

Report to Public Safety & Regulatory Services Committee Livability Offenses – Additional Court Options

What is a “livability offense”?

While the term “livability offense” is not susceptible to clear definition, and the meaning of the term may vary from neighborhood to neighborhood, in general, a “livability offense” is any low level offense (typically a petty misdemeanor or misdemeanor offense) that impacts the quality of life of those that live, work and play in that neighborhood. Livability offenses are violations of either State statutes or City ordinances. Common livability offenses include loitering, lurking, lurking in possession of open bottle, possession of liquor in the park, littering, trespassing, begging, graffiti, consuming in public, prostitution, noise violations (e.g., boom cars), damage to property, and disorderly conduct (which includes public urination).

While the range of punishment alternatives for livability offenses has increased in recent years, the process of being arrested and arraigned often is the most significant punishment for low level offenders. Such consequences do not impress the individual victim, the victim community, or the defendant that low level offenses are taken seriously and that defendants are held accountable for their behavior.

In Minneapolis, frequently the offender is not arrested, but instead is issued a citation by a police officer. The offender must then schedule a court date, but often fails to do so. The result is that many offenders are never brought to court to face consequences for their actions, or the Court sets a hearing date so far into the future (in some cases, as much as six months) that the witnesses sometimes cannot be found, or the police officers who made the arrest cannot recall the incident. In addition, if the arresting police officer tab charges the offender, the jail staff will give the offender a future court date. Often, the offender ignores the court date, resulting in a bench warrant. This means that the criminal justice system must repeatedly deal with the same offender on the same offense many times in some cases.

BEST PRACTICES

The issues discussed above are not unique to Minneapolis. Most large urban areas face similar difficulties in addressing livability crimes. Two of the more innovative approaches to livability crime are in Midtown, Manhattan and Philadelphia, Pennsylvania.

Midtown, Manhattan Solution

In response to the proliferation of petty crimes that gave the Times Square neighborhood in New York City its notorious reputation, a collaboration of staff from the New York State Unified Court System, the City of New York and the Fund for the City of

New York (a private non-profit corporation) embarked on a two-year planning effort to establish the Midtown Community Court. The decision to establish the Midtown Community Court was grounded in the following propositions:

- That centralized courts focus resources on serious crimes and devote insufficient attention to quality of life offenses;
- That both communities and criminal justice officials share a deep frustration about the criminal court processing of low level offenses;
- That community members feel shut off and isolated from large-scale centralized courts;
- That low level offenses like prostitution, street level drug possession and vandalism erode the quality of life and create an atmosphere in which serious crime flourishes; and
- That, when communities are victimized by quality of life crimes, they have a stake in the production of justice and a role to play at the courthouse.

The establishment of the Midtown Community Court reflected a general recognition that the court's response to low level offenses should be more constructive and more meaningful to victims, defendants and the community. In designing the Midtown Community Court, project planners collaborated with community groups, criminal justice officials and representatives of local government to identify ways in which a community court could make case processing swifter, make justice more visible to the community, encourage the enforcement of low level offenses, marshal local resources and help restore neighborhoods victimized by low level crime. This collaborative process produced an approach to low level crime that recognized the victimization of the community, while addressing the underlying problems of defendants.

In October 1993, the Midtown Community Court opened as a three-year demonstration project, designed to test the ability of criminal courts to forge closer links with the community and develop a collaborative problem-solving approach to quality of life offenses. The Midtown Community Court draws upon local resources to develop a broad menu of constructive responses to low level crime. The Court combines punishment with help, sentencing offenders to perform community restitution – painting over graffiti, sweeping streets, stuffing envelopes for local non-profits – in the neighborhood they have harmed and providing a variety of social services on site, including drug treatment, education and health care.

To insure that community service, drug treatment, and other sanctions stand the best chance of success, Midtown assembled core resources that included an assessment team to determine whether the offender has substance abuse or mental health issues, a resource coordinator to match defendants with services, community service and other sanctions, counseling and meeting space, case managers, a community advisory board, and an evaluation team to assess the court's impact on case processing, recidivism, the quality of life in the community and the public confidence in the system. Using these resources, the Midtown Community Court aims to arraign and sentence offenders, within hours of the commission of the offense, to perform community based

work projects and/or participate in treatment. The offenders pay back the community through visible work projects carried out in the Midtown area, including sweeping streets, removing graffiti, cleaning bus lots, maintaining street trees, painting affordable housing units, and cleaning and painting subway stations. The offenders are easily identifiable by the jumpsuits or vests that they wear, bearing the Midtown Community Court name.

The Midtown Court is strictly an arraignment court: Anyone who pleads not guilty goes to trial at the criminal courts located downtown. In Midtown's experience, most people plead guilty. Once a defendant pleads guilty and is sentenced to community service, a court officer takes the defendant to meet with a coordinator who assigns the offender to a work project and/or to treatment. The community service is often completed the same day that the offender is sentenced.

The Midtown Community Court is not without its critics. The punishment meted out by the Midtown Court is more time-consuming than defendants receive elsewhere. As in Minneapolis, offenders of low level crimes whose cases are heard downtown often receive credit for time they have already served as punishment: in general, one night or a few hours. In Midtown Community Court, almost all offenders are sentenced to community service and/or treatment, necessitating far more involvement by court personnel. Others criticize the disparity between the downtown courts and the Midtown Court, which is backed partially by private funding. The success of the Midtown Community Court is now renown and has spawned models in several other communities, including another community court in the Redhook neighborhood of Brooklyn, New York.

Philadelphia, Pennsylvania Solution

Another court model exists in Philadelphia, Pennsylvania. In May, 1996, a "quality-of-life court" concept was developed by Philadelphia Municipal Court Judge Seamus McCaffery. The court was designed to meet the unfulfilled needs of neighborhoods and communities throughout Philadelphia for the enforcement of existing laws and ordinances prohibiting nuisance types of behavior. This behavior, unchecked, was so seriously and deleteriously affecting the quality of life throughout Philadelphia that people had begun to flee the city. Residents who could not afford to move became prisoners in their homes, unable to sit outside due to the nuisance crimes occurring all around them. Residents of these neighborhoods felt disenfranchised and powerless to stop the decline of their communities, and the prevailing perception in the neighborhoods was that the city government and its elected officials, the courts and the law enforcement community, neither "heard" nor cared about the deterioration of these communities.

Some of the crimes plaguing these neighborhoods included public drinking, public urination, underage drinking, and disorderly conduct. The city's politicians were made aware of the need for specific in-the-neighborhood enforcement of law against these nuisance crimes by the citizens of these Philadelphia neighborhoods, and well as by the

police. The police viewed enforcement as lax and ineffective due, in part, to the fact that nuisance type crimes were not treated seriously once they reached the court level.

A pilot project was launched in 1996 by Judge McCaffrey whereby judges who volunteered and other staff went out into communities, at night and on weekends, to handle the processing of individuals charged with nuisance crimes. This program involves holding court in police precincts, usually from 10:00 p.m. until the early morning hours. The court handles both trials and guilty pleas of various neighborhood offenders, immediately following the commission of the criminal act. All of the parties involved – the defendants, police and witnesses – are in the courtroom and the affected neighborhood residents are also present for the hearing. The matters heard are “summary” offenses, payable by fines only. The advantage to the court hearing only summary offenses lies in the fact that the defendant is not subject to jail time, and therefore is not eligible to have an attorney appointed. This eliminates the need for attorneys to participate in this process.

The Nuisance Night Court in Philadelphia is staffed by a volunteer judge and by court staff who are paid through grant money. Most offenders plead guilty. For those who demand a trial, the trial is held on the spot and presided over by the judge. The arresting officer and other witnesses will present the case against the defendant. Penalties imposed when someone pleads guilty or is found guilty include fines and costs and/or community service. When fines and costs are not paid within the allotted time, the case is turned over to a third party collection agency. Occasionally, police officers issue citations for defendants to appear at a time when a judge will be presiding over Nuisance Night Court. If the defendant fails to appear, Pennsylvania law allows the case to proceed *in absentia*.

Since the creation of Nuisance Night Court, the program has expanded into “Eagles Court”. “Eagles Court” puts a judge and staff in a courtroom to handle any quality of life infractions committed during NFL games in Philadelphia. The program has also expanded into a “Summary Diversion Program” which allows first time offenders charged with quality of life violations to attend a class given by volunteer attorneys, dealing with issues such as underage drinking, retail theft, and disruptive community behavior. The classes are held on Saturday mornings so as not to interfere with school and work.

TWO OPTIONS FOR MINNEAPOLIS LIVABILITY OFFENSES

The primary difference between the system in place in Hennepin County and the Philadelphia Nuisance Night Court is that the “livability” offenses that this Office prosecutes are primarily misdemeanors. In Philadelphia, the offenses are the equivalent of our petty misdemeanor offenses. This means that without decriminalization of some of these offenses, an offender has the right to have an attorney represent him or her at all stages of the proceedings.

Notwithstanding the differences between the status of offenses in Philadelphia as compared with Minneapolis, my office believes that two options exist for Minneapolis to implement a system to more rapidly handle livability offenses. The first option, (Option “A”), is a same day court or night court. The second option (Option “B”), is a next day court.

Option A – Same Day Court/Night Court

Under a same day court or night court concept, an offender of a livability offense would be adjudicated the day or evening that the offense is committed. As is done in Philadelphia, it is anticipated that a police officer would escort the offender to the location where “court” is held, and, if the offender indicates that he will plead guilty to the offense, the officer will be released immediately to return to duty.

Under this model, the City Attorney’s Office would need a prosecutor present to review the case, and if the case proceeds, to “certify” or make the case a petty misdemeanor. This action would essentially decriminalize the offense, thereby eliminating the need for the offender to have representation by a private defense counsel or a public defender.

Once the offender appears before a judge and pleads guilty, the offender could be immediately “sentenced” to either pay a fine, pay costs, perform community service, be referred to a restorative justice program, or perform sentence to serve (“STS”). If the offender is sentenced to STS, it is anticipated that Hennepin County Corrections staff will be needed to supervise the STS crews.

If the offender demands a trial, the officer will either remain at the court location, or will provide the court staff his or her pager or cell phone number so that the officer can return to court when he or she is needed to testify. Once the judge is ready to hear the case, the officer and any other witnesses will testify, followed by the offender. The judge will decide the case immediately, and if the offender is found guilty, the sanctions indicated above will be imposed.

Option B – Next Day Court

This option differs somewhat from the Option A in that adjudication of the offense will not take place immediately, but will take place relatively soon after the offense is committed. Under the next day court option, the offender will be issued a citation by the officer to appear in court the day after (or as close in time to the offense as possible), following the offense. Because a little more time between commission of the offense and the appearance in court will have elapsed, the City Attorney’s Office will not need a prosecutor present to review the cases, provided that the reports are submitted to the City Attorney’s Office sufficiently in advance of court to allow this Office to review the cases, and to “certify” the cases as petty misdemeanors.

Once the offender appears in court, the matter will be handled much the same as in Option A.

Advantages and Disadvantages to Same Day Court/Night Court or Next Day Court

Some of the advantages of a same day court or night court include immediate adjudication of offenses, meaningful sanctions, more offenders appearing in court, more fines paid resulting in more revenue to the City, and less time spent overall on any particular livability offense because the matter will be processed fewer times.

The primary impediment to instituting a same day court/night court or next day court in Minneapolis is the current status of livability offenses. Under both State statutes and the City's ordinances, most livability offenses are misdemeanors. Under the current model of misdemeanor prosecution, attorneys (prosecutors and defense attorneys) are necessary to prosecute such offenses. Two options exist to overcome this impediment: The City Attorney's Office can either "certify" these cases as petty misdemeanors, or the City can seek changes to either City ordinances or State statutes to "decriminalize" certain offenses.

Decriminalization may result in eliminating jail time as a possible sanction, thereby losing the ability to create a record of convictions, and the possibility of enhancing offenses to more serious offenses in some cases. In addition, the district court would need to create this model utilizing, at a minimum, judges, court staff, and STS staff. Also, space and all necessary furnishings and supplies for the court must be located. My staff has discussed with Officer Craig Williams the feasibility of conducting court proceedings in the former juvenile unit in City Hall.

Discussed below is how the Hennepin County criminal process currently operates and the constrictions under which a same day court/night court or next day court would operate if the current system is not modified.

HENNEPIN COUNTY CRIMINAL PROCESS

When a person has committed a misdemeanor offense, a police officer may either issue a citation to the person, or tab charge the person with the offense. A citation is a tag or ticket issued to a defendant ordering him or her to set a court date. A tab charge, in misdemeanor cases, is generally the statement of facts contained in the police report. A tab charge is filed at the time a defendant is booked into jail. In Minneapolis, officers arresting persons who will appear in same day court/night court or next day court would be proceeding without arrest warrants. Therefore, officers would choose between using a citation or tab charge. Minnesota Rule of Criminal Procedure 4.02 governs "Arrests without a Warrant". Subd. 2. "Citation", reads as follows:

The arresting officer or the officer's superior may issue a citation to and release the arrested person as provided by these rules, and must do so if ordered by the prosecuting attorney or by a judge or judicial officer of the district court of the county where the alleged offense occurred or by any person designated by the court to perform that function.

Rule 1.04 (c) governs tab charges and reads:

As used in these rules, the term “tab charge” is a brief statement of the offense charged including a reference to the statute, rule, regulation, ordinance, or other provision of law which the defendant is alleged to have violated which the clerk shall enter upon the records. A tab charge is not synonymous with ‘citation’ as defined by Rule 6.01.

Rule 6.01 of the Rules of Criminal Procedure governs pre-trial release. Subd. 1. is entitled “Mandatory Issuance of Citation” and speaks to misdemeanors. It reads:

Law enforcement officers acting without a warrant, who have decided to proceed with prosecution, shall issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that there is a substantial likelihood that the accused will fail to respond to a citation. The citation may be issued in lieu of an arrest, or if an arrest has been made, in lieu of continued detention. If the defendant is detained, the officer shall report to the court the reasons for the detention. Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued.

Issues to be addressed to allow for implementation of same day court/night court or next day court.

Unless statutory changes are made to the status of offenses that constitute “livability” crimes, implementation of a same day court/night court or next day court must consider the following issues:

A. The Process to be Used for Scheduling a Person for Court.

Because bookings are not preferred for misdemeanor violations, except in rare situations, citations usually would be used. The citation could specify a same day or a next day court date, requiring the offender to appear then. The City needs to develop a citation that would specify a court date, as the citations currently in use refer the offender to the Violations Bureau. Under the current system, once the offender contacts the Violations Bureau, he or she may pay the fine, if the offense is payable by fine only, or set a court date.

If Minneapolis were to implement a same day court/night court or next day court which mandated bookings in a particular geographic area, or even city-wide, the City may face allegations of violations of due process and equal protection, as a mandatory booking may be found to be in violation of the Minnesota Rules of Criminal Procedure.

A critical issue to be addressed is the amount of time it will take the Minneapolis Police Department to get CAPRS reports into the system so they are available for immediate court appearances. If the offenses are not certified as petty misdemeanors, but will remain misdemeanor offenses, this office will need to review these reports prior to court in order to insure offenders are correctly charged and to make intelligent offers for case resolution. One way to handle this would be to assign an attorney to review reports at the place where the court will be located, as the officers write them. This would ensure that the reports are complete, the offenses are charged appropriately, and that the reports are reviewed prior to court. The reviewing attorney could then write negotiation offers on these cases, based upon the offense and input from the arresting officers.

B. The Same Day Court/Night Court or Next Day Court Calendar

If these cases are not certified as petty misdemeanor, and remain misdemeanors, then how this program will be implemented, and the size of the calendar, will depend upon whether the program will utilize a separate court calendar or be combined with another calendar, such as in-custody arraignments at Hennepin County's Public Safety Facility. The calendar upon which these cases are handled may dictate the number of cases to be heard on the same day court/night court or next day court calendar. If this project uses a separate calendar, the number of cases should pose no problem, as long as there are enough cases to support and justify a separate calendar. If the cases are joined on an existing calendar, there may be an issue with the number of cases which can be effectively handled on the calendar. This is especially true if Sentence to Serve (STS) is to be heavily used, as STS requires the use of the County's Court Services personnel. If cases are to be joined on an existing calendar, the City should consider limiting the type of crimes placed on the calendar, e.g., consuming in public, littering, etc.

C. City responsibilities for implementing a Same Day Court/Night Court or Next Day Court

- Design a citation which would allow police officers to issue citations which specify a mandatory court date.
- Identify the specific geographic area of the City to be the site of arrests for Same Day Court/Night Court or Next Day Court.
- Identify the types of crimes to be cited for the Same Day Court/Night Court or Next Day Court Calendar.
- Train Minneapolis Police Officers on the use of the Same Day Court/Night Court or Next Day Court citations.
- Develop a method to expedite entry of reports into the CAPRS system.
- Assign an Assistant City Attorney to be physically stationed at the appropriate command to review police reports to be on the Same Day Court/Night Court or Next Day Court calendar.

- Work in conjunction with Hennepin County District Court Administration to develop and implement a system by which the citations create a calendar for the Same Day Court/Night Court or Next Day Court.
- Implement a method by which all reports for Same Day Court/Night Court or Next Day Court offenders will be available for review by Assistant City Attorneys for appropriate negotiations to be placed in files and will allow at least ½ hour for defense attorney review before start of the calendar.

D. Hennepin County responsibilities for implementing Same Day Court/Night Court or Next Day Court

If the cases are heard in Same Day Court/Night Court or Next Day Court, there also are a number of implications for Hennepin County:

- The Hennepin County Sheriff's Office may need to staff the courtroom.
- A separate calendar may require the staffing from Hennepin County District Court as the Court may need a calendar clerk and a judge.
- Community Corrections may need to supply staff to schedule and monitor STS in Next Day Court.
- The Hennepin County Public Defender's Office may be needed to staff the courtroom. The number of attorneys would depend on the number of cases on the calendar and the number of public defender eligible offenders on the calendar.

E. Recommendation for Same Day/Night Court or Next Day Court

Despite the fact that livability offenses are often misdemeanors in Minnesota, my office believes the Philadelphia Nuisance Night Court model has significant merit and could be implemented in Minneapolis on a pilot project basis. This would require the Minneapolis City Attorney's Office to certify the cases as petty misdemeanors if the defendant consents. Under Minnesota law, the defendant must consent to certification of the offense as a petty misdemeanor. While a petty misdemeanor is not punishable by jail time but a maximum \$200 fine only (in most cases), Sentence to Serve (STS) is and can be used in lieu of the fine.

By making these offenses petty misdemeanors, the same day court/night court or next day court could proceed much as it does in Philadelphia with only a judge, a clerk, and STS representative, police officers, witnesses and neighborhood representatives as observers. Neither public defenders nor sheriff's deputies would be needed. Implementation of a Philadelphia-style same day court/night court or next day court would require the following:

- Development of a citation form to be used for these cases.

- Development of a system to place the citations on a calendar.
- Commitment from the Hennepin County District Court of judges and court personnel to staff the courts.
- Commitment from either Minneapolis or Hennepin County to provide space where court could be held. (If space is available, the City Hall location described above may make sense.)
- Any other personnel that may be needed to supervise STS assignments.

NEXT STEPS

The court system in Hennepin County is not currently designed to arraign offenders, not in custody, either the day of or the day after their arrest. Therefore, the success of the same day court/night court or next day court will require the support and complete cooperation of all parts of the criminal justice system. In order to implement a pilot project quickly, all members of the criminal justice system must be flexible and must be able to “think outside the box”. Next steps include the following:

- Involve the Minneapolis Police Department in the analysis of the same day court/night court or next day court options
- Discuss the same day court/night court and next day court with other members of Criminal Justice Coordinating Committee.
- Seek agreement from Chief Judge Burke on assigning judicial personnel.
- Discuss the program with Hennepin County Community Corrections regarding the STS component.
- Seek funding from the business and private foundation communities.
- Involve the neighborhoods and impacted communities.