

Archival Notice

This is an archive page that is no longer being updated. It may contain outdated information and links may no longer function as originally intended.





State Court Journal

Volume 16 • Number 2 • Spring 1992

FEATURES

Using Civil and Administrative Remedies
to Collect Fines and Fees

George F. Cole

4
137895

JUN 19 1992

Changing Caseloads: The View from the State Courts

Brian J. Ostrom

11
137896

ACQUISITIONS

Indigent Defense: Determination
of Indigency in the State Courts

Monica Lee

16
137897

DEPARTMENTS

Washington Perspective

2

Projects in Brief

3

Projects in Progress

24

State Judiciary News

KANSAS

Chief Justice Richard W. Holmes

26

MAINE

Chief Judge Vincent L. McKusick (retired)

28

SOUTH DAKOTA

Chief Justice Robert A. Miller

32

The *State Court Journal* welcomes and encourages the submission of articles dealing with all aspects of court operation, organization, or administration. Articles should be no longer than 25 double-spaced pages (excluding notes and any tables, charts, or figures). Please place all notes, citations, or references at the end of the article. Articles will be reviewed by members of the editorial committee, who will decide whether the article will be published. All rights are reserved to edit, condense, or reject any material submitted for publication. Submit articles to Managing Editor, *State Court Journal*, National Center for State Courts, 300 Newport Avenue, Williamsburg, Va., 23187-8798, or call (804) 253-2000 for more information.

Larry L. Sipes
President

Kriss Knister Winchester
Managing Editor

Charles F. Campbell
Associate Editor

Stevalynn R. Adams
Art Director

Hisako Sayers
Graphic Artist

Mary McCall
Production Coordinator

Editorial Committee

Alexander B. Aikman, chair

Roger Hanson

Ingo Keilitz

Beatrice P. Monahan

Marilyn M. Roberts

Robert T. Roper

H. Ted Rubin

Katherine T. Wilke

Contributing Editors

Kimberly W. Swanson

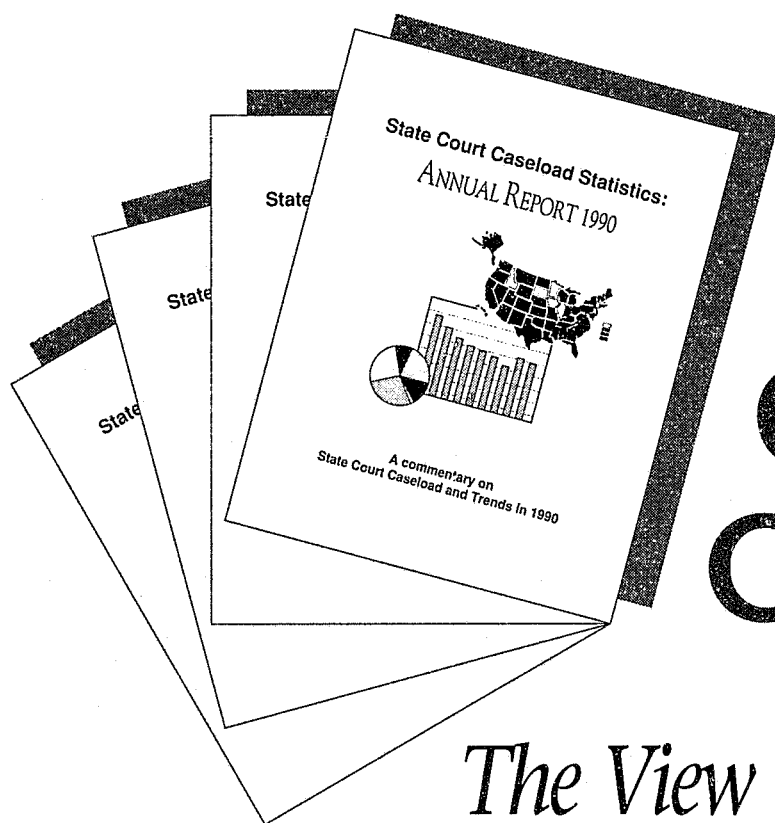
Projects in Brief

Projects in Progress

Thomas A. Henderson

Washington Perspective

©1992, National Center for State Courts; printed in the United States. Opinions expressed are those of the authors and not necessarily those of the National Center for State Courts. The *State Court Journal* is published quarterly for those interested in judicial administration. Subscription price in the U.S. for one year is \$24; individual copies are \$6.00. Address all correspondence about subscriptions, undeliverable copies, and changes of address to the Publications Coordinator, *State Court Journal*, National Center for State Courts, 300 Newport Avenue, Williamsburg, Va., 23187-8798. ISSN: 0145-3076.



Changing Caseloads:

The View from the State Courts

Brian J. Ostrom

The volume of cases in the state courts reached a record high in 1990: more than 100 million cases were filed. Rising trends characterized all major types of cases, with many states reporting dramatic increases in caseloads at both trial and appellate court levels. A rise in caseload volume has important consequences for the operations, functions, and effectiveness of the state court system.

This article summarizes findings from the National Center for State Courts' annual report on caseloads in the state courts—*State Court Caseload Statistics: Annual Report 1990*. The data in this report are the most recent and compre-

hensive compilation of state court caseload statistics. In abstracting some of the important results from the *Report*, this article reviews recent changes in the volume, composition, and trends of trial and appellate court caseloads.

The value of the *Report* lies in its capacity to inform the public and policymakers about increased demands placed on state court systems. Effective policy planning at the local, state, and national level depends on a sound and comprehensive court statistical database to assess the current business of the state courts, to help identify emerging trends in litigation, and to establish long-term needs. Bringing together comparable state court caseload statistics can help courts establish goals and develop policies by providing a yardstick against which states can assess performance and measure the possible impact of legislation and of procedures for forecasting budget requirements.

Overview

For the first time, the total state trial and appellate court caseload statistics include data from all 50 states, the District of Columbia, and Puerto Rico. What stands

out is that caseload volume is up substantially in many states.

- More than 100 million (100,792,000) new cases were filed in state courts in 1990. Mandatory appeals and discretionary petitions to state appellate courts account for 238,000 cases. The remainder are trial court filings: 18.4 million civil cases, 13.0 million criminal cases, 1.5 million juvenile cases, and 67.5 million traffic or other ordinance violation cases.
- Civil trial court filings, which encompass torts, contracts, domestic relations, estate, and small claims cases, grew by more than 5 percent from the 1989 total. Criminal trial court filings, which include felony and misdemeanor cases, increased by 4 percent. Rising filing levels also characterized state appellate courts, where filings of both mandatory appeals and discretionary petitions grew by more than 3 percent.

With more than 100 million new cases, state courts resolve the overwhelming majority of the nation's legal disputes. Compared to the federal court system, the number of cases handled and the number of litigants, lawyers, and judges involved in the state courts is far greater.

EDITOR'S NOTE: Brian J. Ostrom directs the National Center for State Courts' Court Statistics Project. The research described in this article was taken from *State Court Caseload Statistics: Annual Report 1990* (National Center for State Courts: Williamsburg, Va., 1992), a joint effort of the Conference of State Court Administrators, the State Justice Institute, and the National Center for State Courts. The Report was developed under Grant SJI-91-07X-B-007 from the State Justice Institute.

- In 1990 more than 31 million civil and criminal cases were filed in the nation's state trial courts, compared to fewer than 280,000 such filings in the U.S. district courts, the main federal trial courts. Consequently, more than 100 times as many civil and criminal cases commenced in the state courts as in the federal courts.

There is a great deal of variation in the number of cases each state contributes to the national total. At the same time, the bulk of the nation's caseload is concentrated in a relatively small number of states.

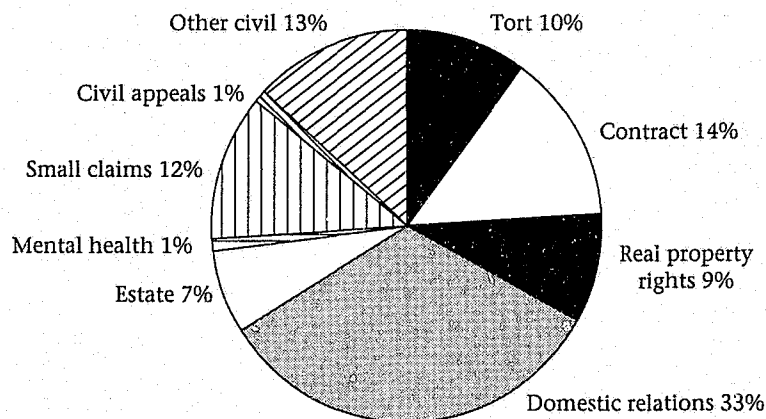
- Ten or fewer states account for most civil, criminal, and juvenile filings, although the states with the largest civil filings are not necessarily the same as the states with the largest criminal or juvenile filings. However, the states that dominate each of the major types of cases have one thing in common: they tend to be the most populous states.

Because much of this variation is due to differences in the number of people being served by the courts, caseload counts must be adjusted to accommodate differences in state populations. On the one hand, reduced variation in population-adjusted filing rates clearly shows that caseload levels in the state trial courts are correlated highly with population. On the other hand, there is not a perfect correspondence between caseload volume and population, which suggests that other social, economic, and legal forces affect filing rates in the states.

Trial court caseloads in 1990 and 1984-1990 trends

Filings for all categories of trial court cases are up and rising. This raises the immediate issue of whether courts are disposing of these cases. The number of case dispositions as a percent of case filings in a given time period offers a clearance rate—a summary measure of whether a court or a state court system is keeping up with its incoming caseload.

Figure 1
The Composition of Civil Caseload Filings in General Jurisdiction Courts, 1990



The chart includes data from 24 states.

Source: *State Court Caseload Statistics: Annual Report 1990* (National Center for State Courts: Williamsburg, Va., 1992).

- The number of new cases filed in 1990 often substantially exceeded the number of cases that were disposed of by the courts. The problem is more prevalent for civil and criminal cases than for juvenile cases, and more prevalent for limited than for general jurisdiction courts.

The question of whether clearance rates in 1990 reflect short-term or long-term problems of the state courts is addressed by constructing a three-year clearance rate that measures the percent of filings that were disposed of between 1988 and 1990. Examining the three-year clearance rate provides the opportunity to see if courts are keeping up with new cases despite a possible shortfall in a given year. The news is encouraging.

- The 1990 clearance rate for criminal cases in general jurisdiction courts exceeds the three-year rate in two-thirds of the states. This implies that clearance rates in 1990 tended to be above the average clearance rates for 1988 to 1990. Further, the three-year

clearance rate for civil cases was above 98 percent in nearly one-half of the state general jurisdiction court systems.

Because courts must give priority to criminal caseloads, maintaining high criminal clearance rates is necessary to ensure timely disposition of all other case types.

In addition to offering a comprehensive summary of state trial court activity related to major types of cases (i.e., civil, criminal, juvenile, and traffic cases), this *Annual Report 1990* looks more closely at the composition of civil and criminal caseloads. The combination of different case types making up the civil caseload in 24 courts is summarized in **Figure 1**.¹ Domestic relations cases form the largest caseload category (33 percent), while general civil cases account for an additional 33 percent of the total (10 percent tort; 14 percent contract; 9 percent real property rights). Although only 7 of the 24 general jurisdiction courts used in **Figure 1** have small claims jurisdiction, small claims cases were common enough

in those courts to account for 12 percent of the total. Other civil cases, accounting for 13 percent of the total, are composed of all civil cases that cannot be identified as belonging to one of the other major categories (e.g., name change and equity cases).

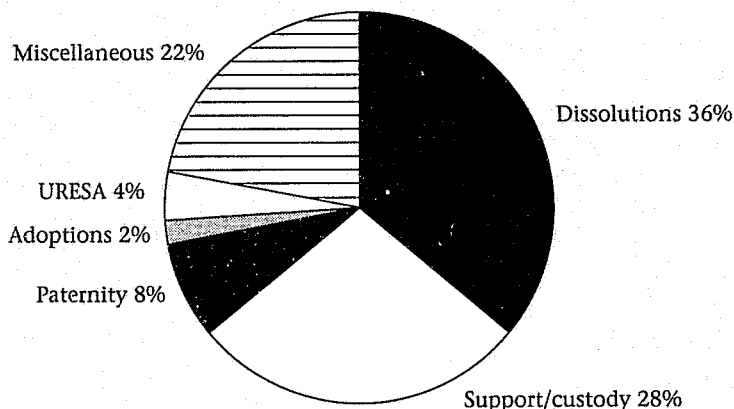
The most frequently reported category of civil filings is domestic relations. Based on data from 31 states, **Figure 2** displays the breakdown of the six main domestic relations case types. Marriage dissolution (divorce) and support/custody cases form the majority of domestic relations activity. The smaller percentages for Uniform Reciprocal Enforcement of Support Act (URESA), adoption, and paternity cases reflect the smaller number of such cases in most courts.

Criminal cases are composed of two main case types: felonies and misdemeanors. Felonies are serious criminal offenses. Typically, a felony is an offense for which the minimum prison sentence is one year or more. States use different criteria when distinguishing a felony from other offenses, but felony case filings always include the most serious offenses and exclude minor offenses. Misdemeanors are less serious criminal offenses that are usually punishable by a fine and/or a short period of incarceration.

Figure 3 shows the distribution of criminal case filings in general jurisdiction courts in 1990. Felony filings represent 28 percent of the total while misdemeanors constitute an additional 60 percent. The "other criminal" category, 12 percent of the total, is composed of DWI/DUI (driving while intoxicated/driving while under the influence), criminal appeals from lower trial courts, and miscellaneous criminal cases (e.g., extradition).

Figure 4 divides criminal filings in limited jurisdiction courts into the three main categories. Misdemeanor filings represent 84 percent of the caseload, DWI/DUI cases 11 percent, and other criminal cases 5 percent of the total. The "other criminal" category is composed of a small number of felony filings (from

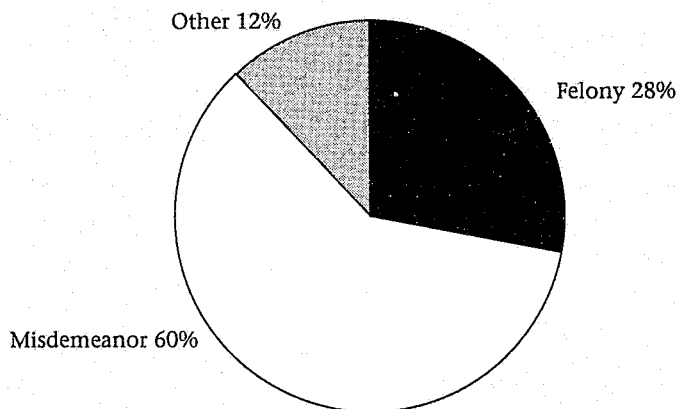
Figure 2
The Composition of Domestic Relations Caseload Filings



The chart includes data from 24 states.

Source: *State Court Caseload Statistics: Annual Report 1990* (National Center for State Courts: Williamsburg, Va., 1992).

Figure 3
The Composition of Criminal Caseload Filings in General Jurisdiction Courts, 1990



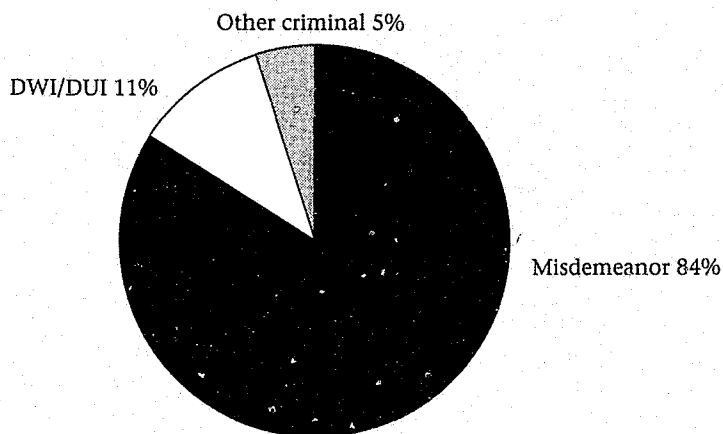
The chart includes data from 26 states.

Source: *State Court Caseload Statistics: Annual Report 1990* (National Center for State Courts: Williamsburg, Va., 1992).

those limited jurisdiction courts that have felony jurisdiction) and miscellaneous criminal cases.

The main finding to emerge from an examination of caseload composition is consistency: the underlying composi-

Figure 4
The Composition of Criminal Caseload Filings
in Limited Jurisdiction Courts, 1990



The chart includes data from 18 states.

Source: *State Court Caseload Statistics: Annual Report 1990* (National Center for State Courts: Williamsburg, Va., 1992).

tion of civil and criminal caseloads is strikingly similar across different states. The relative size or ranking of different areas of law (e.g., domestic relations, tort, contract) within a given type of case (e.g., civil) is quite similar across most courts. Thus, for example, the largest category of civil caseload in most general jurisdiction state courts is domestic relations followed by general civil (i.e., tort, contract, and real property rights). The specific percentage of domestic relations may vary from court to court, but it is consistently the largest category. Hence, the business of the state courts is about the same, despite differences in jurisdiction, crime rates, law enforcement practices, and social conditions.

An examination of caseload trends offers a perspective by fitting the 1990 experience into recent history. In short, caseload growth in 1990 is an extension of a cycle of growth.

- Since 1984, civil caseloads have risen by 30 percent, criminal caseloads by 33 percent, juvenile caseloads by 28

percent, and traffic caseloads by 12 percent. In contrast, national population has increased by 5 percent over the same period.

Trend analysis provides further information about whether caseload growth or decline is consistent among states and across types of cases. The *Annual Report 1990* examines trends in important civil case categories—tort, contract, real property rights—as well as in criminal felony cases.

Tort cases, an ongoing focus of public policy concern, are not consistently increasing across the country. An upward trend may be present in some states, but the distinguishing feature of tort cases in recent years is their susceptibility to short-term adjustments in response to tort reform legislation (e.g., Alaska and Arizona). It is too early to say if those adjustments will meet the objectives of that legislation.

The trend analysis also suggests that tort filings are changing over time in a manner that differs from other civil case categories.

- There are sufficient differences between tort, contract, and real property rights case-filing patterns to suggest that the factors promoting increased or decreased levels of tort litigation in states are not having a similar effect on contract and real property rights filings.
- The most dramatic increases in the civil caseload tend to be for real property rights and contract cases, not torts.

The trend in felony case filings is clear: increasing, and increasing substantially, in the general jurisdiction trial courts of most states.

- Total felony filings have increased by an average of more than 50 percent since 1984 in the 35 courts examined.

Because the number of cases being filed in some states has more than doubled over a seven-year period, the pressures on the criminal courts are substantial indeed. Moreover, felony cases are usually heard at the general jurisdiction court level and are the type of criminal case with the most substantial implications for court staffing and resources.

Appellate court caseloads in 1990 and 1984-1990 trends

This section summarizes the volume and trends in state appellate court caseloads. Although only lightly touched upon in this article, the *Report* goes into detail on the connection between caseload composition and appellate court structure in considering the work, operations, and problems of the appellate courts nationwide.

- The volume of appeals reached a new high in 1990. State appellate courts reported 238,007 mandatory and discretionary filings in 1990, which is a 3.7 percent increase over 1989.

Appeals are heard in two types of courts: intermediate appellate courts (IACs) and courts of last resort (COLRs). All states have established a COLR, often called the supreme court. The COLR has final jurisdiction over all appeals within

Changing Caseloads, *continued*

not uniform, and it is important to note where the increases in the number of appeals occurred.

- Mandatory appeals substantially increased from 1984 to 1990 in most first-level appeals courts—IACs and COLRs without an IAC.
- Discretionary petitions grew consistently from 1984 to 1990 in a majority of COLRs and in a majority of IACs, although there are a limited number of IACs for which data are not available.

These trends have important consequences because they indicate that the largest segments of both IAC and COLR caseloads are increasing at the most rapid rate: mandatory appeals in IACs and discretionary petitions in COLRs.

How are the data collected?

Information for the national caseload databases comes from published and unpublished sources supplied by state court administrators and appellate court clerks. Published data are typically official state court annual reports, which assume a variety of forms and vary widely in detail. Data from published sources often are supplemented by unpublished data received in a wide range of forms, including internal management memoranda and computer-generated output.

Extensive telephone contacts and follow-up correspondence are used to collect missing data, confirm the accuracy of available data, and determine the legal jurisdiction of each court. Information is also collected about the number of judges per court or court system (from annual reports, offices of state court administrators, and appellate court

clerks), the state population (based on Bureau of the Census revised estimates), and special characteristics regarding subject matter jurisdiction and court structure.

Because there are 50 states and thus 50 different state court systems, the biggest challenge is to present the data in such a way that valid state-to-state comparisons can be made. Over the past 14 years, the Conference of State Court Administrators (COSCA) and the National Center for State Courts (NCSC) have jointly developed a model approach for collecting and using caseload data. The key to the approach is comparison: comparison among states and comparison over time. The COSCA/NCSC approach makes that task possible, although at times it highlights some aspects that remain problematic when building a comprehensive statistical profile of the work of the state appellate and trial courts nationally.

For more information

This article has reviewed some of the main findings from *State Court Caseload Statistics: Annual Report 1990*. Further information on the methodology used in compiling caseload information from the states as well as the caveats and cautions needed when making comparisons among the states are elaborated in the *Report*. Much more information is available on such topics as trends in key categories of trial court caseload (e.g., tort, contract, real property rights, and felony cases) and for mandatory and discretionary appellate cases.

State Court Caseload Statistics: Annual Report 1990 contains five main parts

followed by an appendix that details the methodology. The parts are:

- Part I: Trial Court Caseloads in 1990 and 1984-1990 Trends
- Part II: Appellate Court Caseloads in 1990 and 1984-1990 Trends
- Part III: 1990 State Court Caseload Tables (including four tables supporting the trend analysis).
- Part IV: 1990 State Court Structure Charts
- Part V: Jurisdiction and Statistical Reporting Practices

State Court Caseload Statistics: Annual Report 1990 can be ordered for \$6.95 plus \$2.25 postage and handling from the Publications Coordinator, National Center for State Courts, 300 Newport Ave., Williamsburg, Va., 23187-8798, (804) 253-2000, fax (804) 220-0449. scj

Notes

1. This aggregate picture of civil composition appears to reflect the composition of civil caseloads within each of the 24 individual state courts. The largest portion of civil cases in most states is domestic relations, followed by general civil, small claims, and so forth. This observation is supported by statistical results. Specifically, the coefficient of concordance (*W*) measures the extent to which the pooled rankings of case types match with the case-type rankings within each of the 24 courts. A high (.44) and statistically significant value of *W* means that the relative shares of different case types are similar across the 24 courts.