

This document is intended as a tool to assist in clarification of the history and process of Penal Fines. It is not intended as legal advice. Library Staff Boards and Directors should consult with their library attorneys if they have questions regarding laws on funding or payments.

Penal Fine History, Importance & Funding for Public Libraries

12/8/2020

What (Purpose & History)

Article VIII, section 9 of the Michigan constitution 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 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.

This clause has been in the Michigan Constitution since its inception in 1835. Despite some slight language alterations, the intent of the drafters has consistently been to promote and support the right of every Michigan citizen to access a public library, despite repeated attempts by municipalities to usurp the funds.

There are varying accounts as to why penal fines, but one possibility is the remarks of one of the constitutional delegates who posited the value in using the fruits of crime to provide the opportunity and resources for knowledge, which would help people refrain from crime. Other constitutional convention remarks allude to the funds being an incentive for a municipality or a school district to maintain a library. Still other discussions indicate that the distribution to libraries rather than courts or other municipal entities was preferable as libraries are a neutral source – the entities enforcing and interpreting the laws are not benefitting from their infraction- the library is.

No matter the reason, constitutional convention delegates consistently chose to retain this provision. In addition, constitutional materials also consistently indicate that penal fines have never been meant to be the sole financial support of a public library.

Michigan is one of 12 states that uses penal fines as funding for public libraries, and the only one where that promise is enshrined in the state constitution.

According to public library statistics maintained by the Library of Michigan, penal fines account for between 3% and 70% of the annual budgets for public libraries.

What is a penal fine?

The term “Penal Fine” comes from the “Penal code” which is the name of that section of Michigan laws which denote criminal laws and their punishment. The word “penal” denotes laws which dictate

punishments for their violations, *“The word penal connotes some form of punishment imposed on an individual by the authority of the state.”* PENAL, Black's Law Dictionary (11th ed. 2019)

Generally, “penal” is used for criminal laws – laws for the protection of the state as a whole. “Civil” laws are laws that protect individuals.

So, a “Penal Fine,” is a fine levied as punishment for a violation of the criminal (pr “penal”) code, or a violation against the state.

A “Civil Fine” is a fine levied as a result of a violation of a the civil code (such as many laws governing businesses and contracts and some traffic and safety issues), or a violation against an individual.

How do the courts determine what is a “Penal Fine?”

This is a complicated issue. While fines as a consequence of an infraction or violation of the criminal code may only be levied if there is a statute authorizing the fine, judges and prosecutors often have some latitude with regards to the amount of money to be levied, and in some instances, the fine can be completely waived.

In addition to traditional “penal fines,” the penal fine revenues that are paid to libraries also include fines levied for “State Civil Infractions.” MCL 600.8831 provides that fines levied for violations of certain state laws that are not part of the criminal code and which are designated civil infractions also go to public libraries. These include most traffic fines.

In other words, a “penal fine” is the amount levied upon the defendant by the judge as part of the sentencing of a defendant found guilty of violating a section of the state criminal code, or a state civil infraction.

However, the amount levied by a judge as a “penal fine” is often not the entire amount paid to the court by the defendant. The total amount owed by a particular defendant could actually be a combination of multiple assessments, fines, fees and costs.

Assessments – Although this term is used inconsistently in many court forms, statutes and explanatory information produced by the courts, it appears that when used as the descriptor for a type of charge by a court, it refers to an amount levied under statute and designated for a particular fund that is often not directly related to the crime or infraction. Examples are “Justice System Assessment,” “Victim Rights Fund (paid only in misdemeanor and felony cases), and “DNA Assessment,” (paid for costs of DNA sampling done as part of an action).

Fines- An amount of money levied against a defendant convicted of a violation of a law, rule, or ordinance. These amounts must be authorized by statute and can be determined by a judge within a particular scale (i.e. no more than \$X or between \$X and \$Y amounts). It is THIS money, when levied for violations of the STATE Penal (or criminal) laws, or certain civil infractions, which goes to Public Libraries

Fees – An amount of money charged by a court levied for certain services provided by the court such as transcript copies, filing of new actions, certain filings done as part of a proceeding, for a jury trial, an

appeal, certain services in relation to child paternity and custody disputes, among others. These fees are permitted by and amounts often set by statute.

Costs – An amount of money charged by a court to a defendant convicted of violating a law or ordinance which is levied as a way of paying for the operation of the courts. This amount is approved by statute and generally levied as a flat rate for lesser proceedings such as traffic offenses and misdemeanors. Statutorily defined as “ *normal costs incurred in being a party in a civil action after an action has been filed with the court, those provided by law or court rule,*” includes items such as attorney fees, witness fees, relevant studies, analyses and tests done as part of the proceeding. (See MCL 600.2421b) More complex and larger proceedings will have costs calculated by the court using a set equation or program.

To a defendant, the amounts levied typically appear as a total and it can be difficult to determine, of the whole amount, which are fees, which are costs, which are assessments, and which are the fine itself. In addition, different levels of courts (circuit vs district,) for example, or even types of actions (criminal vs civil)) can levy different amounts of fees and costs, which just confuses things more.

For example, If a person is convicted of driving while intoxicated, the statute provides for the assessment of court costs:

MCL 257.625(1)- Driving while intoxicated (no injury to anyone)In addition to possible jail time and community service, a defendant may be liable for “*A fine of not less than \$100.00 or more than \$500.00, or, if the person is guilty of violating subsection (1)(c), a fine of not less than \$200.00 or more than \$700.00.*”

In addition, MCL 257.625 (13) provides “ *In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.*” or, in other words, the defendant convicted of driving while intoxicated can be charged court costs on top of the fine.

On top of the court costs, the court may add assessments or fees for victim rights fund, judicial fund, DNA Assessment, and more, as permitted by statute:

DNA Assessment (because infraction is a felony) - \$60

Crime Victim rights fund - \$130

Minimum State Cost - \$68

Plus additional calculated court costs (costs of prosecution, defense, arrest, etc.)

Plus costs of ordered rehabilitation or addiction recovery, if applicable

Plus costs or probation and/or court monitoring (such as an ankle monitor), if applicable.

So, if the actual penal fine is the minimum for this offense, at \$2,500, the total amount assessed the defendant can easily be much higher.

There are various documents produced by the court that can help sort out fines from fees from assessments. These are organized by court, type of charge, and by court. They can be confusing, and it is important to read the titles carefully to keep everything straight:

COSTS (Arranged by type of action -Civil or Criminal, Felony or Misdemeanor)

Criminal

<https://mjieducation.mi.gov/documents/criminal-qrms/333-gen-costs/file> - General criminal costs

<https://mjieducation.mi.gov/documents/criminal-qrms/334-misdem-costs/file>- Misdemeanor

<https://mjieducation.mi.gov/documents/criminal-qrms/332-felony-table-costs/file>- Felony

Computation of Costs (for actions where a set flat cost is not applicable)

<https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/Documents/collections/MCL769.1k-ImpositionCriminalFinesCostsAssessments.pdf>

Civil Costs

https://courts.michigan.gov/Administration/SCAO/Resources/Documents/other/fc_ci.pdf

General Court Costs Table

<https://mjieducation.mi.gov/documents/criminal-qrms/333-gen-costs/file>

FEES & ASSESSMENTS (By Court)

Fee & Assessments - Circuit Court

<https://courts.michigan.gov/Administration/SCAO/Resources/Documents/other/cfee.pdf>

Fee & Assessments – District Courts

<https://courts.michigan.gov/Administration/SCAO/Resources/Documents/other/dfee.pdf>

How (How penal fines are calculated and distributed, & factors that affect Penal Fines)

Penal Fines are applied and collected primarily in the trial court system. That means the District Courts and the Circuit Courts in Michigan.

District Courts- “ *The district court handles most traffic violations, all civil cases with claims up to \$25,000, landlord-tenant matters, most traffic tickets, and all misdemeanor criminal cases (generally, cases where the accused, if found guilty, cannot be sentenced to more than one year in jail). In addition, small claims cases are heard by a division of the district court. In Michigan, a few municipalities have chosen to retain a municipal court rather than create a district court. The municipal courts have limited powers and are located in Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Park, and Grosse Point Shores/Grosse Pointe Woods.*” From the One Court of Justice website -

<https://courts.michigan.gov/courts/trialcourts/pages/default.aspx>

Circuit Courts – “ *In general, the circuit court handles all civil cases with claims of more than \$25,000 and all felony criminal cases (cases where the accused, if found guilty, could be sent to prison). The family division of circuit court handles all cases regarding divorce, paternity, adoptions, personal protection actions, emancipation of minors, treatment and testing of infectious disease, safe delivery of newborns,*

name changes, juvenile offenses and delinquency, juvenile guardianship, and child abuse and neglect. In addition, the circuit court hears cases appealed from the other trial courts or from administrative agencies. “ From the One Court of Justice website -

<https://courts.michigan.gov/courts/trialcourts/pages/default.aspx>

As discussed above, in many instances, judges have a large amount of discretion over whether to impose a fine as part of a sentence, and if a fine is imposed, how much to impose. Although some criminal statutes require the imposition of a specific fine, most (even if a fine is required) offer the judge the option of a scale (“ no less than \$500 and no more than \$1000”, for example) Judges use different criteria to make these determinations, including the seriousness of a crime, the criminal history of the defendant, the specific facts in the case, etc.

Once a fine is imposed, the judge will add the applicable costs, fees and assessments to the fine, and the defendant is provided with the amount.

Once the defendant pays the total, the court then internally allocates the funds according to the various costs, fees, assessments. As an example, the Michigan Treasury Department has forms that courts use to pay the costs, fees and assessments from court defendants that go to State departments:

https://www.michigan.gov/taxes/0,4676,7-238-43535_43537-167311--,00.html

Similarly, penal fines are separated out from the fees, costs and assessments and, depending on the county, are either paid to the County treasurer monthly, or placed in a Court account to accrue until paid quarterly or annually.

Once at the County, the penal fines are divided into a per capita amount using the appropriate census figures (2010) for the county population, and then disbursed to libraries listed on the eligible libraries list provided to counties by the Library of Michigan (Kathy Webb- The Penal Fine and State Aid Coordinator) each year after June 30.

Each county Court and County Treasurer have their own internal procedures for processing and disbursing Penal Fines.

Court procedures should be fairly consistent from court to court because of documentation and systems that emanate from the State Court Administrative Office, however, there is no guarantee that every court processes their costs and fees and assessments in exactly the same way.

Counties vary widely in procedures. Therefore it is recommended that library directors and/or boards contact their county treasurers and their local court administrators (District and Circuit) to learn about the exact process in their counties.

Penal Fine Tracking

Michigan public libraries have long desired to be able to track pending penal fines in order to monitor whether the amount will be more or less than previous years.

Penal fine revenues can fluctuate from year to year. Unless a library is fortunate enough to be located in an area that has a very stable source of penal fines (such as a commercial vehicle weigh station), the county per capita amounts tend to vary from year to year. It is difficult for libraries to estimate penal fine amounts for budgeting and planning purposes.

Unfortunately, the administrative office of the state courts has indicated to the Library of Michigan that detailed financial data on penal fines received for each county is simply not kept by the courts.

However, the State Court Administrator indicated that installation of an upgraded financial system would enable such reports to be generated. An updated system is a project currently being worked on by the Court Administrator's office.

Here is a listing of courts by County

<https://courts.michigan.gov/Administration/SCAO/Resources/Documents/maps/CourtsByCountyAndDistrictCourtDetail.pdf>

However, there are other methods libraries can use to get an idea as to how penal fines during the year may compare to previous years. In most instances it requires libraries to contact their local courts for access to current statistic reports.

The Michigan State One Court of Justice Court Administrator site provides caseload statistics by county through 2019. This can be useful for a benchmark comparison, but libraries will want regular 2021 numbers in order to track possible changes to penal fine payments in 2021.

<https://courts.michigan.gov/Self-help/Directories/Pages/trial-court-directory.aspx>

To assist libraries with contacting their courts, The Michigan One Court of Justice trial court directory linked above will also provide contact information for Court administrators (which are generally the staff who compiles reports and statistics).

Factors that affect Penal Fines that are distributed to public libraries:

- Only fines collected from violations of STATE laws are paid to libraries. If a violation is charged on a municipal ordinance (such as a municipal traffic ticket written and citing an ordinance), the fine revenue goes to the municipality and not libraries. This circumstance is a major factor in the decrease of penal fine revenue over the years.
- As discussed, judges have much discretion in sentencing and the levying of fines. Currently a renewed interest in community justice and an awareness of the negative impact of monetary punishments on communities of color and disadvantaged communities means that options such as minimal fines and community service or other non-monetary punishments become more prevalent, this reducing penal fine revenues.
- New and amended legislation affecting criminal fines and/or changes to laws making certain activity no longer a criminal offense, or repeals of laws- Changing certain offenses to misdemeanors from felonies, the legalization of Marijuana, raising the speed limit in certain areas, all of these impacts penal fine revenues.
- Weigh Station Pass program-

One additional factor is the social impact of penal fines. The criminal justice reform movement has identified that court fines and fees and costs disproportionately and negatively impact people and communities of color as well as other minority and disadvantaged populations. Initiatives meant to change the existing systems generally favor the limiting of fines and fees. Libraries as traditional champions of social justice struggle with the reality that a relied-upon funding source benefits from a

systemic social inequity. As Judicial reform takes hold, it is likely that penal fines will be reduced- particularly in areas that do not benefit from commercial fines.

Paradoxically, many libraries depend upon this funding in order to provide services to their communities- including the very populations systemically harmed by this funding source.

Why– The impact Penal Fines have on Libraries – why we care

As discussed earlier, Michigan public libraries rely on local funding for their operating budget. Penal fines are an important part of that local funding. While it is true that penal fines have never been intended to be a primary source of a library's budget, libraries have come to depend on penal fines as a reliable piece of their budgets. Penal fines are a source of revenue that legally can not be utilized or distributed to any other entity but public libraries. Municipalities and other government entities are not able to obtain these funds.

Penal fines accrue for the populations of every municipality in the state. That means that if an area is not served by a public library, the penal fines for that population are allocated by the county and maintained in an escrow account until the population becomes served by a library. This means that the funds are kept in an account until the municipality either forms a library, or contracts with an existing library for services. This contracting is an efficient way for municipalities which can not afford, or who have no desire to, form a library to provide their populations with library services. It also provides an additional means for libraries to gain revenue and help communities other than their own.

Because of the emphasis on local funding for libraries, library budgets in Michigan are as diverse as the libraries themselves- From as high as \$21 million to as low as \$18,000.00. Generally, the smaller the library, the more they depend on penal fines. With approximately 70% of libraries in Michigan being small and rural, many rely on penal fines to fund portions of operations and/or programming. Per capita amounts so far for 2020 range from \$1.10 per capita in Kalamazoo County to \$15.06 in Mackinac County.

Penal fines are a stable funding source in that they are constitutionally designated to public libraries. Despite the variations on amounts from year to year, since penal fines are constitutionally guaranteed to libraries, and funded outside of the state's tax revenues and budget, penal fines can not be affected by the legislature or state agencies. As long as crimes are committed and fines are levied, penal fines will benefit libraries. Libraries must be prepared, however, for other factors that will affect penal fines such as the evolution of criminal justice and a continuing understanding of the impact certain punishments have on communities of color and other marginalized populations. In the coming years these factors could result in fewer fines and smaller revenue for libraries.

Who – Which stakeholders in a community need to understand how Penal fines work and their impact on the library

A critical element of the penal fine issue is education. Many of the people involved in the imposition and disbursement of penal fines do not fully understand the process and the relationship of libraries to these fines. They know that libraries receive funds, but they may not understand the history or importance. Since many of these people are those who have the most ability to protect and/or affect penal fines.

Boards – Library boards, as the entities who manage and are fiduciaries for a library have a legal responsibility and duty to maintain library funding. Board members are often influential members of their individual communities and are in unique positions to advocate for library funding.

Judges – District and Circuit Court judges levy the fines for infractions. Understanding penal fines and how they impact libraries provides an additional understanding of the consequences (negative and positive) of their decisions.

District Attorneys – District Attorneys act as the municipal prosecutors in criminal actions. Often DAs will be involved in plea or alternative sentencing negotiations. Knowledge of the impact of penal fines is information that, as with judges, provides additional context to their determinations.

Court Administrators – Court administrators are the judicial employees that maintain statistics and other data for the courts, as well as assist with many of the court's internal functioning. Knowledge of penal fines' importance to public libraries can provide these administrators with context that may result in better reporting and statistical data on penal fines so that libraries can better track them.

Municipal Treasurers – Local municipal treasurers can help libraries by understanding that penal fines are intended for library funding and that penal fine funds are legally protected from any other municipal use. Understanding the impact that these funds have on their particular library could spur them on to assisting in the tracking of these funds to ensure that each municipality receives the correct share of penal fines.

County Treasurers – as the entity charged with disbursing the penal fines, County Treasurers have a unique knowledge of the process. However they do not always have a good understanding of the importance of these funds to individual libraries in their county. Building a relationship with their County Treasurer can help a library track penal fines, and be sure that their amount is accurate.

Municipal elected officials – Municipal officials are the entities charged with managing the funds of a community. In circumstances where that community maintains a library, or contracts for services with a library, a knowledge of how their libraries receive and utilize penal fines can provide context in understanding the realistic costs of providing library service (and how well their penal fines actually cover those costs) as well as the knowledge that penal fines are legally protected from any other use.

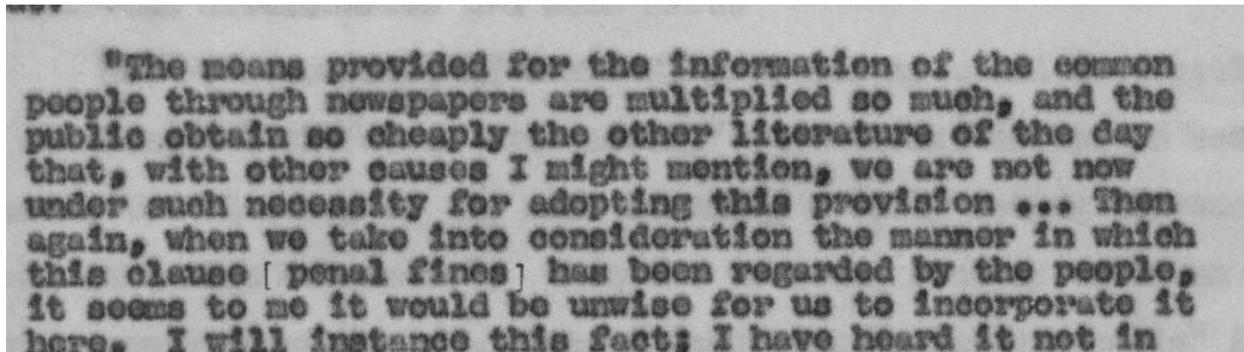
State elected legislators – Legislators are the entity that can have one of the greatest impacts on library funding. Understanding penal fines, their process and history, as well as the inherent issues, as well as how their local libraries utilize and depend on those penal fines, provides legislators with information to help them understand why libraries need a more stable and more robust funding source.

In Sum:

Penal fines are a unique and important funding source for libraries. However, their uncertain future and social consequences make them a complicated funding source. In addition, the uneven allotment of fines across the state results in a feast or famine outcome for many libraries- some areas depend on them and for others the fines are little more than a minor budget line. Public Libraries deserve a better allocated and more consistent form of funding. However until that funding is secured, penal fines need to be responsibly protected.

Educating librarians, boards, judges, court personnel and municipal officials about penal fines and their use by libraries as well as advocacy by libraries for the maintenance of penal fines and the development by the legislature of new funding options for libraries will be a key component of future library fiscal health.

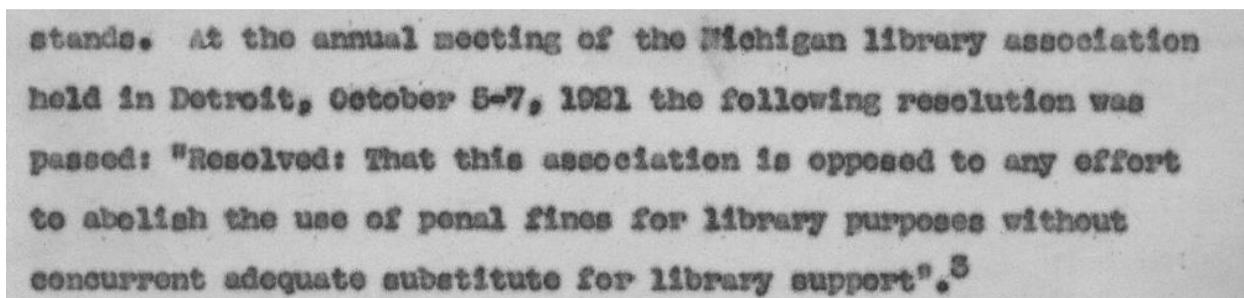
It is fitting to end this document with a quote from a Penal Fine History from 1921:



"The means provided for the information of the common people through newspapers are multiplied so much, and the public obtain so cheaply the other literature of the day that, with other causes I might mention, we are not now under such necessity for adopting this provision ... Then again, when we take into consideration the manner in which this clause [penal fines] has been regarded by the people, it seems to me it would be unwise for us to incorporate it here. I will instance this fact; I have heard it not in

Replace the word "newspaper" with the word "Internet," and you find, interestingly (or discouragingly) enough that this argument by a Constitutional Convention member, "Mr. Henderson of Calhoun," on the Education Committee in the convention of 1867 is very similar to responses by many Michigan municipalities when asked to fund or to increase the funding of their libraries. In addition, Mr Henderson reasoned that since the law was not well enforced, and municipalities were taking the money anyway and spending it on things other than libraries (which was true at the time), with no consequences, then people must not want the libraries to exclusively have the money anymore.

Fortunately, the other members did not agree and the provision continues. However it is interesting that over the long history of penal fines, libraries have been struggling with the same issues:



stands. At the annual meeting of the Michigan library association held in Detroit, October 5-7, 1921 the following resolution was passed: "Resolved: That this association is opposed to any effort to abolish the use of penal fines for library purposes without concurrent adequate substitute for library support".³

2020:

(From the MLA Legislative Agenda Page <https://www.milibraries.org/legislative-agenda>)

- *Penal Fines*
 - *Monitor, protect and reverse any efforts to provide legislation for parallel ordinances and other methods to siphon this funding.*

- *Educate all parties (legislators, county treasurers, librarians) on how this system works – we need a full picture and more consistency in reporting methods to libraries by county.*

The issue here is not a failure of libraries or MLA to solve the issue. Penal fines have been a revenue source eyed by municipalities and other entities since the 1835 constitution. The issue is that many municipalities and the state itself have still not recognized the value of their libraries to the extent that libraries must still fight a fight that started in 1835, continued to 1921, and remains today.

Resources

Library of Michigan, Penal Fine Website,

https://www.michigan.gov/libraryofmichigan/0,9327,7-381-88855_89735_89760_89975---_00.html (Plus numerous conversations and patient explanations from Kathy Webb, Library of Michigan, State Aid and Penal Fine coordinator).

Van der Ploeg, J.E.M., *Penal Fines as Applied to the Support of Public Libraries in Michigan*, MALS Thesis, University of Illinois, Urbana, 1929 (Available from C. Membiela digitally, and the Library of Michigan in print).

Saginaw Public Libraries v. Judges of the 70th Dist. Ct, 18 Mich. App. 379 (1982) (Court of Appeals decision involving a library's objection to how certain court costs and fees were allocated by a court in addition to a penal fine. The defendant court had been improperly assessing costs in civil infractions. The decision clarifies the ability of a court to levy costs and provides some information as to the process). <https://casetext.com/case/library-bd-v-district-judges#p385>

Gillespie Michigan Criminal Law and Procedure 2d, Section, 22:128, Fines (2020) (Gillespie's is a legal encyclopedia of criminal procedure. This section is an explanation of Criminal fines).(Text available from C.Membiela, or any Michigan law library).

Hon. David A. Hogg, District Court Tax Farming Are Judges the New Publicans?, Mich. B.J., February 2011, at 28, 29–30

The Financial Impact of Criminal Charges — An Unequal Debt to Society

<https://medium.com/walawlibrary/the-financial-impact-of-criminal-charges-an-unequal-debt-to-society-part-one-c629b960ac99>

Targeted Fines and Fees against Communities of Color – a US Commission on Civil Rights Briefing

https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf

Targeted Fines and Fees against Communities of Color (This page by a non-profit group provides additional explanation for the above report, as well as other information on this topic).

<https://finesandfeesjusticecenter.org/articles/targeted-fines-fees-against-communities-color/>

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