



**Request for City Council Committee Action
From the City Attorney's Office**

Date: June 25, 2003
To: Public Safety & Regulatory Services Committee
Referral to:

Subject: Nuisance Night Court Update

Recommendation: That the City Council receive and file this report.

Prepared by: Dana Banwer Phone: 673-2014

Approved by: _____
Jay M. Heffern
City Attorney

Presenter in Committee: Dana Banwer

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Costs related to creation of a court to handle livability offenses may include personnel costs, space costs, overtime costs, overhead, supplies, etc.
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

Neighborhood Notification N/A

City Goals: Build communities where all people feel safe and trust the City's public safety professionals and systems; Promote public, community, and private partnerships to address disparities and to support strong, healthy families and communities.

Comprehensive Plan N/A

Zoning Code N/A

Other N/A

Background/Supporting Information See attached material.

**REPORT TO PUBLIC SAFETY & REGULATORY SERVICES
COMMITTEE ON NUISANCE NIGHT COURT PROPOSAL**

June 25, 2003

BACKGROUND

On April 9, 2003, this Committee directed the City Attorney's Office to "work with the Minneapolis Police Department, in consultation with the chief judge of Hennepin County District Court (and other court resources), and others to explore the possibility of creating a nuisance night court, and the feasibility of piloting this program during the summer of 2003." The City Attorney's Office was further directed to report back to this Committee on May 7, 2003.

On May 7, 2003, the City Attorney's Office presented a report to this Committee that outlined the court options available to the City to address livability offenses. Based on a "best practices" analysis of the Midtown Manhattan Community Court and the Philadelphia Nuisance Night Court, the report recommended further study of two main models: 1) Same Day/Night Court and/or 2) Next Day Court.

This Committee then directed staff to move "aggressively forward, with the City Attorney's Office being the coordinator of the project." The Committee action included a reporting schedule encompassing the next three meeting cycles as follows:

1. One cycle-May 21: The CCP/SAFE Team shall provide information through the City Attorney's Office for the Committee to decide on a geographic area to use for a pilot project.
2. Two cycles-June 11: Committee to receive a written update from the City Attorney's Office in terms of the stakeholders' involvement (i.e. the courts being a partner, possible location for the court, resource needs and demands on the various departments).
3. Three cycles-June 25: Staff to provide in person update looking at the specific things that would need to be done in order to implement the project this summer.

On May 21, 2003, the City Attorney's Office and CCP/SAFE presented a report, which outlined the type, incidence, and location of livability offenses occurring within the City in order to provide guidance to the Committee in selecting a geographic area to use for a pilot project. At a special meeting of the Public Safety & Regulatory Services Committee on June 2, 2003, the Committee "identified Downtown as the geographic area for a Pilot Project."

On June 11, 2003, the City Attorney's Office provided a written report to this Committee outlining stakeholders' involvement in the Nuisance Night Court proposal, including courtroom staffing and facilities/equipment needs.

Following is an update of events since the last report to this Committee and a discussion of the steps necessary to establish a same day/night court or next day court, or an alternative means of addressing livability offenses in Minneapolis.

UPDATE

Since the last report to this Committee, a group traveled to Philadelphia to view the Nuisance Night Court and a Summary Diversion class, in order to gain a better understanding of how the Philadelphia court operates. The group included Council Member Paul Zerby, Deputy City Attorney Dana Banwer, Officer Craig Williams, Crime Prevention Specialist Luther Krueger, Gena Gerard, CCNP restorative justice program manager, and Jerry Driessen, the CJCC coordinator. In addition to the trip to Philadelphia, Jay Heffern, Dana Banwer and Mayor Rybak met with Hennepin County District Court Chief Judge Burke, and judges Wieland, Nord, and Hopper to attempt to further define the problem, and to restate the need for a Minneapolis court to handle livability offenses.

VISIT TO PHILADELPHIA

On June 13 and 14, 2003, the group referenced above went to Philadelphia to observe the Philadelphia Nuisance Night Court which was commenced in 1996 as a means to better address livability crimes. Janet DiTomasso, the director of diversion programs for the Philadelphia Municipal Court met the group at the airport and acted as the group's escort throughout the visit. The group visited with the Judge responsible for setting up the Nuisance Night Court, Philadelphia Municipal Court Judge, Seamus McCaffery and additional court personnel, to gain insight into the impetus for, and the operation of the Philadelphia Nuisance Night Court. After walking the beat with a police lieutenant in South Philadelphia on Friday night, the group observed the Nuisance Night Court in action, held in a South Philadelphia police precinct. On Saturday morning, the group observed a Summary Diversion behavior class. Following that, the group met with Ms. DiTomasso and other court staff to learn more about the various livability offense court options in Philadelphia.

Following is a description of the various Philadelphia Nuisance court/program models:

Nuisance Night Court

The Philadelphia Nuisance Night Court was implemented in 1996 by Judge Seamus McCaffery, in response to quality of life or livability crimes occurring in Philadelphia, that seemingly went unpunished. This court was created using a volunteer judge (Judge McCaffery initially) and staff paid by grant money. As currently established, the Nuisance Night Court is held in various police districts (precincts) throughout the city, three to four times a month and was designed to adjudicate immediately, those livability offenses occurring in that neighborhood. Since the creation of the Nuisance Night Court, funds from several Local Law Enforcement Block Grants have been allocated to the program, allowing the program to grow dramatically into other programs.

The director of diversion programs sends letters to the police commissioner requesting dates on which captains in the districts wish to schedule Nuisance Night Court. Upon receiving dates from the police, the director seeks volunteer judges for the court dates. Once the police officers know the date on which Nuisance Night Court will be held in the district, they will issue citations for

livability offenses, ordering the defendant to appear on that date. Occasionally, if a defendant is arrested on the day when Nuisance Night Court will be held, the defendant is detained at the police district for an appearance that night. As discussed in a previous report, such detention is prohibited under Minnesota law, but permitted under Pennsylvania law. The citation given to the defendant specifies the defendant's name and other identifying information, the offense committed, a description of the offense, and a date and time on which the defendant must appear in court. The summary offenses include disorderly conduct, obstructing the highway and other public passages, drinking under age, criminal mischief (\$500 or less), defiant trespasser, retail theft, and harassment. These offenses are violations of state statutes. Some ordinance offenses are also summary offenses, and are handled by the Nuisance Court.

One of the major differences between Pennsylvania and Minnesota law is that juveniles who commit summary offenses are handled in much the same way as adults. Therefore, the group observed many cases involving juveniles during the Nuisance Night Court in South Philadelphia on the same calendar as adults.

During the court session the group observed, defendants came before the judge (or in the case of those juveniles present, the juvenile and his or her parents), as did the arresting police officer(s). If the defendant pled not guilty, the "trial" was held on the spot, as the arresting police officers were either present, or were on duty nearby and were called into court by other police personnel present. If the defendant was either found guilty by the court or pled guilty, either a fine and costs or community service was imposed upon every defendant. In the case of the juveniles, the community service involved performing community service at his or her local recreation center. Recreation center personnel monitor and report back to the Court a defendant's compliance (or failure to comply). If a defendant fails to pay fines and costs, the case is turned over to a third party collection agency. If the defendant continues not to pay, a civil judgment will be entered against the defendant.

In one case, the defendant (a homeless inebriate) was referred to Community Court so that the Court could order the defendant into treatment. Even in this case, the likely result for the defendant will include community service, possibly at the treatment center.

Under Pennsylvania law, if a defendant fails to appear, a trial will be held and the defendant can be found guilty *in absentia*, and a fine will be imposed. In such cases, the defendant is notified by mail of the adjudication and the amount of the sanction imposed. The defendant is given a period of time in which to contact the court. If fines and costs are not paid, a bench warrant will be issued. In cases where the defendant fails to perform community service, the defendant is given an opportunity to pay fines and court costs before a bench warrant is issued. Minnesota law does not permit trials to be held *in absentia*.

Summary Diversion Program

The Summary Diversion Program (Night Court) was established as part of the Nuisance Night Court initiative. Because Nuisance Night Court is normally held once a month in certain police districts (different weekends at different locations), defendants who commit summary offenses are issued citations directing them to appear at the Summary Diversion Program in the Criminal Justice Center at 5:00 p.m., on a date certain for arraignment. The Summary Diversion Program is held every night, and handles an average of 1,000 cases per month. This calendar is scheduled at

a time that allows for convenience of defendants and their parents, in the case of juvenile offenders. A trial court administrative officer presides over this calendar.

Once a defendant appears on this calendar for arraignment, he or she is given three choices: 1) the offender may plead guilty, and is ordered to pay \$442 in fines and costs (the offense goes on defendant's record); 2) the offender pleads not guilty and is sent to Community Court for a trial; or 3) if the offender is a first time offender, he or she may attend the Summary Diversion Behavior Class, and after successful completion, his or her record will be expunged.

Summary Diversion Program Behavior Class

On Saturday morning, the group observed the Philadelphia Municipal Court Summary Diversion Program Behavior Class. This class is held on the second Saturday of each month, and is given in the morning and in the afternoon. The class, which is offered only to first time summary offense offenders, is a three-hour, intensive class that addresses social, economic and legal ramifications of summary offenses. When a defendant completes the class and meets other program requirements (including payment of fees and costs), the case is dismissed and the record of arrest is expunged. The fees and costs total \$175 per person. A victims reparation fund receives \$60 of every \$175 fee collected. On the day that the group observed the class, the Court collected over \$40,000 in fees and costs.

The Summary Diversion Behavior Class is presented by a court administrative officer who is also a lawyer. Although the Summary Diversion Program Behavior Class has only been operating for one year, it has already generated over \$200,000 revenue to the City of Philadelphia.

Trial in Community Court

Philadelphia Community Court is a partner of the Nuisance Night Court. Community Court handles low-level misdemeanors as well as summary trials, but its jurisdiction is limited to a specific geographic area of Center City Philadelphia. Community Court is held each day, but only during regular "business" hours. One judge is assigned to Community Court, and all quality of life summary trials are handled in this court program.

LIVABILITY OFFENSES SUBJECT TO NIGHT COURT/SAME DAY OR NEXT DAY COURT

The summary offenses handled by the various Philadelphia court models include disorderly conduct, obstructing the highway, underage drinking, criminal mischief, defiant trespassing, retail theft, and harassment. Based on reports prepared by the Minneapolis Police Department, and previously filed with this Committee and on the City Council's decision to proceed with the First Precinct as a pilot project site, the "livability" offenses occurring in the First Precinct that we recommend for a night court/same day court or next day court pilot project include: disorderly conduct, trespassing, loitering offenses, possession of drug paraphernalia, graffiti, littering, begging/panhandling, indecent conduct (only if conduct is public urination), lurking offenses, noise violations (boom cars) and liquor offenses, including consuming by a minor, open bottle, consuming in public, and liquor in park.

HENNEPIN COUNTY DISTRICT COURT

On June 16, 2003, Mayor Rybak, Jay Heffern and Dana Banwer met with Chief Judge Kevin Burke and judges Wieland, Nord and Hopper to further discuss the night court/same day court or next day court concept. While the Court continues to express its concern about this initiative moving forward at a time when court funding is not secure, we discussed plans to further analyze the problem of livability offenses. It is anticipated that the analysis will address the following:

1. Definition of the problem based on information from the both the City and the Court, including the impact that juveniles have on livability offenses.
2. Data Research including evaluation of livability cases from the First Precinct to determine what is happening to these offenders. Questions to be answered include: How does the system handle chronic offenders? Now that the Mental Health Court is functioning on a limited basis, is the Mental Health Court an alternative for some of these offenders? How do suburban livability offenders compare with Minneapolis livability offenders? Do offenders appear in court in the suburbs and not in Minneapolis? To answer these questions, we will look at court data and Police Department data.
3. Cost/Benefit analysis needs to be performed by both the City and the County. What will be gained by establishing a new court?
4. Definition of Costs associated with establishing and operating a nuisance court. This will be examined by looking at other models established throughout the country, including Midtown, Manhattan, Austin, TX and Philadelphia, PA.

STAFFING AND COST REQUIREMENTS

Since the specific contours of the night court/same day or next day court have yet to be determined, we can only estimate the personnel needs and associated costs referring to the Philadelphia model and the current Hennepin County out of custody misdemeanor ("OCM") calendar. The morning arraignment calendar is conducted each day in courtroom 1156 of the Hennepin County Government Center. It is important to note that these figures are estimates, based on current OCM courtroom procedures.

Based on the figures provided, the total estimated annual cost of the OCM calendar is approximately \$516,294 (based on 1 FT probation officer; did not include STS crew leads figure of \$100,000) for a calendar that is staffed five days per week. Since a same day/night court model involves considerably less personnel, this figure reflects an upper cap amount indicative of current district court staffing. In addition, since a same day/night court would likely be held only on weekend evenings when the majority of livability offenses are committed, the actual operating costs would be considerably less than the OCM figure provided.

We have obtained a budget from Philadelphia to operate the Nuisance Night Court and its various programs. It is important to note that unlike the Minneapolis model, the Philadelphia model does not use attorneys. Philadelphia's budget totals \$289,570. The estimated Minneapolis figures based on the OCM calendar include both a prosecutor and a public defender. There are also additional cost considerations related to the Police Department that are not reflected on the chart previously provided to this Committee (attached hereto). Although it is difficult to provide a

monetary figure, it is anticipated that police officers would issue citations and/or make arrests during their regularly scheduled work hours and would not require additional personnel or overtime. However, there is a time “cost” involved because the officer’s appearance is required in court to testify to the commission of the offense. Philadelphia estimates that the police officers usually spend 20-30 minutes on-site for each court appearance. The figures provided for other City departments may also not require the allocation of new monies, since a shift of current personnel may potentially fulfill the staffing requirements. For example, the figure provided for the City Attorney’s Office would likely not require additional staff above the current budget allocation because a current Assistant City Attorney could staff the same day/night court as part of their regular work schedule, after an adjustment in work hours, if necessary.

However, actual cost savings could be realized by reducing the number of personnel involved. Since the majority of “livability” offenses are misdemeanors in Minnesota, attorney presence would be needed. However, by decriminalizing some or all of these offenses, the same day/night court or next day court could proceed much as it does in Philadelphia with only a judge, clerk(s), STS staff, police, other witnesses, and security personnel. Neither public defenders nor sheriff’s deputies would be needed. Changing these livability offenses from misdemeanors to petty misdemeanors would require legislative action by the Minneapolis City Council in the case of ordinance violations, and by the Minnesota state legislature in the case of state law.

NEXT STEPS AND RECOMMENDATIONS

While we are aware that the City Council expects the City Attorney’s Office to recommend the specific steps necessary to implement a nuisance night court/same day court or next day court in Minneapolis this summer, as indicated above, we have had several discussions with the Hennepin County District Court Bench regarding this initiative. Like other governmental agencies, the Court has been struggling with its own budget cuts and is unwilling to commit resources to a Minneapolis night court/same day court or next day court at this time. As discussed above, we anticipate being in a better position to discuss the actual design of a nuisance court model once the analysis discussed at our meeting with the Court on June 16th is complete.

As a recurrent theme in our discussions with the Court is lack of funds, we recommend that the City Council continue to explore means of funding a nuisance night court/same day court or next day court from private, non-profit and business community sources.

Pending completion of the analysis, and on a dual track, we recommend that the City Council direct the City Attorney’s Office and the Police Department to report back to this Committee, in one cycle, on the feasibility of initiating a program similar to Philadelphia’s Summary Diversion Behavior Class.

Based on the above, we recommend that the City Council receive and file this report. We further recommend that the City Council determine the offenses that will be subject to a night court/same day court or next day court. We also recommend that the City Council direct the City Attorney’s Office to report back to the Public Safety & Regulatory Services Committee in one cycle with results of the analysis performed by the District Court, the City and the County.

Estimated annual costs of a same day/night court model (half-day calendar) based on current OCM staffing and functions:

Court Staff	\$175,000 for courtroom clerk (.5), clerk in courtroom to set up time pays (.5), PD eligibility clerk (.5), clerk to act as receptionist, answer phones and receipt payments (.5), clerk to prepare, assemble, and update calendar (1.0), and a backup clerk (.5)
Corrections	\$64,000 – 2 part time Community Corrections Specialists for STS \$33,000-132,000 – depending on needs and requests, 1-4 probation officers to do record checks, assessments, referrals, etc. (66,532 1 FT probation officer) [\$100,000 – 2 STS crew leads <i>if</i> increase number persons on STS]
Public Defender:	\$53,000 – 1 part time PD (<i>estimate from Dreissen’s Suburban Cost Memo</i>)
Sheriff Deputy:	\$34,000 – 1 part time deputy
City Attorney:	\$81,762 – 1 FT City Attorney I + criminal division law clerk*
Overhead:	\$42,000 for 2 part time security guards (offsite location may result in increased costs)

* The City Attorney’s Office will use current staff and not new staff for this initiative.