

Breaking the Cycle

How Washtenaw County effected meaningful change by mitigating the inequities of fees and fines **BY CATHERINE MCCLARY**

Flush with American Rescue Plan Act (ARPA) money, the Washtenaw County Board of Commissioners was inspired to fund transformational change that would improve the wealth and financial acumen of future generations.

County boards of commissioners in Michigan have budget development and oversight responsibility, and board members and other county officials and leaders agreed that the \$72 million in stimulus funds from ARPA could enable transformational change throughout all communities in Washtenaw County.

EFFECTING BIG CHANGES

Beyond funding immediate assistance to county residents who had been negatively affected by the COVID-19 pandemic and performing deferred maintenance in environmentally sustainable ways to county infrastructure, the board's overriding, long-range goal was to mitigate poverty throughout the county.

Public defender and prosecutor.

Before the COVID-19 pandemic, Delphia Simpson, the first female public defender appointed by the county, initiated a program to pay cash bail for indigent

defendants awaiting trial for low-level crimes. Simpson, along with the county's treasurer and sheriff, partnered with a Detroit, Michigan, group called the Bail Project, a nonprofit started by public defenders in the State of New York.

A person pays bail as collateral to the court system to get out of jail. If the person returns for court proceedings, the money is returned. If they don't return to court, the money goes to the government's general fund. In county jails, most inmates are awaiting trial; they haven't been adjudged guilty. Approximately half are people of color, and in Washtenaw County, more than half have documented mental illnesses.

When a resident is jailed, their medication is stopped until the jail physician can prescribe it after evaluation; their Medicaid benefits are terminated by federal law. Critics of the bail system note that low-income defendants who can't make bail often face the prospect of losing custody of their children while behind bars. Furthermore, imposing unaffordable bail is costly to taxpayers, who collectively pay much more to jail a person than the cost of that person's bail. And the loss of Medicaid benefits burdens the entire community.

Bootcamp. At the end of 2021, Treasurer Catherine McClary attended a GFOA webinar on the ethics of fees and fines because she was concerned about the disparate credit card fees that her county charges. If a county resident uses the courts and pays by credit card, a fee of approximately 3 percent is added, while the county absorbs the fee for many other services. These discrepancies are often due to different software packages used throughout the county.

The treasurer went on to attend a bootcamp sponsored by Cities & Counties for Fine and Fee Justice (CCFFJ) in March 2022, to promote fees and fines reform. She brought along Simpson, Chief Assistant Prosecutor Victoria Burton-Harris, and Racial Equity Officer Alize Asberry Payne. Over the course of two days, Washtenaw County officials learned from experts, including José Cisneros, the elected treasurer of the City and County of San Francisco, about how to build equity and fairness into fees and fines.

After the bootcamp, Burton-Harris told the group, "This could be a serious game-changer for residents on the east side of the county. This approach could help break extended probations tethering folks to the system because of outstanding fines, costs, and fees.

Failure to pay fines, fees, and costs is one of the top reasons people violate probation and, often, face jail time and lose everything. This is something I'm quite interested in because of the racial disparities, and the cascading effect on Black and Brown families. I will do what I can to help get us with this program."

Following the success of the bootcamp, Asberry Payne took leadership of the project within the scope of the Racial Equity Office. She applied to CCFFJ to become part of their second cohort. This would help Washtenaw County with technical assistance and tools to create policies to mitigate the inequities in fees and fines.

Racial Equity Office. Led by the Racial Equity Office, the Washtenaw County team represents an unprecedented collaboration among the administration, Trial Court, and offices representing the sheriff, prosecutor, public defender, and treasurer. This unique cohort agreed to focus on eliminating non-statutory fees and fines related primarily to incarceration and the local judicial process.

"Many of our departments and elected offices are already doing this work," Asberry Payne noted. "The cohort offers us the unique opportunity to deepen the impact of those efforts. Reducing the impact of fees and fines is aligned with the county's overall equity strategy. It's transformational change of a system that has negatively and disproportionately impacted poor people, Black people, and people of color."

The county's application to CCFFJ was successful, and Asberry Payne set up a site visit to the San Francisco Treasurer's Financial Justice Center. This visit was attended by eight key officials of the Washtenaw County cohort, plus a representative of the consumer/user community—the most important person in the group. After the site visit, Asberry Payne's staff arranged a training session for the cohort officials, provided by CCFFJ, onsite in Washtenaw County. CCFFJ provided extensive technical assistance, data, and "how to begin" support and education.

The Sheriff. Sheriff Jerry Clayton announced more than \$500,000 in inmate debts related to services and fees at the Washtenaw County Jail would be forgiven. His office, with support of the Washtenaw County Board of Commissioners, forgave all inmate debts incurred between 2013 and 2020—which were uncollectable or expensive to collect. This was an immediate positive impact for 31,614 individuals.

"Our decision to eliminate this debt reflects our understanding of the stress and financial burden of incarceration," Clayton said in the announcement. "We know that as people leave our jail in hope of positioning themselves to be successful upon returning home, the burden of jail debt is an added negative factor that can undermine their attempt at reintegration and feed the cycle of incarceration. We also know that incarceration can seriously compromise a person's ability to generate income, leading to even more debt. It's this absurd cycle, along with reincarceration, that we are focused on."



Fees and Fines: the Basics

What are fees and fines? *Fees* are enacted to recover the cost of a service. Some fees recoup costs for what can be considered discretionary activities (such as golf courses, licenses, property records), but other fees raise revenue because the resident must use the service (like courts, jail, inspections). As many local governments find their traditional tax sources constrained, they rely more on fees.

Fines are meant to punish transgressors and deter potential transgressors, particularly within the criminal justice system. If an individual can't pay the fine, it can increase the administrative costs

while not deterring transgressions. In the worst case, unpaid fines make it harder for an individual to get credit, employment, or housing, sometimes to the detriment of other family members, including children.

Ethics of fees and fines—what's the problem? Trust is the essential ingredient that enables elected officials to enact long-term goals to improve their communities. *Trust* and *Fair Treatment* are two of the five pillars of GFOA's Financial Foundations for Thriving Communities, which provides a comprehensive framework for financial decision-making and public policy. But there is evidence that imposed fees and fines have the potential to be used unfairly and, thereby, to reduce trust in government, even if these revenues are not a large part of the budget.

Fees and fines can have negative consequences for government, according to GFOA. Imposing a fee or fine on those who are least able to pay can change the lives of residents for the worse. This reduces residents' trust in local government by making government appear unfair and capricious. Furthermore, it drives up the cost of government when those residents need additional public services.

Furthermore, fees and fines can have disproportionately large impacts on a community's vulnerable residents. Traditionally, taxes have been aligned with some ability to pay (income taxes, sales taxes that exclude food/medicine) or an indication of wealth (property taxes). But with fees and fines, the connection between the ability to pay and the cost is inverted. For people with an average income or greater, many fees and fines are insignificant or merely a nuisance. For others, a fee or fine can be life-altering.

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ALIZE ASBERRY PAYNE, Washtenaw County Racial Equity Officer

Officials are now embarking on an effort to eliminate penalties and surcharges associated with the legal system, including booking fees at the county jail, commissary and telephone charges, and costs associated with electronic monitoring for people on probation.

“We know that things happen. People make mistakes. There’s always a cost for consequences, but that cost should not be an undue burden. Families should not suffer under the burden of extended or excessive fees,” said Crystal Campbell, spokeswoman for the Racial Equity Office.

The Trial Court. The day of the cohort training by CCFFJ, the chief judge of the Washtenaw County Trial Court, Carol Kuhnke, instituted a major policy change in the courts to mitigate the inequity of fees and fines. Kuhnke announced during the morning session that, when she returned to her docket that afternoon, she would eliminate the imposition of fees on defendants who qualify for appointed public defenders.

Kuhnke said, “Michigan, like many other states, relies on convicted persons to contribute to the cost of securing their convictions. CCFFJ has shared their research demonstrating that the imposition and collection of costs is detrimental to the community as a whole—pushing families into poverty and even causing people to commit new crimes to pay court costs.

Knowing that the entire community does better when courts are not funded on the backs of people we hope to reintegrate into society, we want to lead the state in reversing this system. We have taken the first step by ceasing to impose costs on people who qualify for no-cost appointed legal counsel.”

The Treasurer. Bridge Loans to Affordability Revolving Fund and its companion program, Home for Generations, were selected and funded by the Washtenaw County Board of Commissioners in 2018 as a focused strategic investment project to promote equity and mitigate structural racism in housing in the county. Only a nominal amount of seed money was originally allocated, but these two programs have proven to prevent tax foreclosure, preserve homeownership, promote family stability and well-being, maintain property values, and retain wealth for low-income families.

With statutory interest rates on delinquent taxes at 18 percent, and fees running hundreds of dollars per property, using this fund to pay back taxes, interest, and fees aligned with the county’s efforts to reduce, eliminate, or mitigate egregious fines and fees. The treasurer applied to the board of commissioners for additional funding and was allocated \$500,000 for the 2023 foreclosure prevention cycle.

GFOA RECOMMENDATIONS

GFOA has developed policy guidance for those jurisdictions that want to take action and replicate what Washtenaw County is undertaking. GFOA recommends that finance officers and treasurers consider the potential for negative consequences when administering a system of fees and fines.

Fees. Guidelines for making fees fairer and more equitable include:

- Not all public services are a good fit with a fee-for-service approach. Emergency services are not optional, and costs can fall more heavily on vulnerable populations. Typically, general government should be funding mandated services such as fire, ambulance, or police protection. If the service is borne by vulnerable populations—people in poverty, children, or fixed-income seniors—general government should be providing the services.
- For some services that do fit a fee for-service approach, there may be a case for collecting less than the full cost of providing the service. Reconsider fees or fines that discourage residents from following a regulation, such as dog licensing or building permits.
- If collection is difficult or more costly than the service, it may be impractical to charge a fee.

Fines. Fines provide a disincentive for a person to engage in illegal or undesirable behavior; however, fines can also have unintended consequences and may not always be cost-effective.

- The goal of fines should not be to raise revenue. Therefore, the budget of the organizational unit that assesses or collects a fine should not be set in relation to the expected revenue from the fine.
- The organizational unit that generates the fine should not realize financial benefit from assessing a greater number of fines. To the extent possible, revenue generated from fines should be considered a general revenue.

- Sometimes fines are ineffective as a disincentive, and effort would be better spent on more effective ways to address the underlying problem.
- Reconsider fines that are unlikely to be collectable for an acceptable cost.

Finding a better, more sustainable way

“We can balance our budgets in commonsense ways that are not on the backs of the least fortunate people in our communities,” Cisneros said in a recent news release.

The San Francisco Financial Justice Project annual report states: “We are deeply grateful for all of our partners. With your help, this year we lifted tens of millions of dollars in debt off of San Francisco residents, launched innovative pilot programs, and brought financial justice statewide and nationwide.” The group launched a second leadership CCFFJ group, and leaders from all over the country participated in the first fine and fee justice bootcamp, attended by leaders from more than 50 cities and counties.

Washtenaw County has made a commitment to reforming systems and institutions that negatively or disproportionately affect people living in poverty and people of color. This is a long game: transformational and generational change is not a short-term strategy. Meaningful reform of fees and fines can be a first step toward institutional equity and fairness in the services provided to all residents in Washtenaw County. **■**

Catherine McClary is the treasurer of Washtenaw County, Ann Arbor, Michigan, and a 2021 GFOA Hero Award winner.

RESOURCES

Learn more about Cities and Counties for Fine and Fee Justice at finesandfeesjusticecenter.org.

Learn more about GFOA's financial policies for imposed fees, fines, and asset forfeitures at gfoa.org/materials/fees-fines-forfeitures.

Learn more about the accomplishments of the San Francisco Financial Justice Project at sfgov.org/financialjustice.



Where the Washtenaw Initiative Started

The Financial Justice Project in San Francisco

José Cisneros, the elected treasurer of the City and County of San Francisco, California, believes that anti-poverty initiatives will help his jurisdiction economically. He sees the treasurer's office as the perfect place to develop policies that help low-income families move up the economic ladder.

His first project was to increase local participation in the federal Earned Income Tax Credit (EITC). Then he worked with local banks to make it easier for low-income residents—people who typically resort to predatory payday lenders and check-cashing services—to open and maintain checking accounts.

In 2016, Cisneros launched the Financial Justice Project to assess and reform the ways in which fees and fines impact San Francisco's most vulnerable residents. Government programs and courts levy fees and fines on people partly to generate revenue to balance public budgets. An insidious, unintended impact of this practice is to push already low-income families further into poverty. Being an elected official gives Cisneros a different kind of visibility, he believes, and a voice to reach out.

As his work was increasingly recognized across the country, there were requests for technical assistance and training. So, Cisneros partnered with PolicyLink and the Fines and Fees Justice Center to establish Cities & Counties for Fine and Fee Justice (CCFFJ), creating a national network of leaders committed to meaningful fine and fee reform. It is the CCFFJ that has provided structure and focus for Washtenaw County to address issues of fees and fines for its residents.

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JOSÉ CISNEROS