

MEMORANDUM

**To:** Kansas Judicial Council  
**From:** Judicial Council Municipal Court Advisory Committee  
**Date:** December 4, 2009  
**Subject:** Report of the Municipal Court Advisory Committee on proposed amendment to K.S.A. 12-4117.

In preparing the 2009 supplement to the *Kansas Municipal Court Manual*, Mary Feighny, Attorney General's office, asked the Judicial Council Municipal Court Manual (MCM) Committee to review K.S.A. 12-4117 which requires an assessment in any municipal court case "charging a crime other than a nonmoving traffic violation, where there is a finding of guilty, a plea of guilty, a plea of no contest, forfeiture of bond or a diversion". In 2000, the MCM Committee proposed an amendment to this statute which resulted in the current language. That amendment was intended to clarify whether offenses such as parking violations or nonmoving traffic violations require payment of an assessment. However, there still seems to be some confusion as to which municipal ordinance violations require the payment of an assessment.

There is not a definition of "crime" in the municipal code. Therefore, some jurisdictions have interpreted the term broadly to include all municipal ordinance violations while others have sought a definition elsewhere. Those jurisdictions typically have referred to the definition of "crime" in K.S.A. 21-3105 to determine whether the assessment should apply to the particular ordinance violated. K.S.A. 21-3105 defines a crime as "an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized." Although most, if not all, municipal ordinance violations result in a fine and/or jail time, an Attorney General opinion issued in 1997 stated that municipal ordinances are not laws, and since they are not laws, violations of ordinances without a statutory counterpart are not crimes. See Ag. Op. 97-31. Therefore, under the logic of that opinion, an ordinance violation for which there is no statutory counterpart would not require an assessment.

While the jurisdictions who interpret the word “crime” broadly have been charging the assessment on all ordinance violations, those jurisdictions following the statutory definition in conjunction with the Attorney General’s opinion have only been charging the assessment on ordinance violations that have a statutory counterpart. The proposed amendment would clarify and support the intent of the statute which is to require an assessment in any case charging a municipal ordinance violation except those charging nonmoving traffic violations such as parking violations. The proposed amendment is as follows:

12-4117. Municipal court assessments. (a) In each case filed in municipal court, ~~charging a crime~~ other than a nonmoving traffic violation, where there is a finding of guilty, a plea of guilty, a plea of no contest, forfeiture of bond or a diversion, a sum in an amount of \$19 shall be assessed and such assessment shall be credited as follows:

One dollar to the local law enforcement training reimbursement fund established pursuant to K.S.A. 74-5620, and amendments thereto, \$11.50 to the law enforcement training center fund established pursuant to K.S.A. 74-5619, and amendments thereto, \$2.50 to the Kansas commission on peace officers' standards and training fund established by K.S.A. 74-5619, and amendments thereto, \$2 to the juvenile detention facilities fund established pursuant to K.S.A. 79-4803, and amendments thereto, to be expended for operational costs of facilities for the detention of juveniles, \$.50 to the protection from abuse fund established pursuant to K.S.A. 74-7325, and amendments thereto, \$.50 to the crime victims assistance fund established pursuant to K.S.A. 74-7334, and amendments thereto and \$1 to the trauma fund established pursuant to K.S.A. 2008 Supp. 75-5670, and amendments thereto.

(b) The judge or clerk of the municipal court shall remit the appropriate assessments received pursuant to this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the local law enforcement training reimbursement fund, the law enforcement training center fund, the Kansas commission on peace officers'

standards and training fund, the juvenile detention facilities fund, the crime victims assistance fund and the trauma fund as provided in this section.

(c) For the purpose of determining the amount to be assessed according to this section, if more than one complaint is filed in the municipal court against one individual arising out of the same incident, all such complaints shall be considered as one case.