AD HOC COMMITTEE REPORT

ON

BONDING PRACTICES,

FINES AND FEES

IN MUNICIPAL COURTS

Prepared pursuant to Supreme Court Order 2017 SC 87

Submitted on September 6, 2018

AD HOC COMMITTEE ON BONDING PRACTICES, FINES AND FEES IN MUNICIPAL COURTS

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Hon. Scott Wright, Municipal Judge - Beloit

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EXECUTIVE SUMMARY

Supreme Court Order

Chief Justice Lawton R. Nuss issued Supreme Court Order 2017 SC 87 on September 6, 2017. The Order established the Ad Hoc Committee on Bonding Practices, Fines, and Fees in Municipal Courts. The Committee was charged to:

1. Study and examine current Kansas municipal court:
    a) pre-trial bonding practices for defendants;
    b) fines levied against defendants for violations of municipal ordinances; and
    c) fees charged to defendants.
2. Study and examine practices of courts in other jurisdictions that have been identified as disproportionally jailing economically disadvantaged persons due to the defendant's inability to:
    a) post bond to be released from pre-trial custody; or
    b) pay fines and fees levied by the court.
3. Identify and compare practices used in the Kansas municipal courts with those identified in paragraph 2 in regards to:
    a) pre-trial bonding practices; and
    b) fines and fees charged to defendants.
4. Compare effective bonding practices developed by other courts, the National Center for State Courts, or others, with those currently used in Kansas to develop a "best practices" model for Kansas municipal courts.
5. Study and examine methods used by courts in other jurisdictions to reduce the issuance of bench warrants and jailing of persons for non-payment of fines and fees-

including waiver of fines and fees-to develop recommendations for Kansas municipal courts.

6. Identify any statutory impediments to implementation of any recommendation.
7. Identify and prioritize topics that the office of judicial administration can include in training municipal court judges in Kansas:
    a) on “best practices” for pre-trial bonding; and
    b) to reduce the issuance of bench warrants and jailing of persons for non-payment of fines and fees.

The Chief Justice directed the Committee to prepare a written report of the findings and recommendations to be submitted to the judicial administrator and executive director of The League of Kansas Municipalities.

Recommendations

The Committee’s recommendations are summarized below. The full report references the recommendations applicable to the areas of study.

1. Kansas municipal courts should modify their bond schedules to provide for an arrestee’s release on his or her personal recognizance when he or she is initially arrested on new charges. If a court declines to adopt such a schedule, each defendant should be given the chance to execute a poverty affidavit within a reasonable time to secure his or her release.

2. If a municipal court elects not to release an arrestee on his or her personal recognizance after an initial arrest, the court should hold a bail hearing as soon as possible to allow the court to make an individualized bail determination. This hearing must be held within the time

specified by Kansas and federal law, but in no event, should a defendant be held more than 48 hours before a hearing is held to determine probable cause and the amount of bond.

3. Municipal courts should be granted explicit authority to impose non-financial conditions of bail.

4. The use of pretrial bail risk assessments should be the subject of further study. If an appropriate instrument can be identified and implemented in Kansas, it should be made available for use by the municipal courts as well as district courts.

5. The development of a hearing notification strategy for Kansas municipal courts should be studied and, if feasible, implemented.

6. If a defendant intends to proceed without counsel and the court could impose a jail sentence, the defendant should execute a written waiver of counsel.

7. To determine indigency, an affidavit of indigency completed by the defendant should be included in the court file.

8. Municipalities should be encouraged to make their fines and court costs more uniform for traffic infractions and low-level misdemeanors.

9. Municipal and district judges should be authorized to modify mandatory minimum fines when there is sufficient evidence of inability to pay.

10. Municipalities should be encouraged to establish more uniform fees and those fees should be reasonably related to the cost of the service.

11. Compile and distribute information concerning various methods and techniques used by municipalities to collect court-imposed financial sanctions. This would include installment payments and collection agencies. Educate municipal judges on the use of these methods and techniques.

12. Credit given for community service performed to satisfy court imposed sanctions should be increased.

13. Municipal courts should establish guidelines for closing cases and writing off fines and fees for traffic offenses and misdemeanors after a reasonable time if collection efforts have not been successful.

14. Convenient payment options should be offered, including payment by credit card in person, by telephone, or online, as well as other after-hour payment options.

15. Alternatives to payment of financial obligations should be considered for defendants with special circumstances.

16. Alternatives to driver's license suspension as a means of increasing compliance with traffic citations should be considered.

17. Procedural protections should be established for probation and parole sanctions and revocations.

18. Training and education should be provided to ensure protection of the rights of a defendant and to effectively implement any Committee recommendations which are adopted.

INTRODUCTION

Kansas statutes establish the jurisdiction of municipal courts in the state and provide that the code of procedure "shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."[1] The Kansas Supreme Court Order, 2017 SC 87, created the Ad Hoc Committee on Bonding Practices, Fines and Fees in Municipal Courts, and called for an examination of, in part, fairness in administration of the municipal courts in Kansas. The Court specifically directed the Committee to examine pre-trial bonding, fines, fees and the effects of those practices as they relate to economically disadvantaged persons. In this examination, the Committee determined the theme of indigency is woven throughout the municipal court process.

Municipal courts in Kansas are diverse. Some Kansas municipal courts serve communities with populations of a few hundred individuals while others serve communities of a few hundred thousand individuals. Some courts have public offense codes that closely match the Kansas criminal code, while others only handle traffic infractions and locally defined offenses, such as zoning and environmental code violations. Courts may meet every day or a few times a year. Only a few municipal courts have full-time judges. Regardless of the size, location, or offense, the court is directed to use the code of procedure to secure simplicity and fairness in reaching a just determination of all proceedings.

To examine Kansas municipal courts as directed by the Kansas Supreme Court, written surveys were conducted. The surveys sought information on bonding practices, fines for selected offenses, fees assessed, and practices of the courts in dealing with indigent defendants. There are approximately 385 municipal courts in Kansas. 172 courts responded to the surveys: 22 Cities of

[1] K.S.A. 12-4103.

the 1st Class, 53 Cities of the 2nd Class, and 97 Cities of the 3rd Class. This provided valuable information to the Committee and assisted in determining recommendations.

The general purposes of bail under both Kansas law and the United States Constitution are to ensure the arrestee appears to answer the charges and to protect the safety of the public. Public awareness has been heightened by the failure of some courts to set pre-trial bonds with these purposes in mind. The Pre-Trial Justice Institute report, *The State of Pre-trial Justice in America*, reports "nearly two-thirds (63%) of the people in U.S. jails are unconvicted individuals."[2] The impact of detention on those individuals, as well as their communities, is significant.

The negative impact of traditional bonding practices is primarily felt by indigent defendants. While the courts are authorized to make a finding of indigency when affording a defendant the right to counsel[3], the statutes to do not specifically address indigency in the bond stage of proceedings. While alternative forms of bond are authorized under K.S.A. 12-4301, the statute does not identify indigency as a factor the court should consider.

The impact of indigency is also a concern after a defendant has been sentenced for a violation. K.S.A. 21-6612(c) directs that the court "shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose" if imposing a fine. This statute, from the code of procedure for district court, limits the circumstances where a fine is imposed as part of a sentence. Due to the type of charges prosecuted in municipal courts in Kansas, monetary fines are often the most appropriate sentence. Municipal courts uphold the ideal that justice for all dictates that everyone should face consequences for violating the law, but the court should not ignore an individual defendant's economic circumstances.

[2] *The State of Pre-trial Justice In America*, (Nov. 2017) https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=f9d452f6-ac5a-b8e7-5d68-0969abd2cc82&forceDialog=0.
[3] K.S.A. 22-4504, K.S.A. 12-4405.

PRE-TRIAL BONDING PRACTICES

As a preliminary matter, it is important to recognize Kansas law already limits the number of people who may be arrested on municipal charges, compared to the arrests that can be made under the basic constitutional probable cause standards or under the Kansas Code of Criminal Procedure. K.S.A. 12-4211 and K.S.A. 12-4212 create a two-step arrest process, unique to the municipal courts, which should ensure individuals arrested on municipal charges have a factor, or factors, suggesting they are a threat to the public, a flight risk, or both.

This is illustrated by a comparison between K.S.A. 22-2401, governing arrests in district courts, and K.S.A. 12-4211 and K.S.A. 12-4212, the arrest procedures for municipal courts. Under K.S.A. 22-2401, a law enforcement officer may make a warrantless arrest for a misdemeanor if (1) he or she has probable cause to arrest and (2) the offense has either been committed in the officer's view, or one of the following three other conditions apply:

1. The person will not be apprehended, or evidence of a crime will be irretrievably lost unless the person is apprehended; or
2. The person may cause injury to self or others or damage to property unless immediately arrested; or
3. The person has intentionally inflicted bodily harm to another person.

In comparison, under K.S.A. 12-4211, a person may be detained, but not arrested, on municipal charges under similar circumstances. To make an actual warrantless arrest on municipal charges, K.S.A. 12-4212 requires one of the following five additional conditions apply:

1. The officer has probable cause to believe the arrestee has intentionally inflicted bodily harm to another person; or

2. The person refuses to give a written promise to appear in court when served with a notice to appear; or
3. The person is unable to provide identification of self by presenting a valid driver's license or other identification giving equivalent information to the law enforcement officer; or
4. The person is not a resident of the state of Kansas; or
5. The law enforcement officer has probable cause to believe the person may cause injury to self or others or may damage property unless immediately arrested.

In all other circumstances, K.S.A. 12-4211 limits enforcement action to service of a notice to appear.

The previously referenced conditions from K.S.A. 12-4212 are obviously designed to limit arrest on municipal court charges to cases where an individual is more likely to be a flight risk or risk to the public's safety. Thus, these concerns should be present in any bail determination when a municipal court arrest is lawfully effected.

Bond Schedules

Many courts, including many Kansas municipal courts, have historically relied upon bond schedules to set bond for newly arrested individuals. These schedules set a standard bond amount as bail with the bond amount defined by the charge or charges for which a person is arrested. For example, such a schedule might require a bond in the amount of $500 for a driving under the influence charge but require $300 for driving while suspended charges. People who post the bond are released, while people who cannot post the bond must remain in custody until a judge orders their release or they can no longer be legally detained.

While this system is efficient and facially fair, as all people are treated equally, it is subject to valid criticism. The general purposes of bail under Kansas law and the United States Constitution are two-fold. Bail is designed first, to ensure the arrestee appears to answer to the charges and second, to protect the safety of the public.[4]

A bond schedule applied to two similarly situated arrestees whose circumstances differ only in their financial position, illustrates the unfair effect of its strict application. If these two arrestees pose the same degree of flight risk and threat to the public's safety, but one is financially solvent and able to post bond, while the other is indigent and has no money to post the bond, the financially insolvent person is effectively being held in jail only because he or she is indigent. Critics argue this is an equal protection violation. Also, because no individualized determination of risk factors is made, it is also argued this policy violates procedural due process. The United States Department of Justice espoused this position in a "Dear Colleague" letter it sent to municipal and state courts. The Justice Department under President Trump's administration has subsequently rescinded this letter.[5] The weight of legal authority to date tends to agree with these arguments,[6] although there have been courts that have issued contrary opinions.[7]

Nationwide, many municipalities have been sued over their use of bond schedules. Several municipalities, including Dodge City, Kansas, when faced with this type of litigation, have

[4] *State v. Robertson*, 203 Kan. 647, 455 P.2d 570 (1969); *United States v. Salerno*, 481 U.S. 739, 107 S. Ct. 2095, 95 L.Ed. 2095 (1987); K.S.A. 22-2802(1).
[5] The original letter may be found at https://www.courts.wa.gov/subsite/mjc/docs/DOJDearColleague.pdf but is no longer available on the Department of Justice's website. The announcement that the letter has been rescinded is available at https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents.
[6] *ODonnell v. Harris County*, 882 F.3d 528 (5th Cir. 2018); *Ackies v. Purdy*, 322 F. Supp. 38 (S.D. Fla. 1970); *Pugh v. Rainwater*, 572 F.2d 1053 (5th Cir. 1978).
[7] *See Terrell v. City of El Paso*, 481 F. Supp. 2d 757 (W.D. Tex. 2007) (Refusing to apply *Ackies* reasoning to a due process claim).

settled the cases against them.[8] The litigation has occurred almost exclusively in federal court and has been pursued under federal civil rights law, including 42 U.S.C. § 1983. Even though many state courts also use bond schedules of this type, municipalities and other local governments are a preferred target for this sort of litigation because they do not share the sovereign immunity against monetary damages that the states possess.[9]

There are several actions a municipal court might take to remedy this problem. The first would be to continue to use a bond schedule but provide for the release of arrestees on personal recognizance bonds instead of cash or surety bonds. Doing so would be consistent with the American Bar Association's *Criminal Justice Standards on Pretrial Release*, which advocate for presumptive release on personal recognizance bonds.[10] From an administrative standpoint, this is the least burdensome recommendation. It can be implemented through a simple change in the bond schedule.

An alternative if a court does not want to abandon its cash or surety bond schedule, would be to provide an opportunity for those arrestees who are unable to post a required bond due to indigency to execute a poverty affidavit to secure their release. Because indigent arrestees would no longer be held solely due to their indigency, this should mitigate the concern of an equal protection violation due to disparate economic status. Standards would need to be established to define indigency. If a court chose to implement this policy and decided to review each affidavit individually, any substantial delay faced by an indigent person in the review process compared to someone able to post a financial bond might still give rise to an equal protection challenge.[11]

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[8] *See* Mark Clarkin, *Dodge City Bail Policies Targeted by Nationwide Effort to End Pauper Prison Practices*, THE HUTCHINSON NEWS (Oct. 26, 2015), http://www.hutchnews.com/7c644ad8-0344-5fdf-877e-f15c0499be6b.html.
[9] *Monell v. Dept. of Social Services of the City of New York*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974).
[10] ABA STANDARDS FOR CRIMINAL JUSTICE: PRETRIAL RELEASE, AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE STANDARDS COMMITTEE § 10-1.4, 10-5.1 (3d ed. 2017).
[11] *E.g.*, *Walker v. City of Calhoun*, 2016 WL 361612 (N.D. Ga. 2016) *vacated on other grounds by* 682 Fed. App'x. 721 (11th Cir. 2017). A standing order in this case required that any defendant unable to post bond under a bond

This type of affidavit was recently approved in *O'Donnell v. Harris County, Texas,*[12] a Fifth Circuit case involving this issue. That court ruled the affidavit process should occur within 24 hours of arrest.

As a final option, the gold standard from a constitutional perspective would be to conduct individualized bail determinations for each arrestee as soon as soon as possible after arrest. No bond schedule would be used, and all defendants would be held until a bond determination is made. If bond is set after such a determination, and the court made a constitutionally adequate financial resource assessment, both the equal protection and due process concerns should be alleviated. This is the most burdensome option from a resource perspective. It is not a viable option for municipal courts that meet infrequently or those without a judge on call. It also results in more people being initially incarcerated for some time before the bond hearing can be held because even those people who could post a money bond under a bond schedule would be held pending a bail hearing. This additional time in jail is not without cost to taxpayers and negative impact on arrestees and their jobs, families, and other obligations. The possibility of having individualized bond hearings only for those people who cannot post a money bond after initial arrest is not a recommended solution as it does not fully insulate the bond decisions from equal protection challenges.

Many Kansas municipal courts, either persuaded by the legal arguments advanced by the opponents of bond schedules, or fearful of the risk of possible monetary damages and attorney's fees, have already moved away from using bond schedules requiring the posting of a cash or surety bond prior to release after an initial arrest. Other Kansas municipal courts; however,

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schedule be brought before the court after 48 hours to conduct an individualized bail determination. The court found this attempt to cure Equal Protection concerns to be insufficient, stating that "[t]he bail policy under which the Plaintiff was arrested clearly is unconstitutional. Further, although the Standing Order attempts to remedy the deficiencies of the earlier bail policy, it simply shortens the amount of time that indigent arrestees are held to forty-eight hours. As discussed above, however, any detention based solely on financial status or ability to pay is impermissible." *Id.* at 12.

[12] 882 F.3d 528 (2018).

continue to use these schedules to control who is released after arrest. In preparation for this report, Kansas municipal courts were surveyed with a variety of questions regarding their bail practices. 106 courts used bond schedules at the time of the survey; 61 courts did not use a bond schedule. Of the responding courts, 107 answered a subsequent question regarding whether the bond schedule used by the court contemplates releasing all defendants on their personal recognizance. 87 of the courts indicated they release all defendants on personal recognizance bonds after an initial arrest; 20 courts indicated that they did not.

A follow-up question was also asked regarding whether an individualized bond determination is made to set the bond amount for each defendant who is not released on a personal recognizance bond. 151 courts provided a response to this question. 107 indicated they did conduct these individual determinations; 44 stated that at the time of response they did not.

The survey results can be difficult to interpret at times, at least with any precision. Not every court responded to every question asked, and at times some courts seem to have provided contradictory responses from question to question. Nonetheless, it is clear the majority of Kansas municipal courts have already moved away from the strict application of bond schedules after initial arrest. Most of the courts have done so by adopting procedures that contemplate the release of defendants on personal recognizance bonds. Doing so preserves the ease of use of bond schedules while addressing the Equal Protection argument. As noted above; however, other legal courses of action are available to courts to address these concerns.

Recommendation:

1. **Kansas municipal courts should modify their bond schedules to provide for an arrestee's release on his or her personal recognizance when he or she is initially arrested on new charges. If a court declines to adopt such a schedule, each**

defendant should be given the chance to execute a poverty affidavit within a reasonable time to secure his or her release.

A court need not take an all or nothing approach regarding personal recognizance bond schedules. Some charges could be listed on such a schedule while other more serious charges might call for an individualized determination of bond amount.

There are no statutory impediments to the implementation of this recommendation. Courts may release defendants on their personal recognizance, and predicating release on a personal recognizance bond on the execution of a poverty affidavit also seems to be within the inherent authority of the court.

Recommendation:

2. **If a municipal court elects not to release an arrestee on his or her personal recognizance after an initial arrest, the court should hold a bail hearing as soon as possible to allow the court to make an individualized bail determination. This hearing must be held within the time specified by Kansas and federal law, but in no event, should a defendant be held more than 48 hours before a hearing is held to determine probable cause and the amount of bond.**

If the amount of bond for each arrestee, regardless of his or her possible indigency, is determined through an individualized process, then the equal protection concerns cited above should not apply. It is frequently argued individualized bail determinations are mandated constitutionally. K.S.A. 12-4213 requires bond be set within 18-hours of a person's arrest and, if a person is awaiting a first appearance before a judge after a warrantless arrest, he or she must be released on personal recognizance unless an arrest warrant has been issued pursuant to K.S.A.

12-4209. The Constitution requires probable cause determinations for warrantless arrestees be made as soon as possible but no later than 48-hours after the time of arrest.[13]

For most municipal courts the controlling time limitation on making an individualized determination on bond amount would be 18-hours pursuant to K.S.A. 12-4213. This is not, however, true for all jurisdictions. The Kansas Supreme Court has ruled the Kansas Code of Procedure for Municipal Courts is a non-uniform enactment subject to amendment by charter ordinance under the Home Rule Amendment, Article 12, Section 5 of the Kansas Constitution.[14] Pursuant to this Committee's survey results in preparation of this report, at least 19 municipalities in Kansas have passed charter ordinances exempting them from the limitations of K.S.A. 12-4213. These municipalities would only be bound by the provisions of their ordinances and by the Kansas and United States Constitutions on these issues.

In any event, the 18-hour limitation of K.S.A. 12-4213 places significant limitations on a court's ability to conduct an individualized bond determination in a case. Having a judge available to address every warrantless arrest within 18-hours places both small and large jurisdictions in a quandary. In some jurisdictions, the fact that only a single, perhaps part-time judge is employed makes guaranteeing the availability of such a hearing within 18-hours questionable. In others, even jurisdictions with multiple judges, the number of such hearings makes it difficult to adequately prepare for every bond hearing within 18-hours.

Given the 18-hour standard is not uniformly applied in the state, and the types of cases subject to arrest under K.S.A. 12-4212 are already limited to cases with facial public safety or flight risk concerns, repealing the 18-hour limitation in K.S.A. 12-4213 would be appropriate.

[13] *County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S. Ct. 1661, 114 L.Ed.2d 49 (1991).
[14] *Farha v. City of Wichita*, 284 Kan. 507, 161 P.3d 717 (2007).

Bail Reform

Across the nation, the last several years have seen many states' increasingly successful efforts at reforming their bail systems.[15] The National Center for State Courts has convened a National Task Force on Fines, Fees, and Bail Practices and this task force has published a report on some of their findings.[16] A primary point of discussion in this generation of bail reform is the role of money bail in our pretrial release system.

It is far beyond the scope of this report to comprehensively discuss all the arguments against money bail and all the groups and organizations making those arguments. These efforts have gained support from both sides of the political aisle. At the federal level, the bipartisan *Pretrial Integrity and Safety Act of 2017*, S. 1593, was introduced. Its purpose is to provide grants to jurisdictions relying on money bail systems and to create a national pretrial reporting program to track pretrial processing of defendants in state and local courts. An excellent summary of the historical basis of the bail system and the arguments for the reform of money bail can be found in the National Institute for Corrections' 2014 publication, *The Fundamentals of Bail*.[17]

The argument against money bail is that the purpose of bail is to ensure the accused's appearance at court, and to protect the safety of the public, but that there are nonfinancial conditions that better meet these goals. Also, it is argued the use of financial conditions unfairly discriminates against people of lesser economic means and harms society by incarcerating people who are neither a flight risk nor a danger to the public because this incarceration damages their employment and personal lives.

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[15] *The State of Bail: New Jersey Enacts Landmark Bail Reform; Other States Follow Suit.* VERA INSTITUTE. (2017), https://www.vera.org/state-of-justice-reform/2017/bail-pretrial.

[16] Maureen O'Connor & Laurie K. Dudgeon, *The Work of the National Task Force on Fines, Fees, and Bail Practices*, NATIONAL CENTER FOR STATE COURTS (2017), http://www.ncsc.org/~/media/microsites/files/trends%202017/work-of-task-force-fines-fees-trends-2017.ashx.

[17] Timothy R. Schnacke, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*, NATIONAL INSTITUTE OF CORRECTIONS (Sept. 2014), https://nicic.gov/fundamentals-bail-resource-guide-pretrial-practitioners-and-framework-american-pretrial-reform.

The primary replacement proposed for money bail systems is a detention / release with conditions system. These systems generally share similarities to the federal bail system that has existed since the Bail Reform Act of 1966, as modified by the Comprehensive Crime Control Act of 1984. The current federal bail statute, 12 U.S.C. § 3142, specifies that criminal defendants who are arrested may be released on their personal recognizance, released subject to compliance with conditions aimed at ensuring the defendant's appearance or the public's safety, or they may be detained if a judge finds there are no conditions sufficient to reasonably ensure appearance as ordered or to ensure the community's safety. To impose conditions, the judge must find a personal recognizance bond is not enough on its own to compel the defendant to appear and to protect the public's safety.

The conditions that may be imposed under that statute include, *inter alia*, conditions related to employment, education, association, living location, weapons restrictions, substance abuse and mental health treatment, and work or school release. Requiring the posting of a surety or other money bond is allowed but the judge may not impose any financial condition that results in the pretrial detention of the arrestee.[18]

To aid in making a bail determination, some jurisdictions are moving to empirical, evidence-based risk assessments.[19] For example, New Jersey has partnered with the Laura and John Arnold Foundation to try to implement such a tool.[20] The primary ideal espoused by proponents of evidence-based bail determinations is fundamental fairness. Using objective criteria, these tools attempt to predict the likelihood an individual will fail to appear in court or threaten the

[18] 18 U.S.C. § 3142(C) (2012).
[19] *Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants*, PRETRIAL JUSTICE INSTITUTE (May, 2015), https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=23a6016b-d4b3-cb63-f425-94f1ab78a912&forceDialog=0.
[20] American Civil Liberties Union of New Jersey, National Association of Criminal Defense Lawyers, & New Jersey Office of the Public Defender, *New Jersey Pretrial Justice Manual*, 7-12 (2016), https://www.nacdl.org/NJPretrial/.

public's safety.[21] The criteria selected are based on studies conducted to identify conditions influencing these bail factors. Properly designed instruments attempt to identify and eliminate any bias implicit in the system, so the results reached are not discriminatory towards someone based upon his or her race or gender.

Using objective data in a predictable manner rather than relying on incomplete information and judicial hunches certainly appears to be progress toward a more fundamentally fair system. The use of these assessments; however, especially those marketed by for-profit corporations with proprietary algorithms, has generated criticism from the public,[22] then United States Attorney General Eric Holder,[23] and legal scholars.[24] The criticisms levied against evidence-based assessments include due process concerns related to the inscrutability of proprietary algorithms, systemic flaws exacerbating discrimination, and the potential hijacking of the reform process by special interests.

Nonetheless, a properly constructed and implemented assessment which controls for racial or gender bias, including disparate impact, would be appealing. The Public Safety Assessment from the Laura and John Arnold Foundation is an example of one of the assessment tools that attempts to squarely address these concerns. It was created from more than 1.5 million case records from 300 jurisdictions, and does not consider race, gender or level of education as risk factors.[25] It attempts to predict failure to appear risk and the risk of new criminal activity including violent

[21] *E.g. Public Safety Assessment: Risk Factors and Formula*, LAURA AND JOHN ARNOLD FOUNDATION, http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf.
[22] Julia Angwin, Jeff Larson, Surya Mattu, & Lauren Kirchner, *Machine Bias*, PROPUBLICA (May 23, 2016), https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.
[23] Massimo Calabresi, *Exclusive: Attorney General Eric Holder to Oppose Data-Driven Sentencing*, TIME MAGAZINE. (July 31, 2014), http://time.com/3061893/holder-to-oppose-data-driven-sentencing/.
[24] *Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing*, 131 Harv. L. Rev. 1125 (2018).
[25] *Initiatives / Pretrial Justice*. JOHN AND LAURA ARNOLD FOUNDATION. http://www.arnoldfoundation.org/initiative/criminal-justice/pretrial-justice/.

crime. According to the Arnold Foundation's website, more than 40 jurisdictions have either adopted this assessment or are working on implementing it.[26]

The National Center for State Courts' Pretrial Justice Center for Courts has collected a variety of information regarding risk assessment in general as well as several specific risk assessment instruments.[27] This organization emphasizes the importance of developing and validating risk assessments for the specific jurisdictions in which they are used.

Seven courts indicated in response to the survey that they already use some sort of formal assessment tool to assist in making bond decisions. The design and validation of these tools has not been investigated. 140 of the responding courts stated they use no such tool.

Recommendation:

3. **Municipal courts should be granted explicit authority to impose non-financial conditions of bail.**

There is no explicit authority in the Kansas statutes allowing municipal courts to impose nonmonetary conditions on appearance bonds, with one notable exception. K.S.A. 12-4301 identifies methods of securing appearance bonds and the necessary promises a defendant must make in executing such bonds. The only mention of nonmonetary bond conditions is a mandate that all bonds for person offenses must include a condition prohibiting victim contact for at least 72-hours.

In contrast, K.S.A. 22-2802, which applies to the district courts but does not govern municipal court practice, grants judges of the district court the authority to impose many

[26] *Id.*
[27] *Risk Assessment*, PRETRIAL JUSTICE CENTERS FOR COURTS, http://www.ncsc.org/Microsites/PJCC/Home/Topics/Risk-Assessment.aspx.

different types of conditions on appearance bonds.[28] Although the language of K.S.A. 22-2802(1) allows a judge to consider risks of both failure to appear and to the public's safety in setting the amount of appearance bond, the judge may only impose conditions of release "as will reasonably assure the appearance of the person for preliminary examination or trial."[29]

The only bond condition municipal courts are explicitly authorized to impose is the prohibition of contact with victims of person offenses; however, many Kansas municipal court judges impose additional bond conditions. In this Committee's survey of municipal courts, 87 courts responded they did impose nonmonetary conditions of appearance bond; 72 respondents reported not imposing appearance bond conditions. The most common bond conditions reported were no contact orders but a variety of other orders relating to the consumption of alcohol and drugs, travel restrictions, house arrest, mental health treatment, and curfew were also cited.

Some municipal courts in Kansas do not hear person offenses which may explain the lack of bond conditions used. Municipal courts that do use nonmonetary appearance bond conditions may be relying on K.S.A. 12-4103, which provides "[i]f no procedure is provided by this code, the court shall proceed in any lawful manner consistent with any applicable law and not inconsistent with this code." Explicit authority for municipal courts to impose nonmonetary conditions on bonds is important to eliminate ambiguity and to mitigate the negative effects of economic disparity.

Recommendation:

4. **The use of pretrial bail risk assessments should be the subject of further study. If an appropriate instrument can be identified and implemented in Kansas, it should be made available for use by the municipal courts as well as district courts.**

[28] The Kansas Code of Criminal Procedure's provisions only apply to municipal courts when specifically provided by law. K.S.A. 22-2102. No provision in K.S.A. 22-2802 provides for its application in the municipal courts.
[29] K.S.A. 22-2802(1).

Any decision to develop and implement empirically based pretrial risk assessment tools should be pursued with district courts and municipal courts in mind. Municipal courts have jurisdiction over many types of misdemeanor offenses that may be punished by significant jail sentences. In some districts, the number of municipal misdemeanor prosecutions significantly exceeds the number of cases filed for similar offenses in district courts. Municipal judges often must struggle with release decisions for defendants appearing before them when bench warrants have been issued. Providing municipal courts with an assessment tool would grant an important new resource for municipal judges making bond decisions. Thus, municipal courts should be fully integrated in the process of tool design and implementation. Further, implementation resources, including training for municipal judges and court staff, should be offered on a continuing basis to ensure the assessment tool is used appropriately and consistently.

Reducing Failure to Appear Rates

One of the least desirable outcomes of any scheduled court appearance is a failure to appear by the defendant. The process of preparing dockets, reviewing cases for the issuance of warrants and then issuing those warrants is a drain on court resources. After they are issued, warrants must either be served or recalled. This takes more court and law enforcement time and effort. For the warrant arrestee, being plucked from his or her daily life and made to post bail, or remain in jail until released by the judge, can put relationships, employment, and housing in jeopardy. Additionally, the cost of housing a prisoner in jail is significant.

Although some defendants purposefully avoid answering their charges in court, others do not attend court as required merely because of forgetfulness. Taking a cue from health and other service industries, some courts have begun using a variety of court date reminder systems to

reduce the failure to appear rate; preserving society's resources and the stability of the defendant's living situation. Many of their results have been positive.[30]

The Pretrial Justice Center for Courts, a project of the National Center for State Courts, has prepared a pretrial justice brief entitled "Use of Court Date Reminder Notices to Improve Court Appearance Rates."[31] This publication summarizes four different pretrial notification schemes and cites to studies supporting their effectiveness. These four different notification approaches are:

1. Mailed letters or postcards.
2. Telephone calls from a live caller.
3. Telephone calls using an automated system.
4. Text message notification.

Each of the notification methods resulted in significant reductions in failures to appear by defendants. Within these categories, variations in how the message was worded and delivered seemed to affect the failure to appear rate of the jurisdiction testing these methods.

Additional benefits not related to the reduction of failure to appear rates and attendant financial savings were cited by some jurisdictions. These included better quality control on behalf of the court, identifying suspected cases of identity theft before the issuance of a warrant, better customer service, and allaying the fears of people scheduled to appear before the court.

Recommendation:

5. **The development of a hearing notification strategy for Kansas municipal courts should be studied and, if feasible, implemented.**

[30] Jennifer Elek, Sara Sapia, & Susan Keilitz, *Use of Court Date Reminder Notices to Improve Court Appearance Rates*. PRETRIAL JUSTICE CENTER FOR COURTS. (Sept. 2017), http://www.ncsc.org/~/media/Microsites/Files/PJCC/PJCC%20Brief%2010%20Sept%202017%20Court%20Date%20Notification%20Systems.ashx.
[31] *Id.*

While hearing notifications may be relatively easy to implement for some Kansas municipal courts, others simply will not have the resources to design and adopt this sort of program on their own. Also, not all municipal courts have a significant failure to appear problem; however, for jurisdictions with high failure to appear rates, the reduction of costs related to the production and enforcement of bench warrants, including the costs of incarceration and lost police and administrative time, as well as increased appearance rates, is compelling. The nonpecuniary benefits cited by other jurisdictions with these programs are important considerations as well that should not be overlooked. For these reasons, further study aimed at creating best practices for these programs and providing an economy of scale in their implementation should be considered.

APPOINTMENT OF COUNSEL

The defendant's right to counsel is fundamental to the criminal process. The Sixth Amendment to the United States Constitution guarantees the right to be represented by counsel. It states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense (sic)

The Sixth Amendment right to counsel is made applicable to the states through the Fourteenth Amendment.[32] This right has been codified in Kansas statute.[33]

Kansas courts have applied both statutory and constitutional requirements to clarify the right to counsel. At all stages in the proceeding, the key to whether there is a right to counsel turns on if the court could possibly impose a jail penalty or, whether the defendant may be deprived of his

[32] *Gideon v.* Wainwright, 72 U.S. 335, 340–45, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).
[33] K.S.A. 22-4503.

or her liberty. This applies in cases of plea, trial, revocation of diversion or probation, and contempt hearings. If only a fine is possible, those convictions do not trigger a right to counsel.

The Kansas Supreme Court in *State v. Youngblood*[34] held that an uncounseled misdemeanor conviction with a suspended jail penalty and probation was a violation of the right to counsel.[35] Pursuant to *Youngblood,* a person accused of a misdemeanor has a Sixth Amendment right to counsel at the stage of the proceedings where guilt is adjudicated if the sentence to be imposed upon conviction includes a term of imprisonment, even if the jail time is suspended or conditioned upon a term of probation.[36] Kansas has not abandoned the "actual imprisonment" rule, but the Supreme Court has determined a suspended sentence or probation constitutes a term of imprisonment within the meaning of the rule, in accordance with the United States Supreme Court ruling in *Alabama v. Shelton.*[37] Whether the defendant actually serves time in jail is not the test to determine when the defendant is entitled to counsel. Therefore, it is recommended as best practices that when a jail penalty could be imposed, whether to be served or suspended, the defendant either be represented by counsel or make a valid waiver of his or her right to counsel. This would have to be repeated at every stage of the proceeding in which the defendant is facing the possibility of jail. For example, if a defendant is placed on probation, the court must once again address the right to counsel if a motion to revoke the probation is filed.

Recommendation:

6. **If a defendant intends to proceed without counsel and the court could impose a jail sentence, the defendant should execute a written waiver of counsel.**

[34] 288 Kan. 659, 206 P.3d 518 (2009).
[35] Id. at Syl. ¶3.
[36] Id. at Syl ¶2.
[37] 535 U.S. 654, 122 S.Ct. 1764, 152 L.Ed.2d 888 (2002).

At every stage of the proceeding, the defendant has the option to proceed on the case without an attorney. A written waiver of counsel should be obtained if the defendant opts to proceed without counsel. If a waiver is obtained, there is no violation of the right to counsel. Such waiver must be knowingly and voluntarily obtained. How does the court know whether the waiver obtained was done "knowingly and voluntarily"? This question was addressed in *State v. Hughes*,[38] which indicated determination of whether the waiver of counsel was valid (knowing and voluntary), the record must answer two critical questions. First, was the defendant fully advised and properly informed of the right to counsel and second, upon having been fully advised and properly informed, did the defendant make a clear determination not to be represented by counsel before the court.[39]

To ensure a knowing and voluntary waiver of counsel, the Kansas Supreme Court in *In re Habeas Corpus Application of Gilchrist* [40] proposed language which meets constitutional requirements. A form with this language included is attached as Appendix A. While the *Gilchrist* Court recognized the language of a waiver may vary, any valid form must verify the accused was properly advised of his or her rights and that he or she knowingly and intelligently waived those rights. This Committee recommends a written waiver be obtained and made part of the record.

If a defendant requests the court appoint counsel, the court must determine whether the defendant is fully or partially indigent. K.S.A 22-4504 is found in the Kansas Code of Criminal Procedure and includes the requirements of the court when making an indigency determination. Along with other procedural instructions, K.S.A. 22-4504 lists three methods for obtaining information to determine indigency, some mandated and others at the option of the court. For example, subsection (a) provides the court shall require an affidavit, but the court may

[38] 290 Kan. 159, 224 P.3d 1149 (2010).
[39] Id. at Syl ¶ 4.
[40] 238 Kan. 202, 708 P.2d 977 (1985).

interrogate defendant regarding the affidavit and the court may direct the county attorney, sheriff, marshal or other officer of the county to investigate the financial condition of the defendant.

Recommendation:

7. **To determine indigency, an affidavit of indigency, completed by the defendant, should be included in the court file.**

To determine whether a defendant is financially able to employ counsel, the court must look at both the statutes and regulations. K.S.A. 12-4405 incorporates K.S.A. 22-4504 to determine indigency. K.S.A. 22-4504 (f) provides:

> [t]he state board of indigents' defense services shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, relating to the income, assets and anticipated costs of representation for the purpose of determining whether a defendant is financially able to employ counsel and the ability of a defendant to contribute to the cost of the defendant's legal defense services.[41]

It is important to note that household income, as defined in this regulation, requires the court to consider income from relatives by birth, marriage or adoption if living with the defendant. The income of those not related to, but living with, the defendant is not considered if a simple roommate; however**,** if the defendant has a domestic partner, the court may, in its discretion, consider the income of a domestic partner in the same way it considers the income of a spouse.

All the information stated in the regulations is to be provided in an affidavit completed by the defendant, filed under penalty of perjury pursuant to K.A.R. 105-4-3 which states:

> A standard format for an affidavit of indigency **shall** include the following information:
> (a) The defendant's liquid assets and household income;
> (b) the defendant's household expenses;
> (c) any extraordinary financial obligations of the defendant;
> (d) the size of the defendant's household; and
> (e) any transfer of property by the defendant after the date of the alleged commission of the offense.

[41] See K.A.R. 105-4-1.

> If the information provided by the defendant on the affidavit is unclear, incomplete, contradictory, or questionable, further inquiry may be conducted by the board, the court, the county or district attorney, or other officer assigned by the court. The affidavit of indigency forms shall be published and distributed annually to the judicial administrator and to the administrative judge of each district. (Emphasis added.)

Attached in Appendix B is a sample affidavit. The required information reported by the defendant in the affidavit would be compared to the federal poverty guidelines, which are attached hereto as Appendix C. If the affidavit shows the defendant meets the financial guidelines, the court should appoint counsel. It is clear from the statutes and regulations that strictly meeting the federal poverty guidelines is not the only basis to determine whether counsel should be appointed. A survey of Kansas municipal courts revealed judges consider many factors including, but not limited to, the mental and physical health of the defendant, whether the defendant is a caregiver to a third person, education level, number of charges the defendant is facing, outstanding debts or medical bills, etc. The court may choose to appoint counsel because of special circumstances, even if the defendant's income exceeds the guidelines amount, if there is a process in place to do so.

K.A.R. 105-4-5 allows for the court to find the defendant to be partially indigent.

> (a) The court **shall** find any defendant to be partially indigent if the defendant is able to pay some part of the cost of legal representation and if the payment or payments does not impose manifest hardship on the defendant or the defendant's household. Any defendant may be found to be partially indigent if the defendant's combined household income and liquid assets are greater than the defendant's reasonable and necessary living expenses but less than the sum of the defendant's reasonable and necessary living expenses plus the anticipated cost of private legal representation.
> (b) A defendant found to be partially indigent may be ordered by the court to pay, to the clerk of the district court, a sum not more than the amount expended by the board on behalf of the defendant. (Emphasis added.)

A finding of partial indigency is at the discretion of the court. If a defendant is found partially indigent, many courts will assess a fee for appointed counsel that is higher than that assessed to a defendant that is indigent. This is at the discretion of the judge.

If a defendant's case gives rise to a right to counsel but, after a request for appointed counsel, the defendant is determined to not be indigent, there must be a process in place to proceed. The defendant should be given time to retain private counsel. A judge may find even after a reasonable time, the defendant has not retained private counsel and the defendant is not willing to sign a waiver of right to counsel. The court must then decide how to proceed and should be diligent to document the proceedings after the denial of appointment of counsel. The court could consider use of a separate written form for the defendant to sign stating that he or she chooses not to waive counsel and should also document the interim hearings and the defendant's statements regarding attempts to retain counsel. It is also suggested that a review by the court of any change in financial status be addressed and make it a habit to ask about a change. If counsel is still not retained after a reasonable time is granted by the court, and the defendant remains ineligible for a court appointed attorney, the court should document the time allowed to retain counsel and then proceed with the case.

Determining a defendant is indigent, and that the proceedings before the court require the appointment of counsel, can pose challenges for municipal courts. There is no established agency or resource to assist municipal courts in finding attorneys available for appointment to represent indigent defendants. The Kansas Supreme Court issued an opinion in *State ex rel. Stephan v. Smith* dealing with appointing and compensating attorneys to represent indigent defendants in felony cases in district courts in Kansas.[42] The Court recognized attorneys have an ethical obligation to make legal representation available to the public, but also, the government has the obligation to provide counsel for indigent defendants.

For municipal courts, this means the local governing body must make provision for appointed counsel. Some courts have contracts with attorneys to provide representation for

[42] 242 Kan. 336, 747 P. 2d 816 (1987).

indigent defendants. This arrangement ensures an attorney will be available when needed, the governing body has budgeted for the services, and the attorney understands what the compensation will be. Even with this arrangement, any conflict of interest will require the court appoint a different attorney. In that situation, or in a situation where the municipality does not have a contract for services, the court will need to secure the services of an attorney. Ideally, even if there is not an attorney under contract, the court, with the approval of the governing body, can establish a rate of compensation for indigent counsel. This allows the needed funds to be included in the budget and ensures funds are available when appointment is necessary.

Finding an attorney to provide these services may present some challenges. The court's location may be such that there are not many attorneys available in and around the community. Attorneys who prefer not to practice criminal law will likely be hesitant to agree to provide the services. One of the best tools to assist in recruiting attorneys is to establish relationships within the community of attorneys. In addition, the court should consider accommodating reasonable requests for the scheduling of hearings and giving the appointed attorney's cases priority on the docket to reduce waiting time. Terms for compensation should be discussed at the time of securing the attorneys services, including advising the attorney of the need for a detailed accounting of time spent, itemization of out-of-pocket expenses, etc. The rate of reasonable compensation will depend on the court's location, general standards in the local legal community, the municipality's budget constraints, etc. It may be helpful to seek information from other municipal courts in the same vicinity, as well as the district court, to help determine an appropriate rate of compensation for representation in a misdemeanor case. Pursuant to K.A.R. 105-5-2, the State Board of Indigents' Defense Services provides for compensation of $70 per hour for attorneys unless a different rate is provided pursuant to a contract with the attorney.

Upon conclusion of the case, if the defendant was found not guilty, no fees are assessed to the defendant for an appointed attorney. In cases where a defendant is found guilty, the court should establish a policy for whether any part of the expenses incurred by the municipality in providing counsel are assessed to the defendant. At the beginning of each case, a defendant should be advised of the court's policy regarding the assessment of fees for court appointed attorneys. This is not meant to discourage the defendant from requesting an attorney, but rather to ensure the defendant understands the court's policy. At any time after the court orders a defendant to reimburse the municipality for the cost of providing an attorney, the defendant may request relief from the order. The court may waive any remaining amounts owed or make other modification to the terms of repayment that are reasonable based on information provided by the defendant, if the court finds payment would create a "manifest hardship" on the defendant. These issues are addressed in K.S.A. 12-4509(g):

> . . . (g) In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance the judge may order such person to reimburse the city for all or a part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose **manifest hardship** on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. (Emphasis added.)

Documentation when counsel is appointed is important. The substance of any documentation should contemplate how appointed counsel and the defendant will communicate. Do they live in the same town or far apart? Does the defendant have a driver's license? Do they need a translator or bilingual attorney?

It is suggested the court prepare an order containing contact information for the appointed counsel and the defendant in one place and include it in the court file. Handing a defendant a business card, or asking them to complete an address change slip, is helpful, but since neither creates a written record, an order is best. The order may also require the defendant contact counsel within a specific timeframe. The order should be provided to counsel in a timely manner if counsel is not in the courtroom to receive a copy. Contact information should include telephone numbers (toll free if available), fax number, email, and physical and mailing addresses. The same information pertaining to a defendant should be provided to the attorney. Additionally, the defendant should provide the name and contact information for an individual who can always locate the defendant. While a defendant's address may be on a citation, it often changes or is not received as soon as needed to establish contact. An order including all the suggested contact information and directing the defendant to contact counsel is an efficient way to provide this important information. A sample order is attached as Appendix D.

ASSESSMENT OF FINES AND FEES

Fines have been used as criminal punishment since before the establishment of our country.

> To the modern citizen, fines are routine and sensible. Lending moral weight to the punitive effects of economic sanctions, retributivists have long argued that offenders deserve to be punished, and punishment should be proportional to what is justly deserved. However, fines are often perceived as ineffective at impacting the behavior of the rich, for whom fines are too low to have much deterrent value, and essentially unenforceable against the poor, who cannot afford to pay them.[43]

As courts of limited jurisdiction, fines are often the authorized and appropriate sentence in municipal courts. For many offenses prosecuted in municipal courts, a fine can achieve the sentencing objective.

[43]Torie Atkinson, *A Fine Scheme: How Municipal Fines Became Crushing Debt in the Shadow of the New Debtors' Prisons*, 51 Harvard Civil Rights-Civil Liberties Law Review 189, 192 (internal citations omitted) (2016) https://harvardcrcl.org/wp-content/uploads/2016/07/Municipal-Fines.pdf.

> The purpose of a sanction is to hold a person accountable and encourage future compliance with the law. Imposing a financial sanction on a low-income individual that is so high that it would almost be impossible for the person to pay, may promote frustration, despair and disrespect for the justice system.[44]

Statutory authority to fine and/or collect monies from those convicted of violating municipal ordinances has long been approved in Kansas. In 1868, General Statutes, Chapter 18-67, first authorized these collections, which has continued, through numerous changes, to the current statutes. K.S.A. 12-4305 mandates municipal judges shall establish a schedule of fines which shall be imposed for municipal ordinance violations including traffic infractions. Additional costs to convicted persons are authorized by K.S.A. 12-4112, which includes witness fees and mileage, assessments paid to the judicial branch training fund, law enforcement training center fund, Kansas commission on peace officers' standards and training fund, juvenile alternatives to detention fund, the protection from abuse fund, the crime victims assistance fund, the trauma fund, and the department of corrections forensic psychologist fund. There is also statutory authority in K.S.A. 12-16,199 to charge a booking or processing fee back to any person convicted or diverted under a pre-adjudication program This includes fingerprinting if the board of county commissioners or the governing body of a municipality (if the municipality operates a detention facility) votes to adopt such a fee.

Other costs can be ordered by a municipal court. In *City of Junction City v. Griffin*[45] the Kansas Supreme Court held:

> The Kansas Code of Procedure for municipal Courts, K.S.A. 12-4101 through 12-4701, although an enactment of statewide concern, is not **applicable uniformly to all cities** by reason of K.S.A.12-4105 requiring municipal judges of first class cities to be attorneys while permitting second and third-class cities to have lay judges. (Emphasis added.)

[44] TASK FORCE ON FAIR JUSTICE FOR ALL: COURT ORDERED FINES, PENALTIES, FEES, AND PRETRIAL RELEASE POLICIES, JUSTICE FOR ALL 13 (Ariz. 2016), http://www.azcourts.gov/Portals/0/FairJusticeArizonaReport2016.pdf.
[45] 227 Kan. 332, 607 P.2d 459 (1980).

Accordingly, a municipality may, through a valid charter ordinance, exempt itself from the provisions of K.S.A. 12-4112 and provide for the assessment of court costs in municipal court cases.[46]

It should be recognized some members of the public perceive courts as revenue generators for the executive branch of municipal government. This was one of the main complaints raised in the Justice Department's report in their investigation of the City of Ferguson, Missouri.[47] It is necessary for municipal courts to be judicially independent. To avoid even the perception of a conflict of interest, courts should be able to demonstrate court funding is not totally reliant on the assessment of fines, fees, courts costs, etc. It should also be recognized the courts are not revenue generators for superfluous, non-court activities and programs.

Those served by, and benefitting from, actions of the courts and other municipally provided services (law enforcement, for example) must be willing to help fund those activities. Explaining to the public the non-court generated nature of funding for those services and supporting the independence of the judiciary must be, in large part, the responsibility of municipal government.

Determining Fines

To help understand the current diversity in fines and costs across the state, the Committee surveyed the municipal courts regarding fines for 9 different traffic offenses[48] and 9 different misdemeanor offenses[49] The traffic offenses included: speeding 10 mph over; speeding 20 mph over; failure to yield; reckless driving; driving while suspended; no proof of insurance 1st offense; no proof of insurance 2nd offense; illegal tag; and leaving the scene of an accident. The misdemeanor offenses surveyed were: assault; theft; trespass; possession of marijuana;

[46] See Kansas Attorney General Opinion 82-161.

[47] "Ferguson has allowed its focus on revenue generation to fundamentally compromise the role of Ferguson's municipal court. The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct." http://justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police-department_report.pdf p.3 (hereinafter referred to as *Ferguson*).

possession of drug paraphernalia; dog/cat license; animal nuisance; disorderly conduct and obstruction. The results of the surveys are shown in Appendix E.

K.S.A. 8-2118 sets out a uniform fine schedule for traffic infractions for district courts. Although municipalities are required to establish a fine schedule, and are not controlled by the uniform schedule, municipalities should keep in mind the prohibitions of excessive fines found in the Eighth Amendment to the United States Constitution and the Kansas Constitution Bill of Rights §9.

These enactments require a judge to determine whether a fine is excessive before it is imposed.

> When considering fines, in addition to the particular penal statute, we must also consider K.S.A. 21-4607 (3) and the Kansas Constitution Bill of Rights, §9. K.S.A. 21-4607(3) [now found in K.S.A. 21-6612] provides: 'In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.'[50]

A determination of excessiveness can also be made after the fact if information is presented which warrants such action by the judge.

Where a minimum fine has been imposed, the court need not consider the financial resources of the defendant and the nature of the burden its payment will impose. In *State v. Copes* the court held the specific, more recent requirement of a mandatory fine leaves no room for considering financial resources; however, the court may take into consideration the defendant's financial resources for determining the method of the payment.[51] The minimum fine argument appears to

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[48] The survey was conducted by email for traffic fines. We received 168 responses.
[49] The misdemeanor surveys were conducted at the Kansas Municipal Judges Association meeting April 23-24, 2018. We received 84 responses.
[50] *State v Scherer*, 11 Kan. App. 2d 362, 370, 721 P. 2d 743 (1986).
[51] 290 Kan. 209, 222, 224 P. 3d 571 (2010), citing *State v. Raschke*, 289 Kan. 911, 219 P. 3d 481 (2009).

apply not only to large fines, such as DUI, but also to smaller fines such as $100 fines for driving while suspended.[52]

Where the amount of the fine is discretionary, the court must consider the resources of the defendant and the nature of the burden the payment of the fine will impose.

> Where the amount of the fine is discretionary, this court has required the district court to 'state on the record that he or she has taken into account the financial resources of the defendant and the nature of the burden that payment of the fine will impose.' *State v. McGlothlin* 242 Kan. 437, 441, 747 P.2d 1335 (1988).[53]

Municipal courts have the same obligation to conduct inquiry into the defendant's ability to pay when imposing a discretionary fine.[54]

There are few Kansas cases that discuss the Eighth Amendment when it comes to imposition of fines. Most of them discuss the ability of a court to imprison a defendant for failure to pay the fine. In the *City of Wichita v. Lucero,* the Kansas Supreme Court stated,

> The imposition of a fine, costs, and order of restitution against an indigent criminal defendant is not inherently unconstitutional. However, before an indigent defendant may be incarcerated for failure to pay a fine, costs, or restitution it must be shown not only that the defendant is indigent but that the defendant has willfully refused to make bona fide efforts to acquire the resources to pay. If an indigent defendant cannot make such payments despite bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment adequate to meet the State's interests in punishment and deterrence, such as community service.[55]

Recommendation:

8. Municipalities should be encouraged to make fines and court costs more uniform for traffic infractions and low-level misdemeanors.

As evidenced by the results of the fine surveys, fines can vary greatly from municipality to municipality. When court costs are added to these fines, the differences can be dramatic. What is

[52] See *State v Koerner*, 407 P. 3d 676 (2017) (unpublished) https://scholar.google.com/scholar_case?case=5329885221655806844&q=koerner&hl=en&as_sdt=4,17.
[53] *State v. Tafoya,* 304 Kan. 663, 669, 372 P.3d 1247 (2016) quoting from the *Copes* decision.
[54] *City of Gardner v. Barca,* 379 P. 3d 1155 (2016) (unpublished).
[55] 255 Kan. 437, 449-50, 874 P2d. 1144 (1994).

also dramatic is that two different agencies (i.e. municipal police and county sheriffs) can patrol the same streets and issue citations for the same violation; however, the penalties may be substantially different. For example, in Kansas City, Kansas Municipal Court, a citation for speeding 10 m.p.h. over the posted limit would result in a fine and court costs of $103.50. The same ticket, issued by a sheriff's deputy or highway patrol officer, and prosecuted in district court would result in a fine and court costs of $182.

In considering excessive fines, the court should bear in mind:

> (1) The nature of the offense and the character of the offender should be examined with particular regard to the degree of danger present to society; relevant to this inquiry are the facts of the crime, the violent or nonviolent nature of the offense, the extent of culpability for the injury resulting, and the penological purposes of the prescribed punishment;
> (2) A comparison of the punishment with punishments imposed in this jurisdiction for more serious offenses, and if among them are found more serious crimes punished less severely than the offense in question the challenged penalty is to that extent suspect; and
> **(3) A comparison of the penalty with punishments in other jurisdictions for the same offense.**[56] (Emphasis added.)

Jurisdictions have addressed this issue in different ways. For instance, some states have uniform ticket distribution throughout the state. In other words, the state issues tickets to each jurisdiction, the fine schedules are uniform throughout the state and all tickets are reported to the state.[57] In response to the *Ferguson* report, all 80 municipal courts in St. Louis County agreed to a uniform fine and costs schedule.[58]

The Committee does not advocate for a uniform fine schedule to be mandated for municipal courts; however, the Committee recommends the League of Kansas Municipalities conduct

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[56] *State v. Freeman*, 223 Kan. 362,367, 574 P.2d 950, 956 (1978).
[57] This is a recommendation that is consistent with those made by the National Center for State Courts: "Principle 6.1. Legal Financial Obligations. Legal financial obligations should be established by the state legislature in consultation with judicial branch officials. Such obligations should be uniform and consistently assessed throughout the state, and periodically reviewed and modified as necessary to ensure that revenue generated because of their imposition is being used for its stated purpose and not generating an amount in excess of what is needed to satisfy the stated purpose."
[58] https://www.stltoday.com/news/local/crime-and-courts/st-louis-county-municipal-courts-agree-to-uniform-fines-court/article_7851b8a5-52d3-59e6-804c-4f2883acbc77.html.

periodic surveys of fine schedules of municipal courts and make the survey results available to the courts. Courts can then use this information to establish reasonable and consistent fine schedules.

Recommendation:

9. Municipal and district judges should be authorized to modify mandatory minimum fines when there is sufficient evidence of inability to pay.

In *State v. Raschke,* the Kansas Supreme Court invited the legislature to consider the issue of mandatory minimum fines by stating,

> The concept of inflexible mandatory minimum fines--which we have held K.S.A. 21-3710(b)(2)-(4) to be examples of--is incompatible with the malleability inherently injected into the fine setting by consideration of defendant's financial circumstances. **Should the legislature want to resolve this conflict in favor of consideration of such circumstances when a defendant is convicted of forgery or any other crime for which conviction prompts a mandatory minimum fine, it need only amend K.S.A. 21-4607 to state clearly that its subsection (3) overrides any such fine.** [59] (Emphasis added)

There has been a great deal more literature on the issue of ability to pay since *Raschke* was decided.[60] [61] [62] As there has been little action by the Legislature since that invitation in 2009, we recommend that the issue be revisited.[63]

[59] 289 Kan. 911, 924, 219 P 3d. 481 (2009).

[60] See e.g. ALICIA BANNON, MITALI NAGRECHA, & REBEKAH DILLER, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (Brennan Center for Justice, 2010), https://www.brennancenter.org/publication/criminal-justice-debt-barrier-reentry.

[61] Beth A. Colgan, *Reviving the Excessive Fines Clause,* 102 CAL. L. REV. 277 (2014).

[62] Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 HASTINGS CONST. L. Q. 833 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2210674.

[63] This is also a recommendation from the National Center for State Courts, "Principle 6.2 Judicial Discretion with Respect to Legal Financial Obligations. State law and court rule should provide for judicial discretion in the imposition of legal financial obligations. States should avoid adopting mandatory fines, fees, costs and other legal financial obligations for misdemeanors and traffic-related and other low-level offenses and infractions. Judges should have authority and discretion to modify the amount of fines, fees and costs imposed based on an individual's income and ability to pay. Judges should also have the authority and discretion to modify sanctions after sentencing if an individual's circumstances change and their ability to comply with a legal financial obligation becomes a hardship."

Determining Fees

Recommendation:

10. Municipalities should be encouraged to establish more uniform fees and those fees should be reasonably related to the cost of the service.

In addition to fines creating a hardship for many defendants, the fees added by municipalities can be onerous. The Kansas Association of City/County Management surveyed municipalities on their court costs and fees.[64] The fees and costs surveyed included: court costs; fingerprint fees; jail commitment fees; diversion fees; expungement fees; warrant fees; failure to appear fees; technology fees; trial fees, installment payment fees; traffic school fees; amendment fees; notice/mail fees; and interpreter fees. We have chosen to highlight the four most commonly assessed fees based on the survey results – court costs, diversion fees, warrant fees and expungement fees. See Appendix E for the survey results.

One of the things that struck this Committee was the significant variation in the fees assessed; from court costs to warrant fees and expungement fees. (Diversion fees will not be addressed here because of the extreme variations.) Costs and fees should be more consistent and should not exceed the costs of providing the service.

For example, expungement fees ranged from $25 to $250. The Committee acknowledges a small-town clerk's office with part-time prosecutors and a staff that does most everything manually may incur a larger cost for a given service than a large municipality with full time prosecutor and judicial staff, but the disparity is noteworthy. This recommendation is not offered

[64] 200 municipalities responded to the KACM Court Fees Survey. Not all municipalities responded with data for all the fees shown. For example: 175 municipalities supplied court costs data; 80 responded with diversion fees data; 57 responded with warrant fees data; and 41 responded with expungement fees data.

to force a municipality to increase (or decrease) its court costs, but rather, to ensure court costs and other fees are reasonably related to the actual cost of the process.

Collection of Fines and Fees

Recommendation:

11. Compile and distribute information concerning various methods and techniques used by municipalities to collect court-imposed financial sanctions. This would include installment payments and collection agencies. Educate municipal judges on the use of these methods and techniques.

There are more than 200 municipal courts in Kansas and those courts use many different techniques to collect the fines due on municipal violations. Many judges track their collection rates and implement different policies in an effort to collect more of these fines, fees, and costs. Even though this issue is one that is discussed regularly at the Kansas municipal judges annual conference, there exists no central repository for this type of information. As a result, judges are unable to easily review techniques or methods that have worked best. If such repository is established, judges could be trained to use it as a reference point when necessary.

Installment payments, or an order extending time to pay, is one such method used by many municipal courts to enhance collection of sanctions. This method has an added benefit of making it easier for a defendant to pay over time according to their ability to do so. If a defendant is convicted of an offense, municipal court judges should automatically inquire of the defendant's ability to pay the fine. If the defendant is unable to pay the fine, the judge should ask the defendant to assist in setting the payment plan. This will typically result in a plan that is attainable by the defendant.

Many courts also use collection agencies to collect amounts due. A collection fee of up to thirty-three percent (33%) plus the cost of any civil filing fee may be collected on amounts due.[65] These additional amounts are not deducted from the amount the defendant owes to the court.[66] Debts can also be sent to the state debt set-off, which charges "a reasonable collections assistance fee" up to 19% to 24% of the balance due.[67] The collection assistance fee shall be paid as an additional cost but the fee is deducted from the debts owed to the court.[68] However, if it is a hardship on the defendant to pay the amounts due, the likelihood is he or she still won't have the ability to pay the collections and the amount of the debt will likely have increased. In such a hardship situation, the court should consider waiving some, or all, amounts due to the extent the court is authorized to do so.

Recommendation:

12. Credit given for community service performed to satisfy court imposed sanctions should be increased.

Community service is an option offered by many courts at the time of sentencing. This gives unemployed, or under-employed, individuals the opportunity to begin "paying" their fines and costs regardless of their employment status. At sentencing, a payment plan can be set for the defendant. The defendant can be informed they may either choose to make a monetary payment or "pay" by performing community service. Governmental entities, private not-for-profit

[65] K.S.A. 12-4119.
[66] K.S.A. 12-4119(b)(3).
[67] K.S.A. 75-6210(b) [The statute does not set the rate. The director is authorized to contract with municipal courts and to charge a fee consistent with the statute. The current rate structure is set forth on the setoff website: http://admin.ks.gov/offices/chief-financial-officer/setoff-program.]
[68] K.S.A. 75-6210(c) [Since municipal courts can add a collection fee of up to 33% pursuant to K.S.A. 12-4119, the collection assistance fee of 19-24% is permissible, but it must be calculated and added to the original outstanding balance due to the court. The sum of the balance due and the collection assistance fee could then be submitted to the setoff program. It could be problematic if the defendant makes any payments directly to the court after the total has been submitted to the setoff program.]

corporations, and charitable or social service organizations are all immune from liability for acts or omissions by such defendants while performing community service.[69] This immunity does not extend to willful or wanton misconduct of the entity. It also does not cover damages arising out of the operation of a motor vehicle.[70] Despite this immunity, many providers are concerned about liability issues. Education on the limits of a provider's liability could expand the availability of this option for defendants who need such an alternative.

There are some limitations to the extent a court may allow this method of payment. There are state assessments set out in K.S.A. 12-4116 and K.S.A. 12-4117 for certain state related funding. Both statutes require all assessments received be remitted to the state treasurer. K.S.A. 12-4120 specifies that portions of certain fines, including $250.00 of the fine for driving under the influence, be remitted to the state treasurer. There is no provision in these statutes for judge to write-off the amounts due if the defendant is unable to pay or completes other requirements. This effectively limits how much a court may allow a defendant to "pay" through community service.

There are two Kansas statutes that dictate that community service credit is $5 for each hour worked. K.S.A. 8-1567(f) and K.S.A. 21-6604(q) provide:

> In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive credit on the fine imposed in an amount equal to $5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.[71]

[69] K.S.A. 60-3614.
[70] K.S.A. 60-3614(a).
[71] K.S.A. 8-1567(f); K.S.A. 21-6604(q).

This credit rate was established in 1982.[72] At the time of its enactment, the minimum wage in the United States was $3.35 per hour.[73] The current minimum wage is $7.25 per hour, more than double what it was in 1982, yet the community service rate remains the same. In other states such as Arizona, the community service credit rate is $10 per hour.[74]

Recommendation:

13. Municipal Courts should establish guidelines for closing cases and writing off fines and fees for traffic and misdemeanors after a reasonable time if collection efforts have not been successful.

Municipal courts often see defendants who, for one reason or another, "drop off the grid" and stop making payments on their court-imposed financial sanctions. The defendant may have moved to another state for a length of time or simply avoided any contact with the court. When these defendants appear several years later, they may want to clear suspension of their driving privileges, or they may want to "straighten things out" and start with a clean slate. Often these fines have been subject to unsuccessful collection efforts either through a third-party collection firm or state set-off. Additionally, the ability to collect a debt decreases to less than 12% on debt more than 2 years old.[75]

The question becomes whether a court will waive any of these fines or fees or continue to require payment - especially when there has been a license suspension due to failure to comply with the citation. Judges can struggle with what they should do when considering a person's ability to pay and what efforts the municipality has undertaken to collect fines and fees. The court may hold a contempt hearing pursuant to K.S.A. 12-4106(a) and K.S.A. 20-1204a. We

[72] 1982 Kansas Laws Ch. 144, §5.
[73] See WAGE AND HOUR DIVISION, DEP'T OF LABOR, HISTORY OF FEDERAL MINIMUM WAGE RATES UNDER THE FAIR LABOR STANDARDS ACT, 1938-2009, (Last Visited August 15, 2018), https://www.dol.gov/whd/minwage/chart.htm.
[74] See A.R.S. §13-824 (2018) found at https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/13/00824.htm.
[75] *Recovery Chart*, ACCOUNT MANAGEMENT SYSTEMS (2015), www.amscollects.com/recovery.htm.

would recommend that 10 years after the last collection efforts have been made, the court waive any remaining fines and fees, if the court finds the defendant is unable to pay these fines and fees. Arizona has recommended a 20-year window for the same purpose.[76]

ALTERNATIVES FOR ENFORCEMENT OF FINES AND FEES

In Kansas, municipal court judges have general powers that include the authority to impose a fine, imprisonment, or both.[77] The law also allows municipal courts to impose conditions of probation or suspension of sentence, including but not limited to: paying fines or costs, paying restitution, and reimbursing the municipality for the costs of court appointed counsel. The municipal judge may order the amount and manner of payment.[78] The primary purpose of imposing a fine is to hold the person accountable and to deter future violations by that person. Unfortunately, some people are not able to pay the fines and fees through no fault of their own. The Fourteenth Amendment to the United States Constitution mandates alternative measures be considered in these instances.[79]

Alternative Means of Payment

The Kansas Legislature has contemplated the courts should consider alternative measures for the payment of fines and fees. K.S.A. 12-4509(f)(7) allows an order to: "pay a fine or costs . . . in one or several sums and in the manner directed by the court." K.S.A. 12-4509(f) (10) provides

[76] TASK FORCE ON FAIR JUSTICE FOR ALL: COURT ORDERED FINES, PENALTIES, FEES, AND PRETRIAL RELEASE POLICIES, *supra* at 2.
[77] K.S.A. 12-4106(b) provides: The municipal judge shall have the power to hear and determine all cases properly brought before such municipal judge to: Grant continuances; sentence those found guilty to a fine or confinement in jail, or both; commit accused persons to jail in default of bond; determine applications for parole; release on probation; grant time in which a fine may be paid; correct a sentence; suspend imposition of a sentence; set aside a judgment; permit time for post-trial motions; and discharge accused persons.
[78] K.S.A. 12-4509(f).
[79] *Bearden v. Georgia*, 461 U.S. 660, 672, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983).

that community or public service work may be ordered. K.S.A. 12-4509(f) (11) states the municipal judge may order the defendant to:

> ...perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors.

Recommendation:

14. Convenient payment options should be offered, including payment by credit card in person, over the telephone, or online, as well as other after-hour payment options.

Many citations received by defendants are for infractions included on a fine schedule. The defendant is notified of the fine and court cost amounts and given a date to appear in court. The options stated on the citation are to pay in full or to appear in court on the date specified. Some defendants struggle with being able to make the lump sum payment by their court date. If the defendant fails to appear, a warrant may be issued even if they were only cited for a traffic infraction.[80] In addition, the defendant's driver's license may be suspended if the defendant does not appear or fails to pay the citation within 30 days.[81] The defendant should be notified that if he or she is not able to pay in full, he or she may appear on the specified court date and request an extension of time to pay. The judge may authorize the court clerk to grant an extension of time to pay for a specified period.

Courts should try to make it easier for defendants to pay at the beginning of the case. By presenting multiple payment options, courts will increase the likelihood many defendants will simply pay the fines and costs of the citation and the case will be closed. The different payment

[80] K.S.A. 12-4209(e).
[81] K.S.A. 8-2110(b).

options will also be helpful to defendants who are paying pursuant to a payment plan set by the court.

Recommendation:

15. Alternatives to payment of financial obligations should be considered for defendants with special circumstances.

Community service is not a panacea for payment of fines and costs. Some defendants are not employed due to physical or mental disabilities. As a result, they may not be able to perform community service. Other limitations such as transportation and care giving responsibilities should be considered as well.[82]

It is not uncommon for municipal courts to have repeat offenders in court for the same types of petty offenses: theft, possession of drugs or paraphernalia, public intoxication, etc., and these defendants tend to belong to special populations dealing with severe addiction issues and/or mental illness. These defendants need to have their cases addressed in a structured way that allows the defendant to engage in the rehabilitative services they need to help keep them on a sober and law-abiding path. Alternatives to cash payment can be imposed as both a sanction and to rehabilitate the defendant. Credit can be given to the defendant for completing certain tasks. The credit can be given against a certain sum of money due, or against the entire balance. Judges should be willing to be creative to frame alternatives that will serve as a sanction in lieu of fines for defendants who are incapable of paying the amount due. Some options to considered, depending on availability of community resources, include:

1. Obtaining or reinstating a driver's license
2. Attending Alcoholics Anonymous or Narcotics Anonymous meetings

[82] NATIONAL TASK FORCE ON FINES, FEES AND BAIL PRACTICES LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS: A BENCH CARD FOR JUDGES (National Center for State Courts 2017), https://www.ncsc.org/~/media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx.

3. Correction of code violations
4. Sending an apology letter
5. Obtaining a social security card
6. Obtaining a job
7. Developing a healthy hobby
8. Obtaining passing grades in high school or college
9. Attending school with no absences
10. Graduating from high school
11. Obtaining a GED
12. Attending literacy programs
13. Attending recommended treatment without absences
14. Passing a specified number of alcohol and/or drug screens
15. Completing alcohol and/or drug treatment or classes
16. Obtaining a psychological assessment to determine mental health issues and/or learning disabilities
17. Attending and observing other court proceedings

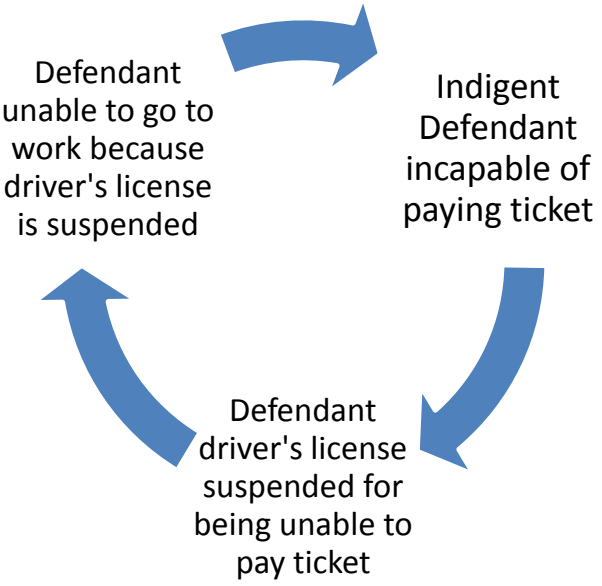
Suspension of Driving Privileges

If a defendant fails to comply with a traffic citation, the defendant's driver's license may be suspended.[83] The statute specifically states compliance means both appearing and paying in full.[84] A driver's license suspension can be a very effective tool for obtaining compliance, especially if the defendant lives in another state. Most states recognize driver's license

[83] K.S.A. 8-2110.
[84] K.S.A. 8-2110(a).

suspensions from other states through the Driver License Compact.[85] Kansas has adopted the Driver License Compact.[86]

Unfortunately, this procedure is also very effective in trapping indigent defendants in a vicious cycle. It begins with the defendant being indigent and therefore incapable of paying the fine. The defendant's driver's license is then suspended for failing to pay the fine. The defendant is unable to travel to work because of the suspended driver's license and is still incapable of paying the fine.



In Kansas in 2017, 51% of all suspensions occurred due to failure to comply with a traffic citation.[87] Prior to suspending a driver's license, courts are required to mail a notice to the person

[85] *Driver License Compact*, NATIONAL CENTER FOR INTERSTATE COMPACTS (2011), http://apps.csg.org/ncic/Compact.aspx?id=56.
[86] K.S.A. 8-1212.

[87] Licensing a Driver and the Consequences that Follow. Presentation by Ted Smith, Deputy General Counsel for Department of Revenue. This percentage reflects 11,629 suspensions for driving while impaired and 78,760 suspensions for other reasons. The total of all suspensions was 90,389 and the total suspensions for failure to comply with a traffic citation was 46,531.

stating "...that if the person does not appear in district or municipal court or pay all fines, court costs and any penalties within 30 days from the date of mailing notice, the division of vehicles will be notified to suspend the person's driving privileges."[88] No other form of notice is required or recognized by the statute.

Many times, the address indicated on the citation for the defendant is not correct. Typically, the address is obtained from the driver's license itself. Law enforcement officers either write the address listed on the citation or scan the driver's license for purposes of an E-citation. Unfortunately, if the address is not correct on the driver's license, and the error is not caught by the defendant at the time of citation, the defendant will not receive any notices from the court, nor will he or she receive notice of suspension from the Division of Vehicles. The driver often learns of his or her suspension when he or she is either arrested or receives a notice to appear for driving while suspended.

The Division of Vehicles has begun tracking email addresses for drivers. There are now automated tools allowing drivers to sign up for automatic notifications if the person's license status changes. Emails for failure to comply notices and suspension notices could be utilized by the courts and the Division of Vehicles respectively. Although many defendants change addresses frequently, they often maintain the same email address. Obtaining cell phone numbers would also allow courts to set up an automated texting system.

If the defendant does receive the notice, this may not resolve the problem. As indicated above, the notice is required to give the defendant two options. The person can either appear in court or "...pay all fines, court costs and any penalties within 30 days."[89] The defendant is informed he or she can come to court but there is no mention the court will consider the

[88] K.S.A. 8-2110.
[89] K.S.A. 8-2110(b)(1).

defendant's financial condition. The defendant may mistakenly believe if he or she is guilty of the offense, the only option is to appear in court and make payment in full.

Once the defendant's license is suspended, the defendant will not only have to satisfy the original charge or charges, but also will be required to pay a reinstatement fee. As of July 1, 2018, the reinstatement fee is $122.00 per charge.[90] Since the fee is added for each charge, these fees can add substantially to the burden on the defendant. A defendant suspended for failing to comply with a traffic citation may apply for a restricted driver's license if the citation is in a Kansas court and the person has a Kansas driver's license. The fee is $25.00 and, if approved, the person will be able to drive only under the following circumstances:

> (i) In going to or returning from the person's place of employment or schooling; (ii) in the course of the person's employment; (iii) in going to or returning from an appointment with a health care provider or during a medical emergency; and (iv) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go by a court.[91]

If the defendant fails to satisfy the conditions within one year, the defendant's driver's license is suspended until the citation is satisfied. There are no provisions allowing the driver to perform community service or other tasks to satisfy his or her obligations. Particularly, there are no provisions allowing a waiver of the $122.00 per charge reinstatement fee.

Recommendation:

16. Alternatives to driver's license suspension as a means of increasing compliance with traffic citations should be considered.

All notifications of non-compliance should provide language advising the defendant he or she may appear in court and inform the court if he or she is incapable of paying. The

[90] K.S.A. 8-2110(c)(2) provides a $100.00 reinstatement fee. The Kansas Supreme Court is authorized to add an additional fee of $22.00 for non-judicial personnel pursuant to Kan. Stat. Ann. 8-2110(e) (2018). This surcharge was added by order of Chief Justice, Lawton Nuss, on June 29, 2017 in order 2017 SC 65.
[91] K.S.A. 8-2110(b)(2)(C).

determination of whether a driver's license should be suspended should be made by the municipal court judge. Courts should be encouraged to set a single hearing to determine whether the defendant's driver's license should be suspended and to consider a motion to impose a jail sentence. Reinstatement fees should be reduced or applied to only one of the offenses per citation. Judges should have the authority to allow defendants to perform community service or other tasks to satisfy their costs and reinstatement fees. Municipal court judges should also be given the authority to order the waiver of reinstatement fees when it is clear the defendant does not possess the ability to satisfy the court's orders.

ENFORCEMENT OF PROBATION OR PAROLE OBLIGATIONS

A court may consider placing a defendant on probation or parole as part of his or her sentence. The payment of fines and fees can be a condition of probation. If payment of fines and fees is not accomplished, the municipality will initiate proceedings for the court to consider revocation of the defendant’s probation or parole. Kansas law provides little guidance for municipal courts to determine probation or parole violations. In fact, the entirety of the statutory law for municipal courts is set forth in one sentence in K.S.A. § 12-4511:

> After notice and hearing, the municipal judge may revoke such parole for violation of conditions by directing the chief of police to execute the sentence and again confine the accused person to jail for the time specified by the court, which shall not exceed the initial jail sentence imposed, less the time served.

Thus, prior to revoking a defendant's probation or parole, the following are statutorily required:

1. Notice to the defendant; and
2. A hearing.

The defendant cannot be ordered to serve more time than the amount of the original sentence. There are no other statutory requirements for probation revocation hearings in municipal courts.

There are no statutes in Kansas specifically addressing the failure, or inability of, a defendant to pay amounts due to municipal courts. Many of the requirements for probation or parole violations are contained in state and federal case law.

Defendants may also be incarcerated in municipal courts in Kansas for indirect contempt when they fail to pay ordered amounts. Municipal court judges have the same contempt power as district judges and may order imprisonment or fines for contempt in the same manner.[92] Prior to having a hearing on contempt, the court must enter an order to show cause why the person should not be found in contempt.[93] The order must state the time and place for the hearing, be accompanied by an affidavit specifically setting out the facts constituting the alleged violation, and be served on the defendant.[94] The court may issue a bench warrant if the person fails to appear after being served or if it appears that the person has secreted themselves to avoid being served.[95] Defendants may appeal from contempt orders in municipal court.[96] While the statute appears to require a transcript or preservation of the trial testimony; however, as municipal courts are not required to keep records and all decisions are appealable by a trial de novo pursuant to K.S.A. 22-3609, this provision would not apply to municipal courts.[97]

Recommendation:

17. Procedural protections should be established for probation and parole sanctions and revocations.

Additional requirements for incarcerating defendants who fail to pay are set out in federal case law. The premise that persons may not be incarcerated because of their poverty is rooted in

[92] K.S.A. 12-4106(a).
[93] K.S.A. 20-1204a(a) .
[94] K.S.A. 20-1204a(b).
[95] K.S.A. 20-1204a(c).
[96] K.S.A. 20-1205.
[97] *See* Advisory Committee Note on Page 17-3 in the Kansas Municipal Court Manual.

the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Section 1 of the Fourteenth Amendment provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The United States Supreme Court determined in *Williams v. Illinois* the maximum sentence imposed may not be greater for someone based upon their economic status because of the equal protection clause above.[98] The court found the Illinois statute applied to the defendant solely because he was unable to pay the fine and resulted in invidious discrimination against the defendant. [99]

The Supreme Court later applied this analysis to cases where defendants had been placed on probation. In *Bearden v. Georgia,* the Court noted that once a court determines a fine or restitution is the appropriate remedy for a defendant, the court could not then imprison the defendant solely based on the defendant's lack of resources; however, a probationer's lack of bona fide efforts to obtain the resources may justify revocation of probation.[100] The Court also indicated that if the probationer could not pay, despite making bona fide efforts, the court must consider alternative methods of punishment.[101]

The Kansas Court of Appeals has held automatic revocation and imprisonment due to failure to pay is prohibited. In *State v. Duke,*[102] the Kansas Court of Appeals held two determinations must be made. First, it must be determined whether the probationer willfully refused and was responsible for the failure to pay or, whether the probationer made a bona fide effort to acquire

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[98] *Williams v. Illinois*, 399 U.S. 235, 244, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970).
[99] *Id.* at 242.
[100] *Bearden v. Georgia*, 461 U.S. 660, 667-68, 103 S. Ct. 2064, 76 L.Ed.2d 221 (1983).
[101] *Id.* at 672.
[102] *State v. Duke*, 10 Kan. App. 2d 392, 395, 699 P.2d 576, 579 (1985).

the resources to pay and was unable to do so. Second, if the court determines the defendant made a bona fide effort, or was otherwise not at fault, the court must determine if other alternatives would be adequate measures of punishment. If no other measures are sufficient, the court may then imprison the defendant.[103] These requirements were addressed and applied to municipal courts in *City of Wichita v. Lucero*[104].

If a defendant is unable to pay due to a lack of resources, a determination should be made regarding whether the defendant made bona fide efforts to acquire the resources to pay the amounts due. In an unpublished opinion, the Kansas Court of Appeals upheld a revocation where the defendant applied for work at only one establishment during a two-year probation term.[105] The Court held that failing to actively seek employment may be a refusal to make bona fide efforts to pay. The ability to borrow money may also be considered.[106]

Both federal and state law provide some guidance regarding the first step of the analysis. The Court in *Bearden* held that the court must inquire into the reasons for the defendant failing to pay.[107] The defendant should be given the opportunity to challenge whether the amount alleged to be due is correct and should be allowed to explain the reasons for nonpayment. The issue Kansas municipal courts are left with is *how* to make the determination of whether the defendant willfully failed to pay or refused to make bona fide efforts to pay.

Prior to a hearing on any form of a motion to impose a jail sentence for failure to pay amounts due, defendants should be provided with a notice of hearing. The notice should provide the following:

1. Date, time, and location of hearing;

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[103] *Id.*
[104] *City of Wichita v. Lucero*, 255 Kan. 437, 874 P.2d 1144 (1994).
[105] *State v. Dockery*, No. 83458, Lexis 923 (Kan. App. 2000) (unpublished opinion), *rev denied*, 4 P.3d 1189 (2000).
[106] *Bearden*, 461 U.S. 660, 668, 103 S. Ct. 2064, 76 L.Ed.2d 221 (1983).
[107] *Id.* at 672.

2. Total amount claimed due;
3. A statement that incarceration may result if the court finds the defendant willfully refused to pay the amounts due and/or failed to make bona efforts to obtain the resources to pay, and alternative measures are not adequate to meet the municipality's interests in punishment or deterrence.
4. A statement that the defendant should bring documentation or information the court should consider in determining ability to pay and/or efforts to acquire the resources to pay with him / her to the hearing.
5. A statement that a defendant who is unable to pay, and unable to obtain the resources to pay, may request payment alternatives, such as community service and/or reductions in the amount owed.
6. A statement that the court will evaluate the issues above at the hearing.
7. A statement that the defendant has a right to counsel and, if he / she cannot afford counsel, one may be appointed for him / her.
8. Any show cause order for indirect contempt must be personally served on the defendant.

A sample Notice of Hearing and Rights is attached as Appendix F.

Municipal court judges must consider numerous items before determining a defendant has willfully failed to pay fines and costs. Issues to address include the defendant's:

1. Assets and other financial resources;
2. Financial obligations;
3. Basic living expenses;
4. Dependents;
5. Income, including whether income is at or below the Federal Poverty Guidelines;

6. Receipt of needs-based, means tested, public assistance;
7. Other financial obligations to the court or other courts;
8. Whether paying the obligations would create a manifest hardship for the defendant and/or the defendant's dependents; and
9. Any other special circumstances that may bear on the defendant's ability to pay.

If it is determined a defendant does not have the resources to pay the amounts due, the court can then inquire whether the defendant has made bona fide efforts to acquire the resources. Items to consider are:

1. Permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
2. Efforts of the defendant to obtain employment;
3. Ability of the defendant to borrow the funds to pay amounts due.

At a hearing to determine if a jail sentence should be imposed when the defendant has failed to pay court ordered obligations, the court must first verify proper notice was provided to the defendant. The court must verify the defendant was advised of the right to counsel and his or her right to court-appointed counsel. If the defendant proceeds without counsel, the defendant should sign a waiver of counsel form. A sample waiver of counsel form for revocation hearings is attached as Appendix G, and a sample waiver of counsel form for show cause/indirect contempt hearings is attached as Appendix H.

The court should query the defendant as to his or her ability to pay or partially pay the amounts owed. If the defendant responds he or she can pay, or could have paid but chose not to, the court can either order revocation or set a new payment plan. If the defendant states an inability to pay the obligation, the defendant should be required to fill out the Affidavit of Indigency, attached as Appendix B. If, after reviewing the affidavit, documents provided, and

receiving testimony, if any, it is determined the defendant has income below the poverty level, alternative measures should be considered, and revocation should not be ordered based upon failure to pay.

If the defendant has income above the poverty level, the court should then consider the defendant's income and expenses to make a meaningful determination of whether the defendant has, or had, the resources to pay the court-ordered obligation. If so, the court may order incarceration. If the court determines the defendant does not, and did not, have resources to pay the court-ordered obligation, the court must then make a determination as to whether the defendant made bona fide efforts to obtain the resources to pay the court-ordered obligation. This determination may include whether the defendant performed community service if it was offered as an option for the defendant. If the defendant failed to make bona fide efforts, the court may order incarceration.

If the court determines that despite the defendant's bona fide efforts he or she is still unable to obtain the resources to pay the court-ordered obligation, alternative measures must be considered. If the court determines alternative measures are not adequate to meet the municipality's interest in punishment and deterrence, the court may order incarceration. It should be noted that although the court may choose to order incarceration, the court may still wish to consider alternate measures. The discretion to make this choice is indicated in K.S.A. 12-4511.

TRAINING

Recommendation:

18. Training and education should be provided to ensure the protection of the rights of a defendant and to effectively implement any Committee recommendations which are adopted.

To assure the processes and considerations related to these issues are adopted, education and training may be required. Training in the principles of procedural fairness can be provided in addition to training on specific court procedures and issues such as determining indigency and fairness in collection of fines and fees. The Office of Judicial Administration provides educational conferences for both municipal court clerks and judges. Manuals are also prepared for both. These provide an opportunity to educate both clerks and judges. Additional education and training should be considered for municipal prosecutors. Finally, educating state legislators and representatives of the Department of Revenue regarding legislative and regulatory changes would be helpful in making the changes necessary to implement the recommendations suggested in this report. The Committee also recommends this report be made available to all stakeholders involved in any training, as well as other interested parties determined at the discretion of the Judicial Administrator and the Executive Director of the League of Kansas Municipalities.

Recommendations that can be accomplished without statutory or regulatory changes should be adopted into the Kansas Municipal Court Judge's Manual and the Kansas Municipal Court Clerk's Manual. Training programs should be developed for both municipal court judges and municipal court clerks through their respective conferences. Training for new, non-lawyer, judges should include this material as a part of their certification process. Training of municipal prosecutors regarding these issues should be considered with continuing legal education hours offered.

CONCLUSION

Some of the recommendations included in this report provide opportunities to evaluate and improve the bonding practices of municipal courts in Kansas. Other recommendations will assist in the development of procedural protections for defendants and greater attention to the issues courts face in cases involving indigent defendants. Kansas is not alone in facing these issues. While there is benefit in studying steps taken in other jurisdictions, any meaningful improvements must be determined with the character and diversity of Kansas municipal courts in mind. The Committee believes it would be appropriate to adopt the recommendations set out in this report, and to also periodically review the practices of municipal courts to ensure adequate protections and equal treatment for defendants in all municipal courts.

Appendices

APPENDIX A

IN THE MUNICIPAL COURT OF _____, KANSAS

CITY OF _____, KANSAS

vs. Case no.

_____

NOTICE TO DEFENDANT

You have been charged with the offense of _____ in violation of Section _____ of Ordinance No. _____ of the City of _____, Kansas. The maximum penalty which can be imposed for that offense is: _____.

You have the right to be represented by an attorney. You may hire an attorney of your own choosing.

If you cannot afford to hire an attorney, you may request that an attorney be appointed to represent you. If the court determines that, because of poverty, you are unable to hire an attorney, one will be appointed to represent you. In some circumstances you may be required to reimburse the city for the cost of representation by counsel.

If you do not wish to be represented by an attorney, you may give up your right to counsel by signing the Waiver of Counsel form which follows.

WAIVER OF COUNSEL

I acknowledge that I have been informed by the Municipal Court of:

- the charges against me,
- the possible penalty,
- the nature of the proceedings,
- my right to have counsel appointed to represent me if I am financially unable to obtain counsel and the Court determines that I am indigent,
- the possible dangers and disadvantages of representing myself, and
- that if I am not a United States citizen, the outcome of this case may affect my ability to remain in the United States.

I possess the intelligence and capacity to appreciate the consequences of this waiver, understand all these rights fully, and state to the Court that I do not desire to have counsel either retained or appointed to represent me before this Court and wish to proceed without counsel.

_____
Defendant

I hereby certify that the above-named person has been fully informed of the charges and of the right to have counsel, either retained or appointed, to represent the defendant in the proceedings before this Court. The defendant has executed the above waiver in my presence, after its meaning and effect have been fully explained to the defendant on this _____ day of _____, 20____.

_____
Municipal Judge

APPENDIX B

IN THE MUNICIPAL COURT OF _____, KANSAS

City of _____, KANSAS

vs. Case no.

_____

AFFIDAVIT OF INDIGENCY

NOTICE TO AFFIANT:

1. The information on this affidavit is *not* confidential.
2. Any information provided may be verified by the Judge.
3. All information you provide is made under oath and under penalties of perjury. False entries may lead to criminal prosecution and conviction.
4. You may be required to testify about any information provided on this form.
5. You may be required to provide documentation verifying the information provided.
6. By signing below, you authorize the City of _____, Kansas to verify the information provided and specifically grant authority for the City to obtain those records.

FULL NAME: _____ DATE OF BIRTH: _____

ADDRESS: _____ HOME TELEPHONE: _____

_____ WORK TELEPHONE: _____

_____ MOBILE TELEPHONE: _____

_____ EMAIL: _____

NAME OF SPOUSE: _____ (write "N/A" if you are not married)

AMOUNT THAT CAN BE PAID NOW

(Write "None" if no amounts can be paid toward amounts that you owe at this time.)

$_____

EMPLOYMENT

(Check all that apply)

☐ Self-Employed; What type of work do you do? _____

Average monthly amount that you receive prior to any withholdings: $_____

☐ Employed; What is the name of your employer? _____

Average monthly amount that you receive prior to any withholdings: $_____

☐ Unemployed; How long have you been unemployed? _____.

Amount of unemployment benefits: $_____

If no unemployment benefits, explain why: _____

APPLICATIONS FOR EMPLOYMENT

(List all applications for employment that you have turned in since the date that probation or parole was ordered. Write "None" if no applications were turned in)

NAME OF EMPLOYER	DATE OF APPLICATION (May be approximate)

*Attach additional pages if needed.

SPOUSE'S EMPLOYMENT

(Check all that apply)

☐ Not Married. (Do not fill out the remainder of this section)

☐ Self-Employed; What type of work does your spouse do? _____

Average monthly amount that your spouse receives prior to any withholdings: $_____

☐ Employed; What is the name of your spouse's employer? _____

Average monthly amount that your spouse receives prior to any withholdings: $_____

☐ Unemployed; How long has your spouse been unemployed? _____.

Amount of unemployment benefits: $_____

If no unemployment benefits, explain why: _____

PERSONS OTHER THAN YOUR DEPENDANTS THAT LIVE IN THE SAME HOME AS YOU

(Write "None" if no persons other than your dependents live with you)

Name	Relationship	Average monthly amount they receive prior to any withholdings.
		$
		$
		$

OTHER INCOME

(Write "None" in Monthly Income if no income for Source)

SOURCE	MONTHLY INCOME	SOURCE	MONTHLY INCOME
Public assistance, including but not limited to: Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), Temporary Assistance for Needy Families (TANF), Veterans' disability benefits		Social Security and/or Retirement benefits	
Rental Property and/or Business Income		Maintenance/Alimony and/or Child Support	
Other (Describe Benefit):		Other (Describe Benefit):	

ASSETS

(Write "None" in the Value or Amount blank if you do not have that asset.)

ASSET	VALUE OR AMOUNT OF ASSET	AMOUNT OWING AGAINST ASSET
Car, Truck, Motorcycle, Camper and/or Recreational Vehicle (Provide Year, Model and Make):		
House/Land (Describe)		
Cash		
Accounts at a financial institution, including but not limited to: banks, savings and loans, credit unions and investment companies. (Provide name of financial institution(s) and type(s) of account(s)):		
Any Asset transferred to another after the date of the filing of this case (Describe):		
Other Asset (Describe):		

DEPENDENTS

(Write "None" if you have no dependents.)

NAME	AGE	RELATIONSHIP TO YOU

EXPENSES

(Write "None" if no expense for the Type listed.)

TYPE	MONTHLY EXPENSE
Rent or House Payment	
Food	
Clothing	
Utilities	

Maintenance/Alimony	
Child Support	
Installment Payments	
Payments for other cases (List Court, Case Number and Total Amount Owed):	
Medical Bills	
Transportation	
Other (Describe):	
Other (Describe):	
TOTAL EXPENSES	

I certify under the penalty of perjury that the foregoing is true and correct. By signing below, I authorize the CITY OF _____,KANSAS to verify my past and present employment earnings, records, bank accounts, stock holdings, and any other asset balances.

Executed this_____ day_____ of , 20_____ .

_____

Signature of Affiant

APPENDIX C

2018 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

Poverty Size of family unit Guideline 100%/125%

1.....$12,140/$15,175

2.....$16,460/$20,575

3.....$20,780/$25,975

4.....$25,100/$31,375

5.....$29,420/$36,775

6.....$33,740/$42,175

7.....$38,060/$47,575

8.....$42,380/$52,975

For family units with more than 8 members, add $4,180 for each additional person.

APPENDIX D

IN THE MUNICIPAL COURT OF _____, KANSAS

CITY OF _____, KANSAS

v. Case no.

_____

IT IS THEREFORE ORDERED your Court appointed counsel is:

☐ Attorney 1
Physical address
Mailing address
city, state zip
Phone and toll free #fax
Email

☐ Attorney 2
physical address
mailing address
city, state zip
Phone and toll free #, fax
Email

Defendant can be contacted at:

Address: _____

Phone: _____Email: _____

Other person who can find Defendant: (name and full contact information):

_____

YOU MUST CONTACT YOUR ATTORNEY within 72 hours of this Order.

THIS CASE IS SET FOR _____ on _____20___ at _____ p.m.

YOU MUST APPEAR UNLESS YOUR ATTORNEY TELLS YOU OTHERWISE.

Court appointed attorney fees may be assessed later as costs of the case, depending on your ability to pay at the time, if you are convicted or enter a plea to said charge(s).

_____
Municipal Court Judge

APPENDIX E

SURVEY RESULTS

TRAFFIC FINES

	Speeding 10 mph over	Speeding 20 mph over	Failure to yield
Minimum	$10	$33	$25
Maximum	$153	$225	$200
Average	$55	$105	$81
Median	$105	$45	$75

	Reckless	Driving while Sus. /Rev.	No proof of ins. 1st
Minimum	$75	$90	30
Maximum	$1,000	$1,000	$1,000
Average	n/v	$187	$295
Median	n/v	$153	$300

	No proof of ins. 2nd	Illegal/Expired Tag	Leaving the Scene
Minimum	$200	$20	$50
Maximum	$2,500	$500 (1-$1,000 2-$2500)	$500 (2-$1,000 3- $2,500)
Average	$714	$99	$173
Median	$800	$80	$150

MISDEMEANOR FINES

	Assault	Petty Theft	Trespass
Minimum	$20	$30	$30
Maximum	$1000	$2500	$1000
Average	$212	$256	$152
Median	$200	$200	$100

	Possession of Marijuana	Possession of Paraphernalia	Dog/Cat License
Minimum	$50	$50	$5
Maximum	$1,500	$1,500	$150
Average	$346	$320	$45
Median	$225	$200	$50

	Animal Nuisance	Disorderly Conduct	Obstruction
Minimum	$20	$50	$50
Maximum	$1,000	$500	$600
Average	$95	$158	$208
Median	$50	$100	$200

COSTS AND FEES

	Court Costs	Diversion Fees	Warrant Fees	Expungement Fees
Minimum	$7	$25	$10	$25
Maximum	$162	$1,292	$150	$250
Average	$75	$210	$52	$103
Median	$75	$100	$50	$100

APPENDIX F

NOTICE OF HEARING AND RIGHTS OF DEFENDANT

You are notified that the hearing on the motion to impose a jail sentence is set for the ____ day of _____, 20___ at _____ o'clock a./p.m. in the Municipal Court of _____, Kansas. You must be present for this hearing. If you fail to appear at the hearing a warrant may be issued for arrest and your driver's license may be suspended.

It is alleged that you have failed to pay amounts due to the court totaling $_____. Incarceration and/or suspension of your driver's license may result if the court finds that you willfully refused to pay the amounts due and/or failed to make bona fide efforts to obtain the resources to pay, and alternative measures are not adequate to meet the state's interests in punishment or deterrence. You must bring any documentation or information you want the court to consider in determining your ability to pay and/or efforts to acquire the resources to pay the amounts due. If you are unable to pay, you may request payment alternatives, such as community service and/or reductions in the amount owed. The court will evaluate the issues above at the hearing.

You have a right to be represented by an attorney at the hearing. If you cannot afford to hire an attorney, one may be appointed for you.

APPENDIX G

IN THE MUNICIPAL COURT OF _____, KANSAS

CITY OF _____, KANSAS

vs. Case no.

_____

WAIVER OF COUNSEL -- PAROLE OR PROBATION REVOCATION HEARING

The undersigned hereby acknowledges being advised of the following by the Municipal Court of _____, Kansas:

1. Notice of the claimed violations of parole or probation;
2. Disclosure of evidence against me;
3. That the City has the burden of establishing the violations charged and that I have the right to be present at a hearing on the charges against me;
4. My right at a hearing to present evidence, subpoena witnesses, and cross-examine witnesses brought by the City to testify against me; and
5. My right to deny or admit the claimed violations of my parole or probation.

I understand that I may be sentenced to a maximum of _____ days in jail if my probation or parole is revoked in this matter.

STIPULATION

___ I admit that I have violated the conditions of my parole or probation.

___ I deny committing the violations alleged and agree to proceed to hearing without counsel.

The undersigned further acknowledges that the Court has advised me of my right to counsel; that I can hire an attorney of my choosing and, if I cannot afford an attorney and I might be deprived of my liberty if parole/probation is revoked, the Court will appoint an attorney to represent me in this case. Notwithstanding my right to counsel, either retained or appointed, I hereby waive this right and agree to proceed as indicated above. I waive an attorney and enter my stipulation above without any promises being made to me by anyone and without any force or coercion being used against me.

DATE _____

_____
Defendant

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20___.

_____
Judge of the Municipal Court

I hereby certify that the above-named person has been fully informed of the alleged violations of his or her probation or parole and of the defendant's right to have counsel, either retained or appointed, to represent the defendant at the proceedings before this Court and that the

accused has executed the above waiver in my presence, after its meaning and effect have been fully explained to the defendant, this _____ day of _____, 20___.

_____
Judge of the Municipal Court

APPENDIX H

IN THE MUNICIPAL COURT OF _____, KANSAS

CITY OF _____, KANSAS

vs. Case no.

_____,

WAIVER OF COUNSEL -- SHOW CAUSE FOR INDIRECT CONTEMPT

The undersigned hereby acknowledges being advised of the following by the Municipal Court of _____, Kansas:

1. Notice of the claimed violations of the Court's orders;
2. Disclosure of evidence against me;
3. That the City has the burden of establishing the violations charged and that I have the right to be present at a hearing on the charges against me;
4. My right at a hearing to present evidence, subpoena witnesses, and cross-examine witnesses brought by the City to testify against me; and
5. My right to deny or admit the claimed violations of the Court's orders.

I understand that I may be sentenced to a maximum of _____ days in jail if I am found in contempt in this matter.

STIPULATION

___ I admit that I have violated the Court's orders.

___ I deny committing the violations alleged and agree to proceed to hearing without counsel.

The undersigned further acknowledges that the Court has advised me of my right to counsel; that I can hire an attorney of my choosing and, if I cannot afford an attorney and I might be deprived of my liberty if found in contempt, the Court will appoint an attorney to represent me in this case. Notwithstanding my right to counsel, either retained or appointed, I hereby waive this right and agree to proceed as indicated above. I waive an attorney and enter my stipulation above without any promises being made to me by anyone and without any force or coercion being used against me.

DATE _____

_____
Defendant

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20___.

_____
Judge of the Municipal Court

I hereby certify that the above-named person has been fully informed of the alleged violations of the Court's orders and of the defendant’s right to have counsel, either retained or appointed, to represent the defendant at the proceedings before this Court and that the accused

has executed the above waiver in my presence, after its meaning and effect have been fully explained to the defendant, this _____ day of _____, 20___.

_____
Judge of the Municipal Court