

Persistence in the Face of Challenges:

Reforming fine and fee policies in Nashville, Tennessee

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INTRODUCTION

Nashville's ongoing efforts to curtail its reliance on criminal justice fines and fees revenues have come during an extraordinarily challenging year for the city and its residents, with tornados, civil unrest, and COVID-19-driven public health and fiscal crises to face. And all of this came as Nashville's third mayor in 18 months was taking office. Despite these challenges and transitions, Nashville has persisted in its work on fines and fees reform, promising to make continued progress towards its goals of building a more sustainable, equitable, and responsive community.

This case study, part of a project led by PFM's Center for Justice & Safety Finance and supported by Arnold Ventures, builds on earlier work and experiences (PFM 2020; Worthington 2020) and highlights several key elements of Nashville-Davidson County's approach. By focusing on process and community engagement; analysis and shared knowledge generation; and subsequent action with accountability, the County has already taken meaningful steps to reduce its use of fines and fees, and with further concrete, actionable recommendations now in hand, it can move further along the path of reform even in a time of challenge.

Nashville's efforts are motivated by several negative aspects of over-reliance on fines and fees revenues in the criminal justice system. Cities and counties across the country collect a dizzying array of fines and fees levied by multiple public agencies, departments, and courts. Previous investigations have identified the system's potential for disparate and destructive impacts by race; regressive effects on low-income individuals and communities; and perverse incentives for public sector officials to increase revenue collections in opaque and counterproductive ways. Overall, the system can generate community conflict and erode confidence in the fair administration of justice, both of which hinder the development of the safe and prosperous communities desired by all (Worthington 2020, 3). Further, these revenues are often costly to collect, so that eliminating these fines and fees need not significantly decrease net revenues — thus making fines and fees reforms more fiscally feasible (Worthington 2020, 2).

The following case study examines Nashville's efforts in the context of multiple challenges that the City has faced in the last three years. It includes a brief description of socioeconomic characteristics, governance, and court structure. The heart of this case study reports findings and recommendations based on PFM's analysis.

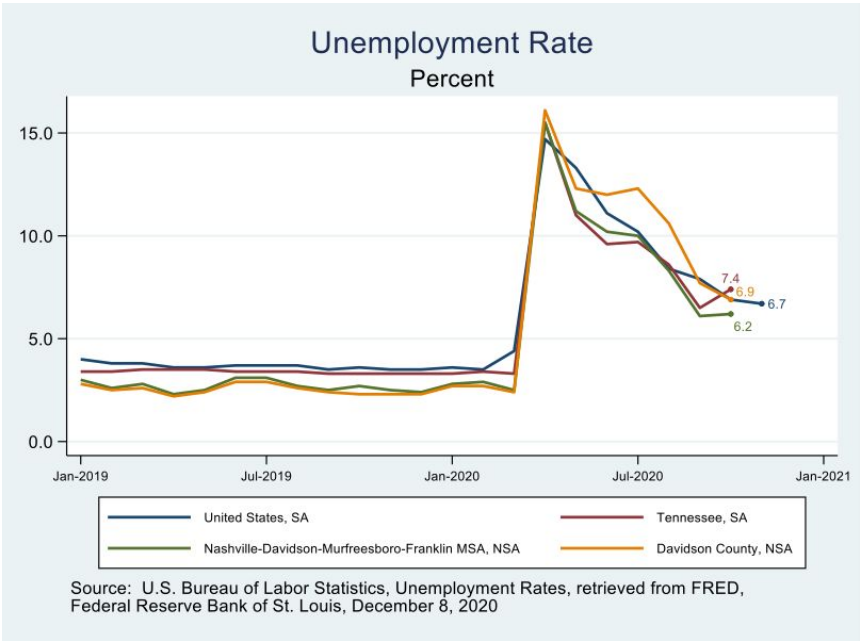
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ABOUT NASHVILLE-DAVIDSON COUNTY

Socioeconomic Profile

Nashville-Davidson County, with its population of 678,322, is home to over 10% of Tennessee’s population (based on U.S. Census Bureau, American Community Survey, 5-year estimates 2013-2017, (U.S. Census Bureau n.d.)). Compared with Tennessee as a whole, the County’s population is younger (median 34.3 vs. 38.6 years of age), more racially diverse (higher shares of Hispanic and Black residents), and better educated (39.1% of the County’s adults have bachelor’s degrees or higher, compared with only 26.1% for the state overall). Labor force participation rates are higher (70.4% vs. 61.2%) and unemployment rates are lower (5.3% vs. 6.6%). Further, County households have higher median incomes (\$53,419 vs. \$48,708). However, the % of individuals living in households with income below the poverty line is similar (16.9% for the County vs. 16.7% for the state as a whole).

Despite its advantages, the County has suffered considerably from recent COVID-related disruptions to economic activity. The April 2020 spikes in unemployment seen nationwide were followed by a somewhat more sluggish recovery in the County than in the metropolitan area as a whole. As of October 2020, the County’s unemployment rate was still elevated at 6.9%, compared with 6.2% for the metro region (see figure below). Unsurprisingly, the County’s fiscal conditions deteriorated sharply in 2020, as revenues were expected to decline by \$215.8 million, with tourism and entertainment-driven local option sales tax revenues alone dropping an estimated \$95.3 million. FY 2021 projections are even worse, leaving County officials to make difficult budget decisions (Metropolitan Government of Nashville and Davidson County 2020, 9, 25, 30).



Governance

Nashville and Davidson County comprise the consolidated Metropolitan Government of Nashville and Davidson County, formed on April 1, 1963. The Government’s founding charter defines two service districts: the General Services District (GSD) and the Urban Services District (USD). The GSD includes the entire county and is responsible for the funding and provision of services for the

whole population, while the USD's boundaries conform to the corporate limits of the City of Nashville as extant on April 1, 1963.² Residents of the USD pay additional taxes to support provision of services benefiting only USD residents (Metropolitan Government of Nashville and Davidson County 2018).

The government's chief executive is its elected mayor, who "is authorized to administer, supervise and control all departments..." (Metropolitan Government of Nashville and Davidson County 2018). While the mayor is not directly responsible for departments and programs controlled by other elected officials such as the Sheriff and a variety of state and local justice and court officials, the mayor is responsible for executive departments such as the Department of Police, Criminal Justice Planning, and the Office of Family Safety — implying that changes in mayoral administration can have outsized effects on how public safety and criminal justice services are provided, administered, and funded. The Mayor is also responsible for proposing the City's annual budget.

Court System

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.

REFORMS IN THE FACE OF CONTINUING CHANGE & CHALLENGE

Nashville-Davidson County is no newcomer to the challenge of cutting back on the use of fines and fees in its criminal justice system, and it is worth noting some special features of Nashville's recent experience.

Former Nashville 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's 2017 report recommended the preparation of an "impact analysis of proposed and existing court fines, fees, and taxes and the collateral consequences affecting financial security and capability" (Metropolitan Government of Nashville and Davidson County 2017, 9).

² Provided services include "general administration, police, fire protection, courts, jails, health, welfare, hospitals, streets and roads, traffic, schools, parks and recreation, airport facilities, auditoriums, public housing, urban renewal, planning and public libraries" (Metropolitan Government of Nashville and Davidson County 2018, x).

These preliminary steps — convening stakeholders and gathering information — were quickly followed by several specific actions to reduce the role of fines and fees:

- **In 2017, the Clerk of the Criminal Court established a Compliance Division**, repurposing resources away from debt collections and towards efforts to clarify payment expectations, create manageable payment plans, and assess indigency — ensuring residents who are unable to pay fines are identified earlier in the process.
- **In 2018, the County eliminated its \$44/day jail fee**, with the Metro 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). Further, the Sheriff eliminated a \$35 pretrial release fee charged to first time defendants released on their own recognizance (PFM 2020, 15).
- **In September 2018, the County introduced the “Steering Clear” program**, which aims to reduce the number of individuals cited for driving without a license or with a suspended driver’s license, thereby reducing 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%.

These initial steps occurred as the city was undergoing a significant change in leadership. Following the resignation of Mayor Barry in March 2018, vice-mayor David Briley assumed office as acting mayor, winning a special election in May 2018 to complete Barry’s term through September 2019.

In early 2019, the Briley Administration took up the work of Mayor Barry on fines and fees and applied for technical assistance from PFM’s Center for Justice & Safety Finance to undertake the comprehensive analysis of criminal justice fines and fees contemplated by the Economic Inclusion Advisory Committee. In May 2019, the Metro Council approved a pair of resolutions officially accepting in-kind and technical assistance from PFM and the National League of Cities to support two related efforts to “reduce or eliminate their reliance on fines and fees collected by or through the criminal justice system while assessing the revenue and cost impact of the current system” (“Nashville | Resolution RS2019-1731” 2019).

PFM began working with representatives from the Criminal Court Clerk, General Sessions Probation, the Criminal Court, the Sheriff’s Office, the District Attorney General, the Finance Department, and the Criminal Justice Planning Department (PFM 2020, 5). However, significant shocks slowed that work down.

First, Mayor Briley lost his bid for re-election in September 2019 and was replaced by John Cooper. The PFM team engaged with the Cooper Administration and, by the end of 2019, Mayor Cooper and his team decided to proceed with the fines and fees analysis.

The following year brought even more disruptions: 2020's COVID-19 pandemic generated twin public health and fiscal crises; tornadoes tore through Nashville and other central Tennessee communities in March 2020 (Bliss 2020a); and late spring brought civil unrest as demonstrators protested the murder of George Floyd and ongoing inequities in the criminal justice system (Bliss 2020b).

Despite these challenges, city leaders continued to pursue opportunities where possible, particularly supporting efforts to catalog and analyze how fines and fees were used in the County. For example, in October 2019, Vice Mayor Jim Shulman created the Special Committee on 37208, a city neighborhood (zip code) with the highest percentage of incarceration in the country, and tasked the committee with making recommendations to correct that. The Special Committee's report was presented to the Metro Council in February 2020 and made multiple recommendations, including that the city re-engage on its efforts to reduce fines and fees (Metropolitan Council 2020).

By June, the Metro Council was prepared to pass a resolution requesting the Mayor to continue the PFM-supported initiative and make the study publicly available once complete ("Nashville | Resolution RS2020-388" 2020). On November 5, 2020, the Mayor did exactly that, releasing the report and expressing his commitment to "working with the Metro Council and the judicial community to identify more ways we can reduce the court system's reliance on fines and fees" (Max 2020).

PFM'S FINDINGS

PFM's final report provides an invaluable compendium of basic facts and figures about fines and fees in the County's criminal justice system, allowing all stakeholders to develop a shared knowledge base and understanding—a crucial precursor to reaching consensus on reform plans. The report includes a thorough catalog of all fines and fees in the system, including dollar amounts; identifies the public entities with legal authority to set, waive, or dismiss these fines and fees; and summarizes the fines and fees revenue flows into and out of the County. As argued elsewhere, jurisdictions seeking to reduce reliance on these revenues best prepare by assembling, analyzing, and sharing as much information as is available to fully describe how these practices affect not only governmental revenues but also the individuals and communities on whom these burdens fall (Worthington 2020, 8–9). As the report indicates, the roundtable discussion convened by PFM in June 2019 offered concrete examples of the stresses experienced by justice-system involved individuals: **"I was released from prison and found out I owed more than \$20,000 in fines and fees. I had just paid my debt to society in prison — why did I still owe?"** (PFM 2020, 12).

PFM's study found that most fines and fees in the County are imposed upon conviction in General Sessions Court (for misdemeanors) or Criminal Court (for felonies), with some additional fees assessed for probation and related services. Judges have wide discretion in imposing fines, and in practice, appear to be impose fines far less often than might be expected. As a consequence, Metro revenues from fines are less than one-seventh the revenues collected from fees (PFM 2020, 7). Fees are often set by statute, but again, judges appear to have discretion to modify fees based on consideration of an individual's ability to pay (PFM 2020, 8). Even before conviction, individuals may be subject to fees for services related to pre-trial detention (booking related fees, etc.) (PFM 2020, 9).

How many dollars does the County collect?

PFM estimated that in FY 2018, justice-involved individuals in Nashville-Davidson County paid just under \$8.5 million for fines and fees assessed by the Sheriff's Office, General Sessions and Criminal Courts, General Sessions Probation, Community Corrections, and State Probation (PFM 2020, 13). To put this figure in perspective, the County's 2018 Comprehensive Annual Financial Report indicates that total revenues across all funds were nearly \$2.5 billion that year, including over \$940 million in revenues for the schools (Metropolitan Government of Nashville and Davidson County 2018, B10–11). Excluding schools-related revenues, this \$8.5 million in fines and fees revenues represents less than 0.6% of total revenues, reflecting the County's limited reliance on these revenues even prior to recent efforts to curtail their use.

Where do the dollars go?

Of the \$8.5 million collected in FY 2018, 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 General Fund - GSD budget, confirming that fines and fees revenues provide a significant share of funding of some justice-related services (Metropolitan Government of Nashville and Davidson County 2018, G-6). Furthermore, nearly \$2.1 million flowed to special revenue funds or otherwise had a specific designated purpose, making it difficult to track the outflows of these revenues in a transparent way and making budgeting and fiscal monitoring processes more opaque (PFM 2020, 14; Worthington 2020, 9).

What does it cost to collect these dollars?

PFM estimated that it cost the County a minimum of \$723,938 to collect its \$8.5 million in fines and fees revenues in FY 2018 (PFM 2020, 16). Further, PFM noted that "data on collection cost was not available for either General Sessions Probation or the Sheriff," though local officials stated they do not employ staff dedicated to collections activities. In fact, many jurisdictions find it difficult to explicitly identify collections costs (among other measures), so that even establishing a lower bound can be useful (PFM 2020, 16; Worthington 2020, 10–11). Further, as the final report notes, other indirect, hard-to-quantify costs may be significant: "[m]any jurisdictions use the authority of the criminal justice system to compel defendants to make payment on their fines and fees. These levers often include post-disposition court hearings, probation violations or extended suspended sentences, and jail time" (PFM 2020, 16).

To put these findings in context, note that while the County's explicit collection costs are less than 10% of revenues collected by the County, previous research has found that jurisdictions may spend as much as \$0.41 on "in-court hearings and jail costs alone" for each dollar of revenue collected (Menendez et al. 2019, 5).

Who has authority to set fines & fees?

The PFM report also described the legal authorities for establishing County fines and fees, and it found that local officials had direct or indirect control over just over one-fourth of collected revenues, similar to their findings in Ramsey County, Minnesota (PFM 2019, 18; 2020, 15). Understanding who can change what is key to developing a set of realistic recommended actions for the County.

Further, PFM assessed the extent to which individual decision makers in the system have discretion in practice to assess, adjust, or waive these fines and fees against specific individuals, taking into account (or not) various aspects of the offense and/or the individual's ability to pay. The report notes that "while judges in General Sessions and Criminal Court have the ability to jail defendants for non-payment of fines and fees, or more specifically for failure to appear at hearings related to non-payment, multiple people and departments stated in interviews that it happens very infrequently (data was not available to confirm or deny)" (PFM 2020, 11).

PFM'S RECOMMENDATIONS

PFM's analysis led it to recommend several specific actions that the County could take to better align its practices with its goals of reducing reliance on fines and fees.

Eliminate Selected Local Fees

PFM recommended that the County eliminate certain fees under its control, such as some testing fees, public defender fees, late payment fees, work release fees, and so on (PFM 2020, 18). Actions by the Metro Council, the Clerk of the Criminal Court, and the Sheriff would be needed to implement this recommendation and would create an estimated annual "budget gap" of \$1.6 million.

Base Fines & Fees on Ability to Pay

PFM recommended that judges, particularly in General Sessions Court, build on current practice and consider ability to pay more frequently and more thoroughly in cases "where indigency may warrant waiver of fines and fees" (PFM 2020, 18). Further, PFM suggested that the County could advocate at the state level to establish a "day fines" pilot program in which criminal justice fines and fees are based on ability to pay. In fact, state policymakers may be receptive to this proposal, as two recent court cases and responsive legislation have essentially restricted practices of suspending driver's licenses when fines, fees, or court costs are unpaid due to indigency (Civil Rights Litigation Clearinghouse n.d.; n.d.; Tennessee General Assembly 2019).

Offset Revenue Losses with Cost Savings

Previous analysis has found that potential expenditure offsets can be found by decreasing explicit spending on collections efforts and by taking steps to decrease the need to provide staff or facilities in pre-trial detention, work-release, and/or probation programs (Worthington 2020, 9; PFM 2019, 24–25). For Nashville-Davidson County, PFM suggested several ways to offset the estimated \$5.2 million revenue impact of eliminating fines and fees throughout the system (including items controlled by state, not local, officials) (PFM 2020, 17, 19).

Specifically, PFM recommended a modest (10%) reduction of staffing devoted to collections efforts by the Criminal Court Clerk's office, amounting to approximately \$72,000 in savings (PFM 2020, 20).

PFM also identified a more significant source of expenditure offsets, over half a million dollars, if the County reduced the number of probation officers through attrition, noting a substantial decline in caseloads and no evidence linking the change in caseloads to changes in recidivism — thus there was little risk of negatively affecting public safety by this change (PFM 2020, 21).

More ambitiously, PFM also recommended the County take a hard look at its annual expenses related to incarceration of local inmates, including pre-trial felons and misdemeanants and convicted misdemeanants. Through 2019, the number of local inmates fell by 39.4% over a six-year period, and in 2020, further reductions occurred, likely due to COVID-driven policies. If the County can sustain this reduction in incarceration levels, it should ultimately be able to realize significant budgetary savings. In fact, PFM found that bail reforms (which affect pre-trial populations) could save between \$2.4 and \$8.0 million and that developing less-costly incarceration programs for convicted misdemeanants could save as much as \$3.6 million. Further, increasing operational efficiency in the County's facilities by just 5% would generate nearly \$2.0 million in annual savings (PFM 2020, 22).

CONCLUSIONS & NEXT STEPS

By persisting in its reform efforts despite its recent challenges — impact of COVID-19, an economic recession, the destruction caused by tornadoes — the County has demonstrated its ongoing commitment to improvements in governance, public safety, and public finance. The County's experience confirms that reform is not a linear process; instead, it is an iterative one. The County's earlier actions — such as elimination of its \$44/day jail fee and \$35 pretrial release fee — preceded the fuller understanding of the system now in hand. With this far more detailed analysis available, the County is well-positioned to understand the consequences of further policy change in this realm and to act when circumstances permit. Implementing the recommendations described here can:

- Decrease the system's negative impacts on individuals and communities;
- Improve fiscal accountability and transparency; and
- Advance the County's broader goals, all without unduly compromising public safety or public finance objectives.

The County's current financial conditions may delay its ability to take certain actions, but both the Metro Council and Mayor John Cooper remain supportive of the goal of reducing the court system's reliance on fines and fees. By accepting PFM's November 2020 report and sharing its findings and recommendations with their constituents, County leaders have affirmed their commitment to reducing reliance on fines and fees in the criminal justice system (Max 2020). Nashville-Davidson will be a jurisdiction to watch in the months and years ahead.

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APPENDIX

	UNITED STATES	TENNESSEE	DAVIDSON COUNTY
	UNITED STATES	TENNESSEE	DAVIDSON COUNTY
Total population	321,004,407	6,597,381	678,322
% Male	50.8%	51.2%	51.8%
% Female	49.2%	48.8%	48.2%
Median age (years)	37.8	38.6	34.3
Race			
% Hispanic, any race	17.6%	5.2%	10.1%
% Non-Hispanic: white	61.5%	74.3%	56.4%
% Non-Hispanic: black	12.3%	16.7%	27.3%
% Non-Hispanic: other	8.7%	3.9%	6.3%
% Population 25 & older with bachelor's degree or higher	30.9%	26.1%	39.1%
% Civilian noninstitutionalized population with a disability	12.6%	15.4%	11.8%
% Population that is foreign born	13.4%	5.0%	12.5%
% of population 16 years and older in labor force	63.4%	61.2%	70.4%
% of labor force that is unemployed	6.6%	6.6%	5.3%
Median household income (2017 \$)	\$57,652	\$48,708	\$53,419
% of individuals living in households with incomes below poverty line	14.6%	16.7%	16.9%

Source: U.S. Census Bureau, American Community Survey, 5-year estimates 2013-2017).
(U.S. Census Bureau n.d.)