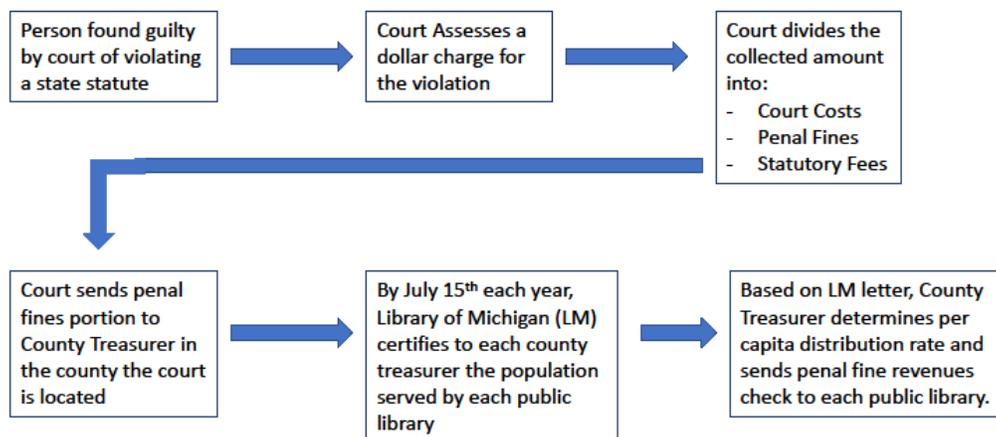


Penal Fines and Public Library Funding in Michigan - A Very Short Summary

State of Michigan Penal Fine Flow Chart



Penal fines are fines that the court assesses for state criminal violations and civil infractions. To be eligible for penal fine funds, a library must be legally established under state statute and must be open at least 10 hours per week.

Citation: State Constitution, Article 8, Section 9. Public Act 59, 1964. Public Act 236, 1961 as amended. Various state statutes establishing public libraries. Michigan Penal Code.

From data submitted to the Library of Michigan via annual state aid reports, penal fines comprise less than 1% to a whopping 84.427% of a public library's annual operating budget, with the average coming in at just under 14%. Interestingly, the largest library systems report the lowest dependence upon penal fines revenues, while it is smaller libraries reporting the largest.

Some background

In 1834, delegates to Michigan's first Constitutional Convention passed a constitutional provision which encouraged the legislature to "provide for the establishment of libraries...and clear proceeds of all fines assessed in the several counties for any breach of the penal laws, shall be exclusively applied for the support of said libraries."

Michigan Penal Fines for Libraries and Schools, Proposal 1 was on the 1881 ballot in Michigan as a legislatively referred constitutional amendment. It was approved.

The 1963 Michigan Constitution (Article VIII, Section 9) readopted a provision from the 1908 Constitution which guarantees that all fines collected for violation on state penal laws are to be used exclusively for library purposes.

All along, the underlying question has been: why are Michigan's public libraries the recipients of penal fines revenues? Anecdotal evidence suggested that libraries were an impartial third party not directly involved in the commission of the crime or the proceedings and punishment.

Frank Woodford writes, in “On Writing Library History,” about New York state funding their State library from chancery court fees in 1825. This may have inspired Monroe’s Edward D. Ellis to suggest the penal fines provision for inclusion in the Michigan constitution of 1835, but Woodford says, “This, frankly is only guesswork. We simply don’t know.”

According to “A history of the development of libraries in Michigan,” a bachelor’s degree thesis written in 1900, “Michigan enjoys the distinction of being the first state to incorporate into its constitution, adopted in 1835, provision for libraries as a part of the educational system of the State. Imitating the form adopted by the Council the clause was made to read: “As soon as the circumstances of the State will permit the Legislature shall provide for the establishment of libraries one in each township, and the money which shall be paid by persons as an equivalent for exemption from military duty and the clear proceeds of all fines assessed in the several counties for any breach of the penal laws shall be exclusively applied to the support of said libraries.” (Art. 10, Sec. 4. Law of 1835) This statute remained practically unchanged until 1859, except that in 1850 the phrase “as an exemption from military duty” was struck out.” The thesis goes on to examine the history of the establishment of and funding for public libraries in Michigan and further states, “this money was not intended, in the original law, as a support to libraries but to be merely incidental and to “make the penalty for crime aid in preventing crime by an increased intelligence.”

In 1929, another student submitted a thesis, this one specifically on penal fines, and it was noted, “but there is evident disinclination in certain quarters to continue to give the library the entire benefit of penal fines.” Again, we see the same assertion, “It was evidently never intended as the sole means of support.”

Further discussion demonstrates another sentiment that has been anecdotally shared in library circles over the years: “It had been said that if so many more crimes were committed in the cities it was fair that they received these fines to prevent the recurrence of those crimes by providing libraries where the young men might read – something to occupy their time.”

In the final paragraphs of the thesis, in the summary, it is noted “That disapproval of this provision is still present is evident from the Legislative session of 1921 when an attempt was made to amend the section by abolishing the use of penal fines for this purpose. Should such abolition be accomplished, one problem to be considered immediately will be: what will take the place of penal fine money now applied to the support of libraries?”

The more things change, the more things stay the same.

After the 1963 Constitution was approved, the Michigan Municipal League published an analysis of penal fines distribution around the state. While no opinions on the efficacy of penal fines or alternatives to the funding source are mentioned, this analysis demonstrated how libraries had started agreeing to allowing contractual service areas, so they could receive that area’s penal fines in exchange for providing library service. “An indication that the penal fine allocation stimulated contractual service is that, of the 38 municipalities reporting the effective date of the contract, 19 instituted such services since 1964 (11 in 1964 and 8 in 1965). The majority of libraries (37) which offer services extend such to the surrounding townships. This comment from one of the large cities probably best exemplifies the reasons for the increase in contractual arrangements. “Numerous non-library entities are flurrying to get attached to some kind of library so that they can receive penal fines, and they are offering penal fines to be received as payment for library affiliation.”

In “On Writing Library History,” Frank Woodford quips, “Here was one of the first instances on record of sin being made to pay. The penal fines provision, as it is popularly known, provided the financial cornerstone for Michigan’s public libraries, and with only minor changes in wording, but without changing the intent, that clause has been retained in all the state’s subsequent constitutions including the present one adopted about three years ago.”

A 1999 paper published by the Michigan Library Association, “With many different organization and legal structures for public libraries, local differences are dramatic and telling, and for the most part reflect variations

in circumstances which are not easily addressed on a statewide basis without major disruption to many of the more than 380 local public libraries in the state.”

From the updated Public Library Trustee Manual (12/2017): “Michigan has enacted statutes requiring that all fines collected for violations of the state penal laws are paid to the local county treasurer. The penal fines collected within each county are distributed in that county on a per-capita basis. Michigan is the only state that uses penal fines as a funding mechanism for libraries. Statutes provide the legal basis for courts to impose penal fines and costs in both criminal and civil cases. Judges have discretion in deciding the actual dollar amount of fines and court costs, which results in a fluctuation of penal fines from year to year and from county to county.

In other words, penal fines are not a stable source of library funding. Many judges are not aware of the vital need for penal fines in support of libraries.”

As we have learned over the years, the per capita rates for penal fines distribution can vary due to a wide variety of reasons:

- Parallel ordinances – local ordinances that parallel state law – 1/3 of the fine stays with the municipality 2/3 to the county, with zero going to the library penal fine fund.
- Unpaid fines. In 1999, it was estimated that 30% or more of the fines, assessments and costs imposed by the courts go uncollected, representing millions of dollars of lost revenue for libraries, the various state funds, and local courts annually. In 2016, in Branch County, the County Sheriff reported that only 3% of assessed charges were collected. Judges can also order community service in lieu of money.
- Law Enforcement Manpower - the number of local police, county sheriff or state police patrols on the road
- Poaching or other hunting & fishing violations
- The number and size of cities in a county
- Election years
- Deliberate non-policing in areas where police are working to improve relationships
- Closed or fewer open hours at roadside weigh stations

The percentage difference between penal fines and court costs may also vary because judges may only assess court costs and no fine for some violations and cases. Due to these variances the figures should be used only for general comparisons and not as exact proof as to how each court breaks down court costs and penal fines.

In 1972, Attorney General Frank J. Kelley sent a letter detailing a memo from the Department of Treasury (December 5, 1972): “If Library Fund moneys are invested separately or are included in the investment of the county’s common cash (general or other bank accounts), the interest earned on Library Fund moneys is to be credited to the Library Fund.

Looking again to the 1999 Michigan Library Association paper on Penal Fines: “In July 1976, the Saginaw Public Library initiated a lawsuit against the judges in the 70th District Court, claiming that the court was charging the day-to-day operational costs of the court to court costs. The library claimed that this practice was illegal because it diverted money that was constitutionally directed to libraries to the county’s general fund. The county and the state together are supposed to share the responsibility for funding the day-to-day operation of the courts.

The lawsuit resulted in an arbitrary settlement that allocated 50% of the fines towards court costs and 50% of the fines toward the library fund. This settlement has had the effect of raising penal fines in other counties in the state. In recent years, the creation of a several assessments on persons convicted under state law has reduced the share of the fine received by both the libraries and the courts. Although no one has yet challenged the constitutional basis of the redefinition of “fine” to “assessment,” since it is a penalty imposed only on those who are convicted, it is clearly not a tax, and on its face would appear to be subject to the same kind of constitutional challenge that was brought in the Saginaw case.”

Are libraries ready to take this step again? How would we define a win?

Threats to Penal Fines

- Parallel Ordinances
- Changes to the distribution formula
- Constitutional Convention
- Judges & court administrators who don't realize they're hurting libraries by changing fines/fees from penal to civil, etc.

What can we do?

- Stay vigilant and in touch with MLA and their advocacy efforts; answer those Calls to Action when they come out
- Educate our boards and our communities about from where penal fines come and why they are at risk
- Meet with local judges; Summarize this historical document into a much more interesting and succinct advocacy piece that can be used to educate & enlighten

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