REVIEW OF PROPOSED PLAN TO IMPLEMENT A CRIMINAL DIFFERENTIATED CASE MANAGEMENT SYSTEM IN THE NINTH JUDICIAL CIRCUIT (ORLANDO) OF FLORIDA
COURTS TECHNICAL ASSISTANCE PROJECT
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Requesting Agency: Ninth Judicial Circuit Court

Requesting Official: Chief Judge Frederick Pfeiffer

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Local Coordinator: Richard Sletten, Circuit Court Administrator

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Central Focus of Study: Criminal DCM Program

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Foreword

In August 1990, the Florida State Court Administrator's Office requested the State Justice Institute (SJI)-sponsored Courts Technical Assistance Project (CTAP) at The American University to meet with judges and administrators of several Florida circuits to discuss the planning and implementation issues relevant to developing local criminal Differentiated Case Management (DCM) programs. Judge Legrome Davis of the Philadelphia Court of Common Pleas and Judge Ronald Taylor, Chief Judge of the Berrien County (St. Joseph), Michigan Circuit Court, represented the CTAP at this meeting. Both Judge Davis and Judge Taylor had instituted criminal DCM programs in their respective courts and had overseen their implementation process.

As an outgrowth of this meeting, the Ninth Judicial Circuit in Orlando undertook development of a criminal DCM program in that Circuit, focusing upon classes of cases which were amenable to an expedited disposition process. To review program planning to date and prepare for implementation, Chief Judge Frederick Pfeiffer, requested the CTAP to provide follow-up assistance from one of the judges present at the August 1990 meeting to meet with local officials in Orlando to review the proposed criminal DCM program plan and provide recommendations, as appropriate, to assure the program's successful operation.

On January 21 and 22, 1993, Judge Davis conducted a site visit in Orlando and reviewed the proposed program plan with the principal local officials who would be involved in its operation. Judge Davis's findings and recommendations are presented in this report.
I. INTRODUCTION

A. Persons Interviewed and Preliminary Observations

During the site visit, I met with Chief Judge Frederick Pfeiffer, the Administrative Judge of the Criminal Division, Michael Cycmanick, and Criminal Trial Division Judges Belvin Perry and Dorothy Russell. Interviews were also conducted with Louis Lorincz, Chief Assistant Public Defender, and Bill Vose, Chief Assistant State's Attorney. I also interviewed Richard Sletten, Circuit Court Administrator, and members of his staff. Additionally, I viewed the initial appearance and arraignment processes which are conducted via closed circuit television. Lisa Rosenfeld, of the State court Administrator’s Office in Tallahassee, was present during the site visit and attended all of the interviews and discussions regarding the proposed case management program. The visit concluded with a plenary session in the afternoon of January 22nd, during which the future program participants discussed the structure and potential of the program as well as possible modifications to address impediments to success.

As noted above, the instant site visit was an outgrowth of a technical assistance project in which Judge Ronald Taylor, Chief Judge, St. Joseph, Michigan, and I participated in 1990 in Tallahassee, Florida. At that time, we were impressed by the Ninth Circuit’s acceptance for the need for differentiated case management and their willingness to develop and implement program models. Although the program development and implementation did not proceed at that time because of fiscal constraints, presently a strong interest in the managerial and structural concepts of DCM exists. The enthusiasm for a DCM program is now shared equally by the prosecution, defense and the judiciary. All parties with whom
I spoke believed that the DCM program would produce definite and immediate results, and were fully prepared to commit the resources and energies of their offices to develop and implement the program. Moreover, all felt the program should commence as soon as possible.

In short, the program as developed by the Ninth Circuit did not appear to have any detractors. All potentially affected agencies appeared ready and willing to work together in order to make this program a success, and each agency has a very strong, clear and valid justification for their participation in the program. In summary, the attitudes and interests of the participants are ideal for the successful implementation of a DCM program.

B. Current Criminal Case Dispositions

In 1991, 17,231 counts, which constituted 10,905 cases, were filed in the Ninth Circuit. As 11,845 cases were disposed during that year, the Circuit does not face the problem of an increasing inventory. Eight judges are assigned to the Criminal Division, seven of whom maintain individual inventories. The eighth judge is not assigned an inventory of cases at arraignment, but instead receives trial ready cases from the dockets of the other seven judges. As of December 1991, the inventories of the seven trial judges ranged from 544 to 744 cases. Although the median inventory was 609 cases, five judges had fewer than six hundred cases. Approximately two percent of the adjudications in 1991 resulted from trials, and virtually every one of these was by way of jury. Negotiated pleas represented 57 percent of the 1991 dispositions; the remainder of the dispositions were either nolle prosses, dismissals, or counts which were not acted upon by the state. None of these methods of disposition required any action by the court. The statistics provided further reflect the average age of a case at the time of plea to be 172 days, and the median
II. FINDINGS AND RECOMMENDATIONS

A. Comments Regarding Structure of Proposed Program

I was immediately impressed by the structure of the actual program designed by members of the Ninth Circuit and agreed to by participating agencies. The proposed design of the program is very specifically responsive to the particularities of practice in the Circuit, just as any potentially successful DCM program must respond to the local legal culture. In their design, the program architects have been guided by certain realities: (1) most cases are disposed by way of plea and, as the sentencing guidelines provisions are relatively tightly structured in Florida, virtually every plea is negotiated, and; (2) many of the pleas are ready to be entered long before the assigned trial date.

Presently attorneys are required to prepare the case for trial, and the court must concomitantly commit its resources in anticipation of trial, when the overwhelming likelihood is that the case will terminate in a negotiated plea. As a consequence of this, neither the court nor counsel can appropriately prepare for that two percent of cases that will result in jury trials. One judge advised me that during trial weeks, he lists 75-90 cases for disposition, continues only four to eight, and disposes of the remainder. Obviously, with this degree of uncertainty as to the method of disposition, much potential trial time is not effectively utilized, and cases must be listed for trial further in the future than would be necessary were case processing mechanisms streamlined. These scheduling practices, which are necessary under the present system, cause additional cost to the court system, which
must list and prepare these cases for trial, to the Clerk's Office, which must bear the unnecessary expense of mailing subpoenas, and to the local jail, which must bear the cost of housing the defendant until the court is able to hear his or her case. The defendant as well bears a cost in the present system as many of the sentences presently imposed are either probation or time served. Ultimately the defendant remains incarcerated because the court was unable to schedule the plea in an expedited fashion or create a structural mechanism for systematically scheduling cases for the entry of early pleas. Counsel, as well, bears an unnecessary expense and responsibility under the present system as witnesses must be deposed for trials which most likely will not occur. Probation and Parole must prepare presentence reports which are superfluous with negotiated plea dispositions, and the Police Department must bear the expense of removing officers from the street to attend court proceedings which, in 98 percent of the cases, do not actually require the officers' testimony.

The proposed program directly addresses all of the above concerns and unnecessary expenditures. Typically, the State's Attorney files bills of information within thirty days of the defendant's arrest. Within three to ten days of the filing of these bills, the defendant is arraigned. At this point the program would commence. In most cases the Office of the Public Defender is appointed to represent the defendant. By agreement, this appointment constitutes an automatic demand for discovery. Discovery, under present practice, is to be provided within seven to ten days of arraignment, and typically consists of police investigative reports, witness interviews, and preliminary chemical analyses of controlled substances. The Office of Probation and Parole will conduct a complete criminal record check of the defendant, prepare a sentencing guidelines scoresheet, and supply it to the Office of the State's Attorney. The prosecutor would then recommend a specific sentence to the defendant upon entry of a plea to a particular count or counts. Defense counsel
would communicate this offer to the defendant. If the defendant accepts the offer, the plea would be tendered within 30-45 days after arraignment. At arraignment, three separate subpoenas would be generated: one for the DCM plea/sentencing date, one for the trial date, and one for the pre-trial hearing which, under present practices, is held a few days prior to the assigned trial date. If the defendant opted not to accept the plea offer, he/she would be required to notify the court of the declination in writing no less than four days prior to the plea/sentencing date.

The Ninth Circuit has identified the following case types for inclusion in the program:

1. drug possession cases
2. drug delivery cases
3. grand theft third degree
4. forgery and uttering forgery cases
5. worthless check cases
6. third degree fraud cases; and
7. B and E Conveyance and Structure cases

These cases were selected because they, particularly, most often result in negotiated pleas. Moreover, on the continuum of criminality, these are the least serious felonies disposed in the jurisdiction. The State’s Attorney would be required to identify, at filing, cases for eligibility in the DCM program, and would also commit to providing discovery within 7-10 days of arraignment. No depositions or subpoenas would be processed prior to the plea/sentencing date.

B. Issues To Address

As previously noted, the structure of the proposed DCM program is sound, and the participants possess the desire and ability to successfully implement it. The following issues, however, should be addressed by the participants prior to commencement of the program
if this venture is to be successful.

1. **Court Management/Monitoring of Case Progress**

   The court should consider the desirability to creating a method for managing and monitoring the events between arraignment and the date scheduled for the entry of the plea. Under the present proposal, cases are not scheduled in court during this time period. The Court Administrator’s Office has no active role in monitoring or scheduling events during this period. All events have been left to the counsel to complete within a relatively tight time period. Both the government and the defense are certain all of the events will be completed during the relevant period. While this enthusiasm and commitment is laudable, it may prove to be somewhat overly optimistic.

   It might prove necessary to involve either the Court Administrator’s Office or the judiciary in the post-arraignment/pre-plea process to insure that events occur as scheduled. If, for example, defense counsel does not receive all of the necessary documents until thirty to forty days after arraignment, and is in trial, counsel may not have time to conduct a jail interview and communicate the offer to the client. Moreover, if the client is on bail, the defendant may not have sufficient time to respond to the letter requesting that he/she come to counsel’s office to discuss the plea offer. My experience with a similar program in Philadelphia lead me to the conclusion that adequate consultation with the defendant is critical to the entry of a plea. The court might solve this problem by issuing a general order requiring particular actions to be taken by a specific day in the process, and further requiring defense counsel to notify the court promptly if the action does not occur by the date scheduled. The circuit might, for example, require discovery within ten days, and an offer and sentencing scoresheet within twenty calendar days after arraignment. If, as counsel expressed, the time lines are consistent with present practices, no additional work
is created; if difficulties do occur, a structured mechanism exists to involve the judiciary at an early state in the process. In this manner, the impediment will be resolved well before the plea date.

The experience of other courts that have implemented similar DCM programs has been to utilize the resources of the court administrator's office as much as possible to develop necessary systems for managing the new program and for monitoring the progress of each case. In this way, problems can be identified -- and addressed -- as they occur and the likelihood of achieving program goals can be maximized, with minimal burden on the individual judges and their staffs.

2. Need for Clearly Articulated Criteria for Case Eligibility

Responsibility for designation of cases for eligibility in the program is placed exclusively upon the State's Attorney. Presently minor differences exist among the participants as to whether the program will be available to first time offenders, or first cell offenders under the sentencing guidelines. Similarly, there is not absolute agreement on whether drug delivery cases will or should be included in the program. Participants will have to resolve these questions prior to commencement of the program.

3. Need for Program Operational Guidelines

Written guidelines, or a program description, must be created prior to the commencement of the program. This process will enable all agencies and offices to understand precisely what action is expected of them, by what date, and for what reason. A DCM program operates as an interrelated system of component parts, and only if each agency understands both their function and the functions of the other agencies, will the synchronized motion that is necessary for success occur. A second benefit of producing a written set of guidelines and procedures is that understandings and agreements will be
reached. Clear commitments and understandings on the part of involved agencies are necessary prior to embarking on a program of this magnitude.

In addition to stating the general policies and agreements, these guidelines must state with specificity and clarity the date by which each event is to occur. Typically, this is done by plotting the course of a case from the day of entry into the program to the plea/sentencing date. These guidelines must address criteria for inclusion in the program, notice to counsel, the specific discovery to be provided and dates for provision, the date the sentencing scoresheet must be supplied to defense counsel, and the date by which the offer must be communicated to defense counsel. One has to also look at the flow of the case from the separate vantage points of the court, the prosecutor, defense counsel, and Probation and Parole, and determine what particular action each agency must perform by a certain date, and whether they are capable of satisfying that responsibility by that date. Perhaps each agency must do this for itself, because this program will require procedural adjustments in the practices of all agencies.

After these separate timelines are completed, participants should compare them, and reach agreements with respect to areas of difference. The differences may prove to be minor, but it is in the interest of all to clarify them prior to commencement of the program. In the end, a single time line will be produced, and all parties will have a full understanding of what is expected of them. I have agreed to supply the participants with copies of the Philadelphia DCM guidelines to illustrate the types of procedural and substantive questions which must be addressed.

4. **Mechanisms for Promptly Addressing Initial Implementation Problems**

Difficulties will certainly arise during the course of implementing this program. Each participating office is certain to encounter policy and procedural barriers to the
smooth implementation of the program. It will be incumbent on the parties to caucus and
work out resolutions and compromises. It may prove advisable to create, at least for the
beginning months of the program, a management counsel, under the direction of
Administrative Judge Cycmanick, to air and resolve these concerns as they occur. Regular
and open communication between participating agencies will insure that difficulties are
resolved long before they reach the magnitude of major problems.

5. Accommodating Other Cases Amenable to Early Disposition

Many cases presently receive early plea dates upon request of the assigned trial
director. The plea/sentencing date created under the proposed program is well over one
hundred days sooner than the early dates presently assigned. When existence of this
program becomes known within the defendant community, defense counsel may encounter
requests from defendants to be included in the program. Some mechanism must be created
to insure early offers in cases not initially designated for inclusion in the program.

6. Documenting Program Results

If this program functions as envisioned by the participants, it will produce
substantial results. It will reduce the inventory of cases awaiting trial, the amount of time
defendants spend in jail awaiting disposition of their cases, the number of subpoenas mailed
and depositions taken, and will also save a substantial portion of expense previously
associated with presentence reports and officer unavailability on the street due to the
requirement of their presence in court. Eventually, the court and the parties may want to
document the concrete benefits of this program to the community. I do not know if this
information is presently being captured, or if any single agency is charged with the
responsibility for compiling it. This information will ultimately prove to be quite valuable
to the court and the participants. If this information is not presently being collected, it
might be advisable to place this responsibility on a single agency, perhaps the Office of the Court Administrator.

7. **Benefits of Beginning with a Pilot Program**

Much discussion occurred with respect to the advisability of implementing the program simultaneously in seven courtrooms, or commencing the program with a more discreet scope, perhaps in one or two courtrooms. It was my strong recommendation, based upon my experiences with the series of DCM projects I have initiated in Philadelphia, that the appropriate initial scope in Orlando might be two courtrooms, at the most. First, uncertainty exists as to the actual percentage of the cases on each judges' inventory that will be included in the program, as originally defined, and also with respect to the number of cases to be ultimately included in the program. Estimates range from 40 to 55 percent. Assuming 40 percent of the median inventory (609 per judge), and also that the inventory remains constant, the program would ultimately include 244 cases\(^1\) per judge. Assuming 55 percent eligibility, the program would include 335 cases\(^2\) per judge. The range of inclusion in the program, therefore, is between 1708\(^3\) cases and 2345\(^4\) cases. To include such a large volume of cases in the program at its inception is extremely ambitious, and will tax the resources of participating agencies quite heavily.

The initial advantage of commencing the program and ironing out the complications in only two courtrooms is to tax the system's participants to a very limited

\[^1\]609 cases \times 0.40 = 244 cases

\[^2\]609 cases \times 0.55 = 335 cases.

\[^3\]244 cases \times 7 judges = 1798 cases.

\[^4\]335 cases \times 7 judges = 2345 cases.
degree initially. It is not absolutely known, for example, that Probation and Parole will be able to complete all of the expedited sentencing scoresheets required if the program commenced in seven courtrooms simultaneously. I was not able to address the issue of resources with members of Probation and Parole. If the decision is made to commence the program in only two courtrooms, resources can be tested and expanded in a gradual manner. The prosecutor, for example, may have to reassign or redefine the responsibilities of clerical personnel. It will be much easier to make these adjustments in two courtrooms, rather than seven. The defense might have to devise a method whereby attorneys assigned to a judge can communicate the plea offers to defendants represented by other attorneys assigned to the same judge.

Similarly, no matter how well the participants plan a program, complications and impediments to success are certain to occur. Many of the difficulties will be encountered within the first thirty days of the program's existence. If the program is initiated in two courtrooms only, problems will be identified and resolved before judges who understand the purposes and procedures of the program. An intact, smoothly functioning program can then be transferred to the five other courtrooms. If, however, the court decides to start the program simultaneously in seven courtrooms with no participant having prior experience with a DCM program, the effect of this decision might be to create seven different programs with slightly different rules and expectations.

A third advantage of a staggered starting date is to eventually create experienced personnel within each office who can explain the program to the parties in other courtrooms, and train them in the program's procedures and practices. Beginning with a limited scope will enhance the possibility of insuring uniform procedures, and smoother implementation.
Further, commencing the program in two courtrooms will provide a certain answer to the question of whether the attorneys can manage the post-arraignment/pre-plea process. If adjustments prove necessary, they can be made quickly, and with limited confusion.

Finally, if the program works well in the two courtrooms initially chosen, succeeding judges will want to duplicate the success, and are more likely to replicate the procedures of the initial judges. The time frame for expansion to the other courtrooms may be as short as 45 days or may be as long as four or five months. The time will be right to begin planning for expansion when the procedures and practices are clear, and the program is functioning smoothly.

8. Potential Expansion of the Program to Other Cases

In the sense that most cases are disposed by way of negotiated plea, the court may ultimately want to include almost all of its cases on this fast track, or a second fast track designed to address the procedural requirements of these additional cases. Court officials will need to examine the remaining inventory and ascertain whether other particular types of cases most often result in pleas, and whether it is wise to begin planning for fast tracking those cases as well. Questions with respect to the capabilities of the participating offices should have been resolved by that time. In short, this program offers much promise, and may be expanded provided it does not overtax the participants.

III. CONCLUSION

In conclusion, I was extremely impressed by the design of the program proposed by the Ninth Circuit. It is based upon an appreciation of the realities of local court practice and is conceptually sound. All that is necessary for success is for the participants to
continue with the same degree of communication, vision, and the desire to act in the public interest they have demonstrated to this point. Difficulties will certainly occur but, if the present spirit of communication and co-operation continues, will prove to be the only minor impediments to success.