

STATE OF MINNESOTA

Office of the State Auditor



Rebecca Otto
State Auditor

SPECIAL REVIEW OF ADMINISTRATIVE TRAFFIC CITATIONS AND LOCAL TRAFFIC DIVERSION PROGRAMS

Description of the Office of the State Auditor

The mission of the Office of the State Auditor is to oversee local government finances for Minnesota taxpayers by helping to ensure financial integrity and accountability in local governmental financial activities.

Through financial, compliance, and special audits, the State Auditor oversees and ensures that local government funds are used for the purposes intended by law and that local governments hold themselves to the highest standards of financial accountability.

The State Auditor performs approximately 160 financial and compliance audits per year and has oversight responsibilities for over 3,300 local units of government throughout the state. The office currently maintains five divisions:

Audit Practice - conducts financial and legal compliance audits of local governments;

Government Information - collects and analyzes financial information for cities, towns, counties, and special districts;

Legal/Special Investigations - provides legal analysis and counsel to the Office and responds to outside inquiries about Minnesota local government law; as well as investigates allegations of misfeasance, malfeasance, and nonfeasance in local government;

Pension - monitors investment, financial, and actuarial reporting for approximately 730 public pension funds; and

Tax Increment Financing - promotes compliance and accountability in local governments' use of tax increment financing through financial and compliance audits.

The State Auditor serves on the State Executive Council, State Board of Investment, Land Exchange Board, Public Employees Retirement Association Board, Minnesota Housing Finance Agency, and the Rural Finance Authority Board.

Office of the State Auditor
525 Park Street, Suite 500
Saint Paul, Minnesota 55103
(651) 296-2551
state.auditor@osa.state.mn.us
www.auditor.state.mn.us

This document can be made available in alternative formats upon request. Call 651-296-2551 [voice] or 1-800-627-3529 [relay service] for assistance; or visit the Office of the State Auditor's web site: www.auditor.state.mn.us.

**SPECIAL REVIEW OF
ADMINISTRATIVE TRAFFIC CITATIONS AND
LOCAL TRAFFIC DIVERSION PROGRAMS**



November 13, 2013

**Legal/Special Investigation Division
Office of the State Auditor
State of Minnesota**

Deputy State Auditor/General Counsel
Celeste Grant

Staff

Nancy Bode, JD, *Assistant Legal Counsel*
Mark Kerr, JD, *Assistant Legal Counsel*

This page left blank intentionally

Table of Contents

Executive Summary	1
Scope and Methodology	3
Introduction	5
Background	7
Findings	15
Conclusions	23
Appendix 1. Letter from Assistant Attorney General Kenneth E. Raschke, Jr., to Minnesota State Representative Steve Smith (Dec. 1, 2003)	27
Appendix 2. Office of the State Auditor’s Statement of Position on Administrative Citations for Traffic Violations	37
Appendix 3. Driver Improvement Clinics Approved by the Minnesota Department of Public Safety	43
Appendix 4. Administrative Traffic Citation Fines Collected by Local Governments Pursuant to Minn. Stat. § 169.999 by Year (by Type of Local Government)	47
Administrative Traffic Citations Pursuant to Minn. Stat. § 169.999 - Cities	
Administrative Traffic Citations Pursuant to Minn. Stat. § 169.999 - Counties	
Administrative Traffic Citations Pursuant to Minn. Stat. § 169.999 - Towns	
Appendix 5. Program Fees Collected for Traffic Diversion Programs by Local Government by Year (by Type of Local Government)	51
Traffic Diversion Programs – Cities	
Traffic Diversion Programs – Counties	
Appendix 6. Summaries of Individual Traffic Diversion Programs Reviewed, Including Program Brochures	55
Cities of Centerville, Circle Pines, and Lexington in Anoka County	57
City of Coon Rapids in Anoka County	61
City of Lino Lakes in Anoka County	65
Chippewa County	69
City of Clara City in Chippewa County	73
Chisago County	77
City of North Branch in Chisago County	81

City of Wyoming in Chisago County	85
Goodhue County	89
City of Red Wing in Goodhue County	93
Grant County.....	97
City of Ashby in Grant County.....	101
City of Grand Rapids in Itasca County	105
Kandiyohi County.....	109
Lac qui Parle County	113
McLeod County	117
Meeker County.....	121
Norman County.....	125
City of Ada in Norman County.....	129
City of Twin Valley in Norman County	133
Red Lake County	137
Renville County	141
City of Fairfax in Renville County	147
Sherburne County	151
City of Becker in Sherburne County.....	155
City of Big Lake in Sherburne County	159
Sibley County.....	163
Wabasha County	167
City of Lake City in Wabasha County.....	171
City of Plainview in Wabasha County.....	175
City of Wabasha in Wabasha County	179
Wright County	183
Cities of Buffalo and Howard Lake in Wright County.....	187

List of Tables in Report

Table 1.	Summary of Administrative Traffic Citation Fines Collected by Local Governments Pursuant to Minn. Stat. § 169.999 for 2010, 2011, and 2012.....	15
Table 2.	Counties and Cities with Traffic Diversion Programs Included in the OSA’s Review	16
Table 3.	Summary of Program Fees Collected for Traffic Diversion Programs by Type of Local Government by Year	19

List of Figures in Report

Figure 1.	Map of Counties and Cities with Traffic Diversion Programs Included in the OSA’s Review	17
Figure 2.	Number of Traffic Diversion Programs by Type of Local Government by Year.....	18
Figure 3.	Administrative Traffic Citation Fines and Traffic Diversion Program Fees by Year.....	22

This page left blank intentionally

Executive Summary

- The number of local governments using administrative traffic citations issued under Minn. Stat. § 169.999 during 2010, 2011, and 2012 has remained fairly stable. However, the total revenues collected through administrative traffic citations have increased by approximately 15 percent, from almost \$349,000 in 2010 to over \$400,000 in 2012.¹
- The use of traffic diversion programs by both cities and counties is growing, especially in cities.² The total amount of fees collected by local governments for the traffic diversion programs in 2010, 2011, and 2012 (approximately \$1.6 million) exceeded the total amount in fines collected by local governments for administrative traffic citations for the same time period (approximately \$1.1 million).³
- Traffic diversion programs present a patchwork of traffic enforcement practices by local governments.⁴
- Whether local governments should be granted the authority to operate local traffic diversion programs is a question for the Legislature. The Office of the State Auditor recommends that the Legislature consider the following issues:⁵
 - The integrity of Minnesota's driving records;
 - The risk of losing federal highway aid and grant funds;
 - The merits of uniformity in traffic enforcement;
 - A statewide database for local traffic diversion programs;
 - Monitoring the use, scope, and effectiveness of local traffic diversion programs;
 - Standards for local traffic diversion programs;
 - Fee and surcharge requirements applicable to local traffic diversion programs;
 - Contracting authority for the use of third-party vendors for local traffic diversion programs; and
 - The data practice status of driver data collected during the operation of local traffic diversion programs.

¹ See page 15 of this report.

² See pages 18 - 19 of this report.

³ See pages 21 - 22 of this report.

⁴ See pages 19 - 21 of this report.

⁵ See pages 23 - 26 of this report.

This page left blank intentionally

Scope and Methodology

This report is a special examination of two enforcement programs used by local governments to respond to traffic offenses. The two programs serve as alternatives to processing traffic tickets through the State court system. This report first examines the use by local governments of administrative traffic tickets authorized by the Minnesota Legislature in 2009.⁶ This report then examines the growing number of traffic diversion programs being offered by local governments.

Administrative Traffic Tickets

To obtain information on the use of administrative traffic tickets, the Office of the State Auditor (OSA) surveyed 147 local governments in August 2013.⁷ The local governments were selected for the survey because they: 1) reported the collection of fines for administrative traffic citations on the OSA's 2010 or 2011 financial reporting form;⁸ 2) notified the Commissioner of Public Safety that they had passed a resolution authorizing the implementation of the administrative traffic ticket statute;⁹ or 3) transferred money to the Commissioner of Management and Budget (MMB) for deposit in the State's General Fund as required by the 2009 statute.¹⁰

The surveys asked whether the local government issued administrative traffic citations in 2010, 2011, or 2012, pursuant to the 2009 statute. If so, the local government was asked for the amount collected each year, the amount remitted to MMB, and the amount collected for each administrative traffic citation issued each year. The OSA achieved a 100 percent response rate on the survey. None of the responses were verified, and the financial information provided was self-reported.

Local Traffic Diversion Programs

The OSA has become aware of traffic diversion programs operated by cities, counties, and local prosecutors. To determine where in Minnesota traffic diversion programs were being offered, the OSA conducted internet searches. From July through the beginning of October 2013, the OSA conducted telephone interviews with local government officials about their traffic diversion programs.¹¹ The interviews asked about the fees charged for the program; the revenues collected by the program in 2010, 2011, 2012, and the first six months of 2013; the traffic offenses eligible

⁶ See Minn. Stat. § 169.999.

⁷ The majority of the surveys were sent by email on August 13, 2013. Included were 108 cities, 34 towns, and 5 counties.

⁸ At the time the OSA began its review, not all local governments had submitted their 2012 financial reporting forms to the OSA. Two towns that had reported less than \$5 collected for administrative fines in 2010 were excluded from the survey.

⁹ The OSA obtained from the Minnesota Department of Public Safety a list of local governments that had provided the Commissioner with notice that the local government had adopted a resolution on administrative traffic fines.

¹⁰ The OSA obtained from MMB a report of payments MMB had received from local governments pursuant to Minn. Stat. § 169.999, subd. 5.

¹¹ After the OSA began this review, a lawsuit filed in Wabasha County District Court challenged Wabasha County's authority to operate the County's traffic diversion program. See *Ass'n for Gov't Accountability v. Wabasha County*, Wabasha Co. Dist. Ct. File No. 79-CV-13-751. The OSA was named as a defendant in the lawsuit. As a result, the OSA did not interview Wabasha County officials as part of this review. Instead, the information contained in this review on Wabasha County's Safe Driving Class was obtained from public sources.

for the program; how long the program has been in existence; a description of the class; any payment of a \$75 surcharge to the State; the use of the uniform traffic ticket; and whether the violation went on the driver's record if the class was completed. As part of the interview, the OSA requested a copy of the brochure describing the program provided to drivers eligible for the program.

The OSA's search was not exhaustive. The OSA found and reviewed a total of 36 such programs - 21 operated by cities and 15 operated by counties.¹² None of the responses were verified, and the financial information provided was self-reported.

¹² The OSA found additional traffic diversion programs in the Cities of Annandale (population 3,280; Wright County), Lester Prairie (population 1,720; McLeod County), and Elbow Lake (population 1,167; Grant County). However, these programs were not included in this review because of their small size.

Introduction

In 2003, the Minnesota Attorney General's Office (AG) examined the legality of municipal programs that imposed administrative penalties for traffic law violations.¹³ Among other things, the AG concluded that the State of Minnesota had "plainly preempted the field of enforcement" for traffic law violations. Citing the strong legislative assertion of state preemption in the area of traffic regulation, the AG concluded that local governments were precluded from creating their own enforcement systems.

Despite the clear direction from the AG, some local governments implemented administrative penalty programs to enforce traffic laws. In 2008, the OSA conducted a Special Study on Administrative Penalty Programs.¹⁴ The Special Study revealed that administrative penalty programs implemented by local governments for traffic law enforcement had the following characteristics:

1. All the revenue collected was retained by the local government.
2. The monetary fines were often less than the fines associated with State traffic tickets.
3. Administrative citations were not reported to other government entities and did not affect an individual's driving record or insurance.
4. Administrative penalty programs were described as "voluntary" because the violators had the option of accepting a State traffic ticket.

In 2009, the Minnesota Legislature provided local governments with the authority to implement administrative citation programs for certain limited traffic violations.¹⁵ Among other things, the legislation set the fine for administrative traffic tickets at \$60. Of that amount, \$40 is credited to the local government's general revenue fund, and \$20 is transferred to the Commissioner of Management and Budget (MMB) for deposit in the State's General Fund.¹⁶ A number of local governments implemented administrative traffic citation programs in compliance with the 2009 law.

Other local governments implemented "traffic diversion programs" to handle certain traffic law violations. Generally under these programs, the local government offers a class for a fee for specific traffic offenses. Upon successful completion of the class, the traffic offense will not appear on the violator's driving record.

¹³ See Letter from Asst. Att'y Gen. Kenneth E. Raschke, Jr., to Minn. State Rep. Steve Smith (Dec. 1, 2003), reproduced in Appendix 1, page 27. See also Letter from State Auditor Awada to Minn. State Rep. Steve Smith (Oct. 2, 2003), at pages 2-4.

¹⁴ See Special Study: Administrative Penalty Programs (Feb. 13, 2008), available on the OSA's website at: http://www.auditor.state.mn.us/reports/gid/2008/adminpen/adminpen_08_fullreport.pdf.

¹⁵ See Minn. Stat. § 169.999, subd. 1.

¹⁶ See Minn. Stat. § 169.999, subd. 5. When a state trooper issues the administrative citation, the State's General Fund receives \$40, with the local government retaining \$20. See Minn. Stat. § 169.999, subd. 5(c).

Similar to administrative traffic citation programs prior to the 2009 law, the local traffic diversion programs generally have the following characteristics:

1. All the revenue collected is retained by the local government.¹⁷
2. The fees for the traffic class are less than the fines associated with State traffic tickets.
3. Citations are not reported to other government entities and do not affect an individual's driving record or insurance.
4. The traffic diversion programs are "voluntary" because the violator has the option of accepting a State traffic ticket.

¹⁷ The OSA found two cities during this review, the Cities of Coon Rapids (Anoka County) and Red Wing (Goodhue County), that forward a \$75 surcharge to MMB for each participant in their traffic diversion programs. *See* Minn. Stat. § 357.021, subd. 6.

Background

State Preemption in Traffic Enforcement

Generally, local governments have no inherent powers beyond those expressly granted by statute or charter, or those implied as reasonable and necessary to the implementation of such express powers.¹⁸ When exercising those powers, local governments may not address areas of the law that have been fully occupied or preempted by state law, or establish programs or procedures that are incompatible with state statutes.¹⁹

State statutes regulate traffic and motor vehicle operation in Minnesota. With respect to the offenses and procedures defined in the Traffic Code (Chapter 169), the State has preempted the field.²⁰ Preemption is found in Minn. Stat. § 169.022. The statute provides:

The provisions of this chapter [Chapter 169] shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may adopt traffic regulations which are not in conflict with the provisions of this chapter; provided, that when any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, then the penalty provided for violation of said local ordinance shall be identical with the penalty provided for in this chapter for the same offense.

Further support of State preemption over traffic enforcement can be found in the statutory requirement that uniform traffic tickets or uniform administrative traffic citations be used for Chapter 169 violations.²¹ Similarly, fines for Chapter 169 violations are uniform in amount and application statewide.²²

As a result, in the area of traffic enforcement, the Minnesota Supreme Court, in at least three cases, and the AG have concluded that local governments are precluded from creating their own traffic enforcement systems.²³

¹⁸ See, e.g., *Country Joe, Inc., v. City of Eagan*, 560 N.W.2d 681, 683 (Minn. 1997).

¹⁹ See, e.g., *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 356, 143 N.W.2d 813, 819 (1966) (A state law may fully occupy a particular field of legislation so that there is no room for local regulation.).

²⁰ See Letter from Asst. Att’y Gen. Kenneth E. Raschke, Jr., to Minn. State Rep. Steve Smith (Dec. 1, 2003), at pages 4-5. See also *State v. Hoben*, 256 Minn. 436, 444, 98 N.W.2d 813, 818-819 (1959).

²¹ See Minn. Stat. §§ 169.99, subd. 1, and 169.999, subd. 3. The uniform traffic ticket must be used by “police and peace officers or any other person for violations of [Chapter 169] or ordinances in conformity thereto.” Minn. Stat. § 169.99, subd. 1(a). It must “be in the form and have the effect of a summons and complaint.” Minn. Stat. § 169.99, subd. 1(a).

²² See Minn. Stat. § 609.101, subd. 4; Minn. R. Crim. P. 23.03, subd. 2(1).

²³ See *State v. Hoben*, 256 Minn. 436, 98 N.W.2d 813, 818-819 (1959); *Duffy v. Martin*, 265 Minn. 248, 252, 121 N.W.2d 343, 347 (1963); *State v. Kuhlman*, 729 N.W.2d 577, 581 (Minn. 2007); Letter from Asst. Att’y Gen. Kenneth E. Raschke, Jr., to Minn. State Rep. Steve Smith (Dec. 1, 2003), at pages 5-6.

Penalties for Traffic Violations

Most traffic offenses are petty misdemeanor or misdemeanor offenses. Generally, petty misdemeanor offenses are “payable offenses.” That is, the fine can be paid without a court appearance, and payment of the fine constitutes a plea of guilty.²⁴

The total amount paid by a violator of a traffic law is generally composed of three items:

- The base fine, which is generally the amount set by the judicial branch and found in a uniform statewide fine schedule known as the Statewide Payables List;²⁵
- A surcharge set by statute at \$12 for parking violations and \$75 for all other violations;²⁶ and
- A law library fee that varies by county.²⁷

The distribution of proceeds from the fine, surcharge, and law library fee is established in statute.²⁸ For example, traffic fines are generally distributed 2/3 to the local government where the violation occurred and 1/3 to the State.²⁹ However, distributions may differ, depending upon the violation. Fines from seat belt violations, for example, must go to an emergency medical services relief account.³⁰

The Surcharge

In 1999, the Legislature imposed a surcharge on every person convicted of any felony, gross misdemeanor, misdemeanor, or petty misdemeanor offense, other than violations related to vehicle parking.³¹ The surcharge does not apply when a person is convicted of a petty misdemeanor for which no fine is imposed.³²

²⁴ See Minn. R. Crim. P. 23.03, subd. 3.

²⁵ See Minn. Stat. § 609.101, subd. 4; Minn. R. Crim. P. 23.03, subd. 2(1). The Statewide Payables List is available at: <http://www.mncourts.gov/?page=1774>.

²⁶ See Minn. Stat. § 357.021, subd. 6.

²⁷ See Minn. Stat. §§ 134A.09, subd. 3 (Hennepin and Ramsey Counties) and 134A.10, subd. 4 (all other counties).

²⁸ For a detailed description of the disbursement allocations, see the Minn. House Research Dep't Information Brief on Traffic Citations (Sept. 2012), available at: <http://www.house.leg.state.mn.us/hrd/pubs/trafcit.pdf>.

²⁹ See, e.g., Minn. Stat. § 484.90, subd. 6.

³⁰ See Minn. Stat. § 169.686, subd. 3 (90 percent for eight regional emergency medical services systems and 10 percent to the State Patrol for traffic safety education programs).

³¹ See Minn. Stat. § 357.021, subd. 6(a). For a history of the surcharge, see the Minn. House Research Dep't Information Brief on Traffic Citations (Sept. 2012).

³² See Minn. Stat. § 357.021, subd. 6(a).

Since 2009, the surcharge has been \$75. The surcharge must be forwarded by the “court administrator or other entity collecting a surcharge” to the Commissioner of MMB. It may not be waived, even upon a showing of indigency or undue hardship.³³ Generally, the \$75 surcharge is distributed among the State’s General Fund, the peace officers training account, and the game and fish fund for Department of Natural Resources (DNR) officer training.³⁴

In addition to raising the surcharge to \$75 in 2009, amendments to the statute provided that the surcharge does not apply to administrative citations issued pursuant to section 169.999, but does apply to people who successfully complete a diversion or similar program for a violation of Chapter 169.³⁵ In 2011, the statute was amended again to its current language: “A person who enters a diversion program, continuance without prosecution, continuance for dismissal, or stay of adjudication for a violation of chapter 169 must pay the surcharge described in this subdivision. A surcharge imposed under this paragraph shall be imposed only once per case.”³⁶

Driving Records

Chapter 169 violations are recorded in a centralized database maintained by the Driver and Vehicle Services Division of the Minnesota Department of Public Safety.³⁷

Minnesota law prohibits certain speeding violations from appearing on a driver’s record. The law, known as the “Dimler Amendment,” currently provides that speeding violations will not be placed on a driver’s record if the driver was going no more than ten miles per hour over the speed limit in a 55 or 60 mile per hour zone.³⁸ Starting August 1, 2014, speeding violations in a 60 mile per hour zone will not appear on the record only if the driver was going no more than five miles per hour over the speed limit. The “Dimler Amendment” does not apply if: 1) the speed limit is other than 55 or 60 miles per hour; 2) the speeding violation occurs in a commercial motor vehicle; or 3) the driver holds a commercial driver’s license (CDL).³⁹

³³ See Minn. Stat. § 357.021, subd. 6(c) and (d).

³⁴ See Minn. Stat. § 357.021, subd. 7. The percentage distributions generally result in \$65 to the State’s General Fund, \$9.75 to the peace officers training account, and \$0.25 to the game and fish fund for DNR officer training. See Minn. House Research Dep’t Information Brief on Traffic Citations (Sept. 2012).

³⁵ See 2009 Minn. Laws Chaps. 83, art. 2 § 22 and 158 § 7. The 2009 Chapter 169 diversion program amendment provided: “A person who successfully completes a diversion or similar program for a violation of chapter 169 must pay the surcharge described in this subdivision.”

³⁶ See 1 Sp. 2011 Minn. Laws Chap. 1, art. 3 § 3. This language is currently found in Minn. Stat. § 357.021, subd. 6(f).

³⁷ See generally Minn. Stat. § 171.12.

³⁸ See Minn. Stat. § 171.12, subd. 6.

³⁹ See Minn. Stat. § 171.12, subd. 6.

Federal law requires that states “not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver’s conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver’s record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.”⁴⁰ Sanctions for noncompliance with this federal law include the withholding of Federal-aid Highway Program funds and Federal Motor Carrier Safety Assistance Program grant funds from the State.⁴¹

To prevent the loss of federal highway aid and grant funds, Minnesota adopted a statute in 2009 that parallels the language of the federal law. The Minnesota statute provides: “An agency, court, or public official in Minnesota shall not mask, defer imposition of judgment for, or allow an individual to enter into a diversion program that would prevent a conviction for a violation of a state or local traffic control law, except a parking violation, from appearing on the driving record of a holder of a commercial driver’s license, when the violation is committed in any type of motor vehicle, or on the driving record of an individual who committed the violation in a commercial motor vehicle.”⁴²

Administrative Traffic Citations (Minn. Stat. § 169.999)

In 2009, the Minnesota Legislature authorized the use of administrative citation programs by local governments for certain traffic violations.⁴³ The statute, Minn. Stat. § 169.999, requires the following:⁴⁴

1. Passage of a resolution about the program and notification to the Commissioner of Public Safety of the resolution.⁴⁵
2. Limitations on the violations eligible for the program to speeding less than ten miles per hour over the speed limit, failing to obey a stop line, and operating a vehicle in violation of certain safety or equipment-related standards.⁴⁶
3. Use of the uniform administrative citation form prescribed by the Commissioner of Public Safety.⁴⁷
4. A process for contesting the administrative citation.⁴⁸
5. A fine of \$60, with \$40 credited to the local government’s general revenue fund, and \$20 transferred to MMB for deposit in the State’s General Fund.⁴⁹

⁴⁰ See 49 CFR Part 384.226.

⁴¹ See 49 CFR Part 384.401.

⁴² Minn. Stat. § 171.163.

⁴³ 2009 Minn. Laws Chap. 158 § 6.

⁴⁴ The OSA’s Statement of Position on Administrative Citations for Traffic Violations provides additional information on Minn. Stat. § 169.999. The Statement of Position is reproduced in Appendix 2, page 37, and is available on the OSA’s website at:

http://www.auditor.state.mn.us/other/Statements/adminpenaltiestrafficoffenses_0907_statement.pdf.

⁴⁵ See Minn. Stat. § 169.999, subd. 1.

⁴⁶ See Minn. Stat. § 169.999, subd. 1.

⁴⁷ See Minn. Stat. § 169.999, subd. 3.

⁴⁸ See Minn. Stat. § 169.999, subd. 4.

⁴⁹ See Minn. Stat. § 169.999, subd. 5. The amount remaining with the local government must be used to supplement, but not supplant, existing law enforcement funding. See Minn. Stat. § 169.999, subd. 5(b).

6. A prohibition on the use of the program for violations that occur in a commercial motor vehicle or for drivers holding a CDL.⁵⁰
7. A report of the total amount of administrative traffic fines collected by a local government as a separate category in the local government's financial reports, summaries, or audits.⁵¹

Authorized Traffic Diversion Programs

The Legislature has authorized two diversion programs for traffic violations: 1) driver improvement clinics and 2) driving after suspension (DAS) and driving after revocation (DAR) diversion pilot programs. As discussed previously in this report, the Legislature has prohibited the use of traffic diversion programs for people holding a commercial driver's license.⁵²

1. Driver Improvement Clinics

Minnesota statutes authorize a trial court to require a person convicted of a violation of Chapter 169 (the Traffic Code) to attend a driver improvement clinic as part of, or in lieu of, other penalties.⁵³

A "driver improvement clinic" is defined as "a formal course of study established under section 169.972, designed primarily to assist persons convicted of traffic violations in correcting improper driving habits and to familiarize them with the provisions of the Highway Traffic Regulation Act."⁵⁴ Under the law, a municipality may establish and conduct a driver improvement clinic and may charge "reasonable tuition fees."⁵⁵ The fees, not to exceed \$50, must also not exceed the actual cost of the course.⁵⁶

Under the rules for driver improvement clinics promulgated by the Commissioner of Public Safety, a driver improvement clinic must provide a course of study that is eight to nine hours in length.⁵⁷ A person may not be ordered to attend a clinic that is located more than 35 miles from the person's residence.⁵⁸

⁵⁰ See Minn. Stat. § 169.999, subd. 6. This prohibition reflects the federal requirement and prevents the loss of federal highway aid and grant moneys. See 49 CFR Parts 384.226, 384.401.

⁵¹ See Minn. Stat. § 169.999, subd. 8(a). The OSA added a line for this amount on the annual reporting forms local governments submit to the OSA. The OSA must annually report to the Commissioner of Public Safety the administrative traffic fines collected by local governments. See Minn. Stat. § 169.999, subd. 8(b).

⁵² See Minn. Stat. § 171.163.

⁵³ See Minn. Stat. § 169.89, subd. 5.

⁵⁴ See Minn. Stat. § 169.971, subd. 2.

⁵⁵ See Minn. Stat. § 169.972, subs. 1 and 2. A "municipality" includes any city, county or town. See Minn. Stat. § 169.971, subd. 3.

⁵⁶ See Minn. Stat. § 169.972, subd. 2.

⁵⁷ See Minn. Rules 7411.5700, subp. 3. The rules also set requirements for instructors, course facilities, course content, and record keeping. See Minn. Rules 7411.5700. A list of approved driver improvement clinics is found in Appendix 3, page 43. See also Minn. Stat. §§ 169.973, subd. 1 (Commissioner of Public Safety shall promulgate rules setting the standards for the curriculum and mode of instruction of driver improvement clinics and youth-oriented driver improvement clinics); and 169.89, subd. 5 ("approved driver improvement clinic or youth-oriented driver improvement clinic" means a clinic whose curriculum and mode of instruction conform to standards promulgated by the Commissioner of Public Safety).

⁵⁸ See Minn. Stat. § 169.89, subd. 5.

2. DAS/DAR Diversion Pilot Programs

In 2009, the Legislature authorized five cities to each establish a pilot driver's license reinstatement diversion program.⁵⁹ The legislation specifically granted cities the authority to contract with a third party to create and administer the diversion program.⁶⁰

The pilot program was created for certain offenders who had been charged with DAS or with certain types of DAR violations, who had not yet entered a plea in the proceedings.⁶¹ The Commissioner of Public Safety and the participating cities are required to report the results of the pilot program to the Legislature.

In 2011, the Legislature made changes to the pilot program, including extending the program to counties and delaying the program's sunset date.⁶²

Other Authorized Diversion Programs

Outside of Chapter 169, the Legislature has mandated the establishment of diversion programs for certain juvenile and adult offenders, and has authorized the establishment of diversion programs for individuals involved with the issuance of dishonored checks.⁶³

⁵⁹ See 2009 Minn. Laws Chap. 59, art. 3 § 4. The law authorizes the Commissioner of Public Safety to permit additional cities to establish license reinstatement diversion pilot programs.

⁶⁰ See 2009 Minn. Laws Chap. 59, art. 3 § 4, subd. 3.

⁶¹ The legislation provided that an individual with a CDL was not eligible for the pilot program.

⁶² See 2011 Minn. Laws Chap. 87. In 2013, the sunset date for the pilot program was extended to June 30, 2017. See 2013 Minn. Laws Chap. 127 § 60.

⁶³ See Minn. Stat. §§ 388.24 (juveniles); 401.065 (adults); and 628.69 (dishonored checks). "Pretrial diversion" is defined in Minn. Stat. § 388.24, subd. 1(2), as "the decision of a prosecutor to refer [a juvenile] offender to a diversion program on condition that the delinquency petition against the offender will be dismissed or the petition will not be filed after a specified period of time if the offender successfully completes the program." "Pretrial diversion" is defined in Minn. Stat. § 401.065, subd. 1(2), as "the decision of a prosecutor to refer [the adult] offender to a diversion program on condition that the criminal charge against the offender will be dismissed after a specified period of time, or the case will not be charged, if the offender successfully completes the program." "Pretrial diversion" is defined in Minn. Stat. § 628.69, subd. 1(2), as "the decision of a prosecutor to refer an offender to a diversion program on condition that the criminal charges against the offender will be dismissed after a specified period of time, or the case will not be charged, if the offender successfully completes the program."

The statutes set the diversion program components.⁶⁴ The statutes require that information on program participants be provided to and maintained by the Minnesota Bureau of Criminal Apprehension.⁶⁵ On a biennial basis, county attorneys must report to the state court administrator and to the Legislature on the operation of their diversion programs for adult offenders.⁶⁶ On a biennial basis, prosecutors must also report to the Minnesota Supreme Court and to the appropriate House and Senate policy committee chairs on their diversion programs for dishonored checks.⁶⁷ Prosecutors are expressly authorized to contract with a private entity to establish a dishonored check diversion program.⁶⁸

Minnesota's Rules of Criminal Procedure govern the procedures in prosecutions for felonies, gross misdemeanors, misdemeanors, and petty misdemeanors in Minnesota's district courts.⁶⁹ Minnesota Rule of Criminal Procedure 27.05 governs pretrial diversion agreements, and states that a pretrial diversion agreement must not include a condition the court could not impose as a condition of probation.⁷⁰ If charges are not pending before the court, the Comment to Rule 27.05 recognizes that the prosecutor and defendant may agree to diversion of a case without court approval.⁷¹

⁶⁴ See Minn. Stat. §§ 388.24, subds. 2 and 3 (juveniles); 401.065, subds. 2 and 3 (adults); and 628.69, subds. 3 and 4 (dishonored checks).

⁶⁵ See Minn. Stat. §§ 388.24, subd. 4 (juveniles); 401.605, subd. 3a (adults); and 628.69, subd. 6 (dishonored checks). See also Minn. Stat. §§ 299C.095 and 299C.46, subd. 5.

⁶⁶ See Minn. Stat. § 401.065, subd. 4.

⁶⁷ See Minn. Stat. § 628.69, subd. 7.

⁶⁸ See Minn. Stat. § 628.69, subd. 2.

⁶⁹ See Minn. R. Crim. P. 1.01.

⁷⁰ See Minn. R. Crim. P. 27.05, subd. 1(3).

⁷¹ Similarly, Minn. R. Crim. P. 30.01 states that a prosecutor may dismiss a complaint or tab charge (a brief statement of charges entered in the record by the court administrator) without the court's approval. Reasons for the dismissal must be stated. See Minn. R. Crim. P. 30.01. The Comment to the Rule notes that one of the reasons for a dismissal may include the satisfactory completion of a pretrial diversion program. See Minn. R. Crim. P. Comment to Rule 30. Dismissal of an indictment requires the court's approval. See Minn. R. Crim. P. 30.01.

This page left blank intentionally

Findings

Administrative Traffic Citation (Minn. Stat. § 169.999)

Based on the OSA’s survey results, the number of local governments using administrative traffic citations during 2010, 2011, and 2012 has remained fairly stable. Administrative traffic citations are primarily used by cities. The total revenues collected through administrative traffic citations have increased by approximately 15 percent, from almost \$349,000 in 2010 to over \$400,000 in 2012.

A summary of the use of administrative traffic fines by local governments is presented in Table 1 below. The survey results for individual local governments are found in Appendix 4, page 47.

	<u>2010</u>	<u>2011</u>	<u>2012</u>
<u>Cities</u>			
Number of Cities	42	46	46
Amount Collected	\$330,686	\$332,530	\$343,631
Amount Remitted To MMB	\$102,341	\$109,957	\$113,580
<u>Counties</u>			
Number of Counties	2	3	3
Amount Collected	\$5,440	\$18,650	\$34,560
Amount Remitted To MMB	\$1,960	\$4,760	\$9,700
<u>Towns</u>			
Number of Towns	2	2	2
Amount Collected	\$12,786	\$16,941	\$25,184
Amount Remitted To MMB	\$4,102	\$5,800	\$8,340
<u>Total</u>			
Total Amount Collected	\$348,912	\$368,121	\$403,375
Total Amount Remitted to MMB	\$108,403	\$120,517	\$131,620

Notes to Table 1: Amounts are rounded to the nearest dollar. The “Amount Remitted to MMB” is the amount local governments reported in response to the OSA’s survey. The amounts do not always agree with the data maintained by MMB. The differences in the amounts appear to be based primarily upon timing. For example, amounts remitted to MMB at year-end may not have been received by MMB until the next calendar year.

Traffic Diversion Programs Operated by Local Governments

The local traffic diversion programs reviewed by the OSA present a patchwork of traffic enforcement practices by local governments in Minnesota. The programs generally have the following characteristics:

- Certain traffic violators are provided the State traffic ticket and a brochure describing a traffic diversion program.
- The traffic diversion program consists of a traffic class offered for a fee.
- Fees for the traffic classes are less than the fines associated with the State traffic ticket.
- With successful completion of the class, a traffic violation is not reported to other government entities and does not appear on the driver's record.
- All revenue collected for the program is retained by the local government(s).¹
- If the violator does not participate in the class, the State traffic ticket is enforced.

Counties and cities with traffic diversion programs included in the OSA's review are shown in Table 2 below. A map of the local governments with traffic diversion programs included in the OSA's review is found in Figure 1 on the following page. A summary of the individual programs reviewed by the OSA is contained in Appendix 6, page 55.

Table 2: Counties and Cities with Traffic Diversion Programs Included in the OSA's Review

Counties:

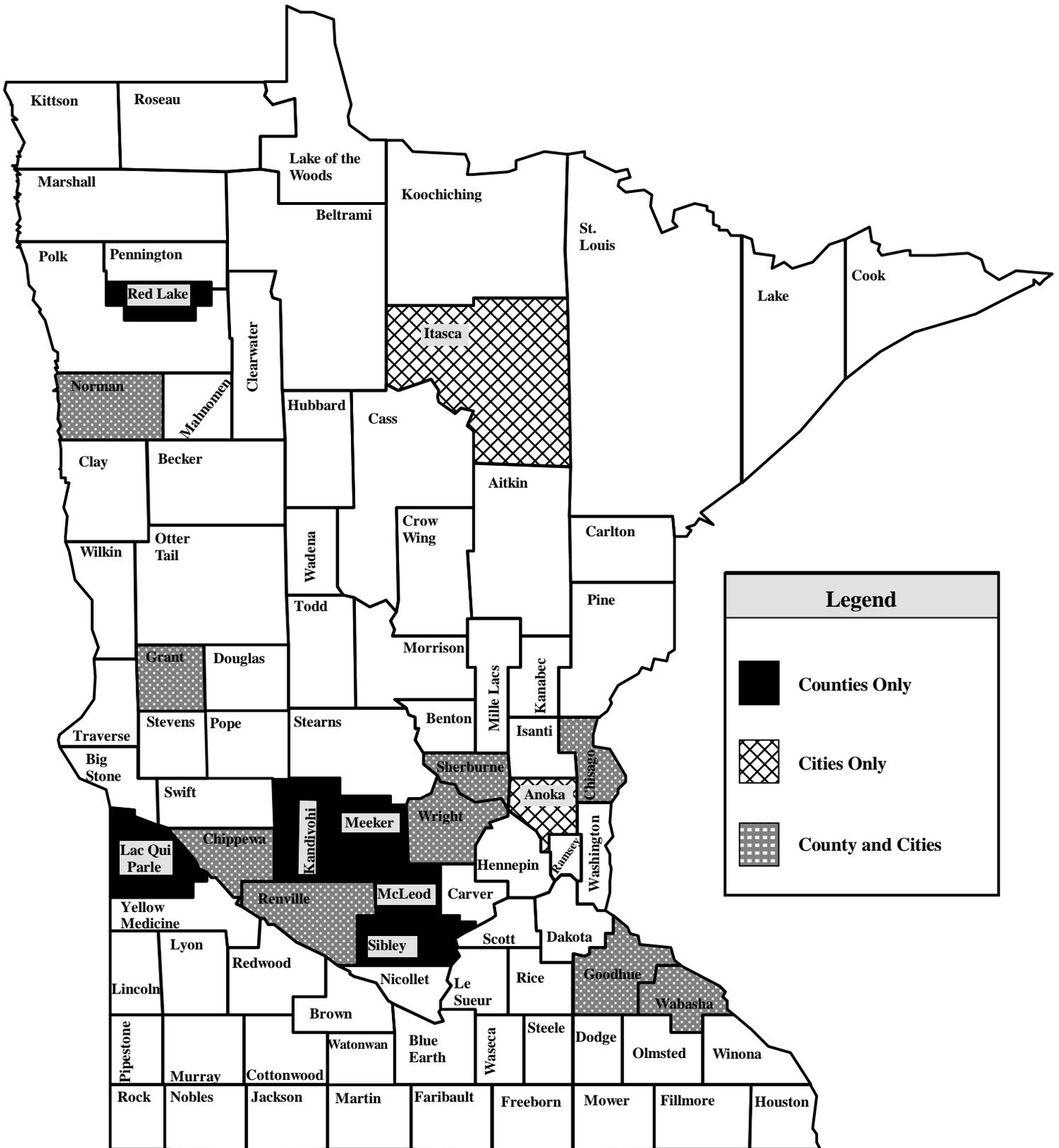
Chippewa	Chisago	Goodhue
Grant	Kandiyohi	Lac qui Parle
McLeod	Meeker	Norman
Red Lake	Renville	Sherburne
Sibley	Wabasha	Wright

Cities (and County Where City is Located):

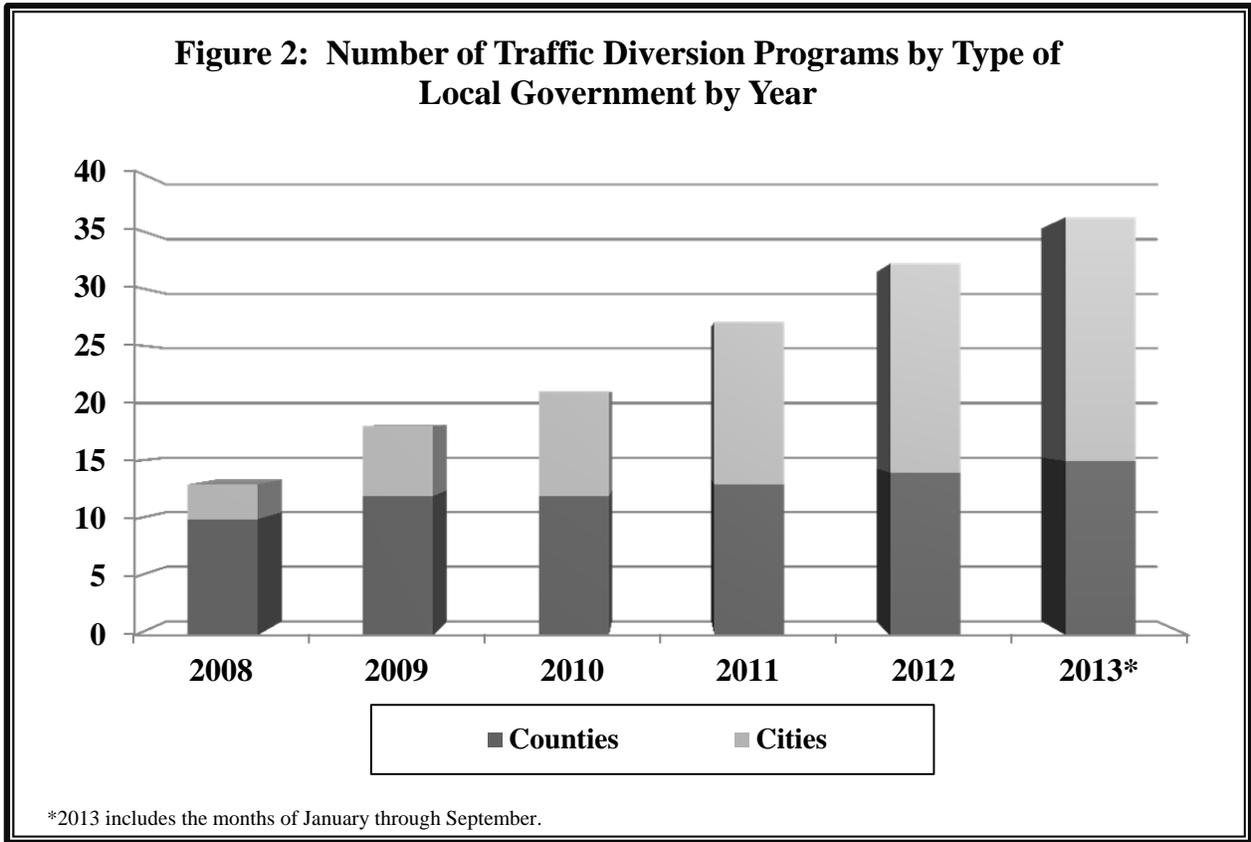
Ada (Norman)	Ashby (Grant)	Becker (Sherburne)
Big Lake (Sherburne)	Buffalo (Wright)	Centerville (Anoka)
Circle Pines (Anoka)	Clara City (Chippewa)	Coon Rapids (Anoka)
Fairfax (Renville)	Grand Rapids (Itasca)	Howard Lake (Wright)
Lake City (Wabasha)	Lexington (Anoka)	Lino Lakes (Anoka)
North Branch (Chisago)	Plainview (Wabasha)	Red Wing (Goodhue)
Twin Valley (Norman)	Wabasha (Wabasha)	Wyoming (Chisago)

¹ The OSA found two cities during this review, the Cities of Coon Rapids (Anoka County) and Red Wing (Goodhue County), that forward the \$75 surcharge to MMB for each participant in their traffic diversion programs. See Minn. Stat. § 357.021, subd. 6.

Figure 1: Traffic Diversion Programs Included in the OSA's Review



The number of local traffic diversion programs is growing, especially in cities, as shown in Figure 2 below and Table 3 on the following page. During its review, the OSA learned that at least four additional local governments are considering the adoption of traffic diversion programs.⁷³



⁷³ The City of Spring Lake Park (Anoka County) anticipates offering an on-line course prior to the end of the year. The Rice County Attorney informed the OSA that Rice County and the Cities of Faribault (Rice County) and Northfield (Rice County) are also considering an on-line course. OSA telephone conversation with Rice County Attorney on Sept. 27, 2013.

Table 3: Summary of Program Fees Collected for Traffic Diversion Programs by Type of Local Government by Year

	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u> (January – June)
<u>Cities</u>				
Number of Cities With Traffic Diversion Programs	9	14	18	19
Program Fees Collected	\$133,965	\$214,330	\$262,450	\$150,511
<u>Counties</u>				
Number of Counties With Traffic Diversion Programs	12	13	14	15
Program Fees Collected	\$370,506	\$333,185	\$343,550	\$124,969
<u>Total Fees Collected</u>	\$504,471	\$547,515	\$606,000	\$275,480

*Notes to Table 3: Amounts are rounded to the nearest dollar. Data for individual local governments are found in Appendix 5, page 51, and Appendix 6, page 55. Fees for a city in Renville County are reported under the County’s program; two cities did not begin collecting program fees until after June 2013. One city remits the \$75 surcharge for each program participant out of the program fees collected; another city collects the \$75 surcharge from each program participant in addition to the program fees. Program fees collected in 2013 do not include fees collected by Wabasha County.

1. Program Characteristics

The contents of the classes in the traffic diversion programs vary greatly. The classes range from an eight to ten minute on-line class in the City of Grand Rapids to two-hour sessions conducted by law enforcement personnel at the local law enforcement center. At least four additional local governments are considering the adoption of the eight to ten minute on-line class currently used by the City of Grand Rapids.⁷⁴ In some programs, the class content may not relate to the violation.

⁷⁴ The Cities of Spring Lake Park (Anoka County), Faribault (Rice County), and Northfield (Rice County) and Rice County.

The traffic violations eligible for the programs vary. For speeding violations, some programs have no set limit on the miles per hour (mph) over the speed limit eligible for the program.⁷⁵ One program includes speeding violations up to 25 mph over the limit.⁷⁶ Other programs include speeding violations up to 20 mph over the limit.⁷⁷ Speeding violations are eligible for most programs without regard to the established speed limit where the offense occurred.⁷⁸ Seatbelt and texting while driving violations are eligible for some of the programs.⁷⁹

2. Additional Local Traffic Diversion Program Findings

The OSA also found the following:

- All of the programs provide that the offense will not appear on the driver's record if the program is successfully completed.
- No central statewide database of participation in the programs exists. Instead, records for participants in a local government's program are maintained locally. While most of the programs limit the number of times a person may participate in the program, there is no mechanism for determining how many times a person may have participated in programs offered by other local governments.
- Some of the programs expressly prohibit participation by a person with a commercial driver's license (CDL), but most do not.⁸⁰
- Fees for the courses range from \$25 to \$125.⁸¹ Three cities using an on-line program set their fees at 90 percent of the Statewide Payables List.⁸²

⁷⁵ See, e.g., Lac qui Parle, Norman, Sherburne, and Wright Counties, and City of Becker (Sherburne County) in Appendix 6.

⁷⁶ See City of Grand Rapids (Itasca County) in Appendix 6.

⁷⁷ See, e.g., McLeod and Sibley Counties, and Cities of Ada and Twin Valley (Norman County) in Appendix 6.

⁷⁸ But see Minn. Stat. § 171.12, subd. 6 (the "Dimler Amendment").

⁷⁹ See, e.g., Lac qui Parle, Meeker, Renville, Sherburne, Sibley, and Wabasha Counties, and Cities of Becker and Big Lake (Sherburne County), Lake City, Plainview, and Wabasha (Wabasha County) (seatbelt); Wright County and Cities of Buffalo and Howard Lake (Wright County), Grand Rapids (Itasca County), Lino Lakes (Anoka County), and Red Wing (Goodhue County) (seatbelt and texting while driving) in Appendix 6.

⁸⁰ Programs that expressly exclude a person with a CDL from participating include: Cities of Centerville, Circle Pines, Coon Rapids, Lexington, and Lino Lakes (Anoka County), Buffalo and Howard Lake (Wright County), and Renville, Sherburne, and Sibley Counties. See Appendix 6. The OSA did not determine as part of this review whether individuals holding a CDL participated in any of the programs.

⁸¹ E.g., Red Lake County (\$25 fee); Cities of Wabasha, Plainview, and Lake City (Wabasha County) and Wabasha County (\$125 fee). See Appendix 6.

⁸² See Cities of Centerville, Circle Pines, and Lexington (Anoka County) in Appendix 6.

- Fees for the courses are generally retained by the local government(s). While several of the programs describe themselves as diversion programs, only two of the programs remit the \$75 surcharge to the State. More specifically, the City of Red Wing pays the \$75 surcharge out of the \$100 program fee; the City of Coon Rapids charges (and pays to the State) the \$75 surcharge for traffic offenses using its program in addition to the \$100 program fee.⁸³
- Brochures for the programs are provided to drivers along with the uniform traffic ticket. One of the brochures lists the average increase in automobile insurance premiums for a number of common tickets and suggests maintaining a clear driver’s record as a “Savings Tip.”⁸⁴ Copies of the brochures for the programs are included in Appendix 6, page 55.

In addition, the OSA learned that data collected from an adult driver to determine eligibility in a traffic diversion program and submitted to an outside vendor are public data, according to a recent Advisory Opinion by the Minnesota Commissioner of Administration.⁸⁵ The public data contained on the driver’s license magnetic stripe and submitted to the outside vendor include a driver’s height, weight, eye color, birth date, and license number. Because the data would not be transmitted to or from the Minnesota Department of Public Safety, the Advisory Opinion concluded that the Federal Drivers Privacy Protection Act was not applicable.⁸⁶

Comparison of Administrative Traffic Citations and Local Traffic Diversion Programs

The total amount of fees collected in 2010, 2011, and 2012 by local governments for traffic diversion programs (approximately \$1.6 million) exceeds the total amount in fines collected by local governments for administrative traffic citations issued under Minn. Stat. § 169.999 during the same three-year time period (approximately \$1.1 million). The comparison is shown in Figure 3 on the following page. The amount collected in traffic diversion program fees per entity is significantly greater than the amount collected in administrative traffic citation fines per entity.

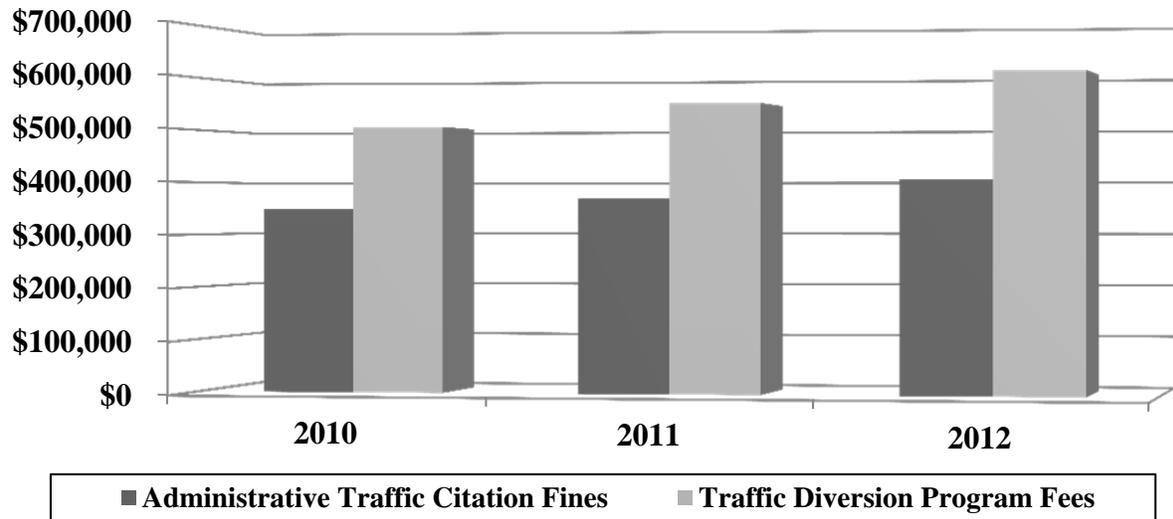
⁸³ For most petty misdemeanor violations of Chapter 169, the City of Coon Rapids program fee is \$100. The City does not collect the \$75 surcharge for non-traffic offenses using its program.

⁸⁴ See City of Grand Rapids Traffic Education Program brochure in Appendix 6.

⁸⁵ See Minn. Comm’r of Admin. Advisory Op. 13-013 (Sept. 6, 2013), issued to the City of Spring Lake Park (Anoka County), available at: <http://www.ipad.state.mn.us/opinions/2013/13013.html>. The City did not raise the issue of the data practice status of data from juvenile drivers. The City of Grand Rapids in Itasca County uses the vendor being considered by the Cities of Spring Lake Park, Northfield, and Faribault, and Rice County.

⁸⁶ See 18 U.S.C. § 2721 *et seq.* The Act regulates when motor vehicle departments may release driving records and when recipients of motor vehicle department records may share the information with others.

Figure 3: Administrative Traffic Citation Fines and Traffic Diversion Program Fees by Year



Conclusions

The State of Minnesota has long preempted local control of traffic enforcement. This special review documents the increasing use of traffic diversion programs created by local governments. It provides a snapshot of existing programs, and reveals the patchwork of local programs currently controlling traffic enforcement practices in Minnesota.

Minnesota drivers experience vastly different consequences for traffic violations depending upon where the violation occurs. Allowing hundreds of local governments to independently decide which violations to report to the Department of Public Safety threatens the integrity of Minnesota's driving records. Accurate and complete tracking of traffic violations can help remove dangerous drivers from Minnesota's roads.⁸⁷

It is unknown whether commercial drivers in Minnesota have been able to keep traffic violations off their driving records by participating in local traffic diversion programs. Participation of commercial drivers in such programs may put Minnesota at risk of losing federal highway aid and grant funds. In addition, if unsafe drivers, commercially licensed or otherwise, are permitted to operate motor vehicles because their traffic violations were not reported to the Department of Public Safety, the public is put at risk.

Whether local governments should be authorized to design and operate their own traffic diversion programs is a question for the Legislature. If these programs represent good public policy and contribute to the safety of Minnesota's roads, then every local government should be able to implement such a program.

As the Legislature decides whether local governments should be granted the authority to develop and conduct traffic diversion programs, the OSA recommends that the following issues be considered:

1) Integrity of Minnesota's Driving Records and Federal Highway Aid and Grant Funds

Both the administrative traffic citation law and the "Dimler Amendment" establish uniform, statewide criteria for recording offenses on driving records.⁸⁸ In contrast, local traffic diversion programs keep various traffic violations, determined at the local level, from being recorded on driving records.

To avoid the loss of federal highway aid and grant funds, Minnesota law expressly prohibits the use of traffic diversion programs by those holding a commercial driver's license or committing a traffic violation in a commercial motor vehicle.⁸⁹ All traffic diversion programs must comply with this law or Minnesota risks the loss of federal funds. Only some of the local traffic diversion programs reviewed by the OSA expressly prohibit participation by a person with a commercial driver's license.

⁸⁷ See, e.g., Minn. Stat. § 171.18, subd. 1(a)(4) (license suspensions for habitual violators of the traffic laws).

⁸⁸ See Minn. Stat. §§ 169.999, subd. 7, and 171.12, subd. 6.

⁸⁹ See Minn. Stat. § 171.163.

2) Uniformity in Traffic Enforcement

Current Minnesota law promotes uniform traffic regulation.⁹⁰ Instead of fines imposed statewide through the Statewide Payables List, the fees charged for local traffic diversion programs reviewed by the OSA vary among jurisdictions and among offenses. Instead of receiving a uniform traffic ticket, drivers eligible for a local government's traffic diversion program receive the uniform traffic ticket and a brochure that serves as an amendment to the uniform traffic ticket.

3) Reporting Requirements

If local traffic diversion programs are authorized, a statewide database of traffic diversion program participants is needed. Current databases of participants are available only to the local government offering the program. In other types of diversion programs authorized by the Legislature, information on program participants is provided to a statewide database available to law enforcement entities.⁹¹ Without such a statewide database for traffic violations, a dangerous driver may attend multiple programs without detection, continue to drive, and avoid serious sanctions.

If these programs are authorized, the Legislature should consider requiring annual reports to be made to the courts and to the Legislature to monitor the use, scope, and effectiveness of local traffic diversion programs. Such reports are required for the pretrial diversion programs authorized by the Legislature for writers of dishonored checks and adult offenders.⁹² The Legislature could also require local governments to report the amounts collected through these programs as a separate category on their annual financial reporting forms submitted to the OSA, similar to the requirement for administrative traffic citations.⁹³

4) Program Standards

Minnesota law requires court-ordered driver improvement clinics to meet standards established by the Commissioner of Public Safety and to be held within 35 miles of the offender's residence.⁹⁴ In contrast, existing local traffic diversion programs reviewed by the OSA vary from an eight to ten minute on-line course to live sessions lasting more than two hours conducted by law enforcement personnel at the local law enforcement center, which may well be located more than 35 miles from the offender's residence. There is currently no requirement that the content of the course address the subject matter of the violation. If these programs are authorized, criteria for the programs should be clearly established and implemented statewide.

⁹⁰ See, e.g., Minn. Stat. §§ 169.022; 169.99, subd. 1; and 609.101, subd. 4.

⁹¹ See, e.g., Minn. Stat. §§ 388.24, subd. 4; 401.065, subd. 3a; and 628.69, subd. 6. See also Minn. Stat. §§ 299C.095 and 299C.46, subd. 5.

⁹² See Minn. Stat. §§ 401.065, subd. 4, and 628.69, subd. 7.

⁹³ See Minn. Stat. § 169.999, subd. 8(a).

⁹⁴ See Minn. Stat. §§ 169.89, subd. 5, and 169.973. See also Minn. Rules 7411.5700.

5) Surcharge and Fee Requirements

The 2009 and 2011 legislative amendments to the \$75 surcharge statute applied the surcharge to everyone who enters a traffic diversion program for a violation of Chapter 169.⁹⁵ Many local programs describe themselves as diversion programs, but this review identified only two local governments that remit the \$75 surcharge to the State.⁹⁶ If these programs are authorized, the application of the \$75 surcharge to these local traffic diversion programs should be clarified and universally applied.

Fees paid for the local traffic diversion courses reviewed by the OSA are generally retained by the local government(s). No fine is paid to the State. As a result, statutorily-required distributions of traffic fines for specific offenses included in these programs do not occur. The fines do not end up where the Legislature intended. For example, local traffic diversion programs that include seatbelt violations negate the legislative determination that fines for this offense should be directed to the emergency medical services relief account.⁹⁷

In addition, fees paid directly to local law enforcement agencies for traffic violations create public perception issues. For example, the public may suspect that a local “speed trap” is merely a method to increase the revenue for the local police department or government. That suspicion is reinforced when the fee is paid directly to the local law enforcement agency, rather than to the state court system, as is the case with State traffic ticket fines.

The Legislature established a \$50 maximum fee for driver improvement clinics and limited the fees for such clinics to the actual cost of the course.⁹⁸ Whether limits should be placed on the fees local governments may charge and retain for local traffic diversion programs is another issue for the Legislature to consider.

6) Contracting Authority

No express statutory authority exists for local governments to enter into contracts with third-party vendors for the development and operation of local traffic diversion programs. In contrast, local governments have express statutory authority to contract with third-party vendors for the DAS/DAR pilot and the dishonored check diversion programs.⁹⁹ If these programs are authorized, the Legislature should determine whether express authority to contract for the operation of a local traffic diversion program is warranted.

⁹⁵ See Minn. Stat. § 357.021, subd. 6(f).

⁹⁶ See Cities of Coon Rapids (Anoka County) and Red Wing (Goodhue County).

⁹⁷ See Minn. Stat. § 169.686, subd. 3.

⁹⁸ See Minn. Stat. § 169.972, subd. 2.

⁹⁹ See 2009 Minn. Laws Chap. 59, art. 3 § 4, subd. 3 (DAS/DAR diversion pilot program authority to contract) and Minn. Stat. § 628.69, subd. 2 (dishonored check diversion program authority to contract).

7) Data Practice Status of Driver Data

Data collected from an adult driver to determine eligibility in a traffic diversion program that are submitted to an outside vendor are public data.¹⁰⁰ It is unclear whether the data remain public if the driver is found to be ineligible for or fails to complete the program, resulting in the subsequent transfer of data to the Minnesota Department of Public Safety. If these programs are authorized, the data practice status of any information collected by local governments during the operation of these diversion programs should be clarified by the Legislature.

¹⁰⁰ See Minn. Comm’r of Admin. Advisory Op. 13-013 (Sept. 6, 2013), issued to the City of Spring Lake Park, available at: <http://www.ipad.state.mn.us/opinions/2013/13013.html>.