NEAC

Nonfelony Enforcement Advisory Committee

FINAL REPORT

January 15, 1997

Pursuant to 1993 Minn. Laws Chap. 255 Sec. 1 Subd. 4

Pursuant to 1995 Minn. Laws Chap. 226 Art. 6 Sec. 17

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Minnesota Supreme Court
State Court Administration
Office of Research and Planning
25 Constitution Avenue, Suite 120
St. Paul, Minnesota 55155
(612) 297-7587

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About This Report

This report contains the history and discussion of a complete recodification of the state's criminal and vehicle codes being recommended by the Nonfelony Enforcement Advisory Committee. This report is supplemented by the Committee's recommended criminal and vehicle codes, in underline and ~~strikeout~~ fashion, including explanatory notes or annotations.

Briefly, the committee's recommendations encompass both felony and nonfelony crimes, with all of these crimes being reformatted, renumbered, and reorganized. Although most felony penalties are not being revised, penalty adjustments are included for those crimes that have both felony and nonfelony penalties. In addition, the Committee is recommending the addition of two new nonfelony penalty levels to facilitate the Committee's primary mandate of proportionality of penalties for nonfelony and related felony crimes.

Under the Committee's recommendations, the existing criminal code (chapter 609) and the scattered provisions relating to victim's rights (chapter 611A), drug crimes (chapter 152), weapons crimes (chapter 624), communications crimes (chapter 626A), and others (chapter 617) would be revised and consolidated into a new family of 609 chapters. The existing traffic related crimes in chapters 168, 169, 171, and 609 would be revised and consolidated into a new family of 169 chapters, creating for the first time a truly comprehensive vehicle code. These changes are intended to provide more user friendly criminal and vehicle codes.

The Committee's report and supplemental annotated codes are the culmination of several years of effort and incorporate the concerns of many individuals and organizations. If adopted, these recommendations will help ensure that the criminal justice system's scarce resources at the nonfelony level are directed proportionately to the most serious and harmful nonfelony crimes.

This report has been prepared and distributed by the State Court Administrator's Research & Planning Office, 120 Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, MN 55155. Both the report and the annotated supplemental codes are also available in electronic format (WordPerfect version 5.1/5.2).

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Table of Contents

NEAC Members

Chair:	Sue Dosal, State Court Administrator
Subcommittee Chairs:	Roger Battreall, Assistant Fourth District Public Defender (former Assistant Minneapolis City Attorney) Robert Johnson, Anoka County Attorney
Members:	Linda Aaberg, District Supervisor, Field Services, Department of Corrections Senator Ellen Anderson, Minnesota Senate Tim Bonham, Public Member Willie L. Bridges, Senior Planning Analyst, Hennepin County Attorneys Office Hon. Kevin S. Burke, Judge, Fourth Judicial District Martin Costello, University of Minnesota Law School and private practitioner (prosecution) Constance J. Crowell, Assistant Meeker County Attorney Representative Mike Delmont, Minnesota House of Representatives Keith Ellison, Executive Director, Minneapolis Legal Rights Center Gene Halverson, Major, State Patrol Mike Grupa, Conservation Officer, Department of Natural Resources Nancy Johnson, Public Member John McHugh, Corrections Agent, Department of Corrections Hon. E. Anne McKinsey, Judge, Fourth Judicial District Senator Thomas Neuville, Minnesota Senate Representative Jim Rhodes, Minnesota House of Representatives Randy Schwegman, Sheriff, Chisago County Stephen Simon, University of Minnesota Law School Representative Wesley Skoglund, Minnesota House of Representatives Karin L. Sonneman, Assistant Third District Public Defender and private practitioner (defense) Senator Allan Spear, Minnesota Senate Eileen M. Wells, Mankato City Attorney
Reporter:	Kenneth F. Kirwin, Professor, William Mitchell College of Law
Staff:	Kenneth Backhus, Senate Counsel Greg Bergstrom, Administrator, Judiciary Committee, Minnesota House of Representatives Marcia Greenfield, Administrative Assistant, Crime Prevention Committee, Minnesota Senate Michael Johnson, Staff Attorney, Research & Planning, State Court Administrator's Office Robert Kittel, Assistant Revisor of Statutes Emily Shapiro, Legislative Analyst, House Research Department Chris Turner, Legislative Analyst, Senate Counsel and Research Judy Zollar, Legislative Analyst, House Research Department
Research Assistants:	Steve Harris, William Mitchell College of Law Pete Ocel, William Mitchell College of Law Yolanda Ricks, University of Minnesota Law School Catherine Twitero, William Mitchell College of Law

NEAC Subcommittee Memberships

Executive Committee

Sue Dosal, chair
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Willie Bridges
Hon. Kevin Burke
Major Gene Halverson
Robert Johnson
Professor Stephen Simon
Representative Wesley Skoglund
Karin Sonneman

Compliance Alternatives/System Effectiveness Working Group

Robert Johnson, chair
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Karin Sonneman
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.....

Staff:
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Chris Turner
Judy Zollar

Proportionality and Statutory Evaluation Working Group

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Martin Costello
Constance Crowell
Representative Mike Delmont
Sue Dosal
Keith Ellison
Major Gene Halverson
Nancy Johnson
John McHugh
Hon. Anne McKinsey
Senator Allan Spear

.....

Staff:
Kenneth Backhus
Marcia Greenfield
Michael Johnson
Robert Kittel

Acknowledgments

The Nonfelony Enforcement Advisory Committee ("NEAC" or "the Committee") acknowledges and thanks the following individuals and organizations for participating in the many discussions necessary to the completion of this project:

Hon. Pamela Alexander
Nancy Bode
Marie Bibus
Hon. Timothy Bloomquist
James Brandt
Michael Brandt
Katherine Burke Moore
Hon. Robert Carolan
Mark Carey
M. Kate Chaffee
Gail Clapp
Kimberly Clement
Judy Cook
Pat Connelly
Debra Dailey
Don Davis
Bruce Duncan
Mary Eide
Robert Ellingson
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Laurel Hersey
Shirley Iverson
Joel Jamnik
William Jeronimous
Stephanie Johnson
C. Paul Jones
Ruth Keller
William Klumpp
Wayne Kobbervig
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Sharon Krmpotich
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Maj. Dennis Lazenberry
Carol Lansing
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Mike Ryan
Sarah Schlauderaff
Hon. Gary Schurrer
Paul Scoggin
John M. Stuart
Eric Stumne
Marie Sunlitis
Joni Thome
Jim Trudeau
Harry Walsh
Allison Wolf

Battered Women's Advocacy Project
Conference of Chief Judges
League of Minnesota Cities
Minnesota Association of Community Corrections Act Counties
Minnesota Association of County Probation Officers
Minnesota Association of Court Administrators
Minnesota Automobile Dealers Association
Minnesota Board of Police Officers Standards and Training
Minnesota Coalition for Battered Women
Minnesota Corrections Association
Minnesota County Attorneys Association
Minnesota Deputy Registrars Association
Minnesota Retail Merchants Association
Minnesota Sheriffs Association
Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure
Minnesota Supreme Court Implementation Committee on Mulitcultural Diversity
Minnesota State Bar Association Computer Law Section
Minnesota State Bar Association Continuing Legal Education
National Federation of Independent Business

These individuals identified many concerns that the Committee was able to address in its recommendations. Without their efforts, this project would not have been such a success.

The Committee is profoundly thankful to Professor Kenneth F. Kirwin for assuming the monumental role of Committee Reporter. His preparation of the statute recodification drafts, with many helpful comments and explanations, demonstrated tremendous skill and dedication. The Committee also acknowledges William Mitchell College of Law for supporting Professor Kirwin's efforts with administrative and research assistance. The contributions of Professor Kirwin's research assistants Steve Harris, Pete Ocel, Yolanda Ricks, and Catherine Twitero were also invaluable. The Committee further acknowledges West Publishing Company of St. Paul for donating CD-ROM research materials for this project.

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Committee Background

The Nonfelony Enforcement Advisory Committee ("NEAC" or "the Committee") was established by 1993 Minnesota Session Laws, chapter 255, in response to concerns about the proportionality, prosecution, and enforcement of nonfelony offenses. The Committee's specific mandate, as amended in 1995,[1] was to:

1. Analyze relative penalty levels for nonfelony crimes against the person, low-level felony property crimes, and crimes for which there are both felony and nonfelony penalties; and

2. Recommend any necessary changes in Minnesota law to achieve the following:

    a. proportionality of penalties for gross misdemeanors, misdemeanors, and petty misdemeanors;

    b. effective enforcement and prosecution of these offenses; and

    c. efficient use of criminal justice system resources.

The Committee consists of a broad cross section of the criminal justice community, including legislators, city and county attorneys, judges, criminal defense attorneys, probation officers, law enforcement, law professors, and public members. Appointments to the Committee were made by the legislature and the chairs of the senate crime prevention and house judiciary committees. The Committee is chaired by Sue Dosal, the State Court Administrator.

The initial legislation established a two-year period for the Committee to complete its work, but provided no funding for staff beyond the proviso that legislative staff and state agencies dealing with criminal justice issues were to provide assistance to the committee. The Committee's 1995 Interim Report to the Legislature set forth several alternative plans that were responsive to the Committee's statutory mandate. The plan recommended by the Committee involved a complete revision of nonfelony penalties (including additional degrees of misdemeanors) and a restructuring of the criminal and vehicle codes that would make those codes more functional and accessible for the entire criminal justice community. The Interim Report also recommended expansion of the Committee's mandate to include an analysis of offenses for which there are both felony and nonfelony penalties, as any modifications to existing nonfelony penalties would also affect the felony penalty. Because the Committee's recommended plan would require extensive drafting work, additional time and resources were necessary if the Legislature wished to have these proposals available for review and consideration for enactment into law. A less ambitious plan that would have minimally met the Committee's mandate was also offered for consideration.

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[1] 1995 Minn. Laws, chapter 226, art. 6, § 17.

In 1995, the Legislature signaled its approval of the Committee's recommended plan by extending the reporting deadline to January 15, 1997, authorizing the Committee to examine relative penalty levels for offenses for which there were both felony and nonfelony penalties, and appropriating funds for a "reporter." Ken Kirwin, professor of law at William Mitchell College of Law in St. Paul was selected as the reporter and state funds have been supplemented by William Mitchell (research assistants and support services) and by West Publishing (CD-ROM materials).

During the last year and a half, the Committee met in full session nine times, held two public hearings, more than a dozen subcommittee draft review sessions, and countless staff drafting sessions. In addition to testimony received at the public hearings, many interested individuals attended and participated in the discussions at each of the meetings. Committee members and staff also made presentations to, and discussed the recommendations with, the supreme court, the implementation committee on multicultural diversity, the advisory committee on the rules of criminal procedure, the conference of chief judges, all ten judicial district benches, court administrators, prosecuting attorneys and their associations, public defenders, court services and corrections departments and associations, county and city governments and their associations, law enforcement departments and associations, victim services, battered women's services, retail merchants, the state bar association computer law section, and other interested persons. These efforts identified additional concerns that the Committee was able to address in its recommendations and produced many helpful suggestions that were incorporated into the recommendations.

The Committee's recommendations are the result of considerable discussion and debate. On each issue, the Committee strived to reach a consensus both within the Committee and among interested persons, and was successful in most instances. Areas of significant disagreement are noted in this report. The Committee recognizes that the legislature is the final arbiter of public policy and this report and the accompanying recommendations for changes in Minnesota's criminal and vehicle statutes are intended as the starting point for an important legislative discussion and debate regarding the overall structure of those statutes and the penalties that are imposed when they are violated.

Underlying Premises

The following conclusions provide the framework for the Committee's recommendations:

1. The current criminal code (Chapter 609) and pertinent statutes contained in other chapters need to be revised to achieve an appropriate balance between person and property crimes. For example, domestic assault, order for protection violations, driving under the influence, and fleeing a police officer are currently sanctioned as misdemeanors and gross misdemeanors, while property offenders are subject to felony sanctions for offenses involving losses of $200 (or less if there are prior offenses).

2. The current criminal code, whose basic structure was created in 1963, is chaotic and disorganized with offenses of like kind being scattered throughout the code (or in other chapters), which makes it difficult for all users (from law enforcement to judges) to work with the code. Data collection and evaluation are also hindered, forcing policy makers to rely on anecdotal information.

3. Charging practices have been dramatically altered since the last criminal code overhaul in 1963. At that time, the majority of nonfelony cases were prosecuted as ordinance violations, rather than under the state's criminal and vehicle codes, because ordinance violations could be tried to the court rather than a jury. With the adoption of the Minnesota Rules of Criminal Procedure in 1975 and accompanying court decisions, criminal defendants secured a right to a jury trial for any charge under ordinance or statute for which they could be subjected to incarceration. Thus, by the early 1980's the state's criminal and vehicle codes served as the basis for most nonfelony prosecutions - with ordinance prosecutions generally limited to minor vehicle violations, housing code violations, and other areas of local concern.

4. Misdemeanors have become "devalued" with "it's only a misdemeanor" being a common refrain from both within the system and from the public. The problem is that the current nonfelony structure provides the legislature little flexibility to designate which nonfelony offenses are deemed to be more serious. This contributes to a continued escalation of penalties and increased costs to the already overburdened criminal justice system.[2]

5. Where practicable, offenses for which first time offenders typically do not receive incarceration should be handled informally to conserve the scarce resources of the criminal justice system.

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[2]In the thirteen-year period from 1982 to 1995, gross misdemeanor filings increased 250% from 6,277 to 22,982, and non-traffic misdemeanors increased 50% from 98,325 to 157,632. Many are high profile cases which place a higher demand on system resources. For example, in 1995, driving under the influence prosecutions accounted for 44,793 misdemeanor filings and 9,715 gross misdemeanor filings, and misdemeanor fifth degree assaults (which include domestic assaults) accounted for 17,666 filings. [Source: Research & Planning Office, State Court Administration.]

Overview of Reorganized Criminal and Vehicle Codes

Introduction

As outlined in the Committee's 1995 Interim Report to the Legislature, the Committee found that the current criminal code, whose basic structure was created in 1963, is chaotic and disorganized. All Committee members who must work with this code, and the equally cumbersome vehicle statutes, uniformly expressed frustration with the current structure and supported the structural changes being recommended by the Committee. The Committee's recommendations will make those codes more functional and accessible for the entire criminal justice community and will also facilitate needed improvements in data collection and evaluation.

This discussion begins with the technical aspects of the Committee's recommendations for formatting and numbering statutes and is followed by an outline of the reorganized criminal and vehicle codes as developed by the Committee. These recommendations encompass both felony and nonfelony offenses, and if enacted into law, will result in a new criminal code (the first recodification effort since 1963) and the creation of the state's first comprehensive vehicle code.

Statutory Format and Numbering Scheme

Existing statutes have no consistent format, with some statutes containing one long paragraph setting forth the elements of the crime, the penalty, and procedural provisions applicable to that crime. Other statutes, particularly those enacted or modified in recent legislative sessions, have a more coherent structure, with separate subdivisions for the elements, penalty and procedures.

In developing its recommendations for a uniform format and numbering scheme, the Committee also worked closely with the criminal and juvenile information policy group.[3] That group has been working for several years developing proposals to improve the information systems used to track and analyze crimes, and the Committee wanted its recommendations to be consistent with the efforts of the information policy group. The formatting scheme recommended by the Committee is to break each offense down into three discrete and separately numbered sections, rather than subdivisions, consisting of: (1) elements of the crime, (2) penalty provisions, and (3) procedural provisions (if any).

Each offense begins with a section defining the elements of the crime. Depending upon the offense, this may consist of one or two sentences or a number of paragraphs. Next, the

[3]Established by the legislature to study and make recommendations on a structured numbering scheme for the criminal code to facilitate identification of the offense and elements of the offense. The group consists of the chair of the sentencing guidelines commission, commissioner of corrections, commissioner of public safety, and the state court administrator. Minn. Stat. § 299C.65, subds. 1, 4 (1996).

penalty section or sections would have the same opening digits as the elements of the offense section, with an additional digit that designates the section as a penalty section. If there is only one penalty section, the last digit is a "5." If there is more than one penalty section, the sections are set out from most severe to least severe, and where possible the last digits are spread out as well (*e.g.*, 3, 5, and 7) to allow room for future legislative enactments. For example, the elements of murder are codified in the Committee's recommended statutes as section 609C.11, and the penalty sections are 609C.113 first degree, 609C.115 second degree, and 609C.117 third degree.

The Committee discussed but rejected a proposal to utilize the same numbers, to the right of the decimal point, for the new statute and the existing offense. Existing statutes have no consistent numbering scheme, with two to four digits to the right of the decimal point for offenses (*e.g.*, manslaughter from first to fourth degree are sections 609.20 to 609.2231). Thus, it would be impossible to use the existing numbers as a basis for a new numbering scheme that would offer any improved functionality or accessibility.

Some concerns were expressed that this new numbering scheme would make it difficult to link a new statute with the existing provision covering the same offense. However, the Committee was assured by the office of the Revisor of Statutes that this should not be a concern as cross-reference tables can be created to allow courts, attorneys, and others to clearly identify the prior statute and corresponding provision of the revised codes. The Committee's recommended statutes also include with each new section a notation that specifies the section or sections of existing law from which the new statute is derived. Finally, historical notes will also be placed throughout the Committee's final statutory recommendations to explain how a particular statute or group of statutes were restructured or reorganized.[4]

Outline of Criminal and Vehicle Chapters

Overview

The Committee's recommendations to restructure the existing criminal and vehicle codes into a new family of 609 and 169 chapters are intended to accomplish several goals. First, to provide a coherent structure for provisions which are now scattered in a "hodgepodge" fashion throughout an existing chapter or even incorporated into two or more existing chapters. Police officers, prosecutors, defense attorneys, and judges on the Committee and groups to which NEAC members and staff made presentations, all expressed their frustration with the current statutory scheme and support for the restructuring being recommended by the Committee. Secondly, the

[4]The Committee also discovered that all criminal statutes were assigned new numbers as part of the Criminal Code Recodification of 1963. With advancements in technology since then, particularly computerized databases and search engines, it should be far easier in the 1990's than in the 1960's for the Revisor of Statutes, legal publishers, and the courts to clearly define and determine from what prior statute or statutes a new section was derived.

proposed restructuring is necessary to deal with the expansion of the state's criminal code since the Criminal Code Recodification of 1963. The criminal code that emerged from that process was only 32 pages in length,[5] and has now grown to some 160 pages. As a result the Revisor's office and legislative staff encounter significant difficulties in trying to determine where a new statute should be located or the "number" that should be assigned to it, since the 1963 code was not designed with the thought that it would grow to its current size.

Criminal Code

The Committee recommends that the existing criminal code (chapter 609) and the scattered provisions relating to victim's rights (chapter 611A), drug crimes (chapter 152), weapons crimes (chapter 624), communications crimes (chapter 626A), and others (chapter 617) be revised and consolidated into a new family of 609 chapters as set forth in Table 1 below.

Table 1 - Criminal Code Outline	
609A	General Principles
609B	Victim's Rights
609C	Crimes Involving Death or Bodily Harm
609D	Other Crimes Against the Person
609E	Weapons Offenses
609F	Controlled Substances
609G	Theft and Related Offenses
609H	Other Property Offenses
609I	Crimes Involving Computers and Communications
609J	Crimes Against Public Health, Safety, and Tranquility
609K	Crimes Against Government
609L	Other Crimes
609M	Forfeitures
609N	Infractions

[5]Minn. Stat. ch. 609 (1965).

Chapter 609A incorporates sections 609.02 through 609.165 of the current criminal code. These provisions, which have been expanded and modified significantly since the adoption of the 1963 criminal code, are now separated into only two topical areas (general principles and sentences). As a result it has become difficult for attorneys, judges, and others to locate the appropriate statutory provisions. The Committee's proposal significantly improves the topical organization for these provisions by grouping them into nine topical areas.[6]

Chapter 609B contains the victim's rights provisions that are currently codified in Chapter 611A. The Committee felt that since this chapter contains substantive provisions that prosecutors, judges and probation officers must consider in their handling of criminal cases, these provisions should precede the chapters defining the various criminal offenses, rather than being contained in a subsequent chapter. Chapters 609C through 609L constitute the revised "criminal code" and consolidate offenses based on common underlying elements and order those offenses from the most serious (homicide), in Chapter 609C, to the least serious (crimes against government and miscellaneous crimes), in Chapter 609L.

Weapon and drug crimes, currently codified as chapters 152 and 624, received scant attention during the 1963 reorganization, but are now some of the most frequently charged criminal offenses. As a result, these are moved into the criminal code as chapters 609E and 609F. Chapter 609F also includes weapon related provisions from the existing chapter 609, thereby consolidating all weapon related provisions into one chapter. Since computer and communications crimes are an area of the criminal law that is likely to receive increased attention in future sessions due to our growing reliance on technology, the Committee has consolidated such offenses into a single chapter, 609I.

The various provisions relating to forfeitures have become a significant part of the existing criminal code and the Committee felt that they merited a separate chapter, 609M. The consolidation of these provisions and reorganization into seven topical areas should make it far easier for police officers, attorneys and judges to identify applicable forfeiture provisions. The last chapter in the 609 family, Chapter 609N, consolidates into one chapter the statutory provisions for infractions (discussed below).

The Committee is confident that this restructuring of criminal provisions will: (1) provide a more "user friendly" criminal code; (2) simplify the collection of statistical information pertaining to various offenses; (3) facilitate consideration of "proportionality" issues in future legislative sessions; and (4) allow room for new statutory enactments in upcoming sessions.

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[6]The nine topical areas are: (1) construction, application and definitions, (2) liability and defenses, (3) multiple prosecution and punishment, (4) punishment levels, (5) sentences generally, (6) increased sentences, (7) sentencing procedure, (8) post-sentence matters and (9) anticipatory offenses.

Vehicle Code

The various statutory provisions pertaining to the operation of motor vehicles and the licensing of drivers have never been the subject of a comprehensive review. The 1963 recodification focused solely on the criminal code and did not include any recommendations pertaining to vehicular offenses. Traffic offenses were once largely an "afterthought" within the criminal justice system. Now, with the public and legislative focus on DUI and other major traffic offenses that is no longer the case.

For the same reasons discussed above regarding the criminal code, *i.e.*, consolidation of related provisions and facilitating growth in the number of statutory provisions, the Committee is recommending the creation of a "vehicle code." This "vehicle code" consolidates related crimes in chapters 168, 169, 171, and 609 and consolidates them into a new family of 169 chapters as set forth in Table 2, below.

Table 2 - Vehicle Code Outline	
169A	Vehicle Code General Principles
169B	Substance-Related Vehicular Provisions
169C	Other Major Vehicular Offenses
169D	Other Moving Violations
169E	School Bus Safety
169F	Vehicle Equipment
169G	Size and Weight Provisions
169H	Parking and Towing
169I	Vehicle Insurance
169J	Drivers' Licenses
169K	Driver License Compact
169L	Driver Education
169M	Other Vehicle Provisions
169N	License Plate Violations and Impoundment

Chapter 169A, General Provisions, consolidates definitions and procedural provisions that are now scattered throughout chapters 169 and 171 and incorporates an enhanced topical breakdown. Definitions are also alphabetizes so that they can be more readily located.

The most substantial change is the consolidation of all substance-related and other major vehicular offenses, into one of two new chapters, Chapters 169B ad 169C. Chapter 169B consists of substance-related provisions now codified as sections 169.121 through 169.129 and the substance-related provisions of section 609.21 (criminal vehicular homicide and injury). This proposal has received broad support within the Committee and in discussions with prosecutors and law enforcement representatives who believe that it will make it far easier for them to work with what has become a complex and oftentimes confusing set of statutory provisions. Although some members initially voiced a concern that relocating felony-level offenses currently contained in Chapter 609 into this new section might be viewed as "minimizing" these offenses, the Committee concluded that this change need not have such a result.

First, members noted that there is precedent in current law for including both felony and nonfelony provisions involving death or substantial bodily harm in Chapter 169. That chapter currently contains felony-level provisions relating to "hit and run."[7] Second, to the extent that the system has a history of seeing "offenses contained within the traffic code" as being "minor offenses," that perspective is no longer valid. DUI and other offenses contained within the vehicle code are now among the most significant nonfelony offenses being dealt with by the criminal justice system. Finally, placing all substance-related offenses in one chapter, without regard to whether the penalty is a felony, gross misdemeanor or misdemeanor, should emphasize the "message" that the offense of DUI, even where the offender is fortunate enough to not have harmed himself or herself or others, is a "crime."

Similarly, the Committee believes that consolidating all major "non substance-related" vehicular offenses into one chapter, Chapter 169C, will be of benefit to the criminal justice system. This chapter includes the portions of section 609.21 (criminal vehicular homicide and injury), that are based on "grossly negligent operation of a motor vehicle," as well as section 609.487 (fleeing a police officer in a motor vehicle). The nonfelony offenses contained within this chapter include the current offenses of "hit and run" (section 169.09) and "careless" and "reckless" driving (section 169.13). Since these offenses are often charged together on a criminal complaint the Committee believes that all such offenses logically should be included in one chapter. In addition, as discussed above regarding Chapter 169B, the inclusion of felony-level offenses within this chapter should be seen as emphasizing the "risk" represented by all driving conduct contained within the chapter. Thus, rather than "minimizing" the felony-level offenses it may well have the desired effect of making the other nonfelony offenses seem more significant.

The remaining chapters, 169D through 169N, consolidate insurance, licensing, plate impoundment and other vehicular-related provisions into discrete chapters. As with criminal offenses, the Committee is confident that this reorganization of vehicular offenses to create for the first time a true "vehicle code" will be of substantial benefit to the criminal justice system.

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[7]Minn. Stat. §169.09 (1996).

Penalty Levels for Nonfelony Offenses

Overview

One of the major recommendations contained in the Committee's 1995 Interim Report to the Legislature was the creation of additional penalty levels for nonfelony offenses. The current two-tiered penalty structure (gross misdemeanor and misdemeanor offenses) dates back to 1913. At that time, a "gross misdemeanor" constituted an offense with a maximum term of incarceration of one year (the same as current law), and a "misdemeanor" offense was subject to a maximum term of incarceration of three months (the same as current law).[8] The only difference between the nonfelony offenses of 1913 and the offenses of today is the maximum fine level.

In the intervening years Minnesota's criminal and traffic laws have undergone major revisions. Yet, the Legislature continues to utilize the same core penalty levels, with the only significant change consisting of the creation of a petty misdemeanor penalty level to encompass minor offenses (predominantly low-level traffic offenses). This results in a "one-shoe-fits-all" treatment of hundreds of offenses, each of which has a different impact on society. For example, driving under the influence, driving without a license, domestic assault, and entering the State Fair grounds without paying the required admission fee are all currently designated by statute as misdemeanors.

With no meaningful differentiation in the statutory penalty for hundreds of misdemeanor offenses involving dissimilar conduct, the Legislature leaves to those working within the criminal justice system (police officers, judges, prosecutors, defense attorneys and probation officers), the difficult task of determining which nonfelony offenses are in fact "more serious."

The Committee believes that, with the addition of two more nonfelony penalty levels, the Legislature will be able to "rank" nonfelony offenses, with the most serious offenses continuing to be gross misdemeanors and less serious offenses being ranked as one of three degrees of misdemeanors (first degree is the most serious, and third degree the least serious). With four nonfelony penalty levels that include incarceration, the Legislature will, for the first time, be able to move away from the "one-shoe-fits-all" approach and provide statutory guidance to the criminal justice system regarding which nonfelony offenses are the most serious.

The new nonfelony penalty structure being recommended by the Committee is set forth in Table 3, below. The Committee decided to insert the first new level between the existing gross misdemeanor and misdemeanor offenses, and the second new level between the existing misdemeanor and petty misdemeanor offenses. The term "gross misdemeanor" is retained as the label for that offense, and the remaining nonfelony incarceration levels are designated as first, second, and third degree of misdemeanors. The Committee considered retaining the label of

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[8]Minn. Stat. §§ 8483, 8482 (1913). It appears that the "gross misdemeanor" offense existed for certain crimes prior to 1913 but was not incorporated into the criminal code as a general penalty until 1913. See Minn. Stat. §8483 (1909); 1911 Minn. Laws. ch. 272 (dishonored check a gross misdemeanor).

"petty misdemeanor" for that offense, but decided that it should be renamed an "infraction" to reflect the extensive changes being made in both the underlying structure and the procedural aspects of the offense.

Table 3 - Offense Classifications	
Current Nonfelony Structure	Proposed Nonfelony Structure
Gross Misdemeanor - up to a $3,000 fine and/or 365 days incarceration	Gross Misdemeanor - up to a $3,000 fine and/or 365 days incarceration
Misdemeanor - up to a $700 fine and/or 90 days incarceration	First Degree Misdemeanor - up to a $1,500 fine and/or 180 days incarceration
	Second Degree Misdemeanor - up to a $1,000 fine and/or 90 days incarceration
	Third Degree Misdemeanor - up to a $750 fine and/or 30 days incarceration
Petty Misdemeanors - not more than $200 fine	Infraction - up to a $500 fine and/or other conditions [9] plus restitution

With the recommendation to create two additional levels of nonfelony penalties for which incarceration may result, the Committee needed to address three issues: (1) the incarceration levels for these offenses, (2) the amount of the fine that may be imposed and (3) the length of the probationary period. The sections that follow discuss each of these issues, the Committee's specific recommendations, and the rationale underlying the recommendations.

Incarceration Levels

For the "first degree misdemeanor" offense the Committee decided to recommend a maximum penalty of 180 days incarceration. The result is a progression of incarceration periods for the gross misdemeanor, first degree misdemeanor and second degree misdemeanor offenses. The most serious offense - gross misdemeanor - has a maximum penalty of one year, the next most serious offense - first degree misdemeanor - has a maximum penalty of 180 days (half of the maximum for a gross misdemeanor), with the maximum penalty for a second degree misdemeanor being 90 days (half of the maximum for a first degree misdemeanor and the same as the current misdemeanor). As to the third degree misdemeanor, the Committee discussed two

[9]See the System Effectiveness section for a discussion of the other conditions that may be imposed as part of an infraction penalty.

options: (1) a maximum period of incarceration of 30 days and (2) a maximum period of incarceration of 45 days. The Committee opted for the former because 30 days appeared adequate for the type of offenses that were being recommended for inclusion in this offense category.

When Committee members and staff have made presentations regarding its recommendations, there has been considerable support for the recommendation to create additional nonfelony penalty levels. The primary concern that has been raised is that the proposed nonfelony penalty structure is more "complex" than current law.

However, if the Committee's recommendations for two additional nonfelony penalty levels are enacted into law, the nonfelony penalty structure will continue to be significantly less complex than Minnesota's felony penalty structure. At the felony level, Minnesota's criminal and vehicle statutes establish thirteen different "levels" of maximum incarceration (life, 40 years, 30 years, 25 years, 20 years, 15 years, 10 years, 7 years, 5 years, 4 years, 3 years, 2 years, and a year and a day).[10] These differing maximum penalties, appear to be driven by the Legislature's desire to differentiate between offenses and also to reflect in the maximum sentence the various community-based and victim-based interests being "protected" by a statute. Just as these considerations mandate a range of maximum penalties for felony offenses (so that manslaughter can be sentenced differently than burglary of a garage or unemployment compensation fraud), they also necessitate a range of maximum penalties for nonfelony offenses (so that repeat DUI can be sentenced differently than unlawful sale of tobacco or driving after suspension).

The Committee also reviewed the nonfelony penalty structure for a cross-section of other Upper Midwestern states, and found that most have already adopted nonfelony structures similar to the Committee's proposal. Table 4, below, identifies the various nonfelony penalties established in the noted states:

[10]This multi-tiered statutory scheme carries over into Minnesota's Sentencing Guidelines "grid," which assigns one of ten different "severity levels" to each criminal offense (with the exception of certain murder offenses that are not incorporated into the Guidelines structure).

Table 4 - Nonfelony Penalties From Selected Jurisdictions	
Illinois	(1) Class A Misd. - 1 year and/or $1,000, (2) Class B. Misd. - 6 months and/or $500, (3) Class C Misd. - 30 days and/or $500, (4) Petty Offense $500. 730 ILCS 5/5-8-3; 5/5-9-1.
Indiana	(1) Class A. Misd. - 1 year and/or $5,000, (2) Class B. Misd. - 180 days and/or $1,000, (3) Class C. Misd. - 60 days and/or $500.
Iowa	(1) Aggravated Misd. - 2 years and at least $500 but not more than $5,000, (2) Serious Misd. - 1 year and at least $250 but not more than $1,500, (3) Simple Misd. - 30 days and at least $50 but not more than $100.
Kansas	(1) Class A. Misd. - 1 year and/or $2,500, (2)Class B Misd. - 6 months and/or $1,000, (3) Class C. Misd. - 1 month and/or $500.
Nebraska	(1) Class I Misd. - 1 year and/or $1,000, (2) Class II Misd. - 6 months and/or $1,000, (3) Class III Misd. - 3 months and/or $500, (4) Class IIIA Misd. - 7 days and/or $500.
North Dakota	(1) Class A Misd. - 1 year and/or $1,000, (2) Class B. Misd. - 30 days and/or $500.
Ohio	(1) First degree Misd. - 6 months and/or $1,000, (2) Second degree Misd. - 90 days and/or $750, (3) Third degree Misd. - 60 days and/or $500, (4) Fourth degree Misd. - 30 days and/or $250.
South Dakota	(1) Class 1 Misd. - 1 year and/or $1,000, (2) Class 2 Misd. - 30 days and/or $200.
Wisconsin	(1) Class A Misd. - 9 months and/or $10,000, (2) Class B Misd. - 90 days and/or $1,000, (3) Class C. Misd. - 30 days and/or $500.

Fine Levels

The additional incarceration levels and the new "infraction" level also require a new maximum fine structure for nonfelonies. Establishing the appropriate levels requires consideration of the history underlying the current misdemeanor fine levels, the need to establish different fine amounts for each level, and the impact of existing mandatory minimum fines.

Historically, the maximum fine amounts for gross misdemeanors and misdemeanors have not been modified in fourteen years. Table 5, below, outlines the history of fine revisions since the Criminal Code Recodification of 1963:

Table 5 - Fine Revisions From 1963 to Present		
Year	Gross Misdemeanors	Misdemeanors
1963	$1,000	$100
1969	No change	$300
1977	No change	$500
1983	$3,000	$700

The Committee decided to retain the $3,000 maximum fine for gross misdemeanors for two reasons. An additional increase in the gross misdemeanor fine level would "overlap" with felony sanctions and could result in a higher fine being imposed on a gross misdemeanor than on certain felony offenses. Second, the last adjustment in 1983 (a tripling of the maximum fine), was of such a magnitude as to make an additional adjustment unnecessary.

The Committee's proposed first degree misdemeanor fine of $1,500 represents 50% of the maximum fine for a gross misdemeanor. For second degree misdemeanors the recommended fine of $1,000 is based on several considerations. First, this offense is equivalent to the current misdemeanor and an upward adjustment in the maximum fine level is needed because of the "devaluation" that results from fourteen years of inflation.[11] Second, a fine is a major component of the sentence for lower-level offenses and it is necessary to establish different fine levels for each nonfelony offense. Third, the $1,000 fine is part of a tiered structure of fines (separated by $250) beginning with the lowest level infraction offense.

The recommended fine of $750 for a third degree misdemeanor is based on several considerations. The conduct encompassed within these offenses is such that the court may wish to "retain" misdemeanor status for enhancement of subsequent offenses while imposing only a fine as the penalty. This means that the maximum fine level for a third degree misdemeanor must be greater than for an infraction or the court would by imposition of a "fine only" reduce the offense from a third degree misdemeanor to an infraction via the sentence imposed. Another factor is that the Committee is also recommending (see discussion below) that local units of government be limited to enacting ordinances that carry penalties no greater than third degree misdemeanors. The Committee did not feel that this limitation should result in a reduction in the maximum fine that political subdivisions may currently impose for ordinance violations ($700). The $750 maximum fine level for third degree misdemeanors means that such a result will be avoided.

[11]Based on CPI (Consumer Price Index) data, by the end of 1996 the core misdemeanor fine would need to be set at slightly over $1,100 to be the equivalent in 1996 dollars of the $700 maximum fine that was established in 1983. Source: Bureau of Labor Statistics.

The maximum fine level of $500 for "infractions" (a lower maximum of $250 is proposed for parking violations and other low-end vehicle offenses) will encourage the Legislature and local units of government to avoid using the criminal justice system for offenses for which incarceration is not going to be the anticipated result. The current $200 maximum fine for petty misdemeanors forces the legislature and local units of government to designate many offenses as misdemeanors for the sole purpose of obtaining fines greater than $200. With the $500 maximum fine for infractions the Committee has been able to recommend that certain offenses now sanctioned as misdemeanors be handled as infractions. These include, for first offenders, the offenses of: (1) underage consumption of alcohol by 19 and 20-year old persons; (2) driving without a license; (3) driving without insurance; (4) theft under $100; and (5) worthless checks under $250. First time and repeat moving vehicle violations, except those involving danger to persons or property, are also included (see Classification of Offenses section, below). It is also the Committee's belief, based on discussions with representatives of the League of Minnesota Cities, that this higher maximum fine for infractions will encourage cities to modify many of their current regulatory ordinances to provide for an infraction rather than a misdemeanor penalty, with possible enhancement to third degree misdemeanor for repeat violations.

Current law also requires courts to impose a minimum fine equal to 30% of the statutory maximum fine.[12] As a result, the Committee's recommended fine levels will increase the minimum fines applicable to most offenses. For example, the minimum fine for offenses that are currently misdemeanors and are classified under the Committee's recommendations as second degree misdemeanors would increase from $210 to $300, while the minimum fine for third degree misdemeanors would be $225 (vs. $210 if these offenses were misdemeanors under current law). Many members of the Committee and the judiciary have expressed concern that these increases could exacerbate the tension between the legislature and the judiciary over sentencing issues[13] and more importantly take Minnesota even farther away from a "means based" approach to criminal and vehicle fines. A means based approach to fines can be designed around the proportionality

[12]Minn. Stat. § 609.101, subds. 2-4 (1996). Codified in the Committee's recommended statutes as 609A.47, subds. 2-4.

[13]The minimum fines are used to fund victim and drug treatment programs. Minn. Stat. § 609.101, subds. 2-4 (1996). This signals a legislative trend that looks to criminals to offset more and more of the costs of the criminal justice system. At the same time, however, fixed percentage minimum fines adversely affect the poor, particularly the working poor and communities of color. For example, a defendant sentenced to 90 days in jail must pay Huber work release fees in order to support his or her family, and often there is no room for the additional burden of the mandatory 30% minimum fine.

embodied in the Committee's recommendations,[14] and the Committee recommends legislative examination of a means based approach.[15]

The Committee is also recommending that fine levels be revised for many felony offenses in order to achieve a consistent progression in fines that may be imposed by the courts for criminal and vehicle offenses. The Committee is aware that this change is not specifically within the Committee's mandate. However, both Committee members and legislative staff assisting the Committee concluded that these recommendations should be pursued in conjunction with the overall renumbering and restructuring of the criminal and vehicle codes rather than attempt to make those changes in a separate piece of legislation that would increase the demands on legislative staff. If the Legislature believes that these changes should not be pursued the Reporter and Committee staff will assist in modifying the draft legislation to delete these changes from the drafts. The changes being recommended are based on the amounts identified in Table 6 below.

Table 6 - Proposed Felony Fine Structure	
General Felony Fines:	$2,000 per year of maximum incarceration
Economic Felony Fines:	$5,000 per year of maximum incarceration
Major Economic Felony Fines: (e.g., hazardous waste crimes)	More than $5,000 per year of maximum incarceration

No fine adjustments are being recommended for those offenses for which unique considerations have caused the legislature to establish far higher maximum fines than are provided for in most of the state's criminal statutes (*e.g.*, controlled substance crimes).

Probationary Period

Subject to certain exceptions, the current maximum nonfelony probationary term for gross misdemeanors is 2 years, and for misdemeanors the maximum is 1 year. The Committee considered establishing a different probationary period for each of the three degrees of

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[14]See, *e.g.*, Minnesota Sentencing Guidelines Commission, *A Model for Means Based Fines*, December, 1992. This model proposed a method of fining based on the seriousness of the offense and the offender's ability to pay. It combines proportionality (fine units are assigned to offenses based on their seriousness) with equality of punishment (fine is adjusted based on offenders net daily income, discounted by financial hardships such as child support and economic status). It also includes a method of determining a comparable amount of community work service in lieu of the means based fine.

[15]The Conference of Chief Judges has appointed a committee to study means based fines and other alternatives to the current mandatory minimums. The committee is expected to report to the Conference by early 1997.

misdemeanors but rejected the idea in favor of a simpler structure that builds on the existing probationary periods.

The proposed first degree misdemeanor category includes many offenses, both existing gross misdemeanors and (certain) misdemeanors,[16] that currently have a two year probationary period. The Committee declined to adopt any proposal that would reduce these probationary periods, and recommends a two year probationary period for both first degree misdemeanors and the gross misdemeanors. The Committee also declined to adopt any probationary period shorter than one year (*e.g.*, six months) because it would not provide sufficient time for completion of court-ordered programs or for payment of restitution. Thus, the Committee recommends a one year probationary term for both second and third degree misdemeanors.

Thus, for any offense that is reclassified from a gross misdemeanor to a first degree misdemeanor there will be no change in the probationary period; likewise for any offense that is reclassified from a misdemeanor (under current law) to a third-degree misdemeanor, there will be no change in the probationary period. The Committee's draft legislation also retains provisions which provide for longer periods of probation for certain designated offenses.[17]

Procedural Implications - Rules of Criminal Procedure

The Rules of Criminal Procedure promulgated by the Minnesota Supreme Court govern the procedure in prosecutions for felonies, gross misdemeanors, misdemeanors and petty misdemeanors. The Committee's recommendations, if adopted by the legislature, will impact the criminal rules and require amendments to those rules. The issues include, for example, whether formal probable cause complaints will be required for the new first degree misdemeanors (the Committee recommends that informal citations or tab charges be permitted) and procedural changes in the sections regarding fine only offenses (see discussion of infractions in the System Effectiveness section, below). A dilemma exists, however, in that the Supreme Court cannot modify its rules until after the legislature adopts the substantive statutory changes recommended by the Committee.

Representatives of the Committee have met with the Supreme Court and have discussed all criminal rules implications with the Court's criminal rules advisory committee (which also

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[16]*E.g.*, harassing telephone calls, intrusive observation and indecent exposure. Minn. Stat. § 609.135 (1996). Pursuant to that section these offenses (misdemeanors under current law) are subject to a 2-year probationary period. The Committee's proposed legislation increases the penalty for each of these offenses to a first-degree misdemeanor, see 609D.715 (intentionally causing distress, formerly harassing telephone calls), 609D.775 (intrusive observation) and 609D.795 (indecent exposure).

[17]These include a 4 year probationary period for gross misdemeanor driving under the influence and refusal to test offenses and a 2 year probationary period for certain second degree misdemeanor offenses (driving under the influence, refusal to test, obscene telephone calls, and domestic related assaults). These are codified in section 609A.65, subd. 3, of the Committee's recommended statutes.

includes one NEAC member, Martin Costello). Both NEAC and the criminal rules advisory committee desire to avoid separation of powers issues and believe that necessary rules changes should be made in the form of recommendations to the rules committee rather than through legislative enactment purporting to dictate the result.

If the Committee's nonfelony offense classifications are adopted by the legislature, the Committee recommends that the Supreme Court modify its rules of criminal procedure to permit the use of citations and tab charges for all first degree misdemeanors. A "tab-charge" is a charge that is filed by a peace officer when an offender is booked during the pretrial detention process (oftentimes with an immediate release); a "citation" commences a prosecution by issuance of a ticket-based charging document. Minn.R.Crim.P. 4.02, subd. 5(3); 6.01. These avoid the delays in obtaining a formal, probable cause complaint or a grand jury indictment.

The new first degree misdemeanor offense classification will include a mixture of former misdemeanor and gross misdemeanor offenses, and the rationale supporting the Committee's recommendation is eloquently set forth in the following criminal rules advisory committee commentary:

> "Where the defendant agrees, Rule 4.02, subd. 3(5) provides the procedure for initiating misdemeanor proceedings . . . without the necessity of issuing a complaint or obtaining an indictment as is required for felonies and other gross misdemeanors. This is provided to avoid the unnecessary delay for a defendant and to aid a prosecutor in those cases in where the defendant may not even desire a complaint if sufficiently informed in some other way of the charges. When a defendant first appears in court following a warrantless arrest in such cases, the clerk shall enter on the records a brief statement (tab charge) of the offense charged, including a citation to the statute, ordinance, rule, regulation, or provision of law which the defendant is alleged to have violated. This statement shall be a substitute for the complaint and is sufficient to initiate the proceedings in such cases under Rule 10.01 unless the defendant, defense counsel or the court requests, in misdemeanor cases, that a complaint be filed . . .
>
> * * *
>
> Under Rule 5.01 a defendant must be advised of the right to demand a complaint. It is anticipated that complaints will be requested by defendants in only a small percentage of misdemeanor cases because discovery is permitted under Rule 7.03, and most defendants will not wish to make an additional appearance to receive the complaint."[18]

Gross misdemeanor driving under the influence proceedings may also be initiated by tab charge under current rule 4.03, subd. 5(3), subject to the requirement that a formal, probable

[18]Minn.R.Crim.P. 4, Comment (West 1996).

cause complaint be filed within 48 hours of the defendant's first appearance in court. The advisory committee comments to the rule explain that this exception is required to avoid substantial delay in prosecuting these offenses which delay is caused by the increased number of gross misdemeanor DUI prosecutions and lack of prosecutorial resources. No change to this rule is recommended by the Committee.

Finally, the Committee recommends that the Court adopt additional modifications to reflect the substantive changes adopted by the legislature, particularly those relating to infractions (see discussion under System Effectiveness, below). This will avoid confusion and unwarranted litigation.

Ranking Factors

The Committee's mandate to recommend penalty changes for a variety of dissimilar offenses required the creation of a "framework" or "matrix" that would identify the issues that should be considered in deciding what penalty level would be recommended for a given offense or group of offenses. The Committee worked on this task in late 1993 and early 1994 and the result was the creation of a two-dimensional table of "Ranking Factors" (set forth in Table 7 below).

In developing the ranking factors the Committee utilized many of the criteria adopted or developed by the Minnesota Sentencing Guidelines Commission for use with felony offenses, with modifications being made to reflect the fact that the table would be utilized primarily for evaluating nonfelony offenses. The Committee determined that the following represented the primary and secondary considerations that would serve as the basis for classifying each offense:

- the interest being protected by the statute;
- the degree of the harm or loss resulting from the offense;
- the level of behavior (extent to which the offense damaged the protected interest);
- the offender's degree of culpability; and
- other issues that impact upon the classification of an offense.

Within each category the Committee then identified applicable "sub-factors" and ranked those factors within each category, with the most significant factor being assigned the highest number (9) and the least significant factor the lowest number (1 or 2).

The primary factor in classifying a crime is the "interest(s) being protected" by the statute. Within this factor is a hierarchy of protected interests ranging from statutes which are designed to protect the person (assigned a value of "8 or 9"), to those intended to protect the moral and behavioral interests (assigned a value of "1"). This hierarchy incorporates the Committee's belief that statutes which protect persons rather than property interests should carry more severe penalties.

One secondary determinant of crime severity is the "degree of harm or loss" that results from the prohibited conduct. Within this factor the highest value is assigned to offenses which result in "great bodily harm or death," the lowest value to offenses with "a small loss" or "other." The other secondary determinant of crime is the "level of behavior." This factor relates to whether the offense is "completed" (assigned the highest rank), resulting in actual harm or loss to the protected interest, or is "incomplete" (ranging from potential to threatened).

The fourth ranking factor is "offender culpability." Within this category the highest value is assigned to premeditated and/or planned conduct and the lowest value to offenses based upon principles of "strict liability," without regard to the offender's intent.

The last ranking factor incorporates miscellaneous issues that impact the classification of a statute for purposes of identifying the penalty level, such as repeat offender status and bias-related motivation. The Ranking Factors are set forth in Table 7, below.

Table 7 - Ranking Factors

Interest Being Protected	Degree of Harm or Loss	Level of Behavior	Degree of Culpability	Other Issues
9 Vulnerable person	**9** Great bodily harm or death	**9** Completed	**9** Premeditated/ planned	**9** Extensive related priors
8 Person	**8** Substantial bodily harm			**8** Abuse of trust
7 Public endangerment	**7** Bodily harm	**7** Threatened	**7** Intentional	**7** Moderate related priors
6 Property	**6** Emotional harm/fear	**6** Likely		**6** Bias-related motivation
5 Gov't process/ institutional integrity	**5** Confinement		**5** Reckless/ gross negligence	**5** Minimal related priors
4 Integrity and fair competition	**4** Large loss	**4** Foreseeable		**4** Secondary person interest
3 Public infrastructure/ conservation protection	**3** Medium loss		**3** Negligence	**3** Secondary public endangerment interest
2 Regulatory process integrity/ compliance problems	**2** Small loss	**2** Potential		**2** Large other
1 Moral and social behavior/ preferential norms enforcement	**1** Other		**1** Strict liability	**1** Smaller other
0 None	**0** None	**0** None	**0** None	**0** None

When reviewing each nonfelony or related felony penalty provision, the Committee identified the values for each of the five ranking factors. These values (with the "interest protected" being the first digit and "other issues" being the last digit) are then reduced to a five-digit "ranking code" (which represents the values for the five ranking factors). These "ranking codes" are included in the Committee's recommended statutes at the end of each penalty provision and in the criminal and vehicle code nonfelony offense lists appended to this report.

The Ranking Factors served as the primary basis for the Committee's recommendations as to what nonfelony penalty should be assigned to a specific offense or group of offenses. The Ranking Factors were also utilized in evaluating the penalty levels for felony property crimes. Additional factors considered by the Committee in determining the appropriate penalty level included existing sentencing practices (is a jail sentence imposed?) and procedural implications.

Comparison of Existing Penalties: Crimes Against the Person and Property Crimes

One of the primary legislative charges to the Committee was to "analyze the relative penalty levels for nonfelony crimes against the person and low-level felony property crimes."[19] The Committee considered a crime to be a "crime against the person" if it resulted in direct injury or threat of injury to another or if the underlying conduct posed a substantial risk of injury to another. For comparison purposes, the Committee focused on four types of person crimes that have had a substantial impact on the criminal justice system and have been the subject of extensive legislative activity over the past fifteen years: driving while under the influence of alcohol and other prohibited substances ("DUI"), domestic assault and related offenses, fleeing a police officer in a motor vehicle, and possession of a handgun without a permit.

Since the early 1980's, the legislature has substantially modified the statutes applicable to these offenses. These changes included: (1) new offenses (fleeing a police officer in a motor vehicle, harassment, and order of protection offenses); (2) enhancement provisions imposing harsher sentences on repeat offenders; and (3) other procedural and statutory changes to strengthen the criminal justice system's response to these offenses (e.g., authorizing an arrest on probable cause within 12 hours of an incident of domestic abuse). The legislative changes and the increased emphasis being placed on the offenses have played a pivotal role in the 250% increase in gross misdemeanor filings between 1982 and 1995 (from 6,277 to 22,982), with gross misdemeanor DUI filings in 1995 (9,715) exceeding the total number of gross misdemeanors filed in 1982.[20] Table 8 below lists the current penalty levels for these offenses.

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[19]See 1993 Minn. Laws, chapter 255.

[20]Source: Research & Planning Office, State Court Administration.

Table 8 - Current Penalties for Selected Nonfelony Person Crimes		
Crime	First Offense	Repeat Offense[21]
DUI	Misdemeanor	Gross Misdemeanor
Domestic Assault	Misdemeanor	Gross Misdemeanor or Felony (5 year)
Flee Officer in Vehicle	Gross Misdemeanor	Felony (1 year and 1 day)
Handgun Possession	Gross Misdemeanor	Felony (3 year)

For comparison purposes, the Committee selected four property offenses that constitute some of the most commonly charged property crime offenses: (1) theft, (2) damage to property, (3) check forgery and (4) financial card transaction fraud. The penalty for these offenses is determined by the amount of loss[22] and is set forth in Table 9 below.

[21]1996 Minn. Stat. §§ 169.121, subd. 3; 169.129 (DUI; prior within 5 years or drivers license is revoked due to prior alcohol-related traffic incident); 609.2242, subds. 2, 4 (domestic assault; prior within 5 years); 609.487, subd. 3 (flee officer; no time limit); 624.714, subd. 1 (handgun possession; no time limit).

[22]Theft of certain property (e.g., firearm, a trade secret, an explosive or incendiary device, a schedule I or II controlled substance, a motor vehicle) and theft from person, constitute a felony without regard to the value. Minn. Stat. § 609.52, subd. 3 (1996). These provisions are retained in the Committee's proposed legislation (see section 609G.113 (e)(1)-(5)). Damage to property constitutes a felony, whatever the amount of the damage where the damage caused a foreseeable risk of bodily harm, involved damage to property of a common carrier or public utility which resulted in "service impairment" to the public, or where the damage is "bias motivated." Minn. Stat. § 609.595, subds. 1, 1a (1996).

Table 9 - Current Penalties for Selected Property Crimes [23]			
Crime	Misdemeanor	Gross Misdemeanor	Felony (maximum penalty)
Theft	$0-$200 loss	$201-$500	$501-$2500 (5 yrs.) $2501-$35,000 (10 yrs.) $35,000+ (20 yrs.)
Damage to Property	$0-$250	$251-500	$500+ (5 yrs.)
Check Forgery	None	$0-$200	$201-$2500 (5 yrs.) $2500-$35,000 (10 yrs.) $35,00+ (20 yrs.)
Financial Transaction Card Fraud	None	$0-200	$201-$2500 (5 yrs.) $2500-$35,000 (10 yrs.) $35,000+ (10 yrs.)

Losses may also be "aggregated" within a six-month time period in order to prosecute at a higher level (*e.g.*, three thefts within a six-month period involving losses of $250, $300 and $375 can be combined into a single offense of theft over $500 with a maximum penalty of 5 years rather than prosecuting each as a gross misdemeanor theft over $200). In addition, if the offender has a prior conviction of a qualifying property crime, losses for theft, check forgery, and financial transaction card fraud that otherwise fall at the gross misdemeanor level may be prosecuted as a felony (5-years).[24]

When reviewing these statutes, the first thing that the Committee noted was that the 5, 10, and 20 year penalties for the selected property crimes not only exceeded the maximum penalty for the selected nonfelony person crimes but also exceeded or equaled the penalty for many felony person crimes. For example, 20 year felonies include first degree assault (great bodily harm) and burglary (involving a weapon or assault). Ten year felonies include second degree

[23]1996 Minn. Stat. §§ 609.52, subd. 3 (theft); 609.595, subd. 1-3 (damage to property); 609.631, subd. 4 (check forgery); 609.821, subd. 3 (financial transaction card fraud).

[24]The qualifying offenses include: (1) wrongfully obtaining assistance, (2) unemployment compensation fraud, (3) aggravated and simple robbery, (4) theft, (5) receiving and concealing stolen property, (6) burglary, (7) aggravated forgery, (8) check forgery, (9) financial transaction card fraud. Minn. Stat. §§ 609.52, subd. 3(3)(c); 609.631, subd. 4 (3)(b); 609.821, subd. 3 (iv) (1996). Under these provisions, the sentence imposed for the prior conviction must fall within the penalty levels for either a felony or gross misdemeanor offense, but above the maximum for a misdemeanor offense. For example, a prior conviction sentenced to 60 days imposed or stayed could not be used to charge the felony level offense for a repeat violation.

assault (dangerous weapon and substantial bodily harm), burglary of a dwelling, fourth degree criminal sexual conduct, criminal vehicular homicide, fleeing police in a vehicle (resulting in death), and second degree manslaughter. Five year felonies include third degree assault (substantial bodily harm), and criminal vehicular homicide (great bodily harm or substantial bodily harm to unborn child). Felony person crimes with maximum penalty of less than five years include criminal vehicular homicide (substantial bodily harm; 3 years) and fourth degree assault on a police officer (2 years).

When the Committee compared the penalties for nonfelony person and the selected property crimes, utilizing the ranking factors, it was apparent that the penalties were significantly lacking in proportionality. For example a theft of $225 and a forged check of $50 are gross misdemeanors with ranking codes of 63970 and 62970, respectively. In contrast, first time DUI and domestic assault are both misdemeanors with ranking codes of 88454 and 86970, respectively. In addition, other gross misdemeanor person crimes have significant ranking codes (e.g., repeat DUI = 87459, repeat domestic assault = 86977, first-time fleeing from a police officer in a motor vehicle = 54974, and possession of a handgun without a permit = 88470).

The options available to the Committee to address the lack of proportionality were: (1) recommend an increase in penalties for the noted "nonfelony crimes against the person" or (2) recommend an adjustment in the dollar levels for felony and nonfelony property crimes. The Committee rejected the first option as inconsistent with the intent of the legislature in creating the Committee. The Committee also concluded that the fiscal impact of the first option (establishing felony DUI and domestic assault crimes) would be substantial, exacerbating the already difficult funding decisions for the legislature, which must balance the demands of the criminal justice system against other important state functions such as education and health care. Thus, the Committee concluded that the second option (adjusting the dollar levels for felony and nonfelony property crimes) should serve as the basis for the Committee's recommendations to the Legislature. The specific offense classifications recommended by the Committee are set forth in the offense tables appended to this report and the discussion of selected provisions (theft, damage to property, check forgery and financial transaction card fraud offenses, worthless check offenses) below.

Classification of Specific Offenses

General

This section discusses the Committee's recommendations for modifying the penalties for the following selected offenses:

- theft and related offenses
- check forgery and financial transaction card fraud
- issuance of dishonored checks ("worthless checks")
- damage to property

- assault and domestic crimes
- substance related offenses
- driving without a license/after suspension
- failure to insure vehicle
- reckless, careless and negligent driving
- moving vehicle violations
- handgun ammunition displays

Complete listings of the Committee's penalty recommendations for all nonfelony are set forth in the appendices to this report. There are separate lists for the criminal and vehicle codes. Offenses are identified by name and proposed statute number, and grouped according to their current and proposed offense classification (gross misdemeanor; first, second, and third degree misdemeanor; and infraction).

The offense classification for a given offense was determined primarily by the ranking factors applicable to the offense. However, the ranking factors could not and did not serve as the sole basis for classification of offenses. The Committee also considered procedural implications, existing sentencing practices, and other factors (*e.g.*, is incarceration necessary to enforce treatment or other court ordered programs?), in determining whether a nonfelony would be classified as gross misdemeanor, first, second, or third degree misdemeanor, or an infraction.

Theft

As discussed in the preceding section, adjustments in the dollar levels for felony and nonfelony property crimes are necessary to achieve proportionality of penalties. For theft and certain theft related offenses, the Committee recommends the levels (retaining aggregation and enhancement provisions) set forth in Table 10 below.

Table 10 - Proposed Theft Offense Penalties		
Theft Provision	Amount of Loss	Maximum Fine/Incarceration
First Degree Felony	$50,000 +	$250,000 fine and/or 20 years
Second Degree Felony	$10,000 - $49,999	$50,000 fine and/or 10 years
Third Degree Felony	$3,000 - $9,999	$25,000 fine and/or 5 years
Gross Misdemeanor	$1,000 - $2,999	$3,000 fine and/or 365 days
1st Degree Misdemeanor	$500 - $999	$1,500 fine and/or 180 days
2d Degree Misdemeanor	$250 - $499	$1,000 fine and/or 90 days
3d Degree Misdemeanor	$100 - $249	$750 fine and/or 30 days
Infraction	Up to $100	$500 fine

The Committee recognized that these recommendations will have a substantial impact on how theft and related offenses are sentenced. A number of felony level property crimes, however, will not be affected by the Committee's recommendations. Burglary will continue to be a felony (except for certain portions of that statute which currently provide for a gross misdemeanor penalty). Additionally, the Committee is recommending retention of the minimum 5 year felony for the theft of a motor vehicle even if the value of the vehicle is less than the felony threshold.[25]

Theft and theft-related offenses[26] are clearly serious offenses which have an impact both on individuals and also on Minnesota's retail community. The Committee's decision to recommend changes in the dollar amounts for dollar-delineated theft offenses was based on three factors: (1) the need to achieve greater "proportionality" of penalties for both person crimes and property offenses throughout the state's criminal and vehicle codes (see the discussion above),

[25]See Minn. Stat. § 609.52, subd. 3(d)(iv) (1996) and proposed § 609G.113 (d)(5). If the prosecution can establish that the value of the vehicle is $10,000 or more ,based upon the proposed changes in the theft statute, the case could be prosecuted as a 10-year rather than a 5-year felony.

[26]"Theft-related offenses" as that term is used in this report are those offenses that do not contain their own penalty section; rather the statute specifies that the offense will be sentenced as specified in the theft statute. These offenses include proposed sections 609G.21 (possessing stolen property); 609H.77 (commercial bribery); 609I.13 (computer theft); 609I.21 (telecommunications fraud). In addition, the currently separate crimes of theft of library property, rustling,, and precious metal dealer possessing stolen property are merged into the general theft and possession of stolen property provisions.

(2) the statutory history underlying Minnesota's theft statutes and (3) the change in the value of the dollar since these amounts were last modified by the Legislature.

Proportionality is discussed extensively in the prior section and serves as the primary basis for the Committee's recommendations. However, the two additional factors - statutory history and the changing value of the dollar - provide a further rationale for the Committee's recommendations. A complete history of theft crime dollar adjustments is set forth in table format in the appendix to this report. What that table shows is how infrequently those dollar amounts have been modified. Legislation enacted from 1979-87 "created" the gross misdemeanor and 20-year misdemeanor offenses and modified the low-end dollar levels (affecting the misdemeanor and 5-year felony provisions), but left the dollar levels for the 10-year felony and the upper end of the 5-year felony unchanged. The last comprehensive revision of the theft statute was a result of criminal code recodification of 1963. The 1963 changes in the theft statute were as "substantial" as those being recommended by NEAC. Those changes increased the threshold dollar amount separating the misdemeanor from the 5-year felony from $25 to $100 and the threshold dollar amount separating the 5-year and 10-year felonies from $500 to $2,500.

Finally, economic factors also support an adjustment in the dollar levels, especially as to the amounts which currently determine whether an offense will be prosecuted as a 10-year felony (amounts over $2,500) or as a 20-year felony (amounts over $35,000). The latter was created in 1987 and that dollar amount has not been modified since 1987. If this amount was "indexed" based on the CPI (Consumer Price Index) as is done with tax rates, Social Security benefits and a wide variety of governmental and non-governmental programs, the $35,000 would need to be increased to over $48,000 (end of 1996) based solely on "indexation" considerations. The 10-year felony of theft over $2500 was last adjusted in 1963 and has not been modified in the ensuing 33 years. If this amount was "indexed" it would have to be increased to nearly $13,000 (end of 1996) to be the equivalent of the $2500 level that was established in 1963. [27] Thus, "indexation" alone supports the Committee's recommendations to increase the amounts for these two felony offenses to $50,000 and $10,000 respectively.

While these changes will mean that property crime offenders who are eligible for a felony or gross misdemeanor sentence under current law may receive a lesser penalty under the Committee's proposals in some instances,[28] anecdotal information from Committee members (which is confirmed by representatives of the retail community) suggests that these changes may in fact increase the number of cases being prosecuted and insure that prosecutions are commenced in a more timely fashion. Under the Minnesota Rules of Criminal Procedure both gross

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[27]The "indexed" amounts are based on CPI data for the years 1963-1996 and 1987-1996. Source: Bureau of Labor Statistics.

[28]The Committee also recommends that convictions for first-degree misdemeanors should constitute an "enhancing theft-related offense" (current law limits enhancements to prior felony or gross misdemeanor convictions, see footnote 24, above). This will recapture the enhancement value of felonies and gross misdemeanors that are reclassified as first degree misdemeanors.

misdemeanor and felony prosecutions must be initiated by issuance of a formal complaint.[29] These cases also require significantly more investigative resources. Given the substantial caseloads throughout the criminal justice system and the need to place the highest priority on person crimes (*e.g.*, sexual assault offenses, drug crimes, crimes involving gangs, and DUI and domestic assault cases), thefts and other property crimes often fall to the "bottom of the stack" at the gross misdemeanor and felony level. Thus, significant delays (2-3 months are not uncommon) can occur between the time that the crime is committed and the filing of criminal charges. This delay substantially undermines the effectiveness of the criminal sanctions for these offenses and is inconsistent with the commonly accepted principle that a penalty is most effective when imposed as soon as possible after commission of the offense.

Because most thefts and other property offenses will be first, second, or third degree misdemeanors under the Committee's recommendations, these offenders can be "tab-charged" or issued a "citation,"[30] which will mean "speedy" vs. "delayed" charging of these offenses. This will also free up law-enforcement investigative resources that can be used for more serious offenses. Municipal prosecutors will, however, experience an increase in the number of cases that must be processed (see Prosecutorial Jurisdiction section, below).

The appropriateness of an infraction penalty for thefts under $100, with a third degree misdemeanor penalty for a second offense within twelve months, was extensively debated by the Committee. Some of the arguments against an infraction theft offense included:

- it sends the wrong message (theft isn't a "crime");
- the absence of statewide nonfelony tracking system makes it difficult to identify repeat violators;
- theft convictions will have the same stigma for employment purposes regardless of their status as an infraction or a third degree misdemeanor, and private search firms already collect this information from the courts;
- infraction offenders have no right to appointed counsel and many will not be aware that they could seek a continuance for dismissal;
- a court appearance may be necessary to resolve restitution issues and would require court supervision; and
- the possibility of jail is a necessary incentive for completion of diversion programs.

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[29]See discussion under Procedural Impact - Rules of Criminal Procedure, above. The Committee recommends that the Rules of Criminal Procedure be amended to specify that issuance of a complaint is not required for first degree misdemeanors.

[30]See previous footnote. A "tab-charge" is a charge that is filed by a peace officer when an offender is booked during the pretrial detention process (oftentimes with an immediate release); a "citation" commences a prosecution by issuance of a ticket-based charging document. Minn.R.Crim.P. 4.02, subd. 5(3); 6.01. In either case the charged person must appear in court, or a warrant may be issued for the person's arrest.

Some of the arguments favoring an infraction theft offense (and which persuaded the Committee to recommend creation of such an offense) included:

- jail time is not currently imposed for the vast majority of first and second time thefts under $100;
- although a statewide nonfelony database is not available, local court databases track petty misdemeanor offenses by name of offender[31] and efforts could be made to improve the statewide availability of such data;
- restitution is typically not an issue in theft cases because most offenders are caught with the stolen property in their possession and the property is retained by the victim;
- the current payables list includes restitution plus a fine for many offenses, and this has not been identified as a problem;
- the restitution amount, if any, can be identified by the law enforcement agency as part of the investigation and can be included on the citation or in the police reports, allowing it to be collected along with the fine through civil debt collection methods;
- enhanced fine enforcement techniques make the fine an effective punishment without the necessity of having a stayed jail sentence and these techniques are less expensive than issuing bench warrants and processing subsequent criminal cases to collect a fine;
- many misdemeanor prosecutors have no "diversion programs" for theft offenses, thus a small dollar first-time theft can result in a misdemeanor sentence, whereas many first-time adult felony thefts may be eligible for diversion programs established by county attorneys; and
- given the likely sentence for a first-time theft offender with a loss of under $100 (a fine) efforts must be made to better utilize scarce criminal justice system resources (court, prosecutor and public defender services), and this can be accomplished through creation of an infraction theft (offenders would not be eligible for court-appointed counsel since they would not face the possibility of incarceration).

By a close vote, the Committee ultimately endorsed the infraction penalty for thefts under $100, with some members indicating that they felt that it was important that the Legislature evaluate this issue, weighing the pros and cons outlined above, and that if an infraction offense was not recommended by the Committee it was unlikely that the issue would be discussed by the Legislature. The Committee's recommendation for an infraction penalty incorporates the general "aggregation" provisions allowing several thefts to be aggregated together to prosecute at the misdemeanor level. The Committee's recommendation also includes an enhancement provision (to a third degree misdemeanor) for a repeat infraction violation within twelve months. The Committee also considered, but rejected as cumbersome and overly complex, an additional means of enhancing the integrity of an infraction theft proposal by creating a third degree misdemeanor violation for any willful failure to comply with an infraction citation or to pay an infraction penalty.

[31]Each trial court has a computer system that tracks petty misdemeanor offenders by name.

Check Forgery and Financial Transaction Card Fraud

The offenses of check forgery and financial transaction card fraud were evaluated by the Committee as companion offenses since they share the same penalty structure and the same underlying conduct, *i.e.*, "the unauthorized use of a financial instrument to obtain or attempt to obtain property of another." These offenses are currently classified as gross misdemeanors, if the amount of loss is $200 or less, and a 5 year felony if the amount of loss exceeds $200 or regardless of the amount if the offender has a prior "qualifying theft-related conviction."[32] The dollar levels for the 20-year and 10-year felony provisions are identical to the general theft statute ($35,000 and $2,500 losses, respectively).

The Committee concluded that check forgery and financial transaction card fraud offenses should continue to be treated more harshly than theft offenses (for losses of less than $10,000), for several reasons. Check forgery and card fraud are usually the byproduct of another criminal offense (*e.g.*, burglary, robbery, or theft) that has given the offender or a third party access to the checks or credit cards involved in these offenses. Check forgery and card fraud also have a substantial collateral impact on the victim (normally an individual rather than a commercial entity), in that it can require weeks or months to close out checking or credit card accounts, and convince retailers and financial institutions that the victim should not be responsible for any unauthorized use of their checks and/or credit cards.

The Committee recommends the following penalties and provisions for check forgery and financial transaction card fraud offenses:

- 20-year and 10-year felonies with dollar levels that conform to the theft statute ($50,000 and $10,000 losses, respectively);
- a five year felony when the loss is $1,000 or more (vs. $3,000 for theft offenses);
- a gross misdemeanor (1 year) when the loss is $300 or more (vs. $1,000 for theft offenses);
- a first-degree misdemeanor (180 days) when the loss is less than $300;
- retention of the existing "aggregation" provisions (see the discussion in the theft section above as to how those provisions can be utilized); and
- expansion of the "enhancement" provision to allow prosecution of repeat violations as a 5-year felony, without regard to the amount of loss, if there is a prior felony, gross misdemeanor, or first degree misdemeanor conviction[33] within the past 5 years.

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[32]See footnote 24, above.

[33]See previous footnote.

The decision to recommend gross misdemeanor and first-degree misdemeanor penalties for losses under $1,000 (vs. current law where only a loss of $200 or less is subject to a nonfelony penalty) was based upon three factors. First, the need to maintain proportionality between the penalty for these offenses and nonfelony "person crimes" (*i.e.*, balancing a $400 forged check or a $75 credit card fraud offense against a repeat DUI or domestic assault, both of which are gross misdemeanors). Second, the Committee's recommendation that convictions for first-degree misdemeanors should constitute an "enhancing theft-related offense" (current law limits enhancements to prior felony or gross misdemeanor convictions), ensures that convictions for any amount of loss that currently exposes the offender to the potential of a harsher (felony) penalty on a subsequent offense will continue to have this enhancement effect. Third, the penalty that can be imposed for a first-degree misdemeanor (180 days incarceration and probation for 2 years), still allows the court to impose a sentence that is greater than the current misdemeanor penalty (90 days incarceration and probation for 1 year), retaining the current legislative policy that check forgery and card fraud merit more than "misdemeanor" treatment without regard to the amount of loss.

Issuance of Dishonored Checks ("Worthless Checks")

The Committee and staff spent a considerable amount of time discussing issuance of dishonored check ("worthless check") offenses and what penalty level(s) should be recommended to the Legislature. This offense has gone full circle, beginning in 1911 as a gross misdemeanor, followed by a reduction to a misdemeanor in 1963, and then subject to both misdemeanor and gross misdemeanor penalties in 1988 depending on the value of the checks.[34] The Committee ultimately decided, with a dissent by several members, to recommend the following penalty structure for worthless check offenses:

- a felony (5 year) penalty where the value of the check(s) is $3,000 or more;
- a gross misdemeanor (1 year) penalty where the value of the check(s) is $1,000 or more;
- a second degree misdemeanor (90 days) penalty where the value of the check(s) is $250 or more; and
- an infraction penalty (fine of up to $500) where the value of the check(s) is less than $250.

[34]The first worthless check offense was established in 1911 and applied to "issuing of checks on bank wherein [there are]insufficient funds," and it carried a gross misdemeanor penalty. 1911 Minn. Laws, ch. 272. In 1955 the Legislature added a misdemeanor offense similar to the now common "failure to pay after notice of dishonor" offense. 1955 Minn. Laws, ch. 768, § 1. The 1963 recodification merged these two statutes and provided a misdemeanor penalty for all violations. Finally, in 1988, the Legislature amended the penalty structure to establish a gross misdemeanor (1 year) for amounts greater than $250 and a misdemeanor (90 days) for amounts of $250 or less. The ability to aggregate multiple check offenses was also added in 1988. 1988 Minn. Laws, ch. 527, §§ 2,3.

These recommendations constitute a significant change in current law, and are based on several factors. First, public testimony and supporting documentation received from representatives of the Minnesota Retail Merchants Association persuaded the Committee that a felony worthless check penalty should be established where the check or checks total $3,000 or more. Under current law no felony penalty exists for worthless check offenses, and this gap appears to be contributing to an increase in the number of cases where individuals are writing worthless checks for thousands of dollars.[35] Although existing law allows check cases, in certain circumstances, to be prosecuted as a felony under the theft statute, county attorneys explained that the difficulty of proving an intent to steal at the time the check was issued makes felony theft convictions (and charges) a rarity. At the same time, municipal attorneys are reluctant to prosecute such high-dollar cases as misdemeanors or gross misdemeanors, in part because of the time demands (where multiple checks are involved, numerous witnesses are necessary if there is a trial), and the difficulties in securing restitution when the maximum sentence is a gross misdemeanor (incarceration for no more than one year and probation for no more than two years). Thus, the larger the value of an offender's worthless checks, the less likely they are to be prosecuted under current law.

Some Committee members did express a concern that creation of a new felony-level offense (where none currently exists), could be seen as exceeding the Committee's mandate. However, most members believed that this change was necessary as part of an effective restructuring of the worthless check statute and that it would be adequate to note the concern via the Committee's report and let the Legislature make the final decision.

Another factor is that the revised dollar levels are based on the same proportionality considerations - balancing the penalties for property and person crimes - that underlie the Committee's other recommendations for an increase in the dollar levels that define property offenses. The Committee did not utilize the full range of non-felony penalties for this offense, as members believed that the recommended penalty structure provided an adequate progression of penalties.

The Committee's recommendations also reflect current sentencing practices and attitudes towards worthless check offenses. Testimony at the Committee's public hearings, the experience of Committee members and information gathered during the course of the Committee's work, all indicate that few worthless check offenders are ever incarcerated. Instead, the focus is on securing restitution to the victim(s) for the outstanding check(s).

The decision to recommend an infraction penalty for worthless check offenses with a loss of less than $250 is supported by a broad spectrum of the criminal justice community (including judges, prosecutors, and defense attorneys). At the public hearings and in meetings with the

[35]Representatives of the Retail Merchants Association provided the Committee with information showing that the number of persons who have outstanding worthless checks in amounts in excess of $3,000 is increasing each year and that they currently experience difficulties in getting such offenders prosecuted criminally for the reasons discussed in the text following this footnote.

criminal justice community, this offense was consistently identified as one that should (at the lower dollar levels) be subject to a civil rather than a criminal penalty. The Committee is also confident that enhanced fine collection techniques are adequate to ensure payment of the restitution and any fine for an infraction worthless check offense. Thus, the Committee believed that it is appropriate to recommend an infraction penalty for a first time worthless check offense involving less than $250 and an enhanced second degree misdemeanor penalty for repeat offenses within 12 months.

Some concerns were expressed that this infraction offense would still be time-consuming for prosecutors because a formal complaint is required where the offense is not committed in the presence of a law enforcement officer (the most common worthless check offense is not completed until after notice of dishonor is mailed and the payment period described in the notice has expired). Thus the Committee's recommendations include a provision (§ 609G.319 subd. 2) authorizing peace officers to issue a citation for the infraction worthless check offense to avoid the need for issuance of a formal complaint.

Damage to Property

From 1858 through 1963, there was no single offense of "damage to property" as we know it today. Instead, as the Advisory Committee on Revision of the Criminal Law observed in its 1963 report:

> "There are numerous sections in the present criminal code making damage to property, whether real or personal, a crime. Varying degrees of punishment are imposed without any principle or policy being evident in the distinctions drawn. There is considerable duplication and overlapping among the several sections."[36]

With the exception of several felony provisions dealing with discrete forms of property (piers, booms and dams; placing obstructions on railroad tracks, property of a public library or damage to "booms of logs"), the penalty for the various property damage offenses was either a misdemeanor (90 days) or a gross misdemeanor (1 year), with several offenses specifying an intermediate penalty of six months incarceration. The closest parallel to the current offense of "damage to property," under the pre-1963 criminal code was the offense of "injury to real or personal property"[37] with a misdemeanor penalty where the property was worth less than $20 and a gross misdemeanor penalty where the property was worth more than $20.

Thus, until the recodification of the criminal code in 1963, Minnesota law contained no felony-level penalty for property damage based on the value of the damaged property. The Criminal Code of 1963 created the crime of "Aggravated Damage to Property," with a felony (5

[36]See the Advisory Committee notes appended to Minn. Stat. Ann. § 609.595 (West 1996).

[37]Minn. Stat. § 621.26 (1961).

year) penalty where the damaged property had a value of more than $100 and the offense of "Criminal Damage to Property," with a misdemeanor (90 day) penalty under any other circumstances, *i.e.*, where the damaged property had a value of $100 or less.[38] The felony threshold was increased from $100 to $300 in 1977,[39] and to $500 in 1987.[40]

The 1987 legislation also established a new gross misdemeanor (1 year) damage to property offense where the loss was more than $250 but not more than $500, with companion changes which reduced the misdemeanor threshold from $300 to $250. In addition, as with the theft statute, an "enhancement provision" was included making it possible to charge an offense that would otherwise be a gross misdemeanor (a loss of $250-$500), as a felony if the offender had previously received a felony or gross misdemeanor sentence for a damage to property offense within the prior three years. These dollar amounts have not been modified since 1987, with the only modification consisting of a 1989 amendment[41] which created a new felony-level offense (one year and a day) for any amount of loss where the damage to property constituted a "bias-motivated" offense.

The Committee is recommending the following penalty structure for the damage to property offense:

- a felony (5-year) penalty if the loss is $3,000 or more;
- a gross misdemeanor (1 year) penalty if the loss is more than $1,000;
- a first degree misdemeanor (180 days) penalty if the loss is $500 or more;
- a second degree penalty (90 days) if the loss is $250 or more; and
- a third degree misdemeanor (30 days) penalty if the loss is less than $250.

The Committee considered but rejected a proposal to establish an infraction penalty if the loss was $100 or less because damage to property offenses have a far greater impact on our communities (random acts of "vandalism" even where the loss is minimal can have a substantial impact on neighborhood livability) than theft and worthless check offenses (where the Committee is recommending an infraction penalty for certain offenses).

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[38]Minn. Stat. § 609.595, subds. 1, 2 (1963).

[39]1977 Minn. Laws ch. 355, § 11.

[40]1987 Minn. Laws ch. 329, § 11.

[41]1989 Minn. Laws ch. 261, §§ 2-4.

The Committee's recommended statutes retain both the current "aggregation" provisions (discussed in the Theft section, above), and the felony-level penalty for "bias motivated" offenses. In addition, the Committee recommends expanding the "enhancement" provision to include first degree misdemeanor sentences for damage to property as a qualifying prior and increasing the window of enhancement from three years to five years. The changes in the enhancement section conform the enhancement provisions of the damage to property statute to the provisions in theft, check forgery, and financial transaction card fraud. This is intended to create a uniform enhancement structure for all of the property-related offenses, which will aid law enforcement agencies and prosecutors in determining when felony charges may be filed.

The Committee's recommended dollar levels for the "damage to property" crimes are based upon the same proportionality issues - balancing the penalty for this offense against person crimes - that serve as the basis for the Committee's recommended increases in the dollar levels that define other property crimes. Similarly, the Committee believes that these changes will allow for better utilization of law enforcement and prosecution resources. Since all damage to property offenses where the damage exceeds $250 are currently gross misdemeanors or felonies, this means that formal complaints must be issued as to all such offenses. As discussed in the Theft section above, this can produce substantial and undesirable delays in charging. The proposed changes would allow prosecution by tab-charge or citation in the case of offenses where a formal complaint is currently required and thus facilitates offender accountability and allows better allocation of scare criminal justice system resources.

Assault and Domestic Crime

Violation of an order for protection ("OFP") and an assault involving attempted or inflicted bodily harm (contrasted with substantial bodily harm or death) or causing fear are currently (90-day) misdemeanors. An OFP violation within five years of a prior OFP, assault, terroristic conduct, harassment, or harassment retraining order violation is currently a gross misdemeanor. Repeat assaults, bias motivated assaults, and assaults on certain public employees are also currently gross misdemeanors. The Committee recommends that these retain their current second degree misdemeanor (90-day) and gross misdemeanor (1 year) levels, except that assaults involving certain public employees[42] be moved to the new first degree level (180 days) because the Committee concluded that these offenses are less serious than bias motivated conduct or repeat assaults but more serious than assaults on other victims.

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[42]See proposed section 609C.218, First Degree Misdemeanor Assault. This section would apply to assaults which inflict "demonstrable bodily harm" upon agricultural inspectors, child protection workers, public-health nurses, and probation or parole officers, if they are engaged in performance of their official duties and the assailant is aware that the victim is a public employee engaged in performance of their official duties. Additional sections (without the requirement that the assailant be aware of the "victim's status) pertain to assaults on an employee of the department of natural resources who is engaged in forest fire activities and to teachers, school administrators, or other employees of a public or private school.

The Committee considered but rejected a proposal to increase the penalty for first time domestic assault, in-the home-assault, completed assault (*i.e.*, bodily injury but not causing fear), and OFP violations from the current (90-day) misdemeanor level to the new first degree misdemeanor level (180 days). The reasons included:

- offenders rarely receive sentences that exceed the current 90-day limit (increasing the maximum penalty would thus be an empty gesture);

- while a longer sentence might be appropriate in certain aggravated cases, the Committee has attempted consistently to base recommended penalty levels upon the "normative" offense rather than on offenses at the far ends of the continuum (the most aggravated or the most minimal conduct);

- appropriation of additional funds for victim services and shelters would aid victims to a greater extent than lengthier periods of incarceration for a limited number of offenders who would receive sentences greater than the current 90-day limit; and

- the Committee was concerned that if these offenses were designated as first degree misdemeanors and the Supreme Court, in amending the Rules of Criminal Procedure, decides to require formal, probable cause complaints for first degree misdemeanors (the Committee is recommending to the Court that such offense could be tab charged, which is currently permitted for misdemeanors), the increased penalties could in fact result in fewer cases being charged and in a significant workload impact on prosecutors and the court system.[43]

The Committee considered and rejected the idea of incorporating into chapter 609C the provisions of Minn. Stat. § 518B.01 regarding obtaining and issuing orders for protection. Only the crime of violating an order for protection is moved to chapter 609C (see 609C.31, .313, and .315). The remainder of section 518B.01 is left in Chapter 518B, with cross references to the 609C criminal violation provisions. The rationale for not moving the core provisions of chapter 518B to the criminal code included:

- orders for protection are civil in nature and in the metropolitan area these cases are handled by family court judges, who work primarily with chapters 517-519 of the statutes;

- although section 518B.01 allows orders for protection to be issued as a component of the criminal case, when release is an issue, that provision is not being utilized because the

[43]In Minneapolis it is not uncommon to have 50 or more offenders in custody and charged with "domestic assault" and "OFP" violations on a Monday morning. If prosecuting attorneys had to prepare formal complaints for **every** offender charged with such offenses (in contrast, current law requires complaints only for offenders being charged with gross misdemeanor offenses due to prior convictions), the impact on the Minneapolis City Attorney's Office and the district court would be substantial. The number of impacted cases would be lesser in other communities and courts but those communities also have fewer prosecutorial resources available.

burden of proof is different and judges don't want to clog the criminal process with custody and support issues that arise in the order for protection process; and

- battered women's advocates were concerned that associating the 518B provisions so closely with the core criminal provisions may have a chilling effect on victims who do not wish to pursue criminal charges.

Substance Related Offenses

The Committee recommends that a first time refusal to submit to blood alcohol testing remain at the second degree misdemeanor level (90-days) Similarly, repeat refusal to submit or refusals involving a child in a vehicle would remain at the gross misdemeanor level (1-year).

Driving under the influence ("DUI") is currently either a misdemeanor or a gross misdemeanor.[44] The Committee concluded that first time DUI involving a non-commercial vehicle should stay at the current 90-day misdemeanor level (second degree under the Committee's proposal) because a reduction in penalty to a third degree misdemeanor (30-days) would be inconsistent with the ranking factors for this offense (ranking code value of 88454). The Committee also concluded that increasing the penalty to a first degree misdemeanor (180 days) was inappropriate for many of the same reasons that first time assaults (see preceding section) should not be increased to that level.

The committee is also recommending that the gross misdemeanor DUI offenses (involving repeat violations, bodily harm, substance-related revocation, or child in a vehicle) should remain as a gross misdemeanor. The ranking factors for these offenses and proportionality concerns (repeat DUI is the most serious nonfelony vehicle crime) meant that the Committee gave no serious consideration to reducing the penalty level for these offenses to first degree misdemeanor (180 days).

The only penalty changes being recommended by the Committee for existing DUI offenses involve first time commercial DUI and DUI at a railroad crossing. The Committee is recommending that first time commercial DUI be moved up from the current (90-day) misdemeanor level to the new first degree misdemeanor level (180-days) because the typical

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[44]All first-time DUI offenses (both commercial and non-commercial vehicles) are misdemeanors except that a gross misdemeanor penalty may be imposed when the driver also is in violation of the requirement to stop at a railroad crossing, a child under the age of 16 is in the vehicle and the driver is more than 36 months older than the child, or there has been an accident resulting in bodily harm. Minn. Stat. §§ 169.121, subd. 3(c)(3),(4); 169.26; 609.21, subd. 2b (1996).

Second or subsequent DUI offenses are subject to a gross misdemeanor penalty if the offender has previously been convicted of a qualifying prior offense, if the offender refused alcohol testing and has certain prior license revocations, or their license is currently under revocation due to a prior alcohol-related incident. Minn. Stat. §§ 169.121, subd. 3(c)(1), (2); 169.129 (1996).

commercial vehicle is capable of doing more damage than the typical noncommercial vehicle.[45] Although a first time DUI involving a railroad crossing also involves significant potential damage, the Committee recommends that this offense be classified as a first degree misdemeanor (180-days) because the Committee felt that the offense is less serious than the other gross misdemeanor DUI offenses (involving repeat violations, bodily harm, substance-related revocation, or child in a vehicle).

The Committee is also recommending the creation of a new DUI offense at the first degree misdemeanor level. this DUI crime would apply to cases involving an accident with an attended vehicle or pedestrian but with no bodily harm. Although in most cases bodily harm would likely be present and would allow a gross misdemeanor charge, the Committee felt that merely having an accident with an attended vehicle or pedestrian was a sufficient aggravating factor to justify more than a second degree (90-day) misdemeanor penalty.

Open bottle offenses are currently misdemeanors (90-day), and the Committee recommends that offenses involving the driver (or owner) be classified at the new third degree misdemeanor level (30-days) because the offense involves possession only, not actual driving or physical control of a vehicle under the influence, which is classified as a second degree misdemeanor (90-days). Open bottle violations involving possession by a passenger are less serious than the driver/owner open bottle violations, and the Committee recommends that these passenger open bottle violations be classified as an infraction level offense (fine only, no jail time).[46] Similarly, possession of a small amount of marijuana in a motor vehicle is currently a misdemeanor (90-day). The Committee recommends that these be classified as third degree misdemeanors because mere possession should carry a less severe penalty than first time DUI offenses.

Possession of a small amount of marijuana outside a motor vehicle and possession of drug paraphernalia are currently fine only offenses. There is also a misdemeanor (90 day) noncompliance offense applicable only to marijuana possession (this offense may be charge if an offender fails to comply with the petty misdemeanor penalty imposed for the possession offense). The Committee recommends retaining the possession crimes as infractions (the equivalent of current law). The Committee discussed a proposal to increase the penalty for possession offenses to a third degree (based on concerns that these offenses affect neighborhood livability), but rejected the proposal because the noncompliance crimes provide an additional bite to the infraction penalty for the possession offenses. The Committee is recommending retention of the noncompliance crime (as a third degree misdemeanor) for the marijuana possession offense and the addition of a similar noncompliance offense for failure to comply with the penalty for possession of drug paraphernalia.

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[45]The legislature has already recognized the greater harm that can be caused by commercial vehicles by establishing the commercial DUI alcohol concentration level at .04, compared to .10 for noncommercial DUI.

[46]Based on the experience of Committee members, the Committee believes that this revised penalty structure for open bottle violations conforms to the current sentencing practices for these offenses.

Consumption of alcohol by 19 and 20-year old persons is currently a misdemeanor. The Committee recommends that first time violations be classified as infractions, with a repeat violation within 12 months being classified as a third degree misdemeanor (see sections 609L.873, .875). This offense is currently included on the "Payables" list as a fine only offense, although several judicial districts appear to mandate an appearance for these offenses. Anecdotal information indicates that the vast majority of first time offenders receive a fine only, and that incarceration is used only to encourage completion of probation requirements for repeat offenders (who will face a third degree misdemeanor penalty under the Committee's recommendations) where a chemical assessment indicates that intervention is necessary.

Driving Without a License/After Suspension

Driving without a valid driver's license and driving after withdrawal of driving privileges (including suspension, revocation, cancellation, or disqualification) are currently misdemeanors. Information received from the State Court Administrator's Office, as well as other information secured by the Committee indicated that these offenses constitute a significant portion of the non-felony caseload in most judicial districts.

The Committee makes the following recommendations for the offenses of driving without a valid license, driving after expiration, and driving after suspension:

- driving without a license and driving after suspension be classified as infractions where the offender has not been convicted of the same offense within the past three years;

- that repeat offenses of driving without a valid license or driving after suspension (prior within three years) be classified as third degree misdemeanors;

- that a new infraction offense of driving after expiration of valid license be added to the vehicle code; and

- that infraction level driving after suspension offenders (no priors within three years) should be able to "avoid" an additional period of suspension if they can secure reinstatement of their driver's license before the effective date of the additional suspension period.

First time driving without a license offenders are rarely incarcerated. Many judges, prosecutors, and defense attorneys have commented to the Committee that this offense should be handled as an "infraction" on a first offense with a misdemeanor sentence being reserved for repeat violators. This perspective (that first time driving without a valid license is a minor offense) is also reflected in the current rules of the Department of Public Safety, which only provide for an administrative sanction (suspension of a license or of the right to apply for a license) after a third or subsequent conviction for driving without a valid license. Thus, the Committee found no rationale for maintaining a misdemeanor penalty for first time offenders.

The Committee is recommending a similar penalty structure for the offenses of driving after suspension. When the Committee examined all of the driving after withdrawal offenses (driving after revocation, cancellation, or disqualification),[47] there appeared to be a clear differentiation between the offense of driving after suspension and the other driving after withdrawal offenses. First, similar to the offense of driving without a valid license, first time driving after suspension is rarely punished by incarceration. Second, the initial license suspension is typically imposed as a result of unpaid fines, failure to appear in court, prior moving violations, or as an additional penalty for driving during a period of withdrawal. In contrast, cancellation or revocation of a license is typically imposed for more serious violations, especially those involving the consumption of alcohol while operating a motor vehicle. Thus, the Committee concluded that the penalty structure for driving after suspension should parallel the recommended penalty for driving without a valid license, with an infraction penalty for a first violation within three years and a third degree misdemeanor penalty for repeat violations.

The Committee chose a third degree misdemeanor penalty for repeat driving after suspension offenses to create a progression of penalties from the least serious driving after withdrawal offense (suspended license) to the most serious (a gross misdemeanor penalty for driving after cancellation, where the license has been cancelled as inimical to public safety). The committee is also recommending the creation of a new offense of driving after expiration of a license. This offense fills in a gap in existing law, and the Committee recommends an infraction penalty for these offenses because the conduct, failure to renew the license, is administrative in nature.

The Committee also discussed the impact of these new offense classifications on juvenile offenders. The Committee concluded that classification of no drivers license and driving after suspension as either infractions or a third degree misdemeanors is irrelevant to the juvenile court because both are considered juvenile petty offenses under the juvenile code and cannot be the basis for a delinquency proceeding.

Driving after suspension convictions also carry administrative sanctions that provide no incentive for violators to become validly licensed. Current law and accompanying administrative rules require DPS to impose an additional 30 day suspension after receiving notice of a driving after suspension conviction from the court even if the offender secured a reinstatement of his or her license before appearing in court. The Committee is aware of many instances in which this occurs.

The Committee concluded that for first-time violators the focus should be on getting the violator validly licensed and on providing an incentive for those persons to accomplish that objective. If the person can meet (or has already met) the reinstatement requirements no purpose appears to be served by imposing an additional license suspension. Thus, the Committee has included in its proposed statutes a provision that will allow a driver convicted of an infraction driving after suspension offense to avoid an additional license suspension if the driver satisfies

[47]Minn. Stat. § 171.24 (1996). Codified in the Committee's proposal as section 169J.65.

all prior reinstatement requirements prior to the effective date of any new suspension period. It is the belief of the Committee, that these changes - an infraction for a first-time violator and an incentive for drivers to secure reinstatement (by waiving any additional license penalties if the person becomes validly licensed) - have the potential to substantially reduce the number of driving after suspension cases being handled by the courts.[48]

Failure to Insure Vehicle

Except where an accident is involved, failure to maintain insurance or provide proof of insurance is currently a misdemeanor (90-days) and violations involving two or more prior convictions in the past ten years are classified as gross misdemeanors. Offenses involving accidents are either gross misdemeanors (substantial bodily harm or death) or misdemeanors. In addition, consecutive sentencing is available for offenses involving driving under the influence. The Committee recommends that:

- first time violations not involving an accident be classified as infractions;
- the second degree misdemeanor (90-days) penalty be retained where there is one prior conviction in the past ten years, the driver causes an accident without substantial bodily harm, the driver provides false information about ownership or insurance, or the offense also involved a DUI;
- offenses involving two or more prior convictions within the past ten years be classified as first degree misdemeanors (180 days);
- offenses involving an accident resulting in substantial bodily harm or death be retained at the gross misdemeanor (1 year) level;
- first time violators be allowed to avoid revocation of their license if they provide proof of six months of paid insurance in a timely fashion (a person who can show proof of at least one month's paid insurance can be required to submit periodic reports to the Department of Public Safety); and
- consecutive sentencing option for offenses involving DUI be retained.

There are many parallels between failure to maintain or provide proof of insurance offenses and the driving without license/after withdrawal offenses discussed in the preceding section. Both constitute a significant portion of the non-felony caseload in most judicial districts. The experience of Committee members, testimony at public hearings, and information gathered at meetings with representatives of the criminal justice community all indicated that first time

[48]Only the additional suspension sanction is waived. The driver must still pay the license reinstatement fees to DPS before the license is reinstated.

violations rarely resulted in incarceration. Thus, the Committee also recommends an infraction penalty for first time failure to maintain or provide proof of insurance offenses (no prior within ten years). This will allow first-time violators of any of these offenses to be handled in a more informal fashion by the courts and will not require appointment of court-appointed counsel to represent these first-time violators.

The reduction in penalty for violations involving multiple prior offenses reflects the creation of a new offense category (first degree misdemeanor) that was not in existence when the gross misdemeanor penalty provision was adopted. Additionally, the change establishes a distinction in penalties between repeat violations of the vehicle insurance laws and the substance-related provisions of Chapter 169B. The Committee concluded that repeat violations of the latter should have a higher penalty (gross misdemeanor) than a comparable violation of the vehicle insurance laws.

Similarly, the Committee recommends a modification of administrative sanctions to allow a first-time violator (no priors within ten years) to avoid a license revocation. Current law and administrative rules establish a minimum revocation period of 30 days without regard to whether the person has any prior violations or is now in compliance with the insurance requirements, which contributes to a considerable increase in the number of driving after revocation and suspension cases being handled by the courts. The Committee's recommendation provides an incentive for first-time violators to comply with the law, thereby increasing the number of persons who will maintain the required insurance and reducing the number of driving after revocation and suspension cases.

The Committee considered but rejected extending this "avoidance of revocation" provision to multiple offenders because this would provide no incentive for an offender to maintain vehicle insurance. In addition, the Committee is recommending that the revocations for repeat failure to provide proof of insurance, which are far more common that offenses involving failure to maintain insurance, follow the same progression of sanctions for repeat failure to maintain insurance. Under current law, any repeat failure to provide proof of insurance offense results in a minimum 30 day revocation (and until proof of insurance is filed), while revocations for repeat failure to maintain insurance follow a progression (30 days, 90 days, 180 days, and 1 year) based on the number of prior offenses. The Committee recommends merging these administrative structures so that a second conviction of either failure to maintain insurance or failure to provide proof of insurance within 5 years would mean a minimum revocation of 90 days (and until proof of insurance is filed), and a third offense within 5 years results in a minimum revocation of 180 days, and four or more priors receives a minimum revocation of 1 year.

Finally, the Committee recommends abandoning the requirement that courts report a person's failure to provide proof of insurance to the Department of Public Safety ("DPS") at the time of the first appearance.[49] In practice DPS is only notified after a conviction.

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[49]Minn. Stat. § 169.792 (1996). This requirement was added in 1989 and modeled after the DUI implied consent procedure.

Reckless, Careless, and Negligent Driving

Reckless and careless driving are both currently classified as misdemeanors (90-days). Driving offenses involving "grossly negligent" conduct are felonies (more than 1 year) and gross misdemeanors (1-year). Careless driving is defined as driving "carelessly or heedlessly in disregard of the rights of others, or in a manner that endangers or is likely to endanger any property or any person."[50] Reckless driving is defined as conduct indicating "either a willful or a wanton disregard for the safety of persons or property,"[51] and this difficult, if not incomprehensible, standard forces most prosecutors to charge careless driving significantly more often than reckless driving. To further complicate things, gross negligence has been interpreted as "significantly higher in magnitude than a mere failure to exercise ordinary care--a heedless and palpable, though not intentional, violation of [the rights of others],"[52] and "unlike recklessness, gross negligence requires no conscious and intentional action which the actor knows or should know creates an unreasonable risk of harm to others."[53]

The Committee recommends that gross negligence standard be substituted for the present reckless standard. The result will be a continuum of offenses which have penalties at the felony level and gross misdemeanor level (formerly codified in section 609.21) and with nonfelony offenses at the first (180 day) and second degree (90 day) misdemeanor level, all based upon "grossly negligent driving."[54] The Committee believes that these changes will in the long-term increase the number of nonfelony grossly negligent driving charges which will be filed.

The Committee also recommends that careless driving be moved to the new third degree misdemeanor level (30-days) because careless driving is less serious than grossly negligent driving and typical sentences are within the 30-day limit. Some prosecutors argue that careless driving should stay at the current (90-day) misdemeanor level because DUI and refusal to test cases that have evidentiary problems can be bargained to a careless driving and yet retain the same maximum penalty. The Committee rejected this approach for several reasons. First, the Committee's overall approach to proportionality of penalties is to focus on the typical case, not on the most or least egregious conduct that falls within the elements of the offense. Second, if a more serious offense cannot be proven, the Committee did not believe that an offender should receive the same penalty as would have been imposed for the more serious offense.

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[50]Minn. Stat. § 169.13, subd. 2 (1996).

[51]Minn. Stat. § 169.13, subd. 1 (1996).

[52]*State v. Anderson*, 78 N.W.2d 320, 325 (Minn. 1956).

[53]*State v. Brehmer*, 160 N.W.2d 669, 673 (Minn. 1968).

[54]See 609C.11 (the offense of "grossly negligent driving) and 609C.111 through 609C.117 (the penalty provisions).

Moving Vehicle Violations

The committee recommends that first time and repeat moving vehicle violations, except those involving danger to persons or property, be handled as infractions (without regard to the number of prior violations). Current law[55] provides for a petty misdemeanor penalty for the first two moving violations within twelve months and a misdemeanor penalty (90 days) where the driver has been convicted of two or more petty misdemeanor moving violations within the preceding 12 months.

The Committee recommends abandoning the misdemeanor penalty for a third moving violation within a year for the following reasons. First, offenders are rarely incarcerated for such repeat moving violations, yet their designation as misdemeanors means that the offender has a constitutional right to a jury trial. With the scarcity of resources within the criminal justice system both prosecutors and judges are reluctant to expend those scarce resources on a jury trial for a simple "third in a year moving violation." Therefore, the experience of Committee members and those throughout the criminal justice community is that offenders who are willing to make multiple court appearances (and/or retain counsel), can often secure a continuance for dismissal or will be allowed to plead to a non-moving violation (such as a seatbelt violation or expired license tabs), which keeps the moving violation off their traffic record. Thus, the right to a jury trial, derivative of the right to incarcerate, gives such offenders substantial leverage that can be used to secure (from the offender's perspective) a favorable plea negotiation.

Second, a primary purpose in providing for a misdemeanor penalty is to allow the court to impose a fine in excess of $200 (the maximum under current law for a petty misdemeanor offense). The Committee's proposals address this issue by permitting the imposition of a $500 fine (the maximum possible for an infraction), for repeat traffic violations.[56] Finally, repeat offenders will still be subject to suspension of their driver's license as an "habitual violator,"[57] which will expose them to prosecution for the infraction and third degree misdemeanor offenses of driving after suspension (discussed above).

Therefore, the Committee has concluded that an infraction penalty will serve as a sufficient sanction for individuals who repeatedly violate those portions of the state's vehicle code relating to moving traffic violations.

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[55]Minn. Stat. § 169.89, subd. 1 (1996).

[56]Minn. Stat. § 169A.215, subd. 2 (1996).

[57]Minn. Rules, §7409.2200 (1995).

Handgun Ammunition Displays

It is currently a petty misdemeanor (fine only) for a handgun dealer to: (1) display handgun ammunition for sale in such a way as to make it directly accessible to minors; or (2) fail to post in a conspicuous place a notice in at least one inch block letters that reads: "IT IS UNLAWFUL TO STORE OR LEAVE A LOADED FIREARM WHERE A CHILD CAN OBTAIN ACCESS." The Committee recommends that display of ammunition accessible to minors be classified as a third degree misdemeanor (30 days; see section 609E.475). The rationale is that this offense is designed to prevent shoplifting of handgun ammunition by minors, and it would be reasonable to assume that a minor who wants to shoplift handgun ammunition either already has the gun or knows someone who does. Under the Ranking Factors analysis, this makes the level of harm at least foreseeable (if not threatened or likely) rather then merely a potential for harm. This adjustment to the ranking factors code justifies the higher offense classification. In contrast, failure to post the required notice addresses only a potential for harm and should be retained at the infraction level (see 609E.075).

Impact on Juvenile Court

The Committee, Reporter and Committee staff, discussed the impact, if any, that the committee's recommendations would have on juvenile offenders and Minnesota's juvenile court process. Regarding vehicle offenses, the Committee concluded that the Committee's recommendations would have no significant impact on juveniles. With several exceptions, a traffic offense committed by a juvenile constitutes a "major traffic offense," and the juvenile is adjudicated a "juvenile highway traffic offender," with no finding of delinquency.[58] The one change that would be necessary in the juvenile code section pertaining to traffic offenders[59] would be to update the statutory references to reflect the new numbering scheme for traffic offenses and to substitute the term "infraction" wherever the term "petty misdemeanor" is used.

The Committee's recommended changes in the criminal code will affect juvenile offenders in several ways. If the legislature adopts the Committee's recommendation to make certain misdemeanor offenses "infractions" (*e.g.*, first-time theft under $100 and first-time worthless

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[58]See Minn. Stat. § 260.193 (1996). This section provides that under certain circumstances a "major traffic offense" can serve as the basis for a delinquency finding, and that certain "major traffic offenders" may be referred to adult court for disposition under the laws controlling adult traffic violations. It also provides that the adult court has jurisdiction over certain juvenile traffic offenders (a petty misdemeanor traffic violation for 16 and 17 year old juveniles and certain DUI offenses involving 16 and 17 year old juveniles). However, as to any offense handled in adult court, subdivision 7a of this section places limitations upon the dispositions that may be imposed by the adult court.

[59]Minn. Stat. § 260.193 (1996).

check under $250), the legislature will need to determine whether changes must be made to the definition of "juvenile petty offenses."[60]

In addition, the recommended revisions in the penalty levels for the various property crime offenses (check forgery, damage to property, financial transaction card fraud, theft and theft-related offenses) will have an indirect impact on juvenile court proceedings. Although juvenile court dispositions, do not turn directly on the "underlying" degree of an offense, the court will consider the "degree" of the offense in determining the "severity of the juvenile's delinquency" when formulating an appropriate disposition.[61]

Finally, adult certification and extended jurisdiction juvenile provisions of the juvenile code[62] contain references to the "offense being a felony." Thus, when the county attorney is seeking to have a juvenile prosecuted as an adult ("certification") or as an "extended jurisdiction juvenile," the juvenile's prior delinquency record will affect the court's determination of whether the case should remain in juvenile court as a delinquency. Here, that impact will in part depend on whether those prior offenses are classified as felonies, gross misdemeanors, or misdemeanors.

These are issues that the legislature will need to evaluate as part of its decision regarding the Committee's recommended modifications of the penalty structure for certain property crimes. However, in this context it is important to note what would not be changed as a result of the Committee's recommendations:

- the Committee's recommendations make no changes in the felony provisions for crimes against the persons. Assault, criminal sexual conduct, robbery and terroristic threats continue to be felony-level offenses except for those portions of the assault and criminal sexual conduct statutes where existing law provides for a non-felony penalty; and

- what are perhaps the mostly commonly charged felony property crime offenses for juveniles, burglary, felony theft of a motor vehicle, and felony theft from person will continue to be felonies.

While the Committee was aware of these impacts upon the juvenile process, they did not appear to be a rationale for abandoning proposals that would impact upon all offenders (both adults and juveniles) and which were necessary to address the issues of proportionality. The decision as to how, or if, the juvenile code should be modified to reflect the penalty changes for certain property crime offenses, is one which the Committee will leave to the Legislature.

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[60]Minn. Stat. § 260.015, subd. 21 (1996).

[61]Minn. Stat. § 260.185 (1996). See also *In re Welfare of L.K.W.*, 372 N.W.2d 392 (Minn.App. 1985) and *In the Matter of the Welfare of J.A.J.*, 545 N.W.2d 412 (Minn.App. 1996).

[62]Minn. Stat. §§ 260.125; 260.126 (1996).

Statutes Omitted from the Criminal Code

The Committee's Reporter identified seven offenses that raised substantial constitutional concerns under the applicable provisions of the Minnesota and United States Constitutions. These offenses are: adultery, flag violation, fornication, nonresident alien possessing firearm, selling contraceptive materials, sodomy, and vagrancy.[63] With the exception of the loitering aspect of vagrancy, and public, commercial, or aspects of sexual conduct involving minors (including some increased penalties), the Committee decided that these offenses would not be incorporated into the Committee's proposed criminal code. This decision is not intended to constitute a recommendation that these offenses be "repealed," which is clearly a determination that should be made by the Legislature. Rather, given the magnitude of the Committee's workload and the issues presented by each of these offenses, it seemed inappropriate to have the Reporter and Committee staff attempt to redraft statutes (to address the constitutional concerns), when the Legislature might well agree, based on the constitutional issues, that some or all of these provisions should not be retained as part of the state's criminal code.

The Committee anticipates an extensive legislative debate regarding the retention of these statutory provisions. This report includes as, an appendix, a compilation of the "Reporter's Notes" pertaining to these offenses. These notes detail the constitutional concerns identified by the Reporter and these notes are also included in the proposed criminal code at the locations where these statutes would have been codified by the Reporter but for the reasons noted above.

While the Committee and Reporter identified a number of constitutional concerns regarding these seven offenses, the Committee's proposed statutes retain substantial portions of those statutes because the constitutional issues affect only specific portions of certain statutes (vagrancy, adultery, fornication and sodomy). Thus, the Committee's proposed statutes contain a new "loitering" provision (see section 609J.19) that retains two of the four clauses from the

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[63]The Committee identified two additional offenses that raise substantial constitutional concerns. The offenses of Serving process on the Sabbath Day (Minn. Stat. § 624.04) and sale of motor vehicles on Sunday (Minn. Stat. §§ 168.274-.276) arguably constitute an "establishment of religion" in violation of the First Amendment of the United States Constitution. Although the Committee initially decided to omit these provisions from the revised criminal code, it reversed this decision because the Committee did not have a full opportunity to solicit input from affected and interested parties, including the Minnesota State Bar Association Civil Law section, the Supreme Court's Advisory Committee on the Rules of Civil Procedure, and the Minnesota Automobile Dealers Association. Additionally, the Committee discovered that the underlying constitutional issue is currently before the state's appellate courts in a case from Ramsey County where the district court upheld the constitutionality of the Sunday vehicle sales law. Thus, these offense are included in the Committee's proposed criminal code (with an infraction penalty). This will allow the Legislature to receive testimony from the affected and interested parties and may, depending on when a decision is rendered, provide the Legislature with the benefit of an appellate court opinion on the underlying constitutional issue.

existing vagrancy statute. The two retained clauses are modified based on an existing Minneapolis ordinance that has been upheld by the Minnesota Supreme Court.[64]

Significant aspects of the adultery, fornication, and sodomy offenses have also been retained. Public sexual conduct, commercialized sexual conduct, and sexual conduct with minors will continue to be illegal.[65] Some have been incorporated into the indecent conduct and indecent exposure offenses, and the Committee is also recommending an increased first degree misdemeanor penalty for first-time violators of these offenses. Only those aspects of the adultery, fornication, and sodomy offenses purporting to regulate purely private, noncommercialized adult conduct would be omitted. While the Committee is cognizant of the policy issues that underlie these provisions, it should also be noted that a decision by the Legislature to "omit" these statutes from the criminal code would accord with the practice in other states, including those that surround Minnesota. It appears that only eight other states (none of which adjoin Minnesota) forbid fornication. Twenty-seven states, including those surrounding Minnesota, do not prohibit sodomy. Although 26 states in addition to Minnesota forbid adultery, 23 states, including South Dakota, do not.[66]

Penalty Provisions Outside Criminal and Vehicle Codes

Many statutes containing criminal penalties exist outside of the core criminal and vehicle provisions discussed above. Statutes also provide criminal penalties for violations of rules promulgated by commissioners and heads of certain state agencies and departments. The Committee recommends that these various provisions (if the penalty provided for is a nonfelony penalty) would default to lesser offenses on "sunset dates" unless the Legislature specifically provides for a different penalty. The Committee's proposal is that gross misdemeanor offenses not within the chapters reviewed by the Committee would default to first degree misdemeanors and that all misdemeanor offenses would default to third degree misdemeanors on the effective date of the recommended changes to the criminal and vehicle codes. On August 1 following the next legislative session after the criminal and vehicle codes take effect, the third degree misdemeanors not within the chapters reviewed by the Committee would default again to infractions, unless the legislature specifically provides for a different penalty before that sunset date.

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[64]*State v. Armstrong*, 282 Minn. 39, 162 N.W.2d 357 (1968).

[65]See proposed sections 609C.51 (criminal sexual conduct);609D.79 (indecent exposure); 609D.81 (indecent conduct in presence of minor under 16); 609L.11 to 609L.23 (prostitution related crimes); and 609L.41 (using minor in sexual performance).

[66]*See* Peter McWilliams, *Ain't Nobody's Business If You Do* 631-32 (1996) (table).

This recommendation is intended to insure that all nonfelony penalties will be reviewed by the legislature and the various state departments that have responsibility for the conduct that is the subject of these laws. When the Ranking Factors are applied to these nonfelony crimes, the legislature and state departments may conclude that many of the provisions do not require criminal sanctions and can be dealt with at the infraction level (with a maximum fine of $500).

Part of the Committee's initial proposal included reviewing nonfelony penalties relating to the Department of Natural Resources ("DNR"). Because of time constraints, initial drafts were prepared late in the Committee process and the Committee is reluctant to make formal recommendations without a thorough review. Nevertheless, the drafts should serve as a vehicle for discussion. In addition, the DNR is familiar with offense classification analysis as many of its offenses are included on the "Payables" list as fine only offenses.

As a further limitation, the Committee recommends that the Crime Prevention Committee of the Senate and the Judiciary Committee of the House should be responsible for reviewing any future legislation that creates or reenacts criminal penalties (felony or nonfelony), to ensure that the proportionality considerations that are embodied in the Committee's proposal will be utilized for offenses that are not part of the state's criminal and vehicle codes.

The Committee also recommends that only the Minnesota Legislature should be authorized to create serious nonfelony crimes (*i.e.*, gross misdemeanors, first degree misdemeanors, and second degree misdemeanors). Local units of government would be allowed to enact ordinances that create third degree misdemeanors and infractions, but not the higher levels of nonfelony offenses.[67] This recommendation is based upon considerations of proportionality, and is an attempt to strike a balance two conflicting policies: (1) that local communities should have the authority to determine how to penalize an offense based upon their "community standards" and (2) the need to retain proportionality between ordinances in the various communities and between local ordinances and state statutes. By limiting local ordinances to third degree misdemeanors and infractions, the result will be to reduce disproportionality without requiring the legislature to "review" all local ordinances.

Additionally, the Committee is recommending that local units of government[68] be authorized to enact ordinances which provide for administrative civil penalties. Local units of government that enacted such ordinances would be prohibited from establishing administrative (*i.e.*, civil) sanctions that exceed those under a comparable state statute. These are permitted to

[67]See proposed section 609A.39.

[68]See proposed amendments to Minn. Stat. §§ 366.01; 375.53; 410.28; and 412.231.

exceed $500 in cases involving locally licensed activities (*e.g.*, alcohol and food), environmental activities (*e.g.*, hazardous waste), and tobacco.[69]

Some cities have expressed a desire to enact local ordinances that parallel state statutes but provide for a lesser penalty than a state statute to provide a city with the ability to prosecute cases where the county attorney has decided not to file felony charges. Examples of current ordinances include misdemeanor terroristic threats and city drug ordinances. The Committee recommends continuation of this authority.

System Effectiveness

This section discusses system effectiveness issues considered by the Committee. It includes issues that are not addressed in the recommended statutory modifications.

Information Systems

The only statewide source of misdemeanor criminal history information is the drivers record database maintained by the Department of Public Safety. The overall statewide criminal history system maintained by the Bureau of Criminal Apprehension does not include misdemeanor offenses. Thus, for non-vehicle related misdemeanors, the legislature and the criminal justice system are forced to rely on local court and prosecution computer systems for deciding important public policy issues or deciding pretrial release or sentencing issues regarding misdemeanor offenses. These local systems were not designed as criminal history databases, however, and they seldom contain detailed or complete information regarding misdemeanor offenses.

Concerns have been expressed that the Committee's recommendation to treat some property crimes as infractions (e.g., theft under $100 and worthless checks under $250) would only exacerbate the criminal history problem because prosecutors would not be directly involved in infraction cases processed through a violations bureau. These violations would continue to be tracked, however, through trial court computer systems. Each of these systems currently allows a search of misdemeanor and petty misdemeanor violations by an offender's name. In many areas of the state, local prosecuting authorities have already established a computer link to the trial court computer system.

The lack of a comprehensive and detailed misdemeanor criminal history information system has been a significant issue for the legislature in structuring penalties (especially for repeat offenders), for the offense of driving under the influence (DUI or DWI). In 1992 the legislature established a commission to study confinement and treatment issues pertaining to repeat DWI

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[69] State law limits administrative sanctions for alcohol to $2,000. Minn. Stat. § 340A.415 (1996). The Committee rejected the idea of capping all administrative sanctions at the $2,000 level because larger fines may be necessary to encourage enforcement in some areas.

offenders.[70] In its report that commission noted that no single database integrates information on charging practices, conviction rates, the actual sentence imposed and the utilization of probation, including treatment programs for substance abuse.[71] This results in legislative policy being based on "anecdotal" information vs. "hard" data.[72] The commission recommended the creation of a DWI tracking system that would compile such information into an integrated database that could be utilized by the legislature and the criminal justice community.[73]

The need for a statewide database on persons committing misdemeanor offenses is well documented. The Criminal and Juvenile Justice Information Policy Group and Task Force recommends creation of a statewide misdemeanor database that is limited to "targeted" misdemeanors (drug offenses, gun offenses, domestic abuse, and all misdemeanors in existing chapter 609).[74] Clearly not all misdemeanors or infractions need to be included in a statewide database, and the Committee's recommendations regarding the ranking or classification of offenses may assist policy makers in determining the appropriate scope of a statewide misdemeanor tracking system.

Fine Schedules or "Payables" Lists

Both Rule 23 of the Rules of Criminal Procedure and Minnesota Statutes currently authorize the courts to establish uniform fine schedules for petty misdemeanors and misdemeanors (90-days). These schedules provide a degree of fairness and predictability, which makes the nonfelony system operate efficiently and effectively. These fine schedules or so called "payables" lists can also designate misdemeanors (90-day) that are to be handled as fine only offenses. Although the Committee's recommended offense classifications and sunset provisions arguably obviate the need for designating misdemeanors as fine only offenses, the Committee recommends that this designation process be continued for third degree misdemeanors. This will allow room for adjustments during the implementation of the Committee's recommendations and beyond, as societal interests continue to evolve or come into sharper focus.

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[70]1992 Minn. Laws, ch. 570, art. 1, § 29.

[71]Commission on Confinement and Treatment of DWI Recidivists, *Final Report* (1993) (referred to herein as *Recidivist Report*).

[72]The lack of hard data also complicated the Committee's task of classifying penalties and measuring the impact of proposed changes on the criminal justice system.

[73]*Recidivists Report*, p. 14.

[74]Criminal and Juvenile Justice Information Policy Group and Task Force, *Recommendations and Progress Report to the Governor, the Supreme Court, and the Legislature*, (Feb. 1995) p. 1.

Identification of Infraction Violators

Concern was expressed over the ability to identify infraction violators. Current law and court rules require the release from custody of an individual who is charged with a fine only offense. Under current practice, a valid drivers license is usually considered adequate to identify an individual for purposes of issuing a citation for a fine only offense. Where no license or other acceptable form of identification is available, most alleged violators are fingerprinted and photographed, and then released with a citation to appear in court at a later date. Additional concern was expressed over the need to maintain fingerprints and photographs for person charged with infraction violations. Currently, if proceedings are eventually determined in favor of the alleged violator (*e.g.*, dismissal or acquittal), the individual must begin expungment proceedings to remove this information from government files. This remedy is often not completely effective, as fingerprints can be distributed to other agencies (*e.g.*, the FBI) before expungment is effected. To address these concerns, the Committee recommends incorporating the following into statute:

> "If a person to whom an infraction citation is to be issued does not provide a reasonable form of identification, the person may be detained for identification purposes. The person detained must be informed promptly of the purpose of the detention and may not be subject to unreasonable or unnecessary force. The person detained may be fingerprinted and photographed for the purpose of determining and verifying the person's identity. The person must be released from detention upon satisfactory proof of the person's identity or completion of the fingerprinting and photographing process, whichever occurs first. The fingerprints and photograph must be destroyed or given to the person upon satisfactory proof of the person's identity or final resolution of the citation, whichever occurs first. Until released, the person may be detained in any detention facility licensed by the commissioner of corrections."

This language does not affect the law regarding when a person may be stopped for investigative reasons. It merely addresses the procedure once a decision to issue an infraction citation has been made. It is contemplated that a valid drivers license or state identification card, or other picture identification acceptable to law enforcement, would constitute satisfactory proof of identification. The return of fingerprints and photographs immediately upon presentation of satisfactory proof of identification avoids the delay and expense of an expungment procedure and places the prosecution in the same position that they would have been in had sufficient proof of identification (e.g., a valid license or other acceptable form of picture identification) been available at the time the person was initially detained for identification purposes for the infraction violation.

Infraction Violations Bureaus

The Committee recommends that the violations bureau concept set forth in Rule 23 of the Rules of Criminal Procedure and related statutes be expanded by granting hearing officers the authority to dismiss cases or reduce fines under an informal procedure, and providing an appeal from the hearing officer's decision to the district court under a *de novo* review standard (*i.e.*, new hearing). This is modeled after the Hennepin and Ramsey county violations bureaus, which use appointed hearing officers to determine whether fines should be reduced. These hearing officers may also divert cases out of the system or continue certain cases for dismissal as part of programs established by the various prosecuting authorities. Granting additional authority to hearing officers may obviate the need for some individual programs, which promotes fairness across jurisdictional lines, and may increase the overall efficiency of the system.

The Committee's proposal also adopts a different standard of proof for infraction offenses. Current fine only offenses require proof beyond a reasonable doubt. The Committee recommends that this be changed to proof by clear and convincing evidence. The clear and convincing standard is currently used, for example, in proceedings involving the termination of parental rights. The Committee believes that fine only offenses such as a speeding violation did not justify a reasonable doubt standard. At the same time, however, the Committee recognizes that a stigma can attach to an infraction conviction that may, for example, adversely affect employment opportunities or insurance costs. For this reason the Committee rejects the mere preponderance of evidence standard applied in civil cases.

An infraction offender may be represented by counsel if the person chooses, but would not be eligible for appointed counsel at public expense. The informality of the proceedings would not appear to necessitate the presence of counsel. The typical proceeding contemplated before a hearing officer would involve only the alleged infraction violator and the hearing officer, and no recording or transcript of the discussions would be made.[75] In the Hennepin County Violations Bureau, for example, matters are handled in an office setting with the alleged violator and hearing officer sitting at a desk.

One of the "conditions" that may be imposed for infractions (in lieu of part or all of the fine) is work service. Probation officers expressed concern that: (1) there are not enough probation officers to handle the current load without adding infraction offenders; (2) work service programs are expensive to operate and are not available in many areas of the state, and infraction violation bureau hearing officers may not understand this fact; and (3) work service authorized by a hearing officer may not be covered by liability statutes. The Committee's recommendations include provisions limiting the authority of hearing officers to assign work service only where an existing work service program has been approved by the judges responsible for overseeing the

[75]It is contemplated that infractions processed in district court (*i.e.*, either on appeal from a violations bureau or where there is no violations bureau established) would be on the record to permit further review by the appellate courts. Committee members have expressed concern that transcripts are currently unavailable for many trials involving fine only offenses.

violations bureau. Liability statutes have also been modified to cover work service ordered by a hearing officer.

Some judges have expressed concern over the qualifications of hearing officers particularly if infraction offenses are to include minor thefts. Although judges in these areas could be assigned as the hearing officers, the requirement of a de novo review means that another judge must be assigned to the appeal. This would create additional burdens in many areas of the state. Thus, the Committee recommends that the expanded violations bureau be available as an option for each judicial district to consider for use in some or all parts of the district (*e.g.*, including county by county or city by city). Where no violations bureau is established, the Committee recommends that infraction offenses be processed in the same fashion as current fine only offenses, subject to the clear and convincing standard and unavailability of appointed counsel at public expense discussed above.

The Committee recognizes that ultimately the detailed procedures for processing infractions will be determined by the Minnesota Supreme Court, through its Rules of Criminal Procedure, and by the trial courts, through administrative practices. Thus the statutes recommended by the Committee include the clear and convincing standard, unavailability of appointed counsel at public expense, work service limitations, and optional creation of violations bureaus (including de novo appeals) discussed above. The remaining procedures and the selection, qualifications, and training of hearing officers, are left to the courts, with the Committee's recommendation that where no violations bureau is established, infraction offenses should be processed in the same fashion as current fine only offenses.[76]

The Committee also considered, but ultimately rejected, the creation of an adjudication system outside the judicial branch in which state agencies and political subdivisions may assess and enforce infraction fines through use of hearing officers. The rationale is that this would only duplicate costs without significant savings to the criminal justice system.

Increased Fine Collection Efforts

Insuring that violators pay the fines imposed for infraction offenses is essential to the integrity of the infractions concept. Otherwise, violators will continue their conduct with no reason to comply with court orders and the laws of the state. The Committee has examined many different means that may be utilized to collect unpaid fines for infraction offenses.

Courts have recently increased collection of fine revenues through improved fine management procedures, addition of collection officers (Minn. Stat. § 357.021, subd. 1a(b) (1994)) (authorizing screener-collector position and reimbursement of salary from fees paid by the county), and use of revenue recapture (Minn. Stat. § 270A.01-02 (1994) (allowing agencies to collect debts through a set off from the individual's tax return)). For example, in the Second

[76]Additional procedural issues presented by the new first degree misdemeanor classification are discussed above in the section titled Procedural Implications--Rules of Criminal Procedure.

Judicial District (Ramsey County), the procedures for collecting unpaid fines prior to 1994 were either suspension of driver's license (moving violations only) or issuance of an arrest warrant (approximately 37,000 warrants were issued annually at an estimated cost of $100 per warrant).

In 1994, after creating a fine collection office and participating in a pilot project with the newly created Minnesota Collections Enterprise ("MCE" is an extension of the Revenue Department that serves as a collection agency for state debt), the Second District collected $150,000 (21%) out of a total of $700,000 in unpaid, court-imposed fines (excluding payables).[77] In 1995, the Second District hired a second collections officer and bypassed the MCE, sending revenue recapture requests directly to the Department of Revenue via computer after skip tracing was done. Despite adding unpaid payables (citations for fine only offenses), collections in the first ten months of 1995 exceeded $700,000.[78]

The Committee's infraction proposal would utilize these fine collection techniques. The Committee's recommendations also add provisions requiring the payment of unpaid fines as a condition of renewal of all professional and occupational licenses issued by the state. Additional authority was also discovered for a set-off against state lottery proceeds. Prior to the enactment of the Welfare Reform Act, a similar set-off for AFDC benefits was prohibited. The new act, however, allows states to establish their own distribution mechanisms. The Committee recommends that the legislature examine whether similar set-offs should be established for AFDC benefits based on this new legislative authority.

In addition, the Committee's recommended statutes require payment of delinquent vehicle fines as a condition of renewing license plate tabs or obtaining duplicate, special or personalized plates. A fine from any offense involving a particular vehicle would attach to the vehicle's tab renewal/plate issuance unless and until the fines are paid or the vehicle is sold for value to another person. For example, if the registered owner of a vehicle allows another person (*e.g.*, a spouse, child, or friend) to drive the vehicle and the other person commits any vehicle related offense (*e.g.*, moving or parking violations), the fines from those offenses must be paid before the tab renewal/plate issuance transaction will be processed.

This proposal would require the Department of Public Safety ("DPS") to implement a separate computer database to track delinquent fines reported by the courts and to note delinquent

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[77]Prior to referral to MCE, statutes required a final demand notice to debtors, and this notice returned $75,000 (debtors have received other notices as part of the court's existing procedures). The remainder was sent to a skip tracing agency to seek correct addresses and social security numbers (necessary to refer to MCE and revenue recapture). Ultimately, $240,000 in unpaid fines was sent to MCE, which used revenue recapture for 90% of the cases, and collected a total of $75,000.

[78] Source: *Second Judicial District Fines Management Program Report*, 11/15/95 (copy on file at Research & Planning Office, 120 Minnesota Judicial Center, St. Paul, MN 55155). *See also Report of the Conference of Chief Judges, Fine Management and Public Defender Eligibility Screening Project,* Jan. 1993, p. ii (noting that while more can be done, current practices are effective in collecting the vast majority of fines and other charges assessed) (copy on file at Research and Planning Office).

fines on motor vehicle registration renewal notices. Under current DPS renewal notice mailing procedures, this would allow a registered owner at least 30 days to clean up the unpaid fines before tabs expire. A motor vehicle registrar processing a license tab transaction, for example, would review the motor vehicle registration notice for a notation of unpaid fines or review the DPS database and direct the applicant to the appropriate court(s) for payment of the fine or, if agreed to by the particular registrar, accept payment of the fines and forward those to the appropriate court.

The proposal would be phased in beginning January 1, 1998, with a pilot project in one or more cities and/or counties selected by DPS and implemented statewide by July 1, 1999. DPS would be responsible for the additional costs of implementing the systems, including computer terminals for registrars (metro area registrars are already computerized) and long distance lines (for checking the driving record). The cost would be offset by a $1 surcharge on all vehicle related fines. Both the DPS and the deputy registrars support this approach.

The Committee's proposal does not apply to a transfer of a vehicle for value to a new owner *(i.e.*, a bona fide sale). Once a bona fide sale occurs, the slate is wiped clean so that the new owner can renew license plate tabs, obtain duplicate, special or personalized plates, or change classification of the vehicle without having to pay the delinquent fines incurred under the previous registered owner. The Committee rejected the idea of passing the fines along with the bona fide sale of the vehicle because it would in effect require a buyer to check the vehicle record before buying. Such "title searches" are impractical, particularly when the value of the car is only several hundred dollars, and should be reserved for major transactions such as those involving real estate. The requirement of a bona fide sale should limit transactions aimed at avoiding outstanding fines. The Committee recognizes that this is a limited method of collecting outstanding fines. Coupled with the other procedures discussed above, however, it should offer an effective and fair method of fine enforcement.

The Committee rejected the idea of requiring payment of outstanding fines as a condition of renewing a drivers license for several reasons. An unlicensed driver is significantly more difficult to spot than an unlicensed car. Preventing the renewal of drivers licenses will only add to the problems the system currently creates by suspending licenses for failure to pay fines and failure to insure a vehicle. The Committee's recommendations regarding driving without a license and failure to insure offenses (discussed in the Classification of Offenses section, above) are intended to minimize this burden on the system and more importantly to get people who are not a danger to society validly licensed and insured.

Prosecutorial Jurisdiction

One of the Committee's mandates is to study and make recommendations regarding the effective prosecution of nonfelony offenses. All felony offenses are now prosecuted by the county attorney, with gross misdemeanor property crime offenses being prosecuted by either the county attorney or municipal prosecutor depending upon the city or county in which the offense

occurred. All misdemeanor level property crimes are now prosecuted by the municipal prosecutor unless by agreement or law the county attorney is designated as the prosecutor.

If the Committee's proposed adjustments to property crime offenses (discussed above) are adopted and prosecutorial jurisdiction remains unchanged, municipal prosecutors would experience an increase in the number of cases that must be processed. Due to information system gaps (see Information Systems section, above), the Committee has not been able to quantify the number of cases that will be transferred from the county attorney to municipal attorneys. Some anecdotal information suggests, however that municipal prosecutors have already absorbed some of these cases by prosecuting theft cases that the county attorney is unable or unwilling (given other priorities) to prosecute. In addition, the classification of certain offenses as infractions (including theft under $100, worthless checks under $250, first time driving after suspension, first time failure to insure vehicle, and repeat moving traffic violations), will result a decrease in the number of such cases that municipal prosecutors must process. The extent to which the decreases may offset the increases is difficult to measure given the information system gaps discussed above.

The Committee also recognizes that these changes in prosecutorial responsibilities raise issues regarding who will pay for incarceration costs for offenders. This appears to be primarily an issue in Hennepin County which has a formula for fine distribution and incarceration costs that is unique to Hennepin County and which provides that the cities receive all of the fine revenue on misdemeanor and gross misdemeanor offenses which they prosecute and are responsible for 100% of the incarceration costs for misdemeanor offenses. In the other 86 counties the statutes establish a different formula for sharing of fines and incarceration costs, and it appears that the cost shifting issues are less significant in those counties. The Committee has not attempted to identify how this issue should be addressed, feeling that it is best addressed on a case-by-case basis with the impacted counties and municipalities offering their own proposals, if necessary, to the Legislature for appropriate resolution.

The Committee examined the delivery of prosecution services in smaller communities and counties where prosecutors are part-time rather than full-time. The Committee was concerned that in many instances prosecutors were not present in court for initial arraignment appearances on nonfelony offenses which can mean that the court does not get the information needed to make appropriate bail determinations on serious offenses such as DUI and domestic assault. The delivery of victim services in smaller communities and counties was also discussed by the Committee as an area of policy concern. The Committee considered various approaches to address these concerns, including:

- consolidation of all prosecution services in counties with a population of 75,000 or less;

- requiring county attorneys to prosecute all gross, first and second degree misdemeanors, and requiring cities to prosecute all third degree misdemeanors and infractions;

- requiring cities under 20,000 to prosecute third degree misdemeanors and infractions only, with county attorney offices in those areas prosecuting the remainder of the crimes; and

- encouraging cooperative arrangements in cities under 20,000 population by making such arrangements a qualification for receipt of certain fine revenues.

The Committee has also discussed these proposals with representatives from the League of Minnesota Cities, city prosecution offices, and the County Attorneys Association. In addition, the Committee has been monitoring the efforts of the Legislative Audit Commission, which is in the process of preparing a Best Practices Review for misdemeanor prosecution. These discussions and efforts indicate that significant issues exist as to whether any mandated solutions are feasible, given the legitimate concerns for how funding and staffing issues would be accomplished and where indications are that voluntary arrangements between cities and counties have proven successful. Thus, the Committee recommends that political subdivisions continue to explore joint ventures to create efficiencies where possible. The Committee is also hopeful that the Legislative Audit Commission's Best Practices Review will offer a guide as to how such joint ventures can best achieve efficiencies and deliver necessary victim services.

The Committee also considered, but rejected as unnecessary, legislation that would encourage cooperative agreements between county attorney offices. The County Attorneys Association testified that adequate legislation exists permitting such arrangements. Prosecutors also indicated that many arrangements are informal.

Traffic Ticket and Citation Forms

The Committee has considered, but rejected, a proposal to expand the uniform traffic ticket and citation forms to incorporate a plea of "guilty with an explanation" to allow defendants to have their say without unnecessary waste of criminal justice system resources. The problems with this approach are that there is no available room on the uniform traffic ticket and it is highly unlikely that anyone would have the time to read the explanations. The Committee also considered a proposal to add the telephone number for the appropriate public defender's office to the forms so that defendants could come to their first appearance having already received the advice of counsel. One problem with this is that the public defender's office cannot proceed with representation until appointed by the court. Although some useful information (e.g., qualifications for public defender appointment and overview of the misdemeanor process) could be distributed in this manner, this information should already be available from the courts (see next section).

Brochures

The Committee considered recommending the preparation and distribution of procedural brochures to misdemeanor defendants in effort to reduce missed appearances and other

inefficiencies. The Committee strongly supports efforts by the courts, through the Pro Se Implementation Committee of the Conference of Chief Judges, to prepare the necessary and appropriate brochures.

Alternative Dispute Resolution

The Committee considered but rejected a proposal to authorize city mediators to resolve misdemeanor violations before or after issuance of a citation or complaint. Cities already have the authority to create diversion programs involving voluntary mediation. To the extent that mandatory mediation is sought, such a program would require a waiver of rights and should include existing limitations on mandatory mediation in civil cases, such as situations involving domestic violence.[79]

Video Arraignments

The Committee considered the use of video teleconferencing to conduct arraignments, which is aimed at reducing transportation time and costs for all system participants. This issue has been the subject of considerable discussion and debate. In 1991, the Supreme Court appointed a 13-member task force to evaluate the possible use of closed circuit television to conduct arraignments and other initial appearances under separate proposals from three Minnesota judicial districts. The task force was split, with a majority recommending approval of a pilot project subject to certain guidelines, and a minority opposing any pilot program because, among other things, of concerns that closed circuit television creates closed courtrooms, precluding participation by counsel, family and friends, use of television robs defendant's of their humanity by loss of human contact, and the process disparately affects minority and indigent persons who are unable to post bail.[80]

At the request of the Legislature, the Conference of Chief Judges and the State Court Administrator's Office commissioned a cost benefit analysis of video arraignments. The January 1996, report by the MACRO GROUP, Inc., revealed that:

- video technology for in-custody arraignment hearings is not cost justified;
- there was a differential impact on agencies and funding sources (probation and defense costs went up to obtain savings for law enforcement);

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[79]*See, e.g.*, Minn.Gen.R.Prac. 114.01, 114.04, 310.01(amended effective July 1, 1997).

[80]*Final Report, Minnesota Supreme Court Task Force on Closed Circuit Television,* December, 1991 (on file in Clerk of Appellate Court's Office, #C0-91-1421)

- there are substantial direct costs (installation and use) to obtain an indirect savings in process (i.e. won't eliminate personnel or lower a budget), and in most locations there is no long term recovery of the direct costs; and

- there is a clear payback from simply redesigning the process (e.g., develop pre-arraignment screening, use facsimile transmission to process complaints, use videotape of judge reading rights to defendants).

As a result, no further pilot projects or use of video arraignments have been authorized by the Minnesota Supreme Court. Based on these results, the Committee recommends that any further use of video arraignments be considered on a case by case basis by the Supreme Court.

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Appendix

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History of Minnesota's Theft Statute [81]

Years in Effect	Amount of Loss	Maximum Incarceration
1858-1873	$100+ $100 or less	3 years 2 years
1873-1886	$100+ $20+ Under $20	7 years 3 years 3 months
1886-1963	$500+ $25+ $25 or less	10 years 5 years 3 months
1963-1979	$2,500+ $100+ $100 or less	10 years 5 years 90 days
1979-1983	$2,500+ $150+ $150 or less	10 years 5 years 90 days
1983-1987	$2,500+ $250+ $250 or less	10 years 5 years 90 days
1987-Present	$35,000+ $2,500+ $500+ $200+ $200 or less	20 years 10 years 5 years 1 year 90 days

This chart indicates that Minnesota's theft statute underwent several revisions in the first three decades of statehood, and then went unchanged as to dollar or penalty levels for a period of seventy-seven years (from 1886-1963). The changes in dollar levels made in 1963 were as "substantial" as those being recommended by NEAC. With the exception of the 1979 and 1983 changes to the amount separating misdemeanor and 5 year felonies, the theft statute remained unchanged. In 1987, the Legislature created the gross misdemeanor theft offense (1 year) and a 20-year felony theft offense. The dollar levels and penalty structure established in 1987 has not been modified since that session and represented the "base point" for NEAC's evaluation.

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[81]Minn. Stat. § 15 (1858); Minn. Stat. § 15 (1866); Minn. Stat. § 84 (1873); Minn. Stat. §§ 417-419 (1886); Minn. Stat. §§ 5393-6397 (1891); Minn. Stat. §§ 10362-10364 (1927); Minn. Stat. §§ 622.05-622.07 (1949); Minn. Stat. §§ 622.05-622.07 (1961); Minn. Stat. § 609.52, subd. 3 (1963); Minn. Stat. § 609.52, subd. 3 (1977); Minn. Stat. § 609.52, subd. 3 (1983); Minn. Stat. § 609.52, subd. 3 (1987); Minn. Stat. § 609.52, subd. 3 (1996).

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Criminal Code Nonfelony Offense List

NOTE: Each provision listed with a new section number having only two digits after the decimal point is subject to the penalty provisions of proposed sections 609G.112 to 609G.119 (theft) or 609H.411 to 609H.418 (property damage). The nonfelony categories are designated by abbreviations: gross misdemeanor ("GM"), first degree misdemeanor ("M1"), second degree misdemeanor ("M2"), third degree misdemeanor ("M3"), and infraction ("INF"). A "ranking code," indicating evaluation of the offense under the NEAC "ranking factors table," is included only if the offense remains under the relevant nonfelony category. This is denoted by an equal sign ("=") under the "Proposed Penalty" column. If the proposed penalty is a different nonfelony category, the offense and its ranking code may be found in the list for that nonfelony category. For example, "Abduction (minor for marriage)" is listed below because it is currently a gross misdemeanor ("GM"). However, because the recommended penalty is a third degree misdemeanor ("M3"), it is listed again in the third degree misdemeanor list with a ranking code of 13792. Finally, the lists for the new first degree misdemeanor ("M1") and third degree misdemeanor ("M3") offenses substitute a column on "Prior Penalty" for "Proposed Penalty."

GROSS MISDEMEANORS

(Offense is currently a gross misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking Codes
D.255	Abduction (minor for marriage)	M3	
	Adultery	**OMIT**	
H.115	Arson (property other than building, $1,000 - $2,999)	**NEW**	63973
C.217	Assault (bias motivation)	=	87976
C.218	Assault on certain public employees	M1	
C.217	Assault (2d in 2 years, any victim)	=	86977
C.217	Assault (caregiver of vulnerable victim)	=	96971
C.218	Assault on school employee	M1	
C.217	Assault (2d in 5 years, same victim)	=	86975
C.218	Assault (2d domestic in 5 years)	=	86975
C.218	Assault DNR employee	M1	
L.893	Bestiality	M1	
H.77	Bribery (commercial, $1,000 - $2,999)	**NEW**	63970
J.895	Bribery (participant or official in contest; fail to report)	M2	

GROSS MISDEMEANORS

(Offense is currently a gross misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking Codes
H.317	Burglary - 4th degree	=	63773
I.257	Cellular phone counterfeiting: possess cloned phone	M1	
G.357	Check forgery (up to $200) - **current**	M1	
G.355	Check forgery ($250-$999) - **proposed**	**NEW**	62970
D.315	Child neglect	=	87678
D.315	Child neglect (parent permits abuse)	=	86678
D.315	Child endangerment	=	86658
E.715	Civil disorder	=	78494
I.13	Computer theft ($1,000-$2,999)	**NEW**	
I.11	Computer damage to property ($1,000-$2,999)	**NEW**	
I.115	Computer (unauthorized access, risk to public et al)	=	74770
K.773	Conceal dead body	=	54770
K.794	Conspire to cause arrest or prosecution	Increase from misd.	85772
	Contraceptive materials (sale restrictions)	**OMIT**	
D.235	Contribute to truancy	M2	
G.418	Credit card fraud (up to $200) - **current**	M1	
G.416	Credit card fraud ($250-$999) - **proposed**	**NEW**	62770
E.555	Crimes against railroads (shoot at train)	=	88670
J.395	Crimes against railroads (others)	M1	
D.439	Criminal abuse (vulnerable adult - misc.)	=	95978
D.439	Criminal abuse (vulnerable adult + sexual contact)	=	96978
C.519	Criminal sexual conduct 5th degree (sexual contact)	=	86493
D.455	Criminal neglect (vulnerable adult)	=	96978

GROSS MISDEMEANORS

(Offense is currently a gross misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking Codes
H.417	Damage to property ($250-$500) - **current**	M2	
H.415	Damage to property (less than $250 w/ bias) - **current**	=	
H.415	Damage to property ($1,000-$2,999) - **proposed**	**NEW**	63970
H.415	Damage to property (less than $1,00 w/ bias) - **proposed**	**NEW**	86676
H.435	Damage timber equipment (less than great bodily harm)	=	63974
J.795	Dangerous acrobatic exhibition	INF	
J.755	Defamation	M1	
F.333	Deliver drug paraphernalia to minor	M1	
J.215	Disorderly house, own or operate (liquor/gambling)	M1	
J.215	Disorderly house, own/operate (prostitution/controlled substances)	=	24974
J.153	Disorderly conduct (by caregiver w/ vulnerable person)	M1	
D.873	Dog bite (dangerous dog/2d bite by same dog)	M1	
K.535	Escape from custody (nonfelony)	=	53970
L.333	Exhibit obscene motion picture at drive-in (2nd conviction)	=	11975
E.377	Fail to aid shooting victim (less than SBH + shooter/companion)	=	87778
D.473	Fail to report maltreatment of vulnerable adult (death/GBH)	=	94970
K.575	Fail to appear on criminal charge (felony)	M1	
H.795	False registration of animal	M2	
K.195	False tax statement	M1	
K.853	False name (use name/d.o.b. of another)	M1	
K.853	False name (fictitious name or d.o.b. in court)	M1	
K.813	Falsely reported crime (2d conviction)	=	54775
H.915	Financially exploit vulnerable adult	=	63978

GROSS MISDEMEANORS

(Offense is currently a gross misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking Codes
L.713	Fireworks (possess 35+ pounds)	=	87480
J.935	Gambling operations (generally)	=	13971
D.637	Harassment/stalking (generally)	=	86970
D.693	Harassment/violate restraining order (2d in 5 years)	=	86677
J.475	Health care (interfere w/ access to)	M1	
J.473	Health care (interfere w/ access to, 2d in 2 years)	**NEW**	85777
K.295	Illegally assume/fail to surrender public office	M1	
D.793	Indecent exposure (2d conviction)	=	86677
D.815	Indecent conduct (minor under 16 present)	=	86678
D.793	Indecent exposure (minor present)	=	86678
K.435	Interfere w/ property in custody	=	63970
L.755	Interfere w/ use of public property	=	86973
D.773	Intrusive observation (2d conviction)	=	86677
H.415	Library property - damage to (based on $ amt. of damage)	Increase from petty	63970
G.115	Library property - remove from (based on $ amt.)	Increase from petty	63970
D.337	Malicious punishment of child	=	87978
L.453	Materials harmful to minors (disseminate)	=	82470
K.255	Misconduct of public officer	M1	
D.415	Mistreat vulnerable adult	=	97978
D.515	Mistreat person confined	=	97978
H.175	Negligent fire ($301-$2,499) - **current**	M2 to GM ($ based)	63973

GROSS MISDEMEANORS

(Offense is currently a gross misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking Codes
H.715	Negligent fire ($1,000-$2,999) - **proposed**	**NEW**	63973
L.515	Nonsupport of child/spouse (90-180 days in arrears)	M1	
L.315	Obscene material (exhibit/produce)	M1	
K.755	Obstruct legal process (w/ use of force)	=	87772
L.435	Pictorial representation of minor (w/ sexual conduct)	=	86470
K.955	Police horse (unseat officer/demonstrable harm to non-officer)	=	87952
K.935	Police/corrections/arson dog (SBH/GBH)	=	68970
G.21	Possess stolen property ($200-$500) - **current**	M2/M3	
G.21	Possess stolen property ($1,000-$2,999) - **proposed**	**NEW**	63970
F.513	Precursor substance (false reporting)	=	53972
F.513	Precursor substance (w/ prior violation)	=	51977
L.235	Prostitution (allow minor prostitute to reside in dwelling)	=	81978
L.135	Prostitution (solicit in public)	M1	
L.115	Prostitution (2d in 2 years)	M1	
L.113	Prostitution (3d in 5 years)	**NEW**	81977
L.179	Prostitution (receive profits w/ prostitute 18+)	=	81972
C.873	Religious observance (physical obstruction)	M1	
G.115	Rustling/livestock theft ($301-$2499) - **current**	M2 to GM ($ based)	
G.115	Rustling/livestock theft ($1,000-$2,999) - **proposed**	**NEW**	63970
F.175	Schedule V controlled substance	=	71972
	Sodomy	**OMIT**	
E.755	Tear gas et al (unlawful use of)	=	87970
I.21	Telecommunications fraud ($1,000-$2,999)	**NEW**	63970

GROSS MISDEMEANORS

(Offense is currently a gross misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking Codes
D.617	Terroristic threats (brandishing replica firearm)	=	87770
G.117	Theft ($200-$500) - **current**	M2/M3	
G.115	Theft ($1,000-$2,999) - **proposed**	**NEW**	63970
J.575	Tobacco products (sale to minor)	M1	
J.573	Tobacco products (2d conviction of sale to minor)	**NEW**	88438
J.373	Transit crimes (violate restraining order)	M1/M2	
H.533	Trespass on school property (3+ persons)	=	76472
C.375	Trespass (at battered women's facility)	=	86673
H.473	Unauthorized release of research animal (2d conviction)	M1	
I.615	Unlawful access to electronic storage (misc.)	=	64770
I.715	Unlawful installation of pen register	=	86470
D.155	Unreasonable restraint of child	=	85970
B.298	Victim (commercial exploitation, "Son of Sam")	M1	
B.293	Victim reparations (false claim)	M1	
C.313	Violate OFP (w/ prior conviction)	=	81977
E.827	Violate OFP (w/ weapons possession)	=	81977
E.845	Weapons (unlawful transfer of pistol or assault weapon)	=	88470
E.215	Weapons (possess dangerous weapon in school zone et al)	=	87473
E.435	Weapons (negligent storage of firearm)	M1	
E.113	Weapons (various possession violations)	=	88473
E.833	Weapons (false statement to secure transferee permit)	=	88272
E.215	Weapons (possess BB gun or replica)	=	87483
E.827	Weapons (possess pistol w/in 3 years of assault conviction)	=	81977
E.855	Weapons (carry/possess w/o permit)	=	88470

GROSS MISDEMEANORS

(Offense is currently a gross misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking Codes
E.845	Weapons (transfer to ineligible person)	=	88470
E.655	Weapons (make or sell Saturday night special)	=	88470
E.255	Weapons (carry BB gun/rifle in public place)	=	87473
E.827	Weapons (possess firearm in violation of court order)	=	81977
E.833	Weapons (various transfer violations)	=	88272
E.415	Weapons (endanger child by access to firearm)	=	88658
H.165	Wildfire (possess flammable to set)	=	63774
I.515	Wiretapping (intermediate violation)	=	86470
K.735	Witness tampering (2d degree)	=	86770
G.313	Worthless check ($251+)	M2 to felony ($ based)	
G.315	Worthless check ($1,000-$2,999)	**NEW**	63970

FIRST DEGREE MISDEMEANORS

(New category of crime)

New 609.--	Offense	Prior Penalty	Ranking Code
H.116	Arson (damage property other than building, $500-$999)	Felony	62973
C.218	Assault DNR employee	GM	87971
C.218	Assault school employee	GM	87971
C.218	Assault certain other public employees	GM	87971
L.893	Bestiality (w/ another person present)	GM	16474

FIRST DEGREE MISDEMEANORS

(New category of crime)

New 609.--	Offense	Prior Penalty	Ranking Code
H.77	Bribery (commercial, $500-$999)	Felony	63970
I.257	Cellular phone counterfeiting: possess cloned phone	GM	63770
G.357	Check forgery (up to $249)	GM/ felony	62970
I.13	Computer theft ($500-$999)	Felony	63970
I.11	Computer damage ($500-$999)	Felony	63970
G.418	Credit card fraud (up to $249)	GM/ felony	62670
H.416	Damage to property ($500-$999)	Felony	63970
J.755	Defamation	GM	86670
H.635	Defeat security on realty (up to $999)	Misd./ felony	62972
F.333	Deliver drug paraphernalia to minor	GM	71678
J.215	Disorderly house, own or operate (liquor/gambling)	GM	23971
J.153	Disorderly conduct (by caregiver w/ vulnerable person)	GM	91638
D.873	Dog bite (dangerous dog/2d bite by same dog)	GM	87935
L.335	Exhibit obscene motion picture at drive-in	Increase from misd.	11970
K.575	Fail to appear on criminal charge (felony appearance)	GM	54970
H.735	False certification by notary	Increase from misd.	53978
K.853	False name (fictitious name/d.o.b. in court)	GM	54672
K.853	False name (use name/d.o.b. of another)	GM	54672
K.195	False tax statement	GM	51971

FIRST DEGREE MISDEMEANORS

(New category of crime)

New 609.--	Offense	Prior Penalty	Ranking Code
K.875	Falsely report child abuse	Increase from misd.	86772
K.815	Falsely report crime	Increase from misd.	54772
J.435	Fire alarm (give false alarm)	Increase from misd.	63974
D.715	Harassing telephone calls (repeated)	Increase from misd.	86772
J.475	Health care (interfere w/ access to)	GM	85773
K.295	Illegally assume/fail to surrender public office	GM	51978
D.795	Indecent exposure	Increase from misd.	86570
D.715	Intentionally cause distress	Increase from misd.	86772
D.775	Intrusive observation (peeping et al)	Increase from misd.	86670
H.416	Library property - damage to ($500-$999)	Increase from petty	63970
G.116	Library property - theft of ($500-$999)	Increase from petty	63970
L.455	Materials harmful to minors (display)	Increase from misd.	82270

FIRST DEGREE MISDEMEANORS

(New category of crime)

New 609.--	Offense	Prior Penalty	Ranking Code
K.255	Misconduct of public officer	GM	52978
H.176	Negligent fire ($500-$999)	GM	63973
L.515	Nonsupport of child/spouse (91-180 days in arrears)	GM	63972
L.315	Obscene material (exhibiting/producing)	GM	11970
G.21	Possess stolen property ($500-$999)	Felony	63970
F.515	Precursor substance (reporting violation)	Increase from misd.	51972
L.135	Prostitution (solicit in public)	GM	81972
L.115	Prostitution (2d in 2 yrs.)	GM	81975
K.335	Public officer, unauthorized compensation	Increase from misd.	53772
C.873	Religious observance (physical obstruction)	GM	81975
I.21	Telecommunications fraud ($500-$999)	Felony	
G.116	Theft ($500-$999)	Felony	63970
J.575	Tobacco products (sale to minor)	GM	88438
J.555	Toxic substances (sale to minor)	Increase from misd.	88438
J.375	Transit crimes (2d conviction for violating restraining order)	GM	52970
H.535	Trespass on school property (after notice by principal)	Increase from misd.	63973
H.473	Unauthorized release of research animal (2d conviction)	GM	62975
I.617	Unlawful access to electronic storage	GM	62770

FIRST DEGREE MISDEMEANORS

(New category of crime)

New 609.--	Offense	Prior Penalty	Ranking Code
J.615	Unused refrigerator (expose to child)	Increase from misd.	88238
B.293	Victim reparations (false claim)	GM	63772
B.298	Victim (commercial exploitation, "Son of Sam")	Gm	63770
E.115	Weapons (possessing dangerous weapons - generally)	Increase from misd.	88273
E.435	Weapons (negligent storage of firearm)	GM	88238

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking code
L.873	Alcohol, person under 21 consume/possess	M3/INF	
L.855	Alcohol, possess at school/state hospital	INF	
J.115	Armed association	=	78214
H.117	Arson (property other than building, up to $249)	=	61973
H.117	Arson (property other than building, up to $499)	**NEW**	61973
C.219	Assault (inflict/attempt bodily harm/cause fear)	=	86970
C.457	Assault unborn child (inflict or attempt bodily harm/cause fear)	=	86970
A.915	Attempt (misdemeanor)	(1/2)	

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking code
L.895	Bestiality (no observing parties)	M3	
J.895	Bribery (participant or official in contest; fail to report)	=	43218
H.77	Bribery (commercial, $250-$499)	=	62970
H.77	Bribery (commercial, up to $249)	M3/INF	
K.175	Camp Ripley (unauthorized presence)	=	53770
I.11	Computer damage (up to $249)	M3/INF	
I.11	Computer damage ($250-$499)	=	62970
I.13	Computer theft (up to $249)	M3/INF	
I.13	Computer theft ($250-$499)	=	62970
L.635	Conceal birth	=	22770
L.615	Conceal stillbirth/death of child	=	23770
J.735	Conceal identity	M3	
K.795	Conspire to cause arrest or prosecution	GM	
A.937	Conspire to commit misdemeanor	(1/2)	
D.235	Contribute to truancy	=	83971
J.397	Crime against railroad (allow animals on track)	=	63473
J.398	Crime against railroad (obstruction on track-no damage)	M3	
J.315	Crime involving transit	=	87273
J.355	Crime involving transit (conduct while riding)	=	11973
H.418	Damage to property (up to $249)	M3	
H.418	Damage to property ($250-$499)	**NEW**	62970
J.793	Dangerous acrobatic exhibition, subsequent	**NEW**	88275
J.815	Dangerous exhibition	M3	
H.635	Defeat security on realty (up to $249)	M1	

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking code
J.155	Disorderly conduct	M3	
K.835	Disseminate false/misleading criminal alert information	M1	
L.385	Distribute indecent article or information	=	14470
I.335	Divulge message; nondelivery	=	86458
C.219	Domestic assault	=	87972
F.355	Drug paraphernalia (advertising)	M3	
I.315	Emergency communication; kidnapping	=	54674
I.353	Emergency telephone calls (other)	=	83470
B.137	Employer discharge victim or witness	=	54770
J.855	Endurance contest	=	87210
L.335	Exhibiting obscene motion picture at drive-in	M1	
K.577	Fail to appear; (gross) misdemeanor defendant	=	53970
H.735	False certification by notary	M1	
J.775	False information to media	=	86670
K.855	False name (fictitious name to officer)	=	53670
H.795	False registration/representation of animal	**NEW**	63772
L.815	False traffic signal	=	77474
K.875	Falsely report child abuse	M1	
K.815	Falsely report crime	M1	
J.435	Fire alarm (give false alarm)	M1	
J.437	Fire alarm (tamper with)	=	64474
	Firearm; nonresident alien possess	OMIT	
L.715	Fireworks	=	87270
	Flag Violation	OMIT	

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking code
	Fornication	OMIT	
G.435	Fraud in obtaining credit (no money/property obtained)	M3	
J.937	Gamble	=	11970
D.715	Harassing telephone call (repeated)	M1	
D.695	Harassment (violate restraining order)	=	86672
D.875	Harm caused by dog	=	87930
E.795	Harmful substance (intentional release)	=	86770
K.455	Impersonate officer	=	53970
E.757	Incapacitation device/tear gas	=	87270
D.795	Indecent exposure	M1	
L.375	Indecent matter (mail or carry)	=	11970
D.715	Intentionally cause distress	M1	
I.435	Interfere with cable communications	=	62770
K.775	Interfere with dead body (fail to report)	=	53730
C.875	Interfere with religious observance	=	81970
D.775	Intrusive observation (peeping et al)	M1	
J.835	Itinerant carnival	M3	
J.195	Loitering crimes	M3	
F.335	Manufacture/deliver drug paraphernalia	=	71670
F.213	Marijuana (fail to comply w/ penalty on small amt conviction)	M3	
F.213	Marijuana (second conviction, small amount)	M3	
F.195	Marijuana (possess in motor vehicle)	M3	
L.455	Materials harmful to minors (display)	M1	
K.915	Misconduct of judicial/hearing officer	=	54978

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking code
G.615	Motor vehicle tampering	=	62970
H.178	Negligent fire (up to $249)	M3	
H.177	Negligent fire ($250-$499)	**NEW**	62973
L.517	Nonsupport	=	62971
K.757	Obstruct legal process (other)	=	54770
L.775	Obstruct public levee	INF	
K.275	Officer not filing security	=	31970
C.315	Order for protection (violate)	=	81972
K.957	Police horse (no bodily harm)	=	64970
G.21	Possess stolen property (up to $249)	M3/INF	
G.21	Possess stolen property ($250-$499)	**NEW**	62970
F.515	Precursor substance (reporting violation)	M1	
L.117	Prostitution (hire/engage in)	=	81970
J.235	Public nuisance	M3	
K.335	Public officer; unauthorized compensation	M1	
L.695	Publish certain medical claim	M3	
I.355	Publish telephone directory without emergency call notice	INF	
L.355	Require retailer to accept literature	=	42971
G.118	Rustling (up to $249)	M3/INF	
G.117	Rustling ($250-$499)	**NEW**	62970
J.635	Secondhand dealer (purchase property from minor)	M3	
K.685	Secondhand dealer (refuse examination of stolen goods)	=	53972
E.379	Shooting victim; fail to aid	=	87730
K.895	Simulate legal process	=	53670

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Proposed Penalty	Ranking code
H.185	Smoking (dangerous)	=	87432
K.615	Solicit juvenile to commit misdemeanor	(1/2)	
K.595	Solicit mentally impaired person to commit misdemeanor	(1/2)	
E.697	Spring gun, etc.	=	87470
J.655	Tatoo minor without parental consent	M3	
I.21	Telecommunications fraud (up to $249)	M3/INF	
I.21	Telecommunications fraud ($250-$499)	=	62970
G.118	Theft (up to $249)	M3/INF	
G.117	Theft ($250-$499)	**NEW**	62970
J.915	Ticket scalping	M3	
H.455	Timber damage device	=	62774
J.577	Tobacco products (furnish to minor)	M3	
G.655	Token or slug (make, offer, or sell)	=	63770
J.535	Toxic substance (aid use for intoxication)	M3	
J.555	Toxic substance (sale to minor)	M1	
J.515	Toxic substance (use for intoxication)	M3	
J.373	Transit crimes (violate restraining order)	M1	
J.335	Transit services, unlawfully obtain	M3	
H.515	Trespass (generally)	=	63970
D.715	Trespass (battered women facility)	M1	
H.537	Trespass on school property (generally)	=	63970
H.535	Trespass on school property (after notice by principal)	M1	
I.157	Unauthorized computer access	=	63770
H.475	Unauthorized release of research animal	=	62970

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated as NEW)

New 609.--	Offense	Proposed Penalty	Ranking code
J.075	Unlawful assembly	M3	
J.095	Unlawful assembly (presence at)	M3	
J.175	Unlawful deposit of garbage	=	62950
H.555	Unlawful ouster/exclusion	=	63970
L.833	Unlawful red light/sign adjacent to railroad (dangerous)	=	77474
L.835	Unlawful red light/sign adjacent to railroad (nondangerous)	INF	
J.495	Unlawful smoking	INF	
J.615	Unused refrigerator (expose to child)	M1	
	Vagrancy (not seek employment)	OMIT	
	Vagrancy (derive support from begging/fortune telling)	OMIT	
B.299	Victim (commercial exploitation)	M3	
D.475	Vulnerable adult maltreatment; fail to report	=	91970
E.847	Weapon (become unknown transferee)	=	88270
E.835	Weapon permit(unlawful transfer; failure to return)	=	88230
E.115	Weapon (possessing dangerous weapons-generally)	M1	
G.317	Worthless check ($250-$999)	NEW	62970
G.317	Worthless check (up to $249, 2d in 12 months)	NEW	62975
G.319	Worthless check (up to $249, 1st in 12 months)	INF	

THIRD DEGREE MISDEMEANORS

(NEW category of crime)

New 609.--	Offense	Prior Penalty	Ranking Code
D.255	Abduction (minor for marriage)	GM	13792
L.873	Alcohol, person under 21 consume/possess (2d in 12 months)	Misd.	87275
L.873	Alcohol, person under 21 consume/possess (under age 18)	Misd.	87470
L.895	Bestiality (no observing parties)	Misd.	11270
H.77	Bribery (commercial, $100-$249)	Misd.	62970
I.13	Computer theft ($100-$249)	Misd.	62970
I.11	Computer damage ($100-$249)	Misd.	62970
I.735	Conceal identity	Misd.	23213
J.398	Crime against railroad (obstruction on track - no damage)	Misd.	63273
H.418	Damage property (up to $249)	Misd.	62970
J.815	Dangerous exhibition	Misd.	88470
J.155	Disorderly conduct	Misd.	11634
F.355	Drug paraphernalia (advertising)	Misd.	11272
G.435	Fraud in obtaining credit (no money/property obtained)	Misd.	63670
J.83	Itinerant carnival	Misd.	13213
H.418	Library property - damage to (up to $249)	Increase from petty	62970
G.118	Library property - theft ($100-$249)	Increase from petty	62970
J.195	Loiter in/near property	Misd.	63230
J.195	Loiter w/ intent to commit prostitution	Misd.	81670
F.195	Marijuana (possess in motor vehicle)	Misd.	71971
F.213	Marijuana (2d conviction, small amt.)	Misd.	11975

THIRD DEGREE MISDEMEANORS

(NEW category of crime)

New 609.--	Offense	Prior Penalty	Ranking Code
H.178	Negligent fire (up to $249)	Misd.	61973
G.118	Possess stolen property ($100-$249)	Misd./GM	62970
J.235	Public nuisance	Misd.	11933
L.695	Publish certain medical claim	Misd.	42410
G.118	Rustling ($100-$249)	Misd.	62970
J.635	Secondhand dealer (purchase property from minor)	Misd.	22412
J.655	Tattoo minor w/o parental consent	Misd.	11910
G.118	Telecommunications fraud ($100-$249)	Misd.	62970
G.118	Theft ($100-$249)	Misd./GM	62970
J.915	Ticket scalping	Misd.	42970
J.577	Tobacco products (furnish to minor)	Misd.	88238
J.535	Toxic substance (aid use for intoxication)	Misd.	88450
J.515	Toxic substance (use for intoxication)	Misd.	88450
J.335	Transit services, unlawfully obtain	Misd.	62773
J.075	Unlawful assembly	Misd.	11973
J.075	Unlawful assembly (presence at)	Misd.	11473
E.475	Unsafe display of handgun ammo (accessible to minors)	Increase from petty	88433
B.299	Victim (commercial exploitation)	Misd.	63650

INFRACTIONS

(Offense is currently a petty misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Prior Penalty	Ranking Code
L.873	Alcohol, person under 21 consume/possess (over 18, 1st in 12 mos.)	**NEW**	87270
L.873	Alcohol, possess at school/state hospital	**NEW**	87270
J.115	Board moving engine or car	=	88271
H.77	Bribery (commercial, up to $99)	**NEW**	61970
I.11	Computer damage (up to $99)	**NEW**	61970
I.13	Computer theft (up to $99)	**NEW**	61970
J.795	Dangerous acrobatic exhibition (1st violation)	**NEW**	88270
F.315	Drug paraphernalia (possess)	=	11470
G.635	Library materials (failure to return)	=	62970
H.41	Library property (damage to)	M3 to felony ($ based)	
G.11	Library property (theft of)	INF to felony ($ based)	
G.11	Library property (theft of, up to $99)	**NEW**	61970
F.215	Marijuana (possess small amount)	=	11970
L.775	Obstruct public levee	**NEW**	32771
G.21	Possess stolen property (up to $99)	**NEW**	61970
I.355	Publish telephone directory w/o emergency call notice	**NEW**	22930
G.11	Rustling/livestock theft (up to $99)	**NEW**	61970
I.21	Telecommunications fraud (up to $99)	**NEW**	61970
G.119	Theft (up to $99)	**NEW**	61970
J.595	Tobacco (use by minor)	=	88270
J.495	Unlawful smoking	**NEW**	11974

INFRACTIONS

(Offense is currently a petty misdemeanor except where indicated as **NEW**)

New 609.--	Offense	Prior Penalty	Ranking Code
L.835	Unlawful red light/sign adjacent to railroad (nondangerous)	**NEW**	31970
E.475	Unsafe display of handgun ammo (accessible to minors)	M3	
E.075	Weapons (dealer to post notice about child access to firearms)	=	88210

Vehicle Code Nonfelony Offense List

NOTE: Each provision listed with a new section number having only two digits after the decimal point is subject to the vehicle code's "default" penalty provisions: it is an infraction ("INF") except that it is a second degree misdemeanor ("M2") if committed in a manner or under circumstances as to endanger or be likely to endanger any person or property. The nonfelony categories are designated by abbreviations: gross misdemeanor ("GM"), first degree misdemeanor ("M1"), second degree misdemeanor ("M2"), third degree misdemeanor ("M3"), and infraction ("INF"). A "ranking code," indicating evaluation of the offense under the NEAC "ranking factors table," is included only if the offense remains under the relevant nonfelony category. This is denoted by an equal sign ("=") under the "recommended penalty" column. If the recommended penalty is a different nonfelony category, the offense and its ranking code may be found in the list for that nonfelony category. For example, "Accident, leave, not cause accident, no substantial bodily harm" is listed below because it is currently a gross misdemeanor ("GM"). However, because the recommended penalty is a first degree misdemeanor ("M1"), it is listed again in the first degree misdemeanor list with a ranking code of 85430. Finally, the lists for the new first degree misdemeanor ("M1") and third degree misdemeanor ("M3") offenses substitute a column on "Prior Penalty" for "Proposed Penalty."

GROSS MISDEMEANORS

(Offense is currently a gross misdemeanor except where indicated)

New 169.--	Offense	Proposed Penalty	Ranking Code
C.515	Accident, leave, cause accident, bodily harm	=	87932
C.515	Accident, leave, not cause accident, substantial bodily harm	=	88430
C.516	Accident, leave, not cause accident, no substantial bodily harm	M1	
D.715	Crosswalk violation, 2d in 12 months	M2	
J.653	Drive after cancellation as inimical to public safety	=	24979
B.115	DUI, bodily harm	=	87953
B.115	DUI during substance-related revocation	=	87459
B.115	DUI , 2d in 5 years or 3d in 10	=	87459
B.115	DUI , child in vehicle	=	87458

GROSS MISDEMEANORS

(Offense is currently a gross misdemeanor except where indicated)

New 169.--	Offense	Proposed Penalty	Ranking Code
B.116	DUI w/ RR crossing violation	M1	
C.715	Flee peace officer in motor vehicle	=	54974
C.115	Grossly negligent driving, bodily harm	=	87953
I.113	Insurance, fail to produce proof, 3d in 10 years	M1	
I.113	Insurance, fail to provide, 3d in 10 years	M1	
I.113	Insurance, fail to provide, accident, death/substantial bodily harm	=	64630
J.613	License, make counterfeit	=	54971
N.133	License plates, conduct intended to escape tax	M2/M3	
J.615	Name or DOB, give other's to officer	M1	
B.413	Refuse to test, child in vehicle	=	24978
B.413	Refuse to test during substance-related revocation	=	24979
B.413	Refuse to test w/in 5 years of revocation or 10 of 2 revocations	=	87459
E.213	School bus, pass signalling	M1	
D.713	School children crossing violation, 2d in 12 months	M1	

FIRST DEGREE MISDEMEANORS

(New category of crime)

New 169.--	Offense	Prior Penalty	Ranking Code
C.516	Accident, leave, not cause accident, no substantial bodily harm	GM	85430
B.515	Commercial driver .04	Misd.	88454
J.655	Drive after disqualification	Misd.	24973
M.335	Drop object on vehicle	GM	86670
I.115	Insurance, fail to produce proof, 3d in 10 years	GM	24936

FIRST DEGREE MISDEMEANORS

(New category of crime)

New 169.--	Offense	Prior Penalty	Ranking Code
I.113	Insurance, fail to provide, 3d in 10 years	M1	23937
B.116	DUI w/ RR crossing violation	GM	88454
C.116	Grossly negligent driving, accident/RR crossing	Misd.	63954
J.615	License, alter	Misd.	54670
J.615	License examination, fraud	Misd.	54670
J.615	License, use fictitious/altered	Misd.	54670
J.615	Name or DOB, give other's to officer	GM	54672
J.615	Name or DOB, give fictitious to officer/examiner	Misd.	54670
E.213	School bus, pass signalling	GM	87630
D.713	School children crossing violation, 2d in 12 months	GM	87437

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated)

New 169.--	Offense	Proposed Penalty	Ranking Code
C.517	Accident, fail to stop/assist	=	23970
C.57	Accident report, disclose information	INF	
C.555	Accident reporting violation	M3	
F.69	Bumper violation	M2/INF	
F.69	Bumper violation, dangerous	NEW	63634
C.315	Careless driving	M3	
B.515	Commercial driver .04	M1	
F.875	Commercial vehicle annual inspection violation	M3	
F.895	Commercial vehicle, drive w/o daily inspection	M3	

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated)

New 169.--	Offense	Proposed Penalty	Ranking Code
F.915	Commercial vehicle, drive w/o postcrash inspection	M3	
D.53	Controlled access highway violation, dangerous	NEW	63634
D.717	Crosswalk violation	M3	
D.715	Crosswalk violation 2d in 12 months	NEW	87430
D.715	Crosswalk violation, dangerous	NEW	87237
H.217	Disability certificate, misuse[82]	INF	
H.215	Disability, doctor fraudulently certify[1]	M3	
H.23	Disability space, allow obstruction[1]	INF	
H.21	Disability space, park in[83]	INF	
J.657	Drive after cancellation generally	=	23973
J.655	Drive after disqualification	M1	
J.657	Drive after revocation	=	23973
J.658	Drive after suspension	M3/INF	
J.033	Drive without valid license	M3/INF	
M.335	Drop object on vehicle	M1	
B.117	DUI	=	88454
D.055	Fail to comply with peace office order	=	24970
M.415	False traffic signal	=	87452
G.41	Farm produce load leaking, dangerous	NEW	63634
G.41	Firewood load violation, dangerous	NEW	63634
C.117	Grossly negligent driving	NEW	87453
I.117	Insurance, fail to produce proof	M2/INF	

[82]The current provision specifies the violator "is guilty of a misdemeanor and . . . subject to a fine of . . . $500."

[83] The current provision specifies a fine of not less than $100 nor more than $200.

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated)

New 169.--	Offense	Proposed Penalty	Ranking Code
I.117	Insurance, fail to produce proof, accident	**NEW**	63630
I.117	Insurance, fail to produce proof, while driving under influence	**NEW**	24934
I.117	Insurance, fail to produce proof, 2d in 10 years	**NEW**	24935
I.117	Insurance, fail to provide	M2/INF	
I.117	Insurance, fail to provide, accident	**NEW**	63630
I.117	Insurance, fail to produce proof, while driving under influence	**NEW**	24934
I.117	Insurance, fail to provide, 2d in 10 years	**NEW**	24935
I.315	Insurance, false document	=	24770
I.315	Insurance, provide false information for reinstatement	=	24770
I.117	Insurance, provide false information re proof of	=	24770
I.315	Insurance, provide false information re revocation	=	24770
N.33	Intercity bus violation	INF	
I.515	Lease agreement, fail to produce	M3	
I.513	Lease agreement, false/fictitious	=	24770
J.615	License, alter	M1	
J.617	License, display canceled/revoked/suspended	=	53670
J.615	License examination, fraud	M1	
J.617	License, fraudulent application	=	53670
J.617	License, lend to other	=	53670
N.133	License plates, conduct to escape tax $501+	**NEW**	23972
J.615	License, use fictitious/altered	M1	
J.617	License, use other's	=	53670
J.655	License, violated limited	=	23973
J.015	License, willful violation not otherwise specified	M3	
M.35	Litter	M2/INF	

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated)

New 169.--	Offense	Proposed Penalty	Ranking Code
M.35	Litter, dangerous	**NEW**[84]	63634
M.15	Motor bicycle rental business violation	INF	
J.615	Name or DOB, give fictitious to officer/examiner	M1	
B.713	Open bottle	M3/INF	
B.595	Out-of-service order violation	=	87274
F.815	Pressurized flammable gas violation	M3	
C.116	Reckless (changed to grossly negligent) driving	M1/M2	
B.415	Refuse to test	=	24974
N.35	Rental truck or trailer business violation	INF	
D.413	RR crossing violation	=	88430
F.64	Rural postal carrier studded tire violation	INF	
F.035	Safety standard violation	M3	
E.555	School bus accident report/inspect violation	M3	
E.115	School bus driver violation	=	87430
E.215	School bus, fail to stop for signalling	=	87430
E.515	School bus inspection certificate violation	M3	
E.355	School bus, operate in violation of rule	M3	
E.315	School bus paint on non-school bus	M3	
D.715	School children crossing violation	=	87432
G.03	Size/weight violation	M2/INF	
G.03	Size/weight violation, dangerous	**NEW**	63634
A.213	Violation where penalty not specified, dangerous	=	63634
G.815	Weighing violation	=	24971

[84] Like the current provision, the proposed provision specifies a $400 minimum fine for any second or subsequent offense.

SECOND DEGREE MISDEMEANORS

(Offense is currently a misdemeanor except where indicated)

New 169.--	Offense	Proposed Penalty	Ranking Code
G.855	Weight document violation	INF	

THIRD DEGREE MISDEMEANORS

(New category of crime)

New 169.--	Offense	Prior Penalty	Ranking Code
C.555	Accident reporting violation	Misd.	22970
C.315	Careless driving	Misd.	63630
F.875	Commercial vehicle annual inspection violation	Misd.	87210
F.895	Commercial vehicle, drive w/o daily inspection	Misd.	87210
F.915	Commercial vehicle, drive w/o post-crash inspection	Misd.	88410
D.717	Crosswalk violation, nondangerous	Misd.	87230
H.215	Disability, doctor fraudulently certify	Misd.	53972
J.658	Drive after suspension (2d in 3 years)	Misd.	22975
J.033	Drive without valid license (2d in 3 years)	Misd.	22975
I.117	Insurance, fail to produce proof	Misd.	23930
I.117	Insurance, fail to provide	Misd.	23930
I.515	Lease agreement, fail to produce	Misd.	23930
N.133	License plates, conduct to escape tax up to $500	GM	22971
J.015	License, unspecified willful violation	Misd.	23970
B.713	Open bottle, driver	Misd.	23934
F.815	Pressurized flammable gas violation	Misd.	88213
F.64	Rural postal carrier studded tire violation	INF	22930
F.035	Safety standard violation	Misd.	23914
E.555	School bus accident report/inspect violation	Misd.	22974
E.515	School bus inspection certificate violation	Misd.	22974
E.355	School bus, operate in violation of rule	Misd.	21974
E.315	School bus paint on non-school bus	Misd.	22931

INFRACTIONS

(Offense is currently a petty misdemeanor except where indicated)

New 169.--	Offense	Proposed Penalty	Ranking Code
C.57	Accident report, disclose information in	**NEW**	22930
F.69	Bumper violation, nondangerous	**NEW**	22930
F.535	Child restraint violation	=[85]	87210
D.53	Controlled access highway violation	**NEW**	22930
D.53	Controlled access highway violation, nondangerous	**NEW**	22930
H.217	Disability certificate, misuse	**NEW**	22930
H.23	Disability space, allow obstruction	**NEW**	22930
H.21	Disability space, park in	**NEW**[86]	22930
J.659	Drive after expiration	=[87]	22930
J.658	Drive after suspension (1st in 3 years)	Misd.	22973
J.033	Drive without valid license (1st in 3 years)	Misd.	22973
L.035	Driver training school violation	=	23970
G.41	Farm produce load leaking	M2/INF	
G.41	Farm produce load leaking, nondangerous	**NEW**	22930
G.41	Firewood load violation	M2/INF	
G.41	Firewood load violation, nondangerous	**NEW**	22930
I.117	Insurance, fail to provide, 1st in 10 years	M	224935
N.33	Intercity bus violation	**NEW**	22930
J.017	License, unspecified nonwillful violation	=	23910
M.35	Litter, nondangerous	**NEW**[88]	22930

[85]The proposed provision, like the current provision, limits the fine to $50.

[86]Like the current provision, this specifies a fine of not less than $100 nor more than $200.

[87] Current section 171.27 specifies when licenses expire, but does not expressly prohibit driving after expiration.

INFRACTIONS

(Offense is currently a petty misdemeanor except where indicated)

New 169.--	Offense	Proposed Penalty	Ranking Code
E.219	Own/lease vehicle not stopping for school bus	=	23910
D.355	Own/lease vehicle not yield to emergency vehicle	=	23910
D.415	Own/lease vehicle violating RR crossing	=	23910
M.15	Motor bicycle rental business violation	**NEW**	22930
B.715	Open bottle, passenger	**NEW**	22914
N.35	Rental truck or trailer business violation	**NEW**	22930
F.515	Seat belt violation	=[89]	87210
G.03	Size/weight violation, nondangerous	**NEW**	22930
F.675	Tire violation	=	22210
A.815	Violate U regents traffic/parking reg	=	22930
A.835	Violate state university traffic/parking reg	=	22930
A.215	Violation where penalty not specified generally	=	22930
G.855	Weight document violation	**NEW**	23911

[88]Like the current provision, the proposed provision specifies a $400 minimum fine for a subsequent offense.

[89]The proposed provision, like the current provision, limits the fine to $25.

Excerpts From Proposed Statutes Regarding Offenses Omitted Due to Constitutional Concerns

ALIEN POSSESSING FIREARM

[TEXT FOLLOWING SECTION 609E.075]

~~A nonresident alien may not possess a firearm except to take game as a nonresident under the game and fish laws. A firearm possessed in violation of this section is contraband and may be confiscated.~~ **[624.719]**

REPORTER'S NOTE

Current section 624.719's restriction on nonresident aliens possessing firearms is omitted because of constitutional concerns. Except for voting and certain governmental positions, a state may not discriminate against aliens unless the discrimination is necessary to serve a compelling governmental interest. *See Bernal v. Fainter,* 467 U.S. 216 (1984) (state may not require citizenship to be notary public); *In re Griffiths,* 413 U.S. 717 (1973) (state may not require citizenship for admission to the bar); *Sugarman v. Dougall,* 413 U.S. 634 (1973) (state may not require citizenship for participation in state civil service system); *Graham v. Richardson,* 403 U.S. 365 (1971) (state may not require citizenship for welfare benefits). *Cf. Takahashi v. Fish & Game Comm'n,* 334 U.S. 410 (1948) (state may not require eligibility for citizenship for issuance of commercial fishing license). *See generally* Annotation, *Validity of State Statutes Restricting the Right of Aliens to Bear Arms,* 28 A.L.R.4th 1096 (1984).

VAGRANCY

609J.19 LOITERING.

~~Any of the following are vagrants and are~~ A person is guilty of ~~a misdemeanor~~ loitering and may be punished as provided in section 609J.195 if the person: **[609.725 (intro)]**

(a) ~~A prostitute who~~ loiters on the streets, ~~or~~ in a public place, or in a place open to the public with intent to solicit ~~for immoral purposes~~ or accept a solicitation of prostitution; or **[609.725 (3)]**

(b) ~~A person found~~ loiters in or ~~loitering~~ near any structure, vehicle, or private grounds ~~who is there without the consent of the owner and is unable to account for being there; or~~ with intent to commit a crime. **[609.725 (2)]**

~~A person, with ability to work, who is without lawful means of support, does not seek employment, and is not under 18 years of age; or~~ **[609.725 (1)]**

~~A person who derives support in whole or in part from begging or as a fortune teller or similar impostor.~~ **[609.725 (4)]**

REPORTER'S NOTE

Paragraph (a) is extended to accord with section 609L.13 in reaching the would-be customer as well as the would-be prostitute.

Paragraph (b) is modified to accord with Minneapolis Code of Ordinances sections 385.50 (loitering) and 385.80 (lurking) in requiring intent to commit a crime rather than inability to account for presence.

The reference to inability to explain presence is omitted because of constitutional concerns. *See Brown v. Texas,* 443 U.S. 47 (1979)(person cannot be required to identify self absent reasonable suspicion, based on objective facts, that person is engaged in criminal activity); *Kolender v. Lawson,* 461 U.S. 352 (1983) (invalidating on vagueness grounds statute requiring person reasonably suspected of criminal activity to provide "credible and reliable identification" and allowing officer to require person to account for presence to extent it assists in producing credible and reliable identification); *Headly v. Selkowitz,* 171 So. 2d 368 (Fla. 1965) (invalidating prohibition on standing, loitering, or strolling in city and being unable to give satisfactory account of self).

Modifying paragraph (b) to require intent to commit a crime brings it into line with Minneapolis Ordinances upheld by the Minnesota Supreme Court. Minneapolis Code of Ordinances section 385.50 specifies, "No person shall loiter on the streets or in a public place or in a place open to the public with intent to solicit for the purposes of prostitution or any other act prohibited by law." Section 385.80 specifies, "No person, in any public or private place, shall lurk, lie in wait or be concealed with intent to do any mischief or to commit any crime or unlawful act." In *State v. Armstrong,* 282 Minn. 39, 162 N.W.2d 357 (1968), the court strongly emphasized those provisions' intent-to-commit-crime requirements in upholding them against challenges of unconstitutional vagueness. The *Armstrong* court concluded, "Because of

[the] required union of overt act and unlawful intent, defendant is protected from punishment either for harmless conduct or for harmful conduct the criminality of which had not been fairly communicated to her." *Id.* at 43, 162 N.W.2d at 360.

This proposal omits paragraphs (1) and (4) of current section 609.725 (vagrancy) because of constitutional concerns and lack of enforcement. Those provisions specify:

> Any of the following are vagrants and are guilty of a misdemeanor:
>
> (1) A person, with ability to work, who is without lawful means of support, does not seek employment, and is not under 18 years of age; or
>
> . . . .
>
> (4) A person who derives support in whole or in part from begging or as a fortune teller or similar impostor.

These provisions are similar to provisions in the ordinance invalidated on vagueness grounds in *Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972). That ordinance specified in relevant part:

> Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, . . . persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, . . . persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished [up to 90 days or $500 or both].

Id. at 156 n.1. The *Papachristou* Court ruled the ordinance void for vagueness "both in the sense that it 'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,' . . . and because it encourages arbitrary and erratic arrests and convictions." *Id.* at 162. *See Decker v. Ellis,* 306 F. Supp. 613 (D. Utah 1969) (invalidating prohibition on person "without visible means of support, who has the physical ability to work, and who does not seek employment, nor labor when employment is offered").

FLAG VIOLATION

[TEXT FOLLOWING SECTION 609K.175]

~~In this section "flag" means anything which is or purports to be the Stars and Stripes, the United States shield, the United States coat of arms, the Minnesota state flag, or a copy, picture, or representation of any of them.~~ **[609.40 1]**

~~Whoever does any of the following is guilty of a misdemeanor:~~

~~(1) Intentionally and publicly mutilates, defiles, or casts contempt upon the flag; or~~

~~(2) Places on or attaches to the flag any word, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered; or~~

~~(3) Manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or~~

~~(4) Uses the flag for commercial advertising purposes.~~ **[609.40 2]**

~~This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.~~ **[609.40 3]**

REPORTER'S NOTE

Current section 609.40 (flags) is omitted because of First Amendment concerns. *See Texas v. Johnson*, 491 U.S. 397 (1989) (invalidating conviction for burning flag); *Spence v. Washington*, 418 U.S. 405 (1974) (invalidating conviction for taping peace symbol onto flag); *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993) (invalidating ordinance prohibiting newsracks on public property to distribute commercial advertising publications).

ADULTERY

[TEXT FOLLOWING SECTION 609L.575]

~~When a married woman has sexual intercourse with a man other than her husband, whether married or not, both are guilty of adultery and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.~~

~~No prosecution shall be commenced under this section except on complaint of the husband or the wife, except when such husband or wife is insane, nor after one year from the commission of the offense.~~

~~It is a defense to violation of this section if the marital status of the woman was not known to the defendant at the time of the act of adultery.~~ **[609.36]**

REPORTER'S NOTE

Current section 609.36 (adultery) is omitted because of constitutional concerns regarding gender discrimination and privacy rights, and because of lack of enforcement.

Current section 609.36's gender classification is clearly unconstitutional because it is not substantially related to the achievement of an important governmental objective. *See United States v. Virginia*, 116 S. Ct. 2263 (1996) (invalidating exclusion of women from military academy); *Craig v. Boren*, 429 U.S. 190 (1976) (invalidating prohibition on selling 3.2 beer to man under 21 or woman under 18). If the provision were nevertheless included, it would at a minimum have to be revised to eliminate the gender discrimination.

Although a number of courts have upheld adultery prohibitions against right-of-privacy challenges under the federal Constitution, *see* Robert A. Brazener, Annotation, *Validity of Statute Making Adultery and Fornication Criminal Offenses*, 41 A.L.R.3d 1338 (1972 & Supp. 1996), it is possible that a contrary result could be reached under the Minnesota Constitution. The Minnesota Supreme Court has determined that the state constitutional right of privacy confers more protection than the federal constitutional right of privacy. *Women of the State of Minnesota v. Gomez*, 542 N.W.2d 17, 30 (Minn. 1995) (withholding public funding for therapeutic abortions violates right of privacy).

SELLING CONTRACEPTIVE MATERIALS

[TEXT FOLLOWING SECTION 609L.695]

~~Instruments, articles, drugs or medicines for the prevention of conception or disease may be sold, offered for sale, distributed or dispensed only by persons or organizations recognized as dealing primarily with health or welfare. Anyone convicted of violation of this~~

~~section shall be guilty of a gross misdemeanor and punished by imprisonment not to exceed one year or by a fine of not more than $3,000 or both.~~ **[617.251]**

REPORTER'S NOTE

Current section 617.251 (sale of articles for prevention of conception or disease) is omitted because of constitutional concerns, and because of the federal court permanent injunction against its enforcement. Minnesota Statutes Annotated sets forth the following note:

> Users are cautioned that Judge Miles Lord of the Federal District Court, in an order dated October 22, 1980, permanently enjoined the enforcement of section 617.251. Judge Lord in a subsequent memorandum dated April 15, 1981, held the statute invalid as a violation of the first and fourteenth amendments to the United States Constitution. *Tice Sales Company v. State of Minnesota, et al,* Civil No. 4-80-487. Citing the permanent injunction to which the state of Minnesota is subject, the attorney general has consistently advised law enforcement officials and others making inquiries about section 617.251 that the statute is unenforceable.

SODOMY AND FORNICATION

[TEXT FOLLOWING SECTION 609L.915]

~~"Sodomy" means carnally knowing any person by the anus or by or with the mouth.~~ **[609.293 1]**

~~Whoever, in cases not coming within the provisions of sections 609.342 or 609.344, voluntarily engages in or submits to an act of sodomy with another may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.~~ **[609.293 5]**

~~When any man and single woman have sexual intercourse with each other, each is guilty of fornication, which is a misdemeanor.~~ **[609.34]**

REPORTER'S NOTE

Current sections 609.293, subdivisions 1 and 5 (sodomy), and 609.34 (fornication) are omitted because of constitutional concerns and because of lack of enforcement.

Sodomy

Although the United States Supreme Court by a 5-4 vote upheld a state's prohibition of homosexual sodomy in *Bowers v. Hardwick,* 478 U.S. 186 (1986), the continued validity of *Bowers* is questionable in light of *Romer v. Evans,* 116 S. Ct. 1620 (1996) (striking down a state constitutional provision barring state or local government from acting to protect persons based upon their homosexual, lesbian, or bisexual orientation). Until *Bowers,* lower courts were divided on whether sodomy prohibitions violated the federal Constitution's right of privacy. *See* John E. Theuman, Annotation, *Validity of Statute Making Sodomy a Criminal Offense,* 20 A.L.R.4th 1009 (1983 & Supp. 1996). A post-*Bowers* ruling determined that the federal Constitution barred prosecution of consensual marital sodomy. *State v. Holden,* 890 P.2d 341, 347-48 (Idaho 1995).

In *State v. Gray,* 413 N.W.2d 107 (Minn. 1987), the court held that a defendant charged with sodomy for having sex with a male prostitute lacked standing to challenge on right-of-privacy grounds section 609.293's application to noncommercial sodomy.

Sodomy prohibitions have been invalidated under state constitutions. *See Commonwealth v. Wasson,* 842 S.W.2d 487 (Ky. 1993); *Commonwealth v. Bonadio,* 415 A.2d 47 (Pa. 1980); *State v. Morales,* 826 S.W.2d 201 (Tex. App. 1992). The *Morales* court reasoned:

> [T]he State makes no showing that criminalizing private conduct engaged in by consenting adults in any way advances public morality. Our laws against public lewdness and indecent exposure . . . properly serve to protect the public's sensibilities form exposure to the intimacies of others. . . . [O]ur decision does not affect those criminal statutes prohibiting sex with minors, child abuse, sexual assault, and prostitution.

> Further, it is disingenuous to suggest that [the statute] serves to protect public morality when the State readily concedes that it rarely, if ever, enforces this statute. If lesbians and gay men pose such a threat to the State, why then does the State not enforce the statute on a regular basis by investigating suspected homosexuals, obtaining search warrants, making arrests, and prosecuting offenders?

826 S.W.2d at 205. Further, state courts that previously invalidated sodomy provisions under the federal Constitution might now invalidate the provisions under a state constitutional analysis. *See, e.g., State v. Pilcher,* 242 N.W.2d 348, 359 (Iowa 1976); *People v. Onofre,* 415 N.E.2d 936 (N.Y. 1980); *Post v. State,* 715 P.2d 1105, 1109 (Okla. 1986).

It is quite possible that the Minnesota Supreme Court would hold that prohibiting sodomy violates the state constitutional right of privacy because the Minnesota Supreme Court, like the *Wasson, Bonadio,* and *Morales* courts, has determined that the state constitutional right of privacy confers more protection than the federal constitutional right of privacy. *Women of the State of Minnesota v. Gomez,* 542 N.W.2d 17, 30 (Minn. 1995) (withholding public funding for therapeutic abortions violated right of privacy).

Fornication

Like current section 609.293, subdivision 5, current section 609.34 (fornication) is omitted because of constitutional concerns and because of lack of enforcement. The New Jersey Supreme Court invalidated the state fornication statute under state and federal constitutional rights of privacy. *See State v. Saunders,* 381 A.2d 333 (N.J. 1977). It is quite possible that the Minnesota Supreme Court would hold reach the same result because, as stated above, it has determined that the state constitutional right of privacy confers more protection than the federal constitutional right of privacy. *Gomez,* 542 N.W.2d 17 at 30.