

City Of Minneapolis Arrest and Prosecution Policies

**Minneapolis Police Department
Minneapolis City Attorney's Office
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PURPOSE

As the City of Minneapolis continues to develop strategies designed to improve its response to misdemeanor criminal activity, it is important that policy makers, city employees and citizens fully understand the City's current misdemeanor arrest and prosecution policies. This white paper details the City's current misdemeanor arrest and prosecution policies.

ARREST POLICIES

The Minneapolis Police Department's arrest and detention policies are governed by state statutes, rules of criminal procedure, and policies of the Hennepin County bench. The policies related to arrests are found in the Minneapolis Police Department Manual, chapters 8 and 9.

Generally MPD officers make arrests in three circumstances. The first is an arrest based on information about a newly committed crime. An example would be an arrest for DWI based on an officer seeing a person driving erratically and failing field sobriety tests. The officer bases the arrest on personal observation and the examination of evidence at the scene.

The second general type of arrest is an arrest for a PC pickup issued by an investigator. In these circumstances, the arresting officer may have no knowledge of the crime committed, but relies on the pickup order. The pickup order is a statement from an investigator that probable cause exists to arrest the named person for a particular crime. PC pickups are generally issued only for felony level crimes, although some misdemeanors, like domestic violence, can result in a PC pickup under certain circumstances.

Finally, officers also make arrests based on arrest warrants. Warrants are issued by the courts and are a court order to arrest a named subject and deliver that subject to the court. Warrants are issued against persons charged with a crime (for failure to appear in court for example), and against people already convicted of a crime (for violations of probation or parole). Warrants can be issued for misdemeanor, gross misdemeanor, and felony crimes, and can be issued by both state and federal courts.

I. MISDEMEANOR ARRESTS LIMITATIONS

A person first enters the criminal justice system through a variety of means. The most common means are through arrest, citation, or tab charge by a police officer. Pursuant to Minn. R. Crim. P. 6.01, police officers must 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 person will fail to respond to a citation. In addition, pursuant to Minn. Stat. section 629.24, a police officer may not arrest someone for a misdemeanor offense unless the officer personally observes the person commit, or attempt to commit the offense. Police officers exercise discretion, within the constraints of Rule 6.01 and Minn. Stat. § 629.34 in determining whether to make an arrest or whether to issue a citation.

II. COURT APPROVED BAIL SCHEDULE

Several years ago, because of serious over-crowding in the old jail, the practice developed that the Sheriff released all misdemeanor arrestees with "no bail required" (NBR). There is no longer a need for this practice, which has contributed to bad policy in the area of arrest, detention, and release (the "revolving door" problem). A committee comprised of representatives from the Sheriff, Court, City Attorney, Probation, and Public Defender met for several months to gather and review data, discuss alternatives, and recommend new

procedures. Based on these discussions the following improvements to pretrial detention policies were implemented effective April 4, 2005:

- Pursuant to Minn. R. Crim. P. 6.01, law enforcement officers may “book” a defendant into the public safety facility on a misdemeanor charge only when “it reasonably appears that 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 public safety facility requires all law enforcement officers to complete a form at the public safety facility stating in detail the Rule 6.01 reasons supporting the officer’s decision to detain.
- In addition, the Minneapolis Police Department has implemented a policy that requires arresting officers to obtain supervisor approval before all misdemeanor bookings.
- All persons booked into the public safety facility have bail amounts imposed according to the attached bail schedule. (See attachment “A”). Unless a person posts bail or is eligible for release by the Hennepin County pre-trial release unit, he or she is held at the public safety facility until his or her in-custody arraignment court appearance. The only exception to this policy is a situation where the Sheriff determines that release is medically necessary. In that situation, the sheriff may give the person notice of any scheduled court appearance date and release the defendant to the Hennepin County Medical Center for treatment or medical intervention at the discretion of the sheriff without bail. If the person posts bail or is released by the pretrial release unit, the public safety facility schedules the person’s arraignment and provides the person a written reminder of his or her arraignment court date.
- In the absence of a Rule 6.01 reason to book, a Minneapolis Police officer who is unable to confirm a misdemeanor defendant’s identify at the scene will transport the defendant to the First Precinct police station’s new identification unit, supported by the First Precinct desk staff. Once the defendant is properly identified the police officer will issue the defendant a citation which contains a court date. In addition, the Minneapolis Police Department plans to increase the use of IBIS portables in the field.

III. SPECIFIC ARREST POLICIES

Misdemeanor arrest policies are detailed in section 9-103 of the department manual. Officers have wide discretion in making arrests for misdemeanors, and supervisory approval is not needed in most cases. Generally misdemeanor violators are issued a citation in lieu of booking into jail and released. The policy details the exceptions that permit a jail booking, as described below.

9-103 MISDEMEANOR ARRESTS - ADULTS (05/29/02) (09/16/04)

Adult misdemeanor violators shall be issued citations in lieu of arrest *unless* the officer believes that one of the following circumstances exists:

- To prevent bodily harm to the accused or another.
- To prevent further criminal conduct.
- There is a substantial likelihood that the accused will fail to respond to a citation.
- The officer has found that the accused has an outstanding warrant.

The officer must be able to articulate to the court *and in the CAPRS arrest report the reason(s) why it was necessary to arrest a person rather than issuing a citation.*

To assist officers in identifying persons with no ID, the 1st Precinct operates an identification center. Arresting officers may bring an arrested party to the 1st Pct where officers will make an effort to identify them from computer records or other means, then issue a citation or court date and release them.

DWI ARRESTS

Though persons arrested for DWI may be cited and released after the intoxilizer test, they are most often booked into jail. This is done to prevent further criminal conduct, i.e. retrieving their car from the impound lot and driving it while still intoxicated. Also, an intoxicated person released on their own can be vulnerable.

9-104 ARRESTS FOR DRIVING WHILE INTOXICATED (DWI) (05/29/02)

When suspects are arrested for DWI, they shall be taken to the Chemical Testing office, Room 19, for testing and video taping procedures. Suspects may be released after testing and issued a citation if they meet the conditions for issuing a citation in lieu of arrest.

VIOLENT CRIMES

The policies related to arrests for crimes of violence are found in section 9-104.01 of the Department Manual. Violent offenders, even misdemeanants, are more likely to be booked into jail under the exception allowing arrest to prevent further harm to the victim. This is especially true in the case of domestic assault. Minneapolis has a policy to arrest and book in to jail domestic violence offenders if they are located with the proscribed PC arrest period.

The policy also details the notification forms that must be completed to comply with jail procedures.

9-104.01 ARRESTS FOR CRIMES OF VIOLENCE (05/29/02)

Minn. Stat. §629.72 requires that victims of crimes of violence be notified of an arrested person's release. Domestic assault victims must also be notified of other relevant case information.

In order to comply with these laws, officers shall complete a Crime of Violence/Attempt Crime of Violence Information Form (HC 6194). This form shall be left at HCADC when the suspect is booked.

When a juvenile is booked at the Juvenile Detention Center for a crime of violence, a Victim Information Form must be completed. The forms are available at the Juvenile Detention Center.

CITIZEN'S ARREST

Minneapolis Police officers are supplied with standardized citizen's arrest forms, which are used to facilitate a citizen's arrest at a complainant's request. Officers have discretion in deciding to allow a citizen's arrest, and have the option of completing an offense report and referring the complainant to the City Attorney's office for follow up.

9-107 CITIZEN'S ARRESTS (05/29/02)

Citizen arrests for misdemeanor crimes can only be made when the crime was committed in the complainant's presence.

Citizens making arrests must complete a Citizen's Arrest Form (MP-3406). Security personnel from businesses that make arrests on a regular basis may be allowed to use the standard CAPRS offense report instead of the Citizen's Arrest form.

Officers shall determine whether the circumstances justify taking the accused into custody. If officers feel that the arrest is illegal, the officer shall refer the complainant to the City Attorney's Office.

If the accused is to be taken into custody, officers shall verify the identity of the complainant and assist in completing the Citizen's Arrest Report. Complainants should be advised that the City Attorney will notify them if a formal complaint is needed.

FELONY ARRESTS

Unlike misdemeanor arrests, felony arrests (except an arrest for a felony warrant or PC Pickup) require the approval of a supervisor. Felony suspects arrested for a new crime are nearly always booked into jail, and placed on a 36 hour PC hold. Reporting standards for PC felony arrests are greater than for misdemeanors. A Judicial Probable Cause Statement must be completed, signed by the arresting officer, and notarized at the time of the booking. This statement is then made available for judicial review. A judge reviews the probable cause described in the PC statement and decides whether detention is warranted.

9-101 FELONY ARRESTS - ADULTS (05/29/02)

All probable cause adult felony arrests must be authorized at the scene of arrest whenever possible. In the event the supervisor is unable to respond to the scene of

the arrest, authorization may be given by radio, telephone or MDT/MDC. The probable cause felony arrest may be authorized by:

- The arresting officer's supervisor, or
- An investigator from the concerned investigative unit/division, or
- Any other supervisor

Supervisors will add their remarks via MDT/MDC to indicate their approval of probable cause and also whether they made the approval at the scene or via radio/telephone or MDT/MDC.

Arrests made on the basis of warrants or PC pickups do not require supervisor's approval.

Prior to transporting arrestees to Hennepin County Adult Detention Center (HCADC), officers should consider a debriefing session. Arrestees shall be taken to HCADC for processing unless requested to be transported to the concerned investigative unit.

The Authority to Detain form (HC 6377) shall be completed. The approving supervisor's name and badge number must be listed in the remarks section of the Authority to Detain form. The name of the supervisor approving the arrest and continued detention of the suspect must be included in the narrative section of the CAPRS report.

The original will be left at the HCADC and the carbon copy shall be given to the Police Typist to accompany the CAPRS report. The 36-Hour Expiration Advisory (HC 6400) shall be completed. In order to comply with the Supreme Court imposed 48-Hour Rule, officers shall note the exact time of arrest. The time of arrest is not when the suspect was booked or when the reports were made. The original 36-Hour Expiration Advisory shall be left at HCADC and the carbon copy will be forwarded with the case to the appropriate investigative unit.

Arrests for criminal sexual conduct (CSC), including PC Pick-ups, require an officer to complete a Criminal Sexual Assault Victim Notification form (HC 6170).

**9-101.01 FELONY AND GROSS MISDEMEANOR ARREST REPORT
REQUIREMENTS PUBLIC INFORMATION – JUDICIAL PROBABLE CAUSE
(05/29/02)**

For felony and gross misdemeanor arrests, the following guidelines apply:

In Supplement Zero (0) of the CAPRS data entry screen, a pre-written prompt entitled "Public Information" appears. Following this prompt, officers are to briefly detail an incident/arrest. No names, addresses or any other information that would identify a victim or witness shall be entered in this section of the report.

The next prompt is the Judicial Probable Cause Oath statement. Following this prompt, officers shall write approximately one to two paragraphs detailing the probable cause for the arrest.

Supplement One (1) of the CAPRS report shall describe the entire incident in detail.

In cases of an arrest based on a PC arrest bulletin (PC Pick-up), officers shall attach a PC Pick-up to the CAPRS report. Copies of the PC Pick-up may be obtained from the Transcription Unit's file or MPD Net.

After administering a written or oral oath, peace officers can sign a written report of another officer for the purpose of providing probable cause for the underlying arrest.

Officers shall swear to and sign their Judicial Probable Cause statement in front of an MPD notary. Peace Officers can sign a Probable Cause statement written by another officer for the purpose of providing probable cause for arrest.

MPD notaries shall witness the swearing and signing, and after such fact, shall sign the statement with their signature, license number, and the date their license expires.

The senior officer making the arrest is responsible for making sure all Probable Cause statements are notarized.

Transcription Unit staff shall distribute the signed and sworn statements to the Criminal History Unit during weekend and holiday hours and to the investigative units during normal work hours.

Criminal History staff shall fill out the court form and attach it to the arrest report.

This policy also applies to felony arrests of juveniles and to gross misdemeanor arrests.

INJURIES

The Hennepin County Jail has a nursing staff that evaluates ill and injured prisoners before admitting them to the jail. Arrested parties who complain of injuries or illness too severe for the jail staff to handle are rejected, and officers must then take them to HCMC for treatment. Persons being held for felony level charges (PC arrests) must be guarded by MPD officers until such time as they are formally charged. At that point the Sheriff's office takes over guarding the prisoner.

9-108 ARREST OR DETENTION OF INJURED ADULTS (05/29/02)

All adult arrestees needing medical attention, including those with known or suspected drug ingestion, shall be transported to the Hennepin County Medical Center (HCMC).

Hospital personnel or hospital security will not hold or guard an arrestee. Officers are responsible for the custody of their arrestees while receiving medical attention.

If an injured misdemeanor arrestee is delayed at the hospital longer than the arresting officers are able to wait, officers shall issue a citation in lieu of arrest and complete a CAPRS report. Officers shall retain custody of arrested felons needing medical attention until they can be transported to the Hennepin County Adult Detention Center.

Arrested felons requiring hospitalization shall be brought to HCMC (Hennepin County Medical Center), if possible. The arresting officers shall notify their on-duty supervisor, who shall then contact the on-duty jail supervisor to arrange for relief.

Officers assigned to the precinct where the arrest was made shall have custodial responsibility until properly relieved by the Hennepin County Sheriff's Office.

JUVENILE ARRESTS

The laws applying to adults also apply to juveniles, and generally the arrest policies for juveniles are similar to those for adults. Due to the vulnerability of juveniles and the role of the parent or guardian in the juvenile court system, there are specific MPD policies that dictate how juvenile arrests are handled. Particular attention is paid to juveniles who are under the influence of drugs or alcohol.

8-202 MISDEMEANOR ARRESTS - JUVENILES (03/06/97)

Officers arresting a juvenile for a misdemeanor will issue a Hennepin County Juvenile Misdemeanor Citation (Tag) for non-traffic misdemeanors, petty misdemeanors and status offenses. When tagging a juvenile for more than one non-traffic offenses all offenses shall be written on one tag.

After issuing the HC Juvenile Misdemeanor Tag, the juvenile should be taken home and released to a parent or guardian, **except** when the arrest is for domestic assault. For a domestic assault arrest the juvenile shall be taken to the Juvenile Detention Center.

If the officers cannot find a parent or legal guardian or are unsure of the juvenile's identification, the officers shall issue a tag and transport the juvenile to:

- 1) The Juvenile Unit during office hours; or
- 2) The Juvenile Detention Center when the Juvenile Unit is closed; or
- 3) The Hennepin County Medical Center Emergency Room when the suspect is intoxicated, under the influence of drugs or injured. Officers shall indicate on the Offense/Incident report that the juvenile was brought to HCMC for medical evaluation and authorization was given to HCMC to release the juvenile to a parent or legal

guardian after completion of the medical evaluation. (12/14/89) (12/14/89) (04/01/93) (03/06/97)

After arresting and tagging the juvenile, the arresting officers shall complete an Offense/Incident Report. The officers may, for status and misdemeanor arrests, allow HCMC to release the suspect to a parent or legal guardian. Officers are not required to maintain physical custody of the juvenile. The Offense/Incident Report must document who the juvenile was released to and the citation (tag) number.(12/14/89) (03/06/97)

8-203 JUVENILES - WARRANTS

Juveniles arrested on a warrant where no other charges are pending can be transported directly to the Juvenile Detention Center. Only the Arrest/Citation Report is needed on a warrant pickup.

Warrant checks on juveniles can be made by contacting the Emergency Communications Center. The Hennepin County Juvenile Warrant Division at 348-3633 can also be used as a back up source of information. (03/06/97)

The arresting officers shall complete an Offense/Incident Report, an Arrest/Citation Report, and statements when appropriate.

Juvenile felony suspects shall be fingerprinted and photographed (see 8-213). (03/06/97)

8-204 PARENTAL NOTIFICATION OF ARRESTED JUVENILE

When juveniles are arrested and transported to the Juvenile Unit office, the Juvenile investigator assigned to the case shall notify the parents or legal guardian. Juvenile Detention Center staff make notifications for juveniles booked at the Detention Center. Parents of hospitalized juvenile arrestees are normally notified by hospital admitting personnel. (01/23/92) (03/06/97)

8-205 ADULT PROCESSED AS A JUVENILE

When an investigation reveals that a person processed as a juvenile is eighteen years of age or older at the time of the commission of the offense, the concerned officer or investigator shall notify the proper investigative division.

8-206 JUVENILE PROCESSED AS AN ADULT

Anyone under the age of eighteen processed as an adult shall be turned over to the Juvenile Unit immediately after the true age is established.

8-208 ARREST OR DETENTION OF INJURED OR INCAPACITATED (UNDER THE INFLUENCE) JUVENILES (04/01/93)

Any juvenile arrestee needing medical attention or evaluation shall be transported directly to the HCMC Emergency Room. This policy includes those who:

1. Have ingested or are suspected of ingesting drugs or other dangerous substances,
2. Are under the influence of drugs or alcohol (except those driving under the influence, see 8-302.01),
3. Are physically injured. (12/14/89) (11/15/92)

However, a juvenile status offender, who is under the influence of drugs or alcohol and who is not in danger of causing self-harm or harm to any other person or property, may be released to the custody of a parent or another responsible adult. Officers must still complete the appropriate reports and document who the juvenile was released to in their report. (See 8-303). (12/14/89) (11/15/92) (03/06/97)

Hospital personnel and security staff will not hold or guard any arrestee. If a guard is needed, officers shall notify the Juvenile Detention Center Supervisor immediately. Usually, the first six to eight hours of guard duty will be the responsibility of the Police Department. The Precinct of the arresting officer(s) shall be responsible for providing a guard until properly relieved by the Hennepin County Sheriff. (12/14/89) (11/15/92)

Officers shall notify the Juvenile Unit by phone after transporting the juvenile to the HCMC Emergency Room to prevent a Missing Juvenile Report from inadvertently being taken. If the Juvenile Unit is closed, the officer shall notify the Criminal History Unit by phone after transporting the juvenile to HCMC. (12/14/89) (03/06/97)

CONCLUSION:

These policies address most situations and provide a set of guidelines and rules for officers when making arrests. No policy can be all inclusive, and as stated above officers generally have wide discretion within the law in deciding when to arrest and how to handle arrestees. Changes in the laws or rules governing arrests result in changes to the MPD policies.

PROSECUTION POLICIES

Part of the Minneapolis City Attorney's Office public safety strategy is to promote public safety by aggressively prosecuting all gross misdemeanor¹, misdemeanor², and petty misdemeanor³ crimes that occur in the city of Minneapolis. This chapter describes the prosecution process, details the city's prosecution policies and provides examples of how the city's policies are practically applied.

I. DIVISION ORGANIZATION

The Criminal Division of the Minneapolis City Attorney's Office is comprised of five teams - the Charging Team; the Domestic Abuse Team; the Special Prosecution Team; and two Regular Trial Teams. Understanding the criminal division's organization may aid one's understanding of the city's prosecution policies.

A. Charging Team

The charging team has three primary responsibilities: (1) charging all cases referred by a law enforcement agency, all cases where there was a complaint demand, and all cases referred for charging by the office duty attorney; (2) reviewing all enhanceable offenses, such as non-domestic assault and prostitution to determine whether a gross misdemeanor complaint should be issued; and (3) charging all of the in-custody cases each morning. The charging team also helps staff the non-domestic arraignment courts, office duty, and the pre-arraignment screening (PAS) process.

B. Domestic Team

The Domestic Abuse Team has primary responsibility for cases where the parties are involved in a significant romantic or sexual relationship, regardless of the charge. An example of "significant romantic or sexual relationships" includes those relationships where the parties call each other boyfriend/girlfriend and seem to be involved in some type of intimate or committed relationship.

The Domestic Abuse Team handles cases and/or charges which stem from the domestic relationship. Charges may include, but are not limited to, domestic assault, assault, violation

¹ A gross misdemeanor is defined under Minn. Stat. § 609.02, subd. 4 and Minn. Stat. § 609.03 (2) as any crime for which the maximum sentence to be imposed is imprisonment of not more than one year and or a fine of not more than \$3000, or both

² A misdemeanor is defined under Minn. Stat. § 609.02, subd. 3, and Minn. Stat. § 609.03 (3) as any crime for which the maximum sentence to be imposed is imprisonment of not more than 90 days and or a fine of not more than \$1000, or both.

³ A petty misdemeanor is defined under Minn. Stat. § 609.02, subd. 4a, as an offense which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed.

of order for protection, violation of a harassment order, stalking and/or harassment, damage to property, and disorderly conduct.

The Domestic Abuse Team does not handle cases if there is no romantic relationship between the parties involved. This is true even though the charge may qualify as domestic under Minnesota Statutes. Examples of cases not handled by the DA Team include those involving siblings, parent/children or roommates. The regular trial teams handle these cases once arraignment has occurred.

C. Special Prosecutions Team

The Special Prosecutions Team (SPT) is comprised of two courtroom attorneys, one paralegal, and community attorneys who are assigned to work in four of the five police precincts. It is anticipated that the final police precinct, the fifth precinct, will receive a community attorney on approximately June 1st. The SPT is responsible for prosecuting top offenders, "organized prostitution" (escort or massage/sauna cases), and other cases as requested by the Criminal Deputy. The SPT is also responsible for addressing crimes that disproportionately affect a specific police precinct, training police officers and community members, and reaching out to address community concerns.

Top offenders are designated as such by either the police department or the City Attorney's Office. Each of the five police precincts designates 10 top offenders at any given time. Police-designated top offenders are put in blue files. The City Attorney's Office designates approximately 50 additional top offenders, based on the frequency of arrests for livability crimes in the past year. City Attorney-designated top offenders are put in green files. Each top offender file contains all prior criminal histories, prior police reports, prior probationary information and all other relevant documentation.

The Special Prosecutions Team is responsible for charging, file review, negotiation, and court appearances at all stages, trials, and probationary hearings on all top offender cases. The Special Prosecution Team is also responsible for handling the prosecution of "organized prostitution" that typically involves escorts or saunas. The two courtroom attorneys rotate their assignments every half month. One attorney handles trials for the first 15 days of the month while the other attorney is assigned to "special prosecution review", which involves covering all other appearances, file review and charging.

The community attorneys focus crime efforts on crime issues within their respective precincts. Crime efforts may include: Electronic Court Watch Programs, Supervising Diversion Programs, Community Trainings, Police Trainings, Community Meetings, and special projects. The community attorneys answer questions, provide legal advice and analysis, and training to the police officers. The community attorneys also assist with daily assignments such as office duty and may cover court appearances for the special prosecutions team when the two courtroom attorneys are unavailable.

D. Regular (non-domestic) Trial Teams

There are two regular trial teams. Each team is comprised of five or six attorneys and one paralegal. The regular trial teams are responsible for handling all non-domestic gross misdemeanor, misdemeanor, and petty misdemeanor cases.

The regular trial teams are responsible for staffing the non-domestic pre-trial calendar, all non-domestic trials and petty misdemeanor court trials. The trial teams also help staff the non-domestic arraignment courts, office duty, pre-arraignment screening (PAS), and miscellaneous appearances. The trial teams work with the Council on Crime and Justice victim liaisons (CVL) on cases where there is a victim. Victim liaisons gather information and victim input, such as restitution amounts and “no contact” requests for the arraignment and pre-trial appearances. A liaison is also present at the pre-trial to assist the attorneys. Investigators and paralegals are routinely used at all stages of the proceedings by the trial teams to gather information and evidence needed at the pre-trial and trial stage.

The two trial teams are on two week rotations, which run opposite of each other. For week one, Team A is assigned to a pre-trial rotation while Team B is assigned to a trial and court trial rotation. For week two, Team A is assigned to a trial and court trial rotation while Team B is assigned to a pre-trial rotation. While on each rotation, team members are frequently used to staff mandatory calendars outside of their assigned rotation. Attorneys are to set all jury trials every two weeks, during their trial rotation.

II. CHARGING

The Minneapolis City Attorney’s Office prosecuted approximately 30,000 cases in 2004. Each of these prosecutions begins with the issuance of a criminal charge. Unlike a felony charge which may only be issued by formal written complaint by a county attorney, a misdemeanor charge may be issued either by a city attorney or a by a law enforcement officer. A city attorney may issue a misdemeanor charge by drafting a written complaint which is reviewed and signed by a judge.⁴ A law enforcement officer, however, may issue a misdemeanor charge using a citation or a tab charge, which is neither reviewed by a prosecutor nor a judge.⁵ In every case, the misdemeanor charges must be supported by probable cause to believe a crime has been committed and that the defendant committed that crime.⁶ This section examines each of these misdemeanor charging processes.

A. City Attorney Issued Charges

The City Attorney’s Office receives charging requests from crime victims, law enforcement personnel, and tab-charged defendants. The criminal division “office duty” attorney responds to crime victim charging requests. After reviewing all the relevant facts, the office duty attorney determines whether the case should be referred to the City Attorney’s Office

⁴ Minn. R. Crim. P., Rule 3.01

⁵ See Minn. R. Crim P., Rule 4.02; Minn. R. Crim. P. 23.03; Minn. Stat. 169.91, Subd 3; and Minn. Stat. 487.28.

⁶ Minn. R. Crim P., Rule 3.01

charging team member⁷ who will then draft a formal written complaint. Law enforcement personnel submit their charging requests directly to the City Attorney's Office charging team using a written referral form. If the law enforcement officer issued the initial charges by tab charge, the defendant, or the court, may request that the City Attorney's Office issue a formal complaint pursuant to Minnesota Rule of Criminal Procedure 4.02, Subd 5(3).

1. Office duty

Every day an Assistant City Attorney is assigned to "office duty". The "office duty" attorney responds to telephone and walk-in crime victim charging requests during regular business hours.⁸ The majority of these requests are generated by the "blue card" that a law enforcement officer provides to a crime victim when the officer takes a report. The blue card directs a crime victim, who wishes to have a city prosecutor review his or her case for possible criminal charges, to contact the office duty attorney at (612) 673-2535.

When a crime victim calls, the office duty attorney confirms that the law enforcement officer has not already issued a citation or tab charge. Assuming the law enforcement officer has not already issued charges, the office duty attorney reviews the law enforcement officer's report to determine whether there is probable cause to believe a crime has been committed and that the defendant committed that crime. If the report does not contain probable cause and it does not appear that reasonable further investigation would reveal supplemental facts that would support a finding of probable cause, the office duty attorney informs the crime victim that, pursuant to Minnesota Rule of Criminal Procedure 3.01, the City Attorney's Office is unable to charge the case.

If the office duty attorney determines that reasonable further investigation would reveal supplemental facts that would support a finding of probable cause, the office duty attorney completes a written investigative request, which may include a request for a photo line-up, taped statements, and/or record checks. One of the three City Attorney's Office investigators is then assigned to investigate the case.

Within approximately four weeks, the investigator provides the office duty attorney with a written investigative report. After reviewing the investigative report, law enforcement officer report and any relevant documents, the office duty attorney determines whether there is probable cause to believe a crime has been committed and that the defendant committed that crime. If there is still no probable cause, the office duty attorney mails a declination of charges letter to the crime victim. If there is probable cause, the office duty attorney must then determine whether the City can prove the case "beyond a reasonable doubt".

⁷ The charging team has three primary responsibilities: (1) charging all cases referred by a law enforcement agency, all cases where there was a complaint demand, and all cases referred for charging by the office duty attorney; (2) reviewing all enhanceable offenses, such as non-domestic assault and prostitution to determine whether a gross misdemeanor complaint should be issued; and (3) charging all of the in-custody cases each morning. The charging team also helps staff the non-domestic arraignment courts, office duty, and pre-arraignment screening (PAS).

⁸ In domestic abuse related cases, the city attorney assigned to the Domestic Abuse Service Center (DASC) provides the same services that the office duty attorney provides in non-domestic cases.

Although Minnesota Rule of Criminal Procedure 3.01 only requires a showing of probable cause to support a criminal charge, the State ultimately must prove the case beyond a reasonable doubt. As a result, the City Attorney's Office only issues criminal charges in those cases that it believes can be proven beyond a reasonable doubt.

If the office duty attorney believes that the city can prove the case beyond a reasonable doubt, the office duty attorney submits the law enforcement officer report, investigative request and any supporting documents such as a harassment order or a driver's license, to the City Attorney's Office Charging Team for issuance of a written complaint.

2. Law Enforcement Complaint Requests

The City Attorney's Office charging team receives written complaint requests from a number of law enforcement agencies, including the Minneapolis Police Department, the Minneapolis Park Police Department, the Minnesota State Patrol, the University of Minnesota Police Department, and the Metro-Transit Police Department. Generally these cases involve gross misdemeanor driving while intoxicated, driving after cancellation, weapons, and harassment cases, as well as misdemeanor theft, assault, and criminal damage to property cases. Different rules and policies govern the complaint request depending on whether the defendant is in-custody or out-of-custody.

a. In-custody

In-custody law enforcement complaint requests generally involve gross misdemeanor offenses because, unlike misdemeanor offenses, a law enforcement officer may not "tab charge" a person with a gross misdemeanor offense.⁹ If the law enforcement officer determines that Minnesota Rule of Criminal Procedure 6.01 requires further detention of a person who has allegedly committed a gross misdemeanor offense, he or she transports the person to the public safety facility where the person will be held on a probable cause hold. Minnesota Rule of Criminal Procedure 4.02, subd. 5(2) requires the City Attorneys Office to issue a formal written complaint within 36 hours of the person's arrest.

The City Attorney's Office receives approximately 850 in-custody complaint requests each year. To comply with the 36 hour rule, each morning a designated law enforcement officer sends the City Attorney's Office written complaint requests for each person being held at the public safety facility on a gross misdemeanor probable cause hold. Each day, an Assistant City Attorney is assigned to handle in-custody charging. The in-custody charging attorney reviews each of these cases to determine whether the constitutionally available evidence is sufficient to prove the case beyond a reasonable doubt. If it is, the attorney issues and signs a formal written complaint. Later that same morning, the law enforcement officer who submitted the complaint request, returns to the City Attorney's Office, picks up the complaint, and then brings it to the designated "signing judge" for review. If the judge signs the

⁹ Minn. R. Crim. P. 1.04(b) creates a narrow exception that allows a law enforcement officer to tab charge gross misdemeanor violations Minn. Stat. §§ 169A.20, 169A.25, 169A.26, and 171.24 (these are DWI related offenses)

complaint, the law enforcement officer files the complaint with the clerk of court who then places the person on the appropriate arraignment calendar.

b. Out-of-custody

Generally, out-of-custody law enforcement complaint requests involve misdemeanor offenses where the defendant fled the scene before the law enforcement officer arrived or where additional off-scene investigation was necessary to establish probable cause. Although the Minnesota Rules of Criminal Procedure do not require the City Attorney's Office to issue out-of-custody complaints within a specific period of time, Minn. Stat § 628.26 requires that the complaint be issued within three years from the date of the offense. Pursuant to Minnesota Rule of Criminal Procedure 3.01, a charging attorney may request that the district court clerk serve the complaint by arrest warrant if the charging attorney reasonably believes that:

- i. there is a substantial likelihood that the defendant will fail to respond to a summons;
- ii. the defendant's whereabouts are not reasonably discoverable; or
- iii. the arrest of the defendant is necessary to prevent imminent harm to defendant or another.

Absent one of these three factors, Minnesota Rule of Criminal Procedure 3.01 requires that the district court clerk serve the complaint by summons, which simply means that the district court clerk mails the defendant his or her arraignment court date.

The City Attorney's Office receives approximately 5,300 out-of-custody complaint requests each year. The charging team leader assigns these requests to attorneys who review the reports within two weeks of assignment. If the constitutionally available evidence is sufficient to prove the case beyond a reasonable doubt, the charging attorney issues a formal written complaint along with a request that the district court clerk serve it by arrest warrant or summons. If a judge signs the complaint, it is then filed with the clerk of court who serves the complaint either by arrest warrant or summons.

If the charging attorney determines that reasonable further investigation will not reveal evidence sufficient to prove the case beyond a reasonable doubt, the office duty attorney sends a declination letter to the law enforcement officer who submitted the request and the crime victims, if any.

3. Complaint Demands

Pursuant to Minnesota Rule of Criminal Procedure 4.02, Subd. 5(3), a tab-charged defendant may request that the City Attorney's Office issue a formal written complaint, in lieu of the tab charge. Whenever a defendant makes such a request, the City Attorney's office must issue and file the formal written complaint within 48 hours (if the defendant is in-custody) or within 30 days (if the defendant is out-of-custody). If the City Attorney's Office does not file a valid complaint within the time required by the rule, the defendant must be discharged, any

proposed complaint and supporting documents must not be filed, and no record shall be made of the proceedings.

B. Law Enforcement Officer Initiated Charges

As mentioned above, a law enforcement officer may issue a misdemeanor charge using a citation or a tab charge, which is not reviewed by a prosecutor or a judge before arraignment.¹⁰ Each of these charging methods is examined below.

1. Citations

There are two types of citations: payable offenses and court required offense. Minnesota Rule of Criminal Procedure Rule 23.03 allows the state-wide Conference of Chief Judges to designate certain misdemeanor offenses as “payable” offenses. A set fine amount is attached to each of these violations, along with mandatory surcharges. When a law enforcement officer issues a person a citation for a payable offense, that individual may choose to simply pay the designated fine amount and surcharges or the individual may elect to set the case for a court appearance. Any misdemeanor offense which has not been designated as a “payable” offense is considered a “court required” offense, which can only be resolved at, or after, an arraignment court appearance.

a. Payable Offenses

There are many categories of payable offenses, including but not limited to the following:

- Parking violations
- Equipment violations
- Moving violations
- Driver’s license violations
- Housing and inspection violations
- Noise violations
- Alcohol violations.

The Minneapolis City Attorney’s Office has identified several prosecution priorities in its business plan, including the prosecution of livability offenses. Many of these offenses are currently on the payables list. The list of offenses identified by the City Attorney’s Office is as follows:

- Alcohol violations.
- Consuming in Public (payable for \$110)
- Littering (payable for \$180)
- Loiter with an Open Bottle (payable for \$110)
- Minor Consumption (payable for \$130)
- Noise Violation (payable for \$110)

¹⁰ See Minn. R. Crim P., Rule 4.02; Minn. R. Crim. P. 23.03; Minn. Stat. 169.91, Subd 3; and Minn. Stat. 487.28.

The Central City Neighborhoods Partnership (CCNP) restorative justice program has requested that the Hennepin County bench consider removing consuming in public, public urination, possession of drug paraphernalia in a public place, minor consumption, noise violations, loiter with an open bottle and littering offenses from the payables list. These offenses constitute 73 per cent of the total offenses sought by CCNP for its diversion program. The District Court agreed to remove possession of drug paraphernalia and public urination offenses from the list beginning on April 4, 2005.

In August 2003, Hennepin County District Court added several misdemeanor traffic offenses to the payables list. These offenses and the payable amounts are:

- Driving After Cancellation (\$180)
- Driving After Suspension (\$180)
- Driving After Revocation (\$180)
- No Insurance – no accident (\$280)
- Failure to Provide Proof of Insurance – no accident (\$280)
- Driver Possess an Open Bottle (\$230)
- Driver/Owner Allow an Open Bottle (\$230)
- Driver Consume in Motor Vehicle (\$230).

When a defendant sets one of these driving offenses for court, the case is set on the Payable Traffic Calendar.

When an individual is issued a payable citation, the individual has approximately 25 days to respond to that citation, by either paying the fine, seeing a hearing officer, or setting the case for court. If the individual does not respond within the 25 day period a reminder notice is sent out and the individual is given another 25 days in which to respond.¹¹ If the individual still does not respond, a late fee is added to the payable fine. If the citation was for a criminal or parking offense, the citation is referred to a collection agency (MCE). If the citation was for a traffic violation, the Minnesota Department of Public Safety is notified and the individual's driver's license is suspended.

b. Court required offenses.

The list of court required livability offenses identified by the City Attorney's Office is as follows:

- Disorderly Conduct
- Prostitution
- Aggressive Solicitation
- Graffiti
- Loitering with Intent
- Lurking
- Damage to Property

¹¹ The Hennepin County District Court is currently considering shortening the "aging" period for payable citations.

- Trespass

When a law enforcement officer issues a person a citation for a court required offense, the person is directed to contact the district court clerk to schedule an arraignment court date. If the person fails to schedule an arraignment date within 25 days, the Traffic Violation Bureau refers the citation to the City Attorney's Office for review. A charging attorney reviews all of these court required unanswered citations. If the constitutionally available evidence is not sufficient to prove the case beyond a reasonable doubt, the charging attorney dismisses the case. If the evidence is sufficient, the charging attorney contacts Traffic Violations Bureau personnel who schedule the case for an arraignment and mail the person a summons to appear on that court date.

2. Tab Charges

A "tab charge" is the process used when a law enforcement officer requests that the public safety facility (jail) continue to detain a person on a misdemeanor offense. This process is commonly known as a "booking." Minnesota Rule of Criminal Procedure 1.04 (c) defines a "tab charge" as a "brief statement of the offense charged including reference to the statute, rule, regulation, ordinance, or other provision of law which the defendant is alleged to have violated" which the district court clerk enters upon the records.

Pursuant to Minnesota Rule of Criminal Procedure 6.01, a law enforcement officer may "book" a person who has committed a misdemeanor if:

- it reasonably appears that detention is necessary to prevent bodily harm to the accused or another;
- it is necessary to prevent further criminal conduct; or
- there is a substantial likelihood that the accused will fail to respond to a citation.

As mentioned previously, Minneapolis police officers are required to obtain supervisor approval before all misdemeanor bookings. The public safety facility requires all law enforcement officers to complete a form stating in detail the Rule 6.01 reasons supporting the officer's decision to detain.

Effective April 4, 2005, all persons booked into the public safety facility have bail amounts imposed according to the attached bail schedule. (See attachment "A"). Unless a person posts bail or is eligible for release by the Hennepin County pre-trial release unit, he or she is held at the public safety facility until his or her in-custody arraignment court appearance. The only exception to this policy is a situation where the Sheriff determines that release is medically necessary. In that situation, the sheriff may give the person notice of any scheduled court appearance date and release the defendant to the Hennepin County Medical Center for treatment or medical intervention at the discretion of the sheriff without bail. If the person posts bail or is released by the pretrial release unit, the public safety facility schedules the person's arraignment and provides the person a written reminder of his or her arraignment court date.

III. ARRAIGNMENT

An “arraignment” hearing is a person’s first court appearance on a criminal charge. At a misdemeanor arraignment, a judge determines whether the person requires an interpreter, provides the person with a copy of any written complaint and supporting documents, advises the person as to the nature of the charge and the person’s constitutional rights, determines whether the person is eligible for a public defender, and if the person does not demand a formal written complaint, the person enter either a “guilty” or not “guilty plea.”¹²

A. Misdemeanor Arraignment Calendars

In September 2004, the Hennepin County District Court reorganized misdemeanor arraignments into three separate arraignment courts: 1) Domestic Arraignments (both in and out of custody); 2) Community Court - for community or livability violations (both in and out of custody); and 3) Serious Traffic - for serious traffic offenses (both in and out of custody). The court has also created a Payable Traffic Calendar, where all payable traffic offenses will be heard.

The Community Court Calendar is scheduled at 8:30 a.m. Monday through Friday in the Public Safety Facility, room 141. The types of cases heard on this calendar are typically the community or livability offenses. Some examples are loiter, drug paraphernalia, prostitution, obstructing legal process, disorderly conduct, consuming in public, false information to law enforcement officer, trespass, aggressive solicitation, theft and weapon violations. This courtroom is staffed by an Assistant City Attorney and a law clerk.

The Serious Traffic Calendar is scheduled at 8:30 a.m. Monday through Friday in the Public Safety Facility, room 142. The types of cases heard on this calendar are all DWIs, driving after cancellation as inimical to public safety, hit and run, and no insurance cases where there was an accident. This courtroom is staffed by an Assistant City Attorney.

Finally, the Payable Traffic Calendar is scheduled at 8:30 a.m. Tuesday through Thursday in the Hennepin County Government Center, room 1159. The types of cases heard on this calendar are the payable traffic offenses, such as driving after suspension, cancellation or revocation, no insurance where there is no accident, careless driving, open bottle or marijuana in a motor vehicle, and all petty misdemeanor violations. There is not an Assistant City Attorney present at this calendar.¹³ The calendar is run by a District Court referee. The

¹² Minn. R. Crim. P. 5.01 and 5.02.

¹³ The following are Payable Traffic Calendar statistics collected by Hennepin County District Court for the period between August 6, 2004 and January 13, 2005.

There were 2,956 Minneapolis common and petty misdemeanor cases handled in the payable traffic calendar (courtroom 1159).

Of these 2,956 cases:

1,738 were common misdemeanors (59%)
1,217 were petty misdemeanors (41%)

City Attorney's Office has provided the referee with guidelines, which the referee uses to resolve these cases. Since there is no city attorney or public defender present, the cases result only in fines, continuances for dismissal, or outright dismissals as part of a plea bargain. No jail time is given for these offenses in this courtroom. If cases do not resolve on this calendar, the misdemeanor offenses are set for a pretrial and eventual jury trial, and the petty misdemeanor offenses are set directly for a court trial.

B. Pre-Arrestment Screening

All out-of-custody arraignment cases are reviewed by an Assistant City Attorney three days before the court appearance. This process is called "pre-arrestment screening".

Each day, three attorneys are assigned to pre-arrestment screening (PAS). The attorneys are responsible for screening all the cases set for arraignment for both the Community Court and the Serious Traffic Arrestment calendars. The attorneys go through each case on the calendar and determine that all of the needed paperwork is in the file. If a report or supplement or accident report is missing, the attorney is responsible for requesting the paperwork prior to the arraignment date. The attorneys are responsible for referring cases to the charging team for which a complaint needs to be issued, i.e., a gross misdemeanor DWI, a gross misdemeanor prostitution, or a gross misdemeanor obstruct with force.

The attorneys are responsible for reviewing the file, filling out a disposition sheet, and making an appropriate offer on the case. In the case of a DWI, the attorneys may be required to fill out a Rule 7 or Rule 9 form providing notices and discovery to the defendant. Attorneys are also responsible for creating a file.

Of those 2,956 cases, 1,061 (36%¹³) were resolved at arraignment (i.e., either dismissed, continued without prosecution, or convicted via a guilty plea). The breakdown is as follows:

570 common misdemeanors resolved = 33% (of 1,738)
491 petty misdemeanors resolved = 40% (of 1,217)

Conversely, 1,900 (64%) of the 2,956 cases were not resolved at arraignment and went on to a pretrial hearing or a court trial. The breakdown is as follows:

1,168 misdemeanors went on to pretrial = 67% (of 1,738)
726 petty misdemeanors went directly on to court trial = 60% (of 1,217)

While not an exact comparison, during the period between August 5, 2003 and January 13, 2004, the City of Minneapolis staffed a "Prosecutor Only" calendar. Petty misdemeanor parking and moving violations were scheduled for this calendar. During this time period, the Minneapolis City Attorney's Office handled 1,471 petty misdemeanor offenses. Of these offenses, we resolved either by plea, continuance for dismissal, or outright dismissal, 652 cases or 44 per cent.

When the City of Minneapolis was involved in the prosecution of these cases at the arraignment stage, the percentage of cases being resolved was the same as the percentage of cases being resolved currently without prosecutor involvement.

In addition, the PAS attorneys are responsible for checking all gross misdemeanor offenses and “all targeted misdemeanors”, as listed in Minn. Stat. § 299C.10, to determine whether the defendant was booked on the charges. If the defendant was not booked, the PAS attorney needs to list the defendant on the dismissal list as needing to be booked so the arraignment attorney is aware that booking needs to take place at the first appearance.

C. Community Court and Serious Traffic Calendars

The Community Court Calendar is held in the Public Safety Facility, Courtroom 141 and staffed by an attorney and one law clerk. The Serious Traffic Calendar is held in the Public Safety Facility, Courtroom 142 and is staffed by one attorney.

1. Case Negotiations

The arraignment attorney reviews the in-custody cases, places appropriate offers on each case, and negotiates cases with any defendants, public defenders or private attorneys. The arraignment attorney considers the following factors in negotiating a case:

- Severity of the crime and its impact upon the victim and/or community
- Criminal history of the defendant
- Defendant’s age and physical and/or mental health
- Whether the defendant expresses genuine remorse
- Defendant’s willingness to make restitution
- Victim’s preferences in how the case should be handled
- The likelihood of conviction at trial.

If the arraignment attorney is unable to resolve the case through plea negotiations, the attorney considers the issue of bail.

2. Bail Arguments

The arraignment attorney requests bail and/or conditions of release, when appropriate, on all in-custody cases, keeping in mind the type of case it is, the number of bench warrants the defendant has, and the defendant’s criminal history.

Minn. Stat. § 629.471 sets forth the maximum bail allowed for misdemeanors and gross misdemeanors. It provides that generally, the maximum bail for a misdemeanor is \$2,000 and for a gross misdemeanor \$6,000 (twice the maximum fine). There are, however exceptions to this general rule:

- The maximum cash bail for a misdemeanor DWI is \$4,000 and for a gross misdemeanor DWI or DAC-IPS it is \$12,000 (four times the maximum fines)
- The maximum cash bail for a misdemeanor domestic assault is \$6,000 and for a gross misdemeanor domestic assault it is \$12,000 (six times the maximum fine)

In addition, regardless of custody status of a DWI defendant, the arraignment attorney argues for the mandatory conditions of release as provided by Minn. Stat. §§ 169A.40 and 169A.44. These sections require that either maximum bail (\$12,000) be imposed or the defendant be placed on an electronic alcohol monitoring system when the defendant is charged with:

- driving under the influence of alcohol with a blood alcohol concentration of .20 or more;
- the defendant is charged with driving under the influence of alcohol within ten years of two “prior impaired driving convictions”;
- the defendant is charged with driving under the influence of alcohol while the defendant’s driver’s license is cancelled inimical to public safety; and
- the defendant is charged with a second DWI violation while the defendant is under the age of 19.

3. Speedy Trial Demands

If a person is unable to post bail in the amount set by the judge, he or she is entitled to an accelerated speedy trial under Minn. R. Crim. P. 6.06. This rule provides that a defendant in custody on a misdemeanor offense is entitled to a speedy trial within 10 days of his or her demand. Rule 11.10 of the Minnesota Rules of Criminal Procedure provides that a defendant in custody on a gross misdemeanor offense is entitled to a speedy trial within 60 days of his or her demand.

If a speedy trial is demanded on a misdemeanor offense, the arraignment attorney sets both an accelerated pretrial and trial date. The arraignment attorney prepares the case for trial within 24 hours of arraignment. Once prepared, the arraignment attorney gives the file to the team leader whose team has trials on that date. The team leader then assigns the case to an attorney so it can be prepared for trial.

If a speedy trial is demanded on a gross misdemeanor offense, the arraignment attorney may schedule only a pretrial date, as long as there is sufficient time after the pretrial to prepare the case for trial.

4. Accelerated Pretrials

If the defendant is unable to post bail, the attorney schedules an accelerated misdemeanor pretrial. In general, when the case involves a victim, accelerated pretrials should be set at least three working days from the date of arraignment to ensure that a victim letter can be sent. If there is no victim, the case may be set sooner to accommodate the parties’ schedules.

5. Victim Letters

Minn. Stat § 611A requires all prosecutors to make every reasonable effort to contact crime victims. Pursuant to a contract between the City and the Council on Crime and Justice, the

Council on Crime and Justice provides victim rights services on behalf of the City Attorney's Office. After each arraignment calendar, the attorney refers all victim cases to the Council on Crime and Justice victim liaison team who sends the victim a letter notifying the victim of his or her rights and the dates of upcoming court hearings. In addition, victim liaisons call victims to obtain victim input regarding the crime, which is then forwarded to the appropriate attorney.

6. Charge Enhancement

The arraignment attorney reviews all files to determine if a charge should be enhanced to a gross misdemeanor and/or felony. The attorney should check the pretrial release evaluation, if there is one, and check SIP to verify conviction and discharge dates. The most common non-domestic offenses to check for enhancement are assaults and prostitution.

7. Bench Warrants

The arraignment attorney also reviews all bench warrant files and documents the non-appearance.

8. Investigative Requests

If any additional information is required, the arraignment attorney requests further investigation. For example, if further witness statements are needed or documents are needed, the arraignment attorney is responsible for making the request and following up to ensure that the investigation is completed by the next court date.

IV. PRETRIAL CALENDAR.

A "pretrial" hearing is a person's second court appearance on a criminal charge.¹⁴ At this hearing, the parties generally have gathered all the information they need to fully negotiate the case, including crime victim input. In negotiating the case, the pretrial attorney considers:

- Severity of the crime and its impact upon the victim and/or community
- Criminal history of the defendant
- Defendant's age and physical and/or mental health
- Whether the defendant expresses genuine remorse
- Defendant's willingness to make restitution
- Victim's preferences in how the case should be handled
- The likelihood of conviction at trial.

If the parties are unable to resolve the case, they submit the issue of probable cause to the judge and request a trial date.

There are normally two attorneys from the trial team assigned to the pretrial calendar each day. If a case is set for trial, it is assigned to the pretrial attorney, unless the file is specifically

¹⁴ Minn. R. Crim. P. 12.

assigned to another attorney. The pretrial attorney ensures that the case is fully prepared for trial, including getting all needed documents and filing all appropriate motions or responses.

Rule 23.04 of the Minnesota Rules of Criminal Procedure allows the prosecuting attorney, with the consent of the defendant, to certify a misdemeanor offense as a petty misdemeanor. If the pretrial attorney certifies any misdemeanor offense, including misdemeanor traffic offenses such as DAS or DAR, as a petty misdemeanor and sets it for trial, the pretrial attorney keeps the case and sets it for trial on their regular trial rotation. On the day of trial, the attorney notifies the assigning judge that the case is set for a court trial. If a defendant appears on a misdemeanor count and a petty misdemeanor moving violation count and the pretrial attorney dismisses the misdemeanor offense, the petty misdemeanor moving violation may be set on the court trial calendar.

All DWIs are preassigned by the trial team leaders to an attorney. That attorney reviews the file and writes an offer in the file for the pretrial date. If that attorney does not want that offer amended, the attorney notes in the file that the offer is not to be changed. Absent such a note, the pretrial attorney is free to renegotiate any DWI at the pretrial stage, regardless of whether or not it is specifically assigned to him or her. If the pretrial attorney renegotiates the case, he or she is required to clearly document in the file that the offer was changed by the attorney and what the outcome was.

If a defendant on a DWI case bench warrants, the pretrial attorney requests that the court clerk strike the trial date and issue a bench warrant.

V. JURY TRIALS

Every person charged with a misdemeanor or gross misdemeanor offense has a constitutional right to a six-person jury trial.¹⁵ Other than for DWIs, the pretrial attorney who handles the case will be the trial attorney assigned for trial. That attorney prepares the case for trial, which includes:

- Send any discovery requested;
- Subpoena all witnesses needed;
- Ask paralegal to obtain all necessary documents;
- Request any investigation need prior to trial;
- Send any required notices or motions to defense attorney – i.e., Spriegl.

When a civilian (non law enforcement) witness is subpoenaed and appears for a trial or hearing, that witness is entitled to witness fees. The trial attorney obtains the subpoena from the witness and makes sure that the witness' social security number is documented on the subpoena.

When a trial settles, either through negotiations or dismissal, the trial attorney notifies all witnesses of the outcome. The attorney contacts the police court liaison regarding all

¹⁵ Minn. R. Crim. P. 26

Minneapolis police officers. The court liaison will then notify the officers that the case has settled.

If the trial has witnesses from law enforcement agencies other than the MPD, the trial attorney contacts that agency to inform the witness that he or she will not be needed.

VI. COURT TRIALS

A person charged with petty misdemeanor does not have a right to a jury trial.¹⁶ Instead, the court (a judge) decides the facts of his or her case. An attorney on the trial rotation is assigned to court trials. The attorney follows the court trial guidelines.

VII. SENTENCINGS

Minnesota Rule of Criminal Procedure 27 governs sentencing hearings. The maximum sentence a prosecutor may seek is controlled by the level of offense. Prosecutors, however, may seek alternatives that are alternatives to traditional incarceration and fines.

A. Maximum Penalties

The maximum penalty for each category of offense is set forth in Minn. Stat § 609.03 as follows:

- One year incarceration and/or \$3,000 fine in gross misdemeanor cases;
- 90 days incarceration and/or \$1,000 fine in misdemeanor cases; and
- A \$300 fine in petty misdemeanor cases.

1. Workhouse Time

Sentences are presumed to run concurrently. Minn. Stat. § 609.15, subd. 1. In other words, if a defendant pleads guilty to 2 cases, and the sentence for both cases is 45 days, he/she will only serve 45 days (less “good time”). However, in certain cases, City prosecutors seek time over and above the maximum sentences by arguing for consecutive sentencing. In cases where consecutive sentences are imposed, one sentence is “stacked” onto another sentence. For example, if a defendant receives two 90-day (misdemeanor) sentences and the sentences are imposed consecutively, the defendant’s actual sentence is 90 days + 90 days, or 180 days total.

- Misdemeanors:** According to statute, “If the court specifies that the sentence shall run consecutively and all of the sentences are for misdemeanors, the total of the sentences shall not exceed one year.” Minn. Stat. § 609.15, subd. 2. Thus, if all the cases are misdemeanors,

¹⁶ Minn. R. Crim. P. 23.05

the City can seek up to 4 consecutive sentences and incarcerate a misdemeanant for one year.

b. Combination of Misdemeanors and Gross Misdemeanors: We may also seek consecutive sentences on a combination of misdemeanors and gross misdemeanors. By statute, “If the sentences are for a gross misdemeanor and one or more misdemeanors, the total of the sentences shall not exceed two years.” Id.

c. Gross Misdemeanors: If all the crimes for which consecutive sentencing is sought are gross misdemeanors, “the total of the sentences shall not exceed four years.” Id.

The most common types of cases in which the City Attorney’s Office seeks consecutive sentences are those of chronic offenders. For offenders who commit multiple offenses within a short period of time, and who have extensive criminal records, a 90-day sentence may not provide an adequate consequence for the repeated criminal conduct. Thus, consecutive sentencing allows the Office to advocate for more severe consequences for offenders whose records justify greater sanctions.

2. Fines

Minnesota Statute Section 609.10, provides that when a person is convicted of a gross misdemeanor or misdemeanor offense, the court must impose a fine of not less than 30 per cent of the maximum fine authorized by law. This would be a minimum fine of \$300 in all misdemeanor cases and a minimum fine of \$1,000 in all gross misdemeanor cases. Minnesota Statute Section 609.101, subdivision 5 prohibits the court from waiving the minimum fine amounts. However, if the court finds that the convicted person is indigent or that immediate payment of the fine would create an undue hardship, the court may reduce the minimum fine to \$50 or allow the convicted person to perform community service in lieu of the fine.

Minnesota Statute Section 488A.03, subdivision 11 governs how fines are distributed to the City of Minneapolis and regulates administrative fees imposed on the City. When a defendant appears in the Violations Bureau or simply elects to pay the full amount on the citation, the fine revenue is distributed in the following manner:

Parking:

- 80% of the fine to the City of Minneapolis
- 20% of the fine to the State General Fund
- \$3 State surcharge.

Petty Misdemeanor (non parking):

- 80% of the fine to the City of Minneapolis

- 20% of the fine to the State General Fund
- \$60 State Surcharge to State Treasurer
- \$3 Law Library Fee

Misdemeanors:

- 20% of the fine to the State Treasurer
- Balance remaining – 80% to the City of Minneapolis and 20% to the State General Fund
- \$60 State Surcharge to State Treasurer
- \$3 Law Library Fee

Charges with a disposition of a CWOP or Diversion:

- 100% of the prosecution costs to the City of Minneapolis
- No State Surcharge
- No Law Library Fee.

When a person elects to go to court on their citation, the fine distribution is as follows:

Parking:

- 100% of the fine to the City of Minneapolis
- \$3 State Surcharge
- \$5 Fees taxed charged to City of Minneapolis and credited to the State General Fund (for arraignment appearance only)
- \$15 Fees taxed charged to City of Minneapolis and credited to the State General Fund (for court trial appearance only).

Petty Misdemeanors:

- 100% of the fine to the City of Minneapolis
- \$60 Surcharge to the State Treasurer
- \$3 Law Library Fee
- \$5 Fees taxed charged to City of Minneapolis and credited to State General fund (for arraignment appearance only)
- \$15 Fees taxed charged to City of Minneapolis and credited to State General Fund (for court trial appearance only).

Misdemeanors:

- 20% of the fine to the State Treasurer
- 80% of the fine to the City of Minneapolis
- \$60 Surcharge to the State Treasurer
- \$3 Law Library Fee

- \$5 Fees taxed and charged to City of Minneapolis and credited to State General Fund (for arraignment and pretrial appearances only)
- \$15 Fees taxed and charged to City of Minneapolis and credited to State General Fund (for court trial and jury trial appearances only).

Charges with a disposition of CWOP or diversion:

- 100% of the prosecution costs to the City of Minneapolis
- No State Surcharge
- No Law Library Fee.

All revenue generated by fines goes into the City's general fund, which in turn helps fund the criminal division of the City Attorney's Office as well as the Minneapolis Police Department. Several factors go into whether or not the City collects any fine revenue on a certain case. First, a defendant who is unable to pay a fine is offered the option to do Sentence to Service (STS), which is a program through Hennepin County in which the defendant is taken to a work site and performs work for the county. Currently, defendants are not taken to specific sites within the City of Minneapolis, so often times the City is not benefiting from the STS program. The City may wish to explore with Hennepin County Community Corrections setting up City-specific sites for defendants to perform their required hours of service so the City may obtain a direct benefit from this option.

Second, sentencing is ultimately up to the judge. Although required by State law to impose a minimum fine, in many cases the judge will elect to either not impose a fine or will suspend some portion of or the entire fine. When this occurs, the City not only does not collect any revenue, but is assessed the \$5 or \$15 administrative fee. City prosecutors should be more aggressive in negotiating fines as part of plea negotiations. In addition, the Hennepin County bench should be educated as to the impact of not imposing or suspending fines has on the City's general fund.

One positive step taken by the County to ensure fine collection began in June 2004. Starting in June 2004, all unpaid court fines were being sent to MCE for collection. As this program is fairly new, there is no specific data for Minneapolis; however, this data should be available at the end of 2005. When an unpaid fine is sent to MCE, the City of Minneapolis still receives its 80%. When the citation becomes delinquent, late fees and collection fees of up to \$50 are added to the fine amount to cover the costs of using a collection agency. MCE charges 15% for citations that are recaptured through state revenue such as tax returns, and 25% for citations that are collected via a private agency. This 15% or 25% is more than covered by the additional \$50 fees assessed on delinquent citations.

Finally, the Minneapolis City Attorney's Office criminal division currently reviews all court required citations. An attorney screens these cases prior to setting them for a court appearance. By proactively screening these cases, the City is able to dismiss cases where there is either no probable cause or insufficient evidence to proceed, thereby avoiding the \$5 administrative fee that would be assessed at arraignment. Many police officers are converting to electronic ticket writers to issue citations. When an officer issues a citation using the

electronic ticket writer, the citation is automatically entered into Hennepin County's citation system (VIBES) and the aging process begins. This still allows for our pre-review prior to a citation being set for court. As the court examines the aging process for citations, the City Attorney's Office will have to continue to assess its prescreening procedures and adjust them so that this process may continue.

Pursuant to Minn. Stat. § 357.021, subd. 6, there is a mandatory court surcharge on all criminal and traffic offenses in the amount of \$60. There is also a \$3 law library fee in addition to this surcharge on these offenses. Pursuant to this same statute, there is a mandatory surcharge of \$3 on all parking violations.

Pursuant to Minn. Stat. § 488A.03, subd. 11, the City is assessed a \$5 fee whenever a case is disposed of at arraignments, pretrial or trial where there is a plea of guilty, a continuance for dismissal, an outright dismissal, or there is a stay of adjudication or imposition of sentence. Pursuant to this same statute, the City is assessed a \$15 fee whenever a case results in a trial, whether it be a court trial or a jury trial. These fees are assessed per count.

The Assistant City Attorney handling any case considers these mandatory fees, and uses his or her discretion in agreeing to suspend or waive any fines or in agreeing to impose no fine in each case. In most cases, the Assistant City Attorney should ask that the mandatory minimum fine be imposed or ask for reasonable court costs if offering a stay of imposition/adjudication or a continuance for dismissal.

B. Alternatives to Incarceration and Fines:

In lieu of sending a defendant to the workhouse, several other significant options are available as sentencing alternatives.

1. Sentence to Serve

The first alternative to workhouse time is known as Sentence to Serve, or STS. The STS program is run by the Hennepin County Community Corrections (probation) Department. Sentence to serve is a form of community service in which an offender performs 8-hour day(s) of work for the County. STS can be performed 7 days a week. Examples of STS projects are collecting trash along roadways, graffiti removal, and park clean-up. Accommodations can be made for disabled individuals or those with physical limitations.

2. Community Service

The second alternative to workhouse time is community service. Community service is similar to STS, in that 8-hour days of service are required. However, community service is more flexible than STS. When an offender is allowed to perform community service, he or she is able to select the program or service provider for which he/she will volunteer. Thus, for example, an offender could volunteer at a church or homeless shelter. Again, the Community Corrections Department oversees the community service program, and verifies that an

offender has actually performed the service hours he/she has committed to perform as part of a criminal sentence.

When a negotiated sentence is relatively short (less than 10 days), it is not uncommon for City prosecutors to agree to allow the defendant to “do the time” on an STS squad or through community service. Both alternatives allow offenders to do something positive for the communities they have wronged by their criminal activity. Depending on the individual defendant, performing STS or community service may be more onerous than serving time at the workhouse.

3. Restorative Justice Programs

One of the prongs of the City Attorney’s Office public safety strategy is “active collaboration with neighborhoods on community justice.” Through targeted partnerships with community groups offering restorative justice services, the City Attorney’s Office has made major strides toward achieving that objective. Today, restorative justice programs not only remain viable but continue to expand both their areas of service and the numbers of offense types they review. The City Attorney’s association with restorative justice programs has also helped forward the City’s goal of promoting partnerships to address disparities and supporting strong, healthy families and communities.

The City Attorney’s Office currently works in cooperation with the following restorative justice diversion programs: Central City Neighborhoods Partnership (CCNP), Midtown Restorative Justice Program (MRJP), Men Who Use Prostitutes (MWUP), and the Police diversion program for minor consumption citations. These programs target livability offenses in different geographical areas of the City. These programs generally offer first-time offenders the opportunity to avoid a criminal conviction for a livability offense by working with members of the victimized community to devise a contract to repay that community for the damage the offenders’ actions have caused.

CCNP covers the following neighborhoods: Downtown Minneapolis, Elliot Park, Loring Park, Marcy-Holmes, North Loop, Southeast Como, Stevens Square-Loring Heights, University of Minnesota, West Bank, and Whittier. It accepts defendants charged with 15 different types of livability offenses. The program brings the defendant together with members of the community who together explore creative ways for defendants to repair the harm caused through their criminal activity, such as performing community service in the victimized neighborhood, writing letters of apology, research projects and more.

CCNP and the Minneapolis City Attorney’s Office recently joined together to create the police diversion program. This new program, administered by CCNP, offers diversion opportunities to people in the University of Minnesota, Marcy-Holmes and Southeast Como neighborhoods for targeted non-driving alcohol-related offenses. University of Minnesota and second precinct police officers inform offenders issued citations about the program. Approximately 40 per cent of all offenders cited for these targeted offenses have elected to participate in the program.

MRJP offers a program similar to CCNP in the Powderhorn Park and Corcoran neighborhoods. With a focus on livability and prostitution offenders, the program offers participants charged with livability offenses the opportunity to keep their records clean of a conviction. Prostitution patrons are offered a stay of adjudication, which means the offender enters a plea of guilty, but the court does not accept the plea. If the offender successfully completes the MRJP program, the plea is never accepted and the charge is dismissed.

MWUP and MRJP have teamed up to administer the Restorative Justice Prostitution Patron Program (RJPPP). The program incorporates counseling, community service and other elements to aid both the community and the offender. The City Attorney's Office offers a stay of adjudication to patrons charged with prostitution city wide.

VIII. REVOCATION HEARINGS

When a defendant violates any term or condition of his or her probation, an arrest and detention order (A&D) may be issued.¹⁷ When a defendant appears in court on an A&D, the defendant either admits or denies the allegation. The arraignment attorney has a copy of the A&D and the report written by the probation officer with the recommendation. If either of these documents are missing, the attorney should request a copy from the court clerk.

If the defendant denies the allegation, a formal Morrissey hearing will be set. If the defendant is to remain in custody, the hearing must be set within seven days unless the defendant waives his right to speedy proceedings. The hearing should be set out as far as possible to allow for adequate preparation. All formal Morrissey hearings are to be scheduled on the trial calendar unless the sentencing judge specifically requests the case be returned to him or her.

If a formal Morrissey hearing is set, the arraignment attorney prepares the case for the hearing and notifies the operations manager of the hearing date.

To prepare for the hearing, the arraignment attorney does the following:

- Have the file room pull the closed file;
- Get a certified copy of the conviction and sentence, if appropriate;
- Notify the supervising probation officer of the date and time of the hearing, and send a subpoena if necessary. The file should be documented that the probation officer was contacted and will appear;
- Obtain copies of the A&D and the Probation report and recommendation for the file;
- Obtain copies of the probation officer's notes, if appropriate;
- Provide discovery if requested;
- Issue subpoenas for any civilian witnesses needed to appear;
- Obtain any other documents, tapes or evidence needed for the hearing.

¹⁷ Minn. R. Crim. P. 27.04

The standard of proof at a Morrissey hearing is “clear and convincing” evidence. Technically, the Rules of Evidence do not apply, but some judges still enforce the Rules of Evidence at these hearings (see Minnesota Rule of Criminal Procedure 27.04).

IX. MISCELLANEOUS APPEARANCES

An attorney will be assigned to appear at all miscellaneous appearances. The miscellaneous appearance attorney should try and settle these cases, when possible. Trials should not be set out of a miscellaneous appearance. If a misdemeanor or gross misdemeanor does not settle from a miscellaneous appearance, the case should be set on the appropriate pretrial calendar.

CONCLUSION

The Minneapolis Police Department protects individuals’ constitutional guarantees, maintains public order, provides crime prevention and suppression, and dutifully responds to the needs of the community.¹⁸ The Minneapolis City Attorney’s Office promotes public safety by aggressively prosecuting all gross misdemeanor, misdemeanor, and petty misdemeanor crimes that occur in the City of Minneapolis. To achieve these goals the Minneapolis Police Department and City Attorney’s Office have developed the misdemeanor arrest and prosecution policies discussed above. Fully understanding these policies is essential to policy makers, city employees and citizens as they develop strategies designed to improve our City’s response to misdemeanor criminal activity.

¹⁸ Minneapolis Police Department’s policy and procedure manual preface.