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# Background

## CHAPTER 1

**N**on-felony offenses — including gross misdemeanors, misdemeanors, petty misdemeanors, and ordinance or rule violations — constitute the majority of crimes and offenses committed in Minnesota. Prosecuting non-felony offenses helps maintain public safety by holding offenders accountable to the law. In Minnesota, county attorneys and city prosecutors litigate non-felony offenses. However, the responsibility for non-felony prosecution differs among cities and among counties.

This chapter provides background information on non-felony prosecution. We focus on prosecutors' responsibilities as well as the state and local government roles in prosecuting non-felony offenses. In this chapter we:

- Define each type of non-felony offense,
- Describe briefly the various steps involved with non-felony prosecution,
- Examine the different roles played by the state and local governments in the prosecution of non-felony offenses, and

*What are non-felony offenses? How are duties for prosecuting these offenses divided between county and city prosecutors?*

- Explain differences between county and city attorneys in the responsibility for non-felony prosecution.

### NON-FELONY OFFENSES

Non-felony offenses constituted nearly 99 percent of all Minnesota offenses in 1995.<sup>1</sup> Minnesota has three types of non-felony offenses: gross misdemeanor, misdemeanor, and petty misdemeanor offenses. Minnesota state statutes define these offenses and their punishments. In addition, counties and municipalities may establish local ordinances that may be prosecutable as misdemeanors or petty misdemeanors.<sup>2</sup> We describe each of these offenses below.

#### Gross Misdemeanors

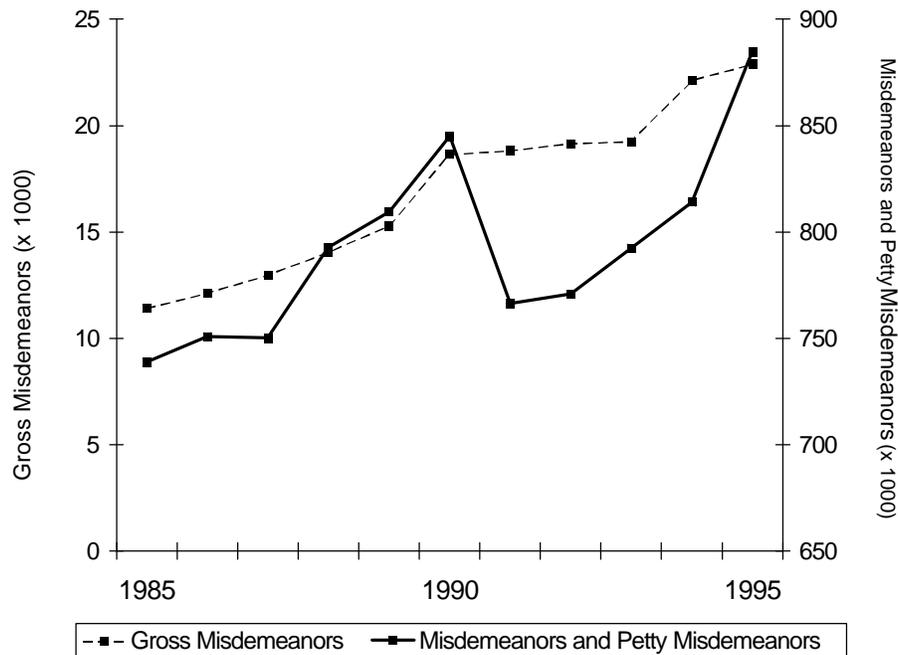
A gross misdemeanor is any crime for which a sentence of not more than one year or a fine of not more than \$3,000, or both, may be imposed.<sup>3</sup> Examples of gross misdemeanors include repeat driving while intoxicated (DWI) and domestic assault when committed within five years of a previous domestic assault conviction involving the same victim or another member of the defendant's family or household. As shown in Figure 1.1, the Minnesota Office of the State Court Administrator reported nearly 23,000

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1 Minnesota Office of the State Court Administrator, Minnesota Trial Court Statistics (TCSTAT).

2 *Minn. Stat.* §§365.125, 375.51, 410.20, and 412.221.

3 *Minn. Stat.* §609.02, subd. 4.

**Figure 1.1: Non-Felony Offenses in Minnesota, 1985-95**

Note: These numbers do not include parking and juvenile traffic violations, which would nearly double the number of misdemeanor and petty misdemeanor offenses represented each year.

Source: Minnesota Office of the State Court Administrator.

gross misdemeanor offenses filed in trial courts across the state in 1995. This represents more than a 22 percent increase from 1990 to 1995, and over a 100 percent increase from 1985 to 1995. The increase is in part due to legislative changes in the codification of offenses that upgraded some violations to gross misdemeanors. Gross misdemeanors totaled 2.5 percent of all non-felony charges in 1995, up from 2.2 percent in 1990 and 1.5 percent in 1985.<sup>4</sup>

### Misdemeanors

A misdemeanor is a crime for which a sentence of not more than 90 days or a fine of not more than \$700, or both, may be imposed.<sup>5</sup> Disorderly conduct or first-time driving under the influence of alcohol are examples of misdemeanor offenses. Individuals charged with misdemeanors enjoy all of

the constitutional rights that protect persons charged with more serious crimes, such as being presumed innocent and having their guilt proven beyond a reasonable doubt before they can be convicted of the offense.

District courts statewide reported nearly 885,000 misdemeanor and petty misdemeanor offenses in 1995, excluding juvenile traffic and parking violations.<sup>6</sup> This number is up over 4 percent from 1990 and almost 15 percent from 1985. However, most misdemeanor and petty misdemeanor offenses are disposed of prior to going to trial. Of the misdemeanor and petty misdemeanor offenses disposed in 1995, just 1 percent were disposed of by court or jury trials.<sup>7</sup> Fifty-seven percent of the cases were disposed of without any court activity, and 42 percent were disposed of after a court

<sup>4</sup> Minnesota Office of the State Court Administrator, TCSTAT.

<sup>5</sup> *Minn. Stat.* §609.02, subd. 3.

<sup>6</sup> Juvenile traffic and parking violations accounted for another nearly 750,000 offenses in 1995.

<sup>7</sup> Minnesota Office of the State Court Administrator, TCSTAT.

appearance of some type but not a trial. Misdemeanors and petty misdemeanors constitute the bulk of all non-felony offenses — over 97 percent in every year between 1985 and 1995.

**Petty Misdemeanors**

A petty misdemeanor is a minor offense, which is prohibited by statute or ordinance but not considered a crime, punishable by a maximum fine of \$200. Petty misdemeanor offenders are not subject to imprisonment. The procedure for petty misdemeanor cases is the same as for misdemeanor cases, except that there is no right to a jury trial or appointed counsel.<sup>8</sup> Examples of petty misdemeanors include driving in excess of the posted speed limit or possessing a small amount of marijuana. Parking offenses, which constitute the majority of petty misdemeanor offenses, represented almost 45 percent of all misdemeanor and petty misdemeanor offenses filed in 1995.<sup>9</sup>

**Local Ordinance and Rule Violations**

In addition to offenses defined in state statutes, local units of government have authority to define offenses by adopting local ordinances. Violations of some ordinances are criminal offenses and others are not, depending on how the ordinance is worded. However, a criminal violation of ordinances, charter provisions, rules or regulations of any subdivision of government is a chargeable offense by the prosecuting attorney.<sup>10</sup>

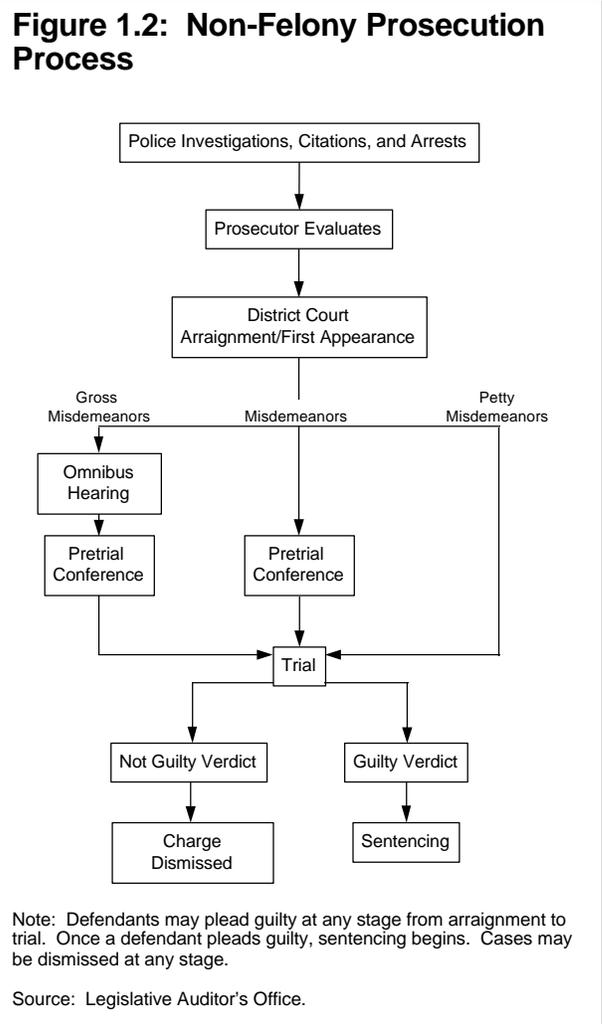
**PROCESS FOR RESOLVING NON-FELONY OFFENSES**

Non-felony offenses may be prosecuted in the formal court system, but many are also resolved through payment schedules, violations bureaus, and administrative processes outside the criminal justice system.

**Prosecution**

The non-felony prosecution process typically contains four principal stages: (1) charges and complaints, (2) arraignments or first appearances, (3) pretrial conferences (except for petty misdemeanors), and (4) trials. These stages differ slightly for gross misdemeanor, misdemeanor, and petty misdemeanor offenses. (See Figure 1.2.)

Many non-felony cases result from peace officer arrests. Arrested defendants may be held in custody or receive citations, written documents (such as tickets) listing the charge and directions to



<sup>8</sup> However, if certain misdemeanors are certified as petty misdemeanors, pursuant to *Minn. R. Crim. P.* 23.04 or *Minn. Stat.* § 609.131, the defendant may still be eligible for court-appointed counsel.

<sup>9</sup> TCSTAT data show 1,634,254 total minor criminal offenses (misdemeanors and petty misdemeanors) in 1995, of which 731,844 were parking and 17,683 were juvenile traffic offenses.

<sup>10</sup> See *Minn. Stat.* §§487.18 and 487.25, subd. 10.

appear before a designated court at a specified time and place. In other instances when cases come to prosecutors' offices, the prosecutor evaluates potential charges and prepares formal complaints when prosecution is warranted. A judge then reviews the complaint and determines whether probable cause exists to believe a crime was committed by the named defendant.

Defendants typically appear in court following the charge or complaint. At a defendant's first appearance, the district court, also known as trial court, informs the defendant of the charges and his or her constitutional rights. For misdemeanors and petty misdemeanors, this first appearance may coincide with the arraignment hearing during which the defendant enters a plea of guilty or not guilty. For gross misdemeanors, the district court typically holds an omnibus hearing to determine whether there is probable cause to support the charges.

With a plea of guilty, sentencing procedures begin. With a plea of not guilty, pretrial procedures begin. Many cases are resolved at these stages before trial either through plea negotiations or dismissals. For the small share of cases that go to trial, a trial by jury is held for misdemeanors and gross misdemeanors and a trial by judge is held for petty misdemeanors.<sup>11</sup> Should the judge or jury find the defendant not guilty, the charge is dismissed. A guilty finding is followed by sentencing.

### Uniform Fine Schedule and Violations Bureaus

Not all non-felony offenses are resolved this way. The Conference of Chief Judges maintains a list of "payable" offenses that allows offenders to merely pay a fine without going to court for specific petty misdemeanors and misdemeanors.<sup>12</sup> This uniform fine schedule applies statewide. In addition, Hennepin and Ramsey counties each has a violations bureau staffed with hearing officers to whom certain minor offense violators may bring their cases. Although not adjudicative, violations

bureaus annually handle tens of thousands of violations — mostly petty misdemeanor moving violations — through a process that gives defendants an opportunity to be heard while reserving the courts for higher-level offenses. Other counties may also have informal administrative processes to manage parking violations.

### Administrative Processes

Some local governments have developed administrative processes to resolve violations of ordinances before they reach the criminal justice system. With the use of independent hearing officers, the administrative process is intended as a less formal alternative to official court proceedings for certain ordinances, such as building code violations. The process can serve as an alternative to adjudication, reserving traditional prosecution for cases where it is best suited.

The jurisdictions using these processes typically write administrative citations for alleged violations of local ordinances. Persons receiving administrative citations may discuss their circumstances with a hearing officer hired to listen to and decide these cases. Routes for appeal are also provided. Although several local governments are using administrative processes, some questions about them remain unanswered because state statutes do not provide express authority for imposing administrative penalties, as they do for adopting ordinances.

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***The use of violations bureaus and administrative processes to resolve less serious cases reserves courts for severe offenses.***

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<sup>11</sup> Defendants in misdemeanor and gross misdemeanor cases may waive the right to a trial by jury and choose to be tried by the court.

<sup>12</sup> The Conference of Chief Judges is the administrative council for Minnesota's trial courts; its members include the chief judge and assistant chief judge of each judicial district.

## STATE AND LOCAL ROLES IN NON-FELONY PROSECUTION

In Minnesota, both the state and local governments have roles in the design and operation of the system for prosecuting non-felony offenses. For example, the Legislature establishes the criminal and traffic codes and other statutes that define non-felony offenses, the Supreme Court promulgates the rules of criminal procedure, and state-paid judges and professional administrators oversee the district courts through which non-felony offenses are prosecuted. On the other hand, local governments are responsible for items such as prosecution of non-felony offenses, law enforcement, and court services like probation.<sup>13</sup>

### The State Role in Non-Felony Prosecution

Non-felony offenses enter the court system at the district court level, the first level of Minnesota's three-tier court system.<sup>14</sup> Most criminal and civil cases are tried at this first level. The second tier, the Minnesota Court of Appeals, reviews decisions of the district courts. The highest court in the state, the Minnesota Supreme Court, hears appeals from the Court of Appeals, the Workers' Compensation Court of Appeals, and the Tax Court, as well as appeals from first-degree murder convictions and legislative election contests.<sup>15</sup>

As shown in Figure 1.3, Minnesota has 10 judicial districts.<sup>16</sup> Judges are elected by district, but have chambers in county court houses throughout the state.<sup>17</sup> With a few rare exceptions, non-felony cases are tried in the county where the offense allegedly occurred.<sup>18</sup>

### Financing the Courts

The state and local governments share the costs of the criminal justice system. District court judges, elected to six-year terms in each district, are paid for by the state. The state also pays for the court reporter, law clerks assisting the judge, public defender services, jury fees and expenses, state law library, state court administrator, judicial district administrators, and (except for Hennepin and Ramsey counties) district administrator staff. District courts report case information, such as the number of cases filed and the number of cases disposed, to the state primarily through a computerized Total Court Information System (TCIS) financed by the state.<sup>19</sup>

Just a decade ago, the structure of Minnesota's courts and court funding responsibilities looked considerably different. Minnesota had a county court system financed largely at the local level through property tax dollars. In 1987, the courts began unifying into a statewide district court system, although counties still shouldered most of the financial burden.<sup>20</sup> In 1989 and subsequent

<sup>13</sup> However, the Department of Corrections provides probation services in some counties.

<sup>14</sup> Some offenses, such as petty misdemeanor moving violations, may instead go to a violations bureau and be resolved administratively, as noted earlier.

<sup>15</sup> Minnesota Office of the State Court Administrator, *I'll See You in Court: A Consumer Guide to the Minnesota Court System* (St. Paul, January 1995), 3.

<sup>16</sup> *Minn. Stat.* §2.722, subd. 2.

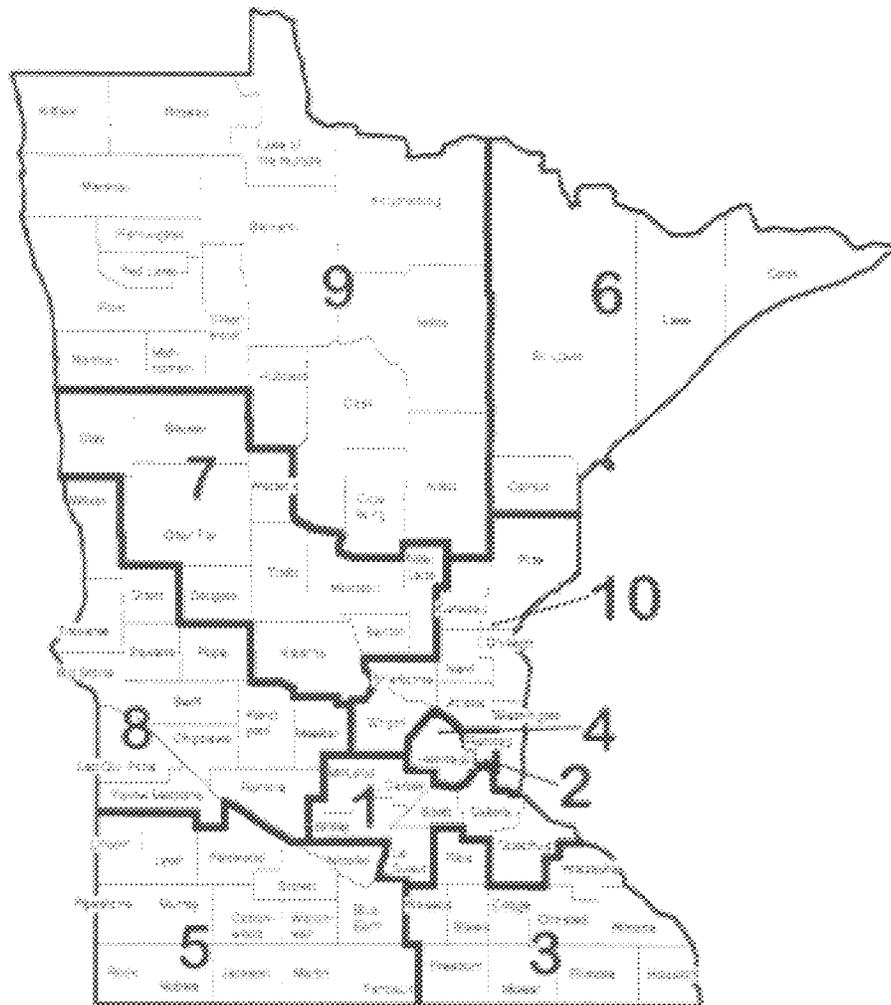
<sup>17</sup> According to the Office of the State Court Administrator, the 10 judicial districts currently have 54 judges: 28 judges in the first district, 26 in the second, 22 in the third, 58 in the fourth, 17 in the fifth, 15 in the sixth, 22 in the seventh, 11 in the eighth, 20 in the ninth, and 35 in the tenth.

<sup>18</sup> See *Minn. R. of Cr. P.*, 24.01.

<sup>19</sup> TCIS data do not include Hennepin and Scott counties, which have their own automated systems.

<sup>20</sup> See *Minn. Stat.* §487.191. Counties funded 79 percent of the cost of Minnesota's trial courts in 1988. See *Trial Court and Public Defense Funding: The Transition from County to State Funding* (St. Paul, February 1991), 3.

**Figure 1.3: Minnesota's Judicial Districts**



years, the Legislature adopted an increased state role in trial court financing, forming the system currently in use.<sup>21</sup> While the state has assumed financial responsibility for a portion of judicial branch costs, it has not assumed responsibility for financing all trial court costs as outlined in state laws.<sup>22</sup>

### *Information Systems*

Multiple information systems related to criminal justice exist at both the state and local levels of government, but they are neither comprehensive nor integrated. Criminal justice information systems administered by several state agencies house everything from numbers of arrests to terms

<sup>21</sup> The Legislature adopted recommendations made by two groups that examined trial court financing: (1) the Minnesota Supreme Court Task Force on Financing of the Trial Courts and (2) the Governor's Advisory Council on State and Local Relations. See *Laws of Minn.* (1989), Ch. 335, Art. 1, Sec. 5. and *Laws* (1989), Ch. 335, Art. 3, Secs. 14 - 20, 22, 26, 37, 38, 42, and 43.

<sup>22</sup> Since 1990, the eighth judicial district has served as a pilot demonstration project for which the state assumed the costs of court operations. See *Laws of Minn.* (1989), Ch. 335, Art. 3, Sec. 54 and *Laws* (1993), Ch. 192, Sec. 107. Although the state was to assume operational costs in additional judicial districts, it has not done so.

of probation agreements.<sup>23</sup> The Department of Public Safety maintains a statewide database on misdemeanor traffic offenses, for instance.

However, information on certain non-felony offenses is difficult to find because many information systems include case information on only gross misdemeanors and felonies. Prosecutors can get information just on cases in their own county or judicial district. They have difficulty determining whether a defendant has committed misdemeanor offenses outside their district because such criminal history information is not available

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**Information systems are neither comprehensive nor integrated.**

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statewide. Although each trial court tracks misdemeanor offenses, the data are not available outside the district.

Further, databases lack integration between state and local levels of

government. There is little interface among the different databases and few links to connect prosecutors, courts, law enforcement, and court services. This precludes electronic communication across agencies for matters such as scheduling hearings and sharing relevant case information. The lack of interface also lowers efficiency because of the duplication of effort involved with re-entering data as a case moves from law enforcement to prosecution to adjudication to court services.

State and local efforts are underway to correct some of these deficiencies, but they are independent of each other. At the local level, a few jurisdictions are developing linkages among prosecutors, the

courts, and law enforcement to automate the scheduling of court activities among these parties and provide a centralized database on non-felony offenses instead of maintaining separate databases in each agency. At the state level, the Criminal and Juvenile Justice Information Policy Group, set up by the Legislature to analyze criminal justice information needs, has recommended enhancing criminal history information with systems that track statewide all orders for protection and targeted misdemeanors, a recommendation now under consideration by the 1997 Legislature.<sup>24</sup>

Although both local and state information systems continue to evolve, there is little coordination among their efforts. No one is integrating the development of the various information systems. However, the Criminal and Juvenile Justice Information Policy Group's recommendations to the 1997 Legislature include, among other things, funding requests to develop infrastructure for a coordinated statewide criminal justice information system, ensure the sharing of criminal justice information, and provide statewide access to existing and future databases.

### *Non-Felony Enforcement Advisory Committee*

The Legislature established the Non-felony Enforcement Advisory Committee (NEAC) in 1993 to "address proportionality, prosecution, and enforcement of non-felony offenses."<sup>25</sup> The NEAC final report, released in January 1997, recommends a reorganization of the criminal and vehicle codes and other criminal offense statutes and a reclassification of specific offenses and their penalties.

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<sup>23</sup> For example, the Computerized Criminal History Records (CCH), administered by the Department of Public Safety, contains information on defendants' criminal histories. The Supreme Court's Total Court Information System (TCIS) contains information on trial court activity, to which county attorneys and court services can purchase online access. TCIS supplies the State Judicial Information System (SJIS) with aggregate data. The Department of Corrections has automated information exchanges with the Department of Public Safety and maintains a database with information on defendants' probation. Various state agencies also maintain databases on arrests, warrants, criminal fingerprints, sentencing, jails, and correctional facilities.

<sup>24</sup> The recommendation also includes statewide juvenile criminal history data. See *Minn. Senate* (1997) S.F. No. 982 and *Minn. House* (1997) H.F. No. 1165.

<sup>25</sup> Non-felony Enforcement Advisory Committee, *Non-felony Enforcement Advisory Committee Final Report*, (St. Paul, January 1997), 1.

The reorganization and reclassification have the potential to significantly affect prosecution services. For instance, NEAC recommends reclassifying as first, second, or third degree misdemeanors certain theft and property-related offenses currently classified as gross misdemeanors or felonies. This means that instead of the county attorney prosecuting the offense as a gross misdemeanor (in counties where the county attorney typically handles gross misdemeanors) or felony, the city prosecutor will be required to prosecute it as a misdemeanor. This shift in offenses from felonies and gross misdemeanors to misdemeanors means that cities would likely see an increase in their prosecution caseload. However, NEAC also recommends reclassifying certain offenses as infractions, thus reducing the number of offenses for which municipal prosecutors would be responsible.

The report also recommends various changes to increase system effectiveness. Among the changes are recommendations to improve the statewide source of certain misdemeanor criminal history information, expand authorities granted to hearing officers in violations bureaus and encourage consideration of violations bureaus in districts currently without them, and increase fine collection efforts.

One item NEAC considered was the appropriate arrangement of prosecution responsibility, also part of this review. After discussing various arrangements with county and city attorneys, NEAC concluded that local governments have legitimate concerns about funding and staffing issues associated with state-mandated changes to local prosecution authority and that current voluntary arrangements work sufficiently. Based on its efforts devoted to this issue, NEAC recommends that “political subdivisions continue to explore joint ventures to create efficiencies where possible.”<sup>26</sup>

### The Local Role in Non-Felony Prosecution

In Minnesota, prosecution of non-felony offenses is lodged at the local government level. Counties are responsible for financing the county attorney, who is elected to a four-year term, and all staff and operations of the county attorney’s office. Counties also pay for the county court administrator, the bailiff, security personnel, sheriff deputies who appear in court, witness fees and expenses, and any administrative or overhead costs associated with the courtroom. Similarly, cities are responsible for paying the city prosecutor (who may be appointed by the city council, the mayor subject to council approval, or city manager subject to council approval) and the police officers who appear in court to testify.<sup>27</sup>

### DIFFERENCES IN COUNTY AND CITY PROSECUTOR RESPONSIBILITIES

Most misdemeanors, petty misdemeanors, and local ordinance or rule violations are prosecuted by the

attorney of the city where the offense allegedly occurred. Cities with a population of 600 or less may, by resolution of the city council and with the approval of the county board, transfer the duty to the county attorney. By statute, cities of the first, second, and third class also prosecute the gross misdemeanor violations of driving while intoxicated, aggravated traffic violations, theft, issuance of dishonored checks, property damage, check forgery, and

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***City prosecutors in the metropolitan area have more responsibility for gross misdemeanors than those outstate.***

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<sup>26</sup> *Ibid.*, 59.

<sup>27</sup> We did not study relationships between the method of selecting city prosecutors and prosecutor performance.

financial transaction card fraud, unless the city uses the county attorney for prosecuting non-felonies.<sup>28</sup> All remaining gross misdemeanors, misdemeanors, and petty misdemeanors not prosecuted by the city attorney are prosecuted by the county attorney of the county where the offense allegedly occurred.<sup>29</sup>

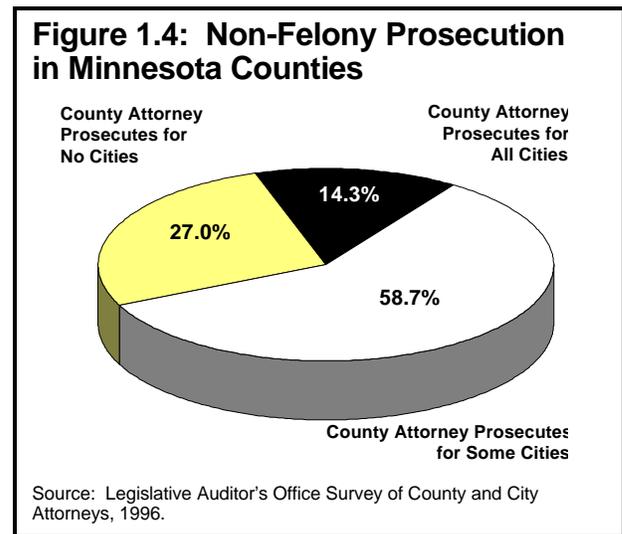
Special provisions exist for the seven-county metropolitan area counties, giving city prosecutors responsibility for prosecuting additional gross misdemeanors.<sup>30</sup> However, only county attorneys prosecute the gross misdemeanor violations of failure to report physical or sexual child abuse or neglect, fifth degree criminal sexual conduct, and certain environmental law infractions.<sup>31</sup>

### DIFFERENCES IN ARRANGEMENTS FOR PROSECUTING NON-FELONY OFFENSES

County and city responsibilities for providing prosecution vary across Minnesota.<sup>32</sup> In some counties, the county attorney is responsible for all non-felony prosecution regardless of where in the county an offense occurs; that is, the county prosecutes non-felony offenses on behalf of all municipalities. Most of these counties lie outside the seven-county metropolitan area; Carver County is unique in the metropolitan area in that none of its cities has its own prosecutor. In other counties, the county attorney is responsible for prosecution services in some but not all municipalities. In yet

others, the county attorney does not prosecute non-felony offenses on behalf of any municipalities. As shown in Figure 1.4, we found that:

- **In 1995, 9 counties (14 percent of county attorneys responding to our survey) in Minnesota provided non-felony prosecution services on behalf of all their municipalities. Another 36 counties (59 percent) prosecuted non-felony offenses for some but not all municipalities, and 17 (27 percent) did not prosecute non-felony offenses for any municipalities.**<sup>33</sup>



28 See *Minn. Stat.* §169.121, subd. 3, para. (d); §169.129; and §487.25, subd. 10. *Minn. Stat.* §410.01 defines four classes of cities: cities of the first class have more than 100,000 inhabitants, cities of the second class have between 20,000 and 100,000, cities of the third class have between 10,000 and 20,000, and cities of the fourth class have not more than 10,000 inhabitants.

29 *Minn. Stat.* §487.25, subd. 10.

30 City prosecutors for communities in Anoka, Carver, Dakota, Hennepin, Scott, and Washington counties have authority to prosecute gross misdemeanors with the exception of those specifically designated to the county attorney. *Minn. Stat.* §388.051, subd. 2 specifies that county attorneys in these counties shall prosecute: tax evasion, tax fraud, making false tax statements, unreasonable restraint or malicious punishment of a child, child neglect, or possessing pictures involving sexual conduct and minors. Similarly, only the Ramsey County attorney can prosecute the gross misdemeanor violations in that county of unreasonable restraint or malicious punishment of a child and child neglect.

31 *Minn. Stat.* §388.057, subd. 2(c).

32 The information we provide on current non-felony prosecution arrangements comes from surveys of county attorneys in Minnesota's 87 counties and a random sample of 533 cities. Data from these surveys pertain to calendar year 1995. Appendix A contains more information about the methodology and results of the surveys.

33 The remaining 25 counties either did not respond to our survey or provided insufficient information for analysis.

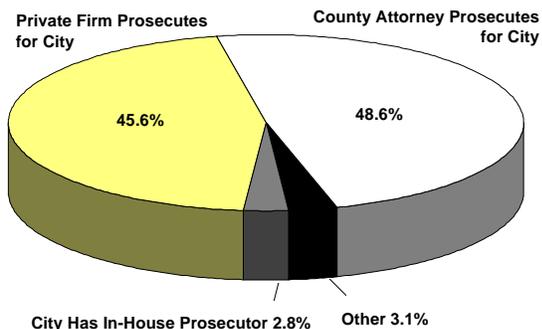
According to our survey of cities, about 49 percent of Minnesota cities relied on the county attorney’s office for prosecution services in 1995. (See Figure 1.5.) This arrangement was most prevalent among smaller cities, under 3,000 population. Another 46 percent of cities received prosecution services provided by private law firms. A few cities had formed joint powers agreements to jointly purchase prosecution services from private firms. We learned of two such joint powers agreements — one in Scott County and another in Hennepin County.

About a dozen Minnesota cities, most with populations of 49,000 or more, had their own full-time attorneys on staff. One of these cities, Minnetonka, provided prosecution services to four nearby communities. Some cities have prosecution responsibility for other entities such as in Minneapolis, where the city attorney prosecutes non-felony offenses on behalf of the University of Minnesota and the Metropolitan Airports Commission.

### SUMMARY

Non-felony offenses include gross misdemeanors, misdemeanors, petty misdemeanors, and local ordinance or rule violations. Both county attorneys and city prosecutors have non-felony prosecution responsibilities, but these differ between the metropolitan and non-metropolitan counties, as well as within the seven-county metropolitan area. In Minnesota, local governments have varying arrangements for non-felony prosecution services. Some counties provide non-felony prosecution services for all their municipalities; in others, some or all cities have their own city prosecutor.

**Figure 1.5: Non-Felony Prosecution in Minnesota Cities**



Note: "Other" includes cities with joint powers agreements and other arrangements for prosecution services shared among several municipalities.

Source: Legislative Auditor's Office Survey of County and City Attorneys, 1996.