

Employment Discrimination Based on Sexual Orientation and Gender Identity in North Carolina



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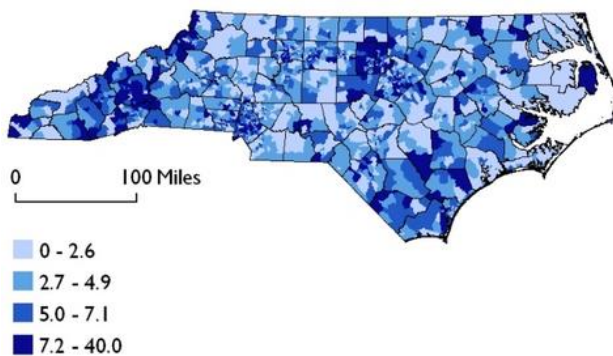
Executive Summary

More than 4% of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 159,000 of these workers live in North Carolina. North Carolina does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment.

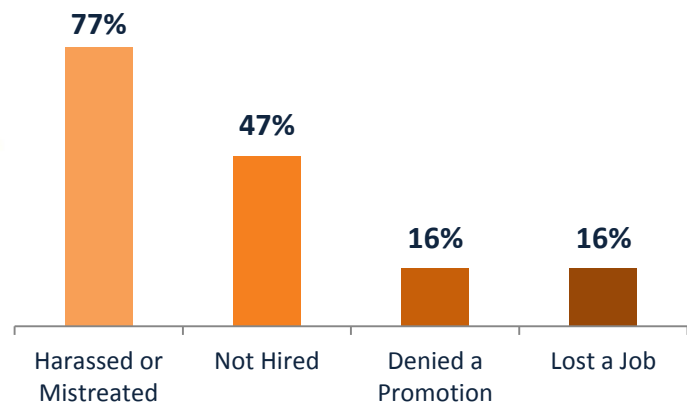
This report summarizes evidence of sexual orientation and gender identity employment discrimination, explains the limited current protections from sexual orientation and gender identity employment discrimination in North Carolina, and estimates the administrative impact of passing a law prohibiting employment discrimination based on these characteristics in the state.

159,000	16%	77%	71%	2%	58
Number of LGBT Workers	Income Disparity between Straight and Gay Male Workers	Transgender Workers Reporting Workplace Discrimination	Public Support for LGBT Workplace Protections	Workforce Covered by Local Non-Discrimination Laws	Estimated New Complaints if LGBT Protections are Added to State Laws

Same-sex couples per 1,000 households, by Census tract (adjusted)



Discrimination experienced by transgender workers in North Carolina



Key findings of this report include:

- In total there are approximately 258,000 LGBT adults in North Carolina, including 159,000 who are part of North Carolina's workforce.¹
- Media reports and lawsuits document incidents of sexual orientation and gender identity discrimination against employees in North Carolina, including several public school teachers and a law enforcement officer.
- Survey data indicate that discrimination against LGBT workers is prevalent across the country. Most recently, a 2013 Pew Research Center survey found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.
- When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, as recently as 2010, 78% of respondents to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity. In response to the survey, 77% of the transgender respondents from North Carolina reported experiencing discrimination or harassment at work.
- Disparities in wages are another way that discrimination has traditionally been measured. Census data show that in North Carolina, the median income of men in same-sex couples is 16% lower than the median income of men in different sex marriages.
- None of North Carolina's private sector workforce is expressly protected from discrimination based on sexual orientation or gender identity. At least seventeen North Carolina counties and municipalities have local ordinances or personnel policies that protect government employees from discrimination based on sexual orientation, and at least eight localities also protect employees from discrimination based on gender identity.
- Approximately 98% of North Carolina's workforce is not covered by a local government policy that prohibits sexual orientation or gender identity discrimination in employment.²
- Eleven of the 12 Fortune 500 companies based in North Carolina have internal policies that prohibit discrimination based on sexual orientation, and six also prohibit discrimination based on gender identity. In addition, 13 campuses in the University of North Carolina system prohibit employment discrimination based on sexual orientation, and five prohibit discrimination based on gender identity.
- Public opinion in North Carolina supports the passage of legal protections from workplace discrimination for LGBT people. In response to a 2013 survey, 73% of respondents said that employers in the state should not be able to discriminate against their employees based on sexual orientation or gender identity. In addition, other polls find that 81% of North Carolina residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.
- Adding sexual orientation and gender identity to the state's current non-discrimination laws would result in approximately 58 additional complaints being filed each year; 50 filed by private sector workers in the courts, and eight filed administratively by government workers.

- Because North Carolina's judicial system has a heavy caseload which has varied from 2,812,988 cases to 3,384,274 cases annually over the past five fiscal years, it is likely that an additional 50 complaints would have no noticeable impact on the system's existing budget with no need for additional resources or staff. Although there are not enough data to estimate the impact of eight additional administrative complaints filed by with the Office of State Human Resources per year, we anticipate that the impact would be minimal given the small number of complaints.

Evidence of Discrimination

Survey Data and Specific Examples of Sexual Orientation and Gender Identity Discrimination in North Carolina

Research shows the existence of widespread and continuing discrimination against LGBT workers in the U.S. In response to surveys, LGBT workers consistently report having experienced discrimination, and non-LGBT people often report having witnessed discrimination against their LGBT co-workers. For example, a national survey conducted by Pew Research Center in 2013 found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.³ Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians had experienced workplace harassment in the last five years, and 12% had lost a job because of their sexual orientation.⁴ As recently as 2010, 78% of respondents to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity.⁵

Similar statistics have been found in surveys of LGBT individuals in North Carolina. In response to the national survey of transgender people, a significant number of transgender respondents from North Carolina reported experiencing adverse treatment at work because of their gender identity or gender expression.⁶ More specifically, 77% of the respondents from North Carolina reported experiencing harassment or mistreatment at work, 16% reported losing a job, 16% reported being denied a promotion, and 47% reported not being hired.

Employment discrimination against LGBT people has also been documented in court cases, state and local administrative complaints, complaints to community-based organizations, academic journals, newspapers, books, and other media. Additionally, a number of federal, state, and local administrative agencies and legislative bodies have acknowledged that LGBT people have faced widespread discrimination in employment.⁷

Recent instances of employment discrimination against LGBT people in North Carolina have been documented in court cases and the media:

- In 2013, a public school teacher was given a three day suspension for showing students a popular music video that featured a song supporting marriage for same-sex couples.⁸

- In 2012, a Raleigh resident reported that she was fired from her job as a broadcast technician because of her sexual orientation.⁹
- In 2011, a teacher brought suit against his former employer, a public school district, alleging that his contract was not renewed because of his sexual orientation.¹⁰ According to the teacher, the school's principal told him that he "didn't belong here," and reported that parents had complained about him teaching their children because he was gay. The teacher also stated that after news of his non-renewal spread, other teachers began to make homophobic comments and jokes about him; and that the principal was "outraged" when she found out that his partner visited him at the school. A district court allowed the teacher's claim based on the equal protection clause of the U.S. Constitution to proceed. As of February 2014, the case was still pending.¹¹
- In 2011, a gay teacher, and former North Carolina resident, published an opinion piece in the Duke University Chronicle explaining that fear of employment discrimination kept him from moving back to his home state to teach.¹²
- In 2007, a public school teacher filed a complaint against her local school board after she was transferred from her position following complaints by a student's parents regarding "her 'alternative life views'" and her perceived sexual orientation.¹³ The teacher stated that "she was the 'target' of discriminatory animus because she 'did not deny that her religious beliefs did not include a view that homosexuality was a sin.'"¹⁴ In 2010, a federal district court allowed the teacher's claim for discrimination based on disability (hearing impairment) to proceed,¹⁵ but the teacher voluntarily dismissed her suit a few months later.¹⁶
- In 2003, a law enforcement officer filed suit against a government official alleging that the official had disclosed the officer's bisexuality, which led to his termination.¹⁷ The officer said that the government official had sent him a letter threatening to disclose his bisexuality if he continued to participate in an investigation into the department's practices by the North Carolina State Bureau of Investigation. The officer turned over the letter to the Bureau, where it became part of the investigation file. Eventually, the officer became the police chief of another town, and the letter was disclosed during a town hall meeting and subsequently published in a local newspaper. Shortly thereafter, the officer reported that he was fired from his job as police chief because the town's board disapproved of his lifestyle. The court denied the government official's request to dismiss, but no further information about the case is available.

Wage Inequity

Census data show that individuals in same-sex couples in North Carolina earn less than individuals married to different-sex partners. On average, men in same-sex couples in North Carolina earn \$34,810 each year, significantly less than the \$44,356 for men married to different-sex partners.¹⁸ The median income of men in same-sex couples in North Carolina is \$28,000, 16% less than that of married men (\$33,500).¹⁹ Men with same-sex partners earn lower wages, despite the fact that they are more likely to

have a college degree than men married to different-sex partners,²⁰ a comparison that supports the possibility that people in same-sex couples are not treated equally by employers.

Women in same-sex couples earn less than married men as well as men in same-sex couples.²¹ Women in same-sex couples in North Carolina earn an average of \$29,572 per year (with a median of \$24,000), which is more than married women, whose earnings average \$24,457 (with a median of \$20,000).²²

These findings are not unique to North Carolina. Analyses of national data consistently find that men in same-sex couples and gay men earn 10-32% less than similarly qualified men who are married to different-sex partners, or men who identify as heterosexual.²³ Additionally, surveys of transgender people find that they have high rates of unemployment and very low earnings.²⁴

Current Protections from Discrimination

North Carolina does not have a statewide law that prohibits employment discrimination based on sexual orientation or gender identity.²⁵ In every legislative session since 2003, efforts have been made to add sexual orientation and gender identity to North Carolina's law prohibiting discrimination in state and local government employment.²⁶ None of these bills have made it out of committee.

Several local governments, public universities, and private corporations in North Carolina have adopted internal policies that prohibit discrimination based on sexual orientation and gender identity in employment.

Statewide Non-Discrimination Laws in North Carolina

The North Carolina Equal Employment Practices Act prohibits employment discrimination based on race, religion, national origin, age, sex, and disability by private sector employers.²⁷ The Act applies to employers with 15 or more employees.²⁸ Unlike in most states, no administrative agency in North Carolina is charged with handling complaints of discrimination under the law. Instead, the non-discrimination law is enforced only through the courts.

North Carolina's State Personnel Act prohibits discrimination based on race, religion, national origin, sex, age, and disability by state and local government employers.²⁹ State law provides for an internal hearing procedure, through the Office of State Human Resources and the Office of Administrative Hearings, to handle complaints of discrimination filed by government employees.³⁰ Administrative hearing officers may provide remedies to employees who have experienced discrimination including reinstatement and back pay, and may award attorneys' fees.³¹

Local-Level Protections from Discrimination

No local ordinances in North Carolina prohibit discrimination based on sexual orientation or gender identity in private sector employment. At least five counties and twelve municipalities prohibit discrimination against their own government employees based on sexual orientation: Buncombe

County,³² Durham County,³³ Guilford County,³⁴ Mecklenburg County,³⁵ Orange County,³⁶ Asheville,³⁷ Bessemer City,³⁸ Boone,³⁹ Carrboro,⁴⁰ Chapel Hill,⁴¹ Charlotte,⁴² Durham,⁴³ Franklinton,⁴⁴ Greensboro,⁴⁵ High Point,⁴⁶ Raleigh,⁴⁷ and Winston-Salem.⁴⁸ Eight of these localities, Buncombe County, Durham County, Mecklenburg County, Boone, Chapel Hill, Charlotte, High Point, and Raleigh also prohibit discrimination against government employees based on gender identity.⁴⁹

Approximately 98% of North Carolina's workforce is not covered by a local policy that prohibits discrimination based on sexual orientation or gender identity.

Private Company and University Non-Discrimination Policies

Private companies adopt internal policies prohibiting discrimination based on sexual orientation and gender identity for a variety of reasons including improved recruitment and retention of talented employees, increasing employee productivity and customer satisfaction, and attracting a larger customer base.⁵⁰ One study of corporate motivations behind adopting workplace non-discrimination policies found that 53% of the top companies in the U.S. with LGBT-supportive policies had adopted the policies for economic reasons.⁵¹

Academic research has found that LGBT-supportive corporate policies are linked to positive business-related outcomes, including greater job commitment, improved workplace relationships, increased job satisfaction, and improved health outcomes among LGBT employees.⁵² For example, a 2006 national poll found that 89% of LGBT respondents and 72% of non-LGBT respondents reported that when deciding where to work, it was important that an employer have a written non-discrimination policy that includes race, ethnicity, sex, religion, age, sexual orientation and disability.⁵³ Research also suggests that employers limit their available talent pool by screening out applicants based on their sexual orientation. One study found that the rate of screening out gay male applicants was twice as high in regions without sexual orientation non-discrimination laws.⁵⁴

Additionally, LGBT-supportive workplace policies can expand opportunities to secure potentially lucrative government contracts for corporate employers. A 2011 study found that 68 local governments had laws requiring contractors to have LGBT-inclusive non-discrimination policies.⁵⁵ A number of states have similar laws that apply to state government contracts.⁵⁶ Without such policies, companies would not be eligible to bid for contracts with these state and local governments.

Many of North Carolina's top employers have adopted internal policies that prohibit sexual orientation and gender identity discrimination. Of the 12 Fortune 500 companies based North Carolina, 11 include sexual orientation in their non-discrimination policies, and six also include gender identity.⁵⁷ Small businesses in North Carolina also support protections from discrimination for LGBT people. In response to a 2013 national poll of small businesses conducted by Small Business Majority, 67% of small businesses across the country supported state-level protections from discrimination based on sexual orientation and gender identity.⁵⁸ One hundred respondents were from North Carolina, and though

individual state results were not available, Small Business Majority stated that the findings in North Carolina were consistent with the national findings.⁵⁹

Additionally, 13 campuses in the University of North Carolina system have internal policies that prohibit employment discrimination based on sexual orientation, and five campuses also prohibit discrimination based on gender identity.⁶⁰

Public Opinion

Public opinion in North Carolina supports the passage of non-discrimination protections for LGBT people. A 2013 opinion survey by NC-based Public Policy Polling found strong support for legal protections from employment discrimination for LGBT people. In response to the poll, 73% of respondents said that employers in the state should not be able to discriminate against their employees based on sexual orientation or gender identity.⁶¹ Similarly, 77% of North Carolina respondents to a 2011 national poll said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.⁶²

In addition, public opinion data indicate that North Carolina residents perceive the state as unfriendly to LGBT people. Aggregated data from two large public opinion polls found that 81% of North Carolina residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.⁶³

Administrative Impact

Complaint Estimate

Despite the persistence and pervasiveness of employment discrimination against LGBT people, studies show that enforcing sexual orientation and gender identity provisions in non-discrimination laws has only a minimal burden on state agencies. Complaints of sexual orientation discrimination are filed by LGBT people at approximately the same rate as complaints of race and sex discrimination are filed by people of color and women, respectively.⁶⁴ However, because the LGBT population is so small, the absolute number of sexual orientation and gender identity complaints filed under state non-discrimination laws is very low.⁶⁵

We estimate that approximately 58 complaints of sexual orientation or gender identity discrimination would be filed with the courts or the Office of State Human Resources in North Carolina each year. To reach this estimate, we drew on Gallup polling data and Census data from North Carolina to estimate the size of the LGBT workforce in the state, and applied a national sexual orientation and gender identity complaint rate to that population. We have previously used this methodology to estimate the number of complaints that would be filed on the basis of sexual orientation and gender identity in other states, including South Carolina, Missouri, Ohio, Pennsylvania, South Dakota, Texas, Utah, and West Virginia.⁶⁶

Results from a 2012 Gallup poll show that 3.3% of people in North Carolina identify as LGBT.⁶⁷ Applying this percentage to the number of people in North Carolina's private sector workforce (3,158,222⁶⁸) indicates that there are 104,221 LGBT employees working in the private sector in North Carolina. Applying this percentage to the number of people who work for state and local governments in North Carolina (547,126⁶⁹) indicates that there are 18,055 LGBT state and local government employees in North Carolina.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in North Carolina to determine how many complaints will be filed annually if these characteristics were added to the employment non-discrimination law. We used the national average complaint rate from a 2008 study that analyzed administrative complaint data from 17 states that prohibited sexual orientation discrimination at that time.⁷⁰ The study found that across these states, the average rate of complaints filed on the basis of sexual orientation was 4.7 per 10,000 LGBT workers.⁷¹ There is not sufficient data to make a similar calculation of the average rate of complaints filed on the basis of gender identity.⁷² Therefore, we assume that this rate is also 4.7 per 10,000 transgender workers.

Applying the national complaint rate (4.7 per 10,000 LGBT workers) to the number of LGBT workers in North Carolina's private sector workforce (104,221) suggests that 50 cases of sexual orientation and gender identity discrimination would be filed with courts under the Equal Employment Practices Act annually if these characteristics were added to the state's non-discrimination laws. Additionally, applying the national complaint rate to the number of LGBT state and local government workers in North Carolina (18,055) suggests that eight complaints of sexual orientation and gender identity discrimination would be filed with the Office of State Human Resources each year. Thus, we expect that a total of 58 complaints would be filed each year either by private sector workers through the courts, or by government workers through the Office of State Human Resources.

Cost of Enforcement

Using Information from North Carolina's judicial branch annual reports, it is possible to estimate the cost associated with handling the additional 50 complaints that would be filed if sexual orientation and gender identity were added to North Carolina's employment non-discrimination laws.

In the 2013 fiscal year, over 2,800,000 new cases were filed in North Carolina's state district and superior courts.⁷³ The state judicial system operated on a budget of \$432,806,800, and employed over 6,000 people.⁷⁴ Given the heavy caseload and size of the state's judicial system, an additional 50 cases per year would most likely have no noticeable impact on the budget or staff.

Additionally, data from previous annual reports show that the judicial system's caseload has varied by many more than 50 cases per year. From 2009 to 2013, the judicial system's caseload fluctuated, on average, by 147,000 cases from year to year. This information supports that the additional complaints could be absorbed into the existing system with minimal impact on staff and resources.

Fiscal Year	Caseload
2013	2,812,988 ⁷⁵
2012	3,006,541 ⁷⁶
2011	3,265,639 ⁷⁷
2010	3,384,274 ⁷⁸
2009	3,366,310 ⁷⁹

There are not enough available data to calculate the impact of the eight additional complaints filed by government employees on the Office of State Human Resources and the Office of Administrative Hearings. However, we given the small absolute number of complaints we expect would be filed, the impact would likely be minimal.

Conclusion

Documented evidence shows that LGBT people face employment discrimination across the country, including in North Carolina. There is currently no statewide law that prohibits employment discrimination based on sexual orientation or gender identity in North Carolina. Adding these characteristics to the state's employment non-discrimination laws would provide protection from discrimination to approximately 159,000 LGBT workers in the state. Based on data from other state administrative enforcement agencies, we estimate that approximately 58 complaints of sexual orientation or gender identity employment discrimination would be filed in North Carolina annually if the law were amended. It is likely that the additional 58 complaints could be absorbed in to the existing enforcement system with minimal impact on the staff and negligible costs.

About the Williams Institute

The Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law advances law and public policy through rigorous, independent research and scholarship, and disseminates its work through a variety of education programs and media to judges, legislators, lawyers, other policymakers and the public. These studies can be accessed at the Williams Institute website.

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Endnotes

¹ These estimates were reached by applying the percentage of people in North Carolina that are LGBT (3.3 percent) to the population of North Carolina aged 16 years and older (7,810,152) and the number of people in the North Carolina civilian labor force (4,820,861), respectively. Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, Feb. 15, 2013, <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>; American Community Survey, U.S. Census Bureau, American FactFinder, 2012 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP03&prodType=table.

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- ⁵⁷ HUMAN RIGHTS CAMPAIGN, CORPORATE EQUALITY INDEX 2014 (2014), <http://www.hrc.org/campaigns/corporate-equality-index>.
- ⁵⁸ Virginia Bridges, *Poll: NC Small-Business Owners Support Gay Rights*, NEWSOBSERVER.COM, June 4, 2013, http://www.newsobserver.com/2013/06/04/2936787_poll-finds-support-for-gay-rights.html?rh=1.
- ⁵⁹ *Id.*
- ⁶⁰ Univ. of N.C. at Chapel Hill, Policy Statement on Non-Discrimination, Feb. 2012, <http://policy.sites.unc.edu/files/2013/04/nondiscrim.pdf> (sexual orientation and gender identity); Appalachian State Univ., Harassment and Discrimination Policies, <http://www.graduate.appstate.edu/gradstudies/bulletin10/policies/harassment.html> (last visited Oct. 10, 2014) (sexual orientation and gender identity); East Carolina Univ., Univ. Policies, http://catalog.ecu.edu/content.php?catoid=7&navoid=438#East_Carolina_University_Equal_Opportunity_and_No_discrimination_Policies (last visited Oct. 10, 2014) (sexual orientation); Fayetteville State Univ., Statement on

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⁶² Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Public Religion Research Institute Survey (2011) (data and calculations on file with author).

⁶³ Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with author).

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⁶⁵ BADGETT, RAMOS, & SEARS, *supra* note 64.

⁶⁶ *See Workplace*, THE WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/category/research/workplace/> (last updated Dec. 10, 2013).

⁶⁷ Gary J. Gates & Frank Newport, *supra* note 1.

⁶⁸ American Community Survey, U.S. Census Bureau, American FactFinder, 2013 ACS Table B24080: Sex by Class of Worker for the Civilian Population 16 Years and Over, 1-Year Estimates, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP03&prodType=table.

⁶⁹ *Id.*

⁷⁰ “National average” refers to the average of the complaint rates in 17 states across the country that prohibited sexual orientation discrimination in 2008. BADGETT, RAMOS & SEARS, *supra* note 64.

⁷¹ The data gathered for the 2008 study included all employment discrimination complaints filed on the basis of sexual orientation; it was not limited to complaints filed by LGB employees. Heterosexual employees may also file complaints under sexual orientation non-discrimination laws if they were discriminated against because of their heterosexuality or because they were perceived to be LGB. However, we use the LGB workforce as the underlying population for purposes of our analysis because LGB employees likely file the vast majority of sexual orientation discrimination complaints. See Rubenstein, *supra* note 64.

⁷² BADGETT, RAMOS & SEARS, *supra* note 64, at 5.

⁷³ NORTH CAROLINA JUDICIAL BRANCH, ANNUAL REPORT JULY 1, 2012 – JUNE 30, 2013 11-12
http://www.nccourts.org/Citizens/Publications/Documents/2012_2013_north_carolina_judicial_branch_annual_report.pdf (last visited Oct. 10, 2014).

⁷⁴ *Id.* at 9.

⁷⁵ *Id.* at 11-12.

⁷⁶ NORTH CAROLINA JUDICIAL BRANCH, ANNUAL REPORT JULY 1, 2011 – JUNE 30, 2012 9-10,
http://www.nccourts.org/Citizens/Publications/Documents/2011-12_AnnualReport_20130328.pdf (last visited Oct. 10, 2014).

⁷⁷ NORTH CAROLINA JUDICIAL BRANCH, ANNUAL REPORT JULY 1, 2010 – JUNE 30, 2011 7-8,
<http://www.nccourts.org/Citizens/Publications/Documents/annualreport-2010-2011.pdf> (last visited Oct. 10, 2014).

⁷⁸ NORTH CAROLINA JUDICIAL BRANCH, ANNUAL REPORT JULY 1, 2009 – JUNE 30, 2010 7-8,
<http://www.nccourts.org/Citizens/Publications/Documents/09-10AnnualReport20110914.pdf> (last visited Oct. 10, 2014).

⁷⁹ NORTH CAROLINA JUDICIAL BRANCH, ANNUAL REPORT JULY 1, 2008 – JUNE 30, 2009 6-7,
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