

# Fine and Fee Reform Efforts in the City of Philadelphia

## I. Introduction

Since 2019, the City of Philadelphia has pursued reform of the fines and fees incurred by its residents to make them more equitable. This pursuit is consistent with the City's other initiatives to increase safety and justice, decrease incarceration, increase economic mobility, and increase racial equity in the City. This Article explains the reasons for, processes for, and outcomes of the City's reform efforts in this realm.

## II. Why Philadelphia Pursues Reform

### A. Values

Philadelphia's fine and fee reform work has been led by the Office of Community Empowerment and Opportunity (CEO), which is the City's Community Action Agency (CAA). CAAs were created as a result of the Economic Opportunity Act of 1964 and were intended to "provide stimulation and incentive for urban and rural communities to mobilize their resources to combat poverty."<sup>1</sup> CAAs operate with a mix of funding that includes Community Service Block Grant (CSBG) funds.<sup>2</sup>

CEO's mission is to provide "leadership on issues of economic justice by advancing racial equity and inclusive growth to ensure that all Philadelphians might share in the city's prosperous future."<sup>3</sup> The focus on economic justice is about more than just funding programs and initiatives that combat the effects of poverty. It is also about confronting and dismantling those apparatuses that make poverty structural and generational. This confrontation takes the form of capacity building for individuals and families, including programs to increase credit scores, bank the unbanked, create and support pathways to post-secondary success, foster meaningful opportunities for employment that pays a living wage, and many other programs and initiatives. The overall goal is to dismantle hurdles and roadblocks to greater levels of economic mobility, which includes combating predatory consumer products and practices, reducing barriers to capital for individuals in crisis and for entrepreneurs, and reforming fines and fees.<sup>4</sup>

Fines and fees often act as a support to structural inequity. Fines and fees disproportionately impact low-income individuals and individuals of color.<sup>5</sup> Our working definition of *fees* includes financial obligations that are imposed to offset costs but that are not part of a punishment, whereas *fines* are financial obligations imposed as part of

a punishment. Fees disproportionately impact low-income individuals and individuals of color, passing on a disproportionate financial burden to support criminal justice and other systems that benefit all of society. Fines, too, disproportionately penalize low-income individuals.<sup>6</sup> For example, in Philadelphia, prohibited parking incurs a \$41 fine.<sup>7</sup> This obligation is meant to dissuade future unlawful parking. However, the disincentive experienced by the people who receive the tickets is proportionate to their respective incomes: a high-income individual has to make relatively few concessions to pay the ticket and is often most inconvenienced by the process of making payment, whereas a low-income individual may have to forgo utility or basic food purchases in order to satisfy the obligation. Thus, the low-income individual sacrifices high-priority needs, the high-income individual does not, and the low-income individual thereby receives an excessive punishment compared to the high-income individual.<sup>8</sup>

### B. Ecosystem

The ecosystem existing in Philadelphia when CEO began its work enabled CEO to lead on fine and fee reform. A member of the Cities for Financial Empowerment Coalition, Philadelphia took on fine and fee reform as a part of its partnership with member cities such as San Francisco.<sup>9</sup> Philadelphia is also an inaugural member of Cities and Counties for Fine and Fee Justice.<sup>10</sup> These partnerships have given Philadelphia thought partners and practical examples of how to enact reform.

Philadelphia's fine and fee reform efforts also fit naturally with other criminal justice and equity efforts the City has undertaken. In 2015, Philadelphia was awarded a planning grant from the MacArthur Foundation under its Safety and Justice Challenge.<sup>11</sup> This initiative led to the awarding of further implementation grants, which seek to reduce Philadelphia's jail population. To date, the City has reduced its jail population by 42.4%.<sup>12</sup>

In 2020, Mayor James Kenney signed an executive order on diversity, equity, and inclusion. As a result of that order, Philadelphia created the Office of Diversity, Equity, and Inclusion and took other steps to promote Racial Equity.<sup>13</sup> The Office of Diversity, Equity, and Inclusion works "to dismantle institutional and structural barriers that have held back many Philadelphia residents for too long."<sup>14</sup> Mayor Kenney has also made fine and fee reform a priority of his administration.<sup>15</sup>



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Finally, in 2020, the Office of Diversity, Equity, and Inclusion partnered with the City of Philadelphia's Budget Office to convene a budget equity committee, and the Budget Office instituted a participatory budgeting process in 2021.<sup>16</sup> These equity initiatives taken by City leadership made fine and fee reform a natural fit to the work already under way.

### C. Antipoverty Agency

In 2018, CEO adopted a new strategic framework that centered the pursuit of greater economic mobility for the most vulnerable Philadelphians in racial equity and economic justice. CEO became a champion of fine and fee reform as a part of its economic justice work.<sup>17</sup> There is nothing just about assessing a financial obligation that the recipient does not have the means to satisfy; as the Superior Court of Pennsylvania has observed in the context of conditions of probation, "conditioning probation on the satisfaction of requirements which are beyond the probationer's control undermines the probationer's sense of responsibility."<sup>18</sup>

Despite a decade of bail reform initiatives,<sup>19</sup> Philadelphians have over \$175 million in unpaid fines and fees related to criminal prosecutions since 2011.<sup>20</sup> Unpaid criminal debt prevents most record clearing in Pennsylvania,<sup>21</sup> making it more difficult for people to find work and housing.<sup>22</sup> Money spent on legal financial obligations (LFOs) also diverts individuals' limited resources away from wealth building and economically stabilizing personal investments.<sup>23</sup> In addition to limiting options for record clearing, unpaid LFOs can extend the term of criminal justice involvement, thus penalizing the poverty and not the underlying activity that gave rise to that involvement.<sup>24</sup> In short, fine and fee reform is an economic-mobility and antipoverty priority.

### III. Philadelphia's Process

In 2019, CEO launched an economic mobility series focused on living wages, consumer protection, asset building, and fines and fees. The event on fines and fees was cohosted with the University of Pennsylvania Law School and was titled "Fines, Fees, and the Criminalization of Poverty."<sup>25</sup> It featured speakers from Community Legal Services, the ACLU of Pennsylvania, the community of Philadelphians with lived experience with LFOs, and the Fines and Fees Justice Center. The event focused on the community impact of unaffordable LFOs and proposed solutions for reform.

Following that event, the City of Philadelphia formed a working group to explore the need and opportunity for reform of fines and fees. This group included leaders from the Mayor's Policy Office; the Budget Office; the Office of Diversity, Equity, and Inclusion; the Managing Directors Office; the Office of Criminal Justice; and the Department of Health and Human Services. This broad group of stakeholders brought several different viewpoints and priorities to the discussion. There are times when such diversity

of perspective can get in the way of achieving outcomes, but, in this case, it was an enhancement. Since everyone involved ultimately needed to support any proposed reforms, having them work to shape the recommendations made the process as straightforward as possible. It cannot be overstated how important it is to start with all stakeholders being a part of the reform work to ensure that the work will reach a successful outcome.

Shortly after convening this internal working group, PolicyLink, the Fines and Fees Justice Center, and the San Francisco Financial Justice Project opened applications to their inaugural Cities and Counties for Fine and Fee Justice cohort.<sup>26</sup> Philadelphia was selected to join, and the guidance, advice, and advocacy provided by the experts that led that initiative were ultimately necessary to Philadelphia achieving its reforms.

In our first year of formal work, Philadelphia established three priorities for reform: (1) reduction of telephone fees at the county jail, (2) reduction of commissary surcharges at the county jail, and (3) a pilot to demonstrate the effects of fee elimination on criminal diversion outcomes. Several factors were weighed in arriving at these priorities. First was data analysis, which included quantitative data analysis, industry research, and qualitative data gathering from community stakeholders and individuals with lived experience. The qualitative data gathering occurred through stakeholder convenings, a survey of individuals with lived experience and their families, and listening sessions. Of particular importance was the input of individuals with lived experience; any reform effort's success is ultimately measured by the effect it has on those impacted by the fine or fee.

The second factor was budget considerations. Philadelphia undertook these reforms during the lockdowns that occurred as a result of the COVID-19 pandemic. City revenues were declining, and budgetary impacts had to be managed in order to achieve reform.

Finally, Philadelphia's leaders focused on where their efforts could have the greatest equity impact. Many fines and fees assessed against Philadelphians are at the discretion of state, federal, or judicial actors, and the fines and fees identified and method of reform for each year-one priority could be achieved by Philadelphia's leaders. The role of government institutions outside of the local municipality must be taken into account. Criminal justice fines and fees imposed as a part of sentencing, driver's license suspensions, and other impacts on criminal justice involvement are often mandated or at the discretion of state leaders, federal leaders, or judges. Reform of these practices requires partnership with these other institutions and a commitment to a long process of identifying the harm of current practices, identifying what needs to change to mitigate the harm and who has the power to make that change, identifying practical reforms, addressing the budgetary implications of those reforms, and identifying the reforms' impacts that justify the necessary investment.

#### IV. Outcomes

By the end of the first year, Philadelphia was in the late stages of an application process to hire and fund external researchers for a five-year criminal fee elimination pilot, a project that was ultimately funded in late 2021. Moreover, the City had eliminated commissary surcharges at the county jail, and had increased the weekly, individual, free telecommunication at the county jail from 70 minutes to 165 minutes.<sup>27</sup>

The reforms achieved at the county jail were a partnership between the internal working group and the department responsible for administering those fees—the Philadelphia Department of Prisons (PDP). PDP's leadership had long made some amount of free communication available and were already receptive to additional equity reforms. This receptiveness was bolstered by the research performed by CEO, and the support of the internal working group. This is not to say that the decisions were easy, as they came at a time when the jail population was increasing and there was pressure to reduce budgets due to the impact of the COVID-19 pandemic on the City's revenue.

In the end, the City invested its funds in families. The financial burden of prison fees for phone calls and commissary surcharges disproportionately falls to the families of incarcerated individuals, who, based on a local survey, are spending over 10% of their income on these charges and are disproportionately low-income, women, and individuals of color.<sup>28</sup> Knowing that increased family communication during incarceration leads to better outcomes in reentry, the City invested in increasing this communication and mitigating the financial burden on families.<sup>29</sup> Not only was this an equity investment—it was a wise financial investment, given the cost of the reforms compared to the larger costs of recidivism, which is exacerbated by a lack of family contact during incarceration.<sup>30</sup>

The criminal diversion fee pilot arose from the City's work with the Safety and Justice Challenge. The racial equity work the Office of Criminal Justice had done to identify disproportionality in diversion outcomes led to the development of a proposed pilot to study the effect of eliminating fees in criminal diversion programs. A research team was identified, a potential funder invited the City of Philadelphia to make an application, and the local stakeholders (the District Attorney, the Courts, Adult Probation and Parole, and the Defender Association of Philadelphia) were consulted on the design of the pilot. This pilot was approved for funding in late 2021.

#### V. Next Steps

The City of Philadelphia will pursue opportunities for reform of other LFOs. These initiatives are all in early stages and will require significant involvement from our City leadership, our budget and policy professionals, community stakeholders, department leadership, and individuals with relevant lived experience. There are potential opportunities with regard to parking, traffic, licenses, water, supervision fees, other criminal court fees, and civil

violation notices. Which, if any, of these potential opportunities are ultimately pursued will be based on a quantitative and qualitative data analysis of the legal, financial, and impact considerations surrounding each of them.

#### VI. Conclusion

Philadelphia's reform efforts are far from over, but significant steps have been taken to reduce inequitable financial burdens on its residents. Over the next several years, the process of analyzing data, listening to stakeholders, and balancing the considerations of reform will continue to repeat in pursuit of a more equitable Philadelphia.

#### Notes

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- <sup>3</sup> City of Philadelphia, Office of Community Empowerment and Opportunity, Mission, Values, and Guiding Principles, <https://www.phila.gov/departments/office-of-community-empowerment-and-opportunity/about/mission-values-guiding-principles/> (accessed Aug. 19, 2021).
- <sup>4</sup> City of Philadelphia, Office of Community Empowerment and Opportunity, Strategic Framework (Sept. 2019), <https://www.phila.gov/media/20201002122303/CEO-Strategic-Framework.pdf>.
- <sup>5</sup> City of Philadelphia, Office of Community Empowerment and Opportunity, The Impact of Criminal Court and Prison Fines and Fees in Philadelphia (2021), <https://www.phila.gov/media/20210505004207/FinesandFees-final.pdf>; Saneta deVuono-powell et al., Who Pays? The True Cost of Incarceration on Families 12–18 (Ella Baker Center, Forward Together, Research Action Design eds., 2015).
- <sup>6</sup> *Id.*
- <sup>7</sup> Philadelphia Parking Authority, Frequently Asked Questions, <https://philapark.org/faq/> (accessed Aug. 19, 2021).
- <sup>8</sup> Saul McLeod, Maslow's Hierarchy of Needs, *Simply Psychology* (updated Dec. 29, 2020), <https://www.simplypsychology.org/maslow.html>.
- <sup>9</sup> Cities for Financial Empowerment Fund, CFE Coalition, <https://cfefund.org/coalition/> (accessed Aug. 19, 2021).
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- <sup>12</sup> City of Philadelphia Philadelphia Prison Population Report, July 2021–July 2021, <https://www.phila.gov/media/20210812121003/Full-Public-Prison-Report-July-2021.pdf>.
- <sup>13</sup> Press Release, City of Philadelphia, Mayor Kenney Signs Executive Order on Diversity, Equity, and Inclusion (Jan. 6, 2020), <https://www.phila.gov/2020-01-06-mayor-kenney-signs-executive-order-on-diversity-equity-and-inclusion/>.
- <sup>14</sup> City of Philadelphia, Office of Diversity, Equity, and Inclusion, What We Do, <https://www.phila.gov/departments/office-of-diversity-equity-and-inclusion/> (accessed Aug. 20, 2021).
- <sup>15</sup> City of Philadelphia, Office of the Mayor, Equity and Opportunity for All: Priorities for Mayor Kenney's Second Term (Jan. 2020), <https://www.phila.gov/media/20200106104156/CITY-OF-PHILADELPHIA-MAYOR-SECOND-TERM-REPORT.pdf>.

- <sup>16</sup> Press Release, City of Philadelphia, Office of the Director of Finance and Office of the Mayor, Philadelphia Announces Participatory Budgeting and Other Equitable Budgeting Initiatives to Reduce Racial Disparities and Improve Community Outcomes (Dec. 1, 2020), <https://www.phila.gov/2020-12-01-philadelphia-announces-participatory-budgeting-other-equitable-budgeting-initiatives-to-reduce-racial-disparities-and-improve-community-outcomes/>.
- <sup>17</sup> City of Philadelphia, *supra* note 17.
- <sup>18</sup> Commonwealth v. Melnyk, 548 A.2d 266, 271 n.4 (Pa. Super. Ct. 1988) (quoting Commonwealth v. Fuqua, 407 A.2d 24, 26 (Pa. Super. Ct. 1979)).
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- <sup>23</sup> City of Philadelphia, *supra* note 5.
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- <sup>26</sup> PolicyLink, *supra* note 10.
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- <sup>28</sup> City of Philadelphia, *supra* note 5.
- <sup>29</sup> Norman Holt & Donald Miller, California Department of Corrections, Research Division, Research Report no. 46: Explorations in Inmate-Family Relationships (Jan. 1972), [https://www.prisonlegalnews.org/media/publications/holt\\_miller\\_prisoner\\_and\\_family\\_relationship\\_recidivism\\_study\\_1972.pdf](https://www.prisonlegalnews.org/media/publications/holt_miller_prisoner_and_family_relationship_recidivism_study_1972.pdf).
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