as normal without regard to the special provisions above.**

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The following table sets out the rules on processing FTCs in light of this latest emergency directive, and the extension order entered by the Chief Justice on 19 March 2020:

<b>Case Category</b>	<b>FTC Processing</b>
FTC date falls before 16 March 2020	Process the FTC as normal
FTC date falls on or after 16 March 2020, and before 6 April 2020	Process the FTC as normal, <u>but</u> the defendant later may “undo” the FTC by making payment in full before the close of business on 17 April 2020.



(This category is governed by the Chief Justice's orders of 19 March 2020 and 2 April 2020.)	For earlier guidance on this issue, <u>see</u> the email titled "FTA and FTC processing" sent to clerks on 03/24/2020 at 10:05 AM.
<p>FTC date falls on or after 6 April 2020, and before or on 1 May 2020</p> <p>(This category is governed by the Chief Justice's order of 2 April 2020.)</p>	<p>Delay the entry of the FTC, the assessment of the FTC fee, and the report of the FTC to DMV.</p> <p>If the defendant still has not paid in full by the close of business on 1 May 2020, then the clerk enters the FTC, assesses the FTC fee, and (if it is a Chapter 20 case) reports the FTC to DMV.</p> <p><u>Note:</u> This delay does <u>not</u> apply to a defendant who is on probation and whose period of probation is scheduled to expire on or after 3 April 2020 and before or on 2 May 2020.</p>

Should you need to consult it, the Chief Justice's order is available here (Emergency Directive 7 appears on page 4):

<https://www.nccourts.gov/assets/news-uploads/2%20April%202020%20-%207A-39%28b%29%282%29%20Order%20%28Final%29.pdf?UqRJH9wO2z3oEU4GW3Eg9rxRuFvTlixn>

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Our continued best to you during this time.

-- Matt



**Matt Osborne**  
Deputy Legal Counsel  
NCAOC Office of General Counsel  
North Carolina Judicial Branch

*Justice for all*  
[www.NCcourts.gov](http://www.NCcourts.gov)

