

# NEAC

Nonfelony Enforcement Advisory Committee

## INTERIM REPORT

March 8, 1995

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APPENDIX A

NONFELONY OFFENSE TEST APPLICATION



# **NEAC INTERIM REPORT**

## **COMMITTEE BACKGROUND**

The Nonfelony Enforcement Advisory Committee (NEAC) was established by 1993 Minnesota Session Laws, chapter 255, in response to concerns about the proportionality, prosecution, and enforcement of nonfelony offenses. By October 1, 1995, the NEAC must complete the following:

1. Evaluate the effect of prosecutorial jurisdiction over nonfelony crimes against the person on effective law enforcement and public safety;
2. Analyze relative penalty levels for nonfelony crimes against the person and low-level felony property crimes; and
3. Recommend any necessary changes to achieve proportionality of penalties for nonfelonies, effective enforcement and prosecution of nonfelonies, and efficient use of criminal justice resources.

The NEAC is comprised of 27 members including corrections and law enforcement personnel, trial court judges, a court administrator, legislators, law professors, county and municipal prosecutors, public defense counsel, victim advocates and crime victims. Support staff has been provided by the legislature and state court administration.

The NEAC met six times in full session and once in executive session. In addition, the NEAC has organized its work through two subcommittees, which have each conducted eight meetings.

The efforts of the NEAC and its request for guidance from the executive and legislative branches are summarized in the next section. A detailed discussion follows the summary.

## SUMMARY

- ✓ **Nonfelonies Increasing in Number and Complexity:** The past several decades have witnessed enormous changes in the volume and character of nonfelony cases. In the twelve year period from 1982 to 1994, gross misdemeanor filings have increased two hundred fifty percent (250%) from 6,277 to 22,118, while non-traffic misdemeanors have increased fifty percent (50%) from 98,325 to 147,266. Many are also high profile cases, which place a higher demand on system resources. In 1994, DWI prosecutions accounted for 42,855 misdemeanor filings and 9,539 gross misdemeanor filings, and misdemeanor 5th degree assaults (which include domestic assaults) accounted for 17,028 filings.
- ✓ **Disproportionality and Disorganization Suggest Complete Code Revision:** Application of the current Criminal Code, whose basic structure was created in 1963, has led to disproportionality. For example, domestic assault, order for protection violations, driving while intoxicated, and fleeing a police officer are currently sanctioned as misdemeanors and gross misdemeanors while property offenders are subject to felony sanctions for offenses involving as little as \$200 in loss. In addition, thirty years of changing legislative and judicial policies coupled with a lack of a consistent and meaningful statutory format have created a disorganized array of provisions. This frequently makes it difficult for criminal justice system personnel to locate the correct statutory citation, which can damage or destroy the legal case. Data collection and evaluation are also hindered, forcing policy makers to rely on anecdotal information. As a result, the NEAC has found that the current Criminal Code is in desperate need of revision.
- ✓ **Criminal Code Revision (Recommended Plan):** The NEAC recommends a full scale revision that would require an extension of the NEAC reporting deadline to January 1, 1997, and the authorization of funds for contracting with a person to serve as reporter or full time staff attorney for the project period. The NEAC proposes to achieve proportionality within the confines of the current resources of the criminal justice system by:
  - ✓ Adding new penalty levels between the existing petty misdemeanor, misdemeanor and gross misdemeanor levels, and expanding the petty misdemeanor level to include other noncriminal, civil sanctions;
  - ✓ revising and recodifying chapters 84, 97A, 97B, 97C, 169 and 171 and revising and consolidating chapters 152, 609, 611A, 617, 624 and 626A into new chapters 609A, 609B, etc., including:
    - ✓ Application of ranking principles based on a hierarchy of protected interests, harm, degree of culpability, and other relevant factors;
    - ✓ Adjusting dollar amounts of felony and nonfelony property crimes and similarly revising other related felony and nonfelony crimes;

- ✓ Referral of chapters 168 and 168A to appropriate transportation committees of the legislature for revision; and
  - ✓ Sunsetting all other unreviewed nonfelonies, including criminal violations of administrative rules, and prohibiting local government and administrative agencies from creating new nonfelonies without legislative review and approval, or limiting the sanction for unreviewed nonfelonies to a specific level unless otherwise determined by the legislature and restricting local government and administrative agencies to creating new nonfelonies at or below this level.
- ✓ **Criminal Code Revision (Alternative Plan):** A scaled down plan that would not require an extension of the NEAC reporting deadline or the appropriation of funds would leave the bulk of recodification of nonfelonies uncompleted and would achieve only limited proportionality and minimal improvement in the efficient use of scarce resources within the criminal justice system. The scaled down plan would include:
- ✓ Adding new penalty levels between the existing petty misdemeanor, misdemeanor and gross misdemeanor levels, and expanding the petty misdemeanor level to include other noncriminal, civil sanctions;
  - ✓ recodifying chapters 609, 617 and 624 into new chapters 609A, 609B, etc., including:
  - ✓ Application of nonfelony ranking principles based on a hierarchy of protected interests, harm, degree of culpability, and other relevant factors to chapters 609, 617 and 624;
  - ✓ Prohibiting local government and administrative agencies from creating new nonfelonies without legislative review and approval, or restricting local government and administrative agencies to creating new nonfelonies at or below a specific level.
- ✓ **Efficiency Measures Being Considered:** Other efficiency issues under consideration by the NEAC, and upon which the NEAC has not yet taken a position, include:
- ✓ Use of civil sanctions to replace criminal sanctions;
  - ✓ Consolidation of all prosecution services in counties with small populations;
  - ✓ Encouraging use of cooperative arrangements between prosecution offices to reduce the number of appearances;
  - ✓ Permitting a plea of "guilty with an explanation" to allow defendants to have their say without unnecessary waste of criminal justice system resources; and
  - ✓ Distribution of procedural brochures to misdemeanor defendants in effort to reduce missed appearances and other inefficiencies.
- ✓ **Conclusions:** The NEAC believes that its recommended plan merits consideration by policy makers because it embodies both the fairness of proportionality and the most bang for the buck by permitting the concentration of scarce resources on those nonfelonies that are determined to be most serious and harmful by today's standards.

## HISTORICAL PERSPECTIVE

The Minnesota of 1963 - the year of the last full recodification of Minnesota's Criminal Code - was a vastly different state than the Minnesota of 1995. The country was in the "Camelot" era, pop stars of the day were the Beatles and Simon and Garfunkel, and Minnesota was a state in evolution from a predominantly rural to a more urban setting. In 1995 we are in an era of disillusionment, Madonna and Prince are today's stars, and the vast majority of the state's population now resides in the seven to nine counties that constitute the urban core.

The dramatic changes in our state over those three decades is reflected in the substantial growth of our suburban communities - in 1960 Eden Prairie was a township of 3,323, Burnsville was a township of 2,716 and Blaine was a village of 7,565.<sup>1</sup> By 1990 Eden Prairie was a city of 39,311, Burnsville was a city of 51,228 and Blaine a city of 38,975.<sup>2</sup> In 1960 a significant number of Minnesotans were residents of regional treatment centers (10,012 mentally ill and 6,008 developmentally disabled), and by 1994 Minnesota had shifted to community-based programs - with several regional treatment centers being converted to correctional facilities - and the residential population in treatment centers had fallen dramatically (1257 mentally ill and 702 developmentally disabled).<sup>3</sup>

As dramatic as these shifts may be, they pale beside the changes in Minnesota's criminal justice system over the years since the 1963 recodification. In 1965 the average yearly population of the state prison system was 1,945, by 1995 the population had grown to 4,486 and

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<sup>1</sup>Slater, Hall, *1994 County and City Extra* (Bernan Press, Lanham, MD, 3d ed. 1994).

<sup>2</sup>*Id.*

<sup>3</sup>Source: Minnesota Department of Human Services, Average Daily Census, Population Trends 1960-1990.



construction of additional prison space has become an annual legislative issue.<sup>4</sup> In 1963 the Minnesota court system was dominated by justices of the peace and municipal courts, evolving through a series of court reorganizations<sup>5</sup> into our consolidated district court system of 1995 with 244 judges divided amongst 10 judicial districts.<sup>6</sup>

In 1963 the majority of nonfelony cases were prosecuted as ordinance violations, rather than under the state's criminal and traffic code, since offenders did not have a right to a jury trial for ordinance violations - rather they received a "bench trial." 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 which attached to any charge (ordinance violations as well as statutory violations) for which they could be subjected to incarceration. This dramatically altered charging practices in the criminal justice community and by the early 1980's the state's criminal and traffic code become the dominant charging instrument - with ordinance prosecutions generally limited to minor traffic violations, housing code violations and other areas of local concern.

Nonfelony caseloads have exploded since 1976, when the criminal justice system first began to resemble the environment that we take for granted today. Nontraffic misdemeanors increased from 60,427 cases in 1976 to 147,266 cases in 1994 (144%). Since 1982 when the

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<sup>4</sup>Source: Minnesota Department of Corrections.

<sup>5</sup>See, e.g., 1971 Minn. Laws, ch. 951 (creating county courts and abolishing municipal courts in all counties except Hennepin and Ramsey); 1977 Minn. Laws ch. 432 (abolishing offices of justice of the peace and judicial officers).

<sup>6</sup>Source: Research & Planning Office, State Court Administration.

State Court Administrator's Office began utilizing a more detailed reporting process the nonfelony caseloads continued to grow at a remarkable pace as shown in Table 1 below:

Table 1  
Nonfelony Filings

	<u>1982</u>	<u>1994</u>	<u>Percent Increase</u>
Gross Misdemeanors	6,277	22,118	252 %
Non-traffic Misdemeanors	98,325	147,266	50 %
Traffic Misdemeanors	555,124	666,750	20 %

As substantial as these increases in caseloads have been, the impact on the system has been even greater as an increasing percentage of the court's caseload involves high-profile cases which place a higher demand on system resources. In 1963 domestic assault was a "family dispute," driving while intoxicated was still socially condoned behavior and considerable resources were being devoted to property crimes as opposed to crimes against the person.

This year the criminal justice system at the nonfelony level will devote significant resources to domestic abuse prosecutions.<sup>7</sup> It is estimated that over 12,500 domestic assaults and an additional 13,000 prosecutions for violation of protective orders will be handled.<sup>8</sup>

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<sup>7</sup>Figures from the State Court Administrator's Office indicate that 17,028 misdemeanor 5th degree assault filings were handled in 1994. This number is an aggregate of both domestic and non-domestic assaults, but if the City of Minneapolis, where over 75 % of assault arrests in 1994 were "domestics," is representative of statewide patterns, then the overwhelming percentage of those case filings relate to domestic assault prosecutions. (Source: Office of the Minneapolis City Attorney.)

<sup>8</sup>Source: Research & Planning Office, State Court Administration.

DWI prosecutions also account for a significant component of the nonfelony caseload, some 42,855 misdemeanor filings and 9,539 gross misdemeanor filings in 1994.<sup>9</sup> While property crimes are still a component of the criminal justice system, increasing resources are also being directed to these other victim-related offenses.

Despite the enormous changes in the volume and character of nonfelony cases, we are still working within the basic structure of the Criminal Code of 1963. This has led to disproportionality. For example, domestic assault, order for protection violations, driving while intoxicated, and fleeing a police officer offenses are currently sanctioned as misdemeanors and gross misdemeanors while an offense involving as little as \$200 in property loss is a felony. As a result, it is the unanimous view of the NEAC that the current Criminal Code is desperately in need of revision. The NEAC's proposed plan for changing the existing statutory scheme are outlined in the next two sections entitled "Proportionality" and "Statutory Revisions/Recodification."

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<sup>9</sup>*Id.*

## PROPORTIONALITY

### Nonfelony Offense Classifications

The current nonfelony structure (set forth in Table 2, below) provides little flexibility for the legislature in attempting to designate which nonfelony offenses are deemed to be more serious. As a result nonfelony sanctions have been devalued. It is "only a misdemeanor?" is a common rejoinder from the perspective of the general public, crime victims, the legislature and even those persons working within the criminal justice system. For example, misdemeanor offenses such as fishing without a license or the theft of \$25 are on the same sanctioning level as a charge of domestic assault or driving while under the influence.

This lack of flexibility in designating the most serious nonfelonies would not be problematic if the criminal justice system had sufficient resources to give full attention to all nonfelonies. The criminal justice system simply does not, and in all probability never will, have the necessary resources to deal with all nonfelonies. A revised sanctioning structure would allow the criminal justice system to get more bang for its buck by focusing scarce resources on the most serious and harmful nonfelonies.

The revised sanctioning structure that the NEAC is recommending (see Table 2, below) adds an additional penalty level between the existing misdemeanor and gross misdemeanor crimes and a new "lesser" misdemeanor offense. With two additional "crime levels" it will then be possible to achieve a more hierarchical system for ranking offenses by severity level and in the process restore a sense of "value" and fairness to the nonfelony sanction. This will also allow the criminal justice system to concentrate its scarce resources on those nonfelonies that are

determined to be most serious and harmful. The current petty misdemeanor level would also include additional, non-criminal sanctions developed by the NEAC (discussed below in the section entitled "Compliance Alternatives\System Effectiveness").

Table 2

Current Nonfelony Structure	Proposed Nonfelony Structure
Gross Misdemeanor - not more than \$3,000 fine and/or 365 days incarceration	Gross Misdemeanor - not more than \$3,000 fine and/or 365 days incarceration
Misdemeanor - not more than \$700 fine and/or 90 days	Class I Misdemeanor - not more than \$1,500 fine and/or 180 days incarceration
	Class II Misdemeanor - not more than \$1,000 fine and/or 90 days incarceration
	Class III Misdemeanor - not more than \$500 fine and/or 30 days incarceration
Petty Misdemeanors - not more than \$200 fine	Petty Misdemeanors - not more than \$200 fine
	Civil Sanctions - not more than \$200 fine and alternative, noncriminal sanctions

### Ranking Principles

In determining what sanction is appropriate for a given offense the NEAC has developed a set of ranking principles<sup>10</sup> that would be utilized to determine the appropriate sanctioning level for an offense.

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<sup>10</sup>These principles are based on, and substantially identical to, the principles adopted and/or developed by the Minnesota Sentencing Guidelines Commission ("MSGC"). See MSGC Severity Ranking Principles (Adopted February 1994); Summary of the Development of Principles for Severity Level Rankings (Revised February 1993; MSGC Working Document).

**Principle 1 - Interest(s) Protected.** A primary determinant of crime severity (and the appropriate penalty) is the "interest(s)" being protected by the statute. The proposed protected interests and the comparative valuation of those interests are set forth in Table 3:

Table 3

Proposed Interests Protected by the State

<b>Most Serious</b>
<b>Person</b> (core criminal prohibitions)
<b>Public Endangerment</b> (core criminal/governmental public policy prohibitions)
<b>Property</b> (core criminal prohibitions)
<b>Government Process/Institutional Integrity</b> (governmental public policy prohibitions)
<b>Integrity and Fairness of Business Practices</b> (governmental public policy prohibitions)
<b>Public Infrastructure/Conservation Protection</b> (governmental public policy prohibitions)
<b>Regulatory Process Integrity/Compliance Requirements</b> (governmental public policy prohibitions)
<b>Moral and Social Behavior/Preferential Norms Enforcement</b> (governmental public policy prohibitions)
<b>Least Serious</b>

**Principle #2 - Type\Level of Harm.** A second determinate of the crime severity level (and the appropriate penalty) is the actual harm, threat of harm, or potential for harm that results from the act(s) that are the subject matter of the statute. Tables 4 and 5 reflect the criteria identified by the NEAC:

Table 4

Proposed Harm Definitions and Principles

<b>HARM is the Primary Determinant of Crime Severity With Each Interest Group</b>			
Definition	Type of Harm	Level of Harm	Multiple Harms
Harm is the actual, threatened, or potential damage to the interests protected by statute.	The types of harm within each interest group are ranked from most to least serious.	The level or degree of harm is also ranked within each interest group according to seriousness.	When there are multiple harms within or across interest groups, only the most serious harm is considered, with certain exceptions.

Table 5

Proposed Type and Level of Harm

Type of Harm	Level of Harm
Death	Completed
Great Bodily Harm	Threatened/Likely/Foreseeable
Substantial Bodily Harm Emotional Harm Fear	Potential
Confinement	
Bodily Harm	

**Principle #3 - Culpability.** An additional factor in determining the severity level of a crime is the degree of culpability of the offender. The proposed degrees of culpability are set forth in Table 6:

Table 6

**Proposed Degrees of Culpability**

Premeditated/Planned
Intentional
Gross Negligence
Negligence
Strict Liability

**Principle #4 - Other Issues.** Additional factors to be considered in the severity level of a crime would be victim vulnerability, prior criminal record (for enhancement based offenses) and other issues such as bias-related motivation.

**Application of Ranking Principles to the Existing Statutory Scheme**

Using the ranking principles discussed above, the NEAC proposes to analyze the core of the criminal and traffic codes (see the next section entitled "Statutory Revisions/Recodification" for a discussion of the proposed chapters to be reviewed) and would "re-rank" offenses based on these criteria. The final product would be weighted so as to sanction most heavily offenses against the person and other crimes which have a significant



impact upon the state and its residents. As with any set of revisions, it can be anticipated that some changes would be extremely popular, others would be somewhat controversial, with the overwhelming majority doing nothing more than conforming the statutory provisions to the "real world" of how those offenses are currently prosecuted and sanctioned. A major focal point of the revisions, as discussed in the section below entitled "Compliance Alternatives\System Effectiveness," will be to identify offenses and offense categories that can be handled outside the confines of the existing criminal justice system, both to better utilize scarce criminal justice resources and because alternatives may better achieve the needs of the state and its citizens.

The NEAC has also discussed the need to substantially revise the dollar levels applicable to felony-level property crimes as part of the proportionality review of nonfelony statutes to recognize an amount greater than \$500 loss (\$200 for second or subsequent offenses) as warranting a felony sanction. What new levels should be proposed is still under discussion, but clearly a better balance between nonfelony "person" and felony "property" offenses is needed.

Members and staff of one of the NEAC subcommittees conducted an informal test application of the above ranking principles and proportionality issues to a sample of nonfelony offenses. The results of this survey, augmented by additional examples prepared by the subcommittee chair and staff, are set forth in Appendix A to this report.

## STATUTORY REVISIONS/RECODIFICATION

### Recodification in General

The assignment of new penalty levels to nonfelony offenses based on the criteria and issues discussed above cannot be accomplished without some rewriting and reorganization of the statutes. The results of years of changing legislative and judicial policies coupled with the lack of a consistent and meaningful statutory format have created a disorganized array of provisions. This frequently makes it difficult for criminal justice system personnel to locate the correct statutory citation, and the wrong citation can damage or destroy the legal case. Data collection and evaluation are also hindered, forcing policy makers to rely on anecdotal information.<sup>11</sup> As a result the NEAC has found that the current Criminal Code is in desperate need of revision.

The daunting task of reviewing the totality of the nonfelony provisions currently enacted into law would require several years and a squadron of staff. This is due to the hundreds of nonfelony provisions that reside outside the "traditional" criminal and traffic chapters and which consist primarily of criminal sanctions which have been enacted as alternatives to or in addition to other administrative or regulatory sanctions. The NEAC proposes that the focal point of the NEAC process should be on those chapters which constitute the bulk of the offenses being handled by the District Courts. These chapters include Chapters 84, 97A, 97B and 97C (DNR and Game and Fish); Chapters 168, 168A, 169 and 171 (covering traffic offenses); and Chapters 609, 617 and 624 (covering criminal offenses).

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<sup>11</sup>See, e.g., Minn. Stat. § 299C.65, subd. 4 (1994) (requiring that the criminal and juvenile information policy group shall study and make recommendations on a structured numbering scheme for the criminal code to facilitate identification of the offense and elements of the offense; policy group consists of the chair of the sentencing guidelines commission, commissioner of corrections, commissioner of public safety, and the state court administrator).

Additional resources would be required to accomplish even this limited review. The NEAC is handicapped by the fact that both committee members and staff effectively have only six months per year to devote to the NEAC since each legislative session fully utilizes the time of existing staff. Time is also required for members to obtain input and approval from their constituencies. In order to accomplish the scope of review proposed in the preceding paragraph, the NEAC is proposing a 15-month extension in its reporting deadline and the authorization of funds for contracting with a person to serve as reporter or full-time staff attorney.

Several alternatives have been discussed as to how to deal with nonfelony provisions contained outside the chapters identified above, including the mushrooming number of criminal penalties which are contained not in the Minnesota Statutes, but in Minnesota's administrative rules. The latter is a result of a number of legislative enactments which make it a misdemeanor to violate rules promulgated by a state department or agency and allow the department or agency, pursuant to the Administrative Procedures Act, to adopt such rules without further legislative oversight.

Among the alternatives the NEAC has discussed is the establishment of a "sunset" date on which the nonfelony criminal penalties in the unreviewed chapters - including any provisions which allow for misdemeanor penalties for violation of administrative rules - would cease to be effective. Under this proposal, affirmative legislative action would be needed for any nonfelony sanctions to continue beyond a "sunset" date. this would include approval by the Judiciary and Crime Prevention Committees to ensure that proportionality issues are addressed and that the offenses are properly ranked within the new multi-class sanctioning scheme.

Another alternative would provide that as of a certain date all such penalties would be reduced to the proposed Class III misdemeanor discussed above (not more than \$500 fine and/or 30 days incarceration) unless a legislative decision is made (again involving the Judiciary and Crime Prevention Committees) authorizing a different sanction. In addition, local governments and administrative agencies would be limited to creating only the proposed Class III misdemeanors, or less, again subject to any exceptions created by the legislature.

The NEAC would assume the primary responsibility for revisions and recommended changes of Chapters 84, 97A, 97B, 97C, 152, 169, 171, 609, 611A, 617, 624 and 626A. Chapters 168 and 168A, which deal with motor vehicle licensing, are in need of substantial revision but great care is needed in how those changes are drafted due to the substantial revenue implications that accompany any such revisions. Thus, the NEAC is proposing that the rewrite of Chapters 168 and 168A should be the responsibility of the Transportation committees of the House and Senate in conjunction with staff from the appropriate state agencies. The NEAC would then review the revisions to that chapter to insure that the proposed penalty structure for various offenses meshes with penalty provisions in other chapters from a proportionality perspective.

#### **Blueprint for "Recodifying" the Existing Criminal Code**

The NEAC proposal includes restructuring the criminal code by consolidating Chapters 152, 609, 611A, 617, 624 and 626A into a new 609, 609A and 609B et al structure, with Chapters 152, 611A, 617, 624 and 626A then being repealed. The proposal also includes incorporating the renumbering scheme developed by the Criminal and Juvenile Justice

Information Policy Group for data collection and evaluation.<sup>12</sup> The resulting benefits would include:

- ✓ Criminal laws more accessible to, and comprehensible for, law enforcement and court personnel;
- ✓ Restructuring and renumbering the criminal code so that the statute citation can be used as a meaningful data element, describing conduct, for purposes of criminal justice information systems and policy evaluations;
- ✓ Having offenses of "like kind" in one chapter should facilitate consideration of "proportionality" issues in future legislative sessions and avoid the "out of sight out of mind" phenomena that perpetuates existing disproportionality; and
- ✓ Relieves the congestion problem, i.e., that current Chapter 609 is so "full" that it is difficult to insert new crimes into the chapter.

A proposed outline of the revised criminal code is set forth in Table 7, below. In many instances current statutes can simply be "moved" into the new chapter with minimal revision (i.e. revising the penalty and renumbering), in other instances a substantial rewrite of a statute or group of statutes may be required. For example, the current theft statute, section 609.52, has 17 different "subclauses" defining the crime of theft and would appear to be in need of a substantial rewrite. Additionally, the NEAC would be reviewing statutes to determine whether repeal of the statute should be recommended.

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<sup>12</sup>See footnote 11, above.

Table 7

Proposed Outline of Revised Criminal Code

Chapter 609	General Principles; Sentences; Victim's Rights
Chapter 609A	Crimes of Violence; Sex Crimes
Chapter 609B	Crimes Involving Weapons
Chapter 609C	Crimes Involving Drugs
Chapter 609D	Crimes Involving Property
Chapter 609E	Crimes Against the Government
Chapter 609F	Crimes Involving Communications; Privacy of Communications
Chapter 609G	Forfeiture Provisions
Chapter 609H	Other Crimes

## COMPLIANCE ALTERNATIVES AND SYSTEM EFFECTIVENESS

In addition to proportionality recommendations, the NEAC has also been directed to make recommendations regarding effective enforcement and prosecution of nonfelonies, and efficient use of criminal justice resources, including the effect of prosecutorial jurisdiction over nonfelony crimes against the person on effective law enforcement and public safety. The NEAC has established a subcommittee to develop these recommendations, and the concepts under consideration by the subcommittee are listed below. Inclusion of an item on this list means that it has been reported to the full NEAC as a concept for consideration. Neither the subcommittee nor the full NEAC has taken a position at this time on the concepts listed below. The subcommittee continues to review and refine the concepts before action by the full NEAC, and welcomes input from any interested parties.

### Use of Civil Sanctions to Replace Criminal Sanctions

One concept under consideration is the use of civil sanctions that would replace some criminal sanctions. Possible approaches include expansion of the existing violations bureau or the creation of an adjudication system outside the judicial branch in which state agencies may assess and enforce fines through use of hearing officers. In all cases the matter would be appealable to the district court. Use of the newly established Minnesota Collection Enterprise to collect unpaid fines is also being considered. Further study and discussion are necessary to determine what if any actual efficiencies might be produced by these efforts.

## **Mediation**

One NEAC subcommittee held a special hearing to discuss the possibility of using mediation to divert cases from the criminal justice system. Clearly some situations, such as those involving domestic abuse, would not be appropriate for diversion to mediation. The effectiveness of mediation as a diversionary tool remains to be seen and a pilot study might provide an appropriate test.

## **Consolidation of Prosecution Services**

Another concept under consideration is to consolidate the prosecution of all crimes in counties with a population of 75,000 or less. In other words, county attorneys would be required to prosecute all gross misdemeanor, misdemeanor and petty misdemeanor violations under state statutes and local ordinances in counties with a population of 75,000 or less. The goal is to increase prosecutor productivity, expertise and consistency. Particularly in rural counties, initial criminal appearances often include the judge and the defendant with no prosecutor. This is the result of the low volume of cases on the calendar which does not cost justify the appearance of the prosecutor.<sup>13</sup> Because all of the parties are not present at such appearances, the opportunity to dispose of the case at the first appearance is lost and from the court's perspective it becomes a meaningless event. Although the concept of consolidating prosecution services would decrease costs to the cities and increase costs to the county, overall costs to the system may be reduced.

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<sup>13</sup>Often public defenders are also not present at these hearings, although this practice is beginning to change under state funding of the public defender system.



### **Prosecution Cooperative Arrangements**

The subcommittee has also discussed the need for legislation permitting a county prosecutor to authorize a prosecutor from another county to handle her or his court appearances. This would enable the prosecutor who has the fuller calendar of business before the court to handle all of the cases before the court, rather than require a second prosecutor to travel some distance for only one or a few cases. There is some question whether legislation is necessary as some informal cooperative arrangements already exist. Explicit statutory authority might encourage greater use of cooperative arrangements.

### **Video Teleconferencing**

Another concept being considered is 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 and continues to be 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.<sup>14</sup> 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

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<sup>14</sup>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)

disparately impacts minorities and the indigent who are unable to post bail.<sup>15</sup> As a result, no pilot project has been implemented.

A bill designed to permit video arraignments has already been introduced this legislative session. The NEAC has not taken a position on the use of interactive video technology in criminal proceedings.

#### **Plea of "Guilty with an Explanation"**

Also under consideration is the concept of a new plea of "guilty with an explanation." The goal is to enhance efficiency by encouraging guilty pleas in those cases where the defendant believes that she or he is guilty but wants to appear in court to explain the circumstances surrounding their guilt. This type of plea is not currently authorized by court rule or case law but is fairly common in practice.

#### **Uniform Traffic Ticket Revisions**

Several possible revisions to the uniform traffic ticket are also being considered. One would be to permit an individual to make a written statement on the ticket that would have the same effect as an oral statement made at an arraignment. As is the case with the plea of "guilty with an explanation" discussed above, the expectation is that this might reduce the number of arraignment appearances. Another possible revision is to include information on the ticket regarding the availability of the public defender. The goal would be to encourage the defendant to contact the public defender before the first appearance and, if the defendant is eligible for

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<sup>15</sup>*Id.*

public defender services, to have the public defender present at the first court appearance. This would obviate the need to refer the defendant for public defender eligibility determination at the initial court proceeding.

### **Procedural Brochures**

The distribution of a nonfelony informational brochure to defendants is also being considered. The purpose of the brochure would be to help defendants to understand nonfelony criminal process so that they do not contribute to the inefficient operation of the process by, for example, missing a required court appearance.

## **CONCLUSIONS**

Despite enormous changes in the volume and character of nonfelony cases, we are still working with a Criminal Code whose basic structure was created in 1963. This has led to disproportionality of penalties. In addition, year after year of changing legislative and judicial policies coupled with the lack of a consistent and meaningful statutory format have created a disorganized array of provisions. As a result, criminal justice system personnel frequently have difficulty in locating the correct statutory citation, and the wrong citation can damage or destroy the legal case. Data collection and evaluation are also hindered, forcing policy makers to rely on anecdotal information. For these reasons the NEAC has found that the current Criminal Code is in desperate need of revision.

The NEAC proposes a full scale revision that would require an extension of the NEAC reporting deadline to January 1, 1997, and the authorization of funds for contracting with a

person to serve as reporter or full-time staff attorney. The NEAC proposes to achieve proportionality within the confines of the current resources of the criminal justice system by:

1. Adding new penalty levels between the existing petty misdemeanor, misdemeanor and gross misdemeanor levels, and expanding the petty misdemeanor level to include other noncriminal, civil sanctions;
2. revising and recodifying chapters 84, 97A, 97B, 97C, 169 and 171 and revising and consolidating chapters 152, 609, 611A, 617, 624 and 626A into new chapters 609A, 609B, etc., including:
  - a. Application of ranking principles based on a hierarchy of protected interests, harm, degree of culpability, and other relevant factors;
  - b. Adjusting dollar amounts of felony and nonfelony property crimes and similarly revising other related felony and nonfelony crimes;
3. Referral of chapters 168 and 168A to appropriate transportation committees of the legislature for revision; and
4. Sunsetting all other unreviewed nonfelonies, including criminal violations of administrative rules, and prohibiting local government and administrative agencies from creating new nonfelonies without legislative review and approval, or limiting the sanction for unreviewed nonfelonies to a specific level unless otherwise determined by the legislature and restricting local government and administrative agencies to creating new nonfelonies at or below this level.

A scaled down plan that would not require an extension of the NEAC reporting deadline or the appropriation of funds would leave the bulk of recodification of nonfelonies uncompleted and would achieve only limited proportionality and minimal improvement in the efficient use of scarce resources within the criminal justice system. The scaled down plan would include:

1. Adding new penalty levels between the existing petty misdemeanor, misdemeanor and gross misdemeanor levels, and expanding the petty misdemeanor level to include other noncriminal, civil sanctions;
2. recodifying chapters 609, 617 and 624 into new chapters 609A, 609B, etc., including:
3. Application of nonfelony ranking principles based on a hierarchy of protected interests, harm, degree of culpability, and other relevant factors to chapters 609, 617 and 624;
4. Prohibiting local government and administrative agencies from creating new nonfelonies without legislative review and approval, or restricting local government and administrative agencies to creating new nonfelonies at or below a specific level.

Efficiency issues under consideration by the NEAC, and upon which the NEAC has not yet taken a position, include, among other things:

1. Use of civil sanctions to replace criminal sanctions;
2. Consolidation of all prosecution services in counties with small populations;
3. Encouraging use of cooperative arrangements between prosecution offices to reduce the number of appearances;
4. Permitting a plea of "guilty with an explanation" to allow defendants to have their say without unnecessary waste of criminal justice system resources; and
5. Distribution of procedural brochures to misdemeanor defendants in effort to reduce missed appearances and other inefficiencies.

The NEAC believes that its recommended plan merits consideration by policy makers because it embodies both the fairness of proportionality and the most bang for the buck by permitting the concentration of scarce resources on those nonfelonies that are determined to be most serious and harmful by today's standards.

# APPENDIX A

3/8/95

## NONFELONY OFFENSE TEST APPLICATION\*

(\* = unofficial results from NEAC subcommittee and staff discussions)

### KEY

GM	current gross misdemeanor (not more than \$3,000 fine and/or 365 days incarceration)
M1	not more than \$1,500 fine and/or 180 days incarceration
M2	not more than \$1,000 fine and/or 90 days incarceration
M3	not more than \$500 fine and/or 30 days incarceration
CIV	civil sanctions not more than \$200 fine and/or other, noncriminal sanctions and administrative process
F	current felony (more than 365 days incarceration)
M	current misdemeanor (not more than \$700 fine and/or 90 days incarceration)
PM	current petty misdemeanor (not more than \$200 fine)

Offense Citation and Description		Factors	Penalty Old New	
169.121, s. 1, 3(b)	DWI first offense, accident involving attended motor vehicle or pedestrian, bodily harm or no harm.	High public endangerment; culpability; injury or potential injury	M	M1
169.121, s. 1, 3(b)	DWI first offense	High public endangerment; culpability.	M	M1-M2
169.09, s. 2, 14(d)	Hit & run; attended vehicle; no bodily harm.	Potential injury; public endangerment; culpability.	M	M1
169.09, s. 4, 14(d)	Hit & run; unattended vehicle.	Property loss; culpability.	M	M2-M3
609.224, s. 2	5° Assault; second offense.	Actual or threatened injury; high culpability.	GM	GM-M1
609.224, s. 1	5° Assault; first offense; bodily harm.	Actual injury; culpability.	M	M1
609.224, s. 1	5° Assault; first offense; committed at victim's residence.	Threatened injury; vulnerable victim; culpability.	M	M1
609.224, s. 1	5° Assault; first offense.	Threatened injury; culpability.	M	M2-M3

**NONFELONY OFFENSE TEST APPLICATION\***  
 (\*=unofficial results from NEAC subcommittee and staff discussions)

Offense Citation and Description		Factors	Penalty Old New	
609.563, s. 1	3° Arson; more than \$300 but less than \$1,000 actual or intended property damage.	Actual or threatened property loss; public endangerment; culpability.	F	F
609.563, s. 2	3° Arson; less than \$300 actual or intended property damage.	Minor actual or threatened property loss; public endangerment; culpability.	M	M1
609.576, s. 1(b)(2)	Negligent fire; more than \$300 but less than \$2,500 property damage.	Property loss; public endangerment; culpability.	GM	GM
609.576, s. 1(b)(1)	Negligent fire; less than \$300 property damage.	Minor property loss; public endangerment; culpability.	M	M1
609.595, s. 1	1° Criminal damage to property; \$1501+ loss; first offense.	High property loss; vulnerable victim; public endangerment; culpability.	F	F
	1° Criminal damage to property; \$751-\$1500 loss; second offense.	Property loss; vulnerable victim; public endangerment; high culpability.	F	F
	1° Criminal damage to property; \$751-\$1500 loss; first offense.	Property loss; vulnerable victim; public endangerment; culpability.	F	GM
609.595, s. 2	3° Criminal damage to property; \$251-\$750 loss.	Small property loss; vulnerable victim; culpability; public endangerment.	GM	M1
609.595, s. 3	4° Criminal damage to property; up to \$250 loss.	Minor property loss; vulnerable victim; culpability; public endangerment.	M	M2

**NONFELONY OFFENSE TEST APPLICATION\***  
 (\*=unofficial results from NEAC subcommittee and staff discussions)

Offense Citation and Description		Factors	Penalty Old New	
609.52	Theft \$3,001+	Extreme property loss; culpability; vulnerable victim; public endangerment.	F	F
	Theft \$1501-\$3000; prior property offense.	High property loss; high culpability; vulnerable victim; public endangerment.	F	F
	Theft \$1501-\$3000	High property loss; culpability; vulnerable victim; public endangerment.	F	GM
	Theft \$501-\$1500	Property loss; culpability; vulnerable victim; public endangerment.	F	M1
	Theft \$101-\$500 (no aggregation)	Property loss; culpability; vulnerable victim; public endangerment.	GM	M2
	Theft under \$100	Minor property loss; culpability; vulnerable victim; public endangerment.	M	M3
	All other provisions moved to related criminal violation sections			
97A.31	Shining	impact on government process/integrity; environmental harm	GM	M2- M3
37.25	State fair trespass; lurking with intent.	minor property loss	M	CIV
		or repeal as already covered by generic crimes	M	
		or new generic crime of failure to pay admission fee; minor property loss.	M	CIV



**NONFELONY OFFENSE TEST APPLICATION\***  
 (\*=unofficial results from NEAC subcommittee and staff discussions)

Offense Citation and Description		Factors	Penalty Old New	
31.08	Food in transit; failure to withhold delivery; render assistance to inspector; disclose consignor/consignee.	(Needs extensive rewrite)		
31.08	Same; adulterated or poisonous food.	High public endangerment.	M	GM
31.08	Same; misbranded, insufficiently labelled or deleterious.	Minor impact on government process/integrity	M	M3-CIV
289A.63, s. 3	Retail sales w/o tax permit; after nonissuance of new permit.	Substantial impact on government process/integrity; risk of property loss.	F	M1-M3
289A.63, s. 3	Retail sales w/o tax permit.	Impact on government process/integrity	GM	M3-CIV
84.0895, s. 1	Taking, importing, transporting or selling endangered plant or animal species	Serious to moderate environmental harm; impact on government process/integrity	M	M2-M3

