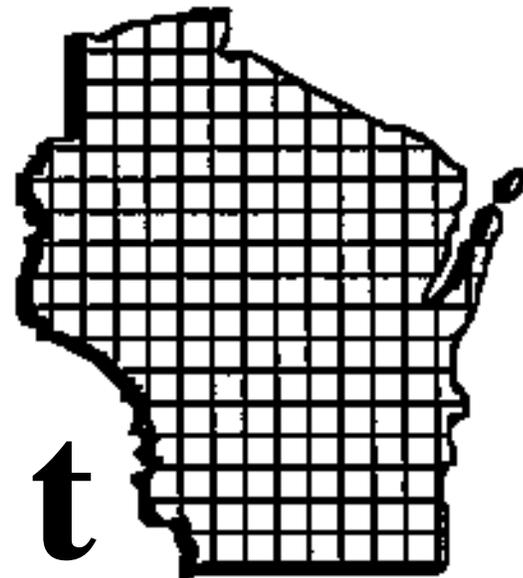


Wisconsin

**Policy
Research
Institute
Report**



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**Outstanding
Warrants in
Milwaukee
County:
*Fugitives From The
Justice System***

REPORT FROM THE PRESIDENT:

When the Milwaukee Sheriff's Department reported that there were approximately 70,000 warrants outstanding in 1997, Milwaukee residents became concerned. Just who were these people and exactly what were the implications of these rather staggering numbers? We contracted with Jean White to examine this whole question of outstanding warrants in Milwaukee. Ms. White has been involved with the court system for over three decades. She has a Master's Degree in City Planning from the University of Pennsylvania and a Certified Court Administrator degree from the University of Denver Law School. Her research sheds some light on this rather complicated issue of just who from the criminal justice system is walking the streets in Milwaukee without any supervision.

By October of 1999, almost 20,000 names had been purged from the outstanding warrant papers. Much of this drop was for administrative purposes. The real question was who was left under the outstanding warrants in Milwaukee County at the end of 1999, and, more importantly, what were their offenses? This report indicates that while Milwaukee County and the Wisconsin Department of Corrections are trying to get a handle on this problem, there is still an enormous amount of work to be done. Bureaucrats from both government agencies seem unwilling or unable to provide data profiling individuals who either have outstanding warrants or who have absconded from probation or parole.

While some would argue that the outstanding warrants in Milwaukee County in many instances deal with non-violent crime or even misdemeanors, there is a much larger issue at stake — the rule of law. If some Wisconsin citizens decide that they are no longer answerable to our criminal justice system, where does it end? Whether it is a court appearance or a meeting with a probation agency, we must live in a state where we expect all our citizens to obey the rule of law. That is not happening with thousands of people today in Milwaukee and must be addressed. We need more information on who these people are. Certainly in the case of county warrants we need to know why people do not show up for court appearances. The current bureaucratic attempts to rectify this situation may be admirable but they must be increased.

Finally we would like to thank Mr. Michael Mett who suggested this study. All our concerns are to make sure that no dangerous felons are roaming unsupervised in our neighborhoods.



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OUTSTANDING WARRANTS IN MILWAUKEE COUNTY: *Fugitives From The Justice System*

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EXECUTIVE SUMMARY

In April of 1997, the Milwaukee County Sheriff's Department reported that there were at least 69,189 warrants outstanding. These warrants included bench warrants for failure to appear in Milwaukee County courts, District Attorney Office apprehension requests, and warrants issued by the 18 municipalities surrounding the City of Milwaukee (which the Milwaukee County jail/sheriff's department processes when the offender is arrested on the warrant).

As of October 31, 1999, there were 49,366 total warrant papers in the Milwaukee County Sheriff's system. The sharp drop in this number does not necessarily mean that more people are showing up for their court appearances or that the numbers of people being charged with crimes has declined. The number primarily reflects the results of "operation purge," undertaken by the court and the district attorney's office to close out warrants for misdemeanants of "victimless crimes" that were seven or more years old. Some 20,000 bench warrants were "purged" in this effort.

Of the 49,366 warrants outstanding at the end of October of 1999, 27,211 were bench warrants — *i.e.* warrants issued when persons charged with a crime fail to appear for a scheduled court appearance. The nature and extent of this problem comprises the bulk of this report. Sources for data are relatively new, but they indicate that the "system" tries hard to apprehend and put into jail persons who might be a threat to public safety. The criminal justice system's notification and follow-up process to defendants regarding their scheduled court appearance dates, times, and locations, however, continues to be a problem.

In addition to those individuals who are charged with a crime and who fail to appear in court, and are, therefore "out walking the streets," the State of Wisconsin Department of Corrections reported in 1998 that there were about 3,800 persons convicted of a crime in Milwaukee County who were "unsupervised" because they had failed to report to the proscribed probation/parole agent.

After all efforts to find the offender have been expended by the agent, the agent (officially the Wisconsin Department of Corrections) may issue an Apprehension Request and Warrant. These are not bench warrants, because they have not been issued by the court, but they are recorded in the State Crime Information Bureau system, which means that the Request for Apprehension is noted in the Milwaukee Sheriff's Department computerized system as well.

Two programs have been implemented since 1998 to deal with the 3,800 probationers who have failed to appear: the Absconder Unit, and the Rope Unit. The success of both programs relies on the probation/parole agents and Milwaukee County police officers jointly going out into the communities to last known addresses and other locations seeking out the offenders. The Rope Unit deals primarily with high risk, assaultive individuals, and the Absconder Unit deals with probationers or parolees who have not shown up for regularly scheduled meetings with the probation/parole agents. Both Units are thought to be somewhat successful, although an evaluation audit has been conducted only of the Absconder Unit. There are currently about 3,500 uncontacted and unsupervised individuals in the corrections system, a decrease of about 8% (300 persons) in one year of operation.

There are still issues not being addressed (defendant notification, courthouse accessibility, courtroom locatability), and there are still causes for concern (27,211 outstanding bench warrants, and 3,500 absconders from their probation/parole obligations). The wheels in the criminal justice system grind incredibly slowly, with more excuses than progress usually, although, thanks to the enthusiasm and stamina of some key individuals, some ideas are currently being tried in the courts on a pilot basis.

It is the conclusion of this report, however, that there needs to be a more comprehensive attack on the issues of failure to appear, and that the implementation of a full-time agency, dedicated to tracking and communicating with defendants from their first court appearance until their last, is required. This agency would bear the responsibility of assuring that defendants arrive when they are scheduled to appear, and, if they don't, would have the authority and creativity to find them and bring them in. Many cities, in most states, have long-term experience with such an agency (often called a pretrial service agency). Milwaukee should cull through the material and knowledge available, and establish a notification/tracking/follow-up agency that meets the criminal justice system's needs for the 21st century. The community would benefit from having fewer absconders and persons with outstanding bench warrants out on the streets.

BACKGROUND

When the fact that there were as many as 70,000 outstanding bench warrants in Milwaukee hit the newspapers in 1997, citizens were predictably and rightly alarmed.¹ Did this mean there were thousands of criminals — some of them sure to be dangerous to public safety and well-being — out on the streets when they should be in jail? Did this mean proof of a frightening trend of lower and lower respect for the court system? Did it mean that the Sheriff's Department needed immediate help in some way to round these people up and bring them back to court?

A satisfactory explanation was not forthcoming from the newspaper or the courts or the sheriff's department. Time moved on, with no one denying or explaining this outrageous number. This report is an attempt (1) to define what was included in that number, (2) to articulate how the process of issuing and remanding bench warrants works, and (3) to explain what steps are being taken or should be taken to deal with the issues of accused persons (or convicted persons, in the case of probation absconders) not appearing where they have been required to be.

DEFINITIONS

A bench warrant is a physical piece of paper issued by a judge or a court commissioner (acting as a judicial officer) when a person who has been scheduled to be in his or her court for a specific purpose at a specific time has not appeared. There are many reasons why this situation occurs — some are legitimate excuses and some are indefensible. The judge, however, cannot tell which is which because the defendant hasn't shown up to explain. So a bench warrant is issued: a form is filled out by the clerk of the courtroom and set aside to be picked up at a central location at the end of the day and delivered to the Sheriff's Department. The bench warrant serves as communication to the Sheriff's Department to locate the individual and bring him or her back to court as soon as possible.

The Sheriff's Department holds on to the piece of paper but enters the information into its computer system, which is immediately linked to the state Crime Information Bureau (CIB) system, and from there to the national NCIC system (National Crime Information Center). This means that any search conducted by any law enforcement officer at any location at any time will now show that "John Jones" has a warrant outstanding against him in Milwaukee County.²

Bench warrants for non-appearance are also issued by municipal court judges for traffic and minor offenses, not only in Milwaukee but also in the suburban municipalities surrounding it. Bench warrants are also issued by Milwaukee Circuit Court judges for non-appearance for misdemeanor offenses as well as for felonies. And bench warrants are issued by judges in juvenile cases when the child or youth fails to make a court appearance.

The Sheriff's Department receives other types of warrants as well and enters them into the same recording system in the same manner as bench warrants. The District Attorney's office frequently issues apprehension requests (*i.e.* warrants) for the Sheriff's Department to locate a suspected perpetrator or witness to a crime in order to bring that person into the DA's office for charging (the first step in beginning a new court case). Warrants are issued for failure to pay fines or costs, for paternity matters, for violations occurring at the State Fair or at Marquette University or against the regulations of the Department of Natural Resources. And so on; there are many different authorities issuing warrants which require the Sheriff Department's attention. And it is only very recently that the Sheriff's Department could distinguish in its statistics which type of warrant was issued. The officers in the field making arrests cannot make this distinction. *It is important to know that the Sheriff's Department counts numbers of warrants outstanding, not persons, in its statistical system.*

Many individuals have more than one warrant outstanding against them. Many individuals have several *bench* warrants outstanding against them at the same time. With the advent of user-friendly computers, multiple warrants can now be linked and shown together when a name search is done. The system is not foolproof, however, because savvy multiple offenders vary their names, their birthdates, and their records in an effort to go unnoticed or to achieve lesser penalties. Less-than-savvy offenders do it, too, for reasons known only to them.

To aid the Sheriff's Department in setting priorities for service amidst this morass of warrants, the Department, along with all the municipal police forces, uses a shared "Hot Sheet." When the District Attorney's office or a judge "flags" one of their warrants as being a suspect who is particularly dangerous to himself or his family or others, or if the crime is a felony involving a "high-risk" offender, then that person's name goes on a "hot sheet" and is dissemi-

nated widely. Special effort is made to find these people and bring them in. And they are usually found right away. For example, in the month of October 1999, four warrants were issued for kidnapping (all of them suspected to be fathers grabbing their children and disappearing); three warrants were “served” by the Sheriff’s Department and the offenders remanded to court by the end of the month.³ In another instance, in the month of November 1999, a homicide defendant failed to appear at one of his hearings; he was immediately arrested and brought back into the system.⁴

While this researcher was using the public access computers at the courthouse one day, a young man next to me was continually expressing disbelief and outrage. He was doing background searches for his employer and couldn’t fathom why three cases had the same name and birthdays but indicated three different addresses. Even worse, someone on his list had five offenses against him using the same name and same address, but had given the police officers five different birthdates, each a month to the day apart, but with widely varying years.

THE CORE OF THE PROBLEM

At the heart of the problem of the large number of outstanding bench warrants is the fact that numerous persons accused of violations of the law are not appearing at the proper time and place in court.

On paper, the criminal justice system in Milwaukee has policies established which assure that a person receives notification of his or her scheduled court appearances. Lawyers who practice in criminal courts are obliged to perform according to certain rules of ethical behavior. One of these obligations is to make sure their clients are informed of every action undertaken in their case. The courts have slowly come to realize, however, that they need to supplement the attorney’s notification system. And it is now standard practice in every criminal courtroom to hand to the defendant at the conclusion of each court action, the time and place he or she is next expected to appear. And still defendants fail to appear in alarming numbers.

There are some legitimate reasons why people fail to make their court appearance. Some cannot read or write or speak the language well enough to understand what is expected of them; some get lost in the three different buildings which house courtrooms; some go to the right room only to find that the judge or type of case being heard in that courtroom has changed; some are in jail already; some are in the hospital or a drug treatment program; some are incapacitated by their drug or alcohol habits.

There are other reasons for non-appearance that are indefensible: (1) wanting to delay conviction and possible fine or incarceration; (2) not believing that the criminal justice system is relevant in any way; (3) being an irresponsible and/or an amoral person. It is these persons about whom we are most concerned. They are flagrantly flaunting the law, and we worry about their being out on the streets committing more crimes.

Unfortunately, there are no accurate statistics in Milwaukee as to why people fail to appear. A quick survey was conducted in 1994 at Intake Court of 175 defendants produced before the court on warrants. They were asked why they failed to appear at the previous court engagement. Some of the answers given leave one scratching one’s head:

- 33 people said they were sick
- 22 people said they were in jail
- 20 people said they forgot
- 20 people said they did not know when to come back
- 18 people said they were there
- 17 people said they didn’t know why
- 16 people said they had a death in the family
- 14 people said they were working
- 5 people said they were afraid of going to jail
- 3 people said they were in drug treatment
- 2 people said that a family member had been kidnapped
- 2 people said they had a fire at their house
- 1 said “I accept full responsibility for not showing; no excuse”⁵

One "failure to appear" case was reported to this author in detail by the accused's attorney. The offender in question is a delivery truck driver. He has this rather low-level job because he is dyslexic and could never read too well. It seems Mr. X parked his truck in an illegal space one day, and received a ticket — except the ticket blew away and he had no idea he had done anything wrong. Later, a warrant was issued for his arrest for failing to pay his fine on the ticket. Also, his license was automatically revoked. He knew nothing until he got another citation for speeding, and found himself arrested and in jail on the warrant as well as for driving after his license had been revoked. The judge deferred sentencing and told Mr. X to go to DMV and apply for and take the test to get a new license. Meanwhile Mr. X couldn't work. He also couldn't quite pass the driver's written part of the test, although he tried three times. And, on top of it all, he now has a criminal record and has served time in jail.

One chief deputy assistant district attorney was very candid about this issue. He said he could not imagine why so many people actually do show up for their court appearances; nothing particularly bad happens if you're subsequently brought in on a bench warrant (*i.e.* no additional charges are brought against you), and, if you stay totally out of trouble, chances are good that you won't be brought in on the bench warrant anyway. But, he added, thank goodness most people still want to do the right thing and at least try to make their court appearances.

THE SIZE AND EXTENT OF THE PROBLEM

Number of Bench Warrants Outstanding

As mentioned earlier, the Milwaukee County Sheriff's Department maintains monthly statistics on the number of warrant papers outstanding. As of October 31, 1999, there were 49,366 total warrant papers in the system.⁶ A summary breakdown of types of warrants is depicted below:

- 27,211 bench warrants of all kinds from all courts in the county
- 13,814 district attorney's office "original" warrants
- 4,421 summons/warrants/body attachments (generally issued in civil and paternity actions)
- 3,920 commitments/warrants — for failure to pay fines, court fees and costs, etc.

The vast majority of the 27,211 bench warrants registered in the system are for traffic and misdemeanor offenses. There are a number of reasons for this: (1) Serious felons are in jail while awaiting their court appearances; (2) Those felons who have been released on bail generally have a strong financial interest in showing up and not losing their cash deposits; (3) 88% - 90% of all the cases heard in the Milwaukee criminal courts are traffic and misdemeanor cases.⁷

According to a Sheriff's Department report, as of October 31, 1999, the following categories of case types had some of the largest numbers of outstanding bench warrants:

- 3,923 — traffic or minor misdemeanor
- 12,445 — obstruction (such as lying to a police officer)
- 1,550 — non-payment of family support

These three categories alone account for 17,918 of the 27,211 outstanding bench warrants, or 66%.

By contrast, there were four outstanding warrants for kidnapping in the system in October; one new one was entered during the month, and two were cleared. These kidnapping charges are usually domestic relations matters, where the spouse who was not given custody of the child/children by the court has grabbed the kid(s) and run.

Another serious felony crime with outstanding bench warrants in the system is smuggling of heroin; there are two outstanding bench warrants. There were no outstanding bench warrants for homicide cases as of October 31, 1999.

One final interesting category in this report was the number of outstanding warrants for violations of rules or laws overseen by the Department of Natural Resources. There were 76 total warrants in the system: 57 of these are for new offenses to be charged by the district attorney's office; 7 are bench warrants; and 12 are commitments.

Number of Bench Warrants Issued in a Month

The numbers above represent a still photo or snapshot view of the size of the outstanding bench warrant problem: on October 31, 1999, there were 27,211 outstanding bench warrants registered in the Sheriff Department's computerized system. But the real number ebbs and flows all the time — more like a movie.

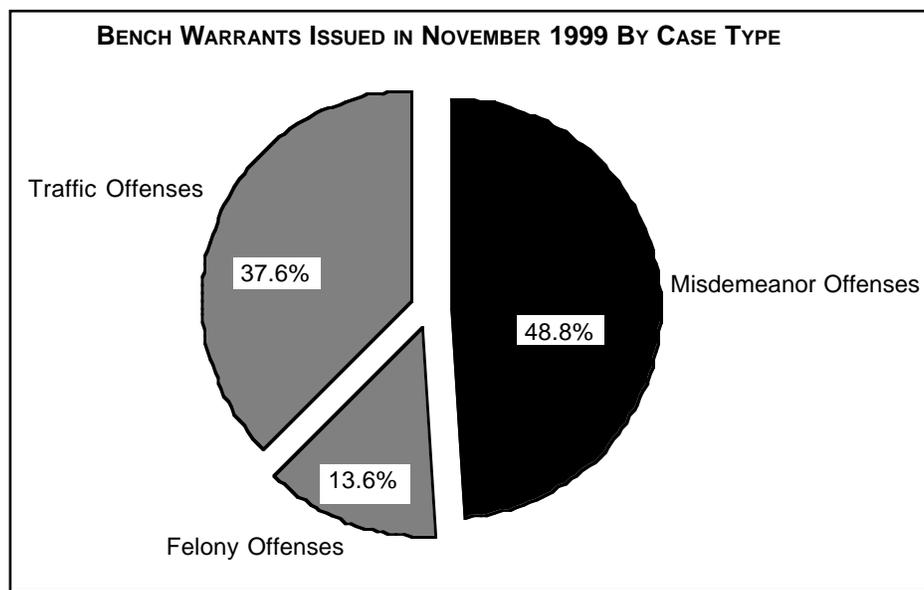
Several persons interviewed for this study emphasized that numbers of outstanding bench warrants and types of crimes for which bench warrants are issued varies widely by time of year, sheriff department vacation schedules, and periodic "sweeps" conducted by law enforcement agencies.

In order to better understand the extent of the resources expended on the problem of failure to appear and subsequent bench warrant proceedings, we can look at the flow of bench warrants being issued by the courts, and the defendants being returned to the courts on bench warrants over a specific period of time. It would also be helpful to know in what kinds of cases bench warrants are being issued.

Until very recently this information was not available. It has been only since mid-October of 1999 that CCAP, the courts on-line computerized case management system, has been able to capture the activity code regarding issuance of bench warrants. The Assistant Administrator of the Criminal Division of the Clerk of Circuit Court very kindly made a special run for this author of the number of bench warrants issued by judge by type of case during the month of November 1999.⁸ The results are discussed below.

During the month of November, 557 warrants were issued: 434 of these were bench warrants. The remaining 123 were district attorney warrants, used, as described earlier in this report, to bring suspected perpetrators or delinquent or recalcitrant witnesses in for the charging process, preliminary to filing a court case. Because some defendants have multiple open and active cases going on in the criminal justice system, the 434 bench warrants issued in November actually represents 397 persons. A breakdown of the warrants issued by type of case is as shown:

One court commissioner explained that the law enforcement agencies in Milwaukee have figured out that there's nothing to be gained by arresting female prostitutes: they don't show up for court appearances and they often have no permanent address; they usually have no money to pay fines anyway; and, as long as there is demand for their type of service, there will be a supply. Instead, when the weather is nice, the police "sweep" up those (usually males) who are responsible for creating the demand. Lunchtime is one good time to make such a "sweep," and there may be a "sweep" a week during the summer months.



It is clear that the vast majority of bench warrants issued by the courts in the month of November 1999 were for relatively minor offenses. In fact, 86.4% of the bench warrants issued were for traffic or misdemeanor cases. (A misdemeanor is a crime that carries a maximum penalty of a year or less in jail.)

This does not imply, however, that the 59 bench warrants issued for felony offenses (56 people) should be viewed as unimportant. These could include some offenders who are dangerous to the public safety. For that matter, some traffic offenders and/or misdemeanants could also be deleterious to the health or well-being of a law-abiding citizen. It is a person's behavior that determines his or her "dangerousness" — not the name of the crime of which he or she has been accused.

Nonetheless, felony crimes have been defined as more serious crimes, and felony offenders bear the closest scrutiny. The 56 felony offenders who failed to make a court appearance in Milwaukee county in November of 1999 were accused of the following crimes:

Offense Type for 59 Felony Bench Warrants Issued in November 1999

- | | |
|---|---------------------------------------|
| • 27 drug possession, manufacture and/or delivery | • 3 "other" crimes against children |
| • 5 forgery | • 1 "other" felony |
| • 1 welfare fraud | • 1 hit and run |
| • 2 damage to property | • 1 aggravated battery |
| • 3 burglary | • 1 armed robbery |
| • 5 theft and unarmed robbery | • 1 kidnap/hostage/false imprisonment |
| • 2 escape | • 2 child abuse |
| • 1 operating a vehicle without permission | • 1 first degree homicide |
| • 2 "other" public safety crimes | |

It would appear that the most heinous of these, and therefore potentially the most dangerous offenders to the community, are the last seven on the list. An extensive search of the files for the current status of these (current as of February 15, 2000) revealed the following:

- The first-degree homicide offender was found and returned to court. A jury trial has been held, and the offender was scheduled to be sentenced in March.
- One of the child abuse offenders has been found and is back in the system, with a trial scheduled for March 1, 2000; the other child abuse suspect was still at large as of February 15, 2000.
- The bench warrant is still outstanding on the kidnap case.
- The armed robbery suspect was returned on warrant to the court February 3. Several hearings have been held since then.
- The suspect accused of aggravated battery (it was a domestic relations case) was returned to court in January, a plea has been entered, and sentencing concluded.
- The hit and run offender was brought back within the month and the case was disposed of in January 2000.

To summarize, five out of the seven offenders accused of the most serious crimes, who failed to appear in court in November of 1999, have subsequently been arrested and brought back into the criminal justice system. Two offenders were still "on the street" as of mid February, 2000.⁹

Number of Bench Warrants Returned in a Month

As shown above, thanks in part to the "hot sheet," a serious attempt is mounted by law enforcement agencies to arrest and bring back to court "harmful" felons. Other offenders tend to be "found" and apprehended only in the course of checking their criminal history records after they have been arrested for a subsequent crime. This is not official, written, standard operating procedure; it's just the way things are in a fairly large municipality where imme-

diate response to current crimes have priority. Today's crimes have an urgency that yesterday's crimes do not. When the Sheriff's Department has time and manpower to spare, then searches may be conducted for bench warrant absconders who are not on the "hot sheet."

Not surprisingly, repeat offenders are frequently caught, and their outstanding bench warrant(s) may clinch their rearrest. When this occurs, the cases are generally combined, and the defendant is soon sent back to the judge who had the original case. There is good communication between the jail booking operation and the criminal courts in these instances. The court of the original case judge is contacted in all felony cases. In misdemeanor cases, the defendant may be sent to the original case judge or to a commissioner in intake court.¹⁰

There is a court clerk whose sole responsibility is to receive the lists from the jail of misdemeanor defendants arrested and remanded to the judge. She gets these lists at 5:30 A.M. and again at 11 A.M. She then notifies, via fax or telephone, the district attorney's office, the judge's clerk, and the attorneys in the case, that this defendant has been brought in; she also schedules the case for two days hence, giving the attorneys and clerks time to find files and summon witnesses.

These lists provided the only available source of numbers of returned, or remanded, bench warrant cases. A summary of the numbers is shown in Table 1.¹¹ It is important to remember that these numbers represent only misdemeanor cases and only cases that have been remanded to a judge. There are many, perhaps as many as 50 cases a day, that are remanded to one of two commissioners for resolution. (There were 28 bench warrant "walk-in's" to the out-of-custody commissioner's court on a single typical day, November 18, 1999).¹²

Although no major conclusions can be drawn from these numbers, they do support the general knowledge gleaned from interviews, that (1) the number of defendants apprehended with outstanding bench warrants who are remanded to court varies widely from month to month, and (2) many defendants have multiple bench warrants outstanding against them.

It is unfortunate that data enabling us to know the total number of bench warrants remanded in a day or a week or a month were not made available for this report. Nor were data available that would indicate how many total activities or total persons were processed in a day or a week or a month. It may be possible to extrapolate from the known quantities, but these figures could not be considered scientifically viable with any degree of reliability. Knowing these limitations, one could still estimate that there may be as many as 570 defendants with bench warrants remanded to the Milwaukee criminal courts in a month.

TABLE 1 NUMBER OF MISDEMEANOR CASE BENCH WARRANTS AND DEFENDANTS REMANDED TO A JUDGE DURING SPECIFIC MONTHS IN 1999

	Number of Bench Warrants Remanded	Number of Defendants
July 1999	64	56
August 1999	174	137
November 1999	144	119

Other Bench Warrants/Other Absconders

The vast majority of "failure to appears" (FTA's) and bench warrants issued occurs in the Milwaukee County Circuit Courts. No report would be complete, however, without some mention of the City of Milwaukee's Municipal Court bench warrants, Juvenile Court bench warrants (usually called "*capiases*"), and convicted defendants who fail to appear for meetings with probation/parole agents ("absconders").

Municipal Court Bench Warrants

The Milwaukee Municipal Court handles City of Milwaukee traffic and ordinance violations. No jail time is involved unless the violator fails to pay his or her fine after an extended period of time and a bench warrant is issued for the apprehension of the violator. A violator may also be held temporarily for driving while intoxicated or driving after the license has been suspended. But usually the crimes don't allow for incarceration, especially if the violator is indigent. If the violator has an outstanding case or cases in the circuit courts, then the violator is released from municipal court (perhaps with a fine to pay), and ordered into the circuit court; any municipal court bench warrants will then be cancelled.¹³

Juvenile Court Bench Warrants

Juvenile Court bench warrants are handled very much like adult circuit court bench warrants. When a juvenile fails to appear in court, the judge may order a *capias* (bench warrant) be issued. At the end of the court session an Order Clerk prepares all the *capiases* and sees to it that they are delivered to the Sheriff's Department downtown. The Sheriff's Department enters the information into their computerized system exactly as they do for adult warrants. This means that the warrant information is passed on to the state and national computer records. Unless there is a special "flag" attached to the *capias* to give it priority status, the warrant is served as all other warrants are served.

The only difference between adult and juvenile bench warrants is that, when juveniles are apprehended, they are taken to the juvenile detention facility on Watertown Plank Road, and every effort is made to bring them before a judge or commissioner immediately. (In adult circuit court it often takes two days to pull files and notify and schedule the attorneys).

Juvenile court transactions are also now part of the CCAP system; however, the humans are still dealing with coding and training and startup problems. From the information that has been converted to input data and entered into the CCAP system, it appears that in November of 1999, 74 *capiases* were issued; 47 of these were still active/outstanding as of the end of the month. During the month, 27 *capiases* were cancelled — *i.e.* dealt with by the court after the juvenile was returned on a warrant.¹⁴

Probation/Parole Absconders

After an offender has been convicted of a crime, one of the alternatives available to the judge is placing the offender on probation for a specified length of time. The other alternative is to send the offender to a prison facility where he or she will remain incarcerated until his or her time is served, with subsequent follow-up supervision by a probation/parole agent. Frequent and consistent contact by the probation/parole agents of the Wisconsin Department of Corrections is vital. In Milwaukee in 1999 there were about 18,900 men and women under supervision. It is a daunting challenge to supervise this many people adequately.

With huge caseloads and inadequate manpower, probation/parole agents simply didn't have time to track down those convicted offenders who failed to show up for a scheduled meeting. In recognition of this fact, monies were targeted in the 1997-98 Wisconsin state budget for establishing in Milwaukee a special Absconder Unit, whose function it would be to find absconders from probation or parole and bring them back under supervision, if possible. The Unit began its work in April of 1998.

The eventual process decided upon was that the Absconder Unit would get its caseload from referrals from probation/parole agents. The process for probation is as follows: as soon as the judge has ordered a defendant to probation, the defendant is directed to one of two substations in the courthouse complex to register and fill out a questionnaire. He is then told to report within five days to one of the six offices of probation, usually the one closest to his or her home, for an introductory session. The defendant's paperwork goes to the supervisor of the office to which he has been assigned, and the supervisor assigns an agent to his "case." If the convicted offender does not report for this introductory session or if he subsequently fails to appear for meetings with his agent, the agent first tries to find him, using such means as phone calls, letters, and home visits. If the offender cannot be located, the agent may, with the consent of the supervisor, issue an Apprehension Request form, which serves as a warrant to law enforcement agencies. The case is then referred to the Absconder Unit.

The Absconder Unit attempts to prioritize the "cases" referred to them by evaluating the charges for which the offender was prosecuted. If, for instance, the offender has a history of battery charges brought against him or her, that offender is deemed to be "assaultive" and would become a person the Unit would attempt to locate. The total population of offenders referred to the Unit during the first year of operation was 2,295; of those, 55% were considered to be assaultive and another 22% were considered to be high risk offenders.¹⁵

It is interesting to note that the 588 females of the Absconder Unit's caseload were more likely to have committed misdemeanors (304 misdemeanants; 278 felons), whereas the 1,707 males in the caseload more often had committed felonies (1,007 felons, 672 misdemeanants).¹⁶ Data about the absconder population by more specific type of crime were not made available for this report.

When offenders referred to the Absconder Unit were thought to be particularly assaultive, the agents in the Unit collaborated with the Milwaukee Police Department (and other law enforcement agencies when appropriate) for police assistance. At least 74 absconders were apprehended in this manner. As a result of this successful coordination, the Milwaukee Police Department nominated the Absconder Unit for the Attorney General's Law Enforcement Program of the Year Recognition.¹⁷

It was reported in the *Milwaukee Journal Sentinel* on January 3, 2000, that about 3,500 men and women abscond from probation or parole in Milwaukee annually.¹⁸ The audit/evaluation of the Absconder Unit conducted by the Wisconsin Department of Corrections (April 30, 1999) states that, in the first year of operation of the Absconder Unit, 2,295 absconders were referred by agents, and the Unit located 665 of them, or 29%. Another interesting statistic reported in this audit is that, while the total probation and parole population in Milwaukee increased by 4% during the year (April 1998 to April 1999), the absconder population decreased by 3%.¹⁹ The average number of days to locate an offender was 36.99 days. Of the total 2,295 referred absconder population, 116 or 5.1% had reabsconded by March 26, 1999. The conclusion is that the Absconder Unit has been somewhat helpful, but probably cannot assure that all offenders will be found, or that all offenders who have been found will continue to be supervised by probation/parole agents.

There is another group of people from the Department of Corrections who work closely with officers from the Milwaukee Police Department to keep close tabs on high risk offenders. The Unit is called the Rope Unit. Ten probation/parole agents go out in the evenings with police officers to visit offenders convicted of high visibility and/or assaultive crimes. They may take urine samples; they may check electronic monitoring devices. The objective is to let the offender — as well as the community — know that disappearing or committing new crimes will not be tolerated. This Unit, in operation since 1998, is widely viewed as having a successful impact, although no formal evaluation has been completed.

WORKS IN PROGRESS

A study of the problem of Failures to Appear in the Milwaukee Courts was commissioned by the county and conducted by a leader in the pretrial services field in 1997.²⁰ The study was shelved and no action taken on recommendations contained therein. By the time of the writing of this report, however, there are four new projects underway to try to stem the flow of fugitives from the justice system.

The Absconder Unit and the Rope Unit are two relatively new projects that deal with criminal offenders who would like to be anonymous or at least unsupervised. If this is not allowed to happen, if we can keep track of those offenders convicted of crimes and assigned to supervision, we should have less to fear from repeated assaultive or abusive crimes. Ideally, of course, supervision would be constant and/or criminals would give up their antisocial behavior. The attainment of this goal is probably pretty far-fetched, but at least the Department of Corrections and the Milwaukee Probation Department should be encouraged in their efforts to create or expand projects like the Absconder Unit and the Rope Unit.

Another very new project, initiated by the court system and involving Wisconsin Correctional Services (WCS) personnel, is proposing to find misdemeanor FTA's (Failure to Appear) immediately after their no-show at court and before an official bench warrant goes to the Sheriff's Department. The project began March 5, 2000.²¹ It is being tested in one misdemeanor court as a pilot project, officially due to last for six months. WCS personnel will have seven days to locate the offender who failed to appear and bring him or her back to the judge's courtroom. Project planners are still working with the Sheriff's Department to get law enforcement commitment to follow-up immediately on those offenders that WCS personnel could not locate within the seven days. Hopefully, nearly all the offenders can be brought back to court within a 14 day time frame; if not, then the bench warrant will be formally entered into the court's and sheriff's computerized systems. The goal is to reduce the number of FTA's and, consequently, to reduce the number of outstanding bench warrants.

The old "purge project," intended to rid the criminal justice system of very old bench warrants, has never officially been retired. But many of the persons who were involved in the original project have changed jobs, and no one has put it back at the top of their list of priorities.

"Hot sheets" continue to help the Sheriff's Department and other law enforcement agencies determine which offenders they will take extra steps to try to apprehend. This method of pinpointing offenders who are especially dangerous to the community has been in use for many years, and hopefully will continue to be used for many more years.

Finally, there is a new joint federal-state-local task force to investigate and bring quickly to court offenders who have committed gun-related crimes. The project is called Operation Ceasefire and involves a special gun court, six assistant district attorneys to prosecute the offenders, agents from the Bureau of Alcohol, Tobacco and Firearms, and officers from the Milwaukee Police Department who go out and pick up the offenders as soon as they have missed a

court date.²² John Chisholm, one of the assistant district attorneys assigned to gun court, was quoted in the *Milwaukee Journal Sentinel* on Monday, February 28, 2000, as saying, “Our position is if a person has committed a gun-related crime, they are the type of people we don’t want walking around not resolving their cases. We don’t want them acting out in a violent manner or committing some other type of new offense.” This is a pilot project at this time.

SUMMARY

When citizens fail to appear as they are mandated by law to do, someone must find them, remind them, and/or bring them physically back into the criminal justice system. In the court system, the problem of failure to appear results in the issuance of a bench warrant, which directs the Sheriff’s Department to apprehend and detain the individual in jail until he or she can be seen again in court (generally two days). The Sheriff’s Department has never set the apprehension of fugitives from the court as its overwhelming number one priority, and subsequently, over the years, the number of outstanding bench warrants has grown and grown, until it is now at about 27,211. Even the massive purging project conducted in the 1990s has not reduced the number to a manageable size. With the additional burden of probation absconders, the criminal justice system sometimes seems scarcely able to keep up.

The real source of the problem of fugitives from the justice system, however, is not the justice system but the fugitives. If there were ways to ensure that accused individuals were present for all of their court and probation appearances, then there would be no need to issue bench warrants at the rate of 400 or so a month. Unhappily in Milwaukee, since bail bondsmen have been virtually eliminated, there has been no public nor private group whose primary responsibility is to see to it that appointments with the criminal justice system are kept.

Law enforcement “hot sheets” have been a consistently successful means for identifying priorities among the many warrants to be served. As shown in this study, 71% of the felony warrants on potentially assaultive fugitives were returned within a month or two of issuance. And there may be as many as 570 warranted individuals remanded to court in a month.

These figures should improve even more with the full implementation and utilization of Operation Ceasefire and the FTA pilot project of the court. Ideally, every suspect who fails to appear and has a gun-related crime outstanding will be picked up immediately and brought to court. Likewise, many misdemeanants will be located within a week by the FTA Unit and brought to court without a bench warrant ever needing to be filed with the Sheriff’s Department.

The Absconder Unit and the Rope Unit of the Wisconsin Department of Corrections also appear to be making a statement to the community that not reporting to probation/parole meetings is intolerable.

Unfortunately, useful, even wildly successful, projects come and go, usually when the funding sources dry up or when the people with drive and a vested interest move on to other jobs. If these projects work, one can only hope they will find a way to endure, perhaps even become institutionalized. Several other ideas are suggested below, as additional ways to stem the incessant flow of new bench warrants being issued.

SUGGESTIONS

This study began as an attempt to understand why there were so many bench warrants outstanding in the Milwaukee criminal justice system. Although there are no longer 70,000 outstanding bench warrants, the 27,211 or so that come and go through the system is still an overwhelming number. There will continue to be 400 or more bench warrants issued each month as long as defendants fail to appear and judges continue to employ the only recourse available to them. To attack the root of the problem, then, one must discover why defendants are failing to appear in court. As this report has shown, the excuses vary from the real to the ridiculous, but the actual reasons reveal some legitimate problems that the court system needs to address.

Notification

The first of these is notification. Although we are all subject to forgetting appointments, how much harder it must be to remember dates and times and places if you cannot read or write; or if you are afraid and overwhelmed by paper and rules; or if you have no time or opportunity to tell an impersonal scheduler about previous commitments.

So whose responsibility is it to make sure a defendant receives notification of his or her court appearance date in a clear, understanding, and repeated manner? Leaving it to the attorneys hasn't worked; and relying on busy, dogmatic court clerks is not working either. What is needed is a special person or persons whose primary job is to call scheduled defendants on the telephone or notify them in person to remind them of their need to be in court a day or two hence. Ideally this person should be patient and answer questions the defendant may have about where to park, where the courtroom is, and so forth. If the defendant has a legitimate excuse for being unable to appear at the originally scheduled time, the official notifier should be able, with the help of the computer, to reschedule the court event to another very specific time, date, and place. The defendant and/or his attorney must make certain that the notifier has the appropriate phone number to make this work. We know this sort of a reminder system of notification works, else why would doctor's, dentist's, and political campaign offices do it as a part of their standard operating practice?

Accessibility

Once a defendant arrives at the courthouse complex for his appearance, it behooves the courts to make certain that he gets to the proper courtroom or hearing room. There are three buildings in which the circuit courts function, and a fourth for the Milwaukee municipal court. The signage outside is not only confusing, it is wrong. The signage inside works only if you know where to look, are willing to walk long distances, through security stations, and know what the court calls things. For example, if you've just discovered you can't get a job because there's an active bench warrant on your record, you will need eventually to wend your way to the back, east side, 4th floor, of the Safety Building, to what the sign in the hallway says is "Harassment Court."

There are no elevator directories; there are no information kiosks; there are no big maps or brochures; there are no information phones that work. In an effort to solicit support for an information desk on the first floor of the main courthouse building, this author once sat on a folding chair to the side of the hallway; in one hour she received questions and directed 72 people to where they needed to go.

The problem is exacerbated by the political fact that the county owns the buildings and has offices there as well, while the courts are state-run. The courts are reduced to begging for any changes that have to do with the facilities. But the issue of public accessibility to the courts is too important to let slide. The county must be urged to help the public, even if the state runs the courts.

Follow-up

If a defendant has received proper notification (including reminders) of his or her scheduled court appearance, and the county and/or state have done everything they can to make sure the defendant can locate where he is expected to appear, the defendant must appear. If he or she does not, there should be immediate follow-up and recourse to severe penalties.

In the past, bail bondsmen provided this service to the courts. At the prospect of losing their cash deposit, bounty hunters rounded up absconders quickly. The idea was right, but the system in some cities became corrupt, harmful to individuals, and threatening to community life. Now there is recognition that the criminal justice system does not work well without some sort of prompt and firm follow-up.

Experience has shown that if there are no consequences for failing to appear, then certain defendants will choose to not appear. Wisconsin statutes clearly provide for sanctions against persons failing to appear for court activities. (Wisconsin Statutes, Sections 946.49 and 946.50) An additional charge for bail jumping or absconding is made available to the prosecutor's office, to add to the charge(s) already filed in the original complaint. In the past, the prosecutor's office has decided that the paperwork involved in invoking this sanction is not worth the possible but unknown outcome. Perhaps a more efficient procedure can be developed now that a reliable computer system is in place. It seems to make sense that, if a defendant knows that his or her sentence may be longer if he or she fails to make a court appearance, then he or she will make a greater effort to appear.

As for rounding up absconders, we have already discussed how certain offices of the Milwaukee criminal justice system are attempting to find FTA's through small projects which target certain types of offenders — those carrying weapons, misdemeanants from a specific court, and probation violators who may be physically dangerous. These limited projects seem to be performing very admirably, perhaps because they are small and focused and moti-

vated by end-of-term evaluations. Perhaps the community would be better served, however, if there were consistent, full-time, official follow-up on all persons who fail to make a court appearance.

Pretrial Service Agency

Many other cities have found that incorporating a failure to appear follow-up component in the regular, ongoing structure of the bail and notification system of the court has proved successful in the long run. These activities are often combined in one organization, usually called a pretrial service agency. In some cities the pretrial agency only does interviews of persons potentially eligible for bail; in other cities, the pretrial service agency is responsible for bail interviews, continuous notification, and roundup of absconders. Washington D.C has had a very successful pretrial service agency for twenty years that includes all of these functions.²³ The National Association of Pretrial Service Agencies has been in existence even longer; it has over 500 members from 44 states, the District of Columbia and Puerto Rico.²⁴ At least 36 of these pretrial agencies and associations have websites, offering mission statements, procedures, and contacts for obtaining further information. In addition, there is a well-respected National Pretrial Services Resource Center, accessible via the web, which offers technical assistance to cities or states that are interested in setting up pretrial organizations. Many of these programs have proven successful in reducing rates of failure to appear. There are even data available to show how pretrial service agencies justify themselves in terms of cost savings, primarily the savings from reduced numbers of defendants incarcerated pending resolution of their cases.

Milwaukee should take advantage of the available current knowledge and establish a pretrial service agency of its own — one that includes innovative notification and follow-up components. It should be permanent, endorsed by all agencies in the criminal justice system, funded adequately, housed conveniently, and operated by creative, talented, committed people. The short run results, in terms of the reduction in number of bench warrants issued, should be immediate and obvious. In the long run, the number of outstanding bench warrants should be substantially reduced, and the time and resources wasted by no-shows in court and additional jail time would be reduced as well. In fact, a secondary and pleasant result of a successful pretrial service agency might be a reduction in the overcrowding in the county jail. The need in Milwaukee is great, and the opportunity to tailor a permanent solution to meet that need is available now.

NOTES

- 1 Lieutenant David Iushewitz, Milwaukee County Sheriff's Department, *Milwaukee Journal Sentinel*, April 1997.
- 2 Interview with Sergeant Matthew Paradise, Milwaukee County Sheriff Department, June 12, 1999.
- 3 Computerized report, Milwaukee County Sheriff Department, Monthly Warrant Activity, October 1999.
- 4 Search of CCAP computerized information system, at courthouse, February 2000.
- 5 Excerpt from *Milwaukee Journal Sentinel* article entitled "And Then the Dog Ate My Subpoena," reporting on a survey done in the summer of 1994 by the Milwaukee Intake Court.
- 6 Computerized internal report of Milwaukee Sheriff Department, Monthly Warrant Activity, October 1999.
- 7 This is a fairly consistent figure drawn from the Annual Report of the Clerk of Circuit Court 1994, the Budget Request of the Clerk of Circuit Court 1995, and the Statistics Report of the Clerk of Circuit Court 1996.
- 8 Printout prepared by Laura Funk, Assistant Administrator, Criminal Division, Clerk of Circuit Court.
- 9 Computer search done at the Milwaukee Courthouse, February 20, 1999.
- 10 Inter-Office Communication from Susan Byrnes re: Remand to Judge/Remand to Commissioner Directive Synopsis, November 9, 1998.
- 11 "Remand to Judge" daily jail lists for July, August, and November 1999.
- 12 Interview and observation in Out-of-Custody Intake Court, November 18, 1999.
- 13 Interview with Herman John, Commissioner, Milwaukee Municipal Court, June 1999.
- 14 Interview with Carlos Rodriguez, CCAP Administrative Services, Juvenile Division, December 1999.
15. *Report of the Performance and Effectiveness of the Wisconsin Department of Corrections Milwaukee County Absconder Unit, April 1, 1998 to March 31, 1999*. Prepared by Gloria J. Thomas, Director, Office of Audits, Investigations, and Evaluations. Submitted April 30, 1999, page 14.
16. *Ibid.*, appendix, activity graphs #7, #8 and #9.
17. *Ibid.*, page 18.
- 18 *Milwaukee Journal Sentinel* article "Probation/County Judges Leery of Program," January 3, 2000.
- 19 State of Wisconsin Department of Corrections, *Report of the Performance and Effectiveness of the Wisconsin Department of Corrections Milwaukee Absconder Unit, April 1, 1998 to March 31, 1999*, page 19.
- 20 *Technical Assistance Report, NIC Technical Assistance No. 97J1130 "Reducing Failures to Appear in Court"*, submitted to Hon. Karen M. Ordinans, Chairman of the County Board of Supervisors on June 23, 1997 (County File No. 97-501).
- 21 Interviews with Tom Reed, Director of the Milwaukee Public Defenders Office, and Susan Byrnes, Misdemeanor/Intake Court Coordinator, March 3 and 7, 2000.
- 22 *Milwaukee Journal Sentinel*, February 28, 2000.
- 23 See Mohammad Chaudhari, founder of the country's first failure-to-appear unit in 1979 in D.C. Superior Court, now head of Pretrial Services Consultants, Springfield, VA.
- 24 See www.napsa.org for data regarding the National Association of Pretrial Service Agencies. The Pretrial Services Resource Center may be accessed via www.pretrial.org.

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