



FINES AND FEES INDEX NORTH DAKOTA

National Rank:

22nd

Score:

33/100

In North Dakota and across the country, state and local governments impose fines as punishment for everything from traffic and municipal code violations to felonies. Courts then tax people with fees, surcharges, and other assessments that fund law enforcement, the court system, and other government operations. Fines and fees for even a single incident can add up to thousands of dollars. People unable to pay these sums immediately may face steep penalties, including additional fees, driver's license suspensions, revocation of voting rights, and even incarceration.

Fines and fees can keep people in a cycle of poverty, causing people to lose their jobs, their homes, and sometimes their children. The same monetary sanction that trivially inconveniences an affluent person can prevent a low-income family from paying the rent. But fines and fees are often set without regard to a person's financial situation. They create a two-tiered system, placing justice out of reach for many low-income people, including a disproportionate number of people of color.ⁱ

That is why the National Center for Access to Justice (NCAJ) based at Fordham Law School convened a task force of experts from around the country to identify best policies to rein in these abuses. In all, NCAJ identified 17 policies that are critical to creating a fairer system that does not criminalize poverty and respects the rights of litigants. NCAJ researched state and local laws in all 50 states and Washington, D.C. and graded the jurisdictions on a scale of 0 to 100 according to how their policies measure up, creating the Fines and Fees Justice Index. In short, no state did well. Only three states scored higher than 50 out of 100 and no state received a passing score.

The good news, however, is that almost every policy we track has been adopted by at least one state. That means that states need not invent good policies whole cloth. Rather, each state could implement more rights-respecting policies simply by looking to what other states are already doing.

This report provides a snapshot of how North Dakota fared on all 17 policy benchmarks — and sub-benchmarks — along with recommendations for how the state can improve access to justice. To see how all states scored on the Fines and Fees Justice Index, read about their policies, and see the methodology for how NCAJ arrived at the scores, visit the Fines and Fees Justice Index at <https://ncaj.org/state-rankings/fines-and-fees>.



Fines and Fees Justice Index

North Dakota Score At-a-Glance

National Rank:

22nd

Score:

33/100

1. Abolition of fees	Weight	Score: 0/10
Has the state abolished all fees?	10	No
Or:		
a. Has at least one county or municipality abolished all local fees?	1	No
b. Has the state abolished "counsel fees"?	2	No
c. Has the state abolished "incarceration fees"?	2	No
d. Did the state take steps to end fees in past 4 years?	3	No
2. Abolition of juvenile court fees and fines	Weight	Score: 0/6
Has the state abolished all juvenile court fees and fines?	6	No
Or:		
a. Do all but some counties/municipalities meet the benchmark?	3	No
b. Do most counties/municipalities meet the benchmark?	1	No
c. Has the state abolished juvenile fees but not fines?	2	No
d. Has the state abolished juvenile fines but not fees	4	No
e. Has the state taken significant steps to abolish juvenile court fines and/or fees in the last 4 years?	2	No
3. Conflicts of interest	Weight	Score: 0/6
Does the state ensure that fines & fees revenue does not directly fund law enforcement and courts?	6	No
Or:		
a. Do all but some counties/municipalities meet the benchmark?	1	No
b. Does at least one major county/municipality meet the benchmark?	1	No
c. Has the state capped the % of local budgets raised from fines & fees?	1	No
4. Private debt collection	Weight	Score: 0/3
Does the state bar courts from using private collection firms?	3	No
Or:		
a. Do all but some counties/municipalities meet the benchmark?	1.5	No
b. Does at least one major county/municipality meet the benchmark?	1	No
c. Does the state require private collectors' compensation be unrelated to the amount collected?	1	No
d. Does the state bar courts from imposing surcharges on fines and fees in private collection?	1	No
e. Does the state have protections of the Fair Debt Collections Practices Act?	1	No
5. Ability to pay determinations	Weight	Score: 6/6
Does the state require courts to conduct an ability to pay determinations when imposing fines, fees, assessments or surcharges?	6	Yes
Or:		
a. Do all but some counties/municipalities meet the benchmark?	3	N/A
b. Does at least one major county/municipality meet the benchmark?	1	N/A
c. Does the state require ability to pay determinations for fines?	3	N/A
d. Can people request an ability to pay determination?	2	N/A
6. Willful failure to pay	Weight	Score: 0/10
Does the state require the government to prove failure to pay is willful before imposing sanctions, including incarceration?	10	No
Or:		
a. Do most counties/municipalities meet the benchmark?	5	No
b. Does at least one major county/municipality meet the benchmark?	1	No
7. Ability to pay standards	Weight	Score: 0/5
Has the state codified standards for judges to determine ability to pay?	5	No
Or:		
a. Do all but some counties/municipalities meet the benchmark?	2.5	No
b. Does at least one major county/municipality meet the benchmark?	1	No

8. Presumption of indigence	Weight	Score: 0/5
Has state codified standards for the presumption of indigence?	5	No
Or: a. Do all but some counties/municipalities meet the benchmark?	2.5	No
b. Does at least one major county/municipality meet the benchmark?	1	No
9. Waiver or modification of fines and fees	Weight	Score: 8/8
Do judges have discretion to waive or modify fines and fees?	8	Yes
Or: a. Do all but some counties/municipalities meet the benchmark?	3	N/A
b. Does at least one major county/municipality meet the benchmark?	1	N/A
c. Does the state meet the benchmark a) only for fines, or b) only for some fees, assessments and/or surcharges?	4	N/A
10. Payment plans	Weight	Score: 0/3
Can anyone pay fines & fees on a payment plan without penalty?	3	No
Or: a. Do all but some counties/municipalities meet the benchmark?	1.5	No
b. Does at least one major county/municipality meet the benchmark?	1	No
11. Day fines	Weight	Score: 0/3
Does the state mandate or encourage courts to use day fines?	3	No
Or: a. Is at least one court in the state piloting or using day fines?	1	No
12. Right to counsel	Weight	Score: 6/6
Is there a right to counsel for people facing incarceration for failure to pay?	6	Yes
Or: a. Do all but some counties/municipalities meet the benchmark?	3	N/A
b. Does at least one major county/municipality meet the benchmark?	1	N/A
13. Driver's license suspension	Weight	Score: 2/6
Does the state law bar driver's license suspension for failure to pay and failure to appear in court?	6	No
Or: a. Does the state allow suspension of driver's licenses for failure to pay, but only in some driving-related cases?	2	Yes
b. Does the state bar driver's license suspension for failure to pay but permit it for failure to appear?	3	No
c. Does the state bar driver's license suspension for failure to appear but permit it for failure to pay?	3	No
14. Voting Rights	Weight	Score: 6/6
Does the state allow restoration of voting rights if people have unpaid fines and fees, including where fines and fees are a condition of probation or parole?	6	Yes
15. Records expungement	Weight	Score: 0/6
Does the state allow sealing of records or records expungement if people have outstanding fines and/or fees?	6	No
Or: a. Do all but some counties/municipalities meet the benchmark?	3	No
16. Data collection and reporting	Weight	Score: 0/6
a. Does the state collect/publish data on fines & fees imposed, and revenue collected?	1	No
b. Data on people incarcerated for failure to pay fines and fees?	1	No
c. Data on fines and fees imposed, broken down by race?	1	No
d. Data on fines and fees imposed, broken down by age?	1	No
e. Data on fines and fees imposed, broken down by gender?	1	No
17. COVID response	Weight	Score: 5/5
Did the state enact at least one significant, temporary measure to mitigate impact of fines and fees during the COVID-19 pandemic?	5	Yes
a. Does at least one major county/municipality meet the benchmark?	2	N/A

North Dakota's Fines and Fees Justice Index Score

North Dakota scored 33 out of 100 points on the Fines and Fees Justice Index. It ranked 22nd, ahead of Connecticut, Delaware, and Michigan. Below, we explain in more detail how North Dakota fared on each of the Fines and Fees Justice Index benchmarks and we describe how it could do better.

Benchmark 1: Abolition of Fees

North Dakota Score: 0 out of 10 points

Recognizing that fees serve no role in making communities safer and that they unfairly force people who come into contact with the courts to pay for a system that serves all of society, the Justice Index sets a goal of abolishing all court fees. No state has yet abolished all court fees, but one in three has moved to abolish some of the most pernicious fees. These include fees for appointed counsel in criminal cases and fees for a person's incarceration, such as per diem "pay to stay" fees and charges for the cost of meals and other basic necessities. North Dakota imposes a range of fees and other charges, including for the cost of a public defender, as well as costs of incarceration, including meals, medical bills and other "legitimate financial obligations" while a person is incarcerated.ⁱⁱ

Recommendation: *North Dakota should abolish all fees. Short of that, it should abolish the most pernicious fees, including fees for appointed counsel and incarceration fees.*

Benchmark 2: Juvenile Court Fines and Fees

North Dakota Score: 0 out of 6 points

A growing body of research shows that juvenile court fines and fees, which require children or their families to pay when a child has contact with the juvenile courts, impede rehabilitation, increase recidivism, and can create family instability by placing financial stress on families already struggling to make ends meet. For that reason, a growing number of states are moving to abolish juvenile court fines and fees. North Dakota, however, imposes juvenile court fines and fees.ⁱⁱⁱ

Recommendation: *North Dakota should abolish all juvenile court fines and fees, as Delaware, New Jersey, New Mexico and New York have done.*

Benchmark 3: Barring Conflicts of Interest Around Fines and Fees Revenue

North Dakota Score: 0 out of 6 points

In many states, fines and fees pay for some or all of law enforcement and court system budgets. This use of the revenue can create perverse incentives, encouraging police to make more stops and arrests and court personnel to ratchet up punishments to pay their own salaries. Alaska, New York, South Dakota, and Utah have all avoided this conflict of interest by ensuring that revenue raised from fines and fees

does not go directly into law enforcement or court budgets. North Dakota, however, has not taken this critical step.^{iv}

Recommendation: *To eliminate conflicts of interest that can increase fines and fees, the state should ensure that revenue from these charges does not go into law enforcement or court budgets.*

Benchmark 4: Private Collection of Fines and Fees Debt

North Dakota Score: 0 out of 3 points

Debt collection agencies often add large surcharges to bills they are collecting. Because they may only get paid when they collect money, debt collection agencies also have an incentive to use predatory practices to squeeze money from people who may not be able to afford it. When states allow private agencies to collect fines and fees, those agencies profit while people who cannot pay incur even more debt. For that reason, one in three states has either outlawed the practice of using private debt collections to collect unpaid court debt or taken steps to rein in abusive practices. North Dakota, however, still allows this practice.^v

Recommendation: *North Dakota should bar the use of private debt collection agencies to collect fines and fees.*

Benchmark 5: Consideration of Ability to Pay at Sentencing

North Dakota Score: 6 out of 6 points

Recognizing the harms of charging people fines and fees they simply cannot afford to pay, one in four states require courts to conduct ability to pay assessments every time they order a person to pay a fine, fee, assessment or surcharge. North Dakota requires courts to consider a person's ability to pay when imposing fines and fees.^{vi}

Recommendation: *North Dakota should continue the practice of requiring courts to conduct ability to pay assessments when imposing fines, fees, surcharges, or other costs.*

Benchmark 6: Proof of Willful Failure to Pay Before Incarceration or Other Sanctions

North Dakota Score: 0 out of 10 points

In 1983 the United States Supreme Court ruled in *Bearden v. Georgia* that courts cannot incarcerate a person for failure to pay court debts unless the failure to pay was "willful." Nevertheless, only 15 states require courts to conduct a hearing and find that the person's failure to pay was willful before ordering incarceration or the imposition of other sanctions, including the suspension of a driver's license. North Dakota does not require the state to prove that a person's failure to pay was willful before a judge imposes sanctions. Rather, it places the burden of proof on the person, who is required to show cause as to why they should not be imprisoned for failure to pay.^{vii}

Recommendation: North Dakota should abolish incarceration as a sanction for failure to pay. Short of that, the state should require the government to prove that a person's failure to pay was willful before ordering incarceration or imposing other sanctions.

Benchmark 7: Ability to Pay Standards

North Dakota Score: 0 out of 5 points

When courts conduct ability to pay determinations, they often do so without clear, uniform standards about how to conduct the proceedings, the evidence to consider, and the criteria to gauge what a person is able to pay. This can lead to wildly different results across court rooms, leaving many people unprotected. For that reason, 11 states have codified standards giving clear guidance to judges. North Dakota has not codified an ability to pay standard.^{viii}

Recommendation: North Dakota should codify a substantive ability to pay standard that all state and local courts must use so that there is consistency across the state in determining whether a person can afford to pay and, if so, how much.

Benchmark 8: Standards that Trigger a Presumption of Indigence

North Dakota Score: 0 out of 5 points

Eight states have codified standards that trigger a presumption that a person is indigent and, therefore, unable to pay fines, fees, costs, surcharges or assessments. In some states, the fact that a person is entitled to appointed counsel or receives public benefits is enough to trigger the presumption that they cannot pay fines and fees. In others, a certain income threshold triggers the presumption. North Dakota codifies standards for determining indigence, but these apply only to eligibility for appointed counsel and not to a person's ability to pay fines and fees.^{ix}

Recommendation: North Dakota should codify a clear standard that triggers the presumption that a person is indigent and, therefore, cannot afford to pay fines or fees.

Benchmark 9: Discretion to Modify or Waive Fines and Fees

North Dakota Score: 8 out of 8 points

To ensure that fines and fees reflect what people can actually afford to pay, judges must have discretion in individual cases. Eighteen states give judges the ability to waive or modify all fines, fees, surcharges and assessments according to the person's ability to pay, and nearly every state give judges the ability to waive or modify these costs in at least some circumstances. North Dakota gives judges discretion to waive or modify fines, fees, and other money assessed by courts.^x

Recommendation: North Dakota should continue to give judges discretion to waive or modify all fines, fees, and other costs.

Benchmark 10: Payment Plans

North Dakota Score: 0 out of 3 points

Bars on payment plans create needless barriers to payment for people who cannot pay an entire fine or fee up front, but some states never allow people to use payment plans. Others authorize—but do not require—judges to allow payment plans, leaving some people who cannot afford to pay upfront vulnerable. States should mandate that anyone can choose to pay fines and fees on a payment plan if they cannot afford to pay immediately, without incurring any additional fees or interest charges, but only five do so to date. North Dakota authorizes—but does not require—judges to allow people to pay fines and fees in installment plans.^{xi}

Recommendation: North Dakota should mandate that anyone can choose to pay fines and fees on a payment plan, without incurring any additional fees or interest charges.

Benchmark 11: Individualized Fines

North Dakota Score: 0 out of 3 points

To date, Oklahoma is the only state that has adopted individualized fines, sometimes referred to as “day fines.” Individualized fines, long used in Germany and other European countries, are scaled to the severity of the offense and the person’s income, helping to ensure that fines are adjusted to what people can afford to pay, and that people with greater income experience penalty of equivalent impact for violation of the same law.^{xii}

Recommendation: North Dakota should follow Oklahoma's lead and institute day fines. Scaling fines not only to the severity of the person's offense but also to their income helps to ensure that people who are poor or working class do not experience much harsher punishments for the same behavior as wealthy people who can afford to pay.

Benchmark 12: Right to Counsel When Incarceration is Possible

North Dakota Score: 6 out of 6 points

More than half of states give people the right to an attorney at court hearings if the person may face jail time for failure to pay a fine, fee, surcharge, or assessment. North Dakota provides such a right to counsel.^{xiii}

Recommendation: North Dakota should continue the practice of providing counsel when a person may face incarceration for failure to pay. It could become a national model by eliminating the possibility of incarceration altogether in such cases.

Benchmark 13: Driver's License Suspension for Failure to Pay Fines and Fees

North Dakota Score: 2 out of 6 points

Eighty-six percent of Americans drive to work. A driver's license is also necessary to take children to school, buy groceries, go to doctor's appointments, and meet many other basic needs. But courts often suspend driver's licenses for failure to pay fines and fees, or for failure to appear at hearings connected with fines and fees payments, forcing people either to lose their jobs and face other hardships, or drive with a suspended license risking further penalties and punishments. For that reason, there is growing momentum to end the suspension of driver's licenses. Now, three in five states bar the suspension of driver's licenses for failure to pay fines and fees. North Dakota authorizes the suspension of driver's licenses for failure to appear at hearings for nonpayment. It received partial credit because it authorizes the suspension of driver's licenses for failure to pay only in cases connected to some driving-related charges.^{xiv}

Recommendation: North Dakota should eliminate the practice of suspending driver's licenses for failure to appear or failure to pay, including in driving-related cases.

Benchmark 14: Voting Rights

North Dakota Score: 6 out of 6 points

During the Jim Crow era, states passed laws designed to prevent Black people from voting, including poll taxes. There is no defensible good government nexus between money and voting. Today, however, a form of poll tax still exists. In many states, people lose the right to vote when they are convicted of a felony. Almost half of states block people from restoring their voting rights unless and until they pay all fines and fees. North Dakota restores the right to vote to people with felony convictions upon release from prison. It does not condition voting rights on payment of fines and fees.^{xv}

Recommendation: North Dakota should continue to allow people to exercise the fundamental right to vote, regardless of whether they have outstanding fines and fees.

Benchmark 15: Conditioning Expungement on the Payment of Fines and Fees

North Dakota Score: 0 out of 6 points

One in three people in the United States has a criminal record, which can interfere with a person's ability to find a job, rent or buy a home, enroll in higher education, access government benefits and more. Some criminal records can be sealed from public view or removed through expungement, making it easier for

people to get back on their feet after satisfying a criminal sentence. One in four states allows people to expunge or seal their records notwithstanding that they have unpaid fines and fees. North Dakota, however, does not allow people to seal their records unless and until they have completed probation, which may in turn be contingent on paying all fines and fees.^{xvi}

Recommendation: *North Dakota should expand access to expungements and record sealing. It should not condition them—or the completion of probation and parole—on the payment of fines and fees.*

Benchmark 16: Data Transparency

North Dakota Score: 0 out of 6 points

To understand the magnitude of the problem and to identify solutions, it is critical for states to collect and publicize data about fines and fees, including the totals that state and local governments assess and actually collect; fines and fee amounts imposed, broken down by race and ethnicity, age, gender, and income level; and number of people incarcerated for failure to pay. North Dakota does not publish any such data.^{xvii}

Recommendation: *North Dakota should collect and report data about fines and fees, including amounts imposed—broken down by race and ethnicity, age, gender, and income level—as well as revenue collected. It should also collect and report on the number of people incarcerated for failure to pay.*

Benchmark 17: Temporary Measures to Mitigate the of Fines and Fees During the COVID-19 Pandemic

North Dakota Score: 5 out of 5 points

The COVID-19 pandemic and resulting economic fallout caused financial hardship across our society. Early in the crisis, tens of millions of people lost their jobs. Although employment numbers gradually improved, the challenges persisted. Near the end of 2021, 20 million households reported that they did not have enough to eat and 10 million households reported that they were behind on rent.^{xviii} Almost half of states took steps to change their fines and fees policies in light of these new economic circumstances. In North Dakota, the Department of Corrections suspended financial obligations for people who are incarcerated.^{xix}

Recommendation: *The COVID-19 pandemic and its financial toll revealed many ways society could be operating differently, including in practices around fines and fees. In anticipation of future pandemic surges and other potential challenges, including financial hardships, North Dakota should continue to review and reform its policies on fines and fees, guided by the benchmarks set forth above.*

Conclusion

The overall findings of the Fines and Fees Justice Index are sobering. No state received a passing score. The findings do, however, provide some room for optimism. Almost all of the 17 benchmarks have been

adopted by at least one state. That means that states need not reinvent the wheel. To implement better, more rights-respecting policies, in most cases they need only look to what other states are already doing. To see how other states fare, visit <https://ncaj.org/state-rankings/fines-and-fees>.

End Notes

ⁱ See, e.g., U.S. Comm’n on Civil Rights, Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications (Sept. 2017), <https://perma.cc/W7Y7-C7MW>.

ⁱⁱ See, e.g., N.D. Cent. Code § 29-07-01.1; N.D. Cent. Code § 27-20.2-12; N.D. Cent. Code § 12-44.1-05; N.D. Cent. Code § 12-44.1-12.1.

ⁱⁱⁱ See, e.g., N.D. Cent. Code § 27-20.2-09; N.D. Cent. Code § 27-20.2-19(4).

^{iv} See N.D. Cent. Code, § 27-05.2-08; N.D. Cent. Code, § 12.1-32-02.2. But see N.D. Const. Art. IX, § 2.

^v See N.D. Cent. Code, § 29-26-22.2.

^{vi} See N.D. Cent. Code § 12.1-32-05. See also N.D. Cent. Code § 29-26-22(4); N.D. Cent. Code § 12.1-32-08(1).

^{vii} N.D. Cent. Code, § 12.1-32-05(3).

^{viii} The Supreme Court of North Dakota has held that N.D. Cent. Code § 29-26-22.2 grants broad discretion in determining inability to pay fines and fees, specifying that a court must only consider whether a person is "unable to pay in full." *Ennis v. Williams Cnty. Bd. of Comm'rs*, 493 N.W.2d 675, 679 (N.D. 1992). See also *Patten v. Green*, 369 N.W.2d 105, 107 (N.D. 1985) (holding that denial of motion to waive filing fees is reviewed only for abuse of discretion, and providing no criteria for employing that discretion).

^{ix} See N.D. Comm’n on Legal Counsel for Indigents, Guidelines to Determine Eligibility for Indigent Defense Services III(B)(2). See also *In Ennis v. Williams Cnty. Bd. of Comm'rs*, 493 N.W.2d 675, 679 (N.D. 1992), (holding that N.D.C.C. § 29-26-22.2 grants broad discretion in determining inability to pay fines and fees.)

^x See N.D. Cent. Code, § 12.1-32-05; N.D. Cent. Code § 12.1-32-08(5).

^{xi} See N.D. Cent. Code, § 12.1-32-05; N.D. Cent. Code § 29-26-22(4).

^{xii} See 22 Okla. Stat. Ann. § 991a(A)(1)(y).

^{xiii} See N.D.R. Crim. P. Rule 44. See also *Peters-Riemers v. Riemers*, 663 N.W.2d 657 (N.D. 2003).

^{xiv} See N.D. Cent. Code § 39-06-32(2)-(3).

^{xv} N.D. Cent. Code § 12.1-33-03.

^{xvi} N.D. Cent. Code § 12-60.1-04. See also N.D. Cent. Code § 12.1-32-07(4)(f).

^{xvii} North Dakota publishes data on criminal court cases, but it does not include data about fines and fees. See 2021 North Dakota Court System Annual Report, N.D. Cts., 2021, <https://perma.cc/BUX4-WLY4>.

^{xviii} "Tracking the COVID-19 Economy's Effect on Food, Housing, and Employment Hardships," Center on Budget and Policy Priorities, Feb. 10, 2022, <https://perma.cc/E9GQ-SFNJ>.

^{xix} "COVID-19 Fines and Fees Policy Tracker," Fines and Fees Justice Center (2020), <https://perma.cc/E6F8-H7YC>. See also, "Ending the Burden of Fines and Fees During COVID-19," Brennan Center for Justice (Jan. 7, 2022), <https://perma.cc/7N85-E6F9>.