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## Driven to Despair: Confronting Racial Inequity in North Carolina's License Suspension Practices

Jennifer M. Lechner

B. Leigh Wicclair

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## **Driven to Despair: Confronting Racial Inequity in North Carolina's License Suspension Practices**

JENNIFER M. LECHNER\*

B. LEIGH WICCLAIR\*\*

### ABSTRACT

*Hundreds of thousands of North Carolina drivers have a suspended license for unpaid traffic court fines and fees. The practice of suspending drivers' licenses for unpaid fines and fees is inequitable and counterproductive. This practice disenfranchises rural drivers and those facing poverty and creates a significant obstacle to employment. Furthermore, African-American drivers are four times as likely as non-Hispanic, white drivers to have a suspended license for unpaid fines and fees. Drawing upon lessons learned from the Driver's License Restoration Project, the Authors conclude that legislative action is needed to remedy this inequitable and inefficient system of collecting state revenue. North Carolina should cease the practice of suspending licenses for unpaid fines and fees, pursue a decrease in criminal court fees and fines overall, and implement a sliding scale structure for fees and fines that makes a fact-specific determination about an individual's real wages and ability to pay. This recommendation would lead to greater racial and economic equity, strengthen the North Carolina economy, and increase the aggregate amount of fees and fines collected by the state. This Article is a continuation of a prior published work, The Poverty Penalty: Driver's License Restoration In North Carolina.<sup>1</sup>*

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\*Executive Director of the N.C. Equal Access to Justice Commission. J.D., Drake University School of Law; B.A., Truman State University.

\*\*Senior Staff Attorney and Restorative Justice Project Director, N.C. Pro Bono Resource Center. J.D., University of North Carolina School of Law; B.A. University of North Carolina at Chapel Hill.

1. See B. Leigh Wicclair, *The Poverty Penalty: Driver's License Restoration in North Carolina*, MGMT. INFO. EXCH. J. 33 (2019); see also *When Debt Takes the Wheel*, N.C. EQUAL ACCESS TO JUST. COMM'N, <https://storymaps.arcgis.com/stories/8c48ba140a7a496b98fa916c08467f24> [<https://perma.cc/NGL9-RKXY>]. [Editors' Note: Some of the research and information used in this Article was previously published as a story map by the North

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#### INTRODUCTION

In 2001, James Anderson,<sup>2</sup> a thirty-three-year-old married father of two with a job sterilizing operating room instruments at a hospital in Greensboro, had his driver’s license suspended for unpaid court fines and fees related to speeding tickets. “It was about 5 or 6 miles to work, and I had to feed my family at the time, and I couldn’t pay for my tickets then,” Anderson said. Anderson ended up losing his job because of absenteeism. “I wound up getting a divorce from my first wife, and I just couldn’t get it together because I couldn’t find a job, a steady job,” Anderson said, “I’d work here for a little bit, and then I’d lose a job because of transportation. I couldn’t take my kids anywhere. It was just hard for me to do anything.” Like many North Carolina drivers with suspensions for unpaid fines and fees, Anderson eventually continued to drive to make ends meet.<sup>3</sup> Consequently, the tickets for driving without a license snowballed, sinking Anderson into a financial hole that is still impacting him nearly twenty years later.

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Carolina Equal Access to Justice Commission and in a special issue article in the *Management Information Exchange Journal*.]

2. Name changed to preserve anonymity.

3. *When Debt Takes the Wheel*, *supra* note 1.

“Under North Carolina law, a person who fails to appear in court to resolve a traffic ticket or fails to pay traffic or criminal court debt is subjected to an indefinite suspension of their driver’s license.”<sup>4</sup> That suspension occurs regardless of whether it is the person’s initial traffic ticket or first time failing to resolve a ticket.<sup>5</sup> “As a result, 15% of all adult drivers in North Carolina have a suspended driver’s license for failing to pay fines and courts costs and/or failing to appear in traffic court.”<sup>6</sup>

Those adversely affected by driver’s license suspension face a variety of economic and legal problems. Many such individuals lose their jobs or struggle with limited employment options. Curtailed driving privileges interfere with regular medical care. Those who depend solely on public transportation also face limited housing options because of limited public transportation infrastructure.<sup>7</sup> Despite these severe consequences, North Carolina is not alone in continuing this draconian practice. Thirty-seven states and the District of Columbia “suspend, revoke or refuse to renew driver’s licenses for unpaid traffic, toll, misdemeanor and felony fines and fees,” resulting in more than 11 million debt-related suspensions nationwide.<sup>8</sup>

In response to growing awareness of the consequences of these suspensions, many jurisdictions have reconsidered the use of suspensions for non-driving related offenses through legislative reform, litigation, administrative action, and government programs.<sup>9</sup> Since 2017, Montana, Texas, Mississippi, California, Idaho, Maine, Hawaii, Maryland, Oregon, Virginia, West Virginia, and the District of Columbia have passed legislation to countermand the societal harm inflicted by debt-based

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4. Wicclair, *supra* note 1, at 33; N.C. GEN. STAT. § 20-24.1(a)(1)–(2) (2019).

5. *Id.*

6. *Id.* (citing William E. Crozier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver’s License Suspension in North Carolina*, 69 DUKE L.J. 1585, 1606 (2020)).

7. *Id.* (citing Crozier, *supra* note 6 at 1599–600).

8. *About the Campaign*, FREE TO DRIVE, <https://www.freetodrive.org/about/#page-content> [<https://perma.cc/82C2-V4P8>; see also Meghan Keneally, *‘It’s not America’: 11 Million Go Without a License Because of Unpaid Fines*, ABC NEWS (Oct. 25, 2019, 5:11 AM), <https://abcnews.go.com/US/vicious-cycle-11-million-live-drivers-license-unpaid/story?id=66504966> [<https://perma.cc/9PCN-HD42>].

9. North Carolina Department of Justice recently issued recommendations which explicitly suggest that “[a]llow[ing] NCDMV hearing officers to waive license restoration fees and other service fees for failure to appear or failure to pay” will help to “[r]educe collateral consequences of criminal convictions.” TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., N.C. DEP’T OF JUST., RECOMMENDATIONS 12 (2020), [https://ncdoj.gov/wp-content/uploads/2020/12/TREC-Recommendations\\_12142020.pdf](https://ncdoj.gov/wp-content/uploads/2020/12/TREC-Recommendations_12142020.pdf) [<https://perma.cc/4Y3M-CUNK>].

suspensions.<sup>10</sup> In 2020, Maryland, West Virginia, and New York stopped suspending driver's licenses for unpaid fees and fines altogether.<sup>11</sup> These efforts reflect bipartisan support to enact reform in the name of equity, public safety, and economic opportunity.

Over the past several years, various North Carolina advocacy groups have engaged in litigation and legislative reform to address the issue of driver's license suspension. Thus far, neither method has significantly impacted the statewide practice of suspending driver's license suspension for failure to pay court costs and fines.<sup>12</sup> Consequently, the North Carolina Pro Bono Resource Center and its partners formed the Driver's License Restoration Project, an innovative model that utilizes strong partnerships, creative technological strategies, and a commitment to pro bono engagement to restore driving privileges to people with license suspensions caused by the inability to pay court costs and fines.<sup>13</sup>

This Article will explore the successes and failures of North Carolinian efforts over the last two years and ultimately recommend uniform policy changes, both statutorily and administratively. This Article will begin by demonstrating that license suspensions for non-driving related reasons are inequitable and counterproductive. Specifically, this Article will show that license suspension for unpaid fees and fines perpetuate racial and economic inequality. Further, the blanket recuperation efforts result in less debt collected by the state. Relying upon these facts, this Article will suggest that North Carolina should pursue both a decrease in criminal court fees and fines overall and implement a sliding scale structure for fees and fines that makes a fact-specific determination about an individual's real wages and ability to pay. This recommendation would lead to greater racial and economic equity, strengthen the North Carolina economy, and increase the aggregate amount of fees and fines collected by the state.

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10. *13 States. 13 Victories. Millions of Lives Restored*, FREE TO DRIVE, [https://www.freetodrive.org/wp-content/uploads/2021/01/Free-to-Drive\\_States\\_DLS\\_Reform\\_1\\_21\\_Infographic1.pdf](https://www.freetodrive.org/wp-content/uploads/2021/01/Free-to-Drive_States_DLS_Reform_1_21_Infographic1.pdf). [<https://perma.cc/SEJ7-JF3V>].

11. *2020 Victories: Six States Pass Driver's License Suspension Reforms*, FREE TO DRIVE, <https://www.freetodrive.org/wp-content/uploads/2020/11/Free-to-Drive-2020-DLS-Reforms-Final2.pdf> [<https://perma.cc/P4K2-YK8E>].

12. *Id.*

13. The North Carolina Equal Access to Justice Commission launched the North Carolina Pro Bono Resource Center (PBRC) to assist lawyers in fulfilling their professional responsibility to provide pro bono legal services. The PBRC identifies unmet legal needs and creates projects to coordinate and train pro bono attorneys to meet these needs.

## I. THE POVERTY PENALTY AND RACE RETRIBUTION

Under North Carolina law, drivers who have unpaid traffic court fees and fines will have their licenses suspended indefinitely, even if it is their initial traffic ticket or their first time unable to pay.<sup>14</sup> This practice disproportionately impacts economically vulnerable North Carolinians and those who reside in rural areas without reliable public transportation. Driver's license suspensions can last years, and the debt often snowballs quickly when drivers are unable to pay court fees and fines, or when they cannot miss work to appear in court.<sup>15</sup> "A broken tail light carries a penalty of \$50, plus \$147.50 in court costs. The fee for missing a court date for a traffic citation is \$200, on top of a general court fee of \$147.50."<sup>16</sup> Additional fines are applied when payments are late or missed, such as a \$50 assessment for failure to comply.<sup>17</sup> That economic snowballing effect is colloquially known as the "poverty penalty."<sup>18</sup>

Further, these collections are not solely used to support the state justice system. North Carolina's Task Force for Racial Equity in Criminal Justice (TREC) reports, "In fiscal year 2018–2019, the North Carolina judicial branch General Court of Justice fee revenue equated to approximately 41 percent of its judicial appropriation."<sup>19</sup> Thus, court system users—most of whom are involuntary participants—are not only underwriting judicial activities but also other state activities through the General Fund. The TREC report recommended that "State and local governments, in particular our system of criminal justice, need to be funded without dependence on individual user fines and fees."<sup>20</sup>

As those fines and fees increased, courts have increasingly denied drivers' requests for fee waivers. In 2016, state courts granted 86,006 fee

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14. *When Debt Takes the Wheel*, *supra* note 1.

15. *Id.*

16. *Id.*

17. *Id.*

18. Tamar R. Birkhead, *The New Peonage*, 72 WASH. & LEE L. REV. 1595, 1635 (2015); *see also* Wicclair, *supra* note 1.

19. N.C. TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., REPORT 2020, at 111 (2020), [https://ncdoj.gov/wp-content/uploads/2020/12/TRECReportFinal\\_12132020.pdf](https://ncdoj.gov/wp-content/uploads/2020/12/TRECReportFinal_12132020.pdf) [<https://perma.cc/9UJK-TLBA>]. North Carolina Governor Roy Cooper established the Task Force for Racial Equity in Criminal Justice (TREC) through Executive Order 145 in June 2020. Led by Attorney General Josh Stein and North Carolina Supreme Court Associate Justice Anita Earls, the task force convened a wide range of stakeholders, including advocates, elected officials, state and local law enforcement agencies, justice-involved individuals, representatives of the judicial branch, and more. *Id.* at 4.

20. *Id.* at 112.

waivers; however, just two years later, that number fell to 28,036.<sup>21</sup> A 2019 report by the ACLU of North Carolina found:

In courtrooms across the state, there is no consistent standard for when and how fines and fees are imposed, and too many judges do not fulfill their constitutional obligation to inquire about an individual's financial status before ordering them to pay fines and fees, as required by law. As a result, judges routinely order low-income North Carolinians—a disproportionate number of them people of color—to pay fines and fees that they cannot afford. Failure to pay will result in more fines, fueling a cycle of debt that forces people to forgo the basic necessities of life in order to avoid jail and collateral consequences. In this racially-skewed, two-tiered system, the rich and the poor can commit the exact same offense, but the poor will receive harsher and longer punishments simply because they are poor.<sup>22</sup>

For those experiencing poverty, there is often no way out. According to the Federal Reserve, four in ten Americans lack the financial resources to cover an unexpected \$400 expense without adding to their debt.<sup>23</sup> Twelve percent are unable to cover it at all;<sup>24</sup> thus, a significant proportion of North Carolina drivers cannot pay escalating court fees and fines that can total hundreds of dollars.

The negative effects of a suspended license are not theoretical. These affected drivers bear the real costs of living without driving privileges. They report foregoing job opportunities, using cost prohibitive ride services such as Uber or Lyft to get to and from a low-wage job, missing doctor's appointments and parent/teacher conferences, being unable to take care of an aging family member, and experiencing anxiety and depression as a result of financial insecurity and the fear of further ticketing and arrest.

Indeed, these problems afflict "one in seven North Carolina drivers with suspended licenses."<sup>25</sup> Unsurprisingly, the temptation to continue

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21. *When Debt Takes the Wheel*, *supra* note 1.

22. ACLU N.C., AT ALL COSTS: THE CONSEQUENCES OF RISING COURT FEES AND FINES IN NORTH CAROLINA 5 (2019), [https://www.acluofnorthcarolina.org/sites/default/files/field\\_documents/aclu\\_nc\\_2019\\_fines\\_and\\_fees\\_report\\_17\\_singles\\_final.pdf](https://www.acluofnorthcarolina.org/sites/default/files/field_documents/aclu_nc_2019_fines_and_fees_report_17_singles_final.pdf) [<https://perma.cc/9JBF-B7ZG>].

23. BD. OF GOVERNORS OF THE FED. RESRV. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2018 - MAY 2019 (2019), <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-dealing-with-unexpected-expense.htm> [<https://perma.cc/CF6G-XFB2>].

24. *Id.*

25. Brandon Garrett et. al, *One in Seven NC Drivers Has Had Their License Suspended. Many of Them Don't Even Know It.*, N.C. POL'Y WATCH, (Jan. 31, 2020), <http://www.ncpolice>

driving is strong when it means putting food on the table, particularly given that “[m]ore than 91 percent of North Carolinians depend on a car to get to and from work.”<sup>26</sup> Of course, driving with a suspended license can exacerbate the dilemma, often leading to “criminal offenses, more fines and fees, and new barriers to jobs, housing, and family stability.”<sup>27</sup> The criminalization of poverty that occurs when one continues to drive with a suspended license is pervasive, as 75% of those with license suspensions continue to drive.<sup>28</sup>

North Carolina Pro Bono Resource Center client James Anderson<sup>29</sup> eventually ended up owing the court thousands of dollars. Fortunately, Anderson’s thirty-one-year-old daughter, who was just twelve the time he first lost his license, encouraged him to attend a July 2019 Driver’s License Restoration clinic in Guilford County. With help from a pro bono attorney, Anderson now has his license back and his tickets forgiven. “The program really helped me and wiped out all of them,” Anderson said, “That was so helpful to me because I couldn’t get that off my back.” Being able to drive is important to him because of his family—remarried, he and his wife have seven kids and five grandchildren between them. “I’m just thankful that the program came along,” he said.<sup>30</sup>

The COVID-19 pandemic has created both public health and economic crises that amplifies the poverty penalty of driver’s license suspensions.<sup>31</sup> As of February 2021, over 28 million Americans have contracted the virus, and over 500,000 have died.<sup>32</sup> According to the North Carolina Department

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ywatch.com/2020/01/31/one-in-seven-nc-drivers-have-had-their-license-suspended-many-of-them-dont-even-know-it/ [https://perma.cc/68ZJ-JCYJ].

26. ACLU N.C., *supra* note 22, at 18.

27. *When Debt Takes the Wheel*, *supra* note 1.

28. AM. ASS’N OF MOTOR VEHICLE ADM’RS, REDUCING SUSPENDED DRIVERS AND ALTERNATIVE REINSTATEMENT: BEST PRACTICES 3 (Nov. 2018) <https://www.aamva.org/Best-Practices-and-Model-Legislation/> [https://perma.cc/GZT2-6DAL] (follow “Reducing Suspended Drivers and Alternative Reinstatement Best Practices” hyperlink to download PDF document).

29. *See supra* pp. 204—05.

30. *When Debt Takes the Wheel*, *supra* note 1.

31. *See* LAUREN BAUER ET AL., THE HAMILTON PROJECT, TEN FACTS ABOUT COVID-19 AND THE U.S. ECONOMY 1 (2020), [https://www.brookings.edu/wp-content/uploads/2020/09/FutureShutdowns\\_Facts\\_LO\\_Final.pdf](https://www.brookings.edu/wp-content/uploads/2020/09/FutureShutdowns_Facts_LO_Final.pdf) [https://perma.cc/XQ48-WZMV].

32. *COVID Data Tracker: United States COVID-19 Cases and Deaths by State*, CTRS. FOR DISEASE CONTROL & PREVENTION, [https://covid.cdc.gov/covid-data-tracker/#cases\\_case\\_sper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_case_sper100klast7days) [https://perma.cc/6GKX-EUCC].

of Labor, the unemployment rate in October 2020 was 6.3%.<sup>33</sup> The United States Census Household Pulse Survey showed that almost 70% of Blacks and over 60% of the Hispanic/Latinx population had difficulty paying for standard household expenses in the past seven days.<sup>34</sup> For families who are struggling to make ends meet and who now face even greater economic uncertainty during the pandemic, the fees and fines accompanying low level traffic tickets add to their economic plight. The debt is then compounded by the threat of license suspension, which can lead to job loss. Thus, the poverty cycle continues.

Scrutiny of license suspensions for unpaid debt began after a 2015 federal investigation, when the United States Department of Justice revealed that “authorities [in Ferguson, Missouri,] used fines to raise revenue for state and local governments.”<sup>35</sup> Furthermore, the investigation determined:

Ferguson’s municipal court and police practices are due, at least in part, to intentional discrimination, as demonstrated by evidence of racial bias and stereotyping of African American residents by certain Ferguson police and municipal court officials. This racial bias and stereotyping led to African Americans being pulled over and stopped more frequently than other community members.<sup>36</sup>

The imposition of court fees and fines as a revenue generator is not unique to Ferguson. According to the United States Commission on Civil Rights,

The Commission’s review of the existing data and research also shows that the impacts of these practices have been borne by communities of color,

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33. *North Carolina’s October Employment Figures Released*, N.C. DEP’T OF COM. (Nov. 20, 2020), <https://www.nccommerce.com/news/press-releases/north-carolina’s-october-employment-figures-released-1> [<https://perma.cc/3RRF-E2EU>].

34. *Week 20 Household Pulse Survey: November 25 – December 7*, U.S. CENSUS BUREAU (Dec. 16, 2020), <https://www.census.gov/data/tables/2020/demo/hhp/hhp20.html> [<https://perma.cc/9X3K-YDH4>] [hereinafter *Week 20*] (scroll down to “Spending Tables”; then follow “Table 1. Difficulty Paying Usual Household Expenses in the Last 7 Days, by Select Characteristics” hyperlink to download Excel file).

35. Justin Wm. Moyer, *Va. Driver’s Licenses, Suspended for Unpaid Court Debt, to Be Reinstated July 1*, WASH. POST (June 3, 2019, 1:37 PM), <https://www.washingtonpost.com/tranSPORTATION/2019/06/03/va-drivers-licenses-suspended-unpaid-court-debt-be-reinstated-july/> [<https://perma.cc/YND2-WEW5>].

36. U.S. COMM’N ON CIVIL RIGHTS, TARGETED FEES AND FINES AGAINST COMMUNITIES OF COLOR: CIVIL RIGHTS & CONSTITUTIONAL IMPLICATIONS 13 (2017), [https://www.usccr.gov/v/pubs/2017/Statutory\\_Enforcement\\_Report2017.pdf](https://www.usccr.gov/v/pubs/2017/Statutory_Enforcement_Report2017.pdf) [<https://perma.cc/W5B9-FLDR>].

along with the poor. Municipalities that rely heavily on revenue from fines and fees have a higher than average percentage of African American and Latino populations relative to the demographics of the median municipality. Another study revealed that residents living in the poorest zip codes of a city account for the vast majority of traffic infractions. The residents living in those zip codes were disproportionately African American and Latino.<sup>37</sup>

In North Carolina, racial disparities result in households of color, and particularly Black and African-American drivers, being disproportionately impacted by traffic debt. For example, when the Driver's License Restoration Project began in Durham County, North Carolina, in 2018, 80% of the county's revoked or suspended licenses affected people of color, despite this same group comprising only 46.5% of the general population.<sup>38</sup> Statewide, based on available data, the suspension rate of Black or African-American drivers was "four times higher than that of white, non-Hispanic drivers."<sup>39</sup> In many North Carolina counties, the racial disparity in suspension rates exceeds that statewide average—in some cases by a factor of fourteen.<sup>40</sup> Unfortunately, that statistic is unsurprising when viewed in light of that fact that Black drivers in North Carolina are twice as likely to be pulled over than white drivers.<sup>41</sup> That evidence demonstrates that Black and African-American drivers bear the heaviest burden of North Carolina's current driver's license suspension policy.

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37. *Id.* at 3.

38. Wicclair, *supra* note 1, at 34. (basing this information on data provided by the North Carolina Administrative Office of the Courts compared to data from the United States Census Bureau for Durham County).

39. *When Debt Takes the Wheel*, *supra* note 1. Data reflects drivers who self-identified as Black or African-American and/or who were identified as such by law enforcement. Because of this method of data collection, there are limitations to this data. In fact, the Task Force for Racial Equity in Criminal Justice adopted a recommendation for the North Carolina Administrative Office of the Courts to include more accurate information on race in its data reporting. N.C. TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., REPORT 2020, *supra* note 19, at 132–37.

40. *Id.* Failure to Comply and Failure to Appear data was queried by North Carolina Administrative Office of the Courts and provided on September 10, 2018. Data was analyzed by Will Crozier, Duke University School of Law Center for Science and Justice, to identify unique drivers and aggregate by county.

41. N.C. CRIM. JUST. ANALYSIS CTR., JUSTICE ANALYSIS REVIEW 1–2 (2020), [https://weare.ncdps.gov/docs/Justice%20Analysis%20Review\\_July2020\\_PQ.pdf](https://weare.ncdps.gov/docs/Justice%20Analysis%20Review_July2020_PQ.pdf) [<https://perma.cc/S9ZP-Z3PD>]; see also FRANK R. BAUMGARTNER ET AL., SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE 66–77 (2018).

## II. AUTOMATED OPPRESSION IN NORTH CAROLINA

The North Carolina Division of Motor Vehicles *must* revoke a person's license if that person fails to appear in traffic court or fails to "pay a fine, penalty, or court costs ordered by the court."<sup>42</sup> This is true even for low-level infractions and even if it is the person's first traffic ticket. Over 1.2 million North Carolinians have a suspended license for one or both of these reasons.<sup>43</sup> License suspensions stemming from a failure to appear in court will remain in place until the person "disposes of the charge."<sup>44</sup> Practically speaking, this often requires a guilty plea, which propels the person into the second category of indefinite suspension status: failure to pay court costs and fines.

A person whose license is suspended due to a "fail[ure] to pay a fine, penalty, or court costs ordered by the court" remains suspended until that person fully satisfies their court debt or "demonstrates to the court that [the] failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted."<sup>45</sup> As court costs have increased and the fees and fines waivers for inability to pay have decreased, North Carolinians living in poverty have suffered disproportionately.<sup>46</sup>

## III. THE DRIVER'S LICENSE RESTORATION PROJECT AND MASS RELIEF DEBT REMITTANCE

Service providers working in the trenches of state district court have a clear view of systemic inequities in the legal system, such as driver's license suspensions. Emily Mistr, then-Assistant Public Defender in Wake County,<sup>47</sup> witnessed an exceedingly high number of people repeatedly cycled through traffic court: "[M]any of these cases began as low-level

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42. N.C. GEN. STAT. § 20-24.1(a) (2019).

43. Crozier & Garrett, *supra* note 6, at 1590–94.

44. N.C. GEN. STAT. § 20-24.1(b).

45. N.C. GEN. STAT. § 20-24.1(b)(4).

46. Sarah Willets, *Advocates Say Durham's Experiment to Wipe Thousands of Old Cases Off the Books Could Be a Model for Statewide Justice Reform*, INDY WEEK (March 13, 2019, 6:00 AM), <https://indyweek.com/news/durham/durham-dear-experiment-north-carolina-reform/> [<https://perma.cc/YUV6-B6NV>] (stating "[o]ver the past two decades, court costs have gone up 400 percent in North Carolina. Lawmakers have also tried to dissuade judges from waiving them by requiring that they first provide notice to any agency that would lose out on revenue and by ordering annual reports that detail how often individual judges let people not pay.").

47. Emily Mistr is now a Clinical Professor of Law at Campbell Law School's Blanchard Community Law Clinic.

traffic infractions, such as minor speeding or having a broken taillight.”<sup>48</sup> Mistr observed that while these charges could be immediately resolved for people able to pay their costs and fines within the allotted time, “they became permanent barriers for people who could not.”<sup>49</sup> Those costs and fines formed formidable barriers for people lacking the immediate financial wherewithal to act. In addition, Mistr observed that judges in North Carolina rarely exercised their discretionary authority to waive courts costs at sentencing for people unable to pay.<sup>50</sup> Those who could not afford to pay often found no alternative but to drive with a suspended license. Many who made this choice accumulated massive debt as Driving While License Suspended offenses piled up.

The North Carolina Justice Center, at the behest of Mistr, opened an investigation of this issue.<sup>51</sup> In September 2017, after identifying the root causes of this cyclical problem, the Justice Center partnered with the North Carolina Pro Bono Resource Center on the pilot phase of the Driver’s License Restoration Pro Bono Project.<sup>52</sup> That pilot program took a pro bono, clinical approach to provide opportunities for relief to low-income individuals in Wilmington and Durham who had their driver’s licenses

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48. Wicclair, *supra* note 1, at 35.

49. *Id.*

50. There are a number of reasons that judges are not waiving court costs at sentencing when people cannot afford to pay. First, section 7A-304(a) of the North Carolina General Statutes requires judges to enter “a written order, supported by findings of fact and conclusions of law, determining that there is just cause” to waive costs. N.C. GEN. STAT. § 7A-304(a) (2019). That statute also prohibits judges from waiving or reducing court costs “without providing notice and opportunity to be heard by all government entities directly affected.” *Id.* Second, the North Carolina legislature requires the court to publish the annual number of waivers each judge grants. N.C. GEN. STAT. § 7A-350 (2019) (“The Administrative Office of the Courts shall maintain records of all cases in which a judge makes a finding of just cause to grant a waiver of criminal court costs under G.S. 7A-304(a) and shall report on those waivers to the chairs of the House of Representatives and Senate Appropriations Committees on Justice and Public Safety and the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1 of each year. The report shall aggregate the waivers by the district in which the waiver or waivers were granted and by the name of each judge granting a waiver or waivers.”).

51. Wicclair, *supra* note 1, at 35.

52. *North Carolina Justice Center*, N.C. PRO BONO RES. CEN., <https://ncprobono.org/provider/north-carolina-justice-center/> [<https://perma.cc/59YT-35SH>] (“The North Carolina Justice Center is one of the state’s preeminent voices for economic and social justice. As a leading progressive research and advocacy organization, our mission is to eliminate poverty in North Carolina by ensuring that every household in the state has access to the resources, services and fair treatment it needs to achieve economic security.”).

suspended for failure to appear in traffic court or lacked the ability to immediately pay their traffic court debt.<sup>53</sup>

District attorneys in those jurisdictions were attracted to this unique model—because of the model’s promise to break the seemingly endless debt cycle—and participated in the clinics as community partners. Clinic advocates worked with those district attorneys, requesting that their Offices voluntarily dismiss the traffic charges with failures to appear pursuant to section 15A-931(a) of the North Carolina General Statutes. Clients with suspended licenses because of unpaid traffic court debt met with a pro bono attorney who helped the client complete an affidavit demonstrating an inability to pay. The volunteer attorney also prepared a Motion to Remit Fees and Fines. The motion and affidavit were presented in court after the clinic, pursuant to section 20-24.1(b)(4) of the North Carolina General Statutes, and the fines and fees were remitted.<sup>54</sup>

The pilot program demonstrated that the clinic model is a valuable, yet resource-intensive, component of the Driver’s License Restoration Project.<sup>55</sup> In response to the sheer number of North Carolinians with indefinite license suspensions for failure to pay, advocates developed a new iteration of the project called “Mass Relief Debt Remittance.”<sup>56</sup> Under section 15A-1363 of the North Carolina General Statutes, the district attorney “may at any time petition the sentencing court for a remission or revocation of the fine or costs.”<sup>57</sup> If the court finds that “the proper administration of justice requires resolution of the case, the court may remit or revoke the fine or costs.”<sup>58</sup>

District attorneys who participate in mass relief debt remittance motion the court for remittance of fines and fees pursuant to section 15A-1363 of the North Carolina General Statutes. Participating district attorneys choose a category of traffic cases for which they are willing to petition the court for consideration of debt remittance based on (1) the length of the license suspension and (2) the underlying traffic offense.<sup>59</sup> Data available from the Administrative Office of the Courts is reviewed to identify what cases meet the criterion. In the motion, the district attorney argues that due to the length

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53. Wicclair, *supra* note 1, at 35.

54. *Id.* (citing N.C. GEN. STAT. § 20-24.1(b)(4) (stating that a license will remain revoked unless the defendant “demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted.”)).

55. Wicclair, *supra* note 1, at 35.

56. *Id.*

57. N.C. GEN. STAT. § 15A-1363 (2019).

58. *Id.*

59. *See id.*

of the failure to comply with fines and fees and the resulting driver's license suspension, "the proper administration of justice requires resolution of the case."<sup>60</sup> By relying on section 15A-1363 of the North Carolina General Statutes and choosing a standard criterion, district attorneys can motion for remittance of fines and fees for a large volume of cases in a single hearing without making an individualized determination of ability to pay which greatly adds to the project's efficiency.

For example, the Durham District Attorney's Office, the first to commit to the program, agreed to present fee remittance motions for cases with a failure to pay license suspension that was at least two years old for all low-level traffic offenses.<sup>61</sup> This program excludes serious traffic offenses and those classified as matters of public safety such as Driving While Impaired or Fleeing to Elude a Police Officer.<sup>62</sup> The North Carolina Pro Bono Resource Center uses data from the Administrative Office of the Courts to identify the cases that meet the district attorney's criteria.<sup>63</sup> Volunteer attorneys then use this data to further screen records to pinpoint qualifying cases and draft motions and advice letters for those eligible for relief. Courts across the state have remitted fines and fees for 36,800 cases, benefiting thousands of drivers whose licenses were suspended for unpaid fines and fees.<sup>64</sup>

Importantly, mass relief does not require potential clients to self-identify or attend clinics or court dates. This key feature has allowed advocates to reach constituencies most impacted by these suspensions while bypassing the typical barriers to seeking relief, including inadequate transportation, lack of childcare, work constraints, and mistrust of the judicial system. On the other hand, notifying people of their debt relief is this strategy's biggest challenge. "Statewide, the median length that drivers had active suspensions for unpaid traffic court fines and fees was 5.8 years. Meanwhile, the average suspension length is even higher at 8.5 years."<sup>65</sup> Given the length of failure to pay suspensions, the last known address on file with the Administrative Office of the Courts is often outdated. To remedy that logistical hurdle, "the [C]ity of Durham developed a website, [secondchancedriving.org](https://secondchancedriving.org), that allows individuals to search whether they have received relief through the program. The City of Durham and local

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60. *Id.*

61. Thomas McDonald, *Thousands of Durham Residents Eligible to Legally Drive Again*, INDY WEEK (Nov. 25, 2020, 12:38 PM), <https://indyweek.com/news/durham/drivers-eligible-license-restoration/> [<https://perma.cc/WK6S-RCNZ>].

62. Wicclair, *supra* note 1, at 35.

63. *Id.*

64. Internally-collected statistic from the N.C. Pro Bono Resource Center.

65. *When Debt Takes the Wheel*, *supra* note 1.

community groups publicize the program and the website.”<sup>66</sup> Through the website, individuals can also request an advice letter clarifying what relief might be available to them, what other suspensions, if any, remain on their record, and what remedial steps they must take. The Pro Bono Resource Center subsequently created [ncfairchance.org](https://ncfairchance.org/), a statewide website expanding the [secondchancedriving.org](https://secondchancedriving.org/) site to serve other jurisdictions that join this mass relief program.<sup>67</sup>

The jurisdiction-specific nature of relief constitutes another challenge of this program. It is not uncommon for North Carolinians to live in one county and work in another. Thus, an individual may have multiple suspensions across one or more jurisdictions. Accordingly, a person may receive partial relief in one jurisdiction but have suspensions in other counties not participating in the program. To address this issue, expanding jurisdictions regionally, as quickly and efficiently as possible, is a top priority. As of 2020, Durham, Mecklenburg, Pitt, Caswell, Rockingham, New Hanover, Pender, and Gaston counties have completed mass relief debt remittance. Guilford County and Buncombe County have started mass relief debt remittance, and district attorneys in several other counties have committed to future participation. By continuing to cultivate strong partnerships and by using creative technology strategies and pro bono volunteers, the N.C. Pro Bono Resource Center anticipates expanding the program across the state, effectively notifying North Carolinians about the relief they have received, and ensuring they reinstate their driver’s licenses after suspensions are resolved.

#### IV. LESSONS LEARNED

Driver’s License Restoration Project partners constantly analyze successes and failures and seek to refine the project’s approach based on lessons learned. There are some universal lessons from this project applicable to related policy work while others have specific utility for advocates in other states who seek specific driver’s license restoration relief.<sup>68</sup>

##### A. *Partner, Partner, Partner*

We all get siloed in our work from time to time; however, collaboration is required to correct entrenched practices like driver’s license suspension.

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66. Wicclair, *supra* note 1, at 35.

67. See N.C. FAIR CHANCE, <https://ncfairchance.org/> [<https://perma.cc/6XRA-AL9V>].

68. For a more in-depth analysis of the lessons learned from the initial implementation of the Driver’s License Restoration Project, see Wicclair, *supra* note 1.

The Driver's License Restoration Project relies on the cooperation of a coalition of stakeholders and works most effectively when each group's strengths are utilized, roles are memorialized in writing, and communication is prioritized.

*B. Unlikely Bedfellows Make Good Partners*

Partnerships between district attorneys responsible for prosecuting traffic cases and advocates for reform are unusual, but the support of district attorneys constitutes an indispensable element of this project, especially given the political constraints specific to North Carolina, where systemic change is more difficult to achieve.

*C. Technology Is Your Friend*

The mass relief debt remittance work was developed in response to the need for high volume driver's license restoration. While legal services work is chronically underfunded, technology solutions can be leveraged in the absence of other resources and has been instrumental to streamline critical components of the project.

*D. Work with Community Organizers and People who are Directly Impacted*

Ensuring that community organizers and people who have experienced license suspensions have a seat at the table establishes a project that remains client-centered, impactful, and responsive to those most in need of relief.

## V. RECOMMENDATIONS

As discussed above, the Driver's License Restoration Project is not without challenges. Most significantly, it relies on voluntary cooperation of individual jurisdictions rather than acting as a statewide program. A legislative approach would increase efficiency and consistency across North Carolina. To achieve that, the North Carolina General Assembly should adopt the following legislative reforms:

- (1) Stop suspending driver's licenses for unpaid fees and fines;
- (2) Decrease court fees and fines;
- (3) Implement a statutory sliding scale for fees and fines based on one's ability to pay; and
- (4) Create a statutory "standard for evaluating an individual's ability to pay including a presumption of inability to pay for people who are

homeless, incarcerated, confined in a mental health facility, juveniles, or whose income is below the poverty level,” as recommended by the United States Commission on Civil Rights.<sup>69</sup>

Taken together, these policies would not only achieve greater racial and economic equity; they would also increase court and law enforcement efficiency and cost saving, boost state revenue, enhance public safety, and promote trust and transparency within the judicial process.

If one goal of traffic court fees and fines is to generate state revenue, suspending driver’s licenses for failure to pay, which cripples affected North Carolinians’ ability to work, contradicts that goal. Data reviewed by the United States Commission on Civil Rights suggested that “debt-related driver’s license suspensions provide little motivation for individuals to comply with court orders to avoid a driver’s license suspension.”<sup>70</sup> The Commission writes:

Perversely, despite the goal to generate revenue, these practices are not systematically documented to actually generate net revenue when taking into consideration serious costs. Those costs include the costs of policing, the costs of jail and incarceration, and the costs of job loss, family separation, and other harms imposed on impacted people and their families.<sup>71</sup>

Suspending driver’s licenses for unpaid fees and fines not only decreases the likelihood they are paid—the practice increases unemployment and weakens local economies. Moreover, the COVID-19 pandemic has exacerbated the economic instability of fragile communities.<sup>72</sup> Higher unemployment has led to housing and food insecurity for vulnerable populations. There must be a greater sense of urgency to incorporate fees and fines reform into any comprehensive pandemic recovery efforts.

Suspending licenses for unpaid fees and fines also makes communities less safe. According to the American Association of Motor Vehicle Administrators, “the practice of suspending driver’s licenses for non-driving related offenses raises important public safety concerns by

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69. U.S. COMM’N ON CIV. RTS., *supra* note 36, at 75.

70. *Id.* at 36.

71. *Id.* at 35 (citation omitted).

72. Corinne Graff, *COVID-19 and Conflict: Implications for Fragile Societies*, U.S. INST. PEACE: OLIVE BRANCH (June 4, 2020) <https://www.usip.org/blog/2020/06/covid-19-and-conflict-implications-fragile-societies> [<https://perma.cc/9Y58-TSCN>].

unnecessarily increasing the number of unlicensed and uninsured drivers on the road.”<sup>73</sup> The Department of Motor Vehicles and law enforcement then spend time and resources policing drivers with license suspensions due to unpaid fees and fines rather than on more pressing matters of public safety.<sup>74</sup>

*A. Decrease criminal court fees and fines.*

North Carolina should decrease criminal court fees and fines to a reasonable rate that considers the economic picture of the state post-COVID-19. The current structure of fees and fines “are not proportional to the crimes charged, and they do not necessarily relate to any expense the state accrued in a particular case.”<sup>75</sup> Furthermore, these fees and fines have increased dramatically since the mid-1990s, far out-pacing inflation.<sup>76</sup> In 1995, the General Court of Justice Fee, the baseline district court fee, was \$41.<sup>77</sup> If that court fee had only increased to take account for inflation, the fee would be \$71.34 today.<sup>78</sup> Currently, it is \$147.50.<sup>79</sup> Across the country, “80 to 90 percent of people charged with a crime are indigent.”<sup>80</sup> In addition, North Carolina has the 15th highest rate of poverty in the country.<sup>81</sup> Under these circumstances, these fees and fines are simply unaffordable for a large part of the population.

Although it may seem counterintuitive, decreasing the amount of fines and fees may actually increase the total amount of money collected. According to the Free to Drive Coalition:

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73. U.S. COMM’N ON CIV. RTS., *supra* note 36, at 37 (citing AM. ASS’N OF MOTOR VEHICLE ADM’RS, BEST PRACTICES GUIDE TO REDUCING SUSPENDED DRIVERS 4 (2013), <http://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/> [<https://perma.cc/YNQ9-WLYK>] (follow “Download the document today” hyperlink to download PDF document)).

74. *Id.*

75. ACLU N.C., *supra* note 22, at 8.

76. David E. Clark & Kevin J. Murtagh, *Flood of New Court Fees Drown Indigent Defendants*, 22 N.C. ST. BAR J. 8, 8 (2017).

77. *Id.* at 9.

78. *Value of \$41 by Year*, SAVING.ORG <https://www.saving.org/inflation/inflation.php?a mount=41> [<https://perma.cc/WY2K-VWCW>] (last visited Feb. 21, 2021) (calculating the value of inflation using the Consumer Price Index (CPI) data provided by the Bureau of Labor Statistics of the United States government).

79. N.C. GEN. STAT. § 7A-304(a)(4) (2019).

80. ACLU N.C., *supra* note 22, at 19.

81. Brian Kennedy, *North Carolina’s Poverty Rate Remains 15th Highest in the Nation*, N.C. JUST. CTR. (Sept. 30, 2019), <https://www.ncjustice.org/publications/north-carolinas-poverty-rate-remains-15th-highest-in-the-nation/> [<https://perma.cc/4AQ5-ESM4>].

The single most effective way to ensure compliance with debt is to reduce the debt to an amount that people can afford to pay. Jurisdictions that lower fines for people who can't afford to pay them tend [to] see an increase in collections and a reduction in spending on enforcement. For instance, when one county decreased the fine amount in 90% of cases by an average of just \$40, the average amount collected rose from \$197 to \$360.<sup>82</sup>

The TREC has also recommended the reduction of the use of fines and fees, stating, “A person’s economic status should never result in the loss of their individual civil liberties. Fines and fees should only be imposed when a meaningful assessment of a person’s ability to pay has been conducted, and the fines and fees should be directly related to the conviction at hand.”<sup>83</sup>

*B. Implement a statutory sliding scale for fees and fines based on one’s ability to pay.*

In recent years, the judiciary has faced increasing political pressure to deny fee waivers based on inability to pay.<sup>84</sup> In 2015, the General Assembly passed a law requiring the North Carolina Administrative Office of the Courts to track and publish a report with the “number of times individual judges waive court costs.”<sup>85</sup> The General Assembly also added a provision to section 7A-304(a) stating that “[n]o court may waive or remit all or part of any court fines or costs without providing notice and opportunity to be heard by all government entities directly affected.”<sup>86</sup> These provisions have had a chilling effect on the issuance of waivers based on inability to pay because many elected judges fear the political backlash of granting too many fee waivers. The provisions have generated significant uncertainty for court users and judges, as judges find themselves trapped between fear of public repudiation, coupled with the implied pressure to generate state revenue and their duty to uphold justice and protect the Constitutional rights of those who come before them. Implementing a sliding scale for fees and fines based on ability to pay would resolve this issue while promoting trust and transparency within the judicial process. Such a policy would create

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82. *Too Poor to Drive: 6 Truths about Driver’s License Suspension*, FREE TO DRIVE, <https://www.freetodrive.org/wp-content/uploads/2019/09/Six-Truths-About-Driver’s-Licence-Suspension.pdf> [<https://perma.cc/2X9Q-2827>].

83. N.C. TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., REPORT 2020, *supra* note 19, at 116.

84. See ACLU N.C., *supra* note 22, at 13.

85. *Id.* (citing N.C. GEN. STAT. § 7A-350 (2019)).

86. N.C. GEN. STAT. § 7A-304.

consistency across the state and give those facing conviction for a traffic or criminal offense predictability at sentencing.

Furthermore, there is growing evidence that a sliding scale system based on ability to pay can maintain or even increase revenue.<sup>87</sup> People are more likely to pay when they can do so without sacrificing their basic needs or care of their family.<sup>88</sup> Assessing manageable fees and fines encourages payment, even among low-income court users.<sup>89</sup> Additionally, there is “substantial evidence . . . that expenditures could be significantly offset by other savings [due to a] decreased need to oversee and respond to delinquent accounts,” fewer resources used to punish people for failure to pay, and a reduction in recidivism.<sup>90</sup>

Implementing a statutory sliding scale for fees and fines based on one’s ability to pay also promotes public safety.<sup>91</sup> According to Beth Colgan, UCLA School of Law Assistant Professor,

Recent studies suggest that the tariff-fines model of ungraduated economic sanctions promotes recidivism by pushing people toward criminal activity as a means of obtaining funds to satisfy economic sanctions. Further, unmanageable economic sanctions—along with penalties for failure to pay that restrict access to occupational and drivers’ licenses and public benefits that provide basic necessities like food and housing—drain defendants’ and their families of necessary resources, thus creating or exacerbating financial instability. Such instability has also been linked to increases in recidivism and participation in crime.<sup>92</sup>

Implementing a statutory sliding scale creates predictability and transparency, which may regenerate trust that has been lost in the scheme of local courts “assessing and collecting economic sanctions.”<sup>93</sup> In combination with ceasing driver’s license suspension for unpaid fines and fees and decreasing fines and fees overall, the sliding scale system

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87. Beth A. Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 IOWA L. REV. 53, 65 (2017).

88. *Id.* at 66.

89. *Id.* at 67.

90. *Id.* at 70.

91. *See id.* at 72–73.

92. *Id.*

93. *See* U.S. COMM’N ON CIV. RTS., *supra* note 36, at 11 (“The current system of assessing and collecting economic sanctions has created distrust. This is especially true because using fees to fund unrelated activities of states and localities ‘turn[s] courts, clerks, and probation officers into general tax collectors.’”).

encourages appearance in court by alleviating some of the fear and uncertainty inherent in appearing in court without the ability to pay.

Since its inception, the TREC has been meeting to reimagine public safety through the lens of race equity. The North Carolina Equal Access to Justice Commission had the opportunity to present to the TREC about its research and mass relief work on driver's license suspensions. The TREC subsequently adopted many of the Commission's recommendations in their final report including the reduction of court fees and fines as well as the elimination of state government reliance on fines and fees.<sup>94</sup> The TREC further recommends that the North Carolina Administrative Office of the Courts create "a system that will allow for individuals to be free of criminal justice debt" that includes:

- Assessing a defendant's ability to pay prior to levying any fines and fees.
- Reduce court fines and fees.
- Eliminate state government reliance on fines and fees.
- Develop a process to eliminate criminal justice debt.<sup>95</sup>

#### CONCLUSION

North Carolina has made progress on the long-standing and pervasive problem of driver's license suspension through its mass relief debt remittance project. This project has revealed and sought to mitigate both the economic and racial disparities of traffic debt and how this debt perpetuates the cycle of poverty. Thousands of people have had millions of dollars of debt remitted.

However, there has not been universal adoption of this project in all prosecutorial districts. Nor does this project address the underlying policy of assessing unreasonable fees and fines for low level traffic debt as a strategy for increasing state revenue. North Carolina should immediately implement the TREC recommendations to address these disparities. This would include the promotion of efforts to fully calculate a defendant's ability to pay in a more comprehensive way without punishing judges and the judicial branch when they evaluate indigency. It is in the best interest of all North Carolinians to develop a statewide approach that is predictable, equitable, and transparent.

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94. N.C. TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., REPORT 2020, *supra* note 19, at 111–14.

95. *Id.* at 114–15.