

# MEMO

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

**TO:** Michigan Library Association  
**FROM:** Anne Seuryneck  
**DATE:** October 31, 2019  
**RE:** Penal Fines

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## ISSUE

We have been asked to provide information regarding the authority granted to libraries with respect to penal fines.

## DISCUSSION

### A. Constitutional Authority

The authority for libraries to receive penal fines is derived from the Michigan Constitution. The Michigan Constitution provides as follows:

The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed and collected in the several counties, townships and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries *as provided by law*.

Mich. Const. Art. VIII, § 9 (emphasis added). Because the authority is granted by the Constitution and not merely by state law, penal fine distribution to libraries is stable. In order to initiate an amendment to the Constitution, either (1) 2/3 of each house of the legislature would have to approve the amendment or (2) petitioners would have to circulate a petition signed by registered electors, equaling at least 10% of the total votes cast for all candidates for governor at the last preceding general election at which a governor was elected. If this threshold was met, the amendment would be voted on in every precinct in Michigan. There is also a process that may be followed in order to have an overall review of the Constitution through a Constitutional Convention. But, as you can see, the process for amending the Constitution is much more vigorous than the process for amending a state statute. See Mich. Const. Art. XII, § 1-3. Thus, the Legislature cannot pass a law to restrict or divert penal fines because it would be in violation of the Michigan Constitution.

### B. Legislative Authority

As indicated above, there is authority “as provided by law” for the Legislature to *implement* penal fine distribution. Although the Legislature may be involved in the process of

how the penal fines are distributed, as state more fully above, the Legislature has no authority to eliminate or divert penal fines to other organizations. The primary legislative act is the Distribution of Penal Fines to Public Libraries Act, 1964 PA 59 (“PA 59”). Pursuant to PA 59, the Legislature defined a library that is qualified to receive penal fines. MCL 397.31. The Legislature also established the procedure for distribution that involves both the County Treasurers and the Library of Michigan. MCL 397.32 and 397.38. The Library of Michigan determines the population of each library's service area and contracted areas and transmits that to the County Treasurers. The County Treasurers then collect and disburse the penal fines to the local libraries. MCL 600.4845; *Id.* Libraries may use the penal fines for any purpose that “supports” the library. MCL 397.36.

### **C. Interpretations of Authority**

The Courts have upheld the rights of libraries to receive penal fines when other entities attempt to divert them. For example, in *Saginaw Public Libraries v Judges of the 70<sup>th</sup> District Court*, 118 Mich App 379; 325 NW2d 777 (1982). In that case, libraries in Saginaw County filed a lawsuit over the way in which district court fees had been allocated between penal fines, court costs and a judgment fee. In 1972, the judges allocated 50% of the total fine as “penal fines” and 50% as court costs. By 1979, the judges decreased the penal fine portion to 11%. The libraries filed suit alleging that the amount allocated towards costs bore no relationship to the actual costs. Instead, it was being used to divert penal fine money to the county’s general fund. The Court found that the costs must be reasonably related to the cost of the prosecution and do not include costs of daily operations. Thus, the courts are willing to protect libraries’ rights to receive penal fines.

Similarly, in *People v Barber*, 14 Mich App 395; 165 NW2d 608 (1968), the Legislature adopted a statute that imposed an “assessment” of 10% on every fine or penalty in certain criminal cases for the purpose of funding the law enforcement officers training fund. The court found the assessment conflicted with the Michigan Constitution’s provision regarding penal fine because the assessment was not a cost but a supplemental fine. Even though the Legislature labeled it a “cost,” the labeling does not preclude the courts from reviewing it and determining whether it is actually a cost or a penal fine. The Court determined that the costs of maintaining the law enforcement training council bore no relationship to the cost of prosecution of the case. The Courts again intervened to protect the libraries’ rights to penal fines under the Michigan Constitution.

## **CONCLUSION**

The Michigan Constitution clearly and unequivocally states that all penal fines shall be used to support public libraries. The Legislature is only permitted to implement the funding, which it does through PA59, and may not enact legislation to limit or divert it. The courts have stepped in to protect library penal fines in such cases.