

State Notes

TOPICS OF LEGISLATIVE INTEREST

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Allocation of Penal and Civil Fine Revenue By Suzanne Lowe, Associate Director

Introduction

The Michigan Compiled Laws establish fines for criminal offenses (misdemeanors and felonies) and noncriminal violations that are labeled by statute as "civil infractions" or "state civil infractions". The statutes also establish "civil fines" for other noncriminal violations that are not called civil infractions or State civil infractions. In the case of a criminal offense, a fine may be ordered by the court as part of the sentence after the defendant is convicted. In the case of a violation that is a civil infraction under the Michigan Vehicle Code, or a violation that is designated a State civil infraction, a judge or magistrate may order the defendant to pay a fine either after he or she admits responsibility without a hearing, or after the defendant is found responsible for the violation after a formal or informal hearing has been conducted. For other civil infractions or violations that are subject to civil fines, a court may order a defendant to pay a fine after a hearing or trial. This article addresses what happens to the revenue from the fines after they have been paid.

Nearly two decades ago, the Senate Fiscal Agency published an article on the same subject, "Allocation of Fine Revenue" (*Notes on the Budget and Economy*, May/June 1996). It appears that, since then, there have been few substantive changes in the law pertaining to the disposition of fines imposed for violations of State law that are criminal offenses, civil infractions, and other civil violations. The current article serves as a refresher on the subject, providing background and an updated review of how fine revenue is allocated.

Except as mentioned with respect to municipal civil infractions, this article does not address fines imposed for violations of local codes and ordinances. In addition, the article does not discuss administrative fines (which are often referred to as "civil" but are imposed by an agency after an administrative hearing). The article also does not address costs or other assessments that may be imposed along with fines. Specifically, the focus is on fines ordered by the courts for violations of State statutes.

Overview

The State Constitution, statutory law, and judicial decisions govern the allocation of fine revenue. All penal fine revenue is constitutionally dedicated to public libraries. Fines imposed for State civil infractions and civil infractions, including those under the Michigan Vehicle Code, are statutorily dedicated to public libraries. In many cases, fines imposed for other civil violations are allocated by statute to a specific fund, which may include the State General Fund. If these fines are not specifically designated, they may be credited to the General Fund; the allocation of these fines is not directly addressed by State statute, however, and the potential for inconsistent treatment exists. [Table 1](#) provides a snapshot of fine allocations.

Table 1

Allocation of Fines Imposed for Violations of State Law	
Type of Violation	Allocation of Fine
Criminal offense	Public libraries
Civil infraction & State civil infraction	Public libraries
Other civil violations	<ul style="list-style-type: none">• Fund specified by statute• General Fund• Other

Criminal Offenses

Beginning with the State Constitution of 1835 (Article 10, Section 4), revenue collected from the violation of penal laws has been dedicated to public libraries. Presently, the State Constitution of 1963 (Article 8, Section 9) states: "The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state...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."

This constitutional requirement is reflected in Section 8379 of the Revised Judicature Act, which states, "(1) Fines and costs assessed in the district court shall be paid to the clerk of the court who shall appropriate them as follows: (a) A fine imposed for the violation of a penal law of this state and a civil fine ordered in a civil infraction action for a violation of a law of this state shall be paid to the county treasurer and applied for library purposes as provided by law" (MCL 600.8379).

Although the Constitution does not clarify what is meant by "penal laws", and whether the term could apply to all provisions imposing a *penalty*, Michigan statutes clearly distinguish between fines imposed for criminal offenses (felonies and misdemeanors) and those imposed for noncriminal, or civil, violations.¹

Civil Infractions

The term "civil infraction" was first introduced into Michigan statutes, and definitions of the term were added to the Michigan Vehicle Code and the Revised Judicature Act (RJA), when traffic and parking offenses were decriminalized in 1978. Legislation enacted in 1995 added Chapter 88 to the RJA to establish procedures under which a violation of State law may be treated as a "state civil infraction", and an increasing number of violations are designated civil infractions or State civil infractions.²

As originally enacted, the term "civil infraction" in the Vehicle Code means, "an act or omission prohibited by law which is not a crime as defined in section 5 of...[the Michigan Penal Code], and for which civil sanctions may be ordered" (MCL 257.6a).³

The current definition of "civil infraction" in the RJA is, "an act or omission that is prohibited by law and is not a crime under that law or that is prohibited by an ordinance and is not a crime under that ordinance, and for which civil sanctions may be ordered" (MCL 600.113). This definition includes, but is not limited to, the following:

- A violation of the Michigan Vehicle Code designated as a civil infraction.

¹ Also, after legislation providing for civil infractions was enacted, the Michigan Court of Appeals stated in a 1982 opinion, "Civil infractions are not crimes and are not punishable by imprisonment or by 'penal fines'" (*Board of Library Commissioners of the Saginaw Public Libraries v. Judges of the 70th District Court*, 188 Mich App 379).

² A list prepared by the State Court Administrative Office identified 82 sections of statute that create State civil infractions, as of May 2014. Subsequently enacted legislation established an additional six State civil infractions; changed an existing misdemeanor to a State civil infraction; and identified one existing civil violation as a State civil infraction.

³ Section 5 of the Penal Code defines "crime" as "an act or omission forbidden by law which is not designated as a civil infraction, and which is punishable upon conviction by any 1 or more of the following: (a) Imprisonment. (b) Fine not designated a civil fine..." (MCL 750.5).



- A violation of a city, township, or village ordinance substantially corresponding to the Vehicle Code, if the ordinance designates the violation as a civil infraction.
- A municipal civil infraction.
- A State civil infraction.
- A violation of the Pupil Transportation Act designated as a civil infraction.
- A violation of a parking, traffic, or pedestrian ordinance adopted by the governing board of a State university or college, if the ordinance designates the violation a civil infraction.
- A violation of a city, township, or village ordinance adopting the Uniform Traffic Code, if the code designates the violation as a civil infraction.
- A violation of parking regulations adopted by a county board of commissioners.
- A violation of an ordinance adopted under Public Act 235 of 1969 (which governs the control of traffic in parking areas).

It is clear that the term "civil infraction" includes many violations that are not violations of State law. As discussed below, however, the statutes that allocate fines for civil infractions apply only to violations of State law, except with respect to local violations that involve commercial vehicles.

The 1978 legislation also added a section to the Michigan Vehicle Code providing that a civil fine ordered under Section 907 of the Vehicle Code for a violation of the Code or other State statute "shall be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law for penal fines assessed and collected for violation of a penal law of the state" (MCL 257.909). (Section 907 governs the imposition of civil fines and costs for civil infractions adjudicated under the Code.)

As noted above, legislation amended the RJA in 1995 to provide for the disposition of State civil infractions. Originally, the RJA defined "state civil infraction" as a civil infraction involving a violation of State law that is designated by statute as a State civil infraction (MCL 600.113). The current definition also refers to a violation of a city, township, village, or county ordinance that is designated by statute as a State civil infraction.⁴ Chapter 88 of the RJA, governing State civil infractions, which does not contain a separate definition of the term.

As provided in the Vehicle Code for civil infractions under the Code, Chapter 88 states, "A civil fine which is ordered under Section 8827 for a violation of state statute shall be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law for penal fines assessed and collected for a violation of a penal law of the state" (MCL 600.8831).⁵ (Section 8827 provides for the imposition of civil fines and costs for State civil infractions under Chapter 88.)

While that language is specific to State civil infractions, Section 8379 of the RJA, as noted above, also dedicates to public libraries "a civil fine ordered in a civil infraction action for a violation of a law of this state". Thus, whether a statute labels a violation a "state civil infraction" or a "civil infraction", the fine revenue is allocated to public libraries if the infraction involves a violation of State law.

⁴ Although such a violation may be labeled a "state civil infraction" under this definition, it remains a violation of a *local* ordinance. Thus, the fine revenue would not be subject to Section 8831 of the RJA, which directs to public libraries State civil infraction fines for violation of a *State* law.

⁵ The statutes contain at least one exception to this requirement. The Playground Equipment Safety Act specifies that a person who violates the Act in the manufacture or assembly of public playground equipment is responsible for a State civil infraction; sets maximum civil fines for violations; and requires the money collected to be deposited in the Children's Trust Fund (MCL 408.685).



In addition, the Vehicle Code states that the provision directing civil fines to public libraries "is intended to maintain a source of revenue for public libraries which previously received penal fines for misdemeanor violations of this act which are now civil infractions". Chapter 88 of the RJA contains language that is identical except that it refers to "misdemeanor violations of state statute which are now designated state civil infractions".

Municipal Civil Infractions

Legislation enacted in 1994 amended the Revised Judicature Act and a number of other statutes governing local ordinances, to provide for municipal civil infractions. This legislation authorizes political subdivisions of the State to treat local violations as "municipal civil infractions", rather than criminal offenses. As a rule, State statutes do not address the disposition of fines collected for local violations, but this revenue traditionally has not been considered penal fine revenue for purposes of the constitutional dedication of penal fines to libraries. According to a 1943 opinion of the Michigan Supreme Court, the issue was settled by an 1877 decision in which the Court held, "[F]ines collected for violations of a city ordinance were not received under the 'penal laws' of the State within the meaning of that phrase as used in the constitutional provision then in effect" (*Delta County v. City of Gladstone*, 305 Mich 50).⁶

Legislation enacted in 2000, however, amended various statutes pertaining to the operation of commercial motor vehicles, to allocate civil fines imposed on commercial vehicle operators for violations of local ordinances governing vehicle operation and equipment. Under the Michigan Vehicle Code, if a civil fine is ordered for the violation of such an ordinance that substantially corresponds to a provision of the Code, the fine must be paid to the county treasurer and allocated as follows: 70% to the local authority in which the citation is issued, and 30% for library purposes as provided by law (MCL 257.909).⁷

Other Civil Violations

Many statutes impose civil fines for violations but do not designate the violations as civil infractions. In some cases, a statute requires the fine to be credited to a particular fund. This occurs, for example, in various sections of the Natural Resources and Environmental Protection Act (NREPA). These sections include Section 21112, which imposes a civil fine for submitting false information when registering an underground storage tank system, and allocates the fine to the Underground Storage Tank Regulatory Enforcement Act; Section 32612, which imposes a civil fine for violations of Part 326 (Great Lakes Submerged Logs Recovery) and dedicates civil fine revenue to the Submerged Log Recovery Fund; and Section 20108, which creates the Cleanup and Redevelopment Fund and requires the Fund to receive money collected by the Attorney General in actions filed under Part 201 (Environmental Remediation). Another example is the Worker's Disability Compensation Act, which allocates to the Worker's Compensation Administrative Revolving Fund civil fines collected from employers who fail to comply with the Act's insurance coverage requirements.

⁶ The ordinances that the Court addressed in *Delta County* "authorized generally the imposition of a fine or jail sentence and dealt with offenses also punishable under State statutes".

⁷ According to the Senate Fiscal Analysis of this legislation (House Bills 4927 through 4932 of the 1999-2000 session), some local units of government reportedly were overzealously enforcing motor carrier laws in order to generate funding for the local governments, since the fines collected for violations of local ordinances were not dedicated to public library purposes.

Other statutes specify that civil fines are to be deposited in the General Fund. These include the Michigan BIDCO Act (MCL 487.1719) and some sections of NREPA. In at least one instance, the law requires a civil fine to be paid to the Attorney General or the prosecuting attorney bringing the action.⁸

In other cases, a statute that imposes civil fines requires money collected or income received under the act to be deposited in a particular fund. Examples of this approach include the State Construction Code Act and the Electrical Administrative Act; both of those laws dedicate the money to the State Construction Code Fund (MCL 125.1522 and 338.889, respectively).

If a statute provides for civil fines but does not dedicate the fine revenue to a specific fund, however, it is possible that a "default" provision of the Management and Budget Act applies.⁹ The Act states, "Except as provided by law, all money received by the various state agencies for whom appropriations are made by a budget act shall be forwarded to the state treasurer and credited to the state general fund" (MCL 18.1443). Whether a civil fine constitutes "money received" is unclear; it is possible that the language refers only to fees, administrative fines, other assessments, and other sources of revenue. If a State law establishes a civil fine for a violation but does not allocate the fine revenue, and if an action is brought to enforce the law and a fine is ordered, where that money goes might be subject to the discretion of the court imposing the fine, in the absence of statutory direction.

Conclusion

Statutory provisions that impose civil fines but do not allocate the revenue might be, or might be becoming, an exception to the rule. Increasingly, contemporary statutes either dedicate civil fine revenue to a particular fund or identify civil violations as civil infractions or State civil infractions. In any case, it might be necessary to review an entire statute to determine whether civil fine revenue is, in fact, dedicated to a particular fund, as one or more sections of the statute might set a fine, while another section allocates it. Often, however, the law simply does not indicate where the money is to go.

A related issue is the absence of statutory provisions governing the enforcement of laws that impose civil fines for violations. The Michigan Vehicle Code prescribes procedures for the issuance of citations, admissions of responsibility, informal and formal hearings, and appeals with respect to civil infractions under the Code, and Chapter 88 of the RJA does the same concerning State civil infractions. The Michigan Compiled Laws, however, do not contain similar provisions concerning other civil infractions or civil violations. Thus, it is not clear what procedures (such as discovery) or rights (such as a jury trial) apply. In addition, the party who would bring the action is unclear, as a rule. While it might be reasonable to assume that the department or agency responsible for enforcing an act would be the party bringing an action for a violation, that is not always explicit in the statutes. Also, as discussed above, if an agency does bring an action and the court orders the violator to pay a civil fine, it is not certain whether that fine revenue defaults to the State's General Fund.

It has been suggested that Michigan law would be improved if legislation established an overall enforcement mechanism concerning civil violations, as well as language directing the disposition of fine revenue that is not otherwise allocated.

⁸ This occurs in the Occupational Code, which provides for an action against someone engaging in a regulated occupation without a license or registration, or operating a barber college, school of cosmetology, or real estate school without being licensed or approved (MCL 339.2412).

⁹ For example, the Workforce Opportunity Wage Act (which replaced the former Minimum Wage Law in 2014) prescribes various civil fines but does not indicate where the revenue is to be deposited.