***PROPOSED***

**STATE OF MINNESOTA SEVENTH JUDICIAL DISTRICT**

**ADMINISTRATIVE POLICY NO. 6.1**

***FAILURE TO APPEAR - PETTY AND MISDEMEANOR CASES***

I. Failure to Appear on Traffic Petty Misdemeanor Violations:

~~When a defendant fails to appear after written citation by an officer, or “Long Form” Summons and Complaint, do the following:~~

~~a. Send out the “Pay or Appear” Notices, (BNOT). This will inform the defendant of a new date to pay by or appear on the charge. (Should be 21 days after the original date.)~~

~~b. If the defendant fails to pay or appear on the new date for a traffic violation, certify the conviction as a failure to appear pursuant to M.S. 171.01, Subd. 13. Suspend the driver’s license pursuant to 171.16, Subd. 2. This is an automatic order of the Court.~~

~~c. On TCIS, enter the disposition of “FTA” (Failure to Appear), enter the suspension date, set up a special account and set it for archiving in 5 years.~~

~~Note: No conviction or fine without guilty plea or trial. “Conviction” under Minnesota Statute 171.01, Subd. 13, is for the limited purpose of driver’s license administration. See State v. Haney, 600 N.W.2d 469 (1999).~~

(This portion of the Administrative Policy has been address by Minnesota Judicial Branch Policy 5.15. and is incorporated below)

It is the policy of the Minnesota Judicial Branch, pursuant to Minn. Stat. §609.491, subd. 1, that court administration shall enter a plea of guilty and conviction when a person fails to appear for a petty misdemeanor offense. If the petty misdemeanor offense was payable, the guilty plea and conviction shall be entered if the person has neither paid the fine nor appeared by the scheduled court date.

If the person has failed to pay his/her fine and also failed to appear for the scheduled hearing, Court Administration shall enter the guilty plea, conviction, and sentence on the 10th day following the person’s failure to appear for the scheduled hearing. The conviction and sentence shall be deemed to have been entered on the date that it is processed by Court Administration. See Minn. Stat. §609.491, subd. 1.

A conviction *shall not* be entered under Minn. Stat. §609.491, subd. 1, when a person fails to appear if:

1. a person is charged with multiple offenses and at least one of those offenses is not a petty misdemeanor;
2. a person makes some attempt to appear in court for a petty misdemeanor offense, but later fails to appear for a scheduled court date, *State v. Haney*, 600 N.W.2d 469 (Minn. App. 1999); or
3. the offense charged is a *misdemeanor* with a payable fine of $300 or less.

II. Failure to appear on ~~Non-Traffic Petty Misdemeanor and All Misdemeanor Violations.~~ Misdemeanor Citations or exception cases as noted above:

~~If the defendant fails to appear after written citation by an officer or “Long Form” Summons and Complaint, do the following:~~

~~a. Complete the form entitled~~ **~~“Notice to Prosecuting Attorney”~~** ~~and send it to the prosecutor along with a copy of the citation.~~

~~b. On TCIS, schedule for a review for sixty-one (61) days from the date the notice is sent to the prosecuting attorney.~~

~~i.e. Notice sent on 10/1/88~~

~~Next Act: 120288 RVW~~

~~Comments: Action on FTA by pros, or dismiss.~~

~~c. If the prosecutor fails to take action on the matter by the sixty-first (61st) date, an order should be prepared for a judge’s signature to dismiss for lack of prosecution. The case can then be dismissed and archived in thirty (30) days.~~

~~d. If, on the other hand, the prosecutor returns the form, indicating what type of action to be taken, follow the necessary steps to complete it. For example;~~

~~1. If a complaint is attached, send it out.~~

~~2. If the prosecutor chooses to convict the defendant of the crime of “Failure to Appear,” use~~ **~~“ACRI”~~** ~~to enter this charge. dispose of this crime, certifying it to the Department of Public Safety and entering the suspension date.~~

~~The original violation would remain open with a pending “RVW” (case status review) in 5 years, unless the prosecutor has indicated action on this violation in addition to the crime of Failure to Appear.~~

Charge where suspension of driver license is not authorized:

Upon defendant’s failure to appear in response to a long form complaint or citation, a warrant of arrest may issue if based upon sworn facts establishing probable cause, which may be set forth in or with the citation and attached to the complaint, as provided in Minnesota Rules of Criminal Procedure 6.01, Subdivision 3. A warrant of arrest may also issue if the judge has personal knowledge, acting in an official capacity, that the defendant had notice of the scheduled court appearance but did not appear. The cases shall be called in open court and upon determination that the defendant is not present, the Court must make findings of probable cause based on sworn facts or personal knowledge and may order that a bench warrant be issued with bail as determined appropriate by the Court. For offenses that are on the approved State Payables List the bail should be the amount of the fine, surcharge and law library fee to allow the defendant to post the fine amount and waive any further appearances.

Charge where suspension of driver license is authorized:

Court Administration will follow the approved process to suspend the driver license for FTA as outlined in MNCIS on-line procedures.

Approved: December 1, 1989

Effective: January 1, 1990

Recodified: May 31, 2002

Revised: April 8, 2009