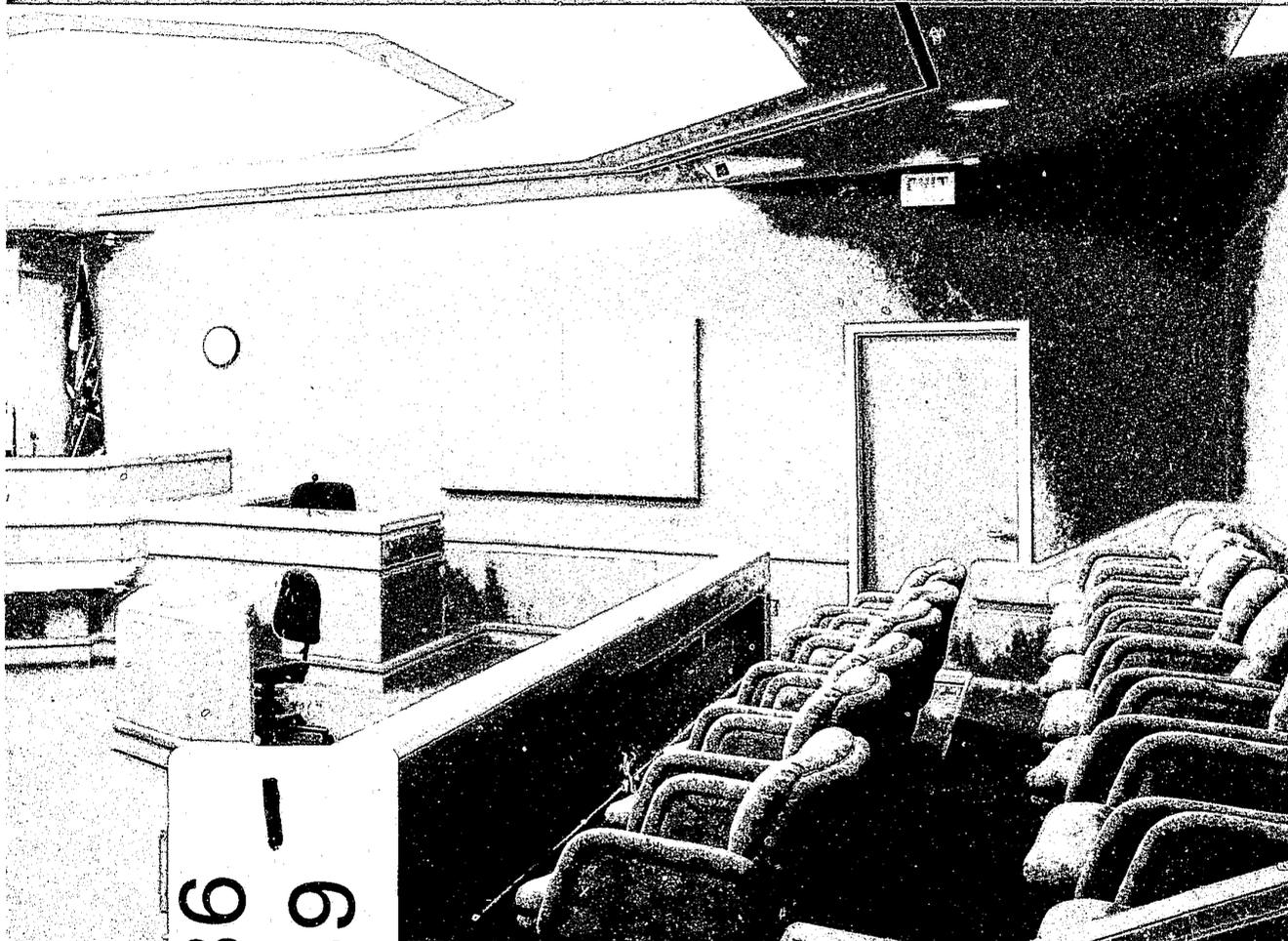


# State Court Journal

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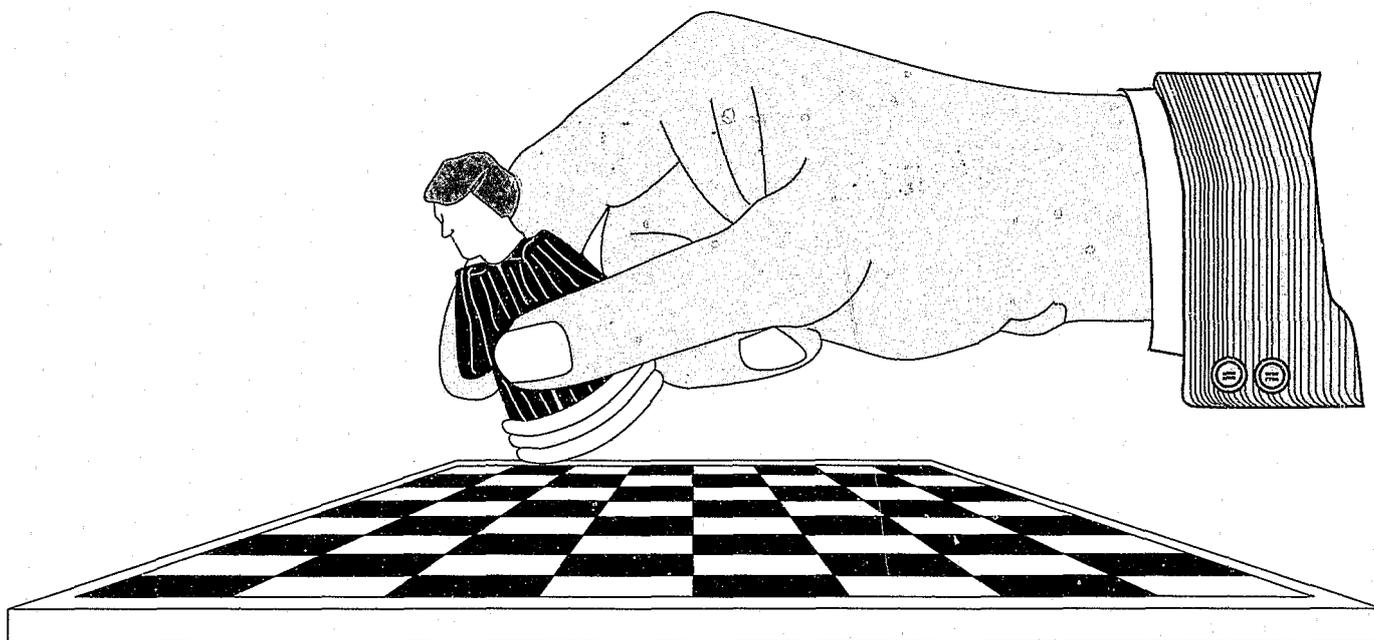
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# How Do States Determine the Need for Judges?

Victor E. Flango, Brian J. Ostrom, and Carol R. Flango



A wide variety of methodologies and criteria are being used to support decisions to determine the need for judicial positions in the state courts.

This article documents the methods states are currently using to determine the need for judges and highlights the strengths and weaknesses of the most

commonly used measures and criteria. One encouraging conclusion is that some of the best data for assessing the need for judges are becoming increasingly available as byproducts of evolving case management systems. Therefore, the criteria used by states in 1992 serve as a platform from which to assess current practice and to launch the evaluation of new methods of determining judgeship needs. Even the most promising techniques, such as weighted caseload or simulation models, will not objectively determine the exact number of judges needed to stay current with caseloads. No quantitative model on its own can accomplish that goal. Instead, the posture adopted here is that quantitative criteria should approximate the need for judgeships, and then these estimates should be tempered with more qualitative, court-specific factors that may differentially affect the need for judges.

The best judgeship needs' methodology was developed by the Task Force

**EDITOR'S NOTE:** *The authors would like to express their appreciation to the State Justice Institute for their financial support of the Determining Judgeship Needs Project (SJI-92-05C-B-158), and especially to Janice Munsterman, project monitor, for her encouragement. We are also indebted to the project's advisory committee for their comments and guidance. Committee members are Dr. Hugh M. Collins, judicial administrator of Louisiana and committee chair; Jane Hess, state court administrator of Missouri; Judge Benjamin Mackoff, presiding judge of the domestic relations division in Chicago; James McComb, of the Michigan Supreme Court state administrative office; Judge Michael Donohue, of the Spokane County Superior Court; Donald Cullen, district administrator of the Third Judicial District of Minnesota; and Nolan*

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*The authors are all with the Research Division of the National Center for State Courts. Victor E. Flango is director of the Court Research Department. Brian J. Ostrom, a senior research associate, directs the Court Statistics Project. Carol R. Flango is a research analyst.*

**Figure 1**  
**Use of Case-related Indicators to Determine Judgeship Needs**

States	Cases Filed	Filings per Judge	Dis-positions per Judge	Dis-positions per Judge	Case Backlogs	Cases Pending	Number of Jury Trials	Case Types	Process Exceeds Standards	Filings and Pendencies per Judge	Pendencies per Judge	Jury Trials per Judge	Case Types per Judge	Totals
Utah	1	1	1	1	1	1	1	1	1	1	1	1	1	13
Pennsylvania	1	1	1	1	1	1	1	1	1	1	1	1	1	13
Florida	1	1	1	1	1	1	1	1	1	0	1	1	0	11
New Jersey	1	1	1	1	1	1	0	1	1	1	1	0	0	10
Hawaii	1	0	1	1	1	1	1	1	1	1	0	1	0	10
Alabama	1	1	1	1	0	1	1	1	0	0	1	0	1	9
Delaware	1	1	1	1	1	1	0	0	1	1	1	0	0	9
Virginia	1	1	1	1	0	1	1	1	0	0	1	1	0	9
Oklahoma	1	1	1	0	1	1	1	0	1	0	1	0	0	8
New York	1	1	1	0	1	1	0	0	1	1	1	0	0	8
Indiana	1	1	1	0	1	1	1	0	0	0	0	1	1	8
Nebraska	1	1	1	1	0	0	1	1	0	0	0	1	1	8
Maryland	1	1	1	1	1	1	0	1	0	0	1	0	0	8
Alaska	1	1	1	1	1	0	1	1	0	0	1	0	0	8
Kansas	1	1	1	1	1	0	1	0	0	1	0	0	0	7
Missouri	1	1	1	1	0	0	1	1	0	0	0	0	1	7
West Virginia	1	1	1	1	1	0	0	1	0	0	0	0	1	7
California	1	0	1	0	1	1	1	1	1	0	0	0	0	7
Arkansas	0	0	1	1	0	0	1	1	1	1	0	1	0	7
Tennessee	1	1	1	1	0	1	0	0	0	1	1	0	0	7
Maine	1	1	1	1	1	0	0	0	0	1	0	0	0	6
Idaho	1	1	1	1	0	1	0	0	1	0	0	0	0	6
Ohio	1	1	0	1	0	0	0	0	0	1	1	1	0	6
Connecticut	1	0	0	0	1	1	1	1	1	0	0	0	0	6
South Carolina	1	1	1	1	0	1	0	0	1	0	0	0	0	6
Oregon	1	1	1	1	0	0	0	0	0	1	0	0	0	5
South Dakota	1	1	1	1	0	0	1	0	0	0	0	0	0	5
Georgia	0	1	0	0	1	0	0	0	0	0	1	1	1	5
Washington, D.C.	1	1	0	0	1	0	0	0	0	0	0	0	1	4
Massachusetts	1	1	0	0	1	0	0	0	0	1	0	0	0	4
Rhode Island	1	0	0	0	1	1	0	0	1	0	0	0	0	4
North Carolina	1	1	0	0	0	0	0	1	0	0	0	0	1	4
Colorado	1	1	0	0	0	0	1	0	0	0	0	1	0	4
Texas	1	1	0	0	0	1	0	0	0	0	0	1	0	4
Kentucky	1	1	1	1	0	0	0	0	0	0	0	0	0	4
North Dakota	1	1	0	0	0	0	0	0	0	0	0	0	1	3
Louisiana	0	0	0	1	0	0	1	0	1	0	0	0	0	3
Minnesota	1	0	1	0	0	0	0	1	0	0	0	0	0	3
Mississippi	0	1	0	0	1	0	0	0	0	1	0	0	0	3
New Mexico	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Vermont	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Wyoming	0	1	0	0	0	0	0	0	0	1	0	0	0	2
Michigan	1	1	0	0	0	0	0	0	0	0	0	0	0	2
New Hampshire	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Montana	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Wisconsin	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Arizona	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Iowa	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Illinois	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nevada	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Totals	42	38	27	24	22	19	18	17	15	15	14	12	11	

on Principles for Assessing the Adequacy of Judicial Resources and summarized in a report endorsed by the Conference of State Court Administrators, the National Association for Court Management, the National Conference of Metropolitan Courts, and the National Council for Judicial Planning Resources (hereafter referred to as the Task Force Report).<sup>1</sup>

Since the Task Force Report was written, however, some states have changed their criteria for determining judgeship needs and others have experimented with new methodologies. This article updates the Task Force Report by presenting criteria used by states in 1992.<sup>2</sup> The Task Force Report distinguished between direct measures of service (case filings and active pending cases), indirect measures that consider work completed rather than work yet to be done, and surrogate measures (such as population) that are believed to be related to the need for judges. That distinction is still useful and will serve as the organizing framework of this article.

Figure 1 simultaneously ranks states in order of the number of case-related indicators used and by frequency of use. The ordering of states does *not* imply that states with the most criteria have the best methodologies. The criteria used most frequently are not necessarily the best. In some instances, the use of multiple criteria may mask the fact that decisions are made subjectively, with objective criteria being used only to the extent that they support decisions made on other grounds.

Some states, including Illinois, New Mexico, Pennsylvania, and Utah, provide information to the legislature as requested but do not rank counties by relative need for judgeships.

## Case-related indicators— direct measures

### Case filings

Filings represent the need for court services directly because they are least likely to be affected by the current allocation of judges. As filings increase beyond a certain level, additional judges will be required if the current level of service is to be maintained. Almost all states use filings in some form as an indicator of the need for judges. Forty-two states use raw case filings as an indicator of judgeship need, and 38 states use filings per judge to measure the *relative* need for judgeships within states (see Figure 1). (In addition, seven states measure relative need for judges by using filings per population.) Accordingly, only six states do not explicitly use filings to determine judgeship needs. Of these, Louisiana and Washington use variations of a weighted caseload approach that incorporates filings as part of the model. Because of the special issues surrounding the use of weighted caseloads, this topic will be discussed separately later.

### Active pending cases

One direct measure sometimes used as a criterion to determine judgeship needs is the inventory of pending cases. Nineteen states use the total number of cases pending as a criterion (Figure 1). Actually, cases that are *actively pending* and require judicial attention should be the criterion rather than all cases pending, because the latter includes situations where the defendant has not been located, is in prison, is in a hospital or mental institution, or is otherwise unavailable for court. Growth in the active pending caseload may indicate a need for additional resources, but not necessarily, because judges have some control over the size of their court's active inventory of pending cases. An

inventory of actively pending cases can increase because judges cannot keep pace with the workload or because they are not managing the available time effectively.

Measures of the relative need for judges based upon pending cases include cases pending per judge (14 states), the number of cases filed and pending per judge as a measure of the total caseload faced by judges (15 states), and cases filed and pending per population (Pennsylvania and Utah). Altogether, 23 states use pending cases in one form or another to determine the need for judges.

Twenty-two states use case backlog as an indicator of the need for judges, and 11 of these use backlog in conjunction with cases pending. One measure of backlog is simply the difference in the number of cases pending at the beginning and at the end of each reporting period. This measure indicates a growth or decline in the caseload inventory.

## Case-related indicators— indirect measures

### Number of dispositions

Dispositions suggest the amount of work being done by judges now on the bench. If the disposition rate increases, however, is it the result of more work done by judges, additional efforts by the bar to settle cases, "docket cleaning" done by clerical staff, or a combination of all three? Similarly, one cannot necessarily attribute decreases in dispositions to decreased judicial activity, as opposed to other factors, say changes in procedures or an influx of more complex cases that require greater amounts of judicial time.<sup>3</sup> Because of these ambiguities, dispositions do not offer clear guidance on the need for judgeships.

Perhaps for that reason, 15 states have ceased to use dispositions or dispositions per judge as indicators of the

**Figure 2**  
**Use of Non-case-related Criteria to Determine Judgeship Needs**

States	Population	Population Growth	Number of Judges	Judges' Travel Time	Use of Retired or Senior Judges	Population Density	Number of Attorneys	Totals
Utah	1	1	1	1	1	1	1	7
Pennsylvania	1	1	1	0	1	1	1	6
Maryland	1	1	1	0	1	0	1	5
Connecticut	1	1	1	0	1	1	0	5
Indiana	1	1	1	1	0	1	0	5
Oklahoma	1	1	1	1	1	0	0	5
Tennessee	1	1	1	1	1	0	0	5
Colorado	1	1	1	1	1	0	1	6
Missouri	1	1	1	1	1	0	0	5
West Virginia	1	1	1	1	1	0	0	5
Nebraska	1	1	1	1	0	0	0	4
Florida	0	0	1	1	1	0	0	3
Idaho	1	1	1	1	0	0	1	5
Virginia	1	0	1	0	1	0	0	3
Hawaii	1	0	1	0	0	0	0	2
Texas	1	0	1	1	1	0	1	5
South Carolina	1	1	1	0	1	0	0	4
Alaska	1	1	0	0	0	0	0	2
Arkansas	0	1	0	1	0	1	0	3
California	0	0	1	0	0	0	0	1
Maine	1	1	0	0	0	1	1	4
South Dakota	1	1	0	1	0	0	0	3
Kentucky	1	1	0	1	0	0	0	3
Delaware	0	0	1	0	0	0	1	2
New York	0	1	1	0	0	0	0	2
Georgia	1	1	1	0	1	0	1	5
North Dakota	1	1	1	1	0	0	0	4
Oregon	0	1	0	1	0	1	0	3
Kansas	1	0	0	0	0	0	1	2
Alabama	1	1	1	1	0	1	0	5
Minnesota	0	0	1	0	0	0	0	1
New Jersey	0	0	0	0	0	0	0	0
North Carolina	1	0	1	0	0	0	0	2
Ohio	1	1	0	0	0	1	0	3
Illinois	1	1	0	1	0	1	0	4
Massachusetts	0	1	0	0	0	1	0	2
Montana	1	0	0	1	0	0	0	2
Iowa	1	0	0	0	0	1	0	2
Rhode Island	0	0	0	0	0	0	0	0
Louisiana	0	0	0	1	0	0	0	1
New Hampshire	1	0	0	0	0	0	0	1
Mississippi	1	1	0	0	0	0	0	2
Washington, D.C.	0	0	0	0	0	0	0	0
New Mexico	0	0	0	0	0	0	0	0
Wisconsin	0	0	0	0	0	0	0	0
Michigan	0	0	0	0	0	0	0	0
Vermont	0	0	0	0	0	0	0	0
Arizona	1	0	0	0	0	0	0	1
Washington	0	0	0	0	0	0	0	0
Wyoming	0	0	0	0	0	0	0	0
Nevada	0	0	0	0	0	0	0	0
Totals	32	27	25	20	14	12	10	

need for new judgeships, while only one state has added dispositions as an indicator in the ten years since the Task Force Report was written. Nevertheless, they are often used in combination with other measures to determine the relative need for judges within states. Twenty-seven states use dispositions as an indicator of the need for judgeships (Figure 1). Moreover, 24 states use dispositions per judge and 5 states use dispositions per population to measure the relative need for judges within states. Altogether, 35 states use either dispositions or dispositions per judge as an indicator of need for judges.

#### ***Manner of disposition***

Obviously, jury trials require more judge time than cases that are dismissed or settled. Eighteen states use the number of jury trials as one indicator of judgeship needs, and 12 determine the relative need for judges within states by using jury trials per judge. (Utah also considers jury trials per population).

#### ***Case-processing time***

Standard 2.1 of the National Center for State Courts' *Trial Court Performance Standards* suggests the use of "recognized guidelines for timely case processing" as one of the key measures of court performance.<sup>4</sup> Case-processing time is defined as the time between the filing of a case and its disposition. This measure has the advantage of directly linking the number of judges to a court performance outcome so that policy makers can decide how to balance the benefits of faster case-processing times against the costs of adding judges. Maryland uses a combination of case-processing times for criminal, civil, and juvenile cases (along with other measures, such as ratio of filings to judges, population to judges, and attorneys to judges) to estimate judgeship needs. Fifteen states use the number of cases exceeding established standards as a measure of de-

*There is some need  
for caution when  
using case-processing  
time as a criterion  
for determining  
judgeship need.*

lay and consequently as a manifest indicator that more judges are required (Figure 1).

There is some need for caution when using case-processing time as a criterion for determining judgeship need. First, time to disposition may not improve as much as expected after new judges are added, especially if the added time available is used to improve the quality of decision making.<sup>5</sup> Second, the effort expended by each judge on any court can affect the pace of litigation, and so pace is not a direct measure of the need for judgeships. For these reasons, the Task Force Report urged caution in using case-processing times to determine the need for new judges directly, but acknowledged that additional judges could result in improved case-processing time.

#### ***Non-case-related criteria—surrogate measures***

Several states consider criteria for determining the need for judgeships that are not case related (see Figure 2). These criteria are attractive precisely because they are not based upon measures that can be affected by judicial actions.<sup>6</sup>

#### ***Use of outside judicial assistance***

Fourteen states examine a court's use of retired judges or judges from other localities to determine whether new judges are needed. If assistance is required because of an extended illness, the assignment of other judges may not be significant. But the regular use of outside assistance is an indirect indicator of the need for judges. In the ten years since the first Task Force Report, 19 states have dropped the use of senior judges as a criterion for determining the need for judgeships.

#### ***Population size or growth***

Population is an attractive indicator of judgeship need because it is objective and easy to understand. On the other hand, it does not account well for workload created by economic conditions, legislative changes, or court procedures, such as use of alternative dispute resolution techniques. Thirty-four states use population as a criterion for judgeship determination. Thirty-two states consider population size, and 27 of these consider population growth as well when determining the need for judges. (Two states consider population growth but not population size.) In Iowa, for example, one judgeship is allocated per 550 combined civil and criminal filings in judicial election districts containing a city of 50,000 or more population. Other districts are entitled to one judgeship per 450 filings or 40,000 people. Typically, the relationship between population size and court case filings is so close that they are indeed surrogates for each other. Nevertheless, even with this close relationship, estimates of filings based on population vary enough to change the rank order of some judicial circuits or districts.<sup>7</sup> Because population is a surrogate indicator of the need for judicial services, it should only be used when the direct or indirect indicators are unavailable or unreliable.

**Figure 3**  
**Purpose for Caseload Forecasting and Forecasting Methods Used by State Judicial Systems**

State	Purpose for Forecasting	Forecasting Methods
California	Budgeting purposes.	NR
Colorado	Estimating future judgeship needs, reporting, future facility needs, and special requests.	Weighted averages and linear regression.
Delaware	Determining future resource requirements.	Trend line; linear regression.
Florida	Two-year projections for resource and budget requirements; forecast prison population special requests and projects.	Time series, ARIMA.
Hawaii	Facilities planning; multiyear program and financial planning; budget justifications.	Trend analysis; bivariate regression.
Idaho	To determine judgeship needs. Facilities planning at request of local courts.	Average percentage increase in cases over ten-year period. Filings-to-population ratios.
Kentucky	Done in past to determine judgeship positions and to realign circuits and districts. Not done for several years.	NR
Maryland	Projects workloads from baseline data by jurisdiction and divided by full-time equivalency measures to determine judgeship needs.	Linear regression.
Michigan	Future resource needs.	NR
Missouri	NR	Linear regression.
New Jersey	To determine the number of judges needed for clearance.	Percent change in case filings/dispositions.
New York	Budgeting and facility planning.	Projection analysis.
North Carolina	Budget justifications.	ARIMA.
Pennsylvania	To approve workload demands over short term.	Various methods including Box Jenkins or simple extrapolation.
Vermont	Budgeting	Regression analysis.
Virginia	No specific use, upon request of local courts.	Simple trend analysis; linear least squares.

NR: Not Reported

ARIMA: Auto Regressive Integrated Moving Average

### **Number of attorneys**

The number of attorneys correlates highly enough with both population and with total case filings to be yet another surrogate measure of need for judicial services. Attorney data may substitute for data on filings under the same circumstances in which population data are used. Ten states use number of attorneys as one of the criteria for determining the need for new judge-ships.

### **Travel time**

Twenty states use the time it takes to travel to court as one criterion for judge-ship needs, but the use of this criterion is declining. A judge who must spend an hour-and-a-half on the road each day does not have the same time available to dispose of cases as a judge who lives closer to court or drives through less congested areas. Travel time may be even longer during the winter months. One way to adjust for travel time is to subtract it from the judge time available to hear cases.

### **Other indicators**

In addition to these frequently used criteria, states use other measures to indicate the need for judges. Louisiana, for example, relies upon a Delphi-based weighted caseload system, but uses it with other indicators—namely case delay (when the requests for trial must be placed on the docket eight months in advance) and the amount of judicial effort (as measured by a peer review and the number of judge days worked). Utah relies on caseload indicators and population growth projections, but also relies heavily on local opinions as to severity of need. These opinions can be confirmed by such measures as how far into the future hearings and trials are set.



## *Case weighting adjusts court activity by the amount of judicial time spent on each activity.*



### **Weighted caseload**

Guideline 5 of the Task Force Report states that the "best direct measure" of the demand for court services is the number of weighted case filings. Because cases vary in complexity and the need for judicial attention, and thus in the amount of judge time that they require to process, some states "weight" some cases more than others. In the absence of explicit case weights, all cases are in effect counted equally, whether they are uncontested divorces, felony murder, or traffic offenses. Weighted caseloads permit taking the differences in case mix into account and make it easier to determine the extent to which caseload equals workload. Case weighting adjusts court activity by the amount of judicial time spent on each activity.

The basic idea underlying case weighting involves determining (1) the total time required to hear all cases, (2) the amount of time that the typical judge has available to hear cases, and (3) the number of judges needed (determined by dividing the time required to hear cases by the judge time available).<sup>8</sup>

The amount of time necessary to dispose of cases must either be obtained directly through measurements of court activity or estimated using the Delphi technique. Self-reports of judicial activity are a direct way to measure time spent on cases. Judges are able to report the time it takes to complete court activities both on the bench and in chambers. However, self-reports are expensive because minutes spent in reporting time worked is time carved out of judges' or clerks' workday. Judges may resist accounting for their time and may also fear that the time data will be used improperly. Consequently, some courts use third parties, consultants, or students to measure time needed to complete case activities. This has the advantage of objectivity and of preserving judge time, but the disadvantage of measuring only activities that take place in open court and of being very time-consuming, and thence costly.

Several states claim to use the traditional weighted caseload approach. Minnesota and Wisconsin still develop case weights by measuring the time it takes to complete discrete activities for each type of case. Washington is another pioneer in the use of weighted caseload, but is also currently experimenting with a simulation model.<sup>9</sup> Although the originator of the weighted caseload methodology, California now is developing a "simulation methodology" that uses a larger number of variables to measure judicial need and incorporates continuous data collection by using samples.<sup>10</sup>

Because the process of updating weights is time-consuming, burdensome, and costly, some states have adopted an alternative method of determining the time it takes to complete specified case activities. The Delphi technique allows judges to estimate the amount of time various cases take without measuring time spent on each activ-

ity.<sup>11</sup> Judges are asked to estimate the time it takes to process specific case types. These estimates are then tabulated, averages (and ranges) are calculated, and results are returned to each judge with a request to adjust the original estimates in light of the new information.

Initially, it is unlikely that judges will agree on the proper amount of time to spend on individual cases. For example, is an hour too much (or not enough) time to spend on a minor misdemeanor? Moreover, there may be a tendency to overestimate the time necessary to dispose of cases. It is a human tendency to remember the unusually long or complex cases and to neglect the larger volume of ordinary cases. If new estimates are widely disparate, new estimates are calculated, and the process is repeated until consensus is achieved. This technique permits judges to participate directly in setting case weights. States using the Delphi method of determining judgeship needs are Alabama, Arkansas, Georgia, Louisiana, and North Carolina (limited jurisdiction courts only). Delphi is also used in Florida, but as one of the aggravating or mitigating factors, not as the primary method of determining judgeship needs.

## **Other considerations in the use of quantitative criteria**

### ***Use of forecasts***

Use of quantitative criteria to determine judgeship needs permit historical filing data to be used to estimate future workload. Unless future workload is estimated, the judges necessary to process cases will always lag behind case filings. If the legislature is informed

about the need for new judgeships after the need becomes manifest, much time may elapse before the judge is actually in place. Legislators need information in advance of budget sessions, so data collection should coincide with budget committee hearings, and the workload should be predicted at least one year in advance.

Sixteen states now forecast caseloads as part of their effort to determine judgeship needs. Figure 3 shows states that use forecasting techniques, the reason the techniques are used, and the precise methods of forecasting.

### ***Evaluate the adequacy of support staff***

Judicial productivity, and hence the need for new judges, also depends on the effectiveness of court support staff. Without the proper type and level of support, judges may be performing some tasks that could be delegated to qualified support staff or may be performing others tasks less than efficiently.

Criteria to measure the need for judges are often not appropriate measures of the need for support staff. Indeed, the relationship between the need for judges and court support staff may be inverse; that is, some types of cases may require additional judges, but no new support staff, and vice versa. In some types of cases where information is supplied to judges by advocates for each side, increased caseloads translate directly into a need for additional judges. In other types of high-volume cases, increased caseloads require more support staff, but no additional judges. Indeed, there may be a synergistic relationship between judges and court support staff so that the proper combination of judges and court support staff makes best use of current resources or

even suggests alternative case-handling procedures. Seven states use court support staff as a measure of judgeship need (Arkansas, Colorado, Kansas, Oregon, Pennsylvania, West Virginia, and Utah).

## **Beyond quantitative criteria**

Theoretically, there may be an optimum number of criteria for determining judgeship needs. While too few criteria will exclude some factors that affect judgeship needs, too many criteria make data collection costly, some criteria redundant, and analysis needlessly complex. Moreover, a method of setting priorities among the nonredundant criteria is necessary to prevent judges, administrative office staff, and legislators from being overwhelmed by data without knowing which criteria are really important. Without an objective way to assess the value of competing claims, different decision makers can simply choose different criteria at different times to justify decisions reached on other grounds. Regardless of criteria used, all states need to establish explicit criteria and apply these consistently to determine the need for new judgeships.

Regardless of quantitative criteria used, none can encompass all contingencies. Even if it were possible it would not be desirable. Each circuit or district will have peculiarities in caseload caused by differences in demographics and other socioeconomic factors. For example, administrative responsibilities take time away from urban judges much like travel takes time away from rural judges. A better solution is to provide for local exceptions to the established criteria. For

example, the location of correctional facilities and other institutions, such as hospitals and educational institutions, are mitigating factors that are legitimate to consider when allocating judgeships. Following the Task Force Report's recommendation, a method of challenging the quantitative criteria on qualitative grounds should be a part of any judgeship needs methodology, but the burden of proof should be on those

challenging the quantitative criteria. Criteria that are too easy to adjust soon become meaningless.

The Task Force Report recommends an independent review to determine whether a court appearing to need judges could reduce that need through operational changes. Courts that desire new judgeships should be able to demonstrate their need, despite the implementation of administrative and procedural

changes designed to reduce or avoid the need for new judgeships. Any circuit or district should be able to request a peer evaluation of current operating procedures and have the opportunity to present a case for adding a new position. A review could also determine whether the need is long term, or caused by a temporary increase in filings or unusually difficult cases. scj

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## Notes

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1. Task Force on Principles for Assessing the Adequacy of Judicial Resources, *Assessing the Need for Judicial Resources: Guidelines for a New Process* (Williamsburg, Va.: National Center for State Courts, 1983).

2. For a summary of the factors used previously in the states, see p. 55 of the Task Force Report. This survey was updated to 1989 by Kenneth G. Pankey, Jr., "Factors Used to Assess the Need for Judicial Resources," (IS 89.1919, November 14, 1989). See also, B. Hoffman, *Determination and Justification of Judgeship Needs in State Courts* (Courts Technical Assistance Monograph No. 4; American University Criminal Courts Technical Assistance Project, 1981), and C. Manning, *Judgeship Criteria: Standards for Evaluating the Need for Additional Judgeships* (Chicago: American Judicature Society, 1973).

3. Task Force Report, p. 14.

4. Trial Court Performance Standards Project, *Measurement of Trial Court Performance* (Williamsburg, Va.: National Center for State Courts, 1990) pp. 2-3.

5. Task Force Report, *op. cit.*, p. 16; L. Sipes et al., *Managing to Reduce Delay* (Williamsburg, Va.: National Center for State Courts, 1980),

pp. 123-127; T. Church, Jr., et al., *Pretrial Delay: A Review and a Bibliography* (Williamsburg, Va.: National Center for State Courts, 1978), pp. 22-24; J. Goerdts et al., *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1991). See also Goerdts, *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts, 1987* (Williamsburg, Va.: National Center for State Courts, 1989), which also found that filings and dispositions per judge were not related to case-processing time.

6. All of these are surrogate measures, except for the use of outside judicial assistance, which is an indirect indicator of the need for judges.

7. See, for example, Victor E. Flango, "Assessment of Judicial Needs in West Virginia," unpublished report (Williamsburg, Va.: Southeastern Regional Office, National Center for State Courts, January 30, 1991).

8. Manning, *supra* at note 2, also quoted in Harry O. Lawson and Barbara J. Gletne, *Workload Measures in Court* (Williamsburg, Va.: National Center for State Courts, 1980), p. 51.

9. See comparison article by Heidi Green, *infra*, for discussion of simulation models in California and Washington.

10. Advisory Committee on Court Profiles, "Proposed New Judgeship Needs Determination Methodology," unpublished report (San Francisco: Administrative Office of the Courts, February 1993).

11. The Delphi technique was first developed by the Rand Corporation in 1964 (O. Helmer, "Convergence of Expert Consensus Through Feedback" [Rand Corporation, 1964]) and applied to courts in Michigan by David P. Doanes, "The Effect of Case Weights on Perceived Court Workload," 2 *Justice System Journal* 270 (spring 1977). For a more detailed explanation of the technique, see H. Graham McDonald and Clifford P. Kirsch, "Use of Delphi Method as Means of Assessing Judicial Manpower Needs," 3 *Justice System Journal* 314 (spring 1978).