

# Nothing to Do with Grace, Nothing to Do with Justice.



## The Human Impact of North Carolina's Unauthorized Substances Tax

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The NC Justice Center seeks to eliminate poverty in North Carolina by ensuring every household in the state has access to the resources, services, and fair treatment it needs to achieve economic security. The Fair Chance Criminal Justice Project of the NC Justice Center, established in 2018, is dedicated to making the criminal justice system fairer from arrest to reentry, including addressing the causes of criminal records and eliminating barriers to successful reentry and prosperity. The project's staff attorneys, staff policy advocates, and external partners are deeply committed to uplifting the voices, experiences, and needs of people, families, and communities impacted by the civil disabilities and private discrimination triggered by criminal records, particularly people and communities of color disproportionately impacted by the criminal justice system and collateral consequences of criminal records.

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## Executive Summary



**North Carolina legislators should take immediate action to abolish the Unauthorized Substances Tax and forgive all outstanding Unauthorized Substances Tax debt.**

North Carolina's Unauthorized Substances Tax, also known as "the N.C. Drug Tax" or "the Drug Tax," has become a site for material and symbolic struggle since its passage in 1989, during the height of the War on Drugs.<sup>1</sup> The tax has been debated in courts, occasionally in the General Assembly, and sporadically in the press, but, most often, the NC Drug Tax is spoken about in hushed tones in households across North Carolina as thousands of families attempt to figure out if and how they will get out from underneath crushing amounts of debt.<sup>2</sup>

On average, about 5,000 residents leave North Carolina courthouses, jails, and prisons every year with thousands of dollars in Drug Tax debt.<sup>3,4</sup> While the average Drug Tax assessment hovers around \$8,872, in 2010, a North Carolina Department of Revenue (NCDOR) official reported that the department had doled out assessments as high as \$5 million.<sup>5</sup>

Individuals bearing the cost of the taxes are typically members of low-income communities and communities of color. While drug use and distribution rates are typically even across lines of race and socioeconomic position, drug enforcement activities disproportionately target Black and impoverished neighborhoods.<sup>6</sup> Since Drug Tax assessments almost

<sup>1</sup>Despite state law that requires tax assessment on illicit drugs and alcohol, this report will use the terms "Unauthorized Substances Tax," and its narrower aliases "the N.C. Drug Tax," and "the Drug Tax" interchangeably.

always follow a drug-related arrest, Drug Tax assessments disproportionately target marginalized communities.<sup>7</sup> One consequence of this uneven distribution is that the people bearing most of the costs are typically the least able to pay off the debt in a timely manner because of structural disadvantages.<sup>8</sup> Moreover, the debt grows because of interest, which can be as high as 40 percent, making it less likely that they can ever pay the debt.<sup>9</sup>

The following study seeks to answer the question: **How does North Carolina's Unauthorized Substances Tax impact those against whom it is assessed?** The findings are derived from in-depth qualitative interviews with 12 of the thousands of North Carolinians who have had Drug Taxes assessed against them. The interviewers coded the transcripts to draw out emergent themes, helping to identify the scope and extent of harm associated with the N.C. Drug Tax.

The evidence suggests that, in addition to the financial burden, the Drug Tax also harmed participants' family members, worsened the collateral consequences of criminal convictions, alienated participants from government institutions, and diminished participants' psychological well-being. Participants felt trapped and tricked by the tax. It took food off their tables and money out of their pockets. Their reactions were often despair, disbelief, and frustration. Many of the participants in this study are still paying a Drug Tax debt from several years ago, and some expect that they will be living with Drug Tax debt for the rest of their lives. These harms persist and have caused many participants to withdraw from public life and formal market institutions.

The N.C. Drug Tax discouraged participants from joining labor markets, using banks, filing taxes, starting businesses, and buying homes, among other desirable economic activities. These findings suggest that the Drug Tax also harms the state economy and all the North Carolinians who rely on it by discouraging behavior that contributes to economic growth.

All the harms and costs are accompanied by relatively little monetary gains for local law enforcement agencies and the State. This study found that revenue from the Drug Tax accounts for less than 0.01 percent of the General Fund and less than 2.5 percent of the budgets of most top-earning police departments.<sup>10</sup> These funds are allegedly used to invest more heavily in drug enforcement activities but considering Drug Tax assessments pushed participants out of formal markets and back into informal markets, the overall impact of this investment is likely little to none.<sup>11</sup>

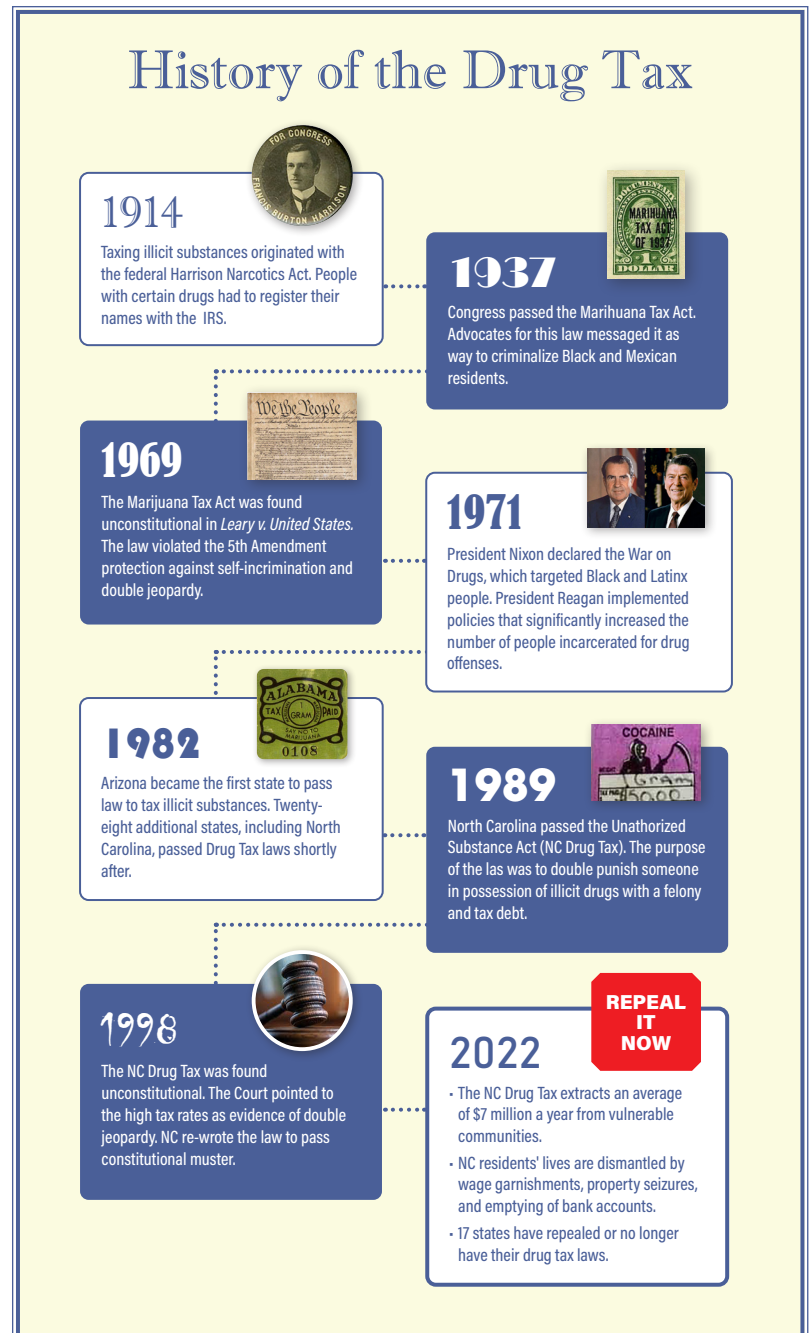
People assessed the N.C. Drug Tax are experiencing oversized tax burdens and worsened collateral consequences, while state and local agencies are incurring minimal gains. North Carolina's Unauthorized Substances Tax is bad public policy, and lawmakers should abolish it.

## What is the Unauthorized Substances Tax?

To understand the human impact of North Carolina's Unauthorized Substances Tax or the N.C. Drug Tax, one must first understand what it is. Very few people have even heard of North Carolina's Drug Tax. Those who have heard of it rarely understand its inner workings because there is very little public information available about it. The few news articles and blog posts published about the N.C. Drug Tax revealing how this policy operates on the ground diverge significantly from how it is described in statute.<sup>12</sup> The Drug Tax relies almost entirely on non-compliance with certain statutory requirements.<sup>13</sup> The statute also does not indicate the scale and scope of the Drug Tax or its history.<sup>14</sup> This information provides vital context when considering the human costs of the Drug Tax. What is the Drug Tax—in history, in statute, and in practice?

### IN HISTORY

Taxing drugs originated at the federal level in 1914 with the Harrison Narcotics Act, one of the nation's first forays into criminalizing drug possession.<sup>15</sup> The Harrison Act included a clause levying a tax on opium and coca products that required people possessing these substances to register their name and location with the Internal Revenue Service.<sup>16</sup> Previous versions of the Harrison Narcotics Act had not passed because opponents viewed it as an incursion of states' rights.<sup>17</sup> However, in 1914, the Act's proponents used unfounded racist tropes to get Southern legislators on board.<sup>18</sup> So-called experts testified at congressional hearings that "most of the attacks upon white women of the South are the direct result of a cocaine-crazed Negro brain."<sup>19</sup> The law passed.<sup>20</sup>



Twenty-three years later, in 1937, the Marihuana Tax Act picked up the drug taxation torch.<sup>21</sup> The first Director of the Federal Bureau of Narcotics, Harry J. Anslinger, was instrumental in writing, introducing, and lobbying for the Act.<sup>22</sup> Anslinger is sometimes referred to as the actual father of the War on Drugs and was an infamous racist and xenophobe.<sup>23</sup> He is known for using fear-mongering tactics to convince white America that marijuana use was associated with violence and social disorder among Black citizens and Mexican immigrants, thus creating a pretext for using the Federal Bureau of Narcotics to persecute non-white communities.<sup>24</sup>

In 1969, the U.S. Supreme Court struck down the Marihuana Tax Act in *Timothy Francis Leary v. United States*.<sup>25</sup> The Court deemed that the Act violated the Fifth Amendment of the U.S. Constitution. The Fifth Amendment establishes the right to due process for all American citizens, which includes protection from self-incrimination and from being punished twice for the same crime. In the Leary case, the Court found that the Marihuana Tax Act exposed people to "real and appreciate" risk of self-incrimination because it required people possessing marijuana to report their name and address to the federal authorities.<sup>26</sup>

In response, Congress passed the Controlled Substance Act in 1970 in the Tax Act's place.<sup>27</sup> The Controlled Substances Act outlawed all currently unauthorized substances but omitted any attempt to tax drugs at the federal level.<sup>28</sup>

One year later, President Richard Nixon declared a national War on Drugs.<sup>29</sup> In a 1994 interview, President Nixon's domestic policy chief, John Ehrlichman, revealed that the motivation behind the War on Drugs was as cynical as many had already assumed.<sup>30</sup> Ehrlichman told *Harper's* magazine:

***"We knew we couldn't make it illegal to be either against the war or Black, but by getting the public to associate the hippies with marijuana and Blacks with heroin and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course, we did."***<sup>31</sup>

Under President Nixon's initiative, the War on Drugs began, but it took off in the 1980s under President Ronald Reagan.<sup>32</sup> President Reagan implemented an array of policies and messaging campaigns that contributed to the number of people incarcerated for non-violent drug offenses increasing from 50,000 in 1980 to over 400,000 in 1997.<sup>33</sup>

State legislators did not want to miss out on the tough-on-crime electoral successes that federal representatives achieved throughout the 1980s and 1990s on the backs of minoritized and low-income communities. Part of the War on Drugs at the state level involved 29 states,

including North Carolina, picking up the cause of taxing substances.<sup>34</sup> Arizona was first in 1982, and the rest followed shortly thereafter.<sup>35</sup>

Only 17 of those 29 states still tax unauthorized substances as of October 2020.<sup>36</sup> Some states eliminated the tax because of legal challenges, while others abolished the tax because the cost of administering the tax outweighed the generated revenue.<sup>37</sup> North Carolina's tax, however, has withstood several legal challenges and has generated more revenue than any other analogous state tax in the country.<sup>38</sup>

North Carolina's first iteration of the Drug Tax came in 1989, and it looked very different than the law on the books today.<sup>39</sup> First of all, the purpose of generating revenue was not a part of the original legislation.<sup>40</sup> The purpose of

the tax at that time was "to levy an excise tax on persons who possess controlled substances and counterfeit controlled substances in violation of North Carolina law and to provide that a person who possesses such substances in violation of this Article is guilty of a felony."<sup>41</sup> The original purpose was to punish the individual, not to generate revenue for the State—a vital difference.<sup>42</sup> Many legislators, pundits, and reporters openly recognized what this statement of purpose truly meant—the primary purpose of state drug taxes was to impose extra-criminal penalties on people found in possession of controlled substances.<sup>43</sup> The line between the civil penalty and criminal penalty was blurred.

The second significant difference was that the tax rate delineated in the first version was much higher than it is now. "Low-value" street drugs sold by weight had a tax rate four times as expensive as the current rate. "Low-value" street drugs sold by dosage were eight times greater.

The original writers of the legislation did learn from the Leary case to include a clause stating that "dealers" would not have to identify themselves to NCDOR to avoid a judicial challenge claiming the law requires self-incrimination. However, this did not save the original statute from all Fifth Amendment challenges.

FIGURE 1: Original vs. Current Drug Tax Rates

SUBSTANCE	ORIGINAL AMOUNT	CURRENT AMOUNT
Marijuana Stems & Stalks	\$0.40 for each gram or fraction thereof	N/A
Marijuana	\$3.50 for each gram or fraction thereof	\$3.50 for each gram or fraction thereof
Low Street-Value Drug Sold by Weight	\$200 for each gram or fraction thereof	\$50 for each gram or fraction thereof
Low Street-Value Drug Sold by Dosage Units	\$400 for each 10 dosage units or fraction thereof	\$50 for each 10 dosage units or fraction thereof
High Street-Value Drug Sold by Weight	\$200 for each gram or fraction thereof	\$200 for each gram or fraction thereof
High Street-Value Drug Sold by Dosage Units	\$400 for each 10 dosage units or fraction thereof	\$200 for each 10 dosage units or fraction thereof



In 1998, the Fourth Circuit ruled that the high tax rates in the original version of the Drug Tax violated the double jeopardy clause of the Fifth Amendment and constituted a criminal punishment (which was, of course, the implicit purpose of the law).<sup>44</sup> But, instead of marking the end of the law as Fifth Amendment challenges had in other states, North Carolina merely revised the rates listed in the statute and added a clause stating that the purpose of the law is to collect revenue, rather than to inflict punishment.<sup>45</sup> Lawmakers have revised the current version of the Drug Tax legislation just enough to evade judicial review under the Fifth Amendment.<sup>46</sup> However, its practical application and the persistent tradition of drug war policies indicate that the spirit of the law remains the same: to penalize drug use and possession by any means possible, especially among vulnerable populations.

**IN STATUTE**

According to the current North Carolina General Statutes §§105-113.105-113, the Unauthorized Substances Tax, also known as the N.C. Drug Tax, is an excise tax levied on controlled substances "possessed, either actually or constructively, by dealers."<sup>47</sup> The State of North Carolina taxes un-prescribed drugs and unregulated liquor—the same drugs and liquor that the State deems illegal.<sup>48</sup> In this context, actual possession means the substance is on one's person or under direct physical control.<sup>49</sup> Constructive possession means that a person has knowledge of the substance and the means to bring the substance under their physical control.<sup>50</sup> For example, if

**ACTUAL POSSESSION:** the substance is on one's person or under one's direct physical control.

**CONSTRUCTIVE POSSESSION:** a person has knowledge of a substance that is not on one's person or under one's control, but has the knowledge and means to bring the substance under their physical control.

**FIGURE 2: Unauthorized Substances Tax Rates**

SUBSTANCE	TAX RATE	MINIMUM QUANTITY BEFORE TAX IS DUE
Marijuana Stems & Stalks	\$0.40 for each gram or fraction thereof	More than 42.5 grams
Marijuana	\$3.50 for each gram or fraction thereof	More than 42.5 grams
Low Street-Value Drug Sold by Weight	\$50 for each gram or fraction thereof	7 or more grams
Low Street-Value Drug Sold by Dosage Units	\$50 for each 10 dosage units or fraction thereof	10 dosage units
High Street-Value Drug Sold by Weight	\$200 for each gram or fraction thereof	7 or more grams
High Street-Value Drug Sold by Dosage Units	\$200 for each 10 dosage units or fraction thereof	10 dosage units
Illicit Spirituous Liquor Sold by the Drink	\$31.70 for each gallon	No Minimum
Illicit Spirituous Liquor Not Sold by the Drink	\$12.80 for each gallon	No Minimum
Mash	\$1.28 per gallon	No Minimum
Illicit Mixed Beverages	\$20 on each 4 liters	No Minimum

a house owner knew that a house guest was storing marijuana in their closet, the house owner would have constructive possession of the marijuana.

While the law states that the tax exclusively targets "dealers," the statute does not define a dealer as someone who sells drugs.<sup>51</sup> Rather, the term "dealer" in the statute refers to a person who possesses a designated amount of an unauthorized substance.<sup>52</sup> Specifically, the statute defines a "dealer" as a person found in possession of any amount of moonshine, "42.5 grams of marijuana, seven or more grams of any other controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance that is not sold by weight."<sup>53</sup>

The law states that anyone fitting this description must purchase stamps from NCDOR within 48 hours of coming into actual or constructive possession of the substance.<sup>54</sup> The purchaser must attach the stamps to the substance's packaging to prove that they have paid the tax.<sup>55</sup>

If a law enforcement officer finds a person in possession of a stamped substance, the officer would still have to charge the person with a criminal offense but would not have to report an unpaid tax to NCDOR.<sup>56</sup> When an officer finds a person in possession of unauthorized substances without the required stamp(s), the officer must report the type and amount of substance to NCDOR.<sup>57</sup> NCDOR, in turn, assesses how much the person owes and charges the person back taxes, penalties, and interest.<sup>58</sup> The principal amount is a flat tax based on the type and amount of the substance.<sup>59</sup> The interest rate varies every six months.<sup>60</sup> The first round of interest is applied after 48 hours of the possession of the unauthorized substances has passed, but the statute does not specify how often interest accrues after the initial application.<sup>61</sup>

Because these charges fall under civil law, once assessed, the State has the right to seize a person's assets, garnish their wages, issue tax liens on their homes, businesses, and bank accounts, and take their state tax refunds until the assessed debt and attendant interest is paid in full.<sup>62</sup>

The first clause of the N.C. Drug Tax statute provides that the purpose of the law is to "generate revenue for State and local law enforcement agencies and for the General Fund."<sup>63</sup> NCDOR is directed to allocate 75 percent of the revenue generated from the tax to the law enforcement agency responsible for reporting the unauthorized substance and 25 percent to North Carolina's general fund.<sup>64</sup>

## IN PRACTICE

In practice, North Carolina's Unauthorized Substances Tax functions differently than it is written in statute.<sup>65</sup> First of all, hardly anyone purchases the requisite stamps.<sup>66</sup> Between 1990 and 2020 a total of 321 orders had been submitted<sup>ii</sup> generating \$36,006.18 in revenue (\$1,161.49 per year on average). This amount is about 0.01 percent of the \$6 to \$12 million total Drug Tax revenue collected by the State every year.<sup>67</sup> Furthermore, experts have concluded that most purchased stamps were bought by stamp collectors, not people in possession of unauthorized substances.<sup>68</sup>

**Only about 0.01 percent of Drug Tax revenues come from stamp sales. Approximately 99.99 percent comes from law enforcement officers reporting stamp-less substances following an arrest.**

<sup>ii</sup>From 1990-July 2021, 321 orders have been submitted. This represents 9,842 stamps purchased in total.

There are three main reasons why stamp sales are so low. First, as mentioned above, very few people know the stamps exist.<sup>69</sup> Besides a brief Frequently Asked Questions section on NCDOR's website, the State appears to have produced very little public information to generate compliance with the law.<sup>70</sup>

Second, and perhaps most surprising, it is not always possible to buy the stamps within 48 hours of coming into possession of a substance, as required by statute.<sup>71</sup> Two authors on different occasions have attempted to buy Drug Tax stamps at local NCDOR offices and discovered that, at the time, NCDOR did not sell the stamps in person.<sup>72</sup> Since the articles, stamps have become more available in NCDOR offices, but the process can be complicated.<sup>73</sup> Anyone interested in buying the stamps can go in person to the local NCDOR office or purchase a money order, fill out a BD-1 (or BD-1L for liquor) tax return form, mail the form and money order to an NCDOR P.O. Box in Raleigh, and wait three to four weeks for processing before they can expect to receive the stamps in the mail.<sup>74</sup>

The statute specifies that purchasers are "not required to give their name, address, social security number, or other identifying information on the [tax] return."<sup>75</sup> However, the mail-based system means that, in practice, the person requesting stamps must give their name and address to receive the stamps.<sup>76</sup> Thus, the third reason virtually no one purchases the stamps is self-incrimination.<sup>77</sup> Even though it would be a Class 1 misdemeanor for an NCDOR employee to provide information about taxpayers to law enforcement, that does not comfort many citizens who feel they would be risking arrest by informing the State of the drugs in their possession. One Winston-Salem woman told Fox8 News that the stamp purchasing process feels like "a setup."<sup>78</sup> Why would she voluntarily tell the State that she was actively breaking the law?

As a result, over 99.99 percent of the revenue from this tax stems from law enforcement officers reporting stamp-less substances following an arrest, and the ensuing back taxes, penalties, and interest assessments. While this is not how the law is written in statute, this is how the Drug Tax functions.<sup>79</sup> Lawmakers did not design the policy for statutory compliance. Instead, the Drug Tax administration has always been directly linked to law enforcement.

One of the greatest problems with this reliance on policing is that it disproportionately harms marginalized communities. Even though scholars have shown many times that drug use and distribution rates are evenly distributed across race and class, law enforcement highly concentrates drug enforcement activities in low-income communities and communities of color.<sup>80</sup> By inextricably linking the enforcement of the Drug Tax to policing, the policy practically ensures that under-resourced people of color are more likely to be subjected to the assessments than their white and affluent counterparts, despite being no more likely to have or sell drugs.<sup>81</sup>

The policy practically ensures that under-resourced people of color are more likely to be subjected to the Drug Tax assessments than their white and affluent counterparts, despite being no more likely to have or sell drugs.

## What, if any, is the revenue generated from the N.C. Drug Tax?

NCDOR rarely releases data about the Unauthorized Substances Tax. Still, some statistics are available from a 2021 public records request by the North Carolina Justice Center's Fair Chance Criminal Justice Project and a 2016 NCDOR file made public by UNC-CH School of Government professor Holbrook in 2019.<sup>82</sup> These reports do not paint the entire financial picture of the Drug Tax, but they begin to reveal the scale of the tax. Specifically, the data shows that, while the cost to the taxpayer is extremely high, the benefit to the State is very low.

For instance, NCDOR has authorized, on average, about 5,000 Drug Tax assessments each year since 1990.<sup>83</sup> While the average assessment falls just under \$10,000, some have reached up to 5 million dollars with interest.<sup>84</sup> Five million dollars may be an outlier, but even \$5,000 accounts for approximately 20 percent of a single, low-income individual's annual income (low-income is defined here as 200% of the 2020-2021 Federal Poverty Line).<sup>85</sup> These assessments then grow because of the added interest, while most family incomes remain basically the same.<sup>86</sup>

The only way for people to end the accumulation of interest is to pay the entirety of the debt or to engage in the Offer in Compromise process.<sup>87</sup> The Offer in Compromise authorizes the North Carolina Secretary of Revenue to accept an amount that is less than the full debt to the State when it is, in the Secretary's opinion, in the best interest of the State to do so.<sup>88</sup> NCDOR is authorized to make an opaque determination about how likely it is that the State will be able to collect the full debt from a particular taxpayer over time versus accepting a smaller lump sum payment upfront and calling it even.

While one might think that most low-income people would be relieved of debt under this statute, there is a catch. Unless you can prove that your gross income falls under the federal poverty line, you must submit 20 percent as a down payment with your application to be considered for an Offer in Compromise deal.<sup>89</sup>

For example, a single parent making \$10 per hour, \$20,000 per year before taxes, has been assessed the average Drug Tax amount of \$5,000. To ask that NCDOR consider how probable it is that the single parent will be able to pay the full debt, the parent would have to submit a lump sum of \$1,000. Even people making far more than that would struggle to come up with \$1,000. An oft-cited 2018 report from the Federal Reserve found that 40 percent of adults, if faced with an unexpected expense of \$400, would either not be able to cover it or would cover it by selling something or borrowing money.<sup>90</sup>

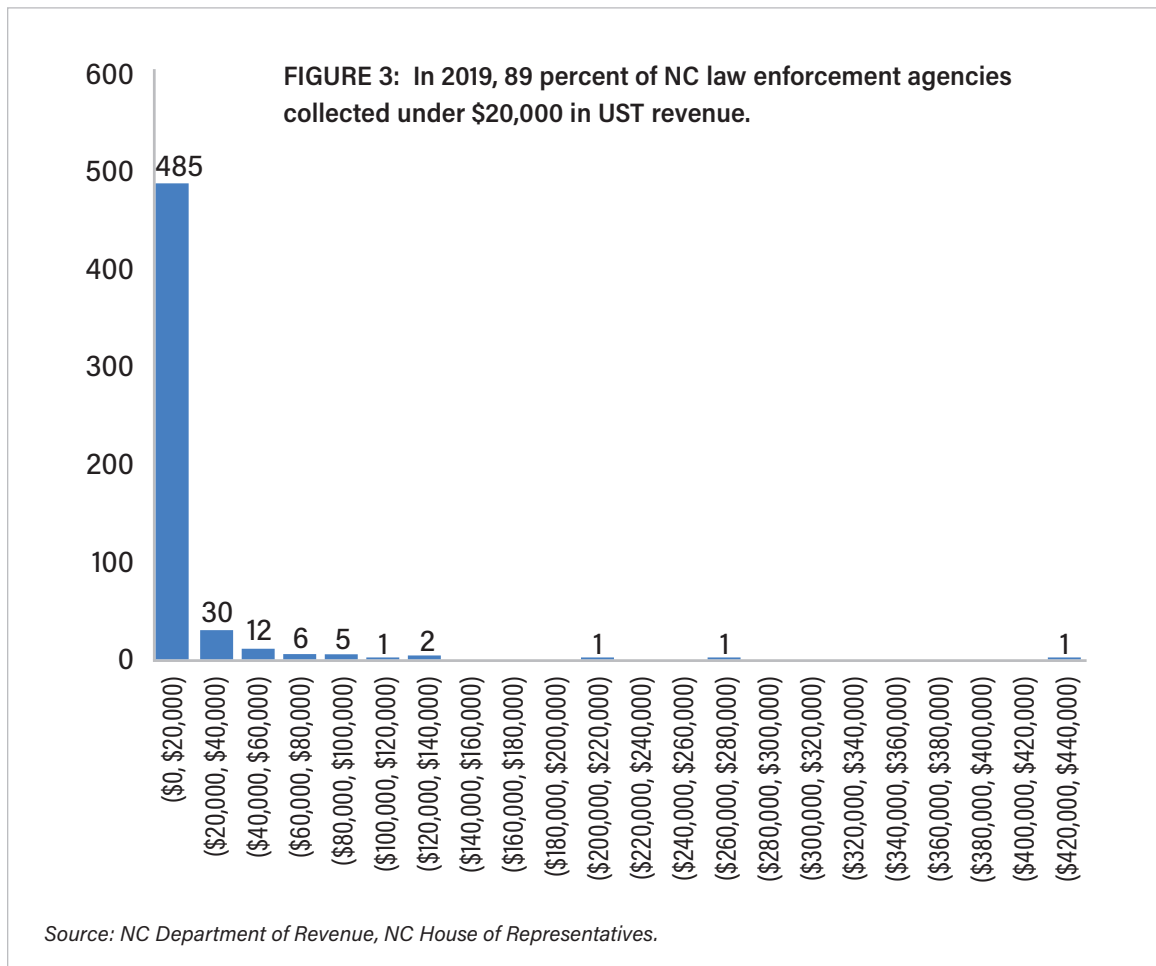
Even if a person does fall below the poverty line or can come up with the down payment, there is still no guarantee that they will be approved for an Offer In Compromise.<sup>91</sup> NCDOR may still determine that you could sell off assets, pay, or devote a larger portion of your income to the Drug Tax debt.<sup>92</sup>

Meanwhile, the amount the State collects is negligible. Recall only 25 percent of the Drug Tax revenues goes into the N.C. General Fund.<sup>93</sup> Between 2002 and 2016, the State collected \$6-\$12 million in annual Drug Tax revenue, averaging about \$9 million per year.<sup>94</sup> Twenty-five percent

of \$9 million is only \$2.25 million. The N.C. General Fund hovered around \$20 billion from 2002 to 2016, adjusted to 2016 dollars. Unauthorized Substances Tax revenue accounted for less than 0.01 percent of the General Fund during the period for which data is publicly available.<sup>iii</sup>

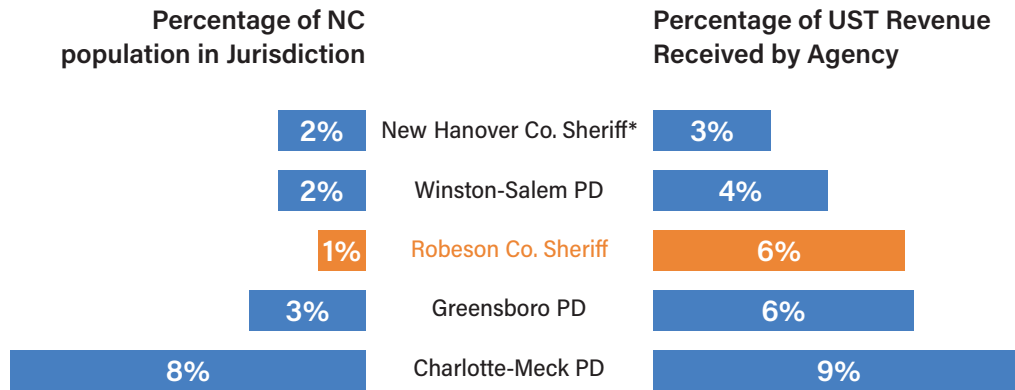
Given the low benefit to the State, do police departments—the recipients of 75 percent of Drug Tax revenue—benefit most from the Drug Tax?<sup>95</sup> Surprisingly, law enforcement agencies fare only slightly better than the State. Just under one-third of all North Carolina law enforcement agencies consistently collect \$0 in Drug Tax revenue annually.<sup>96</sup> Eighty-nine percent of agencies collect less than \$20,000 yearly, often much less.<sup>97</sup> If lawmakers abolished the Drug Tax, these numbers suggest that it would only have a potentially noticeable impact for approximately eleven percent of North Carolina law enforcement agencies.

One of the few exceptions to this trend is Robeson County Sheriff's Office. In 2019, Robeson County Sheriff's Office collected the third-highest amount of any N.C. agency.<sup>98</sup> Robeson County is home to only one percent of North Carolina's population but collected 6 percent of all Drug Tax revenue distributed to law enforcement agencies in 2019.<sup>99</sup> Notably, Robeson County also has a 26.6 percent poverty rate (the average poverty rate across all North Carolina counties is 12.9 percent),<sup>100</sup> and 29.3 percent of Robeson residents identify as white and 40.2 percent identify as Native American.<sup>101</sup>



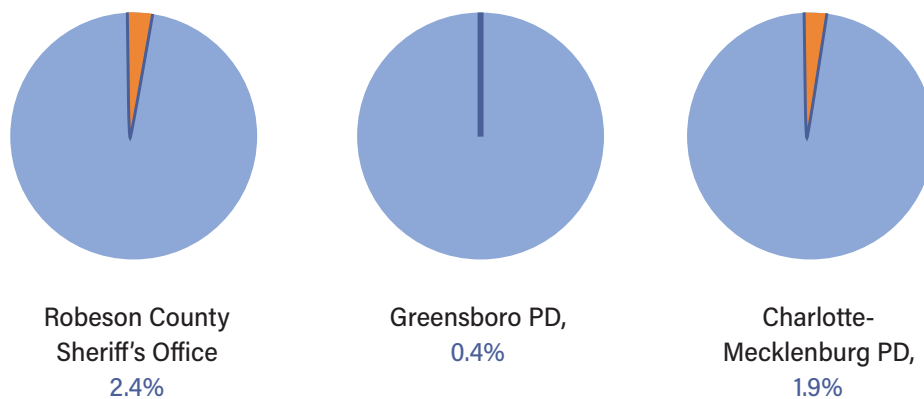
<sup>iii</sup>Data is not currently available about total collected revenue for the following years.

**FIGURE 4:** Three of the law enforcement agencies that made the most money from Drug Taxes in 2020 collected a share of total agency distributions that was disproportionately high, given the share of North Carolinians under their jurisdiction. Most notably, **Robeson County Sheriff's Office** collected the **third-highest Drug Tax distribution** (\$288,164), despite Robeson County being home to only **1 percent of North Carolinians** and having a **27 percent poverty rate**.



Law enforcement agencies that have large police districts and are highly populated, like Charlotte-Mecklenburg, generally receive hundreds of thousands of dollars in Drug Tax revenue.<sup>102</sup> The numbers appear large without context but typically account for less than two percent of agency budgets. Drug Tax revenue still accounts for less than 2.5 percent of the total budget, even for a smaller department, like Robeson County Sheriff's Office.

**FIGURE 5:** Unauthorized Substance Tax revenue accounted for **2.5 percent or less** of most law enforcement agency budgets in 2020 and **less than 1 percent** of the NC General Fund in 2016.



Source: NC Department of Revenue, NC House of Representatives, City of Charlotte, City of Greensboro, NC Treasurer.

## What is the cost, human impact, of the N.C. Drug Tax?

The impact of North Carolina's Unauthorized Substances Tax on individuals depends on many variables, such as the person's financial well-being, the size and composition of their family, and the amount of the Drug Tax assessed against them. Collectively, three main questions help inform our understanding of the experience of people who face the N.C. Drug Tax—who is taxed, how are they taxed, and how much are they taxed?

### THE 'WHO'

While the Drug Tax statute claims to tax "dealers," the policy casts a huge net that often traps people outside the target population. Critically, a failure of the Drug Tax is that it is often assessed against people who had no actual intent to sell an unauthorized substance. The twelve people interviewed for this study conveyed a sense of confusion about why it makes sense to respond to their structural and circumstantial disadvantages with extra-disciplinary actions.

#### People with No Intent to Sell: Constructive Possession and Personal Use

Three of the 12 participants in this study had no intent to sell substances at all. However, they were subjected to the statute's overbroad definition of 'dealer'. The intent to sell is not required for NCDOR to assess a tax explicitly targeting dealers, only the material or constructive possession of a designated amount of an unauthorized substance. Recall that constructive possession expands the net of the Drug Tax to capture people who are only loosely connected to the drug trade. To be found in constructive possession, one must only have knowledge of a substance and the means to bring the substance under one's control.<sup>103</sup>

Valencia B. and Jocelyn L., the two participants with the highest principal assessment amounts in this sample (approximately \$400,000 and \$100,000), were both found to be in constructive possession of an unauthorized substance. They both technically had access to substances that belonged to their significant other but had nothing on their person or in their material possession. For both Valencia and Jocelyn, the incident resulting in the tax was also their first drug charge.

*"There were no drugs on me. There were no drugs in my vehicle. I was just there, but yet, they still seized all my stuff."*

Valencia described the loose application of constructive possession during her arrest:

*"There were no drugs on me. There were no drugs in my vehicle. I was just there; but yet, they still seized all my stuff, charged us with trafficking, whatever... [the house where the drugs were found] was not my house... the landlord could not even identify me out of the lineup, never saw me a day in his life, and though there was nothing on my car and nothing on me, it didn't matter."*

Jocelyn 's experience with constructive possession mirrored Valencia's:

*"It was my first time ever being in trouble, ever in my life. Just made the poor choices of being around someone that engaged in criminal activities... A person that I was arrested with told them, 'Hey, she didn't have anything to do with it. She's pretty much innocent.' I was dating a guy who was involved with criminal activity and pretty much just living two different lifestyles. One way around me and then, I guess, another way around other people."*

Maya T. had the fourth highest principal assessment of all the people interviewed (approximately \$20,000) and did technically have material possession of an unauthorized substance. However, her intent was to use it in a religious ceremony. Like Valencia and Jocelyn, Maya had never been arrested before and had no intention of distributing the substance.

Valencia, Jocelyn, and Maya all experienced needless collateral damage in North Carolina's efforts to target "dealers."

### **People Who Sold Drugs to Support a Habit or Addiction**

Six of the 12 participants in this study reported that they only sold drugs to support a habit of substance use or an addiction. One participant, Emmanuel V., explained that he, like many others, was not selling drugs to make a profit:

*"A lot of people like me were selling drugs and getting high. All the money was going into getting high. And so, I wasn't making money as if it was a business or something like that."*

Ingrid F. confirmed that selling substances to support one's habit is extremely common. She stressed that for herself and everyone that she knew, selling drugs was not an income generating activity: "Everybody that I know that sold, it was basically to support their habit... Did I make money off it? No."

These findings corroborate the notion that it is misleading to attempt to differentiate between providers and consumers in drug markets. Yet, the way that society treats people who use drugs and people who sell drugs is very different.<sup>104</sup> People who use drugs are stigmatized, but they are more commonly seen as vulnerable and in need of intervention and care.<sup>105</sup> People who sell drugs are seen as predatory, and thus subjected to harsher and more punitive policy designs, like the N.C. Drug Tax.<sup>106</sup> The "user/dealer" binary, however, is a fallacy.<sup>107</sup>

*"Everybody that I know that sold, it was basically to support their habit... Did I make money off it? No."*

### **People Who Sold Drugs for Profit**

Lastly, three participants in the study reported selling drugs for profit. Each one of these participants explained why they sold drugs, and none of them did so for nefarious or predatory purposes. Every one of them took responsibility for their actions but provided useful context about feeling like "a product of [their] environment" or "running with the wrong crowd."



Sonia P., Belinda R., and Tyrell J. all started participating in drug markets as teenagers. Sonia was drawn to the structure and belonging that came with gang membership as an adolescent. Belinda felt it was very important to communicate how life circumstances can drive some people to turn to selling drugs with the hope of escaping poverty and the financial trauma inherited by families impacted by mass incarceration:

*"In the hood, you [may] have the single-parent households, you have the poverty. And people sell drugs to get out of poverty a lot of times. They want to have money for their family, they want to have something... People, before they get into a career selling drugs and stuff, they choose that life because that's what is given to them after being impacted by mass incarceration. That's what precedes it. When you look at the reality of it, especially in the projects, everybody has been impacted by that."*

Tyrell explained how his family's financial struggles led him to return to selling drugs after his first prison sentence. "I come home and see my family struggling and I don't like that," he said. "I did what I had to do. I did what I felt I had to do. So, that was the quickest thing, that was what I was taught. That's what I learned. That's what I'm around."

An unintended consequence of measurements that inflate drug quantities is reinforcing the stereotypes and binaries associated with dealing and using drugs described in previous sections. While Sonia, Belinda, and Tyrell all recognized that they made their own choices, they each referenced structural challenges that influenced their decisions and made drug distribution seem like the best option for them at the time. This response again suggests that we need to change our conception of the "drug dealer" and see them as a person who may need care and support, rather than the stigma that they face in a society structured by inequality and racism.

*"People sell drugs to get out of poverty a lot of times. They want to have money for their family, they want to have something."*

Participants who sold drugs were not without agency, and they would be the first to tell you that they take responsibility for their choices. However, their decisions were informed by a society that cast them to the margins, forced them to grow up too soon, and socialized them to survive at all costs.

### **Why the 'Who' Matters**

The 'who' matters for two main reasons. First, as already established, the target population of "drug dealers" identified in North Carolina's Drug Tax does not map onto the population of people impacted by this policy. The Unauthorized Substances Tax policy fundamentally mischaracterizes the groups of people who actually or constructively possess unauthorized substances with a mythologized and untrue conception of a "drug dealer."

Second, it impacts the psychological response impacted people experience when receiving a Drug Tax assessment. Among all the people interviewed for this study, the reaction to receiving

a Drug Tax assessment, given their position in relation to drug markets, was confusion and despair. While many participants understood how their actions were decided in the criminal legal system, the addition of the civil liability baffled them.

"I'm not seeing how it's helping the situation at all," said one participant regarding the Drug Tax as a response to addiction.

Another participant who found themselves in a similar position reported, "I'm guilty. I get it. But as much as they're charging me with [for the drug tax]? I just don't think that part is fair."

Yet another described it even more succinctly: "It's definitely not justice."

Even the people interviewed who were selling drugs for profit were confused by having to pay the tax years after they had stopped participating in drug markets commented, "If I'm not living that lifestyle no more, why do I have to pay for something that I already paid for?" "Why do I have to pay on top of what I paid for?"

Study participants—save for one who had yet to experience a term of confinement at the time of the interview—repeatedly echoed this frustration. When faced with Drug Tax debt, often years, if not decades, after they had stopped committing crimes of any kind, they responded with disbelief. Even if they disagreed with their criminal convictions or the length of their sentences, they understood the terms of incarceration and community supervision as the process for "paying a debt to society." The Drug Tax's relationship to "paying the debt to society" is less clear.

### THE 'HOW MUCH'

Another aspect of the Drug Tax process that sparks confusion, anger, and despair is the way the amount of the assessment is determined. Despite the NCDOR's reference chart, other factors inflate the amount of the assessments. How NCDOR determines tax amounts contributes to how an assessment impacts its recipient.

*"Didn't I serve my time and pay my debt to society? Why do I still gotta pay?"*

*"It's bogus to me honestly because it's like I done paid my debt to society, I went and did time for it."*

*"If I gave y'all this time, I shouldn't have owed anything."*

*"I did my time. I got out, I paid every dime that I thought I owed them, and they still just keep... It's like it's never over."*

*"I thought like once you serve your debt to society and do your time, that should be it... People get out, they did they time, and they still got to have this thing, this cloud over their head."*

*"If someone has served their time, they shouldn't be taxed on it."*

*"I did my time... one of my friends from high school commented like, 'D---, you did your time. They're still coming after you.' And that's how it felt."*

### The Substance Amount: Mixture and Paraphernalia Laws

North Carolina's mixture and paraphernalia laws allow for lawful objects and substances to be included in the official weight of an unauthorized substance for the purposes of criminal charges and civil liability. For instance, NCDOR states the threshold for assessing a marijuana-based Drug Tax as 42.5 ounces, including the weight of the container in which the marijuana is found. Two people interviewed for this report learned this the hard way. Both had extremely low levels of an unauthorized substance in their possession—less than a few grams. Yet, NCDOR charged them both tens of thousands of dollars because law enforcement found the substances in containers filled with non-psychoactive chemical and plant matter.

One interviewee expressed feelings of injustice associated with these calculations,

*"It's like if caffeine is illegal and I have a pound of coffee, it's like a pound of coffee is not the same as a pound of crystalline caffeine... it's like if I'm being charged with possession... what does it matter if it's 100 grams or 1,000 pounds. It's kind of like a felony or a felony. But, like, if you're taxing me and you're actually going to multiply a tax rate by a weight, well then, I would like that weight to be accurate... It was the most disturbing to me that they're taxing based on quantity but, in my opinion, [the quantity] was completely inaccurate to begin with."*

Another expressed, "They tried to make us look like we were just living the drug life. And really, I was living out of my car scraping to get by."

*"They tried to make us look like we were just living the drug life. And really, I was living out of my car scraping to get by."*

### The Principal Dollar Amount: More than the Street Value

Besides the quantity inflation associated with paraphernalia and mixture laws, interviewees also reported that the principal amount they were charged was more than the street value of the drugs they had in their possession. One participant pointed out that the street value of the 24 grams of cocaine found in their possession was "nowhere near" as much as the \$4,800 assessed against them. The mismatch between the amount charged by NCDOR and the street value of the drugs one has in their possession is notable. One interviewee commented, "The drugs weren't even worth that much if I multiplied them ten times."

The flat tax rate structure of the Drug Tax is inconsistent with the fact that, as a percentage of average street values, the Drug Tax rates for low- and high-value street drugs (excluding marijuana) can equal well over a 100 percent tax rate. For example, the average price of a gram of cocaine in the U.S. is \$82, making the \$200 tax per gram approximately a 240 percent tax rate in practice.<sup>108</sup> Despite the downward revision of the tax rates at the turn of the century, this is still an extremely high rate for any tax. It is unlikely any other tax policy could be implemented and survive at such a high rate.

**The Interest Amount: Less for the Well-Resourced**

The last element that determines the Drug Tax is the accrual of interest. Interest begins accruing 48 hours after a person is found in possession and continues to accrue throughout stints of incarceration, community supervision, and beyond. It also means that people with shorter periods of confinement, access to the resources to pay more upfront, and access to legal assistance pay less than their counterparts, even if their principal balance is the same.

These disparities were present even between the twelve people interviewed for this report. In one case, someone was able to pay their bond and leave jail while still in the pre-trial phase of their criminal proceedings. This allowed them to receive the notification of their Drug Tax assessment in a timely manner. They were able to hire a lawyer, who disposed of even more of the interest that had already accrued. Ultimately, this person could pay the reduced amount in one lump sum. Their access to capital and a legal team saved them from paying any interest.

Another person with less access to financial and legal resources struggled for months to make payments on the tax. They recalled that “every time [I] got a bill, it was just more interest, more interest, more interest. I felt like it was never going down.” Eventually, they explained how their family stepped in to help them make the payments.

*“I remember my mom was just like, ‘Look, I’m going to just give you the money to pay that off,’ because of the interest. She’s like, ‘This is ridiculous. We’re going to give you the money to pay this off, and then you can just pay us.’”*

While this person evaded a round of interest accrual because of family support, several interviewees expressed feeling like they will never pay off the debt in their lifetime. They did not have the resources to start the Offer in Compromise process, much less to pay off their entire debt, so the interest kept accruing.

One participant described how they have had to accept that “I have to live with [the Drug Tax debt] for the rest of my life,” and they were not the only one.

Another participant said simply, because of the interest, “No, I’ll never pay it off... Forever. Forever.”

An interviewee who spent over fifteen years incarcerated and did not find out about his Drug Tax assessment until his release found the interest accrual exasperating. He said:

*“They just kept going on and on, they put taxes on it, and I mean, it was just so much. Y’all tell me if I’m incarcerated, how can I pay it, be drawing interest on something, and I’m incarcerated? Where we never sat down, and you let me know anything. You never sat me down. We never came to agreement on anything. How could that, what y’all say I owe, be drawing interest?”*

*The average price of a gram of cocaine in the U.S. is \$82, making the \$200 tax per gram approximately a 240 percent tax rate in practice.*

Half of the people interviewed echoed these sentiments about the accruing interest, especially the fact that interest accrued for years while they were incarcerated.

## THE 'HOW'

The last factor that informs how Unauthorized Substances Tax assessments impact individuals, the economy, and society is the methods NCDOR uses to collect them. Collection starts with the notification of a tax assessment.

### Notification

The notification letter is supposed to inform the person who the agent overseeing their case is and provide that agent's contact information. The taxpayer can then seemingly reach out to their agent to develop a plan. Much can go wrong with this process, beginning with the notification.

Individuals described experiences ranging from inability to access notifications sent to a home address or P.O. Box while incarcerated to being notified by letter while in jail. It is, predictably, difficult to regularly check your mail while incarcerated. Two participants had their parents' addresses listed as their own on their driver's licenses and were notified about the tax because notifications were sent to their parents' homes: "I knew I had the taxes because my mom kept receiving letters while I was incarcerated."

One participant maintained a P.O. Box during their incarceration and found the notification when they were released. Another received notification in a letter sent directly to the county jail.

Another person was directly informed by an agent from the Department of Revenue while incarcerated. The agent visited because the person's assessment was hundreds of thousands of dollars. Even then, the notification paperwork was flawed. They shared:

*"I think I had maybe been in the custody of the county jail for a couple days before the tax man made his appearance. I was called to booking, and I was handed a piece of paper to notify me of the drug taxes. And the paper was this whole, like, you have 60 days to contact us before we start seizing your property kind of thing, yet at the same time he handed me that paper, he notified me that everything I owned had already been seized—car, property, everything."*

Receiving visits from an agent was far from pleasant. During the first visit, the participant explained:

*"The reality of my sentence was weighing on me and me thinking I've ruined my life, I'm never going to be worth anything, I've disgraced my whole family, oh, what's this one more thing? So, I was numb to it at that point."*

But the agent came again a few months later. The participant described what happened during the second visit:

*"I immediately broke down in booking because this was everything. There was a number on the bottom of the paper. And I was upset. I launched straight into a fit. I was 5-point restrained. I was pepper sprayed. And then, I was left in the 5-point restraints in front of the entire quad... for about five hours before they let me go. So, very traumatic experience as a whole."*

Most often, individuals did not receive the proper information in a timely manner. Sometimes lawyers informed participants informally during criminal proceedings, but other times they received notifications with no contact information listed. Sometimes NCDOR simply failed to notify the person was notified at all. The fallout of a failure in the notification process usually resulted in payment scenarios that surprised participants and deprived them of all agency in the process.

### **Payment Plans and Offers in Compromise**

Direct payment plans and Offers in Compromise afford Drug Tax payers the most agency (although neither are guaranteed because the case agent has the discretion to deny any offers they receive from the payer). When NCDOR notified participants properly, the individuals could proactively reach out to their agents and develop payment plans that worked for their lifestyles. Some participants could pay off their Drug Tax debt in under two years.

One person, the parent of 11 children, was denied both a payment plan and an Offer in Compromise. They first tried the Offer in Compromise process.

*"Once I sent the stuff in to the people, they turned down my offer. They didn't want that. They wanted a certain amount of money, which I couldn't give [them]. They wanted me to pay, I think, about four grand right then and there. That was something that I couldn't just pay, you say 30 days, and you want four grand."*

When NCDOR denied the proposed Offer in Compromise, the participant asked for a payment plan.

*"I was saying, 'Well, okay, give me an opportunity to try to pay X amount of Z hopefully per month. I'll say I try to pay \$50 a month. Because as I said, I'm working, I ain't making that much money. You know what I'm saying? And I still got obligations, bills, and try to help my kids out, but you want me to give you \$200 a month? So, at the point of you didn't want what I was trying to offer you."*

***"They wanted me to pay, I think, about four grand right then and there... That was something that I couldn't just pay, you say 30 days, and you want four grand."***

Several participants who did not receive the information to set up a payment plan in advance were eventually able to track down their agent and move into a payment plan, sometimes years after their initial assessment. These participants ended up paying more because of the interest that accrued in the interim.

### Garnishments, Levies, Liens, and Seizures

When individuals were not notified or allowed to develop a payment plan, NCDOR used five main methods for collecting Drug Tax debts—wage garnishments, bank account levies, state tax seizures, asset liens, and property seizures. The first three were the most common.

NCDOR put levies on several participants' bank accounts; two people were not previously notified and found their bank accounts emptied:

One participant described the moment:

*"I was in school, I had some money in my pocket, I had a job, and I had the Pell Grant. I had a little extra money because I was a community college student, which is cheaper, right? I'd get ready to take my mama to the doctor. I go to look at my bank account because I'm fitting to make it rain on mama. This is my mama, this who carried me in her belly. Now, I get to splurge on mama now after stressing her out and being in prison and all this stuff. I go to check my [bank account], you dig what I'm saying? Zeros across the board. I was like, 'Whoa, something ain't right.' I get on the phone like, 'Hey, what's going on?' [They] say, 'Well, the IRS...' I said, 'What you mean the IRS? Some of this money is Pell Grant money. You can't take that.' They say, 'Well no, they actually can. They intercepted it.' I'm talking, it was thousands of dollars that they took. And some of it was Pell Grant. They emptied my whole bank account. And they said because I hadn't set up a payment plan. And I ain't even know I had to pay a drug tax. I ain't even know what it was. And a lot of people don't. You dig? A lot of people that go in there, when they get out, you don't really get educated about no drug taxes, you need to get out, make a payment plan. Don't nobody know nothing about that. It had to be at least \$2,000 they took out."*

Another person was notified by their bank that North Carolina had put a levy on their account because they owed money:

*"I didn't even realize I had the drug tax until I got out of prison. Finally got a job, opened a bank account, went to pay a bill, and my card declined because they had put a levy on my bank account. And I'm like, 'What do I owe?' I didn't know if it was child support, so they gave me the number, and that's how I found out."*

Even though others who experienced bank account levies knew that they had a Drug Tax assessment, the bank account levies still came as a surprise. A person who experienced a levy describes the jarring experience:

*"There was a number on the bottom of the paper. And I was upset. I launched straight into a fit. I was 5-point restrained. I was pepper sprayed. And then, I was left in the 5-point restraints in front of the entire quad... for about five hours before they let me go. So, very traumatic experience as a whole."*

*"My lady's birthday was coming up, so I wanted to do something special for her. So, I go and put the money in my account. As long as I got it in my account, I know I ain't going to spend it. And they garnished, they put a freeze on \$850 of that money. I was so sick and hurt. I'm like, wow. Then there was a time where I had to pay my car note. They took \$370. Then now, when I'm out, and I'm working, you guys garnish money out of my account several times. Now I'm trying to do better for myself. I ain't thinking about the street life anymore. I'm trying to work and do better down here. I have a couple dollars in my bank account. Y'all garnished 800 something dollars or y'all might garnish 300 whenever you felt like it. So, it got to the point where it was fast as I was getting paid, I was trying to take my money out to make sure I be able to pay my bills before they decided they want to take something."*

*"It was thousands of dollars that they took. And some of it was Pell Grant. They emptied my whole bank account, fam. And they said because I hadn't set up a payment plan. And I ain't even know I had to pay a drug tax. I ain't even know what it was, fam."*

This reaction was not unique. While some participants reacted to bank account levies by contacting NCDOR and setting up alternative payment plans, others decided to avoid banks altogether.

One reported, "I honestly don't even trust the banks anymore. It gives me PTSD. That's another thing: They say they can freeze my accounts. They can stop this. They can stop that. So, they just frighten me."

One person started putting all their money onto prepaid debit cards, choosing to pay the fees associated with the card than risk NCDOR seizing money from the bank.

Four others had their wages garnished through their employers at some point during the process. Again, two of these people found out about their Drug Tax assessment from their employers after NCDOR had already taken steps to start garnishing their wages. For at least one participant, their reaction was despair.

"It just feels useless, pointless for me to get up and go to work every day," they said.

They were working a minimum wage job, but the State continued to take 10 percent out of every paycheck every week.

In addition to garnishments and levies, NCDOR applies state tax refunds to individuals' drug tax debts. Even if a person opts out of having a bank account or does not have a wage to garnish, NCDOR still uses this tool. Again, sometimes participants first learned of their assessment when they realized their state taxes had not been returned:



*"Maybe like the second year it happened, I'm like, 'Why did I never get no state taxes?' Then I realized what was going on. I just see other people getting their state taxes, I'm like, wow. It's hard times out here. Especially during the pandemic, that's when you really counting every penny, when you're not working, and you really needing your money. And then with me, wintertime is our slow months, so when you come out of the winter and start getting taxes, you want every penny."*

This method gets even more complicated when you are married. One participant who got married after she was released remembered confronting this complication at tax time:

*"I didn't want my husband to get penalized for something that they say I owe. I try to do my research, figure it out on my end, how can I help with that situation. I looked it up, and there is a form for it called an innocent spouse, injured spouse. And I just asked for that form—if you don't ask for it, then they don't give it to you. They don't care that you owe taxes, but there is a form that will allow my husband to claim innocent spouse because he is an innocent spouse, and they don't take his taxes. And I guess that's what p----- them off when I did that. Because I did that form and then that's when they started slamming me with taking the money out of my check, taking so much at a time, is because they couldn't get it from my husband."*

*"I find it ironic that they call us criminal, yet they use shakedown tactics. And if you don't know any better, then of course you go along with whatever they say."*

The last two methods, less common in the sample, are asset liens and property seizures. One participant whose car was seized explained why it was about more than just property to them: "I was living out of my car at this point, so this was literally every worldly possession that I had all the way down to a cassette tape of my father's dying words to me were in that vehicle."

NCDOR also took the money out of their commissary account, which prevented them from accruing enough to make bond. This participant thought about fighting to get her property back, but NCDOR offered them a deal. If the participant signed off on the property seizure, NCDOR would not hold them liable for the rest of their drug tax assessment (which was exponentially higher than the monetary value of the seized property). They felt like they had no choice.

*"I find it ironic that they call us criminal, yet they use shakedown tactics. And that has been my experience with them as a whole is that everything has been underhanded and very much below board. And I feel like they do their best to railroad people. And if you don't know any better, then of course you go along with whatever they say."*

Another participant now has “a lien on [their] name.” They described this experience:

*“I have ambitions to become my own business owner... But I can't do that with this hanging over me. Because I will never be able to take a business loan or try to get me a building or anything because I can't have that in my name. I can't do anything. I can't own anything. In the letter, it says that if I own anything that they can take it. I can't own it. I can't even have a title to my car. They will take it. I can't have a business in my name—they will take it. I can't even hit the lottery right now. I can't even be lucky and hit the lottery because they will take it. I can't even help build my credit, in other words, is what they're saying. I can't do anything that's going to help me succeed in life because they can take it. So, they're just pretty much giving me no ambition to reach any goal other than to just struggle.”*

### IMPACT ON WELL-BEING: FINANCIAL, FAMILY, PSYCHOLOGICAL

It may be obvious that one of the primary impacts of the Unauthorized Substances Tax on individuals is financial. The financial impact is amplified by the countless other ways the criminal legal system assigns dollar amounts to sentences. Almost all participants had to pay court fees, fines, restitution, and probation fees. If their probation officer required them to attend treatment, they often had to pay for co-pays and transportation. Some had to pay attorney fees. Some had child support. Together, these costs left participants frustrated and hopeless. One person said,

*“I don't understand. For what reason? Okay, you get caught with these drugs, now you got to pay drug taxes. For what? You paying court costs, you paying for your lawyers, all this stuff, you still got to pay. I don't understand.”*

Meanwhile, everyone who had been incarcerated had to face the barriers of reentry. People are often released from incarceration with nothing but debt. For the lucky few with access to reentry programs and services, this burden was slightly lighter but never completely lifted.” Coming home with nothing,” explained one participant, “and having no support system, it's a very hard struggle.”

Another participant explained, “When I first got out, I was starting over completely, in a

*“I will never be able to take a business loan, or try to get a building or anything because I can't have that in my name. I can't do anything. I can't own anything. I can't even have a title to my car. They will take it. I can't have a business in my name—they will take it. I can't even hit the lottery right now. I can't even be lucky and hit the lottery because they will take it. I can't even help build my credit, in other words, is what they're saying. I can't do anything that's going to help me succeed in life because they can take it.”*

*"I'll never pay it off... Forever. Forever."*

different area. I was working for minimum... I worked every minute I could and went to school full time as well, just trying to save up money to get started. I was terrified."

On top of the difficulties associated with returning from incarceration with limited resources and support, the participants also faced the collateral consequences of the felony drug charge(s). Most newly released participants were unemployed, impoverished, sometimes houseless, and struggling to get by. They were also stigmatized and banned from certain homes, jobs, and services due to their criminal records.

A participant reflected, "You want me to go home and be successful when I can't get a house now? I can't get a job? All of this because of something already paid my debt [to society] for?"

When individuals could find work, they often were forced to take less-than-desirable positions and to work multiple jobs to make ends meet. The stigma of a criminal record can be even more intense for people with drug-related charges. A prospective landlord, for instance, told one participant, "I would rather rent to a murderer than a drug dealer."

In North Carolina, stigma impacts policy in the form of the drug felony Supplemental Nutrition Assistance Program (SNAP) ban. The law bans anyone convicted of a Class G or above drug felony in North Carolina from receiving SNAP benefits.<sup>109</sup> Class G drug felonies include trafficking designated amounts of unauthorized substances.<sup>110</sup> Trafficking is defined as selling, manufacturing, delivering, transporting, or possessing that substance.<sup>111</sup> Therefore, the population with drug taxes assessed against them maps closely to the population with Class G drug convictions.

People with lower-level felony drug offenses also do not have an easy path to assistance. Lesser felony drug charges still carry a six-month SNAP waiting period following the completion of a criminal sentence and require SNAP applicants to comply with additional requirements.<sup>112</sup>

The SNAP ban was the primary concern for three study participants, all parents. The Drug Tax assessment amplified this issue. SNAP benefits are means-tested, which means the amount a person receives depends on the income and number of family members in each household. When participants applied for SNAP for their kids, their income counted against their families, but their presence as an additional person in the household did not count in their favor. One participant explained:

*"You're making the same thing as the next mother who's got less kids, and she's getting \$5-, \$6-, \$7-, \$800 in food stamps. It's almost like you're paying two house units! I can starve; I could care less about myself. My kids deserve to eat."*

*"I can starve, I could care less about myself. My kids deserve to eat."*

Another participant described a very similar experience:

*"I was always told that while my drug conviction would hinder me in certain government programs, such as food assistance, that it would not hinder my children. This is false and misleading because even though we are a household of four with X amount of income, I'm not counted as a person. So, they are counted as a household of three with still the same amount of income because I don't count, but my money counts. And so, that has excluded my children from any sort of food benefits outside of WIC [the Special Supplemental Nutrition Program for Women, Infants, and Children]<sup>iv</sup> And it's just made it that much harder. [My children are] being outright excluded. And like I said, I understand. Sure, exclude me. Great. But you're taking away from my children, which is, excuse my language, s-----."*

The exacerbated SNAP ban is not the only way that Drug Tax assessments impact children. Four participants reported that paying their debts prevented them from purchasing things they would have otherwise for their children. One participant said this was the hardest part of the whole experience.

"[My son is] just happy to have me home, but because of that, it's so much more than I wanted to do for him, but I couldn't do it, you know, I had to fall short with everything," they explained.

Another said the colliding factors of having to work so much, stay on top of responsibilities, and pay so many debts kept them from being able to spend as much time with their kids as they would have liked.

*"I was working a lot, recovery is just a lot, going, going, going, going." And so it's safe to say, that lifestyle I had to live as far as working to get by, impacted other relationships as well with my kids, with my family, with my dad, because I had to work so much."*

The entire experience of having a Drug Tax assessment took a psychological toll on virtually every participant. Participants described the uncertainty that came with little to no communication or warnings from NCDOR as "terrifying," "stressful," "frightening," and "traumatizing."

One interviewee put it bluntly:

*"On top of everything that's already going on, people are trying to survive just on a day-to-day basis. And it's really hard. This is very stressful. It's not good for people's mental health on top of it. It's bad enough, with the pandemic and everything going on, just trying to survive."*

"I felt powerless," reported another participant. "I felt small, hopeless. I was very frustrated, I was angry, I was p-----. But I was insecure, and I felt hopeless because it wasn't nothing that I could do about it."

Overall, the Drug Tax assessments had wide-ranging and acute impacts on individuals. It contributed to financial stagnation, kept people from building credit and capital, deprived

<sup>iv</sup>WIC is a government benefit that serves low-income, nutritionally at-risk pregnant women, breastfeeding women, non-breastfeeding postpartum women, infants up to their first birthday, and children up to their fifth birthday.

children and parents alike of their basic needs, and created psychological strife.

All these impacts made Drug Tax collections less lucrative, further undermining the utility of the policy. Individuals bore extreme costs, but the benefit to the state and law enforcement agencies remained insignificant.

Participants reported that their despair sometimes contributed to their making significantly less effort to pay their Drug Tax debt. Two participants, in particular, noted that the only way to cope with the stress was to put it out of their minds, let the State do what it will, and try not to think about it at all, much less attempt to pay the debt.

"They getting their money out of me one way or the other," explained one participant.

### IMPACT ON ECONOMY

The individual impacts associated with the Drug Tax negatively impact North Carolina's economy. Participants were disincentivized and disempowered to participate in the labor force, acquire assets, start businesses, buy homes, file taxes, and even put their money into the banking system—all the things that the State hopes its citizens will do to support economic growth.

Furthermore, as participants were alienated from lawful market structures, those who had sold drugs previously were sometimes tempted to return to drug distribution.

A participant described this mechanism by quoting a reentry provider in their area: "If you make it hard for them to do good, you make it easy for them to do bad! And charging them a drug tax does not contribute to them doing good."

Other participants described feeling pushed back toward old lifestyles.

Two participants reported that they tried to sell the drugs to pay their Drug Tax debt. One describes their experience:

*"It just gives you that extra bit of encouragement to go back to what you know and to the old ways. It's very counterintuitive."*

*"How do they expect for a person to survive? You make a person might want to go back and do the things they was doing... You get individuals where, 'Hey, if they going to keep doing me like this here, I can't survive. I'm going to go back to what I know.'"*

*"What do you expect them to do, besides go sell drugs again? Because this little 9-5 only paying \$8 to \$10 an hour, that's not helping, you know, so and that's how they end up going back because, like, you gotta pay the drug tax."*

*"It was a hard, hard, hard fight, it was a fight like I can't lie. Like I knew people that. I was dealing with before I left. When I got home they told me, here, it's still here, here's is my number, make that call. You know how many times I was tempted to make that call? Like so many. Like I struggled to my last bit of everything."*

*"A lot of people are going to go right back to what they were doing... Because they can't see the light at the end of the tunnel."*

*"I tried it, just to be honest. There was a point in time. And it wasn't hard stuff though, but there was a point in time, even with me loving the Lord, going to church, doing right, going to recovery meetings and everything, I tried to sell weed. And I was so paranoid, and I was so scared because I didn't want to get in trouble. I just stopped, but I definitely tried. And it was around Christmas time. Between child support and probation and drug tax, and I couldn't get food stamps... I had all of that factored into my mindset of like, 'I might as well try the streets again.' And I see that happen with a lot of brothers too. They get to the point if they get a job that ain't living wage or they can't make that budgeting piece click as a part of their lifestyle, they go back to the streets. I see it."*

For another participant, even though the incident resulting in their Drug Tax assessment was their first-ever contact with the criminal legal system, the debt convinced them to continue selling when they were released. Selling drugs allowed them to pay a lower amount. It funded their legal assistance to get their interest taken off and made it possible for them to pay their remaining balance in one lump sum.

"I actually had to tell my lawyer, I said, 'I just need to let you know that the same way that I just got caught, there's more coming,'" they said. "It didn't make it any easier to stop and it actually led to a lot more problems down the road."

Participants reported that the Drug Tax simultaneously pushed them out of formal markets and encouraged them to return to the activities that resulted in the tax in the first place. While the theory behind the Drug Tax is related to capturing tax revenue from informal markets, in reality, it pushes dollars out of North Carolina's tax base.

The Drug Tax is a deeply inefficient policy that pulls money out of the General Fund, out of the North Carolina economy, and out of the pockets of North Carolinians while delivering minimal benefit.

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## Conclusion

Lawmakers should abolish North Carolina's Unauthorized Substances Tax and forgive all outstanding Drug Tax debts. The participants in this study stated this conclusion uniformly, repeatedly, and with no hesitation. The authors of this paper concur.

Participants explained how the Drug Tax is based on a false narrative about who sells and possesses unauthorized substances. They shared how the Drug Tax policy had saddled them with sometimes lifelong debt, disincentivized them from participating in a market already fraught with barriers for people returning from incarceration, and alienated them from government institutions. They experienced anger, frustration, and despair because of Drug Tax debt and the authoritarian tactics to collect on that debt.

Their voices in chorus clearly showed that the Drug Tax promotes structural inequality and

degrades social cohesion. The experience left them feeling like they had no voice or place in government.

In addition, the benefits to the State and local law enforcement agencies are minimal. The evidence further suggests that the revenue it generates is nullified, at least partly because the Drug Tax creates incentive structures for impacted people to return to drug distribution.

There is no justification for this law; any reason is trumped many times over by reasons for its eradication. Lawmakers implemented this policy during the Drug War era when moralism and vaguely coded racism guided drug policy rather than actual evidence.<sup>113</sup> It is well past time to end this era.

One of the first steps is to abolish the N.C. Drug Tax. ■

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