

BEST PRACTICES

REFORMING FINE & FEE POLICIES IN THE CRIMINAL JUSTICE SYSTEM

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EXECUTIVE SUMMARY

Cities, counties, and states across the country face increasing scrutiny of their reliance on fines, fees, and penalties to fund governmental services, particularly in the public safety and criminal justice realm. While states and local governments recognize the many negative social consequences of relying on these revenues, many jurisdictions have struggled with the potential loss of revenues and resulting budget pressures. To assist selected counties across the United States with efforts to reduce their reliance on criminal justice fines and fees in fiscally responsible ways, Arnold Ventures has funded technical assistance provided to Ramsey County, Minnesota; Davidson County, Tennessee; and Dallas County, Texas by PFM's Center for Justice & Safety Finance.

While governments regularly levy fines in efforts to punish and deter criminal behavior, levying fees on individuals who are arrested, tried, convicted and/or detained pre-trial or incarcerated post-trial raises many questions. These financial obligations create significant burdens on individuals and often bear no relation to the underlying offense committed. Yet states, counties, and cities use these revenues to essentially shift the cost of the criminal justice system from taxpayers to defendants, creating the potential for officials to prioritize revenue generation over the fair administration of justice.

Previous research and analysis have linked the growth in these fines and fees revenues to the expansion of the criminal justice system in the “get tough on crime” era of the 1980s and 1990s. Facing growing expenditures amidst rising anti-tax sentiment, public officials increasingly tried to cover rising expenses by collecting fines and fees from system-involved individuals. Ultimately, Michael Brown's shooting in Ferguson, Missouri in the summer of 2014 proved to be an inflection point, as stakeholders came to understand that relying on people convicted of criminal violations to “pay for” the criminal justice system created unmanageable financial burdens, damaged disadvantaged communities, and represented a regressive way of raising revenues.

Counties wishing to limit or even eliminate completely their reliance on fines and fees revenues generated inside their criminal justice systems can take three specific steps to do so. First, by convening all key stakeholders, including community members directly affected by these policies and practices; gathering and sharing relevant data; and asking detailed questions about the nuts and bolts of these fines and fees — when they are imposed, what determines their

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amounts, how funds are collected, where the revenues go, how the revenues are ultimately spent, etc. — counties will **develop a shared knowledge base and understanding among all stakeholders and partners**. Second, counties must **analyze the information and data** at hand to assess the current impact of the system overall, and specific fines and fees in particular, on individuals, communities, and public bodies, with particular sensitivity to impacts on disadvantaged community members. Finally, **counties must act**. With analysis in hand, county officials must continue to work with affected community members and act decisively by passing needed legislation, developing implementation plans, and committing to ongoing benchmarking and measurement of progress. By focusing on process, analysis, and then action, counties can address long-standing inequities of race, ethnicity, and income and increase the sustainability and transparency of their fiscal choices, without damaging public safety outcomes.

San Francisco, Alameda, and Los Angeles Counties in California have each engaged in fines and fees reforms, applying these best practices in real-world settings. San Francisco's Financial Justice Project has led to significant policy change, including basing fine and fee amounts on ability to pay and ending the suspension of driver's licenses for failure to pay traffic citations, and the county is recognized as a national leader in this policy realm. Alameda County eliminated all juvenile justice administrative fees in 2016, following up in 2018 by removing adult fees levied for probation, public defender, and work release services—and forgiving unpaid fees to date. Los Angeles County, too, started by focusing on juvenile justice and then tackled its dysfunctional adult system featuring unaffordable fees levied without regard for ability to pay, low compliance rates, and limited net fiscal benefits once collections costs were factored in.

Aided by technical assistance from PFM's Center for Justice & Safety Finance, county leaders in Ramsey and Davidson Counties have also made significant progress in reducing the roles of fines and fees revenues in their criminal justice systems. Ramsey County found that it had significant discretion in setting certain fines and fees, which provided nearly \$3 million in annual revenue, and has recently eliminated fees for a variety of supervision, electronic home monitoring, and patient health services. The County continues to explore options for reducing other fees in its system, with particular attention to potential revenue and expenditure offsets as described by the Center's report. Davidson County, too, has introduced targeted reforms to limit the negative effects of these revenues, for example eliminating its \$44 per day jail fee.

Reducing or eliminating the reliance on fine and fee revenues to fund criminal justice systems presents challenges to public sector officials entrusted with improving public safety in fiscally responsible and sustainable ways. Successful reform efforts to date suggest that net financial impacts of reform may be muted, since compliance rates are low and collections costs are high. County officials can and should act within their scopes of authority to reform their systems, even as they are only part of a larger system of states, cities, and courts. More recently, the urgency and value of pursuing these reforms have only increased of late, as the nation faces three interlocking challenges to public health, economic prosperity, and the fair administration of justice throughout our communities. The COVID-19 pandemic has led to unprecedented impacts on health and well-being; the resulting economic disruption has damaged the abilities of millions to pay their rent, buy food, and sustain themselves and their families; and the social unrest

following George Floyd's murder has unleashed energies and intentions around public safety, criminal justice reforms, and systemic racial discrimination. All of these developments raise the urgency for addressing the disparate, regressive, and ultimately counterproductive structures of fines and fees in our criminal justice system.

On balance, we hope that the ideas and practices discussed in the present brief will assist states, counties, and municipalities across the country as they work to make their systems more equitable, more transparent, and more sustainable.

INTRODUCTION

Cities, counties, and states across the country face increasing scrutiny of their reliance on fines, fees, and penalties to fund governmental services, particularly in the public safety and criminal justice realm. The tragic summer 2014 events in Ferguson, Missouri, dramatized some of the key negative consequences of excessive use of such revenues:

- community conflict and diminished trust in public institutions;
- disparate and destructive impacts by race;
- regressive effects on low-income individuals and communities; and
- potentially perverse incentives for public sector officials to increase revenue collections in opaque and counterproductive ways.

The human costs of reliance on these revenues are considerable and have been widely documented in the press and in academic, policy, and advocacy circles. Responding to this heightened scrutiny and increased awareness, public officials throughout the nation have established task forces, conducted thorough reviews of current practices, and proposed and implemented reforms in their criminal justice systems. San Francisco has been a leader in this regard (San Francisco Fines and Fees Task Force 2017; The Financial Justice Project 2020b), and other jurisdictions such as Los Angeles County and Ramsey County, Minnesota, have embraced needed reforms as well (Botts 2020; Center for Justice & Safety Finance 2019).

Jurisdictions committed to decreasing their reliance on these revenues face numerous challenges, not the least of which may be a reduction in revenues used in their operating budgets and, in some cases, to support specific programs in public safety or public health. Arnold Ventures supported technical assistance provided by PFM's Center for Justice & Safety Finance in Ramsey County, Minnesota; Davidson County, Tennessee; and Dallas County, Texas. A series of separate case studies profiles these counties (Worthington 2020), and the current brief offers a synthesis of best practices in criminal justice fines and fees reforms, highlighting these counties and other leading efforts nationwide.

In a nutshell, we identify several concrete steps counties can take to lessen their reliance on criminal justice system fines and fees:

- First, by convening all key stakeholders, gathering and sharing relevant data, and asking detailed questions about the nuts and bolts of these fines and fees — when they are imposed, what determines their amounts, how funds are collected, where the revenues go, how the revenues are ultimately spent, etc. — counties will develop a shared knowledge base and understanding among all stakeholders and partners.
- Second, counties must analyze the information and data at hand to assess the current impact of the system overall, and specific fines and fees in particular, on individuals, communities, and public bodies, with particular sensitivity to impacts on disadvantaged community members. This includes making a candid assessment of authority and decision-making: which unit of government, or which agency or unit of a given government, has the authority to change fines and fees-related policies and practices, and how significant are these revenues to funding various governmental entities and programs?
- Finally, counties must act. Once task forces, investigatory committees, and other ad hoc groups have made recommendations and offered proposals, county officials must act decisively by passing needed legislation, developing implementation plans, and committing to ongoing benchmarking and measurement of progress in this realm.

The rest of this brief is organized as follows. The next two sections lay out the rationale for using fines and fees in the criminal justice system and the recent pressure on contemporary practices of relying on “user fees” to fund system services. Next, we propose a simple three-step process for counties to consider when embarking on fines and fees reform. The following sections comprise the core of this brief, describing how counties nationwide have approached this process and distilling insights and lessons learned. Finally, we close with a synthesis and discussion of possible next steps for reformers across the country.

WHY USE FINES & FEES IN THE CRIMINAL JUSTICE SYSTEM?

Fines may be justified if they serve a punishment or deterrence purpose. These payments are intended to deter future offenses and potentially compensate any victims. For example, while states and local governments often use fines to discourage undesirable activities such as littering, driving without a license, or operating a restaurant without the proper license, the evidence on how those fines deter future offenses, if at all, is limited. In the criminal justice context, fines are used to punish and deter activity that threatens to compromise public safety, for example, driving while under the influence (DUI) of alcohol or drugs: from that perspective,

finances should be proportionate to the potential harms from the activity at issue and the person's ability to pay that fine.²

Fees, which are current charges assessed to users of particular public services, are quite different from fines. Outside of the criminal justice system, the use of fees and charges has long been common despite sometimes contentious discussions about the appropriate level of these charges.³ For example, states and local governments raise significant revenues by charging for drivers' licenses, occupational and professional licenses, and business licenses; college and university services; access to roads, bridges, and tunnels; transit services; water and other utilities; and other public services.

In the criminal justice context, however, the widespread use of fees is a more recent and contentious practice. Individuals who are arrested, tried, convicted, and/or detained pre-trial or incarcerated post-trial may be subject to a dizzying array of fees levied by multiple entities. Such individuals are not truly "voluntary" consumers of public services, yet they may face hundreds if not thousands of dollars in fees when moving through the criminal justice system. For example, the state of Tennessee has 245 separate fees and taxes defined in statutes that apply to the state's courts: "...even for a relatively minor offense such as driving with a revoked, suspended, or canceled license, the costs charged in general sessions criminal court could include up to 17 separate fees and taxes totaling a minimum of approximately \$112 to over \$300." (Tennessee Advisory Commission on Intergovernmental Relations 2017). Another example comes from Los Angeles County, where someone with a first-time DUI conviction may owe up to \$2,153 in 14 distinct fees and fines, even if the person cannot afford the principal \$390 fine and opts instead for community service (Let's Get Free LA 2019, 25).

***Why do states, counties, and cities — and the courts that serve their residents — impose such complicated and heavy fees on individuals in the criminal justice system?
The rationale is straightforward: money.***

A recent Brennan Center report points out that these fees are simply intended to raise revenue and often "bear no relation to the offense committed" (Menendez et al. 2019, 6). In fact, the report continues, "fees are intended to shift the costs of the criminal justice system from

² For example, while all 50 states impose penalties for littering and illegal dumping of waste, the little evidence available suggests that inconsistent enforcement limits their impact on behavior (National Conference of State Legislatures 2020; Wagner 2014). On the other hand, quasi-experimental evidence from Washington state suggests that harsher punishments and sanctions on DUI are associated with significant reductions in repeat offenses (Hansen 2015).

³ The Government Finance Officers Association's guidelines state that, user fees are appropriate "[w]hen certain services provided especially benefit a particular group", but further note that "many governments provide subsidies to various users for policy reasons, including the ability of residents or businesses to pay. Well-designed charges and fees not only reduce the need for additional revenue sources but promote service efficiency." (Government Finance Officers Association n.d.)

taxpayers to defendants, who are seen as the “users” of the courts. They cover almost every part of the criminal justice process and can include court-appointed attorney fees, court clerk fees, filing clerk fees, DNA database fees, jury fees, crime lab analysis fees, late fees, installment fees, and various other surcharges” (Menendez et al. 2019, 6).

The potential for conflicts among stakeholders is clear, as funding imperatives may completely undermine other goals of the criminal justice system (Criminal Justice Policy Program 2016). For example, a study of juvenile administrative fees in Alameda County, California, found that “[s]tate law makes clear that the fees are meant to help counties recoup costs and are not supposed to be retributive (to punish the family), rehabilitative (to help the youth) or restorative (to repay victims)” (Policy Advocacy Clinic 2016, 3). Similarly, the Brennan Center report notes that reliance on fine and fee revenues can “distort the fair administration of justice. When criminal courts become responsible for their own financing, they may prioritize the imposition of significant fee and fine amounts and dedicate substantial staff to collecting these sums” (Menendez et al. 2019, 6).

FERGUSON & BEYOND: GROWING SCRUTINY OF CRIMINAL FINES & FEES

How did we get here? Why did states and local governments become so dependent on, even addicted to, the flows of fines, fees, and penalties from individuals engaged in our criminal justice system, with significant and disparate impacts by race and income?

As discussed elsewhere (Eichenthal 2020; Council of Economic Advisers 2015), the enormous expansion of the criminal justice system since the 1980s and 90s brought significant increases in incarceration rates and system-wide expenditures across the country. Those spending demands, coupled with rising anti-tax sentiment, led public officials to turn to people involved in the criminal justice system, both accused and convicted, to recoup some of the funds needed to cover costs. Increased efforts to extract revenues from people convicted of criminal violations resonated with the public during this “get tough on crime” era, leading finance and budget directors to continually look to fines, fees, and penalties as sustainable revenue sources (Eichenthal 2020). In fact, the Brennan Center (2019) documents repeated instances in which states have increased criminal and civil court fees or added new ones and further deepened public sector reliance on fines and fees for budgetary reasons (Menendez et al. 2019, 6).

In the last decade, as unpaid debts rose and individuals struggled to clear their financial obligations from unpaid fines and fees, the regressive and pernicious impacts of these fines and fees came under increasing scrutiny by public policy and advocacy groups from academia and jurisdictions across the country (e.g., (Bannon, Nagrecha, and Diller 2010; Bastien 2017; Zhen and Greene 2018; Let’s Get Free LA 2019; Martin, Smith, and Still 2017)). Ultimately, Michael Brown’s shooting in Ferguson, Missouri in the summer of 2014 proved to be an inflection point, putting all on notice that relying on people convicted of a criminal violation to “pay for” the criminal justice system was ill-advised and likely unconstitutional.

The Justice Department’s 2015 report noted that Ferguson’s focus on revenue generation served to corrupt its public safety officials and institutions:

“Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson’s police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community” (United States Department of Justice 2015).

Since 2014, many public agencies, nonprofit organizations, and consortia of states, local governments, and justice system entities have increasingly focused attention on the negative impacts of these fines and fees revenues on individuals, families, and communities across the country. While specifics vary from state to state, county to county, and city to city, the main principles are clear: the criminal justice system should be funded by general governmental revenues, not by extracting wealth from defendants who are often unable to pay their debts. For example, Principle 1.5 of the 2019 “Principles on Fines, Fees, and Bail Practices” report issued by a task force established by the Conference of Chief Justices and the Conference of State Court Administrators states that “[c]ourts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. Core court functions should not be supported by revenues generated from Legal Financial Obligations” (National Task Force on Fines, Fees, and Bail Practices 2019). In the rest of this brief, we describe a best practices approach that counties may use to achieve these goals and show how selected counties across the country have been able to make significant progress in reducing the use of fines and fees in their justice systems.

A BEST PRACTICES APPROACH TO FINES & FEES REFORMS

Counties wishing to limit or even eliminate completely their reliance on fines and fees revenues generated inside their criminal justice systems can take specific steps to do so. By focusing on process, analysis, and then action, counties can address long-standing inequities of race, ethnicity, and income and increase the sustainability and transparency of their fiscal choices, without damaging public safety outcomes.

Process: Convening Stakeholders & Gathering Information

Counties can start by identifying relevant local stakeholders and inviting them to join the reform process. Being as inclusive as possible at this stage is essential for developing the trust and knowledge needed for successful reforms down the line. Key stakeholders will include representatives from the public criminal justice sector, including police, sheriffs, district attorneys, public defenders, court officials, and others tasked with providing court services, detention, incarceration, and/or probationary services intended to promote and enhance public safety. Further, it is essential to include the voices of individuals who have directly experienced the system themselves: persons who have been arrested, charged, detained, tried, and/or

incarcerated, persons who are on probation, persons who are on home monitoring programs—these individuals have crucial perspectives on how the system’s fines and fees affect them and their families. Local advocacy groups and non-profit organizations dedicated to criminal justice matters will also bring key relationships and insights into the reform process. Finally, given the outsized role of finances in the system, representation from the county’s financial leadership team is essential early on, so that any revenue and cost impacts of reforms are considered and addressed going forward.

Once stakeholders are identified and invited to join the effort, counties must establish an open and transparent process for working together. This requires establishing solid working relationships within and across jurisdictions and departments via task forces, consortia of stakeholders, informal working groups, and/or standing committees and groups. A feasible timeline should also be established.

Once the groups and process have been determined, counties must invite all involved parties to provide detailed information and data about the fines and fees levied throughout the criminal justice system. Such information will be essential for providing a shared knowledge base and understanding that precedes the consensus building needed later to successfully implement reforms. Examples of information that could be collected, synthesized, and reported include:

- A thorough catalog of all fines and fees in the system, including dollar amounts, legal basis for the item, identity of the public entity with authority to set, waive, or change, etc.
- Documentation of the extent to which an individual’s ability to pay can, must, or must not be considered for each specific fine or fee
- Financial measures such as how many dollars are assessed in a given year, how many dollars are collected or unpaid, and how collected dollars are distributed
- Socioeconomic information on individuals assessed fines and fees, for example age, gender, race, ethnicity, and/or family income
- Costs of collecting fines and fees, through personnel expenses or other means

Analysis: Assessing Impacts & Scopes of Authority

Counties must sift through the data and information collected and ask critical questions: do the relevant agencies and departments comprehensively report and track fines and fees assessed, collected, and subsequently allocated to separate governmental bodies and programs? Do fines and fees disproportionately burden low-income, Black, Latinx, or otherwise disadvantaged individuals and communities? Are the consequences of failure to pay commensurate with the gravity of the underlying offense? What are repayment and compliance rates? Can individuals who “fall behind” ever truly catch up, and if so, how?

Further, counties must consider the costs of assessing and collecting these revenues: if costs are high, then the net fiscal impact of these revenues is diminished. More generally, how important are these net revenues to specific units of governments, departments, or programs? Directing specific fines and fees revenues to special funds or specific programs, instead of to the county's general fund, makes the budgeting process more opaque and good fiscal management more difficult.

Counties must also assess the extent to which they have control over the fines and fees assessed on individuals in their criminal justice systems. Multiple actors may have jurisdiction and control over specific fines and fees, and counties must identify what is truly in their scope of authority before pursuing specific reforms.

While the emphasis in the present study is on fiscal and financial aspects of these revenues, it is also important at this stage to document and describe some of the personal stories of people caught up in the system. Human-centered stories are crucial complements of the data and numbers-driven analyses of financial statements, fee schedules, and so on, and successful reformers will likely draw on both types of work to accomplish their goals.

Action: Changing Policy, Implementing Reforms, & Measuring Progress

Given a shared knowledge base and understanding of the local fines and fees structure and its impacts, counties must ultimately decide what changes to make, develop implementation plans, and establish meaningful measurement and accountability expectations.

Potential policy changes can include, for example, eliminating administrative fees in whole or in part; requiring consideration of ability to pay when assessing fees and/or fines; providing meaningful and feasible repayment or catch-up plans for individuals who fall behind in their payments and/or forgiving debt; limiting or removing the ability to place liens on defendant properties; and revising pre-trial detention, work-release, and/or probation procedures to lessen the need to provide staff or facilities resources. Counties can pass or revise relevant ordinances and adjust internal processes to make these changes.

Implementation plans should be explicit and linked to regular budget development processes, since decreasing fines and fees collections will certainly affect gross revenues, even if the impact on net revenues (after collections costs) is not as great. County officials must identify offsets in terms of additional revenues and/or decreased expenditures to fill any budget gaps that emerge once fines and fees revenues are cut back.

Finally, counties must establish clear metrics and standards that will be used to measure progress and hold leaders accountable for meeting the goals established. This requires explicit designation of which entities are responsible for which steps, the timeline for making changes, and reporting requirements back to county leadership.

BEST PRACTICES ON THE GROUND

With the framework above in mind, we now turn to its application in a variety of jurisdictions across the United States. While we focus on counties, we acknowledge that policy choices of multiple actors--states, counties, municipalities, courts--shape the systems as they exist now, and each county must ultimately act in the context of its own state and local legal structure. In this section, we distinguish between counties that have pursued a comprehensive approach to reforms, such as San Francisco, and those that have made more selective and targeted changes to their policies, such as Davidson County in Tennessee.

Comprehensive Reforms

The state of California, home to over 40 million residents, includes several counties that have moved decisively to sharply curtail or even eliminate the use of administrative fees assessed on individuals in the criminal justice system. San Francisco, Alameda, and Los Angeles Counties are highlighted here.

San Francisco County

San Francisco, officially the City and County of San Francisco, is recognized as a national leader in reforming policies and practices related to the collections of fines and fees on individuals in the criminal justice system. Since 2016, when Treasurer and Tax Collector Jose Cisneros launched the Financial Justice Project, the County has acted on multiple fronts to eliminate and reduce fees, link remaining fees to ability to pay, and limit the pernicious effects of debt accumulation on city residents unable to pay off parking tickets and other related fines and fees. The Project has just completed a thorough review of its approach and accomplishments to date, which we highly recommend for interested readers, so here we highlight just a few aspects of the project and reforms (The Financial Justice Project 2020b).

First, regarding process, the County deliberately and explicitly engaged with multiple partners throughout the process, with representation from city and county departments, courts, advocacy groups, and academia. Bringing all relevant stakeholders together early and often has been key to the progress made to date. Developing inclusive processes matters not only from a fairness perspective but from a pragmatic one as well: because the County itself “does not have direct oversight over most of the fines and fees that are issued in San Francisco,” developing partnerships and collaborations is essential for reforming the system (The Financial Justice Project 2020b, 13).

A second process issue emerged early as well, as the County quickly realized that data limitations were significant: “most cities and counties, including San Francisco, lack answers to basic questions, such as how many people receive various fines, fees, tickets; collection and delinquency rates; penalties for nonpayment as well as the cost of collection to the city and county” (The Financial Justice Project 2020b, 16). Thus, a key early priority was working with city, county, and court system partners to develop the knowledge base that could then provide the starting point for reform discussions. Budget staff were involved relatively early in the

process, allowing for measurement and understanding of where the dollars came from and where they went.

Finally, in terms of milestones and accomplishments, we highlight three here:

- The Financial Justice Project's first task was to manage the San Francisco Fines and Fees Task Force, which delivered its recommendations to the County's Board of Supervisors in May 2017 (San Francisco Fines and Fees Task Force 2017). **Two key recommendations included basing fine and fee amounts on ability to pay and ending the use of driver's license suspensions for failure to pay traffic citations** (San Francisco Fines and Fees Task Force 2017).
- The Project recently found that discontinuing the practice of driver's license suspensions for failure to pay (FTP) traffic tickets did not have a negative impact on revenue collections and that, to the contrary, collections of delinquent debt per ticket filed actually rose since the County's Superior Court ended this practice (The Financial Justice Project 2020a, 5). More recently, the Superior Court officially ended the use of driver's license suspensions in the event of failure to appear (FTA) in traffic court (The Financial Justice Project 2020a, 2).
- The County eliminated all "locally charged criminal justice administrative" fees as of July 2018. These fees included probation fees, electronic monitoring fees, and a variety of investigations, reports, and testing fees. The collection rate on probation fees was only nine percent. Existing debt of \$32.7 million was to be discharged, and the city pledged to work with courts to implement this debt forgiveness (The Financial Justice Project 2020b, 21).

The Financial Justice Project continues even now to advocate for reforms and for more equitable and sustainable funding sources for the local criminal justice system, and its engagement with cities across the country underscores its willingness to inspire and lead in this vital policy area. The Project is one of three partners in the newly formed network Cities & Counties for Fine and Fee Justice, which recently announced plans to support 10 jurisdictions across the country, promising to share best practices even further in this important policy domain (Fines and Fees Justice Center 2020).

“San Francisco has a long history of leadership in this area: It is the only county that has never charged fees to parents of children who have been incarcerated in Juvenile Hall, and was the first county court in the state to stop suspending driver’s licenses for unpaid fines and fees. With this ordinance, San Francisco becomes the first county in California to eliminate the criminal justice fines, fees, and financial penalties under its control, that so disadvantage the most vulnerable in our society. By removing these financial burdens and the outstanding debt they create that hangs over thousands of families, San Francisco hopes to inspire other jurisdictions to lift this burden off of low-income families, and to find more fair and just ways to fund their criminal justice systems”

(San Francisco County Board of Supervisors 2018, 3)

Alameda County

Alameda County, located in the Bay Area and home to Oakland, Berkeley, and other cities and unincorporated areas, has moved aggressively in recent years to remove administrative fees imposed in their criminal justice system. These actions are broadly consistent with the County’s overall vision and goals, dubbed Vision 2026, to “promote communities that are vibrant, prosperous, safe, healthy and inclusive” (Alameda County n.d.), and identify the County as a national leader in criminal justices fines and fees reforms. The County’s actions are the result of advocacy by community groups such as the East Bay Community Law Center and the Policy Advocacy Clinic, among others, who prepared legal briefs, conducted and shared analyses, gave voice to community members most directly affected by these fines and fees, and provided concrete recommendations to County leadership over time.

The County first tackled juvenile justice administrative fees, which were assessed for probation, monitoring, drug and alcohol testing, and other services. A 2016 report on the County’s fees noted that state law at that time made it clear that the purpose of such fees was entirely to raise revenue, not to exact retribution, rehabilitate young people, or provide restitution to victims, yet the County’s net fiscal gain was “minimal at best” (Policy Advocacy Clinic 2016, 3). That same report detailed the system’s disparate impact on individuals by race (Policy Advocacy Clinic 2016, 9). In fact, it cost the county in excess of \$250K per year to collect revenues of only \$400K per year (Policy Advocacy Clinic 2016, 13). On March 29, 2016, the Board of Supervisors voted to suspend collection of all such fees and directed staff to return with a proposal to eliminate such fees entirely (Alameda County Board of Supervisors 2016a), and on

July 12, 2016, the Board voted to accept staff recommendations to eliminate the fees (Alameda County Board of Supervisors 2016b). Staff estimated that such fees generated between \$500,000 and \$550,000 annually for the County, which the 2016-2017 budget took into account (Muranishi 2016).

The County continued its reform efforts, and in 2017, the County's Chief Probation Officer co-authored a white paper documenting the perverse and negative consequences of so-called "criminal justice financial obligations", or CFJOs, which are assessed by multiple entities, create unmanageable financial burdens for individuals with limited abilities to pay, and often lead to large unpaid debts and further involvements in criminal justice systems (Martin, Smith, and Still 2017). Legal and advocacy groups continued to push for limits on criminal justice system fees; for example, the East Bay Community Law Center built on its 2015 "post-Ferguson" report with continued advocacy and representation of individuals facing onerous fines and fees in the system (East Bay Community Law Center 2015; 2017). By 2018, the County was ready to act again, this time to address adult fees in the justice system. In September 2018, the County's Chief Probation Office, Public Defender, and Sheriff recommended to the County's Public Protection Committee that all such fees should be eliminated, including probation fees, public defender fees, and fees for participation in the Sheriff's Work Alternative Program (SWAP), which offers people assessed as low risk a light manual labor option in lieu of incarceration (Still 2018a; Woods 2018; Madigan 2018). Subsequent analysis and advocacy from the East Bay Community Law Center built on the proposal and its financial analysis, adding multiple elements to highlight the human costs of these onerous and regressive fees (Zhen and Greene 2018). Ultimately, the proposal was brought before the full Board of Supervisors and approved on December 4, 2018. Officials estimated the elimination of fees would decrease annual revenue by approximately \$1.45 million and suggested alternatives to fill the resulting budget gap (Alameda County Board of Supervisors 2018).

The 2018 adult fees reforms went further than the 2016 reforms for young people since existing, unpaid debt of \$26.0 million was also forgiven. Overall, the recommended reforms were framed as helping to advance the goals of the County's Vision 2026 plan: "This repeal, if approved, meets the 10X goal pathways of Crime Free County and Eliminate Poverty and Hunger in support of the County's shared vision of a Thriving and Resilient Population by providing the reentry community with the opportunities to become contributing and productive members of the society, and reducing reliance on incarceration, and enhancing the safety, well-being and resiliency of vulnerable populations, by eliminating barriers" (Still 2018b).

On balance, the County's approach reflects its clear commitment to working with multiple partners and stakeholder groups, confronting and managing the revenue implications of policy changes, and acknowledging both the human costs of the system as well as its financial and management challenges.

Los Angeles County

Like its counterparts in the Bay Area, Los Angeles County has devoted considerable effort to reducing the role of CFJOs throughout its justice system. In 2009, the County's Board of Supervisors voted to end the practice of assessing juvenile detention fees on parents or guardians. While this action ended the imposition of future fees, it did nothing to address collections of unpaid, previously assessed fees. So, in October 2018, urged by a coalition of community organizations called Let's Get Free LA, the Board approved a plan to discontinue the collection of any unpaid fees incurred prior to 2009; forgive associated debt of \$89 million; and release any liens intended to protect the County's financial interests in collecting these revenues (Los Angeles County Board of Supervisors 2018a; 2018b). The 2018 decision included a directive that the Chief Probation Officer and others report to the Board "quarterly on the status of implementation, until fee collection is discontinued and all debts related to pre-2009 juvenile detention fees are discharged and/or released" (Los Angeles County Board of Supervisors n.d.), highlighting the best practice of developing clear implementation timelines and reporting expectations. The most recent such report, dated April 9, 2020, indicated that the final batch of accounts was forwarded for discharge of debts and that most remaining liens had been resolved during the previous quarterly period (Los Angeles County Board of Supervisors n.d.).

Continued research and advocacy by Let's Get Free LA and its member organizations, in tandem with deliberations by County leaders, led to similar actions being taken to reform adult fees in the system. On April 16, 2019 the Board directed the County's Chief Executive Officer to prepare a thorough, comprehensive report "in consultation with the Probation Department, the Auditor-Controller, County Counsel, Treasurer Tax Collector, the Public Defender's Office, the Alternate Public Defenders Office, the District Attorney's office, the Sheriff's Department, the Courts, and community stakeholders, including those with lived experience, and other relevant stakeholders." Among other things, the report was to:

- include a discussion of how the charges affect individuals, including by income and geography;
- present program-level data on fines and fees collected by different entities;
- identify the authorizing statute for each type of fee and the County's ability to eliminate or suspend the fee;
- distinguish between fees the County has the discretion to control vs. those required under state law;
- review and report the costs of administering and collecting these fees;
- review and report the revenue received by the County and how it is allocated;

- investigate the potential fiscal impact of eliminating fines, fees, and penalties under the County's control;
- and propose a timeline and multi-year plan for discontinuing collection and full elimination of these fines, fees, and penalties.

By emphasizing the need to work with all stakeholders, especially those with “lived experiences”, and the importance of “following the money” carefully—how large are assessed fees, how much is collected, how are revenues spent, and how costly is it to collect and administer the system, the Board sent a clear message about the importance of a thorough review and reform plan, informed by evidence on the fiscal and personal impacts of current system.

By mid-December 2019, the Board had its report in hand, alongside a companion white paper from Let's Get Free LA, whose members shared its findings at a previous Board meeting (Let's Get Free LA 2019; Walker 2019). Together, these reports painted a powerful picture of a dysfunctional system in which “unaffordable and unaccountable” fees, fines, and penalties were assessed without consistent consideration of ability to pay; collection rates were low; and the fiscal impacts on the County itself were small once collection costs and compliance rates were taken into account.

For example, the County found that over the five preceding fiscal years ending in 2018-2019, the County's Probation Department assessed an average of \$120.6 million each year but collected only \$11.4 million (County of Los Angeles 2019, 2). The County estimated an outstanding balance of \$1.8 billion in unpaid fines, fees, and penalties (including restitution-related fees). It is worth emphasizing just how low these collection rates are: despite the prospect of facing suspended driver's licenses, impounded vehicles, and/or wage garnishments, defendants have paid less than 10% of their assessed totals in Los Angeles County in recent years. While local comparisons are hard to make, perhaps a useful national benchmark might be child support obligations, with an over six-times higher collections rate in 2015 (Grall 2020). More generally, low collections rates and high costs of collection render a given tax or fee quite unattractive from a fiscal management perspective.

On February 18, 2020, the Board of Supervisors voted to immediately eliminate collection of all adult criminal justice fees under its discretion and to forgive unpaid, previously assessed fees. Again, the Board also requested quarterly reports from the staff on progress in implementing the new policy, to include how revenue reductions would be offset by other revenues and/or offsetting expenditure reductions.

COMPREHENSIVE REFORMS IN PROGRESS: RAMSEY COUNTY, MINNESOTA

Here, we highlight Ramsey County, Minnesota, which, with technical assistance provided by the Center for Justice & Safety Finance, is even now in the process of significantly reforming its practices and policies related to criminal justice fines, fees, and penalties. The County, home to over a half-million people and the state capital of St. Paul, has long prioritized efforts to promote shared prosperity, opportunity, equity and good government for its residents. Prior to enlisting the support of the Center in 2019, the County had already eliminated or reduced several fees, including a daily \$25 fee at the Sheriff's Adult Detention Center and selected probation supervision fees, even as it noted low collections rates for certain fees. With the technical assistance provided by the Center, the County was able to better understand the details of its fines and fees system, including revenue impacts, costs of collections, disparate impacts on disadvantaged individuals and communities, and even the limits of its own scope of authority to make changes to the system.

As part of the technical assistance process, the Center's team collected data and documents from County departments and conducted multiple interviews with public officials and department heads, independent contractors that operate selected criminal justice programs, and individuals then detained in the Ramsey County Correctional Facility. Ultimately, the team used this information to develop a comprehensive report that summarized the County's current system; identified relevant state and local laws and scopes of authority; assessed not just the gross but the net revenues of the system; and recommended steps to phase out the use of fines and fees (PFM's Center for Justice & Safety Finance 2019).

The Center for Justice & Safety Finance's report echoes findings from other jurisdictions:

- **While the County's direct reliance on fees and fines did not seem excessive, there remained nonetheless significant opportunities to reduce it further** — In 2018, individuals in Ramsey County's criminal justice system paid an estimated minimum of \$12.8 million in fines and fees, of which approximately \$2.9 million, just over 23 percent, was under the control (direct or indirect) of the County itself (PFM's Center for Justice & Safety Finance 2019, 22).⁴
- **The County had been making steady progress** — The County had recently proposed to eliminate its Correctional Facility admission fee, a chemical assessment fee, and its work release fee; eliminated medical care fees in its Correctional Facility; and issued an RFP seeking a vendor to operate its pretrial supervision and diversion services without relying on fee income from participants (PFM's Center for Justice & Safety Finance 2019, 25).

⁴ These revenues are small relative to the County's overall 2018 budget of \$714 million (Ramsey County 2017).

- **Collecting these fines and fees is costly, and many individuals cannot and do not pay their debts** — The state court serving Ramsey County has an estimated \$64 million in uncollected fine and fee debt (PFM’s Center for Justice & Safety Finance 2019, 3), with an estimated collections rate between 20 and 25% (PFM’s Center for Justice & Safety Finance 2019, 23). The collections process is costly and complicated, with at least one full-time position devoted to collections (PFM’s Center for Justice & Safety Finance 2019, 24).
- **Gathering comprehensive data and information on fines and fees is difficult** — Even in a setting like Ramsey County, with committed leadership, a culture of progressive government, and a robust commitment to policies promoting equity and community engagement, data were hard to collect if available at all. For example, the Center’s report stated that the County did not know the fees charged or collected by some of its vendors providing commissary and similar services inside its detention facilities (PFM’s Center for Justice & Safety Finance 2019, 10).
- **Identifying realistic options for revenue and/or expenditure offsets to counteract any revenue decreases from fines and fees reductions is key** — Implementing the recommended steps to phase out all fines and fees under the County’s control would leave a nearly \$3 million revenue gap, one that County leaders would have to fill.

Since the release of the report in December 2019, the County has already been able to act on several of the team’s recommendations. On April 14, 2020, the County’s Board of Commissioners approved amendments to the County’s fines and fees schedule to eliminate 11 specific fees for a variety of supervision, electronic home monitoring, and patient health services, resulting in a gross annual revenue loss of approximately \$675,000 (Ramsey County Board of Commissioners 2020). The County continues to explore options for reducing other fees in its system, with particular attention to potential revenue and expenditure offsets as described by the Center’s report.

TARGETED REFORMS: DAVIDSON COUNTY, TENNESSEE

While the counties described above have pursued wide-spread and fairly comprehensive reforms, others have taken a more targeted approach. Here we highlight one such government, Davidson County in Tennessee. Davidson County, or more formally the consolidated Metropolitan Government of Nashville and Davidson County, has a population of 678,322 and is home to over 10% of Tennessee’s population. Local criminal justice services are, as elsewhere, provided by a mix of state and local entities. Of particular interest in the present context, the County is responsible for staffing and running its local General Sessions Courts (for misdemeanors) and Juvenile Courts, and it also funds the offices of several officials in the state court system, including the offices of Clerk and Master; Circuit Court Clerk; Circuit Court judges; Criminal Court judges; and the Criminal Court Clerk. (Metropolitan Government of Nashville and

Davidson County 2018; Tennessee Advisory Commission on Intergovernmental Relations 2017). Like many counties, Davidson relies in part on criminal justice fines and fees revenues to fund justice system activities and programs.

Motivated by concerns about the negative impacts of these revenues on the very residents and communities the County serves as well as other issues, former Mayor Megan Barry established the Economic Inclusion Advisory Committee in 2016 “with the goal of creating a shared vision of what economic inclusion means for Nashville, and to determine and develop a “Nashville Vision” that provides a holistic approach to financial stability leading to inclusion” (Metropolitan Government of Nashville and Davidson County 2017). The Committee included representatives from the financial sector, public sector, advocacy groups, and academia and issued its report and recommendations in October 2017. One recommendation was to “[c]ommission an impact analysis of proposed and existing court fines, fees, and taxes and the collateral consequences affecting financial security and capability.” (p. 9) (Metropolitan Government of Nashville and Davidson County 2017). Nashville’s selection into the technical assistance programs of PFM’s Center for Justice & Safety Finance and the National League of Cities represents a tangible action to implement the Committee’s recommendation (Hale 2019).

Preliminary findings from the Center indicate that in FY 2018, the County collected just under \$8.5 million from defendants and inmates for fines and fees assessed by the Sheriff’s Office, General Sessions and State Trial Courts, General Sessions Probation, Community Corrections, and State Probation (PFM’s Center for Justice and Safety Finance 2020, 15). Of this total, nearly \$1.6 million was directed to funding the operations of the Clerk of the Criminal Court, accounting for over a quarter of that office’s total budget, confirming that fines and fees revenues provide a significant share of funding of justice-related services (Metropolitan Government of Nashville and Davidson County 2018, G-6). Furthermore, of the nearly \$5.8 million going to the county’s Metro government, nearly \$2.1 million flowed to special revenue funds or otherwise had a specific designated purpose, making it difficult to track the inflows and outflows of these revenues in a transparent way (PFM’s Center for Justice and Safety Finance 2020, 16).

While more general reforms have not yet been proposed or implemented at this time, the County has taken several specific steps worth noting. For example, the County introduced the “Steering Clear” program in September 2018, aiming to help individuals drive legally and thereby reduce caseloads, arrests, and fines. Qualifying individuals have three options: restore or obtain a driver’s license, with assistance; complete a driver’s education class; or perform community service (Metropolitan Government of Nashville and Davidson County n.d.). In the four months after the program’s launch, driver license citations dropped 54%.

The County has taken other actions as well: in 2018 the County’s Council voted to eliminate a \$44 per day jail fee, with the Council’s resolution explicitly noting the low collection rates for both General Sessions and State Trial Court cases (Council of the Metropolitan Government of Nashville and Davidson County, Tennessee 2018). In addition, the Clerk of Court created a compliance division responsible for clarifying payment expectations, creating payment plans,

and assessing indigency — ensuring residents who are unable to pay fines are identified earlier in the process.

These targeted changes to date will mitigate the negative impacts of fines and fees in Davidson County’s criminal justice system and may lead to broader reform efforts. Identifying and managing the revenue implications of fee reductions will be key to successful and sustainable reforms in the future.

CONCLUSIONS & NEXT STEPS

As this brief has described, counties wishing to successfully reduce or eliminate in full their reliance on administrative fees and fines in their criminal justice systems must devote significant energy to process, analysis, and subsequent action. San Francisco, Alameda, and Los Angeles Counties have engaged on multi-year efforts in which they have:

- Partnered with, learned from, and been responsive to relevant stakeholders and partners throughout the system, including community members most directly affected by these practices and policies;
- Analyzed and reviewed the facts about how fines and fees are assessed and on whom; how dollars are collected or left unpaid; how nonpayment affects individuals, families, and communities; and what policy levers are under local control; and
- Revised local ordinances, policies, and procedures to accomplish their goals.

Making these changes takes time and presents challenges, yet in key domains, public officials have found that some of their greatest concerns have been unfounded:

- **Net revenues generated by these fines and fees need not decrease dramatically, especially once the costs of collections are taken into account.** Expenses associated with collections may be reduced (Ramsey County), and revenues per citation actually rose in San Francisco after the discontinuance of driver’s license suspensions for failure to pay traffic tickets. Many jurisdictions simply do not know how much it costs them to collect these revenues (Criminal Justice Policy Program 2016), as San Francisco found when embarking on its Financial Justice Project. In fact, a recent analysis of three states and ten counties throughout the country concludes that “fines and fees are an inefficient source of revenue” (Menendez et al. 2019, 5): “on average the jurisdictions in this report spent more than \$0.41 for every dollar they collected over the period studied” (p. 9), and the authors argue that figure likely understates the true costs of collections.
- **Concerns about negative impacts on public safety also may be overstated.** One review of the evidence suggests that onerous fines and fees actually “push debtors

toward new offenses” and hinder rehabilitation (Bannon, Nagrecha, and Diller 2010). Ramsey County offers a specific example: there, the Center’s report recommended that by implementing targeted early release of lower risk clients from probation, the county can decrease expenses without compromising public safety.

Finally, it is worth noting the importance — and challenge — of tackling these problems on multiple levels. While this brief has primarily highlighted counties across the United States, states are crucial actors as well (Criminal Justice Policy Program 2016). As we have seen, counties have control only over selected elements of their systems, with state governments and courts responsible for far more of the system, and states themselves vary dramatically in how much control they devolve to their local governments.

For example, consider the state of California, which places meaningful limits on the extent to which municipalities can engage in “taxation by citation”, denoting the potentially abusive and distortionary practice in which municipalities “use traffic and other code violations to raise revenue from fines and fees rather than solely to protect the public” (Carpenter, Pochkhanawala, and Menjou 2020). While three counties in California are leading nationally on efforts to reduce their reliance on fines and fees, to date there have been no statewide actions, limiting the overall impact.

For that reason, even California can do more. At the state level, the Legislative Analyst’s Office regularly finds that the system’s complexity and limited data availability make it difficult for legislators to provide appropriate fiscal oversight (Legislative Analyst’s Office 2016; 2017; 2019). And even now, state legislators are considering proposed SB 144, which would repeal the authority to collect most criminal justice fees now assessed, including for “administering probation and diversion programs, collecting restitution orders, processing arrests and citations, administering drug testing, incarcerating inmates, facilitating medical visits, and sealing or expunging criminal records. and incarcerating inmates” (Mitchell, Hertzberg, and Skinner n.d., 144). The bill would also forgive unpaid debts accumulated to date. Opponents of the legislation cite concerns about revenue losses, but the evidence and experiences discussed in this brief weaken those arguments considerably (“Senate Committee on Appropriations Hearing on SB-144 ‘Criminal Fees’” 2019).

On balance, we hope that the ideas and practices discussed in the present brief will assist states, counties, and municipalities across the country as they work to make their systems more equitable, more transparent, and more sustainable.

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