

*Chapter One*  
**Criminal Justice System Overview**

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# *Chapter One*

## **Criminal Justice System Overview**

### **Criminal Justice System Agencies**

#### A. Arresting Agencies

The police agencies in Blue Earth County have the responsibility of arresting defendants and booking them directly into custody. If it is a warrantless arrest, the arresting officer lodges the charges that are later reviewed by the specific prosecutor.

The police agencies within Blue Earth County that book defendants into the Blue Earth County Jail are as follows:

- Amboy/Vernon Center Police Department
- Blue Earth County Sheriff
- Eagle Lake Police Department
- Good Thunder Police Department
- Lake Crystal Police Department
- Mankato Police Department
- Madison Lake Police Department
- Mapleton Police Department
- Minnesota Department of Corrections
- Minnesota State Patrol

#### B. Prosecution

##### 1. County Attorney

The elected County Attorney prosecutes all felony cases in the county. The office also has the responsibility of prosecuting misdemeanor and gross misdemeanor offenses that occur in the

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unincorporated county. The County Attorney also represents the county on civil matters.

There are a total of 6 assistants in the office; 3 assistants are assigned to the criminal division.

Last year the office prosecuted a total of 984 criminal cases—456 misdemeanor cases, 205 gross misdemeanor cases, and 323 felonies. These numbers do not include cases issued citations or cases where the county attorney declined prosecution.

### 2. City Attorney

The appointed city attorney has 2 deputies who prosecute misdemeanor and certain gross misdemeanor offenses that occur within the city of Mankato. In calendar year 2002, the City Attorney opened 1,725 new files for prosecution.

### C. Public Defender

The state of Minnesota operates a public defender system. The system has been in existence since 1995; prior to that the counties funded the expense of appointment of counsel. Blue Earth County is the largest county in a district with 15 counties. There are 5 full-time and 4 part-time attorneys assigned to represent defendants in Blue Earth County.

All of the attorneys carry a mixed caseload of misdemeanors, gross misdemeanors, and felonies with the exception of one attorney who handles the most serious cases. Private attorneys who under contract to the public defender handle conflict cases. The conflict attorneys agree to dedicate a certain percentage of their practice to handling conflict work under the umbrella of the public defender.

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A court staff person conducts the financial screening to determine eligibility for appointment of counsel. The judge reviews the information and makes the formal appointment.

### D. District Court

Blue Earth County is part of the 5<sup>th</sup> judicial district along with 14 other counties. The judges are elected to 6-year terms and select their administrative or chief judge. There are three full-time general jurisdiction judges assigned to the county. The single-level court system hears all civil, criminal, family, and juvenile matters in the county. The court administrator oversees the daily operation of the court as well as the clerk's office.

### E. Community Corrections

The Community Corrections program is administered by the county and has a Citizen's Advisory Board made up of representatives from the judiciary, prosecution, police, school, and human services. The board has a rich history of citizen involvement as well.

The program has a staff of 24 includes 8 probation officers. The Department also handles juvenile cases, bond evaluations, and pre-sentence investigations. Community Corrections operates a community service program, a volunteer program, and a specialized teen program. Community Corrections has an electronic monitoring program that in addition to the traditional monitoring can provide alcohol testing and GPS supervision.

The program operates under a budget that is provided partially by the county and partially by the state. There have been no increases in staff with funding provided by the county since 1987.

## Defendant Processing

### A. Arrest and Booking

*Minnesota Statutes identify who may make arrests:*

#### **629.30 (Subd.2) Arrests; by whom made**

An arrest may be made:

- (1) by a peace officer under a warrant;
- (2) by a peace officer without a warrant;
- (3) by an officer in the United States customs service or the immigration and naturalization service without a warrant;
- (4) by a private person. A private person shall aid a peace officer in executing a warrant when requested to do so by the officer.

*For some classes of offenses, arrests are restricted to certain times of the day.*

#### **629.31 Time when arrest may be made.**

An arrest for a felony or gross misdemeanor may be made on any day and at any time of the day or night. An arrest for a misdemeanor may not be made on Sunday or between 10:00 p.m. and 8:00 a.m. on any other day except:

- (1) when the judge orders in the warrant that the arrest may be made between those hours; or
- (2) when the person named in the warrant is found on a public highway or street.

*Minnesota Statute (626.862) allows for the issuance of a citation in lieu of custody.*

A citation in lieu of arrest must be made by a peace officer, constable, or part-time peace officer, except as specifically provided by statute. The officer giving the citation may ask the person cited to give a written promise that they will appear in court.

*Citations may not be issued for harassment and domestic abuse charges.*

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### **629.72, (Subd. 1a.) Allowing detention in lieu of citation; release.**

(a) Notwithstanding any other law or rule, an arresting officer may not issue a citation in lieu of arrest and detention to an individual charged with harassment, domestic abuse, violation of an order for protection, or violation of a domestic abuse no contact order.

*An officer may make a probable cause arrest in domestic violence cases even though the assault did not take place in the presence of the officer (629.341, Subd1)*

A peace officer may arrest a person anywhere without a warrant if the officer has probable cause to believe that the person has committed a domestic abuse within the preceding 12 hours.

*Factors guiding the release of domestic abuse cases is outlined in statute.*

### **629.72 Citations in case of Domestic Abuse**

(b) Notwithstanding any other law or rule, an individual who is arrested on a charge of harassing any person, domestic abuse, violation of an order for protection, or violation of a domestic abuse no contact order, must be brought to the police station or county jail.

The officer in charge of the police station or the county sheriff in charge of the jail shall issue a citation in lieu of continued detention unless it reasonably appears to the officer or sheriff that release of the person (1) poses a threat to the alleged victim or another family or household member, (2) poses a threat to public safety, or (3) involves a substantial likelihood the arrested person will fail to appear at subsequent proceedings.

*Minnesota Statutes require that peace officers provide victims of domestic abuse specific information:*

### **629.341(Subd. 3.) Victim notice of rights.**

The peace officer shall tell the victim whether a shelter or other services are available in the community and give the victim immediate notice of the legal rights and remedies available. The notice must include furnishing the victim a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an

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order for protection from domestic abuse. The order could include the following:

- (1) an order restraining the abuser from further acts of abuse;
- (2) an order directing the abuser to leave your household;
- (3) an order preventing the abuser from entering your residence, school, business, or place of employment;
- (4) an order awarding you or the other parent custody of or parenting time with your minor child or children; or
- (5) an order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so."

The notice must include the resource listing, including telephone number, for the area battered women's shelter, to be designated by the department of corrections.

*The procedures following arrest and limitations on pre-trial detention are set forth in the Statutes.*

Statute 629.355 addresses the authority of peace officers to detain persons on conditional release. It requires the detaining peace officer to provide a detention report to the supervising agency as soon as possible and indicates that the detention may not exceed eight hours without the approval of the supervising agency.

A person on supervised release or parole may not be detained longer than 72 hours (629.355 (c)) unless a revocation proceeding is initiated.

*For those detained, Minnesota Rules dictate the maximum period of detention by type of facility:*

### **Rule 2911.0200 Detention limits by facility type**

Subp. 11. **Class I facility.** "Class I facility" means a secure adult detention facility used to confine inmates for a time not to exceed 72 hours excluding holidays or weekends. A Class I facility shall also be known as a holding facility.

Subp. 12. **Class II facility.** "Class II facility" means a secure adult detention facility used to confine inmates prior to their appearance in court and sentenced inmates for a time not to exceed 90 days. A Class II facility shall also be known as a lockup facility.

Subp. 13. **Class III facility.** "Class III facility" means a secure detention facility used to confine sentenced inmates for a time not

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to exceed any limits set by Minnesota Statutes, adult pretrial and presentenced detainees indefinitely, and juveniles up to the limits prescribed by Minnesota Statutes and commissioner approval. A Class III facility shall also be known as a jail facility.

Subp. 14. **Class IV facility.** "Class IV facility" means a minimum security adult detention facility used to confine sentenced inmates for a time not to exceed any limits set by Minnesota Statutes or adult pretrial or presentenced detainees indefinitely. A Class IV facility shall also be known as a jail annex.

Subp. 15. **Class V facility.** "Class V facility" means a secure adult detention facility used to detain adult pretrial and presentenced detainees indefinitely. A Class V facility shall also be known as an adult detention center.

Subp. 16. **Class VI facility.** "Class VI facility" means a facility used to confine sentenced inmates for periods of time not to exceed any limits set by Minnesota Statutes. A Class VI facility shall also be known as an adult corrections facility.

### B. Bail

Procedures are established at both the federal and state level that governs the setting of bail.

#### 1. Federal

The issue of financial consideration in effecting pre-trial release became a focus of debate in the 1960s. The concern arose that an over-reliance on financial criteria discriminated against poor defendants and resulted in decisions that were inequitable. This led to the efforts by the Vera Institute to demonstrate that non-financial considerations, such as the community ties of the defendant could be used to make effective release decisions, and eventually resulted in the development of a risk assessment instrument to inform decision-making.

A presumption favoring recognizance release and unsecured bond was first set down (in guideline form) by the Federal Bail Reform Act of 1966. The Act also required federal judicial officers to consider a defendant's "community ties" when making release decisions in non-capital cases; introduced the concept of conditional release; and authorized an option that allowed the defendant to deposit 10 percent bail with the court. For those cases approved for pre-trial release, the Federal Bail Reform Act instructed the judicial officer to take the least restrictive measures to assure appearance. The 1966 Act stipulated that secured bond was to be used only for high-risk defendants. This Federal reform,

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although not binding in state systems, had a tremendous influence on the evolution of state laws pertaining to pre-trial release.

In 1968, the American Bar Association published the first standards on pre-trial release.

*“ Pre-trial incarceration should never be resorted to without first exhausting the possibilities of adequate supervision for defendants on conditional release. Conversely, it is equally indefensible to release criminal defendants who might commit new, and in particular dangerous, offenses pending trial without also taking reasonable steps to protect the community against that danger.”*  
(ABA, 1985)

In 1970, in response to rising concerns over serious crime, the District of Columbia amended the Bail Reform Act to include considerations of community safety, in addition to the risk of flight, in making release decisions. This reform also provided for “preventive detention” of defendants considered posing a significant threat to the community. The Comprehensive Crime Control Act, passed by Congress in 1984, formalized the use of preventive detention and the weighting of community safety, as well as risk, in making release decisions. In 1987, the United States Supreme Court upheld the use of preventive detention as defined in the 1984 Act.

The evolution of pre-trial release law has resulted in enshrining the notion of a presumption of release and the use of the least restrictive release option to ensure appearance in court and protect the public.

### 2. Minnesota

*Minnesota Statutes create a presumption of pre-trial release for all but a few types of cases.*

#### **629.16 Admit to bail.**

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as the judge deems proper, conditioned for the person's appearance before the judge at a time specified in the bond, and for the person's surrender, to be arrested upon the warrant of the governor of this state.

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A person charged with a criminal offense may be released with or without bail (629.53).

*Minnesota Statutes address the issue of who shall receive a pre-trial bail evaluation.*

### **629.74 Pre-trial bail evaluation.**

The local corrections department or its designee shall conduct a pretrial bail evaluation of each defendant arrested and detained for committing a crime of violence...a gross misdemeanor violation ...or a nonfelony violation of ... [the statute references specific offenses under each category].

*When the defendant requests appointed counsel, the pre-trial evaluation shall also include completion of a financial statement (629.74).*

These pretrial evaluations are to be performed by the Department of Corrections or their designee.

*Minnesota Statutes outline the factors to consider when making a release decision:*

### **629.715 Release in cases involving crimes against persons**

When a person is arrested for a crime against the person, the judge before whom the arrested person is taken shall review the facts surrounding the arrest and detention. If the person was arrested or detained for committing a crime of violence, as defined in section [629.725](#), the prosecutor or other appropriate person shall present relevant information involving the victim or the victim's family's account of the alleged crime to the judge to be considered in determining the arrested person's release.

The arrested person must be ordered released pending trial or hearing on the person's personal recognizance or on an order to appear or upon the execution of an unsecured bond in a specified amount unless the judge determines that release (1) will be inimical to public safety, (2) will create a threat of bodily harm to the arrested person, the victim of the alleged crime, or another, or (3) will not reasonably assure the appearance of the arrested person at subsequent proceedings.

*The judge may impose conditions of release.*

### **629.715(b) Release**

If the judge determines release under paragraph (a) is not advisable, the judge may impose any conditions of release that will reasonably assure the appearance of the person for subsequent proceedings, or will protect the victim of the alleged

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crime, or may fix the amount of money bail without other conditions upon which the arrested person may obtain release.

*Statute sets the maximum cash bail for misdemeanor offenses (629.471).*

The maximum cash bail for misdemeanor charges ranges from double the highest cash fine that may be imposed (for misdemeanors or gross misdemeanors); to six times the highest cash fine (for charges of domestic abuse, assault IV, and malicious punishment of a child).

*If bail is denied on a warrant-based arrest, a second review is required.*

### **629.45 Proceedings in the case of bail refusal.**

If a judge in the county where an arrest is made refuses to release the person arrested on bail, or if sufficient bail is not offered, the officer in charge of that person shall take the person before the judge who issued the warrant. If the judge who issued the warrant is absent, the officer in charge of the arrested person shall take the person before some other judge of the county in which the warrant was issued, to be proceeded with as directed.

*The Statutes establish the expectation that in cases of crimes of violence, a good faith effort will be made to notify victims of bail hearings (629.725), release from detention and the conditions of release (629.73).*

There is also the expectation that local law enforcement agencies will be notified of pre-trial release in certain cases.

### **629.735 Notice to local law enforcement agency regarding release of arrested or detained person.**

When a person arrested or a juvenile detained for a crime of violence or an attempted crime of violence is about to be released from pretrial detention, the agency having custody of the arrested or detained person or its designee shall make a reasonable and good faith effort before release to inform any local law enforcement agencies known to be involved in the case, if different from the agency having custody, of the following matters:

- (1) the conditions of release, if any;
- (2) the time of release; and
- (3) the time, date, and place of the next scheduled court appearance of the arrested or detained person.

Electronic monitoring may be imposed as a condition of pretrial release. However, in such cases, the monitoring may not be used as determining factor in setting bail (629.531)

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### C. Arraignment

#### 1. Appointment of Counsel

*Minnesota Statutes require eligible defendants to be appointed counsel.*

#### **611.14 Right to representation by public defender.**

The following persons who are financially unable to obtain counsel are entitled to be represented by a public defender:

- (1) a person charged with a felony, gross misdemeanor, or misdemeanor including a person charged under sections [629.01](#) to [629.29](#);
- (2) a person appealing from a conviction of a felony or gross misdemeanor, or a person convicted of a felony or gross misdemeanor, who is pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction;
- (3) a person who is entitled to be represented by counsel under section [609.14](#), subdivision 2; or
- (4) a minor ten years of age or older who is entitled to be represented by counsel under section [260B.163](#), subdivision 4, or [260C.163](#), subdivision 3.

To test eligibility for appointed counsel, defendants must submit financial information (as described in Statute 611.17). A staff person assigned to court interviews the defendants and presents the verified information to the court who makes the final determination as to eligibility.

#### 2. Pleading

#### **630.31 Plea of not guilty; evidence under.**

The plea of not guilty is a denial of every material allegation in the indictment, and not all matters of fact tending to establish a defense, other than a former conviction or acquittal, may be given in evidence under such plea.

### D. Indictment

The grand jury is composed of not more than 23 (nor less than 16) persons chosen by lot to inquire into public offenses that can be tried in the counties.

*Indictments returned by the grand jury shall be documented as designated:*

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### 628.10 Indictments; contents

The first pleading on the part of the state is the indictment, which shall contain:

(1) the title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties; (2) a statement of the acts constituting the offense, in ordinary and concise language, without repetition.

*A calendar of indictments shall be kept to ensure that in-custody cases are given priority.*

### 630.36 Issues on Calendar, how disposed of

Subdivision 1. The issues on the calendar shall be disposed of in the following order, unless, upon the application of either party, for good cause, the court directs an indictment or complaint to be tried out of its order:

(1) indictments or complaints for felony, where the defendant is in custody;

(2) indictments or complaints for misdemeanor, where the defendant is in custody;

(3) indictments or complaints alleging child abuse, as defined in subdivision 2, where the defendant is on bail;

(4) indictments or complaints alleging domestic abuse, as defined in subdivision 3, where the defendant is on bail;

(5) indictments or complaints for felony, where the defendant is on bail; and

(6) indictments or complaints for misdemeanor, where the defendant is on bail.

*After a plea, the defendant shall be entitled to at least four days to prepare for trial, if the defendant requires it (630.36).*

## E. Trial

*The Statutes set forth objectives for the timely disposition of cases:*

### 631.021 Speedy criminal trials

The judges of each judicial district must adopt and administer rules or procedures to ensure that, on and after July 1, 1997, the following timing objectives for the disposition of criminal cases are met by judges within the district:

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(1) 90 percent of all criminal cases must be disposed of within 120 days;

(2) 97 percent of all criminal cases must be disposed of within 180 days; and

(3) 99 percent of all criminal cases must be disposed of within 365 days.

The time periods referred to in clauses (1) to (3) must be measured from the date the criminal complaint is filed, to the date the defendant is either found not guilty or is sentenced. If the criminal case begins by indictment rather than by criminal complaint, the time period must be measured from the date the indictment is returned.

*Continuances are allowed for cause and according to set procedure:*

### **631.02 Allowing continuances for sufficient cause.**

A continuance may be granted by the court when a case is called for trial, or at any time during pretrial proceedings, upon motion of either the prosecution or defense. The moving party must show sufficient cause for the continuance. Affidavits in support of the motion for continuance must be filed with the court administrator. When a defendant who has given bail appears for trial, the court may at any time after the appearance order the defendant committed to the custody of the proper officer of the county, pending judgment or further order of the court

## F. Sentencing

Minnesota has developed sentencing guidelines that apply to offenders convicted of a felony. Judges may depart from the guidelines for mitigating or aggravating factors, but must explain their reason in writing.

State law requires that persons convicted of murder, assault or rape be incarcerated.

For some crimes, an individual may receive a presumptive stay of sentence. In these cases, the offender does not need to fulfill the sentences as long as he completes a separate sentence that was also issued.

The court may order that a juvenile who was 14 or older at the time of the offense and who is charged with a felony be remanded to adult court. Juveniles charged with first degree murder who were

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16 or 17 at the time of the offense, are required under Minnesota Statutes to be certified as adults for purposes of prosecution.

*Minnesota Statute defines four classes of criminal conduct:*

### 609.02 Definitions

Subdivision 1. **Crime.** "Crime" means conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.

Subd. 2. **Felony.** "Felony" means a crime for which a sentence of imprisonment for more than one year may be imposed.

Subd. 2a. Repealed, 1999 c 194 s 11

Subd. 3. **Misdemeanor.** "Misdemeanor" means a crime for which a sentence of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed.

Subd. 4. **Gross misdemeanor.** "Gross misdemeanor" means any crime which is not a felony or misdemeanor. The maximum fine which may be imposed for a gross misdemeanor is \$3,000 and a term of imprisonment of not more than one year in the county jail.

Subd. 4a. **Petty misdemeanor.** "Petty misdemeanor" means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed.

The legislature has exclusive authority to define crimes and offenses and the range of the sentences. In this function the 11-member Sentencing Guidelines Commission guides it.

The Commission promulgates guidelines that are based on offense and offender characteristics. The guidelines may provide for an increase or decrease of up to 15 percent in the presumptive, fixed sentence.

In establishing and modifying the sentencing guidelines, the primary consideration of the commission is public safety. The commission is also charged with reviewing current sentencing and release practices; correctional resources, including but not limited to the capacities of local and state correctional facilities; and the long-term negative impact of the crime on the community. (244.09)

During the 2002 Legislative Session, modifications to the sentencing guidelines included:

- Fifty percent longer sentence for crimes committed in furtherance of terrorism

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- New felony driving while impaired crime
- New crime for harassing or stalking victims under age 18, committed with sexual or aggressive intent

*Convictions are to be based upon an admission or a finding of guilt.*

### **611.03 Conviction**

No person indicted for any offense shall be convicted thereof, unless by admitting the truth of the charge in a demurrer, or plea, by confession in open court, or by verdict of a jury, accepted and recorded by the court.

*Statutes require that a Pre-sentence Investigation be completed when a defendant is convicted of a felony.*

### **609.115 Presentence investigation.**

(a) When a defendant has been convicted of a misdemeanor or gross misdemeanor, the court may, and when the defendant has been convicted of a felony, the court shall, before sentence is imposed, cause a presentence investigation and written report to be made to the court concerning the defendant's individual characteristics, circumstances, needs, potentialities, criminal record and social history, the circumstances of the offense and the harm caused by it to others and to the community.

At the request of the prosecutor in a gross misdemeanor case, the court shall order that a presentence investigation and report be prepared. The investigation shall be made by a probation officer of the court, if there is one; otherwise it shall be made by the commissioner of corrections.

The sentencing guidelines promulgated by the commission may also establish appropriate sanctions for offenders for whom imprisonment is not proper. By statute, any such guidelines are to make specific reference to non-institutional sanctions, including but not limited to the following: payment of fines, day fines, restitution, community work orders, work release programs in local facilities, community based residential and nonresidential programs, incarceration in a local correctional facility, and probation and the conditions thereof.

*A sentencing order shall be entered within 20 days from the sentencing hearing.*

### **244.10 Sentencing hearing**

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Whenever a person is convicted of a felony, the court, upon motion of either the defendant or the state, shall hold a sentencing hearing. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issue of sentencing. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the sentencing hearing. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecuting attorney copies of the presentence investigation report.

At the conclusion of the sentencing hearing or within 20 days thereafter, the court shall issue written findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

*A Jail sentence may be served in a workhouse or correctional work farm.*

### **631.461 Allowing sentence of offender to a workhouse or correctional or work farm**

When a sentence for an offense includes imprisonment in a county jail, the court may sentence the offender to imprisonment in a workhouse or correctional or work farm if there is one in the county where the offender is tried or where the offense was committed. If not, the court may sentence the offender to imprisonment in a workhouse or correctional or work farm in any county in this state.

## G. Probation

Under Minnesota's Community Corrections Act, counties may enter into a partnership with the State Department of Corrections for the management of the offender population.

The State Department of Corrections has exclusive responsibility for providing probation services to adult felons in counties that do not take part in the Act. However, non-participating counties still have the responsibility to provide supervision services for individuals convicted of gross misdemeanor offenses, according to local judicial policy. (244.20)

*Statute allows a probationer to be detained in jail for a limited time pending a hearing.*

### **244.195 (Subd.2) Detention pending hearing**

When it appears necessary to enforce discipline or to prevent a person on conditional release from escaping or absconding from supervision, a court services director has the authority to issue a

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written order directing any peace officer in the county or any county probation officer serving the district and juvenile courts of the county to detain and bring the person before the court or the commissioner, whichever is appropriate, for disposition. This written order is sufficient authority for the peace officer or probation officer to detain the person for not more than 72 hours, excluding Saturdays, Sundays, and holidays, pending a hearing before the court