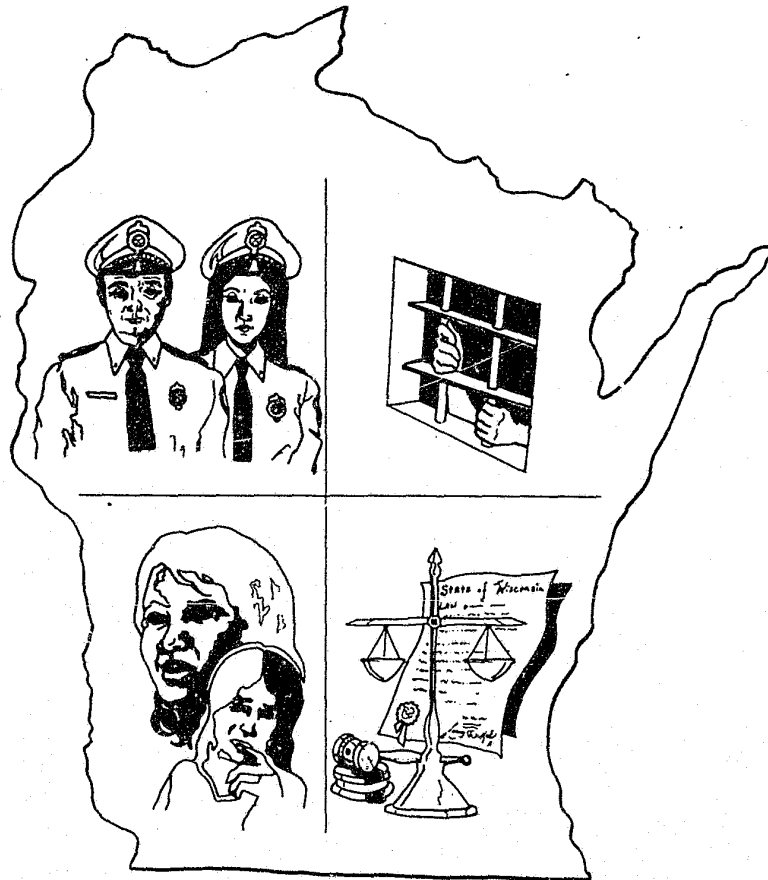
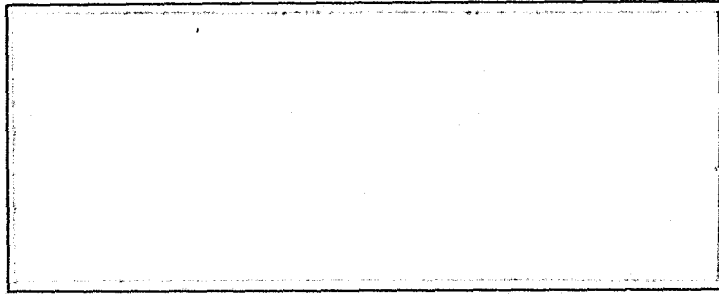




State of Wisconsin \ OFFICE OF THE GOVERNOR

WISCONSIN COUNCIL ON CRIMINAL JUSTICE



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PROGRAM EVALUATION REPORT

Interim Evaluation Report:

✓ Milwaukee County
Mass Case Coordinator Project

WCCJ Grant #78-5A(11A)-MM-05-7

by

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ACQUISITIONS

Wisconsin Council on Criminal Justice
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Introduction

The Mass Case Coordinator Project was funded by the Wisconsin Council on Criminal Justice (WCCJ) in March 1978. Federal funds totaling \$68,096 were awarded to Milwaukee County to finance the project from April 1, 1978 through March 31, 1979. Because of delays by the subgrantee in securing county approval of matching funds and then in recruiting a court commissioner for the Coordinator position, the grant period was adjusted to September 1, 1978 through August 31, 1979.

This interim evaluation report is based on discussions with project staff, observations of some project activities, and on a review of cases processed by the Mass Case Coordinator. Since the project has been operational for only a short time, its impact upon the Milwaukee County criminal justice system cannot yet be measured. This report addresses the development and present activities of the project.

Project Description and Operation

The positions of Judicial Court Commissioner, Court Reporter, and Deputy Clerk are funded through this grant. The role of the court commissioner, referred to as the Mass Case Coordinator (MCC), is to preside at pre-trial conferences and attempt to mediate plea agreements in contested misdemeanor and traffic cases. The other two positions represent the necessary support staff for the MCC; the reporter to record court transactions and the clerk to maintain records and correspondence.

A court commissioner with previous experience in the Milwaukee County court system was hired as MCC and began work on September 8, 1978. Initially, he held pre-trials only twice a week and only for city and county cases. On September 25 he began handling state cases on the other three days of the week. For the first three weeks these were state cases for which pre-trials had originally been scheduled before other judges. On October 16 the MCC began holding pre-trials that were specifically scheduled before him.

In late September judges handling the intake of misdemeanor and traffic cases began scheduling a pre-trial conference before the MCC for all cases in which a jury trial demand was entered. For such cases two dates are scheduled at the intake appearance, one date four weeks ahead for the pre-trial and one date six weeks ahead for a jury trial. Since the judges schedule similar types of hearings each week, rotating them through a four-week cycle, these two dates correspond to weeks when the assigned (intake) judge will be 1) conducting intake again and 2) conducting preliminary hearings and jury trials. If a plea agreement in a case is reached at the pre-trial, the case is sent back to the intake judge for approval of the agreement and formal sentencing. If no agreement is reached, the case is set for trial at the already scheduled date which is two weeks away.

The defendant and/or defense attorney, and the prosecutor are required to be present at the pre-trial conference. Through an exchange of information and discussion of the issues the MCC attempts to mediate a plea agreement between the parties. Usually an agreement involves a plea of guilty or no contest by the defendant in exchange for a specific sentence recommendation by the prosecutor. Occasionally, reduction of a charge or dismissal of other charges by the prosecutor may be part of the agreement.

For criminal offenses, both misdemeanor and traffic, there are three possible results of the pre-trial conference. As mentioned, if a plea agreement is reached, the case is sent to the intake judge for disposition. No written record of the stipulation is made at the pre-trial. The prosecutor presents the agreement to the judge in the form of his/her sentence recommendation after the guilty plea is entered before the judge. If the judge should reject the agreement by refusing to accept the prosecutor's recommendation, the judge will usually allow the guilty plea to be withdrawn. Reportedly, rejection of an agreement by the judge has rarely, if ever, occurred. Upon disposition of the case, the scheduled jury trial is cancelled.

The second possible result of the pre-trial is the dismissal of the case. If there is insufficient evidence to prosecute, or the prosecutor for other reasons chooses not to prosecute a case, he/she may decide to recommend dismissal. In the early months of this project such a decision at the pre-trial resulted in the case being sent to the judge for dismissal. In December the MCC was given the authority by the judges to dismiss a case upon a motion by the prosecutor. This latter practice is probably not allowable under Section 757.69 of the Wisconsin Laws of 1977 which outlines the powers of court commissioners. This issue will be further discussed later in this report.

The third possible result of the pre-trial, which occurs when no agreement is reached, is the transfer of the case to a judge for a jury trial on the scheduled date. The judges have stated that if no agreement is reached, the only options they will consider are: 1) a plea to the original charge, 2) a trial of the case, and 3) a dismissal of the case. Although the MCC is not accountable for court proceedings beyond the pre-trial, he believes that only the three options have been utilized. In November some judges began referring cases involving court trial requests to the MCC for pre-trial. These cases are processed by the MCC in the same manner as jury trial cases except that the court trial, which results if no agreement is reached, is scheduled during the week following jury trials, three weeks after the pre-trial.

An adjournment of a pre-trial to a date beyond the week it is originally scheduled is reportedly rare and only occurs with good reason, such as a defendant being unable to appear.

An adjournment to another date during the week of the scheduled pre-trial is more common, however, since it does not affect the scheduled trial date or unnecessarily prolong the case processing. If a defendant fails to appear at the pre-trial and has given no notice of his/her intentions, the MCC will generally issue a warrant for the defendant's arrest.

For non-criminal cases, which include city and county ordinance violations, the possible results of a pre-trial are similar to those discussed above for criminal offenses except that only a forfeiture can be imposed as a penalty. The major difference in the proceedings is that the MCC can impose the prescribed forfeiture if a plea is entered in a non-criminal traffic case. Until recently the MCC was imposing forfeitures in other types of non-criminal cases besides traffic. Under the current statute which defines a court commissioner's powers (Section 757.69), the imposition of a forfeiture in a non-traffic case is not allowed. The MCC has stopped imposing such forfeitures and now transfers these cases to a judge for disposition.

Powers of the Court Commissioner

The procedure developed by the Milwaukee County court system to pre-trial contested misdemeanor and traffic cases appears to be efficient and effective even though the process has been complicated somewhat by the legal questions raised during this review of the project. In May 1978 the passage of Senate Bill 72 redefined the powers of court commissioners. Important in this regard was the creation of Section 757.69 (Powers and duties of court commissioners) in the Laws of 1977, which was to define those powers in one section of the statutes. Previously existing statutes which defined those powers, primarily Sections 252.15 (Court commissioners; powers and duties) and 256.68(2)(3) (Judicial court commissioners in populous counties), were repealed, although they were first renumbered by the Court of Appeals Bill (Chapter 187, Laws of 1977). The present law, Section 757.69, does not explicitly allow a court commissioner to dismiss cases or impose forfeitures in cases other than traffic. Earlier statutes did explicitly allow a court commissioner to dismiss cases and, because of some vague language, did not prohibit a court commissioner from imposing forfeitures. In discussions with the MCC he stated that he was unaware that (old) Section 256.68(2)(3) had been repealed. This is understandable due to its renumbering and the fact that the relevant statutes were repealed in different sections of Senate Bill 72. The MCC has indicated that non-traffic forfeiture cases in which a plea is entered will now be transferred to a judge for disposition. The dismissal issue will be considered further; the MCC will investigate the possibility that dismissing cases might be an allowable "ministerial" duty.

Compliance with Standards and Goals

In addition to questions about the legality of some case dispositions made by the MCC, there is a question about the conformance of some of the pre-trial dispositions to the WCCJ's Criminal Justice Standards and Goals. Although the pre-trial procedures followed by this project largely comply with Goal 12, Plea Negotiations, they do not always comply with Subgoal 12.2 which reads: "Plea agreements shall not include prosecutorial recommendations as to specific length of incarceration." Although most agreements in these cases do not involve incarceration, a few do involve specific jail sentence recommendations by the prosecutor. The rationale behind Subgoal 12.2 is that "the sentencing function must rest solely with the trial judge."¹ Regardless of whether the sentencing recommendations ensuing from the pre-trial conferences are seen as those of the prosecutor alone or as also those of the MCC, there is still noncompliance with the letter and intent of this Subgoal in those cases in which a specific length of incarceration is recommended.

Project Performance

To examine some aspects of the project's performance in the first months of its operation, the results of pre-trials held in October and November 1978 were compiled from the daily court calendar of the MCC. The calendar, prepared each day by Milwaukee County's Criminal Justice Information System, is a list of the cases to be pre-trialed by the MCC. The information on each case includes the case number, defendant's name, charge(s), and time of court appearance. The result of each pre-trial is written on the calendar by the clerk. Due to occasional difficulty in reading or interpreting the handwritten information on the calendars, the tabulations which follow should be considered approximate rather than exact.

The results of the pre-trial of 1,010 cases were compiled. A few of the cases scheduled during the two-month period did not have recorded results and were omitted from the compilation. A breakdown of the 1,010 cases yields the following jurisdictional totals:

City cases	247
County cases	12
Juvenile traffic cases	17
State cases	722
Cases with illegible jurisdiction code	12
<u>Total</u>	<u>1,010</u>

¹ Final Report - Special Committee on Standards and Goals, Wisconsin Council on Criminal Justice; January 1977, page 104.

Clearly, the vast majority of cases reviewed by the MCC were state and municipal cases. Further analysis reveals that over one-half the cases (531) involved traffic charges, particularly driving while intoxicated or driving after license revocation. Of the city cases, 75% were for traffic violations; of the state cases 48% were traffic.

Table 1 shows the pre-trial dispositions of the 1,010 cases broken down by jurisdiction. It shows that 42% of the scheduled cases were settled by a plea agreement at the pre-trial; 22% were transferred back to the assigned judge for trial. Of the scheduled pre-trials, 26% were adjourned to a different date and warrants were issued in another 4% of the cases. Even though adjourned cases are eventually pre-trialed before the MCC, the adjournment rate plus the no appearance rate indicate that approximately 70% of the scheduled cases are actually pre-trialed. As mentioned, the MCC reports that most adjourned pre-trials are rescheduled for appearance during the same week so that significant case delay is avoided.

Table 1
Pre-trial Disposition by Jurisdiction

	City		State		All Cases	
	N	%	N	%	N	%
Plea Agreement	85	34	323	45	427	42
To be Dismissed	29	12	31	4	61	6
Transfer for Trial	49	20	164	23	223	22
Adjourned	75	30	172	24	257	26
Warrant Issued	9	4	32	4	42	4
Total	247	100	722	100	1,010	100

For each of the 41 working days during October and November 1978 there was an average of 24.6 pre-trials scheduled before the MCC. Subtracting the cases that were adjourned and those in which a warrant was issued, an average of 17.3 cases per day were actually pre-trialed. Although the latter figure accurately reflects the number of cases pre-trialed, it is misleading as a measure of workload because many adjourned cases still require an appearance by the defendant or his/her attorney. Although these figures are below the level of the project's objective of pre-trialing 40-50 cases per day, it is likely the objective is unreasonable. The MCC believes that 25-30 pre-trials per day is a full daily

workload. The number of cases handled per day increased gradually over the two-month period examined. The average workload for November and later months is most likely larger than the two-month daily average obtained in this compilation.

One important consequence of this project is that witnesses do not have to be called for those cases settled at the pre-trial. Under the old system witnesses had to be subpoenaed for a trial even though there was a good chance the defendant would plead guilty on the day of the trial. The MCC independently tabulated the number of witnesses which would not have to be called as a result of cases being settled at the pre-trial. In October an average of fifteen police and five civilian witnesses were exempted each day; in November the daily average rose to twenty-three police and eleven civilian witnesses.

Conclusion

As indicated earlier, the information presented in this report cannot be used to draw a complete picture of the effectiveness and impact of the MCC project. Only short-term results can be derived from the project information presently available. It is clear that 48% of the cases scheduled for pre-trial and 69% of the cases actually pre-trialed were essentially resolved at the pre-trial. It is also clear that these case resolutions saved the courts and witnesses further time and effort. Although it is likely these results represent an improvement over the performance of the old system, this cannot be confirmed because the number and the results of pre-trials previously conducted by the judges have not yet been assessed. In any case, the fact that the MCC is available to do pre-trials for the judges, thus freeing some of their time, is probably having a positive impact upon the court system.

Even though it is likely that efficiency in handling contested misdemeanor and traffic cases has been increased through the implementation of this project, there are still some questions to be answered. It is unclear what effect this project is having on the number of trial demands or on the number of jury and court trials conducted after the pre-trial. It is possible that the assurance of a pre-trial (and the possibility of a plea bargain) is increasing the number of trial demands. It is also possible that the policies adopted by the judges regarding the cases transferred for trial, although they are necessary for the effectiveness of the MCC project, are compelling more defendants than previously to go through a trial. In 1977, for example, there were only 75 jury trials and 1,562 court trials completed out of 18,157 state misdemeanor and traffic cases. In October and November 1978 the MCC referred 164 state cases to judges for trial, mostly jury trial. It is possible that most of the defendants referred for trial are pleading guilty before or at the trial, or are waiving their right to a jury and submitting to a court trial. It may be, however, the trial workload is increasing, contrary to the project's expectations.

The evaluation of this project will continue. The questions raised will be examined as well as other questions regarding the number of cases processed, case processing time, and the effect of the project on the misdemeanor and traffic case backlog. In the interim, it is recommended the project itself monitor its impact upon the court and jury trial workload to determine if any procedural changes in operation are necessary. It is further recommended the project review its policies and procedures and make any changes necessary to insure its compliance with State Law and the WCCJ Criminal Justice Standards and Goals.



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